

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**

**Investigation No. 337-TA-921
(Modification Proceeding)**

**COMMISSION OPINION DENYING GARMIN RESPONDENTS'
EMERGENCY MOTION FOR STAY PENDING APPEAL**

I. BACKGROUND

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 complaint further alleged that an industry exists in the United States as required by subsection (a)(2) of section 337. The notice of investigation named Garmin International, Inc. and Garmin USA, Inc., each of Olathe, Kansas, Garmin (Asia) Corporation of New Taipei City, Taiwan, and Garmin North America, Inc. as respondents. *Id.* The Office of Unfair Import Investigations ("OUII") was also named as a

PUBLIC VERSION

party. *Id.* The Commission later terminated the investigation as to Garmin North America, Inc. and various of the asserted claims.¹

On December 1, 2015, the Commission found a violation of section 337 based on infringement of the asserted claims of the '840 and '550 patents and issued a limited exclusion order ("LEO") and cease and desist orders ("CDOs") against Garmin. 80 *Fed. Reg.* 76040-42 (Dec. 7, 2015). The Commission found no violation with respect to the '499 patent. The LEO as originally issued prohibited unlicensed entry of marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof that are covered by one or more of claims 1, 5, 7, 9, 11, 16-19, 23, 32, 39-41, 63, and 70-72 of the '840 patent and claims 32 and 44 of the '550 patent. Paragraph 1 of the LEO recites the exclusion provision. Paragraph 3 of the LEO recites a certification provision, which allows Garmin to certify that products it wishes to import are not subject to the exclusion provision. Paragraph 4 of the LEO recites a carve-out provision, which states that paragraph 1 does not apply to certain accused components that the Commission specifically found did not indirectly infringe the subject claims. *See Comm'n Op.* at 28-31 and 45-46 (Dec. 1, 2015).

On January 27, 2016, Navico filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"), seeking review of issues the Commission decided against it in the Commission's final determination. *Navico, Inc. v. Int'l Trade Comm'n*, No. 16-1533. On February 11, 2016, Garmin also filed a notice of appeal with the Federal Circuit, seeking review of the Commission's final determination finding a violation of section 337. *Garmin*

¹ 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)).

PUBLIC VERSION

International, Inc. v. Int'l Trade Comm'n, No. 16-1572. Both appeals are currently pending before the Federal Circuit.

On May 20, 2016, Navico filed a petition for modification of the LEO. On June 1, 2016, Garmin filed an opposition to the petition.² On June 10, 2016, Navico filed a motion for leave to file a reply in support of its petition. On June 20, 2016, Garmin filed an opposition to Navico's motion for leave. The Commission granted Navico's petition for modification and issued a modified LEO and an opinion. Notice (Aug. 18, 2016); Comm'n Op. Modifying an LEO ("Comm'n Op. MLEO") (Aug. 18, 2016). The Commission also determined to grant Navico's motion for leave to file a reply. *Id.*

On August 24, 2016, Garmin filed a motion requesting the Commission stay, pending appeal to the Federal Circuit, enforcement of the modified LEO. Garmin Respondents' Emergency Motion for Stay of Modified Remedial Orders Pending Appeal (Aug. 24, 2016) ("Mot."). On August 29, 2016, Garmin filed with the Federal Circuit a petition for appeal from the Commission's issuance of the modified LEO. *Garmin Int'l, Inc. v. Int'l Trade Comm'n*, Appeal No. 16-2584. On August, 30, 2016, Garmin filed with the Federal Circuit an emergency motion for an interim stay and stay pending appeal of the modified LEO.

On September 6, 2016, the Commission and intervenor Navico filed responses to Garmin's motion before the Federal Circuit. As of the date of this Opinion, the motion remains pending before the Court.

Also on September 6, 2016, Navico filed a response to Garmin's stay motion before the Commission. Complainants' Opposition to Garmin's Emergency Motion for Stay of Modified Remedial Order Pending Appeal (Sept. 6, 2016) ("Opp."). OUII did not file a response.

² OUII did not file a response to Navico's petition.

