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## Permissive Interlocutory Appeals at the Court of Appeals for the Federal Circuit: Fifteen Years in Review (1995-2010)

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## Permissive Interlocutory Appeals at the Court of Appeals for the Federal Circuit: Fifteen Years in Review (1995-2010)

## ARTICLE

# PERMISSIVE INTERLOCUTORY APPEALS AT THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT: FIFTEEN YEARS IN REVIEW (1995–2010)

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#### FOREWORD BY CHIEF JUDGE JANE A. RESTANI

*The following selection emanates from research prepared for the Federal Circuit Bar Association's Twelfth Annual Bench and Bar Program held in June 2010. The 2010 Program, "Celebrating Commitment: The Building of a Federal Circuit Jurisprudence," and specifically the panel on which I sat, "The Circuit and Trial Court Dialogue," sought to encourage a conversation among the appellate and trial tribunals. One topic of concern to the panel was that of certification of issues for interlocutory appeal.*

*As a trial court judge and outgoing Chief Judge of the United States Court of International Trade, a national court with appeals to the Federal Circuit, I find that discussion of this issue may inform us on one path to an expeditious and less costly final disposition of a dispute. This Article presents a unique and timely look at the development and present-day state of permissive interlocutory appeals at the Court of Appeals for the Federal Circuit, which should be of interest to the involved courts and the Bar of those courts.*

#### INTRODUCTION

The final judgment rule has existed since the inception of the judiciary in the United States.<sup>1</sup> The rule only permits appeals of final judgments and exists to protect the judicial system from wasteful and dilatory tactics.<sup>2</sup> Over the past century and a half, Congress slowly eroded this rule with specific and narrowly prescribed exceptions. It was not until the 1950s, however, that Congress granted district court judges the discretion to certify orders for immediate review before

1. See, e.g., Judiciary Act of 1789, ch. 20, § 22, 1 Stat. 73, 84 (stating that a circuit court may reexamine "final decrees and judgments" from a district court).

2. See John C. Nagel, Note, *Replacing the Crazy Quilt of Interlocutory Appeals Jurisprudence with Discretionary Review*, 44 DUKE L.J. 200, 203 (1994) (noting that the final judgment rule saves courts from ruling on issues that later become moot, and also prevents the delay that multiple appeals might cause).

rendering a final judgment.<sup>3</sup> To temper any possible over-use of this diversion from the final judgment rule, Congress also required a second level of review of a district court judge's invocation of discretion. The courts of appeals must review a certification by a lower court and determine whether to grant or deny the petition.<sup>4</sup> Only if the petition is granted will the merits of the issue be addressed.<sup>5</sup>

This Article reviews the last fifteen years of discretionary or "permissive" interlocutory appeals at the United States Court of Appeals for the Federal Circuit in an attempt to gain insight into the court's application of this exception to the final judgment rule. Part I briefly discusses the history of permissive interlocutory appeals in the United States judiciary system. Part II surveys the last fifteen years of interlocutory appeals at the Federal Circuit. Finally, Part III takes a closer look at petitions for interlocutory appeals of the two types of cases from which the most and the least petitions derive—intellectual property cases and international trade cases, respectively.

## I. BACKGROUND

The United States Congress decided, in enacting the Judiciary Act of 1789, to adopt the English common law approach and only permit appeals from final judgments.<sup>6</sup> The final judgment rule has remained in our law and in its current statutory form it gives the courts of appeals "jurisdiction of appeals from all final decisions of the district courts of the United States."<sup>7</sup> "A 'final decision' generally is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."<sup>8</sup> This statutory

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3. See Interlocutory Appeals Act, Pub. L. No. 85-919, 72 Stat. 1770, 1770 (1958) (codified at 28 U.S.C. § 1292(b) (2006)) (allowing district court judges to certify for appeal an order that "involves a controlling question of law" when "an immediate appeal . . . may materially advance the ultimate termination of the litigation").

4. See 28 U.S.C. § 1292(b) (2006).

5. *Id.*

6. See Judiciary Act of 1789 § 22 ("And be it further enacted, [t]hat final decrees and judgments in civil actions in a district court . . . may be reexamined, and reversed or affirmed in a circuit court . . ."); see also Nagel, *supra* note 2, at 202 ("The [final judgment] rule developed because at [English] common law an appellate court was required to consider the entire record. This requirement made appeals before a final decision problematic because it was difficult for the King's Bench and the trial court to review the record simultaneously."); 19 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 203App.01 (3d ed. 2010) (noting that "[t]he First Judiciary Act made no provision for appeal from an interlocutory order").

7. 28 U.S.C. § 1291.

8. *Catlin v. United States*, 324 U.S. 229, 233 (1945).

requirement proscribes piecemeal appeals, which were deemed to lead to dilatory tactics and unnecessary expense.<sup>9</sup>

For more than the first one hundred years of federal judicial history, interlocutory appeals were not statutorily recognized. Over time, however, Congress and the federal courts began to allow exceptions to the final judgment rule under very narrow circumstances.<sup>10</sup> These exceptions became known as appeals of interlocutory orders, or interlocutory appeals.<sup>11</sup> Interlocutory appeals first began to find a place in the federal judicial system under the Judiciary Act of 1891 (also known as the “Evarts Act”).<sup>12</sup> The Evarts Act created the federal circuit courts of appeals and section seven provided that injunctive orders could be reviewed by a circuit court before the court below reached a final judgment on the case.<sup>13</sup> Thus, in the specific case of injunctive orders, interlocutory appeals were permitted to promote efficient litigation and to prevent the continuation of a meritless injunction for long periods without review.<sup>14</sup>

Between 1891 and 1958, Congress continued to find merit in permitting interlocutory appeals in certain instances. For example, in 1900, Congress permitted interlocutory review of a district court’s appointment of a receiver as well as injunctive orders.<sup>15</sup> In 1926, Congress allowed for appeals of interlocutory decrees in admiralty

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9. See *Balt. Contractors, Inc. v. Bodinger*, 348 U.S. 176, 178 (1955) (“Congress has long expressed a policy against piecemeal appeals.”), *overruled by* *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 282–83 (1988); *Catlin*, 324 U.S. at 233–34 (stating that “[t]he foundation of [the final judgment rule] policy is not in merely technical conceptions of ‘finality’” but rather one for the “conservation of judicial energy” and the “elimination of delays caused by interlocutory appeals”).

10. See *MOORE ET AL.*, *supra* note 6, § 203App.01 (stating that the shift from the final judgment rule was a “gradual, grudging retreat”).

11. Interlocutory means “interim or temporary, not constituting a final resolution of the whole controversy.” *BLACK’S LAW DICTIONARY* 889 (9th ed. 2009).

12. Judiciary (Evarts) Act of 1891, ch. 517, § 7, 26 Stat. 826, 828.

13. *Id.*

14. See *Smith v. Vulcan Iron Works*, 165 U.S. 518, 525 (1897) (“The manifest intent of [section seven of the Judiciary Act of 1891] . . . appears to this court to have been, not only to permit the defendant to obtain immediate relief from an injunction, the continuance of which throughout the progress of the cause might seriously affect his interests, but also to save both parties from the expense of further litigation, should the appellate court be of opinion that the plaintiff was not entitled to an injunction because his bill had no equity to support it.”).

15. Act of June 6, 1900, ch. 803, 31 Stat. 660, 660–61 (codified as amended at 28 U.S.C. § 1292(a)(2) (2006)). Before 1900, Congress slightly altered the language of section seven of the Evarts Act in a way that seemed to have little effect on the nature of interlocutory appeals. Compare Evarts Act § 7 (stating that where “an injunction shall be granted or continued by an interlocutory order or decree, . . . an appeal may be taken”), with the Act of Feb. 18, 1895, ch. 96, 28 Stat. 666, 666–67 (codified as amended at 28 U.S.C. § 1292(a)(1) (2006)) (stating that where “an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree . . . an appeal may be taken”).

cases.<sup>16</sup> A year later, Congress included review of a judgment in a patent suit that is final, except for accounting, on the list of possible interlocutory appeals.<sup>17</sup>

The most significant change to the final judgment rule in the United States, however, came in 1958. The Interlocutory Appeals Act (“Act”) reformed interlocutory appeals under 28 U.S.C. § 1292.<sup>18</sup> The majority of the enumerated interlocutory appeals permissible prior to the promulgation of the Act were placed under subsection 1292(a).<sup>19</sup> The Act then added subsection (b) to permit, for the first time, non-enumerated appeals of interlocutory orders. The provision stated, in language nearly identical to that of the current statute, that

[w]hen a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order.<sup>20</sup>

Congress granted courts the ability to permit discretionary interlocutory appeals because of the “growing awareness of the need for expedition of cases pending before the district courts,”<sup>21</sup> but had deep concerns that “the indiscriminate use of such authority [might] result in delay rather than expedition of cases in the district courts.”<sup>22</sup> Because of these concerns, the Judicial Conference Committee rejected the original proposed § 1292(b) language by Judge Jerome Frank of the Second Circuit,<sup>23</sup> which would have permitted interlocutory appeals when “necessary or desirable to avoid substantial injustice.”<sup>24</sup>

16. Act of Apr. 3, 1926, ch. 102, 44 Stat. 233, 233–34 (codified as amended at 28 U.S.C. § 1292(a)(3) (2006)).

17. Act of Feb. 28, 1927, ch. 228, 44 Stat. 1261, 1261 (codified as amended at 28 U.S.C. § 1292(c)(2) (2006)).

18. Interlocutory Appeals Act, Pub. L. No. 85-919, 72 Stat. 1770, 1770 (1958) (codified at 28 U.S.C. § 1292(b) (2006)).

19. See S. REP. NO. 85-2434, at 2 (1958) (explaining that the proposed bill, House Bill 6238, “would place the existing provisions of section 1292 in subsection (a) of that section”).

20. 72 Stat. 1770.

21. S. REP. NO. 85-2434, at 2.

22. *Id.* at 3.

23. Judge Jerome Frank served as a judge on the Second Circuit from 1941 until his death in 1957, and throughout his legal career led the legal realism movement. See generally Neil Duxbury, *Jerome Frank and the Legacy of Realism*, 18 J.L. & SOC’Y 175 (1991) (examining the contributions of Judge Jerome Frank to legal realism).

24. JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT OF THE PROCEEDINGS OF A SPECIAL SESSION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, at 203 (Mar. 20–21, 1952) [hereinafter SPECIAL SESSION PROCEEDINGS REPORT]; see also *Appeals from*

Throughout the discussions regarding the most appropriate language for § 1292(b), the House of Representatives and the Senate placed great emphasis on the need to strike a balance between allowing interlocutory appeals when necessary to promote judicial efficiency and the concern about “opening the door to frivolous, dilatory, or harassing interlocutory appeals.”<sup>25</sup> Accordingly, Congress’ intent was clear from the beginning. Interlocutory appeals were to be permitted carefully and rarely.<sup>26</sup> It was generally agreed that the approved language provided “a lot of protective features” and did “not open[] the door to a lot of delaying applications for appeals.”<sup>27</sup>

One of the most significant “protective features,” as explained in the provision itself, is the bifurcated discretionary review by both the lower court and the court of appeals. To begin, a district court judge must deem an issue worthy of immediate review and certify that particular issue for examination. Thus, a court of appeals can dismiss an interlocutory appeal if the lower court did not properly certify the issue.<sup>28</sup> This procedural safeguard prevents a party from submitting an issue for interlocutory review to a court of appeals merely because it does not agree with the lower court’s decision. Even if the lower court properly certifies an appeal, however, the court of appeals still has complete discretion to choose whether to grant or deny the

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*Interlocutory Orders and Confinement in Jail-Type Institutions: Hearings Before the Subcomm. No. 3 of the H. Comm. on the Judiciary on H.R. 6238 and H.R. 7260*, 85th Cong. 9 (1958) [hereinafter *HEARINGS BEFORE SUBCOMM. NO. 3*] (asserting that the proposal of Judge Frank to give full discretion to the court of appeals was “too liberal”). The Judicial Conference Committee rejected the recommendation in March 1952 out of a concern that the proposed language “would unduly encourage fragmentary and frivolous appeals with the evils and delays incident thereto.” *SPECIAL SESSION PROCEEDINGS REPORT*, at 203.

25. See Note, *Interlocutory Appeals in the Federal Courts Under 28 U.S.C. § 1292(b)*, 88 HARV. L. REV. 607, 610 & n.15 (1975) [hereinafter *Interlocutory Appeals Note*] (describing the discussion in the Judicial Conference that emphasized striking a balance between justice and judicial efficiency, and noting that the congressional hearings focused on a similar compromise).

26. See *Milbert v. Bison Labs., Inc.*, 260 F.2d 431, 433 (3d Cir. 1958) (“It is quite apparent from the legislative history of the Act of September 2, 1958 that Congress intended that section 1292(b) should be sparingly applied.”) The *Milbert* court emphasized that interlocutory appeals were only to be used “in exceptional cases where an intermediate appeal may avoid protracted and expensive litigation,” not to “open the floodgates to a vast number of appeals . . . in ordinary litigation.” *Id.*; see also H.R. REP. NO. 85-1667, at 2 (1958) (stating that the bill “will not only save protracted and expensive litigation, but, with its built-in safeguards, prevent numerous and groundless appeals to our appellate courts”).

27. *HEARINGS BEFORE SUBCOMM. NO. 3*, *supra* note 24, at 19 (statements of Edwin E. Willis, Committee Member for Louisiana, and Honorable Albert B. Maris of the United States Court of Appeals for the Third Circuit).

28. See, e.g., *Oppenheimer v. L.A. Cnty. Flood Control Dist.*, 453 F.2d 895, 895 (9th Cir. 1972) (holding that interlocutory orders of the district court were “not appealable [under 28 U.S.C. § 1292(b)] because the district judge did not certify them for appeal”).



petition for an interlocutory appeal.<sup>29</sup> Such a decision can rest on anything from considerations of judicial efficiency to mere docket congestion.<sup>30</sup> The court of appeals is not required to provide an explanation for why it denied or granted a petition for interlocutory appeal.<sup>31</sup>

The next significant change to interlocutory appeals did not come until 1982, under the Federal Courts Improvement Act, which created the United States Court of Appeals for the Federal Circuit (“Federal Circuit” or “CAFC”).<sup>32</sup> The Federal Courts Improvement Act added subsections (c) and (d) to 28 U.S.C. § 1292 and gave the Federal Circuit exclusive interlocutory appellate jurisdiction from a number of specialized federal courts, such as the United States Court of Federal Claims (“CFC”) and the United States Court of International Trade (“CIT”).<sup>33</sup> The standard for certifying an interlocutory appeal for the CFC or the CIT remained the same dual-level certification that is required of the other federal district courts and the geographically determined courts of appeals.<sup>34</sup>

Finally, the most recent expansion to interlocutory appeals occurred in 1992. The Federal Courts Administration Act added subsection (e) to 28 U.S.C. § 1292, which permits the Supreme Court to allow interlocutory appeals in other instances not provided for in

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29. 28 U.S.C. § 1292(b) (2006).

30. See *In re Kashani*, 190 B.R. 875, 882–83 (B.A.P. 9th Cir. 1995) (determining that an interlocutory appeal was warranted for reasons of judicial efficiency because the debtor’s claims would be dismissed with prejudice if the bankruptcy judge had abused his discretion); *Interlocutory Appeals Note*, *supra* note 25, at 607 (highlighting circumstances that lead to a “congested appellate docket”).

31. See, e.g., *Int’l Gamco, Inc. v. Multimedia Games, Inc.*, 206 F. App’x 978, 978 (Fed. Cir. 2006) (agreeing with the district court, without providing reasoning, that the order at issue “meets the statutory requirements of 28 U.S.C. § 1292(b),” and granting permission to appeal); *Miken Composites, L.L.C. v. Wilson Sporting Goods Co.*, 125 F. App’x 298, 299 (Fed. Cir. 2005) (stating that the decision to grant or deny an interlocutory appeal was within the sole discretion of the court); *CSU Holdings, Inc. v. Xerox Corp.*, 129 F.3d 132 (Fed. Cir. 1997) (unpublished table decision) (“This court determines for itself whether it will grant permission to appeal an interlocutory order pursuant to [28 U.S.C. § 1929(b), (c)(1)]. Such a ruling is within this court’s complete discretion.”) (citation omitted).

32. Federal Courts Improvement Act of 1982, § 127, Pub. L. No. 97-164, 96 Stat. 25, 37–39 (codified in scattered sections of 28 U.S.C. § 1292(c)–(d) (2006)).

33. *Id.* § 125(b).

34. Compare 28 U.S.C. § 1292(b) (delineating the system for certifying interlocutory appeals in the geographically determined district courts), with 28 U.S.C. § 1292(d)(1)–(2) (construing interlocutory appellate jurisdiction for the CAFC). Thus, the “Federal Circuit may, in its discretion, permit an appeal to be taken from [an] order” if the CIT or CFC “includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(d)(1)–(2).

the first four subsections of § 1292.<sup>35</sup> The House Report clearly indicated that this provision was designed “to expand the appealability of interlocutory determinations by the courts of appeals.”<sup>36</sup> To date, however, § 1292(e) has not been invoked, and thus interlocutory appeals currently remain limited to § 1292(a)–(d).<sup>37</sup>

## II. PERMISSIVE INTERLOCUTORY APPEALS AT THE FEDERAL CIRCUIT

As intended by Congress, lower court certification of permissive interlocutory appeals has been rare and the Federal Circuit has been equally judicious in granting the subsequent petitions. Over the past fifteen years, since October 1995, there have been only 117 petitions filed pursuant to 28 U.S.C. § 1292(b).<sup>38</sup> Of the 117 petitions submitted for permissive interlocutory review, the Federal Circuit granted only thirty-four percent. Thus, it appears that the Federal Circuit took Congress’ concerns seriously and limited permissive interlocutory appeals to very narrow circumstances. This Article will further review the issues submitted for petition and the Federal Circuit’s disposition of all the petitions in an effort to illuminate the state of permissive interlocutory appeals at the Federal Circuit over the last fifteen years.

### A. *Types of Issues Brought for Immediate Review*

The most common subject matter certified for interlocutory appeal before the Federal Circuit was, by far, intellectual property claims (seventy-two cases). Other types of claims that were certified for

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35. Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 101, 106 Stat. 4506, 4506 (codified as amended at 28 U.S.C. § 1292(e)).

36. H.R. REP. NO. 102-1006, at 18 (1992).

37. At the time this Article went to press the Supreme Court had referenced § 1292(e) in only five cases: *Stolt-Nielsen S.A. v. Animal Feeds Int’l Corp.*, 130 S. Ct. 1758, 1778 (2010) (Ginsburg, J., dissenting); *Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 609 (2009); *Cunningham v. Hamilton Cnty.*, 527 U.S. 198, 210 (1999); *Johnson v. Jones*, 515 U.S. 304, 310 (1995); and *Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 48 (1995). The Supreme Court, however, has yet to invoke its power under § 1292(e) and allow an interlocutory appeal under the provision. See *Stolt-Nielsen*, 130 S. Ct. at 1767 n.2 (finding the case to be ripe for review on other grounds); *Mohawk Indus.*, 130 S. Ct. at 609 (determining that § 1292(e) authorizes the Court to prescribe rules for new types of interlocutory appeals via *rulemaking*, not “by court decision” (citation omitted) (internal quotation marks omitted)); *Cunningham*, 527 U.S. at 208–11 (holding that a sanctions order on an attorney is not appealable under the § 1291 final judgment rule, while noting that statutes such as § 1292(e) might prompt changes that would allow such an appeal in the future); *Johnson*, 515 U.S. at 309–10 (stating that § 1292(e) was not applicable to the question of appealability in the instant case); *Swint*, 514 U.S. at 48 (citing § 1292(e) as an example of Congressional authorization for the Court to “expand the list of orders appealable on an interlocutory basis” by rulemaking, but not by judicial decision).

38. Appendix I contains a complete list of the cases.

interlocutory appeal include contract claims (twelve cases), international trade issues (seven cases), statutory interpretation claims (four cases), claims under the takings clause of the U.S. Constitution (four cases), jurisdictional disputes (three cases), and civil rights claims (two cases).<sup>39</sup> Several other issues appeared only once in a petition for interlocutory review, such as the scope of attorney-client privilege, the propriety of disqualifying a law firm, adopting a party's jury instructions, conformity with due process, standing, statute of limitations, and treaty interpretation.

