

PPC BROADBAND, INC. v. CORNING OPTICAL COMMUNICATIONS RF, LLC, Appeal Nos. 2015-1361, 1364, 1366, 1368, 1369 (Fed. Cir. February 22, 2016). Before Moore, O'Malley, and Wallach. Appealed from the Patent Trial and Appeal Board.

Background:

Corning Optical Communications ("Corning") filed multiple petitions requesting *inter partes* review ("IPR") of various claims of different patents owned by PPC Broadband. The Patent Trial and Appeal Board concluded that all claims at issue would have been obvious in view of two references cited in the IPRs. PPC Broadband appealed the Board's decisions, asserting that the Board had improperly construed the terms of the claims at issue. One appeal addressed four of the IPRs, while the other appeal addressed only one IPR.

Issue/Holding:

In each of the IPRs, did the Board properly apply the appropriate claim construction standard? Yes and no; affirmed in-part and reversed in-part.

Discussion:

In addressing these appeals, the Federal Circuit emphasized that, in IPRs, the Board should give claims their broadest reasonable interpretation consistent with the specification, as similarly done by the Patent Office during initial examination. In contrast, district courts are to seek out the correct construction within the *Phillips* framework, by construing claim terms within their "ordinary and customary meaning" as understood by one of ordinary skill in the art at the time of invention, in light of the entire patent disclosure. The Supreme Court has granted *certiorari* to consider which claim construction standard is appropriate for IPRs. With regard to the present appeals, the Federal Circuit acknowledged that the decision "hinges on the claim construction standard applied-- a scenario likely to arise with frequency."

The Federal Circuit addressed each claim term at issue and held that the Board had mostly applied the proper claim construction standard in each instance by giving the claims their broadest reasonable interpretation. The Federal Circuit noted that the outcome would have been different if the "ordinary and customary meaning" standard had been applied. For example, one claim term at issue was "continuity member," which the Board construed as requiring only physical, rather than temporal, continuity. The Federal Circuit noted that, while PPC Broadband's construction requiring temporal continuity would have been correct under the "ordinary and customary meaning" standard applied by district courts, the Board's construction requiring only physical continuity was correct under the proper standard of "broadest reasonable interpretation."

However, with respect to at least one claim term, the Board had improperly applied the claim construction standard. Specifically, the Board had construed the phrase "reside around" as meaning "in the immediate vicinity of; near," based on a dictionary definition. PPC Broadband argued, and the Federal Circuit agreed, that the Board's construction was not based on the broadest reasonable interpretation *consistent with the specification*. The Federal Circuit emphasized that the specification and claims inform the ordinarily skilled artisan as to *which* ordinary definition the patentee was using for a certain claim term. As such, the Federal Circuit held that "reside around" should be construed as signifying "encircle or surround," in order to be consistent with the specification.