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January 12, 2022

VIA EDIS

The Honorable Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

Re: *Certain Networking Devices, Computers, and Components Thereof and Systems Containing the Same,* Investigation No. 337-TA-____

Dear Secretary Barton:

Enclosed for filing on behalf of Proven Networks, LLC are documents in support of Complainant's request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, concerning certain power inverters and converters, vehicles containing the same, and components thereof. A request for confidential treatment of Confidential Exhibits **3C, 4C, and 9C** is also being submitted.

In accordance with the Commission's Temporary Change to the Filing Procedures dated March 16, 2020 ("Temporary Procedures"), and the guidance provided on the Commission's "COVID-19-RELATED QUESTIONS" webpage, Complainant submits the following documents for filing via EDIS:

1. A Statement on the Public Interest with respect to the remedial orders Complainant seeks in the Complaint, pursuant to Commission Rule 210.8(b).

2. One (1) electronic copy of Complainant's Verified Complaint pursuant to Commission Rule 210.8(a)(l)(i);

3. One (1) electronic copy of the non-confidential exhibits to the Complaint, pursuant to Commission Rule 210.8(a)(l)(i);

4. One (1) electronic copy of the confidential exhibits to the Complaint, pursuant to Commission Rules 201.6(c) and 210.8(a)(l)(ii);

5. One (1) electronic certified copy of United States Patent No. 8,687,573, included with the Complaint as Exhibit **1**, pursuant to Commission Rule 210.12(a)(9)(i);

6. One (1) electronic certified copy of the U.S. Patent and Trademark Office prosecution histories for United States Patent No. 8,687,573, included with the Complaint as Appendix **A1**, pursuant to Commission Rule 210.12(C)(1);

7. One (1) electronic certified copy of the Assignment Records for United States Patent No. 8,687,573, included with the Complaint as Exhibit 2, pursuant to Commission Rule 210.12(a)(9)(ii);

8. One (1) electronic copy of each technical reference cited in the prosecution history for United States Patent No. 8,687,573, included with the Complaint as Appendix **A2**, pursuant to Commission Rule 210.12(c)(2); and

9. A letter and certification requesting confidential treatment for the information contained in Confidential Exhibits **3C, 4C, and 9C** to the Complaint, pursuant to Commission Rules 201.6(b) and 210.5(d). Exhibit 4C is fully redacted, as it is completely confidential.

Thank you for your attention to this matter. Please contact me should you have any question concerning this submission.

Respectfully submitted,

Jonathan D. Link

Enclosures

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500 E Street, SW, Room 112
Washington, DC 20436

Re: *Certain Networking Devices, Computers, and Components Thereof and Systems Containing the Same,* Investigation No. 337-TA-____

Dear Secretary Barton:

Complainant Proven Networks, LLC by counsel hereby requests, pursuant to 19 C.F.R. §§ 210.5 and 201.6, confidential treatment of the confidential business information contained in Confidential Exhibits **3C, 4C,** and **9C** to Complainant's Complaint transmitted herewith.

Confidential Exhibit **3C** discloses the identity of Complainant's licensees to the Asserted Patents. Confidential Exhibit **4C** is the confidential license agreement between Complainant and it's licensee Extreme Networks, Inc. Confidential Exhibit **9C** is confidential domestic industry financial information.

The information described above qualifies as confidential information pursuant to 19 C.F.R. § 201.6 because:

a. it is not available to the public;

b. unauthorized disclosure of such information could cause substantial harm to the competitive position of Complainant and its licensees; and

c. its disclosure could impair the Commission's ability to obtain information necessary to perform its statutory function.

Please contact me should you have any question concerning this submission.

Respectfully submitted,

Jonathan D. Link

THE UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of	§	
	§	
CERTAIN NETWORKING DEVICES,	§	
COMPUTERS, AND COMPONENTS	§	Investigation No. 337-TA-_____
THEREOF AND SYSTEMS	§	
CONTAINING THE SAME	§	