*Table 1: Type of Case or Issue on Appeal*

<i>Type of Case or Issue on Appeal</i>	<i>No. of Cases</i>	<i>Percentage of Total No. of Petitions</i>
Intellectual Property	72	61.54%
Contract	12	10.26%
Trade	7	5.98%
Statutory Interpretation	4	3.42%
Takings Clause	4	3.42%
Unknown	4	3.42%
Jurisdiction	3	2.56%
Civil Rights	2	1.71%
Discovery	2	1.71%
Attorney-Client Privilege	1	0.85%
Disqualification of Law Firm	1	0.85%
Due Process	1	0.85%
Jury Instructions	1	0.85%
Standing	1	0.85%
Statute of Limitations	1	0.85%
Treaty	1	0.85%

Intellectual property claims clearly dominated the majority of the petitions for permissive interlocutory appeal at the Federal Circuit. Although there could be many causes, this trend may be due to the sheer number of intellectual property cases heard by lower courts, the complexity of such cases, and non-specialized trial judges.<sup>40</sup>

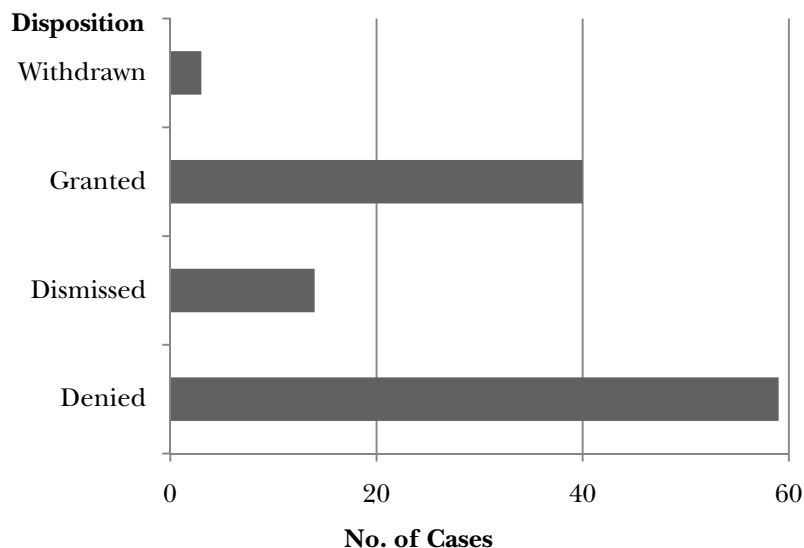
39. In four of the cases the nature of the claim was indiscernible.

40. See *infra* Part III (discussing possible reasons why intellectual property cases are nearly five times more likely than international trade cases to result in interlocutory review).

*B. Disposition of Petitions by the Federal Circuit*

As presented by Figure 1, the Federal Circuit denied the petition for interlocutory review in sixty cases, dismissed the petition in fourteen cases, and granted the petition in forty cases. In three of the cases, the parties withdrew their petitions.

*Figure 1: CAFC'S Disposition of Petitions for Permissive Interlocutory Appeal*



Accordingly, the Federal Circuit denied or dismissed nearly sixty-three percent of all the issues certified for interlocutory review by the lower courts. The following subsections further analyze the Federal Circuit's disposition of the petitions for permissive interlocutory review.

*1. Denied petitions*

As mentioned, the Federal Circuit denied the petition for interlocutory appeal in sixty cases. In the majority of the cases, the Federal Circuit did not provide a significant explanation for its denial of the petition (twenty-six cases). The most common reason expressed for denying a petition was that the issue did not merit immediate review (ten cases).<sup>41</sup> The next most prominent concern

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41. See *infra* app. 1, col. C (listing reasons provided by the Federal Circuit to explain why individual petitions for permissive interlocutory appeal were or were not granted).

for the Federal Circuit seemed to be that immediate review of the issue would not dispose of the entire case and thus, would not promote judicial efficiency (five cases). In a similar vein, the petition was denied in several cases because the upcoming trial was imminent and appeal would not shorten the ultimate disposition of the case (four cases). The Federal Circuit also denied petitions where it was determined that the issue could be decided under an appeal of the lower court's Federal Rule of Civil Procedure 54(b) judgment (four cases). Other reasons for denying the petition include the fact that the issue was intertwined with the merits and not a clear question of law (three cases), the issue was not addressed in the lower court (two cases), the issue was not certified by the lower court (two cases), the issue would be decided sooner by another court (one case), the appeal would waste judicial resources already expended (one case), the appeal would not advance the ultimate termination of the litigation (one case), and the petition was untimely (one case).<sup>42</sup>

*Table 2: Of Those Petitions Denied by the CAFC, Why Were They Denied?*

No Significant Explanation	26
Issue Does Not Merit Immediate Review	10
Would Not Dispose of Entire Case	5
Upcoming Trial Will Come Sooner	4
Issue Can Be Decided Under Appeal of 54(b) Judgment	4
Issue Intertwined with Merits/Factual Issue/Not a Clear Question of Law	3
Issue Not Addressed Below	2
No Certification Below	2
Issue Will Be Decided Sooner by Another Court	1
Would Waste Judicial Resources Already Expended	1
Would Not Advance Ultimate Termination of the Litigation	1
Untimely	1

Table 2 indicates that, of the denials that are explained, the Federal Circuit is most likely to deny a petition when it is not efficient to permit immediate review of an issue. If immediate review will not expedite the litigation or if there is another avenue by which review of the issue can be effectuated, the Federal Circuit will not invoke its discretionary powers under § 1292(b).<sup>43</sup>

42. These numbers may not correspond with totals because all reasons cited by the Federal Circuit for denying the petition were noted.

43. See *infra* app. 1, col. C (cataloging the various reasons provided by the CAFC for denying petitions for interlocutory appeal).

This focus on the efficient use of judicial resources does not waver depending on the issue on appeal. The most common cases denied permissive interlocutory review were intellectual property claims (forty-one cases). Other types of claims that saw repeated denials of interlocutory review were contract claims (six cases) and international trade cases (four cases).<sup>44</sup> The Federal Circuit denied interlocutory review of issues regarding treaty interpretation (one case), the takings clause (one case), attorney-client privilege (one case), jury instructions (one case), disqualification of a law firm (one case), and jurisdiction (one case).

*Table 3: Of Those Petitions Denied by the Federal Circuit, What Were the Issues on Appeal?*

<i>Issue</i>	<i>No. of petitions denied</i>	<i>Percentage of total no. of petitions denied</i>
Intellectual Property	41	68.33%
Contract Claim	6	10.00%
International Trade	4	6.67%
Unknown	3	5.00%
Attorney-Client Privilege	1	1.67%
Disqualification of Law Firm	1	1.67%
Jurisdiction	1	1.67%
Jury Instructions	1	1.67%
Takings Clause	1	1.67%
Treaty Interpretation	1	1.67%

In general, the percentage of each issue denied roughly corresponds to its percentage of the total number of petitions submitted to the Federal Circuit.<sup>45</sup> Thus, it does not appear that the Federal Circuit is more apt to deny a particular issue submitted for permissive interlocutory review.

## *2. Dismissed petitions*

As mentioned above, the Federal Circuit dismissed the petition for interlocutory appeal in fourteen cases. The most common reasons given for dismissing a petition were that the particular issue was not

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44. In three of the cases denied petition for interlocutory review, the nature of the dispute is indiscernible.

45. See *infra* figure 1 (graphing the Federal Circuit's disposition of petitions for permissive interlocutory appeal).

reviewable by the Federal Circuit (four cases),<sup>46</sup> the lower court had not issued an order of certification (three cases), and the petition was untimely (three cases). The remaining dismissals occurred because the parties withdrew (one case), the parties settled (one case), or the case was docketed in error (one case). In only one case the Federal Circuit did not explain its reason for dismissing a petition for interlocutory appeal.<sup>47</sup>

*Table 4: Of Those Petitions Dismissed by the CAFC, Why Were They Dismissed?*

No Right of Appeal of Issue	4
No Order of Certification	3
Untimely	3
Docketed in Error	1
No Significant Explanation	1
Settlement	1
Withdrawn	1

Overall, Table 4 indicates that under most circumstances the Federal Circuit will dismiss a petition when the court deems that there is a procedural flaw in submitting a petition for permissive interlocutory review.

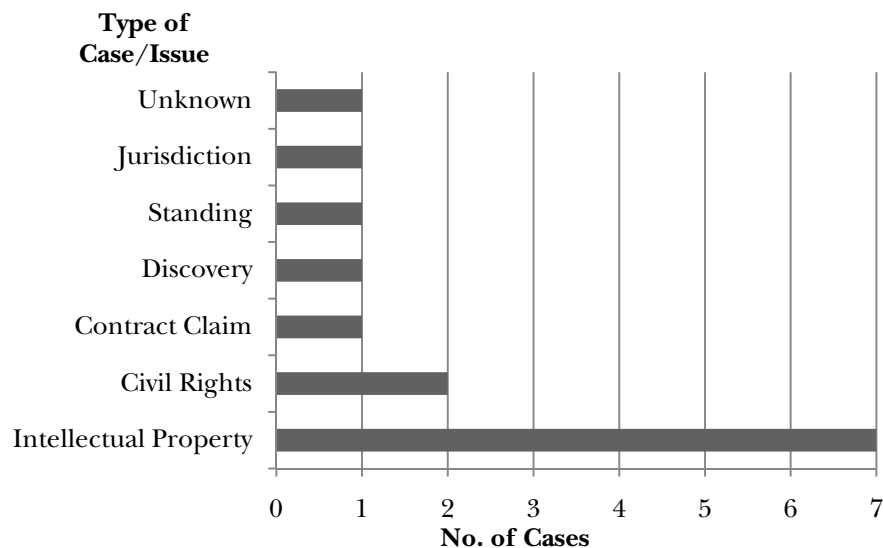
The most common types of cases for which the Federal Circuit dismissed the petition were intellectual property (seven cases) and civil rights claims (two cases). The other cases included a contract claim (one case), an issue of discovery (one case), standing (one case), and jurisdiction (one case).

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46. See, e.g., *Christopher Village, L.P. v. United States*, 25 F. App'x 922, 922 (Fed. Cir. 2001) (“[A] party may not seek interlocutory review of the denial of class certification under the rules of the Court of Federal Claims.”).

47. These numbers may not correspond with totals because all reasons cited by the CAFC were noted.

*Figure 2: Of Those Petitions Dismissed by the CAFC,  
What Were The Types of Cases/Issues on Appeal?*



As shown above, there does not seem to be any indication that the Federal Circuit denies or dismisses a petition for interlocutory review merely because of the type of case presented. Rather, procedurally flawed petitions will be dismissed.<sup>48</sup>

### 3. *Granted petitions*

Over the last fifteen years the Federal Circuit granted forty petitions for interlocutory review. The most common reason given for granting a petition is that resolution of the issue would resolve other pending cases (six cases).<sup>49</sup> The second most common reason given was that certification was unopposed (four cases), the issue was purely one of law (four cases), and granting the petition would promote judicial efficiency and conserve resources (four cases). The Federal Circuit has also granted petitions for interlocutory review because there was a jurisdictional split which should be resolved (three cases), it was an issue of first impression (three cases), it would advance the ultimate termination of litigation (two cases) and significant resources would be wasted if the case were to proceed to the damages stage without establishing the legitimacy of the order of the lower court (two cases). In other instances the Federal Circuit

48. See *supra* Table 4 (tallying the different reasons provided by the Federal Circuit for dismissing petitions for permissive interlocutory review).

