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-00051-JRG **LEAD CASE**
AMAZON.COM, INC.	C.A. No. 2:20-cv-00052-JRG
BEST BUY CO., INC., ET AL	C.A. No. 2:20-cv-00054-JRG
SAMSUNG ELECTRONICS AMERICA, INC.	C.A. No. 2:20-cv-00029-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

DEFENDANTS' P.R. 3-3 INVALIDITY CONTENTIONS

Pursuant to the Docket Control Order in this case (Dkt. No. 54) and Local Patent Rule 3-3, Defendants Samsung Electronics America, Inc., PEAG, LLC d/b/a JLab Audio, and Audio Partnership LLC and Audio Partnership PLC d/b/a Cambridge Audio (collectively, "Defendants") provide their invalidity contentions to Plaintiff VARTA Microbattery GmbH ("Plaintiff" or "Varta") in support of Defendants' allegations of invalidity of United States Patent Nos. 9,153,835 ("the '835 patent"); 9,799,858 ("the '858 patent"); 9,799,913 ("the '913 patent"); and 9,496,581 ("the '581 patent") (collectively, the "Asserted Patents").

I. INTRODUCTION

As disclosed in its respective P. R. 3-1 Infringement Contentions served on Defendants, Plaintiff asserts the following patents and claims:

Asserted Patents	Asserted Claims
U.S. Patent No. 9,153,835	1, 2, 4-12
U.S. Patent No. 9,496,581	1, 2, 4-12
U.S. Patent No. 9,799,858[1]	1-8
U.S. Patent No. 9,799,913	1-8

As further detailed in and supported by these Invalidity Contentions, Defendants contend that each Asserted Claim is invalid under at least 35 U.S.C. §§ 102, 103, and/or 112.[2] Defendants reserve the right to challenge the Asserted Claims on bases other than those required to be disclosed in these disclosures pursuant to P. R. 3-3.[3]

Defendants incorporate, in full, all prior art references cited in the Asserted Patents and any patent applications to which the Asserted Patents claim priority, and the Asserted Patents' respective prosecution histories.

II. AMENDMENT AND SUPPLEMENTATION

Defendants' Invalidity Contentions pertain to the Asserted Claims as identified in

---

[1] Varta has not asserted the '858 patent against Samsung, Costco Wholesale, or Amazom.com, or against any Samsung product, and thus these contentions with respect to the '858 patent are submitted only on behalf of PEAG and the Audio Partnership defendants. Samsung and its customer defendants reserve the right to submit their own Invalidity Contentions to the extent the '858 patent becomes relevant with respect to one or more of them, or any Samsung product.

[2] References to Title 35 of the United States Code are to statutes prior to amendment under the America Invents Act ("AIA"), as the Asserted Patents purport to have effective filing dates prior to applicable AIA effective dates.

[3] For example, Defendants note that Patent Local Rule 3-3 does not require the disclosure of unenforceability contentions in a party's Invalidity Contentions.

Plaintiff's Infringement Contentions. To the extent the Court later allows Plaintiff to amend its Infringement Contentions and/or assert one or more claims or patents other than the Asserted Claims or Asserted Patents, respectively, Defendants reserve the right to modify, amend, or supplement these Invalidity Contentions accordingly to, for example, show the invalidity of any such newly asserted claims.

These Invalidity Contentions are based on Defendants' current understanding of the Asserted Claims and Plaintiff's apparent view of the scope of those claims as shown, for example, in Plaintiff's Infringement Contentions. A *Markman* Order in this case has not yet been issued, and in no way shall these Invalidity Contentions be taken as any admission or acquiescence by Defendants as to the proper scope of the Asserted Claims and/or proper claim constructions of terms and phrases recited in those claims. By identifying prior art that anticipates and/or renders obvious the Asserted Claims, Defendants do not admit that the claim limitations are capable of construction, do not admit that any claim limitations are supported with an appropriate written description and enabling disclosure in the applicable patent specifications, and do not adopt Plaintiff's apparent claim constructions or admit the accuracy of any particular claim construction.[4] Defendants reserve all rights to later challenge or oppose any claim constructions advanced by Plaintiff and to present their own claim construction positions.

Defendants further reserve the right to revise these Invalidity Contentions in view of the

---

[4] Defendants do not concede that Plaintiff's constructions are correct, but rather assert the well-established principle that whatever infringes a claim if later in time anticipates if earlier in time. *Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1378 (Fed. Cir. 2001). Thus, where Plaintiff for purposes of its infringement case alleges that a feature of an accused product meets a particular limitation recited in one or more of the Asserted Claims, then that feature, should it be found in the prior art, would also cause that limitation to be met for invalidity purposes.

Court's construction of terms and phrases recited in one or more of the Asserted Claims, additional information obtained during discovery, additional infringement theories put forth by Plaintiff during fact and/or expert discovery, any findings as to the priority date(s) of the Asserted Claims, and/or positions that Plaintiff, its fact witnesses, or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues.

Defendants further reserve the right to supplement their accompanying P.R. 3-4(b) document production should they later discover additional prior art documents, information, testimony, prior art systems and related documentation, and/or software or hardware code, including but not limited to information provided by third parties after the date of service of these Invalidity Contentions.

Defendants may further rely on inventor admissions concerning the scope or state of the prior art relevant to the Asserted Claims, the patent prosecution histories of the Asserted Patents, related patents and/or patent applications, any deposition or trial testimony of a named inventor on the Asserted Patents, and the papers filed and any evidence produced or submitted by Plaintiff in connection with this case or other related litigation. Defendants reserve the right to contend that one or more of the Asserted Claims are invalid under 35 U.S.C. § 102(f) in the event Defendants obtain evidence that any of the named inventors did not invent the subject matter in the Asserted Claims with which they are associated on the face of the Asserted Patents.

Prior art not included in these Invalidity Contentions, whether known or not known to Defendants, may become relevant. In particular, Defendants are currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the Asserted Claims are not disclosed in the prior art identified in these Invalidity Contentions. Accordingly, Defendants reserve the right to identify other references that would disclose the allegedly missing limitation(s) of the claimed

method, device, or system.

The references identified in these Invalidity Contentions, which include the attached claim charts, may disclose the elements of the Asserted Claims explicitly and/or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. References identified in these Invalidity Contentions, as well as the "References Cited" on the faces of the Asserted Patents and the patents cited within the bodies of the Asserted Patents, may be used to illustrate, but not limit the scope of, the state of the art to which the Asserted Patents pertain (*i.e.*, at a time prior to the date of alleged inventions of the Asserted Claims of the Asserted Patents). Moreover, Defendants reserve the right to rely on later identified sources of information, including but not limited to witness testimony and other discovery, to establish the state of the art in the relevant time frame pertaining to the Asserted Patents.

Because discovery has just recently begun, Defendants anticipate that additional prior art and invalidity bases may be found. Defendants' investigation and analysis of the prior art is continuing, and thus Defendants reserve the right to supplement, amend, and/or revise the information provided herein as Defendants conduct further investigation and/or analysis, including identifying, charting, and relying on additional references.

Additionally, in view of likely third-party discovery that will be taken, Defendants reserve the right to present additional items of prior art under 35 U.S.C. §§ 102(a), (b), (e), and/or (g) and/or § 103 located during discovery or further investigation, and to assert contentions of invalidity under 35 U.S.C. §§ 102(c), (d), or (f). For example, Defendants may issue subpoenas to third parties believed to have knowledge, documents, and/or other evidence concerning invalidity of one or more of the Asserted Claims.

In addition to the positions and prior art identified in these Invalidity Contentions

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.