

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

IPR2026-00409
U.S. Patent No. 12,278,330

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	Reserved
2015	<i>Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Technology Ltd.</i> , IPR2025-00389, Paper 2 (January 15, 2025)
2016	<i>Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Technology Ltd.</i> , IPR2025-00389, Paper 8 (June 10, 2025)
2017	<i>Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Technology Ltd.</i> , IPR2025-00389, Paper 10 (September 9, 2025)
2018	European Patent Office English Translation of Description and Claims of Japanese Patent Publication No. JP 2014225326A to Sugita et al. (“Sugita”) provided by Espacenet

Exhibit Number	Description
2019	<i>Ningde Ampere Technology Ltd. v. Zhuhai CosMX Battery Co., Ltd.</i> , Case No. 2:24-cv-00728, Complaint (E.D. Tex 2024)
2020	European Patent Office English Translation of Description and Claims of Chinese Patent Publication No. CN110429328B provided by Espacenet
2021	English Translation of Chinese Patent Office First Search Opinion Dated July 3, 2020 provided by Espacenet
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 1-20 of U.S. Patent No. 12,278,330 (the “’330 Patent,” Ex. 1001), one of six patents Patent Owner asserted against Petitioner in a now dismissed district court action (Civil Action No. 2:26-cv-00139, the “Third Texas Litigation”). 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), Petitioner has filed no 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 '330 Patent Is No Longer at Issue in the District Court.

In June, the Third Texas Litigation, which included the '330 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 argument began—all of which suggest denial is appropriate here.

Despite the wide-ranging litigation across multiple 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. 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. Starting a new wave of IPRs would frustrate 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 in 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. Sportscaster 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 ’330 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 ’330 Patent issued recently, the years of litigation between the Parties leave little doubt that Petitioner was long aware of it and of Patent Owner’s other and related patents. Petitioner has not denied such knowledge in its Petition.

The ’330 Patent claims priority to Application No. 17/746,755 filed on May 17, 2022, now Patent No. 11,923,498 which is a continuation of Application No. 17/407,081, filed on Aug. 19, 2021, which is a continuation of Application No. 16/113,938, filed on Aug. 27, 2018, now abandoned, which is a continuation of Application No. 14/596,873, filed on Jan. 14, 2015, now Pat. No. 10,541,441 (issued on Jan. 21, 2020 after being published in 2015). Ex. 1001 at 1. Application No. 14/596,873 (the ’441 Patent) in turn claims priority to Chinese Patent Application 201420030319.4 filed on January 17, 2014. *Id.* 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 parent to the '330 Patent (CN203733894U) was cited as relevant art to Petitioner in multiple of Petitioner's patent prosecutions worldwide as early as March 2020, further ensuring Petitioner's knowledge of this family. Exs. 2020, 2021.

Moreover, on January 15, 2025, Petitioner filed an *inter partes* review petition challenging the '498 Patent, the parent of the '330 Patent, further evidencing its knowledge of the portfolio. Ex. 2015. Worse, Petitioner's arguments in the '498 Patent IPR are materially different from those here despite relying on many of the same references. In the '498 proceedings, Petitioner and its expert argued that a POSITA would rely only on the embodiments depicted in Figures 8 and 9, emphasizing Takemura's use of insulating tape as the basis for the proposed combination with Sato. Ex. 2015 at 28-39. Here, using the prior IPR arguments and decisions as a roadmap, Petitioner takes the opposite approach, urging that a POSITA would focus on Figure 4 while disregarding the very embodiments it previously identified as the sole relevant ones. Pet. at 38-39; *see Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16-18 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i) (discouraging strategic staging of prior art and arguments in multiple serial petitions, using prior decisions as a roadmap, as "unfair to patent owners" and "an inefficient use of the inter partes review process and other post-grant review processes."). These inconsistent positions do not reflect

an accurate understanding of what a POSITA would have understood when reading Takemura, but are instead the epitome of hindsight based on lessons learned from Petitioner's prior IPR petition against a related family member.

Such inconsistencies show why petitioners should be required to challenge closely related patents at the same time: had the challenges proceeded together (or had a district court case remained pending), Patent Owner and the Board could have addressed Petitioner's conflicting theories. Petitioner should not be rewarded for withholding its challenge to the '330 Patent and then advancing a materially different theory after the related IPR against the '498 Patent was terminated based on a global agreement. Regardless of the gamesmanship, Petitioner has undoubtedly been aware of the patent family encompassing the '330 Patent since at least September 2024, if not substantially earlier. Ex. 2019.

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).

