

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ZHUHAI COSMX BATTERY CO., LTD.,  
Petitioner

v.

NINGDE AMPEREX TECHNOLOGY LIMITED,  
Patent Owner

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Case IPR2025-00405  
U.S. Patent No. 11,769,910

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**AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST**

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**EXHIBIT LIST**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
1001	U.S. Patent No. 11,769,910 (“the ’910 Patent”)
1002	Prosecution history of U.S. Patent No. 11,769,910 (“the ’910 Patent file history”)
1003	Declaration of Dr. Brett Lucht, Ph.D.
1004	<i>Curriculum Vitae</i> of Dr. Brett Lucht, Ph.D.
1005	China Patent Application Publication No. CN 106099187A to Zeng et al. (“Zeng”)
1006	Certified English Translation of China Patent Application Publication No. CN 106099187A to Zeng et al. (“Zeng”)
1007	U.S. Patent Application Publication No. 2013/0224535 A1 to Matsuoka et al. (“Matsuoka”)
1008	U.S. Patent Application Publication No. 2017/0288268 A1 to Kim et al. (“Kim”)
1009	Japan Patent Application Publication No. 2009-252349 to Sunose et al. (“Sunose”)
1010	Certified English Translation of Japan Patent Application Publication No. 2009-252349 to Sunose et al. (“Sunose”)
1011	China Patent No. 108023117 to Su et al. (“Su”)
1012	Certified English Translation of China Patent No. 108023117 to Su et al. (“Su”)
1013	China Patent Application Publication No. CN 105552439 A to Zhou et al. (“Zhou”)
1014	Certified English Translation of China Patent Application Publication No. CN 105552439 A to Zhou et al. (“Zhou”)
1015	Chinese Patent No. 106848381 (“Hong”) and Certified Translation of Hong
1016	Petition (Paper 1) in <i>Zhuhai CosMX Battery Co. v. Ningde Amperex Tech. Ltd.</i> , IPR2023-00586 (PTAB Feb. 23, 2023)

<u>Exhibit No.</u>	<u>Description</u>
1017	Decision Denying Institution (Paper 14) in <i>Zhuhai CosMX Battery Co. v. Ningde Amperex Tech. Ltd.</i> , IPR2023-00586 (PTAB Aug. 18, 2023)
1018	National Library of Medicine PubChem web pages for adiponitrile, 1,3,6-tricyanohexane, lithium hexafluorophosphate, 1,3-propane sultone, succinonitrile, 1,2-bis(2-cyanoethoxy)ethane
1019	Millipore Sigma data sheets for ethylene carbonate (EC), propylene carbonate (PC), ethyl propionate (EP), and propyl propionate (PP)
1020	TCI America page for 1,3,6-Hexanetricarbonitrile
1021	Complaint, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:24-cv-00728-JRG (E.D. Tex. Sept. 6, 2024), ECF 1.
1022	Unopposed Application for Extension of Time to Answer Complaint, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:24-cv-00728-JRG (E.D. Tex. Dec. 4, 2024), ECF 16.
1023	U.S. Patent Application Publication No. 2017/0324116 A1 to Youichi Ohashi (“Ohashi”)
1024	U.S. Patent Application Publication No. 2016/0294007 A1 to Wang Kefei (“Kefei”)
1025	U.S. Patent Application Publication No. 2017/0069934 A1 to Yun-Hee Kim et al. (“Kim ’934”)
1026	Partial Stay Order, <i>STA Grp. LLC v. Motorola Sols., Inc.</i> , No. 2:23-cv-00030-JRG-RSP (E.D. Tex. Aug. 27, 2024), ECF 402.
1027	Order, <i>Stellar, LLC v. Motorola Sols., Inc.</i> , No. 4:23-cv-00750-SDJ (E.D. Tex. Apr. 21, 2025), ECF 170
1028	Order, <i>Cellspin Soft, Inc. v. ByteDance Ltd.</i> , No. 2:23-cv-00496-JRG-RSP (E.D. Tex. Jan. 27, 2025), ECF 106
1029	Order, <i>Intercurrency Software LLC v. Binance Holdings Ltd.</i> , No. 2:23-cv-00370-JRG (E.D. Tex. Aug. 29, 2024), ECF 86
1030	Order, <i>Netlist, Inc. v. Micron Tech., Inc.</i> , No. 2:22-cv-00203-JRG (E.D. Tex. Feb. 10, 2024), ECF 493

