

Arista Legal Update

Update on Copyright Case and 944, 945 ITC Investigations
August 4, 2017

In light of our commitment to provide full transparency to our readers, we would like to update you on recent developments in our litigation with Cisco. These include the status of the 944 and 945 investigation and the judge’s decision in the copyright case to deny Cisco’s motion to overturn the jury verdict in our favor.

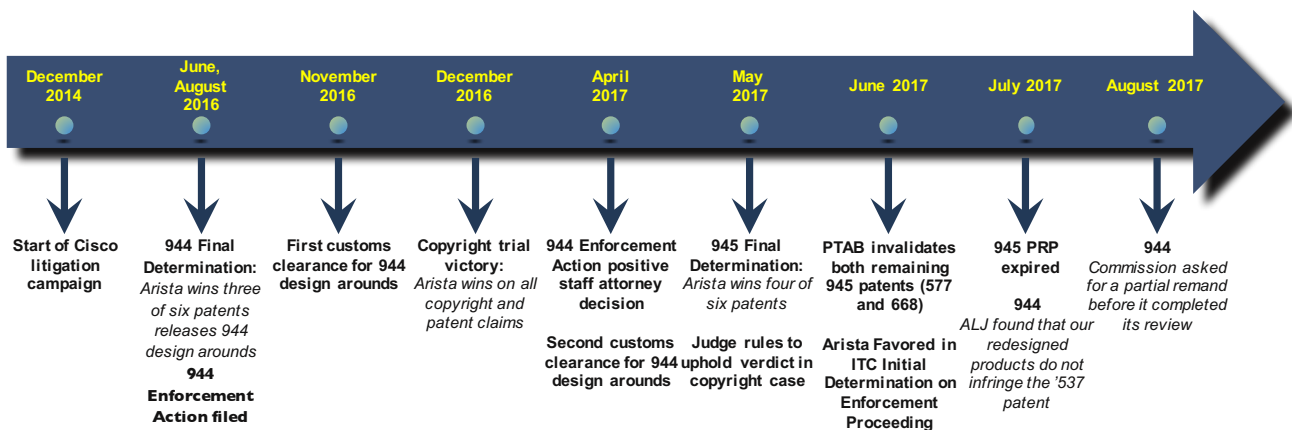
Quick Recap

Cisco’s legal attack started in December 2014 and spans two separate District Court cases and two ITC investigations. Taken together, 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, receiving favorable decisions on 12 of the 14 asserted patents, receiving a favorable jury verdict on Cisco’s copyright claims—which was upheld by the judge on May 10, 2017—and receiving two PTAB decisions finding that every single claim of the two patents we were found to infringe in the 945 investigation is invalid.

Cisco’s motives for this legal assault were made public last December during the copyright trial. The testimony of current and former Cisco executives, including Executive Chairman John Chambers, revealed that Cisco believed Arista was outperforming Cisco in “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 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 PVLANS, and the '537 patent. Consequently, the ITC issued a limited exclusion order and a cease and desist order that prohibited Arista from importing into the United States (or selling after importation) products that infringed these patents. These orders did not prohibit Arista from either importing or selling non-infringing products.

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 undertook a significant redesign of EOS, which included the complete removal of the PVLAN feature as well as the EOS agent-to-Sysdb write mount requests Cisco accused of infringing the '537 patent. These product modifications removed central elements of the technologies found to have infringed the patent claims. To complete this redesign, Arista committed substantial financial and engineering resources over many months.

CBP process

In tandem with these activities, Arista sought a ruling from U.S. Customs and Border Protection (“CBP”) that Arista’s redesigned products no longer infringe the '145, '592, and '537 patents, which would allow Arista to import these products into the United States. The CBP process is widely used, and the ITC’s Final Determination specifically reaffirmed that it was proper for Arista to use it to obtain import clearance for its redesigned products.

