

U.S. International Trade Commission To Review Default Judgment Against South Korean EV Battery Component Maker

APRIL 22, 2020

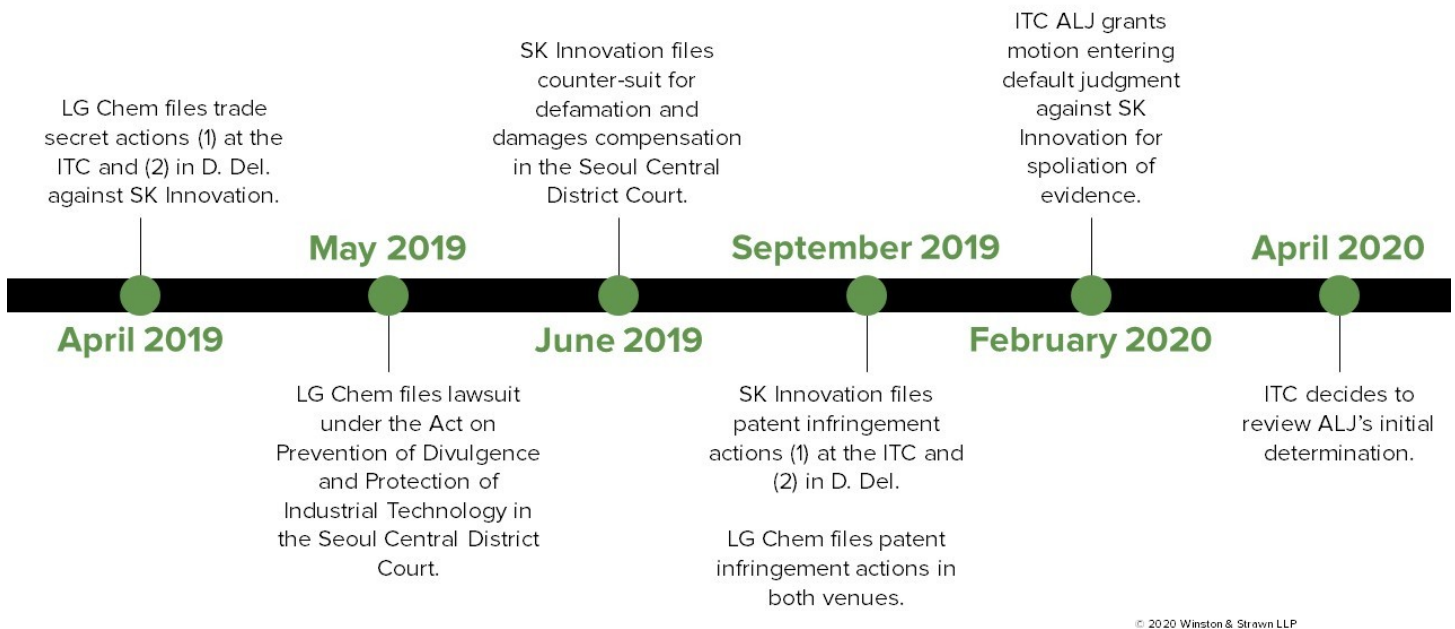
On April 17, 2020, the U.S. International Trade Commission (ITC) decided to review the initial determination against lithium-ion battery manufacturer SK Innovation Co., Ltd. (Korea) and its U.S. affiliate (collectively SKI), the respondents in a Sec. 337 investigation. Two months earlier, the Administrative Law Judge Elliott had found that respondents had spoliated evidence and concluded that the appropriate remedy was to grant complainants' motion for default judgment. Judge Elliot found that (1) a U.S. litigation was reasonably foreseeable after SKI received a cease-and-desist letter on April 9, 2019, through the Korean postal service; (2) SKI had failed to observe its duty to preserve evidence, which was triggered by that letter; and (3) SKI actively destroyed documents following the filing of the ITC complaint in April despite the circulation of multiple litigation hold notices. The Commission requested additional briefing from the parties before it decides in October whether or not to affirm the initial determination in favor of complainants LG Chem, Ltd. (Korea) and LG Chem Michigan, Inc.

LG Chem and SKI are the competing South Korean battery-cell manufacturing arms of the LG Corporation and SK Group. Both companies import key battery components into the U.S. for automotive manufactures. SK currently supplies batteries for electric crossovers, made in Korea, and imported into the U.S.

The conflict between the rival Korean companies stems from the alleged poaching of more than 70 former LG Chem employees by the SKI and quickly grew into a flurry of legal battles across multiple jurisdictions. The alleged poaching led LG Chem to file its complaint (337-TA-1159) requesting the ITC to stop SKI's importation of sample lithium-ion batteries and infrastructure technology that incorporated LG Chem's trade secrets. Contemporaneously, LG Chem commenced a trade secret misappropriation action before the U.S. District Court for the District of Delaware. In May of 2019, LG Chem further brought a lawsuit in the Seoul Central District Court under the Act on Prevention of Divulgence and Protection of Industrial Technology. SK Innovations countered with a defamation suit in the Seoul Central District Court in June of 2019, and answered with its own ITC complaint (337-TA-1179) and district court case in Delaware, alleging patent infringement. In response, LG Chem initiated its own patent enforcement actions in the same venues.

In reaching the finding that SKI had intentionally destroyed relevant evidence, Judge Elliot highlighted that on the day after LG Chem filed its ITC complaint, a SKI employee sent an urgent email directing the recipient(s) to "[d]elete every material related to the rival company from every single individual's PC, mail storage archives and team rooms.

ASAP[.] Make sure to especially scrutinize SKBA. PCs may even be subject to seizure and examination. Delete this email after completing this directive.”



TIP: The U.S. ITC is a viable venue for foreign or domestic companies that suffered from trade secret misappropriation or unfair competition abroad, as the ITC may exercise jurisdiction over imported articles that benefited from the foreign misconduct. Multi-national companies should also be aware that their local recruitment practices, document destruction, and internal communications could be scrutinized under U.S. laws and subject to administrative penalties and evidentiary sanctions.

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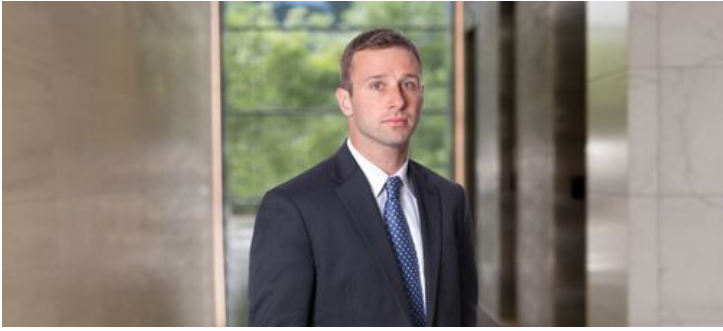
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