

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

VARTA MICROBATTERY GMBH,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION

C.A. No. 2:20-cv-0051-JRG

LEAD CASE

BEST BUY CO., INC, ET AL

C.A. No. 2:20-cv-00054-JRG

PEAG, LLC

C.A. No. 2:20-cv-00071-JRG

AUDIO PARTNERSHIP LLC, ET AL

C.A. No. 2:20-cv-00138-JRG

**DEFENDANTS PEAG, LLC D/B/A JLAB AUDIO, AUDIO PARTNERSHIP LLC AND
AUDIO PARTNERSHIP PLC D/B/A CAMBRIDGE AUDIO'S
OPPOSED MOTION TO STAY PENDING *INTER PARTES* REVIEW
IN CASE NOS. 2:20-CV-00071 AND 2:20-CV-00138**

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INTRODUCTION

Defendants PEAG, LLC d/b/a JLab Audio (“JLab”), Audio Partnership LLC and Audio Partnership PLC d/b/a Cambridge Audio (“Cambridge”) (collectively “Defendants”) respectfully move the Court to stay Case Nos. 2:20-cv-00071 and 2:20-cv-00138 until the Patent Trial and Appeal Board (“PTAB”) has concluded *inter partes* review (“IPR”) of all four patents asserted in these cases: U.S. Patent Nos. 9,153,835; 9,496,581; 9,799,858; and 9,799,913 (collectively, the “Asserted Patents”).

Defendants diligently filed four IPR petitions with the PTAB seeking review of the Asserted Patents on July 7, 2020, less than two months after Plaintiff VARTA Microbattery GmbH (“VARTA”) disclosed the asserted claims in its infringement contentions. Defendants’ IPR petitions challenge the patentability of all of the asserted claims and others, citing prior art combinations that the United States Patent and Trademark Office did not consider during prosecution.

Resolution of the pending IPRs will significantly narrow the scope of the present litigation, or altogether render it moot. Additionally, VARTA’s statements in these IPR proceedings will be relevant to issues here, including issues of claim construction, which process has not yet begun in this case.

Defendants bring this motion now when the factors this Court considers—the simplification of pending issues, state of the proceedings, and risk of undue prejudice to the plaintiff—all weigh in favor of a granting a stay.

I. STATEMENT OF FACTS

VARTA filed complaints against JLab and Cambridge in the Eastern District of Texas on March 4, 2020 and May 4, 2020¹, respectively, asserting infringement of four patents. On May 12, 2020, VARTA served infringement contentions on Defendants and identified the patent claims it contends Defendants infringe. Less than two months after receiving VARTA's infringement contentions, Defendants filed IPR petitions, seeking to invalidate each asserted claim of each Asserted Patent. Those four IPR petitions also address certain claims that have not been asserted in litigation:

IPR Case No.	Patent	Challenged Claims	Actual Filing Date	Notice of Filing Date Accorded	Institution Decision Deadline
IPR2020-1211	'581	1-12	July 7, 2020	July 22, 2020	January 7, 2021
IPR2020-1212	'835	1-12	July 7, 2020	July 22, 2020	January 7, 2021
IPR2020-1213	'858	1-8	July 7, 2020	August 6, 2020	January 7, 2021
IPR2020-1214	'913	1-8	July 7, 2020	August 6, 2020	January 7, 2021

The actual and accorded filing date for Defendants' petitions is July 7, 2020. VARTA has three months from the notice of filing date to file a preliminary response to each petition. The PTAB is set to issue institution decisions on Defendants' petitions in less than six months, i.e., on

¹ VARTA filed a complaint against Cambridge in the Northern District of Illinois on March 3, 2020 (Case No. 1:20-cv-01568). That complaint was voluntarily dismissed and refiled in this District on May 4, 2020.

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