49. In sixteen of the cases the Federal Circuit did not provide a significant explanation of its reason for granting the petition.



granted review because there was substantial ground for difference of opinion (one case), and because interlocutory review would decide the case (one case).<sup>50</sup>

*Table 5: Of Those Petitions Granted by the CAFC, Why Were They Granted?*

No Significant Explanation	16
Will Resolve Other Pending Cases	6
Certification Unopposed	4
Promote Efficiency and Conserve Resources	4
Purely a Legal Issue/Issue of Law	4
Issue of First Impression	3
Jurisdictional Split	3
Advance Ultimate Termination of Litigation	2
Resources Wasted if Proceed Without Establishing Legitimacy of Order	2
Substantial Ground for Difference of Opinion	1
Will Decide the Case	1

Once again, Table 5 reveals the Federal Circuit's focus on judicial efficiency in determining whether to grant a petition for permissive interlocutory appeal. Not surprisingly, the most common type of case for which the Federal Circuit granted interlocutory review was intellectual property (twenty-three cases). The Federal Circuit also granted interlocutory review of contract claims (four cases), issues of statutory interpretation (four cases), international trade cases (three cases), and claims under the takings clause of the U.S. Constitution (two cases). Interlocutory review was also permitted for claims involving due process violations (one case), discovery disputes (one case), jurisdictional issues (one case), and violations of the applicable statute of limitations (one case).

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50. These numbers may not correspond with totals because all reasons cited by the CAFC for granting a petition were noted.

*Table 6: Of Those Petitions Granted by the Federal Circuit, What Were the Types of Cases/Issues on Appeal?*

<i>Of Those Petitions Granted by the CAFC, What Were the Types of Cases/Issues on Appeal?</i>	<i>No. of Petitions Granted</i>	<i>Percentage of Total No. of Petitions Granted</i>
Intellectual Property	23	57.50%
Contract	4	10.00%
Statutory Interpretation	4	10.00%
International Trade	3	7.50%
Takings Clause	2	5.00%
Discovery	1	2.50%
Due Process	1	2.50%
Jurisdiction	1	2.50%
Statute of Limitations	1	2.50%

As presented by Table 7, of the petitions granted, the Federal Circuit affirmed the decision of the lower court in fourteen cases. The most common type of case affirmed was intellectual property (ten cases). The Federal Circuit also affirmed the lower court's decision in two contract claim cases and two cases involving statutory interpretation.

In three cases, the Federal Circuit affirmed in part and reversed in part the decisions of the lower court. Two of those cases involved issues of international trade and one involved an intellectual property issue. The Federal Circuit reversed and remanded fifteen of the cases for which it granted the petition for interlocutory review. Those cases involved issues of intellectual property (five cases), statutory interpretation (two cases), contract claims (two cases), the takings clause (one case), discovery (one case), international trade (one case), statute of limitations (one case), due process (one case), and jurisdiction (one case).

The Federal Circuit dismissed the lower court's decision in three cases, and in one case it remanded the issue to the lower court without decision. All four of those cases involved issues of intellectual property. Finally, the Federal Circuit vacated and remanded three cases—two involving issues of intellectual property and one regarding the takings clause of the U.S. Constitution. In one intellectual property case, the Federal Circuit has not yet ruled on the merits of a petition it granted for interlocutory appeal.

*Table 7: If the CAFC Granted the Petition, What Was the Disposition of the Interlocutory Appeal?*

<i>All Holdings</i>	<i>Total</i>	14
What Issues?	Contract	2
	Intellectual Property	10
	Statutory Interpretation	2
<i>Affirmed in Part, Reversed in Part</i>	<i>Total</i>	3
What Issues?	International Trade	2
	Intellectual Property	1
<i>Dismissed</i>	<i>Total</i>	3
What Issues?	Intellectual Property	3
<i>Remanded Without Decision</i>	<i>Total</i>	1
What Issues?	Intellectual Property	1
<i>Reversed and Remanded</i>	<i>Total</i>	15
What Issues?	Intellectual Property	5
	Statutory Interpretation	2
	Takings Clause	1
	Contract	2
	Discovery	1
	International Trade	1
	Statute of Limitations	1
	Due Process	1
	Jurisdiction	1
<i>Vacated and Remanded</i>	<i>Total</i>	3
What Issues?	Intellectual Property	2
	Takings Clause	1
<i>Not Yet Decided</i>	<i>Total</i>	1
What Issue?	Intellectual Property	1

### III. A CLOSER LOOK AT PERMISSIVE INTERLOCUTORY APPEALS OF INTELLECTUAL PROPERTY AND INTERNATIONAL TRADE CASES

As mentioned above, the Court of Appeals for the Federal Circuit has exclusive jurisdiction to hear appeals from interlocutory orders in cases involving intellectual property and international trade.<sup>51</sup> In terms of sheer numbers of petitions for permissive interlocutory review brought to the Federal Circuit, however, the two types of cases are at opposite ends of the spectrum. Since 1995, seventy-two petitions for interlocutory review of intellectual property cases were brought to the Federal Circuit.<sup>52</sup> During the same time period, only seven international trade cases were certified for interlocutory review.<sup>53</sup>

There are many possible reasons for the difference in the amount of intellectual property cases versus international trade cases seeking interlocutory review. In any given year there are generally more intellectual property cases brought and decided in the United States. For example, between 2005 and 2009 there were a total of 846 cases decided at the CIT.<sup>54</sup> During that same time period, however, U.S. courts decided 1,778 intellectual property cases.<sup>55</sup> Assuming these numbers represent the average number of intellectual property and international trade cases decided in any given five-year time span, it still means that historically, an intellectual property case is 4.89 times more likely to be the subject of an interlocutory appeal than an international trade case.

It has also been posited that generally there is a high occurrence of appeals in patent cases because district court judges are not specialized in the field.<sup>56</sup> This might at least partly explain why intellectual property cases have so many more petitions certified for

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51. 28 U.S.C. § 1292(c)(1)–(d)(1) (2006).

52. See *infra* app. 1, col. E (referencing the type of case underlying each petition for permissive interlocutory appeal brought to the Federal Circuit).

53. *Id.*

54. *Slip Opinions*, THE UNITED STATES COURT OF INTERNATIONAL TRADE WEBSITE, [http://www.cit.uscourts.gov/slip\\_op/slip-op.html](http://www.cit.uscourts.gov/slip_op/slip-op.html) (last modified Feb. 17, 2011).

55. See *Cumulative Caselist thru 2010*, U.S. PATENT LITIGATION STATISTICS WEBSITE, <http://www.patstats.org/patstats2.html> (follow “Cumulative Case List” link) (last visited Mar. 22, 2011) (compiling intellectual property appeals by year).

56. See Donna M. Gitter, *Should the United States Designate Specialist Patent Trial Judges? An Empirical Analysis of H.R. 628 in Light of the English Experience and the Work of Professor Moore*, 10 COLUM. SCI. & TECH. L. REV. 169 (2009), available at <http://www.stlr.org/cite.cgi?volume=10&article=4> (discussing the idea that there should be specialized district court judges to deal with patent law claims in order to avoid having so many cases appealed and overturned at the Federal Circuit Court of Appeals). This theory is based on studies of English courts that have a lower reversal rate in patent cases due to specialized lower court judges who decide patent claims. *Id.*

interlocutory review than international trade cases. In contrast, judges at the U.S. Court of International Trade have a limited and specific jurisdiction, which allows them to be very specialized.<sup>57</sup> The following sections further analyze interlocutory appeals in both intellectual property and international trade cases.

A. *Permissive Interlocutory Appeals of Intellectual Property Cases*

Intellectual property cases have a number of different routes to an appeal. In addition to the traditional appeal after a final judgment, patent cases have three available interlocutory appeal methods under 28 U.S.C. § 1292. The first is the same method that is available for interlocutory appeals in non-patent cases, a § 1292(a)(1) appeal, which is taken in response to an injunction.<sup>58</sup> The second option for an interlocutory appeal, a § 1292(c) appeal, is exclusive to patent cases.<sup>59</sup> This interlocutory appeal can be taken in a patent infringement case when the case is “final except for accounting.”<sup>60</sup> Both of these interlocutory orders may be immediately appealed as of right.<sup>61</sup> The third route to an interlocutory appeal, as mentioned above, arises from a permissive appeal under 28 U.S.C. § 1292(b).

The United States district courts certified seventy-two intellectual property cases for interlocutory review between 1995 and 2010. Of those certifications, forty-one petitions for interlocutory appeal were denied and the Federal Circuit granted twenty-three of the petitions. Seven of the petitions were dismissed, and the parties withdrew one petition.

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57. See *About the Court*, THE UNITED STATES COURT OF INTERNATIONAL TRADE WEBSITE, <http://www.cit.uscourts.gov/informational/about.htm> (last visited Jan. 28, 2011) (providing information about the history, procedures, and jurisdiction of the CIT).

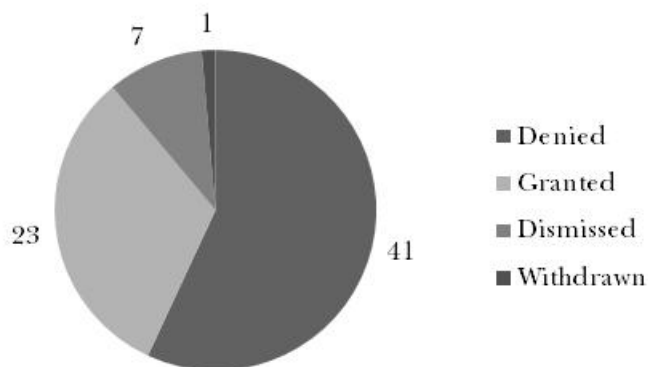
58. 28 U.S.C. § 1292(a)(1) (2006).

59. *Id.* § 1292(c).

60. *Id.* § 1292(c)(2). A decision that is final except for accounting means that “the patent has been found to be valid and infringed and that all that remains is to determine the amount of damages to be awarded.” V. Ajay Singh, *Interlocutory Appeals in Patent Cases Under 28 U.S.C. § 1292(c)(2): Are They Still Justified and Are They Implemented Correctly?*, 55 DUKE L.J. 179, 184 (2005) (citing *Del Mar Avionics v. Quinton Instruments Co.*, 645 F.2d 832, 834 n.3 (9th Cir. 1981)). “The stated purpose and primary benefit of this provision is to allow immediate appellate review of the liability issues before the expense of an accounting is incurred, which, if the finding of liability is reversed, benefits both the litigants and the courts.” *Id.* at 179.

61. MOORE ET AL., *supra* note 6, § 203App.01.

*Figure 3: Disposition of Intellectual Property Cases Seeking Interlocutory Review at the CAFC*



Of those cases that were denied, the most common reason for not permitting the interlocutory appeal was because it would not promote judicial efficiency (seven cases).<sup>62</sup> Other reasons for denying the petition were that the issue did not raise a clear question of law (three cases), interlocutory review would not decide the case (three cases), the issue was better reviewed by appeal of the district court's Federal Rule of Civil Procedure 54(b) judgment (three cases), the issue was not addressed below (two cases), the issue was not certified by the lower court (one case), and lastly, there was no jurisdictional split regarding the issue (one case).<sup>63</sup>

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62. In nineteen of the decisions by the Federal Circuit denying a petition for interlocutory review of intellectual property cases, the court did not give a significant explanation.

63. These numbers may not correspond with totals because all reasons cited by the CAFC for denying the petitions were noted.

