

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.

IPR2026-00398
Patent 10,916,769

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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EXHIBIT LIST

Exhibit No.	Description
2001	File history for U.S. Pat. No. 11,522,168 (assigned to Zhuhai CosMX Battery Co., Ltd.)
2002	CosMX 2026 Semi Annual Report
2003	English translation of excerpts of CosMX 2026 Semi Annual Report
2004	CosMX 2025 Annual Report
2005	English translation of excerpts of CosMX 2025 Annual Report
2006	Listing of Zhuhai Huafa Group Co., Ltd. Management Team, available at: https://en.cnhuafag.com/about/team.html
2007	History of Zhuhai Huafa Group Co., Ltd., available at: https://en.cnhuafag.com/about/history.html
2008	Industrial Investment Sector, available at: https://en.cnhuafag.com/industry/54.html
2009	Translation certificate for Exhibits 2003 and 2005

I. INTRODUCTION

Ningde Amperex Technology Limited (“ATL” or “Patent Owner”) respectfully requests that the Director exercise discretion to deny institution of the Petition filed by Zhuhai CosMX Battery Co., Ltd. (“CosMX” or “Petitioner”) against U.S. Patent No. 10,916,769 (the “’769 Patent”). This request is submitted under the Acting Director’s March 26, 2025 Memorandum, “Interim Processes for PTAB Workload Management” (the “Interim Process”), which governs because Patent Owner’s preliminary response is due after March 26, 2025. Several independent considerations warrant denial.

First, the Petition should be denied under Section 325(d). Ground 1 challenges the claims over Tanaka and Tanaka in combination with Yamafuku. Those are the very references the Examiner applied. During prosecution, the sole Office Action rejected most claims over Tanaka or Tanaka in view of Yamafuku, and the claims issued only after amendment. Pet. at 4-5. The Petition does not present new art on this ground. It presents the same art, coupled with the assertion that the Examiner “materially erred.” A petitioner’s disagreement with an examiner’s allowance, without a developed showing of material error, does not satisfy the second part of the *Advanced Bionics* framework. *Nespresso USA, Inc. v. K-Fee Sys. GmbH*, No. IPR2021-01222, 2022 WL 212376, at *4 (P.T.A.B. Jan. 18, 2022); *Advanced*

Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH, No. IPR2019-01469, Paper 6, 2020 WL 740292 (P.T.A.B. Feb. 13, 2020) (precedential).

Second, settled expectations favor denial. The '769 Patent issued on February 9, 2021, more than five years before the Petition was filed. EX1001. The parties' only district court dispute over the '769 Patent has been dismissed. Reviewing a long-issued patent whose enforcement dispute has ended is not an appropriate use of Office resources. *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, No. IPR2026-00097, 2026 WL 1348926 (P.T.A.B. May 14, 2026).

Third, no parallel proceeding remains. The district court action in which the '769 Patent was asserted was dismissed on June 16, 2026, before the Petition was filed. Pet. at 96. The *Fintiv* framework is premised on the advanced state of a parallel proceeding. *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11, 2020 WL 2126495, at *3-*4 (P.T.A.B. Mar. 20, 2020) (precedential). With no such proceeding pending, institution would not serve as an alternative to litigation. It would simply consume Board resources to resolve a dispute the parties have already ended.

Fourth, CosMX has pursued a campaign of serial petitions against ATL's patent portfolio, and the Office has repeatedly declined to institute review of ATL patents at CosMX's request. Congress intended *inter partes* review to be an alternative to litigation, not a tool for repeated challenges. *Magnolia Med. Techs.*, 2026 WL 1348926 at *1.

Fifth, the Interim Process permits the Director to consider the extent of a petition's reliance on expert testimony. The Petition relies extensively on Dr. Zhu's declaration to supply the material-error theory that the intrinsic record does not support, in effect asking the Office to revisit the Examiner's allowability determination through the lens of a retained expert the Examiner did not have.