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
1031	Order, <i>BoxCast Inc. v. Resi Media LLC</i> , No. 2:21-cv-00217-JRG (E.D. Tex. May 25, 2022), ECF 163
1032	Order, <i>Datatresury Corp. v. Fiserv, Inc.</i> , No. 2:13-cv-00431-JRG-RSP (E.D. Tex. Aug. 14, 2014), ECF 616
1033	Docket Navigator Time to Trial for Eastern District of Texas District Judge Rodney Gilstrap
1034	“Nearly two lithium battery fires per week on airplanes in the US alone,” CTIF (Dec. 19, 2024), available at <a href="https://ctif.org/news/nearly-two-lithium-battery-fires-week-airplanes-us-alone">https://ctif.org/news/nearly-two-lithium-battery-fires-week-airplanes-us-alone</a>
1035	Declaration of John C. Evans in Support of Petitioner’s Response to Patent Owner’s Discretionary Denial Brief
1036	Report on District Judge Rodney Gilstrap from Lex Machina
1037	Verdict Form, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:22-cv-00232-JRG (E.D. Tex. Feb. 9, 2024), ECF 345.
1038	Amended Final Judgment, <i>Ningde Amperex Tech. Ltd. v. Zhuhai CosMX Battery Co.</i> , No. 2:22-cv-00232-JRG (E.D. Tex. Sept. 3, 2024), ECF 427.

Zhuhai CosMX Battery Co., Ltd. (“Petitioner”) hereby submits this Authorized Response to Ningde Ampere Technology Limited’s (“Patent Owner”) Request for Director Review of the Board’s Decision Granting Institution of *Inter Partes* Review (Paper 16, “Patent Owner’s Request”) under the Director’s August 27, 2025, email authorization (Exhibit 3100). Patent Owner’s Request actually makes two separate requests: (1) a request for Director Review of the Board’s Institution Decision; and (2) a request for rehearing the Director’s earlier decision to not grant discretionary denial. Both requests should be denied.

First, Patent Owner’s claim that the Board abused its discretion in instituting review lacks merit. The Board found that Petitioner was likely to prevail on the vast majority of claims and grounds presented in the Petition. Even assuming that Patent Owner is correct that the challenges to claims 20-26 are forfeited (they are not), this small minority is outweighed by the challenges likely to prevail by a factor of 2:1. Thus, consistent with the law and PTAB precedent, the Board correctly instituted this IPR.

Second, seeking a second bite at the apple, Patent Owner rehashes prior discretionary denial arguments that the Director already considered and rejected. Patent Owner fully briefed the potential impact of denial of institution of a separate IPR on this proceeding in its request for discretionary denial. The Director weighed those arguments, along with all of the other arguments and evidence presented, and

correctly concluded that referral to the panel was appropriate. It remains so, as is the panel's decision to institute.

## **I. LEGAL STANDARD**

Requests for Director Review of a Board's decision are governed by 37 C.F.R. § 42.75. Requests are limited to decisions that present “(a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” Director Review Process § 2(B). A decision presents an abuse of discretion only if it:

(1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) follows from a record that contains no evidence on which the Board could rationally base its decision.

*VidStream LLC v. Twitter, Inc.*, 981 F.3d 1060, 1064 (Fed. Cir. 2020) (quoting *Shu-Hui Chen v. Bouchard*, 347 F.3d 1299, 1307 (Fed. Cir. 2003)).

