

ESTTA Tracking number: **ESTTA514508**

Filing date: **01/07/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	VARTA Microbattery GmbH
Granted to Date of previous extension	01/13/2013
Address	Daimlerstraße # 1 Ellwangen, 73479 GERMANY

Correspondence information	H. David Starr Nath, Goldberg & Meyer 112 S. West Street Alexandria, VA 22314 UNITED STATES dstarr@nathlaw.com Phone:7035486284
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Applicant Information

Application No	85552077	Publication date	07/17/2012
Opposition Filing Date	01/07/2013	Opposition Period Ends	01/13/2013
Applicant	Johnson Controls Hybrid and Recycling GmbH Am Leineufer 51 Hannover, 30419 GERMANY		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Industrial batteries

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3669642	Application Date	02/04/2009
Registration Date	08/18/2009	Foreign Priority Date	08/05/2008
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: Batteries, accumulators, galvanic cells, electric primary and secondary cells, microbatteries, equipment batteries, lithium batteries, lithium accumulators, zinc air batteries, nickel-metal hydride batteries; fuel elements and fuel cells; gas generating cells, in particular cells for generating oxygen and hydrogen; equipment and apparatus for charging, testing, maintaining and monitoring the aforesaid goods; rectifiers, switching equipment, switches and capacity meters for all the aforesaid goods

Related Proceedings	91208212, 91197255, 92053247
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Attachments	79066497#TMSN.jpeg (1 page)(bytes) Notice of Opposition - 62232.pdf (8 pages)(350992 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/H. David Starr/
Name	H. David Starr
Date	01/07/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Serial Number: 85/552,077
Application Filing Date: February 24, 2012



Mark:
Date of Publication: July 17, 2012

VARTA Microbattery, GmbH,)
)
Opposer,)
)
)
v.)
)
)
Johnson Controls Hybrid and Recycling GmbH,)
)
Applicant.)

NOTICE OF OPPOSITION

VARTA Microbattery, GmbH, a Gesellschaft mit beschränkter Haftung organized and existing under the laws of Germany, having a business address of Daimlerstraße 1, 73479 Ellwangen, Germany (“Opposer”), believes that it will be damaged by registration of the mark



shown in Application Serial No 85/552,077 (the “Application”), and hereby opposes same. The Application was filed on February 24, 2012 by Johnson Controls Hybrid and Recycling GmbH, which is alleged to be a corporation organized and existing under the laws of Germany, having a business address of Am Leineufer 51, Hannover 30419, Germany (the “Applicant”), and is pending for the following goods: “industrial batteries,” in International Class 9.

The Application was published for opposition on July 17, 2012. Opposer has previously timely filed two successive requests for extensions of time to oppose the Application and said requests were granted by the Board with the present extension of time set to expire on January 13, 2013.

As grounds for this opposition, Opposer alleges that:

1. Opposer is the owner of the Registration No. 3,669,642 (the “Registration”), which registered on the Principal Register on August 18, 2009. Said Registration is for the mark



and is registered for, “Batteries, accumulators, galvanic cells, electric primary and secondary cells, microbatteries, equipment batteries, lithium batteries, lithium accumulators, zinc air batteries, nickel-metal hydride batteries; fuel elements and fuel cells; gas generating cells, in particular cells for generating oxygen and hydrogen; equipment and apparatus for charging, testing, maintaining and monitoring the aforesaid goods; rectifiers, switching equipment, switches and capacity meters for all the aforesaid goods,” in International Class 9. Said Registration is valid, subsisting and unrevoked.¹ A copy of said Registration is attached hereto as Exhibit “A.”

2. Applicant’s mark  and Opposer’s mark  are confusingly similar in appearance, and overall commercial impression. Furthermore, the goods of the Applicant are identical and/or highly related to the batteries and related products of Opposer. Accordingly, the Applicant’s mark is likely, when used in association with the goods of Applicant, to cause confusion among relevant consumers.

