

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

VARTA MICROBATTERY GMBH, v. GUANGDONG MIC-POWER NEW ENERGY CO., LTD.	CASE NO. 2:21-cv-00036-JRG LEAD CASE JURY TRIAL DEMANDED
VARTA MICROBATTERY GMBH, v. PEAG, LLC d/b/a JLAB AUDIO	CASE NO. 2:21-cv-00038-JRG MEMBER CASE JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AGAINST PEAG, LLC**

Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiff VARTA Microbattery GmbH (“VARTA”) files this First Amended Complaint for Patent Infringement of United States Patent Nos. 10,804,506 and 10,971,776 (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 and internet sites including www.jlabaudio.com 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, by being an entity registered to conduct business in Texas, 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.

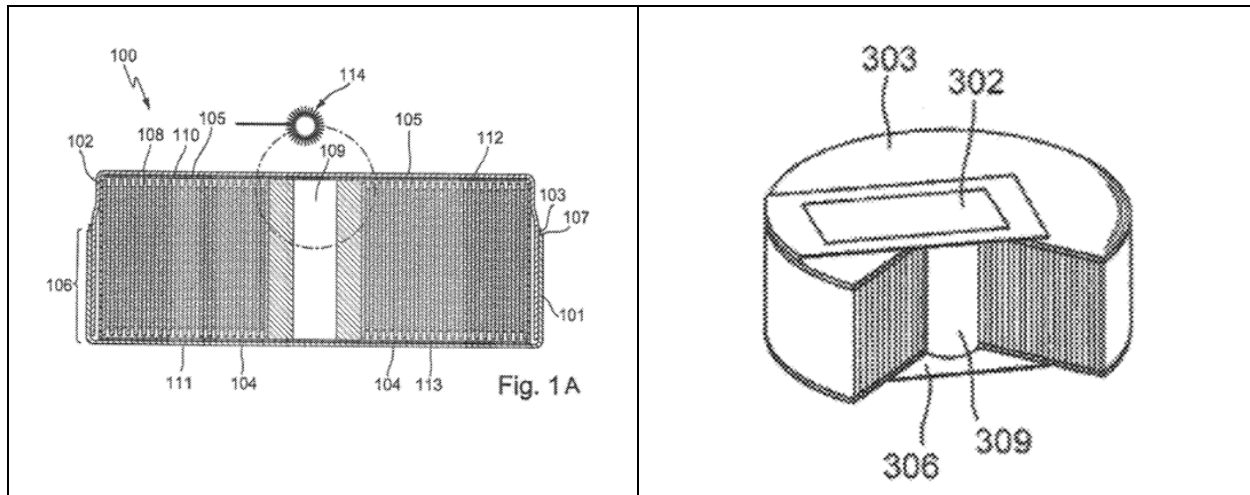
BACKGROUND

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. 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 1A and 3b of the Patents-in-Suit illustrate an example of an embodiment of the invention. The electrodes of one polarity and the electrodes of the other polarity are wound in a spiral configuration (shown generally as reference number 108 in FIG. 1). The electrodes may be separated from each other by a flat separator layer of non-electrically conductive material.



13. The end faces of the spiral winding 108 face in the direction of a planar bottom region 104 and a planar top region 105 of the housing cup part 101 and the housing top part 102 respectively. The housing cup part 101 and the housing top part 102 are fitted together to form a housing about the electrode-separator assembly 108.

14. Electrical contact between the electrode-separator assembly 108 and the flat top and/or bottom areas 104, 105 may occur through an output conductor comprising a piece of foil bearing flat 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.