*Table 8: Why Did the CAFC Deny the Permissive Appeal Petitions of Intellectual Property Cases?*

No Significant Explanation	19
Will Not Promote Judicial Efficiency	7
Immediate Review of Issue Not Warranted	4
Better for Issue to Be Reviewed by Appeal of Lower Court's 54(b) Judgment	3
Not a Clear Question of Law	3
Will Not Decide Case	3
Issue Not Addressed Below	2
No Jurisdictional Split	1
Not Certified by the Lower Court	1
Would Waste Judicial Resources Already Expended	1

Of those intellectual property petitions that were dismissed by the Federal Circuit, the most common reason given was because the petition was untimely (three cases). Other reasons given for dismissing the petition were that the issue was not immediately appealable (two cases), the petition was docketed in error (one case), and lastly, the parties sought to withdraw the petition (one case).<sup>64</sup>

*Table 9: Of Those Intellectual Property Petitions Dismissed by the CAFC, Why Were They Dismissed?*

Untimely	3
Issue Not for Immediate Appeal	2
Docketed in Error	1
Motion to Withdraw	1

Of the twenty-three intellectual property petitions for interlocutory review that were granted by the Federal Circuit, the most common reason given was that there was a controlling question of law that needed to be resolved (four cases).<sup>65</sup> The Federal Circuit also

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64. These numbers may not correspond with totals because all reasons cited by the CAFC were noted.

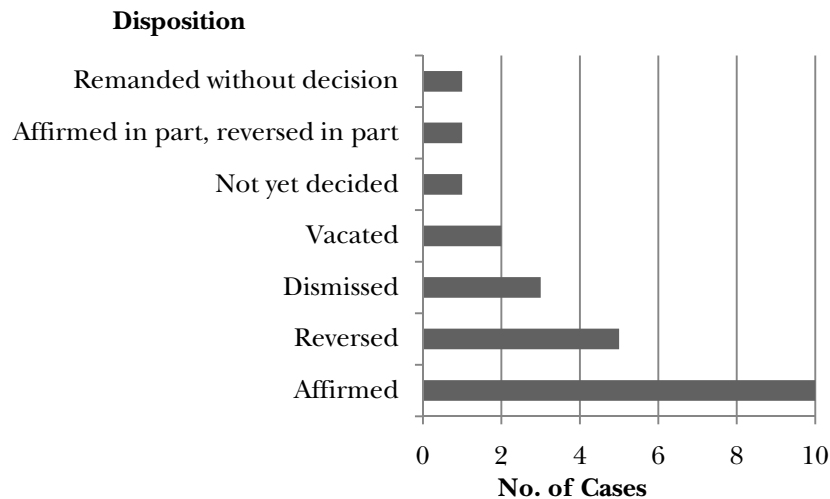
65. In eleven of the decisions by the Federal Circuit granting a petition for interlocutory review of intellectual property cases, the court did not give a significant explanation.

granted interlocutory review because the petition was unopposed (three cases), the review would promote judicial efficiency (three cases), the issue affected the disposition of other cases (two cases), there was a jurisdictional split that should be resolved (one case), it would advance the termination of litigation (one case), and it was an issue of first impression (one case).<sup>66</sup>

*Table 10: Of Those Intellectual Property Petitions Granted by the CAFC, Why Were They Granted?*

No Significant Explanation	11
Controlling Question of Law	4
Unopposed	3
Promote Judicial Efficiency	3
Issue Affects Many Cases	2
Jurisdictional Split	1
Advance Termination of Litigation	1
Issue of First Impression	1

*Figure 4: Once the CAFC Granted the Petition, What Was the Disposition of the Case?*



66. These numbers may not correspond with totals because all reasons cited by the CAFC were noted.



Of those cases that were granted interlocutory review, the Federal Circuit most commonly affirmed the lower court's decision (ten cases). The Federal Circuit affirmed in part and reversed in part in one case, reversed in five cases, dismissed three cases, vacated two cases and has yet to make a decision in one case.

Overall, the Federal Circuit granted about thirty-two percent of the petitions certified by lower courts for interlocutory review of intellectual property cases. This rate of acceptance is only slightly lower than the thirty-four percent acceptance rate of petitions for interlocutory review in general at the Federal Circuit. This rate, however, is significantly lower than the fifty-three percent of cases in which the courts of appeals nationwide have granted petitions for interlocutory appeals in the decade following the passage of § 1292(b).<sup>67</sup> This may be due in part to the increase in the number of suits being filed, particularly intellectual property suits, which have inevitably made dockets more crowded. In sum, the trends that have emerged from petitions for review of intellectual property cases have been similar to the overall trend in permissive interlocutory appeals at the Federal Circuit.

*B. Permissive Interlocutory Appeals at the United States Court of International Trade*

Interlocutory appeals from the U.S. Court of International Trade are a rarity.<sup>68</sup> Since 1990, the parties sought interlocutory review of the CIT's order in only fourteen cases.<sup>69</sup> Of those, the CIT denied certification for immediate review in exactly half of the cases.

*Table 11: Petitions for Certification of Interlocutory Appeal at the CIT Between 1990–2010*

<b>Total</b>	<b>14</b>
CIT Denied Petition	7
CIT Granted Petition	7

The most common reason given for denying certification was that there was no ground for substantial difference of opinion (four cases).<sup>70</sup> Other reasons given were that the statutory requirements for

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67. In the ten years after enactment of § 1292(b), there were over one thousand petitions for appeal, fifty-three percent of which were granted. *Interlocutory Appeals Note*, *supra* note 25, at 607 n.5.

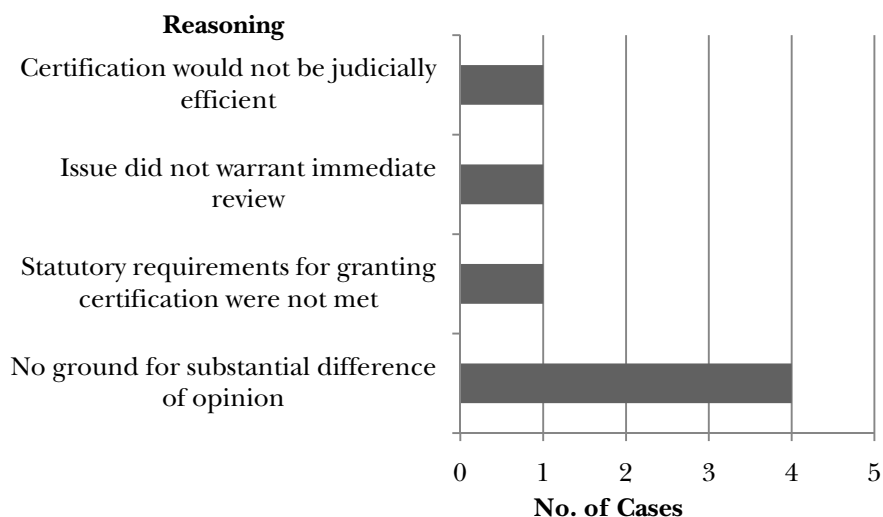
68. Appendix II contains a complete list of the cases.

69. This survey of interlocutory appeals emanating from the CIT includes any case that was deemed "closed" on January 1, 1990 and any other case closed or pending until the present day.

70. *Infra* app. 2, col. C.

granting certification were not met (one case), the issue did not warrant immediate review (one case), and it would not be judicially efficient to grant the certification (one case).

*Figure 5: Why the CIT Denied Certification*

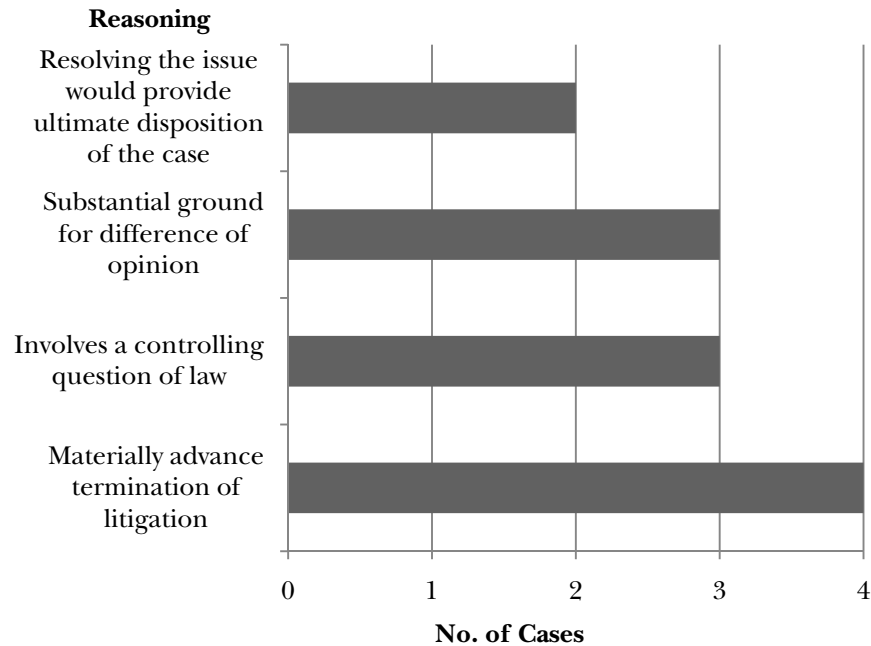


Of the seven cases in which the motion for certification of interlocutory appeal was granted, the CIT most commonly stated that its reason for doing so was because it would materially advance the termination of litigation (four cases).<sup>71</sup> Other reasons for granting certification were that the issue involved a controlling question of law (three cases), there was substantial ground for difference of opinion (three cases), and resolving the issue would provide ultimate disposition of the case (two cases).<sup>72</sup>

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<sup>71.</sup> *Id.*

<sup>72.</sup> These numbers may not correspond with totals because all reasons cited by the CIT were noted.

*Figure 6: Why the CIT Granted the Petition*

Of those seven motions for certification granted by the CIT, the Federal Circuit denied four and granted three of the petitions for interlocutory review.

