

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

Investigation No. 337-TA-945

**NOTICE OF COMMISSION DETERMINATION TO DENY RESPONDENT'S
PETITIONS TO SUSPEND OR TEMPORARILY RESCIND REMEDIAL ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny the petitions of respondent Arista Networks Inc. ("Arista") to suspend or temporarily rescind the limited exclusion order ("LEO") and cease and desist order ("CDO") issued in the above-captioned investigation pending appeal of the Patent Trial and Appeal Board's *inter partes* review final written decisions finding unpatentable the claims of U.S. Patent Nos. 7,224,668 ("the '668 patent") and 6,377,577 ("the '577 patent") that the Commission found to be infringed.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 by Cisco Systems, Inc. of San Jose, California ("Cisco"). 80 FR 4313-14 (Jan. 27, 2015). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, and 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 Nos. 7,023,853; the '577 patent; 7,460,492; 7,061,875; the '668 patent; and 8,051,211. The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named Arista as respondent. The Office of Unfair Import Investigations ("OUII")

was also named as a party to the investigation. The Commission previously terminated the investigation in part as to certain claims of the asserted patents. Order No. 38 (Oct. 27, 2015), unreviewed Notice (Nov. 18, 2015); Order No. 47 (Nov. 9, 2015), unreviewed Notice (Dec. 1, 2015).

On May 4, 2017, the Commission found a violation of section 337 as to certain claims of the '577 and '668 patents. Notice (May 4, 2017); 82 *Fed. Reg.* 21827-29 (May 10, 2017). Specifically, the Commission issued an LEO prohibiting the unlicensed entry of network devices, related software and components thereof that infringe any of claims 1, 7, 9, 10, and 15 of the '577 patent; and claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and 64 of the '668 patent, and a CDO that prohibits Arista from importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of certain network devices, related software and components thereof that infringe any of claims 1, 7, 9, 10, and 15 of the '577 patent; and claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and 64 of the '668 patent.

On June 1, 2017, Arista filed an emergency petition to modify, suspend, or rescind the remedial orders pending appeal of a May 25, 2017 final written decision of the Patent Trial and Appeal Board ("PTAB") finding unpatentable all of the claims of the '577 patent which form the basis of the Commission's determination of violation. *See Arista Networks, Inc. v. Cisco Systems, Inc.*, Case IPR2016-00303, Final Written Decision (May 25, 2017). Arista also requested a shortened time for Cisco and OUII to file responses to the motion. On June 2, 2017, Cisco opposed Arista's request for a shortened response time.

Also on June 1, 2017, the PTAB issued a final written decision finding unpatentable all of the claims of the '688 patent which form the basis of the Commission's determination of violation. *See Arista Networks, Inc. v. Cisco Systems, Inc.*, Case IPR2016-00309 Final Written Decision (June 1, 2017). Arista filed a second emergency petition to suspend or rescind the remedial orders pending appeal of both the May 25, 2017 and June 1, 2017 final written decisions of the PTAB. *See Arista Networks, Inc. v. Cisco Systems, Inc.*, Case IPR2016-00309 (June 1, 2017). Arista also requested a shortened time for Cisco and OUII to file responses to the motion.

On June 8, 2017, the parties filed a joint stipulation, agreeing that Cisco and OUII would each file a combined response to Arista's petitions by June 12, 2017. Pursuant to the stipulation, Cisco filed a combined response opposing Arista's petitions on June 12, 2017, and OUII filed a response supporting Arista's petitions on the same day. On June 15, 2015, Arista filed a motion for leave to file a reply in support of its petitions. On June 20, 2017, Cisco opposed Arista's motion for leave. On July 18, 2017, Arista filed a supplemental brief.

The Commission has determined to deny Arista's petitions for failing to satisfy the requirements of 19 U.S.C. § 1337(k) and 19 C.F.R. § 210.76. Specifically, the Commission finds that the PTAB's final written decisions do not constitute a changed circumstance such that the remedial orders should be rescinded. The legal status of the claims at issue will not change unless and until the United States Patent and Trademark Office issues a certificate cancelling the claims following the exhaustion of all appeals. 35 U.S.C. § 318 ("If the Patent Trial and Appeal Board

issues a final written decision under subsection (a) and the time for appeal has expired or any appeal has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable”).

In addition, the Commission denies Arista’s request for a shortened response time in light of the joint stipulation by the parties, and denies Arista’s motion for leave to file a reply in support of its petitions.

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". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: June 20, 2017

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Monica Bhattacharyya, Esq., and the following parties as indicated, on **July 21, 2017**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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