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14 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 INFINEON TECHNOLOGIES NORTH
AMERICA CORP.,
17 Plaintiff,
18 v.
19 MOSAID TECHNOLOGIES
INCORPORATED,
20 Defendant.
21
22

Case No. C 02-5772 JF (RS)

**INFINEON TECHNOLOGIES NORTH
AMERICA CORP. ET AL.'S
OPPOSITION TO MOSAID'S MOTION
FOR ENTRY OF FINAL JUDGMENT
PURSUANT TO RULE 54(B)**

Date: November 4, 2005
Time: 9:00 a.m.
Room: Courtroom 3, 5th Fl.
Before: Hon. Jeremy Fogel

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1 **I. INTRODUCTION**

2 Having segregated its infringement claims into separate “counts” for each of the patents-
3 in-suit, Mosaid now seeks the extraordinary relief of separate final judgment under Rule 54(b)
4 for certain of those counts—proceeding on the simplistic assumption that each count can and
5 should be thought of as separable for the purposes of judgment and appeal.

6 Nothing could be further from the truth. As detailed below, any appeal by Mosaid of the
7 New Jersey Court’s summary judgment decision with respect to some of the patents-in-suit will
8 necessarily require the Federal Circuit’s review of the New Jersey Court’s claim construction
9 order and its application of that order vis-à-vis Infineon’s accused products. Given the common
10 prosecution history, specification, and claim terminology shared between the ’703 patent and
11 three of the six patents for which Mosaid seeks immediate appeal, duplication of appellate
12 review at least with respect to claim construction issues would be all but inevitable. In addition,
13 the invalidity and unenforceability defenses to Mosaid’s claims under the ’703 patent overlap
14 with issues likely to be addressed in any immediate Mosaid appeal. Finally, Mosaid may well
15 also choose to challenge other aspects of the New Jersey Court’s summary judgment ruling, such
16 as its determination of no infringement by equivalents. This decision applies equally to all of the
17 patents-in-suit, including the ’703 patent currently pending before this Court, and it can
18 reasonably be expected that similar or identical issues will be raised from a final judgment on
19 that patent. As detailed below, Mosaid’s motion amounts to a proposal that the Court divide this
20 patent infringement action involving closely related patents into two separate actions and two
21 separate appeals, instead of finally resolving all of the issues with one trial and one appeal.

22 The only justification Mosaid offers to support such a radically inefficient departure from
23 the norm is Mosaid’s subjective belief that definitive appellate determination of certain claim
24 construction issues might assist Mosaid’s efforts to keep its licensing revenue flowing. That
25 subjective belief falls far short of the requisite standard for separate entry of judgment under
26 Rule 54(b). Far from facilitating settlement, Mosaid’s proposal only delays conclusive
27

1 resolution of the infringement dispute between the parties, and places an undue burden on the
2 Courts.

3 Because Mosaid's request for a piecemeal appeal is precisely the type of request
4 routinely rejected for 54(b) certification and because Mosaid has made absolutely no
5 demonstration that it has a pressing need for immediate appeal, this Court should deny Mosaid's
6 motion.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 In September 2001, Mosaid filed suit against Samsung Electronics in the United States
9 District Court for the District of New Jersey ("New Jersey Court") alleging infringement of
10 seven patents related to Dynamic Random Access Memory ("DRAM"). On December 11, 2002,
11 to clear its products from similar flawed claims of patent infringement, Infineon was forced to
12 file an action in this Court seeking declaratory judgments of invalidity, unenforceability, and
13 noninfringement of the same seven patents. Mosaid counterclaimed, alleging that Infineon's
14 DRAM products infringed the same seven patents. To conserve judicial resources and because
15 of the overlapping factual and legal issues, Infineon filed a motion with the Judicial Panel on
16 Multidistrict Litigation ("JPML") to consolidate both actions for pre-trial purposes. Mosaid
17 opposed any consolidation with the New Jersey action on the same seven patents, or even
18 coordination on discovery or claim construction. In September 2003, the JPML ordered that the
19 action pending before this Court be transferred for pre-trial purposes to the New Jersey Court.

