

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

In the Matter of

**CERTAIN SYSTEMS FOR DETECTING  
AND REMOVING VIRUSES OR  
WORMS, COMPONENTS THEREOF,  
AND PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-510**

**NOTICE OF COMMISSION DECISION NOT TO REVIEW A FINAL INITIAL  
DETERMINATION FINDING A VIOLATION OF SECTION 337; REQUEST FOR  
WRITTEN SUBMISSIONS ON THE ISSUES OF REMEDY, THE PUBLIC INTEREST,  
AND BONDING**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation on May 9, 2005, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337. Notice is also hereby given that the Commission is requesting briefing on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3104. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 3, 2004, based on a complaint filed by Trend Micro Inc. of Cupertino, California (“Trend Micro”). 69 *Fed. Reg.* 32044-45 (2004). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, and products containing same by reason of infringement of claims 1-22 of U.S. Patent No. 5,623,600 (“the ‘600 patent”). The notice of investigation named Fortinet, Inc. (“Fortinet”) as the sole respondent.

On October 12, 2004, the ALJ issued Order No. 6 terminating the investigation as to claims 2, 5-6, 9-10, and 16-22 of the ‘600 patent based upon Trend Micro’s unopposed motion to withdraw these claims. The Commission did not review Order No. 6, hence the claims of the ‘600 patent in issue are claims 1, 3, 4, 7, 8, and 11-15.

On December 14, 2004, the ALJ issued Order No. 13 granting complainant Trend Micro’s motion for a summary determination that it satisfies the economic prong of the domestic industry requirement. Order No. 13 was not reviewed by the Commission.

An evidentiary hearing was held from January 24, 2005 to January 28, 2005. On March 29, 2005, a second evidentiary hearing was conducted and additional exhibits received into evidence.

On May 9, 2005, the ALJ issued his final ID and recommended determinations on remedy and bonding. He found a violation of section 337 based on his determinations that claims 4, 7, 8, 11, 12, 13, 14 and 15 of the ‘600 patent are not invalid or unenforceable, and that they are infringed by respondent’s products. The ALJ also found that an industry exists that is related to the ‘600 patent, and that the respondent has imported infringing product. The ALJ further found that claims 1 and 3 of the ‘600 patent are anticipated by prior art.

On May 20, 2005, respondent Fortinet filed a petition for review of the final ID and complainant Trend Micro filed a contingent petition for review. The IA did not file a petition. On May 27, 2005, Fortinet filed a response to Trend Micro’s contingent petition for review, and Trend Micro filed a response to Fortinet’s petition for review. On June 2, 2005, the IA filed a response to Trend Micro’s and Fortinet’s petitions for review.

Having examined the record in this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ID, thereby finding a violation of section 337.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United states, and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the

form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

**WRITTEN SUBMISSIONS:** The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the expiration date of the '600 patent and the HTSUS numbers under which the infringing products are imported. The main written submissions and proposed remedial orders must be filed no later than July 18, 2005. Response submissions must be filed no later than July 25, 2005. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.5. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.42, 210.43, and 210.50 of the Commission's

Interim Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.43, and 210.50).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: July 8, 2005