STATEMENT REGARDING THE PUBLIC INTEREST

Pursuant to Commission Rule 210.8(b), 19 C.F.R. § 210.8(b), Complainant Proven Networks, LLC ("Proven" or "Complainant") respectfully submits this Statement Regarding the Public Interest. Proven seeks a limited exclusion order excluding from entry into the United States certain networking devices, computers, and components thereof (the "Accused Products") that infringe one or more of the Asserted Claims of United States Patent No. 8,687,573 ("'573 patent" or the "Asserted Patent"). Proven also seeks cease and desist orders prohibiting Netapp, Inc. ("NetApp" or the "Proposed Respondent"), its subsidiaries, related companies, and agents from engaging in the importation, sale for importation, marketing and/or advertising, distribution, offering for sale, sale, use after importation, sale after importation, or other transfer within the United States of certain networking devices, computers, and components thereof that infringe one or more claims of the Asserted Patent. Exclusion of such products from the United States will not have an adverse effect on the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

Exclusion of the Proposed Respondent's infringing networking devices, computers, and components thereof would not "deprive the public of products necessary for some important health or welfare need." *Spansion, Inc. v. U.S. Int'l Trade Comm'n*, 629 F.3d l33l, 1360 (Fed. Cir. 2010).

Further, because Proven's licensees supply the market for networking systems and products, consumers would not face any substantial shortage of like or competitive products in the United States. Thus, this Investigation does not present an instance where a compelling public interest would supersede entry of the requested remedial orders.

I. Explanation of How the Articles Potentially Subject to the Remedial Orders Are Used in The United States

The products at issue in this investigation include networking devices, computers, and components that are commonly used by consumers in commercial applications. These networking devices and products comprise switches, gateways, and other networking products that mange the flow of traffic and bandwidth over a network. The products at issue in this investigation are generally used by the end consumers for business and communication purposes.

II. Identification of Any Public Health, Safety, or Welfare Concerns Relating to the Requested Remedial Orders

Issuance of the requested remedial orders would have no adverse effect on the public health, safety, or welfare in the United States. In general, concerns about a negative impact on public health, safety, or welfare have arisen in cases involving pharmaceuticals, essential equipment for medical treatment, or green technology products, such as hybrid cars and solar panels. *See Spansion*, 629 F.3d at 1360. For example, the Commission has previously concluded that access to essential medical equipment used to treat burn victims is a significant public interest consideration because the equipment "provide[s] benefits unavailable from any other device or method of treatment." *Certain Fluidized Supporting Apparatus & Components Thereof*, Inv. No. 337-TA-182/ 188, USITC Pub. 1667, Comm'n Op. at 23-25 (Oct. 1984). None of these concerns are present here. And as discussed further below, the requested remedial orders will not significantly impact the overall market for networking products in the United States.

Accordingly, access to the accused products does not implicate any meaningful public health, safety, or welfare concern. Indeed, the requested relief serves the public interest because, as previously recognized by the Commission, there is a strong public interest in protecting intellectual property rights. *See, e.g.*, *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm'n Op. at 136–37 (June 19, 2007). This strong interest in protecting Proven's intellectual property rights and the domestic industry set forth in the Complaint far outweighs any hypothetical adverse effect on the public.

III. Identification of Like or Directly Competitive Articles That Complainant, Its Licensees, or Third Parties Make Which Could Replace the Subject Article If They Were to Be Excluded

Switches, gateways, and other networking products that mange the flow of traffic and bandwidth over a network and their associated components are available from multiple sources with which Proposed Respondent competes. As an initial matter, Proven's licensees and non-Respondent third parties adequately supply the market and will continue to do so irrespective of whether the requested remedial orders are issued. Moreover, Proposed Respondent is a small subset of the suppliers of networking systems and products in the United States market, and Proposed Respondent's products do not contain any unique health or safety-related features. No public interest concerns exist where the market contains an adequate supply of competitive or substitute products for those subject to a remedial order. *See, e.g.*, *Certain Lens Fitted Film Packages*, Inv. No. 337-TA-406, Comm'n Op. at 18 (June 28, 1999). The networking systems and products market is highly competitive, and numerous companies, including Proven's licensees, have the capacity to replace Proposed Respondent's volume of production of infringing products for the United States market without delay.

IV. Indication of Whether Complainant, Complainant's Licensees, and/or Third Party Suppliers Have the Capacity to Replace the Volume of Articles Subject to the Requested Remedial Orders in a Commercially Reasonable Time

Networking devices, computers, and components thereof are currently available in the United States including products from Proven's licensees and non-Respondent third parties. Proven's licensees and the non-Respondent third parties have the capacity to increase domestic production of networking products should demand require. In addition, non-infringing networking products will also continue to be available from third-party suppliers. Consequently, consumers would have access to competitive non-infringing products from Proven's licensees and non-Respondent third parties in amounts sufficient to meet the demand should the accused products be excluded from the United States.