20 In May and October 2003, Mosaid amended its counterclaims, alleging that the same
21 Infineon products infringed three additional patents. After claim construction by the New Jersey
22 Court, Mosaid chose not to pursue its infringement counterclaims with respect to two of the
23 patents and then subsequently dropped another patent by stipulation. Mosaid then proceeded on
24 seven patents-in-suit: U.S. Patent Nos. 5,828,620 ("620 patent"); 6,055,201 ("201 patent");
25 6,580,654 ("654 patent"); 5,822,253 ("253 patent"); 5,751,643 ("643 patent"); 6,278,640
26 ("640 patent"); and 6,603,703 ("703 patent"). All seven of these patents are very closely
27 related—they all grew out of the same design project with Sanyo, they all have the same priority

1 date, and they all include Valerie Lines as an inventor. The seven patents-in-suit collectively
2 belong to two families based on shared parent applications: the '620, '201, and '654 patents
3 ("Foss patents") name Richard Foss and Valerie Lines (and two others) as inventors, share the
4 same specification, and are continuations of the same parent application; and the '253, '643,
5 '640, and '703 patents ("Lines patents") name Valerie Lines as sole inventor, share the same
6 specification, and are continuations of the same parent application.¹ Mosaid has accused the
7 same products in all of its infringement claims, essentially accusing Infineon's entire DRAM
8 product line.

9 On April 1, 2005, the New Jersey Court issued a summary judgment decision ("Summary
10 Judgment Order") that ordered, *inter alia*, the following:

- 11 1. Infineon's accused products do not infringe any of the asserted claims in the Foss
12 patents, either literally or under the doctrine of equivalents.
- 13 2. Infineon's accused products do not infringe any of the asserted claims in the Lines
14 '253, '643, or '640 patents, either literally or under the doctrine of equivalents.²
- 15 3. No limitation of any asserted claim of the patents-in-suit is met under the doctrine
16 of equivalents.

17 The JPML subsequently issued an order remanding the pending claims to this Court for
18 adjudication. Five months after the Summary Judgment Order, Mosaid brought the pending
19 Motion for Entry of Final Judgment Pursuant to Rule 54(b) ("Mot."), seeking to immediately
20 appeal those portions of the summary judgment decision that implicate six of the seven patents-
21 in-suit.

22 **III. LEGAL STANDARDS**

23 Federal Rule of Civil Procedure 54(b) provides that "[w]hen more than one claim for
24 relief is presented in an action, . . . the court may direct the entry of a final judgment as to one or
25

26 ¹ The '643 patent was filed as a continuation-in-part because it includes additional subject matter.

27 ² Neither party moved for summary judgment on the issue of infringement of claims 1 and 2 of the '703 patent.

1 more but fewer than all of the claims or parties only upon an express determination that there is
2 no just reason for delay and upon an express direction for the entry of judgment.” To enter a
3 judgment under Rule 54(b), a court must first determine that the decision in question is final, i.e.,
4 “that it is ‘an ultimate disposition of an individual claim entered in the course of a multiple
5 claims action,’” *Curtiss-Wright v. General Electric Co.*, 446 U.S. 1, 7 (1980) (quoting *Sears,*
6 *Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)).³ Next, the court must assess “whether
7 there is any just reason for delay.” *Id.* at 8. In essence, the court must determine whether to
8 withhold entry of judgment until resolution of the entire dispute in the district court (thereby
9 permitting the parties a single appeal spanning all appealable issues in the case), or instead to
10 depart from the norm by entering separate judgment on some claims, even though other,
11 unresolved claims are still pending before the trial court. That gatekeeping function is left to the
12 sound discretion of the district court:

13 Not all final judgments of individual claims should be immediately appealable,
14 even if they are in some sense separable from the remaining unresolved claims.
15 The function of the district court under the Rule [54(b)] is to act as a ‘dispatcher’
16 It is left to the sound judicial discretion of the district court to determine the
17 ‘appropriate time’ when each final decision in a multiple claims action is ready
18 for appeal. This discretion is to be exercised ‘in the interest of sound judicial
19 administration.’

