

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIFIO, INC.,
Petitioner,

v.

DELPHIX CORP.,
Patent Owner.

Case IPR2015-00034
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, 7–14, 17–19, 22, 23, 28, 40, 41, and 47–49 (the “challenged claims”) of U.S. Patent No. 8,150,808 B2 (Ex. 1301, “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, 7–14, 17–19, 22, 23, 28, 40, 41, and 47–49 of the ’808 patent are unpatentable.

A. Procedural History

On October 7, 2014, Petitioner filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1, 7–14, 17–19, 22, 23, 28, 40, 41, and 47–49 of the ’808 patent. Patent Owner filed a Preliminary Response (Paper 7, “Prelim. Resp.”). On April 28, 2015, we instituted an *inter partes* review of claims 1, 7–14, 17–19, 22, 23, 28, 40, 41, and 47–49 on the ground that the challenged claims are unpatentable under § 103(a) over the combination of Edwards,¹ Patterson,² and SnapManager Guide.³ Paper 8 (“Inst. Dec.”).

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. 1303).

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 20, “PO Resp.”), to which Petitioner filed a Reply (Paper 28, “Pet. Reply”).⁴ Subsequently, Patent Owner moved to exclude (Paper 42, “PO Mot. to Exclude”) Exhibits 1305, 1322, 1332–1346, 1348, 1349, 1354, 1357, 1361, 1369, and 1372; Petitioner opposed (Paper 48, “Pet. Exclude Opp.”); and Patent Owner replied (Paper 50, “PO Exclude Reply”). Patent Owner also filed Motions for Observation on certain cross-examination testimony of Dr. Erez Zadok (Paper 45, “Obs. Zadok”) and Louis Hernandez (Paper 43, “Obs. Hernandez”), to which Petitioner filed Responses (Paper 51 (“Obs. Resp. Zadok”) and Paper 49 (“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 52 (“Exclude Pet. Reply Evid.”).

A combined oral hearing in this proceeding and related Cases IPR2015-00014, IPR2015-00016, IPR2015-00019, 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

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. 1304).

³ NetApp Inc., *SnapManager® 5.0 for Microsoft® SQL Server® Installation and Administration Guide* (October 6, 2008) (“SnapManager Guide”) (Ex. 1305).

⁴ Unless otherwise indicated, we refer to public (including redacted) Papers and Exhibits.

record as Paper 62 (“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, IPR2015-00016, and IPR2015-00019. 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 IPR2015-00128.⁵

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. 1301, 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.

⁵ Case IPR2015-00136 has been consolidated with IPR2015-00128.

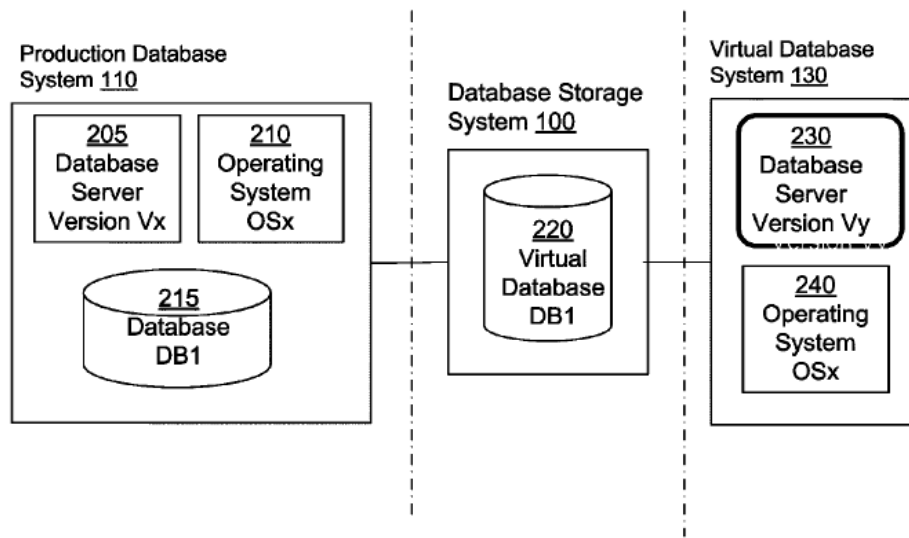


FIG. 2(a)

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 database blocks representing the production database at that time in database storage system 100. *See* Ex. 1301, col. 18, ll. 27–36; Fig. 10. Subsequent PIT copies involve incremental changes and copy “only the blocks that changed since the last PIT copy and may copy much less data compared to the first PIT copy.” *Id.* at col. 18, ll. 38–41. A virtual database (VDB) is created by creating VDB file structures comprising VDB blocks that point to different PIT database blocks. *See id.* at col. 18, ll. 27–55. Each time an updated PIT copy is received at database storage system 100 reflecting changes in the production database, the system updates the appropriate VDB

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