V. Statement of How the Requested Remedial Order Would Impact Consumers

Consumers will have available to them in the United States marketplace a wide variety of networking devices and computers including those supplied by Proven's licensees, as well as other competitive non-infringing networking products, if the accused products are excluded from the United States. In view of the availability of commercial alternatives to the accused products, the exclusion of the infringing networking devices, computers, and components thereof will not negatively impact consumers in the United States. Rather, the requested relief will serve the public interest by enforcing United States intellectual-property rights. Precluding the Proposed Respondent from importing and selling their infringing networking devices, computers, and components thereof will benefit the public interest by protecting innovators, such as Proven and its licensees, who invest domestically to research and develop new networking technology. Permitting unlicensed suppliers like the Proposed Respondent to import and sell infringing networking devices, computers, and components thereof would not only devalue the licenses Proven granted to other companies, but would also undermine future investment in similar

technology. *See Certain Display Controllers and Products Containing Same*, Inv. No. 337-TA-491/481, Comm'n Op. at 66 (Feb. 2005).

Dated: **January 12, 2022**

Respectfully submitted,

/s/ Jonathan Link

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Attorneys for Complainant Proven Networks, LLC

THE UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of	§	
	§	
CERTAIN NETWORKING DEVICES, COMPUTERS, AND COMPONENTS THEREOF AND SYSTEMS CONTAINING THE SAME	§	Investigation No. 337-TA-_____

COMPLAINT UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED

COMPLAINANT:
PROVEN NETWORKS, LLC
12424 Wilshire Blvd, 12th Floor
Los Angeles, CA 90025
Phone Number: (310) 826-7474

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PROPOSED RESPONDENT:

NETAPP, INC.
3060 Olsen Drive Ave
San Jose, CA 95128
Phone: (408) 822-6000

TABLE OF CONTENTS

Exhibits

Exhibit Number	Description
1	Certified Copy of U.S. Patent No. 8,687,573
2	Certified Assignment at Reel/Frame 025612/0531 ('573)
3C	Complainant's Identification of License Agreements
4C	Extreme Networks License Agreement
5	Infringement Claim Chart for U.S. Patent No. 8,687,573 to NetApp (NetApp Storage Systems and Clustered Data ONTAP operating systems)
6	NetApp Datasheet for NetApp FAS8000 Series
7	NetApp Storage Performance Primer for Clustered Data ONTAP 8.2
8	Images of NetApp's FAS8020 control board and the USB flash boot media board showing the hardware which runs the NetApp Accused Products is assembled in HU (Hungary) and then imported into the U.S.
9C	Confidential Domestic Industry Financial Information
10	Domestic Industry Claim Chart for U.S. Patent No. 8,687,573 (Extreme XOS Operating System)

Appendices

Appendix Letter	Description
A1	Certified copy and three additional copies of the prosecution history of U.S. Patent No. 8,687,573
A2	References cited in the prosecution history of U.S. Patent No. 8,687,573

I. INTRODUCTION

1. This Amended Complaint is filed by Complainant Proven Networks, LLC ("Proven" or "Complainant") pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337").

2. Complainant brings this action to remedy violations of Section 337 arising from the unlawful and unauthorized importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation, of certain networking and storage devices, computers, and components thereof (the "Accused Products") that infringe one or more claims of United States Patent No. 8,687,573 (the "'573 Patent).

3. Complainant asserts that the Accused Products infringe at least the following claims of Asserted Patents in violation of Section 337(a)(1)(B)(i) and 35 U.S.C. §§ 271(a), (b), and/or (c), either literally or under the doctrine of equivalents:

Asserted Patent	Asserted Claim
U.S. Patent No. 8,687,573 ("'573 Patent")	1-37

4. The management and optimization of data flow in networking systems is essential in modern society. Not only do computers, smartphones, and home automation devices operating via the Internet generate data traffic, but basic technology such as voice services and file transfers do as well. The enormous increase in multimedia content, such as videos, has greatly increased data traffic without proportional increases in data bandwidth. One problem caused by the large consumption of high-bandwidth multimedia content is that more important data, including relatively low-bandwidth services such as voice services and data transfers (e.g., financial data), can suffer due to lack of bandwidth, resulting in dropped calls and incomplete file transfers.