*Table 12: CAFC Disposition of CIT-Certified Permissive Interlocutory Appeals*

<b>Total No. of Motions for Interlocutory Review</b>	<b>7</b>
Denied	4
Granted	3

In one case the Federal Circuit denied the petition because the appeal was not pled with specificity, as required by the Federal Rules of Appellate Procedure, and, in any event, the issue could be appealed after final judgment.<sup>73</sup> In another case, the Federal Circuit determined that the issue was presently on appeal in a pending case before the court and thus, permissive appeal was not warranted.<sup>74</sup> In one case, the Federal Circuit determined that granting the petition was not warranted because it would not advance the termination of

73. Fed. Mogul Corp. v. United States, Case No. 1992-M322 (Fed. Cir. 1992).

74. Carnival Cruise Lines, Inc. v. United States, 92 F.3d 1203, (Fed. Cir. 1996) (unpublished table decision).

litigation.<sup>75</sup> In the final international trade case for which the Federal Circuit denied the petition, it did so without further explanation.<sup>76</sup>

*Table 13: Of Those Petitions Denied by the CAFC, Why Were They Denied?*

<i>Reasons for Denying Petition<sup>77</sup></i>	<i>Petitions Denied</i>
Not Pled with Specificity	1
Issue Could be Appealed After Final Judgment	1
Would Not Advance Termination of Litigation	1
No Significant Explanation	1
Issue Presently on Appeal in a Pending Case	1

The Federal Circuit granted the petition for interlocutory review in three of the cases certified by the CIT.<sup>78</sup> The Federal Circuit provided its reasoning in only one of the cases and stated that it was granting the petition because the issue presented was one of first impression and a denial of the petition would result in time-consuming litigation.<sup>79</sup>

*Table 14: Of Those Petitions Granted by the CAFC, Why Were They Granted?*

<i>Reasons for Granting Petition</i>	<i>Petitions Granted</i>
No Significant Explanation	2
Issue Presented Was One of First Impression	1

In that case, the Federal Circuit ultimately reversed the CIT's disposition of the issue of first impression.<sup>80</sup> In the final two cases for which the Federal Circuit granted the petition for interlocutory appeal, the court affirmed in part and reversed in part.<sup>81</sup>

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75. *Group Italglass U.S.A., Inc. v. United States*, 9 F.3d 977, (Fed. Cir. 1993) (unpublished table decision).

76. *United States v. UPS Customhouse Brokerage, Inc.*, 213 F. App'x 985 (Fed. Cir. 2006).

77. These numbers may not correspond with totals because all reasons cited by the CAFC were noted.

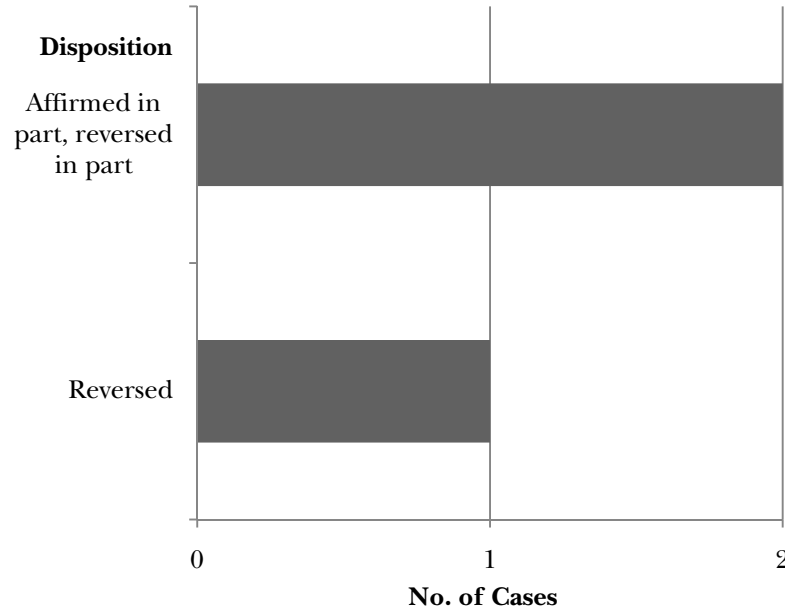
78. *Orleans Int'l, Inc. v. United States*, 49 F. App'x 892, 895 (Fed. Cir. 2002); *Eurodif S.A. v. United States*, 411 F.3d 1355, 1357 (Fed. Cir. 2005) (disposing of *United States Enrichment Corp. v. United States*, a member case).

79. *Orleans Int'l*, 49 F. App'x at 893.

80. *Id.*

81. *Eurodif*, 411 F.3d at 137.

*Figure 7: Once the CAFC Granted the Petition  
What Was the Disposition of the Case?*



#### CONCLUSION

The analysis of permissive interlocutory appeals at the Federal Circuit reveals that courts have faithfully followed Congress' intent that courts carefully exercise discretion to limit divergence from the final judgment rule. Although an important portion of the cases do not include a significant explanation for the decision, those opinions that do provide an explanation demonstrate a conscious effort to weigh the conservation of judicial resources against efficient termination of litigation.<sup>82</sup> Thus, a certified issue that decides the case, resolves other pending cases, or prevents the lower court from entering into needless proceedings, will often provoke the Federal Circuit to grant the petition for interlocutory review.<sup>83</sup> As expressly desired by Congress, these factors are outside the control of the

82. See, e.g., *Group Italglass U.S.A., Inc. v. United States*, 9 F.3d 977 (Fed. Cir. 1993) (unpublished table decision) (declining to grant a petition for interlocutory appeal on efficiency grounds); see also *infra* app. 1, col. C (listing the reasons provided by the Federal Circuit for granting or denying individual petitions for permissive interlocutory appeal).

83. *Id.*

litigants and prevent interlocutory appeals from becoming a strategic dilatory tactic.

Consequently, it appears that the Federal Circuit is able to assess petitions for permissive interlocutory appeals, balance the concerns of Congress, and still provide a more efficient and economical disposition of certain disputes. In an era where “time is money” and there is a scarcity of both for clients, practitioners, and the judicial system alike, it may be time to discuss the prudence of expanding or limiting the Federal Circuit’s discretionary power with regard to permissive interlocutory appeals.

## APPENDIX I

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>CAFC Granted Petition? Why or Why not?</i>	<i>CAFC Final Decision, if Granted</i>	<i>Type of Case</i>
<i>Northrop Grumman Corp. v. United States</i> , Case No. 2005-M789 (Fed. Cir. 2005).	No information available.	Denied.	N/A	Contract Claim
<i>Environ Prod., Inc. v. Furon Co.</i> , Case No. 1999-M576 (Fed. Cir. 1999).	No information available.	Denied.	N/A	Intellectual Property
<i>Vae Nortrak North America v. Progress Rail Servs. Corp.</i> , 146 F. App'x 482 (Fed. Cir. 2005).	Seeking appeal to determine whether the "presence of a structural claim limitation on one element of the invention provides an arguable basis for a finding of 'equivalency' and therefore creates a potential jury issue."	Denied.	N/A	Intellectual Property
<i>Mushroom Assocs. v. Monterey Mushrooms, Inc.</i> , 99 F.3d 1159 (Fed. Cir. 1996).	No information available.	Denied.	N/A	Unknown
<i>Research Corp. Tech., Inc. v. Pharmachemie BV</i> , Case No. 2002-M712 (Fed. Cir. 2002).	No information available.	Denied.	N/A	Intellectual Property
<i>S&amp;G Tool Aid Corp. v. Fisher Tooling Co.</i> , Case No. 2000-M606 (Fed. Cir. 2000).	No information available.	Denied.	N/A	Intellectual Property

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>CAFC Granted Petition? Why or Why not?</i>	<i>CAFC Final Decision, if Granted</i>	<i>Type of Case</i>
<i>Versa Corp. v. Ag-Bag Int'l Ltd.</i> , 70 F. App'x 567 (Fed. Cir. 2003).	Seeking an appeal of the district court's "order preventing Ag-Bag from presenting evidence relating to a prior invention . . . On the ground that the Board of Patent Appeals and Interferences, while determining priority in an interference proceeding, found that the invention was abandoned . . ."	Denied. "[A] decision relating to the admission of evidence, [is] not an area that generally merits immediate review. Further, we note that there are many issues that remain to be decided by the trial court whether or not we decide this issue on an interlocutory basis."	N/A	Intellectual Property
<i>Canon Computer Sys., Inc. v. Nu-Kote Int'l, Inc.</i> , 155 F.3d 571 (Fed. Cir. 1998).	Seeking appeal of "the district court's order construing the claims of one of Canon's patents and the district court's order granting Nu-kote's motion for summary judgment of invalidity of [one of] Canon's [patents]."	Denied. "[I]t is unnecessary to consider the petition for permission to appeal because the certified orders may be reviewed in the context of Canon's forthcoming appeal from the district court's Fed. R. Civ. P. 54(b) judgment."	N/A	Intellectual Property



<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>CAFC Granted Petition? Why or Why not?</i>	<i>CAFC Final Decision, if Granted</i>	<i>Type of Case</i>
<i>Nat'l Westminster Bank v. United States</i> , 232 F.3d 906 (Fed. Cir. 2000).	Seeking appeal of the following controlling question of law: "Whether U.S. Treasury Regulation § 1.882-5, providing a formula to determine deductible interest for calculation of taxable income attributable to United States operations of foreign businesses, is inconsistent with the 'separate enterprise' provisions of Article 7 of the Convention for the Avoidance of Double Taxation . . . ."	Denied. "[R]egardless of the outcome of the treaty issue, further calculations would have to be made relating to this issue. Thus, the court is not convinced that granting the United States' petition will advance the ultimate termination of the litigation."	N/A	Treaty
<i>Alan Lee Distrib., Inc. v. Brown</i> , 199 F. App'x 952 (Fed. Cir. 2006).	No information available.	Denied. "[T]he district court did not certify an order [for interlocutory appeal] . . . [i]nstead, the district court has entered judgment pursuant to [Federal Rules of Civil Procedure] 54(b). Thus, Brown's petition for permission to appeal is unnecessary."	N/A	Intellectual Property

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>CAFC Granted Petition? Why or Why not?</i>	<i>CAFC Final Decision, if Granted</i>	<i>Type of Case</i>
<i>Bruckelmyer v. Ground Heaters, Inc.</i> , 81 F. App'x 315 (Fed. Cir. 2003).	Seeking appeal of the portion of the district court's holding that "the file wrapper contents of Canadian Patent No. 1,158,119 constitute a printed publication for purposes of 35. U.S.C. § 102(b). Bruckelmyer asserts that the broader controlling question of law is whether 'the contents of a foreign country's patent file wrapper, available only in one foreign patent office, constitute a printed publication.'"	Denied. "[W]e are not convinced that immediate interlocutory review of the issues raised is warranted. Any review of the issues may await an appeal after final judgment."	N/A	Intellectual Property
<i>Indep. Ink, Inc. v. Trident, Inc.</i> , 49 F. App'x 301 (Fed. Cir. 2002).	Seeking appeal of the district court's order and "controlling questions of law [that] relate to issues concerning evidence of market share, presumptions of market power in a patented product itself, and whether a patent, standing alone, with no consideration of the products at issue, their substitutes, or a definition of the relevant market, establishes market power in a tying case as a matter of law."	Denied. "[W]e are not convinced that immediate interlocutory review of the issues raised is warranted. Any review of the issues may await an appeal after final judgment."	N/A	Intellectual Property

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<i>Linear Tech. Corp. v. Impala Linear Corp.</i> , 31 F. App'x 700 (Fed. Cir. 2002).	Seeking an appeal of the district court's order "to obtain review of any claim construction determinations that were adverse to [either party]."	Denied. "[W]e are not convinced that the petition for permission to appeal is appropriate . . . [because] the parties do not argue . . . that the claim construction determined one way or the another will definitely decide the case . . . —instead, [LTC] state[s] that such claim construction would 'be important to LTC's claim of infringement against ADI, and any other proceedings that remain before the District Court.' Additionally, the parties have not convinced us that granting the petition for permission to appeal, in the words of the statute, 'may materially advance the ultimate termination of litigation.'"	N/A	Intellectual Property

