

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

VARTA MICROBATTERY GMBH,

Plaintiff,

v.

PEAG, LLC D/B/A JLAB AUDIO

Defendant.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff VARTA Microbattery GmbH (“VARTA”) files this Complaint for Patent Infringement of United States Patent Nos. 9,153,835; 9,496,581; 9,799,913; and 9,799,858 (collectively “the Patents-in-Suit”) against Defendant PEAG, LLC (“PEAG”) d/b/a JLab Audio, and alleges as follows:

**PARTIES**

1. VARTA is a German limited liability company headquartered at VARTA-Platz 1, 73479 Ellwangen, Baden-Württemberg, Germany.
2. PEAG is a corporation organized under the laws of the State of Delaware with a place of business in Texas and this Judicial District, including at 2591 Dallas Parkway, Frisco, TX 75034.
3. On information and belief, PEAG acquired and is the successor to JLab Audio, and continues to do business as JLab Audio.

## **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over PEAG in this action because PEAG has committed and continues to commit infringing acts within the Eastern District of Texas and has established minimum contacts with this District such that exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

6. PEAG d/b/a JLab Audio sells and offers for sale in the State of Texas and/or imports into the State of Texas the infringing products, including by placing such products into the stream of commerce through established distribution channels including internet sites with the knowledge and understanding that such products will be sold throughout the State of Texas including in this District. PEAG has purposefully availed itself of the privileges of conducting business in the State of Texas, including by deriving substantial revenues from importing and selling the infringing products here.

7. This Court has general jurisdiction over PEAG due to its continuous and systematic contacts with the State of Texas and this District, including by having a physical presence in this District at its registered address at 2591 Dallas Parkway, Frisco, TX 75034, and by conducting continuous and substantial business in the State of Texas from which PEAG has derived significant revenue.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. § 1400(b) because PEAG has committed and continues to commit acts of infringement by selling and offering to sell in and/or importing into this District the infringing products and because PEAG

has a regular and established place of business in this District at its registered address at 2591 Dallas Parkway, Frisco, TX 75034.

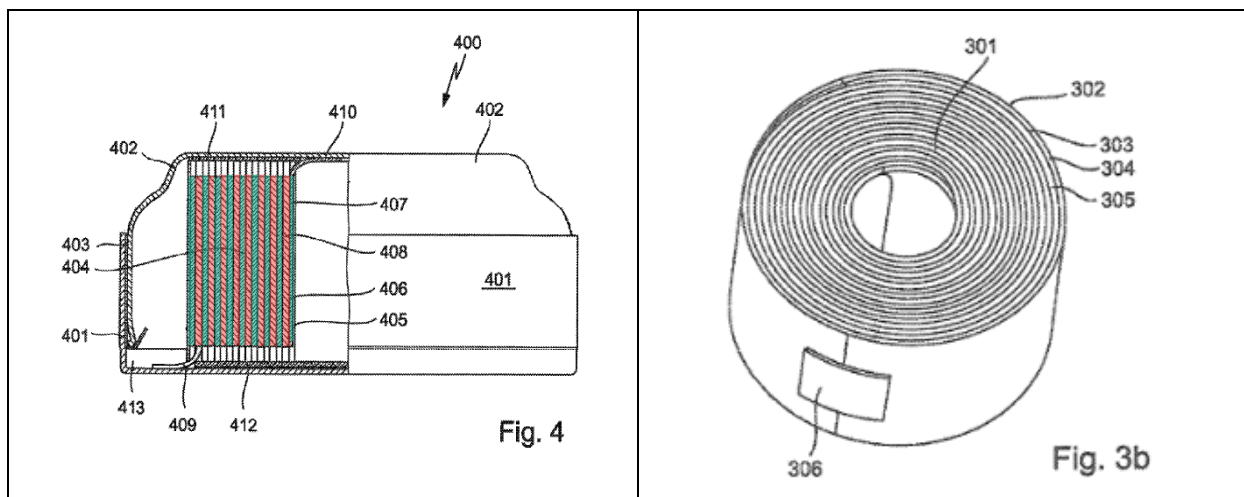
### **BACKGROUND**

9. VARTA is a leading manufacturer of microbatteries, which include batteries referred to as button cells and coin cells due to their small form factor and low height. Applications for VARTA microbatteries include, for example, watches, hearing aids, and wearable cordless devices such as wireless earphones.

10. In the mid-to-late 2000's, VARTA undertook efforts to design and develop a novel and proprietary microbattery technology with excellent mechanical strength characteristics, increased power density, and better space utilization.