Optimization of data traffic in data networks has become even more important in order to navigate the bandwidth limitations.

5. Another modern trend is greater use of cloud-based data services. One advantage is that companies can reduce their capital expenses by migrating their enterprise data to these data centers. However, data centers charge their enterprise customers by both the amount of data stored and the amount of data accessed—where the costs vary among different data storage providers depending on bandwidth, storage demand, and even time of day. The ability to manage the storage of data based on parameters such as data size and storage duration, is essential to manage the associated cost.

6. The Asserted Patent originated from telecommunications and wireless networking research conducted by Alcatel-Lucent. The inventors were keenly aware of the increase of high-bandwidth applications such as video, especially in wireless and mobile networks, and sought to develop technology to maintain acceptable performance for as many users, for as long as possible, under varying and adverse data traffic conditions. Further, the inventors sought to managing the costs associated with the storage and access of such data in cloud-based data services.

7. For example, the ’573 Patent relates to systems and methods of allocating resources within a communications system.

8. The proposed Respondent is NetApp, Inc (“NetApp” or “Respondent”).

9. On information and belief, and as set forth in this Complaint, the Respondent imports into the United States, sells for importation into the United States, and/or sells in the United States after importation Accused Products that directly infringe the Asserted Patent.

10. Complainant seeks, as relief for the unfair acts of Respondent, the following: (i) an investigation into Respondent’s violations; (ii) a public hearing; (iii) a limited exclusion order barring from entry into the United States the Accused Products that infringe the Asserted Patent;

(iv) permanent cease and desists order prohibiting the importation, sale, sale for importation, offer for sale, and soliciting of the sale in the United States, of the Accused Products that infringe the Asserted Patent; (v) the imposition of a bond on importation and sales of infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j); and (vi) such other relief as the Commission deems proper.

11. A domestic industry exists as the result of activities and investments in the United States related to products that practice the Asserted Patent. These activities include the current and ongoing significant and substantial domestic investments in plant, equipment, labor, and capital of licensee Extreme Networks, Inc.

II. THE PARTIES

A. Complainant

12. Complainant Proven Networks, LLC ("Proven") is a Limited Liability Company, having its principal place of business at 12424 Wilshire Blvd., 12th Fl., Los Angeles, CA 90025. Proven is the sole owner by assignment of all right, title, and interest in each Asserted Patent.

13. One of Proven's domestic licensees is Extreme Networks, Inc. ("Extreme"), located at 6480 Via Del Oro, San Jose, CA 95119. Extreme has a non-exclusive license to practice the Asserted Patent, which relates generally to allocating resources within a communication system.

B. Respondent

1. NetApp

14. NetApp, Inc. ("NetApp") is a publicly traded corporation organized under the laws of the State of Delaware. Its principal place of business is at 3060 Olsen Drive Ave San Jose, CA 95128.

15. On information and belief, NetApp designs and manufactures and/or has manufactured on its behalf abroad certain Accused Products that are then sold for importation into

the United States, imported into the United States, and/or sold within the United States after importation. *See* Ex. 8.

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE

16. Pursuant to 19 C.F.R. § 210.12(a)(12), the categories of products accused of infringing the Asserted Patent are switches, gateways, and other networking products that mange the flow of traffic and bandwidth over a network, as well as components involved therewith. Respondents infringe the Asserted Patent through the sale for importation into the United States, importation into the United States, and/or sale within the United States after importation of such Accused Products. Exemplary identifications of such infringing products are provided in Section V below.

17. The management and optimization of data flow in networking systems is essential in modern society. Not only do computers, smartphones, and home automation devices operating via the Internet generate data traffic, but basic technology such as voice services and file transfers do as well. The enormous increase in multimedia content, such as videos, has greatly increased data traffic without proportional increases in data bandwidth. One problem caused by the large consumption of high-bandwidth multimedia content is that more important data, including relatively low-bandwidth services such as voice services and data transfers (e.g., financial data), can suffer due to lack of bandwidth, resulting in dropped calls and incomplete file transfers. Optimization of data traffic in data networks has become even more important in order to navigate the bandwidth limitations.