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<i>Testwuide v. United States</i> , 73 F. App'x 395 (Fed. Cir. 2003).	Seeking appeal of the lower court's denial of plaintiff's motion for class certification.	Denied. "[W]e conclude that granting the petition is not appropriate. We note in particular the trial court's ruling that the question of law presented in the class certification motion is not a simple legal issue, but rather is intertwined with the merits of the case."	N/A	Takings Case
<i>Advanced Analogic Techs., Inc. v. Linear Tech. Corp.</i> , 213 F. App'x 984 (Fed. Cir. 2006).	Seeking to appeal the district court's denial of a motion for "a declaratory judgment of invalidity, non-infringement, and unenforceability of four of Linear's patents."	Denied. "[W]e conclude that interlocutory appeal is not warranted."	N/A	Intellectual Property
<i>Amgen, Inc. v. Ariad Pharm., Inc.</i> , 213 F. App'x 990 (Fed. Cir. 2006).	Seeking to appeal the district court's denial of motion "seeking a declaratory judgment of invalidity and non-infringement of Ariad's patent."	Denied. "[W]e conclude that interlocutory appeal is not warranted."	N/A	Intellectual Property
<i>Miken Composites, L.L.C. v. Wilson Sporting Goods, Co.</i> , 125 F. App'x 298 (Fed. Cir. 2005).	Seeking appeal of the district court's construction of one of the three patent claims at issue.	Denied. "[W]e conclude that interlocutory appeal is not warranted."	N/A	Intellectual Property

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<i>Network Signatures, Inc. v. ABN-AMRO, Inc.</i> , 227 F. App'x 915 (Fed. Cir. 2007).	The district court <i>sua sponte</i> certified for interlocutory appeal its order denying reconsideration of its determination that, although Network Signatures does not possess all substantial rights to the patent, they nonetheless have standing to bring suit in their own name.	Denied. "[W]e conclude that interlocutory appeal is not warranted."	N/A	Intellectual Property
<i>Shawn Montee, Inc. v. Johanns</i> , 131 F. App'x 304 (Fed. Cir. 2005).	Seeking appeal of whether the contract clause limits the Forest Service's liability for suspension caused by its own failure to meet its pre-award environmental obligations.	Denied. "[W]e conclude that the better course is for the [agency] to develop the factual record and fully adjudicate the legal issues prior to review."	N/A	Contract Claim
<i>Heil Co. v. McNeilus Truck and Mfg., Inc.</i> , 111 F.3d 141 (Fed. Cir. 1997).	Seeking appeal of the district court's interpretation of a patent claim.	Denied. "[W]e conclude that the ensuing delay, inefficient use of resources, and increased cost, do not warrant interlocutory review."	N/A	Intellectual Property
<i>Ford Motor Co. v. Lemelson</i> , 124 F.3d 227 (Fed. Cir. 1997).	Seeking appeal of the district court's denial of Ford's motion for summary judgment on its defense of laches against certain claims of infringement of Lemelson's patents.	Denied. "[W]e determine in our discretion that granting the petition is not warranted."	N/A	Intellectual Property

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<i>CSU Holdings, Inc. v. Xerox Corp.</i> , 129 F.3d 132 (Fed. Cir. 1997).	CSU sought an appeal of controlling issues of law that included: (1) the legality of "a patent holder's unilateral refusal to sell or license its patented invention"; (2) whether a patent holder is "required to proffer a legitimate business justification to avoid antitrust liability for exercising its right to refuse to sell or license a patented invention"; (3) whether a patent holder is "subject to antitrust liability for exercising its right to refuse to sell or license a patented invention even if the patent holder engages in other allegedly anticompetitive conduct"; and (4) whether "[a] patent holder is not liable for misuse or antitrust law violations for setting a 'supracompetitive' sale price for a patented invention."	Denied. "[W]e determine in our discretion that permissive appeal is not warranted in the circumstances of this case."	N/A	Intellectual Property
<i>Allied Gator, Inc. v. NPK Constr. Equip. Co.</i> , 111 F.3d 142 (Fed. Cir. 1997).	NPK seeks to appeal the district court's denial of its motion for summary judgment of noninfringement because "under the proper claim construction there could be no infringement."	Denied. "[W]e determine that granting NPK's petition is not warranted."	N/A	Intellectual Property
<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>CAFC Granted Petition? Why or Why</i>	<i>CAFC Final Decision, if Granted</i>	<i>Type of Case</i>

		<i>not?</i>		
<i>Flores v. Union Pac. R.R. Co.</i> , 101 F.3d 715 (Fed. Cir. 1996).	Seeking appeal of the district court's claim construction and its interpretation of the words "rotatably" and "rotate" in a patent infringement case.	Denied. "[W]e determine that granting the petition is not in the interest of judicial efficiency."	N/A	Intellectual Property
<i>Carnival Cruise Lines, Inc. v. United States</i> , 92 F.3d 1203 (Fed. Cir. 1996).	Seeking appeal of the CIT's order holding that the entire Harbor Maintenance Tax, a portion of which was found unconstitutional in a different case ( <i>United States Shoe Corp v. United States</i> ), was not unconstitutional because the other provisions of the Harbor Maintenance Tax were severable.	Denied. "Because <i>United States Shoe</i> is presently on appeal to this court, we determine that permissive appeal is not warranted in the circumstances of this case."	N/A	International Trade
<i>Coast Fed. Bank, FSB v. United States</i> , 6 F. App'x 882 (Fed. Cir. 2001).	Seeking appeal of the lower court's grant of "the United States' motion for summary judgment regarding the duration of Coast Federal's capital credit" because "Coast Federal argues that resolution of the duration of capital credit will control the parties' damage analyses."	Denied. "Coast Federal's petition for permission to appeal is denied."	N/A	Contract Claim
<i>Ecolab Inc. v. Envirochem, Inc.</i> , 243 F.3d 553 (Fed. Cir. 2000).	Seeking expedited appeal of the district court's order finding infringement and construction of the term "substantially uniform" in claim 1 of Ecolab's patent.	Denied. "Envirochem's motion for an expedited appeal is denied as unnecessary. The parties may file their briefs early and thereby self-expedite the appeal."	N/A	Intellectual Property

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<i>Amgen, Inc. v. Hoechst Marion Roussel Inc.</i> , 232 F.3d 905 (Fed. Cir. 2000).	Seeking appeal of a district court's denial of a motion to compel Amgen to return inadvertently produced documents. The district court determined that HMR's inadvertent disclosure waived its attorney-client privilege for the documents because "there should have been a better review of the copied documents to ensure that the proper documents were copied."	Denied. "Given the district court's trial date, we determine that the petition for permission to appeal should be denied. If we decided this issue in the context of an appeal . . . The issue would not be decided until after the . . . trial date."	N/A	Attorney-Client Privilege
<i>CLS Bank Int'l v. Alice Corp. Pty. Ltd.</i> , No. 07-974, 2010 U.S. App. LEXIS 4355 (Fed. Cir. Feb. 2, 2010).	"The district court granted CLS Bank's motion for certification for interlocutory appeal on two issues: (1) whether a system located entirely outside the United States can be 'used' within the United States, and (2) whether a method performed outside the United States can be 'sold' or 'offered for sale' in the United States within the meaning of 35 U.S.C. § 271(a)."	Denied. "Given the posture of this case below, we determine that it would be more appropriate for the trial court to complete its proceedings rather than for us to review the issues at this interlocutory stage."	N/A	Intellectual Property



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<i>Wirtgen Am. Inc. v. CMI Corp.</i> , 129 F.3d 133 (Fed. Cir. 1997).	The district court certified two issues for immediate appeal: "whether Wirtgen had standing to raise for adjudication whether [the inventor] had a fiduciary duty to assign his interest in the Patent; and (2) whether [the inventor's] legal interest in the Patent could be deemed assigned to CMI without ever joining [the inventor] as a part to the action."	Denied. "In essence, CMI asks this court to review two issues that were not addressed in the [district court's] order. Because the district court did not expressly discuss the first question, we are without the benefit of the district court's views. Further, the second question consists of a mixture of issues. Under the circumstances, the questions as expressed do not meet the statutory criteria. Thus we decline to exercise our discretion to grant interlocutory review in this case."	N/A	Intellectual Property

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<i>Dethmers Mfg. Co. v. Automatic Equip. Mfg. Co.</i> , 185 F.3d 879 (Fed. Cir. 1998).	Seeking appeal of the district court's order denying Dethmers' summary judgment motion. The district court certified three issues: (1) "Whether the district court properly determined that Dethmers' patent was invalid based on a defective reissue declaration?"; (2) "Whether the district court properly determined that if Dethmer's patent was invalid owing to a defective reissue declaration, then the carry-over claims were also invalid?"; and (3) "Whether the district court properly denied summary judgment of Dethmers' noninfringement of Automatic's patent because there were genuine issues of material fact?"	Denied. "In this case, the issues appear to concern the law as applied to specific facts. The order does not state a clear question of law set in the context of indisputable facts; therefore, granting the petition is not warranted in this circumstance. Further, interlocutory review of a denial of summary judgment would rarely be appropriate."	N/A	Intellectual Property

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<i>Heil Co. v. McNeilus Truck and Mfg., Inc.</i> , 230 F.3d 1381 (Fed. Cir. 2000).	"The district court certified its order stating that the order involved a controlling question of law, i.e. whether the applicant's failure to include the duty to disclose in the declaration rendered the application incomplete and not entitled to the application's original filing date or whether the omission was a minor informality which the [Patent and Trademark Office] correctly waived subject to subsequent correction."	Denied. "The court notes that the case is scheduled for jury trial in February, 2000. In view of the impending trial, the court deems the proper course is to deny the petition for permission to appeal."	N/A	Intellectual Property
<i>Monsanto Co. v. Pioneer Hi-Bred Int'l Inc.</i> , 6 F. App'x 891 (Fed. Cir. 2001).	Seeking appeal of the district court's order granting "Monsanto's motion for partial summary judgment, resolving the [breach of] contract claim," in a law suit that included claims for "breach of contract, patent infringement, and misappropriation of trade secrets."	Denied. "The district court first certified its decision for interlocutory appeal under 28 U.S.C. § 1292(b) and subsequently amended its judgment to include an express certification under Fed. R. Civ. P. 54(b). In light of the district court's certification under Rule 54(b), it appears that Pioneer's petition for permission to appeal is unnecessary."	N/A	Contract Claim