11. VARTA's novel and proprietary design includes an electrode-separator assembly located between a housing cup and a housing top that includes at least one positive electrode and at least one negative electrode separated by a separator. The electrodes and the separator may be formed from flat layers that may be laminated or bonded together. The assembly is wound into a spiral winding and located in the housing so that the electrodes are disposed at essentially right angles to the flat bottom and top areas of the housing cup and housing top respectively.

12. Figures 3b and 4 of the Patents-in-Suit illustrate an example of an embodiment of the invention. The electrodes 407 of one polarity (highlighted in green) and the electrodes 408 of the other polarity (highlighted in red) are wound in a spiral configuration (shown generally in FIG. 3b). The electrodes 407, 408 may be separated from each other by separator layers 405, 406 of non-conductive material.



13. The lower housing cup and the upper housing top are fitted together to form a housing about the electrode-separator assembly.

14. Electrical contact between the electrode-separator assembly and the flat top and/or bottom areas may occur through an output conductor comprising a piece of foil resting between the spiral winding and the flat top and/or bottom areas.

15. VARTA sells and offers for sale its patented microbatteries in the United States and worldwide *inter alia* under the trademark CoinPower®.

### THE PATENTS IN SUIT

16. VARTA spent a great deal of time, effort, and expense in the research and development that lead to the CoinPower microbatteries. Because of their outstanding performance, the CoinPower microbatteries have been highly successful and well accepted by the market across the world. In recognition of the break-through nature of its invention, VARTA was granted an international patent portfolio covering various aspects of the CoinPower microbatteries, including a number of patents in the United States, with additional patent applications still pending in the United States Patent and Trademark Office.

17. On October 6, 2015, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,153,835 (“the ’835 Patent”), entitled “Button Cells and Method for Producing Same” to the listed inventors Eduard Pytlik, Jürgen Lindner, Ulrich Barenthin, and Winfried Gaugler, all of Ellwangen, Germany. VARTA is the assignee and owner of all right, title, and interest in the ’835 Patent, including the right to sue for and recover all past, present, and future damages and to seek injunctive relief for infringement of the ’835 Patent. A true and correct copy of the ’835 Patent is attached hereto as Exhibit A.

18. On November 15, 2016, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,496,581 (“the ’581 Patent”), entitled “Button Cells and Method of Producing Same” to the listed inventors Eduard Pytlik, Jürgen Lindner, Ulrich Barenthin, and Winfried Gaugler, all of Ellwangen, Germany. VARTA is the assignee and owner of all right, title, and interest in the ’581 Patent, including the right to sue for and recover all past, present, and future damages and to seek injunctive relief for infringement of the ’581 Patent. A true and correct copy of the ’581 Patent is attached hereto as Exhibit B.

19. On October 24, 2017, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,799,913 (“the ’913 Patent”), entitled “Button Cells and Method of Producing Same” to the listed inventors Eduard Pytlik, Jürgen Lindner, Ulrich Barenthin, and Winfried Gaugler, all of Ellwangen, Germany. VARTA is the assignee and owner of all right, title, and interest in the ’913 Patent, including the right to sue for and recover all past, present, and future damages and to seek injunctive relief for infringement of the ’913 Patent. A true and correct copy of the ’913 Patent is attached hereto as Exhibit C.

20. The ’835 Patent, ’581 Patent, and ’913 Patent each claim priority to International Patent Application PCT/EP2010/000787 filed on February 9, 2010 on behalf of VARTA, which

