

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN NETWORK DEVICES,
RELATED SOFTWARE AND
COMPONENTS THEREOF (II)

Inv. No. 337-TA-945

**ORDER NO. 54: INITIAL DETERMINATION EXTENDING
TARGET DATES**

(March 29, 2016)

The final Initial Determination (“ID”) on violation in this Investigation was scheduled to be filed by a target date of no later than April 26, 2016. (Order No. 5, Initial Determination Setting Target Date; and Order Setting Case Management Conference and Procedural Schedule, at 3.). For the reasons set forth below, I am hereby extending the target date of the ID in this Investigation to August 26, 2016. Accordingly, the target date is also extended to December 26, 2016.

A Markman hearing was held on June 15-16, 2015. On November 6, 2015, a Markman Order issued. (Order No. 45.). The hearing in this Investigation was held from November 6, 2015 through November 20, 2015. (Order No. 7.). There was an additional day of testimony taken on December 9, 2015 that affected substantively two of the patents. (Order No. 51.). Accordingly, the procedural schedule was modified and deadlines for submitting the final briefing with regard to the two patents at issue was extended to January 11, 2016 in order that the December 9, 2015 testimony could be incorporated into final briefing. (*See* Doc. Id. Nos. 572184, 572180 and 572173.). Moreover, despite a much earlier deadline, trial exhibits

continued to be filed on EDIS through February 10, 2016 even though I had great assistance from other staff.

I regret the necessity of extending the ID on violation target date in this Investigation. I do not enjoy extending my own deadlines especially since I understand the impact this has on the parties. The Commission's policy is to conduct expeditious proceedings to the extent practicable. *See* 19 C.F.R. § 210.2. The "parties, their attorneys or other representatives, and the presiding administrative law judge shall make every effort at each stage of the investigation...to avoid delay." (*Id.*). I am aware the parties and their attorneys are anxious for this matter to be resolved. For other reasons, at the start of this Investigation, Respondent, Arista Networks, Inc. ("Respondent") requested initially that a 22 month target date be set. (Motion Docket No. 945-002.).¹ ALJ Pender denied Respondent's request. (Order No. 5 at 2.). However, extenuating circumstances have now made extended target dates in this Investigation unavoidable.

Some of my work has been impeded during the pendency of these proceedings because I have been either short of staff or without any staff. My administrative assistant was on prolonged leave during much of my handling of this Investigation. Exhibits in this case were filed late, through February 10, 2016, despite the great assistance of other staff. During most of this Investigation, I had one lawyer to assist me. Since approximately mid-January 2016, I have had no lawyers of my own to assist me although I have had excellent assistance intermittently from another attorney in the Office of the Administrative Law Judges ("OALJ") when she has been available. I completed a hiring process and selected two attorneys. Start dates have been held up in hiring/security procedures over which I have had no control.

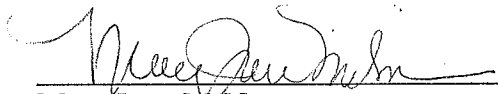
In addition to the ID on violation in this Investigation, I have two other initial IDs on

¹ / This Investigation was initially assigned to Administrative Law Judge ("ALJ") Thomas Pender. (Notice, Doc. Id. No. 549675.).

violation due: on May 26, 2016 and June 17, 2016. I hope to keep these two IDs on schedule. I have calculated the new target dates in this Investigation bearing in mind my schedule, possible settlements, summary determinations and assuming I have staff starting very soon. Since the evidentiary hearing in this case, I also have held an evidentiary hearing in Investigation No. 337-957. I have a Markman hearing scheduled for May 24, 2016 in Investigation No. 337-979, and an evidentiary hearing scheduled for June 6, 2016-June 13, 2016 in Investigation No. 337-966. If I can issue the ID on violation in this case before August 26, 2016, I will make every effort to do so.

This Initial Determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

SO ORDERED.



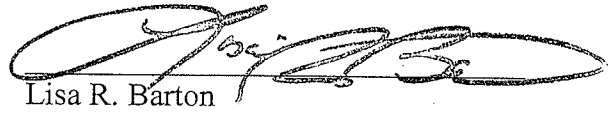
Mary Joan McNamara
Administrative Law Judge

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the Commission Investigative Attorney, Monica Bhattacharyya, Esq., and upon the following parties as indicated on **March 29, 2016**.



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