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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **SOUTHERN DIVISION**

16 RJ TECHNOLOGY LLC  
17 Plaintiff,  
18  
19 vs.  
20 APPLE INC.,  
21 Defendant.  
22  
23

Case No. 8:22-CV-1874-JVS-JDE

**PLAINTIFF RJ TECHNOLOGY  
LLC'S RESPONSIVE CLAIM  
CONSTRUCTION BRIEF**

## TABLE OF CONTENTS

|      |                                                                                                                                                            |    |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.   | Introduction .....                                                                                                                                         | 1  |
| II.  | Argument.....                                                                                                                                              | 1  |
| a.   | Charge Cut-off Voltage.....                                                                                                                                | 1  |
| b.   | Ratio of Positive Electrode Material to Negative Electrode Material as<br>Calculated by a Theoretic Capacity with a Charge Cut-off Voltage set at 4.2V ..6 |    |
| i.   | The ratio is not indefinite.....                                                                                                                           | 6  |
| ii.  | RJ Technology’s construction reflects the term’s plain and ordinary<br>meaning.....                                                                        | 10 |
| c.   | A Secondary Lithium Ion Cell or Battery .....                                                                                                              | 12 |
| d.   | Overcharging Protection Voltage / Overcharg[e/ing] Protection Release<br>Voltage.....                                                                      | 15 |
| e.   | Maintains at Least ... Capacity after 400 Cycles.....                                                                                                      | 18 |
| III. | Conclusion.....                                                                                                                                            | 22 |

## TABLE OF AUTHORITIES

| <b>Cases</b>                                                                                                                                   | <b>Page(s)</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <i>Ateliers de la Haute-Garonne v. Broetje Automation-USA Inc.</i> ,<br>No. Civ. A. 09-598 (LPS), 2011 WL 722937 (D. Del. Feb. 23, 2011) ..... | 2, 3           |
| <i>Abbott Labs. v. Sandoz, Inc.</i> ,<br>566 F.3d 1282 (Fed. Cir. 2009) .....                                                                  | 2, 3           |
| <i>AIA Eng'g Ltd. v. Magotteaux Int'l S/A</i> ,<br>657 F.3d 1264 (Fed. Cir. 2011) .....                                                        | 3, 4           |
| <i>Apple Inc. v. Motorola, Inc.</i> ,<br>757 F.3d 1286 (Fed. Cir. 2014) .....                                                                  | 3              |
| <i>BASF Corp. v. Johnson Matthey Inc.</i> ,<br>875 F.3d 1360 (Fed. Cir. 2017) .....                                                            | 19, 21         |
| <i>Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.</i> ,<br>880 F.3d 1356 (Fed. Cir. 2018) .....                                           | 12, 13, 14     |
| <i>Curtiss-Wright Flow Control Corp. v. Velan, Inc.</i> ,<br>438 F.3d 1374 (Fed. Cir. 2006) .....                                              | 10             |
| <i>Honeywell Int'l, Inc. v. ITT Indus., Inc.</i> ,<br>452 F.3d 1312 (Fed. Cir. 2006) .....                                                     | 16, 17         |
| <i>In re Vamco Mach. &amp; Tool, Inc.</i> ,<br>752 F.2d 1564 (Fed. Cir. 1985) .....                                                            | 20             |
| <i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.</i> ,<br>381 F.3d 1111 (Fed. Cir. 2004) .....                                 | 17             |
| <i>Jack Guttman, Inc. v. Kopykake Enterprises, Inc.</i> ,<br>302 F.3d 1352 (Fed. Cir. 2002) .....                                              | 8              |
| <i>Kaneka Corp. v. SKC Kolon PI, Inc.</i> ,<br>2014 WL 10983769 (C.D. Cal. Mar. 13, 2014).....                                                 | 21             |
| <i>Kraft Foods, Inc. v. Int'l Trading Co.</i> ,<br>203 F.3d 1362 (Fed. Cir. 2000) .....                                                        | 10             |

## **RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

|    |                                                                   |        |
|----|-------------------------------------------------------------------|--------|
| 1  |                                                                   |        |
| 2  | <i>Mycogen Plant Science v. Monsanto Co.</i> ,                    |        |
| 3  | 243 F.3d 1316 (Fed. Cir. 2001) .....                              | 10     |
| 4  | <i>Nature Simulation Sys. Inc. v. Autodesk, Inc.</i> ,            |        |
| 5  | 50 F.4th 1358 (Fed. Cir. 2022) .....                              | 20     |
| 6  | <i>Nelcor Puritan Bennett, Inc. v. Masimo Corp.</i> ,             |        |
| 7  | 402 F.3d 1364 (Fed. Cir. 2005) .....                              | 15     |
| 8  | <i>Neville v. Found. Constructors, Inc.</i> ,                     |        |
| 9  | 972 F.3d 1350 (Fed. Cir. 2020) .....                              | 19     |
| 10 | <i>Pac. Coast Bldg. Prod., Inc. v. CertainTeed Gypsum, Inc.</i> , |        |
| 11 | 816 F.App'x 454 (Fed. Cir. 2020) .....                            | 22     |
| 12 | <i>Panduit Corp. v. Corning Inc.</i> ,                            |        |
| 13 | 2021 WL 2785326 (E.D.N.C. July 2, 2021) .....                     | 4      |
| 14 | <i>Pfizer, Inc. v. Ranbay Labs. Ltd.</i> ,                        |        |
| 15 | 457 F.3d 1284 (Fed. Cir. 2006) .....                              | 3      |
| 16 | <i>Phillips v. AWH Corp.</i> ,                                    |        |
| 17 | 415 F.3d 1303 (Fed. Cir. 2005) .....                              | 1      |
| 18 | <i>Plantronics, Inc. v. Aliph, Inc.</i> ,                         |        |
| 19 | 724 F.3d 1343 (Fed. Cir. 2013) .....                              | 16, 17 |
| 20 | <i>Prolifiq Software Inc. v. Veeva Sys. Inc.</i> ,                |        |
| 21 | 2014 WL 3870016 (N.D. Cal. Aug. 6, 2014) .....                    | 22     |
| 22 | <i>Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC</i> ,  |        |
| 23 | 824 F.3d 999 (Fed. Cir. 2016) .....                               | 19     |
| 24 | <i>Takeda Pharm. Co. v. Zydus Pharms. USA, Inc.</i> ,             |        |
| 25 | 743 F.3d 1359 (Fed. Cir. 2014) .....                              | 19, 22 |
| 26 | <i>TI Group Auto. Sys. (N.A.), Inc. v. VDO N.A.</i> ,             |        |
| 27 | 375 F.3d 1126 (Fed. Cir. 2004) .....                              | 3      |
| 28 | <i>TQ Beta LLC v. Dish Network Corp.</i> ,                        |        |
|    | 2016 WL 356024 (D. Del. Jan. 28, 2016) .....                      | 4      |

