

**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
(Enforcement Proceeding)**

**NOTICE OF COMMISSION DETERMINATION TO REVIEW THE FINAL REMAND
ENFORCEMENT INITIAL DETERMINATION IN ITS ENTIRETY; REQUEST FOR
WRITTEN SUBMISSIONS; EXTENSION OF THE TARGET DATE**

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 its entirety the final remand enforcement initial determination (“REID”) issued by the presiding administrative law judge (“ALJ”) on June 4, 2018. The Commission has also determined to extend the target date for completion of these proceedings until September 11, 2018.

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 the underlying 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; U.S. Patent No. 7,340,597; 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 withdrawn from the investigation. The notice of investigation named Arista Networks, Inc. (“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney (“IA”) participated in the investigation.

On June 23, 2016, the Commission found that a Section 337 violation occurred as to the ’537, ’592, and ’145 patents and therefore issued a cease and desist order (“CDO”) against Arista and a limited exclusion order. 81 *FR* 42375-76 (June 29, 2016). The CDO prohibited Arista from importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for certain network devices, related software, and components thereof that infringe the asserted claims of the ’537, ’592, and ’145 patents. *Id.* at 42376.

On August 26, 2016, Cisco filed an enforcement complaint alleging that Arista had violated the June 23, 2016 CDO by reason of infringement of the ’537 patent. The Commission instituted this enforcement proceeding on October 4, 2016, based Cisco’s complaint. 81 *FR* 68455 (Oct. 4, 2016).

On June 20, 2017, the ALJ issued his final enforcement initial determination (“EID”) finding no violation of the CDO. On August 4, 2017, the Commission determined to review the EID in the entirety and remanded certain issues in the investigation to the ALJ.

On June 4, 2018, the ALJ issued his REID in this investigation, finding that Arista has not violated the CDO that issued on June 23, 2016, in the underlying investigation. On June 15, 2018, Cisco and Arista both filed petitions for review of the REID. On June 22, 2018, all of the parties filed responses to the petitions for review.

Having examined the record of this investigation, including the REID, the petitions for review, and the responses thereto, the Commission has determined to review the REID in the entirety.

In connection with its review, the Commission is interested in responses to only the following questions. For each argument presented, the parties’ submissions should set forth whether such argument was presented to the ALJ and if so include citations to the record.

1. Please address whether the relevant amendment(s) to claim 19 is no more than tangentially related to the equivalent in question. *See* REID at 56-59; Cisco REID

Pet. at 34-35. Please address the statements in the prosecution history and the relevant operation of the accused products.

2. Did complainant present a doctrine of equivalents analysis (*e.g.*, a function-way-result analysis), before the ALJ, for the “managing subsystem” claim elements or did complainant waive this issue? *See* REID at 61-63. If complainant presented arguments before the ALJ on this limitation, do the accused products meet the “managing subsystem” claim elements under the doctrine of equivalents?
3. Identify the evidence in the intrinsic record that defines the function, in the context of the function-way-result test, of the “management registration request” limitation? *See* REID at 65-68.

The responses must reference applicable law and the evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings. At this time, the Commission is not requesting written submissions on civil penalties.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Each party’s written submission responding to the above questions and any response to the initial submissions should be no more than 20 pages. The written submissions must be filed no later than close of business on Friday, July 27, 2018. Reply submissions must be filed no later than the close of business on Friday, August 3, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions should refer to the investigation number (“Inv. No. 944 (Enforcement Proceeding)”) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

The Commission has also determined to extend the target date for completion of the enforcement proceeding until September 11, 2018.

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, loopy circular flourish.

Lisa R. Barton
Secretary to the Commission

Issued: July 19, 2018