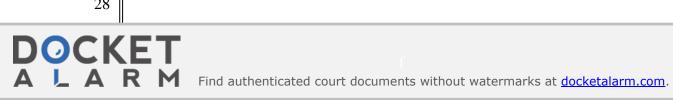
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17	OpenTV, Inc., Nagravision, S.A., and Nagra France S.A.S.	Case No. 5:15-cv-02008-EJD	
18	Plaintiffs,	DEFENDANT APPLE INC.'S OPPOSITION TO PLAINTIFFS'	
19	v.	MOTION FOR RULE 54(b) CERTIFICATION	
20	Apple Inc.,	Date: August 18, 2016	
21	Defendant.	Time: 9:00 a.m. Judge: Honorable Edward J. Davila	
22	Detendant.	Courtroom: 4, 5th Floor	
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#### I. <u>INTRODUCTION</u>

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

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



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