

ITC Upholds LG's Win In \$1B Trade Secrets Battle With SK

By Hailey Konnath

Law360 (February 10, 2021, 11:01 PM EST) -- The U.S. International Trade Commission handed LG Energy Solution a victory Wednesday in its \$1 billion trade secrets dispute with fellow South Korean rival SK Innovation Co., banning the importation of SK's electric vehicle batteries for 10 years.

LG Energy had alleged it lost \$1 billion through SK Innovation's "multi-company, international conspiracy" to poach its employees and steal trade secrets behind its electric vehicle batteries. With the stolen information, SK Innovation was able to ramp up production of its own electric car battery and hobble LG Energy's ability to manufacture and sell its product in the U.S. market, LG Energy claimed.

In February, ITC Administrative Law Judge Cameron Elliot handed LG Energy a rare default judgment, saying SK Innovation's evidence destruction was so thorough, it rendered him incapable of deciding the case on its merits. The full ITC upheld that ruling Wednesday and issued a limited exclusion order prohibiting "the entry of certain lithium ion batteries, battery cells, battery modules, battery packs and components thereof" for the next decade.

However, the commission said it would still allow SK Innovation to import components for domestic production of the batteries for certain Ford Motor Co. and Volkswagen of America Inc. vehicles, according to the decision. SK Innovation is also allowed to import materials for repairing and replacing batteries for Kia vehicles that have already been sold to U.S. consumers, the commission said.

President Joe Biden has 60 days to nix the ruling, according to the commission. The White House didn't immediately return a request for comment late Wednesday.

Jong Hyun Kim, the CEO of LG Energy Solution, said in a statement Wednesday that "SKI's total disregard of our warnings and intellectual property rights gave us no choice but to file this case."

"[W]e are grateful to the International Trade Commission for protecting our innovations and significant economic investments in the United States," he said.

SK Innovation didn't immediately return a request for comment Wednesday.

LG Energy lodged complaints with the ITC and a Delaware federal court in April 2019. SK Innovation then engaged in a companywide effort to destroy documents and other materials related to LG Energy, according to Judge Elliot's February 2020 order. The judge ruled that the destruction was meant to

hobble his ability to decide the case, saying the default win was the only reasonable remedy left.

In its petition seeking a review of the initial decision, SK Innovation argued that Judge Elliot overstepped by imposing the ultimate sanction on a Korean company that hadn't expected it would be subject to U.S. evidence preservation laws. The company argued that the win by default relieved its rival of the burden of proving its claims.

SK Innovation had also contended that LG Energy's proposed remedy — a limited exclusion order targeting the electric car batteries and components — could freeze battery production at a factory in Georgia and shut down plans to create a second U.S. facility.

The Georgia plant in particular was created to manufacture batteries for automobile giants Volkswagen and Ford under new supply contracts, SK Innovation said.

Meanwhile, LG Energy has argued that those contracts were improperly secured using its stolen technology.

"SKI's new Georgia plant would have relied on LG Energy Solution's stolen trade secrets, and the ITC's ruling has definitively prohibited use of LG Energy Solution's misappropriated technology," LG Energy said in Wednesday's statement.

The ITC agreed to review Judge Eliot's decision in April.

LG is represented by Bert C. Reiser, David K. Callahan, Gabriel Gross, Jeffrey Homrig, Joseph Lee and Sarah Gragert of Latham & Watkins LLP.

SK is represented by Sturgis M. Sobin of Covington & Burling LLP and Blaney Harper of Jones Day.

The case is In the Matter of Certain Pouch-type Battery Cells, Battery Modules and Battery Packs, Components Thereof and Products Containing the Same, investigation number 337-TA-1179, in the U.S. International Trade Commission.

--Additional reporting by Alyssa Aquino. Editing by Breda Lund.