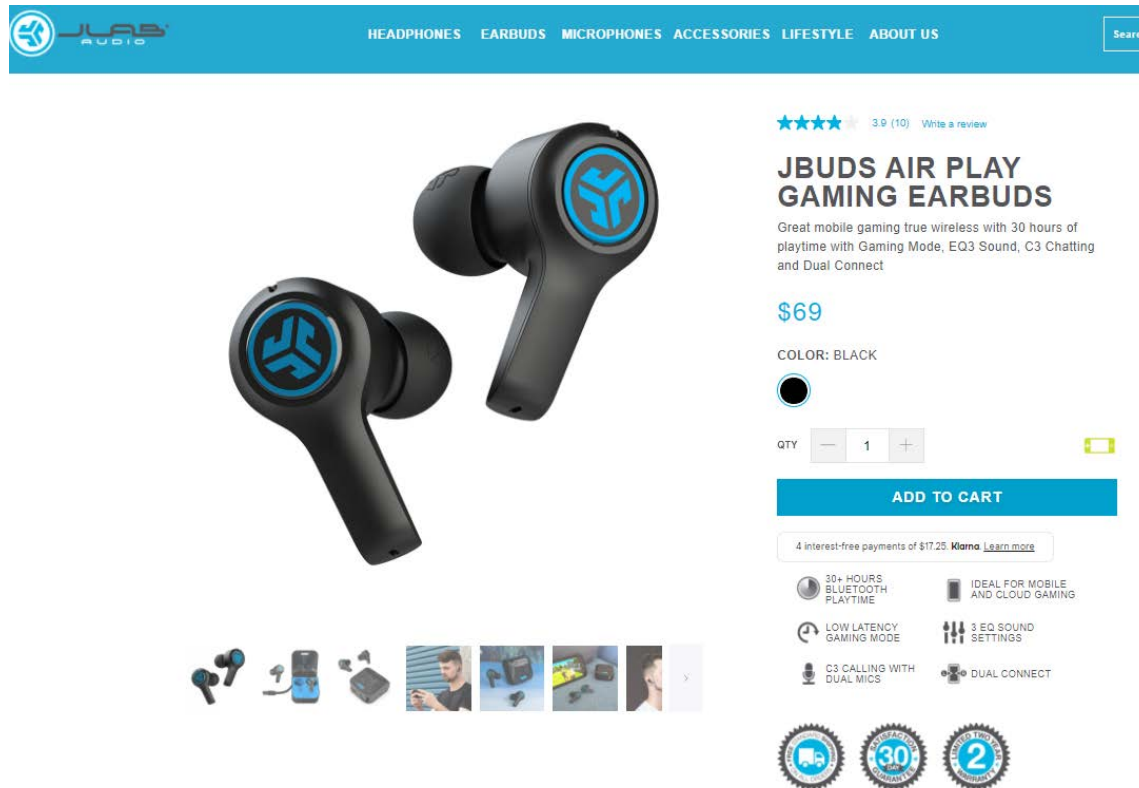
17. On October 13, 2020, the United States Patent and Trademark Office duly and legally issued United States Patent No. 10,804,506 (“the ’506 Patent”), entitled “Button Cell Having a Winding Electrode and Method for the Production Thereof” to the listed inventor Winfried Gaugler of Ellwangen, Germany. On December 1, 2020, the United States Patent and Trademark Office duly and legally issued a Certificate of Correction for the ’506 Patent. VARTA is the assignee and owner of all right, title, and interest in the ’506 Patent, including the right to sue for and recover all past, present, and future damages and to seek injunctive relief for infringement of the ’506 Patent. A true and correct copy of the ’506 Patent and its Certificate of Correction are attached hereto as Exhibit A.

18. On April 6, 2021, the United States Patent and Trademark Office duly and legally issued United States Patent No. 10,971,776 (“the ’776 Patent”), entitled “Button Cell Having Winding Electrode and Method for the Production Thereof” to the listed inventor Winfried Gaugler of Ellwangen, Germany. The ’776 Patent issued from a divisional of an application that is a divisional of the application leading to the ’858 Patent. VARTA is the assignee and owner of all right, title, and interest in the ’776 Patent, including the right to sue for and recover all past, present, and future damages and to seek injunctive relief for infringement of the ’776 Patent. A true and correct copy of the ’776 Patent is attached hereto as Exhibit B.

THE INFRINGING PRODUCTS

19. 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 infringing batteries from Guangdong Mic-Power New Energy Co. Ltd. of China bearing at least the part number 1254 and/or microbatteries from other suppliers (“the infringing microbatteries”) that are

found in products such as, for example, wireless earphones by JLab Audio including at least those wireless earphones under the name JBuds Air Play Gaming (“the PEAG wireless earphones”).



(source: <https://www.jlabaudio.com/products/jbuds-air-play-gaming-earbuds>)

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

21. The infringing microbatteries used in the PEAG wireless earphones include a housing cup with a flat bottom area and a housing top with a flat top area.

22. The infringing microbatteries used in the PEAG wireless earphones 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.

23. The electrode-separator assembly of the infringing microbatteries used in the PEAG wireless earphones 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.

