

1 Robert F. McCauley (SBN 162056)  
2 robert.mccauley@finnegan.com  
3 FINNEGAN, HENDERSON, FARABOW,  
4 GARRETT & DUNNER, LLP  
5 3300 Hillview Avenue  
6 Palo Alto, CA 94304-1203  
7 Telephone: (650) 849-6600  
8 Facsimile: (650) 849-6666

9 Gerald F. Ivey (*pro hac vice*)  
10 Smith R. Brittingham IV (*pro hac vice*)  
11 Elizabeth A. Niemeyer (*pro hac vice*)  
12 John M. Williamson (*pro hac vice*)  
13 Rajeev Gupta (*pro hac vice*)  
14 Aidan C. Skoyles (*pro hac vice*)  
15 FINNEGAN, HENDERSON, FARABOW,  
16 GARRETT & DUNNER, LLP  
17 901 New York Avenue, NW  
18 Washington, DC 20001-4413  
19 Telephone: (202) 408-4000  
20 Facsimile: (202) 408-4400

21 Stephen E. Kabakoff (*pro hac vice*)  
22 FINNEGAN, HENDERSON, FARABOW,  
23 GARRETT & DUNNER, LLP  
24 3500 SunTrust Plaza  
25 303 Peachtree Street, N.E.  
26 Atlanta, GA 30308-3263  
27 Telephone: (404) 653- 6400  
28 Facsimile: (404) 653-6444

29 *Attorneys for Plaintiffs*  
30 OpenTV, Inc., NagraVision S.A., and Nagra France S.A.S.

31 UNITED STATES DISTRICT COURT  
32 NORTHERN DISTRICT OF CALIFORNIA  
33 SAN JOSE DIVISION

34 OPENTV, INC., NAGRAVISION S.A., and  
35 NAGRA FRANCE S.A.S.

36 Plaintiffs,

37 v.

38 APPLE INC.,

39 Defendant.

40 Case No. 5:15-cv-02008-EJD (NMC)

41 **PLAINTIFFS' REPLY IN SUPPORT  
42 OF RULE 54(B) CERTIFICATION**

43 Date: August 18, 2016

44 Time: 9:00 a.m.

45 Courtroom: 4, 5<sup>th</sup> Floor

46 Judge: Honorable Edward J. Davila

**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

	<b>Page</b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	1
A. Rule 54(b) Is Not Confined to “Rare,” “Harsh,” or “Infrequent” Cases.....	1
B. There Is Strong Potential for Increased Judicial Efficiency Through Rule 54(b) .....	2
C. For Purposes of Rule 54(b), There Is Minimal Relevant Overlap Between the Claims of the Remaining Patents and the Patent Claims Held Ineligible .....	4
1. General Factual Overlap Is Not Meaningful for Rule 54(b).....	4
2. In This Case, Future Ineligibility Defenses Are Not Relevant to the Rule 54(b) Inquiry .....	6
III. CONCLUSION .....	7

