

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

IPR2026-00402
U.S. Patent No. 12,334,494

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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TABLE OF EXHIBITS

Exhibit Number	Description
2001	Civil Action No. 2:26-cv-00139, the “Third Texas Litigation” Dismissal
2002	Reserved
2003	Listing of Zhuhai Huafa Group Co., Ltd. Management Team, available at: https://en.cnhuafag.com/about/team.html
2004	History of Zhuhai Huafa Group Co., Ltd., available at: https://en.cnhuafag.com/about/history.html
2005	Industrial Investment Sector, available at: https://en.cnhuafag.com/industry/54.html
2006	Application Proof for Zhuhai Kingsware Artificial Intelligence Co., Ltd., available at: https://www1.hkexnews.hk/app/sehk/2026/108812/documents/sehk26082102364.pdf
2007	Docket Navigator Report for U.S. Cases Involving Petitioner and Patent Owner (September 23, 2026)
2008	Darts IP Report for Global Cases Involving Petitioner and Patent Owner (May 6, 2025)
2009	English Translation of CosMX 2026 Semi Annual Report
2010	Reserved
2011	Reserved
2012	Reserved
2013	English Translation of CosMX 2025 Annual Report
2014	European Patent Office English Translation of Description and Claims of Japanese Patent Publication No. JP2018156803 to Matsuoka provided by Espacenet
2015	European Patent Office English Translation of Description and Claims of Chinese Patent Publication No. CN110739487 to Gao et al. (“Gao”) provided by Espacenet
2016	European Patent Office English Translation of Description and Claims of Chinese Patent Publication No. CN102668221 to Shinako et al. (“Shinako”) provided by Espacenet
2017	U.S. Patent Office Global Dossier Citation Record for Chinese Patent Publication No. CN114050232 to Mu et al. (“Mu”), available at:

Exhibit Number	Description
	https://globaldossier.uspto.gov/citations/PUB/CN/114050232/120374?reload=1790971139801
2018	European Patent Office English Translation of Description and Claims of Chinese Patent Publication No. CN111342129 to Zhang et al. provided by Espacenet
2019	European Patent Office English Translation of Description and Claims of International Patent Publication No. WO2021174417A1 to Zhang et al. provided by Espacenet
2020	Reserved
2021	Reserved
2022	Chinese battery makers ATL, CosMX agree to settle global patent battle, MLEX (May 28, 2026), available at: https://www.mlex.com/mlex/articles/2482691/chinese-battery-makers-atl-cosmx-agree-to-settle-global-patent-battle

I. INTRODUCTION

Ningde Amperex Technology Ltd. (“ATL” or “Patent Owner”) requests that the Petition for *inter partes* review (Paper 1 or “Pet.”) filed by Petitioner Zhuhai CosMX Battery Co., Ltd. (“Petitioner” or “CosMX”) be discretionarily denied.

The Petition seeks *inter partes* review (“IPR”) of claims 1-10 and 12-19 of U.S. Patent No. 12,334,494 (the “’494 Patent,” Ex. 1001). The ’494 Patent is one of six patents that Patent Owner asserted against Petitioner in a now dismissed district court action (Civil Action No. 2:26-cv-00139, the “Third Texas Litigation”). Ex. 2001. That action was dismissed after the Parties negotiated an agreement to dismiss and withdraw all existing lawsuits and invalidity challenges. Beyond that agreement, the Parties litigated extensively over the past four years (so Petitioner has long been aware of these patents and their family members), Petitioner failed to list all real parties-in-interest (“RPIs”) (including government entities), the pending IPRs will not resolve all disputes involving this patent, Petitioner has not filed any stipulation, and Petitioner’s products are not manufactured in the United States. The Director should therefore deny institution to reduce the burden on all involved and to signal that IPR is not a true alternative to litigation when filed after the Parties have resolved their disputes.

II. LEGAL STANDARDS

The Acting Director’s March 26, 2025 Memorandum, “Interim Processes for

PTAB Workload Management” (“Director Memo”), identifies non-exhaustive additional factors the Director may consider in exercising discretion under 35 U.S.C. § 314(b) (the “Memo Factors”). Director Memo at 2-3. The Director also issued a memo titled Additional Discretionary Institution Considerations — U.S. Manufacturing and Small Business Use of AIA Proceedings, which states that the Director will consider the extent to which accused products in a parallel proceeding are manufactured in the U.S. or relate to U.S. manufacturing investments.