24. On information and belief, PEAG had pre-suit knowledge of, or was at least willfully blind to, the '506 Patent and the claims therein at least as of October 13, 2020, the date the '506 Patent issued.

25. On information and belief, PEAG had pre-suit knowledge of, or was at least willfully blind to, the '776 Patent and the claims therein at least as of April 6, 2021, the date the '776 Patent issued.

26. On information and belief, during 2017-2018, employees of PEAG d/b/a JLab Audio exchanged several communications with third parties and with employees and representatives of VARTA regarding the purchase and use of VARTA microbatteries in PEAG wireless earphones. On further information and belief, PEAG d/b/a/ JLab Audio was placed on notice that the VARTA microbatteries were the subject of various patents and pending application filed in the United States and internationally.

27. On March 4, 2020, a complaint was filed against PEAG d/b/a JLab Audio alleging that at least some of the PEAG wireless earphones infringe several patents owned by VARTA including U.S. Patent 9,799,858 ("the '858 Patent") which is the parent to the '506 Patent and which is related to the '776 Patent.

28. As of the date of that complaint, the United States Patent and Trademark Office had issued a Notice of Allowance in the pending application for the '506 Patent allowing the claims that would become the independent claims of the '506 Patent.

29. In that lawsuit, which became *VARTA Microbattery GmbH v. Costco Wholesale Corporation et al.*, 2:20-cv-00051, PEAG denied that it infringed the '858 Patent and further asserted as an affirmative defense that the '858 Patent was invalid.

30. On July 7, 2020, PEAG filed a petition for *inter partes* review in the United States Patent and Trademark Office alleging that the '858 Patent is allegedly invalid in view of prior art. The Patent Office has designated that proceeding as IPR2020-01213.

31. On information and belief, and based on PEAG's activities with respect to the parent '858 Patent, PEAG knew of the pending application for the '506 Patent and the allowed claims therein or at the very least was willfully blind as to the existence of that application and the allowed claims.

32. PEAG, 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 the infringing microbatteries.

33. PEAG has infringed and continues to infringe by selling and offering to sell in the United States and/or importing into the United States the PEAG wireless earphones having the infringing microbatteries.

COUNT I: INFRINGEMENT OF THE '506 PATENT

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

35. On information and belief, PEAG has infringed and continues to infringe at least claims 1 and 11 of the '506 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 the infringing microbatteries.

36. More particularly, the infringing microbatteries used with PEAG wireless earphones include two metal housing halves separated from one another by an electrically insulated injection molded seal or film seal wherein one of the housing halves includes a planar bottom region and the other housing half includes a planar top region parallel to the planar bottom region.

37. The infringing microbatteries used with the PEAG wireless earphones have a height-to-diameter ratio of less than one.

38. The infringing microbatteries used with the PEAG wireless earphones include an electrode-separator assembly having one positive electrode and one negative electrode in the housing in the form of a winding, the end sides of which face in the direction of the planar bottom region and the planar top region such that the layers of the electrode separator assembly are oriented essentially orthogonally to the planar bottom region and the planar top region.

39. In the infringing microbatteries, the winding has a substantially centrally located axis and an open cavity extending along the axis, wherein the open cavity has axially spaced opposite ends and the planar top region and the planar bottom region each have a sub-region radially and axially adjacent one of the ends of the open cavity.

40. In the infringing microbatteries, the positive and negative electrodes each include a current collector in the form of a metal foil or metal mesh coated on both sides with an active electrode material and each of the current collectors includes an uncoated section.

41. The infringing microbatteries have two metal foils functioning as conductors that electrically connect the positive and negative electrodes to the housing halves, wherein the metal foils bear flat on an inner surface of the planar bottom region or the planar top region.

42. In the infringing microbatteries, one of the metal foils is attached by a weld to one of the uncoated sections and one of the planar bottom and top regions, and another one of the metal foils is attached by a weld to another one of the uncoated sections and another one of the planar bottom and top region.

43. The infringing microbatteries have at least one insulator disposed to prevent direct electrical contact between one of the metal foil conductors and an adjacent one of the end sides of the electrode separator assembly.

44. The infringing microbatteries are configured as a secondary lithium ion cell and the open cavity includes no winding core.

