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Transcript of Martin C. Peckerar, Ph.D.

Date: June 2, 2021

Case: PEAG LLC, et al -v- VARTA Microbattery GMBH. (PTAB)

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 Conducted on June 2, 2021

<p style="text-align: center;">1</p> <p>1 UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE PATENT TRIAL AND APPEAL BOARD</p> <p>2</p> <p>3 PEAG LLC (d/b/a JLab Audio), AUDIO PARTNERSHIP LLC and AUDIO PARTNERSHIP PLC (d/b/a Cambridge Audio),</p> <p>4 Petitioner,</p> <p>5 v.</p> <p>6 VARTA MICROBATTERY GMBH,</p> <p>7 Patent Owner.</p> <p>8</p> <p>9 Case IPR2020-01211 Case IPR2020-01212 USP 9,496,581 UPS 9,153,835</p> <p>10 Case IPR2020-01213 Case IPR2020-01214 USP 9,799,858 USP 9,799,913</p> <p>11</p> <p>12</p> <p>13 VIDEOTAPED DEPOSITION OF:</p> <p>14 MARTIN C. PECKERAR, Ph.D.</p> <p>15</p> <p>16 TRANSCRIPT OF TESTIMONY, as reported</p> <p>17 by Nancy C. Bendish, Certified Court Reporter,</p> <p>18 RMR, CRR and Notary Public of the States of</p> <p>19 New York and New Jersey, conducted virtually via</p> <p>20 Zoom Videoconference on Wednesday, June 2, 2021,</p> <p>21 commencing at 9:12 a.m. EST.</p> <p>22</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">I N D E X</p> <p>1 WITNESS EXAMINATION</p> <p>2</p> <p>3 MARTIN C. PECKERAR, Ph.D.</p> <p>4 By Mr. Ragusa.....7</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 E X H I B I T S</p> <p>13 NUMBER DESCRIPTION PAGE</p> <p>14 1001- United States Patent IPR2020-01211 US 9,496,581 B2.....83</p> <p>15 1001- United States Patent IPR2020-01212 US 9,153,835 B2.....83</p> <p>16 1001- United States Patent IPR2020-01213 US 9,799,858 B2.....83</p> <p>17 1001- United States Patent IPR2020-01214 US 9,799,913 B2.....83</p> <p>18 1005 United States Patent Application Publication US 2005/0233212 A1.....131</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: center;">2</p> <p>1 A P P E A R A N C E S :</p> <p>2 (All participated remotely via Zoom Videoconference)</p> <p>3</p> <p>4 ON BEHALF OF PETITIONER, PEAG LLC, AUDIO PARTNERSHIP LLC and AUDIO PARTNERSHIP PLC:</p> <p>5</p> <p>6 BAKER BOTTS LLP BY: PAUL A. RAGUSA, ESQ. NICK PALMIERI, ESQ. 30 Rockefeller Plaza New York, New York 10112 212.408.2500 paul.ragusa@bakerbotts.com nick.palmieri@bakerbotts.com</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 ON BEHALF OF PATENT OWNER, VARTA MICROBATTERY GMBH:</p> <p>13</p> <p>14 LEYDIG VOIT & MAYER, LTD. BY: WESLEY O. MUELLER, ESQ. ROBERT T. WITTMANN, ESQ. Two Prudential Plaza 180 N. Stetson Avenue, Suite 4900 Chicago, Illinois 60601 312.616.5600 wmueller@leydig.com bwittmann@leydig.com</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 DANIEL TERRY, Planet Depos Technician</p> <p>21 BRENDAN CASE, Planet Depos Videographer</p> <p>22</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">E X H I B I T S (Cont'd)</p> <p>1 NUMBER DESCRIPTION PAGE</p> <p>2</p> <p>3</p> <p>4 1006 Japanese Patent Office Publication No.JP 2007-294111....179</p> <p>5 1031 Curriculum Vitae of Martin Peckerar, Ph.D.....13</p> <p>6 2043 Corrected Declaration of Martin C. Peckerar, Ph.D.....67</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">5</p> <p>1 THE VIDEOGRAPHER: Here begins the 2 video deposition of Dr. Martin Peckerar in the 3 matter of PEAG, LLC, et al., versus VARTA 4 Microbattery GmbH, held in the United States 5 Patent and Trademark Office, Cause Number 6 IPR2020-01211; 12, 13 and 14. 7 Today's date is Wednesday, 8 June 2nd, 2021. The time is 9:12 a.m., Eastern 9 Standard Time. 10 Your videographer of the day is 11 Brendan Case, representing Planet Depos. 12 This deposition is taking place via video 13 teleconference via zoom. 14 Would counsel present please 15 identify themselves and whom they represent. 16 MR. RAGUSA: Paul Ragusa and 17 Nicholas Palmieri of Baker Botts on behalf of 18 the petitioners, PEAG, LLC, and Audio 19 Partnership, LLC. 20 MR. MUELLER: Wesley Mueller from 21 Leydig Voit & Mayer, representing the patent 22 owner, VARTA Microbattery GmbH. And with me is</p>	<p style="text-align: right;">7</p> <p>1 Maryland University. 2 THE REPORTER: Okay. Thank you. 3 You may begin. 4 MR. RAGUSA: Okay. Terrific. 5 EXAMINATION BY MR. RAGUSA: 6 Q. Good morning, Dr. Peckerar. 7 A. Good morning. 8 Q. Have you been deposed before, 9 either in reality or in virtual form? 10 A. Never virtually, but in reality, 11 11 yes, a number of times. 12 Q. How many times? 13 A. I believe the number is five. 14 Q. And were those all patent cases? 15 A. Yes. 16 Q. Were any of those cases involving 17 VARTA? 18 A. Could you repeat that, please. 19 19 Involving? 20 Q. Sure. Did any of those cases 21 involve VARTA? 22 A. Can you hear me?</p>
<p style="text-align: right;">6</p> <p>1 Bob Wittmann. 2 THE VIDEOGRAPHER: The court 3 reporter today is Nancy Bendish, representing 4 Planet Depos. 5 Would the court reporter please 6 swear in the witness. 7 8 M A R T I N C . P E C K E R A R, Ph.D., 9 having been remotely sworn by the 10 Court Reporter, testified as follows: 11 THE REPORTER: Your full name, 12 please. 13 THE WITNESS: Martin Charles 14 Peckerar. 15 THE REPORTER: Thank you. 16 And your address where you're 17 presently located, at least the city and state. 18 THE WITNESS: The address of the 19 recording site or my home address? 20 THE REPORTER: Where you are 21 presently. 22 THE WITNESS: Okay. College Park,</p>	<p style="text-align: right;">8</p> <p>1 Q. We can hear you fine, yes. 2 A. Involving VARTA? No, never 3 3 involving VARTA. 4 Q. Did any of those cases involve 5 batteries? 6 A. I did an IPR; I provided input to 7 7 Finnegan on their part in an IPR associated with 8 8 Milwaukee Power and the battery associated with 9 9 their power tools. 10 Q. What time frame was that? 11 A. I think that was five years ago, 12 12 five to seven years ago. I mean, I'm relying on 13 13 my memory here. 14 Q. Understood. 15 Have you given testimony at trial 16 before? 17 A. Yes. 18 Q. And can you describe the case that 19 that occurred in? 20 A. Yeah, I went before the ITC twice. 21 21 One was a lawsuit involving the DDR3 bus control 22 22 spec for almost every laptop that's used in the</p>

