UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.,
Petitioners,

v.

PANTECH CORPORATION,
Patent Owner

Case: IPR2025-00762

U.S. Patent No. 10,863,573

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION UNDER 35 U.S.C. § 314(A)

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PATENT OWNER'S EXHIBIT LIST

Exhibit Number	Description
2001	Second Amended Docket Control Order, *Pantech Corporation and Pantech Wireless, LLC v. OnePlus Technology (Shenzhen) Co., Ltd.*, No. 5:24-CV-00038-RWS-JBB (E.D. Tex.) (Dkt. 58) (May 13, 2025)
2002	United States District Courts – National Judicial Caseload Profile
2003	Pantech Corporation's July 9, 2021 Notice Letter to OnePlus Technology Co., Ltd.
2004	Third Amended Docket Control Order, *Pantech Corporation and Pantech Wireless, LLC v. OnePlus Technology (Shenzhen) Co., Ltd.*, No. 5:24-CV-00038-RWS-JBB (E.D. Tex.) (Dkt. 86) (July 17, 2025)
2005	Order Modifying Dates in Docket Control Order, *Pantech Corporation and Pantech Wireless, LLC v. OnePlus Technology (Shenzhen) Co., Ltd.*, No. 5:24-CV-00038-RWS-JBB (E.D. Tex.) (Dkt. 85) (July 17, 2025)
2006	Jury Verdict, *Pantech Corp. v. OnePlus Technology (Shenzhen) Co., Ltd.*, No. 5:22-cv-00069-RWS (E.D. Tex.) (Dkt. 259) (April 1, 2024)
2007	Final Judgment, *Pantech Corp. v. OnePlus Technology (Shenzhen) Co., Ltd.*, No. 5:22-cv-00069-RWS (E.D. Tex.) (Dkt. 499) (Jan. 23, 2025)
2008	Kiri Gupta & Urska Petrovcic, *Evidence of Systematic "Patent Holdout"*, 38 Berkeley Tech. L. J. (2023)
2009	Richard A. Epstein & Kayvan B. Noroozi, *Why Incentives for "Patent Holdout" Threaten to Dismantle FRAND, and Why It Matters*, 32 Berkeley Tech. L.J. 1381 (2017)

2010	Kalyan Dasgupta & David J. Teece, *Protecting Innovation in the Mobile Wireless Ecosystem: Understanding & Addressing "Hold-Out"*, 38 Berkeley Tech. L.J. 313 (2023)

Pursuant to Acting Director Stewart's March 26, 2025 Memorandum titled "Interim Processes for PTAB Workload Management" ("March 26, 2025 Memorandum"), Patent Owner Pantech Corporation ("Pantech") respectfully requests that the Director exercise her discretion to deny institution of Petitioner OnePlus Technology (Shenzhen) Co., Ltd.'s ("Petitioner") Petition for *inter partes* review of U.S. Patent No. 10,863,573 ("IPR"). The grounds for discretionary denial are compelling and supported by the facts, the procedural posture of the parallel district court litigation, the strong settled expectations, the equities of the case, and the public interest. The Board should deny institution under 35 U.S.C. § 314(a).

I. INTRODUCTION

This IPR is a paradigmatic example of why discretionary denial is necessary to protect the integrity of the patent system, prevent duplicative proceedings, and respect the statutory balance between the PTAB and Article III courts. The underlying district court litigation between Pantech and Petitioner is at an advanced stage, with a detailed and imminent case schedule, and the issues raised in this IPR are or will be fully addressed in that forum. Moreover, Petitioner's conduct—both in the marketplace and in litigation—demonstrates a pattern of holdout, bad faith, and disregard for its FRAND obligations, further supporting denial.

