

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 PRELIMINARY RESPONSE

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND	2
A. Background of the '573 Patent	2
B. Relevant '573 Patent Prosecution History	4
C. Summary of Petitioner's Proposed Grounds for Unpatentability	5
D. Petitioner's Relied-Upon References	5
1. <i>Overview of Koskinen (EX1005)</i>	6
2. <i>Overview of Sammour (EX1006)</i>	7
3. <i>Overview of Deenoo (EX1007)</i>	8
III. CLAIM CONSTRUCTION	9
IV. LEGAL STANDARD FOR INVALIDITY UNDER 35 U.S.C. § 103	9
V. THE PETITION DOES NOT SHOW A REASONABLE LIKELIHOOD OF PREVAILING WITH RESPECT TO ANY CHALLENGED CLAIM	10
A. Grounds 1-2: Petitioner Fails To Establish That Koskinen Alone or in View of Sammour Renders Obvious Claims 1-5 or 8-12	11
B. Ground 3: Petitioner Fails To Establish That Deenoo in View of Sammour Renders Obvious Claims 1-5 or 8-12	14
VI. CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Forescout Tech., Inc., v. Fortinet, Inc.,</i> IPR2021-01328, Paper 12 (PTAB Jan. 27, 2022)	15
<i>Graham v. John Deere Co. of Kansas City,</i> 383 U.S. 1 (1966)	10
<i>Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.,</i> 821 F.3d 1359 (Fed. Cir. 2016)	10
<i>KSR Int’l Co. v. Teleflex Inc.,</i> 550 U.S. 398 (2007)	10
<i>Medichem, S.A. v. Rolabo, S.L.,</i> 437 F.3d 1157 (Fed. Cir. 2006)	10
 Statutes	
35 U.S.C. § 102(d)(2)	8, 15
35 U.S.C. § 103(a)	9

PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Description
2001	Second Amended Docket Control Order, <i>Pantech Corporation and Pantech Wireless, LLC v. OnePlus Technology (Shenzhen) Co., Ltd.</i> , 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, <i>Pantech Corporation and Pantech Wireless, LLC v. OnePlus Technology (Shenzhen) Co., Ltd.</i> , No. 5:24-CV-00038-RWS-JBB (E.D. Tex.) (Dkt. 86) (July 17, 2025)
2005	Order Modifying Dates in Docket Control Order, <i>Pantech Corporation and Pantech Wireless, LLC v. OnePlus Technology (Shenzhen) Co., Ltd.</i> , No. 5:24-CV-00038-RWS-JBB (E.D. Tex.) (Dkt. 85) (July 17, 2025)
2006	Jury Verdict, <i>Pantech Corp. v. OnePlus Technology (Shenzhen) Co., Ltd.</i> , No. 5:22-cv-00069-RWS (E.D. Tex.) (Dkt. 259) (April 1, 2024)
2007	Final Judgment, <i>Pantech Corp. v. OnePlus Technology (Shenzhen) Co., Ltd.</i> , No. 5:22-cv-00069-RWS (E.D. Tex.) (Dkt. 499) (Jan. 23, 2025)
2008	Kiri Gupta & Urska Petrovic, <i>Evidence of Systematic “Patent Holdout”</i> , 38 Berkeley Tech. L. J. (2023)

Case IPR2025-00762
Patent No. 10,863,573
Patent Owner Preliminary Response

2009	Richard A. Epstein & Kayvan B. Noroozi, <i>Why Incentives for “Patent Holdout” Threaten to Dismantle FRAND, and Why It Matters</i> , 32 Berkeley Tech. L.J. 1381 (2017)
2010	Kalyan Dasgupta & David J. Teece, <i>Protecting Innovation in the Mobile Wireless Ecosystem: Understanding & Addressing “Hold-Out”</i> , 38 Berkeley Tech. L.J. 313 (2023)
2011	Claim Construction Order from <i>Pantech Corp. et al. v. OnePlus Tech. (Shenzhen) Co., Ltd.</i> , No. 5:24-cv-00038-RWS-JBB (E.D. Tex.)

I. INTRODUCTION

Patent Owner Pantech Corporation (“Pantech”) respectfully requests that United States Patent and Trademark Office (“USPTO” or the “Office”) Patent Trial and Appeal Board (“PTAB” or the “Board”) deny institution of *inter partes* review of claims 1-5 and 8-12 (the “challenged claims”) of U.S. Patent No. 10,863,573 (“the ’573 Patent”). Petitioner OnePlus Technology (Shenzhen) Co., Ltd.’s (“Petitioner” or “OnePlus”) has failed to demonstrate a reasonable likelihood of prevailing with respect to at least one challenged claim.