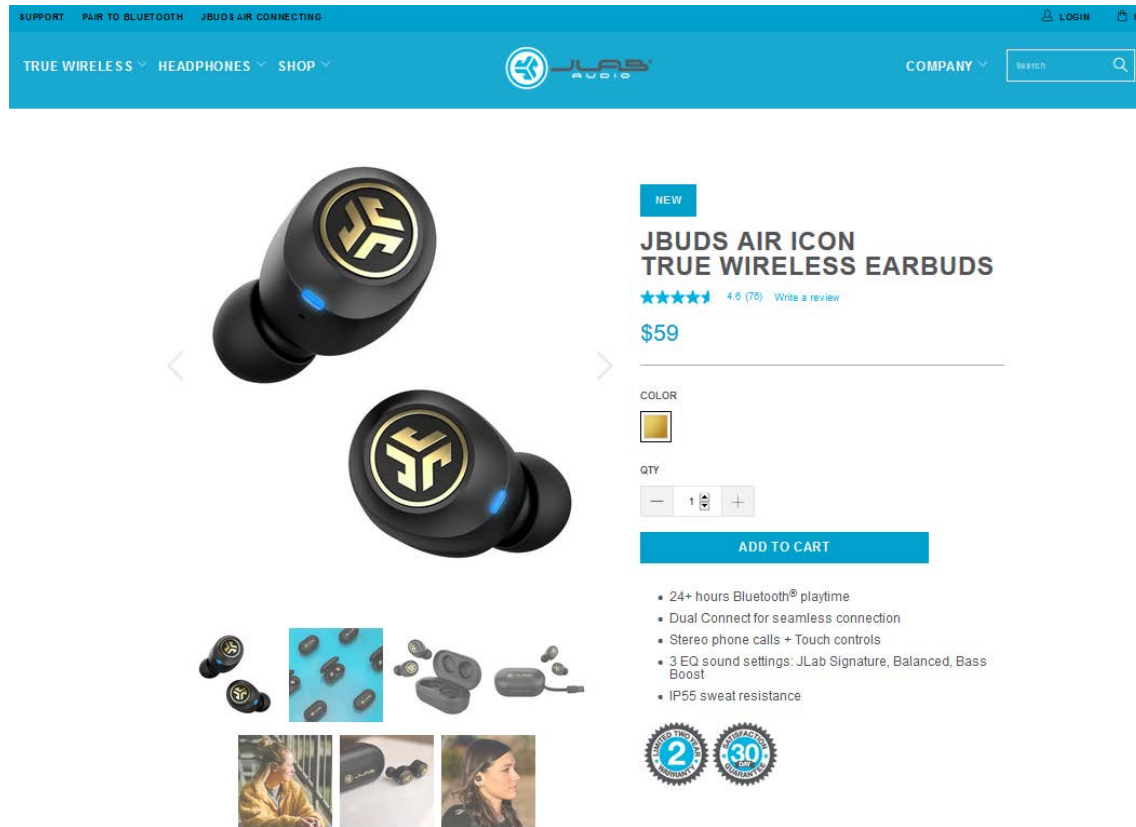
in turn claims priority to three applications filed in Germany: Application No. DE 10 2009 008 859 filed February 9, 2009, Application No. DE 10 2009 030 359 filed June 18, 2009, and Application No. DE 10 2009 060 788 filed December 22, 2009.

21. On October 24, 2017, the United States Patent and Trademark Office duly and legally issued United States Patent No. 9,799,858 (“the ’858 Patent”), entitled “Button Cell having Winding Electrode and Method for the Production Thereof” to inventor Winfried Gaugler of Ellwangen, Germany. VARTA is the assignee and owner of all right, title, and interest in the ’858 Patent, including the right to sue for and recover all past, present, and future damages and to seek injunctive relief for infringement of the ’858 Patent. A true and correct copy of the ’858 Patent is attached hereto as Exhibit D.

22. The ’858 Patent claims priority to International Patent Application PCT/EP2010/058637 filed on June 18, 2010, which in turn claim priority to two applications filed in Germany: Application No. DE 10 2009 030 359 filed on June 18, 2009 and Application No. DE 10 2009 060 800 filed on December 31, 2009.