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 are expected to bring early challenges. *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.”). Petitioner’s delay after years of awareness of the ’330 Patent’s family favors denial even though the ’330 Patent did not issue until April 2025, Pet. at 113: its Chinese parent application issued in 2015 and the first U.S. family member issued in January 2020, over six years before the instant Petition. The Parties’ global agreement also created its own settled expectation that disputes over this patent and its family members had been resolved, and 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 seven¹ entities as RPIs but makes critical omissions. See Pet. 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

¹ Petitioner also listed “Chongqing CosMX Battery Co.” twice, but failed to list “Chongqing CosMX Power Battery Co.,” which it listed in IPR2026-00402.

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

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 not only owns 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 also specifically committed to pay any compensation due to ATL from 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 65-66.

What’s more, Hu Wang serves as a director on Petitioner’s board. *Id.* at pp. 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* 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 three grounds rely on three references Sato (Ex. 1005), Takemura (Ex. 1006), and Kodama (Ex. 1007) but a relative of Sato was already before the Office, Sato and Takemura were relied upon in the ’498 IPR proceedings, and the addition of Kodama does not substantially change this combination. Indeed, Petitioner admits that its ground is largely the same as the ground it previously presented to the Board but then dismissed. Pet. at 1 (“*As in the ’498 Patent*, the ’330 Patent claims”) (emphasis added).

Because Petitioner’s grounds here are based on both Sato and Takemura, and because Petitioner has not shown material error, this Petition should be denied.

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 (Feb. 13, 2020) (precedential). The Chinese counterpart to Sato was expressly disclosed to the Office in an IDS filed on April 11, 2024, and was acknowledged by the Examiner on August 6, 2024. Ex. 1002 at 253-255; pp. 73-75.

Therefore, there can be no dispute that the first prong of *Advanced Bionics* is met as to Sato. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 3-4 (Director May 19, 2025) (precedential as to § A). Moreover, during prosecution the Examiner applied Sugita (Ex. 2018, JP2014-225326) against the claims in an Office Action filed on August 6, 2024. Although not identical to Sato, Sugita is closely related: both were assigned to Panasonic and disclose the same fundamental battery architecture, Ex. 2018 at 1; Ex. 1005 at 1, and both depict a wound electrode group including a negative lead positioned at the bottom of the electrode assembly, with active material provided on the facing surface of the electrode, Ex. 2018; Ex. 1005. Indeed, Figure 1 of each reference has substantially the same structure. Ex. 2018 at Fig. 1; Ex. 1005 at Fig. 1.

Most importantly, the very structural characteristics on which Petitioner relies in Sato were already before the Office through Sugita. The Examiner nevertheless determined that Sugita failed to satisfy the claim requirements (Ex. 1002 at 52 “As noted above in the phone interview summary, the Examiner agrees that Sugita fails to teach at least the highlighted claim features above.”). Thus, the Examiner already considered and rejected the same type of battery structure that Petitioner now repackages through Sato. Accordingly, Petitioner presents no materially different prior-art teaching; it asks the Board to reconsider art directed to the same battery structure already evaluated during prosecution. That request weighs strongly in favor

of discretionary denial.

The first prong of *Advanced Bionics* is further satisfied because references relied upon in the Petition, including Sato and Takemura, were previously presented to the Office in a related proceeding involving a patent from the same family. The '330 Patent is a continuation of the '498 Patent, and in the IPR proceedings directed to the '498 Patent, Petitioner relied upon both Sato and Takemura in asserting patentability challenges directed to similar battery technology. Ex. 2015. Those challenges have now been dismissed (significant resources were invested by the Parties and the Board prior to dismissal as a result of a settlement).

Sato and Takemura are therefore neither newly discovered nor previously unconsidered references; they have already been brought to the Office's attention and analyzed in connection with a related family member, confirming that the asserted grounds are based on the same or substantially the same prior art previously presented. And as explained, Petitioner previously advanced a different reading of Sato and Takemura in the '498 IPR proceedings, which the Board accepted for purposes of institution despite Patent Owner's protests. Petitioner should not be allowed to abandon its original reading to adopt the very interpretation that Patent Owner advanced in the earlier proceeding. Regardless, both theories have been presented to the Office, and Petitioner cannot assert error because it itself advocated for the reading the Board ultimately adopted.

The addition of Kodama does not alter that conclusion. Sato and Takemura form the core of Petitioner's obviousness theory, just as they did in the '498 proceedings, and Kodama merely supplements that combination for a limited additional teaching (Ex. 1001 at cl. 1 “a portion of the negative current collector where the negative lead is disposed extends towards the center of the battery”). Petitioner cannot avoid discretionary denial by repackaging previously presented art in a slightly modified combination while advancing the same basic theory of unpatentability. Petitioner's reliance in Grounds 2 and 3 on Nakamura (Ex. 1012 at 2003-68271) and Kobayashi (Ex. 1008, JP 2010-55906)—both of which were also used in the '498 IPR proceedings—confirms that Petitioner merely repackaged old art, further evidencing the inefficient nature of this proceeding.

