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

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

PATENT OWNER'S RESPONSE TO PETITIONER'S EXPLANATION OF PARALLEL PETITIONS

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I. INTRODUCTION

Ningde Amperex Technology Ltd. ("ATL" or "Patent Owner") respectfully submits this Response to Petitioner Zhuhai CosMX Battery Co., Ltd.'s ("Petitioner" or "CosMX") Explanation of Parallel Petitions ("Expl." or Paper 3).

"[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). Petitioner contends that it "needs two petitions" to challenge the claims under "two potential claim interpretations" allegedly implicated by infringement contentions, (Expl., 3-4) but the Director has already 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 (P.T.A.B. June 25, 2025) (informative).

Thus, the Board should exercise its discretion to deny institution of CosMX's second petition (or both, as described below).

II. ONE PETITION SHOULD HAVE BEEN SUFFICIENT

First, CosMX contends that it "needs two petitions" to challenge the claims under "two potential claim interpretations" allegedly implicated by infringement contentions served a full three weeks before the first petition ('431 Petition) was

filed. Expl., 3-4. But the Director has already provided clear guidance on how the Board should handle multiple Petitions filed "to present two different constructions," at most, institute on one of the petitions. *CrowdStrike,* Paper 25.

Second, CosMX complains that "[c]laims 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." Expl., 2. But CosMX fails to explain why "significantly" more words are required to address the "nearly 900 words" of the twelve challenged claims[1] and fails to explain why the length of the claims has a material impact when CosMX does not repeat the claim language across each of Grounds and, worse still, does not even include the complained-of "lengthy" claim language. *See e.g*., Pet., 25. That is, CosMX provides no reasoned explanation why the "nearly 900 words" would allegedly "raise the word count" compared to any other IPR. Expl., 2.

CosMX complains about the length of the claims out of a desire to "address[] multiple Grounds," (*id*.) but "[t]here is no entitlement to assert . . . more than one

[1] Twelve is a "small number of claims"—not a large number justifying multiple petitions. *Apple Inc. v. Koss Corp.*, No. IPR2021-00679, Paper 14, 12 (P.T.A.B. Oct. 12, 2021) ("The Board routinely receives petitions challenging more than 18 claims. Indeed, the basic filing fee . . . contemplates challenging up to 20 claims.").

ground . . . against each challenged claim." *Global Tel*Link Corp. v. HLFIP Holding, Inc.*, IPR2021-00445, Paper 14, 18 (P.T.A.B. June 22, 2021). Indeed, the '431 Petition not only addresses 12 of the challenged claims, which includes the 4 claims challenged in the '722 Petition, it also presents at least *five* separate grounds for each of the 12 challenged claims. The '722 Petition—which was filed two months after the '431 Petition—raises *six* additional grounds for claims 14, 16, and 17 and *twelve* additional grounds for claim 15 (for a total of ***seventeen grounds*** attempted against a single claim between both Petitions). The sheer number of grounds should prevent an additional petition being instituted. If Petitioner's grounds had merit, they would not need so many of them.

Third, CosMX does not explain the delay between the first petition ('431 Petition) and the second petition ('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, which CosMX always could have filed ***without*** the alleged benefit of the infringement contentions it claims to have relied upon in its first petition. There is no reason why CosMX could not have raised the same grounds it raises in the second petition at the same time it filed the first petition. CosMX admits that it filed the '722 Petition to "merely challenge[] a subset of the claims challenged in the '431 Petition under the second claim interpretation." But the 12 challenged claims are not lengthy and CosMX

could have challenged the claims under both alleged claim interpretations in a timely single petition, particularly if it had focused its number of grounds. Accordingly, the Board should exercise discretion to deny institution of the '722 Petition.

III. COSMX ASSERTS A CONSTRUCTION IT DISAGREES WITH

CosMX disagrees with the sole proffered construction in the '431 Petition for claims 14-17 and asserts that only its challenges in the '722 Petition are based on the correct interpretation. 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)). The Board's decision in *Hologic, Inc. v. Enzo Life Sciences, Inc.*, IPR2018-00019, Paper 21 (P.T.A.B. 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 (P.T.A.B. 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 (P.T.A.B. Dec. 21, 2023).

Worse still, despite ranking the '722 Petition *below* the '431 Petition, CosMX characterizes the construction in the '722 Petition—under which CosMX challenges

only claims 14-17—as being the "correct" one, thereby implying that the constructions of the '431 Petition are incorrect. Expl., 3. In other words, CosMX has prioritized a petition, the '431 Petition, which relies entirely on a claim construction or interpretation that CosMX now alleges to be incorrect. *Id*.

Further, as demonstrated in the discretionary denial briefing papers replying to the '722 Petition, *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (P.T.A.B. Sept. 6, 2017) (precedential as to § II.B.4.i) also requires denial of institution of that second IPR petition, particularly since CosMX has not explained the delay in filing the '722 Petition, which it alleges did not require reliance on ATL's infringement contentions and therefore could have been filed at the same time as (or earlier than) the '431 Petition.

IV. CONCLUSION

Patent Owner respectfully submits that the Board should deny institution of at least the second of CosMX's Petitions, if not both (due to the assertion of a construction it asserts to be incorrect in its higher-priority first petition).

Dated: August 5, 2025 Respectfully submitted,

By: / Christopher TL Douglas /
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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 **PATENT OWNER'S RESPONSE TO PETITIONER'S EXPLANATION OF PARALLEL PETITIONS** was served in its entirety on August 5, 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 (as agreed by counsel for Petitioner):

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