

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

KT CORPORATION (Patent Owner) and
PEGASUS WIRELESS INNOVATION LLC (Exclusive Licensee)

U.S. Patent No. 11,540,272

Issue Date: December 27, 2022

Title: METHOD AND DEVICE FOR ALLOCATING DATA CHANNEL
RESOURCE FOR NEXT-GENERATION WIRELESS ACCESS NETWORK

Inter Partes Review No.: IPR2025-00137

**PETITIONERS' OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

TABLE OF CONTENTS

CONTENTS

I.	Introduction.....	1
II.	Stipulation.....	3
III.	Analysis	3
	A. Factor 1 – Likelihood of Stay.....	3
	B. Factors 2 and 5 – Timing of Trial and Overlap of Parties	4
	C. Factor 3 – Investment in Parallel Proceedings.....	6
	D. Factor 4 – <i>Sotera</i> Stipulation and Overlap of Issues.....	8
	E. Factor 6 – Other Factors.....	9
	1. Gao Teaches, Or Renders Obvious, The Claimed “Information On A Starting OFDM Symbol.”	9
	2. You Teaches, Or Renders Obvious, The Claimed “Information On A Starting OFDM Symbol.”	12
IV.	Conclusion	17
	CERTIFICATION OF SERVICE ON PATENT OWNER.....	1

Petitioners' Exhibit List

<i>Exhibit #</i>	<i>Description</i>
1001	U.S. Patent No. 11,540,272 (“the ‘272 Patent”)
1002	Select portions of prosecution history of the ‘272 Patent (“File History”)
1003	Declaration of Petitioners’ Expert (“Melodia Declaration”)
1004	U.S. Pat. Pub. No. 2018/0376497 (“You”)
1007	KR2016/008093 (“You PCT”) filed on July 25, 2016
1006	Certified Translation of EX-1007
1007	U.S. Pat. Pub. No. 2020/0187169 (“Gao”)
1008	CN201610849716.8 (“Gao Priority Application”)
1009	Certified Translation of EX-1008
1010	3GPP Specification 36.213, Release 13.1.0 (published March 2016)
1011	3GPP Specification 36.212, Release 13.1.0 (published March 2016)
1012	Declaration of Craig Bishop (“Bishop Declaration”)
1013	List of related patents
1014	Plaintiff Pegasus Wireless Innovations LLC’s Disclosure of Asserted Claims and Infringement Contentions, Verizon Case.
1015	‘272 Patent Priority Application (October 31, 2016)
1016	Certified Translation Of October 31, 2016 Priority Application For ‘272 Patent
1017	RAN 84-BIS list of attendees (including inventor)
1018	RAN 86 list of attendees (including inventor)
1019	RAN 86-BIS list of attendees (including inventor)
1020	R1-1610129
1021	RAN1#86-BIS Meeting Draft Minutes (dated October 20, 2016).

<i>Exhibit #</i>	<i>Description</i>
1022	<i>Pegasus Wireless v. Cellco Partnership d/b/a Verizon Wireless</i> , Case 2:23-cv-00640-JRG (EDTX), Docket Control Order
1023	Websters definition of “table” (https://www.merriam-webster.com/dictionary/table)
1024	Brittanica definition of “table” (https://www.britannica.com/dictionary/table)
1025	KT Corporation Motion For Protective Order From Questioning Beyond The Scope Of Jurisdictional Discovery (Redacted), Dkt. No. 172, case 2:23-cv-00640.
1026	Excerpts from Prosecution History Of Application 16/346,108 (parent application to ‘272 patent)
1027	Order Granting Protective Order, case 2:23-cv-00640-JRG Document 178 (12/12/2024)
1028	<i>Pegasus Wireless v. Cellco Partnership d/b/a Verizon Wireless</i> , Case 2:23-cv-00640-JRG (EDTX), Dkt. No. 310-15, Exhibit M to Plaintiff Motion To Amend Infringement Contentions (April 17, 2025 redacted filing of April 10, 2025 sealed motion)
1029	<i>Pegasus Wireless v. Cellco Partnership d/b/a Verizon Wireless</i> , Case 2:23-cv-00640-JRG (EDTX), Dkt. No. 310-16, Exhibit N to Plaintiff Motion To Amend Infringement Contentions (April 17, 2025 redacted filing of April 10, 2025 sealed motion)

