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19	UNITED STATES DISTRICT COURT					
20	NORTHERN DISTRICT OF CALIFORNIA					
21	SAN JOSE					
22	OPENTV, INC., NAGRAVISION S.A., and NAGRA FRANCE S.A.S.	Case No. 5:15-cv-02008-EJD (NMC)				
23	Plaintiffs,	PLAINTIFFS' REPLY IN SUPPORT OF RULE 54(B) CERTIFICATION				
24	v.	Date: August 18, 2016 Time: 9:00 a.m.				
25	APPLE INC.,	Courtroom: 4, 5 th Floor Judge: Honorable Edward J. Davila				
26	Defendant.	raage. Honoracie Lawara J. Daviia				
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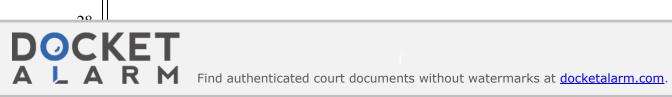


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I. INTRODUCTION

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

II. ARGUMENT

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

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



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