

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZHUHAI COSMX BATTERY CO., LTD.,
Petitioner

v.

NINGDE AMPEREX TECHNOLOGY LIMITED,
Patent Owner

Case IPR2025-00431
U.S. Patent No. 11,799,131

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1001	U.S. Patent No. 11,799,131 (“the ’131 Patent”)
1002	Prosecution history of U.S. Patent No. 11,799,131 (“the ’131 Patent file history”)
1003	Declaration of Dr. Brett Lucht, Ph.D.
1004	<i>Curriculum Vitae</i> of Dr. Brett Lucht, Ph.D.
1005	China Patent Application Publication No. CN 106099187A to Zeng et al. (“Zeng”)
1006	Certified English Translation of China Patent Application Publication No. CN 106099187A to Zeng et al. (“Zeng”)
1007	U.S. Patent Application Publication No. 2013/0224535 A1 to Matsuoka et al. (“Matsuoka”)
1008	U.S. Patent Application Publication No. 2017/0288268 A1 to Kim et al. (“Kim”)
1009	Japan Patent Application Publication No. 2009-252349 to Sunose et al. (“Sunose”)
1010	Certified English Translation of Japan Patent Application Publication No. 2009-252349 to Sunose et al. (“Sunose”)
1011	China Patent No. 108023117 to Su et al. (“Su”)
1012	Certified English Translation of China Patent No. 108023117 to Su et al. (“Su”)
1013	China Patent Application Publication No. CN 105552439 A to Zhou et al. (“Zhou”)
1014	Certified English Translation of China Patent Application Publication No. CN 105552439 A to Zhou et al. (“Zhou”)
1015	Chinese Patent No. 106848381 (“Hong”) and Certified Translation of Hong
1016	Petition (Paper 1) in <i>Zhuhai CosMX Battery Co. v. Ningde Ampere Tech. Ltd.</i> , IPR2023-00586 (PTAB Feb. 23, 2023)

<u>Exhibit No.</u>	<u>Description</u>
1017	Decision Denying Institution (Paper 14) in <i>Zhuhai CosMX Battery Co. v. Ningde Amperex Tech. Ltd.</i> , IPR2023-00586 (PTAB Aug. 18, 2023)
1018	National Library of Medicine PubChem Pages
1019	Millipore Sigma data sheets for ethylene carbonate (EC), propylene carbonate (PC), ethyl propionate (EP), propyl propionate (PP), diethyl carbonate, and fluorobenzene
1020	TCI America page for 1,3,6-Hexanetricarbonitrile
1021	Complaint, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:24-cv-00728-JRG (E.D. Tex. Sept. 6, 2024), ECF 1.
1022	Reserved
1023	U.S. Patent Application Publication No. 2017/0324116 A1 to Youichi Ohashi (“Ohashi”)
1024	U.S. Patent Application Publication No. 2016/0294007 A1 to Wang Kefei (“Kefei”)
1025	U.S. Patent Application Publication No. 2017/0069934 A1 to Yun-Hee Kim et al. (“Kim ’934”)
1026	Prosecution history of U.S. Patent No. 11,769,910 (“the ’910 Patent file history”)
1027	Alleged Infringement Claim Chart for ’131 Patent
1028	Second Amended Complaint for Patent Infringement, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:24-cv-00728-JRG (E.D. Tex. Jan. 28, 2025), ECF 23.
1029	Partial Stay Order, <i>STA Grp. LLC v. Motorola Sols., Inc.</i> , No. 2:23-cv-00030-JRG-RSP (E.D. Tex. Aug. 27, 2024), ECF 402.
1030	Order, <i>Stellar, LLC v. Motorola Sols., Inc.</i> , No. 4:23-cv-00750-SDJ (E.D. Tex. Apr. 21, 2025), ECF 170
1031	Order, <i>Cellspin Soft, Inc. v. ByteDance Ltd.</i> , No. 2:23-cv-00496-JRG-RSP (E.D. Tex. Jan. 27, 2025), ECF 106
1032	Order, <i>Intercurrency Software LLC v. Binance Holdings Ltd.</i> , No. 2:23-cv-00370-JRG (E.D. Tex. Aug. 29, 2024), ECF 86