I. INTRODUCTION

Patent Owner (“PO”) has requested discretionary denial of institution of the Petition for *inter partes* review of the ’272 Patent on the basis that “each *Fintiv* factor weighs in favor of the Board exercising its discretion to deny institution” in view of the related district court litigation, *Pegasus Wireless Innovation LLC v. Cellco Partnership d/b/a Verizon Wireless et al.*, No. 2:23-cv-00640-JRG (E.D. Tex.) (“Related Litigation”). Patent Owner’s Request For Discretionary Denial, Paper 12 (“Request”), 1. However, PO mischaracterizes several material facts while ignoring others in seeking discretionary relief from an otherwise meritorious petition.

Petitioners acknowledge that ***one*** trial is scheduled in the Related Litigation prior to an expected decision in this proceeding. However, as set forth below, trials against other Petitioners have not been scheduled and one Petitioner, Google, is not a party to any trial. Importantly, recent PTAB case law supports institution in this case notwithstanding the trial schedule in the Related Litigation. *See, e.g., Google LLC v. Mullen Industries LLC*, IPR2025-00019, Paper 14 (PTAB May 12, 2025). Moreover, PO has recently moved to dismiss four of the patents at issue in the Related Litigation, along with numerous claims of the remaining patents. This fact, coupled with the absence of system prior art contentions and the planned submission of *Sotera* stipulations with respect to all remaining patents at issue in

the Related Litigation, render the PTAB the most judicially efficient forum for adjudicating all prior art invalidity issues.

Moreover, Petitioners' *Sotera* stipulation proffered herein eliminates any overlap of issues presented in the Petition and issues to be tried in the Related Litigation. *Motorola* is clearly distinguishable given that in the Related Litigation, Defendants have **not** proffered any invalidity contentions based on system prior art (which cannot be raised in an IPR even if they did).

PO's Request also demonstrates the strength of Petitioners' unpatentability challenges because the Request resorts to mischaracterizing and/or ignoring arguments in the Petition. As discussed in greater detail below, PO's argument that the Petition fails to demonstrate the claimed "information on a starting OFDM symbol" is belied by PO's admission that no claim constructions are necessary, including "structural information," and Grounds 1 and 2 of the Petition demonstrating the claimed subject matter.

PO's argument that Ground 1 fails to disclose "information on a starting OFDM symbol" ignores key analysis and citations in the Petition that demonstrate how the asserted Gao and You prior art references disclose these claim elements, both alone and in combination.

This Opposition demonstrates that a proper analysis of the *Fintiv* factors, particularly in view of Petitioners' *Sotera* stipulation and the strength of the

grounds set forth in the Petition, dictates that discretionary denial is not warranted and that PO's Request should be denied in the interest of efficiency, fairness, and patent quality.

Accordingly, Petitioners hereby respectfully request that the Board deny PO's Request and grant the Petition to institute *inter partes* review of the '272 Patent.

II. STIPULATION

Petitioners hereby present a *Sotera* stipulation. Petitioners stipulate that if the Board grants the Petition and institutes an inter partes review, Petitioners will not pursue in the Related Litigation the specific grounds asserted in the Petition, or any other ground that could have been reasonably raised in an IPR. *See Sotera Wireless, Inc. v. Masimo Corporation*, IPR2020-01019, Paper 12 (P.T.A.B. Dec. 1, 2020) (precedential).

III. ANALYSIS

A. Factor 1 – Likelihood of Stay

No party has requested a stay, and the District Court has not indicated whether a stay is likely to be granted. The fact that other IPR petitions – IPR2025-00036 and IPR2025-00037 – have been denied by the Board (Request, at 4-5) is irrelevant as to this Petition because those other petitions address different patents. Notably, the Request does not cite to any support for the principle that the *Fintiv* analysis for the '272 patent depends on, or can even consider, discretionary denials

of institution for other unrelated patents. Therefore, this factor is neutral.

B. Factors 2 and 5 – Timing of Trial and Overlap of Parties

Petitioners comprise multiple entities with different trial dates – or no trial date at all. These factors are interrelated and strongly favor institution. *See HP Inc., et al. v. Neodron Ltd.*, IPR2020-00459, Paper 17 at 36, 38 (P.T.A.B. Sept. 14, 2020).