## **RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

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|-----------------------------------------------------------------------------------------------------------------|----|
| <i>Williamson v. Citrix Online LLC</i> ,<br>792 F.3d 1339 (Fed. Cir. 2015) .....                                | 17 |
| <i>Wilson Sporting Goods Co. v. Monsta Athletics, LLC</i> ,<br>2020 WL 5835321 (C.D. Cal. Sept. 24, 2020) ..... | 17 |

**RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

## I. INTRODUCTION

As anticipated in RJ Technology’s opening brief, Apple’s claim construction arguments rest on misreading of fundamental claim construction principles; violations of established canons of construction; and out-of-context citations. Applying applicable law to a fair reading of the intrinsic evidence, Apple’s arguments must be rejected. The patent is definite, and RJ Technology’s constructions are correct.

## II. ARGUMENT

### a. Charge Cut-off Voltage

| RJ Technology’s Construction                                                                             | Apple’s Construction                                                                                   |
|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| <b>Plain and ordinary meaning.</b> The maximum voltage to which the battery is configured to be charged. | The voltage at which the charging changes from constant current charging to constant voltage charging. |

The specification and prosecution history uniformly use the term “charge cut-off voltage” to refer to the maximum voltage to which the battery is configured to be charged. By contrast, Apple’s proposed construction finds no support in the intrinsic evidence; the patent does not even mention constant current/constant voltage charging (“CC/CV”). Nor does Apple identify any disclaimer in which the patentees narrowed the scope of the term to a single charging algorithm. Where the words of the claim and the intrinsic record point in only one direction, and there has been no disclaimer, RJ Technology’s construction is the correct one under the law. After all, it is “the claims [that] define the invention”; and those are interpreted “in the context of the written description and the prosecution history.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313-14 (Fed. Cir. 2005) (en banc). By contrast, extrinsic evidence (including expert testimony and external publications) is “less significant” and “less reliable than the patent and its prosecution history . . .” *Id.* at 1317-18. Apple relies primarily on the inventors’ statements in litigation in China regarding the Chinese counterpart patent. But litigation statements are not intrinsic evidence

1 and are not contemporaneous extrinsic evidence. More importantly, under Chinese  
2 law, those statements are not claim construction (a process unknown in Chinese  
3 patent law) and do not purport to define the full scope of the term “charge cut-off  
4 voltage.”

5 Apple’s passing references to the specification do not support its proposed  
6 construction. All stand for the well-accepted fact that at the time of the invention,  
7 there was a universal industry standard that the charge cut-off voltage of a secondary  
8 lithium-ion battery should not exceed 4.2V. See Defendant Apple Inc.’s Opening  
9 Claim Construction Brief (“Apple Br.,” Dkt. 68) at 4 (citing U.S. Patent No.  
10 7,749,641 (“’641 Patent”) at 1:45-51, 4:43-46, 5:62-6:34, 8:19-24). Not a single  
11 one makes reference to CC/CV charging or suggests that the “charge cut-off voltage”  
12 must exclusively be implemented through CC/CV.

13 Without intrinsic or even contemporaneous extrinsic evidence to support its  
14 construction, Apple instead relies almost exclusively on statements made by the  
15 inventors’ attorneys in proceedings in China. These were not part of the prosecution  
16 of the Chinese patent but instead were made during post-grant invalidity  
17 proceedings that occurred 13 years after the Chinese patent was issued. At best,  
18 they are recent comments made regarding a foreign patent, based upon foreign law  
19 different from U.S. law. When placed in the proper context, the comments do not  
20 contravene RJ Technology’s claim construction here and certainly do not support  
21 narrowing the term’s construction from the claim term’s plain meaning as  
22 confirmed by the specification and prosecution history.

23 **First**, Apple’s suggestion that the statements are intrinsic evidence on par  
24 with the specification and ’641 Patent’s prosecution history is wrong. If a US  
25 application claims priority to a foreign application, statements made by applicants  
26 *during prosecution* of that foreign application may sometimes be considered for  
27 claim construction, but even when appropriate such foreign prosecution statements  
28 have only a “narrow application.” See *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282,

## **RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 1290 (Fed. Cir. 2009). And even in that scenario (which is not the case here),  
 2 caution should still be exercised as “the varying legal and procedural requirements  
 3 for obtaining patent protection in foreign countries might render consideration of  
 4 certain types of representations . . . inappropriate . . . .” *TI Group Auto. Sys. (N.A.),*  
 5 *Inc. v. VDO N.A.*, 375 F.3d 1126, 1136 (Fed. Cir. 2004); *Pfizer, Inc. v. Ranbay Labs.*  
 6 *Ltd.*, 457 F.3d 1284, 1290 (Fed. Cir. 2006) (“[S]tatements made during prosecution  
 7 of foreign counterparts to the ’893 patent are irrelevant to claim construction  
 8 because they were made in response to patentability requirements unique to Danish  
 9 and European law.”); *AIA Eng’g Ltd. v. Magotteaux Int’l S/A*, 657 F.3d 1264, 1279  
 10 (Fed. Cir. 2011) (“[O]ur precedent cautions against indiscriminate reliance on the  
 11 prosecution of corresponding foreign applications in the claim construction  
 12 analysis”). Moreover, courts place more weight on “content of the foreign priority  
 13 application” itself than “attorney argument or amendments during a foreign  
 14 prosecution.” *Abbott Labs.*, 566 F.3d at 1290.

15 Here, the statements in question were not made during the Chinese patent’s  
 16 original prosecution; they were made during litigation 13 years after the original  
 17 Chinese patent issued. This is not intrinsic evidence. None of the cases cited by  
 18 Apple stands for the proposition that statements made in overseas post-grant patent  
 19 litigation or proceedings are intrinsic evidence. *See, e.g., Apple Inc. v. Motorola,*  
 20 *Inc.*, 757 F.3d 1286, 1312-13 (Fed. Cir. 2014) (overruled by *Williamson v. Citrix*  
 21 *Online LLC*, 792 F.3d 1339 (Fed. Cir. 2015) (en banc)) (considering as “further  
 22 support” for claim construction statements made during prosecution of a Japanese  
 23 patent application).

