

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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IPR2020-01213  
Patent 9,799,858 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 in Part and Denying in Part 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 1–8 of U.S. Patent No. 9,799,858 B2 (Ex. 1001, “the ’858 patent”). Varta Microbattery GmbH (“Patent Owner” or “VARTA”) filed a Preliminary Response (Paper 8, “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 ’858 patent. Paper 9 (“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 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, “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. Paper 16; Paper 23. We provided Preliminary Guidance on that motion. Paper 26. Thereafter, Patent Owner filed a revised contingent Motion to Amend, proposing substitute claims 10–17 for original claims 1–8, 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 1–8 of the '858 patent are unpatentable. We grant Patent Owner's revised contingent Motion to Amend as to proposed substitute claims 10–14, 16, and 17.

*A. Related Proceedings*

The parties indicate that the '858 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, IPR2020-01212, and IPR2020-01214. Pet. 2; Paper 5, 3.

*B. The '858 Patent (Ex. 1001)*

The '858 patent is titled "Button Cell Having Winding Electrode and Method for the Production Thereof" and issued October 24, 2017, with claims 1–9. Ex. 1001, codes (54), (45), 8:34–9:27. The '858 patent describes a button cell that includes two metal housing halves and a spiral winding electrode separator assembly connected to the housing halves by

metal conductors, where at least one of the conductors is connected to the housing by welding. *Id.* at code (57). The '858 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 3:15–19.

Figure 1A of the '858 patent, reproduced below, illustrates a button cell according to an embodiment of the claimed invention.

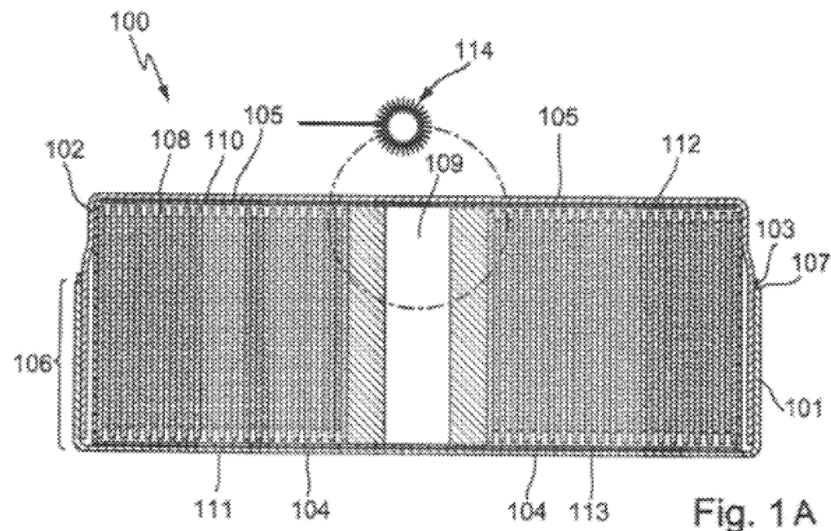


Figure 1A of the '858 patent, above, shows button cell 100 comprising two metal housing halves, metal cup part 101 and metal top part 102, that form plane bottom region 104 and plane top region 105; electrode assembly 108 wound on winding core 109; metal foil output conductors 110 and 111; and insulating elements 112 and 113. *Id.* at 6:52–7:18, Fig. 1A.

The '858 patent discloses that metal foils 110 and 111 are welded to the respective housing halves by laser 114, which creates a weld bead that passes fully through the housing and connects the conductors to the housing. *Id.* at 7:19–30, Fig. 1B. The '858 patent further discloses that insulating

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