Petitioner Google LLC is not a party to any trial. Therefore, there is *not* complete overlap of the parties, and at least one Petitioner will *never* have a trial date in the Related Litigation. *IQE PLC v. Cornell Rsch. Found. Inc.*, IPR2024-00609, Paper 9 at 12-13 (P.T.A.B. Sept. 13, 2024).

As for the other Petitioners, only one of the three trials in the parallel District Court case is scheduled. PO points to median-time-to trial statistics to suggest that the scheduled trial date favors denial, but recent cases tell a different story. In 2025, the District Court has significantly delayed multiple scheduled trial dates and has an average of 29 months to trial. *See Whirlpool Corp. et al. v. Shenzhen Sanlida Elec. Tech. Co.*, No. 2:22-CV-00027 (E.D. Tex. Mar. 25, 2025) (1092 days to trial); *Force Mos Tech., Co. v. ASUSTek Computer Inc.*, No. 2:22-CV-00460 (E.D. Tex. Jan. 22, 2025) (802 days to trial); *Touchstream Techs., Inc. v. Charter Communications Inc.*, No. 2:23-CV-00059 (E.D. Tex. Feb. 17, 2025) (746 days to trial). Indeed, trial dates in this district court are often delayed multiple times. *See,*

e.g., Multimedia Techs. PTE Ltd. v. LG Elecs. Inc., et al., 2:22-cv-00494-JRG-RSP, Dkt. 273 (E.D. Tex. Mar. 18, 2025) (noting that “[t]his case has been set for trial five times: November 18, 2024, January 27, 2025, February 7, 2025, March 3, 2025, and March 17, 2025. The parties have also been notified that other cases are preferentially set ahead of them for the April 7, 2025 and April 21, 2025 trial settings.”).

Further, it is unlikely for the cases to be scheduled serially given the number of patents and claims at issue, as post-trial motions and other factors, including the Court’s busy docket, will prevent serial scheduling of the trials. Consequently, while one case *may* go to trial before a final written decision issues, it is unlikely that all cases will go to trial prior before such time.

In *Google LLC v. Mullen Industries LLC*, IPR2025-00019, Paper 14 (PTAB May 12, 2025), the Board granted institution in spite of the fact that district court trial was scheduled to occur “more than six months” before the projected final written decision date and “the defendant’s invalidity contentions include system prior art.” *Id.* at 10-12. In *Mullen*, while parties had yet to conduct Markman in the parallel district litigation, prior art invalidity based on system art was still at issue, unlike the Related Litigation in the present case. Thus, in light of this fact and the *Sotera* stipulation presented herein, there will not be any overlap or investment whatsoever concerning prior art invalidity between the PTAB and district court if

trial is instituted at the PTAB. The facts here are at least as favorable towards institution as compared with *Mullen*.

Accordingly, these factors weigh strongly in favor of institution. *See HP Inc.*, Paper 17 at 36, 38. PO never addressed the significant risk of inconsistent jury verdicts on validity (given that there will be three separate trials), which further favors resolving validity in a single proceeding at the P.T.A.B.

C. Factor 3 – Investment in Parallel Proceedings

Here again, Petitioner Google is not a party in the District Court proceedings and, thus, will not challenge the validity of the '272 Patent in those proceedings.

As for the other parties, the Director focuses on the status of the District Court proceedings *at the time the POPR was filed*, now that the interim guidelines have been rescinded.¹ *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 3 (P.T.A.B. Mar. 28, 2025). In contrast to the facts of *Motorola*, the parties here had invested little energy into invalidity challenges of the '272 Patent claims and Defendants had and have **not** proffered any invalidity contentions based on

¹ Petitioners reserve the right to challenge the March 26, 2025 Interim Processes for PTAB Workload Management at least because it is legally invalid as (1) exceeding the Director's authority, (2) arbitrary and capricious, and (3) adopted without notice-and-comment rulemaking.

system prior art (which cannot be raised in an IPR even if they did). *Id.*, 4. At the time of filing the POPR, the parties had just completed fact discovery and served opening expert reports, and a claim construction order had not issued. (The Court has still not issued a claim construction order.) The facts here further differ from *Motorola*, as there is a non-defendant petitioner, multiple unscheduled trials, and challenge of unasserted claims did not factor into the Director’s analysis.

