



Arista Legal Update

Update on the Copyright Case and ITC Investigations

April 9, 2018

In light of our commitment to provide full transparency to our readers, we would like to update you on developments in our litigation with Cisco. Most recently, on April 6, 2018, the ITC suspended enforcement of the remedial orders it issued in the 945 Investigation for the '668 patent. This suspension will allow Arista to continue selling its redesigned products, in spite of any infringement finding on the '668 patent, because the '668 patent is invalid.

The '668 patent is one of two patents still at issue in the 945 Investigation. The second, the '577 patent, expires on June 30, 2018, and the ALJ overseeing the 945 Investigation issued a recommended determination on March 23, 2018 finding that our redesigned products do not infringe that patent. The ALJ's decision is now under review by the Commission.

We feel it is important to recognize what the 945 Investigation has become. Of its original six-patent case, Cisco is left battling to enforce two invalid patents. In the case of the '668 patent, Cisco has dropped even the pretense that this patent is valid. We are grateful that the Commission suspended its orders as to the '668 patent, preventing Cisco from continuing to wield it as a weapon until its final cancellation.

Quick Recap

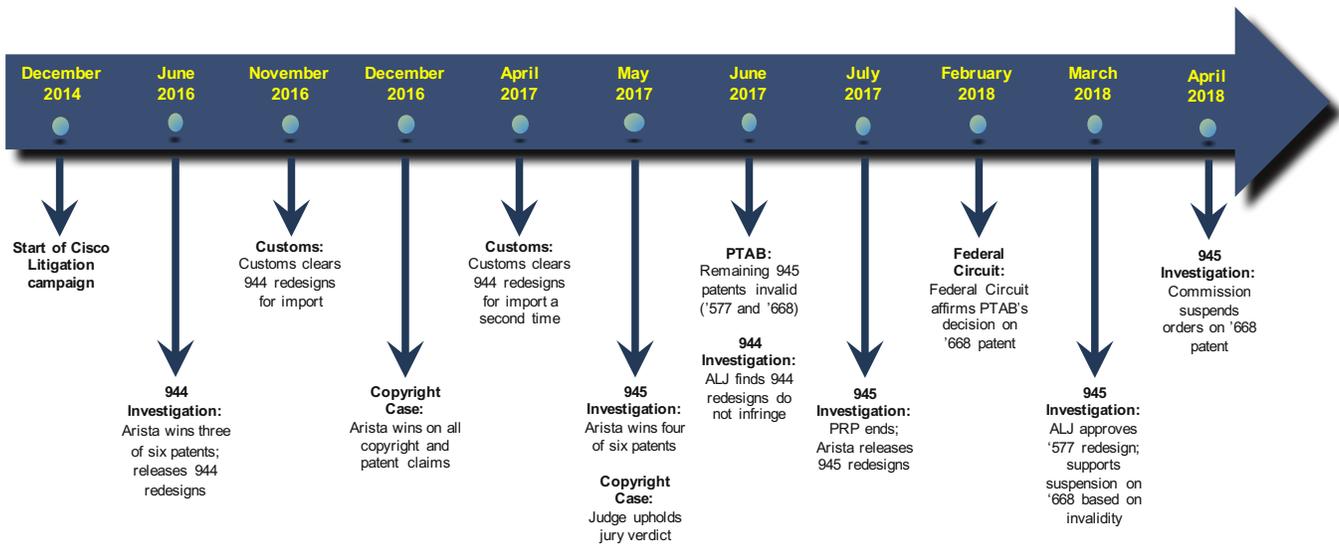
Cisco's legal attack started in December 2014 and spans two District Court cases and two ITC investigations. Cisco has alleged in these actions that Arista's products infringe 14 patents—many asserted against widely implemented networking features—and copyrights asserted against a limited number of elements in Arista's Command Line Interface ("CLI"). Contrary to Cisco's distorted messaging, Arista has obtained significant victories in these proceedings, including:

- Favorable decisions on 12 of the 14 asserted patents
- A favorable jury verdict on Cisco's copyright claims, which the judge upheld on May 10, 2017
- Decisions by the Patent Trial and Appeal Board (the "PTAB") that every patent claim we were found to infringe in the 945 Investigation is invalid
- A Federal Circuit affirmance of the PTAB decision finding the asserted claims of the '668 patent invalid
- A finding by the ALJ that Arista's redesigned products do not infringe the '577 patent
- An order from the ITC suspending enforcement of its remedial orders as to the '668 patent

Cisco's motives for this legal assault were made public during the 2016 trial of Cisco's copyright claims. The testimony of current and former Cisco executives, including Executive Chairman John Chambers, revealed that Cisco believed Arista was outperforming Cisco on "price, product, roadmap and vision" and, in the words of one customer, Cisco was "on target to become irrelevant" in the majority of data centers. The testimony also indicated that these Cisco failures came despite its six-year campaign to "beat Arista" in the marketplace, including efforts to build so-called Arista killer products, to disrupt us in customer accounts, and to stop our 2014 IPO.

Despite Cisco's overheated rhetoric and promises to shut Arista down, we are still standing tall thanks to the wide-ranging support we have received from the larger community that sees this assault for what it is. The timeline below depicts some of the key events in this campaign.

Litigation Timeline



ITC 945 Investigation

On May 4, 2017, the ITC issued its final determination in the 945 Investigation, finding that Arista's products infringed two of the six patents asserted in that case—the '668 and '577 patents. The ITC found that TCAM-based security ACLs infringed the '577 patent, and the Control Plane Policing (CoPP) and Control Plane ACL (CP-ACL) features infringed the '668 patent. On July 3, 2017, the ITC's remedial orders went into full effect barring the importation and sale of infringing covered products in the United States. Arista subsequently released redesigned products to address the ITC's findings.

Patent Trial and Appeal Board

In May and June 2017, the PTAB found that every claim of the '577 and '668 patents we were found to infringe is invalid. Cisco appealed these decisions to the Court of Appeals for the Federal Circuit, the appeals court with jurisdiction over patent matters. The oral argument on both appeals was held on February 9, 2018.

Only five days later, the Federal Circuit affirmed the PTAB's finding that the asserted claims of the '668 patent are invalid. We await the Federal Circuit's decision on the '577 patent, and we are confident that it will affirm the PTAB's decision on that patent as well.

In light of the Federal Circuit's finding that the asserted claims of the '668 patent are invalid, the only way Cisco can save those claims from cancellation is to obtain Supreme Court review. Historically, the Supreme Court accepts less than 1% of all cases for review, and they have never accepted a petition to review the merits of an IPR decision. Thus, we believe that it is now only a matter of time before the Patent Office cancels the asserted claims of the '668 patent, after which, the ITC's orders as to that patent will have no effect. In recognition of this, on April 6, 2018, the ITC suspended enforcement of its remedial orders as to the '668 patent.

ITC Modification Proceedings

At Cisco's request, on October 27, 2017, the ITC instituted a modification proceeding to determine whether the ITC should modify its remedial orders in the 945 Investigation to cover our redesigned products. During a January 19, 2018 hearing, Cisco dropped its infringement allegation against Arista's AlgoMatch feature, which it had previously accused of infringing the '577 patent. Instead, Cisco argued that a different feature infringed—one that it had never before accused—and made an outrageous claim that Arista had not removed the TCAM security ACL feature from our redesigned products. Cisco also accused our PDP and Service ACL features of infringing the '668 patent.



On March 23, 2018, the ALJ issued a recommended determination (“RD”) finding that Arista’s redesigned products do not infringe the ’577 patent but do infringe the ’668 patent. In addition, the ALJ agreed that the Commission should modify or rescind the ITC’s orders as to the ’668 patent, which would permit Arista to continue selling its current products without modification. The ALJ based this decision on the conclusion that it was “all but certain” that the asserted claims of the ’668 patent would be cancelled.

