

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**SYSTEMS FOR DETECTING AND
REMOVING VIRUSES OR WORMS,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-510
Enforcement Proceeding

NOTICE OF INSTITUTION OF FORMAL ENFORCEMENT PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to a cease and desist order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. Copies of the public version of all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<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>.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on June 3, 2004, based on a complaint filed by Trend Micro Inc. ("Trend Micro") of Cupertino, California. 69 *Fed. Reg.* 32044-45 (June 8, 2004). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, and products containing same by reason of infringement of claims 1-22 of the '600 patent. The notice of investigation named Fortinet, Inc. ("Fortinet") of Sunnyvale, California as the sole respondent.

On May 9, 2005, the ALJ issued his final ID finding a violation of section 337 based on his findings that claims 4, 7, 8, and 11-15 of the '600 patent are not invalid or unenforceable, and are infringed by respondent's products. The ALJ also found that claims 1 and 3 of the '600 patent are invalid as anticipated by prior art and that a domestic industry exists. He also issued his recommended determination on remedy and bonding.

On July 8, 2005, the Commission issued a notice that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of Section 337. 70 *Fed. Reg.* 40731 (July 14, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding. *Id.* Submissions on the issues of remedy, the public interest, and bonding were filed on July 18, 2005, by all parties. All parties filed response submissions on July 25, 2005. On August 8, 2005, the Commission terminated the investigation, and issued a limited exclusion order and a cease and desist order covering respondent's systems for detecting and removing viruses or worms, components thereof, and products containing same covered by claims 4, 7, 8, and 11-15 of the '600 patent.

On September 13, 2005, complainant Trend Micro Inc. filed a complaint for enforcement proceedings of the Commission's remedial orders. Trend Micro asserts that respondent Fortinet, and its distributors, have circumvented the cease and desist order by continuing to advertise, market, sell and offer for sale in the United States the imported infringing products and antivirus features of Fortinet's infringing software.

The Commission, having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, has determined to institute formal enforcement proceedings to determine whether Fortinet is in violation of the Commission's cease and desist order issued in the investigation, and what if any enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) complainant Trend Micro, (2) respondent Fortinet, and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

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 section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.75).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 7, 2005