

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: IPR2025-00720

U.S. Patent No. 9,769,776

**PATENT OWNER'S RESPONSE TO
PETITIONER'S REQUEST FOR DIRECTOR REVIEW**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Other Authorities

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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 Petrovcic, <i>Evidence of Systematic “Patent Holdout”</i> , 38 Berkeley Tech. L. J. (2023)
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”) responds to Petitioner’s Request for Director Review (Paper 12) and respectfully requests that the Director affirm the discretionary denial of this IPR (Paper 11). Petitioner offers no new facts, legal authority, or other changed circumstances that would warrant reconsideration of the Director’s discretionary denial. The Decision was based on a “holistic assessment of all the evidence and arguments” and correctly concluded that denial was appropriate. Paper 11, at 3. Moreover, the proceedings have complied fully with the APA.

II. BACKGROUND

U.S. Patent No. 9,769,776 issued on September 19, 2017. It has been asserted in *Pantech Corporation, et al. v. OnePlus Technology (Shenzhen) Co., Ltd.*, 5:24-cv-00038-RWS-JBB (E.D. Tex.), filed March 14, 2024. On May 18, 2025, Petitioner filed the instant petition. Paper 1. On August 12, 2025, Patent Owner filed its Request for Discretionary Denial of Institution Under 35 U.S.C. § 314(a). Paper 7. On September 12, 2025, Petitioner filed its Opposition. Paper 8. On October 3, 2025, the Director denied institution under 35 U.S.C. § 314(a). Paper 11. Petitioner filed a request for Director review on November 3, 2025. Paper 12.

III. NO ABUSE OF DISCRETION WARRANTS REVERSAL OF THE DIRECTOR'S DISCRETIONARY DENIAL

A. Even When Viewing the Scope of Challenged Patents, The Outcome Is Still Discretionary Denial

Petitioner relies primarily on the number and scope of patents asserted in the district court litigation as a basis for its position that the petition should be referred to the Board for a merits decision. Paper 12 at 2-5. However, Petitioner's argument is negated by the fact that the District Court already has familiarity with the parties, technology, and patent families because the district court previously found Petitioner 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). Moreover, both here and at the District Court, the patents all relate to aspects of LTE/5G wireless communication technology. There is no indication that the district court cannot handle the scope and nature of this technology.

Petitioner's reliance *American Airlines, Inc. et al. v. Intellectual Ventures I LLC*, IPR2025-00785 et al., Paper 11, does not change the outcome. *See* Paper 12 at 3. In *American Airlines*, the twelve challenged patents across six families were directed to a diverse range of subject matter (*e.g.*, Internet hotspots, distributed networking, transceiver operation, computer clusters). *See American Airlines*, Paper

11 at 3. This is unlike the patents challenged by Petitioner, which all relate to wireless communication (as demonstrated in greater detail below).

Tesla, Inc. v. Intellectual Ventures II LLC, IPR2025-00217 et al., Paper 9 is also distinguishable. In *Tesla*, the Director relied on the fact that “Petitioner has filed a broad stipulation and asserts that the merits are strong because the Board previously determined there was a reasonable likelihood that similar claims of an ancestor patent were unpatentable in three separate proceedings with respect to some of the challenged patents in these proceedings.” *Id.* at 2. The fact that eleven patents across nine families (spanning the subject matter of “generalized hebbian learning,” “docking assistant[s],” “large dynamic range cameras,” “determining buffer occupancy and selecting data for transmission on a radio bearer,” and “power control in a wireless network,” among other subjects, *see Tesla* Paper 8 at 5-7) were challenged was used as a factor that helped just tip this balance towards referral.

Tesla is thus unlike the dispute between Pantech and OnePlus, where all the patents are within a narrow field of art, as demonstrated by the similar fields of the invention for each, and the district court is already familiar with the technology from a past case of similar patents. Here, the scope of the patents and prior district court matters tip the balance in favor of affirming the decision to discretionarily deny review.

