

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.

Case No. IPR2020-01214
U.S. Patent No. 9,799,913 B2

PATENT OWNER'S REVISED CONTINGENT MOTION TO AMEND

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EXHIBIT LIST

Exhibit	Description
2001	Email Chain dated April 27, 2020
2002	First Amended Consolidation Order, 2:20-cv-00051-JRG, Dkt. 021 (E.D. Tex., May 7, 2020)
2003	Discovery Order, 2:20-cv-00051-JRG, Dkt 051 (E.D. Tex., June 10, 2020)
2004	Docket Control Order, 2:20-cv-00051-JRG, Dkt. 054 (E.D. Tex., June 11, 2020)
2005	Defendants' Opposed Motion to Stay, 2:20-cv-00051-JRG, Dkt. 064 (E.D. Tex., Aug. 20, 2020)
2006	Plaintiff's Opposition to Defendants' Motion to Stay, 2:20-cv-00051-JRG, Dkt. 65 (E.D. Tex., Sept. 3, 2020)
2007	Order Denying Stay, 2:20-cv-00051-JRG, Dkt. 68 (E.D. Tex., Oct. 7, 2020)
2008	Complaint for Patent Infringement, 2:20-cv-00138-JRG Dkt. 001 (E.D. Tex., May 4, 2020)
2009	Complaint for Patent Infringement, 2:20-cv-00071-JRG, Dkt. 001 (E.D. Tex., March 4, 2020)
2010	Answer to Complaint for Patent Infringement, 2:20-cv-00051-JRG, Dkt. 26 (E.D. Tex., May 13, 2020)
2011	Joint Motion for Entry of Docket Control Order, 2:20-cv-00051-JRG, Dkt. 045, (E.D. Tex., June 8, 2020)
2012	Defendants' P.R. 3-3 Invalidity Contentions, 2:20-cv-00051-JRG, (E.D. Tex., July 10, 2020)
2013	U.S. Publication No. 2003/0013007 to Kaun ("Kaun '007")

Exhibit	Description
2014	Reserved
2015	Reserved
2016	Reserved
2017	Reserved
2018	Reserved
2019	Reserved
2020	Reserved
2021	Reserved
2022	Reserved
2023	Reserved
2024	Reserved
2025	IEC-62133-2 Standard
2026	<i>Button Cell</i> , WIKIPEDIA (Dec. 3, 2020, 11:24 AM), https://en.wikipedia.org/wiki/Button_cell
2027	Button Cell Battery Safety Act, S. 1165, 112th Cong. (2011)
2028	FIG. 11 of U.S. Publication No. 2005/0233212 to Kaun
2029	Rolled-Ribbon Cell Design, Rolled-Ribbon Battery Company, http://www.rolled-ribbon.com/downloads/D-RRBC_Cell%20Design_20190827_11x17.pdf (last visited Mar. 28, 2021)
2030	William H. Gardner Deposition Testimony – Days 1-2 (Mar. 3-4, 2021)

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