

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

**TERMINATION OF INVESTIGATION; ISSUANCE OF A LIMITED EXCLUSION
ORDER AND A CEASE AND DESIST ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation in which it has found a violation of the Tariff Act of 1930 and has issued a limited exclusion order and a cease and desist order.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3112. 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: This patent-based section 337 investigation was instituted by the Commission on June 3, 2004, based on a complaint filed by Trend Micro Inc. ("Trend Micro") of Cupertino, California. 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") of Sunnyvale, California as the sole respondent.

On October 12, 2004, the ALJ issued an initial determination (ID)(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 an ID (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 administrative law judge ("ALJ") issued his final ID finding a violation of section 337 based on his findings that claims 4, 7, 8, and 11-15 of the '600 patent are not invalid or unenforceable, and are infringed by respondent's products. The ALJ also found that claims 1 and 3 of the '600 patent are invalid as anticipated by prior art and that a domestic industry exists. He also issued his recommended determination on remedy and bonding.

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 and Fortinet's petition for review.

On July 8, 2005, the Commission issued a notice indicating that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of section 337. 70 *Fed. Reg.* 40731 (July 14, 2005). The Commission also invited the parties to file written submission regarding the issues of remedy, the public interest, and bonding, and provided a schedule for filing such submissions.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of systems for detecting and removing viruses or worms, components thereof and products containing same covered by claims 4, 7, 8, and 11-15 of the '600 patent. The order covers systems for detecting and removing viruses or worms, components thereof and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of the respondent, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission also determined to issue a cease and desist order prohibiting the respondent from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for systems for detecting and removing viruses or worms, components thereof and products containing same.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (f)(1), 19 U.S.C. §§ 1337(d)(1) and (f)(1), do not preclude issuance of either the limited exclusion order or the cease and desist order. In addition, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders and opinion in support thereof were delivered to the President on the day of their issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.50 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: August 8, 2005