II. THE ADVANCED STATUS OF THE PARALLEL DISTRICT COURT LITIGATION FAVORS DISCRETIONARY DENIAL UNDER SECTION 314(A)

The Director should deny institution under 35 U.S.C. §314(a) because all six *Fintiv* factors favor discretionary denial. The *inter partes* review statute leaves institution entirely at the discretion of the Director. *See* 35 U.S.C. § 314(a); *Harmonic Inc. v. Avid Tech.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016). "[T]he PTO is permitted, but never compelled, to institute an IPR proceeding." *Id.*

The Director has historically applied that discretion where efficiency considerations stemming from parallel proceedings on the same patent warrant denial of institution. *See NHK Spring Co. v. Intri-Plex., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential, designated May 7, 2019) ("*NHK Spring*").

A. The District Court Litigation Is Well Advanced

The underlying litigation, *Pantech Corp. et al. v. OnePlus Tech. (Shenzhen) Co., Ltd.*, No. 5:24-cv-00038-RWS-JBB (E.D. Tex.), is proceeding under a Third Amended Docket Control Order ("DCO") with a highly developed schedule:

- *Markman* briefing: completed
- *Markman* hearing: completed
- Final election of asserted claims: September 5, 2025
- Fact discovery closes: September 19, 2025
- Expert discovery closes: November 7, 2025
- Dispositive motions due: November 28, 2025
- Pretrial conference: April 28, 2026
- Trial: TBD at Pretrial Conference

By the time the Board would be scheduled to reach a Final Written Decision (November 2026), the district court will have completed claim construction, fact and expert discovery, summary judgment, and the pretrial conference. And, considering the median time-to-trial statistics putting trial even earlier than it currently is likely to occur following the pretrial conference, the court will have fully adjudicated all issues, including validity, with the benefit of a complete record, live testimony, and a jury trial.

It should be no surprise that this case schedule is at an advanced stage: Petitioner waited almost three years after becoming aware of their infringement to file the present petition. This delay undermines the statutory purpose of *inter partes* review and is entirely a problem of Petitioner's own making.

The Director's own guidance, as well as the *Fintiv* factors, strongly favor denial where the parallel district court litigation is at an advanced stage and will resolve the same issues. *See NHK Spring*, Paper 8. Here, the parties have already exchanged infringement and invalidity contentions, produced documents, completed claim construction briefing, and the *Markman* hearing. The court's management of the case ensures that all issues—including those raised in this IPR—will be resolved efficiently and fairly.

B. Fintiv Factor 1: Whether a Stay Exists or Is Likely to Be Granted if IPR Is Instituted

The district court has not granted a stay, nor is there been any indication that a stay will be granted if the IPR is instituted. The Second Amended Docket Control Order ("DCO") set a trial date of April 27, 2026—seven months before the expected Final Written Decision in this IPR. Ex. 2001. The Third Amended Docket Control Order removes that date but only delays the pretrial conference by 21 days, with the trial expected to be set shortly after the pretrial conference. Ex. 2004. For example, the trial was originally set for jury selection 20 days following the pretrial conference. Ex. 2001. The parties are actively litigating, and the case is proceeding on all fronts. Notably, claim construction, fact discovery, and expert discovery will have been completed and the parties will be well into dispositive motions practice before the anticipated November 19, 2025 Institution Decision.

Moreover, though Petitioner has not requested a stay in the district court proceedings, any such pre-institution request would almost certainly be denied consistent with the practice in the Eastern District of Texas. *Luminati Networks Ltd. v. Teso LT, UAB*, No. 2:19-CV-00395-JRG, 2020 WL 6803255, at *1 (E.D. Tex. Oct. 30, 2020); *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13 CV-1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) ("it is the universal practice of courts in this District to deny pre-institution motions to stay);

Viavi Sols. Inc. v. Zhejiang Crystal-Optech Co., No. 2:21-CV-00378-JRG, 2022 WL 16856099, at *5 (E.D. Tex. Nov. 10, 2022) ("It is the Court's established practice to consider motions to stay pending IPR proceedings which have not been instituted are inherently premature and should be denied as such.").

