

1 George A. Riley (S.B. #118304) griley@omm.com
 2 Luann L. Simmons (S.B. #203526) lsimmons@omm.com
 3 Melody Drummond Hansen (S.B. #278786) mdrummondhansen@omm.com
 4 O'MELVENY & MYERS LLP
 5 Two Embarcadero Center, 28th Floor
 San Francisco, California 94111-3823
 Telephone: (415) 984-8700
 Facsimile: (415) 984-8701

6 Ryan K. Yagura (S.B. #197619) ryagura@omm.com
 7 Xin-Yi Zhou (S.B. #251969) vzhou@omm.com
 8 Brian M. Cook (S.B. #266181) bcook@omm.com
 9 Kevin Murray (S.B. #275186) kmurray2@omm.com
 10 O'MELVENY & MYERS LLP
 400 South Hope Street
 Los Angeles, California 90071-2899
 Telephone: (213) 430-6000
 Facsimile: (213) 430-6407

11 *Attorneys for Defendant*
 12 APPLE INC.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN JOSE**

17 OpenTV, Inc., NagraVision, S.A., and Nagra
 France S.A.S.
 18
 19 Plaintiffs,
 20 v.
 21 Apple Inc.,
 22 Defendant.

Case No. 5:15-cv-02008-EJD

**DEFENDANT APPLE INC.'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR RULE 54(b)
 CERTIFICATION**

Date: August 18, 2016
 Time: 9:00 a.m.
 Judge: Honorable Edward J. Davila
 Courtroom: 4, 5th Floor

23
 24
 25
 26
 27
 28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION	1
II. PROCEDURAL HISTORY.....	2
III. LEGAL STANDARDS.....	2
IV. ARGUMENT	3
A. Permitting Interlocutory Appeal On The Patent Ineligibility Ruling Would Lead To Multiple Appeals On The Same Legal Issue	3
B. Factual Overlap Between The Dismissed Claims And The Pending Claims Weighs Against Rule 54(b) Certification.....	5
C. Rule 54(b) Certification Would Lead To Judicial Inefficiency And Piecemeal Litigation	6
D. OpenTV Has Not Demonstrated Any Harm That Would Result From Denial Of Its Motion	9
V. CONCLUSION	9

TABLE OF AUTHORITIES

	Page
<u>CASES</u>	
<i>Chaparral Commc'ns, Inc. v. Boman Indus.</i> , 798 F.2d 456 (Fed. Cir. 1986).....	3
<i>Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.</i> , No. CV 03-0110-GLT, 2004 U.S. Dist. LEXIS 27639 (C.D. Cal. Apr. 14, 2004)	4
<i>Curtiss-Wright Corp. v. Gen. Elec. Co.</i> , 446 U.S. 1 (1980).....	2
<i>Doe v. Univ. of Cal.</i> , No. C-92-2284 SAW, 1993 WL 361540 (N.D. Cal. Sept. 2, 1993).....	8
<i>Ferring B.V. v. Actavis, Inc.</i> , No. 3:13-cv-00477-RCJ-VPC, 2014 U.S. Dist. LEXIS 151432 (D. Nev. Oct. 23, 2014).....	3, 4, 9
<i>HTC Corp. v. IPCom GMBH & Co., KG</i> , 285 F.R.D. 130 (D.D.C. 2012).....	6
<i>iLOR, LLC v. Google, Inc.</i> , 550 F.3d 1067 (Fed. Cir. 2008).....	1, 2
<i>Mayfield v. Cnty. of Merced</i> , 1:13-cv-01619 LJO BAM, 2015 U.S. Dist. LEXIS 1636 (E.D. Cal. June 6, 2014)	8
<i>Morrison-Knudsen Co. v. Archer</i> , 655 F.2d 962 (9th Cir. 1981).....	1, 3, 9
<i>OpenTV, Inc. v. Netflix Inc.</i> , 76 F. Supp. 3d 886 (N.D. Cal. 2014)	3, 4
<i>OpenTV, Inc. v. Netflix Inc.</i> , No. 3:14-cv-01723-RS, ECF No. 47 (N.D. Cal. Feb. 11, 2015).....	4
<i>Reddy v. Nuance Commc'ns</i> , No. C 11-05632 PSG, 2012 U.S. Dist. LEXIS 138652 (N.D. Cal. Sept. 26, 2012)	1
<i>Remediation Prods., Inc. v. Adventus Ams., Inc.</i> , No. 3:07cv153-RJC-DCK, 2011 WL 1272924 (W.D.N.C. 2011)	5
<i>Smart Sys. Innovations, LLC v. Chi. Transit Auth.</i> , No. 14-CV-08053, ECF No. 102 (N.D. Ill. Nov. 10, 2015)	4, 5