### **THE INFRINGING PRODUCTS**

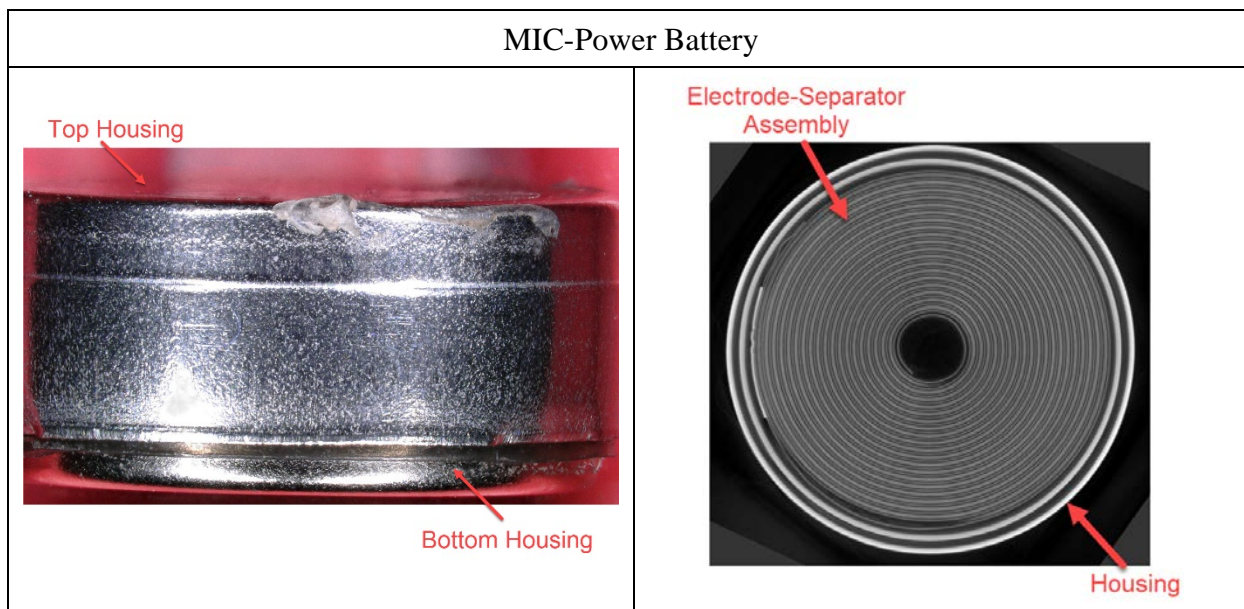
23. On information and belief, PEAG sells and offers for sale in the United States and/or imports into the United States products with infringing microbatteries including batteries from MIC-Power of China bearing the part number M1254S2 found in products such as, for example, wireless earphones by JLab Audio under the names JBuds Air Sport, JBud Air Executive, and/or JBuds Air Icon.



(source: <https://www.jlabaudio.com/collections/all-products/products/jbuds-air-icon-true-wireless-earbuds>)

24. The microbatteries provide a source of rechargeable power for the wireless earphones and other electronic devices in which they are included.

25. The M1254S2 battery includes a housing cup with a flat bottom area and a housing top with a flat top area as shown below.



26. The M1254S2 batteries include an electrode-separator assembly within the housing having a positive electrode and a negative electrode in the form of flat layers connected to and separated by a flat separator.

27. The electrode-separator assembly of the M1254S2 batteries are in the form of a spiral winding with end faces facing in the axial direction relative to the flat bottom area and the flat top area so that the electrodes are aligned essentially at right angles to the flat bottom area and the flat top area when the housing cup and housing top are closed.

28. PEAG d/b/a JLab Audio, without license or authorization, has sold and offered to sell and continues to sell and offers to sell in the United States and/or imports into the United States infringing products having at least the M1254S2 batteries.

29. PEAG d/b/a JLab Audio has infringed and continues to infringe by selling and offering to sell in the United States and/or importing into the United States infringing products having at least the M1254S2 batteries.



**COUNT I: INFRINGEMENT OF THE '835 PATENT**

30. VARTA incorporates and re-alleges the allegations in the preceding paragraphs of its Complaint as if fully set forth herein.

31. On information and belief, PEAG has infringed and continues to infringe at least claim 1 of the '835 Patent under 35 U.S.C. § 271(a) by selling in, offering to sell in, and/or importing into the United States infringing products having at least the M1254S2 batteries.

32. More particularly, the M1254S2 batteries have a housing cup and a housing top separated from one another by an electrically insulating seal to form a housing with a flat bottom area and a flat top area.

33. The M1254S2 batteries have an electrode-separator assembly within the housing with a positive and a negative electrode in the form of flat layers and that are connected to one another by a flat separator.

34. The M1254S2 batteries have an electrode-separator assembly where the electrode layers are aligned essentially at right angles to the flat bottom area and the flat top area and the housing cap and the housing top are closed without being beaded over.

35. The M1254S2 batteries have an electrode-separator assembly in the form of a spiral winding with end faces facing in the axial direction relative to the flat bottom area and the flat top area.

36. The M1254S2 batteries have an insulator arranged between the end faces of the spiral winding and the housing cup and the housing top.

37. On information and belief, PEAG has infringed and continues to infringe at least claim 10 of the '835 Patent under 35 U.S.C. § 271(g) by importing into and/or selling in the United States infringing products having at least the M1254S2 batteries which are made by a process that involves each and every step set forth in at least claim 10.

38. On information and belief, the M1254S2 batteries are produced by inserting an electrode-separator assembly with electrodes in the form of a flat layer into the housing such that the electrode layers are aligned essentially at right angles to the flat bottom and top areas.