Finally, it is important to emphasize that the district court proceedings were previously stayed by mutual agreement of the parties, specifically to allow for resolution of Petitioner's challenge to Pantech's standing to assert the patents-in-suit. The parties expressly agreed that the stay would remain in place only until the district court ruled on the standing issue. Once the court resolved the matter in Pantech's favor, however, Petitioner refused to cooperate in lifting the stay, despite the clear terms of the parties' agreement. Instead, Petitioner insisted that Pantech file a formal motion to lift the stay, thereby forcing Pantech to expend additional time and resources and causing unnecessary, avoidable delay of several months to the district court's schedule. This conduct resulted in significant disruption to the orderly progress of the litigation and underscores that Petitioner should not be allowed to leverage its own dilatory tactics as a basis for instituting a parallel PTAB proceeding. The current absence of a stay, when viewed in light of Petitioner's deliberate delay, weighs strongly in favor of discretionary denial.

C. Fintiv Factor 2: Proximity of the District Court's Trial Date to the PTAB's Projected Statutory Deadline

Petitioner only recently filed this IPR on April 24, 2025—more than one year after the underlying complaint was filed and a courtesy copy was provided to Petitioner's counsel on March 14, 2024. The Notice of Filing Date Accorded to Petition was mailed on May 19, 2025. Paper 5. A Final Written Decision will therefore be due by November 19, 2026. See 35 U.S.C. §314(b); 35 U.S.C. §316(a)(11).

Because Petitioner waited until the last minute to file its IPR, the parallel district court litigation has already proceeded to an advanced stage, and the district court trial is scheduled to occur after the pretrial conference set for April 28, 2026, roughly seven month before the PTAB's projected FWD.

Moreover, the result is the same even when considering the median time from filing to disposition of civil trials in the Eastern District of Texas rather than the anticipated trial date following the pretrial conference. The current median time to trial in the Eastern District of Texas is 21.6 months. Ex. 2002 at 35. Considering that the district court litigation was filed on March 14, 2024, these statistics suggest that the trial would still occur by January 2026, well before the FWD. Thus, the median time-to-trial statistics for the Eastern District of Texas consistently place the trial well before the expected FWD.

Under *Fintiv* factor 2, this weighs heavily in favor of discretionary denial. *See Fintiv I*, at 9 ("If the court's trial date is earlier than the projected statutory deadline, the Board generally has weighed this factor in favor of exercising authority to deny institution under NHK."); *Ericsson Inc. et al v. Collison Communications, Inc.*, IPR2022-01233, Paper 12 at 12-13 (PTAB Jan. 19, 2023) (holding Factor 2 "weighs in favor of denying institution, given that we would not expect to issue a final written until at least four months" after trial). Here, the roughly 7-month gap between the anticipated district court trial and the final written decision is longer than in cases such as *Ericsson* where the Board has previously denied institution. *Id.*

By the time the PTAB would issue a FWD, the district court will have completed claim construction, fact and expert discovery, dispositive motions, pretrial conference, and likely a jury trial and post-trial proceedings. The district court will have resolved all issues, including validity, with the benefit of a full record, live testimony, and a jury verdict. The proximity of the anticipated trial date to the PTAB's deadline weighs heavily in favor of denial, as the district court will almost certainly reach a decision first, rendering the PTAB proceeding duplicative and unnecessary.

D. Fintiv Factor 3: Investment in the Parallel Proceeding by the Court and the Parties

The parties and the court have already made substantial investments in the

district court litigation. The DCO reflects that:

- The parties have exchanged infringement and invalidity contentions.
- Fact discovery is set to close on September 19, 2025.
- Expert discovery will close on November 7, 2025.
- Dispositive motions are due by November 28, 2025.
- The *Markman* hearing occurred on July 9, 2025.

The court has entered multiple scheduling orders, and the Court held the *Markman* hearing and issued preliminary constructions. The court's management of the case ensures that all issues—including those raised in this IPR—will be resolved efficiently and fairly. The significant investment by both the court and the parties in the district court litigation, including the exchange of contentions, document production, and expert discovery, means that the issues are already being fully developed and will be adjudicated in the Article III forum. This factor strongly supports discretionary denial.

