Trials@uspto.gov
571-272-7822

Paper 57
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIFIO, INC.,
Petitioner,

v.

DELPHIX CORP.,
Patent Owner.

Case IPR2015-00050
Patent 8,548,944 B2

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

BLANKENSHIP, *Administrative Patent Judge*.

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

I. BACKGROUND

Petitioner, Actifio, Inc., filed a request for an *inter partes* review of claims 1–6, 9–12, 17–19, and 21 of U.S. Patent No. 8,548,944 B2 (Ex. 1001, "the '944 patent") under 35 U.S.C. §§ 311–319. Paper 1 ("Petition" or "Pet."). The Board instituted an *inter partes* review of claims 1–6, 9–12, 17–19, and 21 on asserted grounds of unpatentability for obviousness. Paper 8 ("Dec. on Inst.").

Subsequent to institution, Patent Owner, Delphix Corp., filed a patent owner response. Paper 20 ("PO Resp."). Petitioner filed a reply. Paper 24 ("Pet. Reply").

Patent Owner filed a Motion to Exclude Evidence (Paper 37; "PO Mot. to Exclude"). Petitioner filed an Opposition to the Motion to Exclude (Paper 41; "Pet. Exclude Opp."), and Patent Owner filed a Reply (Paper 43; "PO Exclude Reply").

An oral hearing concerning this case and several other *inter partes* reviews in which the parties are involved was held on January 14, 2016. The record contains a transcript of the hearing (Paper 55).

The Board has jurisdiction under 35 U.S.C. § 6(c). This final written decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–6, 9–12, 17–19, and 21 of the '944 patent are unpatentable.

A. Related Proceedings

According to Petitioner, the '944 patent is involved in the lawsuit *Delphix Corp. v. Actifio, Inc.*, No. 5:13-cv-04613-BLF (N.D. Cal.). Pet. 2.

The ’944 patent is also the subject of Case IPR2015-00052 (PTAB Oct. 8, 2014).

B. The ’944 Patent

The ’944 patent relates to backing up and restoring file systems. File system backups are performed by copying information describing changes in the file system since a previous point in time. To restore data, a virtual restored file system (VRFS) structure is created corresponding to a snapshot of data copied from the file system that is stored in the backup file system. Ex. 1001, Abstract. The VRFS structure points at data blocks copied at various points in time. *Id.* at col. 1, ll. 40–42. Upon request, the backup system generates a virtual restored file system by linking a set of files to stored data blocks of the storage system and mounting the set of files on the target system. *Id.* at col. 1, ll. 57–62.

C. Illustrative Claim

Claim 1, reproduced below, is illustrative.

> 1. A method for performing backup of file systems, the method comprising:
>
> receiving data blocks for a plurality of point-in-time copies of a source file system, each point-in-time copy of the source file-system obtained by extracting data blocks from the source file-system that changed since a previous point-in-time copy was extracted, the source file system comprising at least a source file;
>
> storing the data blocks on a storage system, the stored data blocks comprising one or more versions of a data block, each version corresponding to a point-in-time copy;

receiving a request to restore information obtained from the source file system for a target system; and

responsive to receiving the request to restore, creating a virtual restored file system comprising a set of files including a restored file corresponding to the source file, the creating comprising:

linking the restored file to a plurality of the data blocks stored on the storage system, the plurality of data blocks comprising at least a first data block associated with a first point in time copy and a second data block associated with a second point in time copy, and

mounting the set of files to the target system to allow the target system to access the set of files, the mounted set of files comprising the virtual restored file system.

D. Asserted Prior Art

Fair et al., US 7,334,095 B1, issued Feb. 19, 2008 ("Fair"). Exhibit 1006.

Sanders et al., "*DB2: Cloning a Database using NetApp FlexClone™ Technology*," Apr. 30, 2006 ("Sanders"). Exhibit 1003.

Edwards et al., "*FlexVol: Flexible, Efficient File Volume Virtualization in WAFL*," June 22–27, 2008, PROCEEDINGS OF THE ANNUAL TECHNICAL USENIX CONFERENCE ("Edwards"). Exhibit 1004.

Patterson et al., "*SnapMirror®: File System Based Asynchronous Mirroring for Disaster Recovery*," PROCEEDINGS OF THE FAST 2002 CONFERENCE ON FILE AND STORAGE TECHNOLOGIES, Jan. 28–30, 2002 ("Patterson"). Exhibit 1005.

NetApp, Inc., "*Data ONTAP® 7.1 Data Protection Online Backup and Recovery Guide*," Jan. 12, 2007 ("ONTAP"). Exhibit 1007.

E. Asserted Grounds of Unpatentability

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

References	Claim(s)
Sanders, Edwards, and Patterson	1–4, 10–12, 17, 18, and 21
Sanders, Edwards, Patterson, and Fair	5, 6, and 19
Sanders, Edwards, Patterson, and ONTAP	9

II. ANALYSIS

A. Patent Owner's Motion to Exclude Evidence

In *inter partes* reviews, documents are admitted into evidence subject to an opposing party asserting objections to the evidence and moving to exclude the evidence. 37 C.F.R. § 42.64. As movant, Patent Owner has the burden of showing that an Exhibit is not admissible. 37 C.F.R. § 42.20(c).

Patent Owner moves to exclude Petitioner's Exhibits 1019, 1027, 1029, 1032, 1034–1037, 1039–1042, 1044, 1045, and 1047, all of which were filed with Petitioner's Reply. PO Mot. to Exclude 1. As Patent Owner notes, however, Petitioner does not rely on Exhibits 1034, 1035, 1036, and 1037. *Id.* at 1 n.1. Further, Petitioner has moved, unopposed, to expunge Exhibit 1027 (*see* Paper 34), which motion we hereby grant. Of the other objected-to Exhibits, except for Exhibits 1019 and 1044, we do not, and need not, consider such evidence in connection with the Reply. We determine, for reasons set forth below, that Petitioner has demonstrated by a

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