Therefore, much work is still to be done in the District Court case, and this factor favors institution.

PO argues that “Patent Owner served infringement contentions on Petitioners in district court on March 18, 2024...[y]et, Petitioners delayed until November 27, 2024—over eight months after receiving infringement contentions—to file its Petition challenging the ’272 patent.” Request, 13.

Petitioners did not delay filing its petition given the involvement of non-party Google coupled with PO’s delay in reshaping of asserted claims and infringement contentions. Indeed, Petitioners promptly worked together, including with non-party Petitioner Google, to prepare and file this petition in an effort to advance judicial efficiency by avoiding multiple petitions and thereby conserving Board resources. Further, on *April 10, 2025* – four days prior to the close of fact discovery, PO filed a motion for leave to amend its infringement allegations to include a number of IOT devices that were not previously accused of infringing the

'272 Patent. EX-1028, EX-1029. While briefing of the issue has concluded, no order has been entered and the late identification of these accused products raises the possibility of a continuance.

Accordingly, this factor favors institution or, at the very least, is neutral.

D. Factor 4 – *Sotera* Stipulation and Overlap of Issues

Because Google is not a party to the parallel litigation, there cannot be any overlap for Google. Moreover, Petitioners present a *Sotera* stipulation. To mitigate any duplication concerns, if this IPR is instituted, Defendants will not pursue in District Court litigation the specific grounds asserted in this proceeding, or any other ground that was raised or could have been reasonably raised in an IPR. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (P.T.A.B. Dec. 1, 2020) (precedential); *BMW of No. Am., LLC v. Northstar Systems LLC*, IPR2023-01017, Paper 12, at 10 (P.T.A.B. Dec. 8, 2023). As noted above, PO has recently moved to dismiss four of the patents at issue in the Related Litigation, along with numerous claims of the remaining patents. This fact, coupled with the absence of system prior art contentions and the planned submission of *Sotera* stipulations with respect to all remaining patents at issue in the Related Litigation, render the PTAB the most judicially efficient forum for adjudicating all prior art invalidity issues. Therefore, this factor favors institution.

E. Factor 6 – Other Factors

PO's arguments regarding the timing of the multiple petitions challenging patents unrelated to the '272 patent must be rejected. The Board should look no further than the present Petition for purposes of weighing the *Fintiv* factors.

The Petition presents compelling evidence of invalidity. PO challenges the Petition's analysis of only a single claim element: "information on a starting OFDM symbol" within a slot. Request, 26-29. As detailed below, both the Gao reference (EX-1007) and You reference (EX-1004) teach this claim element.

PO's assertion makes no sense in light of the express disclosure of the prior art and effectively requires the Board to entirely ignore the evidence.

1. Gao Teaches, Or Renders Obvious, The Claimed "Information On A Starting OFDM Symbol."

For example, Gao expressly discloses "slots" with OFDM symbols. Gao allocates "regions" within "time units" which are "one or more slots..." EX-1007, 0019. For example, Figure 5 shows two "time units" (slots) each divided into multiple "regions" for downlink and uplink shared channels. EX-1003, ¶¶205-211.