II. LEGAL STANDARD

Section 10(d) of the Administrative Procedure Act provides an agency with the authority to “postpone the effective date of action taken by it, pending judicial review” if the “agency finds that justice so requires.” 5 U.S.C. § 705. The Federal Circuit has set forth the following four-part test to assess whether to stay a lower court’s remedy pending appeal:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Standard Havens Prods., Inc. v. Gencor Indus, Inc., 897 F.2d 511, 512 (Fed. Cir. 1990)

(quotation omitted).

The Commission evaluates motions for stay under the *Standard Havens* test with one exception. At the agency level the movant need not demonstrate a likelihood of success on appeal. The Commission has recognized the futility of establishing a likelihood-of-success in this context given that it would be difficult to ask an agency to find that its own decision is likely to be overturned on appeal. *Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380 (“*Agricultural Tractors*”), Comm’n Op. Denying Resp’ts’ Pet. for Reconsideration and Mot. for Relief Pending Appeal at 10 (Apr. 25, 1997); *see also* *Washington Metro. Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) (“Prior recourse to the initial decisionmaker would hardly be required as a general matter if it could properly grant interim relief only on a prediction that it has rendered an erroneous decision”). Accordingly, in lieu of the likelihood-of-success prong, the Commission considers whether it has “ruled on an admittedly difficult legal question.” *Holiday Tours*, 559 F.3d at 844-45 (“What is fairly contemplated is that tribunals may properly stay their own orders when they have ruled on an admittedly difficult legal question and when the equities of the case suggest that

PUBLIC VERSION

the status quo should be maintained.”); *see also Agricultural Tractors*, Comm’n Op. at 10. The Commission has repeatedly recited and applied this “admittedly difficult question” test in previous investigations in which stays were sought pending appeal.³

III. DISCUSSION

A. Whether This Case Presents an Admittedly Difficult Legal Question (Substantial Likelihood of Success on the Merits)

Garmin argues that it has demonstrated a substantial likelihood of success on the merits, the merits being the following: (1) the Commission failed to afford Garmin an opportunity for a hearing and presentation of all defenses as required by 19 U.S.C. § 1337(c); (2) the Commission lacked the jurisdiction to modify the original orders; and (3) the modified orders are impermissibly overbroad and create uncertainty as to what goods are excluded. None of Garmin’s arguments is persuasive.

In making its arguments on likelihood of success, Garmin does not address whether the case presents an admittedly difficult legal question. The issue before the Commission in deciding whether to modify the original LEO was whether clarification of the LEO was appropriate given the uncontested fact that Garmin’s current activity involved importing components of the adjudicated marine sonar systems separately and, after importation, kitting the components into a single box, thus constituting a device which the Commission had previously

³ *Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same*, Inv. No. 337-TA-395, Comm’n Op., 2001 WL 242553, at *80 (July 9, 1998); *Certain Baseband Processor Chips & Chipsets, Transmitter & Receiver (Radio) Chips, Power Control Chips & Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543 (“Baseband Processors”), Comm’n Op. Denying Mots. for Stay at 5-6 (June 21, 2007); *Certain High-Brightness Light Emitting Diodes, and Products Containing Same*, Inv. No., 337-TA-556, Comm’n Op., 2008 WL 2556199, at *4-*5 (Sept. 11, 2007); *Certain Semiconductor Chips with Minimized Chip Packages*, Inv. No. 337-TA-605, Comm’n Op., 2009 WL 2350644, at *2-*4 (July 29, 2009); *Certain Digital Television Products and Certain Products Containing Same and Methods of Using Same*, Inv. No. 337-TA-617, Comm’n Op., 2009 WL 2598777, at *2-*3 (Aug. 21, 2009).

found directly infringes the asserted patents.⁴ The question before the Commission concerning whether to modify the exclusion order therefore was not “admittedly difficult” in this context.