More specifically, Petitioner has not shown that either of its primary references—Koskinen and Deenoo—is likely to render the challenged claims unpatentable, and the secondary reference relied upon in Grounds 2 and 3—Sammour—fails to cure the deficiencies of these primary references under a theory of obviousness. None of the references relied upon teach a limitation found in each of the independent claims of the ’573 Patent, whereby an “in-sequence timer for the PDCP SDUs” wherein a radio resource control (RRC) message is received that includes a PDCP-configuration information element that “includes a field indicating a value of the in-sequence timer” (in the case of independent claim 1) or that “the processor determines the value of in-sequence timer based on the PDCP-

configuration [information element]” (in the case of independent claim 8). *See* ’573 Patent at claims 1-5 and 8-12.

Furthermore, Deenoo, the primary reference relied upon in Ground 3, is not prior art to the ’573 Patent. While Petitioner does not address the priority date of Deenoo, its expert, Dr. Lo, states that “Deenoo (EX1007) is a US patent application publication [] with a filing date of January 17, 2013.” *See* EX1003 at 111. This is incorrect. Deenoo has a § 371(c)(1) date of July 16, 2015—after the priority date of the ’573 Patent—and differs substantially from the PCT application (adding at least 73 paragraphs of disclosures), and also both U.S. provisional applications to which it claims priority. Patent Owner has made no showing that the portions of Deenoo on which it relies exist in any earlier application.

According, Petitioner has failed to meet its burden of showing a reasonable likelihood of prevailing with respect to the invalidity of any challenged claims. The Board should deny Petitioner’s request to institute *inter partes* review.

II. BACKGROUND

A. Background of the ’573 Patent

The ’573 Patent relates to the field of wireless communications. More particularly, it sets forth equipment and methods for in-sequence delivery considering a multi-flow in a wireless communication system supporting dual connectivity. ’573 Patent at 1:21-25. The invention of the ’573 Patent is directed to

solving problems whereby a packet data convergence protocol (PDCP) entity cannot sequentially acquire the PDCP service data units (SDUs). '573 Patent at 2:34-3:21. The '573 Patent is entitled "Method and apparatus for transmitting uplink data on uplink resources," issued on December 8, 2020, and claims priority to Korean Patent Application No. KR-10-2013-0053408, filed on May 10, 2013.

As the background section of the '573 patent explains, because of problems such as hotspots of high cellular services demand in certain areas of cellular coverage, a dual connectivity scheme had begun to be envisioned and developed by the time of the invention of the '573 Patent. *See* '573 Patent at 1:29-60. Dual connectivity is a concept of wireless communication whereby user equipment may transmit/receive services from two or more serving cells, which may belong to different base stations. *Id.* at 1:50-60.

But the inventors of the '573 Patent recognized that existing protocols for reordering packet data units (PDUs) received at a UE were insufficient for dual connectivity. *Id.* at 28-30. At a high level, the solution arrived at by the inventors of the '573 Patent includes obtaining service data units (SDUs) by the UE as well as using an in-sequence timer for the SDUs, such that a PDCP entity at a UE end delivers PDCP SDUs to an upper layer in sequence in a dual connectivity system. *Id.* at 2:34-42.

B. Relevant '573 Patent Prosecution History

During the prosecution of the application that led to the '573 Patent, the claims at issue were examined at length for their novelty, including in view of U.S. Patent Application Publication No. 2015/0215827 (“Zhang”), U.S. Patent Application Publication No. 2010/0046448 (“Peisa”), U.S. Patent Application Publication No. 2012/0182971 (“Ohta”), U.S. Patent Application Publication No. 2010/0304733 (“Yi”), and U.S. Patent Application Publication No. 2015/0373559 (“Hong”). In response to a rejection of the initial claim set forth based on Zhang and Peisa (*see* EX1002 at 172-74), the patent owner pointed out to the examiner the correct priority dates of the claim as being May 10, 2013. *See* EX1002 at 157. The examiner deemed this argument persuasive. *Id.* at 140. In response to a subsequent rejection of the claim based on Ohta and Yi (*id.* at 141-43), applicant argued that neither Ohta nor Yi included an in-sequence timer as required by the claim, and in particular that Yi instead disclosed a “discard timer.” *Id.* at 128-29. The examiner reiterated rejections under Ohta and Yi, and also Hong (*id.* at 110-13), whereupon applicant argued that Hong discloses an “activation/deactivation timer” and not an in-sequence timer as required by the claim. *Id.* at 40-43. At this time, applicant also added claims 2-12. *Id.* at 43.