17 *Id.*

18 In making that critical determination, the Court must “take into account judicial
19 administrative interests as well as the equities involved. Consideration of the former is necessary
20 to ensure that application of the Rule effectively ‘preserves the historic federal policy against
21 piecemeal appeals.” *Id.* Given the inefficiency of duplicative piecemeal appeals, the strong
22 preference is that all claims in a case be appealed together. *See, e.g., Morrison-Knudsen Co.*,

23
24 ³ Although there is no dispute between the parties with respect to the finality of the Summary Judgment Order,
25 there is disagreement regarding Mosaid’s contention that “it is immaterial that the New Jersey Court’s
26 disposition of MOSAID’s infringement claims was not coupled with a dismissal of Infineon’s separate claims
27 of invalidity and unenforceability” (Mot. at 4.) As discussed in the Argument, the manifest overlap
28 between Infineon’s invalidity and unenforceability claims with respect to the ’703 patent and the six patents for
which Mosaid seeks an appealable judgment effectively precludes entry of final judgment under the legal
standards applicable to entry of judgment under Rule 54(b).

1 *Inc. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981) (“Judgments under Rule 54(b) must be reserved
2 for the unusual case in which the costs and risks of multiplying the number of proceedings and of
3 overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early
4 and separate judgment as to some claims or parties”). As discussed below, this case does not
5 present any facts that would justify the extraordinary relief Mosaid requests.

6 7 **IV. ARGUMENT**

8 **A. Entry of Judgment With Respect to Six of the Seven Patents Asserted by 9 Mosaid Against Infineon Offends Sound Judicial Administration**

10 One critical factor in weighing the judicial administrative interests of a Rule 54(b)
11 certification is the amount of legal and factual overlap between the claims for which separate
12 judgment is sought and the claims that would remain. *See* 10 JAMES WM. MOORE ET AL.,
13 MOORE’S FEDERAL PRACTICE—CIVIL § 54.23[1] (3d ed. 1999) (“Primary Consideration
14 Informing Exercise of Discretion Is Relationship of Adjudicated and Unadjudicated Claims”).
15 Due to the obvious duplication of effort resulting from serial appellate review of overlapping
16 factual and legal questions, courts are loathe to certify claims as final that overlap, either legally
17 or factually, with pending claims:

18 The trial court should not direct entry of judgment under Rule 54(b) unless it has
19 made specific findings setting forth the reasons for its order. Those findings
20 should include a determination whether, upon any review of the judgment entered
21 under the rule, the appellate court will be required to address legal or factual
22 issues that are similar to those contained in the claims still pending before the trial
23 court. A similarity of legal or factual issues will weigh heavily against entry of
24 judgment under the rule, and in such cases a Rule 54(b) order will be proper only
25 where necessary to avoid a harsh and unjust result, documented by further and
26 specific findings.

27 *Morrison-Knudsen*, 655 F.2d at 965. Thus, any risk of duplicative appeals stemming from
28 overlapping factual and legal issues weighs heavily against a request for separate judgment under
Rule 54(b). *See Curtiss-Wright*, 446 U.S. at 8 (“It was therefore proper for the District Judge
here to consider such factors as whether the claims under review were separable from the others
remaining to be adjudicated and whether the nature of the claims already determined was such

1 that no appellate court would have to decide the same issues more than once even if there were
 2 subsequent appeals.”); *Wood v. GCC Bend, LLC*, 422 F.3d 873, 882 (9th Cir. 2005) (“The greater
 3 the overlap the greater the chance that this Court will have to revisit the same facts—spun only
 4 slightly differently—in a successive appeal. . . . We cannot afford the luxury of reviewing the
 5 same set of facts in a routine case more than once without a seriously important reason.”).⁴

