

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AEROHIVE NETWORKS, INC.,  
Petitioner,

v.

CHRIMAR SYSTEMS, INC.,  
Patent Owner.

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Case IPR2016-01759  
Patent 8,902,760 B2

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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, 31, 37, 58, 59, 69, 72, 73, 106, 112, 134, 142, and 145 of U.S. Patent No. 8,902,760 B2 (Ex. 1001, “the ’760 patent”). Petitioner also filed a Motion for Joinder (Paper 3, “Motion” or “Mot.”) requesting that Petitioner be joined to the *inter partes* review in IPR2016-00574 (“the ’574 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 ’760 patent. Pet. 3–4; Prelim. Resp. 5–6; Ex. 2090; Ex. 2091. Petitioner instead relies on its request to join the ’574 IPR to avoid the time limit in Section 315(b). Pet. 3–4 (“The time limit of 35 U.S.C. § 315(b) . . . does not apply here because Aerohive has moved for joinder . . . to the ’574 review within one month of the ’574 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 ’574 IPR. Paper 7, 2. The ’574 IPR, however, has been terminated. *Dell*

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*Inc. v. Chrimar Sys., Inc.*, Case IPR2016-00574, slip op. at 3 (PTAB Jan. 20, 2017) (Paper 46). Thus, there no longer is a pending proceeding in the '574 IPR for Petitioner to join. As a result, Petitioner's request to join the '574 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 '574 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.

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