

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AEROHIVE NETWORKS, INC.,
Petitioner,

v.

CHRIMAR SYSTEMS, INC.,
Patent Owner.

Case IPR2016-01758
Patent 9,019,838 B2

Before KARL D. EASTHOM, GREGG I. ANDERSON, and
ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Aerohive Networks, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1, 2, 7, 26, 29, 38, 40, 47, 55, and 69 of U.S. Patent No. 9,019,838 B2 (Ex. 1005, “the ’838 patent”). Petitioner also filed a Motion for Joinder (Paper 3, “Motion” or “Mot.”) requesting that Petitioner be joined to the *inter partes* review in IPR2016-00573 (“the ’573 IPR”). Chrimar Systems, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition and a Response and Opposition to the Motion for Joinder (Paper 9, “Prelim. Resp.”). For the reasons set forth below, the Petition is not timely under 35 U.S.C. § 315(b). Accordingly, the Petition is denied.

II. ANALYSIS

Under Section 315(b), an *inter partes* review “may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” Petitioner does not dispute that the Petition was filed more than one year after Petitioner was served with a complaint alleging infringement of the ’838 patent. Pet. 3; Prelim. Resp. 4–5; Ex. 2090; Ex. 2091. Petitioner instead relies on its request to join the ’573 IPR to avoid the time limit in Section 315(b). Pet. 3 (“The time limit of 35 U.S.C. § 315(b) . . . does not apply here because Aerohive has moved for joinder . . . to the ’573 review within one month of the ’573 review’s institution on August 10, 2016.”).

Petitioner confirmed during a conference call with the Board that the Petition is barred under Section 315(b), unless Petitioner is joined to the ’573 IPR. Paper 7, 2. The ’573 IPR, however, has been terminated. *AMX*,

IPR2016-01758
Patent 9,019,838 B2

LLC v. Chrimar Sys., Inc., Case IPR2016-00573, slip op. at 3 (PTAB Nov. 9, 2016) (Paper 25). Thus, there no longer is a pending proceeding in the '573 IPR for Petitioner to join. As a result, Petitioner's request to join the '573 IPR is moot, and the Petition is not timely under Section 315(b).

III. CONCLUSION

The Motion for Joinder is dismissed as moot because the '573 IPR already has been terminated, and the Petition is denied because it was not filed within the time period set forth in Section 315(b).

IV. ORDER

In consideration of the foregoing, it is hereby
ORDERED that the Motion for Joinder is *dismissed* as moot; and
FURTHER ORDERED that the Petition is *denied*, and no trial is
instituted.

IPR2016-01758
Patent 9,019,838 B2

PETITIONER:

Matthew A. Argenti
Michael T. Rosato
WILSON SONSINI GOODRICH & ROSATI
margenti@wsgr.com
mrosato@wsgr.com

PATENT OWNER:

Justin S. Cohen
THOMPSON & KNIGHT LLP
justin.cohen@tklaw.com

Richard W. Hoffman
REISING ETHINGTON PC
hoffmann@reising.com