<u>Exhibit No.</u>	<u>Description</u>
1033	Order, <i>Netlist, Inc. v. Micron Tech., Inc.</i> , No. 2:22-cv-00203-JRG (E.D. Tex. Feb. 10, 2024), ECF 493
1034	Order, <i>BoxCast Inc. v. Resi Media LLC</i> , No. 2:21-cv-00217-JRG (E.D. Tex. May 25, 2022), ECF 163
1035	Order, <i>Datatransury Corp. v. Fiserv, Inc.</i> , No. 2:13-cv-00431-JRG-RSP (E.D.Tex. Aug. 14, 2014), ECF 616
1036	Docket Navigator Time to Trial for Eastern District of Texas District Judge Rodney Gilstrap
1037	“Nearly two lithium battery fires per week on airplanes in the US alone,” CTIF (Dec. 19, 2024), available at https://ctif.org/news/nearly-two-lithium-battery-fires-week-airplanes-us-alone
1038	Declaration of John C. Evans in Support of Petitioner’s Response to Patent Owner’s Discretionary Denial Brief
1039	Report on District Judge Rodney Gilstrap from Lex Machina
1040	Verdict Form, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:22-cv-00232-JRG (E.D. Tex. Feb. 9, 2024), ECF 345.
1041	Amended Final Judgment, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:22-cv-00232-JRG (E.D. Tex. Sept. 3, 2024), ECF 427.

Zhuhai CosMX Battery Co., Ltd. (“Petitioner”) hereby submits this Authorized Response to Ningde Ampere Technology Limited’s (“Patent Owner”) Request for Director Review of the Board’s Decision Granting Institution of *Inter Partes* Review (Paper 19, “Patent Owner’s Request”) under the Director’s September 2, 2025, email authorization (Exhibit 3100). Patent Owner’s Request actually makes two separate requests: (1) vacatur and reversal of the Board’s Institution Decision; and (2) a request for rehearing the Director’s earlier decision to not grant discretionary denial. Both requests should be denied.

First, Patent Owner’s argument that the Board erred by not addressing Petitioner’s parallel petitions is moot because the Director discretionarily denied the second petition challenging the ’131 Patent. Without parallel petitions, *Crowdstrike*¹ is inapplicable.

Second, Petitioner properly used the claim interpretation proffered by Patent Owner in the underlying district court litigation. The non-binding *Hologic*² decision

¹ *CrowdStrike, Inc. v. GoSecure, Inc.*, IPR2025-00068, -00070, Paper 25 (PTAB June 25, 2025) (Stewart, Dir.) (informative).

² *Hologic, Inc. v. Enzo Life Sciences, Inc.*, IPR2018-00019, Paper 21 (PTAB Nov. 28, 2018).

cited by Patent Owner is distinguishable, misinterprets Rule 42.104(b)(3), and directly contradicts many more recent Board decisions.

Third, seeking a second bite at the apple, Patent Owner rehashes prior discretionary denial arguments that the Director already considered and rejected. Patent Owner fully briefed the potential impact of denial of institution of a separate IPR on this proceeding in its request for discretionary denial. The Director weighed those arguments, along with all of the other arguments and evidence presented, and correctly concluded that referral to the panel was appropriate. It remains so, as is the panel's decision to institute.

I. LEGAL STANDARD

Requests for Director Review of a Board's decision are governed by 37 C.F.R. § 42.75. Requests are limited to decisions that present "(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). A decision presents an abuse of discretion only if it:

(1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) follows from a record that contains no evidence on which the Board could rationally base its decision.

VidStream LLC v. Twitter, Inc., 981 F.3d 1060, 1064 (Fed. Cir. 2020) (quoting *Shu-Hui Chen v. Bouchard*, 347 F.3d 1299, 1307 (Fed. Cir. 2003)).

II. ARGUMENT

A. The Board did not err in instituting this IPR.

1. The parallel petition argument is moot.

Patent Owner’s primary argument is based entirely on Petitioner having filed two parallel petitions challenging the ’131 Patent—this IPR, IPR2025-00431 (’431 IPR) and IPR2025-00722 (’722 IPR), which was denied in Paper 11.³ Specifically, Patent Owner cites *CrowdStrike* for the notion that “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.” Paper 19 at 2 citing

³ Petitioner does not concede that Patent Owner’s argument had merit before the Director’s discretionary denial of the ’722 IPR. The ’431 IPR Petition addressed claims 1-7, 12, and 14-17, while the ’722 IPR only addressed claims 14-17. The ’431 IPR Decision found Petitioner likely to prevail on claims 1-7 and 12—claims that were only challenged in the ’431 IPR Petition—institution of this proceeding was appropriate regardless of the issues surrounding claims 14-17. And if the Board found that the claim interpretation proffered in the ’722 IPR was correct for claims 14-17, institution there would also have been appropriate.