After many months of discussions and extensive review by CBP, we were pleased to receive CBP’s approval of our redesigned products on November 18, 2016. As a result, CBP reopened the borders and allowed us to resume importing our products into the United States. As we explained at that time, however, pursuant to applicable regulations, CBP could modify or revoke its ruling if CBP found it to be in error, not in accordance with its current views, or in conflict with any future ITC findings. Given Cisco’s transparent motives, the stakes involved, and its recent loss of the CLI copyright case in the District Court in December, it is not surprising that Cisco aggressively campaigned to revoke CBP’s decision. Indeed, Cisco filed its formal request for revocation (without Arista’s knowledge) the day Arista obtained a favorable jury verdict in the copyright case.

In response to Cisco’s request, CBP decided to conduct an inter partes proceeding to reconsider our redesign, in which both Arista and Cisco were given the opportunity to fully present their arguments. On January 13, 2017, CBP also revoked its November 18, 2016 ruling until it could put a new ruling in place based on the outcome of the inter partes process.

On April 7, 2017, following extensive briefing by both parties and a hearing during which both parties presented their arguments, CBP once again ruled that Arista’s redesigned products do not infringe the '592, '145, or '537 patents, and that Arista may resume importing its redesigned products into the United States. Arista appreciates the hard work and dedication of CBP in conducting this fair process and in reaffirming the 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 in the 944 investigation. This investigation only involves the '537 patent; Cisco no longer alleges that Arista infringes the '145 or '592 patents. A hearing in this matter was held on April 5, 2017 involving both parties as well as the ITC staff attorney from the Office of Unfair Importation Investigations (“OUII”). OUII serves as a neutral third party representing the interests of the public in ITC investigations. OUII takes the position that Arista’s redesigned products do not infringe the '537 patent, that Arista has not violated the ITC’s cease and desist order, and that Arista acted in good faith in doing so.

On June 20, 2017, the ALJ issued his initial determination (“ID”) in the enforcement action. In the ID, the ALJ—agreeing with both CBP and the OUII Staff—found that our redesigned products do not infringe the '537 patent. Following the ID, the 945 enforcement action schedule contemplated that the Commission would issue a notice by August 4, 2017 to determine whether it intended to review the ID and, if so, the Commission would issue its Final Determination on September 20, 2017.

On August 4, 2017, the Commission issued a notice stating that it would be reviewing the ID in its entirety. The Commission also remanded certain issues from the ID to the ALJ to provide additional analysis and conclusions. The Commission instructed the ALJ to issue an initial determination within 30 days extending the target date as he deems necessary to accommodate any remand proceedings and allow the Commission an additional three months for its review.



The Commission frequently reviews some or all aspects of ALJ initial determinations in order to better understand the issues presented to it in an investigation. In this instance, the Commission has not reversed or vacated any aspect of the ALJ's decision nor expressed any position on its merits. In both the 944 and 945 investigations, the Commission reviewed certain aspects of the initial determination, and in both cases it left the ALJ's ultimate conclusions about infringement unchanged.

We will continue to work with the ALJ and the Commission to bring this investigation to its conclusion. We note that U.S. Customs and Border Protection has twice found that our redesigned products do not infringe Cisco's patent, that the Commission's Office of Unfair Import Investigations has agreed with us during the enforcement action that our redesigned products do not infringe Cisco's patent and of course the ALJ has previously ruled in the ID that our redesigned products do not infringe Cisco's patent. The final determination is currently set to issue on September 20, 2017.

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's final determination was largely consistent with the ALJ's December 9, 2016 initial determination. Following the completion of the 60-day Presidential review period on July 3, 2017, the limited exclusion order and cease and desist order went into effect barring the importation and sale of infringing covered products into the United States.

In late 2015, Arista filed petitions with the Patent and Trial and Appeal Board ("PTAB") for inter partes review of the validity of the '668 and '577 patents. The PTAB instituted both petitions, and the parties participated in a hearing before the PTAB in March 2017. On May 25, 2017, the PTAB issued a final written decision finding invalid all claims of the '577 patent that we were found to infringe in the ITC. In addition, the ALJ in the 945 investigation already ruled that the '577 patent was invalid, but that Arista could not challenge validity because of the archaic legal doctrine of assignor estoppel. On June 1, 2017, the PTAB issued a final written decision invalidating all claims of the '668 patent we were found to infringe in the ITC. At this point, every claim on which the ITC's 945 remedial orders are based has been found invalid by the PTAB.

