

## Actifio Wipes Out Delphix Database Patent In AIA Review

By **Kelly Knaub**

*Law360, New York (May 12, 2016, 10:35 PM ET)* -- The Patent Trial and Appeal Board on Wednesday invalidated a Delphix Corp. patent covering complex storage and database virtualization techniques in an America Invents Act review, saying rival Actifio Inc. had shown the patent can't survive in light of prior art.

In a final written decision, the three-judge panel held that 14 claims of Delphix's U.S. Patent No. 8,566,361 B2 are invalid as obvious over patents belonging to inventors referred to as Sanders, Edwards and Chapman. The PTAB instituted the inter partes review in May 2015, it said.

The ruling is one of a series of final written decisions issued by the PTAB over the last several weeks that invalidated 109 of 111 challenged claims brought by Actifio over five Delphix patents.

Latham & Watkins LLP, the firm representing Actifio, said in a statement Wednesday that it is confident that the two remaining claims are so narrow that they can't be infringed, effectively "gutting" Delphix's original patent infringement suit.

Delphix sued Actifio in California federal court in October 2013 alleging Actifio is infringing the '361 patent and four others with its data storage products, including its Copy Data Storage Platform. Actifio countersued Delphix on two patents in the case, which is stayed.

Actifio also filed a separate action against Delphix in Massachusetts federal court in August 2014, alleging Delphix is infringing two of Actifio's patents with Delphix's Agile Data Platform products and services, according to the federal court docket. That case is pending.

"The most recent patent office decision confirms that Delphix should have never filed suit in October 2013 and the claims on which it filed suit should have never issued from the patent office," Max Grant of Latham & Watkins LLP, an attorney for Actifio, told Law360.

An attorney for Delphix did not respond Thursday to a request for comment by Law360.

The patent-in-suit is U.S. Patent Number 8,566,361 B2.

Actifio is represented by Robert Steinberg, S. Giri Pathmanaban, Jonathan Link and Max Grant of Latham & Watkins LLP.

Delphix is represented by J. David Hadden and Saina S. Shamilov of Fenwick & West LLP.

The case is Actifio Inc. v. Delphix Corp., case number IPR2015-00100, before the Patent Trial and Appeal Board.

--Editing by Brian Baresch.

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