

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOKIA OF AMERICA CORP., ERICSSON INC., AT&T SERVICES, INC.,
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS,
AND T-MOBILE USA, INC.,
Petitioners,

v.

PEGASUS WIRELESS INNOVATION LLC,
Patent Owner.

Case IPR2025-00036
U.S. Patent No. 11,627,631

PATENT OWNER'S PRELIMINARY SUR-REPLY

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Memorandum Opinion and Order in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex Dec. 11, 2024)
2002	Memorandum Opinion and Order in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex Dec. 23, 2024)
2003	Comparison of Districts Within the Fifth Circuit — 12-Month Period Ending September 30, 2024 (available at https://www.uscourts.gov/sites/default/files/2024-12/fcms_na_distcomparison0930.2024.pdf)
2004	Defendants' Preliminary Invalidity Contentions in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex May 17, 2024)
2005	Appendix A to Defendants' Preliminary Invalidity Contentions in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex May 17, 2024)
2006	Ex. A-1 of Appendix A to Defendants' Preliminary Invalidity Contentions in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex May 17, 2024)
2007	Ex. A-2 of Appendix A to Defendants' Preliminary Invalidity Contentions in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex May 17, 2024)
2008	Ex. A-4 of Appendix A to Defendants' Preliminary Invalidity Contentions in <i>Pegasus Wireless Innovation LLC v. Verizon Communications Inc. et al.</i> , Nos. 2:23-cv-00640, 2:23-cv-00638, 2:23-cv-00639 (E.D. Tex May 17, 2024)
2009	Reserved
2010	Reserved
2011	Reserved
2012	Reserved
2013	Reserved

Exhibit No.	Description
2014	Reserved
2015	Reserved
2016	U.S. Patent 10,966,222 (Han counterpart)
2017	Non-access stratum – Wikipedia (Oct. 19, 2016) (available at https://en.wikipedia.org/w/index.php?title=Non-access_stratum&oldid=745097988)

As authorized by the Board (Ex. 3001), Patent Owner files this Preliminary Sur-Reply in support of its Preliminary Response (“POPR”) and in response to Petitioners’ Preliminary Reply (“Reply”).

I. Petitioners’ Own Evidence and Expert Testimony Confirms that the 2016 KR Document Supports the Challenged Claims

Petitioners are wrong that “the burden shifted to the Patent Owner to show that the ’631 Patent is not entitled to the priority date of the 2016 KR document.” In IPRs, petitioners bear the burden of persuasion, and *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375 (Fed. Cir. 2015) is no different. *Id.* at 1378 (“that burden never shifts to the patentee”).

Petitioners also complain that the POPR introduced extrinsic evidence to “oversimplify” a PDU session (Reply, 1), but Ex. 1020 was Petitioners’ own evidence that confirmed the understanding of a PDU session. Petitioners’ expert cited to and relied on this evidence, describing it as a reference that “describes what a person of ordinary skill in the art would have known.” Ex. 1003, ¶58. Dr. Kotzin endorsed Ex. 1020’s definition of a PDU session as “an association between the UE and a data network that provides a PDU connectivity service (which is a service that provides exchange of PDUs between a UE and a data network).” Ex. 1003, ¶59 (citing Ex. 1020, pp. 21-22). Petitioners’ use of this evidence as “what a person of ordinary skill in the art would have known” (Ex. 1003, ¶58) confirms its probative value, and undercuts Petitioners’ complaint that

it is somehow improper to consider this evidence for the very purpose that it was originally submitted. Notably, Petitioners offer no case law that prohibits considering what was understood by a POSITA at the relevant time for determining whether §112(a) is satisfied.

Petitioners also take an overly rigid interpretation of the 2016 KR document, complaining that the “arrows in Fig. 1 are not labeled as ‘PDU sessions’ or even ‘logical connection[s] between a user equipment (UE) and a data network,’” (Reply, 2) but written description support does not require verbatim disclosures. *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) (the exact terms appearing in the claim “need not be used *in haec verba*.”); *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1345 (Fed. Cir. 2016). The disclosures relied upon in the 2016 KR Document do support these claimed elements under §112(a) as discussed extensively in the POPR. POPR, 13-18.

