UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ERICSSON INC. and TELEFONAKTIEBOLAGET LM ERICSSON,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

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Case IPR2015-01872
Patent 7,385,994 B2

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Before BRYAN F. MOORE, BRIAN J. MCNAMARA,
and DAVID C. MCKONE, *Administrative Patent Judges.*

MCKONE, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Ericsson Inc. and Telefonaktiebolaget LM Ericsson (collectively "Petitioner") filed a Petition (Paper 2, "Pet.") to institute an *inter partes* review of claims 1–25 of U.S. Patent No. 7,385,994 B2 (Ex. 1001, "the '994 patent"). Intellectual Ventures II LLC ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp."). Upon consideration of the Petition and Preliminary Response, we conclude, under 35 U.S.C. § 314(a), that Petitioner has established a reasonable likelihood that it would prevail with respect to claims 1–4, 7, 11–14, 17, and 20–25, but not claims 5, 6, 8–10, 15, 16, 18, and 19. Accordingly, we institute an *inter partes* review of claims 1–4, 7, 11–14, 17, and 20–25 of the '994 patent.

B. Related Matters

The '994 patent is the subject of several lawsuits in the United States District Court for the District of Delaware. Pet. 1; Paper 5, 1–2.

The '994 patent also was the subject of *Ericsson Inc. v. Intellectual Ventures II LLC*, Case IPR2014-01170 (PTAB). In that proceeding, the Board declined to institute an *inter partes* review. Ex. 1005.

C. The Asserted Grounds

In its statement of the statutory grounds for its challenges, Petitioner contends that claims 1–25 are unpatentable as obvious, under 35 U.S.C. § 103(a), over Lu (US 6,480,911 B1, issued Nov. 12, 2002, Ex. 1002), alone or in view of Pankaj (US 2002/0183066 A1, published Dec. 5, 2002, Ex. 1003). Pet. 9, 16. Nevertheless, in its detailed contentions, Petitioner

does not present evidence to show that Lu alone teaches claims 22 and 25.
Pet. 57–60. Thus, Petitioner is contending that claims 1–21, 23, and 24
would have been obvious over Lu alone and that claims 1–25 would have
been obvious over Lu and Pankaj.