18. Another modern trend is greater use of cloud-based data services. One advantage is that companies can reduce their capital expenses by migrating their enterprise data to these data centers. However, data centers charge their enterprise customers by both the amount of data stored and the amount of data accessed—where the costs vary among different data storage providers

depending on bandwidth, storage demand, and even time of day. The ability to manage the storage of data based on parameters such as data size and storage duration, is essential to manage the associated cost

19. The Asserted Patent originated from telecommunications and wireless networking research from Alcatel-Lucent. The inventors were keenly aware of the increase of high-bandwidth applications such as video, especially in wireless and mobile networks, and sought to develop technology to maintain acceptable performance for as many users, for as long as possible, under varying and adverse data traffic conditions. Further, the inventors sought to managing the costs associated with the storage and access of such data in cloud-based data services. The Asserted Patent covers different aspects networking technology. For example, the '573 Patent relates to systems and methods of allocating resources within a communications system.

IV. THE ASSERTED PATENT

20. The Asserted Patent relates to improvements in networking technology, particularly switches, routers, and other networking equipment to facilitate increasing traffic and routing demands through efficient allocation of networking resources and paths.

21. The identification, ownership, non-technical description, foreign counterparts, and licensees for each Asserted Patent are identified below.

A. U.S. Patent No. 8,687,573

1. Identification of the Patent and Ownership

22. The '573 Patent, titled "Allocating Resources Within Communication System," issued on April 1, 2014, naming Daniela Laselva and Jeroen Wigard as the inventor. Ex. 1 ('573 Patent) at 1. The '573 Patent is based on U.S. Patent Application No. 12/994,964 filed May 30, 2008, which is a continuation of U.S. Patent Application No. 11/750,430 (now U.S. Patent No. 7,903,092) filed May 18, 2007, which claims priority to U.S. Provisional Application No.

60/803,138 filed May 25, 2006. *Id.* at 1; *id.* at 1:7–11. The expiration date of the '573 Patent is April 19, 2029. A certified copy of the '573 Patent is attached as Exhibit 2. This complaint is accompanied by a certified copy of the prosecution history for the '573 Patent, three additional copies of the prosecution history, and four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history for the '573 Patent. *See* Appx. A1 and A2.

23. Proven owns by assignment all rights, title, and interest in the '573 Patent. *See* Ex. 2.

2. Nontechnical Description of the Patent

24. The '573 Patent relates to allocating resources in a communications system. A communication system is a facility which facilitates communication between two or more entities such as communication devices, network entities and other nodes. A communication system may be provided by one or more interconnected networks and the elements thereof and a plurality of communication devices, for example user devices. Systems existing prior to the '573 Patent implemented service differentiation to ensure that services such as voice were prioritized over browsing. However, there was a desire for both user differentiation and service differentiation so that operators may offer different levels of subscriptions. The inventions of the '573 Patent provide a system which can allocate resources based upon priorities for services at different user levels, or at least provide a useful alternative.

3. Foreign Counterparts of the Patent

25. The following foreign patents and patent applications correspond to the '573 Patent: (a) PCT Application No. PCT/EP2008/056720 (published as WO2009143900 A1, active); Chinese Patent Application No. 200880129506 (published as CN 102047745 A, abandoned); (d) EP Patent

Application No. 08760307 (published as EP 2292063 A1, withdrawn); and (e) Korean Patent Application No. 20107029648 (published as KR 20110030506 and KR101287551 B1, active).

26. To the best of Proven's knowledge, information, and belief, there are no other foreign patents issued or foreign patent applications pending, filed, abandoned, withdrawn, or rejected corresponding to the '573 Patent.

4. Licensees

27. Entities that have taken a license to the '573 Patent from Proven are identified in Confidential Exhibit **3C**.

V. UNLAWFUL AND UNFAIR ACTS OF THE RESPONDENTS

28. Proven asserts that Respondents directly infringe, literally or under the doctrine of equivalents, actively induce the infringement of, and/or contributorily infringe at least the following claims of the Asserted Patents, in violation of 35 U.S.C. §§ 271(a), (b), and/or (c):

Respondent	Claim Type	'573 Patent
NetApp	Apparatus	20-37
	Method	1-19

A. NetApp

1. Infringement of the '573 Patent

29. On information and belief, NetApp imports, sells for importation, and/or sells within the United States after importation certain Accused Products (the "NetApp Accused Products"), such as the NetApp FAS90xx series, FAS80xx series, FAS 500f, FAS20xx series running Clustered Data ONTAP 8.2 and 8.3 operating systems as well as ONTAP 9.0, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, and 9.9.1, that directly infringe, literally and/or under the doctrine of equivalents, at least claims 1 and 20 of the '573 Patent. The NetApp Accused Products satisfy all claim limitations of claims 1 and 20 of the '573 Patent at the time of importation into the United States.