24 **Second**, a post-grant comment on a term’s meaning is at best non-  
 25 contemporaneous extrinsic evidence. But courts have been reluctant to rely upon  
 26 comparable evidence. For example, in *Ateliers de la Haute-Garonne v. Broetje*  
 27 *Automation-USA Inc.*, Judge Stark (then a judge on the district court) considered  
 28 evidence of arguably a stronger caliber than what Apple relies upon here – a foreign

## RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

1 court's actual construction of a foreign counterpart patent. No. CIV.A. 09-598-LPS,  
 2 2011 WL 722937, at \*5 (D. Del. Feb. 23, 2011) (Stark, J.). Because laws inevitably  
 3 differ from country to country, the court found that the foreign claim construction  
 4 was "at most extrinsic evidence" that had "little relevance" to construction of the  
 5 U.S. patent under U.S. law, and therefore would be accorded "little weight." *Id.*

6 **Third**, even in circumstances in which a party takes a different claim  
 7 construction position in parallel U.S. proceedings – i.e., in *inter partes* review and  
 8 corresponding district court infringement litigation – courts have declined to give  
 9 the prior position controlling or even significant weight. For example, at the time  
 10 that the PTAB and district courts applied different claim construction standards,  
 11 courts held that those differences significantly diminished the relevance of positions  
 12 taken in IPR, which were deemed "not binding." *See, e.g., TQ Beta LLC v. Dish*  
 13 *Network Corp.*, No. 14-CV-848-LPS-CJB, 2016 WL 356024, at \*4 (D. Del. Jan. 28,  
 14 2016) (Stark, J.). Here, of course, there is far more daylight between legal standards  
 15 – Chinese patent litigation does not even have a claim construction procedure, as  
 16 discussed below. Notably, even now that PTAB and district court claim  
 17 construction standards have been harmonized, courts are still reluctant to deem a  
 18 claim construction position taken in IPR to be binding. *See Panduit Corp. v.*  
 19 *Corning Inc.*, No. 5:18-CV-229-FL, 2021 WL 2785326, at \*1 (E.D.N.C. July 2,  
 20 2021) (considering and rejecting argument that a party's claim construction position  
 21 in *inter partes* review was binding on that party's position in parallel district court  
 22 infringement litigation; applying principles of estoppel and finding there was none).

23 **Fourth**, the material differences between U.S. and Chinese law makes the  
 24 statements of the inventors in the Chinese litigation even less relevant, if they are  
 25 relevant at all. *See AIA Eng'g Ltd.*, 657 F.3d at 1279 ("[T]he varying legal and  
 26 procedural requirements for obtaining patent protection in foreign countries might  
 27 render consideration of certain types of representations inappropriate' for  
 28 consideration in a claim construction analysis of a United States counterpart."). As

## RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

1 noted above, China does not have formal, U.S.-style claim construction proceedings.  
2 J. Benjamin Bai et. al., *What Multinational Companies Need to Know About Patent*  
3 *Invalidation and Patent Litigation in China*, 5 NW. J. TECH. & INTELL. PROP. 449,  
4 460-61 (2007) (“There is no U.S.-style, pre-trial Markman hearing for claim  
5 construction in China.”). As a result, the parties to the Chinese litigation never had  
6 the opportunity or necessity to address what the full scope of the term “charge cutoff  
7 voltage” is, as the parties here must do under U.S. patent law.

8 Apple also takes the statements out of context. In China, Apple argued that  
9 the term “charging limit voltage” was ambiguous because a technician in the field  
10 could not determine in what structure(s) the limit applied. *See* Ex. 1 (Apple’s First  
11 Invalidity Request). It was in response to this that the patentees emphasized that  
12 the term is not ambiguous because it is a “standard general term in the field of  
13 battery related technology” while also explaining that the term “*refers to the voltage*  
14 *value of the battery when it transitions from charging at a constant current to*  
15 *charging at a constant voltage.*” Dkt. 69-3 at 3 (quoted at Apple Br. at 5). The  
16 inventors were therefore commenting that CC/CV is a familiar concept in the field,  
17 and therefore there was no invalidating ambiguity because how the voltage in that  
18 algorithm was implemented would likewise be well understood. The inventors did  
19 not purport to define the outer bounds of “charge cut-off voltage” and certainly did  
20 not clearly or unambiguously disclaim other charging algorithms.

21 Similarly, when the inventors explained that in a diagram (as excerpted from  
22 Apple Br. at 5) the “limited charging voltage” is the point at which “the battery is  
23 charged from the constant current to constant voltage,” they were not defining  
24 charge cutoff voltage for all purposes or disclaiming anything, they were merely  
25 identifying what the charge cutoff voltage value would be *if* CC/CV were used. The  
26 statement is totally silent as to what the charge cutoff voltage would be if another  
27 algorithm were used, and certainly does not suggest (as Apple’s argument would  
28

## RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

1 have it) that if another algorithm were used there could be no charge cutoff voltage  
2 because that term can only be used with CC/CV.

3 Finally, Apple's reliance on an earlier construction proposed by RJ  
4 Technology during a meet and confer is a distraction. Apple does not mention that  
5 it also proposed a different construction initially, or that that construction (like RJ  
6 Technology's final construction) did not restrict the term to any specific charging  
7 algorithm. See Ex. 2 (Apple's Proposed Construction of Claim Terms).

8 b. Ratio of Positive Electrode Material to Negative Electrode Material  
9 as Calculated by a Theoretic Capacity with a Charge Cut-off Voltage  
10 set at 4.2V

| RJ Technology's Construction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Apple's Construction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>11 <b>Plain and ordinary meaning.</b> The</p> <p>12 ratio calculated as the product of the</p> <p>13 capacity of the cathode active material</p> <p>14 per mass unit and the amount of the</p> <p>15 cathode active material in the same</p> <p>16 mass unit divided by the product of the</p> <p>17 capacity of the anode active material</p> <p>18 per mass unit and the amount of the</p> <p>19 anode active material in the same mass</p> <p>20 unit, when the charge cutoff voltage is</p> <p>21 4.2V.</p> | <p>22 <b>Indefinite.</b></p> <p>23 In the alternative, the ratio calculated</p> <p>24 as the product of the theoretic capacity</p> <p>of the cathode active material per mass</p> <p>unit and the amount of the cathode</p> <p>active material in the same mass unit</p> <p>divided by the product of the capacity</p> <p>of the anode active material per mass</p> <p>unit and the amount of the anode active</p> <p>material in the same mass unit, when</p> <p>the cell charge cutoff voltage is set at</p> <p>4.2V,</p> <p><b><u>wherein "theoretic capacity" means</u></b><br/> <b><u>"theoretical, rather than actual,</u></b><br/> <b><u>capacity that assumes all of the</u></b><br/> <b><u>active substances participate in the</u></b><br/> <b><u>reaction of the battery."</u></b></p> |

25 i. The ratio is not indefinite

26 RJ Technology's construction follows mandatory claim construction  
27 principles by giving each word in the claim meaning and by following the express  
28 definition provided in the specification. Apple's construction, by contrast,

**RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 improperly reads out much of the claim language and ignores the specification's  
2 express definition. Apple does this to create an indefiniteness issue that does not  
3 exist under an appropriate claim construction. Properly construed, the claim is not  
4 indefinite.

