

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**ST. CLAIR INTELLECTUAL PROPERTY  
CONSULTANTS, INC.,**  
*Plaintiff-Respondent,*

v.

**NOKIA CORPORATION AND NOKIA INC.,**  
*Defendants-Petitioners,*

AND

**HEWLETT-PACKARD COMPANY,**  
*Defendant-Petitioner,*

AND

**PALM, INC., KYOCERA WIRELESS CORP., AND  
KYOCERA SANYO TELECOM, INC. (NOW KNOWN AS  
KYOCERA COMMUNICATIONS, INC.),**  
*Defendants-Petitioners,*

AND

**HTC CORPORATION, HTC (BVI) CORP., AND HTC  
AMERICA, INC.,**  
*Defendants-Petitioners,*

AND

**RESEARCH IN MOTION, LTD. AND RESEARCH IN  
MOTION CORP.,**  
*Defendants-Petitioners.*

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Miscellaneous Docket No. 952

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On Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b) from the United States District Court for the District of Delaware in case nos. 04-CV-1436, 06-CV-0404, and 08-CV-0371, Judge Joseph J. Farnan, Jr.

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**ST. CLAIR INTELLECTUAL PROPERTY  
CONSULTANTS, INC.,**  
*Plaintiff-Respondent,*

v.

**FUJIFILM HOLDINGS CORPORATION, FUJIFILM  
CORPORATION, FUJI PHOTO FILM CO. LTD.,  
FUJI PHOTO FILM U.S.A. INC., FUJIFILM U.S.A.,  
INC. AND FUJIFILM AMERICA INC.,**  
*Defendants-Petitioners,*

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Miscellaneous Docket No. 953

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On Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b) from the United States District Court for the District of Delaware in case no. 08-CV-0373, Judge Joseph J. Farnan, Jr.

**ON PETITION FOR PERMISSION TO APPEAL**

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PER CURIAM.

**ORDER**

Nokia et al. and Fujifilm et al. petition for permission to appeal orders certified by the United States District Court for the District of Delaware as ones involving a

controlling issue of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation. St. Clair Intellectual Property Consultants, Inc. opposes. Nokia and Fujifilm move for leave to file a reply. St. Clair opposes. Fujifilm moves without opposition to consolidate these petitions.

These two petitions stem from suits brought by St. Clair in the District of Delaware alleging infringement of four related patents (the Roberts Patents). In these cases, the district court has adopted the claim construction order from a separate prior suit brought by St Clair against Fuji also involving the Roberts Patents (*Fuji I*). Final judgment in *Fuji I* was issued in 2009 in favor of St. Clair and is now currently on appeal before this court. The *Fuji I* appeal has been fully briefed and is scheduled for oral argument in October of 2010.

In late February 2010 the district court adopted the *Fuji I* claim construction order. The following month, the petitioners sought to file an amicus brief in *Fuji I*. That motion was denied by this court on April 30, 2010. The petitioners also requested that the district court certify the claim construction order for interlocutory appeal. The district court certified the order for interlocutory appeal on July 20, 2010. Ultimately, however, this court must exercise its own discretion in deciding whether it will grant permission to appeal interlocutory orders certified by a trial court. See *In re Convertible Rowing Exerciser Patent Litigation*, 903 F.2d 822 (Fed. Cir. 1990); 28 U.S.C. § 1292(c)(1).

Granting the petitions under these circumstances is not warranted. Unlike *Regents of the Univ. of California*, 477 F.3d 1335, 1336-37 (Fed. Cir. 2007) in which this court granted immediate appeal of a claim construction order when intertwined with the issues in a pending appeal, the 1292(b) petitions here were brought well after

the court expended resources preparing for oral argument in *Fuji I*. We see no reason to delay proceedings in that case on these grounds and therefore deny the petitions.

Accordingly,

IT IS ORDERED THAT:

- (1) The petitions for permission to appeal are denied.
- (2) The motion to consolidate is granted. The revised official caption is reflected above.
- (3) The motion for leave to file a reply is granted.

FOR THE COURT

SEP 24 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

**SEP 24 2010**

**JAN HORBALY  
CLERK**