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Transcript of Dr. Hans Jurgen Lindner

Date: June 8, 2021

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

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<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, Patent Owner.</p> <p>7</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 DR. HANS JÜRGEN LINDNER</p> <p>15</p> <p>16 TRANSCRIPT OF TESTIMONY, as reported by</p> <p>17 Nancy C. Bendish, Certified Court Reporter, RMR, CRR and Notary Public of the States of New York and New Jersey, conducted virtually via Zoom Videoconference on Tuesday, June 8, 2021, commencing at 8:08 a.m. EST.</p> <p>21</p> <p>22</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">I N D E X</p> <p>2 WITNESS EXAMINATION</p> <p>3 DR. HANS JÜRGEN LINDNER</p> <p>4 By Mr. Palmieri.....6</p> <p>5 By Mr. Hartmann.....120</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p style="text-align: center;">E X H I B I T S</p> <p>11 NUMBER DESCRIPTION PAGE</p> <p>12 1001- United States Patent</p> <p>13 IPR2020-01212 US 9,153,835 B2.....67</p> <p>14 1001- United States Patent</p> <p>15 IPR2020-01213 US 9,799,858 B2.....78</p> <p>16 1005 United States Patent</p> <p>17 Application Publication</p> <p>18 US 2005/0233212 A1 (Kaun).....96</p> <p>19 1007 European Patent Specification</p> <p>20 EP 1 886 364 B1 (Ryou).....107</p> <p>21 1008 Korean Patent Application</p> <p>22 (Kwon).....114</p> <p>2046 Declaration of Dr. Lindner.....18</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: NICK PALMIERI, ESQ. PAUL A. RAGUSA, ESQ. 30 Rockefeller Plaza New York, New York 10112 212.408.2500 nick.palmieri@bakerbotts.com paul.ragusa@bakerbotts.com</p> <p>9</p> <p>10</p> <p>11 ON BEHALF OF PATENT OWNER, VARTA MICROBATTERY GMBH:</p> <p>12</p> <p>13 LEYDIG VOIT & MAYER, LTD. BY: H. MICHAEL HARTMANN, ESQ. WESLEY O. MUELLER, ESQ. Two Prudential Plaza 180 N. Stetson Avenue, Suite 4900 Chicago, Illinois 60601 312.616.5600 mhartmann@leydig.com wmueller@leydig.com</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 VINCENT ZHANG, Baker Botts DANIEL WENG, VARTA Microbattery LILY OLM, German Translator JARED BENNETT, Planet Depos Technician RJ BUCKLER, Planet Depos Videographer</p> <p>22</p>	<p style="text-align: center;">4</p> <p>1 THE VIDEOGRAPHER: Here begins</p> <p>2 recording number 1 in the videotaped deposition</p> <p>3 of Dr. Hans Jürgen Lindner, in the matter of</p> <p>4 PEAG LLC et al. versus VARTA Microbattery GmbH,</p> <p>5 held in the United States Patent and Trademark</p> <p>6 Office held before the Patent Trial and Appeal</p> <p>7 Board.</p> <p>8 Today's date is June 8th, 2021.</p> <p>9 The time on the video monitor is 8:09 a.m.</p> <p>10 Eastern US time. The videographer today is RJ</p> <p>11 Buckler CLVS representing Planet Depos. This</p> <p>12 deposition is taking place remotely via Zoom.</p> <p>13 Would counsel please introduce</p> <p>14 themselves and state whom they represent.</p> <p>15 MR. PALMIERI: My name is Nick</p> <p>16 Palmieri with Baker Botts representing the</p> <p>17 petitioners. Also here with me is Paul Ragusa,</p> <p>18 also with Baker Botts.</p> <p>19 MR. HARTMANN: I'm Mike Hartmann</p> <p>20 for patent owner in all four of the IPRs that I</p> <p>21 believe this deposition is being taken in.</p> <p>22 THE VIDEOGRAPHER: The court</p>