## **II. ARGUMENT**

### **A. The Board did not err in instituting this IPR.**

Patent Owner argues that the Board should have declined to institute “in the interest of efficiency” because challenges to a subset of claims have purportedly been “forfeited” and a subset of grounds are purportedly unlikely to succeed. Paper 16 at 5-7. More specifically, Patent Owner contends that the Board did not consider or address Patent Owner's efficiency argument, and that constitutes error. *Id.* at 11.

For the reasons explained below, the Board correctly determined to institute this IPR and did not abuse its discretion or make any erroneous findings of fact or conclusions of law, in instituting review.

**1. The Board thoroughly evaluated Patent Owner’s arguments.**

Unhappy with the Board’s nearly 100-page Institution Decision, Patent Owner contends the Board erred by not expressly addressing a conclusory assertion made in its Preliminary Response (“POPR”). Paper 16 at 11. The Board did not err. To start, Patent Owner vastly overstates the argument it made in its POPR. The POPR merely had a single conclusory assertion that “[g]iven that *all* grounds lack merit ... it would not be an efficient use of resources for the Board to institute.” Paper 9 at 59. The Board considered, and rejected this argument, when it determined to institute this IPR in its thorough Institution Decision. *See Medtronic, Inc. v. Daig Corp.*, 789 F.2d 903, 906 (Fed. Cir. 1986) (“We presume that a fact finder reviews all the evidence presented unless he explicitly expresses otherwise.”).

As the sole support for this argument, Patent Owner cites *Nokia of America Corporation v. Soto*. Paper 16 at 5 (citing IPR2023-00680, Paper 18 (PTAB Mar. 28, 2024), Paper 30 at 7, 15 (PTAB Dec. 3, 2024)). But *Nokia* addressed whether the Board sufficiently analyzed the first part of the *Advanced Bionics*<sup>1</sup> framework in

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<sup>1</sup> *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-

support of its denial of institution under 35 U.S.C. § 325(d). *Nokia*, IPR2023-00680, Paper 18 at 4, 8-9 (PTAB Mar. 28, 2024), Paper 30 at 4 (PTAB Dec. 3, 2024). Here, by contrast, no stringent framework governs whether institution should be denied for efficiency reasons alone. Moreover, *Nokia* should be interpreted narrowly, as the Federal Circuit has held that “[t]he Board is not required to address every argument raised by a party or explain every possible reason supporting its conclusion.” *Novartis AG v. Torrent Pharms. Ltd.*, 853 F.3d 1316, 1327 (Fed. Cir. 2017) (citation modified). Nor does silence on a specific argument—especially an incidental one—indicate that the Board did not consider it. *Id.*; *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 70 F.4th 1331, 1348 (Fed. Cir. 2023). The Board is well aware of the efficiency considerations articulated in *Chevron* and *Deeper* when a petition fails to present a sufficient number of grounds/challenged that meet the reasonable likelihood standard. *Chevron Oronite Co. v. Infineum USA LP*, IPR2018-00923, Paper 9 (PTAB Nov. 7, 2018); *Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, Paper 7 (PTAB Jan. 24, 2019). The Board is further aware that efficiency is a *discretionary* issue that it “*may* consider.” *Chevron*, IPR2018-00923, Paper 9 at 9-11 (emphasis added). Here, where the Board determined Petitioner established a reasonable likelihood of prevailing on the vast majority of the grounds and claims (and Patent

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01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential).

Owner did not ask the Board to address explicitly *Chevron-Deeper*), the Board’s silence merely indicates the Board correctly determined this IPR does not warrant denial because of efficiency considerations.

**2. The Board ruled that Petitioner is likely to prevail on at least the majority of the challenged claims and grounds.**

The Board did not err in implicitly finding that institution was an efficient use of its resources. Petitioner challenged claims 1-6 and 12-26. Paper 3 at 1. The Board ruled that Petitioner is likely to prevail as to at least claims 1-6 and 12-19—that is, at least the majority of the challenged claims. Paper 12 at 40, 44, 48, 55, 62, 72, 88-90. The Board likewise ruled that the majority of Petitioner’s grounds (12 out of 15) were likely to prevail in whole or in part. *Id.* The below table summarizes the Board’s preliminary findings, with the claims for each Ground found likely to prevail highlighted in green:

Ground	Claims	References
1A	1-6, 12, 16-19, 20-26	• Zeng
1B	1-6, 12, 16-19, 20-26	• Zeng, Matsuoka
1C	1-6, 12, 16-19, 20-26	• Zeng, Matsuoka, Kim
2A	13, 14	• Zeng, Sunose
2B	13, 14	• Zeng, Sunose • Zeng, Matsuoka, Sunose
2C	13, 14	• Zeng, Kim, Sunose • Zeng, Matsuoka, Kim, Sunose
3A	15	• Zeng, Sunose, Su
3B	15	• Zeng, Sunose, Su • Zeng, Matsuoka, Sunose, Su

Ground	Claims	References
3C	15	<ul style="list-style-type: none"> <li>• Zeng, Kim, Sunose, Su</li> <li>• Zeng, Matsuoka, Kim, Sunose, Su</li> </ul>
4A	1–6, 12, 16–19, 20-26	<ul style="list-style-type: none"> <li>• Zhou</li> </ul>
4C	1–6, 12, 16–19, 20-26	<ul style="list-style-type: none"> <li>• Zhou, Kim</li> </ul>
5A	13, 14	<ul style="list-style-type: none"> <li>• Zhou, Sunose</li> </ul>
5C	13, 14	<ul style="list-style-type: none"> <li>• Zhou, Sunose</li> <li>• Zhou, Kim, Sunose</li> </ul>
6A	15	<ul style="list-style-type: none"> <li>• Zhou, Sunose, Su</li> </ul>
6C	15	<ul style="list-style-type: none"> <li>• Zhou, Sunose, Su</li> <li>• Zhou, Kim, Sunose, Su</li> </ul>

In light of these findings, the Board’s decision to institute is both reasonable and an efficient use of the Board’s resources.

Moreover, here, the facts are highly distinguishable from *Chevron* and *Deeper*. In *Chevron*, institution was denied because there was only “a reasonable likelihood of prevailing with respect to two dependent claims out of a total of twenty challenged claims.” IPR2018-00923, Paper 9 at 11. Similarly in *Deeper*, institution was denied because “Petitioner challenged twenty-three claims under four asserted grounds” but was only likely to prevail on “two claims on one asserted ground.” IPR2018-01310, Paper 7 at 42-43. These cases bear no resemblance to the situation here, where the Board found Petitioner is likely to prevail on at least the majority of claims and grounds. Paper 12 at 40, 44, 48, 55, 62, 72, 88-90.

Patent Owner’s attempt to paint a different picture relies on creative math—including double-counting grounds—to make institution seem less efficient. For

example, Patent Owner inflates the number of grounds presented by double counting Grounds 5C and 6C. Paper 16 at 11. Patent Owner also claims that “ten of the raised grounds[] were fatally flawed,” but they only identify Grounds 4C, 5C, and 6C. *Id.*<sup>2</sup> Elsewhere Patent Owner refers to Grounds 1A, 1B, 1C (double counted), and 4A, but these grounds are not “fatally flawed” – Patent Owner admits the Board found these grounds were likely to prevail with respect to claims 1-6, 12, and 16-19. Paper 16 at 10.

At bottom, the Board found that a least the majority of the asserted grounds are likely to prevail and at least the majority of the challenged claims will likely be found unpatentable. Thus, the efficiency concerns articulated in *Chevron-Deeper* are simply inapplicable here and, rather than being an abuse of discretion, it would have been unreasonable to deny institution based on efficiency concerns.

### **3. Petitioner did not forfeit challenges to claims 20-26.**

As an initial matter, whether Petitioner purportedly forfeited challenges to claims 20-26 is irrelevant to the propriety of granting institution. As explained

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<sup>2</sup> The Board did not state that these Grounds were fatally flawed, but merely that based on the “preliminary record” they did not appear to meet the threshold for institution. Paper 12 at 90-91. Petitioner respectfully disagrees and contends that Grounds 4C, 5C, and 6C will prevail at trial.

above, the Board found that Petitioner is likely to prevail on at least claims 1-6 and 12-19. So, even if Patent Owner were correct, institution remains reasonable based on the Board's finding that *two-thirds* of the challenged claims are likely to be unpatentable as obvious. Nevertheless, and to the extent the Director wishes to delve deeper into Patent Owner's argument at this stage, Petitioner addresses it below.

