

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)	
)	
Data Physics Corporation)	06-BIS-21
2025 Gateway Place, Suite 260)	
San Jose, CA 95110)	
)	
Respondent.)	

ORDER RELATING TO DATA PHYSICS CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has initiated an administrative proceeding against Data Physics Corporation (hereinafter referred to as “Data Physics”), case number 06-BIS-21, through the issuance of a charging letter, pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (“Regulations”)¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).² BIS and Data Physics have agreed to settle case 06-BIS-21 based on the following five alleged violations of the Regulations. Specifically, the charges are:

¹ The violations charged occurred in 2001-2002. The Regulations governing the violations at issue are found in the 2001-2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2007 Regulations govern the procedural aspects of the case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

Charge 1 15 C.F.R. §764.2(a) - Unlicensed Export to Listed Entity in China

On or about December 20, 2001, Data Physics engaged in conduct prohibited by the Regulations when it exported a DP 550 Vibration Controller, an item subject to the Regulations, to the Chinese Academy of Launch Vehicle Technology (“CALT”) in the People’s Republic of China (“China”), an organization on BIS’s Entity List,³ without the license required by the Department of Commerce. A license was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. § 764.2(e) - Acting With Knowledge of a Violation

On or about December 20, 2001, in connection with the transaction described in Charge 1 above, Data Physics sold and/or forwarded a DP 550 Vibration Controller with knowledge that a violation of the Regulations would occur in connection with the item. At all times relevant hereto, Data Physics knew or should have known that an export license was required to ship a DP 550 Vibration Controller, an item subject to the Regulations, from the United States to CALT, an entity on BIS’s Entity List. Data Physics had reason to know that a license was required for this export since, *inter alia*, Office of Export Enforcement (“OEE”) special agents visited Data Physics in May 1999 where they informed Data Physics’ Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity List. The Chief Technology Officer then sent an email to Sri Welaratna, company president, explaining the rules and included a link to BIS’s Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

Charge 3 15 C.F.R. §764.2(a) - Unlicensed Export to Listed Entity in China

On or about March 15, 2002, Data Physics engaged in conduct prohibited by the Regulations when it exported a Signalstar Vector (DP 560) vibration controller, an item subject to the Regulations, to the Beijing Automation Control Equipment Institute (“BACEI”) in China, an organization on BIS’s Entity List,⁴ without the license required by the Department of Commerce. A license was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

³ 15 C.F.R. Supplement No. 4 to Part 744.

⁴ Id.

Charge 4 15 C.F.R. § 764.2(e) - Acting With Knowledge of a Violation

On or about March 15, 2002, in connection with the transaction described in Charge 3 above, Data Physics sold and/or forwarded a Signalstar Vector (DP 560) vibration controller with knowledge that a violation of the Regulations would occur in connection with the item. At all times relevant hereto, Data Physics knew or should have known that an export license was required to ship a Signalstar Vector (DP 560) vibration controller, an item subject to the Regulations, from the United States to BACEI, an entity on BIS's Entity List. Data Physics had reason to know that a license was required for this export since, *inter alia*, OEE special agents visited Data Physics in May 1999 where they informed Data Physics' Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity List. The Chief Technology Officer then sent an email to Sri Welaratna, company president, explaining the rules and included a link to BIS's Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

Charge 5 15 C.F.R. § 764.2(g) - False Statement on Shipper's Export Declaration

On or about March 15, 2002, in connection with the transaction described in Charges 3 and 4 above, Data Physics made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Data Physics filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the items that were the subject of the SED qualified for export as "NLR," i.e., that no license was required. This representation was false, as a license was required for the Signalstar Vector (DP 560) vibration controller to be exported to the Beijing Automation Control Equipment Institute. In so doing, Data Physics committed one violation of Section 764.2(g) of the Regulations.