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<p style="text-align: right;">5</p> <p>1 reporter today is Nancy Bendish representing 2 Planet Depos. Would the reporter please swear 3 in the witness. 4 - - - 5 LILY OLM, German Translator, was remotely sworn 6 by the Court Reporter. 7 DR. HANS JÜRGEN LINDNER, 8 having been remotely sworn by the 9 Court Reporter, testified as follows: 10 THE REPORTER: Please state your 11 full name. 12 THE WITNESS: Hans Jürgen Lindner. 13 THE REPORTER: And the address 14 where you are presently located. 15 THE WITNESS: I live in Germany in 16 the City of Herne, and I live on the floor of a 17 house on Eickeler Strasse 24. That's the street 18 where I'm living. 19 THE REPORTER: And where are you 20 presently located in this moment? 21 THE WITNESS: Now I'm in the 22 factory of VARTA Microbattery here in Ellwangen.</p>	<p style="text-align: right;">7</p> <p>1 you. If at any time you need me to clarify a 2 question, repeat a question, just let me know. 3 Also, please feel free to use our interpreter if 4 you need any question interpreted into German. 5 And otherwise I will assume that you understand 6 the question that I ask. Feel free to ask for 7 clarification on anything. 8 A. That's okay with me. 9 Q. Throughout this deposition I'll 10 refer to the patent owner VARTA Microbattery 11 GmbH as "VARTA." Are you all right with that? 12 A. Yes. 13 Q. Before we begin as well, is there 14 any information in your declaration that you 15 would like to correct or any errors that you 16 would like to fix? 17 A. The document is okay with me. 18 There is no problem with it. 19 Q. Okay. And just to clarify, the 20 declaration you submitted is in English, 21 correct? 22 A. Yeah, of course, yeah.</p>
<p style="text-align: right;">6</p> <p>1 EXAMINATION BY MR. PALMIERI: 2 Q. Thank you, Dr. Lindner, for taking 3 time to speak with us today. We just have some 4 initial questions we wanted to ask before we get 5 into it. 6 First, is there anyone else in the 7 room with you right now? 8 A. Yeah, I have somebody with me in 9 the room, yeah. 10 Q. Okay. Can you state their name. 11 A. Dr. Lindner, I'm the former 12 development engineer and the quality manager for 13 VARTA when I was still working. 14 Q. And the name of the person in the 15 room with you? 16 A. That's Rainer Jostes, one of my 17 colleagues. 18 Q. And he's the only other person in 19 the room with you? 20 A. Yes. 21 Q. And so we're going to generally 22 proceed in English, if that's all right with</p>	<p style="text-align: right;">8</p> <p>1 Q. You didn't prepare a German 2 language version of this document? 3 A. I did not what? 4 Q. Prepare a German -- sorry. 5 (Question translated.) 6 A. Partly, partly. I prepared it in 7 German and I prepared it also partly in English. 8 Q. Okay. But the document submitted 9 is all in English and you're comfortable 10 proceeding in English? 11 A. Yes, correct. 12 Q. Great, thank you. And you're not 13 a lawyer, correct? 14 A. I'm not a lawyer. I'm a chemist. 15 Q. You don't have any background 16 education in US patent law specifically? 17 A. No, I don't have any background on 18 that one. 19 Q. Okay. 20 A. (Indiscernible.) 21 (Reporter clarification.) 22 A. I have no background in legal</p>

