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13 Attorneys for Plaintiff,
14 DELPHIX CORP.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 DELPHIX CORP.,
19 Plaintiff,
20 v.
21 ACTIFIO, INC.,
22 Defendant.

Case No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

23 Plaintiff Delphix Corp. (“Delphix”) brings this action against Defendant Actifio, Inc.
24 (“Actifio”), and avers as follows:

NATURE OF THE ACTION

25 1. This is a civil action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and
26 2202, for the resolution of an existing patent conflict between Delphix and Actifio. The
27 underlying dispute arises under the patent laws of the United States, Title 35 of the United States
28 Code. Specifically, Actifio has asserted rights under U.S. Patent Nos. 6,959,369 (“369 patent”)
and 6,732,244 (“244 patent”) (collectively the “patents-in-suit”) based on certain ongoing
activity by Delphix, and Delphix contends that it has the right to engage in this activity without

1 license. Delphix thus seeks a declaration that it does not infringe the patents-in-suit and that the
2 patents-in-suit are invalid.

3 **PARTIES**

4 2. Delphix is a corporation organized and existing under the laws of the State of
5 Delaware, with its principal place of business at 275 Middlefield Road, Suite 50, Menlo Park,
6 California 94025. Delphix is a leading provider of software platforms for creating virtual storage
7 and infrastructure for complex database systems, including the Delphix Agile Data Platform.

8 3. On information and belief, defendant Actifio, Inc., (“Actifio”) is a corporation
9 organized and existing under the laws of the State of Delaware, with its principal place of
10 business at 333 Wyman Street, Waltham, Massachusetts 02451. Actifio makes and sells storage
11 virtualization and data management systems and services.

12 4. Upon information and belief, Actifio develops, manufactures, imports, offers for
13 sale and sells certain products, including the Copy Data Storage Platform, the Actifio Protection
14 and Availability Storage software product and their predecessor versions (“Actifio Storage
15 Products”), to customers in the United States, including in the Northern District of California.

16 5. On information and belief, Actifio transacts business related to the Actifio Storage
17 Products throughout the United States, including sales of the Actifio Storage Products within the
18 boundaries of this district, including sales of the Actifio Storage Products to the Palo Alto Unified
19 School District.

20 6. Actifio conducts sales efforts in the Northern District of California, including
21 meeting with customers and potential customers in the district.

22 **JURISDICTION**

23 7. This action is based on the patent laws of Title 35 of the United States Code, § 1
24 *et seq.*, with a specific remedy sought under the Federal Declaratory Judgments Act, 28 U.S.C.
25 §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between
26 Delphix and Actifio that requires a declaration of rights by this Court.

27 8. This Court has personal jurisdiction over Actifio because Actifio has established
28 minimum contacts with the forum and the exercise of jurisdiction over Actifio would not offend

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1 traditional notions of fair play and substantial justice. Among other things, on information and
2 belief, Actifio regularly conducts business in California, at least as follows: a) Actifio has
3 accused Delphix, a corporation headquartered in California, of infringing the patents-in-suit; b)
4 Actifio regularly transacts business in California, including making sales efforts and sales of its
5 product in this judicial district.

6 **VENUE**

7 9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400
8 because Actifio is subject to personal jurisdiction in this judicial district and is therefore deemed
9 to reside in this district pursuant to 28 U.S.C. § 1391(c). A substantial part of the acts giving rise
10 to the claim occurred in this judicial district.

11 10. Delphix maintains its primary office in Menlo Park, California, at which its
12 research and development efforts take place.

13 11. On information and belief, at least one of the inventors on the asserted patents
14 resides in this judicial district.

15 12. Accordingly, there are fact witnesses in this judicial district.

16 **INTRADISTRICT ASSIGNMENT**

17 13. Pursuant to Civil L.R. 3-2(c), divisional assignment is unnecessary because this
18 case is an intellectual property action.

19 **NOTICE OF RELATED CASES**

20 14. The present action is related to *Delphix Corp. v. Actifio, Inc.*, Case No. 3:13-cv-
21 04613-RS, a patent infringement action brought in this district by Delphix against Actifio, which
22 is currently assigned to the Honorable Richard Seeborg.

23 **FACTUAL BACKGROUND**

24 15. Delphix develops, sells, and licenses software platforms which provide virtual
25 storage and infrastructure for complex database systems.

26 16. Actifio purports to be the owner of U.S. Patent No. 6,959,369 (“’369 patent”).
27 The ’369 patent is entitled “Method, system, and program for data backup.” A copy of the ’369
28 patent is attached as Exhibit A.

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1 17. Actifio purports to be the owner of U.S. Patent No. 6,732,244 (“’244 patent”).
2 The ’244 patent is entitled “Instant virtual copy technique with expedited creation of backup
3 dataset inventory from source dataset inventory.” A copy of the ’244 patent is attached as Exhibit
4 B.

5 18. On March 5, 2014, Actifio sent a letter to Mr. Jedidiah Yueh, the CEO and founder
6 of Delphix, and the Delphix Board in this district in which Actifio alleges that it has “concluded
7 that certain products made, sold, offered for sale, and used by Delphix (including Delphix’s Agile
8 Data Platform) infringe one or more claims of the ’369 and ’244 patents.” Actifio’s letter further
9 demanded “that Delphix immediately cease making, using, selling or offering for sale infringing
10 products, including Delphix’s Agile Data Platform.”