BIS and Data Physics having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that Data Physics shall pay a civil penalty of \$55,000 to the U.S. Department of Commerce to be paid within 30 days from the date of entry of the Order. Payment shall be made in the manner specified in the attached instructions. Additionally:

- A. Pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Data Physics will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.
- B. The timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Data Physics. Accordingly, if Data Physics should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Data Physics' export privileges for a period of one year from the date of entry of this Order.
- C. Data Physics shall perform an audit of its internal compliance program within 12 months from the date of entry of this Order. Said audit shall be in substantial compliance with the Export Management systems audit module, which is

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Data Physics Corporation

available from the BIS website at

[http://www.bis.doc.gov/complianceandenforcement/](http://www.bis.doc.gov/complianceandenforcement/ExportManagementSystems.htm)

ExportManagementSystems.htm, which is incorporated by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 96 North Third Street, Suite 250, San Jose, California 95112 no later than 13 months from the date of entry of the Order.

SECOND, that for a period of five years from the date of entry of the Temporary Denial Order against Data Physics on May 23, 2006, Data Physics Corporation, 2025 Gateway Place, Suite 260, San Jose, CA 95110, its subsidiaries, successors or assigns, and, when acting for or on behalf of Data Physics, its officers, representatives, agents or employees (“Denied Person(s)”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) that is subject to the Regulations and that is exported or to be exported from the United States to the People’s Republic of China (“China”), or in any other activity subject to the Regulations that involves China, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to China;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be

exported from the United States to China, or in any other activity subject to the Regulations that involves China; or

- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States to China that is subject to the Regulations, or in any other activity subject to the Regulations that involves China.

THIRD, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported to China:

- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations to China;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to China, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States to China;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to China; or

Order
Data Physics Corporation

- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to China and that is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to China. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.
- F. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

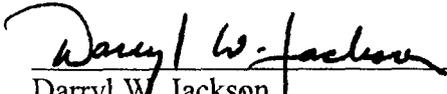
FOURTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Data Physics by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

FIFTH, that the charging letter, amended charging letter, the Settlement Agreement, and this Order, and the record of the cases as defined by Section 766.20 of the Regulations shall be made available to the public. BIS shall notify the administrative law judge that case 06-BIS-21 is withdrawn from adjudication.

Order
Data Physics Corporation

SIXTH, that this Order shall be served on the Denied Person and on BIS, and shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 16th day of May 2007.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)	
)	
Data Physics Corporation)	06-BIS-21
2025 Gateway Place, Suite 260)	
San Jose, CA 95110)	
)	
Respondent.)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Data Physics Corporation (hereinafter referred to as “Data Physics”) and the Bureau of Industry and Security, U. S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(b) of the Export Administration Regulations (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

WHEREAS, BIS has initiated an administrative proceeding against Data Physics, case number 06-BIS-21, pursuant to the Act and the Regulations,

¹ The Regulations are currently codified at 15 C.F.R. Parts 730-774 (2007). The violations charged occurred in 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 and 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). Actions taken during this administrative enforcement proceeding are governed by the Regulations in effect at the time such action takes place.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006 (71 FR 44551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”).

WHEREAS, Data Physics has reviewed all of the alleged violations in case 06-BIS-21 and is aware of the administrative sanctions which could be imposed against it if the allegations are found to be true,

WHEREAS, Data Physics fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Data Physics enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Data Physics states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Data Physics neither admits nor denies any of the alleged violations contained in case 06-BIS-21;

WHEREAS, Data Physics wishes to settle and dispose of all matters alleged in case 06-BIS-21 by entering into this Agreement; and

WHEREAS, Data Physics agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Data Physics, under the Regulations, in connection with the matters alleged in case 06-BIS-21.
2. BIS and Data Physics shall settle the administrative case against Data Physics with a civil penalty based on the following 5 charges, which Data Physics neither admits nor denies:

Charge 1 15 C.F.R. §764.2(a) - Unlicensed Export to Listed Entity in China

On or about December 20, 2001, Data Physics engaged in conduct prohibited by the Regulations when it exported a DP 550 Vibration Controller, an item subject to the Regulations, to the Chinese Academy of Launch Vehicle Technology (“CALT”) in the People’s Republic of China (“China”), an organization on BIS’s Entity List,³ without the license required by the Department of Commerce. A license was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

