

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  
(Enforcement Proceeding)

NOTICE OF COMMISSION DETERMINATION TO REVIEW THE FINAL  
ENFORCEMENT INITIAL DETERMINATION IN ITS ENTIRETY; AND ON REVIEW  
TO REMAND THE INVESTIGATION IN PART TO THE PRESIDING  
ADMINISTRATIVE LAW JUDGE

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the final enforcement initial determination (“EID”) issued by the presiding administrative law judge (“ALJ”) on June 20, 2017. The Commission has also determined to remand the investigation in part to the ALJ.

**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 the underlying investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. (“Complainant”) 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 alleges 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 (“the ’296 patent”); U.S. Patent No. 7,290,164; U.S. Patent No. 7,340,597; U.S. Patent No. 6,741,592 (“the ’592 patent”); and U.S. Patent No. 7,200,145 (“the ’145 patent”), and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The ’296 patent was withdrawn from the investigation. The notice of investigation named Arista Networks, Inc. (“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney (“IA”) participated in the investigation.

On June 23, 2016, the Commission found that a Section 337 violation occurred as to the ’537, ’592, and ’145 patents and therefore issued a cease and desist order (“CDO”) against Arista and a limited exclusion order. 81 *FR* 42375-76 (June 29, 2016). The CDO prohibited Arista from importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for certain network devices, related software, and components thereof that infringe the asserted claims of the ’537, ’592, and ’145 patents. *Id.* at 42376.

On August 26, 2016, Cisco filed an enforcement complaint alleging that Arista had violated the June 23, 2016 CDO by reason of infringement of the ’537 patent. The Commission instituted this enforcement proceeding on October 4, 2016, based Cisco’s complaint. 81 *FR* 68455 (Oct. 4, 2016).

On June 20, 2017, the ALJ issued his final EID finding no violation of the CDO. On July 3, 2017, Cisco and Arista each filed petitions for review of the ID. On July 10, 2017, Cisco filed its response to Arista’s petition for review. On July 11, 2017, Arista timely filed a response to Cisco’s petition for review. Also on July 11, 2017, the IA filed a response to the private parties’ petitions for review.

Having examined the record of this investigation, including the ALJ’s final EID, the petitions for review, and the responses thereto, the Commission has determined to review the final EID in its entirety. The final EID includes analysis comparing the redesigned products to products found to infringe in the underlying investigation to conclude that the redesigned products do not infringe the ’537 patent. However, this analysis, while addressing the parties’ arguments, does not address the issue of whether the language of the claims reads on the redesigned products. *See e.g.*, EID at 14-20. For example, the EID does not provide a clear application of the claim limitations to the redesigned products or find that the limitations were not met for other reasons (*e.g.*, waiver). Therefore, the Commission remands the investigation in part to the ALJ to (1) address literal infringement in terms of whether the asserted claims, as construed, read on the redesigned products, and make appropriate findings, and further, if necessary, modify any other affected findings, including findings under the doctrine of equivalents; (2) consider and address, if necessary, the alleged inconsistency between the EID’s finding for what constitutes a “client subsystem” and the EID’s findings for the “managing

subsystem”; (3) identify which accused products are addressed in the EID; and (4) issue a final remand enforcement initial determination.

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 Part 210 of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

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Lisa R. Barton  
Secretary to the Commission

Issued: August 4, 2017