

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

IPR2026-00408
U.S. Patent No. 11,699,808

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL STANDARDS	2
III.	Argument	2
A.	The '808 Patent Is No Longer at Issue in the District Court.....	2
B.	Petitioner Offers No Stipulation, Increasing Risk of Duplicated Efforts	5
C.	Settled Expectations Favor Denial or Are at Least Neutral.....	6
D.	Petitioner Fails to Identify All RPIs.....	7
E.	The Petition Should Be Rejected Under § 325(d).....	11
1.	Petitioner Presents Substantially the Same Art Previously Considered and Rejected.....	11
2.	Petitioner Has Not Shown, and Cannot Show, Material Error	14
F.	Heavy Reliance on Expert Testimony, Including to Fill Gaps in the Prior Art's Teachings, Favors Denial.....	15
G.	Compelling Interests Favor Denial	18
IV.	CONCLUSION.....	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH</i> , IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020)	13, 14
<i>Ecto World, LLC v. RAI Strategic Holdings, Inc.</i> , IPR2024-01280, Paper 13 (Director May 19, 2025)	14, 15, 16
<i>Google LLC v. Mullen Industries LLC</i> , IPR2025-00227, Paper 13 (PTAB June 25, 2025)	4
<i>iRhythm Technologies v. Welch Allyn Inc.</i> , IPR2025-00377, Paper 10 (PTAB June 6, 2025)	7
<i>Mullen Industries LLC v. Samsung Electronic Co., Ltd.</i> , Case No. 2:24-cv-00049, ECF No. 52 (E.D. Tex. Nov. 21, 2024)	4
<i>Murata Mfg. Co., Ltd. v. Ga. Tech Research Corp.</i> , IPR2025-00383, Paper 13 (PTAB July 29, 2025)	6
<i>Phison Elecs. Corp. v. Vervain</i> , IPR2025-00213, Paper 14 (PTAB July 10, 2025)	5
<i>Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.</i> , IPR2025-00632, Paper 20 (PTAB Nov. 3, 2025)	6
<i>SportRadar AG v. Sportscast Inc.</i> , IPR2025-00313, Paper 16 (PTAB June 18, 2025)	5
<i>SportRadar AG v. Sportscast Inc.</i> , IPR2025-00313, Paper 19 (PTAB July 16, 2025)	4, 5
<i>Tianma v. LG Display</i> , IPR2025-01579, Paper 12 (Director Mar. 18, 2026)	8, 9, 12
<i>Viance, LLC v. Koppers Performance Chemicals Inc.</i> , PGR2026-00023, Paper 32 (Director Aug. 19, 2026)	9

<i>Yangtze Memory Technologies Co. v. Micron Technology, Inc.</i> , IPR2025-00098, Paper 38 (Director Jan. 15, 2026)	12
---	----

<i>Zerto, Inc. v. EMC Corp.</i> , IPR2014- 01254, Paper 35 at 7 (PTAB Mar. 3, 2015)	12
--	----

Statutes

35 U.S.C. § 312(a)(2).....	7
35 U.S.C. § 314(b)	2
35 U.S.C. § 325(d)	13, 16

Other Authorities

37 C.F.R. § 42.8(b)(1).....	7
37 C.F.R. § 42.104(b)(4).....	19

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 of Korean Patent No. 10-0670438 (“Kim-438”) provided by Espacenet
2015	U.S. Patent App. Pub. No. 2009/0023058 (“Kim-058”)
2016	U.S. Patent App. Pub. No. 2014/0356672 (“Lee”)
2017	U.S. Patent No. 5088870 (“Fukuhara”)
2018	Prosecution File History of U.S. Patent No. 11,094,992
2019	Reserved
2020	Reserved
2021	Reserved
2022	Chinese battery makers ATL, CosMX agree to settle global patent battle, available at:

Exhibit Number	Description
	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 1-27 of U.S. Patent No. 11,699,808 (the “’808 Patent,” Ex. 1001). The ’808 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”). The Third Texas Litigation was dismissed after the Parties negotiated an agreement to dismiss and withdraw all existing lawsuits and invalidity challenges. Not only have the Parties reached an agreement that resulted in a dismissal of the underlying district court case, the Parties had been involved in extensive patent litigation over the past four years (and so Petitioner has been well aware of the existence of these patents and their family members for years), Petitioner failed to list all real parties-in-interest (“RPIs”) (including government entities), Petitioner has not filed any stipulation, and Petitioner’s products are not manufactured in the United States. The Director should therefore exercise its discretion to deny institution to reduce the burden on all involved and to signal that IPR is not a true alternative to litigation when it is filed after the Parties have resolved their disputes.

II. LEGAL STANDARDS

As indicated in the Acting Director’s March 26, 2025 Memorandum titled “Interim Processes for PTAB Workload Management” (hereafter “Director Memo”), there are a number of non-exhaustive additional factors that may be considered by the Director when evaluating how to apply the Director’s discretion under 35 U.S.C. § 314(b) (hereafter, the “Memo Factors”). Director Memo at 2-3. In addition, the Director issued a memo titled Additional Discretionary Institution Considerations — U.S. Manufacturing and Small Business Use of AIA Proceedings. This stated that the extent to which any products accused of infringement in a parallel proceeding are manufactured in the United States or are related to investments in American manufacturing operations will be considered by the Director.

III. ARGUMENT

A. The ’808 Patent Is No Longer at Issue in the District Court.

In June, the Third Texas Litigation, which included the ’808 Patent, was dismissed as a result of an agreement between the Parties. Ex. 2001. Continuing with an IPR under these circumstances would undercut the purpose of IPRs and would be an inefficient use of the IPR system. In fact, this is an opportunity for the Director to address such gamesmanship by confirming that it is a waste of public resources to proceed on IPRs after the Parties themselves have agreed to dismiss the lawsuits asserting infringement of the patents challenged in those IPRs.

The Parties are competitors and have been involved in litigation across the world dating back to at least January 2022. Over the past four years, this litigation has encompassed 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 previously filed six IPR Petitions in 2023 and 2025 that were denied institution either on discretionary grounds or on the merits, and in 2026 dismissed four other IPR Petitions that were initially instituted, shortly after beginning oral arguments for those IPRs—all of which suggest denial is also appropriate here.

Despite the wide-ranging litigation across multiple different forums, in June 2026, the Parties entered into an agreement that resulted in the dismissal of all then-pending worldwide litigation, invalidity challenges, and IPRs. As a result of that agreement, the Third Texas Litigation, which included the patent challenged here, was dismissed without prejudice given the early stage of the proceedings and the wide-ranging resolution between the Parties. While the Third Texas Litigation was dismissed without prejudice given its early stage, it was done so as part of a negotiated agreement that resulted in the dismissal of all global litigation between the Parties. 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. *See id.* Here too, instituting review would be a waste of the Board's limited resources.

B. Petitioner Offers No Stipulation, 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 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 “Petitioner does not believe any claim terms require specific construction and thus should receive their plain and ordinary meaning, in the context of the ’808 patent specification, under Phillips.” *See, 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.

C. Settled Expectations Favor Denial or Are at Least Neutral

Though the '808 Patent issued over three years ago, Petitioner certainly has been aware of it and the other patents owned by Patent Owner, including related patents, given the years of litigation between the Parties. There can be little doubt that Petitioner was aware of the patent challenged in this proceeding well before it filed its Petition. Petitioner has not denied such knowledge in its Petition.

The '808 Patent claims priority to Chinese Application No. 201721567327, filed on November 17, 2017. Ex. 1001 at 1. Given that the Parties are competitors that have been litigating worldwide since at least January 2022 over Patent Owner's battery-technology patent portfolio, Petitioner would have had every reason to monitor this application and related applications. 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 13 at 2-3 (PTAB July 29, 2025).

