

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. 14: Denying Complainant's Motion for Sanctions

On March 17, 2011, complainant American GNC filed a motion for sanctions against respondents Navico Holdings AS, Navico UK, Ltd., and Navico, Inc. (Navico) for an alleged failure to supplement interrogatory responses as required by Order No. 12. (Motion Docket No. 738-18.)¹

On March 21, 2011, Navico in a filing opposed Motion No. 738-18.

On March 25, 2011, the Commission Investigative Staff (staff) in a filing opposed Motion No. 738-18.

No other responses to the pending motion were received.

Complainant argued in support of Motion No. 738-18 that Navico failed to comply with Order No. 12. It is argued that in response to Order No. 12, Navico produced over 275,000 pages of source code and a letter, dated February 15, 2011, which identified certain ranges in that

¹ Complainant's motion concerns complainant's Interrogatory Nos. 60-62 to Navico. (Mot. Mem. at 1.) Those interrogatories sought a description of how various Navico autopilot products "steer a boat to a waypoint." (*Id.* at 4.) Complainant previously filed a motion to compel Navico to provide, *inter alia*, a more descriptive response to the interrogatories. (Motion Docket No. 738-16.) Order No. 12 granted complainant's motion and required Navico to produce source code and supplement its initial responses to the interrogatories in question by the close of business on February 16, 2011.

production as pertaining to the B&G and Simrad autopilots and other ranges as pertaining to earlier versions of Navico source code. (Mot. Mem. at 5.) Complainant contended that “a letter is not a response to an interrogatory” because it is “not verified and not useable in deposition or at the hearing.” (Id. at 6.) Complainant further argued that the letter does not “identify or describe the software modules, routines, algorithms, functions, or other source code or software used in guiding a boat to a waypoint,” contains no description of “steering information” or “information received from the navigator,” and does not describe how the source code uses “inputs from compasses and rate gyros.” (Id.) Because of said alleged shortcomings, complainant contended that Navico has failed to comply with an order compelling discovery and therefore should be sanctioned under Commission Rule 210.33(b). (Mot. Mem. at 10.) Complainant requested that the administrative law judge order sanctions unless, before a date certain, Navico further supplements its responses to Interrogatory Nos. 60-61 and provides a corporate witness for deposition. (Id. at 12.)

Navico in its opposition argued that it timely complied with Order No. 12 when it delivered the February 15 letter and source code to complainant (Opp. at 7); that complainant did not object to that production until approximately one month later, when the parties were corresponding about a potential motion for summary determination by Navico based on Navico’s prior art products (id. at 5); and that when complainant requested a verified version of the February 15 letter Navico promptly provided one (id. at 7; Opp., Ex. L). Navico also noted that complainant deposed two corporate witnesses that provided detailed testimony concerning the software Navico produced. (Opp. at 4.) Hence, Navico argued that in view of its production, its

verified response, and testimony from its corporate representatives, it has complied with Order No. 12. (Id. at 10.)

The staff in its response argued that complainant has suffered no prejudice that would justify sanctions because Navico provided discovery relating to the source code at issue in Order No. 12 (Staff Resp. at 2) and that complainant's Motion No. 738-18 appeared to be an attempt by complainant to obtain an additional deposition to discover differences between Navico's current products and prior art products in relation to a summary determination motion. (Id. at 3.) The staff noted that the interrogatories in question do not concern differences between current and prior art products, and therefore the relief complainant sought is unrelated to the alleged discovery violation. (Id.)

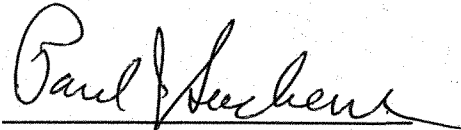
Commission Rule 210.33(b) governs non-monetary sanctions and states that when a party fails to obey a discovery order the administrative law judge "may take such action in regard thereto as is just" See 19 C.F.R. § 233(b). A party moving for sanctions has the burden to demonstrate by clear and convincing evidence that sanctions are justified. See Certain DC-DC Controllers and Products Containing the Same, Inv. No. 337-TA-698, Order No. 55 (U.S.I.T.C. Aug. 10, 2010) (citing cases).

The administrative law judge has reviewed Navico's letter of February 15, Navico's verified supplemental interrogatory responses, and the deposition testimony provided by the parties. In view of said responses and testimony, and because there is the option to produce records in response to an interrogatory (see Commission Rule 210.29(c)), the administrative law judge finds that complainant has failed to establish that Navico violated Order No. 12. Further, to the extent that complainant seeks a sanction in the form of an additional corporate deposition

to explore differences between Navico's current products and its prior art products, the administrative law judge finds that complainant specifically listed this as a topic for its now-completed depositions of Navico corporate representatives. (See Opp., Ex. A, ¶ 3.) Thus, complainant apparently has already had the opportunity to explore said differences.

Based on the foregoing, Motion Docket No. 738-18 is denied.

This order will be made public unless a bracketed confidential version is received no later than the close of business on April 12, 2011.




Paul J. Luckern
Chief Administrative Law Judge

Issued: April 5, 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 April 22, 2011.


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