1. The Commission did not violate its own procedures or the requirements of the Administrative Procedure Act

The sole issue in the Commission’s modification proceeding was whether the text of the LEO should be modified to clarify that the LEO covered importation of transducers that were kitted with head units after importation and then sold as complete directly infringing systems. There was no issue as to whether any particular transducer or system infringed any of the patent claims recited in the LEO. Contrary to Garmin’s position, the Commission was not required to institute formal adjudication under subchapter II of chapter 5 of Title 5 (“APA”) before it determined to modify the exclusion order here. Indeed, Garmin did not present that argument during the modification proceeding, and so has waived it. In any event, the Commission’s governing statute explicitly distinguishes a Commission determination regarding whether a violation of Section 337 has occurred, which is subject to the APA formal adjudication requirement, and subsequent Commission remedial action of the kind involved here, which is not. The Commission’s finding of a violation and its issuance of exclusion orders are determinations under Section 337(d) (“If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the

⁴ Garmin argues that the Commission erred in finding that Garmin’s current importation practice began following issuance of the original exclusion order on December 1, 2015. Mot. at 14. Rather, Garmin asserts, it “began changing its practices to import its transducers and head units separately in September 2015.” *Id.* Garmin never presented this fact to the Commission in opposing Navico’s petition for modification. Moreover, this evidence was not presented to the Commission during the remedy phase of the investigation. The presiding Administrative Law Judge (Judge Shaw) issued his final initial determination on July 2, 2015, before Garmin began its new importation practice. As such, the Commission had no reason or opportunity to consider these facts when crafting the original LEO. If the Commission had been aware of Garmin’s new importation practice, the original LEO would have explicitly included a provision to address those facts as the LEO was modified to do.

PUBLIC VERSION

articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States”). Section 337(c) requires only that the Commission hold an APA proceeding before it determines whether a violation has occurred, which would necessitate the exclusion of articles under Section 337(d).

The Federal Circuit has recognized that violation and remedy determinations under Section 337(d) are distinct and subject to different procedural requirements. Specifically, the Court has held that only “underlying determinations to exclude goods from entry under subsections 337(d) . . . ‘be made on the record after notice and opportunity for a hearing’” *Hyundai Elecs. Indus. Co., Ltd. v. Int’l Trade Comm’n*, 899 F.2d 1204, 1208 (Fed. Cir. 1990). Remedy determinations are thus not subject to formal APA adjudication. The Commission’s issuance of a modified exclusion order constitutes a remedial action pursuant to Section 337(d). *Allied Corp. v. Int’l Trade Comm’n*, 850 F.2d 1573, 1580 (Fed. Cir. 1988).

Garmin relies on *Vastfame Camera, Ltd. v. International Trade Commission*, 386 F.3d 1108, 1114 (Fed. Cir. 2004) for the proposition that an oral hearing was required and that it had the right to present “all defenses (including Garmin’s noninfringement defense for the tilted redesign)” before the Commission rendered its decision. Mot. at 6. *Vastfame*, however, concerned the requirements for when the Commission is investigating a violation of a general exclusion order by a party who was not a party to the original investigation which resulted in the issuance of that order. The party was accused of infringing the recited patent and thus violating the order. The Federal Circuit held that the enforcement proceeding was under Section 337(b) and that the accused party could raise invalidity as a defense because it had not previously had the chance to do so. *Vastfame*, 386 F.3d at 1112-3.

PUBLIC VERSION

The modification at issue here, as opposed to the enforcement proceeding at issue in *Vastfame*, did not involve adjudication of an alleged violation of a remedial order. Rather, the Commission modified the LEO in order to clarify the LEO it originally issued based on its prior finding of violation. There was no allegation and thus no ruling as to whether any particular Garmin product infringed the recited patent claims, including no ruling concerning whether Garmin's alleged redesigns do or do not infringe the asserted claims of the '840 and '550 patents. Thus, Garmin's complaint that it did not have "an opportunity to be heard on its noninfringement defense" (Mot. at 5) is meritless. There was no allegation of infringement.

Garmin has several avenues to determine whether it may import its purported redesign products, including requesting an advisory opinion from the Commission pursuant to 19 C.F.R. § 210.79(a), seeking an official ruling from Customs pursuant to 19 C.F.R. Part 177, or awaiting Customs action on importation as a predicate for a protest under 19 C.F.R. § 1514. *See, e.g., Ninestar Tech. Co., Ltd. v. Int'l Trade Comm'n*, 667 F.3d 1373, 1384-85 (Fed. Cir. 2012) (agreeing with the Commission that one appropriate vehicle for a respondent to request a determination that a redesigned product does not infringe and, thus, does not fall within the Commission's exclusion order is to seek an advisory opinion from the Commission). Garmin has done none of these things.⁵

2. The Commission had jurisdiction to modify the LEO

Garmin asserts that the Commission lacked the requisite jurisdiction to modify the LEO since the underlying determination of violation is on appeal to the Federal Circuit. Mot. at 8-9.