Following this response, the Patent Office issued a notice of allowance on July

24, 2020. In this notice of allowance, the examiner reiterated certain teachings of Ohta and Yi, but acknowledged that Ohta and Yi both “fail[] to disclose or render obvious the received in-sequence timer for the PDCP SDUs and how the in-sequence timer is delivered as claimed.” *Id.* at 17-19.

C. Summary of Petitioner’s Proposed Grounds for Unpatentability

Petitioner contends that claims 1-5 and 8-12 of the ’573 Patent would have been obvious under 35 U.S.C. § 103. The Petition raises three grounds of alleged unpatentability based on the following references:

1. U.S. Patent Application Publication No. 2014/0301362 (“Koskinen”);
2. U.S. Patent Application Publication No. 2009/0149189 (“Sammour”);
3. U.S. Patent Application Publication No. 2016/0021581 (“Deenoo”).

The specific grounds of alleged invalidity and are summarized as follows:

Ground	Basis	Claims	References
1	§103	1-5, 8-12	Koskinen
2	§103	1-5, 8-12	Koskinen in view of Sammour
3	§103	1-5, 8-12	Deenoo in view of Sammour

D. Petitioner’s Relied-Upon References

The three references relied upon by Petitioner are summarized as follows:

1. Overview of *Koskinen* (EX1005)

U.S. Patent Application Publication No. 2014/0301362 (“*Koskinen*”) was filed on April 4, 2013 and published on October 9, 2014. *Koskinen* is entitled “Delivery of Protocol Data Units.” EX1005 at 1.

Koskinen is generally directed to “observing a gap in a sequence of protocol data units received from a plurality of lower-layer protocol entities providing data transfer [and] starting a timer upon the gap observation [and] preventing the gap from blocking delivery of service data units to a higher layer, when the timer expires.” *Id.* at 6. However, as explained below, *Koskinen* does not teach or suggest an in-sequence timer for the PDCP SDUs wherein a radio resource control (RRC) message is received that includes a PDCP-configuration information element that includes a field indicating a value of the in-sequence timer, among other distinctions from the claims of the ’573 Patent.

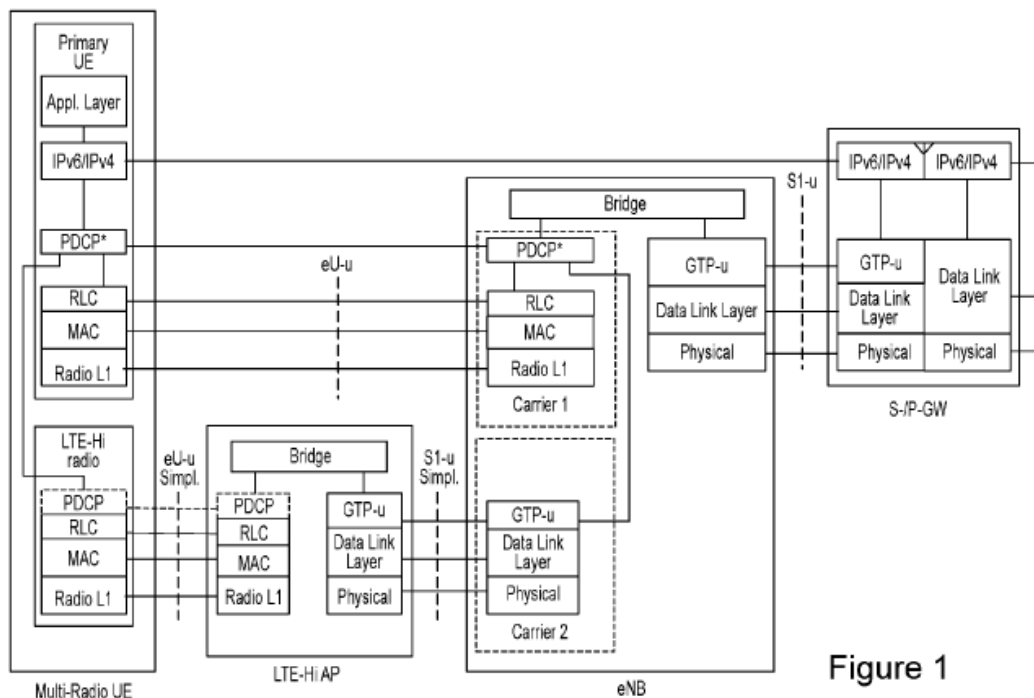


Figure 1

EX1005 at Fig. 1.