**a. The Petition and Dr. Lucht's declaration identify disclosure of fluoroethylene carbonate in both Zeng and Zhou.**

Institution is appropriate if “the information presented in the petition” shows “a reasonable likelihood that the petitioner would prevail.” 35 U.S.C. § 314(a). And the Office rules require “[t]he petition [to] specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4). The Petition meets these standards for all challenged claims, including claims 20-26.

Claim element [20.7] recites the same subject matter as earlier claims but adds that the electrolyte also includes “fluoroethylene carbonate” (FEC).<sup>3</sup> Accordingly,

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<sup>3</sup> Element [20.7] further recites that the electrolyte further comprises “0.1 wt% to 3 wt% propanesultone” (PS), but Patent Owner does not dispute that the Petition sufficiently addresses where the PS component is disclosed in the prior art—because the Petition sufficiently does so. Thus, Petitioner mainly focuses its analysis on the

as will be shown in trial, the Petition properly references prior analysis of the Zeng and Zhou references covering the same material. Paper 3 at 29<sup>4</sup> and 68-69<sup>5</sup>. Patent Owner contends that “the Petition and Dr. Lucht’s declaration both lack *any argument* explaining how claim element [20.7] is allegedly met by the prior art.” Paper 16 at 8. Not so. Again, as will be shown in trial, *both* the Petition and Dr. Lucht’s declaration *expressly* highlight that the Zeng and Zhou references *both* use FEC in their electrolytes.

**Zeng:** In its overview of the Zeng Grounds, the Petition explains that the Zeng Embodiments 4 and 6 electrolytes contain FEC (and PS):

To this base electrolyte of Zeng Embodiments 4 and 6: “the following are added on the basis of the *total weight of the electrolyte solution*: 4 wt% of **fluoroethylene carbonate (FEC)**...and 4.0 wt% of 1,3-propane sultone.”