Sixth, CosMX fails to correctly name the real parties in interest. Petitioner lists seven entities as RPIs but makes critical errors. *See* Pet. at 95. First, Petitioner fails to list at least Zhuhai Purida Investment Co., Ltd., which owns more than 10% of Petitioner. Second, Petitioner also fails to list a controlling foreign entity that is ineligible to participate in *inter partes* review. Last, "Zejiang CosMX Battery Co., Ltd." and "Zejiang CosMX Power Supply Co., Ltd." are the wrong names.

Seventh, Patent Owner provides a large percentage of the batteries used in smartphones, portable computers, and other portable electronics in the United States, including for large U.S. companies like Apple and Dell. It has an interest in protecting its U.S.-granted intellectual property from attacks by an adjudicated willful infringer.

For these reasons, discretionary denial is warranted.

II. BACKGROUND

A. The '769 Patent

The '769 Patent is titled “Cathode, Electrochemical Device and Electronic Device Comprising Same” and is assigned to ATL. EX1001. It issued on February 9, 2021 from an application filed March 11, 2019, which claims priority to a Chinese application filed November 5, 2018. EX1001. The patent claims a cathode with a two-layer active material structure and an insulating layer configured to improve mechanical safety in electrochemical devices.

B. Prosecution History

The '769 Patent issued from U.S. Application No. 16/298,738. Pet. at 4. During prosecution, a single Office Action issued. It rejected most of the claims over Tanaka, or over Tanaka in view of Yamafuku. Pet. at 4-5. Prosecution claims 6, 14, and 20 were determined to be allowable, the applicant incorporated prosecution claim 6 into the independent claims, and the application was allowed. Pet. at 5. The Examiner thus considered Tanaka and Yamafuku, applied them in a rejection, and allowed the claims only after the applicant amended to overcome that rejection.

C. The Petition and Its Grounds

The Petition advances two sets of grounds. Ground 1 comprises Grounds 1A through 1E, each of which is built on Tanaka, alone or in combination with Yamafuku and, in two grounds, with Li or Kaplan. Pet. at 11. Ground 2 comprises

Grounds 2A through 2D, built on Kim and Sikha, with Yamafuku, Li, or Kaplan added in three grounds. Pet. at 11. The Petition repeatedly asserts that the Examiner “materially erred” in allowing the claims over Tanaka and Tanaka in view of Yamafuku. Pet. at 11. The Petition is supported by a lengthy declaration from Dr. Yu Zhu.

D. Related Proceedings

ATL asserted the ’769 Patent against CosMX in Ningde Amperex Technology Limited v. Zhuhai CosMX Battery Co., Ltd., No. 2:26-cv-00139 (E.D. Tex.), filed February 18, 2026. That action was dismissed on June 16, 2026. Pet. at 96. The Petition was accorded a filing date of July 21, 2026, after the dismissal. Paper 3.

CosMX has filed numerous other petitions against ATL patents. Concurrent with or shortly after this Petition, CosMX filed petitions challenging ATL’s U.S. Patent Nos. 12,374,686 (IPR2026-00399), 12,294,082 (IPR2026-00401), 11,699,808 (IPR2026-00408), 12,334,494 (IPR2026-00402), and 12,278,330 (IPR2026-00409). Paper 5; Paper 6. CosMX has also challenged ATL patents unsuccessfully before. In an earlier wave of petitions, the Office denied institution of the petition in IPR2025-00722 on discretionary grounds. *Zhuhai CosMX Battery Co. v. Ningde Amperex Tech. Ltd.*, No. IPR2025-00722, Paper 11 (P.T.A.B. Sept. 3, 2025).

III. LEGAL STANDARDS

Under the Interim Process, decisions on institution are bifurcated. The Director first determines whether discretionary denial is appropriate, and only if it is not does the Director refer the petition to a three-judge panel to decide the merits. The Interim Process invites the parties to address any fact or circumstance bearing on the Director's discretion to institute.