⁵ On August 31, 2016, Navico, Inc. filed a complaint requesting the Commission to institute an enforcement proceeding regarding the CDOs the Commission issued against Garmin in the underlying investigation. In the complaint, Navico asserts that Garmin's alleged redesign products infringe the claims of the asserted patents on which the Commission found a violation of Section 337. When the Commission institutes the enforcement action, a determination regarding whether Garmin's redesign products are infringing will be forthcoming.

PUBLIC VERSION

While couched as a jurisdictional argument, Garmin does not actually challenge the Commission's reasoning concerning why it retained the ability to modify the LEO despite the ongoing Federal Circuit appeals from the Commission's finding of violation. *See* Comm'n Op. MLEO at 4-6. Rather, Garmin complains only that the scope of the modified order is uncertain. Moreover, Garmin's uncertainty arguments appear to be based at least partially on its alleged redesign, which as noted above the modification did not address. Garmin's purported jurisdictional argument therefore does not contribute to its position concerning likelihood of success on the merits.

3. The Scope of the Modified LEO is Clear

Garmin asserts that the modified LEO is unclear as to what activity Garmin is actually enjoined from engaging in. In particular, Garmin asserts that "the Modified Orders potentially exclude: (1) standalone transducers that indisputably do not directly infringe and the Commission determined in its Final Determination do not indirectly infringe the '840 and '550 patents . . . ; (2) standalone transducers that Garmin has imported for individual sale, but which Customs could nevertheless attempt to exclude; and (3) tilted redesign transducers that point at a 16 degree angle rather than straight down, which are not covered by the asserted claims requiring 'downscan.'" Mot. at 10. The modification (which is the only provision that can be the subject of Garmin's second appeal) relates only to a particular mode of importation and sale, clarifying that such acts are subject to the Commission's prior determination of direct infringement. It is quite clear what this particular mode of importation and sale is. However, the modification does not make any ruling as to whether infringement exists. That must await further proceedings at Customs or at the Commission.

In any event, the conduct prohibited is clearly defined in the modified LEO. The modified order states the scope of exclusion in paragraph 1, which is unchanged from the

PUBLIC VERSION

original LEO. Paragraph 1 of the modified LEO, which is unchanged from its original form, states the following:

Marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof that are covered by one or more of claims 1, 5, 7, 9, 11, 16-19, 23, 32, 39-41, 63, and 70-72 of the '840 patent and claims 32 and 44 of the '550 patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

Modified LEO at 2, ¶ 1.

Garmin argues that it “should be permitted to sell standalone transducers even where its customers ultimately use them in a combination the Commission found to be infringing” and that “the Modified Orders appear to address the advertising of standalone products unless Garmin certifies that the products are ‘intended for sale for use other than in the infringing marine sonar imaging devices.’” Mot. at 12, 13. The modified LEO contains no provision regarding Garmin’s conduct concerning advertising.⁶ Rather, the modified LEO explicitly states that the exclusion

⁶ The issued CDOs do prohibit Garmin from advertising infringing products. *See, e.g.,* Cease and Desist Order to Garmin International, Inc. at 3, section III (C). Garmin argues that “any attempt to regulate Garmin’s advertisements would violate the First Amendment under the test set forth in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 564 (1980). The CDOs have not been modified. Further, although Garmin has appealed the finding of a violation, it did not challenge the Commission’s exercise of discretion in issuing the CDOs. The time for Garmin to make such a direct challenge against those orders has passed. Moreover, in *Central Hudson Gas*, the Supreme Court held that “there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it or commercial speech related to illegal activity.” *Id.* at 563 (internal citations omitted). The Commission’s CDOs, which prohibit Garmin from advertising infringing articles, therefore explicitly falls within the exception noted by the Supreme Court.