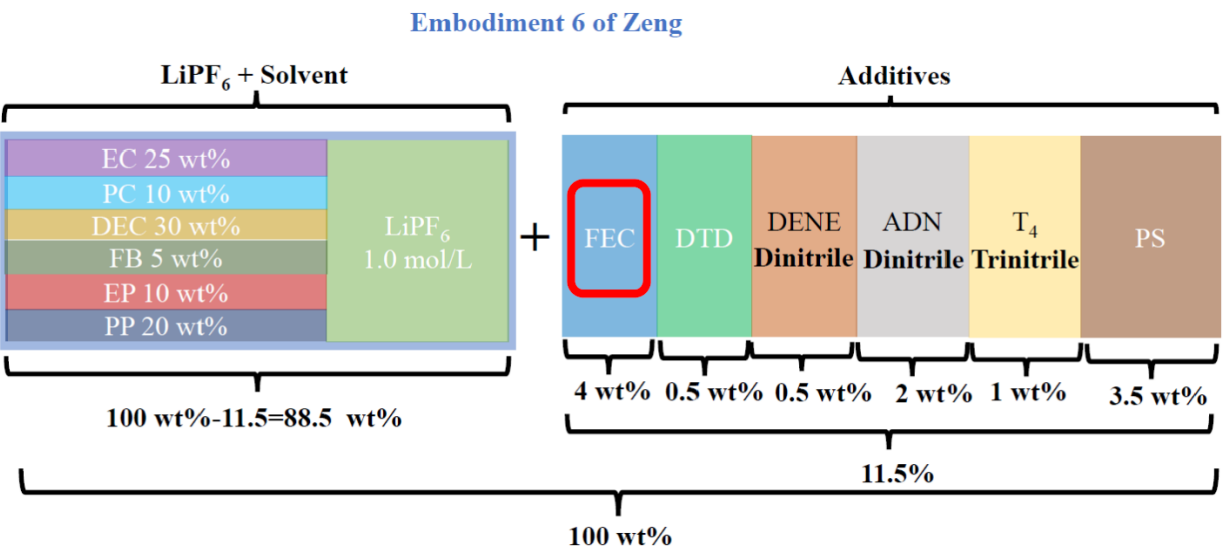
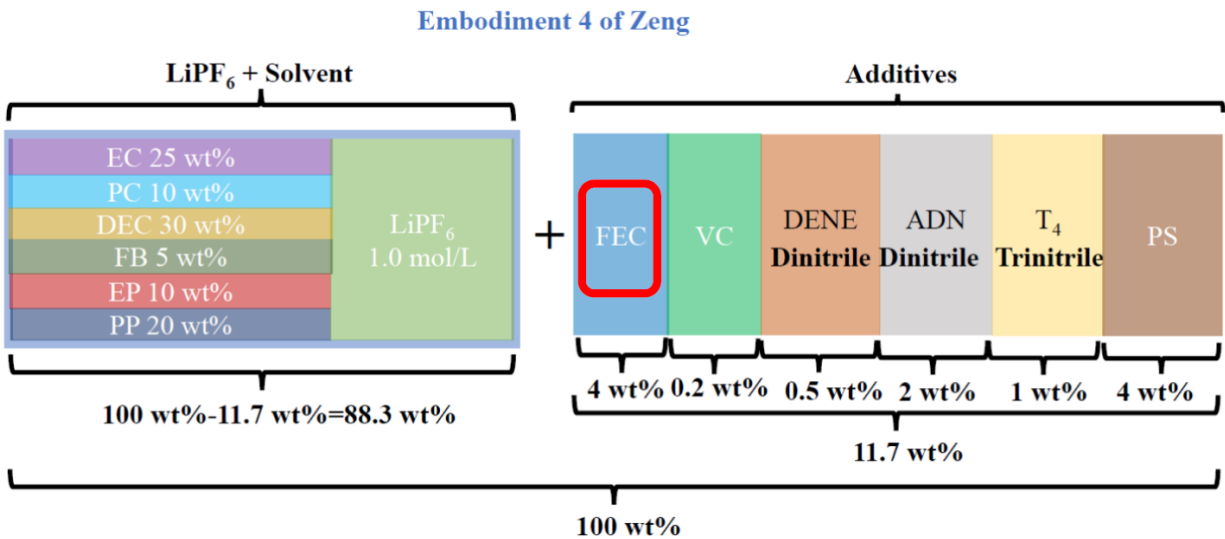
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element being contested: FEC.

<sup>4</sup> “Claims 12 and 16-26 recite an electrolyte—substantively identical to or similar to that of claims discussed above—in an electrochemical device having electrodes. For the reasons discussed above ... Zeng discloses or suggests claims ... 16-26.” Paper 3 at 29.

<sup>5</sup> Citing to “Sections XIII.B.8 ([1.7]), XIII.D.1 ([3.1])” for claim element [20.7].