¹ The parties hereto are involved in a related proceeding concerning this registration. See, Johnson Controls Technology Company and Johnson Controls Hybrid and Recycling GmbH v. VARTA Microbattery GmbH, Cancellation No. 92053247.

3. Applicant filed its intent-to-use application on February 24, 2012, which date is long after Opposer's Registration filing date of February 4, 2009 and priority date of August 5, 2008. Opposer thus has priority over Applicant.

4. Applicant's  mark, is likely to cause confusion, mistake or deception in that consumers are likely to believe that Applicant's goods are Opposer's goods or goods of a company that is sponsored, authorized, or licensed by, or in some other way legitimately connected with, Opposer in violation of Section 2(d) of the Trademark Act of 1946, §1052(d).

5. Applicant's registration of the  mark in connection with the goods identified in the Application would be damaging to Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be granted in favor of the Opposer and that Application Serial No. 85/552,077 be rejected, that no registration be issued thereon to Applicant, and this opposition be sustained to Opposer.

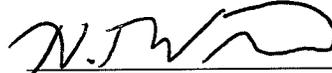
The required filing fee of \$300.00 is submitted herewith.

Opposer hereby appoints H. David Starr, Gary M. Nath, Jerald L. Meyer, Howard W. Kline and Gulnaz T. Donahue, all of the law firm of Nath, Goldberg & Meyer with offices at 112 S. West Street, Alexandria, Virginia 22314, to act as attorneys for the Opposer herein, with full power to prosecute said Opposition, to transact all relevant business with the U.S. Patent and Trademark Office and in the United States Courts.

It is requested that communications be conducted with the below attorney who is authorized to receive all official communications in connection with this Notice of Opposition:

H. David Starr
Nath, Goldberg & Meyer
112 S. West Street
Alexandria, Virginia 22314

Respectfully submitted,



H. David Starr
Nath, Goldberg & Meyer
112 S. West Street
Alexandria, VA 22314
(703) 548-6284 (phone)
(703) 683-8396 (facsimile)

Attorney for Opposer

Dated: January 7, 2013

CERTIFICATE OF SERVICE

This is to certify that I am on this date serving a copy of the within and foregoing upon the Applicant by depositing a true and correct copy of same in the United States Mail in an envelope with sufficient first class postage affixed thereon to ensure delivery, addressed as follows:

Peter J. Lynfield
Ned Branthover
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, NY 10017



H. David Starr
Attorney for Opposer

Date: January 7, 2013
Nath, Goldberg & Meyer
112 South West Street
Alexandria, VA 22314
(703) 548-6284 (tel.)
(703) 683-8396 (fax)

EXHIBIT “A”



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Nov 28 05:02:46 EST 2012

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Record 1 out of 1

TSDR ASSIGN Status TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)



Goods and Services IC 009. US 021 023 026 036 038. G & S: Batteries, accumulators, galvanic cells, electric primary and secondary cells, microbatteries, equipment batteries, lithium batteries, lithium accumulators, zinc air batteries, nickel-metal hydride batteries; fuel elements and fuel cells; gas generating cells, in particular cells for generating oxygen and hydrogen; equipment and apparatus for charging, testing, maintaining and monitoring the aforesaid goods; rectifiers, switching equipment, switches and capacity meters for all the aforesaid goods

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 26.05.02 - Plain single line triangles; Triangles, plain single line
26.09.21 - Squares that are completely or partially shaded

Trademark Search Facility Classification Code SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons
SHAPES-TRIANGLES Triangular shaped designs and marks including incomplete triangles

Serial Number 79066497

Filing Date February 4, 2009

Current Basis 66A

Original Filing Basis 66A

Published for Opposition June 2, 2009

Registration Number 3669642

International Registration 0996708

Number**Registration Date**

August 18, 2009

Owner

(REGISTRANT) VARTA Microbattery GmbH GmbH FED REP GERMANY Daimlerstraße 1 73479 Ellwangen FED REP GERMANY

Priority Date

August 5, 2008

Description of Mark

Color is not claimed as a feature of the mark.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)