PUBLIC VERSION

order does not apply to “standalone products (for example, a standalone transducer product) that are, or will be, both imported as standalone products and sold after importation as standalone products.” Modified LEO at 3, ¶ 4. Moreover, the introductory paragraphs of the modified LEO make clear that the provisions of the order apply to Garmin “or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.” *Id.* at 2, ¶ 1. The modified LEO does not mention actions by or directed toward Garmin’s “customers.”⁷

Garmin further misinterprets the modified LEO with respect to what products are and are not excluded. Mot. at 11-12. The modified LEO does not exclude standalone transducers the Commission found to not indirectly infringe the asserted patents. Rather, the modified LEO contains a carve-out provision, paragraph 4, that explicitly removes standalone transducers intended for individual sale (for which Navico failed to prove indirect infringement) from the scope of the Commission’s order. Modified LEO at 3, ¶ 4. The modified LEO does not prohibit importation of standalone transducers the Commission found do not infringe.

Garmin complains that the “Commission has permitted Garmin only to continue imports of standalone transducers only upon certification that they are ‘intended for sale’ for use other than in the infringing marine sonar imaging devices.” Mot. at 11-12. Garmin asserts that this requirement “is inconsistent with the Commission’s prior judgment of no infringement.” *Id.* at 12.

Garmin is incorrect. The modified LEO excludes only standalone transducers that are imported for kitting by Garmin into an infringing device. See Modified Order at 3, ¶ 4 (“By contrast, the provisions of this Order shall apply to components (for example, a transducer

⁷ Likewise, the Commission’s determination to modify the LEO does not address whether Garmin’s activity in instructing its customers to combine a standalone transducer into an infringing device might constitute induced infringement.

PUBLIC VERSION

component) of marine sonar images devices when such components are, or will be, imported or sold after importation as part of a marine sonar imaging system covered by one or more of the claims recited above in Paragraph 1.”). The Commission explicitly included the certification provision to provide Garmin with a mechanism to inform Customs that certain of Garmin’s imported products do not fall within the modified LEO. The Federal Circuit has approved of prior Commission orders crafting its remedy to match the facts of the underlying investigation. *Hyundai Elecs. Indus.*, 899 F.2d at 1210.

The question of whether Garmin’s tilted redesign will ultimately be subject to exclusion is a question that neither the Commission nor U.S. Custom and Border Patrol (“CBP”) has resolved. As noted above, Garmin has several avenues to ask the Commission or CBP to issue a ruling on these products. Thus far, Garmin has not availed itself of these options. Garmin’s statement that it “also repeatedly disclosed the tilted redesign to the IPRB and Customs, but Customs has not requested a ruling under 19 C.F.R. § 177” is confusing. Mot. at 16. It is Garmin who must seek a Part 177 ruling from Customs. Customs does not independently initiate the proceeding.

Garmin also argues that a stay is warranted because it has “a substantial case on the merits with respect to the Commission’s underlying finding of a violation” Mot. at 17. This is the subject of a separate appeal in which Garmin has not sought a stay. Further, if Garmin were correct that its independent belief in the merits of its case on appeal from the Commission’s determination of violation were sufficient, any respondent against which the Commission has issued an exclusion order would be entitled to a stay. That is not a logical result.

PUBLIC VERSION

Having reviewed Garmin's petition and the opposition thereto, the Commission finds that Garmin has failed to demonstrate either that the Commission's issuance of the modified LEO presents "an admittedly difficult legal question" or that Garmin is likely to succeed on appeal of the Commission's modification determination.

B. Irreparable Harm

Garmin argues that, unless the modified LEO is stayed, "Garmin will suffer irreparable harm to its marine business in the form of injury to its reputation, loss of goodwill, and the loss of actual and potential customers." Mot. at 17. Garmin further contends that it "cannot determine how many Garmin loyalists who would have purchased Garmin products will instead purchase a competitor's product or how many new customers it could lose absent a stay of the Modified Orders." *Id.* at 18.

