

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.

IPR2020-01214
Patent 9,799,913 B2

Before CHRISTOPHER L. CRUMBLY, 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 1–8 of U.S. Patent No. 9,799,913 B2 (Ex. 1001, “the ’913 patent”). Varta Microbattery GmbH (“Patent Owner” or “VARTA”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”).¹

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 ’913 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,² we instituted review of all challenged claims on all asserted grounds. *Id.*

Following institution of trial, Patent Owner filed a Patent Owner Response (Paper 14, “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,

¹ 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.

² 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”; Ex. 2051, “Gardner Deposition III”), 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”). Patent Owner also relies 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).

After institution, Patent Owner filed a Contingent Motion to Amend and Petitioner filed an Opposition to Patent Owner’s Contingent Motion to Amend. Paper 15; Paper 22. We provided Preliminary Guidance on that motion. Paper 25. Thereafter, Patent Owner filed a Revised Contingent Motion to Amend, proposing substitute claims 9–16 for original claims 1–8, 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 to Amend (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”).

An oral hearing was held on November 2, 2021, and a transcript of the hearing is included in the record (Paper 46, “Tr.”).

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 '913 patent are unpatentable. We grant Patent Owner's Revised Contingent Motion to Amend as to proposed substitute claims 9–16.

A. Related Proceedings

The parties indicate that the '913 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 IPR2020-01213. Pet. 2; Paper 5, 3.

B. The '913 Patent (Ex. 1001)

The '913 patent is titled "Button Cells and Method of Producing Same" and issued October 24, 2017, with claims 1–8. Ex. 1001, codes (54), (45), 13:6–14:46. The '913 patent describes a button cell that includes a housing cup and a housing top separated by a seal to form a housing having parallel flat bottom and top areas, and an electrode-separator assembly

including a flat positive and negative electrode and connected by one flat separator, 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 surfaces of the winding facing in an axial direction relative to the flat bottom and top areas. *Id.* at code (57), 10:26–31, 12:4–26. The '913 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 4:4–19.

Figure 4 of the '913 patent, reproduced below, illustrates a button cell according to an embodiment of the claimed invention.

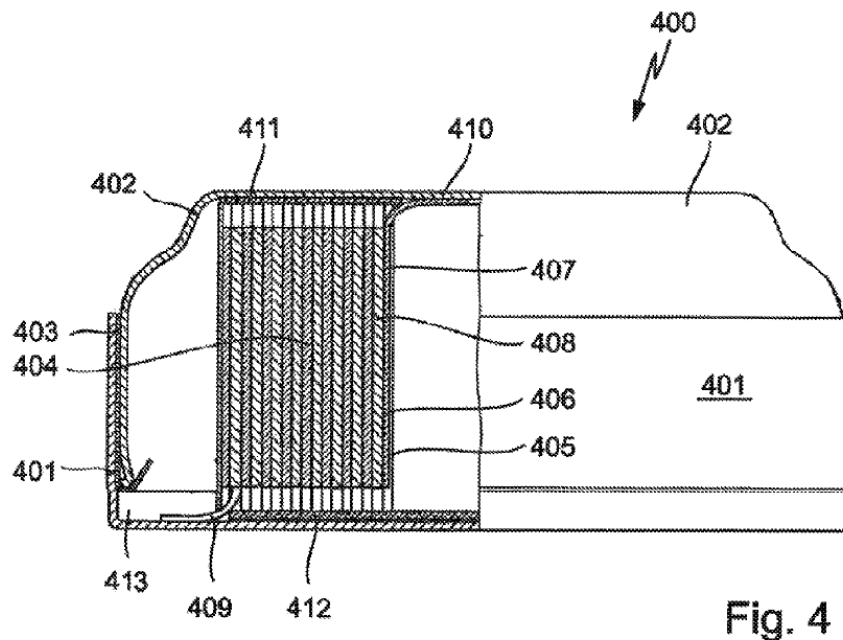


Fig. 4

Figure 4 of the '913 patent, above, shows button cell 400 including a housing comprising cup part 401 and top part 402, with seal 403 arranged therebetween, and an assembly of electrodes 407 and 408 and separators 405

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