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<p style="text-align: right;">9</p> <p>1 skills in USA.</p> <p>2 Q. And have you ever been deposed</p> <p>3 before?</p> <p>4 A. I have never been what?</p> <p>5 Q. Deposed.</p> <p>6 A. No. No, it's okay. I did not</p> <p>7 understood the word "deposed." No, I have never</p> <p>8 been deposed at all.</p> <p>9 Q. And have you ever testified at a</p> <p>10 trial or other similar proceeding?</p> <p>11 A. No, not here in Germany, not</p> <p>12 anywhere else in the world.</p> <p>13 Q. And what did you do in preparation</p> <p>14 for today's deposition?</p> <p>15 A. I was just reading my deposition</p> <p>16 and the patents, what we discuss today probably,</p> <p>17 and I think also some other literature which</p> <p>18 were in the name for the various prior art</p> <p>19 documents, which I get.</p> <p>20 Q. And did you speak with anyone else</p> <p>21 at VARTA specifically?</p> <p>22 A. No, only with my colleagues like</p>	<p style="text-align: right;">11</p> <p>1 battery development and manufacturing, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you haven't been involved in</p> <p>4 any of the sales or commercialization of VARTA's</p> <p>5 batteries?</p> <p>6 A. No. If they have a question, I</p> <p>7 can help them in sales, but the sales department</p> <p>8 have to take over. I'm not directly involved</p> <p>9 with customers in that time.</p> <p>10 Q. Okay. So have you ever directly</p> <p>11 communicated with customers, in particular in</p> <p>12 connection with the CoinPower batteries?</p> <p>13 A. No, I did not.</p> <p>14 Q. And have you been involved with</p> <p>15 the development of any other products at VARTA</p> <p>16 beyond CoinPower batteries?</p> <p>17 A. Yes.</p> <p>18 Q. Can you describe what those</p> <p>19 products were?</p> <p>20 A. Very simple, when I started with</p> <p>21 VARTA in '88, 1988, I was in the development</p> <p>22 department of nickel-cadmium round cells,</p>
<p style="text-align: right;">10</p> <p>1 Michael Hartmann and Dr. Jostes.</p> <p>2 Q. And did Dr. Jostes speak with you</p> <p>3 about this deposition in advance of today?</p> <p>4 A. I don't think so, no. I see</p> <p>5 Rainer for the first time this week.</p> <p>6 Q. And did you speak with Dr. Martin</p> <p>7 Peckerar in advance of today?</p> <p>8 A. No, not recently, no.</p> <p>9 Q. When's the last time you did speak</p> <p>10 with Dr. Peckerar?</p> <p>11 A. It was already weeks ago. Was</p> <p>12 probably around beginning of May.</p> <p>13 Q. And what did you discuss with him</p> <p>14 at the beginning of May?</p> <p>15 A. I think your sound line is very</p> <p>16 bad. I don't get your -- what did you ask?</p> <p>17 Q. What did you speak with Dr.</p> <p>18 Peckerar with at the beginning of May?</p> <p>19 A. That was about the various patents</p> <p>20 we hold and what was about the technology he</p> <p>21 invented and I think that was more or less all.</p> <p>22 Q. So your background is primarily</p>	<p style="text-align: right;">12</p> <p>1 cylindrical round cells, and consumer batteries</p> <p>2 during that time. And I have also been</p> <p>3 responsible for running the pilot line on</p> <p>4 nickel-metal hydride round cells, which are --</p> <p>5 (Reporter clarification.)</p> <p>6 A. Nickel-metal hydride. That's a</p> <p>7 subsequent system like the nickel-cadmium</p> <p>8 batteries that was giving us more capacity and</p> <p>9 that was development, what we did.</p> <p>10 Q. And were those cylindrical</p> <p>11 batteries?</p> <p>12 A. Yes. They were all in -- that was</p> <p>13 a different place of manufacturing and that was</p> <p>14 nickel-cadmium batteries also for the airplanes</p> <p>15 and all other systems what we supported --</p> <p>16 (Reporter clarification.)</p> <p>17 A. I have to recall the sentence.</p> <p>18 It was at that time when I was</p> <p>19 responsible for the development and also for the</p> <p>20 production, and then I was working on all those</p> <p>21 systems which we had in that factory that were</p> <p>22 round cells for consumer, for OEM customers and</p>

