

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AEROHIVE NETWORKS, INC.,
Petitioner,

v.

CHRIMAR SYSTEMS, INC.,
Patent Owner.

Case IPR2016-01757
Patent 8,942,107 B2

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

ANDERSON, *Administrative Patent Judge*.

DECISION

Denying *Inter Partes* Review and
Denial of Motion for Joinder
37 C.F.R. § 42.108
37 C.F.R. § 42.122(a) and (b)

I. INTRODUCTION

Petitioner, Aerohive Networks, Inc., filed a Petition requesting *inter partes* review of claims 1, 5, 31, 43, 53, 58, 70, 72, 75, 83, 84, 103, 104, 111, 123, and 125 (“the challenged claims”) of U.S. Patent No. 8,942,107 (“the ’107 patent”) under 35 U.S.C. §§ 311-319. Paper 1 (“Pet.”). Petitioner filed a Motion for Joinder with the ’569 IPR¹ concurrently with the Petition. Paper 3 (“Motion,” or “Mot.”). Patent Owner, ChriMar Systems, Inc., submitted a Preliminary Response under 35 U.S.C. § 314 and Response and Opposition to the Motion under 37 C.F.R. § 42.107(b). Paper 9 (“Prelim. Resp.”).

Pursuant to 35 U.S.C. § 314(a), the Director may not authorize an *inter partes* review unless the information in the petition and preliminary response shows a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim. For the reasons that follow, the Board determines that the Petition was not filed timely within the statutory period of 35 U.S.C. § 315(b), and, therefore, the Board declines to institute an *inter partes* review.

II. ANALYSIS

Section 315(b) of Title 35 of the United States Code states as follows:

(b) PATENT OWNER’S ACTION.—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. The time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c).

Patent Owner contends the Petition was filed more than one year after Petitioner was served with a complaint alleging infringement of the ’107 patent and is

¹ *AMX, LLC and Dell, Inc. v. ChriMar Systems, Inc.*, IPR2016-00569.

barred by section 315(b). Prelim. Resp. 2, 5–6.

The Petition relies on joinder with the '569 IPR to avoid the bar of 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 . . . within one month of the '569 review’s institution on August 10, 2016.”) Petitioner’s position was confirmed in a conference call on November 1, 2016, where Petitioner acknowledged that, unless it was permitted to join the '569 IPR, its Petition in this proceeding would be barred under section 315(b). Paper 7, 2; *see also* Ex. 2089 (Partial Transcript of November 1, 2016, Conference Call).

The '569 IPR, however, has been terminated. '569 IPR, Paper 40. There is no longer any pending proceeding in the '569 IPR to join that would allow Petitioner to avoid the time bar of section 315(b). As a result, the Petition is barred under section 315(b).

III. CONCLUSION

Because the '569 IPR is no longer pending, Petitioner’s motion for joinder is *dismissed* as moot. As a result, the Board denies the Petition because it was not filed within the time limit imposed by section 315(b).

IV. ORDER

For the reasons given, it is

ORDERED that Petitioner’s motion for joinder is *dismissed* as moot; and

FURTHER ORDERED that the Petition challenging the patentability of claims 1, 5, 31, 43, 53, 58, 70, 72, 75, 83, 84, 103, 104, 111, 123, and 125 of U.S. Patent No. 8,942,107 B2 is *denied*.

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