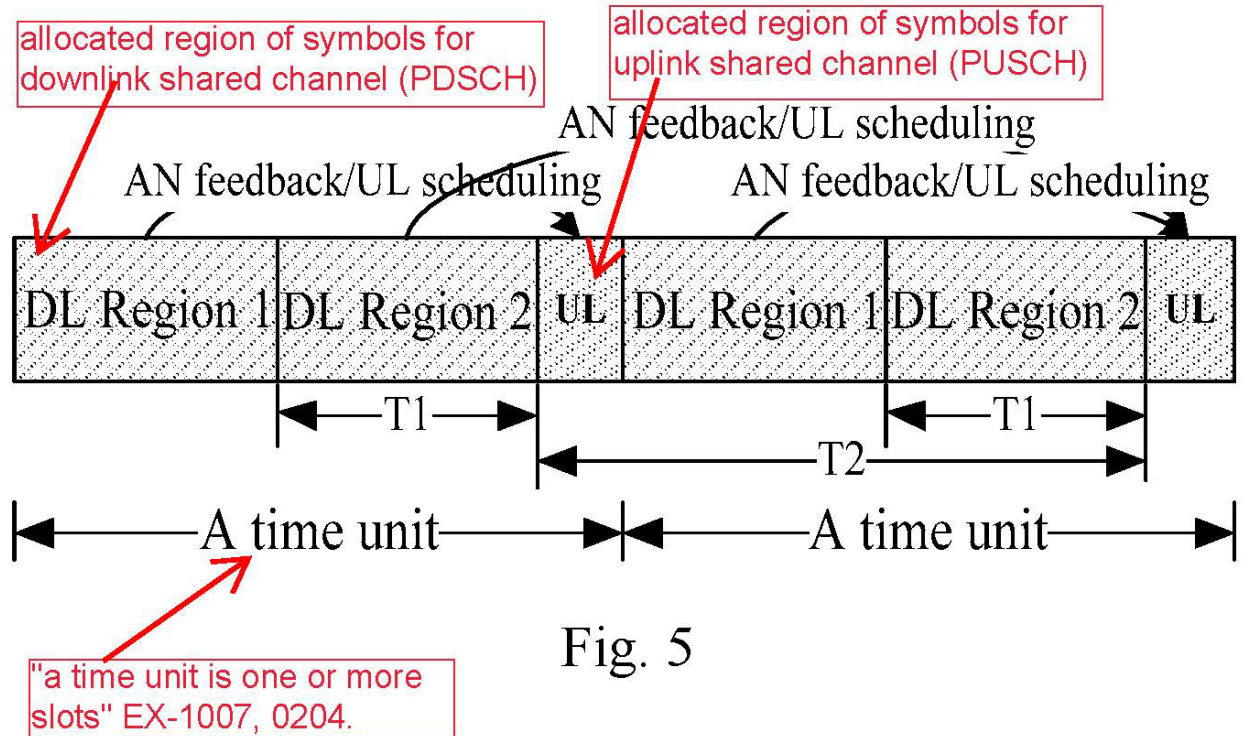


Fig. 5

EX-1007, Fig. 5, 0147 (“downlink transmission in the DL region may occupy only a part of OFDM symbols”); 0170 (“downlink transmission in the DL region may occupy only a part of OFDM symbols”) 0147-0161.

Gao expressly states “each pattern includes an allocation of lengths and **positions of the DL regions in the time unit...**” EX-1007, 0206. EX-1003, ¶¶238-241.² Moreover, Gao expressly identifies this “position” using “*the* number of a symbol.” *E.g.*, EX-1007, 0128 (“indication information indicates a time domain position” using “the number of a symbol”). EX-1003, ¶283. Plainly “the

² PO does not dispute that the disclosure of “an allocation of lengths” in Gao discloses or renders obvious “the number of OFDM symbols.”

number of a symbol” is “information on a starting OFDM symbol.” Thus, Gao clearly identifies the “position” (i.e., “the number of a symbol”) within the slot – which teaches (or at a minimum) renders obvious the “information on a starting OFDM symbol.”

Notably, PO does not address the disclosures above. Instead, PO makes an ill-reasoned argument about a different disclosure in Gao. PO cites to the following disclosure:

[0191] In an implementation, the notifying module is configured to notify the UE of the allocated DL regions via the configuration signaling by: notifying the UE of lengths and positions of the DL regions in the time unit; or notifying the UE of one of a plurality of predefined patterns, where each pattern includes an allocation of lengths and positions of the DL regions in the time unit; **or notifying the UE of start or end positions of the DL regions in the time unit.**

Request at 28,29 (underlined and bolded emphases in original) (quoting EX-1007, [0191]). Gao recites separate mechanisms “to notify the UE of the allocated DL regions via the configuration signaling” (as quoted above). The content of one of the alternatives does not dictate or limit the meaning / content of the other alternative.

PO’s position devolves to the assertion that because Gao did not recite the word “start” before “positions” in the underlined passages, Gao does not disclose “information on a starting OFDM symbol” as claimed. Request, 28-29.

