

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PEAG LLC (d/b/a JLab Audio), AUDIO PARTNERSHIP LLC and AUDIO  
PARTNERSHIP PLC (d/b/a Cambridge Audio)  
Petitioner,

v.

VARTA MICROBATTERY GMBH,  
Patent Owner.

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IPR2020-01211  
Patent 9,496,581 B2

Before CHRISTOPHER L. CRUMBLEY, JO-ANNE M. KOKOSKI, and  
JON B. TORNQUIST, *Administrative Patent Judges*.

CRUMBLEY, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining All Challenged Claims Unpatentable  
Granting Patent Owner's Motion to Amend  
*35 U.S.C. § 318(a)*

ORDER  
Dismissing in Part and Denying in Part Patent Owner's Motion to Exclude  
Evidence  
*37 C.F.R. §42.64(c)*

## I. INTRODUCTION

PEAG LLC (d/b/a JLab Audio), Audio Partnership LLC and Audio Partnership PLC (d/b/a Cambridge Audio) (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting the Board institute an *inter partes* review of claims 1–12 of U.S. Patent No. 9,496,581 B2 (Ex. 1001, “the ’581 patent”). Varta Microbattery GmbH (“Patent Owner” or “VARTA”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”).<sup>1</sup>

Upon consideration of the Petition, Preliminary Response, and the parties’ evidence, we determined that Petitioner had demonstrated a reasonable likelihood that it would prevail with respect to at least one claim of the ’581 patent. Paper 8 (“Decision on Institution” or “DI”). Thus, pursuant to the Supreme Court’s decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018), and USPTO Guidance,<sup>2</sup> we instituted review of all challenged claims on all asserted grounds. *Id.*

Following institution of trial, Patent Owner filed a Patent Owner Response (Paper 16, “PO Resp.”), Petitioner filed a Reply (Paper 24, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 29, “Sur-reply”). In support of their respective positions, Petitioner relies on the testimony of Mr. William H. Gardner (Ex. 1003, “Gardner Declaration”; Ex. 1041,

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<sup>1</sup> Petitioner identifies PEAG LLC (d/b/a JLab Audio), Audio Partnership LLC, Audio Partnership PLC (d/b/a Cambridge Audio), and Guangdong Mic-Power New Energy Co. Ltd., as the real parties-in-interest. Pet. 1. Patent Owner identifies VARTA Microbattery GmbH, as the real party-in-interest. Paper 5, 2.

<sup>2</sup> In accordance with USPTO Guidance, “[i]f the PTAB institutes a trial, the PTAB will institute on all challenges raised in the petition.” *See* USPTO, Guidance on the Impact of SAS on AIA Trial Proceedings (April 26, 2018) (available at <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>) (“USPTO Guidance”).

“Gardner Supplemental Declaration”; Ex. 1032, “Gardner Deposition I”; Ex. 1033, “Gardner Deposition II”), and Patent Owner relies on the testimony of Dr. Martin C. Peckerar (Ex. 2043, “Peckerar Declaration”; Ex. 2050, “Peckerar Supplemental Declaration”; Ex. 2060, “Peckerar Second Supplemental Declaration”; Ex. 1034, “Peckerar Deposition I”; Ex. 1035, “Peckerar Deposition II”; Ex. 1042, “Peckerar Deposition III”). The parties also rely on the declaration testimony of Mr. Philipp Miehlich (Ex. 2045) and Dr. Hans Jurgen Lindner (Ex. 2046), and their respective deposition testimony (Exs. 1036, 1037).

An oral hearing was held on November 2, 2021, and a transcript of the hearing is included in the record (Paper 47, “Tr.”).