5 Both parties agree that for a cathode active material, there is a theoretical  
6 maximum capacity. See Plaintiff RJ Technology LLC's Opening Claim  
7 Construction Brief ("RJ Tech. Br.," Dkt. 70) at 16; Apple Br. at 9. Both parties also  
8 agree that the capacity of the cathode active material varies based on charge cut-off  
9 voltage. See RJ Tech. Br. at 15; Apple Br. at 9-10. Apple's argument depends on  
10 the premise that the term "theoretical capacity" *always* refers to the theoretical  
11 maximum capacity, and it can *never* reflect any adjustment to account for the  
12 lithium ions that cannot be extracted at a given voltage from the cathode. As  
13 explained below, that is not how the term is used in the industry, and the intrinsic  
14 evidence alone leaves no doubt that the words mean what they say: that the claim  
15 refers to the capacity at 4.2V, not the theoretical maximum capacity.

16 Apple claims that the specification of the '641 Patent uses the words  
17 "theoretical capacity" to mean the theoretical maximum capacity. It is true that in  
18 some instances, when inventors use the words "theoretical capacity" *alone* in the  
19 specification, they are referring to theoretical maximum capacity. See, e.g., '641  
20 Patent at 1:40-45. But when a particular charge cutoff voltage is identified in  
21 conjunction with the words "theoretic[al] capacity," there is no ambiguity and the  
22 specification refers to the capacity at a charge cutoff voltage of 4.2V. See, e.g., '641  
23 Patent at 6:55-58 ("the ratio of positive electrode material to negative electrode  
24 material of cell is 1:1.0 to 1:2.5 calculated by the theoretical capacity under the  
25 charge cut-off voltage of 4.2V"); 7:25-30; 7:67-8:3.

26 This mirrors the practice in the art, in which the words "theoretical capacity"  
27 is sometimes used to refer to the maximum capacity and sometimes used to refer to  
28 the capacity at a particular voltage. Yao Decl. ¶¶ 5-7 (quoting numerous references

## **RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 using “theoretical” capacity to mean a capacity less than the theoretical maximum).  
 2 Critically, the claim language leaves no ambiguity about which usage the inventors  
 3 intended: it says that the theoretical capacity is calculated at a specific charge cutoff  
 4 voltage. That entire phrase has only one meaning in the art, and therefore the patent  
 5 is not indefinite.

6 Separate and apart from the claim language itself, the specification eliminates  
 7 any ambiguity by providing an express definition of “theoretical capacities of  
 8 positive electrode and negative electrode,” which expressly dictates that the term  
 9 “means the **capacities** of the positive electrode and the negative electrode calculated  
 10 **with a charge cut-off voltage set at 4.2 V.**” *Id.* at 4:5-9 (emphases added). Apple  
 11 notably ignores this entirely, as it dooms Apple’s argument. The definition makes  
 12 clear that the term does not refer to the theoretical maximum capacities, and the  
 13 inventors’ express definition in the specification controls. *See Jack Guttman, Inc.*  
 14 *v. Kopykake Enterprises, Inc.*, 302 F.3d 1352, 1360-61 (Fed. Cir. 2002) (“Where,  
 15 as here, the patentee has clearly defined a claim term, that definition usually is  
 16 dispositive; it is the single best guide to the meaning of a disputed term”).

17 In addition, in the prosecution history of the Chinese patent, the applicants  
 18 explicitly stated that the ratio should be calculated with the capacity at 4.2V. There,  
 19 in 2004, the examiner in China asked the applicants to give a clear and complete  
 20 explanation as to how to calculate the claimed ratio. *See* Ex. 3 (Patent Application  
 21 Statement of Argument). In response, the applicants explained that to calculate the  
 22 ratio, the capacity at a charge cut-off voltage of 4.2V should be used, not the  
 23 theoretical maximum capacity. *Id.*; Yao Decl. ¶ 8.

24 Apple argues elsewhere in its brief that this type of prosecution history (i.e.,  
 25 original prosecution of a related patent) can be considered as intrinsic evidence and  
 26 can be used to further elucidate the meaning of the claim terms. *See* Apple Br. at 5.  
 27 If the use of the Chinese file history is appropriate (which is questionable, as noted  
 28 above), it is more so here it was part of the original priority patent application

## RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

1 prosecution, not a post-grant proceeding (as was the case with the charge cut-off  
2 voltage term), and the inventors were providing an answer to a technical question  
3 that does not relate to a unique aspect of foreign patent law. Here, the Chinese  
4 patent examiner asked the inventors how to calculate capacity when the charge  
5 cutoff voltage is 4.2V and the inventors provided a response that is the same as RJ  
6 Technology’s proposed construction in this case.

7 Apple also relies upon statements made in the proceedings in China, but they  
8 do not help Apple’s construction. The quote cited by Apple (see Apple Br. at 9, 11-  
9 12) is taken out of context and incomplete. The inventors first explained what  
10 “theoretical capacity” *as a standalone term* is. For example, the inventors explained  
11 that for  $\text{LiCoO}_2$  as the cathode active material, “[i]f all lithium ions are de-  
12 intercalated ... it is 273.848 mAh/g, which is the theoretical gram capacity.” Dkt.  
13 69-4 at 8. This is the same approach as taken in the specification, and in both places  
14 the inventors’ explanation is consistent with the meaning of theoretical maximum  
15 capacity. See RJ Tech. Br. at 16.