6 **1. If Adopted, Mosaid’s Approach Will Waste Judicial Resources**

7 The relief requested by Mosaid will result in precisely the sort of piecemeal appeals and
 8 parallel trials on overlapping factual and legal questions that the case law seeks to avoid. In the
 9 absence of the extraordinary relief sought by Mosaid, the infringement claims based on the ’703
 10 patent could proceed to resolution at trial, and final judgment on the entire case could be entered
 11 at the conclusion of that trial. The parties could then file a single appeal to the Federal Circuit
 12 that covered any and all issues that they contest from either the Summary Judgment Order or the
 13 trial. If, after that single appeal, the Federal Circuit remanded some portion of the case, this
 14 Court could address all remanded issues at one time. Thus, denying Mosaid’s motion leads to (at
 15 most) two trials before this Court and a single appeal to the Federal Circuit, an approach that best
 16 serves the judicial administrative interests of both Courts.

17 By contrast, were the Court to grant Mosaid’s motion, Mosaid would immediately appeal
 18 the Summary Judgment Order to the Federal Circuit. If the Federal Circuit were to order remand
 19 based on any portion of that appeal, this Court would have to schedule a trial to resolve the
 20 remanded issues. In the meantime, Mosaid’s remaining claims of infringement based on the
 21 ’703 patent (which shares the same specification and prosecution history as the other Lines
 22 patents, stems from the same Mosaid design effort, accuses the same Infineon products, and

23 ⁴ Mosaid cites *Loral Fairchild v. Victor Co. of Japan Ltd.*, 931 F. Supp. 1044 (E.D.N.Y. 1996), *aff’d on other*
 24 *grounds*, 181 F.3d 1313 (Fed. Cir. 1999), as a “good example of ‘sound judicial administration’ . . .” (Mot. at
 25 6.) In contrast with the facts here, in *Loral Fairchild* the district court’s summary judgment of noninfringement
 26 completely resolved all claims between plaintiff Loral and defendant Sony, making the appeal between those
 27 parties easily separable from the pending claims between Loral and the other defendants. Additionally, Loral
 sought to appeal the claim construction from the same patent that remained pending against the other parties;
 accordingly, under the facts in *Loral*, the Federal Circuit did not risk another appeal on similar claim terms from
 different but closely related patents as is the case before this Court.

1 which must be measured against the same prior art as the other Lines patents formerly in the
 2 case) would have remained in this Court, presumably proceeding to trial, and leading to a
 3 separate inevitable second appeal.⁵ Mosaid's approach divides litigation involving a
 4 continuation patent from the rest of the patents in its family and other closely related patents with
 5 positively no benefit. It would be a waste of judicial resources to have separate trials and appeals
 6 when the facts are so closely related. A single final judgment on all the claims, a single appeal,
 7 and a single remand trial (if necessary) best serves judicial administrative interests, which is the
 8 Rule 54(b) litmus test. That alone is reason enough to deny Mosaid's motion.

9 **2. Piecemeal Appeal of Claim Construction Issues Related to the Lines**
 10 **Patent Family Would Require Unjustified Duplication of Judicial**
 11 **Effort**

12 Mosaid seeks certification of a final judgment of noninfringement for three Lines patents
 13 while it continues to assert (and has refused to dismiss) infringement of a fourth Lines patent—
 14 the '703 patent. All of the Lines patents derive from the same application, share the same
 15 specification, and have the same priority date. This is an archetypal situation of overlapping
 16 claims that renders Rule 54(b) certification inappropriate. *See, e.g., SmithKline Beecham Corp.*
 17 *v. Apotex Corp.*, No. 99-CV-4304, 2004 U.S. Dist. LEXIS 5571, at *16 (E.D. Pa. Mar. 26, 2004)
 18 (holding that related patents “counsel[ed] against piecemeal appeal in this case”). Unless and

19 ⁵ Mosaid's moving papers do not suggest or explicitly request a stay of trial for the remaining infringement
 20 claims under the '703 patent. However, imposition of such a stay pending appeal of the six other patents-in-
 21 suit would still not avoid the unnecessary division of this lawsuit. Even if stayed pending any future remand of
 22 Mosaid's claims under the other six patents, the inevitable appeal following the ultimate consolidated trial could
 23 reasonably be expect to present—with respect to the '703 patent—similar or identical legal questions of claim
 24 construction and invalidity that will be the subject of the immediate appeal Mosaid now seeks.

