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Jury Clears Arista In Cisco's \$335M IP Infringement Suit

Share us on: By [Dorothy Atkins](#)

Law360, San Jose (December 14, 2016, 3:05 PM EST) -- A California federal jury handed Arista Networks Inc. victory Wednesday in a \$335 million copyright and patent infringement suit brought by [Cisco Systems Inc.](#), finding Arista's popular Ethernet switches are shielded from infringement claims by the scènes à faire doctrine.



The ruling brings to a close Cisco's December 2014 lawsuit contending that Arista had infringed its copyrights and a patent by using its command-line interface to develop its switches. (AP)

The ruling brings to a close Cisco's December 2014 lawsuit contending that Arista infringed its copyrights and a patent by using its command-line interface to develop its switches. Cisco asked the jury to bar Arista from infringing and award it millions in damages.

As the trial [kicked off](#) on Nov. 28, Cisco told the eight-member jury that Arista “slavishly” copied its patented command-line interface to create its switch products, then marketed those products using Cisco’s name.

Arista, however, countered that the command lines are protected from infringement claims under the doctrines of fair use, merger and *scènes à faire*. The *scènes à faire* doctrine denies infringement protection for a copyrighted work if its expression necessarily flows from a commonplace idea.

Although Arista switches were built to recognize some of the same commands that Cisco uses, Cisco executives promoted its interface as the industry standard, and other companies at the time were using it, Arista said.

During the two-week trial, Cisco and Arista’s former and current executives and engineers [took the stand](#), including [former Cisco CEO John Chambers](#), testifying on the history of Cisco’s user interface, how Arista used Cisco’s commands to develop its switches and the marketing tactics of both companies.

The trial closed with [testimony from John R. Black](#), an associate computer science professor at the University of Colorado who was hired by Arista. Black testified that Arista’s switches are shielded from infringement claims by fair use, saying Arista transformed Cisco’s command lines by programming computers to run a series of command lines automatically, as opposed to typing them.

The commands are akin to the labels on knobs on stereo receivers, Black said. While the knobs might look the same and have the same labeling, what happens inside is what truly matters, he said.

“Maybe the commands look the same thing to type them, but when you’re using a computer to issue them it doesn’t really matter what they are,” Black said.

During [closing arguments](#) on Monday, Arista’s attorney Robert A. Van Nest of [Keker & Van Nest LLP](#) said Cisco’s interface uses simple, two-word phrases that are not creative and the interface is 40-year-old technology that comes from legacy systems.

The commands are also not original works, and Cisco engineers were explicitly told not to be creative when they were developing them, he said. Therefore, the commands are uncopyrightable under the fair use, merger and *scènes à faire* doctrines.

Van Nest said Cisco made a business decision to abandon its copyrights when it chose not to stop companies from using its interface and added that Cisco hasn’t proven patent infringement “by a mile.”

He also said it is in the public’s interest for the court to find Cisco’s command lines are protected from infringement claims, because such innovative technology is exactly what the fair use doctrine is intended to protect.

“Cisco is trying to change all the rules around technology and innovation,” he said.

On Wednesday, the jury sided with Arista, clearing it of copyright and patent infringement claims and finding that Cisco’s command lines are not protected from claims under the fair use and merger doctrines but are protected under *scènes à faire*. The jury also found that Cisco did not misuse or abandon its copyrights and that Arista did not infringe Cisco’s technical manuals.

The jury instructions had said that to be protected under the *scènes à faire* doctrine, Arista must show that at the time Cisco created its user interfaces — not at the time of any copying — external factors other than Cisco’s creativity dictated that Cisco select, arrange, organize and design its original features in the manner it did.

“The doctrine depends on the circumstances presented to the creator at the time of creation, not the circumstances presented to the copier at the time it copied,” the jury instruction said.

Marc Taxay, senior vice president and general counsel of Arista, said in a statement that the verdict represents an important victory “not only for Arista, but for the entire industry.”

A Cisco representative said the company disagreed with the verdict and is reviewing its details to determine its options for post-trial motions and appeal.

The patent-in-suit is U.S. Patent Number [7,047,526](#).

Cisco is represented by Kathleen Sullivan, Sean S. Pak, Amy H. Candido, John M. Neukom and David Nelson of [Quinn Emanuel Urquhart & Sullivan LLP](#), Steven Cherny, Adam R. Alper and Michael W. De Vries of [Kirkland & Ellis LLP](#) and John M. [Desmarais](#) of Desmarais LLP.

Arista is represented by Robert A. Van Nest, Brian L. Ferrall, David Silbert and Michael S. Kwun of Keker & Van Nest LLP and Susan Creighton, Scott A. Sher, Jonathan M. Jacobson, Chul Pak and David H. Reichenberg of [Wilson Sonsini Goodrich & Rosati PC](#).

The case is Cisco Systems Inc. v. Arista Networks Inc., case number [5:14-cv-05344](#), in the U.S. District Court for the Northern District of California.

--Editing by Brian Baresch.

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Court

California Northern

Nature of Suit

Patent

Judge

[Beth Labson Freeman](#)

Date Filed

December 5, 2014

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