

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

In the Matter of

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

**Investigation No. 337-TA-921
Enforcement Proceeding**

**COMPLAINT TO ENFORCE CEASE AND DESIST ORDERS
PURSUANT TO COMMISSION RULE 210.75**

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Cease and Desist Orders
2	Claim Charts Showing Infringement of Claims 1 and 23 of the '840 Patent and Claim 32 of the '550 Patent.
3	Examples of Garmin's Website Advertising, Marketing, and Promoting a Covered Product
4	Garmin's ClearVü Web pages
5	Screen Shot of Garmin Promotional Video Demonstrating the DownVü Sonar with a Covered Product
6	Garmin Public Statement regarding the ITC's Orders
7	January 27, 2016 Letter to Garmin
8	Declaration of Scott Stevens
9	Garmin 2016 Marine Catalog
10	Garmin echoMAP CHIRP 73dv Website
11	Garmin GT22 Website
12	Garmin GT22 Installation Instructions
13	Navico Images of a GT20 with Tilt Design
14	Garmin 2016 Transducer Selection Guide
15	Garmin echoMAP CHIRP 73dv Owner's Manual
16	Garmin GCV10 Website
17	Garmin GT30 Website

I. INTRODUCTION

1. Navico, Inc. and Navico Holding AS (“Navico”) request that the United States International Trade Commission commence a formal enforcement proceeding pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337 (“Section 337”), and Commission Rule 210.75, 19 C.F.R. §210.75, to investigate and remedy repeated violations of the Cease and Desist Orders (Ex. 1) issued by the Commission on December 1, 2015 to Garmin International, Inc. and Garmin USA, Inc. (collectively, “Garmin” or “Enforcement Respondents”).

2. On July 9, 2014, the Commission instituted Investigation No. 337-TA-921 based on a complaint filed by Navico alleging violations of Section 337 via the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof (“the Covered Products”) by reason of infringement of various claims of one or more of United States Patent Nos. 8,305,840 (“the ’840 Patent”), 8,605,550 (“the ’550 Patent”), and 8,300,499 (“the ’499 Patent”) (collectively “the Asserted Patents”). *See* EDIS Doc ID 537683.

3. On December 1, 2015, the Commission issued its “Notice of the Commission’s Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation” (EDIS Doc ID 569980) and “Commission Opinion” (EDIS Doc ID 569986) (collectively, the “Final Determination”). In the Final Determination, the Commission found violations of Section 337 by Garmin International, Inc., Garmin USA, Inc., and Garmin Corp. based on infringement of claims 1, 5, 7, 9, 11, 16-19, 23, 32, 39-41, 63, and 70-72 of the ’840 Patent and infringement of claims 32 and 44 of the ’550 Patent.

4. The Commission issued a Limited Exclusion Order (EDIS Doc ID 569983) (the “LEO”) as well as Cease and Desist Orders (EDIS Doc ID 569987, attached as Ex. 1) (individually a “CDO,” and collectively the “CDOs”) directed to Garmin International, Inc. and Garmin USA, Inc.¹

5. On May 20, 2016, Navico filed a petition for modification of the LEO. On August 18, 2016, the Commission issued its “Notice of a Commission Determination to Grant a Petition for Modification; Issuance of a Modified Limited Exclusion Order” (EDIS Doc ID 588521) and “Commission Opinion Modifying a Limited Exclusion Order” (EDIS Doc ID 588520) (collectively, the “Modification Determination”). The Commission also issued a “Modified Limited Exclusion Order” (EDIS Doc ID 588514) (the “MLEO”).

II. JURISDICTION

6. The Commission has jurisdiction over this matter and the proposed Enforcement Respondents pursuant to Sections 333 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§1333 and 1337.

7. The Commission has personal jurisdiction over the proposed Enforcement Respondents by virtue of their participating fully in the underlying investigation, their stipulations regarding importation (*see* EDIS Doc ID 541285), and by virtue of the CDOs directed to them (*see* EDIS ID # 569987).

¹ The Commission also issued a Cease and Desist Order directed to Garmin Corp.

III. COMPLAINANTS

A. Navico, Inc.

8. Navico, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 4500 South 129th East Avenue, Suite 200, Tulsa, Oklahoma 74134.

9. Navico, Inc. was founded in March 2006 and is the U.S. entity of one of the world's largest manufacturers of marine sonar equipment. Navico, Inc. manufactures and markets products under the Lowrance, B&G, Simrad, and GoFree brands of marine electronics.

