

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZHUHAI COSMX BATTERY CO., LTD.,
Petitioner

v.

NINGDE AMPEREX TECHNOLOGY LTD.,
Patent Owner

IPR2025-00385
Patent 10,964,927

**PATENT OWNER'S RESPONSE TO PETITIONER'S REQUEST FOR
DIRECTOR REVIEW OF THE INSTITUTION DECISION**

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TABLE OF EXHIBITS

Exhibit Number	Description
2001	Second Amended Complaint, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , Case No. 2:24-cv-00728-JRG, ECF No. 23 (E.D. Tex. Jan. 28, 2025)
2002	Scheduling Order, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , Case No. 2:24-cv-00728-JRG, ECF No. 27 (E.D. Tex. Feb. 6, 2025)
2003	CosMX Invalidity Contentions Cover Pleading, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , Case No. 2:24-cv-00728-JRG (E.D. Tex. Jan. 7, 2025)
2004	Summons to attend oral proceedings in German Case No. 3 Ni 12/23 (EP) (“Germany Order 1”)
2005	Summons to attend oral proceedings in German Case No. 3 Ni 12/24 (EP) (“Germany Order 2”)
2006	Docket Navigator Statistics for Judge Rodney Gilstrap (accessed May 5, 2025)
2007	Docket, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , Case No. 2:22-cv-00232 (E.D. Tex.)
2008	Joint Motion for Entry of Protective Order, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:24-cv-00728-JRG, ECF No. 30 (E.D. Tex. Feb. 11, 2025)
2009	Amended Final Judgment, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , Case No. 2:22-cv-00232, ECF No. 427 (E.D. Tex.)
2010	Article, <i>Lithium battery manufacturer ATL won injunction against its Chinese rival COSMX in German Court</i> , China IP Today (April 6, 2024)
2011	Reserved
2012	Reserved
2013	Reserved
2014	Reserved
2015	Declaration of Dean R. Wheeler, Ph.D.
2016	<i>Curriculum Vitae</i> of Dean R. Wheeler, Ph.D.
2017	Reserved
2018	Reserved

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2019	Reserved
2020	Reserved
2021	Reserved
2022	Reserved
2023	Reserved
2024	Reserved
2025	<i>2016 Batteries Conference GRC</i> , https://www.grc.org/batteries-conference/2016/ (accessed on May 12, 2025)
2026	<i>Hubs – Department of Energy</i> , https://www.energy.gov/hubs (accessed on May 12, 2025)
2027	<i>DOE Energy Innovation Hubs</i> , https://science.osti.gov/bes/Research/DOE-Energy-Innovation-Hubs (accessed on May 12, 2025)
2028	Sergiy Kalnaus, Yanli Wang, John A. Turner, <i>Mechanical behavior and failure mechanisms of Li-ion battery separators</i> , 348, 255-263, J. Power Sources (2017)
2029	Jan Diekmann, Stefan Doose, Svenja Weber, Swantje Münch, Wolfgang Haselrieder, and Arno Kwade, <i>Development of a new procedure for nail penetration of lithium-ion cells to obtain meaningful and reproducible results</i> , 167(9) J. Electrochem. Soc. (2020)
2030	Callister and Rethwisch, <i>Materials Science and Engineering: An Introduction</i> , 9 th ed., Wiley, 2014
2031	Jay R. Lund and Joseph P. Byrne, <i>Leonardo Da Vinci’s Tensile Strength Tests: Implications for the Discovery of Engineering Mechanics</i> , 00, 1-8, Civil. Eng. and Env. Syst. (2000)

I. INTRODUCTION

Petitioner's request for Director Review should be denied. The '927 Patent solved safety problems in the prior art by proposing a separator with a porous substrate with specific deformation properties to help avoid fires when pierced. *E.g.*, Ex. 1001, 1:37-44, Claim 1. It describes measuring plastic deformation rate using tensile tests in which "length before stretching is recorded as L0; the porous substrate of a certain length and width is stretched to break at a certain rate, and the maximum length reached by the stretching is recorded as L1; and then the broken porous substrates are docked along the fracture and flattened to test the length L2 in a natural state." *Id.* at 4:15-21. The patent also defines "absolute plastic deformation rate" (APDR) by the equation " $\epsilon_1 = (L2 - L0) / L0 \times 100\%$." *Id.* at 4:48-54. The claims cover porous substrates with prescribed APDR ranges calculated using this formula, with L0 and L2 as described. *Id.* at 25:28-37.

