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3:02-CV-01900 SANYO ENERGY V. BYD COMPANY LIMITED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Signature]
DEPUTY

6 Attorneys for Plaintiff
7 SANYO ENERGY (USA) CORPORATION

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 SANYO ENERGY (USA) CORPORATION, a
12 Delaware corporation,
13 Plaintiff,
14 v.
15 BYD COMPANY LIMITED, a People's
16 Republic of China joint stock limited company,
17 BYD AMERICA CORPORATION, an Illinois
18 corporation,
19 Defendants.

Case No. 02-CV01900B (AJB)

AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

VIA FAX

19 Plaintiff, by its attorneys, alleges as follows:

20 THE PARTIES

- 21 1. Plaintiff Sanyo Energy (USA) Corporation ("SANYO") is a corporation organized
- 22 and existing under the laws of Delaware, with its principal place of business located at 2055
- 23 Sanyo Avenue, San Diego, California 92154.
- 24 2. On information and belief, defendant BYD Company Limited ("BYD") is a joint
- 25 stock limited company incorporated in and organized under the laws of People's Republic of
- 26 China with limited liability, with its principal place of business located at Yan An Road,
- 27 KuiChong Longgang District, Shenzhen, 518119, P.R.C.

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3. On information and belief, defendant BYD America Corporation ("BYD AMERICA") is a corporation organized and existing under the laws of Illinois, with its principal place of business located at 1420 Howard Street, Elk Grove Village, Chicago, Illinois.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1338(a) because it involves claims of patent infringement, and pursuant to 28 U.S.C. §1332 because this action is between citizens of different states and the matter in controversy is believed to exceed the sum or value of \$75,000.00, exclusive of interest and costs. Venue is proper within this judicial district pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(b).

BACKGROUND

5. A battery pack is a re-chargeable, portable power source usually employing one or more batteries.

6. SANYO is a leading seller of lithium ion batteries in the United States. The lithium ion batteries sold by Sanyo are incorporated into battery packs, which are sold throughout the United States.

7. On information and belief, BYD and BYD AMERICA are involved in the business of selling, offering to sell, and/or assembling lithium ion batteries and battery packs in the United States or exporting and/or importing lithium ion batteries and battery packs into the United States.

8. Lithium ion batteries sold by BYD and BYD AMERICA are incorporated into battery packs sold in the United States.

**COUNT I
PATENT INFRINGEMENT BY BYD AND BYD AMERICA**

1 9. SANYO incorporates the allegations of paragraphs 1-8 as though fully set forth
2 herein.

3 10. On November 17, 1997, United States Letters Patent No. 5,686,138 (hereinafter
4 "the '138 patent") entitled "Lithium Secondary Battery" was duly and legally issued in the name
5 of inventors Masahisa Fujimoto, Noriyuki Yoshinaga, Koji Ueno, Nobuhiro Furukawa, Toshiyuki
6 Nohma, and Masatoshi Takahashi.

7 11. On November 2, 1999, United States Letters Patent No. 5,976,729 (hereinafter
8 "the '729 patent") entitled "Cell which Secures the Reliability of a Protective Circuit" was duly
9 and legally issued in the name of inventors Takuma Morishita, Kazuro Moriwaki, Masatoshi
10 Takahashi, and Kensuke Nakatani.

11 12. SANYO is the exclusive licensee of each of the '138 and '729 patents.

12 13. On information and belief, defendants BYD and BYD AMERICA have infringed
13 and are currently infringing the '138 and '729 patents, by making, having made, using, importing,
14 selling and offering for sale, products embodying the inventions claimed in the '138 and '729
15 patents.

16 14. Lithium ion batteries sold and/or offered by sale by BYD have also been and are
17 currently being incorporated into battery packs manufactured, sold, offered for sale or imported
18 into the United States by third parties , including Kyocera Wireless Corporation, Moltech Power
19 Systems, Inc., Hecmma, Inc., Motorola, Inc., TDI Batteries, a division of Tyco Electronics
20 Corporation, and Flextronics. The battery packs manufactured, sold, offered for sale or imported
21 into the United States by these third parties, including Kyocera Wireless Corporation, Moltech
22 Power Systems, Inc., Hecmma, Inc., Motorola, Inc., TDI Batteries, a division of Tyco Electronics
23 Corporation, and Flextronics directly infringe the '729 Patent and the '138 Patent. BYD has
24 induced infringement of both the '138 Patent and the '729 Patent under 35 U.S.C. § 271(b) as
25 BYD knew of both the '138 Patent and the '729 Patent and encouraged or assisted these third
26 parties in the activity that infringed the patent, by encouraging or assisting a customer in
27 manufacturing, using, selling, offering for sale, or importing into the United States products
28 that directly infringe the patent.

