



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-921

Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof

Notice of Commission Determination to Review the Final Initial Determination in Part; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation on July 2, 2015. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 14, 2014, based on a complaint filed by Navico, Inc. of Tulsa, Oklahoma, and Navico Holding AS, of Egersund, Norway (collectively, "Navico"). 79 *Fed. Reg.* 40778 (July 14, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof. *Id.* The complaint alleged the infringement of certain claims of U.S. Patent Nos. 8,305,840 ("the '840 patent"), 8,300,499 ("the '499 patent"), and 8,605,550 ("the '550 patent"). *Id.* The notice of investigation named Garmin International, Inc. and Garmin USA, Inc., each of Olathe, Kansas, Garmin (Asia) Corporation of New Taipei City, Taiwan (collectively, "Garmin"), and Garmin North America, Inc. as respondents. *Id.* The Office of Unfair Import Investigations ("OUII") was also named as a party. *Id.* The Commission later terminated the investigation as to Garmin North America, Inc. and various of the asserted claims. Notice (Dec. 31, 2014) (determining not to review Order No. 10 (Dec. 2, 2014)); Notice (Jan. 9, 2015) (determining not to review Order No. 11 (Dec. 11, 2014)); Notice (Jan. 13, 2015) (determining not to review Order No. 13 (Dec. 17, 2014)).

On July 2, 2015, the ALJ issued a final ID finding no violation of section 337 with respect to all three asserted patents. Specifically, the ALJ found that the asserted claims of each patent are not infringed and were not shown to be invalid for anticipation or obviousness. The ALJ found that the economic prong of the domestic industry requirement was not satisfied with respect to the '550 patent. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending, if the Commission finds a section 337 violation, that a limited exclusion order and a cease and desist order should issue and that a bond should be imposed at a reasonable royalty of eight percent for each infringing device imported during the period of presidential review.

On July 20, 2015, Navico, Garmin, and OUII timely filed petitions for review challenging various findings in the final ID. On July 28, 2015, the parties filed responses. On August 5, 2015, Navico and Garmin filed a post-RD statement on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from the public. *See* 80 *Fed. Reg.* 39799 (July 10, 2015).

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's determination of no violation in part. Specifically, the Commission has determined to review (1) the ALJ's construction of the limitation "single linear downscan transducer element" recited in claims 1 and 23 of the '840 patent (and its variants in the '499 and '550 patents); (2) the ALJ's construction of the limitation "combine" (and its variants) recited in claims 1, 24, and 43 of the '499 patent; (3) the ALJ's findings of noninfringement with respect to the three asserted patents; (4) the ALJ's findings of validity with respect to the three asserted patents; and (5) the ALJ's finding regarding the economic prong of the domestic industry requirement with respect to the

'550 patent.

The Commission has determined not to review the remaining issues decided in the final ID.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the existing evidentiary record. In connection with its review, the Commission requests responses to the following questions only.

1. Discuss whether the limitation “single linear downscan transducer element” as recited in claims 1 and 23 of the '840 patent (and its variants in the '499 and '550 patents) should be construed as “a single downwardly pointed transducer that is formed from a single element or a plurality of elements that act together as if they were a single element.” Discuss whether the phrase “act together” in this construction means act simultaneously or in phase. If the variants of the limitation “single linear downscan transducer element” in the '499 and '550 patents should be construed differently, please explain any such differences.
2. Applying the construction in Question No. 1, discuss whether the accused products satisfy the limitation “single linear downscan transducer element.”
3. Applying the construction in Question No. 1, discuss whether the prior art anticipates or renders obvious the asserted claims with respect to the limitation “single linear downscan transducer element.”

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the

respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written

submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant Navico is also requested to submit proposed remedial orders for the Commission's consideration. Navico is also requested to state the date that the asserted patent expires and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on **Monday, September 14, 2015**. Initial written submissions by the parties shall be no more than 40 pages, excluding any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on **Monday, September 21, 2015**. Reply submissions by the parties shall be no more than 20 pages, excluding any exhibits. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-921") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission

and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton

Secretary to the Commission

Issued: September 3, 2015

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