

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

IPR2025-00431
Patent 11,799,131

**REQUEST FOR DIRECTOR REVIEW OF DECISION GRANTING
INSTITUTION OF *INTER PARTES* REVIEW**

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I. INTRODUCTION

Ningde Amperex Technology Ltd. (“ATL” or “Patent Owner”) respectfully submits this Request for Director Review of the Board’s Decision Granting Institution of *Inter Partes* Review (Paper 15, “Institution Decision”).

The Board’s Institution Decision should be vacated and reversed because the Board failed to address or even acknowledge Petitioner’s parallel petitions on the same challenged patent—filed months apart—or Patent Owner’s request to deny the Petition in its Response to Petitioner’s Explanation of Parallel Petitions (Paper 12). Both Petitioner’s Explanation of Parallel Petitions and Patent Owner’s Response explained that Petitioner expressly urged two different claim interpretations of the same claims in its two petitions. Petitioner’s Explanation of Differences Between, and Ranking of, Two Petitions Challenging U.S. Patent No. 11,799,131 (Paper 8, “Expl.”) at 2-4; Paper 12 at 4-5; *see also* IPR2025-00722, Paper 9. But, without paying heed to the Director’s recent informative *CrowdStrike* decision, the Board failed to construe the claim so that at most one of the petitions would be instituted. *CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068, Paper 25, at 3 (PTAB June 25, 2025) (Stewart, Dir.) (informative).

Critically, this Petition advances an interpretation of claims of challenged claims 14-17 that ***Petitioner expressly contends is an incorrect interpretation*** of those claims and is not the interpretation that Petitioner will be advancing in claim

construction or at the trial, which is scheduled to occur before any final written decision in this case. Petitioner’s Explanation of Differences Between, and Ranking of, Two Petitions Challenging U.S. Patent No. 11,799,131 (Paper 8, “Expl.”) (“The two Petitions substantively differ because *the ’431 Petition challenges the claims under PO’s interpretation* that both claims 1 and 14 correspond to Figure 4 *while the ’722 Petition challenges only claims 14-17 under the correct view* that these claims correspond to Figures 2 and 3” (emphasis added)). But the Director previously stated: “where two different claim constructions [are] advanced in two petitions, the Board should [construe] the claim term and institute[] review of, at most, one of the petitions.” *CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068, Paper 25, at 3 (PTAB June 25, 2025) (Stewart, Dir.) (informative).

This requires denial of the Petition. In *Hologic, Inc. v. Enzo Life Sciences, Inc.*, IPR2018-00019, Paper 21, at 6 (PTAB Nov. 28, 2018), the Board held that a “Petitioner does not satisfy Rule 42.104(b)(3) when, in a proceeding applying the *Phillips* claim-construction standard, it ‘*expressly disagree[s] with its proffered constructions.*’” See also, *Samsung Elecs. of Am., Inc. v. Uniloc 2017 LLC*, IPR2020-00046, Paper 6, 10 (PTAB Apr. 1, 2020) (denying institution based on “Petitioner’s invitation to adopt allegedly incorrect claim constructions”); *Netflix, Inc. v. GoTV Streaming, LLC*, IPR2023-00757, Paper 18, 9 (PTAB Dec. 21, 2023).

Furthermore, even if Petitioner did not disagree with its advocated claim

interpretation, Petitioner advances a contradicting interpretation of claims 14-17 in a later-filed Petition, IPR2025-00722 (the “’722 Petition”).¹ The Board’s Institution Decision did not take any position as to which competing interpretation was correct. The Board’s failure to construe which interpretation of the same challenged claims was correct was further error. The Director has instructed, “where two different claim constructions [are] advanced in two petitions, the Board should [construe] the claim term and institute[] review of, at most, one of the petitions.” *CrowdStrike, Inc.*, IPR2025-00068, Paper 25, at 3. Though the Director has not yet ruled on discretionary denial of the second-filed petition and the Board has not ruled on institution, the Director’s informative decision in *CrowdStrike* nonetheless required the Board in this proceeding to affirmatively decide which of the two alternative

¹ CosMX contends that it “needs two petitions” to challenge the claims under “two potential claim interpretations” it advances that are allegedly implicated by infringement contentions served on January 7, 2025, three weeks before the ’431 Petition was filed (which claimed to rely on those contentions) and months before the ’722 Petition was filed (which did not). Expl., 3-4. CosMX has not explained its delay between filing the ’431 Petition and the ’722 Petition, which was filed months later on April 1, 2025—particularly since it contends that the later-filed petition is the only one that is based on the allegedly “correct” construction of claim 14.