Section 325(d) permits the Director to “reject the petition ... because[] the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). The Board applies a two-part framework: first, whether the same or substantially the same art or arguments were previously presented to the Office, and second, if so, whether the petitioner has shown that the Office erred in a manner material to patentability. *Nespresso*, 2022 WL 212376, at *3. The statute is disjunctive, so the inquiry shifts to material error where either the art or the arguments were previously presented. *Id.* Previously presented art includes art the Examiner applied and art submitted on an Information Disclosure Statement. *Id.* The *Becton, Dickinson* factors guide this analysis. *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, No. IPR2017-01586, 2017 WL 6405100, at *6 (P.T.A.B. Dec. 15, 2017) (precedential). Factors (a), (b), and (d) inform whether the same or substantially the same art or arguments were presented, and factors (c), (e), and (f) inform whether the petitioner has shown material error. *Id.* A petitioner does not

establish material error merely by disagreeing with the Examiner. If reasonable minds can disagree about the Examiner's treatment of the art, the Office did not err in a manner material to patentability. *Id.*

Under Section 314(a), the Director also considers discretionary factors identified in the Interim Process, including the settled expectations of the parties, such as the length of time the claims have been in force. 35 U.S.C. § 314(a). Settled expectations of either party may support denial, and absent persuasive reasoning from a petitioner it is not an appropriate use of resources to review a patent in which the patent owner has developed settled expectations. *Magnolia Med. Techs.*, 2026 WL 1348926 at *4. The *Fintiv* factors address discretionary denial based on the advanced state of a parallel district court proceeding.

IV. ARGUMENT

A. The Board Should Deny Institution Under Section 325(d) Because the Petition Relies on the Same Art and Arguments the Examiner Already Considered

Ground 1 fails both parts of the *Advanced Bionics* framework, and denial of the entire Petition is warranted.

Under the first part of the framework, and *Becton, Dickinson* factors (a), (b), and (d), the art in Ground 1 is not merely similar to what the Examiner considered. It is identical. The sole Office Action rejected most claims over Tanaka, or Tanaka in view of Yamafuku. Pet. at 4-5. Ground 1 challenges the claims over the same

Tanaka reference, alone and in combination with the same Yamafuku reference. Pet. at 11. Because the Examiner applied these references as the basis for rejection, they were unquestionably “previously presented to the Office.” *Nespresso*, 2022 WL 212376, at *3. Where the Examiner rejected a claim over the same art in the same combination under the same statutory basis and then allowed the claims after amendment, the Board attributes controlling weight to that fact. The Director has recently reaffirmed the governing standard: where the Examiner applied the asserted art, the petitioner must show both that the art teaches the disputed limitations and that no reasonable examiner could have found otherwise; if reasonable minds can disagree, there is no material error. *Ecto World, LLC v. Rai Strategic Holdings, Inc.*, No. IPR2024-01280, 2025 WL 1441509, at *2 (P.T.A.B. May 19, 2025); *see also West Pharm. Servs., Inc. v. Sanofi-Aventis Deutschland GmbH*, No. IPR2018-01162, 2018 WL 6433571, at *4 (P.T.A.B. Dec. 6, 2018). This is exactly that situation.

Under the second part of the framework, and *Becton, Dickinson* factors (e) and (f), CosMX must show that the Examiner erred by misapprehending or overlooking specific teachings material to patentability. The Petition does not carry that burden. It asserts that the Examiner “materially erred” in allowing the claims over Tanaka and Yamafuku. Pet. at 5. But an assertion of error is not a showing of error. The Examiner reviewed Tanaka and Yamafuku and relied on them in rejecting the claims. That the Examiner then allowed the claims after amendment reflects a

considered patentability judgment, not an oversight. *West Pharm.*, 2018 WL 6433571, at *5. A petitioner's contention that the Examiner "did not appreciate the full scope" of a reference the Examiner applied does not establish material error. *Id.*

Nor can CosMX manufacture material error from its expert. The Petition leans on Dr. Zhu's declaration, but the fact that a petition is supported by expert testimony the Examiner did not have does not, without developed analysis, establish that the Examiner materially erred. *Nespresso*, 2022 WL 212376, at *11. At most, CosMX offers a competing view of what Tanaka and Yamafuku teach. Where reasonable minds can disagree about the Examiner's treatment of the art, it cannot be said that the Office erred in a manner material to patentability. *Id.* The Office has denied institution on precisely this record, giving the greatest weight to the Examiner's rejection over the same combination under the same statute, even where the petitioner offered new arguments and expert testimony. *West Pharm.*, 2018 WL 6433571, at *5. The Director's recent guidance is to the same effect. *Ecto World*, IPR2024-01280, Paper 13, 2025 WL 1441509, at *2.