The Petition presented three grounds based on express anticipation, inherent anticipation, and obviousness. The Board correctly rejected all of Petitioner's arguments and denied institution. Petitioner now admits that, despite the specific requirements for APDR claimed by the '927 Patent, "**none** of the applied references reported numeric values for APDR as measured by stretching the porous substrates to breaking, docking and flattening, and measuring the post-stretching length." Paper 11 at 2-3 (emphasis added). This alone defeats Petitioner's arguments regarding

express anticipation. Regardless, Petitioner argues that the limitations of the challenged claims are *inherently* met because the references disclose *other* numeric values relating to deformation and those values can be used to *approximate* ADPR through other means. *Id.* These arguments fail for the reasons set forth in Patent Owner’s Preliminary Response, in the Board’s Decision, and in detail below.

II. ARGUMENT

A. The Claims Are Not Anticipated by Nishikawa (Ground 1)

1. The Board’s Analysis Regarding the Failures of Ground 1 Is Correct

The Board correctly determined that Nishikawa neither expressly nor inherently anticipates the claims. It reasoned that, not only did “Petitioner point[] to nothing in Nishikawa that allows a POSITA to determine $L2 \dots$ or $L2 - L0$,” but Petitioner also failed to sufficiently explain how Nishikawa disclosed an adequate proxy and instead relied on flawed approximations and estimates. Paper 10, 13-14. The Board also recognized the unreliability of Dr. Pecht’s testimony relying on a flawed “theoretical stress-strain curve” model. *Id.* at 14.

Petitioner does not dispute the Board’s finding of no express anticipation by Nishikawa. *See, e.g.*, Paper 11, 5 (“Nishikawa does not measure the APDR of its separator, so there is no $L2$ value in the reference.”). Rather, Petitioner argues that the Board erred in finding no *inherent* anticipation by Nishikawa. *Id.*

But the Board correctly concluded that “Petitioner provides no evidence to

demonstrate that the absolute plastic deformation rate claimed is inherent in a porous substrate.” *Id.* at 16. The Board rejected Petitioner’s “approximations” and “estimates,” as well as Petitioner’s conclusory statement (without support in the cited art) that “[i]t would be well within the knowledge and skill of a POSA that the polymers of Nishikawa, given their various properties as reported, would necessarily have absolute plastic deformation rates over 40%.” *Id.* at 14-15 (quoting Paper 2, 32-33).¹ The Board also rejected Petitioner’s reliance on Exhibit 1008, a part of the prosecution history from the parent Chinese patent application for the ’927 Patent, because unlike the ’927 Patent’s parent, Nishikawa “reveals nothing at all about the stretching conditions or stretching ratios” that would affect absolute plastic deformation rates. *Id.* at 15. Thus, the Board’s analysis and conclusions support Patent Owner’s evidence showing Petitioner’s reliance on flawed assumptions and

¹ “Common sense” and “general knowledge” from an expert, not found within a printed publication or patent, cannot be used to supply the basis for a ground in an *inter partes* review petition, providing further justification for the Board’s ruling. 35 U.S.C. § 311(b); 37 C.F.R. § 42.104(b)(4); *Qualcomm Inc. v. Apple Inc.*, 134 F.4th 1355, 1364-65 (Fed. Cir. 2025); *see also* July 31, 2025 Memorandum by Coke Morgan Stewart, “Enforcement and Non-Waiver of 37 C.F.R. § 42.104(b)(4) and Permissible Uses of General Knowledge in Inter Partes Review.”

calculations manufactured *post hoc* by its expert fail to meet the inherency standard. *See, e.g.*, Paper 8, 49-50; *see also, e.g.*, Paper 10, 15 (“Inherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”) (citations omitted).