Garmin has failed to show that it will suffer irreparable harm absent a stay. Garmin has failed to cite to any evidence concerning the purported harms caused by issuance of the modified LEO. Garmin does not provide evidence, for example, that it will be forced to close its business or downsize its workforce as a result of the modified exclusion order. *See, e.g., Standard Havens*, 897 F.2d at 515-16 (granting a motion for stay in an infringement appeal where the Court found the harm to the movant without a stay would be "catastrophic and irreparable" because the movant would be "likely to suffer irreparable harm in the form of employee layoffs, immediate insolvency, and, possibly, extinction."). As Navico notes, the "Commission has repeatedly considered and rejected the argument that lost sales and lost market position constitute 'irreparable injury.'" Opp. at 15 (citing *Certain High-Brightness Light Emitting Diodes, and Products Containing Same*, Inv. No., 337-TA-556, Comm'n Op. at 10-12 (Aug. 20, 2007) ("High-Brightness LEDs"); *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Comm'n Op. at 15 (June 28, 1999)) ("LFFPs"); *see also Wisconsin Gas Co. v. F.E.R.C.*, 758

F.2d 669, 674 (D.C. Cir. 1985) (“It is also well settled that economic loss does not, in and of itself, constitute irreparable harm. As this court has noted: The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm. Recoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant’s business.”) (internal citations omitted). In short, Garmin’s claims of harm are speculative and without support.

C. Balance of Hardships

Garmin argues that the balance of hardships favors a stay because “a stay will cause no direct or immediate harm to Navico.” Mot. at 18. Specifically, Garmin asserts that, should the Federal Circuit ultimately affirm the Commission’s determination of violation, “Navico would have an obvious remedy: seeking monetary damages for infringement of the same patents at issue here” in the stayed action in Oklahoma district court. *Id.* at 18-19.

The Commission has explained that “[b]ecause section 337 remedies are in addition to, and not instead of, other remedies at law . . . remedies potentially available in the courts are irrelevant to our analysis of whether to stay [] proceeding[s].” *Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, Inv. No. 337-TA-605, Comm’n Op., 2008 WL 2223426, *2 n. 2 (May 27, 2008) (citing 19 U.S.C. § 1337(a)(1)).

Moreover, the Commission has explained that a complainant “will be irreparably injured by a stay that denies its patents the full term to which they are entitled.” *LFFPs*, Comm’n Op. at 17; *High-Brightness LEDs*, Comm’n Op. at 12; *Agricultural Tractors*, Comm’n Op. at 16).

Navico argues that “Garmin’s improper circumvention of the LEO has already deprived Navico

PUBLIC VERSION

of the remedy to which it was entitled once the December 1, 2015 orders became effective. During that time, Garmin has continued to sell products, all premised on activities found to infringe Navico's intellectual property rights. Any further delay would . . . deprive Navico of its adjudicated patent rights." Opp. at 16. We agree. In addition, granting a stay would unfairly prejudice Navico's licensees, which would "likewise suffer substantial harm if Garmin were allowed to continue its unlawful importation of infringing products." *Id.* (citing *Certain Digital Televisions*, Inv. No. 337-TA-617, Comm'n Op. at 7-8 (Aug. 21, 2009) (considering the harm to the patent licensees because loss of sales and market share will "hav[e] the effect of diminishing the value" of the patent to licensees.))

Garmin contends that there is "no indication that the competitive situation would change between now and the completion of the appeal." Mot. at 19. But Garmin's importations during the period of a stay would certainly be a change of the current "competitive situation" between Navico (and its licensees) and Garmin. The Commission modified the LEO to clarify that importation of transducers intended to be combined by Garmin into an infringing device post-importation are covered by the LEO. Garmin has failed to demonstrate that it is entitled to such extraordinary treatment.

D. Public Interest

Garmin argues that the "public interest is not served by allowing patent holders like Navico to exclude products that were found not to infringe, and have been redesigned to avoid risk of infringement." Mot. at 20. These assertions are incorrect as explained above. Moreover, the public interest favors enforcement of valid patents. *See, e.g., Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 931-32 (Fed. Cir. 2012).

IV. CONCLUSION

Garmin's motion to stay enforcement of the modified LEO is denied.

PUBLIC VERSION

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: October 20, 2016

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

**Inv. No. 337-TA-921
(Modification)**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon the Commission Investigative Attorney, Peter J. Sawert, Esq., and the following parties as indicated, on **October 21, 2016**.



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

On Behalf of Complainants Navico, Inc. and Navico Holding

AS:

M. Scott Stevens, Esq.
ALSTON & BIRD LLP
950 F Street, NW
Washington, DC 20004

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**On Behalf of Respondents Garmin International, Inc.,
Garmin USA, Inc., and Garmin Corporation:**

Nicholas Groombridge, Esq.
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____