

United States Patent and Trademark Office

Before the Patent Trial and Appeal Board

Aerohive Networks, Inc.,
Petitioner

v.

Chrimar Systems, Inc.
Patent Owner

Case No. IPR2016-01758
U.S. Patent No. 9,019,838

**PATENT OWNER'S PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107(A) AND**

**PATENT OWNER'S RESPONSE AND OPPOSITION TO
AEROHIVE'S MOTION FOR JOINDER**

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Case No. IPR2016-001758

U.S. Patent No. 9,019,838

PATENT OWNER'S EXHIBIT LIST

Chrimar Exhibit No.	Exhibit Description	Date Filed
2089	Transcript of Telephone Proceedings, November 1, 2016, IPR2016-01758, IPR2016-01758, IPR2016-01758	11/30/2016
2090	Complaint in <i>Chrimar Systems Inc. et al., v. Dell, Inc. and Aerohive Networks, Inc.</i> , Case No. 6:15-cv-0639 (E.D. Tex.)	12/14/2016
2091	Proof of service of summons on Aerohive Networks Inc. in <i>Chrimar Systems Inc., et al. v. Dell, Inc. and Aerohive Networks, Inc.</i> , Case No. 6:15-cv-0639 (E.D. Tex.)	12/14/2016

Introduction and Summary of Arguments

Patent Owner Chrimar Systems, Inc. (“Chrimar” or “Patent Owner”) files this combined Patent Owner’s Preliminary Response pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.107(a) and Patent Owner’s Response and Opposition to Aerohive’s Motion for Joinder.

This Preliminary Response raises preliminary or threshold issues only, and does not attempt to make a full response to all arguments or issues raised in the Petition by Aerohive Networks, Inc. (“Aerohive” or “Petitioner”). If a trial is instituted in this case, Patent Owner reserves its right to present additional evidence and to raise additional factual and legal arguments in addition to the arguments presented in this Preliminary Response. Patent Owner’s decision at this time to forgo contesting or rebutting any contention or argument made in the Petition is not an indication of Patent Owner’s agreement with the contention or argument, nor should it be deemed an admission by Patent Owner as to the truth or accuracy of such contention or argument. Patent Owner reserves all rights to provide a full response to the Petition in a Patent Owner Response, in accordance with the applicable federal statutes and rules of the Patent Trial and Appeal Board. *See* 35 U.S.C. § 316(a)(8) and 37 C.F.R. § 42.120.

Summary of Argument

Aerohive does not dispute that it filed this petition more than one year after it was served with a complaint for infringement of U.S. Patent No. 9,019,838 (the “’838 Patent”). For this reason, Aerohive’s IPR petition must be denied, and the Board may not institute a trial in this case. *See* 35 U.S.C. §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 . . . is served with a complaint alleging infringement of the patent”).

Aerohive’s Motion for Joinder also should be denied. With the motion, Aerohive seeks to join Case IPR2016-00573 (the “-573 IPR”), which was filed by petitioner AMX. But the -573 IPR has been fully terminated with respect to all parties, and has been closed. Aerohive cannot join a proceeding that has been fully terminated. Aerohive’s motion for joinder should be denied for other reasons, but Chrimar will not brief those reasons here given the termination of the -573 IPR case to which Aerohive is seeking to be joined.

Aerohive has admitted that if its motion for joinder is not granted, this petition is time barred. Because the motion for joinder must be denied given the

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