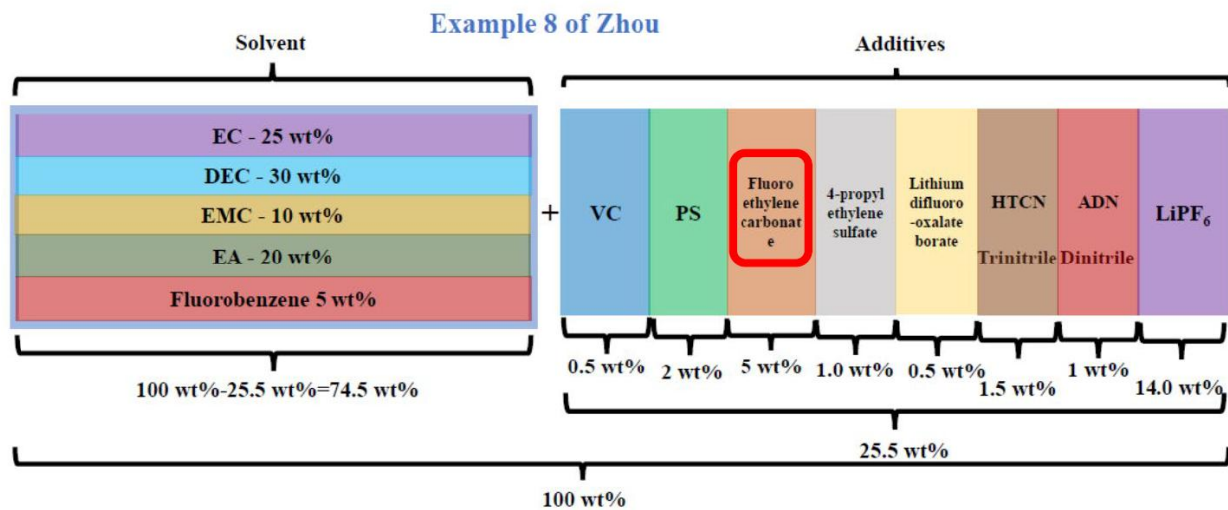
Paper 3 at 16 (citing EX1003, ¶¶ [0044]-[0049], [0069]) (bold emphasis added). Likewise, Dr. Lucht’s declaration discusses Zeng’s inclusion of FEC in the disclosed electrolytes. EX1003, ¶¶ 66-73 (“Zeng’s electrolytes have the following main components ... fluoroethylene carbonate (FEC)”). Further, both the Petition and Dr. Lucht’s declaration provide the following figures depicting Zeng Embodiments 4 and 6 and showing that they contain FEC (and PS):



Paper 3 at 17-18; EX1003, ¶ 73.<sup>6</sup>

In short, in the discussions of claim 1 and element [3.1], the Zeng Grounds sufficiently elaborated that Zeng Embodiments 4 and 6 disclose FEC (and PS) and render element [20.7] obvious. Therefore, the Petition adequately addresses element [20.7].

**Zhou:** Similarly, in the overview of the Zhou Grounds, the Petition and Dr. Lucht's declaration similarly provide a figure for Zhou Example 8 showing that Zhou's electrolyte includes FEC (and PS):



<sup>6</sup> For the purposes of this Response, the FEC component disclosed in the above figures have been outlined in red.

Paper 3 at 57-58; EX1003, ¶ 184.<sup>7</sup> Dr. Lucht’s declaration additionally discusses how “Example 8 of Zhou contains ... 2% by mass of 1,3-propane sultone, 5% by mass of fluoroethylene carbonate” in the electrolyte solution. EX1003, ¶ 183.

Accordingly, as Petitioner will establish during trial, “the information in the Petition” demonstrates that both Zeng and Zhou disclose FEC and 0.1 wt% to 3 wt% PS and, further, “specif[ies] where [that] element of the claim” is found in Zeng and Zhou. This meets the statutory standard under 35 U.S.C. § 314(a) and the Office’s standard under 37 C.F.R. § 42.104(b)(4)—regardless of the summary tables provided for convenience.

**b. The Board should address the substance of the Petition.**

Patent Owner suggests that the Board should not address Petitioner’s arguments regarding claims 20-26 because the Petition relied on internal citations, and those internal citations are imperfect. That is not the standard under 35 U.S.C. § 314(a) and 37 C.F.R. § 42.104(b)(4). Instead, as discussed, the “information in the Petition” must show a likelihood of prevailing, including by “specify[ing] where each element of the claim is found in the prior art patents.” As explained above, the Petition did that in the overview sections for the Zeng and Zhou Grounds.

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<sup>7</sup> For the purposes of this brief, the FEC component disclosed in the above figure has been outlined in red.