10. Lowrance Electronics, Inc. has been a leader in marine electronics since it invented the first consumer marine sonar device in Joplin, Missouri, in 1957. Carl Lowrance, an avid fisherman, shared his love of the sport with his two sons, Darrell and Arlen. Collectively, these family members determined that an instrument was needed to show fishermen where to concentrate their fishing efforts, and they set out to design such an instrument themselves, focusing on making it compact, lightweight, and relatively inexpensive.

11. By November 1959 Lowrance Electronics, Inc. had designed and introduced the world's first high frequency transistorized marine sonar for sport fishing and boating. This portable sonar unit became the most popular sonar in the world, and Lowrance Electronics, Inc. produced and sold more than a million units between 1959 and 1984.

12. In 1964, Lowrance Electronics, Inc. moved its operations to Tulsa, Oklahoma, and manufacturing started there in January of 1965. In 1965, based on its research and development, Lowrance Electronics, Inc. introduced the first marine sonars and transducers capable of high-speed performance. Over the next several decades, Lowrance Electronics, Inc. continued to develop and introduce sonar and radar units, fish finders, mapping products, GPS devices, software tools, and a variety of other products and accessories that have revolutionized marine electronics.

13. In 2006, Lowrance Electronics, Inc. and Simrad Yachting merged to form Navico, Inc., which remains today located in Tulsa, Oklahoma. Navico, Inc. manufactures and markets four well-known brands of marine electronics, namely, Lowrance, B&G, Simrad, and GoFree.

14. Research is one of the keys to Navico, Inc.'s success and provides the necessary cornerstone for its cutting-edge products. In 2008, Navico, Inc. introduced the first High Definition System ("HDS") Multifunction Display. Navico, Inc. has since continued to launch new award-winning products bearing features that redefine marine electronics, including StructureScan® HD with sidescan and DownScan Imaging™, Broadband Sonar, Trackback™ review, Broadband 4G Radar, and StructureMap™.

15. Since 2008, Navico, Inc. has spent millions of dollars in U.S. expenditures related to the development, testing, product support, repair, and service of its DownScan Imaging™ and StructureScan® product lines, which, *inter alia*, embody the innovations of the Asserted Patents and many others in Navico's patent portfolio. These expenditures and efforts demonstrate Navico's commitment to bringing state-of-the-art marine sonar equipment to U.S. consumers.

B. Navico Holding AS

16. Navico Holding AS is a corporation organized under the laws of Norway, with its principal place of business at Nyåskaiveien 2, 4370 Egersund, Norway.

17. Navico Holding AS is the holding company for the company's legal entities, and owns the entire right, title, and interest to the Asserted Patents. Navico Holding AS houses the head office functions and is the global manager of research and development activities, enabling use of common design and technical platforms and the most efficient use of available resources. It oversees seven research and development centers located in the United States, New Zealand, Mexico, Norway, the United Kingdom, Italy, and Russia.

18. These research and development centers focus on a variety of technological development, including software, hardware, project management, mechanical, technical writing, and optics.

19. Navico Holding AS continues to own, and Navico, Inc. continues to be the exclusive licensee of, the Asserted Patents at issue in this enforcement action, which are the subject of the Commission's LEO, MLEO, and CDOs.

IV. PROPOSED ENFORCEMENT RESPONDENTS

A. Garmin International, Inc.

20. Proposed Enforcement Respondent Garmin International, Inc. is a company organized and existing under the laws of the State of Kansas, having a principal place of business at 1200 East 151st Street, Olathe, Kansas 66062. Garmin International, Inc., among other things, is engaged in the importation into the United States and sale after importation into the United States of marine sonar equipment, including Garmin's DownVü Products.

21. Upon information and belief, Garmin International, Inc. imports all or a substantial portion of Garmin's DownVü Products.

22. Garmin International, Inc. is a wholly owned subsidiary of Garmin Ltd., a Swiss corporation whose shares are publicly traded on the NASDAQ stock market. Additional information concerning Garmin Ltd. may be found in its 2014 Form 10K, available at http://www8.garmin.com/aboutGarmin/invRelations/reports/10-K_2014.pdf.

B. Garmin USA, Inc.

23. Proposed Enforcement Respondent Garmin USA, Inc. is a company organized and existing under the laws of the State of Kansas, having a principal place of business at 1200 East 151st Street, Olathe, Kansas 66062. Garmin USA, Inc., among other things, is engaged in the sale

after importation into the United States of marine sonar equipment, including Garmin's DownVü Products.