Challenged Patent	Field of the Invention
9,763,283 (IPR2025-00637)	<p>Field</p> <p>Exemplary embodiments relate to wireless communication, and more particularly, to a method and an apparatus for controlling a radio link in a wireless communication system supporting dual connectivity.</p>
9,769,776 (IPR2025-00720)	<p>Field</p> <p>The present invention relates to wireless communication and, more particularly, to an apparatus and method for uplink synchronization in a multiple component carrier system.</p>
10,764,803 (IPR2025-00756)	<p style="text-align: center;">FIELD OF INVENTION</p> <p>The present invention is related to a wireless communications. More particularly, the present invention is related to an enhanced uplink (EU) operation during a soft handover.</p>
10,863,573 (IPR2025-00762)	<p style="text-align: center;">Field</p> <p>The present invention relates to wireless communication, and more particularly, to a method and an apparatus of in-sequence delivery considering a multi-flow in a wireless communication system supporting dual connectivity.</p>
11,212,838 (IPR2025-00763)	<p style="text-align: center;">FIELD OF INVENTION</p> <p>The present application is related to wireless communication.</p>
9,288,824 (IPR2025-00783)	<p>1. Field of the Invention</p> <p>The present invention relates to a wideband radio access system, and more particularly, to a method of transmitting and receiving a random access request (random access preamble) and transmitting and receiving a random access response in a wideband radio access system.</p>
8,995,372 (IPR2025-00887)	<p>1. Field</p> <p>The present invention relates to a method and apparatus for performing random access in a wireless communication system, and more particularly, to a method and apparatus for performing random access in a communication system that supports a plurality of component carriers (CCs).</p>

9,369,251 (IPR2025-00888)	<p>1. Field 2</p> <p>The embodiment of the present invention relates generally to a wireless communication system, and specifically to a method and an apparatus for performing muting for all or a partial resource region in a resource space (PDSCH, Physical Downlink Shared Channel) for data transmission of a serving cell so as to avoid interference from a neighboring cell at the time of allocating a resource of a channel state information-reference signal (hereinafter referred to as “CSI-RS”) in a wireless communication system, and using muting information for muting. 3</p>
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Finally, this is unlike *Apple Inc. v. Apex Beam Techs.*, IPR2025-00896, Paper 10, at 2-3 (Sept. 3, 2025), where the district court proceeding asserted a total of *seventeen* different patents spanning *eleven* families with a diverse range of subject matter (spanning “multi-antenna transmission, uplink transmission, down-link control information, uplink cancellation signaling, and failure recovery”), and the challenged patents had not been in force for a significant period of time (issued in 2021, 2021, 2022, 2021, 2021, 2021, and 2023).

B. No Examiner Error Exists

Next Petitioner argues that its alleged showing of examiner error counsels against discretionary denial. Paper 12 at 6-7. Petitioner makes a bare-bones argument that “[t]he Examiner overlooked the relevant prior art cited in the present Petition, which clearly teaches the purportedly patentable subject matter related to the ‘TAG identifier’” without further explanation other than to cite to its discretionary denial brief. *See id.* at 7.

Petitioner’s argument is unavailing and amounts to a mere *ipse dixit* conclusion, one that presumably every petitioner in an IPR would make. As explained in Patent Owner’s Preliminary Response (Paper 9), Petitioner failed to demonstrate a reasonable likelihood of prevailing because Petitioner’s primary reference for all Grounds 1-4—Dinan—is not prior art to the challenged claims. Paper 9 at 6-10. Further, Petitioner’s final ground of alleged invalidity—obvious by TS36.331 in view of Sharp—lacks critical elements of the independent challenged claims, including those pertaining to the TAG identifier. *See* ’776 Patent at claims 1 and 5; Paper 9 at 11-13.

Ultimately, Petitioner may disagree with the Examiner’s conclusion about the scope of the prior art, but “[i]f reasonable minds can disagree regarding the purported treatment of the art or arguments, it cannot be said that the Office erred in a manner material to patentability.” *See Advanced Bionics, LLC v. MED-EL 1 Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 9 (PTAB Feb. 13, 2020) (precedential); *see also Ascentcare Dental Prods, Inc., v. Solmetex, LLC*, IPR2025-01065, Paper 11, at 2-3 (Director Oct. 17, 2025).

