

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

ZHUHAI COSMX BATTERY CO., LTD.,
Petitioner,

v.

NINGDE AMPEREX TECHNOLOGY LIMITED,
Patent Owner.

IPR2025-00524
Patent 12,015,118 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

Granting Director Review, Affirming-in-Part and Vacating-in-Part
the Decision Granting Institution, and Maintaining Institution
of *Inter Partes* Review

Ningde Amperex Technology Limited (“Patent Owner”) filed a request for Director Review of the Decision granting institution (“Decision,” Paper 11), and Zhuhai CosMX Battery Co., Ltd. (“Petitioner”) filed an authorized response. *See* Paper 14 (“DR Request”); Paper 16. Patent Owner argues, *inter alia*, that the Decision should be vacated because the Board “erred when it introduced its own evidence, not part of the Petition, to buttress an insufficient Petition and justify institution with respect to [the Ishigaki¹-based grounds].” DR Request 2. In particular, Patent Owner contends that “[t]he Board relied upon new evidence that it introduced itself (Ex. 3003, ‘Hutin’^[2]) to conclude that the prior art’s use of laser diffraction techniques to measure particle sizes meant that the prior art’s reported number-based particle size distribution (‘D90’) was a volume-based particle size distribution (Dv90).” *Id.* (emphasis omitted) (citing Decision 30–33). According to Patent Owner, without the Board’s new evidence, the Petition failed to show a reasonable likelihood of success as to the Ishigaki-based grounds. *Id.* at 2–3.

Petitioner responds that Patent Owner’s arguments lack merit because the Board cited Hutin “only to corroborate its evaluation of competing expert testimony and to reject Patent Owner’s counterarguments regarding conversions between number-based and volume-based particle size distributions.” Paper 16, 8. Petitioner further contends that “even if citing Hutin were improper, any error would be harmless.” *Id.*

¹ Ishigaki et al., JP 2013-211096 A, filed Mar. 28, 2012 (Ex. 1004).

² Anthony Hutin, *SIZE ANALYSIS OF DISPERSIONS IN LIQUID PHASE: I. PARTICLE SIZE ANALYSIS (PSA)*, 1st ed. (2022) (Ex. 3003).

The Board is reminded that *inter partes* review is “a party-directed, adversarial process,” not an “agency-led, inquisitorial process for reconsidering patents.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018). In determining whether to institute review, as here, it is inappropriate for the Board to introduce its own evidence into the record. The Board’s proper role and function is to focus on “the information presented in the petition filed under section 311 and any response filed under section 313.” 35 U.S.C. § 314(a). That said, panels are entitled to, on occasion, take judicial notice of adjudicative facts that are “not subject to reasonable dispute.” Fed. R. Evid. 201. But particle size distributions and conversions, as have been plucked from the Hutin reference’s definitions, are not such facts.

Further, although Petitioner argues that Hutin merely “corroborate[d]” the Board’s evaluation, the Board’s credibility determination is based on Hutin. Decision 32 (“In view of the record as presently developed and *understood with Hutin’s definitions*, we find Petitioner’s Declarant more credible than Patent Owner’s Declarant with respect to Ishigaki.”) (emphasis added). Thus, the Board erred in introducing its own evidence with respect to the Ishigaki-based grounds following its own extra-record factfinding, and that unforced error is not harmless with respect to those grounds. As a result, the portion of the Decision addressing the Ishigaki-based grounds is herewith vacated.

Patent Owner’s other arguments for vacating or reversing the Decision, however, are not persuasive and the remainder of the Board’s Decision is affirmed. Because the affirmed portion of the Decision found that Petitioner showed a reasonable likelihood of success in prevailing on at

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least one challenged claim for those other grounds, the Board's decision to institute this *inter partes* review is affirmed.

Accordingly, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Board's Decision granting institution of *inter partes* review is affirmed-in-part and vacated-in-part; and

FURTHER ORDERED that the Board's decision to institute trial is affirmed.

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