16 Critically, Apple ignores the inventors’ comments in the next section of the  
17 Chinese submission. Under the heading “Regarding the ‘ratio of positive and  
18 negative electrodes of the single lithium ion battery’ and ‘calculated based on the  
19 theoretical gram capacity when the charging limit voltage is 4.2 V’,” the inventors  
20 explained that an artisan reading the claim would have to take into account the claim  
21 language “with a charge cutoff voltage set at 4.2 V” and need to apply the  
22 corresponding “deinter[calating] coefficient”—the percentage of lithium ions from  
23 the cathode active material that participate in the reactions generating and storing  
24 electricity. See Dkt. 69-4 at 8. The inventors could not have been clearer in making  
25 exactly the same point that RJ Technology makes here: “The reason why it is  
26 specifically stated that ‘when the charging limit voltage is 4.2 V’ is because it is  
27 necessary to consider the deintercalating coefficient of lithium ions when the  
28 charging limit voltage is 4.2 V.” This “deinter[calating] coefficient” is the “x

#### **RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

factor” described in RJ Technology’s opening brief and in the Linden treatise. *See* RJ Tech. Br. at 16-17. In other words, the inventors in China explained that the claim language refers to a charge cutoff voltage of 4.2V because it is directing that the capacity at the charging limit voltage (based upon the “x factor”) be used, not the theoretical maximum capacity.

ii. RJ Technology’s construction reflects the term’s plain and ordinary meaning

Both parties agree that their proposed constructions for this term are similar, and that the dispute is narrow. To support its construction, Apple relies upon the principle of claim differentiation, and repeats the same indefiniteness argument. Both should be rejected.

Claim differentiation as a tool for claim construction “works best in the relationship between independent and dependent claims,” *Curtiss-Wright Flow Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1380 (Fed. Cir. 2006), and it “cannot be used to overcome the plain language of the claims themselves.” *Mycogen Plant Science v. Monsanto Co.*, 243 F.3d 1316, 1329 (Fed. Cir. 2001). It is not unusual that separate claims may define the invention using different terminology, especially where (as here) independent claims are involved.” *Id.*; *see also Kraft Foods, Inc. v. Int’l Trading Co.*, 203 F.3d 1362, 1368 (Fed. Cir. 2000) (“That the patentee chose several words in drafting a particular limitation of one claim, but fewer (though similar) words in drafting the corresponding limitation in another, does not mandate different interpretations of the two limitations, since ‘defining a state of affairs with multiple terms should help, rather than hinder, understanding.’”).

Claim 1, which has been withdrawn from this case, is an independent claim separate from claim 5. As noted above, the ’641 Patent provides a specific definition for the term “theoretical capacity,” and RJ Technology’s construction follows that definition and the claim’s own language. Using claim differentiation

**RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

as Apple proposes would read out express language from the claim, and be contrary to the plain meaning of the term. Indeed, Apple itself does not read the ratio limitations from claim 1 and claim 5 any differently when it proposed constructions for the terms. Ex. 2 (Apple's Proposed Construction of Claim Terms) at 2. As shown in the table below, which is reproduced from Apple's claim construction disclosure, it provided the same construction for both terms in claim 1 and claim 5:

| Claim Term                                                                         | Corresponding Asserted Claims | Apple's Proposed Construction                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "as calculated by a specific capacity with a charge voltage limited to 4.2 V"      | Claim 1                       | Indefinite.<br><br>In the alternative, as calculated by actual capacity of stored electricity (measured as mAh/g) maintained after the first cycle (i.e., before irreversible capacity loss), with a voltage at which the transfer of lithium ions from the cathode to anode stops at 4.2V. |
| "as calculated by a theoretic capacity with a charge cut-off voltage set at 4.2 V" | Claim 5                       | Indefinite.<br><br>In the alternative, as calculated by actual capacity of stored electricity (measured as mAh/g) maintained after the first cycle (i.e., before irreversible capacity loss), with a voltage at which the transfer of lithium ions from the cathode to anode stops at 4.2V. |

The extrinsic evidence relied upon by Apple does not support Apple's construction. Apple points to the Linden handbook at section 1.4.3, which states

#### **RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

that “[t]he theoretical capacity of a cell is determined by the amount of active materials in the cell.” Dkt. 69-10 at 447. What Apple neglects to point to is that in the very same section, the Linden handbook lists 137 mAh/g as the theoretical capacity for  $\text{LiCoO}_2$ —which undisputedly is not the theoretical maximum of that material—274 mAh/g is—but instead the capacity after an “x” factor of .5 is applied. *See id.* at 447-448; *see also* RJ Tech. Br. at 16. If there is any ambiguity about whether theoretical capacity refers to the theoretical maximum capacity, or the capacity at 4.2V, the claim clears that ambiguity by specifying that it is the theoretical capacity at 4.2V.

Finally, RJ Technology agrees with Apple’s clarification that the “charge cut-off voltage” as recited in this term should refer to the full-cell voltage.

c. A Secondary Lithium Ion Cell or Battery

| RJ Technology’s Construction      | Apple’s Construction                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>No construction is needed.</b> | A lithium ion battery, wherein the battery electrode materials must not be substantially changed from what was available in the art and made without substantially decomposing the electrolyte, which can be recharged to its original capacity, without any decreased capacity or cycle life at a charge cut-off voltage above 4.2V. |

Apple asserts that the patentees narrowed the definition of “secondary lithium ion cell or battery” in a manner that defies basic chemistry, renders the claimed battery an impossible device, and contradicts the express teachings of the patent. Of course, the patentees did no such thing. All of Apple’s citations are taken out of context or mischaracterized. For prosecution disclaimer to apply, the alleged disavowing statements must be “clear and unmistakable.” *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1367 (Fed. Cir. 2018). There was no

**RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 disclaimer at all, let alone a “clear and unmistakable one” leading to the extreme  
2 and unnatural construction that Apple invents. *Id.*

3 None of the statements identified by Apple support its assertion that the  
4 inventors disclaimed using any electrode materials “not substantially changed from  
5 what was available in the art.” Apple Br. at 13-17. In the specification and the  
6 prosecution history, the inventors explained that battery engineers were then  
7 focused on developing “active substances (positive electrode materials and negative  
8 electrode materials) having higher specific energy.” ’641 Patent at 1:30-35. These  
9 approaches had not been successful, and so contrary to this conventional wisdom,  
10 the inventors took a different approach—they altered other key attributes of the  
11 battery to improve performance. The goal of this work was to increase the  
12 “efficacy” and “actual utilization” of electrode materials—whatever those were. *Id.*  
13 at 2:58-67. The inventors expressly and repeatedly stated that their invention was  
14 directed towards improving battery performance of the materials used—whether  
15 those materials were conventional *or unconventional*. For example, they state:  
16 “[T]he present method further optimizes the utilization of positive electrode  
17 material . . . [t]he inventors believe that the method can still be used to positive and  
18 negative electrode materials having higher specific energy *developed in future*, and  
19 achieves the optimal effect.” *Id.* at 7:8-15 (emphasis added). They also say:  
20 “[E]ven if new positive electrode material and negative electrode material having  
21 higher specific energy are developed, the lithium ion cell cannot exhibit the best  
22 performance. Hence, it is urgently needed to provide a method that can improve  
23 the efficacy of active substances of lithium ion cell.” *Id.* at 2:58-67. These express  
24 statements in the specification doom Apple’s effort to manufacture a disclaimer.