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13	<p>1 for military goods.</p> <p>2 Q. And you used the term "round</p> <p>3 cells" there. Is there a difference between</p> <p>4 that and cylindrical cells?</p> <p>5 A. No, the same wording actually.</p> <p>6 Q. And are -- would button cell</p> <p>7 batteries also be considered a round cell?</p> <p>8 A. We did not manufacture the button</p> <p>9 cells in that part of the factory. That was</p> <p>10 coming in later.</p> <p>11 Q. But would you classify button</p> <p>12 cells as a type of round cell?</p> <p>13 A. Can you repeat, please?</p> <p>14 Q. Yes. So you've referred a couple</p> <p>15 times to round cells.</p> <p>16 A. Yes.</p> <p>17 Q. I'm wondering if you use the term</p> <p>18 "round cells" to also describe button cell</p> <p>19 batteries?</p> <p>20 A. No. Definitely not for us, either</p> <p>21 the round cell or cylindrical cell is that the</p> <p>22 diameter is smaller than the height, and button</p>	15	<p>1 ask professor to take you on as a doctor degree</p> <p>2 in future.</p> <p>3 So, that one is definitely a</p> <p>4 thesis that was, I think a couple of years I</p> <p>5 worked over there only; if I'm not mistaken,</p> <p>6 four years.</p> <p>7 Q. And what was the topic of your</p> <p>8 research during your Ph.D., during those years?</p> <p>9 A. At the university, that was the</p> <p>10 studies on phosphor chemistry which had various</p> <p>11 impact, for instance to what is called</p> <p>12 fertilizers and also for killing insects.</p> <p>13 Q. So, as you said, you began working</p> <p>14 at VARTA immediately after you finished your</p> <p>15 Ph.D.?</p> <p>16 A. Yes.</p> <p>17 Q. And that was in 1987?</p> <p>18 A. That was in '88 I started in</p> <p>19 December with VARTA in Germany at the factory in</p> <p>20 Hagen.</p> <p>21 Q. Can you just repeat where you</p> <p>22 started working, where was that location? I</p>
14	<p>1 cells are normally the cells which are diameter</p> <p>2 bigger than the height.</p> <p>3 Q. And so can you also just provide a</p> <p>4 brief background on your education.</p> <p>5 A. I studied chemistry at the</p> <p>6 University of Bochum and I get my diploma degree</p> <p>7 over there, what is roughly about the step</p> <p>8 before you can do your Ph.D. actually, and then</p> <p>9 I work on the Ph.D. as well during my time.</p> <p>10 When I came out of them, I went over to VARTA</p> <p>11 Microbatteries.</p> <p>12 Q. So you didn't work anywhere else</p> <p>13 before joining VARTA?</p> <p>14 A. No. I had a small military career</p> <p>15 for the two years, compulsory service.</p> <p>16 Q. And as part of your Ph.D. did you</p> <p>17 prepare a dissertation or a thesis paper?</p> <p>18 A. Yes. That is the longer way we</p> <p>19 have it in Germany, that you have to have a</p> <p>20 diploma degree. Then you have already special</p> <p>21 practical work to do in and supply the documents</p> <p>22 over there, and then you go with this one and</p>	16	<p>1 didn't quite get that.</p> <p>2 A. That was the development</p> <p>3 department in VARTA Hagen. That's a small</p> <p>4 village southern of the Dortmund region.</p> <p>5 Q. And you're no longer employed by</p> <p>6 VARTA, correct?</p> <p>7 A. I'm only -- I was not working with</p> <p>8 VARTA. Now I'm back for VARTA here helping them</p> <p>9 with this trial, yeah.</p> <p>10 Q. But you retired from your --</p> <p>11 A. Yes.</p> <p>12 Q. -- positions. Okay.</p> <p>13 And could you provide a -- could</p> <p>14 you describe what position you were in around</p> <p>15 the time these patents were filed?</p> <p>16 A. In the beginning I was working in</p> <p>17 the development department here in Arlen</p> <p>18 (phonetic) on batteries and battery development</p> <p>19 of various systems, and then I started to work</p> <p>20 on this project, making a new cell, and we have</p> <p>21 then been working inside the -- what is it</p> <p>22 called? I was working as a manager for new</p>

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