

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

**PLAINTIFF VARTA MICROBATTERY GMBH'S OPPOSITION TO DEFENDANTS'  
MOTION TO STAY PENDING *INTER PARTES* REVIEW**

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## I. INTRODUCTION

Plaintiff VARTA Microbattery GmbH (“VARTA”) respectfully opposes the Motion to Stay Pending *Inter Partes* Review (Dkt. 64, “Motion”) filed by Defendants PEAG, LLC d/b/a JLab Audio, and Audio Partnership LLC and Audio Partnership PLC d/b/a Cambridge Audio (collectively “Defendants”).

In this Court, it is “not just the majority rule; it is the universal practice” to deny pre-institution motions to stay. *Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV-1047-WCB, 2015 WL 1069179, at \*6 (E.D. Tex. Mar. 11, 2015); *see also GreenThread, LLC v. Samsung Electronics Co., Ltd. et al.*, No. 2:19-CV-00147, Dkt. 43 at 1 (E.D. Tex. Feb. 4, 2020) (“It is the Court’s established practice to consider that motions to stay pending IPR proceedings that have not been instituted are inherently premature and should be denied as such.”).

Defendants ask this Court to ignore the “universal” and “established practice,” but they provide no justification for doing so. For this reason alone, Defendants’ Motion should be denied.

Moreover, each of the relevant factors—simplification of the issues, prejudice, and stage of the lawsuit—weigh decidedly against granting a stay in this case regardless of whether the PTAB institutes review of the patents-in-suit. Defendants raised in this lawsuit a myriad of invalidity defenses that cannot be resolved by the PTAB. Absent an improbable finding by the PTAB that all claims are invalid, all issues—including invalidity—will need to be resolved by this Court. Thus, a stay is not likely to result in significant simplification of the issues in this case.

VARTA will also be substantially prejudiced if this case is stayed. VARTA manufactures and sells batteries covered by the asserted patents. Defendants have in the past sold, and continue to sell, accused products with infringing batteries purchased from a Chinese battery manufacturer, MIC-Power. This continuing infringement has adversely impacted

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