11 19. Delphix denies infringement and/or asserts that the patents-in-suit are invalid, and
12 contends that it maintains the right to engage in making, using, offering to sell, and selling the
13 Delphix Agile Data Management Platform product line without license from Defendant.

14 20. Delphix therefore seeks declaratory relief as alleged more fully below.

15 **FIRST CLAIM FOR RELIEF**
16 **(Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 6,959,369)**

17 21. Plaintiff Delphix restates and incorporates by reference each of the allegations set
18 forth in paragraphs 1 through 20 above, as if fully set forth herein.

19 22. Actifio contends that Delphix has or is infringing one or more claims of the ’369
20 patent.

21 23. Actifio claims to be the owner of all right, title and interest in the ’369 patent,
22 including the right to assert all causes of action arising under that patent and the right to any
23 remedies for infringement of it.

24 24. Delphix does not infringe any claim of the ’369 patent, directly or indirectly,
25 contributorily or otherwise, through its or its customer’s activities in conjunction with any of
26 Delphix’s products or services.

27 25. As set forth above, an actual and justiciable controversy exists between Delphix
28 and Actifio as to Delphix’s non-infringement of the ’369 patent.

1 26. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,
2 Delphix requests that this Court enter a judgment that Delphix does not infringe, under any theory
3 of infringement, any valid claim of the '369 patent.

4 **SECOND CLAIM FOR RELIEF**
5 **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 6,959,369)**

6 27. Plaintiff Delphix restates and incorporates by reference each of the allegations set
7 forth in paragraphs 1 through 26 above, as if fully set forth herein.

8 28. Upon information and belief, Actifio contends that the '369 patent is valid.

9 29. One or more of the claims of the '369 patent are invalid for failure to comply with
10 one or more of the conditions for patentability set forth in Title 35 of the United States Code,
11 including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

12 30. As set forth above, an actual and justiciable controversy exists between Delphix
13 and Actifio as to whether the claims of the '369 patent are invalid.

14 31. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,
15 Delphix requests that this Court enter a judgment that the claims of the '369 patent are invalid
16 pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101,
17 102, 103, and/or 112.

18 **THIRD CLAIM FOR RELIEF**
19 **(Declaratory Relief Regarding Non-Infringement of U.S. Patent No. 6,732,244)**

20 32. Plaintiff Delphix restates and incorporates by reference each of the allegations set
21 forth in paragraphs 1 through 31 above, as if fully set forth herein.

22 33. Actifio contends that Delphix has or is infringing one or more claims of the '244
23 patent.

24 34. Actifio claims to be the owner of all right, title and interest in the '244 patent,
25 including the right to assert all causes of action arising under that patent and the right to any
26 remedies for infringement of it.

1 35. Delphix does not infringe any claim of the '244 patent, directly or indirectly,
2 contributorily or otherwise, through its or its customer's activities in conjunction with any of
3 Delphix's products or services.

4 36. As set forth above, an actual and justiciable controversy exists between Delphix
5 and Actifio as to Delphix's non-infringement of the '244 patent.

6 37. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,
7 Delphix requests that this Court enter a judgment that Delphix does not infringe, under any theory
8 of infringement, any valid claim of the '244 patent.

9 **FOURTH CLAIM FOR RELIEF**
10 **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 6,732,244)**

11 38. Plaintiff Delphix restates and incorporates by reference each of the allegations set
12 forth in paragraphs 1 through 37 above, as if fully set forth herein.

13 39. Upon information and belief, Actifio contends that the '244 patent is valid.

14 40. One or more of the claims of the '244 patent are invalid for failure to comply with
15 one or more of the conditions for patentability set forth in Title 35 of the United States Code,
16 including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

17 41. As set forth above, an actual and justiciable controversy exists between Delphix
18 and Actifio as to whether the claims of the '244 patent are invalid.

19 42. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq.,
20 Delphix requests that this Court enter a judgment that the claims of the '244 patent are invalid
21 pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101,
22 102, 103, and/or 112.

23 **DEMAND FOR JURY TRIAL**

24 Delphix demands trial by jury on all issues so triable, pursuant to Federal Rule of Civil
25 Procedure 38.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Delphix respectfully prays for judgment in favor of Delphix and against
28 Actifio as follows:

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- a) For a judicial determination and declaration that Delphix has not infringed and is not infringing, directly or indirectly, any claim of the patents-in-suit;
- b) For a judicial determination and declaration that one or more claims of the patents-in-suit is invalid;
- c) For injunctive relief against Actifio, and all persons acting on its behalf or in concert with it, restraining them from further prosecuting or instituting any action against Delphix or Delphix’s customers claiming that the patents-in-suit are valid or infringed, or for representing that Delphix’s products or services, or that others’ use thereof, infringe the patents-in-suit;
- d) For a declaration that this case is exception under 35 U.S.C. § 285 and for an award of reasonable attorneys’ fees and costs in this action; and
- e) such other and further relief as the Court may deem just and fair.

Dated: March 5, 2014

FENWICK & WEST LLP

By: /s/ J. David Hadden
J. David Hadden

Attorneys for Plaintiff
DELPHIX CORP.