Here, Petitioner delayed filing until nearly six months after the filing of the complaint and after the Parties reached agreement. This tactic of intentional delay should not be rewarded with institution. Instead, the Director should 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 the current disputes over this patent and its family members had been resolved. Petitioner’s decision to disrupt this post-agreement equilibrium by filing new IPRs further 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 seven¹ entities as RPIs but makes critical errors. *See* Petition at 69. 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.

¹ Petitioner listed the entity “Chongqing CosMX Battery Co.” twice, but failed to list “Chongqing CosMX Power Battery Co.,” which was listed as an RPI for U.S. Patent No. 12,334,494 at issue in co-pending IPR2026-00402.

(hereinafter “Zhuhai Technology”). Last, Zejiang CosMX Battery Co., Ltd and Zejiang CosMX Power Supply Co., Ltd are the wrong names.

The 2026 Semi-Annual Report of Zhuhai CosMX Battery Co., Ltd. lists Zhuhai Purida Investment Co., Ltd. (hereinafter “Zhuhai Purida”) as holding 17.57% ownership. Ex. 2009, at 65, 197. Worse, Petitioner admits that Zhuhai Purida Investment Co., Ltd., “the ***controlling shareholder*** of the Company,” acts in concert with at least nine other unlisted entities. *Id.* But Zhuhai Purida does not just own more than 10% of Petitioner; its principal also controls Petitioner. Specifically, Yanming Xu is both Petitioner’s Chairman of the Board and General Manager, and also 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.

Furthermore, Zhuhai Purida has specifically committed to pay any compensation due to ATL due to any adverse judicial rulings against Petitioner, leaving no doubt that they are a true RPI and should have been listed. Ex. 2009 at 48-49. Petitioner identifies this commitment in their own public investor filings, leaving no excuse for their 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. 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. As is reported in the 2026 Semi-Annual Report, Zhuhai Technology is also listed as Petitioner's shareholder and is listed as "a state-owned corporation." Ex. 2009 at 66. Zhuhai Technology owns 1.37% of Petitioner. *Id.* at 65-66.

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.* (珠海科技創業投資有限公司) (“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. To the extent Petitioner disagrees with any details of the chain of ownership and control, it was Petitioner’s burden to identify RPIs, and it is plain that Hu Wang retains 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. Here, there is no reason to allow Petitioner to amend its listing of real parties in interest, especially given its failure to list Zhuhai Purida, which is glaring given their 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 two grounds rely on primary reference Kim-439 (Ex. 1005, KR 10-0591439), but two other references, KR10-0670438 (“Kim-438”) and US2009/0023058 (“Kim-058”), by the *same inventor* (Joong Hun Kim) and applicant (Samsung SDI Co. Ltd.), with substantially similar disclosure were considered by the Examiner during prosecution. Ex. 1002 at 0085. Because Petitioner’s grounds here are based on substantially similar disclosure in Kim-438 and Kim-058 that was cited during prosecution, and because Petitioner has not shown and cannot show material error, this Petition should be denied under § 325(d).

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). Here there is no doubt that Kim-438 and Kim-058 were cited during prosecution of the '808 Patent. Ex. 1002 at 0085.

Both references from the same inventor independently disclose substantially the same structure from Kim-439 with curved sides that Petitioner now relies on. For example, Figures 5 and 6 of Kim-438 show the same structure that Petitioner relies upon in Figures 4b and 5b of Kim-439, respectively. Ex. 2014 at Figures 5 and 6. Kim-438 discloses a pouch-type lithium secondary battery having winged portions where “the wing portion 127 of the pouch bare cell is naturally folded while having a curvature as shown in FIG. 6.” Ex. 2014 at 3, Figure 6. Similarly, Figure 3B of Kim-058 shows the same structure that is disclosed in Figure 5b of Kim-439. Kim-058 discloses “the wing portions 41w, 42w are subjected to a rounding process” and “the wing portions 41w, 42w are rounded to surround both sides 41a2 of a pouch 41a.” Ex. 2015 at [0052]. There can be no dispute that the first prong of *Advanced Bionics* is met as to Kim-438 and Kim-058. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 3-4 (Director May 19, 2025) (precedential as to § A).

