

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIFIO, INC.,
Petitioner,

v.

DELPHIX CORP.,
Patent Owner.

Case IPR2015-00014
Patent 8,150,808 B2

Before HOWARD B. BLANKENSHIP, KARL D. EASTHOM, and
MINN CHUNG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

In this *inter partes* review trial, instituted pursuant to 35 U.S.C. § 314, Petitioner Actifio, Inc. (“Petitioner”) challenges the patentability of claims 1, 4–9, 15, 35, 46, 50, and 57 (the “challenged claims”) of U.S. Patent No. 8,150,808 B2 (Ex. 1001, “the ’808 patent”), owned by Delphix Corp. (“Patent Owner”). The Board has jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. With respect to the grounds instituted in this trial, we have considered the papers submitted by the parties and the evidence cited therein. For the reasons discussed below, we determine Petitioner has shown by a preponderance of the evidence that claims 1, 4–9, 15, 35, 46, 50, and 57 of the ’808 patent are unpatentable.

A. Procedural History

On October 3, 2014, Petitioner filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1, 4–9, 15, 35, 45, 46, 50, and 57 of the ’808 patent. Patent Owner filed a Preliminary Response (Paper 10, “Prelim. Resp.”). On April 16, 2015, we instituted an *inter partes* review of claims 1, 4–9, 15, 35, 46, 50, and 57 based on the following grounds of unpatentability (Paper 13, “Inst. Dec.”):

Claim(s) Challenged	Statutory Basis	Ground
1, 4–9, 35, 46, 50, and 57	§ 103(a)	Edwards, ¹ Patterson, ² and Sanders ³
15	§ 103(a)	Edwards, Patterson, Sanders, and CaraDonna ⁴

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 24, “PO Resp.”), to which Petitioner filed a Reply (Paper 33, “Pet. Reply”).⁵ Subsequently, Patent Owner moved to exclude (Paper 47, “PO Mot. to Exclude”) Exhibits 1034–1048, 1050, 1051, 1053, 1056, 1058–1061, and 1064; Petitioner opposed (Paper 54, “Pet. Exclude Opp.”); and Patent Owner replied (Paper 57, “PO Exclude Reply”). Patent Owner also filed Motions for Observation on certain cross-examination testimony of Dr. Erez Zadok (Paper 50, “Obs. Zadok”) and Louis Hernandez (Paper 48, “Obs. Hernandez”), to which Petitioner filed Responses (Paper 58 (“Obs. Resp.

¹ Edwards et al., *FlexVol: Flexible, Efficient File Volume Virtualization in WAFL*, PROCEEDINGS OF THE ANNUAL TECHNICAL USENIX CONFERENCE 129–142 (June 22–27, 2008) (“Edwards”) (Ex. 1003).

² Patterson et al., *SnapMirror®: File System Based Asynchronous Mirroring for Disaster Recovery*, PROCEEDINGS OF THE CONFERENCE ON FILE AND STORAGE TECHNOLOGIES, USENIX ASSOCIATION (January 28–30, 2002) (“Patterson”) (Ex. 1004).

³ Jawahar Lal & Roger Sanders, *DB2: Cloning a Database using NetApp FlexClone™ Technology*, Network Appliance Inc., IBM Toronto Lab, TR-3460 (Apr. 30, 2006) (“Sanders”) (Ex. 1005).

⁴ U.S. Patent No. 8,532,973 B1 (Sept. 10, 2013) (“CaraDonna”) (Ex. 1012).

⁵ Unless otherwise indicated, we refer to public (including redacted) Papers and Exhibits.

IPR2015-00014
Patent 8,150,808 B2

Zadok”) and Paper 56 (“Obs. Resp. Hernandez”), respectively). Patent Owner also filed a Paper identifying allegedly untimely evidence and evidence and arguments beyond the scope of Petitioner’s Reply. Paper 59 (“Exclude Pet. Reply Evid.”).

A combined oral hearing in this proceeding and related Cases IPR2015-00016, IPR2015-00019, IPR2015-00034, IPR2015-00025, IPR2015-00026, IPR2015-00050, IPR2015-00052, and IPR2015-00128 was held on January 14, 2016. A transcript of the hearing is included in the record as Paper 69 (“Tr.”).

B. Related Proceedings

According to Petitioner, the ’808 patent is the subject of the following pending patent infringement case: *Delphix Corp. v. Actifio, Inc.*, No. 5:13-cv-04613-BLF (N.D. Cal.). Pet. 2. In related proceedings before the Board, we instituted *inter partes* reviews of various claims of the ’808 patent in Cases IPR2015-00016, IPR2015-00019, and IPR2015-00034. Additionally, we instituted *inter partes* reviews of claims of U.S. Patent No. 8,161,077 B2 in Cases IPR2015-00025 and IPR2015-00026; claims of U.S. Patent No. 8,548,944 B2 in Cases IPR2015-00050 and IPR2015-00052; claims of U.S. Patent No. 8,566,361 B2 in Cases IPR2015-00100 and IPR2015-00108; and claims of U.S. Patent No. 8,468,174 B1 in Case IPR2015-00128.⁶

⁶ Case IPR2015-00136 has been consolidated with IPR2015-00128.

II. THE '808 PATENT

A. Described Invention

The '808 patent describes a system and method to create a virtual database, which involves obtaining multiple “point-in-time” (“PIT”) copies of the database to be virtualized. *See* Ex. 1001, Abstract. In one virtual database embodiment represented by Figure 2a, “production database system 110 . . . is the source of the database being virtualized” to create virtual database 220 using virtual database files stored in database storage system 100. *Id.* at col. 6, ll. 59–65. Figure 2a of the '808 patent is reproduced below.

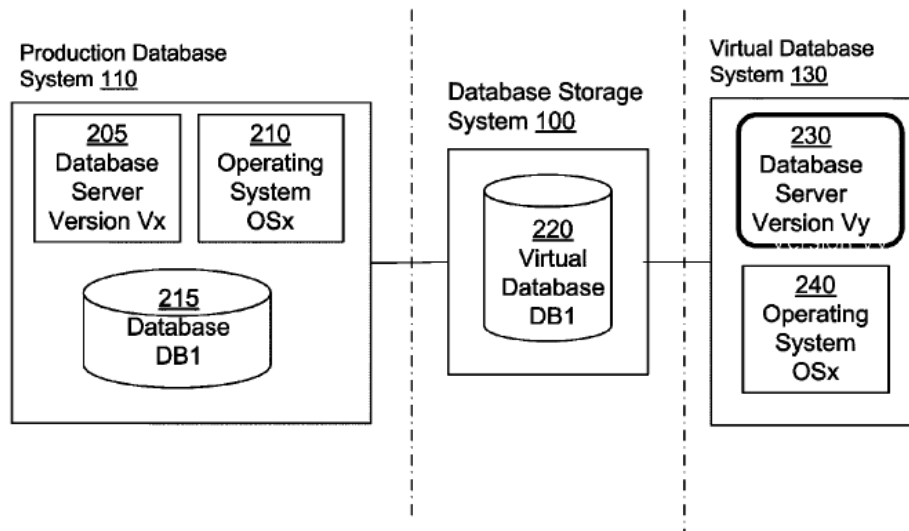


FIG. 2(a)

Figure 2a depicts production database system 110, virtual database DB1 220 stored in database storage system 100, and virtual database system 130, which accesses virtual database 220.

To virtualize a production database, the system of the '808 patent makes a first PIT copy of the production database and stores an entire set of

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