**TABLE OF AUTHORITIES**

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(s)**

**Cases**

<i>Alice Corp. Pty. Ltd. v. CLS Bank International</i> , 134 S. Ct. 2347 (2014).....	3
<i>Angoss II P'ship. v. Trifox, Inc.</i> , No. 98-cv-1459-SI, 2000 WL 288435 (N.D. Cal. Mar. 13, 2000).....	2
<i>Curtis-Wright Corp. v. Geeral Electric Co.</i> , 446 U.S. 1 (1980) .....	<i>passim</i>
<i>Ferring B.V. v. Actavis, Inc.</i> , No. 13-cv-00477, 2014 WL 5419055 (D. Nev. Oct. 23, 2014) .....	6
<i>HTC Corp. v. IPCom GMBH &amp; Co., KG</i> , 285 F.R.D. 130 (D.D.C. 2012).....	2, 6
<i>Nautilus Grp., Inc. v. Icon Health &amp; Fitness, Inc.</i> , 308 F. Supp. 2d 1224 (W.D. Wash. 2003).....	2
<i>Remediation Products, Inc. v. Adventus Americas, Inc.</i> No. 07-cv-153, 2011 WL 1272924 (W.D.N.C. Apr. 1, 2011) .....	5
<i>Smart Systems Innovations, L.L.C. v. Chicago Transit Authority</i> , No. 14-cv-08053 (N.D. Ill. Nov. 10, 2015) .....	3, 4, 6
<i>Solannex, Inc. v. Miasole, Inc.</i> , No. 12-cv-00832-PSG, 2013 WL 430984 (N.D. Cal. Feb. 1, 2013).....	7
<i>Takeda Pharmaceutical Co. v. Handa Pharmaceuticals, LLC</i> , No. 11-cv-01609-JCS (N.D. Cal. Apr. 30, 2013).....	4, 5
<i>Trading Technologies Int'l, Inc. v. BCG Partners, Inc.</i> , 883 F. Supp. 2d 772 (N.D. Ill. 2012).....	2, 5
<i>Ultramercial Inc. v. Hulu, LLC</i> , 772 F.3d 709 (Fed. Cir. 2014).....	3
<i>Warner-Lambert Co. v. Apotex Corp.</i> , No. 98-cv-4293, 2001 WL 736024 (N.D. Ill. June 28, 2001).....	2
<i>WiAV Sols. LLC v. Motorola, Inc.</i> , No. 3:09-cv-447, 2010 WL 883748 (E.D. Va. Mar. 8, 2010).....	5, 6, 7
<i>Williamson v. Citrix Online LLC</i> , 792 F.3d 1339 (Fed. Cir. 2015).....	3
<i>Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC</i> , No. 04-cv-00346, 2010 WL 4115427 (N.D. Ill. Oct. 18, 2010) .....	2

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**Rules**

Fed. R. Civ. P. 54(b)..... *passim*

1 **I. INTRODUCTION**

2 Apple's opposition to OpenTV's request for Rule 54(b) certification is fundamentally based  
3 on a misapprehension of the legal standard required by the rule and the purpose behind it.  
4 Throughout its brief, Apple persistently and incorrectly asserts that Rule 54(b) certification is limited  
5 only to "rare circumstances" and "infrequent harsh cases," urging an over-exacting standard rejected  
6 by the Supreme Court in *Curtis-Wright Corp. v. General Electric, Co.*, 446 U.S. 1, 9–10 (1980). In  
7 using that standard, Apple misses the point: there is "no just reason" for delaying an appeal on the  
8 discrete legal issue of patent eligibility as it relates to two of the five patents-in-suit at this early  
9 stage and on such a limited record. Fed. R. Civ. P. 54(b). Straying from the *Curtis-Wright*  
10 framework, Apple emphasizes irrelevant facts, glosses over cases allowing certification in factually  
11 similar scenarios and under the proper legal standard, and tries to show "no judicial efficiency"  
12 through immaterial examples of lengthy patent appeals. None of Apple's arguments, however, sets  
13 forth a just and relevant reason to prevent an appeal. And nothing that Apple cites rebuts the fact  
14 that the Federal Circuit has been moving swiftly in appeals involving discrete issues of patent  
15 eligibility. A consolidated trial is possible if any dismissed patent claims are remanded on appeal,  
16 and no judicial waste will transpire if not. Accordingly, because no "just reason" exists to delay  
17 appeal, and there is strong potential of gaining judicial efficiency, this Court should grant OpenTV's  
18 motion for Rule 54(b) certification.

19 **II. ARGUMENT**

20 **A. Rule 54(b) Is Not Confined to "Rare," "Harsh," or "Infrequent" Cases**

21 Apple repeatedly refers to Rule 54(b) certification as an exceptional event that is limited to  
22 "only . . . rare circumstances," "infrequent harsh case[s]," "where necessary to avoid . . . harsh and  
23 unjust result[s]," or "where there exists some danger of hardship." (Dkt. 79 at 1, 3, 9.) But that is  
24 not the correct standard. In *Curtis-Wright*, the Supreme Court vacated a decision denying Rule  
25 54(b) certification on the ground that the moving party had failed to "show harsh or unusual  
26 circumstances." 446 U.S. at 9. The Court ruled that the "infrequent harsh case" standard used by  
27 the appellate court in *Curtis-Wright*—and urged by Apple here—"reflect[ed] a misinterpretation of

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