Additional reliance on Ueda (Ex. 1006) and Kim-999 (Ex. 1007) does not allow Petitioner to avoid *Advanced Bionics*' first prong. Petitioner relies on Ueda for an adhesive between side wings and curved sides of a battery. Petition at 32. During prosecution, the Examiner also cited US2014/0356672 (“Lee”). Ex. 1002 at 0085.

Lee disclosed using an adhesive between side wings and curved sides of a battery. For example, Lee discloses “the side wings 201 may be **adhered** onto the third and fourth side portions 230 and 240 of the battery cell 200.” Ex. 2016 at [0066] (emphasis added). “For example, the side wings 201 may overlap the supporting portion 150, and thus may be curved along with the rounded shape of the supporting portion 150.” *Id.* at [0065]. As such, the Examiner considered using Lee’s adhesive to adhere the wing portion of Kim-438’s or Kim-058’s battery package to its curved side face.

Petitioner relies on Kim-999 for disclosing various spatial arrangements for a folded wing portion of a structure. During prosecution, the Examiner also cited US5088870 (“Fukuhara”). Ex. 1002 at 0085. Fukuhara also discloses spatial arrangements for a folded wing portion of a structure. For example, Fukuhara discloses “[t]he point b has a somewhat rounded form, thus, the material plastically deforms to displace radially inward end at the end of the second winding up roll as shown in FIG. 10(C), the point c is located at the tip end of bending and a double bent winding up portion 46 is formed.” Ex. 2017 at 6:52-57, *see also* Fig. 10C.

Thus, substantially similar art to Ueda and Kim-999 (and the combinations presented herein) was also previously presented to the Office.

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

Petitioner must “explain, with reference to Becton Dickinson factors (c), (e), and (f), how the Examiner erred in overlooking the prior art.” *Ecto World*, IPR2024-01280, Paper 13 at 5. Here, Petitioner has not alleged *any* error by the Examiner. In fact, Petitioner identifies no errors or omissions in the prosecution of this patent. Indeed, in the Office Action mailed March 1, 2023, the Examiner explicitly stated:

Regarding **Claim 1**, the cited prior art discloses all aspects of the claimed invention except for the feature of the second part being adhered to the curved side face of the electrode body via an adhesive layer. In particular, the cited references disclose covering the side face of the electrode body with the second part by merely folding the second part but fail to explicitly teach provision of an adhesive layer (or similar material) to adhere the second part to the side face of the electrode body. The instant application teaches that providing adhering the second part to the curved side surface by an adhesive layer ensures a fit between each portion of the second part and the electrode body to further prevent the opening of the flange portion during transportation, use, or placement.

Ex. 1002 at 0044. Here, Petitioner is relying on disclosures substantially similar to the references cited and considered during prosecution, but has not identified, and cannot identify, any error by the Examiner.

In view of 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*, Paper 13 at 5-6. Accordingly, institution should be denied 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 the structure recited in claim 1, which the specification and the intrinsic record for the ’808 Patent describe as “the structure formed by the claimed configuration ensures the amount of glue at the valley bottom of the sides [is] as much as possible, so that the adhesive force here is improved, the tightness of the valley bottom is ensured and the problem of opening the flange portion when transporting, using, or storing is reduced as much as possible” and “when the protrusion segment of the flange portion has a curved structure, the battery side which nestles against the flange forms a structure having a reliable seal.” Ex. 2018 at 12.

Instead of identifying explicit teachings or suggestions in the prior art that would have led a POSITA to form the structure recited by the claims, the Petition and Petitioner’s expert rely on assumptions and impermissible hindsight that are not

found in any of the references, not supported by the references, and are contrary to the common knowledge of a POSITA. Petition at 32-34.