1 15. Each of BYD's infringing activities and BYD AMERICA's infringing activities,
2 are without the consent of, authority of, or license from, SANYO.

3 16. Both BYD and BYD AMERICA have been given notice of their infringing
4 activities. Notwithstanding such notice, SANYO believes that both BYD and BYD AMERICA
5 will continue such infringing activities.

6 17. BYD's infringement has been and continues to be willful, knowing and deliberate.

7 18. BYD AMERICA's infringement has been and continues to be willful, knowing and
8 deliberate.

9 19. As a direct and proximate result of BYD's infringement and BYD AMERICA's
10 infringement, SANYO has suffered damages in an amount which cannot yet be fully ascertained,
11 but which are believed to far exceed the sum of \$75,000.

12 20. Unless permanently enjoined, BYD and BYD AMERICA will continue to engage
13 in the aforementioned acts, to SANYO's further and continuing damage. Such continuing acts
14 will, unless enjoined, cause irreparable damage in that SANYO will have no adequate remedy at
15 law to compel defendants to cease such acts.

16 Wherefore, SANYO demands:

17 a. Entry of an injunction enjoining BYD, BYD AMERICA, their officers, agents,
18 servants, employees, and attorneys, and those persons in active concert or participation with it
19 who receive actual notice thereof, from directly or indirectly infringing, or inducing the
20 infringement of the '138 and '729 patents, said injunction to be made permanent following trial;

21 b. Judgment in favor of SANYO and against BYD and BYD AMERICA, for
22 infringement of the '138 and '729 patents;

23 c. An award of SANYO's damages for infringement by BYD and BYD AMERICA,
24 in an amount adequate to compensate but in no event less than a reasonable royalty.

25 d. An award of SANYO's treble damages for willful, knowing and deliberate
26 infringement of the '138 and '729 patents, by BYD and BYD AMERICA.

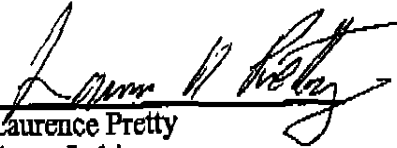
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e. Entry of judgment for SANYO's costs, interest, and reasonable attorney fees incurred herein.

f. Such other and further relief as the Court may deem appropriate.

Dated: January 10, 2005

HOGAN & HARTSON LLP

By: 
Laurence Pretty
Stuart Lubitz

Attorneys for Plaintiff
SANYO ENERGY (USA) CORPORATION

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, SANYO demands a trial by jury on all issues triable as of right by a jury.

Dated: January 10, 2005

HOGAN & HARTSON LLP

By: *Laurence M. Pretty*
Laurence Pretty
Stuart Lubitz

Attorneys for Plaintiff
SANYO ENERGY (USA) CORPORATION

PROOF OF SERVICE

I, Virginia Rohrabough, declare as follows:

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Hogan & Hartson L.L.P., Biltmore Tower, 19th Floor, 500 South Grand Avenue, Los Angeles, California 90071-2611.

On January 10, 2005, I served the foregoing document described as:

AMEDED COMPLAINT FOR PATENT INFRINGEMENT

DEMAND FOR JURY TRIAL

On all counsel of record in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Henry C. Bunsow, Esq. Howrey Simon Arnold & White, LLP 525 Market Street, Suite 3600 San Francisco, CA 94105-2708 Telephone: (415) 848-4900 Fax: (415) 848-4999	
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BY MAIL I am "readily familiar" with the firm's practice of collection and proessing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FACSIMILE I caused said document to be transmitted by facsimile transmission to the number indicated after the address(es) noted above.

BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the addressee(s) as stated above.

BY FEDERAL EXPRESS I caused such envelope to be delivered to Federal Express for overnight courier service to the offices of the addressee(s) listed on the attached service list.

FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on January 10, 2005, at Los Angeles, California.

Virginia Rohrabough
Name


Signature