To the extent that Patent Owner argues for a higher standard, that is misguided. While the Board should not have to “decode a petition,” neither should it “take an overly mechanistic view of a petition and decline to address an argument because the petitioner did not present it with ideal vigor and clarity.” *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1377 (Fed. Cir. 2023). Instead, petitions should be reviewed holistically. *Id.* at 1379. Here, no decoding is necessary. As detailed above, the Petition addresses that both Zeng and Zhou disclose the use of FEC in the relied-upon electrolytes. As FEC is only a required element for claim 20, the prior discussions of FEC in Zeng and Zhou could only relate to claim 20. While this could have been more explicitly clear in the Petition, a holistic reading of the Petition makes plain that claim element [20.7] was addressed. Thus, Petitioner has not forfeited any challenge to claims 20-26 and will show during trial that the Petition establishes these claims are unpatentable.

**B. Denial of Patent Owner’s Request for Discretionary Denial was Not an Abuse of Discretion.**

Patent Owner asks the Director to overturn her prior ruling rejecting Patent Owner’s request for discretionary denial. Patent Owner does not allege that the Director abused her discretion, but instead that purported “changed circumstances” warrant a reversal. Paper 16 at 12. But that is not the standard for Director Review

under 37 C.F.R. § 42.75. *See* Section I. For this reason alone, Patent Owner’s request should be denied.

Even if “changed circumstances” met the standard for Director Review, there are no changed circumstances. Patent Owner argues that because the Board denied institution as to another patent involved in the same underlying district court case, and that claims 20-26 in this IPR will fail, a district court trial “is certain to occur without any stay.” Paper 16 at 12-13. This is not a new argument or circumstance. Patent Owner’s brief requesting discretionary denial discussed this possible situation at length. Paper 8 at 2, 11-12, 20-23. The Director considered all of Patent Owner’s arguments (including this one) and still denied the request for discretionary denial. Paper 11 at 2-3 (“the determination not to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented.”). Nothing has changed warranting reversal of the Director’s decision. Notably, counter to Patent Owner’s argument, two more IPRs have been instituted (IPR2025-00431 for the ’131 Patent and IPR2025-00432 for the ’148 Patent) and Petitioner is preparing a request for Director Review for the Denial of Institution of IPR2025-00385 for the ’927 Patent. To the extent “changed circumstances” are considered, these circumstances (including the institution of the related IPRs and the likelihood of a district court stay based on Petitioner’s pending motion) are further reasons weighing *against* denial.

Patent Owner’s second argument is another rehash—this time concerning Petitioner’s *Sotera* stipulation. Patent Owner argues that the Director gave it too much weight. Paper 16 at 13-14. This argument fails. First, there is no indication of how much weight the Director gave to Petitioner’s *Sotera* stipulation. The Director’s decision regarding discretionary denial makes no mention of the *Sotera* stipulation, but instead discusses other factors. Paper 11 at 2-3. Second, the Director already considered this argument during the discretionary denial briefings. *See* Paper 8 at 31-35. Thus, this is not a “changed circumstance,” but is in fact the identical argument already presented to the Director. There is no abuse of discretion here.

### **III. CONCLUSION**

For these reasons, the Director should deny Patent Owner’s Request for Director Review and either decline to revisit the decision denying discretionary denial or reaffirm that decision.

Respectfully submitted,

LEE & HAYES, P.C.

*/ James D. Stein /*

James D. Stein  
Registration No. 63,782  
Lead Counsel for Petitioner

Date: September 4, 2025

**CERTIFICATION UNDER 37 C.F.R. § 42.24**

Pursuant to 37 C.F.R. § 42.24(d), I certify that this motion complies with the page limits of 37 C.F.R. §42.24(a)(1)(v) because it contains 15 pages.

Respectfully submitted,

LEE & HAYES, P.C.

*/ James D. Stein /*

James D. Stein  
Registration No. 63,782  
Lead Counsel for Petitioner

Date: September 4, 2025

**CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(e), 42.105(a))**

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that a true and correct copy of the above-captioned AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST was served in its entirety on September 4, 2025, via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS) and electronic mail on the following counsel of record for Patent Owner:

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Respectfully submitted,

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Date: September 4, 2025