

**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 DECLASSIFICATION PROCEEDING PURSUANT TO COURT ORDER
AND ORDER TO SHOW CAUSE**

The Commission instituted this 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 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 (“the ’296 patent”); U.S. Patent No. 7,290,164 (“the ’164 patent”); 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 ’296 patent was subsequently terminated from the investigation. The complaint named Arista Networks, Inc. (“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney 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. 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, Appeal Nos. 16-2539 and 16-2563, were consolidated and are currently in briefing.

On November 2, 2016, Cisco filed a motion with the Federal Circuit to, *inter alia*, make certain information public. Specifically, Cisco sought to declassify the information marked confidential on pages 14-24 and 45-47 of the Commission Opinion. Cisco also sought to declassify the evidence upon which the Commission relied on those same pages. The Commission opposed that part 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 confidentiality definition set out in Commission Rule 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. On consideration of that Order, the Commission will consider Cisco's November 2, 2016, motion with the Court as well as Arista's response thereto and Cisco's reply, and the Commission hereby **ORDERS** that:

1. Cisco is directed to show cause why the material it seeks to declassify on pages 14-24 and 45-47 of the Commission Opinion should be declassified pursuant to Commission Rule 201.6, 19 C.F.R. § 201.6 (defining "confidential business information" as "information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership,

corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information."'). Cisco should address each redaction individually.

2. If Cisco wishes to continue to pursue the declassification of the evidentiary materials cited on pages 14-24 and 45-47 of the Commission Opinion, Cisco should also show cause why the evidentiary material it seeks to declassify should be declassified pursuant Commission Rule 201.6. In addressing the cited materials, Cisco should identify which specific parts of the evidence it seeks to declassify and provide separate justification for each portion it seeks to declassify.
3. Cisco has ten (10) days from the date of this Order to file a response to this Order and serve it on Arista and the Commission investigative attorney.
4. Arista has ten (10) days from the date of Cisco's response to this Order to file a response thereto and serve the response on Cisco and the Commission investigative attorney. Arista's response should likewise address each portion of the Commission opinion and/or underlying evidence separately and address whether the information should retain its designation as confidential business information pursuant to Commission Rule 201.6. Subject to the same time limit, the Commission investigative attorney may also file a response to Cisco's response to this Order and serve such response on Cisco and Arista.

5. The Secretary shall serve a copy of this Order on all parties of record.

On receipt of the specified papers, the Commission will consider whether it will conduct the remainder of the proceeding itself or refer the matter to an administrative law judge for initial consideration on an expedited basis. At that time, the Commission will consider whether it will be necessary or appropriate to waive any of its procedural rules.

By Order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: January 10, 2017