

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

CISCO SYSTEMS, INC.,
Appellant

v.

INTERNATIONAL TRADE COMMISSION,
Appellee

ARISTA NETWORKS, INC.,
Intervenor

ARISTA NETWORKS, INC.,
Appellant

v.

INTERNATIONAL TRADE COMMISSION,
Appellee

CISCO SYSTEMS, INC.,
Intervenor

2017-2289, -2351

Appeals from the United States International Trade
Commission in Investigation No. 337-TA-945.

ON MOTION

Before TARANTO, CHEN, and HUGHES, *Circuit Judges*.

TARANTO, *Circuit Judge*.

O R D E R

Arista Networks, Inc. moves to stay enforcement of the International Trade Commission's Limited Exclusion Order and the ITC's Cease and Desist Order and for an interim stay of the orders pending resolution of its motion. The ITC and Cisco Systems, Inc. oppose. Arista replies.

Arista separately moves unopposed to withdraw Exhibits Four and Six from its motion to stay enforcement of the ITC's orders as well as any references in its motion to those exhibits.

Unified Patents Inc., HP Inc., Hewlett Packard Enterprise Co., VIZIO Inc., Alliance of Automobile Manufacturers, Association of Global Automakers, and Cable Technology Laboratories, Inc. move for leave to file a brief *amici curiae* in support of neither party. The ITC opposes.

Rule 18(a)(2) of the Federal Rules of Appellate Procedure authorizes this court to grant a stay pending appeal. Our determination is governed by four factors, the first two of which are the most critical: (1) whether the movant has made a strong showing of likelihood of success on the merits; (2) whether the movant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

Without prejudicing the ultimate disposition of this case by a merits panel, we conclude based upon the papers submitted that Arista has not established the right to a stay pending appeal.

Accordingly,

IT IS ORDERED THAT:

(1) Arista's motion to stay the ITC's Limited Exclusion Order and the ITC's Cease and Desist Order and for an interim stay of the orders pending resolution of its motion is denied, subject to the condition that the product redesign on which Cisco relies to deny irreparable harm must be permitted to enter the country, without being blocked by the Commission order under review in this case, unless and until Commission proceedings are initiated and completed to produce an enforceable determination that such a redesign is barred by the order here under review or by a new or amended order. Any such determination may itself be reviewed, if challenged, in this court.

(2) Arista's motion to withdraw Exhibits Four and Six from its motion is granted.

(3) The motion for leave to file a brief *amici curiae* is granted.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court