

The following small statement is a response to the pending NPRM, Docket # PTO–P2018–0036.

Dropping the BRI-Standard is Necessary! ¹⁾

But can the *Phillips*-Standard Meet the Supreme Court's Framework Requirements?

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The answer is: NOT REALLY,

The problem being that the proposed new claim construction standard (based on the CAFC's *Phillips* decision, 2005) does not yet know the Supreme Court's framework decisions²⁾. I.e., especially *Mayo/Biosig/Alice*³⁾ require to search – in construing a 'claim interpretation's, CI's' claim construction⁴⁾ for (with it) thereafter testing the CI, whether it satisfies SPL³⁾ – this CI's specification for an inventive alias exceptional concept (modeling an abstract idea or a natural phenomenon) that is independent of this CI's other concepts. But the *Phillips* based claim interpretation does not yet know any one of these few notional refinements of SPL by the Supreme Court's framework clearly defined and required to be used for this CI test!

Thus, starting the CI's PE-analysis from the *Phillips*-based claim interpretation – due to the preceding reasoning today seen as incomplete, after the Supreme Court's reinterpretation of § 101 for refining SPL in favor of ETCIs (see *Mayo/Biosig/Alice*) – drags also *Alice*'s PE-analysis into incomplete interpretation. This is indeed the USPTO's and CAFC's key fault^[480] stereotypically committed when dealing with ETCIs, primarily DNA-based ones (explained in more detail several times already in FSTP-papers, once more in^[480]).

... .. but the flaw is SIMPLY FIXABLE, EVEN IF NOT EVIDENTLY:⁵⁾

IN TOTAL: In line with the Supreme Court's responsibility by the US Constitution for interpreting the 35 USC §§ 101, 102, 103, 112 and with Andrei Iancu's multiple explicitly concurring statements, this author suggests to replace in this NPRM the targeted claim interpretation/construction⁴⁾ standard based on the CAFC's *Phillips* decision by the corresponding notions based on the Supreme Court's framework decisions.

Without using the Supreme Court's framework based SPL refinement it is impossible to guarantee consistency and predictability in SPL precedents alias absolute robustness of granted US patents – as by investors and inventors into patent business urgently needed – while using it properly does guarantee these advantages.

¹ This author has explained in far more than 20 (FSTP-) publications – US-wide and by scientific (especially AI^{[2](470, fn1.b))}) reasoning – that the meaning of the notion 'broadest reasonable interpretation, BRI' is indefinable, as being highly metaphysical^{[470, fn5.b))}.

² (while being a big step into the correct direction, it is not big enough for enabling SPL to dealing with 'emerging technology, ET' CIs)

³ Meeting by a 'claimed invention, CI' the requirements stated/implied by the framework^[480] is necessary and sufficient for the CI satisfying SPL. *Mayo* (2012) and *Alice* (2014) require identifying in a CI's specification an 'inventive concept' resp. an 'inventive *Alice* concept' for modeling an abstract idea or a natural phenomenon^[480], and *Biosig* (2013) requires that the meaning of a CI is clearly defined, whereby residual ambiguities must be resolved by the CI's inventor, see^[480].

⁴ For the distinctions between the notions 'claim construction' & 'claim interpretation', between 'inventive alias exceptional concepts' & 'ordinary (creative or noncreative) concepts', and between 'dependent concepts' & 'independent concepts' see^[480].

⁵ by simply grasping the SPL-notions' proper meanings, the precise definitions of which the Supreme Court by its framework's requirements either clarified or partially even delivered for the first time, see^[480].

The FSTP-Project's Reference List (Version of 05.07.2018)

Most of the FSTP-Project papers below are written in preparation of the textbook^[182] – i.e. are not fully self-explanatory independent of their predecessors.
WARNING: Some of the final entries in the FSTP-Project's Reference List are here slightly incorrect – the author is begging your pardon for any inconvenience!

- [2] AIT: "Advanced Information Sciences & Technologies" or "Artificial Intelligence Technology" denotes cutting edge IT areas, e.g. Knowledge Representation(KR)/ Description Logic (DL)/ Natural Language (NL) Semantics/ Semiotics/ System Design... just as MAI & MKR: "Mathematical Artificial Intelligence & Mathematical Knowledge Representation", the resilient fundament of AIT and "Facts Screening/Transforming/Presenting, FSTP"-Technology, both developed here. — currently much of it still in a "status nascendi"^[184]
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*) documents and full list available at www.fstp-expert-system.com.

Yet note the above WARNING: Some of the final entries in the FSTP-Project Reference List likely have wrong numbers!!!