III. ARGUMENT

A. The ’494 Patent Is No Longer at Issue in the District Court.

In June, the Third Texas Litigation, which included the ’494 Patent, was dismissed by agreement of the Parties. Ex. 2001. Continuing with an IPR under these circumstances would undercut the purpose of IPRs and waste the Parties’ and Board’s resources. The Director should use this opportunity to address such gamesmanship by confirming that proceeding on IPRs after the Parties have agreed to dismiss the lawsuits asserting the challenged patents is a waste of public resources.

The Parties are competitors that have litigated worldwide since January 2022, across five U.S. district court actions, an appeal to the Federal Circuit, sixteen IPRs (including the currently pending proceedings), an *ex parte* reexamination (Reexamination No. 90/019,470), and numerous other litigation and invalidity challenges worldwide, including in Germany and China. Exs. 2007, 2008. Petitioner

filed six IPR Petitions in 2023 and 2025 that were denied institution on discretionary grounds or on the merits, and in 2026 dismissed four other instituted IPR Petitions shortly after oral arguments began—all of which suggest denial is appropriate here.

Despite the wide-ranging litigation across multiple forums, in June, the Parties entered into an agreement that resulted in the dismissal of all then-pending worldwide litigation, invalidity challenges, and IPRs. The Third Texas Litigation, which included the patent challenged here, was dismissed without prejudice given the early stage of the proceedings as part of that negotiated agreement resolving all global litigation between the Parties. Ex. 2001. Starting a new wave of IPRs frustrates that global peace and can only be characterized as harassing given the posture between the Parties. Exs. 2001, 2022.

This is not the first time that IPRs would have been denied because a patent was no longer asserted in litigation, even when that underlying dismissal was without prejudice. *See, e.g., Google LLC v. Mullen Industries LLC*, IPR2025-00227, Paper 13 at 4 (PTAB June 25, 2025) (“it is an inefficient use of Board resources to review the ’540 patent that has been dismissed from the litigation.”); *Mullen Industries LLC v. Samsung Electronic Co., Ltd.*, Case No. 2:24-cv-00049, ECF No. 52 (E.D. Tex. Nov. 21, 2024) (dismissing claims of infringement of ’540 patent without prejudice); *SportRadar AG v. Sportscast Inc.*, IPR2025-00313, Paper 19 at 2 (PTAB July 16, 2025) (“Additionally, for IPR 2025-00313 and IPR2025-00315,

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*, Petitioner pointed out that even though Patent Owner had “stipulated that it will not pursue the currently challenged claims [of the challenged patent] in the district court litigation, this has been done arguably without prejudice. It is feasible that Patent Owner could attempt to assert these claims and future proceedings. Given that the statutory deadline for filing an IPR directed to the [challenged] patent has expired, Petitioner will not be able to access *inter partes* review of this patent in the future.” *SportRadar AG v. Sportscast Inc.*, IPR2025-00313, Paper 16 at 5-6 (PTAB June 18, 2025) (underlined emphasis added). Even so, the Director held that IPR was an inefficient use of Board resources. *SportRadar AG v. Sportscast Inc.*, IPR2025-00313, Paper 19 at 2 (PTAB July 16, 2025). Here too, instituting review would be a waste of the Board’s limited resources.

B. Petitioner Offers No Stipulation and Challenges Only a Subset of Claims, Increasing Risk of Duplicated Efforts

Petitioner has not offered any form of stipulation that would mitigate any risk of overlap between this case and any hypothetical future district court case. *See Phison Elecs. Corp. v. Vervain*, IPR2025-00213, Paper 14 at 3 (PTAB July 10, 2025) (finding even where “the challenged patents have not been in force for a significant

period of time,” “[t]he absence of such a stipulation tips the balance in favor of discretionary denial”). Indeed, no stipulation has been entered addressing use of prior art alone or in combination with system art. This is particularly concerning where, as here, fewer than all claims of the patent are challenged in the Petition, so the risk of a hypothetical future district court needing to revisit the same issues raised in this IPR is amplified. Moreover, Petitioner has not offered a stipulation that it agrees with and will be bound by its assertion that “[a]ll claim terms receive their ordinary and customary meaning as understood by a POSITA at the time of the invention, in light of the specification and the prosecution history” and that “no terms require express construction” Pet. 11; *see also, e.g., Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 3–5 (PTAB Nov. 3, 2025) (precedential). The lack of any stipulation further underscores the harassing and inefficient nature of these IPRs.