E. Fintiv Factor 4: Overlap Between Issues Raised in the Petition and in the Parallel Proceeding

There is substantial overlap between the issues raised in this IPR and those before the district court. The same prior art references (Koskinen, Sammour, and Deenoo) and the same invalidity arguments are at issue in both forums. The district court will resolve these issues as part of its adjudication of the case, including through summary judgment and trial. The risk of inconsistent outcomes is real and significant, as both the PTAB and the district court would be considering the same

validity challenges based on the same evidence. The PTAB's involvement would be duplicative, wasteful, and contrary to the goal of judicial economy. This factor weighs heavily in favor of denial.

Petitioner has offered a *Sotera* stipulation not to pursue in district court any ground that could have been raised in IPR. Paper 1 at 72; Ex. 1041. However, this stipulation does not eliminate the substantial overlap of issues or the risk of inconsistent results. Most importantly, the stipulation does not bind all real parties-in-interest and thus does not prevent the district court from considering the same prior art and arguments. Specifically, Petitioner has identified Guangdong OPPO Mobile Telecommunications Corp., Ltd. ("OPPO") as a real party-in-interest, and has represented to the district court that it may seek to add additional parties to the case once the court rules on its motion to dismiss. But OPPO is not a signatory on the stipulation. Thus, Petitioner could seek to add OPPO (a closely related entity) to the district court litigation and thereby effectively sidestep the stipulation it now offers, undermining the entire purpose of *Sotera*-type stipulations.

At bottom, the Board and the courts have recognized that even properly-made *Sotera* stipulations, while relevant, are not dispositive and do not outweigh the other Fintiv factors when the district court litigation is as advanced as it is here. *See Samsung Electronics Co., Ltd. v. California Institute of Technology*, IPR2023-00130, Paper 10 (PTAB May 4, 2023).

F. Fintiv Factor 5: Whether the Petitioner and the Defendant in the Parallel Proceeding Are the Same Party

The petitioner in this IPR, OnePlus Technology (Shenzhen) Co., Ltd., is the same party as the defendant in the district court litigation. The issues, parties, and interests are identical, further supporting the conclusion that the PTAB proceeding would be duplicative and unnecessary. This factor supports discretionary denial.

G. Fintiv Factor 6: Other Circumstances That Impact the Board's Exercise of Discretion, Including the Merits

While the merits of the petition are a consideration, the advanced status of the district court litigation, the substantial investment by the parties and the court, the overlap of issues, and the proximity of the anticipated trial date all weigh so heavily in favor of denial that the merits do not tip the balance. The district court is fully capable of resolving all issues, and there is no compelling public interest that would justify institution in this case.

Granting institution here would frustrate one of the primary objectives of the AIA "to provide an effective and efficient alternative" to parallel litigation, not a duplicative one. *NHK Spring*, 19-20 (*quoting General Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, 15-19 (PTAB Sept. 6, 2017) (precedential, designated Oct. 18, 2017). If IPR were instituted, any potential FWD would issue well after trial is expected to conclude. Where, as here, the district court is poised to resolve all issues, the Board should defer to the Article III forum.

Moreover, there are strong settled expectations here. The '573 Patent is a standard essential patent ("SEP"). As such, it is viewed as part of a "family" rather than an individual patent for FRAND purposes. Here, the relevant patent family has been committed to 3GPP since it was filed, creating strong, settled expectations within the industry that these patents are valid and enforceable. That is, Pantech, and the telecommunications industry, have relied on the status of these patents as SEPs for an extended period, which is evidenced by the widespread adoption of the 3GPP standards and the corresponding licensing and enforcement activities surrounding these patents. Thus, the strong settled expectations of both Pantech and the industry at large are that these patents are valid, enforceable and subject to FRAND licensing.