25 Thus, even if trial on Mosaid's '703 infringement claims awaited remand from Mosaid's contemplated
 26 immediate appeal, in any appeal after such a consolidated trial, the Federal Circuit would once again have to
 27 consider the same prosecution history, factual history, claim construction and prior art references for the first
 28 time in connection with the '703 patent, even though it had already undertaken that exercise once in the first
 appeal of Mosaid's other patents. That exercise itself presents a significant chance of yet another trial in this
 Court concerning infringement claims under the '703 patent after its particular issues are belatedly addressed by
 the Federal Circuit in a second appeal. Thus, with or without a second remand trial, the net result of Mosaid's
 current proposal would necessarily result in two appeals concerning closely related or even identical legal
 questions of claim construction and invalidity or unenforceability, plus the significant likelihood of a second
 trial in this Court concerning at least the '703 patent. Mosaid offers no compelling reason for such inefficiency.
 One trial and one appeal should do; Mosaid cannot legitimately justify more.

1 until Mosaid dismisses its pending infringement counterclaims related to the '703 patent, the
2 legal and factual similarity with the Lines claims at issue in the Summary Judgment Order render
3 Rule 54(b) certification improper.

4 Mosaid candidly admits its intention to challenge the New Jersey Court's claim
5 construction ruling concerning the Lines patents. Although Mosaid mentions only its intent to
6 appeal the New Jersey Court's claim construction with respect to the "latching" limitation of the
7 Lines patent, that appellate process will necessarily require the Federal Circuit to examine the
8 complex prosecution history of the Lines patents (three of which share identical specifications,
9 with the fourth a continuation-in-part), review and become familiar with the technology and the
10 scope and content of the prior art, all *en route* to addressing any and all Lines patent claim
11 construction issues identified in Mosaid's appeal and any cross-appeal. However, the '703
12 patent—which in Mosaid's view should remain in this Court notwithstanding the appellate
13 review of its sister Lines patents and their common prosecution history—shares many of those
14 very claim terms, including " V_{dd} ," " V_{pp} ," " V_{dd} logic levels," "applying the controlled high
15 voltage V_{pp} to the word line," and "controlled high voltage V_{pp} supply."⁶ In addition to those
16 common claim terms, the asserted claims of the '703 patent include other claim language that
17 may not be identical to the language used in other Lines patents-in-suit, but are nonetheless
18 unquestionably closely related and deserving of consistent construction, and include claim
19 terminology reasonably expected to be the subject of any appeal of Lines claim construction
20 issues in Mosaid's contemplated appeal. Thus, if this Court permits separate appeal of the claim
21 construction for the other three Lines patents, it is virtually assured that the Federal Circuit will
22 be asked to address the same (or very similar) claim terms on the later appeal of the '703 patent
23

24 ⁶ Although the specific claim language "applying the controlled high voltage V_{pp} to the word line" does not
25 appear verbatim in the asserted claims of the '703 patent, the limitation "applying the logic signal having the
26 state at the V_{pp} voltage to the word line" in claims 1 and 2 of the '703 patent is essentially the same as the
27 previously-constructed claim term. Similarly, while "controlled high voltage V_{pp} supply" does not appear in the
pending claims of the '703 patent, claim 2 does include the nearly identical limitation "controlled supply
voltage V_{pp} ."

1 judgment. Under such circumstances, entry of final judgment under Rule 54(b) is clearly
2 inappropriate.

