

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN NETWORKING DEVICES,
COMPUTERS, AND COMPONENTS
THEREOF AND SYSTEMS
CONTAINING THE SAME**

Investigation No. 337-TA-1298

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION FOR GOOD CAUSE;
DENIAL OF MOTION TO STRIKE AS MOOT; TERMINATION OF THE
INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 15) of the presiding chief administrative law judge (“CALJ”), terminating the investigation for good cause. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-5453. 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: The Commission instituted this investigation on February 18, 2022, based on a complaint filed by Proven Networks, LLC of Los Angeles, CA (“Proven”). 87 FR 9382 (Feb. 18, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain networking devices, computers, and components thereof and systems containing the same by reason of infringement of claims 1-37 of U.S. Patent No. 8,687,573. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation

named as respondent NetApp, Inc. of San Jose, CA (“NetApp”). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On May 5, 2022, NetApp moved, “[p]ursuant to Commission Rule 210.21(a) [19 CFR 210.21(a)] . . . for termination of the instant investigation based on [Proven’s] clear and unequivocal waiver of the sole basis on which Proven alleges it satisfies the domestic industry requirement.” *Certain Networking Devices, Computers, and Components Thereof and Sys. Containing the Same*, Inv. No. 337-TA-1298, Respondent’s Mot. to Terminate Based on Waiver of Domestic Indus., 1 (May 5, 2022). Proven filed a response in opposition to the motion to terminate on May 16, 2022. The CALJ held oral argument on the motion on June 1, 2022. At the outset of the argument, the CALJ characterized the pending motion as one “to terminate the investigation for good cause.” Tr. at 4 (EDIS Doc. ID 772805).

On July 5, 2022, the CALJ issued the subject ID granting NetApp’s motion and terminating the investigation in its entirety. The ID relies on the “good cause” language of Commission Rule 210.21(a)(1) as the basis for granting the motion. ID at 4, 12. Substantively, the ID finds that “Proven expressly waived its ability to rely on [third-party] Extreme’s products and activities to demonstrate a domestic industry in this investigation,” and that “[w]ithout the ability to rely on Extreme’s products and services, Proven cannot satisfy the domestic industry requirement of section 337 and no violation of section 337 can be found.” ID at 12. The Commission has determined not to review the subject ID.

The Commission has also determined to deny as moot a motion filed by NetApp to strike Proven’s untimely petition for review. Proven filed an untimely petition for review of the ID, which NetApp moved to strike. Proven’s request that its petition for review be received out of time was denied by the Chair. *See* EDIS Doc. ID 776332 (July 27, 2022). As such, Proven’s petition for review is not on the record and therefore NetApp’s motion to strike the petition from the record is moot.

The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on August 4, 2022.

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 "Katherine M. Hiner". The signature is written in a cursive style with a large initial "K".

Katherine M. Hiner
Acting Secretary to the Commission

Issued: August 5, 2022