2. Overview of *Sammour (EX1006)*

U.S. Patent Application Publication No. 2009/0149189 (“*Sammour*”) was filed on December 5, 2008 and published on June 11, 2009. *Sammour* is entitled “Method and apparatus for supporting configuration and control of the RLC and PDCP sub-layers.” EX1006 at 1.

Sammour is generally directed to “supporting configuration and control of the radio link control (RLC) and packet data control protocol (PDCP) sub-layers by defining and using radio resource control (RRC) parameters and procedures.” EX1006 at 6. As relevant to Petitioner’s arguments, *Sammour* discloses a “flush

timer that the WTRU should use to stop reordering for this [radio bearer].” *Id.* at 14.

3. Overview of Deenoo (EX1007)

U.S. Patent Application Publication No. 2016/0021581 (“Deenoo”) has a Section 371(c)(1), (2) date of July 16, 2015, and thus does not qualify as prior art under 35 U.S.C. § 102(a)(2) to the ’573 Patent absent a showing that the disclosures relied upon were present in PCT Application No. US2014/012067, or else provisional application No. 61/753,867, filed on Jan. 17, 2013 or provisional application No. 61/811,233, filed on Apr. 12, 2013, to which Deenoo claims priority. *See* 35 U.S.C. § 102(d)(2) (“such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application... as of the filing date of the earliest such application that describes the subject matter”). Deenoo is entitled “Packet data convergence protocol (PDCP) placement.” EX1007 at 1.

Deenoo is generally directed to “small-cell enhancements such as they relate to dual-connectivity scenarios.” EX1007 at 22. However, as explained below, Deenoo does not teach or suggest an in-sequence timer for the PDCP SDUs wherein a radio resource control (RRC) message is received that includes a PDCP-configuration information element that includes a field indicating a value of the in-sequence timer, among other distinctions from the claims of the ’573 Patent.

III. CLAIM CONSTRUCTION

For purposes of this proceeding, Petitioner has not identified any claim terms for construction as necessary to resolve the controversy. But this is not what Petitioner has argued in the parallel District Court Action, *Pantech Corp. et al. v. OnePlus Tech. (Shenzhen) Co., Ltd.*, No. 5:24-cv-00038-RWS-JBB (E.D. Tex.). In the parallel District Court Action, Petitioner argued for the following constructions that were adopted by the Magistrate Judge:

Term	Construction
“macro base station” (Claim 8)	macro eNB
“small base station” (Claim 8)	small eNB

See EX2011. For purposes of this Preliminary Response, Patent Owner also applies the plain and ordinary meaning for these terms. Pet. at 8.

IV. LEGAL STANDARD FOR INVALIDITY UNDER 35 U.S.C. § 103

A claim is not patentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time of the invention. 35 U.S.C. § 103(a). Obviousness requires assessing (1) the “level of ordinary skill in the pertinent art,” (2) the “scope

and content of the prior art,” (3) the “differences between the prior art and the claims at issue,” and (4) “secondary considerations” of non-obviousness such as “commercial success, long felt but unsolved needs, failure of others, etc.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966)).

It is a petitioner’s burden “to demonstrate both ‘that a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so.’” *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367-68 (Fed. Cir. 2016) (quotations and citations omitted). However, a petitioner must first show that all of the claimed elements are disclosed in the prior art. *See Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1164 (Fed. Cir. 2006) (considering motivation to combine and reasonable expectation of success only “if all the elements of an invention are found in a combination of prior art references”).

V. THE PETITION DOES NOT SHOW A REASONABLE LIKELIHOOD OF PREVAILING WITH RESPECT TO ANY CHALLENGED CLAIM

In addition to the grounds already presented in Patent Owner’s Request for Discretionary Denial, institution should be denied because Petitioner does not establish a reasonable likelihood of prevailing against any challenged claim.

A. Grounds 1-2: Petitioner Fails To Establish That Koskinen Alone or in View of Sammour Renders Obvious Claims 1-5 or 8-12

Petitioner has not shown a likelihood of prevailing on Ground 1 because Koskinen does not teach each and every element of claims 1-5 or 8-12.

