Lithium battery manufacturer ATL won injunction against its Chinese rival COSMX in German Court

By **China IP** | Apr 06, 2024

Photo: SSE Roadshow

The German court issued what may be the first injunction in the lithium battery industry. COSMX may face the choice of settling with its Chinese rival ATL or withdrawing from the German market, given its loss in two invalidation challenges against the disputed patent.

On March 19, lithium battery manufacturer COSMX announced that the Munich District Court in Germany had issued an injunction against the company in response to a dispute initiated by its Chinese rival, ATL.

According to the announcement, the Munich District Court's first-instance civil judgment instructed COSMX and its subsidiaries to halt the provision and sale of the disputed products in Germany. Additionally, they were mandated to furnish ATL with pertinent information and explanations regarding the infringement, assume responsibility for compensating ATL (although the exact amount remains undetermined), and cover the litigation expenses.

The conflict between the two parties in Germany traces back to March 21, 2023, when COSMX revealed ATL's lawsuit alleging infringement of its European patent EP3,627,606 B1 against the company and its subsidiaries.

The European patent EP3,627,606 B1, titled "An Electrolyte and an Electrochemical Device," mainly involves electrolytes comprising "2-nitriles, 3-nitriles, and propionic acid propyl esters," as outlined in the specification.

ATL requested the court to:

1. Order the defendants to (1) cease providing, selling, and importing the implicated products in Germany; otherwise, they may face a maximum fine of €250,000 or a maximum of 6 months imprisonment upon court order as an alternative. (2) provide information on manufacturers, suppliers, etc., related to the sale of the implicated products within a specified period, along with details on quantity, price, cost, profit, etc., of the products produced and delivered within the same period. (3) recall the implicated products in Germany.

2. Require the defendants to jointly compensate the plaintiff for the losses incurred due to infringement within a specified period.

3. Mandate the defendants to bear the litigation costs.

It is evident from the comparison that ATL's litigation requests were largely supported by the court.

The primary contention in the case revolved around whether the court would approve the "injunction relief." Ultimately, the German court issued what may be the first injunction in the lithium battery industry.

This means that upon ATL's application for enforcement of the injunction, COSMX's end products implicated in the alleged infringing technology will be prohibited from sale in Germany.

In recent years, automotive giant Daimler and mobile phone giant OPPO encountered similar situations in German courts due to patent infringement, both facing Nokia as their opponent.

Daimler settled with Nokia, while OPPO initially withdrew from the German market until reaching a settlement with Nokia this year.

Likewise, COSMX may face the choice of settling with ATL or withdrawing from the German market, given its loss in two invalidation challenges against the disputed patent.

On August 8, 2023, the Patent Trial and Appeal Board of the United States Patent and Trademark Office(USPTO) upheld the validity of US Patent US10,833,363, which is in the same family as European Patent EP3,627,606 B1.

Similarly, the Chinese counterpart of EP3,627,606 B1, CN109301326B, was upheld as valid by the China National Intellectual Property Administration (CNIPA) on July 19, 2023.

Since the patent dispute erupted between both parties in 2021, the battleground has expanded from China to the United States and further extended into Europe.

It is foreseeable that as similar cases increase gradually and their influence grows, more Chinese companies may seek to venture beyond their domestic jurisdiction. They may aim to gain a legal advantage in foreign jurisdictions, apart from Chinese courts, in the future, according to IP analysts.

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