CrowdStrike, IPR2025-00068, -00070, Paper 25 at 3. That argument is now moot as the Director discretionarily denied the '722 IPR, which Petitioner ranked below the '431 IPR Petition. As a result, one Petition challenging the '131 Patent remains—this Petition—under one proffered claim construction. Moreover, the Board found it unnecessary to construe any claim terms prior to institution in the '431 IPR Decision. For all these reasons, *Crowdstrike* is inapplicable.

2. The '431 IPR permissibly applies Patent Owner's proffered claim construction of claims 14-17.

Patent Owner argues that Petitioner's failure to expressly agree with Patent Owner's interpretation for claims 14-17 (only) presented in the '431 IPR required denial. Paper 19 at 11. In support, Patent Owner cites an old, non-binding opinion where the panel majority interpreted Rule 42.104(b)(3) to require the petitioner to agree with the claim construction proffered in the petition. Paper 19 at 11 (quoting *Hologic*, IPR2018-00019, Paper 21 at 6).

As an initial matter, the Board mooted this entire issue for the '431 IPR by finding that no claim construction was necessary to institute review. Paper 15 at 12 ("because we determine that claim construction is not necessary to decide whether to institute, we do not expressly construe any claim terms."). And Patent Owner agreed that no claim construction is necessary. Paper 11 at 7. Patent Owner cannot now argue the Board erred by adopting Patent Owner's own position.

Second, the circumstances here differ from those in *Hologic* because, regardless of how claims 14-17 might have been construed, institution would remain appropriate for claims 1-7 and 12. In contrast, the claim construction issue in *Hologic* applied to all claims challenged in the petition. IPR2018-00019, Paper 21 at 4 (“Collectively, the terms for which Petitioner proposes constructions with which it disagrees appear in every one of the challenged claims.”).

Third, the subset of the panel that rendered the *Hologic* decision, now many years old, misapplied Office rules. To start, Rule 42.104(b)(3) states that the petition must identify “[h]ow the challenged claim is to be construed.” Petitioner did exactly that. Paper 1 at 17. The plain language of this Rule does not require the petitioner to subjectively believe that a proffered claim interpretation is correct. Imposing this improper requirement would not only require reading petitioners’ minds but lead to the absurd result that patent owners—including Patent Owner here—could avoid review of their patents based on their own claim constructions. In nearly all patent disputes, plaintiffs/patent owners and defendants/petitioners disagree over how important claim terms should be construed or applied. Thus, reading an unrecited subjective-belief requirement into Rule 42.104(b)(3)—aside from being unworkable—would effectively render IPR unavailable to resolve nearly all patent disputes.

Indeed, in a forceful dissent, the dissenting APJ in *Hologic* agrees: “I do not interpret that rule to require an unpatentability analysis under what Petitioner considers to be the ‘correct’ claim construction as proposed under 37 C.F.R. § 42.104(b)(3).” IPR2018-00019, Paper 17 at 1-2 (PTAB Apr. 18, 2018) (Paulraj, C., dissenting).⁴ Backed by the Federal Circuit precedent, the dissenting APJ cited *Rovalma, S.A. v. Bohler-Edelstahl GmbH & Co. KG*, 856 F.3d 1019, 1027 (Fed. Cir. 2017), in which the Court affirmed that it was appropriate for the Board to apply the “patent owner’s [claim] construction” in the IPR proceeding. This is the correct result—a petitioner should be able to challenge a patent owner’s claims using the patent owner’s own claim construction, regardless of whether the petitioner subjectively believes the construction is correct. *See, e.g., Apple Inc. v. Masimo Corp.*, No. IPR2024-00294, 2025 WL 1772913, at *14-15 (PTAB June 26, 2025) (holding it was appropriate for the petitioner to apply a different claim construction

⁴ “The contrary interpretation of our rules that has been applied in the majority opinion would force Petitioner into an untenable Hobson’s choice of adopting—as *its own*—Patent Owner’s proposed constructions from the district court proceeding (which may not necessarily be favorable to its non-infringement positions) in order be allowed to present its unpatentability arguments in this proceeding.” IPR2018-00019, Paper 17 at 2 (dissent).

in the IPR than in the related district court litigation); *W. Digit. Corp. v. SPEX Techs., Inc.*, IPR2018-00084, Paper 14 at 10-11 (PTAB Apr. 25, 2018) (“Petitioner’s statement that its Petition ‘is *based on* the claim constructions urged by Patent Owner’ in related District Court litigation ... suffices to identify claim constructions Petitioner is adopting ... in compliance with [37 C.F.R.] § 104(b)(3).”); *Philip Morris Prods., S.A. v. RAI Strategic Holdings, Inc.*, IPR2020-00921, Paper 13 at 42-44 (PTAB Aug. 5, 2021) (“Numerous decisions have held that [37 C.F.R. § 42.104(b)(3)] does not ... prohibit a petitioner from relying on claim constructions that it believes are incorrect.”). For the above reasons, Petitioner’s reliance on Patent Owner’s own claim construction—now moot—was entirely proper, and so institution is proper.

