

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIFIO, INC.,
Petitioner,

v.

DELPHIX CORP.,
Patent Owner.

Case IPR2015-00016 & IPR2015-00019¹
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

¹ As explained below, we hereby consolidate the two trials for purposes of issuing this Final Written Decision.

I. INTRODUCTION

In these *inter partes* review trials, instituted pursuant to 35 U.S.C. § 314, Petitioner Actifio, Inc. (“Petitioner”) challenges the patentability of certain claims of U.S. Patent No. 8,150,808 B2 (Ex. 1101, “the ’808 patent”), owned by Delphix Corp. (“Patent Owner”), as follows: claims 3, 29, 31, 36, 53, 54, and 56 in Case IPR2015-00016 (“’016 IPR”); and claims 2, 24–27, 35, 51, and 52 in Case IPR2015-00019 (“’019 IPR”). Based on a substantial overlap of arguments and evidence presented in the two cases, to administer the proceedings more efficiently, we exercise our authority under 35 U.S.C. § 315(d) to consolidate the two proceedings for purposes of issuing one final written decision.

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 2, 3, 24–26, 29, 31, 35, 36, 51, 53, 54, and 56 of the ’808 patent are unpatentable, but has not shown by a preponderance of the evidence that claims 27 and 52 are unpatentable.

A. Procedural History

Based on Petitions (Paper 1 (“Pet.”) in the ’016 IPR; ’019 Paper 1 (“’019 Pet.”) in the ’019 IPR) filed by Petitioner, we instituted *inter partes* reviews of claims 2, 3, 24–27, 29, 31, 35, 36, 51–54, and 56 based on the

following grounds of unpatentability (Paper 11 (“Inst. Dec.”); ’019 Paper 11 (“’019 Inst. Dec.”)):

Claim(s) Challenged	Statutory Basis	Ground
2, 3, 24–26, 29, 31, 51, 53, 54, and 56	§ 103(a)	Edwards, ² Patterson, ³ and Sanders ⁴
36	§ 103(a)	Edwards, Patterson, Sanders, and Singh ⁵
2, 27, 35, 51, and 52	§ 103(a)	Edwards, Patterson, Sanders, and Fair ⁶

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 23, “PO Resp.”), to which Petitioner filed a Reply (Paper 32, “Pet. Reply”).⁷ Subsequently, Patent Owner moved to exclude (Paper 46, “PO Mot. to Exclude”) certain Exhibits; Petitioner opposed (Paper 53, “Pet.

² 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. 1103).

³ 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. 1104).

⁴ 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. 1105).

⁵ U.S. Patent No. 8,775,663 B1 (July 8, 2014) (“Singh”) (Ex. 1106).

⁶ U.S. Patent No. 7,334,095 B1 (Feb. 19, 2008) (“Fair”) (Ex. 1206).

⁷ Unless otherwise indicated, we refer to public (including redacted) Papers and Exhibits filed in IPR2015-00016.

Exclude Opp.”); and Patent Owner replied (Paper 56, “PO Exclude Reply”). Patent Owner also filed Motions for Observation on certain cross-examination testimony of Dr. Erez Zadok (Paper 49, “Obs. Zadok”) and Louis Hernandez (Paper 47, “Obs. Hernandez”), to which Petitioner filed Responses (Paper 57 (“Obs. Resp. Zadok”) and Paper 55 (“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 58 (“Exclude Pet. Reply Evid.”). The parties filed similar Papers and Exhibits in the ’019 IPR (to be designated, as indicated above, with the “’019” prefix: for example, “’019 Paper”).

A combined oral hearing in these proceedings and related Cases IPR2015-00014, 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 68 (“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 IPR2015-00014 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 IPR2015-00128.⁸

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. 1101, 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.

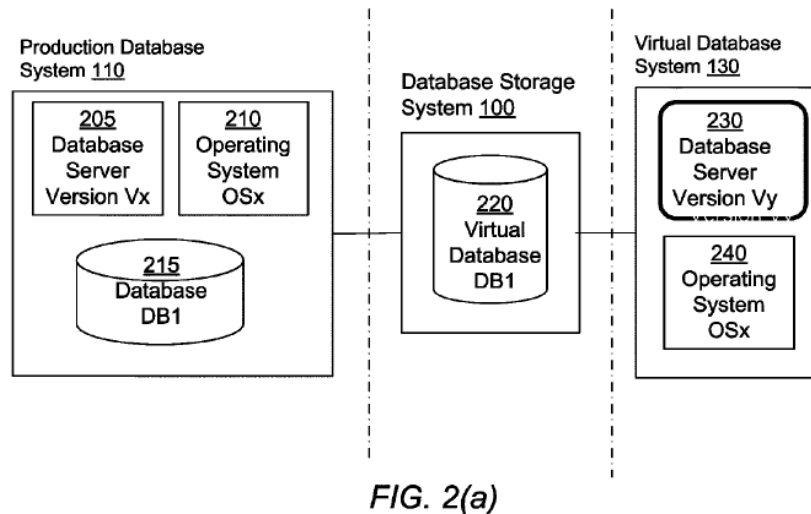


Figure 2a depicts production database system 110, virtual database DB1 220 stored in database storage system 100, and virtual database system 130,

⁸ Case IPR2015-00136 has been consolidated with IPR2015-00128.

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