Petitioner cannot overcome the hurdle of showing that reasonable minds could not disagree, and therefore cannot meet its burden. To evaluate material error, the Board weighs *Becton, Dickinson* factors c, e and f. Petitioner does not reference any

of these factors, let alone analyze them. *Vital Connect, Inc. v. Bardy Diagnostics, Inc.*, IPR2023-00381, Paper 7 at 20 (PTAB July 11, 2023) (“[W]hile there are no ‘magic words’ necessary to address material error, Petitioner’s alleged grounds of unpatentability cannot establish material error *per se* under our binding precedent. . . . Otherwise, the reasonable likelihood standard of § 314(a) and the second part of the *Advanced Bionics* framework (‘material error’) would collapse into one.”). Moreover, Patent Owner has not argued for denial under § 325(d). Thus, all Petitioner has done is demonstrate (at most) that reasonable minds can disagree on the treatment of the art. *See, e.g., Fujirebio Diagnostics, Inc., v. Quanterix Corp.*, IPR2025-01060, Paper 13, at 2-3 (Director, Oct. 17, 2025).

Petitioner’s cited case law does not change the outcome in this respect either. *Eunsung Global Corp. v. HydraFacial LLC*, IPR2025-00445, Paper 14 at 3 (Director, July 10, 2025) addressed IPRs on three patents where only one out of the three had been in force since 2017. For that patent, however, the Director found that “Petitioner persuasively demonstrates that the patent examiner overlooked certain teachings in Karasiuk that appear to disclose the allowable features of the claims.” *Id.* Here, Petitioner has not made a similar persuasive showing. That is, in *Eunsung*, there was a persuasive showing of the weight of the merits in favor of institution, but here (as can be seen, if desired, in Patent Owner’s Preliminary Response, Paper

9 (all cited references lack the same limitation key to patentability)) the merits are weak and certainly not so strong as to outweigh the other factors.

Petitioner's reliance on *Anthony Inc. v. Controltec LLC*, IPR2025-00559, Paper 12 at 2 (Director July 16, 2025) is misplaced because the prosecution history differed and was integral in the decision finding Examiner error:

Specifically, at the beginning of patent examination, the patent examiner issued a restriction requirement for the application that eventually became the challenged patents. Ex. 1002, 72. Patent Owner elected a group of claims and filed a divisional patent application. *Id.* at 36. The patent examiner issued a notice of allowance of both patent applications as the first office action. *Id.* at 14. Petitioner persuasively explains that the patent examiner erred by overlooking the teachings of Carter.

Id. at 2.

For both *Microsoft Corp. v. Partec Cluster Competence Center GMBH*, IPR2025-00318, Paper 9, and *Xencor, Inc. v. Merus N.V.*, IPR2025-00604, Paper 12 (cited by Petitioner at Paper 13 at 6), the specific overlooked teachings were particular to the claims being challenged, and the factual inquiry undertaken in those proceedings in no way changes the standard of material examiner error nor changes the lack of error in the present circumstances, as explained above.

Ultimately, as Patent Owner as set forth, no examiner error exists, and Petitioner's disagreement with the merits of the past decisions is not grounds to overturn the Director's decision on discretionary denial.

IV. THERE IS NO VIOLATION OF THE APA OR DUE PROCESS

Petitioner's final section alleges that the application of the "settled expectations" factor for discretionary denial of review violates the APA because of a lack of notice-and-comment rulemaking. *See* Paper 12 at 7-13. First, this argument starts with the citation to new evidence not permitted in Director Review Requests. USPTO, Director Review Process, Sec. 3.E ("Absent Director authorization, a request for Director Review may not introduce new evidence, 37 C.F.R. § 42.75(c)(3), and exhibits may not be entered in support of the request for Director Review. The Director will not consider new evidence or new arguments not part of the official record."). While this new evidence should not be considered, it still does not change the outcome. Second, this argument fails—notice and comment rulemaking was not required. Finally, the "settled expectations" factor is not arbitrary and capricious or a violation of due process.

A. Notice and Comment Rulemaking was not Required

Petitioner's unelaborated argument about a supposed violation of the APA because the application of the "settled expectations" factor "did not go through

notice-and-comment rulemaking” is incorrect. “The notice-and-comment requirements apply [] only to so-called ‘legislative’ or ‘substantive’ rules; they do not apply to ‘interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.’” *Lincoln v. Vigil*, 508 U.S. 182, 196 (1993). Petitioner provides no support for why it believes the “settled expectations” factor, among others outlined in the Stewart Memo, is a “substantive rule. The Stewart Memo explains that “consistent with the discretionary considerations enumerated in existing Board precedent (including *Fintiv*, *General Plastic*, and *Advanced Bionics**) and the Consolidated Trial Practice Guide (Nov. 2019), the parties are permitted to address all relevant considerations, which **may** include: ... settled expectations....” Stewart Memo, at 2 (emphasis added). Contrary to Petitioner’s arguments, applying the “settled expectations” factor does not exceed the Patent Office’s statutory authority. Paper 12, at 9. 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.*