2. Petitioner’s Arguments About Legal and Factual Errors Fail

First, Petitioner argues the Board misapplied the law of inherency by “requiring express disclosure in the prior art of the apparatus claim property.” Paper 11 at 4. But the Board properly recognized that express disclosure is *not* required to prove inherent anticipation. Paper 10, 15 (“A reference may anticipate inherently if a claim limitation that is not expressly disclosed ‘is necessarily present, or inherent, in the single anticipating reference.’”) (citation omitted). Moreover, the Board did not require an explicit L2 value for *inherency*; rather, the Board concluded that Nishikawa did not *expressly* anticipate the claims because it was lacking L2. Paper 10, 13-14. The Board separately considered whether Nishikawa disclosed *something else* that would prove that the claimed ADPR was necessarily present in Nishikawa, despite Nishikawa not disclosing L2, but it found Petitioner’s expert testimony unconvincing on this point. *See, e.g.*, Paper 11, 14 (“Petitioner and its expert, Dr. Pecht, fail to adequately explain why tensile strength divided by Young’s modulus is ‘a proxy for L1 – L2’ or why such a proxy is sufficient to disclose the limitation as stated. Instead, *we are required to rely on ‘approximations’ and ‘estimates’ with*

insufficient explanation of why they are appropriate or adequate.”) (emphasis added); *see also id.* at 15 (noting Nishikawa lacks evidence from which one can reasonably determine inherency because “it reveals nothing at all about the stretching conditions or stretching ratios”). These conclusions are supported by Dr. Wheeler’s expert testimony. *See, e.g.,* Ex. 2015 (Wheeler Decl.) ¶ 81 (“Dr. Pecht’s analysis fails to show how the claimed absolute plastic deformation rate is disclosed because he incorrectly assumes that his other approximations for arriving at ‘estimated’ plastic deformation are an accurate approximation of the claimed absolute plastic deformation rate.”); *see also, e.g., id.* ¶¶ 101, 107, 120-124.

Second, Petitioner argues that the Board misapplied the law of inherency by “evaluating inherency through the lens of what the POSITA would understand, rather than what is physically true about the prior art.” Paper 11, 4. This argument also fails. Petitioner’s own case law confirms that “inherency, like anticipation itself, requires a determination of the meaning of the prior art” and “[t]hus, a court may consult artisans of ordinary skill to ascertain their understanding about subject matter disclosed by the prior art, including features inherent in the prior art.” *Schering Corp. v. Geneva Pharms., Inc.*, 339 F.3d 1373, 1377-78 (Fed. Cir. 2003) (citation omitted). Moreover, Petitioner uses POSA’s understanding of references in the context of its inherency arguments. *See, e.g.,* Paper 2 at 32-33 (“It would be well within the knowledge and skill of a POSA that the polymers of Nishikawa, given their various

properties as reported, would necessarily have [ADPRs] over 40%.”).

The Board did not require a POSITA to have recognized the presence of the claimed ADPR at the time of the patent to prove inherency. Instead, the Board properly required that the claimed ADPR be in fact “necessarily present in or result from the prior art.” Paper 10, 15. The Board properly looked to Petitioner’s expert testimony to determine whether the claimed ADPR is necessarily present in Nishikawa, but found that testimony unconvincing. *Id.* Indeed, throughout its decision, the Board identified multiple instances where Petitioner’s expert testimony was inconsistent and thus unreliable. *See, e.g.*, Paper 10, 14 (“[I]t is clear from Petitioner’s cited references that the theoretical stress-strain curve is not consistent with the actual stress-strain curves of the porous separators disclosed therein”); *see also, e.g.*, Ex. 2015 (Wheeler Decl.) ¶¶ 87-90, 94, 101; Paper 10, 14 n. 5 (“This, too, is inconsistent with Petitioner’s arguments. Petitioner does not address the disparity.”).² The Board’s conclusions are reinforced by Patent Owner’s expert,

²*See also, e.g.*, Ex. 2015 ¶ 80 (“This failure to address the express disclosure of Nishikawa regarding the term ‘elongation’ is significant because it illustrates Dr. Pecht’s fundamental misunderstanding of stress-strain behavior and, in my opinion undercut[s] his ultimate conclusion that the POSITA could approximate the claimed absolute plastic deformation rate.”); *id.* ¶¶ 74-79.

who explained the ways in which Petitioner failed to prove that the claimed ADPR is necessarily present in Nishikawa. *See, e.g.*, Ex. 2015 (Wheeler Decl.) ¶¶ 87-90, 94, 101, 107, 120-124. The Board’s weighing of the experts’ testimonies, and finding one less credible and more inconsistent, cannot justify Director reversal.