24. Upon information and belief, Garmin USA, Inc. sells after importation a substantial portion of Garmin's DownVü Products.

25. Garmin USA, Inc. is a wholly owned subsidiary of Garmin Ltd.

V. THE TECHNOLOGY AND COVERED PRODUCTS

26. Navico's Asserted Patents are a reflection of the breadth of Navico's extensive dedication to and investment in marine electronics technology. Since its modest beginnings dating back to 1957, Navico has strived to provide its customers with cutting-edge marine sonar devices.

27. Early marine sonar imaging systems, such as fish finders that utilized broadband sonar, generated images that helped locate fish but did not provide a clear view of underwater topography or structures, such as sunken trees or rocks. Navico's DownScan Imaging™ sonar technology, by contrast, raised the bar in fish and structure-finding technology by providing greater target and bottom definition with improved clarity and detail. The new technology has proven to be particularly adept at generating sharp, picture-like images of structures, fish, thermoclines, and more, making for more productive fishing, diving, and search and recovery.

28. Beginning in 2008, Navico developed its DownScan Imaging™ technology, designed to generate near picture-perfect images of structure, fish, and bottom contours located directly beneath a boat. By about July 2009, Navico began filing patent applications to protect its DownScan Imaging™ innovations.

29. The Covered Products are certain Garmin marine sonar imaging devices, products containing the same, and components thereof that incorporate, without authorization, certain of Navico's DownScan Imaging™ and StructureScan® technologies as set forth and claimed in the

Asserted Patents. Garmin generally advertises these products as containing DownVü or SideVü technologies.

30. Specifically, the Covered Products include Garmin's "echo products, echoMAP products, and GPSMAP products with their respective transducers" and the "GCV10 and GSD25 sonar modules with their respective transducers." EDIS Doc ID 569980 at 3.

31. The Covered Products fall into the categories of products that are generally known in plain English as fishfinders, fishfinder/GPS combos, chartplotters, chartplotter/sonar combos, marine multifunction displays, and/or sonar modules.

VI. THE CEASE AND DESIST ORDERS

32. As a result of the finding of a violation of Section 337, the Commission issued CDOs to, *inter alia*, Garmin International, Inc. and Garmin USA, Inc. on December 1, 2015. Exhibit 1.

33. Each CDO prohibits Garmin from importing or selling the Covered Products. *Id.* at 3.

34. Each CDO prohibits Garmin, and its employees and agents, from, *inter alia*, marketing or advertising the Covered Products. *Id.* 1 at 3.

35. Each CDO also prohibits Garmin and its distributors from continuing to "distribute, sell, or otherwise transfer" the Covered Products. *Id.* at 2-3.

36. Each CDO also prohibits Garmin from aiding or abetting any other entities in the sale after importation of covered products. *Id.* at 3.

VII. GARMIN'S VIOLATIONS OF THE COMMISSION'S CEASE AND DESIST ORDERS VIA ITS "TILTED"-DESIGN DOWNVÜ PRODUCTS

37. After issuance of the LEO, Garmin instituted a new importation practice in order to improperly circumvent the LEO. Instead of importing the entire Covered Product in the same

box, Garmin began to import the constituent components separately. Specifically, Garmin began a widespread practice of importing DownVü head units separately from DownVü transducers. Upon arrival in the United States, Garmin would then assemble, or “kit,” the head unit and transducer into a single unit and sell it as such. In the alternative, Garmin would sell the two components to its retailers and distributors in the United States with the understanding that the retailers, distributors, or their customers would either combine the components into a single unit for sale or sell the components separately with the understanding that the ultimate customer would combine the components.

38. The August 18, 2016 opinion accompanying the MLEO clarified that Garmin’s new practice of importing components is included in the scope of the original LEO. EDIS Doc ID 588520, p. 8. In the MLEO, the Commission “simply clarifie[d] the LEO as originally issued and d[id] not change the scope of the order.” *Id.*

39. In the opinion accompanying the MLEO, the Commission stated that “Garmin’s importation of transducers for the purpose of kitting an infringing device” is “activity which circumvents the exclusion order” and is “contrary to Commission practice and would violate the purpose of the LEO.” *Id.* p. 10

40. While Garmin’s new importation practice was aimed at evading the LEO—a practice that the MLEO and the August 18, 2016 Commission opinion clarify is and has been improper—even Garmin concedes that the action of separately importing but selling after importation the kitted products has always violated the CDOs. As Garmin put it, “that post-importation activity is already covered by the CDOs issued in this Investigation.” EDIS Doc. ID. 582599 at 7.

