

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 MODIFY THE REMEDIAL
ORDERS TO SUSPEND ENFORCEMENT AS TO U.S. PATENT NO. 7,224,668**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify the limited exclusion order (“LEO”) and cease and desist order (“CDO”) (collectively, “the remedial orders”) issued in the above-captioned investigation to suspend enforcement of those orders as to the claims of U.S. Patent Nos. 7,224,668 (“the ’668 patent”) that the Commission found to be infringed. The Commission has further determined to deny Arista’s motion for stay as moot in view of the suspension of the remedial orders as to the ’668 patent.

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 <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 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 Networks Inc. (“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 June 11, 2016, the Patent Trial and Appeal Board (“PTAB”) of the U.S. Patent and Trademark Office instituted separate *inter partes* review (“IPR”) proceedings concerning the ’577 and ’668 patents. *Arista Networks, Inc. v. Cisco Systems, Inc.*, Case IPR2016-00303 (regarding the ’577 patent); *Arista Networks, Inc. v. Cisco Systems, Inc.*, Case IPR2016-00309 (regarding the ’668 patent).

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 May 25, 2017, the PTAB issued its final written decision finding claims 1, 7-10, 12-16, 18-22, 25, and 28-31 of the ’577 patent unpatentable based on prior art not presented in the Commission investigation. On June 1, 2017, the PTAB issued its final written decision finding claims 1-10, 12, 13, 15-28, 30, 33-36, 55-64, 66, 67, and 69-72 of the ’668 patent unpatentable based on certain combinations of prior art not presented in the Commission investigation.

On February 14, 2018, the U.S. Court of Appeals for the Federal Circuit summarily affirmed the PTAB’s decision finding the claims of the ’668 patent unpatentable. *Cisco Systems, Inc. v. Arista Networks, Inc.*, Appeal No. 17-2384 (Feb. 14, 2018). The Court issued the mandate on March 23, 2018. *Id.*, Dkt. No. 54. The PTAB’s decision concerning the ’577 is currently still pending before the Court.

On March 15, 2018, Arista filed a motion before the Commission to stay the Commission’s remedial orders as to the ’668 patent. On March 26, 2018, Cisco filed its response stating that it takes no position on and, thus, does not oppose Arista’s motion. OUII did not file a response to Arista’s motion.

The Commission has determined, pursuant to 19 U.S.C. 1337(k)(1) and 19 CFR 210.76(a)(1), to modify the remedial orders to suspend enforcement of those orders with respect to the ’668 patent pending rescission of the orders upon the cancellation of the asserted claims or pending reversal or vacatur of the Federal Circuit’s decision in *Cisco Systems, Inc. v. Arista Networks, Inc.*, Appeal No. 17-2384.

The Commission has further determined to deny Arista's motion as moot in view of the suspension of the remedial orders as to the '668 patent.

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', enclosed within a large, loopy oval shape.

Lisa R. Barton
Secretary to the Commission

Issued: April 5, 2018