Trials@uspto.gov
571-272-7822

Paper 8
Date: January 6, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PEAG LLC (d/b/a JLab Audio), AUDIO PARTNERSHIP LLC and AUDIO PARTNERSHIP PLC (d/b/a Cambridge Audio)
Petitioner,

v.

VARTA MICROBATTERY GMBH,
Patent Owner.

IPR2020-01212
Patent 9,153,835 B2

Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and MONTÉ T. SQUIRE, *Administrative Patent Judges.*

SQUIRE, *Administrative Patent Judge.*

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

I. INTRODUCTION

PEAG LLC (d/b/a JLab Audio), Audio Partnership LLC and Audio Partnership PLC (d/b/a Cambridge Audio) (collectively, "Petitioner") filed a Petition (Paper 1, "Pet.") requesting the Board institute an *inter partes* review of claims 1–12 of U.S. Patent No. 9,153,835 B2 (Ex. 1001, "the '835 patent"). Varta Microbattery GmbH ("Patent Owner") filed a Preliminary Response (Paper 7, "Prelim. Resp."). Petitioner identifies PEAG LLC (d/b/a JLab Audio), Audio Partnership LLC, Audio Partnership PLC (d/b/a Cambridge Audio), and Guangdong Mic-Power New Energy Co. Ltd., as the real parties-in-interest. Pet. 1. Patent Owner identifies VARTA Microbattery GmbH, as the real party-in-interest. Paper 5, 2.

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2019). 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 the Director determines . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Having considered the Petition, Preliminary Response, and evidence of record, for the reasons below, we determine that the Petition shows a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims. Patent Owner has not persuaded us that we should exercise our discretion to deny institution. We thus institute *inter partes* review on all challenged claims on all asserted grounds. *See SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354, 1359–60 (2018); *see also* Patent Trial

and Appeal Board Consolidated Trial Practice Guide 64 (Nov. 2019) ("The Board will not institute on fewer than all claims or all challenges in a petition."), *available at* https://www.uspto.gov/TrialPracticeGuideConsolidated ("TPG").

II. BACKGROUND

A. Related Matters

The parties indicate that the '835 patent is the subject of the following pending consolidated district court actions: *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. Audio Partnership LLC, et al.*, No. 2:20-cv-00138-JRG (E.D. Tex.); and *VARTA Microbattery GmbH v. Samsung Electronics America*, Inc., No. 2:20-cv-00029-JRG (E.D. Tex.) (collectively, "the District Court Action"). Pet. 1; Paper 5, 2–3; Ex. 2002. Petitioner also filed petitions challenging claims of other patents asserted in the District Court Action in IPR2020-01211, IPR2020-01213, and IPR2020-01214. Pet. 2; Paper 5, 3.

B. The '835 Patent (Ex. 1001)

The '835 patent is titled "Button Cells and Method for Producing Same" and issued October 6, 2015, with claims 1–13. Ex. 1001, codes (54), (45), 12:1–66. The '835 patent relates to a button cell comprising two housing half-parts (housing cup and housing top) 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, and an electrode-separator assembly within the housing. *Id.* at code (57), 1:16–24, 3:7–12.

According to the '835 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, 1:43–44, 3:34–37. The '835 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 can start to leak. *Id.* at 1:57–59, 1:65–2:3.

The '835 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 2:4–6, 2:18–23. The '835 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 2:24–28. Thus, the '835 patent indicates there was a need in the art for a button cell that is resistant to mechanical loads in the axial direction and manufactured without a beaded-over cup edge. *Id.* at 2:31–36.

The '835 patent describes a button cell, which includes a housing cup and a housing top 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, and an electrode-separator assembly within the housing, including at least one positive and at least one negative electrode in the form of flat layers and connected to one another by at least one flat separator, wherein the electrode layers are aligned essentially at right angles to the flat bottom and top areas of the housing and the button cell is manufactured without being beaded over. Ex. 1001, code (57), 2:40–49, 11:1–22.

Figure 4 of the '835 patent, reproduced below, illustrates a button cell according to an embodiment of the claimed invention.

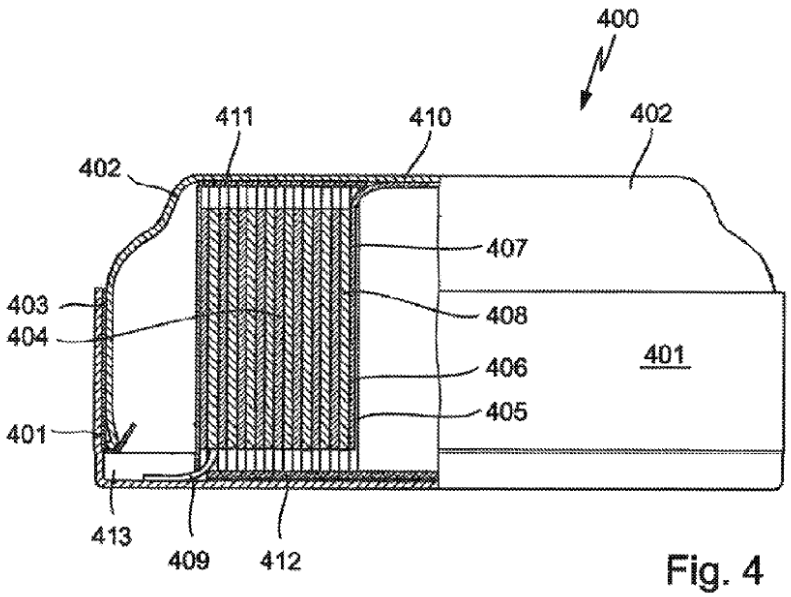

Fig. 4

Figure 4 of the '835 patent, above, shows button cell 400 including a housing comprising cup part 401 and top part 402, with seal 403 arranged therebetween, and an assembly of electrodes 407 and 408 and separators 405 and 406, contained as spiral winding 404 within the housing. *Id.* at 11:1–9, Fig. 3. Figure 4 of the '835 patent also shows button cell 400 as having top part 402 inserted into cup part 401 such that the casing areas of top part 402

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.