The scope of the Petition further confirms its harassing nature. Petitioner advances *six* separate grounds, one of anticipation and five of obviousness, drawing from three different prior art references in various one- and two-reference combinations, yet challenges only a subset of the patent’s claims—omitting claim 11 entirely. Pet. at 1. The fact that institution, even if successful, would not resolve the question of patentability of all claims of the ’494 Patent strongly favors discretionary denial because it would be an inefficient use of the Board’s limited

resources to institute IPR of fewer than all claims, guaranteeing that claim 11 could still be asserted in litigation.

Moreover, Petitioner only addresses claims 1, 2, 7, 13, 15, and 16 under the lone anticipation ground 1A, but then fails to fully address these claims under the obviousness grounds. That is, while Petitioner nominally presents these claims in the header of obviousness ground 1B, it never *addresses* them in the actual substance of that obviousness ground (or any other). Pet. at 41-51 (discussing only claims 8, 12, and 14). As such, for the reasons that are outlined herein, given the failure of the anticipation ground 1A, it would be an inefficient use of Board and party resources to proceed on the remaining claims and facially insufficient grounds. *See Chevron Oronite Co. v. Infineum USA L.P.*, IPR2018-00923, Paper 9 at 10-11 (PTAB Nov. 7, 2018) (informative).

C. Settled Expectations Favor Denial or Are at Least Neutral

Though the '494 Patent issued recently, the years of litigation between the Parties leave little doubt that Petitioner was long aware of it and Patent Owner's other and related patents. Petitioner has not denied such knowledge in its Petition.

The '494 Patent is a continuation of U.S. Patent Application No. 16/970,864, which is a National Phase Entry of International Application No. PCT/CN2020/077638, filed on March 03, 2020. Ex. 1001 at [63]. As competitors litigating worldwide since at least January 2022 over Patent Owner's battery-

technology patent portfolio, Petitioner had every reason to monitor this application and related applications. Indeed, the Chinese Patent Office identified CN113437366 and its parent, CN111342129, to Petitioner as relevant prior art as part of its investigation of the patentability of two related CosMX patents, as early as June of 2020. Ex. 2017 (showing that CN113437366 was cited by the Chinese Patent Office for Chinese Patent Publication No. CN114050232, and that CN111342129 was cited by the Chinese Patent Office for Chinese Patent Publication No. CN114094167). CN111342129 and PCT/CN2020/077638 (corresponding to WO2021174417A1) share the same content and were filed on the same date. Exs. 2018-2019. Accordingly, Petitioner has been aware of counterparts to the '494 Patent since at least June of 2020.

Petitioner's longstanding awareness of Patent Owner's involvement in the same technology space also favors discretionary denial. *See Murata Mfg. Co., Ltd. v. Ga. Tech Research Corp.*, IPR2025-00383, Paper 14 at 2-3 (PTAB July 29, 2025).

The PGR window closed on March 17, 2026—approximately three months before the Parties reached agreement in June 2026. Petitioner, while simultaneously negotiating a resolution of all disputes, allowed this early-challenge window to lapse. This tactic of intentional delay should not be rewarded with institution. The Director should instead hold that parties demonstrably aware of a patent before its issue date should be encouraged to use early challenges to these patents, including

challenges while the patents remain pending, or at least to use the PGR process shortly after the patent issues. *See iRhythm Technologies v. Welch Allyn Inc.*, IPR2025-00377, Paper 10 at 3 (PTAB June 6, 2025) (“Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial and outweighs the above-discussed considerations.”).

Finally, the Parties’ global agreement created its own settled expectation that disputes over this patent and its family members had been resolved. Petitioner’s decision to disrupt that post-agreement equilibrium by filing new IPRs compounds the prejudice to Patent Owner and independently favors denial.

D. Petitioner Fails to Identify All RPIs

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 v. LG Display*, IPR2025-01579, Paper 12 at 5 (Director Mar. 18, 2026) (precedential).

Petitioner lists eight entities as RPIs but makes critical omissions. *See* Pet. at 80. 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 Zhuhai Technology Venture Investment Co., Ltd. (hereinafter “Zhuhai Technology”).

