

**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 REVIEW AND CLARIFY AN
INITIAL DETERMINATION GRANTING RESPONDENT'S UNOPPOSED MOTION
FOR RETURN OF ITS BONDS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination ("ID") (Order No. 59), granting a motion of respondent Arista Networks Inc. ("Arista") for return of its bonds. On review, the Commission clarifies that the returned bonds include three bonds posted by Arista under the terms of the cease and desist order and a separate bond posted by Arista under the terms of the limited exclusion order.

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; 6,377,577 ("the '577 patent"); 7,460,492; 7,061,875; 7,224,668 ("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 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 with respect to certain of the asserted claims of the '577 and '668 patents. Notice (May 4, 2017); 82 FR 21827-29 (May 10, 2017); *see also* Notice of Correction (May 30, 2017); 82 FR 25811 (June 5, 2017). The Commission issued a limited exclusion order (“LEO”) and a cease and desist order (“CDO”) (collectively, “remedial orders”) against Arista. *Id.*

On June 30, 2017, Cisco filed a notice of appeal with the United States Court of Appeals for the Federal Circuit (“Federal Circuit”), seeking review of the Commission’s finding of no violation. *Cisco Sys., Inc. v. Int’l Trade Comm’n*, Appeal No. 17-2289. On July 21, 2017, Arista filed a notice of appeal with the Federal Circuit, seeking review of the Commission’s finding of violation. *Arista Networks, Inc. v. Int’l Trade Comm’n*, Appeal No. 17-2336. On August 3, 2017, the Federal Circuit consolidated the Arista and Cisco appeals. *Cisco Sys., Inc. v. Int’l Trade Comm’n*, Appeal No. 17-2289, Dkt. No. 20.

On August 24, 2018, Arista, Cisco, and the Commission filed a Stipulation of Voluntary Dismissal the U.S. Court of Appeals for the Federal Circuit in the consolidated appeals *Cisco Systems, Inc. v. Int’l Trade Comm’n* and *Arista Networks, Inc. v. Int’l Trade Comm’n*, Appeal Nos. 17-2289, -2351. The basis of the request was a global settlement resolving all on-going patent disputes between the parties. On August 27, 2018, the Court issued an order granting the dismissal.

On September 12, 2018, Arista filed a motion for the return of three bonds Arista posted with the Commission under the terms of the CDO and the bond posted under the terms of the LEO. Arista asserted that the return of the bonds is warranted based on the settlement agreement between Cisco and Arista.

On September 28, the ALJ issued the subject ID, granting Arista’s motion pursuant to Commission Rule 210.50(d)(1)(ii) (19 CFR 210.50(d)(1)(ii)), which allows a respondent to request return of its bond within 30 days after the resolution of any appeal taken from the underlying Commission decision issue a remedial order. The ID notes that Arista timely filed its request and that the global settlement agreement fully resolves the disputes that led to issuance of the Commission’s remedial orders. The ID also finds that the relief Arista seeks would advance the public interest. No party petitioned for review of the ID.

The Commission has determined to review the subject ID pursuant to Commission Rule 210.44 (19 CFR 210.44) to clarify that the returned bonds include the three bonds Arista posted under the terms of the CDO and the separate bond Arista posted under the terms of the LEO.

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, stylized oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: November 9, 2018