Charge 2 15 C.F.R. § 764.2(e) - Acting With Knowledge of a Violation

On or about December 20, 2001, in connection with the transaction described in Charge 1 above, Data Physics sold and/or forwarded a DP 550 Vibration Controller with knowledge that a violation of the Regulations would occur in connection with the item. At all times relevant hereto, Data Physics knew or should have known that an export license was required to ship a DP 550 Vibration Controller, an item subject to the Regulations, from the United States to CALT, an entity on BIS’s Entity List. Data Physics had reason to know that a license was required for this export since, *inter alia*, Office of Export Enforcement (“OEE”) special agents visited Data Physics in May 1999 where they informed Data Physics’ Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity List. The Chief Technology Officer then sent an email to Sri Welaratna, company president, explaining the rules and included a link to BIS’s Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

Charge 3 15 C.F.R. §764.2(a) - Unlicensed Export to Listed Entity in China

On or about March 15, 2002, Data Physics engaged in conduct prohibited by the Regulations when it exported a Signalstar Vector (DP 560) vibration controller, an item subject to the Regulations, to the Beijing Automation Control Equipment Institute (“BACEI”) in China, an organization on BIS’s Entity List,⁴ without the license required by the Department of Commerce. A license was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

³ 15 C.F.R. Supplement No. 4 to Part 744.

⁴ Id.

Charge 4 15 C.F.R. § 764.2(e) - Acting With Knowledge of a Violation

On or about March 15, 2002, in connection with the transaction described in Charge 3 above, Data Physics sold and/or forwarded a Signalstar Vector (DP 560) vibration controller with knowledge that a violation of the Regulations would occur in connection with the item. At all times relevant hereto, Data Physics knew or should have known that an export license was required to ship a Signalstar Vector (DP 560) vibration controller, an item subject to the Regulations, from the United States to BACEI, an entity on BIS's Entity List. Data Physics had reason to know that a license was required for this export since, *inter alia*, OEE special agents visited Data Physics in May 1999 where they informed Data Physics' Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity List. The Chief Technology Officer then sent an email to Sri Welaratna, company president, explaining the rules and included a link to BIS's Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

Charge 5 15 C.F.R. § 764.2(g) - False Statement on Shipper's Export Declaration

On or about March 15, 2002, in connection with the transaction described in Charges 3 and 4 above, Data Physics made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Data Physics filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the items that were the subject of the SED qualified for export as "NLR," i.e., that no license was required. This representation was false, as a license was required for the Signalstar Vector (DP 560) vibration controller to be exported to the Beijing Automation Control Equipment Institute. In so doing, Data Physics committed one violation of Section 764.2(g) of the Regulations.

3. BIS and Data Physics agree that the following sanctions shall be imposed against

Data Physics in complete settlement of all of the alleged violations of case

06-BIS-21:

- a. Data Physics shall be assessed a civil penalty in the amount of \$55,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Data Physics. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Data Physics' export privileges under the EAR for a period of one year from the date of imposition of the penalty.
- c. For a period of five years from the date of entry of the Temporary Denial Order against Data Physics on May 23, 2006, Data Physics, including its subsidiaries, successors or assigns, and, when acting for or on behalf of Data Physics, its officers, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") that is subject to the Regulations and that is exported or to be exported from the United States to the People's Republic of China ("China"), or in any other activity subject to the Regulations that involves China, including, but not limited to:
- i. Applying for, obtaining, or using any license, License Exception, or export control document that involves export to China;
 - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any

transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to China, or in any other activity subject to the Regulations that involves China; or

- iii. Benefiting in any way from any transaction involving any item exported or to be exported from the United States to China that is subject to the Regulations, or in any other activity subject to the Regulations that involves China.

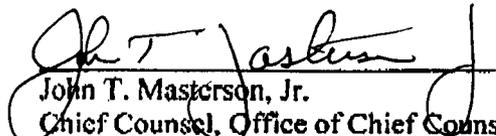
- d. Data Physics shall perform an audit of its internal compliance program within 12 months of the date of entry of the Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS website at <http://www.bis.doc.gov/complianceandenforcement/ExportManagementSystems.htm>, which is incorporated by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 96 North Third Street, Suite 250, San Jose, California 95112, no later than 13 months from the date of entry of the Order.