3 **3. Invalidation Defenses Common to All Lines Patents Would Require**
4 **Unjustified Duplication of Judicial Effort Were the Court to Enter**
5 **Final Judgment for Some But Not All of the Lines Patents-In-Suit**

6 The Lines patents not only share common specification material and an inventor, but all
7 of the Lines patents also claim priority to the same British application. Assuming that common
8 priority claim is valid, the same universe of prior art applies to all of the Lines patents. As a
9 result, Infineon's numerous invalidity defenses in connection with the '703 patent also cover all
10 of the Lines patent claims Mosaid seeks to appeal. For example, the Fujii (Fujii, Syuso et al., *A*
11 *45-ns Mbit DRAM with Triple-Well Structure*, 24 IEEE J. SOLID STATE CIRCUITS 1170-74 (Oct.
12 1989)) and Kajigaya (U.S. Patent No. 5,602,771) references have already survived scrutiny at the
13 summary judgment stage by the New Jersey Court and are invalidating prior art for all of the
14 Lines patents. Although each prior art reference necessarily must be applied to each patent based
15 on the specific claim language of the asserted claims, it makes no sense to undertake that close
16 appellate review of the prior art once in connection with Mosaid's proposed immediate appeal,
17 and then repeat the exercise on appeal of the '703 claims after separate trial.

18 Moreover, regardless of the issues Mosaid chooses to appeal, Infineon will be compelled
19 to seek a cross-appeal (and necessarily a corresponding 54(b) certification) portions of the
20 Summary Judgment Order affecting certain invalidity defenses. Those defenses apply equally to
21 all of the Lines patents and it would therefore be a waste of judicial resources to have the Federal
22 Circuit hear the appeal for three Lines patents now and one more continuation Lines patent
23 shortly thereafter.

24 **4. Piecemeal Appeal of Invalidity and Unenforceability Defenses**
25 **Common to All Patents-in-Suit Would Result in Needlessly**
26 **Duplicative Judicial Effort**

27 If separate judgment under Rule 54(b) were entered as Mosaid requests, Infineon would
28 also be forced to cross-appeal other aspects of the New Jersey Court's Summary Judgment
Order, such as its decisions concerning Infineon's on-sale bar and inequitable conduct defenses.

1 Because there is no distinction between the application of those defenses to the '703 patent and
2 their application to the patents for which Mosaid seeks separate judgment, if Mosaid's motion
3 were granted, the Federal Circuit would be forced to hear the appeal of these defenses once now
4 (applied to the six patents for which Mosaid seeks final judgment) and once in the future at the
5 conclusion of the trial on the '703 patent. Depending on the timing, any decision from the
6 Federal Circuit permitting Infineon to raise those defenses could also delay and/or interrupt a
7 separate trial of the '703 patent in this Court. Piecemeal appeal of these defenses for some
8 patents now and another patent in the future contravenes the intent of Rule 54(b).

9 Similarly, Infineon's defense of prosecution laches, asserted against all of the patents in
10 suit, was also the subject of the Summary Judgment Order. If either party sought review of that
11 aspect of the New Jersey Court's decision, the Court of Appeals would undertake an analysis of
12 all of the patents-in-suit and their prosecution histories. It would be a tremendous waste of
13 resources to have the Federal Circuit review that voluminous record once now for certain Foss
14 and Lines patents and then once again at the conclusion of the trial on the '703 patent.

15 **5. Piecemeal Appeal of the New Jersey Court's Equivalents Decision**
16 **Would Result in Needlessly Duplicative Judicial Effort**

17 The New Jersey Court decided an additional issue at summary judgment that implicates
18 all of the patents-in-suit. It held that Mosaid is not permitted to argue that any of the pending
19 claims are infringed by Infineon's products by means of equivalents. That judgment relates to
20 both the six infringement counts for which Mosaid seeks entry of judgment under Rule 54(b) and
21 to the pending infringement claims based on the '703 patent. Once again, that legal and factual
22 overlap would lead to duplicative appellate examination of the Summary Judgment Order: once
23 now (as applied to the six patents Mosaid seeks to sever) and once again (as applied to the '703
24 patent). Mosaid's piecemeal appeal approach makes no sense given that the judgment of the
25 New Jersey Court applies identically to all of the patents-in-suit.
26
27