Third, Petitioner argues that the Board erred by “effectively turn[ing] an ‘electrochemical device’ claim with a recited parameter range into a method step, requiring express disclosure of claim language that is not itself a limitation at all.” Paper 11, 5. This argument is incorrect. The case law is clear that the “wherein” clause defining APDR carries patentable weight. *See, e.g., Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329 (Fed. Cir. 2005); *Allergan Sales, LLC v. Sandoz, Inc.*, 935 F.3d 1370, 1380 (Fed. Cir. 2019). The two cases Petitioner cites are inapposite. In *Teva*, the term “molecular weight” was found indefinite because the patent described multiple formulas to calculate molecular weight, but it was unclear which method was claimed. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335, 1344-45 (Fed. Cir. 2015). That is not the case here, where not only is there no indefiniteness challenge, but also the specification *and* the claims expressly recite the equation that expressly defines APDR. Similarly, in *Katz*, the Federal Circuit affirmed the district court’s ruling that a patent claim was indefinite because it claimed both an apparatus and a method of using said apparatus. *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1314 (Fed. Cir. 2011). But Petitioner raises no indefiniteness

challenge to this term here or in the district court. Moreover, the challenged claim language defines what APDR *is* and is not a method step.

Fourth, Petitioner argues that the Board erred because it “inappropriately dismissed Petitioner’s expert’s explanation for how the prior art necessarily discloses the same material property by a different derivation as ‘insufficient,’” and “ignores [Petitioner’s] evidence.” Paper 11, 6-7. Not so. The Board properly analyzed Petitioner’s expert testimony and found it unconvincing for multiple reasons, including because it was inconsistent and failed to provide adequate explanation. *See, e.g.*, Paper 10, 13-15. The Board’s conclusion is consistent with Dr. Wheeler’s expert testimony, which explains precisely why Petitioner’s estimates and approximations are flawed and fail to not prove express or inherent anticipation. *See, e.g.*, Ex. 2015 (Wheeler Decl.) ¶¶ 83, 87-90, 94, 99, 101, 107, 120-124.

Fifth, Petitioner argues that “[t]he panel’s observation that the textbook stress-strain curve of an idealized material is not consistent with the actual stress-strain curves of porous separators is irrelevant.” Paper 11, 7. This argument strains credulity. As Petitioner admits, its arguments rely on “the theoretical stress-strain curve [] to explain the innate mathematical relationships between properties like tensile strength and Young’s modulus, and show the origins of Petitioner’s calculations.” Paper 11, 7. But, as made clear by Petitioner’s own references and Patent Owner’s expert, the mathematical relationships and calculations based on a

theoretical “best case” curve for an idealized material do not work when applied to real-world porous separators, which do not follow that curve. *See, e.g.*, Paper 8, 33-42; Ex. 2015 ¶¶ 87-90, 94, 101. Petitioner argues that it “compensates for the reality that polymer separators do not behave like ideal materials by calculating the upper and lower bounds of possible plastic deformation rates,” but its bounds were each calculated based on the incorrect assumptions and calculations drawn from the curve for ideal materials. Thus, these values Petitioner relies upon fail to reliably demonstrate the actual upper and lower bounds of ADPR for the prior art’s polymerous porous separators. *See, e.g.*, Ex. 2015 ¶ 101.

Finally, Petitioner argues that the Board erred by requiring Petitioner to demonstrate that the entire claimed numeric range is inherent in any porous separator. Paper 11, 8. This is not so. The Board simply pointed out that Petitioner’s inherency theory is discredited by data reported in the patent (showing porous substrates in Comparative Examples having ADPR values outside the claimed range) and is unsupported by its expert testimony. Paper 10, 13-16. It also articulated that the legal standard it applied for inherency was whether the claimed limitation (the ADPR range) “is necessarily present, or inherent” in Nishikawa. *Id.* at 15. Thus, the Board did not err.

B. The Claims Are Not Obvious Over Nishikawa (Ground 2A)

The Board properly found that “Petitioner’s reasoning [for Ground 2A] is

essentially a restatement of the arguments made in relation to its anticipation challenge,” and incorporated its Ground 1 analysis finding lack of express or inherent disclosure in Nishikawa. Paper 10, 16. Petitioner does not dispute this and addresses only Ground 2B under its “Ground 2” heading (ignoring 2A), focusing on the Board’s analysis of Chen and the combination of Nishikawa with Chen.