Importantly, Pantech made OnePlus expressly aware of the existence of the '573 Patent, its status as an SEP, and the necessity of obtaining a license by letter dated July 9, 2021. Despite this clear notice, OnePlus waited almost three years to file this IPR. Given the declaration of the '573 patent family to the 3GPP standard-setting organization and OnePlus's direct knowledge of its alleged infringement dating back to at least July 9, 2021, the settled expectations regarding this patent are particularly strong. Allowing institution of this IPR under these circumstances would undermine the established licensing framework and disrupt the reasonable, settled expectations of both Pantech and the industry. Accordingly, the settled expectations

as to this patent strongly favor discretionary denial of this IPR.

III. PETITIONER'S LITIGATION CONDUCT AND FRAND VIOLATIONS SUPPORT DENIAL

A. Petitioner's Willful Infringement and Bad Faith

Petitioner has been on notice of Pantech's patent portfolio—including the '573 patent—since at least July 2021. Ex. 2003 at 2. Pantech repeatedly offered Petitioner a license on FRAND terms, provided detailed claim charts, and identified the relevant patents. Petitioner refused to engage in good faith negotiations, never made a counteroffer, and continued to sell infringing products. Petitioner also did not seek an IPR: rather, it ignored Pantech.

The Director's recent decision in *iRhythm Technologies v. Welch Allyn Inc.*, IPR2025-00377, et al. (Director Review: June 6, 2025), Paper 10, further underscores the significance of these facts. In that case, the Director exercised her discretion to deny institution where the petitioner had long been aware of the asserted patents but delayed seeking IPR until after being sued. The Director found that such delay, especially when the patent owner had made the patents known and sought resolution, created "settled expectations" that weighed heavily in favor of denial. Here, Petitioner's conduct is even more egregious: not only was Petitioner aware of the '573 patent almost three years before filing its IPR, but Pantech also made

repeated, detailed, and good-faith efforts to resolve the dispute amicably. Petitioner's refusal to engage, despite these efforts, demonstrates a lack of diligence and good faith that the PTAB has recently found to be a compelling basis for discretionary denial.

B. Jury Verdict of Willful Infringement

In a recent trial, a jury found that Petitioner willfully infringed five of Pantech's patents, and the court denied Petitioner's motions for judgment as a matter of law. The jury's verdict and the court's order confirm the strength of Pantech's patents and the egregiousness of Petitioner's conduct. The Board should not reward such conduct by granting institution.

The Director's recent guidance makes clear that the PTAB is increasingly focused on the equities of the parties' conduct and the timing of IPR petitions. Where, as here, a petitioner has been found by a jury to have willfully infringed and has ignored repeated opportunities to resolve the dispute, the equities strongly favor denial. Allowing institution in these circumstances would undermine the "settled expectations" created by Pantech's good-faith efforts and would reward strategic delay and bad faith, contrary to the PTAB's current policy direction.

C. Violation of FRAND Obligations

Petitioner's refusal to negotiate in good faith and its holdout tactics are a direct violation of its FRAND obligations under ETSI policy. Petitioner's conduct has

already been found to be unjust, further supporting denial of institution as a matter of equity and public policy. The availability of discretionary denial is designed to prevent precisely this type of gamesmanship.

Petitioner's anticipated arguments in response to this filing—such as claims that "Patent Owner is a non-practicing entity (NPE) engaged in an ongoing campaign to monetize a portfolio of weak patents that it did not invent," and that "[d]espite repeated and meritorious challenges to its portfolio, Patent Owner's litigation campaign persists unchecked"—are directly contradicted by the facts. *See* IPR2025-00637, Paper No. 13 (July 17, 2025) (Petitioner's reply in support of a different IPR petition).

First, Petitioner has been found to be a willful infringer of Pantech's patents. *See* Ex. 2006, *Pantech Corp. v. OnePlus Technology (Shenzhen) Co., Ltd.*, No. 5:22-cv-00069-RWS, Dkt. 259 (E.D. Tex. April 1, 2024) (jury verdict of willful infringement); Ex. 2007, Dkt. 499 (E.D. Tex. Jan. 23, 2025) (final judgment of infringement and no invalidity). In the ongoing litigation between the parties, Petitioner continues to engage in such conduct, seeking to reduce the royalties owed to legitimate patent owners by leveraging the threat of protracted and costly litigation.

