

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.**

In the Matter of

CERTAIN COMPONENTS FOR  
INSTALLATION OF MARINE  
AUTOPILOTS WITH GPS OR IMU

Inv. No. 337-TA-738

**Order No. 17: Denying Navico's Motion No. 738-17 For Summary Determination  
Of Patent Invalidity**

On March 16, 2011, respondents Navico Holding AS, Navico UK, Ltd., and Navico, Inc. (Navico) moved for summary determination of patent invalidity under 35 U.S.C. § 102(b) with respect to the claims 2, 4, 10-13, 28, 30, 54, and 55 of United States Patent No. 6,596,976 (the '976 patent) that have been asserted by complainant AGNC Corporation (AGNC) in this investigation. (Motion Docket No. 738-17.)

Complainant, in a response dated March 28, 2011, argued that Motion No. 738-17 should be denied not only because complainant AGNC's March 25 infringement contentions render said motion moot, but also because Navico has failed to demonstrate that summary determination of invalidity is proper.

The Commission Investigative Staff (staff) in a filing dated March 28, 2011, argued that there are genuine issues of material fact with respect to whether the accused autopilot systems are the same as, or insubstantially different from, systems sold by Navico and its relevant predecessors prior to the alleged invention of the '976 patent as alleged by Navico; and that

accordingly, summary determination is not appropriate and Navico's motion should be denied.<sup>1</sup>

No other party responded to Motion No. 738-17.<sup>2</sup>

The Commission rules permit a party to "move with any necessary supporting affidavits for summary determination in his favor upon all or any part of the issues to be determined in the investigation." See Commission rule § 210.18(a). Summary determination "shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving Party is entitled to a summary determination as a matter of law." See also Commission rule § 210. 18(b), DeMarini Sports, Inc. v. Worth Inc., 239 F.3d 1314,1322 (Fed. Cir. 2001) and Wenger Mfg., Inc. v. Coating Mach. Sys., Inc., 239 F.3d 1225, 1231 (Fed. Cir. 2001). In addition "[w]hen ruling on a motion for summary judgment, all of the nonmovants's evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant's favor." Xerox Corp., v. 3ComCorp., 267 F.3d 1361, 1364 (Fed. Cir. 2001). The trier of fact should "assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid unnecessary trial." EMI Group N. Am., Inc. v. Intel Corp., 157 F.3d 887,891 (Fed. Cir.1998). The nonmoving party bears the initial burden of establishing that there is an

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<sup>1</sup> The staff noted that while the other respondents in this investigation, i.e., Furuno Electronics Col. Ltd., Furuno U.S.A. Inc., Flir Systems, Inc., Raymarine UK Ltd., and Raymarine Inc., support Motion No. 738-17 they do not join in Navico's motion , citing Motion at 2.

<sup>2</sup> Order No. 16, which issued on April 27, 2011, granted Motion Nos. 738-27 and 738-28 for tolling certain procedural deadlines as they affect the Furuno and Raymarine respondents in order to memorialize settlement agreements.

absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Also "a moving party seeking to invalidate a patent at summary judgment must submit such clear and convincing evidence of facts underlying invalidity that no reasonable jury could find otherwise." SRAM Corp. v. AD-II Eng'g, Inc. 465 F.3d 1351, 1357 (Fed. Cir. 2006). If the moving party satisfies its initial burden, then the burden shifts to the non-movant to demonstrate specific facts that show there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,256 (1986).

Respondents Navico, in support of the pending motion, argued that the asserted claims are invalid under 35 U.S.C. § 102(b) in light of AGNC's claims of infringement against Navico's Simrad autopilot systems; and that in particular, AGNC has asserted the claims of the '976 patent against marine autopilot systems that are the same as, or insubstantially different from, systems sold by Navico and its relevant predecessors prior to the alleged invention of the '976 patent. In support of the assertion that there is a direct correspondence between the presently accused functionalities in Simrad's autopilot systems and Simrad's prior art autopilot systems, Navico cites to the deposition testimony of AGNC's designated witness, Dr. Anastasios Politopoulos, and alleged that he "conceded" that there are "counterpart disclosures in prior art manuals" (supporting memo at 8).


Reference however is made to complainant's responses to the following statement of facts of movants: SOF 16, SOF 17, SOF 19, SOF 20, SOF 21, SOF 22, SOF 23, SOF 24, SOF 25, SOF 26. From said responses of complainant while it appears that Navico's Motion No. 738-17 is based on AGNC's infringement contentions as of February 10, 2011, including, AGNC's reliance on descriptions of certain components of the accused systems in various manuals that

were publicly available (Motion Memorandum at 13-16), since the filing of Navico's Motion No. 738-17, AGNC has further supplemented its infringement contentions, which were served on March 25, 2011, and which are attached as staff Ex. 1. Said the infringement contentions incorporated deposition testimony provided by Navico witnesses and Navico source code produced after February 10, 2011, and which infringement contentions had been supplemented prior to the cut-off date, i.e., April 15, 2011, for responses to contention interrogatories.

Regarding any cited deposition testimony of Politopoulos, by movants as of February 25, 2011, complainant "has not had access to Respondent CBI" (Staff Ex. 2) Moreover it is not denied, as complainant argued, that Politopoulos was not its rule 30(b)(6) witness concerning its infringement contentions and that all that Politopoulos could testify on was complainant's pre-filing investigation using public documents (opposing memo at 22.).

Based on the foregoing motion No. 738-17 for summary determination is denied.

This order will be made public unless a confidential bracketed version is received no later than May 18, 2011.

  
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Paul J. Luckern  
Chief Administrative Law Judge

Issued: May 4, 2011

**CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **Public Version Order** has been served by hand upon the Commission Investigative Attorney, Vu Q. Bui, Esq., and the following parties as indicated, on July 25, 2011.



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