C. The Claims Are Not Obvious Over Nishikawa in View of Chen (Ground 2B)

1. The Board’s Analysis Regarding the Failures of Ground 2B Is Correct

The Board properly determined that the claims are not obvious over Nishikawa in view of Chen. Petitioner relied on Chen as allegedly “explicitly disclosing the absolute plastic deformation rates of the Teijin separators disclosed in Nishikawa.” Paper 10, 17 (citing Paper 2, 46). After reviewing all the evidence, the Board concluded Chen does not disclose the claimed APDR because “[t]here is no disclosure of $L2$ or $(L2 - L0)/L0 \times 100\%$ in Chen, and insufficient explanation by Petitioner as to how a POSITA would discern these values from Chen.” *Id.* at 19. The Board also rejected this combination because Petitioner “fails to account for [] inconsistencies” between plastic strain in Nishikawa versus Chen, “calling into question Petitioner’s assertion that a POSITA would have been motivated to combine the references or would have expected success in doing so.” *Id.* at 19-20.

2. Petitioner's Arguments About Legal and Factual Errors Fail

First, Petitioner argues that the Board erred in requiring Chen to “expressly disclose the L2 distance of the $(L2 - L0)/L0 * 100\%$ equation” because, it claims, that “treats the calculation of the recited APDR in the apparatus claims as a method step.” Paper 11, 8-9. The Board did not do so and did not err. Unlike its arguments for Nishikawa, Petitioner *never argued* that Chen inherently disclosed the claimed APDR but only focused on express anticipation. *See, e.g.*, Paper 2, 46 (“To the extent the absolute plastic deformation rates of the Teijin separators disclosed in Nishikawa are not inherent (Ground 1) or obvious (Ground 2A), these values are *explicitly* disclosed for the Teijin separator described and tested in Chen.” (emphasis added)). But even if Petitioner had made such an argument, it would be incorrect for the same reasons discussed above with respect to Ground 1. *See* discussion *supra* § II.A.1-2.

Second, Petitioner argues that, to the extent the Board relied on Patent Owner's arguments about different chuck-to-chuck distances and stretching speeds in the prior art, this too was legal error. Paper 11, 9-10. Not so. The Board's decision merely referenced this argument from Patent Owner but its decision did not turn on it. Paper 10, 19-20. Moreover, Patent Owner did not import additional limitations into the claim by pointing out these differences. Rather, this argument correctly highlights that differences in the prior art may affect the assumptions and approximations of Petitioner's expert, who never acknowledged such differences.

See, e.g., Paper 8 at 61-62; Ex. 2015 (Wheeler Decl.) ¶¶ 158-161 (“That Petitioner ignores these differences in its analysis is further evidence that the Petition’s estimations are unreliable.”).

Third, Petitioner argues that the Board improperly imposed “a requirement that the prior art use the same words and equations in order to disclose an underlying physical property that can be measured by many different methods.” Paper 11, 10. This is wrong. The Board concluded both (1) Chen did not disclose L2 or $(L2 - L0)/L0 \times 100\%$, **and** (2) Petitioner did not sufficiently explain “how a POSITA would discern these values from Chen.” Paper 10, 19. Thus, the Board did not require Chen to use the exact “same words” when it found that Petitioner had not established that its assumptions and calculations based on Chen disclosed the same material properties claimed by the patent. This conclusion is supported by Patent Owner’s evidence (cited by the Board), which explains Petitioner’s “incorrect and unreliable assumptions in evaluating Chen.” Paper 10, 18-19 (citing Paper 8, 56-61); *see, e.g.*, Ex. 2015 (Wheeler Decl.) ¶¶ 149-56.

Finally, Petitioner argues the Board erred because it “overlook[ed] the actual motivation to combine in favor of a ‘same products’ theory not advanced in the Petition.” Paper 11, 11-12. This too is incorrect. The Board directly quoted Petitioner’s claim that Nishikawa and Chen “disclose different attributes of the *same products*.” Paper 10, 19 (quoting Paper 2 at 49 (panel’s emphasis)). For Petitioner to