This is the same argument ATL has successfully advanced against CosMX's other petitions, and it applies with even greater force here. In its prior requests, ATL showed that the primary references had been placed before the Examiner on an Information Disclosure Statement and that CosMX had made no showing of material error. Patent Owner's Request for Discretionary Denial, IPR2025-00405 (P.T.A.B.)

at 55. Here, the references were not merely disclosed. They were the actual basis of the Examiner's rejection. The Petition amounts to nothing more than asking the Board to second-guess the Examiner's allowability determination more than five years after issuance where CosMX identifies no actual material error. *See, e.g.*, Patent Owner's Request for Discretionary Denial, IPR2025-00385 (P.T.A.B.) at 29.

B. Settled Expectations Favor Denial Because the '769 Patent Has Been in Force for More Than Five Years and the Parties' Dispute Has Been Dismissed

The Interim Process indicates that the Director will weigh the settled expectations of the parties, including the length of time the claims have been in force. The '769 Patent issued on February 9, 2021. EX1001. By the time CosMX filed its Petition on July 21, 2026, the patent had been in force for more than five years - specifically, five years and five months. Paper 3. Settled expectations of either party may support denial, and absent persuasive reasoning from a petitioner it is not an appropriate use of resources to review a patent in which the patent owner has developed settled expectations. *Magnolia Med. Techs.*, 2026 WL 1348926, at *4. The Director has confirmed that the longer a patent has been in force, the more settled expectations become, and that actual notice is not required. *Dabico Airport Sols. Inc. v. Axa Power Aps*, No. IPR2025-00408, 2025 WL 1710857, at *1 (P.T.A.B. June 18, 2025).

A period of six to seven years in force reflects strong settled expectations. *Amgen Inc. v. Bristol-Myers Squibb Co.*, No. IPR2025-00601, 2025 WL 2086050, at *1 (P.T.A.B. July 24, 2025). A petitioner's awareness of a patent and its failure to seek early review support denial and can outweigh factors that otherwise favor institution. *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, No. IPR2025-00363, 2025 WL 1606488 (P.T.A.B. June 6, 2025). CosMX has been aware of the '769 Patent since at least April 2021. See Information Disclosure Statement in CosMX application U.S. 17/119,304 listing patent CN 109244362 (the priority patent for the '769 Patent, application CN 1308841) filed April 30, 2021. Ex. 2001.

CosMX offers no justification for waiting more than five years to challenge the '769 Patent. Its delay is especially telling because the parties have been adverse in litigation over ATL's battery patents, and CosMX was plainly aware of ATL's portfolio well before it filed this Petition. That awareness, combined with the absence of any early challenge, weighs in favor of denial. *iRhythm*, 2025 WL 1606488.

The settled posture of the parties' dispute reinforces this conclusion. The district court action asserting the '769 Patent has been dismissed. Pet. at 96. There is no live controversy that institution would help resolve. Reviewing a long-issued patent whose enforcement dispute has ended is not an appropriate use of the Office's resources. *Magnolia Med. Techs.*, 2026 WL 1348926 at *4.

C. No Parallel Proceeding Remains, So Institution Would Serve No Efficiency Interest

Inter partes review was created to provide an efficient alternative to district court litigation. The *Fintiv* factors, which address discretionary denial based on parallel litigation, are premised on the advanced state of a parallel proceeding. Here, there is no parallel proceeding at all. The only district court action asserting the '769 Patent was dismissed on June 16, 2026, before the Petition was filed. Pet. at 96. It is not an efficient use of Office resources to review a patent that has been removed from parallel litigation. *See Ericsson Inc. v. Procomm Int'l Pte. Ltd.*, IPR2024-01452, 2025 WL 1758910 (P.T.A.B. June 25, 2025).

