

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

In the Matter of

**CERTAIN COMMUNICATION
EQUIPMENT, COMPONENTS
THEREOF, AND PRODUCTS
CONTAINING THE SAME, INCLUDING
POWER OVER ETHERNET
TELEPHONES, SWITCHES, WIRELESS
ACCESS POINTS, ROUTERS AND
OTHER DEVICES USED IN LANS, AND
CAMERAS**

Investigation No. 337-TA-817

**NOTICE OF THE COMMISSION'S DETERMINATION TO GRANT
COMPLAINANT'S REQUEST FOR RECONSIDERATION AND AFFIRM THE
COMMISSION'S DETERMINATION TO REVERSE AN INITIAL DETERMINATION
GRANTING THE OFFICE OF UNFAIR IMPORT INVESTIGATIONS' UNOPPOSED
MOTION TO AMEND THE NOTICE OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant Complainant's request for reconsideration and affirm the Commission's determination to reverse the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 3) granting the Office of Unfair Import Investigations' ("OUII") unopposed motion to amend the Notice of Investigation.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, 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 this investigation on December 7, 2011, based on a complaint filed by ChriMar Systems, Inc. d/b/a DMS Technologies (“ChriMar”) of Farmington Hills, Michigan, alleging a violation of section 337 in the importation into the United States, the sale for importation and the sale within the United States after importation of certain communication equipment, components thereof, and products containing the same, including power over ethernet telephones, switches, wireless access points, routers and other devices used in LANs, and cameras. 76 *Fed. Reg.* 76,436-37 (Dec. 7, 2011). The complaint alleges infringement of certain claims of U.S. Patent No. 7,457,250. The named respondents are Cisco Systems, Inc. of San Jose, California; Cisco Consumer Products LLC of Irvine, California; Cisco Systems International B.V. of the Netherlands; Cisco-Linksys LLC of Irvine, California; Hewlett-Packard Co. of Palo Alto, California; 3Com Corporation, of Marlborough, Massachusetts; Avaya Inc. of Basking Ridge, New Jersey; and Extreme Networks, Inc. of Santa Clara, California.

On January 3, 2012, the ALJ issued an ID granting OUII’s unopposed motion to amend the Notice of Investigation. Order No. 3 at 1. OUII sought to add, in the “Scope of the Investigation” section, the underlined portion of the following language: “whether an industry in the United States exists or is in the process of being established as required by subsection(a)(2) of section 337.” *Id.* The ALJ explained that there is good cause to amend the Notice of Investigation because “the error was inadvertent and the investigation is still in its early stages.” *Id.* at 2. The ALJ also determined that the “amendment will not prejudice the public interest or any of the rights of the parties in the investigation.” *Id.*

On January 27, 2012, the Commission determined to review and reverse the presiding ALJ’s ID and deny the motion to amend the Notice of Institution. *See* Notice of Commission Determination to Review and Reverse An Initial Determination Granting the Office of Unfair Import Investigation’s Unopposed Motion to Amend the Notice of Investigation. On February 1, 2012, ChriMar filed a petition for reconsideration requesting that the Commission reconsider its determination to review and reverse the ALJ’s ID. On February 8, 2012, OUII submitted a response to ChriMar’s request for reconsideration, asserting that it would be appropriate for the Commission to consider ChriMar’s request for reconsideration.

The Commission has determined to grant ChriMar’s request for reconsideration because ChriMar has not previously had an opportunity to present arguments on the issues presented in the Commission’s Notice. On reconsideration, the Commission has determined to affirm its reversal of the ALJ’s ID granting OUII’s motion to amend the Notice of Investigation. As noted previously, the ALJ’s conclusion regarding inadvertence was not supported by the facts, and therefore it is clearly erroneous. Moreover, ChriMar’s complaint only includes a description of the relevant domestic industry that “allegedly exists,” and therefore, the Commission determines that the complaint does not meet the requirements of Commission Rule 210.12(a)(6)(i) (19 C.F.R. §210.12(a)(6)(i)). The Commission maintains its reversal of the ALJ’s ID without prejudice to the parties’ right to move to amend the complaint and Notice of Investigation in a timely manner.

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 sections 210.42, 210.48 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.48).

By order of the Commission.

James R. Holbein
Secretary to the Commission

Issued: March 28, 2012