UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVE ENERGY CO., LTD.,
Petitioner,

v.

VARTA MICROBATTERY GMBH,
Patent Owner.

IPR2021-00474
Patent 9,496,581 B2

Before CHRISTOPHER L. CRUMBLEY, JO-ANNE M. KOKOSKI, and AVELYN M. ROSS, *Administrative Patent Judges.*

CRUMBLEY, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining No Challenged Claim Unpatentable
Dismissing Patent Owner's Motion to Amend
35 U.S.C. § 318(a)

I. INTRODUCTION

Eve Energy Co., Ltd. filed a Petition (Paper 2, "Pet.") requesting the Board institute an *inter partes* review of claims 1–13 of U.S. Patent No. 9,496,581 B2 (Ex. 1001, "the '581 patent"). Varta Microbattery GmbH, the owner of the '581 Patent, filed a Preliminary Response (Paper 7, "Prelim. Resp."). Each party identified itself as the sole real party-in-interest to this proceeding. Pet. 1; Paper 4, 2.

Upon consideration of the Petition, Preliminary Response, and the parties' evidence, we determined that Petitioner had demonstrated a reasonable likelihood that it would prevail with respect to at least one claim of the '581 patent. Paper 10 ("Decision on Institution" or "DI"). Pursuant to the Supreme Court's decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018), and USPTO Guidance,[1] we instituted review of all challenged claims on all asserted grounds. *Id.*

Following institution of trial, Patent Owner filed a Patent Owner Response (Paper 16, "PO Resp."), Petitioner filed a Reply (Paper 20, "Pet. Reply"), and Patent Owner filed a Sur-reply (Paper 23, "Sur-reply").

After institution, Patent Owner filed a Contingent Motion to Amend (Paper 17, "Motion to Amend" or "MTA"), proposing substitute claims 26–38 for original claims 1–13, contingent on those original claims being found unpatentable. Petitioner filed an Opposition (Paper 21, "MTA Opp.), Patent

[1] In accordance with USPTO Guidance, "[i]f the PTAB institutes a trial, the PTAB will institute on all challenges raised in the petition." *See* USPTO, Guidance on the Impact of SAS on AIA Trial Proceedings (April 26, 2018) (available at https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial) ("USPTO Guidance").

Owner filed a Reply in Support of its Motion (Paper 24, "MTA Reply"), and Petitioner filed a Sur-reply (Paper 27, "MTA Sur-reply").

In support of their respective positions, Petitioner relies on the testimony of Mr. Marc Juzkow (Ex. 1011, "Juzkow Declaration"; Ex. 1017, "Juzkow Supplemental Declaration"; Ex. 2006, "Juzkow Deposition") and Mr. Jonathan Merz (Ex. 1013, 22, "Merz Translation Declaration"; Ex. 2011, "Merz Deposition"). Patent Owner relies on the testimony of Dr. Martin C. Peckerar (Ex. 2004, "Peckerar Declaration"; Ex. 2025, "Peckerar Supplemental Declaration"), Mr. Philipp Miehlich (Ex. 2008), and Dr. Hans Jurgen Lindner (Ex. 2009).

An oral hearing was held on May 24, 2022, and a transcript of the hearing is included in the record (Paper 29, "Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, we determine that Petitioner has not shown by a preponderance of the evidence that claim 13 of the '581 patent is unpatentable. Petitioner's challenges to claims 1–12 are moot in view of the Office's subsequent cancellation of these claims. We dismiss as moot Patent Owner's Revised Contingent Motion to Amend as to proposed substitute claims 26–38.

A. Related Proceedings

The parties indicate that the '581 patent is the subject of multiple district court actions: *VARTA Microbattery GmbH v. Samsung Electronics America, Inc.*, No. 2:20-cv-00029-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Costco Wholesale Corporation*, No. 2:20-cv-0051-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Amazon.com, Inc.*, No. 2:20-cv-0052-

JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Best Buy Co., Inc.*, No. 2:20-cv-0054-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. PEAG, LLC*, No. 2:20-cv-0071-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. PEAG, LLC d/b/a JLab Audio*, 2:20-cv-0071-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Audio Partnership LLC, et al.*, No. 2:20-cv-00138-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Guangdon Mic-Power New Energy Co., Ltd.*, No. 2:21-cv-00036-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Audio Partnership LLC, et al.*, No. 2:21-cv-00037-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. PEAG, LLC d/b/a JLab Audio*, 2:21-cv-0038-JRG (E.D. Tex.); and *VARTA Microbattery GmbH v. GN Audio A/S et al.*, 2:21-cv-0134-JRG (D. Del.). Pet. 2–3; Paper 4, 2–3.

The '581 patent was also the subject of an *inter partes* review filed by another petitioner. *See* IPR2020-01211, Paper 1. In that proceeding, we held in our Final Written Decision that claims 1–12 of the '581 patent were unpatentable, but granted Patent Owner's Motion to Amend as to substitute claims 14–25. *See id.*, Paper 48. The Office issued a Trial Certificate finally canceling claims 1–12 and entering claims 14–25 on April 11, 2022.

B. The '581 Patent (Ex. 1001)

The '581 patent is titled "Button Cells and Method for Producing Same" and issued November 15, 2016, with claims 1–13. Ex. 1001, codes (54), (45), 12:15–13:12. The '581 patent describes a button cell that includes a housing cup and a top separated by a seal that forms a housing with parallel flat bottom and top areas, and an electrode-separator assembly including a flat positive and negative electrode, wherein the electrodes are aligned essentially at right angles to the flat bottom and top areas, and the assembly is a spiral winding having end faces defining side surfaces of the

winding facing in an axial direction relative to the flat bottom and top areas. *Id.* at code (57), 9:34–39, 11:11–24. The '581 patent further describes that the positive and negative electrodes are each in the form of flat electrode layers and connected to one another via a flat separator, and the electrodes are preferably laminated or adhesively bonded onto this separator. *Id.* at 3:22–30.

According to the '581 patent, it was known in the art to have button cells with electrode-separator assemblies contained within the housing, but the prior art button cells always contained these assemblies inserted flat such that the electrode layers are aligned essentially parallel to the flat bottom and top areas of the housing. Ex. 1001, 1:44–45, 3:36–39. The '581 patent states that various problems occur in button cells that contain such electrode-separator assemblies, including increased scrap rates due to faults that can occur when the assemblies make contact with one another, as well as the potential that the assemblies will leak. *Id.* at 1:58–60, 1:66–2:4.

The '581 patent states it was also known in the art to close button cells in a liquid-tight manner by beading the edge of the cell cup over the cell top and that button cells without beading cannot be loaded as heavily in the axial direction as compared to button cells with a beaded-over cup edge, especially with respect to axial mechanical loads caused in the interior of the button cell. *Id.* at 2:5–7, 2:18–23. The '581 patent explains that the axial forces, which may occur, for example, as a result of volume changes during charging and discharging processes, can lead to leaks more readily in button cells without beading than in button cells with beading. *Id.* at 2:23–29. Thus, the '581 patent indicates there was a need in the art for a button cell

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