This type of holdout behavior undermines the U.S. patent system, as leading academics have increasingly recognized. *See, e.g.*, Ex. 2008, Kiri Gupta & Urska

Petrovcic, Evidence of Systematic "Patent Holdout", 38 Berkeley Tech. L. J. 575, 576, 584 (2023) ("'[P]atent holdout' refers to the opportunistic behavior of an implementer of a patented technology that uses delaying tactics and legal maneuvering to prolong infringement and thereby coerce the patent holder to accept zero or 'unreasonable' royalties or other such licensing terms."). The combination of a FRAND cap on damages for standard essential patents and the pressure of litigation costs "incentivizes the very patent holdout problem FRAND was intended to avoid." *See* Ex. 2009, Richard A. Epstein & Kayvan B. Noroozi, Why Incentives for "Patent Holdout" Threaten to Dismantle FRAND, and Why It Matters, 32 Berkeley Tech. L.J. 1381, 1382 (2017); *see also* Ex. 2010, Kalyan Dasgupta & David J. Teece, Protecting Innovation in the Mobile Wireless Ecosystem: Understanding & Addressing "Hold-Out", 38 Berkeley Tech. L.J. 313, 317 (2023) ("Thus, the worst outcome for a licensor might be that it pays, after considerable delay, FRAND royalties on only a portion of infringing sales. This has the potential to further depress negotiated royalties."). As a result, SEP owners like Pantech are forced to choose between accepting a discounted royalty rate—which subsequent implementers may use to further drive down rates—or incurring significant litigation costs simply to enforce their valid rights.

Second, contrary to Petitioner's anticipated assertions, Pantech's patents are not weak. In the first round of litigation between the parties, Petitioner abandoned

all of its invalidity defenses against Pantech's asserted standard essential patents during the jury trial, rather than presenting an invalidity case. While Petitioner may point to several IPRs and EPRs involving Pantech's patents, each has either upheld valid claims, been terminated, or remains ongoing.

In sum, Petitioner's persistent holdout behavior supports discretionary denial of this IPR, which was filed long after Pantech initiated its second round of patent litigation. The inter partes review system was designed to reduce litigation costs—not to provide parties like Petitioner with a last-minute, second opportunity to challenge patents once district court litigation is well underway, thereby increasing costs and uncertainty rather than reducing them.

IV. CONCLUSION

For the foregoing reasons, the Board should exercise its discretion under 35 U.S.C. § 314(a) and deny institution of IPR2025-00762. The advanced status of the district court litigation, the duplicative nature of the issues, Petitioner's willful infringement and bad faith, the cumulative nature of the prior art, the strong settled expectations, and the equities of the case all compel discretionary denial.

Dated: July 21, 2025

Respectfully submitted,

/James A. Fussell Reg No 54885/
James A. Fussell (Reg. No. 54,885)

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2025, a copy of the attached **PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION UNDER 35 U.S.C. § 314(A)** was served by electronic mail to the attorneys of record, at the following addresses:

Zhiwei (Wayne) Zou
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With a courtesy copy by electronic mail to:

OnePlus-Pantech-IPR@bayes.law

Respectfully submitted,

Date: July 21, 2025 By: /James A. Fussell Reg No 54885/
James A. Fussell (Reg. No. 54,885)

CERTIFICATION PURSUANT TO 37 C.F.R. § 42.24(d)

Pursuant 37 CFR 42.24(d), the undersigned certifies that this Request for Discretionary Denial of Institution complies with the type-volume limitation of 37 CFR §42.24(a). The word count application of the word processing program used to prepare this Request for Discretionary Denial of Institution indicates that the Request for Discretionary Denial of Institution contains 3,572 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a).

Respectfully submitted,

Date: July 21, 2025 By: /James A. Fussell Reg No 54885/
James A. Fussell (Reg. No. 54,885)