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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

CISCO SYSTEMS, INC.,

Plaintiff,

v.

ARISTA NETWORKS, INC.,

Defendant.

Case No. 4:14-cv-5343

**JOINT STATUS REPORT
PURSUANT TO DKT. NO. 35**

Judge: Honorable Jeffrey S. White

Action Filed: December 5, 2014

Trial Date: None Set

1 Pursuant to the Court’s March 6 Order (Dkt. No 35), Plaintiff Cisco Systems, Inc. (“Cisco”)
2 and Defendant Arista Networks, Inc. (“Arista”, collectively “the parties”) submit this Joint Status
3 Report.

4 **I. PROCEDURAL OVERVIEW AND CURRENT STATUS**

5 On December 5, 2014, Cisco filed this action, alleging that Arista infringes twelve Cisco
6 patents: U.S. patent numbers 6,377,577 (“the ’577 patent”); 7,023,853 (“the ’853 patent”); 7,340,597
7 (“the ’597 patent”); 7,162,537 (“the ’537 patent”); 8,051,211 (“the ’211 patent”); 8,356,296 (“the ’296
8 patent”); 7,290,164 (“the ’164 patent”); 6,741,592 (“the ’592 patent”); 7,200,145 (“the ’145 patent”);
9 7,460,492 (“the ’492 patent”); 7,061,875 (“the ’875 patent”); and 7,224,668 (“the ’668 patent”). On
10 December 19, 2014, Cisco filed two Complaints with the United States International Trade
11 Commission (“ITC” or “Commission”), under Section 337 of the Tariff Act of 1930, requesting that
12 the ITC institute and conduct investigations into Cisco’s allegations that Arista infringes those twelve
13 patents. On January 21, 2015, the Commission instituted ITC Investigation No. 337-TA-944 (“944
14 Investigation”), which involved the ’597, ’537, ’296, ’164, ’592, and ’145 patents, and ITC
15 Investigation No. 337-TA-945 (“945 Investigation”), which involved the ’577, ’853, ’211, ’492, ’875,
16 and ’668 patents.

17 On January 29, 2015, Arista moved to stay this action pending resolution of the ITC
18 proceedings pursuant to 28 U.S.C. § 1659(a). Cisco did not oppose that request, and on February 10,
19 2015, the Court stayed this action “until the determination of the United States International Trade
20 Commission (‘ITC’) in Investigation Nos. 337-TA-3045 [sic] and 337-TA-3046 [sic], becomes final.”
21 Order No. 34 at 1.

22 **The ITC’s 944 Investigation**

23 On June 23, 2016, the Commission issued its Final Determination in the 944 Investigation,
24 finding a violation of Section 337 due to Arista’s infringement of the ’537, ’592, and ’145 patents, and
25 no violation by Arista with respect to the ’597 and ’164 patents.¹ Based on that determination, the
26 Commission issued a Limited Exclusion Order (an “LEO”) and Cease-and-Desist Order (“CDO”)
27

28 ¹ Cisco withdrew its infringement allegations for the ’296 patent on August 20, 2015.

1 prohibiting, *inter alia*, Arista from importing its products found to infringe the '537, '592, and '145
2 patents.

3 All appeals of the Final Determination issued in connection with the 944 Investigation have
4 now concluded. On August 22, 2016, Cisco appealed to the Federal Circuit to review the
5 Commission's determination of non-infringement of the '597 patent. On August 24, 2016, Arista
6 appealed to the Federal Circuit to review the Commission's construction of particular terms of the
7 '537 patent, and whether the Commission exceeded its authority by issuing remedial orders applying
8 to the importation of switch "components." The Federal Circuit held oral argument on June 6, 2017.
9 On September 27, 2017, the Federal Circuit issued a sealed opinion, affirming the Commission's Final
10 Determination. The Federal Circuit issued its mandate on November 20, 2017, and Arista did not file
11 for a petition for writ of certiorari with the Supreme Court.

12 **The ITC's 944E Enforcement Proceeding**

13 On August 26, 2016, Cisco petitioned the Commission to institute an Enforcement Proceeding
14 with the ITC ("944E Enforcement Proceeding") based on Cisco's claim that Arista's allegedly
15 "redesigned" products found to infringe the '537 patent are still infringing and in violation of the CDO
16 issued in the 944 Investigation. The '537 patent is the only patent involved in that proceeding. The
17 ALJ issued his initial determination in the 944E Enforcement Proceeding on June 20, 2017, finding
18 no violation of the CDO. Cisco petitioned the Commission to review that initial determination, and
19 on August 4, 2017, the Commission remanded the 944E Enforcement Proceeding for further
20 proceedings. The ALJ held a hearing on February 1, 2018, and the ALJ is scheduled to issue a final
21 remand enforcement initial determination no later than June 4, 2018. 8/25/17 Order No. 55 (EDIS
22 No. 621226) at 3.

23 **The ITC's 945 Investigation**

24 On May 4, 2017, the Commission issued its Final Determination in the 945 Investigation,
25 finding a violation of Section 337 due to Arista's infringement of the '577 and '668 patents, and no
26 violation by Arista with respect to the '853, '875, '492, or '211 patents. Based on that determination,
27 the Commission issued an LEO and CDO prohibiting, *inter alia*, Arista from importing its products
28 found to infringe the '577 and '668 patents.