PO's position makes no sense. Gao's "DL regions" are defined by contiguous blocks of OFDM symbols within a slot as shown above. In the context of Gao, therefore, there are only a few ways to interpret Gao's disclosure of "positions of the DL regions in the time unit"—and at least one of them expressly provides "information on a starting OFDM symbol." First, and most relevant to the claim language here, "positions" can refer to the start symbol number, while "lengths" refers to how many symbols are in the "DL region" going "forward" in time. Second, "positions" can refer to the ending symbol number, while "lengths" refers to how many symbols are in the "DL region" going "backward" in time. Third, the "positions" could be express identification of the contiguous symbol numbers (e.g., symbols 2, 3, 4). At least the first alternative provides the claimed "*information on a starting OFDM symbol*" because it conveys to the UE the number of the symbol that starts the DL block so that the UE can successfully identify, receive, and decode the OFDM symbols in the DL region. Thus, it makes no sense that Gao must expressly use the word "start" to disclose (or render obvious) the disputed claim element (as PO contends).

2. You Teaches, Or Renders Obvious, The Claimed "Information On A Starting OFDM Symbol."

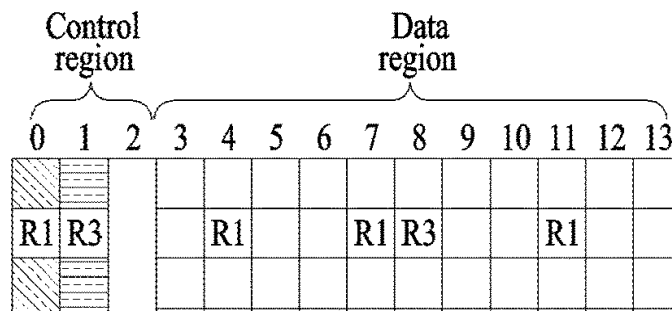
PO mischaracterizes You's teachings and the Petition's arguments. You plainly teaches that "patterns" identify ("indicate") specific regions for PDSCH within an overall set of symbols:

Such an sPDSCH transmission resource pattern may indicate only a PRB resource region in which the sPDSCH is transmitted. Alternatively, the sPDSCH transmission resource pattern may **indicate** not only the PRB resource region in which the sPDSCH is transmitted but also a resource region in which the sPDSCH is transmitted **within** an OFDM symbol region in which the sPDCCH is transmitted in the PRB resource region in which the sPDSCH is transmitted.

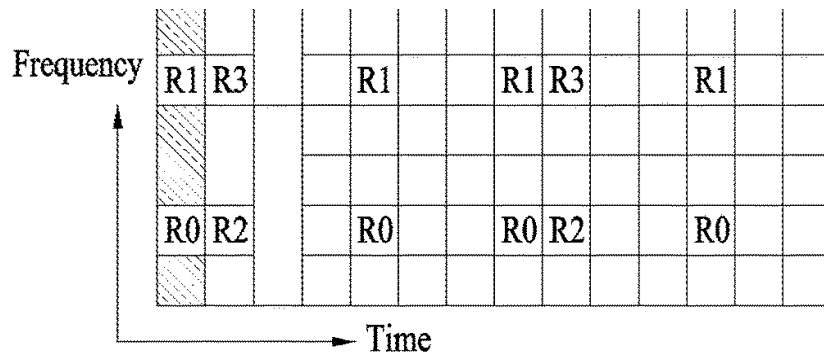
EX-1004, [0004]. The “indicate ... within” teaches that the pattern is not just some undefined block (region) of OFDM symbols but includes identification of where the PDSCH region is actually located (the “indication”) within an overall OFDM symbol region that includes other regions (e.g., “information on a starting OFDM symbol...”).

This embodiment is demonstrated by You’s Figure 3 (and associated description. EX-1003, ¶¶379-385. You’s Figure 3 shows a PRB region that includes both PDCCH (control) and PDSCH (data) “regions.”

FIG. 3



...



EX-1004, Fig. 3 (excerpted). You teaches that the “control” region may have a variable number of OFDM symbols (e.g., 3 or 4).

Referring to FIG. 3, **a maximum of 3 (or 4) OFDM symbols** located in a front part of a first slot of a subframe corresponds to the control region. ...