Even at the preliminary stage, the following deficiency of Koskinen is readily apparent: Koskinen does not teach an “in-sequence timer for the PDCP SDUs” wherein a radio resource control (RRC) message is received that includes a PDCP-configuration information element that “includes a field indicating a value of the in-sequence timer” (in the case of independent claim 1) or that “the processor determines the value of in-sequence timer based on the PDCP-configuration [information element]” (in the case of independent claim 8), which was the basis for the Examiner’s allowance of the ’573 Patent.

Petitioner acknowledges at least part of this deficiency. See Pet. at 23 (Koskinen “does not explicitly describe a configuration IE field for the in-sequence timer”). But a “POSITAs’ general familiarity that IEs carried information in RRC message” and a POSITA’s supposed knowledge of analogous teachings for the RLC layer (as Petitioner argues), even if true, do not show the obviousness of this limitation.

Petitioner skips the actual disclosures of Koskinen. At most, Koskinen teaches a “reordering timer” that is used to “conclude when a gap in received protocol data

units can no longer be expected to be filled.” EX1005 at [0037]. This reordering timer “can be started [] whenever a gap in the received protocol data units is observed [], such as by observing a gap in a sequence of protocol data units... Once the timer expires [], that gap is no longer allowed to block delivery of service data units to higher layer.” *Id.* at [0038].

But the claims require “an in-sequence timer for the PDCP SDUs” **based on the sequence of SDUs**. See claims 1 and 8. This difference between the claimed in-sequence timer (which “takes into account a transmission delay time to pass PDCP SDU to the upper layer with respect to one evolved packet system bearer through a macro base station and a small base station,” see EX1002 at 42) and Koskinen’s reordering timer explains why Koskinen does not teach receiving in a radio resource control (RRC) message a PDCP-configuration information element that “includes a field indicating a value of the in-sequence timer” (in the case of independent claim 1) or that “the processor determines the value of in-sequence timer based on the PDCP-configuration [information element]” (in the case of independent claim 8). This is because Koskinen’s reordering timer (even if it were to be called an in-sequence timer) **is not properly configured by an information element from an RRC message**: at most, an RRC message is taught as setting the expiry value for the reordering timer for the “delivery delay of protocol data units” (EX1005 at [0039])

not an out of sequence SDU.

During prosecution, the applicant distinguished other forms of timers in the prior art, and the examiner ultimately agreed each time. *See, e.g.*, EX1002 at 42 (distinguishing the “cell activation/deactivation timer” of Hong), 128 (distinguishing the “discard timer” of Yi). **The reordering timer of Koskinen is no different: it is not an in-sequence timer, and does not render obvious such a concept.** Just as Hong and Yi failed to render obvious such an inventive concept, so does Koskinen.

Regarding Ground 2, the teachings of Sammour regarding a “flush timer” do not cure the deficiencies of Koskinen, even if they would be obvious to combine (and they would not be). According to Petitioner, at most a POSITA “would have looked to other references providing further details of how to deliver Koskinen’s PDCP timer information to the UE.” *See* Pet. at 39. **But the “flush timer” of Sammour is not the in-sequence timer claimed by the ’573 Patent**, and not even Petitioner argues to the contrary. Rather, Petitioner’s argument is that Sammour (somehow) teaches that information about timers generally can be transmitted by an information element in an RRC message. *Id.* at 40. But regardless of how Koskinen’s reordering timer is configured, it is not an in-sequence timer, and the method of configuration from Sammour would not make it an in-sequence timer—therefore, whether or not this aspect of Sammour would be obvious to combine with

Koskinen's teachings is irrelevant: Sammour does not cure the deficiencies of Koskinen.

Accordingly, Koskinen alone or in view of Sammour does not render obvious claims 1-5 and 8-12 of the '573 Patent, and Grounds 1 and 2 do not have a reasonable likelihood of success.

B. Ground 3: Petitioner Fails To Establish That Deenoo in View of Sammour Renders Obvious Claims 1-5 or 8-12

As a threshold matter, Ground 3 has no likelihood of success because Deenoo is not prior art to the '573 Patent. As recognized by the examiner in withdrawing an rejection, the claimed subject matter of claims 1-5 and 8-12 of the '573 Patent is entitled to a priority date of May 10, 2013. *See* EX1002 at 140.

