UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

CHARGELOGIC LLC,
Patent Owner

Inter Partes Review Case No. IPR2026-00378
U.S. Patent No. 11,258,107

PETITIONER'S SUR-REPLY

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I. INTRODUCTION

The mistaken service of Tesla's invalidity contentions that included indefiniteness contentions on September 28 should not result in the discretionary denial of this IPR. The indefiniteness contentions were never meant to be in the final as-served contentions, and they were only there because of an internal miscommunication. Tesla apologizes for the mistake and the additional briefing it has caused. When Patent Owner identified the issue on September 29, within hours, Tesla took steps to correct it and moot the need for further briefing: it served amended contentions that removed all indefiniteness contentions less than 24 hours after the mistaken invalidity contentions were served and expressly committed not to present any indefiniteness contentions at any point in the Parallel Litigation. EX2035; EX2036. That commitment is unconditional and does not depend on whether these proceedings are instituted and not later vacated.

Tesla's concrete corrective actions evidence that it never intended to take inconsistent positions in the two proceedings. And Tesla's unconditional withdrawal of its inadvertently served indefiniteness contentions allays the concerns of gamesmanship and misuse of the IPR process to gain an upper hand in the overall litigation that underly Patent Owner's cited cases. In each case cited by Patent Owner, the petitioners waited until after their IPRs were instituted to raise their indefiniteness contentions in their litigation, refused to withdraw their inconsistent

positions until the issue was brought to the Director's attention, and, even then, only offered a ***conditional*** commitment to resolve the inconsistent claim constructions if the Director instituted their IPR. Not one of those facts is present here.

For these reasons and those below, Tesla respectfully asks that the Director consider Tesla's immediate corrective actions for the mistake. Viewed in the entirety, Tesla submits that the circumstances do not warrant discretionary denial and respectfully requests that the Director refer this proceeding to the merits panel.

II. ARGUMENT

Tesla does not dispute that its now-withdrawn indefiniteness contentions in the Parallel Litigation would have been inconsistent with its claim constructions in this IPR. Paper 10, 2-3. However, the circumstances here are distinguishable from those in *Tesla*, *Terumo*, and *Generac*. Paper 10, 3. In those cases, the petitioners waited until after institution to present their indefiniteness contentions and maintained that they should be permitted to do so—either because "petitioners "cannot raise indefiniteness challenges in an *inter partes* review," *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 at 3 (Dir. Nov. 5, 2025) (informative), because the relevant term's claim construction was immaterial to the prior art analysis and was otherwise not in controversy in the IPR, *Terumo BCT Inc., v. Haemonetics Corp.*, IPR2025-01374, Paper 20 at 2-3 (Dir. May 12, 2026), or because a POSITA would understand the relevant terms "with adequate precision"

for purposes of the IPR, *Generac Power Sys., Inc. v. Champion Power Equip., Inc.*, IPR2025-00805, Paper 40 at 5 (Dir. Feb. 3, 2026).

Here, Tesla is ***not*** maintaining that it should be permitted to argue indefiniteness in the Parallel Litigation. Tesla's presentation of indefiniteness contentions in the Parallel Litigation was in error, Tesla promptly withdrew its contentions, and Tesla affirmed that it "does not present ***and will not present*** in this litigation any argument that any claim term is indefinite under § 112, ¶ 2." EX2035 (emphasis added). Thus, Patent Owner is mistaken that Tesla waited to "disclose[] or explain[] its inconsistent positions" (because it did not intend to raise those positions) and "proposed express and plain-and-ordinary constructions in IPRs while asserting indefiniteness for the same terms in litigation." Paper 10, 3.

Tesla's corrective actions, contrary to Patent Owner's contention (Paper 10, 4-5), completely nullify any risk of inconsistent positions between this IPR and the Parallel Litigation. The Board's decision in *Amazon.com, Inc. v. NL Giken Inc.*, is instructive. IPR2025-00050, Paper 12 (PTAB May 23, 2025). There, "Patent Owner [] contend[ed] that Petitioner ha[d] taken inconsistent positions in this proceeding because, in the district court, Petitioner argue[d] that many limitations of the challenged claims here [were] indefinite." *Id*. at 12. Then the Petitioner wholly withdrew its indefiniteness contentions. *Id*. Accordingly, the Board concluded that "Petitioner no longer takes inconsistent positions between this proceeding and the

Related Litigation[,]" and concluded that *Fintiv* Factor 4 "weigh[ed] against exercising discretion to deny institution." *Id*. Likewise here, Tesla has withdrawn any indefiniteness positions, is not taking any inconsistent positions between this IPR and the Parallel Litigation, and, unlike the petitioner in *Amazon*, Tesla never meant to take inconsistent positions in the first place.

The Director's decisions in *Ford* and *TikTok* do not warrant the opposite conclusion here. In both cases, the petitioners waited until ***after*** the patent owner brought the petitioners' indefiniteness contentions to the Office's attention and, even then, both petitioners agreed only to ***conditional*** stipulations to withdraw or abandon their indefiniteness contentions if their IPRs were instituted and/or maintained. *Ford Motor Co. v. AutoConnect Holdings LLC*, IPR2025-01342, Paper 27 at 3 (Dir. May 12, 2026) (informative); *TikTok, Inc. v. ShopSee, Inc.*, IPR2025-01485, Paper 13, 2 (Dir. Jan. 16, 2026). By contrast, Tesla withdrew its contentions as soon as it became aware of the mistake and *before* Patent Owner reached out to the Office and unconditionally affirmed that it will not pursue indefiniteness in the Parallel Litigation at any time.

That Patent Owner is skeptical of Tesla's error (Paper 10, 4-5) is irrelevant to the Director's analysis. In any event, Patent Owner misunderstands Tesla's mistake. The inclusion of indefiniteness was not akin to a "typo," but was the result of a miscommunication. EX1096, ¶ 5. While potential indefiniteness contentions had

been added to the draft cover pleading, they were not supposed to be included in Tesla's final, served version. *Id*. Tesla's litigation counsel only realized it had neglected to delete the draft indefiniteness section in the final version *after* it was served. *Id*., ¶¶ 5-7. Given the nature of this error, a certification from Tesla was not required with its amendment, as Patent Owner suggests. Paper 10, 4-5. A document was mis-served. That mistake is no different from inadvertently serving a document from another case or an earlier, non-final version of a draft. No new information was added to Tesla's corrected invalidity contentions, so no certification or motion practice was needed. EX1096, ¶ 9.

As these facts show, it is simply not the case that Tesla only withdrew its contentions "because ChargeLogic told Tesla it was going to inform the Office of the inconsistent positions." Paper 10, 5. Nor would crediting Tesla's withdrawal "penalize patent owners" going forward. *Id*. Tesla has given up its right to pursue indefiniteness in the Parallel Litigation unconditionally. It did so before the Director made his discretionary denial or institution decision, and before the parties had even begun claim construction briefing in the Parallel Litigation. As a result, Patent Owner has not been penalized or prejudiced in any way; it remains in the same situation as a week ago, before Tesla mis-served the wrong version of its invalidity contentions. Under these circumstances, Tesla's promptly corrected mistake should not provide an independent basis for discretionary denial.

Respectfully submitted,

BY: /s/ Jennifer C. Bailey
Jennifer C. Bailey, Reg. No. 52,583

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE ON PATENT OWNER
UNDER 37 C.F.R. § 42.105

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on October 7, 2026, the foregoing *Petitioner's Sur-Reply* was served via electronic filing with the Board and via Electronic Mail on the following counsel of record for Patent Owner:

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