

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COMPUTER NETWORK
SECURITY EQUIPMENT AND
SYSTEMS, RELATED SOFTWARE,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-1314

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART AND, ON
REVIEW, TO AFFIRM A FINAL INITIAL DETERMINATION FINDING NO
VIOLATION OF SECTION 337; 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 determined to review in part a final initial determination (“Final ID”) issued by the presiding administrative law judge (“ALJ”) finding no violation of section 337 of the Tariff Act of 1930, with respect to U.S. Patent Nos. 9,264,370 (“the ’370 patent”); 10,193,917 (“the ’917 patent”); and 10,284,526 (“the ’526 patent”). On review, the Commission has determined to take no position regarding whether the economic prong of the domestic industry requirement is satisfied, and to affirm under modified reasoning the Final ID’s finding of no violation of section 337 with respect to those patents. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: On May 24, 2022, the Commission instituted this investigation based on a complaint, as amended and supplemented, filed on behalf of Centripetal Networks, Inc. of Reston, Virginia. 87 FR 31581-82 (May 24, 2022). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“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 computer network security equipment and systems, related software, components thereof, and products containing the same that infringe certain claims of the ’370 patent, the ’917 patent, and the ’526 patent. *Id.* at 31581. The complaint also

alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation names Keysight Technologies, Inc. of Santa Rosa, California (“Keysight”) as a respondent. *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

On January 20, 2023, the complainant provided notice that it changed its name to Centripetal Networks, LLC (“Centripetal”). Complainant’s Notice of Corporate Name Change (Jan. 20, 2023). On March 6, 2023, the Commission granted the complainant’s motion to amend the complainant and notice of the investigation to reflect the name change. Order No. 32 (Feb. 3, 2023), *unreviewed by Comm’n Notice* (Mar. 6, 2023).

Centripetal originally asserted that Keysight violated section 337 based on infringement of claims 22-27, 42-48, and 63 of the ’370 patent; claims 1, 5, 11, 15, and 20 of the ’917 patent; and claims 1-3, 6, 11-13, and 16 of the ’526 patent. 87 FR at 31581-82. The Commission previously terminated the investigation with respect to claims 23-27, 42, 44-48, and 63 of the ’370 patent, claims 1, 5, and 15 of the ’917 patent, and claims 2, 6 and 12 of the ’526 patent based on Centripetal’s partial withdrawal of the complaint. Order No. 27 (Jan. 27, 2023), *unreviewed by Comm’n Notice* (Feb. 24, 2023); Order No. 39 (Feb. 27, 2023), *unreviewed by Comm’n Notice* (Mar. 29, 2023). Accordingly, at the time of the evidentiary hearing, claims 22 and 43 of the ’370 patent, claims 11 and 20 of the ’917 patent, and claims 1, 3, 11, 13, and 16 of the ’526 patent remained at issue.

On September 26, 2022, the ALJ conducted a *Markman* hearing. On February 22, 2023, the ALJ issued a claim construction order. Order No. 37 (Feb. 22, 2023). The ALJ held an evidentiary hearing on March 1-3 and 6-7, 2023.

On August 8, 2023, the ALJ issued the Final ID finding no violation of section 337 with respect to any asserted patent. Specifically, the Final ID finds that: (1) with respect to the ’370 patent, claims 22 and 43 are not infringed and are invalid for being directed to unpatentable subject matter under 35 U.S.C. 101, and the technical prong of the domestic industry requirement is not satisfied; (2) with respect to the ’917 patent claims 11 and 20 are infringed and the technical prong of the domestic industry requirement is satisfied, but the asserted claims are invalid as obvious under 35 U.S.C. 103; and (3) with respect to the ’526 patent, claims 1, 3, 11, 13, and 16 of the ’526 patent are not infringed and are invalid as anticipated under 35 U.S.C. 102, but the technical prong of the domestic industry requirement is satisfied. Finally, the Final ID finds that Centripetal has satisfied the economic prong of the domestic industry requirement under Section 337(a)(3)(A) and (B) with respect to each of the asserted patents.

The ALJ recommended that, if the Commission were to find a violation of section 337, the Commission should issue a limited exclusion order and cease and desist order with respect to Keysight. The ALJ also recommended that, should a violation be found, the bond rate be set at a 100 percent of entered value of the products imported during the period of Presidential review.

On August 14, 2023, the Commission requested comments from the public and interested government agencies regarding any public interest issues raised by the ALJ’s recommended determination on remedy and bonding. 88 FR 55067-68 (Aug. 14, 2023).

The Commission received no comments from the public or government agencies. On September 7, 2023, Centripetal and Keysight provided comments on the public interest pursuant to Commission Rule 210.50(a)(4). 19 C.F.R. § 210.50(a)(4).

On August 23, 2023, Centripetal filed a petition for review challenging the Final ID's findings that: (1) the '370 patent claims are not infringed or invalid for being directed to unpatentable subject matter, and that the technical prong of the domestic industry requirement is not satisfied as to that patent; (2) the '917 patent claims are invalid for obviousness; and (3) the '526 claims are not infringed and invalid for anticipation. On September 1, 2023, Keysight and OUII filed responses opposing the petition for review.

Having examined the record of this investigation, including the ALJ's Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in part and, on review, to affirm the Final ID's finding of no violation. Specifically, the Commission reviews the Final ID's finding that Centripetal waived its argument that the Check Point R77.30 prior art software does not satisfy the limitation "creat[ing] the list of the identification data based on the received at least one list of network addresses and/or domain names" in claims 3 and 13 of the '526 patent. The Final ID finds waiver because Centripetal failed to contest that limitation in its prehearing brief. *Id.* at 203-204. Centripetal, however, showed that it argued in its prehearing brief that the Application and URL Filter do not satisfy the claim language because that functionality is performed after decryption. *Pet.* at 76. Accordingly, the Commission determines to review the Final ID's finding of waiver, and, on review, finds that Centripetal did not waive its argument.

The Commission, however, determines to affirm under modified reasoning the Final ID's finding that Check Point R77.30 satisfies the limitation "creat[ing] the list of the identification data based on the received at least one list of network addresses and/or domain names." In addition to the reasons found in the Final ID, and as argued by OUII, the Application and URL Filter satisfy the claim language because the filter uses category-based rules based on a subscription service to determine what traffic to decrypt and inspect. *See* RX-0529.0039-41 (describing a HTTPS inspection policy with rules that use subscription-service categories to inspect traffic); *id.* at .0035 (explaining that HTTPS inspection involves decrypting data, inspecting the clear text, and re-encrypting the data).

The Commission has also determined to review the Final ID's finding that the economic prong of the domestic industry requirement is satisfied. On review, the Commission has determined to take no position as to whether the economic prong of the domestic industry requirement is satisfied.

The Commission has determined not to review the remainder of the Final ID. Consequently, the Commission finds no violation of section 337 with respect to any asserted patent. This investigation is hereby terminated with a finding of no violation of section 337.

The Commission vote for this determination took place on December 5, 2023.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, stylized oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: December 5, 2023