- 4. Subject to the approval of this Agreement pursuant to paragraph 9 hereof, Data Physics hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the alleged violations in case 06-BIS-21; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

5. BIS agrees that, upon entry of the Order, it will not initiate any further administrative proceeding against Data Physics in connection with any violation of the Act or the Regulations arising out of the transactions identified in case 06-BIS-21.
6. BIS will make the charging letter, amended charging letter, this Agreement, the Order, if entered, and the record of the case as defined by Section 766.20 of the Regulations available to the public.
7. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(b) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

9. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record. Upon both Parties signing this settlement agreement and the Assistant Secretary of Commerce for Export Enforcement issuing the appropriate Order, BIS shall withdraw case 06-BIS-21 including all the alleged violations from adjudication.
10. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE


John T. Masterson, Jr.
Chief Counsel, Office of Chief Counsel
for Industry and Security

Date: May 16, 2007

DATA PHYSICS CORPORATION


Sri Welaratna
President

Date: 2007 / 05 / 16

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Data Physics Corporation
2025 Gateway Place, Suite 260
San Jose, CA 95110

Attention: *Mr. Sri Welaratna*
President

Dear Mr. Welaratna:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Data Physics Corporation ("Data Physics"), of San Jose, California, has committed five violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").² Specifically, BIS charges that Data Physics committed the following violations:

Charge 1 15 C.F.R. §764.2(a) - Unlicensed Export to Listed Entity in China

On or about December 20, 2001, Data Physics engaged in conduct prohibited by the Regulations when it exported a DP 550 Vibration Controller, an item subject to the Regulations, to the Chinese Academy of Launch Vehicle Technology ("CALT") in the People's Republic of China ("China"), an organization on BIS's Entity List,³ without the license required by the Department of Commerce. A license was required for this export under Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. In so doing, Data Physics committed one violation of Section 764.2(a) of the Regulations.

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¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The violations charged occurred from 2001 through 2002. The Regulations governing the violations at issue are found in the 2001 - 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2007 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006, (71 Fed. Reg. 44551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA").

³ 15 C.F.R. Supplement No. 4 to Part 744.

CALT, an entity on BIS's Entity List. Data Physics had reason to know that a license was required for this export since, *inter alia*, Office of Export Enforcement ("OEE") special agents visited Data Physics in May 1999 where they informed Data Physics' Chief Technology Officer and the Director of Manufacturing and Quality Systems, on the rules and requirements regarding exports to organizations on the BIS Entity List. The Chief Technology Officer then sent an email to Sri Welaratna, company president, explaining the rules and included a link to BIS's Entity List. In so doing, Data Physics committed one violation of Section 764.2(e) of the Regulations.

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On or about March 15, 2002, in connection with the transaction described in Charges 3 and 4 above, Data Physics made a false statement to the U.S. Government in connection with the submission of an export control document. Specifically, Data Physics filed a Shipper's Export Declaration ("SED") with the U.S. Government stating that the items that were the subject of the SED qualified for export as "NLR," i.e., that no license was required. This representation was

⁴ *Id.*

false, as a license was required for the Signalstar Vector (DP 560) vibration controller to be exported to the Beijing Automation Control Equipment Institute. In so doing, Data Physics committed one violation of Section 764.2(g) of the Regulations.

* * * * *

Accordingly, Data Physics is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of up to \$11,000 per violation⁵

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Data Physics fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Data Physics defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Data Physics. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

Data Physics is further notified that it is entitled to an agency hearing on the record if Data Physics files a written demand for one with its answer. (Regulations, Section 766.6). Data Physics is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Data Physics have a proposal to settle this case, Data Physics or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Data Physics' answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

⁵ See 15 C.F.R. § 6.4(a)(4).

Data Physics Corporation
Final Charging Letter
Page 4

In addition, a copy of Data Physics' answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Gregory Michelsen, Esq. and Adrienne Frazier, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Gregory Michelsen and Adrienne Frazier are the attorneys representing BIS in this case; any communications that Data Physics may wish to have concerning this matter should occur through them. They may be contacted by telephone at (202) 482-5301.

Sincerely,

John McKenna
Acting Director
Office of Export Enforcement