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*, IPR2024-01280, Paper 13 at 5. Here, Petitioner does not allege *any* error by the Examiner or the PTAB, and identifies no errors or omissions in the prosecution of this patent or in the PTAB's prior institution decision. Petitioner relies on the same and/or substantially similar references to address the battery configuration but has not identified any error by the Examiner.

In the '498 IPR proceedings, Patent Owner repeatedly argued that a POSITA

would **not** look to Figures 8 and 9 of Takemura when combining Takemura with Sato. Specifically, Patent Owner contended that Petitioner “overlook[s] the fact that Takemura disparages the use of tape” and that “Takemura is clear that a POSITA should not use the structures depicted in Figs. 8 and 9,” because Figures 8 and 9 depict disfavored Comparative Example 1—background prior art over which Takemura claims to have improved. Ex. 2016 at 18. Patent Owner argued that Takemura “describes the tape of Figures 8 and 9 in the background section and then explicitly teaches not to use it for a variety of reasons,” and that a POSITA would therefore not be motivated to combine the tape of Figures 8 and 9 of Takemura with Sato. Ex. 2016 at 18. In its Decision Granting Institution, the PTAB sided with Petitioner’s reliance on Figures 8 and 9. Ex. 2017 at 24-25. Petitioner cannot now argue that the Board erred by accepting their own argument.

In view of the IDS submission, the Examiner’s comments in the related Office Action, and the arguments contained in the ’498 IPR proceedings, there is no basis to conclude that the Examiner erred in determining that the cited references failed to disclose the claimed limitations. Petitioner identifies no error in that analysis and cannot rely on the grounds presented in the Petition without identifying one. *Ecto World*, 5-6. Petitioner has thus failed to demonstrate under *Advanced Bionics* prong 2 that the Office materially erred in evaluating the art and arguments the Petition raises, and 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 cited references discloses a negative electrode that satisfies both the orientation and extension limitations recited in the challenged claims—that is, that “the negative lead is disposed on a surface of the negative current collector facing away from the center of the battery” and “a portion of the negative current collector where the negative lead is disposed extends towards the center of the battery.” Ex. 1001 at cl. 1.

For example, in Ground 1, Petitioner’s reliance on Takemura is hindsight-driven and depends on Dr. von Sacken’s testimony to fill gaps in the prior art, selecting Figure 4 from among Takemura’s six disclosed embodiments based solely on that testimony. Ex. 1003 at ¶¶ 138-143. Petitioner argues that “[a] POSA would have understood Takemura’s configuration as one of two straightforward, conventional options for attaching a lead tab to a current collector – attachment on either the surface facing toward that battery’s center or the surface facing away from the battery’s center.” Pet. at 38. Dr. von Sacken merely repeats this, adding his own unsupported description of the embodiment: “such a modification would have involved a simple choice of one of two finite, predictable solutions (i.e., disposing the negative lead (11) on a center-facing surface of the current collector (10)) or the

other (i.e., disposing the negative lead (11) on an outward-facing surface of the current collector (10)).” Ex. 1003 at ¶ 141. He cites no disclosure in Takemura that would motivate a POSITA to select one of its six arrangements, especially when he advocated for a different embodiment in the prior proceeding, and he identifies no design need, market pressure, or other motivation that would suggest to one of ordinary skill to pursue the claimed course or selection. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417, 421, (2007). Petitioner’s cherry-picking is especially apparent when viewed against its prior reliance on Takemura in the related IPR proceedings involving the parent ’498 Patent.

Petitioner likewise relies on Dr. von Sacken’s testimony to bridge a critical gap in Kodama, arguing that “[a]lthough Kodama expressly describes this configuration in the context of a positive electrode, a POSA would have readily understood that the same principles and advantages apply to recesses formed in the middle portion of negative electrodes as well.” Pet. at 41. Its only support is Dr. von Sacken, who asserts that “[g]iven the structural similarities between negative and positive electrodes with centrally-located recesses, as disclosed in Sato, a POSA would have understood Kodama’s technique would function in an analogous manner if applied to a negative electrode with a centrally-located lead tab.” Ex. 1003 at ¶ 147. But he points to no disclosure in Kodama explaining why a configuration expressly taught for a positive electrode would have been applied to a negative

electrode, particularly where the negative electrode is made from materially different components, including copper foil and graphite or silicon-based active material rather than aluminum foil and lithium cobalt oxide. Petitioner's theory thus requires the Board to accept Dr. von Sacken's word that Kodama's positive-electrode teaching would apply equally to a materially different negative electrode, despite the absence of any such teaching in Kodama itself.

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, 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 reasons 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: 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 of 37 C.F.R. §42.24 and the Director Memo 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, and 2015-2022** 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):

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