

Korean Battery Cos. Avert Import Ban With \$1.8B Settlement

By **Alex Lawson**

Law360 (April 11, 2021, 3:04 PM EDT) -- South Korean battery maker SK Innovation agreed to pay \$1.8 billion to settle a bitter trade secrets dispute with rival LG Energy Solution Sunday, averting a sweeping U.S. import ban that could have jeopardized the Biden administration's electric vehicle push.

LG Energy Solution Ltd. and SK Innovation Co. announced the settlement mere hours before the White House was set to decide whether to uphold an import ban triggered by the U.S. International Trade Commission in February. LG Energy claimed that SK Innovation poached employees and stole electric battery trade secrets, and the ITC rapped SK Innovation for destroying crucial evidence in the case.

The commission teed up a ban on SK Innovation batteries and components that was set to last 10 years, but the Biden administration faced political pressure to issue a rare reversal that would help sustain the U.S. supply of batteries for electric cars. The government urged both companies to reach a settlement that would avoid a thorny political decision.

SK Innovation agreed to pay LG Energy 2 trillion won, or \$1.8 billion, to immediately halt not just the ITC dispute, but all of the companies' legal quarrels over battery IP in both the U.S. and South Korea. The companies also agreed not to bring any new lawsuits against one another for the next 10 years.

"We are dedicated to work together to support the Biden administration's climate agenda and to develop a robust U.S. supply chain." SK Innovation CEO Kim Jun and LG Energy CEO Kim Jong-Hyun said in a joint statement.

Biden himself lauded the end of the dispute in a statement, touting the rapid expansion of electric vehicle production as a crucial component of his climate agenda.

"We need a strong, diversified and resilient U.S.-based electric vehicle battery supply chain, so we can supply the growing global demand for these vehicles and components — creating good-paying jobs here at home, and laying the groundwork for the jobs of tomorrow," he said.

At the center of the political firestorm was SK Innovation's plans to expand its manufacturing base in Commerce, Georgia, which had been a pivotal hub for electric battery sourcing for automotive giants like Ford and Volkswagen. The ITC import ban would have provided partial relief for some car models, but the administration nevertheless faced pressure to avoid the ban altogether.

"Now that it seems sure that these jobs will stay in Georgia, I'm glad that all parties involved listened and that the community of Commerce for the decision they hoped for, which will keep the local economy moving forward," Sen. Raphael Warnock, D-Ga., said in a statement.

White House reversals of ITC rulings are rare; the last one came in 2013 in a dispute over certain iPhone models that the ITC found to infringe on Samsung patents.

U.S. Trade Representative Katherine Tai worked closely with both companies to iron out a settlement. In a statement issued Sunday, she said the deal "builds confidence in [the companies'] reliability and responsibility as suppliers to the U.S. auto industry."

The dispute kicked off in earnest in April 2019, when LG Energy filed complaints at the ITC and in Delaware federal court accusing SK Innovation of concocting a "a multi-company, international conspiracy" aimed at filching its electric battery trade secrets.

ITC Administrative Law Judge Cameron Elliot ruled that SK Innovation had engaged in a companywide effort to destroy documents relating to the dispute, handing LG Energy a rare default judgment. The full bench of ITC commissioners backed Judge Elliot's finding in February, kicking the case to the White House for review.

LG Energy is represented by Bert C. Reiser, David K. Callahan, Gabriel Gross, Jeffrey Homrig, Joseph Lee and Sarah Gragert of Latham & Watkins LLP, Song Jung, R. Tyler Goodwin and Mark Hogge of Dentons, and Louis Mastriani, Jonathan Engler and Deanna Tanner Okun of Adduci Mastriani & Schaumberg LLP.

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

The case is In the Matter of Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Production and Testing Systems and Processes Therefor, investigation number 337-TA-1159, in the U.S. International Trade Commission.

--Additional reporting by Hailey Konnath, Tiffany Hu, Adam Lidgett and Mike LaSusa. Editing by Adam LoBelia.