Petitioner’s 2026 Semi-Annual Report lists Zhuhai Purida Investment Co., Ltd. (“Zhuhai Purida”) as holding 17.57% ownership. Ex. 2009 at 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 only 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. Ex. 2009 at 66-67. There can be no doubt that unlisted Zhuhai Purida and Mr. Xu control Petitioner.

Zhuhai Purida has specifically committed to pay any compensation due to ATL due to any adverse judicial rulings against Petitioner—a commitment Petitioner identifies in its own public investor filings—leaving no doubt that it is a true RPI that should have been listed. Ex. 2009 at 48-49.

This ownership, control, and interest required Petitioner to list Zhuhai Purida in its mandatory notices. *Tianma*, IPR2025-01579, Paper 12 at 8 n.6. Indeed, in PGR2026-00023, the Director denied institution when Petitioner’s majority owner, who had the ability to control the proceeding, was not listed as an RPI. *Viance, LLC v. Koppers Performance Chemicals Inc.*, PGR2026-00023, Paper 32 at 3 (Director Aug. 19, 2026). The Director should also do so here.

Second, Petitioner fails to identify that it is owned and controlled by Zhuhai Technology. The 2026 Semi-Annual Report lists Zhuhai Technology as a shareholder of Petitioner, owning 1.37% of Petitioner, and as “a state-owned corporation.” Ex. 2009 at 66.

What's more, Hu Wang serves as a director on Petitioner's board. *Id.* at 33, 198. Prior to his appointment, Hu Wang served as Deputy General Manager of the Investment Business Department at Zhuhai Technology from July 2017 to September 2022. Ex. 2013 at 49. In September 2022, Hu Wang transitioned directly from Zhuhai Technology 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 major government enterprise. Ex. 2003 (identifying Jin Guo as the Director of Industrial Investment Sector of Huafa Group and as President of Zhuhai Huajin Capital Co., Ltd.); Ex. 2004 (explaining that Zhuhai Huafa Group is "a leading state-owned enterprise"); Ex. 2006 at N4. Zhuhai Technology is related to Zhuhai Huafa Group Co., Ltd. Ex. 2005 (indicating five platforms of investment including Zhuhai Science and Technology); *see also* Ex. 2006 at 111 ("Zhuhai Science and Technology is a limited partnership established under the laws of the PRC and managed by its general partner, Zhuhai Kechuang, . . . [which] is a wholly-owned subsidiary of Zhuhai Technology Venture Investment Co., Ltd.* . . . ("Zhuhai Technology"), which is ultimately controlled by Guangdong Provincial Department of Finance and Zhuhai Municipal People's Government State-owned Assets Supervision and Administration Commission."); *see also id.* at 110-111 ("Zhuhai Kechuang is owned

as to 60% by Zhuhai HUAFA Group Co., Ltd.”). As such, Zhuhai Technology appears to be an unlisted government RPI that also has the ability to control Petitioner at least through Director Hu Wang. If Petitioner disagrees with any details of the chain of control, it was Petitioner’s burden to identify RPIs, and it is plain that Hu Wang retains the ability to control Petitioner on behalf of a government enterprise.

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 (PTAB Mar. 3, 2015); *see also Yangtze Memory Technologies Co. v. Micron Technology, Inc.*, IPR2025-00098, Paper 38 at 7 (Director Jan. 15, 2026) (informative). Petitioner cannot do so.

Petitioner’s only recourse is amendment, but there is no reason to allow it to amend its listing of real parties in interest, especially given its glaring failure to list Zhuhai Purida despite Purida’s commitment to pay any judgment owed to Patent Owner. Regardless, Petitioner cannot amend to include proper RPIs Zhuhai Technology and/or Zhuhai Huafa Group. *Tianma*, IPR2025-01579, Paper 12 at 5 (“bar[ring] a petition when a foreign government is an RPI of a petitioner.”).

E. The Petition Should Be Rejected Under § 325(d)

The Petition should also be denied institution because “the same or substantially the same prior art or arguments previously were presented to the

Office.” 35 U.S.C. § 325(d). Petitioner’s six grounds rely on primary reference Luo (Ex. 1005, CN 105428720 A), but substantially similar art was before the Office.