1 **B. An Ordinary, Unified Appeal Would Not Cause Mosaid Hardship or**
2 **Injustice**

3 Even if this Court should determine that the counterclaims decided by the New Jersey
4 Court are sufficiently distinct from the pending claims to justify duplicative judicial effort as
5 outlined above, this Court should still not award Mosaid Rule 54(b) certification of the Summary
6 Judgment Order:

7 If the adjudicated and unadjudicated claims are distinct, the district court still
8 should not exercise its discretion to enter judgment under Rule 54(b) unless doing
9 so will alleviate some hardship or injustice that would result from the delay in the
10 entry of judgment.

11 10 MOORE ET AL., *supra* p. 5, § 54.23[1][b]. Mosaid has made absolutely no showing that it will
12 suffer any hardship or injustice if it has to wait until resolution of all the claims in this action
13 before seeking appellate review. On the contrary, Mosaid waited five months after the New
14 Jersey Court issued its Summary Judgment Order before seeking Rule 54(b) certification from
15 this Court. Certain circuits have held that such a delay bars Rule 54(b) certification per se:

16 With those considerations in mind, we believe that to allow plaintiffs to proceed
17 with this appeal, having dilatorily sought a Rule 54(b) determination without any
18 excuse for the delay, would be to erect an unnecessary disparity between
19 timeliness requirements for appeals before and appeals after the ultimate
20 termination of a lawsuit in the trial court. We hold, therefore, that as a general rule
21 it is an abuse of discretion for a district judge to grant a motion for a Rule 54(b)
22 order when the motion is filed more than thirty days after the entry of the
23 adjudication to which it relates.

24 *Schaeffer v. First Nat'l Bank*, 465 F.2d 234, 236 (7th Cir. 1972). If Mosaid truly faced hardship
25 or injustice without immediate appeal, it would have sought Rule 54(b) certification within 30
26 days of the Summary Judgment Order. As it did not, it cannot now claim that there is no just
27 reason for delaying its appeal until final resolution of all the claims in this litigation.

28 **C. The Equities Favor Appeal of All Claims As a Unit**

 Mosaid asserts that “where neither side will suffer undue hardship due to an immediate
 appeal, and there is a prospect that an immediate appeal will save the parties and the courts
 considerable time and expense, the equities ‘fall easily in favor of certification.’” (Mot. at 8,
 citing *E.I. DuPont de Nemours & Co. v. Phillips Petroleum Co.*, 720 F. Supp. 373, 387 (D. Del.

1 1989).) That assertion bears no resemblance to the facts of this case. As demonstrated above,
2 Mosaid's proposal for immediate appeal not only creates additional work for this Court and the
3 Court of Appeals, but it also needlessly increases the expense to Infineon through multiplication
4 of trials and appeals on closely related issues. Mosaid chose to assert its infringement claims
5 under the closely related Lines and Foss families as a group against Infineon, and against the
6 same Infineon products. Even now, if Mosaid felt strongly about the prospects of a prompt
7 resolution through a quick appeal, Mosaid could withdraw its assertion of the '703 patent, and
8 the parties could proceed with a single appeal of the remaining patents. Mosaid should not be
9 permitted to continue to multiply its lawsuits against Infineon simply to continue to drive up the
10 costs of this litigation. Rather, efficiency and equity militate against Mosaid's request for
11 separate judgments under Rule 54(b).

12
13 **V. CONCLUSION**

14 For the foregoing reasons and to avoid piecemeal appeals of the claims in this litigation,
15 Infineon respectfully requests that this Court deny Mosaid's Motion for Entry of Final Judgment
16 Pursuant to Rule 54(b).

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Respectfully submitted,

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