Petitioners briefly argue that the “2016 KR document describes data channels as being ***physical*** and ***not logical***” and therefore somehow contradicts the POPR’s interpretation of a PDU session. Reply, 2 (emphasis in original). But this argument is not well-developed, for good reason. First, Dr. Kotzin admitted that in LTE, both logical interfaces and physical channels are used for signaling. Ex. 1003, ¶¶56-57. Second, Petitioners cannot credibly contend that a physical channel could be established without the existence of a logical channel to transmit control

plane information and establish the physical channel.

Petitioners also complain that there is no support for the “rejection” limitation of the claims, arguing that “[n]on-support and rejection are two different concepts.” Reply, 3. But a target base station that informs a source base station that it does not support a PDU session clearly cannot accept that PDU session. Dr. Kotzin opines that “information of non-support” does not reasonably convey “information for indicating a rejection of the one or more PDU sessions,” Ex. 1003, ¶¶116-120, but by responding to a request by informing the requester that that target does not support an aspect of the request *is a rejection* of that aspect, along with a reason for the rejection. This disclosure also satisfies §112(a).

Oddly, after first complaining about the POPR's reliance on Petitioners' own evidence, Petitioners then fault the POPR for relying on “only attorney argument.” Reply, 4. This is wrong. The POPR expressly relied on the testimony of Petitioners' own expert, Dr. Kotzin, his explanation of a PDU session, and his own relied-upon evidence (Ex. 1020) to support these concepts. POPR, 12-23. Per Ex. 1020, in the context of an all-IP LTE network, the PDU is a data packet. Dr. Kotzin's own reference confirms that a PDU session is a logical connection between a user equipment (UE) and a data network. Further, the 2016 KR document expressly identifies Fig. 1 as illustrating “an example of multiple slices built within the same network infrastructure.” Ex. 1006, [0027]. These slices are

provided for “*data transmission-reception via a specific network slice* or one or more network slices provided on an infrastructure where the terminal is shared” *Id.*, [0028] (emphasis added); *see also id.*, [0030]. As explained in the POPR, the bidirectional arrows are labeled “EPC,” which confirms that they are operating in an LTE environment, using network slices.

Moreover, Petitioners do not dispute that the 2016 KR document discloses a handover request message including network slice information. As explained in the POPR, the 2016 KR document clearly discloses an “an association between the UE and a data network” for transmitting and receiving data using packet data in an LTE environment. This is the very definition of a PDU session in an all-IP network. Contrary to Petitioners’ Reply, all elements of the challenged independent claims are fully supported by the 2016 KR Document.

II. The Director Should Deny Institution Under *Fintiv*

Petitioners present cursory arguments regarding *Fintiv*. They reference “the fact that trial dates have not yet been set for two of the three cases” (Reply, 5), but that argument has been repeatedly rejected as weighing in favor of institution. *See* POPR, 36-41 (citing cases). Moreover, Petitioners do not contend that all three of these cases will need to go to trial in order to fully litigate all validity issues surrounding the ’631 patent. One trial date set eight months before a final written decision here is sufficient to fully test the ’631 patent’s validity in district court and

to push this factor in favor of denial. Petitioners also mention “[c]ompelling merits” (Reply, 5) but do nothing to show the merits are compelling here. Indeed, as explained in the POPR, Petitioners’ substantive arguments lack merit. Finally, Petitioners “present a *Sotera* stipulation.” Reply, 5. But this stipulation does not outweigh the significant weight in favor of discretionary denial. Considering the earlier trial date, Petitioners’ attempt to peel off a small subset of the case’s invalidity issues for this IPR would be an inefficient use of resources. This case presents a situation where a broad, multi-patent suit can be fully resolved many months before the Board issues its final written decision. The district court would consider the issues raised in this IPR, and also all other validity and infringement issues involving the challenged patent. Carving Petitioners’ challenges from that dispute would not help drive resolution of the dispute, and Petitioners have not explained any efficiencies that would arise from this IPR. The Director should deny institution rather than go forward with Petitioner’s challenges.

Finally, Petitioners’ delay in filing their Petition and failure to file a *Sotera* stipulation with their Petition demonstrates their intent to conduct parallel proceedings. Given the lengthy time that passed between the filing of their invalidity contentions and their slow-rolled Petition, Petitioners’ belated *Sotera* stipulation should be given little weight as it encourages gamesmanship and rewards petitioners for pursuing parallel proceedings.

Dated: April 4, 2025

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CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on this date, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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