

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VMWARE, INC.,
Petitioner,

v.

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH
INSTITUTE
Patent Owner

Case IPR2014-00901
Patent No. 6,978,346 B2

PETITIONER'S NOTICE OF APPEAL

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 1 OB20
600 Dulany Street
Alexandria, VA 22314-5793

Notice is hereby given, pursuant to 35 U.S.C. §§ 141(c) and 142 and 37 C.F.R. § 90.2(a), that Petitioner VMware, Inc. (“Petitioner”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on December 9, 2015, (Paper 35), and from all underlying orders, decisions, rulings and opinions.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Petitioner further indicates that the issues on appeal include, but are not limited to (1) the Patent Trial and Appeal Board’s determination that claims 1-9 of U.S. Patent No. 6,978,346 (“the ’346 patent”) are not rendered obvious under 35 U.S.C. § 103 by Kevin J. Smith, Mylex Corp., STORAGE AREA NETWORKS; UNCLOGGING LANS AND IMPROVING DATA ACCESSIBILITY, published May 29, 1998, in view of U.S. Patent No. 5,574,950, (2) the Patent Trial and Appeal Board’s claim construction of certain terms in claims 1-9 of the ’346 patent, and (3) any factual findings, conclusions of law, or other determinations supporting or related to those issues, as well as all other issues decided adversely to Petitioner in any orders, decisions, rulings, and opinions. The appeal may also raise the issue of whether obviousness under 35 USC § 103 requires an express disclosure of a motivation to combine

prior art systems as well as a teaching in the prior art of how to physically combine said systems. The appeal may also raise the issue of whether the Board deprived Petitioner of their right to a hearing on certain grounds of unpatentability asserted in the Petition on the basis that such grounds of unpatentability were redundant to the grounds upon which the Board instituted trial.

Simultaneous with this submission, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board. In addition, this Notice of Appeal is being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Dated: January 28, 2016

/Katherine Kelly Lutton/
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CERTIFICATE OF SERVICE

I hereby certify that pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), that on January 28, 2016, a complete and entire copy of this Notice of Appeal was provided via email to the Patent Owner by serving the correspondence address of record as follows:

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I hereby certify that, in addition to being filed electronically through the Board's PRPS System, the original version of the foregoing, Notice of Appeal, was served by hand on this 28th day of January, 2016, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 1 OB20
600 Dulany Street
Alexandria, VA 22314-5793

I hereby certify that the foregoing Notice of Appeal was filed electronically on this 28th day of January, 2016, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, at the following address:

United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Suite 401
Washington, DC 20005

/s/ Katherine Kelly Lutton
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