For example, in Ground 1, Petitioner argues “[a] POSA would have had a reasonable expectation of success in combining Ueda’s adhesive layer technique with Kim-439 because this modification would improve the structural integrity of Kim-439’s battery without meaningfully increasing its profile.” Petition at 33. Petitioner relies *only* on the testimony of their expert, Dr. Von Sacken, for this statement, and cannot point to any disclosure in Kim-439 or Ueda explaining that Ueda’s adhesive layer technique could be applied to Kim-439 without significantly increasing its profile. Ex. 1003 at ¶ 80. Moreover, neither Petitioner nor Dr. Von Sacken address the fact that the purpose of Kim-439 is to increase battery capacity by maximizing the size of a battery that can fit in a battery pack case. Ex. 1005 at 2. Adding adhesive to the sides of Kim-439, as suggested by Petitioner’s expert, necessarily adds width to the outside of Kim-439’s battery package and therefore decreases the maximum possible size and capacity of the battery that can fit into a battery pack case, which defeats the purpose of Kim-439. Petitioner never addresses this departure from Kim-439’s stated purpose.

Petitioner’s obviousness theory depends on *newly created expert figures* that alter Figure 5b of Kim-439. Petition at 33, 38. These new figures are not grounded in the teachings of Kim-439 or Ueda. They add structural features that the prior art

neither teaches nor suggests. Rather than deriving those features from the references, Dr. Von Sacken has, at best, constructed figures based on the teachings of the '808 Patent itself. Dr. Von Sacken's modified figures are therefore not evidence of what the prior art taught, but instead are classic hindsight reconstruction, and may not be relied upon. July 31, 2025 Memorandum by Coke Morgan Stewart, "Enforcement and Non-Waiver of 37 C.F.R. § 42.104(b)(4) and Permissible Uses of General Knowledge in Inter Partes Review" (expert testimony may not be used to supply a missing claim limitation not present in the prior art).

With respect to Ground 2, Petitioner argues that "[a] POSA would have been motivated to modify the height of Kim-439's second part such that a projection of the second part's second end portion in the width direction is located between a central plane of Kim-439's first part and a projection of Kim-439's first surface in the width direction, as taught by Kim-999, to minimize the battery's footprint." Petition at 108-109. Petitioner *only* relies on the testimony of Dr. Von Sacken to generate Kim-439's modified battery despite the lack of any support for such a configuration from any of the references. *Id.* Absent support from the references, Dr. Von Sacken instead again relies on the teachings of the '808 Patent to generate Kim-439's modified battery.

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

Patent Owner's own expert will provide testimony explaining why these assumptions about the prior art are incorrect and how Petitioner's expert is simply "filling in gaps" in the prior art. This, on top of the other reasons demonstrating that this is an inefficient and wasteful proceeding, favors denial of institution.

G. Compelling Interests Favor Denial

The Director Memo also identifies "compelling economic, public health, or national security interests." Patent Owner (which is 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. 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.

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).

As outlined in the March 11, 2026 Director memorandum related to American manufacturing, 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 is to be considered when considering institution. Here, the formerly accused products are manufactured outside of the U.S. 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: September 30, 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: September 30, 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, 2013-2018, and 2022** were served in their entirety on September 30, 2026 by filing this document through the PTAB's P-TACTS Filing System as well as delivering a true and correct copy by electronic mail on Petitioner's lead and backup counsel at the following email addresses (as agreed by counsel for Petitioner):

Jason A. Fitzsimmons	jfitzsimmons-PTAB@sternekessler.com
Jason D. Eisenberg	jasone-PTAB@sternekessler.com
Ian Soule	isoule-PTAB@sternekessler.com
John D. Higgins	jhiggins-PTAB@sternekessler.com
James D. Stein	james.stein@leehayes.com
Steven Philbin	steven.philbin@leehayes.com
	PTAB@sternekessler.com
	COSMX-PTAB@leehayes.com

Dated: September 30, 2026

By: / Christopher TL Douglas /
Christopher TL Douglas