Because no litigation remains, institution cannot serve as an alternative to litigation. It would instead create a proceeding where none is otherwise needed, consuming Board resources to adjudicate the validity of a patent the parties are no longer litigating. Congress intended AIA review to narrow disputes, not to open a new forum after the dispute has ended. *Magnolia Med. Techs.*, 2026 WL 1348926 at *1. The efficiency rationale that might support institution is therefore absent, and this factor favors denial.

This is not the first time IPRs would have been denied because a patent was no longer asserted in litigation, even when the underlying dismissal was without prejudice. *See, e.g., Google LLC v. Mullen Indus. LLC*, IPR2025-00227, Paper 13, 4 (June 25, 2025) ("it is an inefficient use of Board resources to review the '540

patent that has been dismissed from the litigation.”); *Mullen Indus. LLC v. Samsung Elec. Co.*, No. 2:24-cv-00049, ECF No. 52 (E.D. Tex. Nov. 21, 2024) (dismissing infringement claims of the ’540 patent without prejudice); *SportRadar AG v. Sportscastr Inc.*, IPR2025-00313, Paper 19, 2 (July 16, 2025) (“the challenged claims are no longer asserted in the parallel litigation. Under these circumstances, it is an inefficient use of Board resources to review claims of a patent that are no longer being asserted in district court.”) (cleaned up).

Indeed, in *SportRadar*, the petitioner pointed out that even though the patent owner had stipulated it would not pursue the challenged claims in the district court litigation, the stipulation was arguably without prejudice, so the patent owner could attempt to assert the claims in future proceedings after the petitioner’s IPR deadline had expired. *SportRadar AG v. Sportscastr Inc.*, IPR2025-00313, Paper 16, 5-6 (June 18, 2025). Even so, the Director held that institution would be an inefficient use of Board resources. *See id.* Here too, instituting review would waste the Board’s limited resources.

D. Petitioner’s Serial Petitions and History of Denied Challenges Counsel Denial

CosMX has repeatedly used the *inter partes* review process against ATL. It filed petitions against at least five other ATL patents at or near the time of this Petition. Paper 5; Paper 6. It has done so before as well, and the Office denied institution of its petition in IPR2025-00722 on discretionary grounds. *Zhuhai*

CosMX Battery Co. v. Ningde Amperex Tech. Ltd., No. IPR2025-00722, Paper 11 (P.T.A.B. Sept. 3, 2025). The Office has also denied a CosMX petition against an ATL patent even after initially granting review: in IPR2025-00405, the Director vacated the institution grant and denied institution. *Zhuhai CosMX Battery Co. v. Ningde Amperex Tech. Ltd.*, IPR2025-00405, 2025 WL 2939499, at *1 (P.T.A.B. Oct. 15, 2025).

The Office has recognized that AIA reviews can be misused for repeated challenges, contrary to Congress's intent that review serve as an alternative to litigation rather than an addition to it. *Magnolia Med. Techs.*, 2026 WL 1348926, at *1. The Board's serial-petition jurisprudence confirms the point. *Gen. Plastic Indus. Co., Ltd. v. Kaisha*, No. IPR2016-01357, 2017 WL 3917706, at *4 (P.T.A.B. Sept. 6, 2017); *Pacificorp & Midamerican Energy Co. v. Birchtech Corp.*, No. IPR2025-00687, 2026 WL 85526, at *1 (P.T.A.B. Jan. 12, 2026). CosMX's pattern of serial filings against ATL's portfolio, combined with the dismissal of the underlying litigation, reflects the kind of repeated, resource-intensive challenge that the discretionary framework is designed to curb. This factor supports denial.