1. Petitioner Presents Substantially the Same Art Previously Considered and Rejected

The first *Advanced Bionics* prong considers “whether the same or substantially the same art previously was presented to the Office.” *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). During prosecution of the ’494, the Examiner cited U.S. Patent Publication No. US 2006/0147803 to Kim et al. (Ex. 1028, “Kim-803”). Kim-803 teaches coating a copper collector (Ex. 1028 ¶ [0027]), but fails to provide any guidance regarding an *area* of the copper collector that is left uncoated. Accordingly, the Examiner of the ’494 Patent allowed the challenged claims, stating that “[t]he closest prior art do not teach, fairly suggest or render obvious wherein an area of the second region, B%, is 0.4% to 54% of a surface area of the current collector; and $A \times B < 600$,” as recited in the challenged claims. Ex. 1002 at 181. Just like Kim-803, primary reference Luo provides no guidance regarding an *area* of a current collector that is left uncoated. For example, Luo generally describes that the width of an uncoated portion of a copper foil is 30 mm, but provides no guidance on the length of the uncoated region, and thus provides no guidance on the *area* of the uncoated region. This flaw in both Kim-803 and Luo not only warrants

discretionary denial under § 325(d), but also confirms that the challenged claims are patentable over deficient references like Kim-803 and Luo. Consequently (and similar to what the Examiner found with respect to Kim-803), Luo also fails to “teach, fairly suggest or render obvious wherein an area of the second region, B%, is 0.4% to 54% of a surface area of the current collector; and $A \times B < 600$.” Ex. 1002 at 181.

Moreover, Applicant filed an Information Disclosure Statement (IDS) on March 18, 2024 citing Matsuoka (JP2018156803), Gao (CN110739487), and Shinako (CN102668221). Ex. 1002 at 119. Like Luo, each of these references generally describes that the current collector of a negative electrode (or anode) includes a coated region and an uncoated/exposed region. Ex. 2014 at 4, 9, 11-12; Ex. 2015 at 5; Ex. 2016 at 9. Additionally, like Luo, Matsuoka provides generic disclosure regarding the fabrication of the negative electrode with incomplete information regarding the area of the uncoated region. For example, Matsuoka describes that after drying and rolling with a roll press, the copper foil was “punch[ed] out to 15 mm x 21 mm” to form a negative electrode with a coated portion and an uncoated portion. Ex. 2014 at 4 (describing that its secondary battery includes positive and negative electrodes that each have a tab constituted by an exposed portion of the respective current collector or by a piece of metal welded to the exposed portion of the respective current collector), 11-12 (describing that the

positive and negative electrode are cut/punched out to particular dimensions for incorporation into the secondary battery). Thus, just like the Luo reference now asserted, the information provided in Matsuoka is insufficient for a POSITA to accurately determine the *area* of the uncoated region. The Examiner signed the IDS indicating that these references were considered. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 3-4 (Director May 19, 2025) (precedential as to § A); *see also*, Ex. 1002 at 119-120. Thus, substantially similar art to Luo was previously presented to the Office and the first prong of *Advanced Bionics* is met as to Luo. The Board should deny institution under 35 U.S. C. § 325(d).

2. Petitioner Has Not Shown, and Cannot Show, Material Error

Even when references are only cited in an IDS, a petitioner must “explain, with reference to Becton Dickinson factors (c), (e), and (f), how the Examiner erred in overlooking the prior art.” *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 5 (PTAB May 19, 2025). Here, Petitioner alleges that the Examiner erred “by allowing the Challenged claims based on current-collector geometry that Kim-803 lacked but that unexamined prior art—including Luo—discloses in combination with the claimed nitrile content.” Pet. at 10. Such a conclusory statement is insufficient to demonstrate material error. Regardless, as described above with respect to Section III.E.1, the Examiner considered art that is

substantially similar to Luo in their determination that the art does not “teach, fairly suggest or render obvious wherein an area of the second region, B%, is 0.4% to 54% of a surface area of the current collector; and $A \times B < 600$.” Ex. 1002 at 181.

In view of the targeted IDS filing and the Examiner’s comments, there is little doubt that the Examiner reviewed and found that the cited references did not disclose the recitations in the claims. Petitioner has identified no errors in this analysis and cannot rely on the grounds presented in the Petition instead of the required identification of an error. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 5-6 (PTAB May 19, 2025). Accordingly, the Board should deny institution under § 325(d).