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<p style="text-align: right;">9</p> <p>1 world. And then I helped to defend Macronix in</p> <p>2 an issue associated with memory technology,</p> <p>3 nonvolatile memory technology.</p> <p>4 Q. So you have some background in the</p> <p>5 procedure. Let me just give a quick refresher.</p> <p>6 I'll ask some questions today.</p> <p>7 Obviously, if you don't understand a question,</p> <p>8 please let me know, and I'll do my best to</p> <p>9 rephrase the question. Obviously we need to</p> <p>10 work together on that. Unless you tell me</p> <p>11 otherwise, I'll assume --</p> <p>12 A. Yes.</p> <p>13 Q. -- that you do understand the</p> <p>14 question. Can we proceed with that</p> <p>15 understanding?</p> <p>16 A. (Witness nods.)</p> <p>17 Q. Okay. And --</p> <p>18 A. Yes.</p> <p>19 Q. -- for the court reporter's sake</p> <p>20 if you could say yes or no. I know it's -- we</p> <p>21 all like to nod our heads, but that would be</p> <p>22 appreciated as well. Thank you.</p>	<p style="text-align: right;">11</p> <p>1 age in particular; hence why I ask it.</p> <p>2 Is there any information that</p> <p>3 you're aware of in your declaration that is</p> <p>4 subject to correction or that you feel needs to</p> <p>5 be corrected, sitting here right now?</p> <p>6 A. There were a few typos. It is a</p> <p>7 270-page report, and when I -- I missed a few on</p> <p>8 correction, but the sense of the issue is</p> <p>9 present in the document and was easily</p> <p>10 recognizable, so nothing affecting the</p> <p>11 interpretation.</p> <p>12 Q. Okay. Thank you.</p> <p>13 Let's turn to your educational</p> <p>14 background. And I have your updated CV, which</p> <p>15 I'll share for the court reporter. I understand</p> <p>16 that this is a new CV that was not the CV in the</p> <p>17 IPR, so let's give it a new exhibit number.</p> <p>18 The next available IPR exhibit</p> <p>19 number is 2047.</p> <p>20 MR. MUELLER: Counsel, sorry to</p> <p>21 interrupt, but if it's an exhibit number that</p> <p>22 the petitioners are using, it should probably</p>
<p style="text-align: right;">10</p> <p>1 Today I'll refer to the patent</p> <p>2 owner VARTA Microbattery as "VARTA"; if that's</p> <p>3 okay with you?</p> <p>4 A. (Witness nods.)</p> <p>5 Q. Again, if you could just say yes.</p> <p>6 A. Yes.</p> <p>7 Q. Okay, terrific.</p> <p>8 Before we begin --</p> <p>9 A. Can you not hear me?</p> <p>10 Q. There's just a slight delay, so,</p> <p>11 yes, we do hear you.</p> <p>12 A. Okay. I think you may have to</p> <p>13 wait a second to hear the response, right.</p> <p>14 Q. Correct. So before we begin --</p> <p>15 A. Your light isn't what it used to</p> <p>16 be.</p> <p>17 Q. No, it's not.</p> <p>18 Before we begin, is there any --</p> <p>19 any reason why you can't testify today, either</p> <p>20 medical -- medically or otherwise?</p> <p>21 A. No. No.</p> <p>22 Q. Good question to ask in today's</p>	<p style="text-align: right;">12</p> <p>1 have a 1000 number.</p> <p>2 MR. RAGUSA: Okay. Let's change</p> <p>3 that. Nick, if you could just quickly look that</p> <p>4 up.</p> <p>5 Q. While we're getting the exhibit</p> <p>6 number right, why don't we turn to your</p> <p>7 educational background.</p> <p>8 Is it correct that you have a</p> <p>9 bachelor's in physics from Stony Brook, 1968?</p> <p>10 A. Yes.</p> <p>11 Q. A master's in physics from the</p> <p>12 University of Maryland?</p> <p>13 A. Yes.</p> <p>14 Q. And finally a Ph.D. in electrical</p> <p>15 engineering?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Can you tell me the topic</p> <p>18 of your Ph.D. thesis?</p> <p>19 A. Yes. Surface anodization of</p> <p>20 electronic materials using semiconductive</p> <p>21 technology.</p> <p>22 Q. Did your educational training</p>