3. Institution of the ’431 IPR remains efficient.

Petitioner challenged claims 1-7, 12, and 14-17 in the ’431 IPR. Paper 1 at 1. The Board found that Petitioner was likely to prevail on ***all claims***, including claims 14-17. Paper 15 at 18, 41, 48-49, 56-60, 75, 78. This alone demonstrates that instituting review promotes an efficient use of the Board’s resources. Moreover, even if claim construction had been required and/or Petitioner were ultimately unsuccessful on claims 14–17, institution would remain efficient because claims 1-7 and 12—**two-thirds** of the challenged claims—are still likely to be canceled because the Board already found a reasonable likelihood of Petitioner’s success on all

challenged claims. This is highly distinguishable from the *Chevron* decision cited by Patent Owner, see Paper 19 at 4, 19, where the Board denied institution because there was only “a reasonable likelihood of prevailing with respect to **two** dependent claims out of a total of **twenty** challenged claims.” *Chevron Oronite Co. v. Infineum USA LP*, IPR2018-00923, Paper 9 at 11 (PTAB Nov. 7, 2018) (emphases added). Whether Petitioner is likely to prevail in the ’431 IPR on all claims (as the Board held) or two-thirds of the claims (as Patent Owner argues), institution remains efficient.

B. The Board properly referred the ’431 IPR to the merits panel in view of the Patent Owner’s discretionary brief arguments.

Separately, Patent Owner asks the Director to revisit and overturn her prior ruling rejecting Patent Owner’s request for discretionary denial in the ’431 IPR. Patent Owner does not allege that the Director abused her discretion, but instead that “changed circumstances” warrant a reversal. Paper 19 at 13. But that is not the standard for Director Review under 37 C.F.R. § 42.75. See Section I. For this reason alone, Patent Owner’s request should be denied.

Even if “changed circumstances” met the standard for Director Review, there are no changed circumstances here. Patent Owner argues that because the Board denied institution in IPR2025-00385 for another patent involved in the same underlying district court case, and that claims 20-26 in the 11,769,910 Patent

(IPR2025-00405) will fail, a district court trial “is certain to occur without any stay.” Paper 19 at 13. Aside from being wrong, this is not a new argument or circumstance.

Patent Owner’s discretionary brief discussed this possible situation at length. Paper 10 at 10-11, 20-22. The Director considered all of Patent Owner’s arguments (including this one) and still referred the ’431 IPR to the merits panel. Paper 14 at 2-3 (“the determination not to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented.”). Nothing has changed warranting reversal of the Director’s decision.

Notably, counter to Patent Owner’s argument, three more IPRs have been instituted (IPR2025-00405, IPR2025-00432, and IPR2025-00389) and Petitioner is considering a request for Director Review for the Denial of Institution of IPR2025-00385. To the extent “changed circumstances” are considered, these reasons—including the institution of the related IPRs and the likelihood of a district court stay based on Petitioner’s pending motion—further weight *against* denial.

Patent Owner’s second argument is another rehash—this time concerning Petitioner’s *Sotera* stipulation. Patent Owner argues that the Director gave it too much weight. Paper 19 at 14-15. This argument fails. First, there is no indication of how much weight the Director gave to Petitioner’s *Sotera* stipulation. The Director’s decision regarding discretionary denial does not mention the *Sotera* stipulation, but instead discusses other factors. Paper 14 at 2-3. Second, the Director already

considered this argument, many times, during the discretionary denial briefings. *See* Paper 10 at 31-34. Thus, this is not a “changed circumstance,” but is in fact the identical circumstance already presented to the Director. There is no abuse of discretion here.

III. CONCLUSION

For these reasons, the Director should deny Patent Owner’s Request for Director Review and either decline to revisit the decision denying discretionary denial or reaffirm that decision.

Respectfully submitted,

LEE & HAYES, P.C.

/James D. Stein/

James D. Stein
Registration No. 63,782
Lead Counsel for Petitioner

Date: September 9, 2025

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)(l)(v) because it contains 10 pages.

Respectfully submitted,

LEE & HAYES, P.C.

/James D. Stein/

James D. Stein
Registration No. 63,782
Lead Counsel for Petitioner

Date: September 9, 2025

CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(e), 42.105(a))

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that a true and correct copy of the above-captioned AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST was served in its entirety on September 9, 2025, via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS) and electronic mail on the following counsel of record for Patent Owner:

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