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Paper 19
Entered: March 14, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EVE ENERGY CO., LTD.,
Petitioner,

v.

VARTA MICROBATTERY GMBH,
Patent Owner.

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IPR2022-01484
Patent 9,153,835 B2

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Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and BRIAN D. RANGE, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

# DECISION
Denying Institution of *Inter Partes* Review
*35 U.S.C. § 314*

# I. INTRODUCTION

Eve Energy Co., LTD. ("Petitioner") filed a Petition requesting *inter partes* review of claims 14–25 of U.S. Patent No. 9,153,835 K1 (Ex. 1027, "the '835 patent"). Paper 1 ("Pet.").[1] VARTA Microbattery GMBH ("Patent Owner") filed a sealed Preliminary Response (Paper 7) and public redacted version of the sealed Preliminary Response (Paper 8 ("Prelim. Resp."")). With permission to file a Reply, Petitioner filed a supporting sealed Reply (Paper 12 ("Prelim. Reply")) and public redacted version of the Reply (Paper 13). Patent Owner filed a sealed Sur-Reply (Paper 15) and public redacted version of the sealed Sur-Reply (Paper 16 ("Prelim. Sur-Reply")).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a) (2020). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

[1] USPTO records show that challenged claims 14–25 are the result of an Inter Partes Review Certificate issued April 7, 2022 for IPR2020-01212. *See infra* n.2. Neither party has introduced any record evidence of the wording of the challenged claims. Accordingly, we add the trial certificate from that proceeding as Exhibit 3001. The certificate refers to U.S. Patent 9,153,836 K1, using the type code for trial certificates. *See* Exhibit 3001. We will herein, when referring to the '836 patent, reference the claims of U.S. Patent 9,153,835 K1 (i.e., of the Certificate and as also set forth in the Petition's listing of claims (Pet. 14–25)) and the disclosure of U.S. Patent 9,153,835 B2 (Ex. 1027).

After considering the Petition, the Preliminary Response, the Preliminary Reply, the Preliminary Sur-Reply, and the evidence of record, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to at least one challenged claim. Accordingly, we do not institute an *inter partes* review of any challenged claim.

## II. BACKGROUND

### *A. Related Matters*

The parties identify twelve district court cases that involve the '835 patent: *Audio Partnership LLC et al. v. VARTA Microbattery GmbH*, No. 1:22-cv-01073 (N.D. Ill.); *VARTA Microbattery GmbH v. Guangdong Mic-Power New Energy Co., Ltd.*, No. 2:22-cv-00025 (E.D. Tex.); *VARTA Microbattery GmbH v. Eve Energy Co., Ltd.*, No. 2:21-cv-00399 (E.D. Tex.); *VARTA Microbattery GmbH v. Audio Partnership LLC, et al.*, No. 2:21-cv-00400 (E.D. Tex.); *VARTA Microbattery GmbH v. GN Audio A/S et al.*, No. 1:21-cv-00134 (D. Del.); *VARTA Microbattery GmbH v. Guangdong Mic-Power New Energy Co., Ltd.*, No. 2:21-cv-00036 (E.D. Tex.); *VARTA Microbattery GmbH v. Costco Wholesale Corporation*, No. 2:20-cv-0051 (E.D. Tex.); *VARTA Microbattery GmbH v. Amazon.com, Inc.*, No. 2:20-cv-0052 (E.D. Tex.); *VARTA Microbattery GmbH v. Best Buy Co., Inc.*, No. 2:20-cv-0054 (E.D. Tex.); *VARTA Microbattery GmbH v. PEAG, LLC*, No. 2:20-cv-0071 (E.D. Tex.); *VARTA Microbattery GmbH v. Audio Partnership LLC, et al.*, No. 2:20-cv-00138 (E.D. Tex.); and *VARTA Microbattery GmbH v. Samsung Electronics America., Inc.*, No. 2:20-cv-

00029 (E.D. Tex.). Pet. 100–02; Paper 5, 2–3. Petitioner also indicates the '835 patent was the subject of IPR2020-01212.[2] Pet. 102; Paper 5, 5.

*B. Asserted Grounds of Unpatentability*

The Petition is supported by a Declaration of Marc Juzkow (Ex. 1002) and asserts the following grounds of unpatentability (Pet. 18–19):

| | Claims Challenged | 35 U.S.C. §[3] | References/Basis |
|---|---|---|---|
| 1 | 14–25 | 103(a) | Kobayashi,[4] Kaun,[5] Brenner[6] |
| 2 | 14–25 | 103(a) | Brown,[7] Higuchi,[8] Kaun, Brenner, Arai[9] |

[2] In IPR2020-01212, the outcome of the Final Written Decision was: "Petitioner has shown by a preponderance of the evidence that claims 1–12 of the '835 patent are unpatentable. We grant Patent Owner's Revised Contingent Motion to Amend as to proposed substitute claims 14–25." IPR2020-01212, Final Written Decision 4 (issued Jan. 5, 2022).

[3] The relevant sections of the Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112–29, took effect on March 16, 2013. The '835 patent claims priority to applications with filing dates before this date. *See* Ex. 1027, code (30). For the purposes of this Decision, pre-AIA statutes apply.

[4] JP 2007294111A, published November 8, 2007, Ex. 1004 ("Kobayashi") (Japanese Patent Application with foreign translation and declaration therefor).

[5] US 2007/0160901 A1, published July 12, 2007, Ex. 1023 ("Kaun").

[6] DE 10 2005 058 132 A1, published June 6, 2007, Ex. 1005 ("Brenner").

[7] US 3,748,182, published July 24, 1973, Ex. 1006 ("Brown").

[8] CN 101286572A, published October 15, 2008, Ex. 1007 ("Higuchi") (Chinese Patent Application Publication with foreign translation and declaration therefor).

[9] US 2006/124973 A1, published June 15, 2006, Ex. 1020 ("Arai").

### *C. The '835 patent (Ex. 1027)*

The '835 patent is titled "BUTTON CELLS AND METHOD FOR PRODUCING SAME." Ex. 1027, code (54). The '835 patent

> relates to button [battery] cells comprising two metallic housing half-parts separated from one another by an electrically insulating seal and which form a housing with a flat bottom area and a flat top area parallel to it, as well as within the housing, an electrode-separator assembly comprising at least one positive and at least one negative electrode, which are in the form of flat layers and are connected to one another by at least one flat separator, and to a method for producing such button cells.

*Id.* at 1:16–24.

According to the patent, "[b]utton cells normally have a housing consisting of two housing half-parts, a cell cup and a cell top." *Id.* at 1:28–29. This housing contains "electrochemically active materials." *Id.* at 1:37–56. Rather than placing these materials in the housing "in the form of individual electrodes, in the form of tablets, separated from one another by a separator," they may instead be made into "prefabricated electrode-separator assemblies" that are "placed flat one on top of the other," making "stacks of any desired height." *Id.* "[I]t has been found that button cells having a stack of electrodes and separators very quickly start to leak," requiring closing the housings "in a liquid-tight manner." *Id.* at 2:4–5.

"Traditionally," this has been accomplished "by beading the edge of the cell cup over the edge of the cell top in conjunction with a plastic ring, which is arranged between the cell cup and the cell top and at the same time acts as a sealing element." *Id.* at 2:4–8. "[A]lternatively, it is also possible to manufacture button cells in which the cell cup and the cell top are held

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