EX-1004, 0067. Then, You teaches that the “data” (PDSCH) region may also be in the overall resource region after the “control” region.

OFDM symbols other than the OFDM symbol(s) used in the control region correspond to the data region to which a physical downlink shared channel (PDSCH) is allocated. Hereinafter, a resource region available for PDSCH transmission in the DL subframe is referred to as a PDSCH region.

EX-1004, 0067. EX-1003, ¶¶381-384.

Thus, given that the “control region” may be of variable length within the overall PRB resource region, You’s teaching that the “the sPDSCH transmission resource pattern may **indicate** ... a resource region in which the sPDSCH is transmitted **within** an OFDM symbol region in which the sPDCCH is transmitted in the PRB resource region in which the sPDSCH is transmitted” teaches that the

pattern identifies (indicates) the actual starting OFDM symbol of the PDSCH region.

PO also incorrectly argues that You's Section "D. **Starting OFDM Symbol** location of sPDSCH Transmission" should be read in an exclusionary fashion to negate the teachings of Section "C. sPDSCH PRB Allocation" in which You describes "patterns" as "Method 7." EX-1004, [0198-0225]. See Request, 27-28.

PO incorrectly interprets Section D. Section D describes different "options" for the OFDM starting location depending on the particular configuration of the system. Specifically, Section D describes different "options" for different "method" scenarios for transmissions of PDCCH and PDSCH:

- "Method 1. Transmission Through OFDM Symbol on which sPDCCH is not Transmitted ..." (EX-1004, [0233-0235]).
- "Method 2. Transmission Only in OFDM Symbol Region in which sPDCCH is not Transmitted within sPDCCH PRB-Set(s)..." (EX-1004, [0236-0251]).
- "Method 3. Transmission of sPDSCH Only in OFDM Symbol Region in which sPDCCH is not Transmitted in all PRBs when sPDSCH Transmission PRB Resource Overlaps sPDCCH PRB-Set(s) ..." (EX-1004, [0252-0255]).
- "Method 4. Transmission Only in OFDM Symbol Region in which sPDCCH is not Transmitted in PRB Region in which sPDCCH for Scheduling sPDSCH is Transmitted..." (EX-1004, [0256-0271]).

- “Method 5. Transmission of sPDSCH in RE Region in which sPDCCH for Scheduling sPDSCH is not Transmitted...” (EX-1004, [0272-0273]).
- “Method 6. Transmission Only in OFDM Symbol Region in which sPDCCH is not Transmitted in PRB Region Indicated by eNB...” (EX-1004, [0274-0295]).

For each of these methods, Section D teaches which different “options” may be used such as DCI, SIB, or RRC to configure PDSCH information. E.g., EX-1004, [0240, 0259].

PO’s reading that Section D somehow excludes or overrides Section C is unsupported by any citation to You. Rather, You teaches that Section D should be considered in conjunction with Section C. EX-1004, [0230]. For example, Section C also separately teaches that the “location” of PDSCH “may be configured” by RRC, SIB or DCI (consistent with Section D). EX-1004, [0216, 0218, 0220, 0205].

You includes two invalidating teachings. First, as detailed above, You teaches that its RRC signaling sending patterns identify a PDSCH region “within” an overall region that includes variable amounts of other OFDM symbols. You’s teaching of different methods of identifying OFDM starting locations (DCI, RRC, SIB...) supports the basic teaching that RRC-transmitted patterns encompass the complementary teaching of specifying OFDM start locations with RRC signaling.

IV. CONCLUSION

For the foregoing reasons, the Director should deny PO's request for discretionary denial of institution.

Respectfully submitted,

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Dated: May 27, 2025

CERTIFICATION OF SERVICE ON PATENT OWNER

Pursuant to 37 C.F.R. §§42.6(e), 42.8(b)(4) and 42.105, the undersigned certifies that on May 27, 2025, a complete and entire copy of this **Petitioners' Response to Patent Owner's Request for Discretionary Denial** was served in its entirety via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as by delivering copies via electronic mail to the following:

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24 *et seq.*, the undersigned certifies that this document complies with the type-volume limitations. This document contains 3380 words as calculated by the “Word Count” feature of Microsoft Word, the word processing program used to create it.

Dated: May 27, 2025

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