25 None of the statements Apple points to, either from the intrinsic record, or  
26 from the proceedings in China, says otherwise. To the contrary, in essentially every  
27 instance, Apple points to statements by the inventors explaining that the invention  
28 could be used with conventional materials. But statements expressly providing that

## **RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

certain materials are *included* do not equate to statements that other materials are *excluded*. The latter would have to be stated (clearly and unambiguously) in order for there to be a disclaimer, and the citations provided by Apple do not even come close to language of exclusion. For example, Apple repeatedly relies on the inventors' statement that the invention is developed "on the basis of traditional cathode materials." Apple Br. at 14-15. These statements merely explain that the invention could be used to increase the performance of cathode materials available at that time. They do not in any way suggest that the invention can **only** be applied to conventional materials. There is no ambiguity here, and even if there were, no disclaimer exists when the statement is "ambiguous or amenable to multiple reasonable interpretations." *Core Wireless Licensing*, 880 F.3d at 1367.

Apple next asserts an even more implausible disclaimer, claiming that the patentees disavowed batteries that suffered *any* capacity loss whatsoever upon recharge. Since (as the patent describes) all batteries lose capacity after recharge, Apple claims that the patentees renounced all batteries. Once again, this is wrong, and the statements Apple relies upon make that clear. They explicitly say that some decrease in capacity is inevitable and within the scope of the invention. *See, e.g.*, Dkt. 69-2 at APL-RJT\_00001135 (a secondary battery "denotes a battery that can be recharged to capacities **relatively close** to the original capacity") (emphasis added). Several statements relied upon by Apple merely assert that the invention provides *improved* battery lifespan—meaning less capacity loss than seen in conventional rechargeable batteries. *See, e.g.*, Dkt. 69-2 at APL-RJT\_00001097 (commenting that the patent enabled a battery "free of *poor* recyclability and electrolyte breakdown" while noting that conventional wisdom was that the invention would have resulted in "the opposite, *i.e.*, a battery with poor recyclability and/or *significant* electrolyte breakdown") (emphasis added). Others explain that a battery that experiences extreme capacity loss would not be considered "secondary." *See, e.g.*, Dkt. 69-2 at APL-RJT\_00001135 (explaining that prior art

## RJ TECHNOLOGY'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

combination would result in “very poor cycleability, e.g., a capacity of 50% after the cell is depleted and recharged”); *id.* at APL-RJT\_00001100-01 (it “would not have produced a ‘secondary’ type battery, because the capacity and cycleability generally associated with a secondary-type battery would not be present.”). A battery which is not meaningfully rechargeable is not remotely close to one that loses zero capacity, ever. There was no disclaimer and Apple’s construction is improper. Indeed, adopting Apple’s construction would improperly read out all embodiments described in the patent. *See Nellcor Puritan Bennett, Inc. v. Masimo Corp.*, 402 F.3d 1364, 1370 (Fed. Cir. 2005) (finding the district court erred in finding a disclaimer where such would read out all embodiments).

d. Overcharging Protection Voltage / Overcharg[e/ing] Protection Release Voltage

| RJ Technology’s Construction                                                                                                                                                                                                                                                                                                                                                                                                                 | Apple’s Construction                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Plain and Ordinary Meaning.</b></p> <ul style="list-style-type: none"> <li>“overcharging protection voltage” refers to the voltage level at which the battery’s protection mechanism(s) engages to prevent the battery from being charged to a higher voltage.</li> <li>“overcharge/overcharging protection release voltage” refers to the voltage level at which a battery’s protection mechanism(s) disengages or resets.</li> </ul> | <p>Overcharging protection voltage / release voltage, implemented in the secondary lithium ion cell or battery, and not in a protection circuit.</p> |

Apple claims that the patentees disclaimed operation of an overcharging protection voltage/release voltage in an external protection circuit, due to their election in response to a restriction requirement. But Apple conflates two distinct concepts: (1) the election of patentable subject matter subject to a restriction requirement; and (2) disclaimer of claim scope. Apple Br. at 20-22. As discussed

**RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 in RJ Technology’s opening brief, the election of patentable subject matter over a  
 2 restriction requirement does not necessarily operate as a disclaimer. Dkt. 72 at 22-  
 3 23. There is a “heavy presumption” that a claim term carries the full scope of its  
 4 plain and ordinary meaning, and a restriction requirement can only amount to a  
 5 disavowal if it leads to a “clear and unmistakable” disclaimer of scope by the  
 6 patentees. *Plantronics, Inc. v. Aliph, Inc.*, 724 F.3d 1343, 1350 (Fed. Cir. 2013).  
 7 Here, there was no disclaimer. *See id.*

8 A restriction requirement is a discretionary tool used by patent examiners at  
 9 the USPTO to assist in controlling their workload. Manual of Patent Examining  
 10 Procedure § 803 (Restriction – When Proper). Restriction requirements play no  
 11 substantive role in the examination of a patent application. *Id.* Instead, they are  
 12 merely tools to ease the administrative burden on the USPTO by limiting the  
 13 number of claims to be included in a particular patent application. *Id.* Accordingly,  
 14 even when the examiner identifies distinct patentable inventions, and even when the  
 15 patentee responds by electing fewer than all of those “without traverse,” there is no  
 16 disclaimer absent the patentee’s clear, unmistakable, and unambiguous statement of  
 17 intent to do so. *Plantronics*, 724 F.3d at 1350-51. “The election of an invention in  
 18 response to an ambiguous restriction requirement . . . cannot be said to provide any  
 19 guidance forming a basis for narrowing a broadly drafted claim.” *Id.*

20 Here, just as in *Plantronics*, the inventors merely elected one set of claims  
 21 upon which to continue prosecution without disclaiming (unequivocally or  
 22 otherwise) the scope of those claims. Neither the patentees nor the examiner  
 23 “construe[d] the claim term[s] [] or determine[d] [their] meaning in light of the  
 24 written description” before issuing the restriction, *see Honeywell Int’l, Inc. v. ITT*  
 25 *Indus., Inc.*, 452 F.3d 1312, 1319 (Fed. Cir. 2006), and the examiner did not specify  
 26 that the election would constitute a disclaimer. *See, e.g.*, Dkt. 69-2 at APL-  
 27 RJT\_0001228-31 (Restriction Requirement), APL\_RJT\_00001223-24 (Election).

## RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF

1 The Court should therefore not “assign much weight” to the election. *See*  
2 *Honeywell*, 452 F.3d at 1319.

3 Apple insists that RJ Technology “tacit[ly]” disavowed implementation of  
4 claims 9-10’s overcharging protection in an external overcharge protection circuit  
5 when they amended claim 5 in response to a lengthy rejection by the examiner.  
6 Apple Br. at 21. But, by definition, a “tacit” disavowal is not clear, unmistakable,  
7 and unequivocal, and so it is no disavowal at all. *Plantronics*, 724 F.3d at 1350.  
8 “An applicant’s silence in response to an examiner’s characterization of a claim  
9 does not reflect the applicant’s clear and unmistakable acquiescence to that  
10 characterization . . . .” *Wilson Sporting Goods Co. v. Monsta Athletics, LLC*, No.  
11 5:19-CV-738 AB (MRW), 2020 WL 5835321, at \*8 (C.D. Cal. Sept. 24, 2020); *see*  
12 *also Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111,  
13 1124 (Fed. Cir. 2004) (“It is well settled, however, that it is the applicant, not the  
14 examiner, who must give up or disclaim subject matter that would otherwise fall  
15 within the scope of the claims.”). Here, there was not even a tacit disavowal. In  
16 response to the examiner’s comments, the patentees affirmatively disputed the  
17 assertion, stating that “[a]pplicant reiterates that *it does not believe this conclusion*  
18 *to be reasonable.*” Dkt. 69-2 at APL-RJT\_00001095 (emphasis added). The  
19 patentees then said that they were amending the claims in a manner discussed in an  
20 unrecorded conversation with the examiner. *Id.* The amendments made were not  
21 just related to the “protection circuit” but also to other elements, including “an  
22 electrolyte” and a “single cell.” *Id.* at APL-RJT\_00001091-92. This falls well short  
23 of the unequivocal disclaimer that is required—particularly where the patentees  
24 affirmatively disputed the examiner’s characterization. *See Plantronics*, 724 F.3d  
25 at 1351 (explaining that “Plantronics did disagree with the PTO’s comments” in  
26 finding no disclaimer).

27 Finally, Apple’s reliance on the examiner’s statement that the protection  
28 circuit is “inherent in the battery” is even more confused, in part because Apple has

**RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

wildly mischaracterized the statement. The actual statement is that “overcharging protection release voltage is inherent in the battery of Takeuchi...,” referring to a prior art reference. Dkt. 69-2 at APL-RJT\_0001205. The other quotations similarly refer to that element being inherent in prior art batteries. *Id.* at APL-RJT\_00001121 (referring to Idota), APL-RJT\_00001154 (same). The examiner was not even remotely commenting on the restriction requirement, protection circuits, disclaimers, or even the scope of term “overcharging protection.” Instead, the examiner was referring to the unrelated obviousness principle of “inherency.” See *id.* at APL-RJT\_00001202-04. Notably, the examiner also said that things like capacity, voltage, and specific energy were inherent (in other references, *id.*); and none of these was a comment on whether these things occur only inside of or outside of the battery. Plainly, there was no disclaimer.<sup>1</sup>

e. Maintains at Least ... Capacity after 400 Cycles

| RJ Technology’s Construction                                                                                                                        | Apple’s Construction |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| <b>Plain and ordinary meaning.</b><br>“maintains at least [a percentage] of capacity after 400 complete charge and discharge cycles of the battery” | <b>Indefinite</b>    |

Asserted claims 11-14 set out standard performance evaluation metrics, which are known in the industry, are the subject of numerous consistent standards for testing, and are used by Apple itself in its advertising to consumers. These claims are reasonably certain and a POSA would readily understand how to test for them. They are not indefinite.

<sup>1</sup> It should be noted that the restriction requirement was limited to an *external* protection circuit, as is Apple’s construction. Therefore, a protection circuit internal to the battery, such as the battery management system, Dkt. 70-1 (Declaration of Dr. Yan Yao) at ¶ 67, is within the scope of this term, even under Apple’s construction.

**RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

Apple’s first argument—that claim 5’s use of the term “theoretic capacity” renders claims 11-14 indefinite (Apple Br. at 22-23)—has it backwards. Apple says that “capacity” in claims 11-14 should be given the same meaning as “theoretic capacity” in claim 5, but this creates a problem because “theoretic capacity” as construed by Apple in claim 5 can never be lost. *Id.* Once again, under Apple’s own argument, its constructions render the terms “nonsensical,” demonstrating that they “cannot be correct.” *Neville v. Found. Constructors, Inc.*, 972 F.3d 1350, 1357 (Fed. Cir. 2020); *see also Ruckus Wireless, Inc. v. Innovative Wireless Sols., LLC*, 824 F.3d 999, 1004 (Fed. Cir. 2016) (construction that creates ambiguity should be rejected). And in any event, Apple’s underlying premise—that “capacity” in claims 11-14 refers to the “theoretic capacity” in claim 5—is unsupported and wrong. Claims 11-14 (which do not use the words “said capacity”) refer to the measured capacity after a specified number of charging cycles, whereas claim 5 refers to the theoretical capacity at a particular charging voltage. The words in each claim are different because they refer to distinct concepts. Claim 5 measures how much of the anode and cathode material should be included in the battery, whereas claims 11-14 refer to the battery’s degradation over time. Consistent with this, the dependent claims do not suggest that claim 5 provides antecedent basis.

Apple’s second argument—that the claims are indefinite because they don’t specify, in minute detail, a laundry list of testing conditions (Apple Br. at 23-24)—fares no better. Those parameters are either (1) disclosed or (2) immaterial to the scope and meaning of the claim. At best, they may suggest the “potential for inconsistent results,” which are minor and do “not render a claim indefinite.” *Takeda Pharm. Co. v. Zydus Pharms. USA, Inc.*, 743 F.3d 1359, 1367 & n.3 (Fed. Cir. 2014).