30. NetApp also knowingly and intentionally induces infringement of at least claims 1 and 20 of the ’573 Patent in violation of 35 U.S.C. § 271(b). Through the filing and service of this Complaint, and also through the filing and service of the related District Court complaint referenced in Section VIII, NetApp has had knowledge of the ’573 Patent and the infringing nature of the NetApp Accused Products. Despite this knowledge of the ’573 Patent, NetApp continues to actively encourage and instruct its customers and end users (for example, through its user manuals and online instruction materials on its website) to use NetApp in ways that directly infringe the ’573 Patent. NetApp does so knowing and intending that its customers and end users will commit these infringing acts. NetApp also continues to import, sell for importation, and/or sell in the United States the NetApp Accused Products, despite its knowledge of the ’573 Patent, thereby specifically intending for and inducing its customers to infringe the ’573 Patent through the customers’ normal and customary use of the NetApp Accused Products.

31. A claim chart comparing independent claims 1 and 20 of the ’573 Patent to a representative NetApp Accused Product, devices running the NetApp ONTAP operating system versions 8.2, 8.3, 9.0, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, and 9.9.1 and including photographs and drawings where applicable, is attached as Exhibit 5.

VI. SPECIFIC INSTANCES OF IMPORTATION

A. NetApp

32. On information and belief, the NetApp Accused Products are manufactured outside of the United States and sold for importation into the United States, imported into the United States, and/or sold within the United States after importation. For example, Exhibit 8 includes images of the FAS 8020 controller board as well as USB flash boot media board that is attached to the controller board showing that the hardware which runs the NetApp Accused Products is built in Singapore and then shipped to San Jose, California in the United States. Moreover, Complainant

has purchased a NETAPP FAS 8020 controller board in Los Angeles, California, which contains a mark that is was "assembled in HU [Hungaria]." Images of this product and the receipt for its purchase are attached as Exhibit 8.

VII. CLASSIFICATION OF THE ACCUSED PRODUCTS UNDER THE HARMONIZED TARIFF SCHEDULE

33. The Accused Products are classified under at least the following subheading of the Harmonized Tariff Schedule of the United States: 8517.62.00. These classifications are exemplary in nature and not intended to restrict the scope of any exclusion order or other remedy ordered by the Commission.

VIII. RELATED LITIGATION

34. Complainant Proven has filed district court complaint against the Proposed Respondent asserting the claims of the '573 Patent in the United States District Court for the Western District of Texas.

35. The '573 Patent was previously involved in *Certain Networking Devices, Computers, and Components Thereof*, 337-TA-1275, which has been terminated due to settlement.

IX. DOMESTIC INDUSTRY

36. A domestic industry exists under Section 1337(a)(2) and 1337(a)(3). In particular, a domestic industry exists as a result of Extreme Networks, Inc. ("Extreme") (a Proven licensee) significant employment of labor and capital with respect to Extreme products that practice and are protected by the Asserted Patents. 19 U.S.C. § 1337(a)(3)(A)-(B). Pursuant to Commission Rule 210.12(a)(9)(iv), Complainant has attached as Confidential Exhibit **4C** a copy of the Extreme license agreement.

A. Technical Prong

37. Extreme makes significant and substantial investments in labor and capital with respect to products that practice one or more claims of the Asserted Patent (the "Domestic Industry Products"), including the following exemplary Extreme product: Extreme XOS Operating System.

38. Exhibit 10 is a claim chart demonstrating that the Extreme Networks Domestic Industry Products practice the Asserted Patent. The following table identifies the exemplary Extreme Network Domestic Industry Product with the corresponding Asserted Patent and exemplary Asserted Claim.

