

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
Case IPR2025-00722
U.S. Patent No. 11,799,131

**PETITIONER’S EXPLANATION OF DIFFERENCES BETWEEN, AND
RANKING OF, TWO PETITIONS
CHALLENGING U.S. PATENT NO. 11,799,131**

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I. INTRODUCTION

Petitioner Zhuhai CosMX Battery Co., Ltd. (“Petitioner”) filed two petitions (IPR2025-00431 (“’431 Petition”), IPR2025-00722 (“’722 Petition”)) challenging U.S. Patent No. 11,799,131 (the “’131 Patent”) and asks the Board to institute both petitions. Pursuant to the November 2019 Consolidated Trial Practice Guide, Petitioner provides this explanation of the two petitions and ranking.

As explained below, given the number, scope, and length of the challenged claims, Petitioner could not properly present these challenges within the word limit of a single petition. Patent Owner (“PO”) has yet to narrow which claims it will ultimately assert in the related district court litigation, *Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.*, No. 2:24-cv-728 (E.D. Tex.). Moreover, the two Petitions substantively differ in that each relies on different prior art to address two different claim interpretations implicated in PO’s recent infringement contentions, and the ’722 Petition only challenges a subset of the claims challenged in the ’431 Petition. Accordingly, discretion is warranted under 35 U.S.C. § 314(a) to institute both petitions given these differences and in light of *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 5, 9-10 (PTAB Sept. 6, 2017) (precedential).

II. REASONS FOR INSTITUTION OF MULTIPLE PETITIONS

A. Claim Length and Related Litigation Necessitate Two Petitions

At this early stage of the related district court litigation, as PO has yet to limit its asserted claims, Petitioner cannot limit the challenged claims. EX1028, ¶62 (“CosMX has infringed and continues to infringe *at least* claims 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 16, and 17”) (emphasis added). Claims 1-7, 12, and 14-17 comprise nearly 900 words, a significant factor raising the word count in the petitions, particularly when addressing multiple Grounds. Additionally, the two independent claims have different scope. Adequately addressing the lengthy claims with differing scopes requires a significant number of words across the two Petitions to preserve Petitioner’s invalidity defenses. See PTAB Multiple Petitions Study, 14 (July 2023) (identifying “[l]arge number of claims/complex claim set” as a justification for parallel petitions).¹

B. The Two Petitions Materially Differ

The two Petitions have material differences stemming from PO’s infringement allegations that implicate two potential claim interpretations. On January 7, 2025, PO served contentions in the related litigation that equated the

¹ Available at

https://www.uspto.gov/sites/default/files/documents/ptab_multiple_petitions_study_fy2021-2022_update.pdf

elements of independent claim 14 with those of independent claim 1. EX1027, 12-14. Specifically, PO contends that an electrode in which a first *part* of its current collector has a single-sided coating and a second *part* of the current collector has a double-sided coating satisfies all limitations of *both* claims 1 and 14—without providing a unique analysis for claim 14. *Id.*, 1-4 (claim 1), 12-14 (merely referring to claim 1 for all claim 14 elements). This contention corresponds to '131 Patent Figure 4 in which the same electrode C has a single-sided coating on a first *portion* of its current collector and a double-sided coating on a second *portion*. EX1001, 20:34-40, FIG. 4.

Yet, instead of first and second *portions* of the same electrode collector, claim 14 recites first and second *electrodes*—claim elements absent from claim 1—that have single- and double-sided coatings on their respective collectors. *Compare* EX1001, 33:17-53 *with id.*, 35:44-36:24. So 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. *Id.*, 20:24-34, FIGS. 2, 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. Different prior art is required to meet these two interpretations: the '431 Petition relies on Sunose and Su for the Figure 4

electrode structure and the '722 Petition relies on Hirai and Han for Figure 2 and 3's electrode structure. Because Markman will not occur for many months, Petitioner must challenge the claims under both interpretations and needs two petitions to do so. *See, e.g., Intel Corp. v. VLSI Tech. LLC*, Nos. IPR2019-01199, -01200, Paper 19 at 11 (PTAB Feb. 6, 2020) (finding two parallel petitions appropriate to address independent claims "raising different claim construction issues").

C. The *General Plastic* Factors Favor Institution of Both Petitions

The *General Plastic* factors weigh in favor of instituting both petitions. *Gen. Plastic*, Paper 19 at 9-10.

Factor (1): The Petitions are not directed to the same grouping of claims. The '431 Petition challenges claims 1-7, 12, and 14-17 and the '722 Petition challenges only claims 14-17.

Factors (2)-(5): The Petitions were filed in close proximity and before a POPR, much less any PTAB decision. Petitioner has not gained any advantage by using earlier POPRs or decisions as a "roadmap" for the second petition. Petitioner did not learn of PO's interpretation equating claims 1 and 14—which prompted the need for further prior art search/consideration and two petitions—until January 7, 2025. EX1027.

Factors (6) and (7). Petitioner submits granting both Petitions would impose no *excessive* burden on the Board or PO. The '722 Petition merely challenges a

subset of the claims challenged in the '431 Petition under the second claim interpretation, and the schedules of the two proceedings can be closely aligned.

D. Rank Ordering of Petitions

Petitioner requests that the Board consider the Petitions in the following order:

Rank	IPR Petition	Primary Reference(s)	Challenged Claims
A	IPR2025-00431	Zeng, <u>Sunose</u> ² , Matsuoka, Kim '268, <u>Su</u> , and Zhou	1-7, 12, 14-17
B	IPR2025-00722	Zeng, <u>Hirai</u> ² , Matsuoka, Kim '268, <u>Han</u> , and Zhou	14-17

III. CONCLUSION

Petitioner respectfully requests that the Board institute both *inter partes* reviews under 35 U.S.C. § 314(a).

Respectfully submitted,

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Date: April 1, 2025

² The '431 Petition relies on Sunose and Su where the '722 Petition relies on Hirai and Han.

CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(E), 42.105(A))

I certify that copies of the above-captioned Petitioner's Explanation of Differences Between, and Ranking of, Two Petitions Challenging U.S. Patent No. 11,799,131 was served in its entirety upon the Patent Owner on April 1, 2025, via FedEx® Express as follows:

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