

Arista Legal Update

Update on Copyright Case and ITC Investigations
February 15, 2018

In light of our commitment to provide full transparency to our readers, we would like to keep you up-to-date on developments in our litigation with Cisco. Most recently, on February 14, 2018, the Federal Circuit affirmed the PTAB's finding that the '668 patent is invalid and did so only days after the oral argument.

Quick Recap

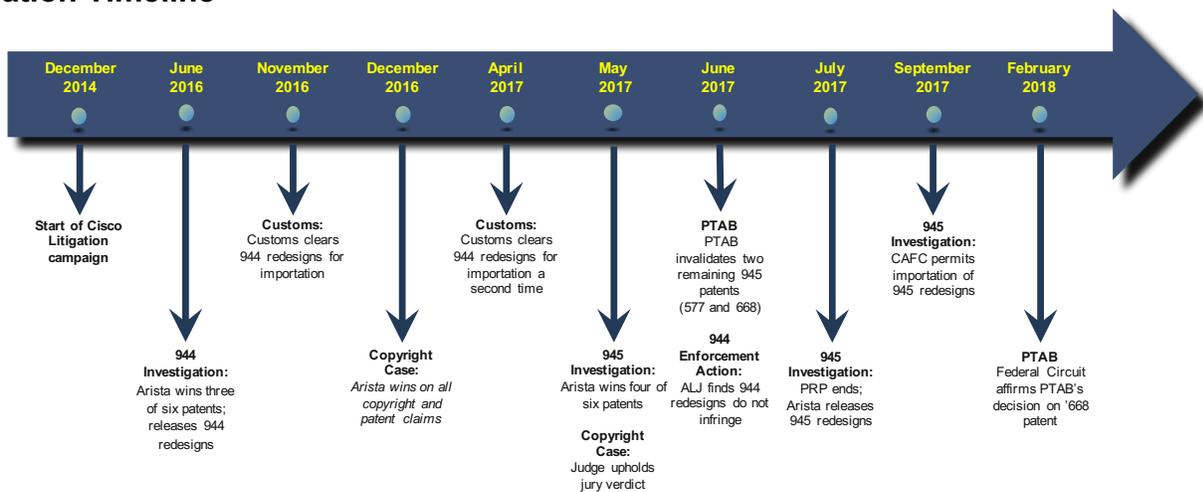
Cisco's legal attack started in December 2014 and spans two separate District Court cases and two ITC investigations. Taken together, Cisco has alleged in these actions that Arista's products infringe 14 patents—many asserted against widely implemented networking features—and copyrights asserted against 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, including:

- Favorable decisions on 12 of the 14 asserted patents
- A favorable jury verdict on Cisco's copyright claims, which was upheld by the judge on May 10, 2017
- Two decisions by the Patent and Trial Appeal Board (the "PTAB") finding invalid that every claim of the two patents we were found to infringe in the 945 investigation
- A Federal Circuit affirmation of the PTAB decision finding the asserted claims of the '668 patent 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 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. 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.

Patent Trial and Appeal Board

In tandem with the ITC investigations, in May and June 2017, the PTAB issued final written decisions finding that every claim of the '577 and '668 patents that the ITC found we infringed is invalid. Cisco appealed these decisions to the Court of Appeals for the Federal Circuit, the appeals court with jurisdiction over patent matters.

Promptly upon receiving the PTAB final written decisions, Arista filed emergency motions with the ITC seeking a suspension or stay of the ITC orders pending completion of Cisco's appeals. The ITC denied those motions. Arista also filed a motion with the Federal Circuit, seeking similar relief. On September 22, 2017, the Federal Circuit declined to entirely stay the ITC's orders, but ordered the ITC to permit Arista to import redesigned products unless and until the ITC determined that those redesigned products infringed.

Arista also requested that the Federal Circuit expedite its review of the PTAB decisions, and the Federal Circuit granted Arista's request, expediting both briefing and oral argument. The oral argument on both PTAB 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 are awaiting the Federal Circuit's decision on the '577 patent, and we are confident that it will affirm that decision as well.

ITC Modification Proceedings

At Cisco's request, on October 27, 2017, the ITC instituted a modification proceeding to determine whether the ITC's remedial orders for the 945 Investigation should be modified to cover our redesigned products. The ITC has delegated the proceeding to an Administrative Law Judge and has ordered that the ALJ issue a recommended determination in five months (March 27, 2018), with the option to extend for an additional month (April 27, 2018) on a showing of good cause. The ALJ's recommended determination will be subject to Commission review, after which, the Commission will issue a final determination. The Commission has not set a target date for its final determination.

The ALJ held a hearing on January 19, 2018. During that hearing, Cisco dropped all infringement allegations against Arista's AlgoMatch feature, which it had previously accused of infringing the '577 patent. The parties now await the ALJ's initial determination.

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.

And 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 has 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 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.

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 removed central elements of the technologies found to have infringed the patent claims.

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.

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. Following Cisco's complaints regarding the nature of CBP's traditional review proceedings, CBP decided to revoke its prior ruling in order 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 April 7, 2017, 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 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 ("EID"). In the EID, 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. Following the EID, the 944 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 EID in its entirety. The Commission also remanded certain issues from the EID to the ALJ to provide additional analysis and conclusions. The new target date for the completion of the enforcement action is September 4, 2018.

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.

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/Redesigned Feature
	'853	Won
	'668	Invalid/Redesigned Feature
	'875	Won
	'211	Won
	'492	Won
Copyright Trial	'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 and the CAFC have each determined that it will not stay the ITC 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 and 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.

We cannot thank you all enough for your unwavering support.
Sincerely,

The Arista Leadership Team