39. PEAG is not and has never been licensed or authorized to commit the acts described above with respect to any claim of the '835 Patent.

40. As a result of PEAG's infringement of the '835 Patent, VARTA has suffered and continues to suffer damages, in an amount to be determined, of at least a reasonable royalty and/or lost profits due to lost sales, profits, and potential sales that VARTA would have made but for PEAG's infringing acts.

41. VARTA has been, and will continue to be, damaged by PEAG's infringement of the '835 Patent and will suffer irreparable injury unless the infringement is enjoined by this Court pursuant to 35 U.S.C. § 283 and/or the equitable powers of this Court.

## **COUNT II: INFRINGEMENT OF THE '581 PATENT**

42. VARTA incorporates and re-alleges the allegations in the preceding paragraphs of its Complaint as if fully set forth herein.

43. On information and belief, PEAG has infringed and continues to infringe at least claim 1 of the '581 Patent under 35 U.S.C. § 271(a) by selling in, offering to sell in, and/or importing into the United States infringing products having at least the M1254S2 batteries.

44. More particularly, the M1254S2 batteries have a housing cup and a housing top separated from one another by an electrically insulating seal to form a housing with a flat bottom area and a flat top area.

45. The M1254S2 batteries have an electrode-separator assembly within the housing with a positive and a negative electrode in the form of flat layers and that are connected to one another by a flat separator.

46. The M1254S2 batteries have an electrode-separator assembly where the electrode layers are aligned essentially at right angles to the flat bottom area and the flat top area.

47. The M1254S2 batteries have an electrode-separator assembly in the form of a spiral winding with end faces facing in the axial direction relative to the flat bottom area and the flat top area.

48. The M1254S2 batteries have one of the electrodes that connects to the flat bottom area or the flat top area via an output conductor comprising a foil resting flat between an end face of the spiral winding and the flat top or the flat bottom area to which it is connected.

49. On information and belief, PEAG has infringed and continues to infringe at least claim 10 of the '581 Patent under 35 U.S.C. § 271(g) by importing into and/or selling in the United States infringing products having at least the M1254S2 batteries which are made by a process that involves each and every step set forth in at least claim 10.

50. On information and belief, the M1254S2 batteries are produced with the electrode-separator inserted into the housing such that the electrodes are aligned at essentially right angles to the flat bottom area and the flat top area.

51. PEAG is not and has never been licensed or authorized to commit the acts described above with respect to any claim of the '581 Patent.

52. As a result of PEAG's infringement of the '581 Patent, VARTA has suffered and continues to suffer damages, in an amount to be determined, of at least a reasonable royalty and/or lost profits due to lost sales, profits, and potential sales that VARTA would have made but for PEAG's infringing acts.

53. VARTA has been, and will continue to be, damaged by PEAG's infringement of the '581 Patent and will suffer irreparable injury unless the infringement is enjoined by this Court pursuant to 35 U.S.C. § 283 and/or the equitable powers of this Court

### **COUNT III: INFRINGEMENT OF THE '913 PATENT**

54. VARTA incorporates and re-alleges the allegations in the preceding paragraphs of its Complaint as if fully set forth herein.

55. On information and belief, PEAG has infringed and continues to infringe at least claims 1, 4, and 6 of the '913 Patent under 35 U.S.C. § 271(a) by selling in, offering to sell in, and/or importing into the United States infringing products having at least the M1254S2 batteries.

56. More particularly, the M1254S2 batteries have a housing cup and a housing top separated from one another by an electrically insulating seal to form a housing with a flat bottom area and a flat top area.

57. The M1254S2 batteries have an electrode-separator assembly within the housing with a positive and a negative electrode in the form of flat layers and that are connected to one another by a flat separator.

58. The M1254S2 batteries have an electrode-separator assembly where the electrode layers are aligned essentially at right angles to the flat bottom area and the flat top area.

59. The M1254S2 batteries have an electrode-separator assembly in the form of a spiral winding with end faces facing in the axial direction relative to the flat bottom area and the flat top area.

60. The M1254S2 batteries have an electrode-separator assembly where at least one of the electrodes connects to the flat bottom area or flat top area by an output connector

comprising a foil resting between the end faces of the spiral winding and the flat top or bottom areas.

61. The M1254S2 batteries have an insulator arranged between the end faces of the spiral winding and the housing cup and the housing top preventing direct mechanical and electrical contact.

62. The M1254S2 batteries have at least one flat layer composed of plastic preventing direct mechanical and electrical contact between the end faces of the winding and the flat bottom and flat top areas.