D. The '994 Patent

The '994 patent describes gateway queuing algorithms for processing
queued data packets in packet networks. Ex. 1001, 1:5–9. The data packets
are queued according to tiers and a communication resource is made
available on a tier-by-tier basis. *Id.* at Abstract. Figure 2, reproduced
below, illustrates an example:
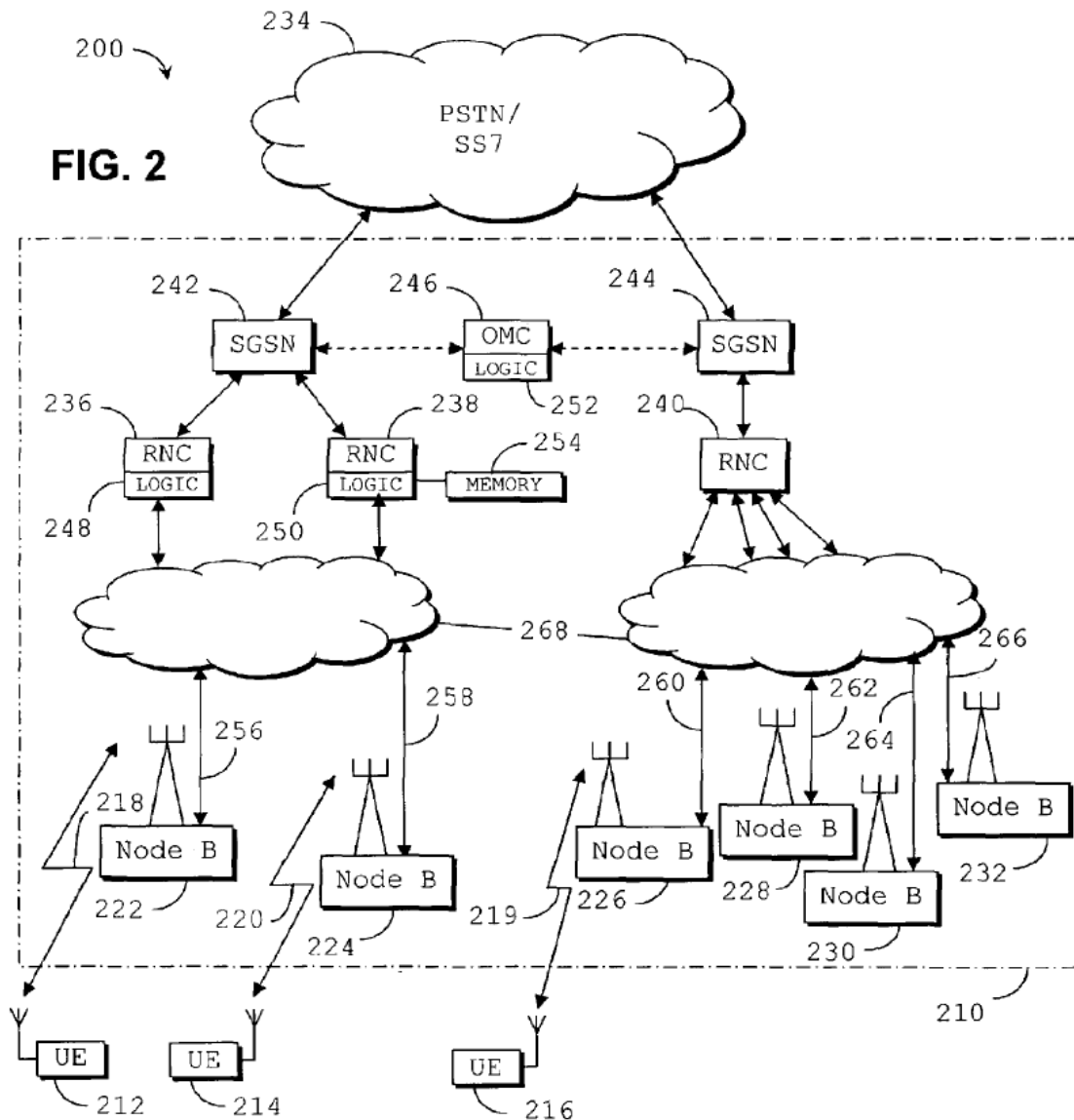
234

200

PSTN/
SS7

FIG. 2

Figure 2 is a block diagram of a wireless communication system. *Id.* at 5:8–10.

The following acronyms are helpful in understanding the description of Figure 2, as well as other portions of this discussion:

3GPP - Third Generation Partnership Project;
CDMA - code division multiple access;
ETSI - European Telecommunication Standards Institute;
GGSN - gateway GPRS support node;
GPRS - General Packet Radio Service;

GSM - Global System for Mobile Communication;
MS - mobile station;
MSC - mobile switching centre;
PSTN - public switched telephone network;
RNC - radio network controller;
TDMA - time-division multiple access;
UE - user equipment;
UMTS - universal mobile telecommunication system;
UTRAN - UMTS Terrestrial Radio Access Network;
WCDMA - Wideband CDMA.

Cellular-based telecommunication system 200 is described in terms of a UMTS system, in particular a system that complies with the 3GPP specification for WCDMA. *Id.* at 5:21–30. As shown in Figure 2, system 200 includes a plurality of subscriber terminals (e.g., cellular telephones, also referred to as MS or UE) 212, 214, 216 communicating over radio links 218, 219, 220 with base transceiver stations (also called Node-Bs) 222, 224, 226, 228, 230. *Id.* at 31–37. The Node-Bs are connected to external network 234 (e.g., the Internet), through base station controllers (also called RNCs) 236, 238, 240 and, in turn through MSC 242 and SGSN 244. *Id.* at 5:61–67.

RNCs 236, 238, 240 include processing elements 248 adapted to facilitate packet data queuing and scheduling. *Id.* at 6:14–18. RNCs 236, 238, 240 implement an algorithm to schedule queued packet data transmissions. *Id.* at 6:18–22. Allocation of a shared resource is made at certain time intervals, or rounds. *Id.* at 6:29–32. In one example, users compete to send 1 kbit data packets over a 10 Mbps link in 10 msec rounds, in which 100 packets are allocated each round. *Id.* at 32–37. The resource is allocated in tiers. In a two-tier system, for example, 75 percent of the resource might be allocated to a higher tier while 25 percent is allocated to

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