The ALJ’s RD is not final, and the Commission is currently reviewing it. The parties’ initial submissions to the Commission were filed on April 5 and responses are due on April 12. We have sought review of the infringement findings on the ’668 patent, and Cisco has sought review of the non-infringement findings on the ’577 patent. Following its review, the Commission will issue a final determination, but it has not set a target date for that decision.

On April 6, 2018, the ITC suspended its remedial orders as to the ’668 patent because both the Federal Circuit and PTAB have found the asserted claims of that patent invalid. As a result, even if the ITC concludes that our redesigned products infringe the ’668 patent, we will be free to continue selling those products. The suspension will remain in effect pending the completion of Cisco’s appeal of the ’668 invalidity decision to the Supreme Court. If they decline review as expected, the asserted claims of the ’668 patent will be cancelled, and the ITC’s orders as to that patent will be terminated.

Cisco’s Motives

Cisco’s true motives for this litigation are exposed by its assertion of the ’853 and ’577 patents. Cisco asserts these patents against the use of a standard security feature called access control lists that are stored in a specific type of memory (ternary content addressable memories or TCAMs) contained in merchant silicon switching chips used in our products.

This nearly-20-year-old technology is implemented the same way in virtually every network switch on the market, and third parties such as Broadcom and Intel build it into the merchant silicon switching chips used by Arista, Cisco, and many others. Arista is simply a downstream user of these chips and is not involved in their development, design, or manufacture.

Despite Cisco’s claims that this case is about protecting its intellectual property, Cisco has never sought to enforce these patents against the chip suppliers that have been providing this technology to the market for over a decade or the network switch vendors that have been using it for just as long. Given that Cisco applied for the ’577 patent in 1998, and the patent expires in June 2018, had it truly been concerned with protecting its alleged intellectual property, it had ample time to do so.

ITC 944 Investigation

On August 22, 2016, the Presidential review period ended in the 944 Investigation. Of six patents at issue, the ITC found infringement of three: the ’145 and ’592 patents, which Cisco asserted against the Private Virtual LAN (PVLAN) feature, and the ’537 patent. Consequently, the ITC issued remedial orders that prohibited Arista from importing into the United States (or selling after importation) products that infringed these patents.

Contrary to Cisco’s public statements, the ’537 patent does not broadly cover our implementation of a centralized database or the multi-process state-sharing architecture in our Extensible Operating System (EOS). Instead, the ’537 patent is directed to a specific request-based process to register “managing subsystems” to “externally manage” router configuration data of a centralized database—a process that Cisco does not even claim to use in its own Ethernet switch operating systems (IOS or NX-OS).

In our effort to fully comply with the ITC’s remedial orders, Arista redesigned EOS to remove central elements of the technologies found infringe the patent claims. The redesigns have been endorsed by Customs and Border Protection (twice), the Staff attorney assigned to the 944 Investigation, and the ALJ overseeing the 944 Investigation.



CBP Process

After releasing our redesigned products, Arista sought a ruling from U.S. Customs and Border Protection (“CBP”) that those products no longer infringe the ’145, ’592, and ’537 patents. After many months of discussion and extensive review by CBP, we were pleased to receive CBP’s approval of our redesigned products on November 18, 2016.

Following Cisco’s complaints about CBP’s traditional process for conducting such reviews, CBP decided to revoke its ruling and conduct an inter partes proceeding to reconsider our redesign. In that proceeding, both Arista and Cisco were given the opportunity to fully present their arguments. On April 7, 2017, CBP once again ruled that Arista’s redesigned products do not infringe the ’592, ’145, or ’537 patents. Arista appreciates the hard work and dedication of CBP in conducting this fair process and in reaffirming their initial ruling, which validates the company’s good faith efforts to comply with the ITC’s remedial orders.

Enforcement Action

In addition to challenging Arista’s redesigned products in CBP, Cisco also brought an ITC enforcement action against Arista on August 26, 2016 (three days after the end of the Presidential review period in the original investigation) asserting that Arista is violating the cease and desist order from the 944 Investigation. This enforcement investigation only involves the ’537 patent; Cisco no longer alleges that Arista infringes the ’145 or ’592 patents.

