

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

VARTA MICROBATTERY GMBH, Plaintiff,  v.	
COSTCO WHOLESALE CORPORATION	Civil Action No. 2:20-cv-00051-JRG <b>LEAD CASE</b>
AMAZON.COM, INC.	Civil Action No. 2:20-cv-00052-JRG
BEST BUY CO., INC., ET AL	Civil Action No. 2:20-cv-00054-JRG
PEAG, LLC	Civil Action No. 2:20-cv-00071-JRG
AUDIO PARTNERSHIP LLC, ET AL	Civil Action No. 2:20-cv-00138-JRG
SAMSUNG ELECTRONICS AMERICA, INC.  Defendants.	Civil Action No. 2:20-cv-00029-JRG

**DISCOVERY ORDER IN CIVIL ACTION NOS. 2:20-00029, 2:20-00071, 2:20-00138**

After a review of the pleaded claims and defenses in Civil Action Nos. 2:20-00029-JRG, 2:20-00071-JRG, 2:20-00138-JRG,<sup>1</sup> in furtherance of the management of the Court's docket under Federal Rule of Civil Procedure 16, and after receiving the input of the parties to those three actions, it is ORDERED AS FOLLOWS:

<sup>1</sup> Civil Action Nos. 2:20-cv-00051-JRG and 2:20-cv-00052 are not included in this Order as those cases were stayed by this Court on May 18, 2020. Civil Action No. 2:20-cv-00054 is not included in this Order because that case was stayed by this Court on June 4, 2020.

1. Initial Disclosures: In lieu of the disclosures required by Federal Rule of Civil Procedure 26(a)(1), each party shall disclose to every other party in its individual action<sup>2</sup> the following information:

- a. the correct names of the parties to the lawsuit;
- b. the name, address, and telephone number of any potential parties;
- c. the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);
- d. the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;
- e. any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;
- f. any settlement agreements relevant to the subject matter of the action; and
- g. any statement of any party to the litigation.

<sup>2</sup> For clarity, the disclosures required to be made under this Order require a party to provide information to the parties in its individual action only. Individual defendants may separately agree to provide to other defendants in the actions subject to this Order certain information, but that is not required by this Order.

2. Disclosure of Expert Testimony: A party must disclose to the other parties in its individual action the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or 705, and:
  - a. if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, provide the disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B) and Local Rule CV-26; and
  - b. for all other such witnesses, provide the disclosure required by Federal Rule of Civil Procedure 26(a)(2)(C).
  
3. Additional Disclosures: Without awaiting a discovery request, each party will make the following disclosures to every other party in its individual action:
  - a. provide the disclosures required by the Patent Rules for the Eastern District of Texas.
  - b. produce or permit the inspection of all documents, electronically stored information, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action, except to the extent these disclosures are affected by the time limits set forth in the Patent Rules for the Eastern District of Texas;<sup>3</sup> and
  - c. provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including

<sup>3</sup> The parties anticipate that this provision will alleviate the need for requests for production of documents under Fed. R. Civ. P. 34.

materials bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

4. Protective Orders: The Court will enter the parties' Agreed Protective Order, subject to the Court's approval.
5. Discovery Limitations: The discovery in these actions is limited to the disclosures described in Paragraphs 1-3 together with the following limits:
  - a. Defendants: For purposes of this paragraph, there are three "Defendant Groups": (1) Samsung Electronics America, Inc.; (2) PEAG, LLC d/b/a JLab Audio; and (3) Audio Partnership (Audio Partnership LLC and Audio Partnership PLC d/b/a Cambridge Audio). "Defendants" refers to all of the Defendants in the foregoing Defendant Groups. "Side" means Plaintiff VARTA Microbattery GmbH on the one hand and the three Defendant Groups collectively on the other hand.
  - b. Interrogatories: Plaintiff may serve fifteen (15) interrogatories common to all Defendants and five (5) individual interrogatories on each Defendant Group. Defendants may collectively serve ten (10) interrogatories on Plaintiff and each Defendant Group may serve ten (10) individual interrogatories on Plaintiff.
  - c. Requests for Admissions: Plaintiff may serve fifteen (15) requests for admission common to all Defendants and ten (10) individual requests for admission to each Defendant Group. Defendants may collectively serve fifteen (15) requests for admission and each Defendant Group may serve

ten (10) individual requests for admission on Plaintiff. Each side may serve an additional thirty five (35) requests for admission that seek an admission as to the authenticity of a particular document or thing. The parties shall work together in good faith in an effort to stipulate as to the authenticity of documents where possible.

d. Depositions:

- i. Fact Depositions: Plaintiff may take a take a maximum of forty-nine (49) hours of fact depositions (including 30(b)(6), 30(b)(1), and third-party fact depositions) of each Defendant Group. Defendants may collectively take a maximum of twenty-one (21) hours of fact depositions (including 30(b)(6) and 30(b)(1) and third party fact depositions); this limitation, however, does not include depositions of the named inventors of the patents-in-suit, which may also be taken by Defendants. Each Defendant Group may individually take two (2) additional depositions of Plaintiff. Unless otherwise agreed, the daily limit of seven (7) hours shall apply to all fact depositions, and no fact witness may be deposed more than once by Defendants.
- ii. Expert Depositions: Plaintiff and each Defendant Group may take up to seven (7) hours of deposition testimony of each expert who submits a report on the issues of infringement, validity and damages in the case. Plaintiff and Defendants will endeavor to minimize the amount of experts and related depositions to the extent possible and each side in good faith will consider using a single expert per side

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