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Solannex, Inc. v. Miasolé, Inc.,
No. CV 12-00832 PSG, 2013 U.S. Dist. LEXIS 15057 (N.D. Cal. Feb. 1,
2013) 4

Sun Pharm. Indus., Ltd. v. Eli Lilly & Co.,
No. 07-cv-15087, ECF No. 120 (E.D. Mich. June 30, 2010) 8

Takeda Pharm. Co. v. Handa Pharm., LLC,
Nos. C-11-01609, C-11-01610, 2013 U.S. Dist. LEXIS 62557 (N.D. Cal.
Apr. 30, 2013) 5

Ultramercial Inc. v. Hulu, LLC,
772 F.3d 709 (Fed. Cir. 2014)..... 7

Williamson v. Citrix Online LLC,
792 F.3d 1339 (Fed. Cir. 2015)..... 7

Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC,
No. 1:04-cv-00346, ECF No. 328 (N.D. Ill. Oct. 18, 2010) 8

STATUTES

35 U.S.C. § 101 2, 4

RULES

Fed. R. Civ. P. 54 advisory committee’s notes (1946) 1

Fed. R. Civ. P. 54(b) 1, 2, 9

1 **I. INTRODUCTION**

2 It has long been established that “all issues decided by the district court should be resolved
3 in a single appeal of a final judgment.” *iLOR, LLC v. Google, Inc.*, 550 F.3d 1067, 1072 (Fed.
4 Cir. 2008). Rule 54(b) provides an exception that applies only in rare circumstances—the trial
5 court has discretion to certify a partial judgment for interlocutory appeal only upon an express
6 finding that “there is no just reason for delay.” Fed. R. Civ. P. 54(b). As the Advisory
7 Committee to Rule 54 explained, because the “historic rule in the federal courts has always
8 prohibited piecemeal disposal of litigation,” district courts should exercise their “discretionary
9 power to afford a remedy [under Rule 54(b)] in the infrequent harsh case.” Fed. R. Civ. P. 54
10 advisory committee’s notes (1946). Consistent with this principle, courts have found that
11 “[j]udgments under Rule 54(b) must be reserved for the unusual case in which the costs and risks
12 of multiplying the number of proceedings and of overcrowding the appellate docket are
13 outbalanced by the pressing needs of the litigants for an early and separate judgment as to some
14 claims or parties.” *Reddy v. Nuance Commc’ns*, No. C 11-05632 PSG, 2012 U.S. Dist. LEXIS
15 138652 (N.D. Cal. Sept. 26, 2012) (citing *Morrison-Knudsen Co. v. Archer*, 655 F.2d 962, 965
16 (9th Cir. 1981)). Absent a compelling need for immediate appeal, Rule 54(b) certification should
17 not be granted in a case where the adjudicated claims and the remaining claims involve
18 overlapping issues. *See Morrison-Knudsen*, 655 F.2d at 965.

19 OpenTV’s Motion for Rule 54(b) Certification asks this Court to deviate from the well-
20 established prohibition against piecemeal appeal. OpenTV’s motion should be denied because
21 the facts of this case weigh strongly against permitting interlocutory appeal of the Court’s order
22 invalidating two of the five patents-in-suit (ECF No. 72). First, because Apple’s defenses against
23 OpenTV’s three remaining patents rely in part on the same legal theories underlying the Court’s
24 order, a Rule 54(b) certification would lead to multiple appeals on the same legal question of
25 patent eligibility. Second, because the patents remaining in the case relate to the same technology
26 as those dismissed by the Court, allowing an interlocutory appeal would require multiple Federal
27 Circuit panels to learn the same technology and address the same factual issues. Third, given that
28 there are three patents remaining in the case that may be resolved at different stages of litigation,

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.