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<p style="text-align: right;">13</p> <p>1 involve the construction of batteries? 2 A. Of course. I took courses that 3 taught -- my leanings were toward 4 electrochemistry, and so I did take courses in 5 that. But I don't have any specific degrees in 6 chemistry, no, or battery technology, but I have 7 worked extensively in the battery arena. 8 Q. Okay. So, focusing on the -- on 9 your educational time period, did you take 10 courses in the construction of battery housings? 11 A. Not specifically. That's a rather 12 specific topic that is rarely covered in 13 course -- academic course work. 14 Q. Understood. 15 A. As a teacher, I can tell you that. 16 Q. Okay. Understood. 17 MR. RAGUSA: And I've been 18 informed that this exhibit should be 19 Exhibit 1031. 20 (Exhibit 1031 marked for 21 identification.) 22 Q. So, turning to your employment</p>	<p style="text-align: right;">15</p> <p>1 circuits that were powered by batteries but not 2 the batteries themselves; is that correct? 3 A. (Witness nods.) 4 Q. Okay. And let's turn to -- 5 A. Not at that point in my career. 6 Q. Let's turn to your next position. 7 Was that at the Naval Research Laboratory? 8 A. Naval Research Laboratory, yes. 9 Q. And did your work at the Naval 10 Research Laboratory involve -- 11 A. Yes. 12 Q. -- the construction of batteries? 13 A. No. It involved analytic 14 chemistry, largely for detecting pollutants in 15 the environment. 16 Q. Okay. If we turn -- and I'm 17 sorry. The -- looks like you had two periods 18 where you worked at the Naval Research 19 Laboratory, one from -- 20 A. Right. 21 Q. -- 1973 to '76 and the second from 22 '81 to 2002?</p>
<p style="text-align: right;">14</p> <p>1 history, what was your first position after 2 receiving your Ph.D. back in 1975? 3 A. I went to work for Westinghouse 4 Electric as a process development engineer. 5 Q. And did that work entail working 6 with batteries? 7 A. It involved fabrication of 8 electronic parts. Of course, in -- even at that 9 time, back in the '60s, we had a very integrated 10 approach to development in chip design and 11 production. And so of course the power supplies 12 are important in how those -- that power is 13 supplied to a chip, which I believe has 14 relevance to the battery area. So I did work in 15 that area in that regard. 16 Q. Okay. Did your work involve the 17 construction of batteries? 18 A. Involved the construction of 19 integrated circuit components, chips, which 20 interfaced or were powered by batteries. 21 Q. Understood. 22 So you worked on the integrated</p>	<p style="text-align: right;">16</p> <p>1 A. Right. And in the interim, I 2 worked at Westinghouse about five years, yes. 3 Q. Okay. Terrific. 4 Overlapping that time period, you 5 were a professor at the University of Maryland; 6 is that correct? 7 A. Yes. After my Ph.D. my thesis 8 advisor hired me to become adjunct and then part 9 time, yes. 10 Q. And did the courses that you 11 taught in that time period from 1981 to 2012 12 include courses involving the construction of 13 batteries? 14 A. They -- of course even in junior 15 electronics we talked about batteries, and I 16 taught the essential design and characterization 17 of battery technology. That was always a part 18 of the courses that I taught, yeah. 19 Q. Okay. But did that coursework 20 involve -- 21 A. Yeah, I don't know -- 22 Q. -- building batteries?</p>

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