41. Upon information and belief, Garmin has sold tens of thousands of units of its DownVü products since December 1, 2015.

42. The DownVü products sold since December 1, 2015, primarily or exclusively use the very same DownVü transducer element that the Commission found literally infringes, but the element has been slightly tilted to the port (left) side. As with the design that the Commission found literally infringes, the tilted DownVü transducer generates sonar beams oriented to capture images underneath the watercraft. Moreover, because the transducer is usually mounted on the starboard (right) side of a boat, the slight tilt to the port (left) side ensures that DownVü displays images of the entire area underneath the watercraft.

43. In a public filing, Garmin has conceded that the tilted DownVü element continues to be a “linear downwardly pointed transducer” as required by the Commission’s claim construction. (Comm’n Op. at 17.) Garmin also conceded that the tilted design continues to “show an image of the structure beneath the watercraft.”

44. The tilted DownVü element is configured and aimed so as to project fan-shaped sonar beams perpendicular to the surface of the water.

45. Garmin’s DownVü Products violate the CDOs and continue to directly infringe claims 1, 5, 7, 9, 11, 16-19, 23, 32, 39-41, 63, and 70-72 of the ’840 Patent.

46. An exemplary claim chart showing infringement of independent claims 1 and 23 of the ’840 Patent by Garmin’s echoMAP CHIRP 73dv is attached as Exhibit 2.

47. Garmin’s DownVü Products that also contain SideVü also violate the CDOs and continue to directly infringe claims 32 and 44 of the ’550 Patent.

48. An exemplary claim chart showing infringement of independent claim 32 of the ’550 Patent by Garmin’s GCV10 is attached as Exhibit 2.

VIII. GARMIN’S VIOLATIONS OF THE COMMISSION’S CEASE AND DESIST ORDERS VIA ITS “SHADED”-DESIGN DOWNVÜ PRODUCTS

49. On at least each day from December 2, 2015 to February 12, 2016, Garmin continued to advertise and promote the shaded-design Covered Products on its website.

50. For example, prior to the issuance of the CDOs, Garmin had a webpage on its website (Garmin.com) dedicated to the advertisement, marketing, and promotion of Covered Products branded as “echo dv,” “echoMAP dv,” “GPSMAP xs,” “GPSMAP xsv,” and “GCV 10.” Each of those webpages continued to exist for months, and each advertised, marketed, and promoted the Covered Products and specifically the use of the shaded-design DownVü sonar that was the subject of the underlying investigation.

51. As one example, prior to the CDOs, Garmin advertised, marketed, and promoted its echoMAP 74dv with GT-21 transducer, part number 010-01524-01. Every day between December 1, 2015 and at least February 12, 2016, Garmin’s website has continued to advertise, market, and promote the very same product. Through at least that day, Garmin had a page dedicated to part number 010-01524-01, which includes the message that the product includes “DownVü scanning sonar with the clearest images on the water.” *See* Exhibit 3.

52. While Garmin’s website has discontinued direct sales of many of these shaded-design products, the web pages directed prospective purchasers to a list of authorized Garmin dealers where the purchaser may continue to purchase shaded-design Covered Products for months after the issuance of the CDOs. *Id.*

53. Similarly, prior to December 1, 2015, Garmin’s website (Garmin.com) included a page advertising and promoting its “ClearVü Scanning Sonar,” and noted that, “This family includes DownVü and DownVü/SideVü scanning sonar with CHIRP technology.” Garmin’s ClearVü webpage existed for months after the issuance of the CDOs, continuing to demonstrate the use of the technology found to infringe in the Covered Products. *See* Exhibit 4.

54. Additionally, Garmin continued to advertise, market, and promote shaded-design Covered Products at trade shows. For example, upon information and belief, from February 3-7,

2016, Garmin attended and exhibited shaded-design Covered Products at the Atlantic City International Power Boat Show in Atlantic City, New Jersey.

