

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

01 COMMUNIQUE LABORATORY, INC.,

PLAINTIFF,

vs.

CITRIX SYSTEMS, INC., ET AL., AND
CITRIX ONLINE, LLC,

DEFENDANTS.

CASE NO.: 1:06-CV-0253

JUDGE SARA LIOI

MAGISTRATE JUDGE KATHLEEN BURKE

PLAINTIFF'S NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff 01 Communique Laboratory, Inc.
("Communique") appeals to the UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT from each of the following:

1. The Court's Judgment entered February 8, 2016 (ECF 576);
2. The Jury's Verdict, dated January 19, 2016 (ECF 570);
3. The Court's Memorandum Opinion and Order, entered March 21, 2017 (ECF 594) denying plaintiff's Motion for Judgment as a Matter of Law and for New Trial (ECF 580);
4. All non-final rulings and orders adverse to plaintiff issued prior to the Memorandum Opinion and Order entered March 21, 2017, including (but not

limited to) the following rulings and orders:

- a. the Court's denial throughout the trial of Plaintiff's objections to Defendants' argument and evidence suggesting that Defendants do not infringe because they practice the prior art (*see, e.g.*, ECF 523 (motion in limine), Transcript ECF 532 35818:21 – 35830:25 (objections and discussion), Transcript ECF 541 36427:16 – 36429:11 (rulings), Transcript ECF 548 37775:22 – 37778:19 (further objections and rulings), Transcript ECF 552 38110:7 – 38111:2 (further objections), Transcript ECF 552 38222:6-8 (objection to instructions))
 - b. the Court's refusal to charge the jury regarding the "practicing the prior art" defense as requested alternatively in the motion in limine ECF 523
 - c. the Court's refusal to permit Plaintiff to offer evidence that Defendants initiated the reexamination of the patent in suit, or to refer to the proceeding as a "reexamination," or to explain the reexamination proceeding as having taken place after the lawsuit was initiated (*see, e.g.* ECF 512, "Order regarding Motion in Limine")
5. the Court's Memorandum Opinion dated January 10, 2016 (ECF 513) affirming the Magistrate Judge's Order (ECF 338) refusing to require Plaintiff's 30(b)(6) witness to answer certain questions because of asserted privilege.

All applicable fees associated with the Notice of Appeal are submitted herewith. Plaintiff understands that by filing electronically it is in compliance with the language of Rule 3(a) of the Federal Rules of Appellate Procedure requiring "enough copies of the notice to enable the clerk to comply with Rule 3(d)," because the information on appeal will be submitted to the Circuit

Court via electronic submission.

Respectfully submitted,

/s/ Thomas H. Shunk

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2017, a true and correct copy of the foregoing was served via the Court's electronic filing system on counsel of record.

/s/ Thomas H. Shunk
An Attorney For Plaintiff