interpretations of claims 14-17 was correct before deciding on institution. If Petitioner's interpretation in the '431 Petition is incorrect (as Petitioner itself advocates), then this Petition should be denied under *CrowdStrike* and, for reasons of efficiency, under *Chevron Oronite Co. v. Infineum USA LP*, IPR2018-00923, Paper 9, 9-11 (PTAB Nov. 7, 2018) (informative). Instituting review of multiple claims, including claims where Petitioner has already taken the position that the interpretation is incorrect, would waste the Board's valuable and limited resources.

The Office's resources are further strained because jury selection in the underlying district court case remains set for July 6, 2026, which is well over a month *before* the scheduled FWD in this proceeding (and roughly 4 months before the scheduled FWD in two other IPRs, if instituted). Worse still, jury selection and trial are now even more likely to proceed before the FWD, given that the Board has already denied institution on at least one of the other five patents asserted in the underlying district court proceeding. That denial makes it even less likely the district court will grant a stay—further reinforcing the case for discretionary denial. *See* IPR2025-00385, Paper 10 (Aug. 20, 2025); *see Samsung Elecs. Co., Ltd. v. Icashe, Inc.*, IPR2025-00639, Paper 11 at 2 (PTAB Aug. 14, 2025) (Stewart, Dir.) (explaining that it would be an inefficient use of Board resources to refer a subset of patents to the Board when other patents had already been denied institution).

Altogether, these new facts underscore that it would not be an efficient use of

resources for the Office to continue with IPR in this proceeding, and Patent Owner respectfully requests the Director reconsider her earlier Decision declining to apply discretionary denial, including where Petitioner intends to raise against the '131 Patent the *same art* at issue in this proceeding together with unpublished system prior art in the district court. Paper 10 at 31-34 (explaining Petitioner's reliance on each of Zeng, Zhou, Matsuoka, Sunose, and Su in combination with unpublished system prior art in the underlying district court litigation); *Motorola Sol'ns, Inc. v. Stellar LLC*, IPR2024-01205, Paper 19 (Order Granting Director Review, Vacating the Decision Granting Institution, and Denying Institution of *Inter Partes* Review) at 3-4 (PTAB March 28, 2025) (Stewart, Dir.) (finding that a *Sotera* stipulation was unlikely to moot petitioner's combination of IPR art with unpublished system prior art in district court proceedings, and could not outweigh other factors favoring denial). The certainty of duplicative effort between both tribunals strongly favors denying institution, in addition to the other reasons detailed in Paper 10.

II. LEGAL STANDARD

The Director may review institution decisions “presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” Director Review Process § 2(B); 37 C.F.R. § 42.75. “Both discretionary and merits-based issues may be raised, subject to limitations (a)–(d) above.” Director Review Process § 2(B). “The Director

Review process provides a mechanism to correct errors at the institution stage, for example, to avoid unnecessary trials for patent owners.” *Id.*

“An abuse of discretion is found if [a] decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision.” Director Review has been granted, for example, when the Board misstates or misapplies the law. *See, e.g., Duration Media LLC v. Rich Media Club LLC*, IPR2023-00953, Paper 78 at 8 (PTAB Dec. 12, 2024) (vacating Board decision that conflated analysis of enablement and obviousness). Abuse of discretion also includes failing to adequately address arguments that have been raised in the underlying briefing. *See Nokia of Am. Corp. v. Soto*, IPR2023-00680, Paper 18 (PTAB Jan. 4, 2024) (vacating decision denying institution), Paper 30 at 7, 15 (PTAB Dec. 3, 2024) (same).

“[O]ne petition should be sufficient to challenge the claims of a patent” in “the vast majority of cases.” PTAB Consolidated Trial Practice Guide, 59 (Nov. 2019). Patents with a large number of claims is one exception, but fewer than twenty challenged claims cannot justify multiple petitions. *See Apple Inc. v. Koss Corp.*, IPR2021-00679, Paper 14, 12 (PTAB Oct. 12, 2021).