55. Moreover, Garmin continued to advertise, market, and promote Covered Products through its use of professional and/or semi-professional fishermen after December 1, 2015. Garmin provided such fishermen Garmin products, including shaded-design Covered Products, and paid them to use, advertise, and promote the shaded-design Covered Products. As one example, Garmin released a promotional video on or about December 24, 2015, showing one of its professional anglers using a shaded-design Covered Product. *See* Exhibit 5. Upon information and belief, these activities continue today.

56. Upon information and belief, Garmin has also aided and abetted and encouraged its authorized distributors to continue to distribute Covered Products after December 1, 2015 (the date of the CDOs) and also after January 30, 2016 (the end of the Presidential Review period), and its authorized distributors have done so. For example, even though the CDOs prohibit authorized Garmin distributors from distributing or selling Covered Products, Garmin has actively, openly, and repeatedly stated that its authorized distributors may continue to sell Covered Products. *See, e.g.,* Exhibit 6.

57. Upon information and belief, Garmin has also aided and abetted its authorized dealers (i.e. retailers) in their continued sales of shaded-design Covered Products. For example, Garmin has provided various incentives, including rebates, price protections, and/or other incentives, to its authorized dealers in order to aid, abet, and encourage their continued sales of Covered Products after December 1, 2015 and after January 30, 2016.

58. Garmin did not post a bond with respect to the above activities, as required by the CDOs, to the extent that these activities took place during the Presidential Review Period. As such, Garmin has violated the CDOs each and every day since their issuance.

59. On January 27, 2016, near the end of the Presidential Review Period, Navico informed Garmin of the above conduct, and requested that it cease no later than the end of the Presidential Review Period, which expired on January 30, 2016. *See* Exhibit 7. Upon information and belief, Garmin has taken no remedial actions subsequent to the letter or the expiration of the Presidential Review Period, thus exhibiting its intent to continue to knowingly violate the CDOs.

IX. SPECIFIC INSTANCES OF GARMIN VIOLATING THE CDOs

60. Garmin sells its DownVü Products after importation in violation of the CDOs. Examples of two such DownVü Products were purchased from retailers in the United States. *See* Ex. 8.

61. Exhibit 8 contains photographs of a Garmin echoMAP CHIRP 73dv purchased from a retailer in the United States. These photographs show, *inter alia*, that the echoMAP CHIRP 73dv head unit and GT-22 transducer were “Made in Taiwan,” and that the components are intended to be sold as a kitted unit. Specifically, Navico’s counsel caused a Garmin echoMAP CHIRP 73dv to be purchased on February 17, 2016 from Cabela’s in Allen, Texas. *See* Ex. 8, ¶ 2.

62. Exhibit 8 also contains photographs of a Garmin echoMAP CHIRP 53dv purchased from a retailer in the United States. These photographs show, *inter alia*, that these components—the echoMAP CHIRP 53dv head unit and GT-22 transducer—were “Made in Taiwan,” and that they were always intended to be sold as a kitted unit. Specifically, Navico’s counsel caused a Garmin echoMAP CHIRP 53dv to be purchased on March 18, 2016 from a Bass Pro Shop in Cornelius, North Carolina. *See* Ex. 8, ¶ 3.

X. CONCLUSION

63. Garmin’s conduct plainly violates the CDOs issued by the Commission. Garmin’s flagrant disregard for the CDOs is evident from the fact that Garmin has not changed its advertising, marketing, or promotion of Covered Products after December 1, 2015 in a manner

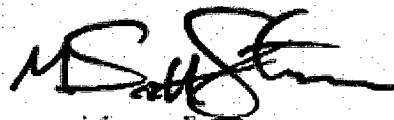
that would avoid violating the CDOs. As a result, Navico respectfully requests that the Commission institute an enforcement proceeding, and impose civil penalties against Garmin for every day subsequent to December 1, 2015.

XI. REQUEST FOR RELIEF

64. Complainants request that the United States International Trade Commission:
- a. Institute a formal enforcement proceeding pursuant to 19 C.F.R. §210.75, to confirm the violations of the Cease and Desist Orders described herein;
 - b. Determine that there have been violations of the Cease and Desist Orders by each Enforcement Respondent;
 - c. Impose civil penalties for violations of the Cease and Desist Orders, and if necessary, bring a civil action in an appropriate United States District Court pursuant to 19 C.F.R. §210.75(4) requesting the imposition of such civil penalties or the issuance of such injunctions as the Commission deems necessary to enforce its orders and protect the public interest; and
 - d. Grant such other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

Dated: August 30, 2016

Respectfully submitted,



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