E. The Petition's Heavy Reliance on Expert Testimony Further Supports Denial

The Interim Process permits the Director to consider the extent of a petition's reliance on expert testimony. The Petition relies extensively on Dr. Zhu's declaration to supply the material-error theory that the intrinsic record does not support, in effect

asking the Office to revisit the Examiner’s allowability determination through the lens of a retained expert the Examiner did not have. As explained above, expert testimony the Examiner lacked does not by itself establish material error. *Nespresso*, 2022 WL 212376, at *11. To the extent CosMX uses its expert to fill gaps in the prior art rather than to explain the background knowledge of a person of ordinary skill in the art, that reliance further supports denial. *iRhythm*, 2025 WL 1606488.

F. CosMX Fails to Correctly Name the Real Parties in Interest

The Petition identifies the following “real parties-in-interest:”

- Zhuhai CosMX Battery Co., Ltd.;
- Chongqing CosMX Battery Co., Ltd.;
- Zhuhai CosMX Power Jinwan Subsidiary Co., Ltd.;
- Zhuhai CosMX Power Battery Co., Ltd.;
- Zhuhai CosMX Power Supply Co., Ltd.;
- Zejiang CosMX Battery Co., Ltd.;
- Zejiang CosMX Power Supply Co., Ltd.; and
- Chongqing CosMX Battery Co., Ltd.

Pet. at 95 (repeated entity Chongqing CosMX Battery Co., Ltd. is contained in the Petitioner’s list).

A petition for *inter partes* review “may be considered only if . . . the petition identifies all real parties in interest.” 35 U.S.C. § 312(a)(2); *see* 37 C.F.R. §

42.8(b)(1). Petitioner fails to do so. *Tianma Microelectronics Co. v. LG Display Co.*, IPR2025-01579, Paper 12, 5 (Director Mar. 18, 2026) (precedential).

Petitioner lists seven entities as RPIs but makes critical errors. *See* Pet. at 95. The 2026 Semi-Annual Report of Zhuhai CosMX Battery Co., Ltd. lists Zhuhai Purida Investment Co., Ltd. (“Zhuhai Purida”) as holding 17.57% ownership. Ex. 2003, pp. 65, 197. Worse, Petitioner admits that Zhuhai Purida, “the controlling shareholder of the Company,” acts in concert with at least nine other unlisted entities. *Id.* Zhuhai Purida does not just own more than 10% of Petitioner; its principal also controls Petitioner. Yanming Xu is both Petitioner’s Chairman of the Board and General Manager and the Executive Director of Zhuhai Purida. There can be no doubt that unlisted Zhuhai Purida and Mr. Yanming control Petitioner.

Furthermore, Zhuhai Purida has specifically committed to pay any compensation due to ATL from any adverse judicial rulings against Petitioner, leaving no doubt that it is a true RPI that should have been listed. Ex. 2003, pp. 48-49. Petitioner identifies this commitment in its own public investor filings, leaving no excuse for its failure to identify Zhuhai Purida as an RPI here. *Id.*

This ownership, control, and interest required Petitioner to list Zhuhai Purida in its mandatory notices. *Tianma*, IPR2025-01579, Paper 12, at 8 n.6 (the USPTO “expects each petitioner and patent owner to identify as part of their mandatory notices any parent corporation, entity, or person that owns 10% or more of that

petitioner's or patent owner's stock, shares, or membership interests.”). Indeed, in *Viance, LLC v. Koppers Performance Chemicals Inc.*, PGR2026-00023, Paper 32, at 3 (Director Aug. 19, 2026), the Director denied institution when the petitioner's majority owner, who had the ability to control the proceeding, was not listed as an RPI. The Director should do so here, where Zhuhai Purida is an RPI that was not identified in the Petition.

