

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

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.

---

IPR2020-01212  
Patent 9,153,835 B2

Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and  
AVELYN M. ROSS, *Administrative Patent Judges*.

ROSS, *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. 9,153,835 B2 (Ex. 1001, “the ’835 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 ’835 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 15, “PO Resp.”), Petitioner filed a Reply (Paper 23, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 28, “Sur-reply”). In support of their respective positions, Petitioner relies on the testimony of Mr. William H. Gardner (Ex. 1003, “Gardner Declaration”; Ex. 1041,

---

<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, “if 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 to Patent Owner’s Contingent Motion to Amend. Paper 14; Paper 22. We provided Preliminary Guidance on that motion. Paper 25. 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 27 (“Motion to Amend” or “MTA”). Subsequently, Petitioner filed an Opposition to Patent Owner’s Motion (Paper 34, “MTA Opp.”), Patent Owner filed a Reply in Support of its Motion (Paper 36, “MTA Reply”), and Petitioner filed a Sur-reply (Paper 41, “MTA Sur-reply”).

Patent Owner also filed a Motion to Exclude certain testimony contained in Mr. Gardner’s Supplemental Declaration (Ex. 1041). Paper 37 (“MTE”). Thereafter, Petitioner filed an Opposition to Patent Owner’s Motion to Exclude (Paper 40, “MTE Opp.”) and Patent Owner filed a Reply in Support of its Motion to Exclude (Paper 42, “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 '835 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 '835 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 IPR2020-01211, IPR2020-01213, and IPR2020-01214. Pet. 2; Paper 5, 3.

*B. The '835 Patent (Ex. 1001)*

The '835 patent is titled "Button Cells and Method for Producing Same" and issued October 6, 2015, with claims 1–13. Ex. 1001, codes (54), (45), 12:1–66. The '835 patent relates to a button cell comprising two housing half-parts (housing cup and housing top) separated from one another by an electrically insulating seal and which form a housing with a flat

bottom area and a flat top area parallel to it, and an electrode-separator assembly within the housing. *Id.* at code (57), 1:16–24, 3:7–12.

According to the '835 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, 1:43–44, 3:34–37. The '835 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 can start to leak. *Id.* at 1:57–59, 1:65–2:3.

The '835 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 2:4–6, 2:18–23. The '835 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 cells without beading than in button cells with beading. *Id.* at 2:24–28. Thus, the '835 patent indicates there was a need in the art for a button cell that is resistant to mechanical loads in the axial direction and is manufactured without a beaded-over cup edge. *Id.* at 2:31–36.

The '835 patent describes an electrode-separator assembly within the housing, including at least one positive and at least one negative electrode in

# 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.