F. Heavy Reliance on Expert Testimony, Including to Fill Gaps in the Prior Art’s Teachings, Favors Denial

Petitioner relies heavily on expert argument, assumptions, and inferences to fill in the gaps of the prior art. *None* of the prior art references disclose at least a current collector comprising a first region and a second region, where “a negative electrode active substance layer is provided only in the first region,” and where “an area of the second region, B %, is 0.4% to 54% of a surface area of the current collector; and $A \times B < 600$.”

Instead of identifying explicit teachings or suggestions in the prior art that would have led a POSITA to the B% range and, thus, the $A \times B$ range, the Petition

and Petitioner's expert assume—without substantiation—that a POSITA would universally seek an electrode geometry in which the length of the uncoated region is equal to the length of the coated region even though battery cells are routinely made using electrode geometries in which coated and uncoated regions of the electrodes do not share any of the same dimensions. Pet. at 16-17; Ex. 1003 ¶ 65. This assumption is not found in any of the references, is not supported by the references, and is contrary to the common knowledge of a POSITA. Such conclusory and unsupported testimony is fatal to the Petition.

For example, in Grounds 1A and 1B¹, the Petition argues “[a] POSITA would have understood that Luo’s stated 104mm length is the total length of the cut copper-foil sheet—the common length of both its coated and uncoated regions.” Pet. at 16. Petitioner relies only on the testimony of their expert, Dr. Zhu, for this unsupported statement, and cannot point to any disclosure in Luo explaining that the 104mm

¹ Petitioner does not address independent Claim 1 or 10 in Ground 1B at all, but generally states “it would have been obvious to make [the uncoated] portion the same 104mm length as the coated portion for the same reasons discussed above for why a POSITA would read the lengths as the same.” Pet. at 45. Because nothing is said about Claim 1 or 10 in Ground 1B, the Board’s decision will turn on whether the Board accepts Petitioner’s conclusory statements in anticipation Ground 1A.

length of the uncoated region is common to both the coated and uncoated regions. *Id.* at 16-17, 45; Ex. 1003 ¶ 65. Moreover, neither Petitioner nor Dr. Zhu address other possible anode geometries, including flag shaped electrode geometries in which a square region of the current collector is coated and a thinner, rectangular region of uncoated current collector protrudes out of the cell (forming the pole of the flag) and acts as an integrated tab.

These gaps in the prior art are not filled by the references themselves but by speculative reasoning and hindsight reconstruction offered by Dr. Zhu, which are insufficient to establish a *prima facie* case of anticipation or obviousness.

G. Compelling Interests Favor Denial

The Director Memo also identifies “compelling economic, public health, or national security interests.” Patent Owner, a subsidiary of Japanese company TDK, 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, and has an interest in protecting its U.S.-granted intellectual property from attacks by an adjudicated willful infringer. Its continued investment in research and development and continued willingness to supply the United States are compelling reason for IPR denial.

Moreover, the March 11, 2026 Squires Memorandum directs the Office to consider, among other things, the extent to which products accused of infringement

in a parallel proceeding are manufactured in the United States or are related to investments in American manufacturing operations. Memorandum, Additional Discretionary Institution Considerations—U.S. Manufacturing and Small Business Use of AIA Proceedings at 2-3 (Mar. 11, 2026). Here, however, the formerly accused products are manufactured outside of the U.S. and the Petitioner is not a small business. This is yet another reason why the Patent Trial and Appeal Board is not the most appropriate or efficient forum for this dispute.

IV. CONCLUSION

The circumstances of this case strongly favor discretionary denial. As such, Patent Owner respectfully submits that the Board deny institution of the Petition.

Dated: October 5, 2026

Respectfully submitted,

By: / Christopher TL Douglas /
Christopher TL Douglas, Reg. No. 56,950

CERTIFICATION UNDER 37 C.F.R. §42.24

I certify that this brief complies with the type-volume limits stated in the Interim Director Discretionary Process because it contains fewer than 20 pages.

Dated: October 5, 2026

By: / Christopher TL Douglas /
Christopher TL Douglas

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that true and correct copies of the foregoing **PATENT OWNER'S DISCRETIONARY DENIAL BRIEF and NINGDE AMPEREX TECH. EXHIBITS 2001; 2003-2009; 2013-2019; and 2022** were served in their entirety on October 5, 2026 by filing the documents through the PTAB's P-TACTS Filing System as well as delivering true and correct copies by electronic mail on Petitioner's lead and backup counsel at the following email addresses (as agreed by counsel for Petitioner):

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