



## INTERNATIONAL TRADE COMMISSION

### Certain Network Devices, Related Software and Components Thereof (I)

#### Investigation No. 337-TA-944

#### **Commission's Final Determination Finding a Violation; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a limited exclusion order prohibiting importation of certain network devices, related software and components thereof, and (2) issued a cease and desist order. The Commission terminates the 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 <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>. 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. (“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 (“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 alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The ’296 patent was previously terminated from the investigation. The complaint named Arista Networks, Inc. (“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney (“IA”) is participating in the investigation.

On February 2, 2016, the ALJ issued his final ID finding a violation of section 337. The ID found a violation with respect to the ’537, ’592 and ’145 patents. The ID found no violation based on the ’597 and ’164 patents. On February 11, 2016, the ALJ issued his Recommended Determination on Remedy and Bonding.

On February 17, 2016, Cisco and Arista filed petitions for review. On March 3, 2016, the parties, including the IA, filed responses to the respective petitions for review. On April 11, 2016, the Commission determined to review the ID in-part. The Commission determined to review the final ID on the following issues: (1) infringement of the ’537, ’597, ’592 and ’145

patents; (2) patentability of the '597, '592, and '145 inventions under 35 U.S.C. §101; (3) the construction of “said router configuration data managed by said database system and derived from configuration commands supplied by a user and executed by a router configuration subsystem before being stored in said database” of claims 1, 10, and 19 of the '537 patent; (4) the construction of “a change to a configuration” / “a change in configuration” of claims 1, 39, and 71 of the '597 patent; (5) equitable estoppel; (6) laches; (7) the technical prong of domestic industry for the '537, '597, '592 and '145 patents; (8) economic prong of domestic industry; and (9) importation. To the extent any findings that the Commission reviewed implicated the ID’s findings for the '164 patent (*e.g.*, intent to induce infringement), the Commission also reviewed those findings for the '164 patent. The parties briefed the issues on review, remedy, bonding, and the public interest.

After considering the final ID, written submissions, and the record in this investigation, the Commission has determined to affirm-in-part the final ID and to terminate the investigation with a finding of violation of section 337. Specifically, the Commission finds that a violation of section 337 has occurred for the '537, '592, and '145 patents and no violation has occurred for the '597 and '164 patents. The Commission finds that the asserted claims of the '597 and '164 patents are not directly infringed by the accused products.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is (1) a limited exclusion order prohibiting the unlicensed entry of certain network devices, related software and components thereof thereof that infringe one or more of claims 1, 2, 8-11, and 17-19 of the '537 patent; claims 6, 7, 20, and 21 of the '592 patent; and claims 5, 7, 45, and 46 of the '145 patent; and (2) a cease and desist

order prohibiting Arista from importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States, agents or distributors for States certain network devices, related software and components thereof that infringe one or more of claims 1, 2, 8-11, and 17-19 of the '537 patent; claims 6, 7, 20, and 21 of the '592 patent; and claims 5, 7, 45, and 46 of the '145 patent.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. §§ 1337(d) and (f)) do not preclude issuance of the limited exclusion order or a cease and desist order. Finally, the Commission has determined that a bond during the period of Presidential review (19 U.S.C. § 1337(j)) shall be in the amount of zero percent (0%) of the entered value of the imported articles that are subject to the limited exclusion order or cease and desist order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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 CFR part 210).

By order of the Commission.

Lisa R. Barton  
Secretary to the Commission

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