The Director has stated that “[a]llowing Petitioner more than one petition to challenge the same claims under two different claim constructions effectively

expands the permitted word count and places ‘a substantial and unnecessary burden on the Board and the patent owner and could raise unfairness, timing, and efficiency concerns.’” *CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068 & IPR2025-00070, Paper 25, at 3 (PTAB June 25, 2025) (Stewart, Dir.) (informative). The Director continued, “where two different claim constructions were advanced in two petitions, the Board should have construed the claim term and instituted review of, at most, one of the petitions.” *Id.* This informative decision issued after Patent Owner’s Response to Petitioner’s Explanation of Parallel Petitions.

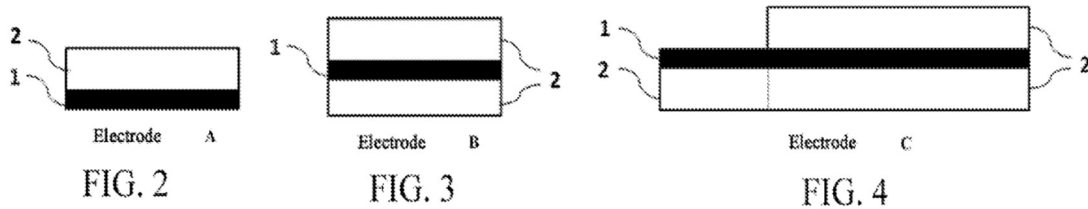
III. ARGUMENT

A. CosMX asserts two conflicting claim interpretations in two different Petitions, which required the Board to take a position as to which interpretation is correct before institution

Even if the Director is not persuaded that CosMX expressly disagrees with the interpretation of claims 14-17 it advances in this Petition (which alone would require denial), it is clear that CosMX advances two different (and contradicting) interpretations or constructions of the same challenged claims 14-17 in its two parallel petitions. Expl. at. 3.

In the ’431 Petition, Petitioner argues that claim 14 maps to an interpretation of the claims where the same electrode has two different portions that each have either a single-sided or double-sided coating (what it later argued is shown in Fig. 4 of the ’131 Patent). ’431 Petition at 7-9, 17, 43-44; Expl. at 3. For ease of reference,

Figures 2, 3, and 4 of the '131 Patent are shown below:



In the '431 Petition's position on claim construction, Petitioner claims to apply "Patent Owner's position" with respect to claim 14. '431 Petition at 17. In the '722 Petition, however, Petitioner argues a conflicting position that disclaims the position it advanced in the '431 Petition, alleging that claim 14 can *only* be correctly mapped to two different electrodes as shown in Figs. 2 and 3, one of which has a single-sided coating and the other of which has a double-sided coating. '722 Petition at 7-8, 13-15; *see* Expl. at 2-4 (alleging that the "correct" interpretation of claim 14 corresponds to the structure depicted in Fig. 4). In the '722 Petition's section on claim construction, Petitioner noted "that the electrode structure recited in claims 14-16—including first and second electrodes respectively having single- and double-sided coatings—corresponds to '131 Patent Figures 2 and 3, discussed above." '722 Petition at 15. Petitioner does not attempt to, and cannot, reconcile the two positions.

The Board's Institution Decision did not take any position as to which competing interpretation advanced by Petitioner was correct. Decision at 39-40. The Board's failure to construe which conflicting interpretation of the same challenged claims was correct was error—the Director has instructed, "where two different

claim constructions [are] advanced in two petitions, the Board should [construe] the claim term and institute[] review of, at most, one of the petitions.” *CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068 & IPR2025-00070, Paper 25, at 3 (PTAB June 25, 2025) (Stewart, Dir.) (informative).

Though the second-filed petition has not yet been instituted or denied, the Director’s informative decision in *CrowdStrike* nonetheless required the Board in this proceeding to affirmatively decide which of the two alternative interpretations of claims 14-17 was correct before deciding on institution. If Petitioner’s interpretation advanced in the ’431 Petition is incorrect (as Petitioner itself alleges in its explanation and ranking of its parallel petitions), then this Petition should be denied, both under *CrowdStrike* and, for efficiency reasons, under *Chevron Oronite Co. v. Infineum USA LP*, IPR2018-00923, Paper 9, 9-11 (PTAB Nov. 7, 2018) (informative). Instituting review of multiple claims, including claims where Petitioner has already taken the position that the interpretation is allegedly incorrect, would waste the Board’s valuable and limited resources. *Id.*; *CrowdStrike* at 3.