On May 30, 2017 and June 2, 2017, Arista filed emergency motions with the ITC seeking suspension of the ITC orders pending completion of any appeals of the PTAB decisions. On June 12, 2017, Cisco filed a brief in response objecting to any suspension of the ITC orders, while the staff attorney from the Office of Unfair Importation Investigations ("OUII"), a neutral third party representing the interests of the public in ITC investigations, also filed a brief in support of the requested suspension.

On July 20, 2017, the ITC denied Arista's motion to suspend the ITC orders. Arista is deeply disappointed in the ITC's decision in light of the PTAB's invalidity findings for the '577 and '668 patents. This decision unjustly harms Arista and our customers, represents an unfortunate departure from precedent and from the core premise of the AIA and its inter partes review proceedings and raises highly troubling questions for any future respondents in ITC cases seeking to use *inter partes* review to protect themselves against the assertion of invalid patents.

Indeed, until this litigation, Cisco had been an outspoken proponent of the PTAB's role as the "expert agency" in weeding out "bad patents that should never have been granted." As Cisco expressed to the Senate Judiciary Committee in 2015, the PTAB process was intended to avoid this very issue - "the bizarre situation in which the PTO announces tentative determinations that particular patents are invalid at the same time a court is considering injunctive relief on the basis of findings of validity and infringement of the very same patents."

We will be filing an appeal to the Federal Circuit seeking an immediate stay of the remedial orders. Arista has also been working on modifying its products to address the ITC Orders. Arista intends to release these modified products as soon as practicable and work with customers on their qualification and deployment. Arista will also seek appropriate regulatory approvals for these modified products.

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 is built by third parties such as Broadcom and Intel into their merchant silicon switching chips used by Arista, Cisco, and many others. Arista is simply a downstream user of these merchant silicon switching chips and has no involvement in their development, design or manufacturing.

And despite Cisco's claims that this case is simply about protecting its intellectual property, Cisco has never once sought to enforce these patents against the actual suppliers of this allegedly infringing technology or against any of the other network switch vendors that use the exact same chips or that similarly implement this technology into their own chips. And given that it applied for this patent in 1998, and the patent expires in June 2018, Cisco has had ample time to do so.

Copyright Case

On May 10, 2017, Judge Freeman denied Cisco's motion to vacate the jury's verdict in Arista's favor in the copyright trial held last December in the Northern District of California. In that trial, the jury found that Arista was not liable for copyright infringement related to Arista's use of a relatively small number of commands and other elements similar to those found in Cisco's Command Line Interface (CLI) or for infringement of 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. After an intense two-week trial, we were very pleased to see the jury reach a verdict in our favor. We believe that this decision was critical not only to Arista but to the entire industry to promote multi-vendor interoperability and innovation. This view is shared by many of our peers whose testimony confirmed Arista's defenses.

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
	'853	Won
	'668	Invalid
	'875	Won
	'211	Won
Copyright Trial	'492	Won
	'886	Won
	'526	Won
	CLI	Won

**The table represents the current status of each of the IP claims. Please note that '537 redesign continues to be litigated in the ITC enforcement action. Although the '577 and '668 patents have been found to be invalid in the PTAB, the ITC has determined that it will not suspend its remedial orders pending appeal of those decisions. Additionally, the patent decisions in the 944 and 945 Investigations and the PTAB, as well as the patent and copyright decisions in the copyright trial, remain subject to appeal in the Federal Circuit and re-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 FUD 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. The recent invalidation of two patents and relevant claims reveals our firm commitment to innovating and supporting our customers.

We cannot thank you all enough for your unwavering support.

Sincerely,

The Arista Leadership Team