now claim it never advanced such a theory is disingenuous. Moreover, even if one were to consider the motivation to combine theory to be what is newly stated in the Request for Review (that “both references use Teijin separators manufactured by the same wet process”), Petitioner’s motivation to combine fails for the same reasons set forth in the decision and Patent Owner’s Preliminary Response. According to Petitioner’s expert, the Teijin separator in Nishikawa has a plastic strain in the MD direction of 72.55-72.75%, whereas the Teijin separator in Chen has a plastic strain in the MD direction of 137.2-141.57%. Ex. 1003 ¶¶ 110, 155. This extreme variation, despite both separators allegedly being manufactured by the same company and the same wet process, is further evidence that porous substrates vary widely in their properties and so Petitioner’s sweeping assumptions are unreliable. *See, e.g.*, Ex. 2015 ¶¶ 169-70. (This also further supports a failure to find “inherency” with respect to Ground 1.) Thus, the Board was correct that Petitioner’s failure “to account for these inconsistencies” calls into question its arguments that there was motivation to combine and a reasonable expectation of success. Paper 10, 19-20.

**D. The Claims Are Not Obvious Over Chen in View of Zhang
(Ground 3)**

**1. The Board’s Analysis Regarding the Failures of Ground 3
Is Correct**

The Board properly determined that the challenged claims are not obvious over Chen in view of Zhang. The Board provided three reasons why Ground 3 failed.

First, Petitioner did not adequately explain why it used 35% as the point of “strain that non-linearity occurred.” Paper 10, 20 (citing Paper 2, 65). Second, “Petitioner fail[ed] to demonstrate that subtracting the yield strength from the elongation at break equals the absolute plastic deformation rate.” Paper 10, 21. Third, “[t]here is no evidence that Chen discloses the claimed absolute plastic deformation rate.” *Id.*

2. Petitioner’s Arguments About Legal and Factual Errors Fail

First, Petitioner argues “the panel repeats the legal errors and misapprehensions of fact present in Ground 2 by carrying forward its finding that Chen does not disclose the APDR of the separators its tests.” Paper 11, 12. This argument fails for the same reasons discussed above with respect to Ground 2B.

Second, Petitioner argues the Board was wrong that the Petition did not adequately explain why it used 35% in its calculations. Paper 11, 13. Petitioner now argues that the reason it used a different value for the Celgard separators in Ground 3 than it used for the Teijin separators in Ground 2B is because the Teijin separators were made by the wet process, whereas the Celgard separators were made by the dry process. *Id.* at 13-14. This was not clearly articulated in the Petition. The Petition’s analysis of the APDR limitation is limited to three short paragraphs on pages 64-65. Paper 2, 64-65. Nothing in this section, nor the broader section on Ground 3 (*id.* at 56-70), sets forth the detailed explanation Petitioner provides for the first time in its Request. Moreover, even if the Petition had articulated this, the Board determined

that Ground 3 failed for at least two other, independent reasons. *See* Paper 10, 21.

E. The Board Applied the Correct Evidentiary Standard

In a last-ditch effort to reverse or remand, Petitioner argues the Board held “Petitioner to an improperly high evidentiary standard” by “effectively requir[ing] that the Petition show the claimed APDR *conclusively* in order to justify institution.” Paper 11, 15. This is incorrect. Petitioner cites to nowhere in the institution decision where the Board requires such a high standard, nor could it. The Board correctly articulated the institution standard to require “a reasonable likelihood that the petitioner would prevail with respect to at least [one] of the claims challenged in the petition.” Paper 10, 2. It then determined that Petitioner “has not established a reasonable likelihood of prevailing with respect to” any of Petitioner’s grounds. *Id.*; *see also id.* at 16, 20, 21. Thus, the Board applied the correct evidentiary standard.

III. CONCLUSION

Patent Owner respectfully requests that the Director deny Petitioner’s request.

Dated: September 29, 2025

Respectfully submitted,

By: / Christopher TL Douglas /
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CERTIFICATION UNDER 37 C.F.R. §42.24

Pursuant to 37 C.F.R. §42.24(d), I certify that this response complies with the type-volume limits of the Board's Exhibit 3100 because it contains 15 pages, excluding the parts of this response that are exempted by 37 C.F.R. §42.24(b) (including a table of contents, a table of authorities, a listing of facts which are admitted, a certificate of service or this certificate word count, and appendix of exhibits).

Date: September 29, 2025

By: / Christopher TL Douglas /
Christopher TL Douglas

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that a true and correct copy of the foregoing **PATENT OWNER'S RESPONSE TO PETITIONER'S REQUEST FOR DIRECTOR REVIEW** was served in their entirety on September 29, 2025 via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS) and electronic mail on the following counsel of record for Petitioner:

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