1 On July 3, 2017, Cisco appealed to the Federal Circuit to review the Commission's
2 determinations as to the '211, '853, '492, and '875 patents, but ultimately briefed only the '211 patent.
3 On July 21, 2017, Arista appealed the Federal Circuit to review Commission's determination of
4 infringement and no invalidity of the '577 and '668 patents. The appeal of the 945 Investigation is
5 currently ongoing. Only the '577, '668, and '211 patents are currently at issue in that appeal, and
6 neither Cisco nor Arista has contested any of the ITC's determinations made with respect to the '853,
7 '492, or '875 patents in its briefing to the Federal Circuit.

8 **The ITC's 945 Modification Proceeding**

9 On October 27, 2017, the Commission instituted a modification proceeding ("945 Modification
10 Proceeding") to determine whether Arista's allegedly "redesigned" products infringe the '577 and
11 '668 patents in violation of the Commission's Orders. The '577 and '668 patents are the only patents
12 involved in this proceeding. A hearing was held on January 26, 2018 and the ALJ's recommended
13 determination ("RD") in connection with the 945 Modification Proceeding was scheduled to be issued
14 by no later than April 27, 2018.² Based on a recent Federal Circuit affirmance of a Patent Trial and
15 Appeal Board ("PTAB") decision finding all of the '668 patent claims asserted in that proceeding (but
16 not all claims of the '668 patent) unpatentable, Arista moved the ALJ presiding over the 945
17 Modification Proceeding to stay those proceedings insofar as they relate to the '668 patent pending
18 resolution of any further appeal by Cisco; Cisco did not oppose that request. Arista also moved the
19 ALJ to suspend enforcement of any '668 patent-related portions of a modified order resulting from
20 the Modification Proceeding, and moved the ALJ, the Commission, and the Federal Circuit to stay
21 enforcement of the LEO and CDO as it relates to the '668 patent. On Friday, March 23, 2018 the ALJ
22 denied Arista's motion to stay, finding that the existing LEO and CDO would be rescinded with respect
23 to the '668 patent if the decision could be made at the ALJ's level, but that it is instead the
24 Commission's decision to make. On March 23, 2018, Cisco filed a response taking no position on
25 Arista's stay motion to the Commission. Cisco is reviewing Arista's motion before the Federal Circuit,
26 and its deadline for responding to that motion has not yet passed. Also on Friday, March 23, 2018,

27
28 ² The Commission set the due date for the RD to March 27, 2018 (10/27/17 Commission Order, EDIS No. 626954),
but this date could have been extended by one month for good cause.

1 the Initial Determination in the 945 Modification Proceeding issued, finding a violation as to the '668
 2 patent and recommending that the LEO and CDO be modified to include the redesigned switches with
 3 respect to that patent, while indicating that the claims of that patent asserted in that proceeding are
 4 likely to be canceled due to the pending appeals described above. The Initial Determination found no
 5 violation as to the '577 patent and recommends that the currently enforced LEO and CDO issued
 6 against Arista be rescinded or modified to remove references to the '577 patent.

7 Summary of ITC Proceedings

8 The below table summarizes the status of each of the ITC proceedings, by patent, for each of
 9 the patents asserted in this action.

Count	Patent No.	Current Status
I	6,377,577	ITC proceeding pending before ALJ (945 Modification Proceeding) and Federal Circuit (945 Investigation appeal)
II	7,023,853	No pending ITC proceeding (945 Investigation)
III	7,340,597	No pending ITC proceeding (944 Investigation)
IV	7,162,537	ITC proceeding pending before ALJ (944E Enforcement Proceeding)
V	8,051,211	ITC proceeding pending before Federal Circuit (945 Investigation)
VI	8,356,296	No pending ITC proceeding (944 Investigation)
VII	7,290,164	No pending ITC proceeding (944 Investigation)
VIII	6,741,592	No pending ITC proceeding (944 Investigation)
IX	7,200,145	No pending ITC proceeding (944 Investigation)
X	7,460,492	No pending ITC proceeding (945 Investigation)
XI	7,061,875	No pending ITC proceeding (945 Investigation)
XII	7,224,668	ITC proceeding pending before ALJ (945 Modification Proceeding) and Federal Circuit (945 Investigation appeal) per above, Arista has filed certain motions to stay with respect to the '668 patent and Cisco has responded as described above

21 Summary of Relevant Inter Partes Review Proceedings

22 While the aforementioned Commission proceedings were underway, Arista filed petitions for
 23 *inter partes* review challenging certain claims of eight patents Cisco asserts in this case. The PTAB
 24 has issued final decisions – either denying institution or final written decisions (“FWD”) – in each
 25 proceeding. However, five Federal Circuit appeals from those final decisions (five appeals filed by
 26 Arista and three cross-appeals filed by Cisco) remain pending. The table below summarizes the status
 27 of each remaining IPR proceeding, by patent:

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