Moreover, “an inventor need not explain every detail because a patent is read by those of skill in the art” and a claim will only be found indefinite if it is incomprehensible to a POSA. *BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360,

## **RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 1366 (Fed. Cir. 2017); *Nature Simulation Sys. Inc. v. Autodesk, Inc.*, 50 F.4th 1358,  
 2 1366 (Fed. Cir. 2022) (“Although the district court adopted the argument of  
 3 Autodesk’s expert that there are ‘unanswered questions’ about the claims, this was  
 4 not the correct standard for evaluating whether the claims met the standard for  
 5 definiteness.”). Here, the parties agree that the skill in the art is high. *Compare*  
 6 Dkt. 68-1 (Horn Declaration) at ¶ 16 (bachelor’s degree and at least four years of  
 7 experience) *with* Dkt. 70-1 (Yao Declaration) at ¶ 16 (master’s degree and three  
 8 years of experience). As such, the patent provides more than sufficient guidance.

9 To begin, many of the parameters *are* in the specification. For example,  
 10 Apple claims that the patent does not specify the “anode and cathode materials,”  
 11 Apple Br. at 23, but exemplary anode and cathode materials are identified at  
 12 columns 8 and 9 of the patent, ’641 Patent at 8:4-9:21. And, in any event, to the  
 13 extent certain materials influence the testing outcomes, that is a question of  
 14 infringement, not definiteness – since definiteness concerns whether a POSA would  
 15 know how to measure capacity loss not whether certain unusual materials might not  
 16 satisfy the claim limitations. Similarly, the patent *does* disclose exemplary methods  
 17 to manufacture the claimed batteries, such as in columns 9 and 10.<sup>2</sup> *Id.* at 9:62-  
 18 10:25.

19 To the extent certain details are not expressly laid out in the specification, a  
 20 POSA would still understand that the testing would be conducted under typical  
 21 operating conditions of the commercial batteries on which the patent is focused.

---

22  
 23  
 24 <sup>2</sup> To the extent Apple argues this detail must have been included in the claims  
 25 themselves, Apple Br. at 23, this position is contrary to law. The “claims are not  
 26 technical descriptions of the disclosed inventions but are legal documents like the  
 27 descriptions of lands by metes and bounds in a deed which *define the area* conveyed  
 28 but *do not describe the land.*” *See Nature Simulation* 50 F.4th at 1366 (quoting *In*  
*re Vamco Mach. & Tool, Inc.*, 752 F.2d 1564, 1577 n.5 (Fed. Cir. 1985)) (emphasis  
 in original).

1 The patent says this expressly: “Except voltage, all process parameters for charge  
 2 and discharge are commonly used in the art.” ’641 Patent at 9:22-23. Persons of  
 3 skill routinely conduct testing on batteries to determine their cycle life, and these  
 4 tests are typically done in a standardized fashion, especially when designing and  
 5 testing commercial batteries as the patentees have done here. Yao Decl. ¶ 12.  
 6 These testing methods are meant to approximate normal operation of the batteries  
 7 and are often codified in technical standards, such as those provided by  
 8 Underwriters Laboratory (UL), which specify that testing must be undertaken “per  
 9 the manufacturer’s specifications.” Ex. 4 (UL Standard for Safety for Lithium  
 10 Batteries); Yao Decl. ¶¶ 13, 16, 17; *see also* Ex. 5 (Chinese National Lithium-ion  
 11 Battery Standard). In other words, the standard specifies that testing must be  
 12 undertaken under the same conditions as the normal operational parameters of the  
 13 battery. *Id.* For good reason—it would make no sense for the designer of a  
 14 commercial battery to perform baseline life cycle testing under extreme or unusual  
 15 conditions, which would not be reflective of how the battery would perform for the  
 16 regular consumer. Rather, life cycle testing is typically performed within a narrow  
 17 band of conditions reflecting the typical use of the battery. *Id.* A POSA would  
 18 understand this and would interpret the claims accordingly. *See BASF*, 875 F.3d at  
 19 1366 (“an inventor need not explain every detail because a patent is read by those  
 20 of skill in the art”); *Kaneka Corp. v. SKC Kolon PI, Inc.*, No. CV1103397JGBRZX,  
 21 2014 WL 10983769, at \*12 (C.D. Cal. Mar. 13, 2014) (rejecting indefiniteness  
 22 argument even though measurement criteria were not specified).

23 Apple attempts to sow doubt where there is none. For example, Apple claims  
 24 that a variance in temperature would be especially likely to induce inconsistent  
 25 results. Dkt. 68 at 23-24. But a POSA would understand that such testing would  
 26 be undertaken at room temperature. Yao Decl ¶ 14; Ex. 4 (UL Standard for Safety  
 27 for Lithium Batteries); Ex. 5 (Chinese National Lithium-ion Battery Standard). This  
 28 is common sense. Absent a statement regarding temperature or on the use of an

## **RJ TECHNOLOGY’S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

1 oven or freezer, a POSA would understand that the patentees tested at room  
 2 temperature. *Id.* After all, if the inventors went to the trouble to heat or freeze the  
 3 charging batteries, they would have mentioned it. *Id.* Further, unless the tests were  
 4 conducted well outside of normal conditions, variations in temperature would  
 5 produce only small differences in results; not enough to render the claim indefinite.  
 6 *See Takeda*, 743 F.3d at 1367 & n.3; Yao Decl. ¶ 21. This distinguishes Apple’s  
 7 (unpublished) case authority, which concerns variances in testing parameters which  
 8 yielded significantly different results. *See Apple Br. 22-24.* Moreover, unlike here,  
 9 the testing at issue did not involve widely used tests and performance criteria, but  
 10 rather a testing metric that was “coined by the patent” and unknown in the art. *See*  
 11 *Pac. Coast Bldg. Prod., Inc. v. CertainTeed Gypsum, Inc.*, 816 F.App’x 454, 456  
 12 (Fed. Cir. 2020).<sup>3</sup>

### 13 **III. CONCLUSION**

14 RJ Technology’s proposed constructions are correct and should be adopted.

---

25  
 26 <sup>3</sup> Apple mentions in passing enablement (Apple Br. at 24), but enablement cannot  
 27 be at issue at the *Markman* stage. *See, e.g., Prolifiq Software Inc. v. Veeva Sys. Inc.*,  
 28 No. C 13-03644 SI, 2014 WL 3870016, at \*12 (N.D. Cal. Aug. 6, 2014) (explaining  
 that enablement “is not properly before the Court at the *Markman* stage.”).  
 Regardless, the claims are enabled.

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**Certification Per Local Rule 11-6.2**

The undersigned counsel of record for Plaintiff RJ Technology LLC certifies that this brief contains 6985 words, as calculated by the limitations in L.R. 11-6.1.

By: /s/ Daniel Zaheer

Daniel Zaheer