

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN NETWORK DEVICES,
RELATED SOFTWARE AND
COMPONENTS THEREOF (I)**

Investigation No. 337-TA-944

**NOTICE OF COMMISSION DETERMINATION TO DECLASSIFY CERTAIN
PORTIONS OF THE COMMISSION OPINION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to declassify certain portions of the Commission Opinion issued on June 23, 2016 in this investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential 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. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. ("Cisco") of San Jose, California. 80 *Fed. Reg.* 4314-15 (Jan. 27, 2015). The complaint was filed on December 19, 2014, and a supplement was filed on January 8, 2015. The complaint alleged violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 ("the '537 patent"); U.S. Patent No. 8,356,296; U.S. Patent No. 7,290,164; U.S. Patent No. 7,340,597 ("the '597 patent"); U.S. Patent No. 6,741,592 ("the '592 patent"); and U.S. Patent No. 7,200,145 ("the '145 patent"), and alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named Arista Networks, Inc.

(“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney (“IA”) is participating in the investigation.

The Commission found a violation of section 337 by Arista with respect to the ’537, ’592, and ’145 patents and issued remedial orders on June 23, 2016. Arista appealed the Commission’s finding of violation for the ’537 patent and Cisco appealed the Commission’s finding of no violation for the ’597 patent. The two appeals were consolidated.

On November 2, 2016, Cisco filed a motion with the Federal Circuit, *inter alia*, (1) to declassify certain information marked confidential on pages 14-24 and 45-47 of the Commission Opinion and (2) to declassify the evidence upon which those redactions were based. The Commission opposed these parts of Cisco’s motion, arguing that the Commission itself should make such decisions in the first instance and noting that Cisco had not applied the Commission’s definition of confidential business information (“CBI”) set out in Commission Rule 201.6, 19 C.F.R. § 201.6. Arista also opposed Cisco’s motion.

On December 30, 2016, the Federal Circuit agreed that the Commission should consider the requests in the first instance. The Court granted the Commission leave to consider Cisco’s requests for declassification of CBI and directed the Commission to act expeditiously.

On January 10, 2017, the Commission issued a Notice and Order instituting a declassification proceeding and directing Cisco to show cause why the information it sought to be declassified should be declassified pursuant to Commission Rule 201.6, 19 C.F.R. § 201.6. Arista and OUII were both given an opportunity to file responses. Cisco filed its response on January 23, 2017. Arista and OUII filed their respective responses on February 2, 2017. On February 10, 2017, Arista moved to replace Exhibit 2 of its original filing in order to withdraw additional redactions. On February 16, 2017, Arista submitted a letter and corrected motion with corrections to replacement Exhibit 2.

The Commission has considered the parties’ filings before the Federal Circuit and those submitted in response to the Commission’s January 10, 2017 Notice. As set out in the Commission’s Declassification Opinion and Order, the Commission has determined to declassify certain portions of the disputed passages within pages 14-24 and 45-47 of the confidential Commission Opinion and to maintain the classification of other portions. Many of the declassified redactions now stand withdrawn by Arista. The Commission finds that other passages in the Commission Opinion do not meet the CBI definition in Rule 201.6(a). The Commission has determined to grant Arista’s motions to replace Exhibit 2 of its original filing.

The Commission has stayed the Declassification Order for 21 days from the date of its issuance to permit Arista to seek judicial relief and to seek a judicial stay. As to the redactions the Commission has determined not to declassify, the Commission notes that in its December 30, 2016 Order, the Court stated that Cisco may renew its motion for declassification with the Court.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Parts 201 and 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Parts 201 and 210).

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: March 23, 2017