After institution, Patent Owner filed a Contingent Motion to Amend and Petitioner filed an Opposition. Paper 15; Paper 23. We provided Preliminary Guidance on that motion. Paper 26. Thereafter, Patent Owner filed a revised contingent Motion to Amend, proposing substitute claims 14–25 for original claims 1–12, contingent on those original claims being found unpatentable. Paper 28 (“Motion to Amend” or “MTA”). Subsequently, Petitioner filed an Opposition to Patent Owner’s Motion (Paper 35, “MTA Opp.”), Patent Owner filed a Reply in Support of its Motion (Paper 37, “MTA Reply”), and Petitioner filed a Sur-reply (Paper 42, “MTA Sur-reply”).

Patent Owner also filed a Motion to Exclude certain testimony contained in Mr. Gardner’s Supplemental Declaration (Ex. 1041). Paper 38 (“MTE”). Thereafter, Petitioner filed an Opposition to Patent Owner’s Motion to Exclude (Paper 41, “MTE Opp.”) and Patent Owner filed a Reply in Support of its Motion to Exclude (Paper 43, “MTE Reply”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–12 of the '581 patent are unpatentable. We grant Patent Owner's Revised Contingent Motion to Amend as to proposed substitute claims 14–25.

*A. Related Proceedings*

The parties indicate that the '581 patent is the subject of the following pending consolidated district court actions: *VARTA Microbattery GmbH v. Costco Wholesale Corporation*, No. 2:20-cv-0051-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Amazon.com, Inc.*, No. 2:20-cv-0052-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Best Buy Co., Inc.*, No. 2:20-cv-0054-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. PEAG, LLC*, No. 2:20-cv-0071-JRG (E.D. Tex.); *VARTA Microbattery GmbH v. Audio Partnership LLC, et al.*, No. 2:20-cv-00138-JRG (E.D. Tex.); and *VARTA Microbattery GmbH v. Samsung Electronics America, Inc.*, No. 2:20-cv-00029-JRG (E.D. Tex.) (collectively, "the District Court Action"). Pet. 1; Paper 5, 2–3; Ex. 2002. Petitioner also filed petitions challenging claims of other patents asserted in the District Court Action in IPR2020-01212, IPR2020-01213, and IPR2020-01214. Pet. 2; Paper 5, 3.

*B. The '581 Patent (Ex. 1001)*

The '581 patent is titled "Button Cells and Method for Producing Same" and issued November 15, 2016, with claims 1–13. Ex. 1001, codes (54), (45), 12:15–13:12. The '581 patent describes a button cell that includes a housing cup and a top separated by a seal that forms a housing with parallel flat bottom and top areas, and an electrode-separator assembly

including a flat positive and negative electrode, wherein the electrodes are aligned essentially at right angles to the flat bottom and top areas, and the assembly is a spiral winding having end faces defining side surfaces of the winding facing in an axial direction relative to the flat bottom and top areas. *Id.* at code (57), 9:34–39, 11:11–24. The '581 patent further describes that the positive and negative electrodes are each in the form of flat electrode layers and connected to one another via a flat separator, and the electrodes are preferably laminated or adhesively bonded onto this separator. *Id.* at 3:22–30.

According to the '581 patent, it was known in the art to have button cells with electrode-separator assemblies contained within the housing, but the prior art button cells always contained these assemblies inserted flat such that the electrode layers are aligned essentially parallel to the flat bottom and top areas of the housing. Ex. 1001, 1:44–45, 3:36–39. The '581 patent states that various problems occur in button cells that contain such electrode-separator assemblies, including increased scrap rates due to faults that can occur when the assemblies make contact with one another, as well as the potential that the assemblies will leak. *Id.* at 1:58–60, 1:66–2:4.

The '581 patent states it was also known in the art to close button cells in a liquid-tight manner by beading the edge of the cell cup over the cell top and that button cells without beading cannot be loaded as heavily in the axial direction as compared to button cells with a beaded-over cup edge, especially with respect to axial mechanical loads caused in the interior of the button cell. *Id.* at 2:5–7, 2:18–23. The '581 patent explains that the axial forces, which may occur, for example, as a result of volume changes during charging and discharging processes, can lead to leaks more readily in button

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