But Deenoo is not entitled to a priority date before May 10, 2013—its national stage entry (in which **substantial new material was added** in comparison to the original PCT application) occurred on July 16, 2015. The subject matter of the PCT application (PCT Application No. US2014/012067), to which the Petitioner does not cite, is substantially reduced: just at a glance, Deenoo has 262 paragraphs of disclosures, whereas PCT Application No. US2014/012067 has just 189 paragraphs of disclosures. Petitioner also does not cite to provisional application No. 61/753,867, filed on Jan. 17, 2013 or provisional application No. 61/811,233, filed on Apr. 12, 2013, to which Deenoo claims priority, and there is no showing of any

reasonable likelihood that either provisional application supports the prior art status of Deenoo.

Section 102 states that a reference will only be accorded prior art status according to the filing date of another application to which it claims priority if the teachings being relied upon are in the earlier application: “such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application... as of the filing date of the earliest such application that describes the subject matter.” 35 U.S.C. § 102(d)(2). Given that there is no showing that the PCT application or either provisional applications describe the subject matter at issue, there is no reasonable likelihood that Deenoo is prior art with respect to the teachings relied upon. *See Forescout Tech., Inc., v. Fortinet, Inc.*, IPR2021-01328, Paper 12 at 9-10 (PTAB Jan. 27, 2022) (“Forescout has an initial burden, not just to compare the challenged claims with the disclosure in Thomas, but to show that the subject matter that Forescout relies on in Thomas is also found in the Thomas Provisional. Because Forescout has not met that burden, we determine that Forescout has not adequately shown that it is reasonably likely to prevail”).

Additionally, Deenoo also fails to teach an “in-sequence timer for the PDCP SDUs” wherein a radio resource control (RRC) message is received that includes a

PDCP-configuration information element that “includes a field indicating a value of the in-sequence timer” (in the case of independent claim 1) or that “the processor determines the value of in-sequence timer based on the PDCP-configuration [information element]” (in the case of independent claim 8).

Like Koskinen, Deenoo at most teaches the use of a “reordering timer.” See EX1007 at ¶ 211. And like Koskinen, Deenoo only teaches that the “reordering timer” is started “as soon as out of sequence PDCP Data PDU SN>N (from say RLC1/RLC2) is received.” *Id.* at ¶ 208. **This reordering timer is not an “in-sequence timer for the PDCP SDUs,” as required by the claims.** And because it is not an in-sequence timer, there can be no disclosure of the reception of a radio resource control (RRC) message includes a PDCP-configuration information element that “includes a field indicating a value of the in-sequence timer” (in the case of independent claim 1) or that “the processor determines the value of in-sequence timer based on the PDCP-configuration [information element]” (in the case of independent claim 8).

In fact, Deenoo is entirely silent on the configuration of its “reordering timer.” See *generally*, EX1007. In view of this deficiency, Petitioner appears to turn to Sammour, but as previously addressed, the teachings of Sammour regarding a “flush timer” do not cure the deficiencies of Deenoo, even if they would be obvious to

combine (and they would not be). According to Petitioner, at most a POSITA “would have been motivated to incorporate Sammour’s RRC configuration of the timer into Deenoo.” *See* Pet. at 55. Petitioner does not argue that the “flush timer” of Sammour is the in-sequence timer claimed by the ’573 Patent or otherwise converts the reordering timer of Deenoo into one. Thus, regardless of how Deenoo’s reordering timer is configured, it is not an in-sequence timer, and the method of configuration from Sammour would not make it an in-sequence timer—therefore, whether or not this aspect of Sammour would be obvious to combine with Deenoo’s teachings is irrelevant: Sammour does not cure the deficiencies of Deenoo.

Accordingly, Deenoo in view of Sammour does not render obvious claims 1-5 and 8-12 of the ’573 Patent, and Ground 3 does not have a reasonable likelihood of success.

VI. CONCLUSION

For at least the foregoing reasons, the Board should deny institution.

Case IPR2025-00762
Patent No. 10,863,573
Patent Owner Preliminary Response

Dated: August 19, 2025

Respectfully submitted,

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Case IPR2025-00762
Patent No. 10,863,573
Patent Owner Preliminary Response

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2025, a copy of the attached **PATENT OWNER'S PRELIMINARY RESPONSE** was served by electronic mail to the attorneys of record, at the following addresses:

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Date: August 19, 2025

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Case IPR2025-00762
Patent No. 10,863,573
Patent Owner Preliminary Response

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

Pursuant 37 CFR 42.24(d), the undersigned certifies that this Preliminary Response 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 Preliminary Response indicates that the Preliminary Response contains 3,495 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a).

Respectfully submitted,

Date: August 19, 2025

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