On June 20, 2017, the ALJ issued his initial determination in the enforcement action (“ID”). In the ID, the ALJ—agreeing with both CBP and the ITC staff attorney from the Office of Unfair Importation Investigations—found that our redesigned products do not infringe the ’537 patent and that Arista acted in good faith in its efforts to comply with the ITC’s remedial orders.

On August 4, 2017, the Commission issued an order remanding the 944 Investigation back to the ALJ to address certain issues from the ID and provide additional analysis and conclusions. The ALJ is due to issue his updated ID on June 4, 2018, and the new target date for the completion of the enforcement action is September 4, 2018.

It is not uncommon for the Commission to remand certain aspects of an investigation back to the ALJ for further analysis. In doing so here, the Commission has not reversed any aspect of the ALJ’s decision or expressed any position on its merits. Once the Commission receives the ALJ’s updated ID, it will conduct a normal review. In both the 944 and 945 Investigations, the Commission reviewed certain aspects of the ID but left the ALJ’s ultimate conclusions unchanged.

We will continue to work with the ALJ and the Commission to bring this investigation to its conclusion.

Copyright Case

On May 10, 2017, Judge Freeman denied Cisco’s motion to overturn the jury’s verdict in Arista’s favor in the copyright case. In that case, the jury found that Arista was not liable for using in its Command Line Interface (CLI) a relatively small number of commands and other elements similar to those found in Cisco’s CLI. The jury also found that Arista did not infringe the remaining patent in the case. As a result of this ruling, Arista owes no damages to Cisco.

As we have expressed since the case was initially filed in 2014, we believe that the industry standard CLI command language was widely adopted by customers and other network vendors with Cisco’s encouragement. When we entered the market in 2008, we too openly adopted this industry standard. Cisco knew this for years without expressing a single complaint—until it filed its lawsuit in December 2014 and sought to reverse its long-standing policy of permitting, indeed encouraging, the industry to adopt its CLI.

While we were pleased that the jury reached a verdict in our favor in the copyright case, Cisco’s bait-and-switch tactics on the CLI represent a broader concern for the industry. As a result, we are pursuing an antitrust claim



against Cisco to protect the broader industry against Cisco's unfair tactics. That case is schedule for trial before Judge Freeman in August 2018.

Case	IP Claim	Current Status*
944 Investigation	'537	Redesigned Product
	'145	Removed Feature
	'592	Removed Feature
	'597	Won
	'296	Won
	'164	Won
945 Investigation	'577	Invalid/Redesigned Feature
	'853	Won
	'668	Invalid/Redesigned Feature
	'875	Won
	'211	Won
	'492	Won
Copyright Trial	'886	Won
	'526	Won
	CLI	Won

**This table represents the status of each of the IP claims. Please note that the redesigns for the '537, '577, and '668 patents continue to be litigated in the ITC. The '577 patent has been found invalid by the PTAB. The '668 patent has been found invalid by the PTAB and Federal Circuit, and the ITC has suspended its orders on that patent. The decisions in the 944 and 945 Investigations, the Copyright case, and the PTAB remain subject to appeal. The patents in the 944 and 945 Investigations also remain subject to litigation in the district court.*

Arista's Commitment to Our Customers

While Cisco is a dominant and powerful company with deep pockets and enormous political clout and lobbying capabilities, it has also attempted to portray itself as an innocent, injured party, while misstating the facts and generating confusion with misleading spin and blog posts.

For the first time in decades the industry has recognized in Arista a true alternative to Cisco; a better and compelling replacement for the technology that has dominated Ethernet switching based on momentum instead of innovation. Arista's contributions to the Cloud and SDN are welcome and refreshing improvements in this stagnant marketplace.

Since the beginning of Cisco's legal attack in 2014, we have explained that we are committed to the continued lawful supply of products to our customers and to servicing them without disruption.

We cannot thank you all enough for your unwavering support.

Sincerely,
The Arista Leadership Team