

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RAYMARINE, INC.
Petitioner

v.

NAVICO HOLDING AS
(previously NAVICO, INC., changed by assignment on 6/28/13)
Patent Owner

Case IPR2013-00355
Patent 8,305,840
Title: DOWNSCAN IMAGING SONAR

**NOTICE OF PROPOSED MOTIONS
BY PETITIONER RAYMARINE, INC.**

NOTICE OF PROPOSED MOTIONS

The initial conference call in this matter is scheduled for January 9, 2014 at 1:30 p.m. Eastern Time. Pursuant to the instructions for initial conference calls set forth in the Office Trial Practice Guide, Petitioner Raymarine, Inc. provides the following notice regarding anticipated motions in this case.

Petitioner's Motions: Raymarine does not presently intend to file any motions but nevertheless reserves the right to file a motion to exclude evidence or a motion for observation on the dates set forth in the scheduling order for this case, as well as any other motions that become necessary as the case develops (e.g., a motion for discovery).

Patent Owner's Motions: Raymarine anticipates that Patent Owner Navico will file a motion to disqualify and exclude the testimony of both of Raymarine's experts, as described in Navico's Objection to Evidence filed December 27, 2013 (Paper No. 16) ("Objection"). The stated basis for the Objection is that Mr. Klein previously served as an expert witness on behalf of Navico in another matter and, allegedly, had confidential information that is somehow relevant to the current proceeding, and that "Mr. Klein's knowing or unknowing use of this information in preparing his Declaration is improper." [Objection at 4] Navico also objects to the Paul Stokes Declaration (RAY-1010) in light of the similarity between the two declarations. *Id.*

Notwithstanding Navico's Objection, it does not identify any portion of the declarations as reflecting or even as being relevant to any allegedly protected Navico information. Because Navico fails to identify the basis for its objection (i.e., the confidential information that was allegedly used in the Declarations), its objection does not provide sufficient particularity and is therefore non-compliant with the requirements of 37 C.F.R. §42.64(b)(1).

Notwithstanding the insufficiency of Navico's Objection, Petitioner Raymarine is serving, simultaneously with this notice, supplemental evidence showing that the Objection lacks merit. Specifically, the supplemental evidence consists of letters dated November 7, 2013 and November 26, 2013 (the "Klein Letters") from Mr. Klein's attorneys refuting any improper use of Patent Owner's confidential information. The Klein Letters state:

- "Mr. Klein does not have any Navico confidential information and has not had any since February 2012 (at the latest)." (RAY-1011)
- "Mr. Klein has never disclosed whatever Navico information he once had." (RAY-1011)
- "[D]uring the Engagement, Mr. Klein did not come into possession of Navico information relevant to his current work for Raymarine." (RAY-1011)

- “Mr. Klein is happy to confirm that he has not used or disclosed any confidential information he received from Navico, and that he will not do so.” (RAY-1012)
- “Mr. Klein’s engagement for Raymarine does not ‘involve or pertain to confidential information of Navico.’” “Mr. Klein’s engagement with Raymarine involves his knowledge of prior art and the written claims and specifications of publicly available patents, as read from the perspective of one skilled in the art.” (RAY-1012)

As shown by these letters, Navico’s allegation that Mr. Klein is misusing confidential information is baseless and should be withdrawn. Moreover, any contention that Mr. Klein’s actions are improper is belied by Navico’s six-month delay in raising this issue with the Board. Nevertheless, if Navico persists in maintaining its Objection, the Board should require Navico to bring a motion now, instead of waiting until the end of the IPR proceeding when a successful motion would inflict maximum prejudice on Petitioner Raymarine.

Raymarine accordingly requests that the Board consider the following course of action in connection with the initial conference call:

- 1) striking the Objection as non-compliant;
- 2) providing the Navico an opportunity to serve a rule-compliant objection, if any, that identifies with particularity the portions of the Klein and Stokes

Declarations that it considers to contain Patent Owner's confidential information, prior to January 16, 2014;

- 3) requiring Navico to file a Motion to Disqualify/Exclude Evidence based upon its renewed objection, if any, prior to February 6, 2014;
- 4) requiring Petitioner to serve its Response to the Motion to Disqualify/Exclude Evidence prior to February 20, 2014; and
- 5) ruling on the Motion to Exclude Evidence on an expedited basis.

By resolving Navico's motion to exclude early, instead of waiting until the end of the IPR process as suggested by Navico's objection, the Board will remove the cloud caused by Navico's Objection and will also give both parties guidance with regards to the parties' related IPRs, in which Messrs. Klein and Stokes have also submitted declarations.

Dated: January 7, 2014
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Telephone: 214/651-5533
Facsimile: 214/200-0853

Respectfully Submitted,
By: /David L. McCombs/
David L. McCombs
Registration No. 32,271
Counsel for Petitioner

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