63. PEAG is not and has never been licensed or authorized to commit the acts described above with respect to any claim of the '913 Patent.

64. As a result of PEAG's infringement of the '913 Patent, VARTA has suffered and continues to suffer damages, in an amount to be determined, of at least a reasonable royalty and/or lost profits due to lost sales, profits, and potential sales that VARTA would have made but for PEAG's infringing acts.

65. VARTA has been, and will continue to be, damaged by PEAG's infringement of the '913 Patent and will suffer irreparable injury unless the infringement is enjoined by this Court pursuant to 35 U.S.C. § 283 and/or the equitable powers of this Court.

#### **COUNT IV: INFRINGEMENT OF THE ' 858 PATENT**

66. VARTA incorporates and re-alleges the allegations in the preceding paragraphs of its complaint as if fully set forth herein.

67. On information and belief, PEAG has infringed and continues to infringe at least claim 1 of the '858 Patent under 35 U.S.C. § 271(a) by selling in, offering to sell in, and/or importing into the United States infringing products having at least the M1254S2 batteries.

68. More particularly, the M1254S2 batteries include two metal housing halves separated from one another by an electrically insulating seal forming a housing having a plane bottom region and a plane top region.

69. The M1254S2 batteries include an electrode-separator assembly having one positive electrode and one negative electrode in the housing in the form of a winding, the lateral ends of which face in a direction of the plane bottom region and the plane top region such that the layers of the winding are oriented essentially orthogonal to the plane bottom region and the plane top region.

70. The M1254S2 batteries include metal conductors electrically coupled to the positive electrode and the negative electrode and, respectively, to one of the housing halves.

71. The M1254S2 batteries include a height-to-diameter ratio of less than one.

72. In the M1254S2 batteries, one of the conductors is a metal foil and connects to the respective housing half with a weld bead or weld spot passing through and originating from the outer side of the housing and the metal foil connects to the respective housing half by bearing flat on one lateral end side of the electrode-separator assembly winding and is shielded from the lateral ends sides of the winding by insulting elements.

73. On information and belief, PEAG has infringed and continues to infringe at least claim 9 of the '858 Patent under 35 U.S.C. § 271(g) by importing into and/or selling in the United States infringing products having at least the M1254S2 batteries which are made by a process that involves each and every step set forth in at least claim 9.

74. On information and belief, the M1254S2 batteries are produced by providing first and second metal housing halves, placing an electrode-separator assembly including a positive electrode and a negative electrode in one of the housing halves with a metal conductor bonded to

at least one of the electrodes, assembling the two housing halves together, and laser welding the conductor to the metal housing half.

75. PEAG is not and has never been licensed or authorized to commit the acts described above with respect to any claim of the '858 Patent.

76. As a result of PEAG's infringement of the '858 Patent, VARTA has suffered and continues to suffer damages, in an amount to be determined, of at least a reasonable royalty and/or lost profits due to lost sales, profits, and potential sales that VARTA would have made but for PEAG's infringing acts.

77. VARTA has been, and will continue to be, damaged by PEAG's infringement of the '858 Patent and will suffer irreparable injury unless the infringement is enjoined by this Court pursuant to 35 U.S.C. § 283 and/or the equitable powers of this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, VARTA prays for judgment on the Complaint as follows:

A. A judgement declaring that PEAG is liable for infringement of the '835 Patent, the '581 Patent, the '913 Patent, and the '858 Patent;

B. An award to VARTA and against PEAG of compensatory damages for infringement of the '835 Patent, the '581 Patent, the '913 Patent, and the '858 Patent together with all pre-judgment and post-judgment interest;

C. Entry of a preliminary and/or permanent injunction against PEAG pursuant to 35 U.S.C. § 283 and/or the equitable powers of the Court to prevent further infringement of the '835 Patent, the '581 Patent, the '913 Patent, and the '858 Patent;

D. A declaration that this is an exceptional case within the meaning of 35 U.S.C. § 285 and an award to VARTA of its reasonable attorneys' fees; and

E. An award of any and all other relief as this Court may deem just and proper under the circumstances.

**JURY DEMAND**

Pursuant to Rule 38(B) of the Federal Rules of Civil Procedure, VARTA requests a trial by jury on all triable issues.

Dated: March 4, 2020

Respectfully submitted,

/s/ Andrew W. Stinson

H. Michael Hartmann (*pro hac vice forthcoming*)

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Wesley O. Mueller (*pro hac vice forthcoming*)

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