B. CosMX asserts a claim interpretation it expressly disagrees with in this Petition, which requires denial

CosMX expressly disagrees with its sole proffered interpretation of claims 14-17 in its ’431 Petition and asserts that only its challenges in the later-filed ’722 Petition are based on the “*correct view*” of those claims. Expl., 3 (“The two Petitions

substantively differ because *the '431 Petition challenges the claims under PO's interpretation* that both claims 1 and 14 correspond to Figure 4 while *the '722 Petition challenges only claims 14-17 under the correct view* that these claims correspond to Figures 2 and 3" (emphasis added)). Petitioner alleges that claim 14 "*should* correspond to '131 Patent Figures 2 and 3 where electrodes A and B respectively have single- and double-sided coatings on their current collectors." Expl. at 3. But the '431 Petition expressly and intentionally advances a contrary claim interpretation where Petitioner contends the relevant language of claim 14 can be met by "an electrode with single- and double-sided portions," as it contends is shown in Fig. 4 of the '131 Patent (which it alleges is Patent Owner's position in the underlying litigation).² Therefore, Petitioner expressly contends that this interpretation of claim 14 (equating claim 14 with the structure in Fig. 4 of the '131

² Without taking any position on the accuracy of Petitioner's allegation regarding Patent Owner's position, the relevant language of claim 14 claims:

. . . the electrodes comprise a first electrode and a second electrode,
wherein
 the first electrode comprises a first current collector and a
 single-sided coating;
 the second electrode comprises a second current collector and a
 double-sided coating; . . .

Patent) is the **wrong interpretation**, and only its claim construction position in the '722 Petition (equating claim 14 with the structures in Figs. 2 and 3 of the '131 Patent) is “correct.” Expl. at 2-4.

Petitioner’s express disagreement with its own claim construction requires denial of institution. The Board’s decision in *Hologic, Inc. v. Enzo Life Sciences, Inc.*, IPR2018-00019, Paper 21 (PTAB Nov. 28, 2018), held that a “Petitioner does not satisfy Rule 42.104(b)(3) when, in a proceeding applying the *Phillips* claim-construction standard, it ‘**expressly disagree[s] with its proffered constructions.**’” *Id.*, 6; see also e.g., *Samsung Elecs. of Am., Inc. v. Uniloc 2017 LLC*, IPR2020-00046, Paper 6, 10 (PTAB Apr. 1, 2020) (denying institution due to “Petitioner’s invitation to adopt allegedly incorrect claim constructions”); *Netflix, Inc. v. GoTV Streaming, LLC*, IPR2023-00757, Paper 18, 9 (PTAB Dec. 21, 2023).

Despite ranking the '722 Petition *below* the '431 Petition, CosMX only characterizes the construction in the '722 Petition as being the “correct” one, thereby implying that the claim interpretations and constructions it advances in the '431 Petition are incorrect as to those claims. Expl. 3. CosMX has therefore prioritized a petition that relies on a claim construction or interpretation that CosMX expressly contends is incorrect. *Id.* The Board should not waste resources on such a petition.

The Board did not address this claim construction issue or Petitioner’s express disagreement with its own position in its Decision granting institution, and this is

further error that also requires reversal.

Petitioner's argument that *Intel Corp. v. VLSI Tech. LLC*, Nos. IPR2019-01199, -01200, Paper 19 at 10-11 (PTAB Feb. 6, 2020) justifies its parallel petitions are wrong. In those proceedings, the parallel petitions challenged *different* independent claims that included *different* claim terms directed to *different* subject matter and raising *different* claim construction issues—they did not involve two petitions directed to the *same* claims under contradictory claim constructions of the *same* term. *Id.*

C. The Board's denial of another IPR petition directed to a different patent in the same underlying district court litigation further supports discretionary denial

Patent Owner previously submitted a request for discretionary denial, which the Director denied together with four other requests. Since that denial, however, the Board has denied institution on at least one other referred petition, in IPR2025-00385. Three other petitions directed to patents at issue in the same underlying district court proceeding remain pending, in IPR2025-00389, -00524, and -00722. The last of these proceedings, if instituted, will not reach FWD until roughly four months after jury selection.

