

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN NETWORK DEVICES,  
RELATED SOFTWARE AND  
COMPONENTS THEREOF (II)

Inv. No. 337-TA-945

**ORDER NO. 3: DENYING RESPONDENT'S MOTION TO CONSOLIDATE  
INVESTIGATIONS**

(February 5, 2015)

On January 23, 2015, Respondent Arista Networks, Inc. filed a motion seeking consolidation of Investigation Nos. 337-TA-944 and 337-TA-945, which concern the same Complainant and Respondent. (Motion Docket No. 945-001.) According to Respondent, combining all twelve asserted patents into a single investigation would serve judicial economy, conserve public and private resources, and add convenience for witnesses and third parties. (Mot. at 2; Mot. Mem. at 1-2.) Respondent explains that the two complaints “raise the same issues and evidentiary record: the accused products are the same, the domestic industry products are the same, the economic domestic industry issues are the same, the technologies are the same, the fact and expert witnesses will overlap, the documentary evidence will be the same, and many of the defenses will be identical.” (Mot. Mem. at 2. *See also id.* at 6-11, 15.) Respondent relies on Commission Rule 201.7(a), and certain Commission precedent. (*Id.* at 3-5.)

On February 4, 2015, Complainant Cisco Systems, Inc. opposed the motion, arguing that consolidation would conflict with “the Commission’s typical practice of ensuring that separate technologies and issues be evaluated separately.” (Opp. at 1.) According to Complainant, Respondent has only shown superficial overlaps between the 944 and 945 Investigations,

primarily because these two Investigations involve “two different groups of patents that present different substantive issues and require different evidence and proof.” (*Id.* at 2.) Complainant argues that consolidation would also cause a six month delay in the proceedings, which prejudices Complainant and runs counter to the language of Commission Rule 201.7(a) permitting consolidation “in order to expedite” Commission functions. (*Id.* at 1-3.) Complainant also submits that it will work with the Commission Investigative Staff (“Staff”) and Respondent “to the extent there is any overlap in discovery to minimize any burdens and maximize efficiencies.”<sup>1</sup>

On February 4, 2015, Staff also opposed the motion, arguing that the issue of consolidation has already been considered by the Commission and the Chief Administrative Law Judge. (Staff Opp. at 3.) Staff also argues that consolidation would not serve the purpose set forth in Commission Rule 201.7(a), but instead would result in complexity and delay. (*Id.* at 4.) Staff suggests that instead “the parties should be encouraged to coordinate scheduling of any common fact depositions, coordinate document discovery to avoid duplicative document collection and production, and hold joint DCM calls if appropriate.” (*Id.* at 5.)

Respondent’s request was in front of the Commission when the Commission determined to institute separate investigations. (*See* Letter from McKeon to Secretary Barton, Dkt. Nos. 548825, 548828 (Jan. 6, 2015).) While the Commission did delegate authority to the Chief Administrative Law Judge to consolidate Investigation Nos. 337-TA-944 and 337-TA-945, the Chief Administrative Law Judge did not choose to exercise that authority. 80 Fed. Reg. 4313 (January 27, 2015); Notice of Assignment (January 21, 2015). In essence, Respondent is seeking reconsideration of the Chief Administrative Law Judge’s decision not to consolidate the two investigations. I find that the determination whether to consolidate in this instance was given

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<sup>1</sup> Complainant is bound by this assertion.

solely to the Chief Administrative Law Judge by the Commission, and thus I do not have the authority to consolidate here. Even if this were not the situation, the number, variety, and technical complexity of the patents involved in the two investigations suggest that consolidation would run contrary to the Commission's policy favoring expeditious proceedings. Commission Rule 201.7(a); Commission Rule 210.2.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "Thomas B. Pender", written over a horizontal line.

Thomas B. Pender  
Administrative Law Judge

**CERTAIN NETWORK DEVICES,  
RELATED SOFTWARE AND  
COMPONENTS THEREOF (II)**

337-TA-945

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the Commission Investigative Attorney, Monica Bhattacharyya, Esq., and upon the following parties as indicated on *February 5*, 2015.



Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
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