United States District Court,
S.D. California.

**SANYO ENERGY (USA) CORPORATION,**
Plaintiff.
v.
**BYD COMPANY LIMITED and BYD America Corporation,**
Defendants.

CIV No. 02CV1900B (JMA)

**Aug. 17, 2004.**

Laurence H. Pretty, Stuart Lubitz, Hogan and Hartson, Los Angeles, CA, for Plaintiff.

Edward C. Kwok, MacPherson Kwok Chen and Heid, San Jose, CA, for Defendants.

**SUPERCEDING CLAIM CONSTRUCTION ORDER FOR** UNITED STATES PATENT NUMBER 5,976,729

RUDI M. BREWSTER**, Senior District Judge.**

Before the Court is the matter of claims construction for United States Patent Number 5,976,729 ("the '729 patent") in the above titled cases for patent infringement. Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), the Court conducted a supplemental Markman hearing regarding construction of the disputed claim terms for the '729 patent on August 4, 2004. Plaintiff Sanyo Energy (USA) Corporation ("Sanyo") was represented by the law firm of Hogan & Hartson, LLP, and Defendant BYD Company Limited and BYD America Corporation (collectively "BYD") were represented by the law firm of MacPherson, Kwok, Chen & Heid, LLP.

The purpose of the Markman hearing was for the Court, with the assistance of the parties, to prepare jury instructions interpreting the pertinent claims at issue in the '729 patent. Additionally, the Court and the parties prepared a "case glossary" for terms found in the claims and the specification for the ' 729 patent, considered to be technical in nature and which a jury of laypersons would not understand clearly without specific definition. As the case advances, the parties may request additional terms to be added to the glossary as to further facilitate the jury's understanding of the disputed claims.

After careful consideration of the parties' arguments and the applicable statues and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the ' 729 patent and ISSUES the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto. This claim construction order supercedes all previously issued claim construction orders for the '729 patent entered in the above-titled action.

**IT IS SO ORDERED**

***EXHIBIT A-UNITED STATES PATENT NUMBER 5,976,729-CLAIM CHART***

| ***VERBATIM CLAIM LANGUAGE*** | ***COURT'S CLAIM CONSTRUCTION*** |
|---|---|
| ***Claim 1*** | |
| A cell comprising: | A cell comprising: |
| a positive electrode; | a positive electrode; |
| a negative electrode; | a negative electrode; |
| a separator filled with an electrolyte; | a separator filled with an electrolyte; |
| an outer can which has a bottom and which is composed of one of aluminum and an aluminum alloy; and | an outer can which has a bottom, *which is the portion of the outer can that is opposite from a lid,* and which is *made of aluminum or aluminum alloy without requiring the absence of other materials that do not materially affect its character as aluminum or aluminum alloy;* and |
| a first lead plate for utilizing current, said first lead plate being welded to an outer surface of said outer can, and also welded to a second lead plate for electrically connecting said cell with a protective circuit. | a first lead plate for *conducting* current, said first lead plate being welded to an outer surface of said outer can, and also welded to a second lead plate for electrically connecting said cell with a protective circuit. |
| ***Claim 2*** | |
| The cell of claim 1, | The cell of claim 1, |
| wherein said first lead plate is made from a metal whose conductivity is lower than aluminum and the aluminum alloy. | wherein said first lead plate *comprises* a metal whose *electrical* conductivity is lower than aluminum and the aluminum alloy. |
| ***Claim 3*** | |
| The cell of claim 1, | The cell of claim 1, |
| wherein material of said first lead plate is selected from a group consisting of nickel, iron, a nickel alloy, and an iron alloy. | wherein material of said first lead plate is selected from a group consisting of nickel, iron, a nickel alloy, and an iron alloy. |
| ***Claim 4*** | |
| The cell of claim 1, wherein said outer can and said first lead plate are laser-welded. | The cell of claim 1, wherein said outer can and said first lead plate are laser-welded. |
| The cell of claim I, wherein said first lead plate includes | The cell of claim 1, wherein said first lead plate includes |
| a cladding plate having a first layer and a second layer, | a cladding plate having a first layer and a second layer, |
| said first layer being made from one of aluminum and the aluminum alloy and welded to said outer can, and | said first layer being made from one of aluminum and the aluminum alloy and welded to said outer can, and |
| said second layer being welded to said second lead plate. | said second layer being welded to said second lead plate. |
| ***Claim 6*** | |
| The cell of claim 5, wherein said outer can and said first lead plate are ultrasonic-welded. | The cell of claim 5, wherein said outer can and said first lead plate are ultrasonic-welded. |
| ***Claim 8*** | |

| | |
|---|---|
| The cell of claim 5, wherein said second layer is a metallic plate whose conductivity is lower than aluminum and the aluminum alloy. | The cell of claim 5, wherein said second layer is *a plate comprising metal* whose conductivity is lower than aluminum and the aluminum alloy. |
| ***Claim 14*** | |
| The cell of claim 2, wherein said outer can and said first lead plate are laser-welded. | The cell of claim 2, wherein said outer can and said first lead plate are laser-welded. |
| ***Claim 15*** | |
| The cell of claim 3, wherein said outer can and said first lead plate are laser-welded. | The cell of claim 3, wherein said outer can and said first lead plate are laser-welded. |

## *EXHIBIT B-GLOSSARY OF TERMS*

| *TERM* | *DEFINITION* |
|---|---|
| ***Angstrom ( A)*** | A unit of measure equivalent to one ten billionth of a meter, useful for distances on the scale of atoms. There are 10,000 A *in 1 (mu)m. |
| ***Anion*** | A negatively charged ion. |
| ***Anode*** | The negative electrode of a battery. |
| ***Bottom*** | The portion of the outer can that is opposite from a lid. |
| ***Can*** | The outer container or housing of the battery. |
| ***Cathode*** | The positive electrode of a battery. |
| ***Cation*** | A positively charged ion. |
| ***Crystallite Size*** | A value which measures the numbers of layers of carbon atoms in a crystal of graphite. |
| ***d-value*** | A value which measures the distance between layers of carbon atoms in a sample of graphite. |
| ***Electrode*** | A portion of a battery through which electrical current flows, used to connect a battery to an electronic device. Batteries contain two electrodes the positive electrode, or cathode, and the negative electrode, or anode. Negative ions flow towards the anode while positive ions flow towards the cathode. |
| ***Electrolyte*** | A material which allows electrical current to flow between electrodes in a battery. |
| ***Graphite*** | A form of pure carbon with a very uniform molecular structure. The carbon atoms in graphite form flat planes, or layers. Multiple parallel layers are combined to form a single graphite |

crystal, each layer being separated from the others by a specific distance. Samples of graphite are generally described with two values, the d-value and the crystallite size. The c-axis of a graphite crystal refers to an axis perpendicular to the parallel layers of the carbon atoms.

***Micron ((mu)m)*** A unit of measure equivalent to one millionth of a meter.

***Solute*** A material which is dissolved in another material (called the solvent); e.g., the sugar in sugar water.

***Solvent*** A material in which another material (the solute) dissolves; e.g., the water in sugar water.

***X-ray Diffraction*** A method for using x-rays to measure distances between atoms.

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