Second, Petitioner fails to identify that it is owned and controlled by entities not listed as real parties in interest. As reported in the 2026 Semi-Annual Report, Zhuhai Technology Venture Investment Co., Ltd. (“Zhuhai Technology Venture Investment”) is listed as a shareholder of Petitioner and is foreign entity that is ineligible to participate in *inter partes* review, as expressly classified in the filing's shareholder table. Ex. 2003, p. 66. Zhuhai Technology Venture Investment owns 1.37% of Petitioner. Ex. 2003, pp. 65-66. Hu Wang serves as a director on Petitioner's board. Ex. 2003, pp. 33, 198. Prior to his appointment, Hu Wang served as Deputy General Manager of the Investment Business Department at Zhuhai Technology Venture Investment from July 2017 to September 2022. Ex. 2005, pp. 46-53. In September 2022, Hu Wang transitioned directly from that entity to Zhuhai Huajin Innovation Investment Co., Ltd., where he currently holds the title of Investment Director. *Id.* Zhuhai Huajin Innovation Investment Co., Ltd. is ultimately owned by Zhuhai Huajin Capital Co., Ltd., which is a controlled subsidiary of

Zhuhai Huafa Group Co., Ltd., a Zhuhai foreign entity that is ineligible to participate in *inter partes* review. Ex. 2006; Ex. 2007. Zhuhai Technology Venture Investment is also a subsidiary of Zhuhai Huafa Group Co., Ltd. Ex. 2008. As such, not only does a foreign entity have an ownership interest in Petitioner, it appears to have the ability to control Petitioner through at least its director, Mr. Hu.

In view of this evidence, it is Petitioner's burden to establish that it has complied with the statutory requirement to identify all real parties-in-interest. *Zerto, Inc. v. EMC Corp.*, IPR2014-01254, Paper 35, at 7 (P.T.A.B. Mar. 3, 2015); *see also Yangtze Memory Techs. Co. v. Micron Tech., Inc.*, IPR2025-00098, Paper 38, at 7 (Director Jan. 15, 2026) (informative); *Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (P.T.A.B. Aug. 18, 2015) (precedential); *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018); *Curium US LLC v. Universitaet Heidelberg*, IPR2025-01582, Paper 11 (informative). Petitioner cannot do so.

These facial defects and omissions place the completeness and accuracy of Petitioner's real party in interest disclosure in dispute, and they prevent the Office from verifying whether all RPIs have been named, as required by Section 312(a)(2). *See also Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) ("Determining whether a non-party is a 'real party in interest' demands a flexible approach that takes into account both equitable and practical

considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.”).

Applying these standards here, Petitioner’s misspellings and failure to identify the broader controlled corporate family gives rise to a dispute concerning real party in interest that Petitioner must resolve with proof before institution. Proceeding without a complete real party in interest record would contravene the AIA’s threshold requirements and the Board’s gatekeeping function.

Petitioner’s only other recourse is amendment. There is no reason to allow Petitioner to amend its listing of real parties in interest, especially given that its failure to list Zhuhai Purida is glaring in light of Purida’s commitment to pay any judgment owed to Patent Owner. And even if Petitioner could amend, the Petition must fail because certain entities, including Zhuhai Huafa Group, are RPIs to this proceeding and are ineligible to participate in *inter partes* review. *Tianma*, IPR2025-01579, Paper 12, 5 (barring a petition when a foreign government is an RPI of a petitioner).

Thus, no filing date should be accorded the Petition under 35 U.S.C. § 312. *See* 37 C.F.R. § 42.106.

G. There Exist Compelling Economic Interests Favoring Denial

An additional factor favoring discretionary denial is that the Patent Owner provides a large percentage of the batteries used in smartphones, portable computers,

and other portable electronics in the United States, including for large U.S. companies like Apple and Dell. It has an interest in protecting its U.S.-granted intellectual property from attacks by an adjudicated willful infringer. Patent Owner continuing to invest in its research and development as well as a continued willingness to supply the United States is a compelling reason for IPR denial.

V. CONCLUSION

The same art and arguments that CosMX now presents were already considered by the Examiner, and CosMX has not shown material error. The '769 Patent has been in force for more than five years, the parties' litigation over it has been dismissed, and no parallel proceeding remains that institution could streamline. CosMX's serial petitions against ATL's portfolio confirm that institution would not advance the efficiency goals of the AIA. For each of these independent reasons, and on the totality of the circumstances, Patent Owner respectfully requests that the Director deny institution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing was served to the following lead counsel of record for Petitioners as follows:

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