

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-944

Order No. 4

Respondent Arista Networks, Inc. (“Arista”) filed a motion requesting consolidation of this investigation with *Certain Network Devices, Related Software and Components Thereof (II)*, Inv. No. 337-TA-945, and a memorandum in support thereof. Motion Docket No. 944-01.

Complainant Cisco Systems, Inc. (“Cisco”) opposed the motion. The Commission Investigative Staff (“Staff”) filed a response opposing the motion.

Arista argues, *inter alia*, that failure to consolidate the investigations “would be highly prejudicial [to Arista] and would reward Cisco for gaming the system.” *See* Mem. at 2. It is argued that “Cisco’s tactic of requesting two unnecessarily separate investigations will not only result in significant inefficiencies with respect to public and private resources, but also set a potentially dangerous precedent that will encourage future complainants to file piecemeal complaints.” *Id.* at 3. It is further argued that “consolidation will result in efficiencies and consistency of rulings that will inure to the benefit of both the private parties, OUII, and the Commission generally.”

In opposition, Cisco argues that the two investigations should not be consolidated because they “involv[e] unrelated patents, different technologies, and different legal and factual issues.” *See* Opp’n at 1. Cisco also argues that “Arista itself acknowledges that consolidation

would add up to six months to the length of these proceedings, delaying and prejudicing Cisco's right to speedy resolution of its claims of infringement." *See id.* at 1-2 (citing 19 C.F.R. § 201.7(a)). It is further argued that "Arista fails to provide a single, concrete example of how claim construction, infringement, or existence of a domestic industry (or any other meaningful substantive issue to be addressed in the investigations) will overlap in a manner that makes it advantageous to collapse these distinct investigations into a single twelve-patent investigation." *Id.* at 2. Cisco also represents that it "stands willing to work cooperatively with the ITC Staff and Arista to the extent there is any overlap in discovery to minimize any burdens and maximize efficiencies," and that it "will support management of these cases in whatever manner the Commission determines will be most effective." *Id.* at 3.

The Staff takes the position that "Arista's motion [does not show] that consolidation would allow the Commission to 'expedite the performance of its functions.'" *See Staff Resp.* at 3-4 (citing 19 C.F.R. §§ 201.7, 210.2). As discussed by the Staff, "the two investigations combined implicate 12 separate patents (and include over 200 asserted claims)," and "[n]one of the patents asserted in the 944 Investigation are the same or related to the patents asserted in the 945 Investigation." *See id.* at 4. It is further argued that "consolidating the two investigations would require one ALJ to handle the entire set of twelve patents," and "[a] case of this magnitude would likely require a later target date than the 16 month target date that has been set for Investigation 944, and would introduce additional risks that an initial target date would need to be extended." *Id.*

Having considered the arguments of the parties, the administrative law judge finds that consolidation of the two investigations would create an investigation of such large scope that it would be burdensome to complete the investigation within the previously set 16 month target

date. It is unclear that even the 22 month target date suggested by Arista could be realized. *See* Opp'n at 14 n.7. Further, it does not appear that consolidation of the two investigations would conserve public resources to a significant degree, inasmuch as the total agency hours required to litigate and adjudicate a consolidated investigation would likely approximate the total agency hours required to litigate and adjudicate two separate investigations.

Therefore, Motion No. 944-01 is denied.



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David P. Shaw  
Administrative Law Judge

Issued: February 13, 2015

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

**INV. NO. 337-TA-944**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 4** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.**, and the following parties as indicated, on **FEB 13 2015**.



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street SW, Room 112A  
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