

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MARINE SONAR IMAGING
DEVICES, INCLUDING DOWNSCAN
AND SIDESCAN DEVICES, PRODUCTS
CONTAINING THE SAME, AND
COMPONENTS THEREOF**

**Inv. No. 337-TA-921
(Enforcement Proceeding)**

Order No. 31

On November 23, 2016, complainants Navico Inc. and Navico Holding AS (collectively, “Navico”) filed a motion to compel respondents Garmin International, Inc. and Garmin USA, Inc.’s (collectively, “Garmin”) to “produce responsive documents to Requests for Production 1-38 immediately.” Motion Docket No. 921-30.

On December 5, 2016, Garmin filed a response in opposition, and the Commission Investigative Staff (“Staff”) filed a response supporting the motion.

Navico argues:

Garmin has yet to produce a single document in this investigation, despite fact discovery being halfway over with the close of fact discovery less than six weeks away. These facts alone are reason to grant a motion to compel Garmin to produce its documents responsive to Navico’s RFPs. *See Certain Personal Data and Mobile Communications Devices and Related Software*, Inv. No 337-TA-710, Order No. 125, at 1 (Sept. 19, 2012) (granting motion to compel production where respondent HTC had failed to produce a document over halfway through the discovery period).

This situation is particularly concerning because Garmin’s delay is intentional and without proper basis. Garmin acknowledges that it has responsive documents, but refuses both (i) to produce any documents in this proceeding, and (ii) to deem produced the many documents it has already produced in the District Court litigations. As to the latter, there are many thousands of documents produced by Garmin in the concurrent District Court litigations, many of which

are responsive to Navico's RFPs. If Garmin would provide written assent that these documents may be deemed produced in this proceeding, then a substantial portion of Garmin's discovery obligation would be satisfied. Navico has attempted multiple times in good faith to stipulate to such cross-use, and Navico has already agreed to cross-use of Navico's documents, but Garmin refuses to agree or reciprocate.

Garmin does not refuse based on relevancy or burden or any colorable basis. Instead, Garmin simply wants something in exchange for complying with its discovery obligations. Specifically, Garmin wants Navico to agree that documents (including confidential documents) produced by third parties in the District Court litigations can be deemed produced in this case without objection from Navico. Notwithstanding the impropriety of Garmin's refusal to produce documents based on such a "condition precedent," Navico cannot grant Garmin's demand because Navico cannot assent to the use in this proceeding of documents produced by third parties in the District Court litigations. Those documents are governed by separate Protective Orders that prohibit the use of those documents in any other litigation (Ex. C (Eastern Texas District Court Protective Order) at ¶ 3 (prohibiting use of confidential information for "for any purpose other than conducting this Proceeding"); Ex. D (Northern Oklahoma District Court Protective Order) at ¶¶ 1(e), 3 (same)). Additionally, whether such documents can be deemed produced in this enforcement proceeding is up to the third parties in question, not Navico.

More importantly, there is simply no excuse for Garmin to hold all of its documents hostage based on such a condition. The documents requested in Navico's RFPs include requests relating to Garmin's sales, importation, advertising, and other information, all of which is squarely relevant in determining the civil penalties that should be awarded if a violation is found.

The prejudice to Navico by Garmin's refusal to produce a single document is exacerbated by the extremely short discovery period in this proceeding. The parties are already halfway through the discovery period, which closes on January 6, 2017. Navico needs Garmin's productions immediately so it can prepare for corporate depositions and otherwise prepare for the hearing scheduled for early March 2017.

Mem. at 3-5.

Garmin argues:

Navico's motion to compel is unnecessary. During the November 22nd meet and confer that preceded the motion, Garmin: (1) told Navico that Garmin would produce its responsive documents; (2) reminded Navico that Garmin had already made substantial productions; and (3) confirmed that if the parties did not agree on a global cross-use agreement for all pending litigations, then Garmin would make sure that the documents it produced in other litigations would still be

available to Navico in this Investigation. Importantly, Garmin is not withholding the production of documents in this Investigation, and Garmin is not allowing the fact that the parties have disagreements, which Navico grossly mischaracterizes, regarding the use of documents in other pending actions to prevent Garmin from producing its documents here. Thus, no order compelling production is necessary, and Navico's motion should be denied.

Opp'n at 1.

The Staff argues:

In short, Complainants' behavior is not consistent with their discovery obligations under the Commission Rules. While a short delay to negotiate procedural details that may save discovery costs is reasonable, nothing in the Commission Rules allows a party to make the performance of its discovery obligations subject to condition. Respondents have a duty to provide discovery, including document production, under Commission Rules. They simply have not done so. Any issues related to third party discovery, regardless of the reasonableness or unreasonableness of the arguments, have no bearing on Respondents' obligations under the Commission Rules to produce their own documents.

For these reasons, the Staff supports Complainants' Motion. Given the rapidly approaching close of fact discovery on January 6, 2017, see Order No. 29, Respondents should be ordered to produce all relevant and non-privileged responsive documents immediately.

Staff at 2-3.

According to Garmin, "Navico fails to mention that during the meet and confer, Garmin proposed that the parties agree to complete their document production by the week of December 12. Navico refused to agree, and indeed Navico refused to provide any information regarding when Navico anticipates completing its document production." Opp'n at 3-4.

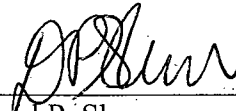
If Garmin's representation is accurate, the dispute is moot. Indeed, the private parties should have completed their document production by now.¹ If any portion of the pending motion

¹ In that case, the motion should be withdrawn. See Ground Rule 5.h ("If a change in circumstances renders all or any portion of a motion moot, the moving party shall promptly file notice (with the pertinent motion number in the document title) as to whether all or a specific portion of said motion is being withdrawn.").

remains ripe, the parties are to meet and confer and file a joint statement addressing any remaining dispute by December 23, 2016, and thereafter, Navico should file a new motion to compel as appropriate.

Motion No. 921-30 is denied.

So ordered.



David P. Shaw
Administrative Law Judge

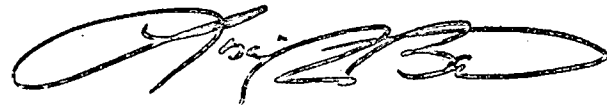
Issued: December 21, 2016

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INV. NO. 337-TA-921 (Enforcement)

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 31** has been served by hand upon the Commission Investigative Attorney, **Peter J. Sawert, Esq.**, and the following parties as indicated, on DEC 21 2016.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, DC 20436

FOR COMPLAINANTS NAVICO, INC.; AND NAVICO HOLDING AS:	
M. Scott Stevens, Esq. ALSTON & BIRD LLP 950 F Street, NW Washington, DC 20004	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENTS GARMIN INTERNATIONAL, INC.; GARMIN USA, INC.:	
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