Indeed, as the Director is aware, none of the *Fintiv* factors have undergone notice-and-comment rulemaking, and their application has been confirmed by the Federal Circuit. *See Mylan Labs. Ltd. v. Janssen Pharmaceutica,*

N.V., 989 F.3d 1375, 1382 (Fed. Cir. 2021) (“Mylan lacks a clear and indisputable right to review of the Patent Office’s determination to apply the *Fintiv* factors or the Patent Office’s choice to apply them in this case through adjudication rather than notice-and-comment rulemaking.”). It is entirely unclear, and Petitioner has not explained, why the “settled expectations” factor would be different in this regard from any other *Fintiv* factor.

B. There Has Been No Violation of Due Process Rights

The “settled expectations” factor also does not violate due process. Paper 12, at 12. The Due Process Clause protects against the deprivation “of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. However, there is no protected property or liberty interest in the institution of an *inter partes* review, nor in the application of any particular set of discretionary factors.

To begin with, even if an *inter partes* review proceeding is a benefit provided by statute, “a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). It is beyond dispute that “§314(a) invests the Director with discretion on the question whether to institute review.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 366 (2018); *see also Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“the agency’s decision to deny a petition is a matter committed to the Patent Office’s

discretion”). Without any “deprivation of ‘life, liberty, [or] property,’ [] any procedural due process challenge is foreclosed.” *Mylan Labs. Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1383 (Fed. Cir. 2021).

Indeed, this exact argument as Petitioner now makes has been squarely rejected by the Federal Circuit. “We likewise see no due process violation by the Acting Director applying the rescission of the Vidal Memorandum to the petitions.” *In re Motorola Sols., Inc.*, 2025 U.S. App. LEXIS 29183, *11-12 (Fed. Cir. Nov. 6, 2025) (“Motorola did not experience anything close to the kind of unfair surprise that might raise a due process violation... Even if Motorola relied on the Vidal Memorandum when it undertook the expense of filing the petitions [], ‘reliance alone is insufficient to establish a constitutional violation.’”).

Thus, Petitioner has no due process right in a certain set of factors to be applied in the consideration of discretionary denial under 35 U.S.C. § 314(a).

C. The “Arbitrary and Capricious” Standard Does Not Apply to Section 314(a)

Finally, Petitioner’s unelaborated argument about the “settled expectations” factor being “arbitrary and capricious” was firmly settled by *Vidal*, 63 F.4th at 11-12. The “arbitrary and capricious” standard requires that “agency action be reasonable and reasonably explained.” 63 F.4th at 11 (citing *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021)). But where, as here, the applicable

statutory scheme has a “reviewability bar,” there are no challenges permitted under the “arbitrary and capricious” standard. *See Vidal*, 63 F.4th at 12 (“If the congressional preclusion of review of the decision to institute is to be respected in the inevitable system of delegation, it must extend to the substance of such instructions.”). Simply put, this requirement of the APA is inapplicable.

V. ADDITIONAL FACTORS SUPPORT DISCRETIONARY DENIAL

To the extent any additional factors should be considered in re-evaluating the decision on discretionary denial, it is that the settled expectations of Pantech are even farther reaching. As explained in the Request for Discretionary Denial, the ’776 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. Specifically, 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 widespread 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 and extend beyond just the years the ’776 Patent has been in force. 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. Moreover, Petitioner should not be rewarded for its refusal to negotiate in good faith and holdout tactics in direct violation of its FRAND obligations.

VI. CONCLUSION

For at least the foregoing reasons, Petitioner's Request for Director Review should be denied and the Director should affirm the Decision Denying Institution.

Dated: November 7, 2025

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Attorneys for Pantech Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2025, a copy of the attached **PATENT OWNER'S RESPONSE TO DIRECTOR REVIEW REQUEST** 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: November 7, 2025

By: / Amanda S. Bonner Reg No 65,224/

Amanda S. Bonner (Reg No 65,224)