The justification for denial in pursuit of efficiency only increases in light of this institution denial combined with the other factors that the Director previously determined favor applying the Director's discretion to deny review, even in light of

the issue date of the '131 Patent. Patent Owner respectfully requests that the Director revisit the Decision Denying Patent Owner's Request for Discretionary Denial, including in below of the following changed circumstances.³

First, the Board has now denied institution with respect to one of the other patents asserted in the same underlying district court case⁴ (with more denials in other IPRs anticipated by Patent Owner) and also agreed that Petitioner failed to raise a *prima facie* case of unpatentability for claims 20-26 of the '910 Patent (a parent of the '131 Patent), ensuring that a district court trial (together with its duplicated effort) is certain to occur without any stay.⁵ See IPR2025-00405, Request

³ Interim Director Discretionary Process § V.C (“If the Director issues a decision determining that discretionary denial is not appropriate, a party should file a single request for . . . Director Review after the Board panel issues its decision.”).

⁴ *Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Tech. Ltd.*, IPR2025-00385, Decision Denying Institution, Paper 10 (PTAB Aug. 20, 2025).

⁵ See, e.g., *Force MOS Tech. Co., Ltd. v. ASUSTeK Computer, Inc.*, Case No. 2:22-cv-00460, ECF No. 74, (E.D. Tex. April 10, 2024) (stating the Court “has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings” as to all asserted patents and denying motion to stay *with*

for Director Review, Paper 16 (Aug. 26, 2025). Jury selection in the underlying district court case is set for July 6, 2026, well over a month *before* the scheduled FWD in this IPR, and roughly 4 months before the hypothetical FWDs in IPR2025-00524 and IPR2025-00722 (directed to other patents in the underlying litigation).

Second, Petitioner's *Sotera* stipulation cannot outweigh the multiple other grounds favoring denial where Petitioner continues to assert the primary prior art references (and most of the secondary references) in *combination* with unpublished system prior art references against the '131 Patent in the underlying district court litigation, which is likely to reach a verdict before any FWD. Paper 10 at 31-34 (explaining Petitioner's reliance on each of Zeng, Zhou, Matsuoka, Sunose, and Su in combination with unpublished system prior art in the underlying district court litigation); *Motorola Sol'ns, Inc. v. Stellar LLC*, IPR2024-01205, Paper 19 (Order Granting Director Review, Vacating the Decision Granting Institution, and Denying

prejudice where *one* patent was not subject to IPR review because "the IPRs cannot simplify the issues to the extent necessary to justify a stay" and "the Court still has a case to try regardless of the outcome of the IPRs.") (*citing Uniloc 2017 LLC v. Samsung Elecs. Am., Inc.*, Case No. 2:19-cv00259-JRG-RSP, 2020 WL 1433960, at *6 (E.D. Tex. Mar. 24, 2020) (denying stay request because even if all remaining IPRs succeeded, at least some asserted claims "would remain live in this case"))).

Institution of *Inter Partes* Review) at 3-4 (PTAB March 28, 2025) (Stewart, Dir.) (finding that a *Sotera* stipulation was unlikely to moot petitioner's combination of IPR art with unpublished system prior art in district court proceedings, and therefore could not outweigh other factors favoring denial).

Third, Petitioner's conflicting interpretations of claim 14 increase the likelihood of inconsistent results between the Board and the district court, with claim construction beginning at the district court this month. As the district court proceeding will proceed to *Markman* and to trial regardless of the institution of these proceedings (including on substantially the same art raised in both petitions directed to the '131 Patent), the Director should use her discretion to both petitions directed to the '131 Patent to reduce the risk of inconsistent results between the two tribunals.

IV. CONCLUSION

Patent Owner respectfully requests that the Director vacate and reverse the Board's Decision Granting Institution and instead deny institution pursuant to her discretion under § 314 and § 325.

Dated: September 2, 2025

Respectfully submitted,

By: / Christopher TL Douglas /
Christopher TL Douglas

CERTIFICATION UNDER 37 C.F.R. §42.24

Pursuant to 37 C.F.R. §42.24(d), I certify that this motion complies with the page limits of 37 C.F.R. §42.24(a)(1)(v) because it contains 15 pages.

Dated: September 2, 2025

Respectfully submitted,

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 above-captioned **REQUEST FOR DIRECTOR REVIEW OF DECISION GRANTING INSTITUTION OF *INTER PARTES* REVIEW** was served in its entirety on September 2, 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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Dated: September 2, 2025

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