

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIFIO, INC.,
Petitioner,

v.

DELPHIX CORP.,
Patent Owner.

Case IPR2015-00025 & IPR2015-00026¹
Patent 8,161,077 B2

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

EASTHOM, *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

Petitioner, Actifio, Inc., filed a request for an *inter partes* review of claims 1–7, 9, 10, 18–23, 25, and 26 of U.S. Patent No. 8,161,077 B2 (Ex. 1001, the “’077 patent”) under 35 U.S.C. §§ 311–319. Paper 1 (“Petition” or “Pet.”). The Board instituted an *inter partes* review of these claims on asserted grounds of unpatentability for obviousness. Paper 11 (“Dec. on Inst.”). In related Case IPR2015-00026 involving the same parties, pursuant to Petitioner’s *inter partes* request, the Board also instituted *inter partes* reviews of claims 8, 11–13, 17, 24, 27–29, and 33 of the ’077 patent in IPR2015-00026 (“’026 IPR”) on asserted grounds of unpatentability for obviousness. *See* ’026 Paper 11 (“’026 Dec. on Inst.”). 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. For the reasons discussed below, we determine Petitioner has shown by a preponderance of the evidence that claims 1–13, 17–29, and 33 of the ’077 patent are unpatentable.

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”).² Subsequently, Patent Owner moved to exclude (Paper 46, “PO

² Unless otherwise indicated, we refer to public (including redacted) Papers and Exhibits filed in IPR2015-00025.

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Mot. to Exclude”) certain Exhibits, Petitioner opposed (Paper 53, “Pet. Exclude Opp.”), and Patent Owner replied (Paper 56, “PO Exclude Reply”). Patent Owner also filed Motions for Observation on certain cross-examination testimony of Petitioner’s declarant, Dr. Erez Zadok (Paper 49, “Obs. Zadok”), to which Petitioner filed Responses (Paper 57 (“Obs. Resp. Zadok”) and Paper 55. 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 ’026 IPR (to be designated, as indicated above, with the “’026” prefix: for example, “’026 Paper” and “’026 Exhibit”).

A combined oral Hearing in this proceeding and related Cases IPR2015-00014, IPR2015-00016, IPR2015-00019, IPR2015-00034, 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.”).

A. Related Proceedings

The ’077 patent is the subject of *Delphix Corp. v. Actifio, Inc.*, No. 5:13-cv-04613-BLF (N.D. Cal.). In proceedings involving the same parties, the Board instituted *inter partes* reviews of U.S. Patent No. 8,150,808 B2 in Cases IPR2015-00014, IPR2015-00016, IPR2015-00019, and IPR2015-00034; U.S. Patent No. 8,548,944 B2 in Cases IPR2015-00050 and IPR2015-00052; U.S. Patent No. 8,566,361 B2 in Cases IPR2015-00100 and

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IPR2015-00108; and U.S. Patent No. 8,468,174 B1 in Case IPR2015-00128.³

B. Asserted Grounds of Unpatentability

We instituted *inter partes* review on the following grounds of unpatentability under 35 U.S.C. § 103(a):

Claims Challenged	References
1, 3, 5–7, 9, 10, 18, 20–23, 25, and 26	Sanders ⁴ and Edwards ⁵
2, 4, and 19	Sanders, Edwards, and Patel ⁶
8, 11–13, 24, and 27–29	Sanders, Edwards, and Data ONTAP Guide ⁷
17 and 33	Sanders, Edwards, Data ONTAP Guide, and Sarma ⁸

³ Case IPR2015-00136 has been consolidated with IPR2015-00128.

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. 1013).

⁵ 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. 1014).

⁶ Dipesh Patel and Generosa Litton, *Rapid Database Development and Deployment*, Network Appliance, Inc., WP-7014-0307 (Mar. 2007) (“Patel”) (Ex. 1016).

⁷ *Data ONTAP® 7.1 Data Protection*, ONLINE BACKUP AND RECOVERY GUIDE, Network Appliance, Inc. (Jan. 12, 2007) (“Data ONTAP Guide”) (’026 Ex. 1117).

⁸ Sarma et al., U.S. Patent No. 7,631,021 B2 (Dec. 8, 2009) (“Sarma”) (’026 Ex. 1118).

C. The '077 Patent

The '077 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 7:52–54. A reproduction of Figure 2a of the '077 patent follows:

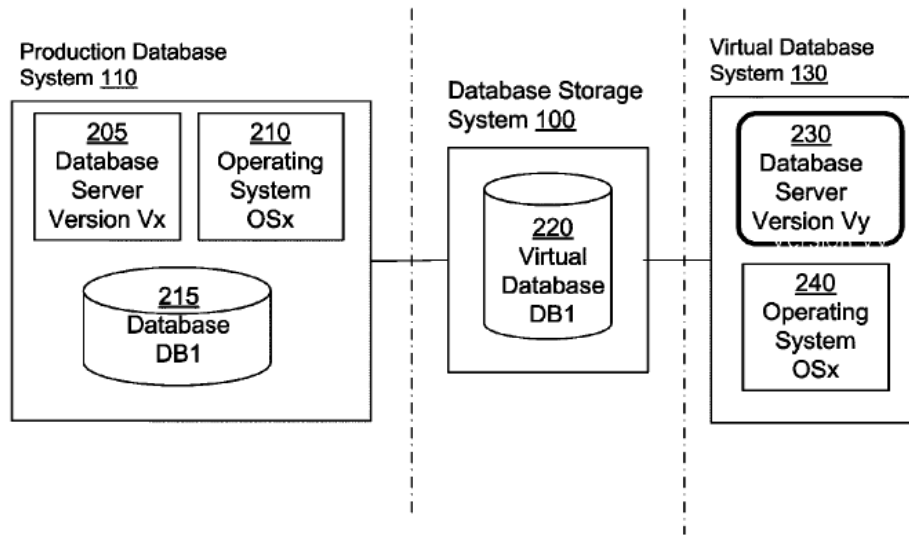


FIG. 2(a)

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

To virtualize a production database, the system of the '077 patent makes a first PIT copy of the production database and stores an entire set of database blocks representing the production database at that time in database storage system 100. *See* Ex. 1001, 19:23–24, Figs. 10–13. Subsequent PIT copies involve incremental changes and copy “only the blocks that changed

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