Asserted Patent	Exemplary Practiced Claims	Exemplary Domestic Industry Product
8,687,573	1	Extreme XOS Operating System

39. Exemplary claim charts showing how the Extreme Domestic Industry Products practice exemplary claims of the '573 Patent are attached as Exhibit 10. These claim charts provide a basis for the domestic industry relating to the '573 Patent.

B. Economic Prong

40. Extreme has in the United States, with respect to the Domestic Industry Products, significant employment of labor and capital directly attributable and allocated to the Extreme Domestic Industry Products. Extreme is fully licensed to practice each of the Asserted Patents. *See* Confidential Exhibit 6C. Within the United States, Extreme designs, develops, manufactures, sells, and supports products that use technology claimed by the Asserted Patents.

41. Extreme Networks, Inc., is a leader in providing software-driven networking solutions for enterprise, data center, and service provider customers. Providing a combined end-to-end solution from the enterprise edge to the cloud, Extreme designs, develops, and manufactures wired and wireless network infrastructure equipment and develops the software for network

management, policy, analytics, security, and access controls. Extreme services more than 30,000 customers around the world, including over half of the Fortune 50, building networks that drive competitive advantage, accelerate innovation, and improve the human experience.

42. As of June 30, 2019, Extreme's research and development organization consisted of 982 employees and Extreme's research and development efforts were conducted in several domestic locations, including San Jose, California, Morrisville, North Carolina; and Salem, New Hampshire. Extreme's research and development expenses in fiscal years 2019, 2018 and 2017 were $210.1 million, $183.9 million, and $93.7 million, respectively.

43. Extreme has invested and continue to invest significant sums in domestic labor and capital relating to the Domestic Industry Products. A detailed accounting and allocation Extreme's significant domestic expenditures on labor and capital specifically related to the domestic industry product are set forth in Confidential Exhibit **9C**.

X. RELIEF REQUESTED

44. Respondents have infringed and will continue to infringe the Asserted Patents as specified in Sections V and VI above, unless the Commission prohibits the importation into and sale within the United States after importation of the Accused Products.

45. Accordingly, Complainant respectfully requests that the United States International Trade Commission:

a) institute an immediate investigation pursuant to Section 337(b)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, into Respondents' violations of Section 337 arising from the sale for importation into the United States, importation, and/or sale within the United States after importation of certain networking devices, computers, and components thereof that infringe the Asserted Patents;

b) schedule and conduct a hearing, pursuant to Section 337(c), for purposes of receiving evidence and hearing argument concerning whether Respondents have violated Section 337 and, following the hearing, determine that Respondents have violated Section 337;

c) issue a permanent limited exclusion order, pursuant to Section 337(d) and (f)(1), excluding from entry into the United States Respondents' networking devices, computers, and components thereof that infringe one or more claims of the Asserted Patents, including, without limitation, the specific Accused Products identified in this Complaint and the exhibits hereto;

d) issue permanent orders, pursuant to Section 337(f), directing Respondents to cease and desist from importing, selling, selling for importation, offering for sale, using, demonstrating, promoting, marketing, and/or advertising in the United States Respondents' networking devices, computers, and components thereof that infringe one or more claims of the Asserted Patents, including, without limitation, the specific Accused Products identified in this Complaint and the exhibits hereto;

e) impose a bond on importation and sales of infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j); and

f) grant all such other and further relief as it deems appropriate under the law, based upon the facts complained of herein and as determined by the investigation.

Dated: January 12, 2022

Respectfully submitted,

/s/ Jonathan D. Link

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Attorneys for Complainant Proven Networks, LLC

THE UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of	§	
	§	
CERTAIN NETWORKING DEVICES,	§	
COMPUTERS, AND COMPONENTS	§	Investigation No. 337-TA-_____
THEREOF AND SYSTEMS	§	
CONTAINING THE SAME	§	

I, Larry Russ, declare, in accordance with 19 C.F.R. § 210.12(a)(1), as follows:

1. I am a Member of Proven Networks, LLC and I am duly authorized to sign this Complaint;

2. I have read the Complaint and am aware of its contents;

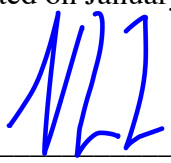
3. The Complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;

4. To the best of my knowledge, information and belief founded upon reasonable inquiry, claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

5. The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 11, 2022



Larry Russ
Proven Networks, LLC