45. The metal foils of the infringing microbatteries have a thickness between 5 μm and 100 μm .

46. PEAG is not and never has been licensed or authorized to commit the acts described above with respect to any claim of the '506 Patent.

47. As a result of PEAG's infringement of the '506 Patent, VARTA has suffered and continues to suffer damage, 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 infringement.

48. VARTA has been, and will continue to be, damaged by PEAG's infringement of the '506 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.

49. On information and belief, PEAG has known of the '506 Patent and its infringement of the '506 Patent since it issued on or about October 13, 2020. Despite such knowledge, PEAG has continued to sell, offer for sale, and imported into the United States the PEAG wireless earphones with infringing microbatteries. Upon information and belief, PEAG's infringement has been willful entitling VARTA to enhanced damages pursuant to 35 U.S.C. § 284. This action, therefore, is exceptional within the meaning of 35 U.S.C. § 285 entitling VARTA to its attorney fees and expenses.

COUNT II: INFRINGEMENT OF THE '776 PATENT

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

51. On information and belief, PEAG has infringed and continues to infringe at least claim 1 of the '776 Patent under 35 U.S.C. § 271(g) by importing and/or selling and/or offering for sale in the United States infringing products with the Mic-Power batteries which are made by a process that involves every step set forth in claim 1.

52. The Mic-Power batteries include a metal cell cup having a cell cup plane region connected to a lateral surface region and a metal cell top having a cell top plane region connected to a lateral surface region.

53. The Mic-Power batteries include a cylindrical electrode winding having a first end side, a second end side, and an outer side that is formed from a multi-layer assembly that is wound into a spiral shape about an axis. The multi-layer assembly includes a positive electrode formed from a current collector coated with an electrode material, a negative electrode formed from a current collector coated with an electrode material, and a separator disposed between the positive electrode and the negative electrode.

54. The Mic-Power batteries include a first conductor connected to one of the first current collector or the second current collector.

55. On information and belief, the Mic-Power batteries are produced by inserting the electrode winding into the cell top and inserting the cell top into the cell cup to form a housing in which a strip-shaped first portion of the first conductor lies flat between the first end side of the electrode winding and a first plane region of the cell cup plane region or the cell top plane region wherein the strip-shaped portion of the first conductor has a maximum length that is less than a diameter of the electrode winding.

56. On information and belief, the Mic-Power batteries are produced by welding the strip-shaped first portion of the first conductor to a surface of the first plane region located in the interior of the housing.

57. PEAG is not and has never been licensed or authorized to commit the acts described above with respect to any claim of the '776 Patent.

58. As a result of PEAG's infringement of the '776 Patent, VARTA has suffered and will continue 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.

59. VARTA has been, and will continue to be, damaged by PEAG's infringement of the '776 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 the Court.

60. Upon information and belief, PEAG has known of the '776 Patent and its infringement of the '776 Patent since April 6, 2021, when the '776 Patent issued. Despite such knowledge, PEAG has continued its infringing activities. Upon information and belief, PEAG's

infringement of the '776 Patent is willful, entitling VARTA to enhanced damages pursuant to 35 U.S.C. § 284. This action, therefore, is “exceptional” within the meaning of 35 U.S.C. § 285 entitling VARTA to its attorneys’ fees and expenses.

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 '506 and the '776 Patents;
- B. An award to VARTA and against PEAG of compensatory damages for infringement of the '506 and '776 Patents 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 '506 and '776 Patents;
- D. A declaration that PEAG d/b/a JLab’s infringement is willful and an award of enhanced damages pursuant to 35 U.S.C. § 284;
- E. An award to VARTA of costs pursuant to 28 U.S.C. § 1920, 35 U.S.C. § 284, Fed. R. Civ. P. 54, and/or the Court’s discretion;
- F. 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
- G. 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: May 14, 2021

Respectfully submitted,

/s/ Andrew W. Stinson
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Certificate of Service

The undersigned certifies that on May 14, 2021, a true and correct copy of the foregoing document was served on all attorneys of record who have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Andrew W. Stinson
Andrew W. Stinson

Certificate of Conference

Pursuant to Fed. R. Civ. P. 15(a)(2), counsel for VARTA and PEAG have met and conferred regarding this First Amended Complaint for Patent Infringement and Defendant PEAG, LLC d/b/a JLab Audio has provided written consent to VARTA's filing of the same.

/s/ Andrew W. Stinson

Andrew W. Stinson