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<i>Pin/Nip, Inc. v. Platte Chemical Co.</i> , 250 F.3d 754 (Fed. Cir. 2000).	Seeking appeal of a district court grant of "Pin/Nip's motion for judgment on the jury's findings" that Pin/Nip had willfully infringed Platte's patent.	Denied. "The order does not state a clear question of law set in the context of indisputable facts; therefore, granting the petition is not warranted in this case."	N/A	Intellectual Property
<i>Omniglow Corp. v. Unique Indus., Inc.</i> , 38 F. App'x 574 (Fed. Cir. 2002).	Seeking appeal of "the district court's ruling that the prosecution history bars Omniglow from claiming that Unique's use of certain compounds infringes claim 1 of Omniglow's patent under the doctrine of equivalents."	Denied. "We are not persuaded on the papers here that the district court has created a new rule rather than applying the law to the facts of this particular case . . . [and] [a]dditionally, it appears that, based on the district court's ruling, the case will be decided in the district court sooner rather than later."	N/A	Intellectual Property
<i>Consumer Cap Corp. v. Portola Packaging, Inc.</i> , 173 F.3d 433 (Fed. Cir. 1998).	No information available.	Denied. "We conclude that review at this stage is premature."	N/A	Unknown

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<i>King Pharm., Inc. v. Teva Pharm. USA, Inc.</i> , 185 F. App'x 939 (Fed. Cir. 2006).	Seeking appeal of the district court's determination that the terminally disclaimed patent is eligible for extension under 35 U.S.C. § 156 due to delay at the Food and Drug Administration.	Denied. "We decline to exercise our discretion to grant the petition in this case," because Teva "points to no judicial opinions that are in conflict" regarding this issue.	N/A	Intellectual Property
<i>Microchip Tech., Inc. v. Scenix Semiconductor, Inc.</i> , 173 F.3d 432 (Fed. Cir. 1998).	The "district court <i>sua sponte</i> certified its memorandum decision and order," which "set[] forth its claim construction with respect to different claims in the two asserted patents."	Denied. "We deem the appropriate course is to review the district court's pretrial claim construction decision in the context of any appeal of a preliminary injunction," which had not yet been granted or denied.	N/A	Intellectual Property
<i>Monsanto Co. v. Scruggs</i> , 345 F. App'x 552 (Fed. Cir. 2009).	Appeal of district court's denial of motion for reconsideration in light of a Supreme Court decision. The district court denied the motion, explaining that the Supreme Court's decision merely reaffirmed its decision, but granted certification because a "wealth of persuasive authority . . . posits the opposite conclusion."	Denied. "We determine that granting the petition in these circumstances is not warranted. Scruggs may raise these issues on appeal from the final judgment or injunction."	N/A	Intellectual Property

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<i>Arlaine &amp; Gina Rocky, Inc. v. Cordis Corp.</i> , 68 F. App'x 185 (Fed. Cir. 2003).	Seeking appeal of a district court's denial of a motion to remand because the lower court concluded it had jurisdiction over the entire case, presumably under the supplemental jurisdiction statute, because one of the counts for relief arose under the patent laws.	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A	Intellectual Property
<i>Bayer Healthcare, LLC v. Norbrook Labs.</i> , 370 F. App'x 103 (Fed. Cir. 2010).	Seeking appeal of the district court's denial of Norbrook's motion "seeking to dismiss Bayer's infringement complaint for failure to state a claim and for lack of subject matter jurisdiction."	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A	Intellectual Property
<i>DDB Tech., Inc. v. MLB Advanced Media</i> , 2010 WL 675689 (Fed. Cir. Feb. 24, 2010).	Seeking appeal of the district court's denial of MLB's motion to dismiss because the district court concluded that DDB had legal title to the patents in suit and therefore standing to bring the infringement complaint.	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A	Intellectual Property
<i>ICU Medical, Inc. v. Rymed Tech. Inc.</i> , 364 F. App'x 622 (Fed. Cir. 2010).	Seeking review of a claim construction order and "whether collateral estoppel or stare decisis apply to prior district court's claim constructions that were not expressly reviewed on appeal."	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A	Intellectual Property

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<i>United States v. UPS Customhouse Brokerage, Inc.</i> , 213 F. App'x 985 (Fed. Cir. 2006).	Seeking appeal of the CIT's order denying UPS Customhouse's motion for summary judgment. The CIT certified the following controlling issue of law: "Whether, pursuant to 19 U.S.C. § 1641 (d) (1) (A), [Customs] may issue more than one penalty notice for a customs broker's alleged failure to exercise responsible supervision and control based upon the custom broker's alleged repeated misclassification of entered merchandise over a period of time and on multiple separate entry documents; and if so, whether the aggregate penalty sought from those multiple penalty notices may exceed \$30,000."	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A	International Trade
<i>Cook Biotech Inc. v. ACell, Inc.</i> , 123 F. App'x 968 (Fed. Cir. 2004).	ACell seeks to appeal an order that construed certain claim language and adopted jury instructions proposed by Cook.	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A	Jury Instruction

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<i>Kimco Realty Corp. v. United States</i> , 49 F. App'x 300 (Fed. Cir. 2002).	Seeking appeal of the following controlling questions of law: "(1) Whether this court correctly applied applicable law in determining the extent to which the Postal service is responsible for 'Common Area Maintenance Charges' under the subject lease, and (2) Whether this Court correctly applied applicable law in determining that the Postal service is not responsible for a share of property taxes under the subject lease."	Denied. "We determine that granting the petition is not appropriate."	N/A	Contract Claim
<i>Enzo Biochem, Inc. v. Applera Corp.</i> , 213 F. App'x 974 (Fed. Cir. 2006).	Seeking to appeal a decision by a "Connecticut district court regarding disputed claim terms in five patents. The Connecticut district court certified the order for interlocutory review recognizing that portions of its claim construction ruling conflicted with a claim construction order issued by the United States District Court for the Southern District of New York in a pending case."	Denied. "We determine that granting the petitions in these circumstances is not warranted."	N/A	Intellectual Property



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<i>Quad Dimension, Inc. v. Sage Alerting Sys., Inc.</i> , 69 F. App'x 448 (Fed. Cir. 2003).	Whether "the doctrine of absolute intervening rights barred Quad from recovering any damages for alleged infringement occurring before the issuance of a second reexamination certificate."	Denied. "We note that issues of infringement and invalidity remain to be tried regardless of whether the issue raised by this petition are decided by us at this time."	N/A	Intellectual Property
<i>Amp Plus, Inc. v. Juno Lighting, Inc.</i> , 194 F.3d 1337 (Fed. Cir. 1999).	District court certified for immediate appeal two controlling first impression trademark law issues regarding the new Trademark Law Treaty Implementation Act and an issue relating to the Federal Rules of Civil Procedure.	Denied. "We see no reason for these issues to be decided on an interlocutory basis at this time."	N/A	Intellectual Property

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<i>Wirtgen Am., Inc. v. CMI Corp.</i> , 119 F.3d 13 (Fed. Cir. 1997).	Seeking appeal of the district court's denial of a motion for declaratory judgment regarding "two issues that purportedly underlie the district court's ruling on the motion to dismiss but were not addressed."	Denied. "While it is not a rigid requirement that a district court's order contain a formal statement that recites § 1292(b), the order should address the issue that is to be reviewed and indicate that certification of that issue is intended. . . . Clearly the statutory requirements for certification are not satisfied when a party seeks certification of an issue not discussed by the district court."	N/A	Intellectual Property

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<i>Akazawa v. Link New Tech, Inc.</i> , 124 F. App'x 645 (Fed. Cir. 2004).	"Link seeks permission to appeal an order that disqualified its law firm. The issue involves the application of apparently unsettled California and Ninth Circuit law."	Denied. "While the court may in its discretion grant a petition such as this, involving application of unsettled regional circuit law, we deem the better course is to deny the petition in these circumstances."	N/A	Disqualification of Law Firm
<i>ArthroCare Corp. v. Ethicon, Inc.</i> , 168 F.3d 1321 (Fed. Cir. 1998).	The district court, <i>sua sponte</i> , certified for interlocutory review its "memorandum decision and order setting forth its claim construction and ruling on several evidentiary issues."	Denied. "[W]e determine in our discretion that granting the petition is not warranted under the circumstances presented" because "it would be far more efficient and economical for this court to hear any appeal of the trial court's pretrial claim construction ruling as part of any appeal of the preliminary injunction ruling."	N/A	Intellectual Property

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<i>Am. Mgmt. Sys., Inc. v. United States</i> , 58 F. App'x 479 (Fed. Cir. 2003).	Seeking appeal of the lower court's denial of a motion to dismiss and finding of subject matter jurisdiction. The lower court determined that the nonappropriated funds doctrine did not preclude AMS's suit challenging the Federal Retirement Thrift Investment Board's termination of its contract with AMS for default, but certified the issue as one involving a controlling question of law with respect to which there is a substantial ground for difference of opinion.	Denied. "Immediate interlocutory review may not advance the ultimate termination of the litigation because our decision on appeal, either affirming or reversing, would not decide the case. If we affirmed, the case would continue. If we reversed, the trial court would still be required to consider AMS's remaining arguments regarding jurisdiction."	N/A	Contract Claim

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<i>Ins. Co. of the West v. United States</i> , 230 F.3d 1371 (Fed. Cir. 1999).	The district court did not decide the issue, but certified for review, "[w]hether as recognized by the Federal Circuit in <i>Balboa</i> , the United States has waived sovereign immunity for the equitable subrogation claims of surety against the United States, in light of the Supreme Court's recent holding in [ <i>Dep't of the Army v. Blue Fox, Inc.</i> , 525 U.S. 255 (1999)] and, if not, whether jurisdiction for such a claim can be predicated on surety's status as a third party beneficiary."	Denied. "In this case, there is no order from which to take an interlocutory appeal and no order for this court to review . . . [and thus,] this court lacks jurisdiction to entertain the United States' petition for permission to appeal."	N/A	Jurisdiction

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<i>Armamant Sys. &amp; Procedures, Inc. v. Monadnock Lifetime Prods., Inc.</i> , 98 F.3d 1356 (Fed. Cir. 1996).	No information available.	Denied. Although "Monadnock states its motion for certification is pending before the district court . . . Permission to appeal must be sought within 10 days <i>after</i> entry of the amended order. We note that even if the district court had certified its . . . order, Monadnock's petition for permission to appeal would be untimely." (emphasis in original.)	N/A	Unknown
<i>RF Del., Inc. v. Pac. Keystone Tech., Inc.</i> , 49 F. App'x 912 (Fed. Cir. 2002).	RFD and Pacific filed cross-motions for summary judgment on the issue of patent infringement. "[T]he district court granted Pacific's motions and ordered that, pursuant to Fed. R. Civ. P. 54(b), final judgment be entered on the issue of infringement." RFD sought appeal of the district court's denial of its summary judgment motion.	Denied. RFD's petition for appeal is "unnecessary" in light of the district court's Rule 54(b) judgment.	N/A	Intellectual Property

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<i>Federal Mogul Corp. v. United States</i> , Case No. 1992-M322 (Fed. Cir. 1992).	Seeking appeal of the CIT's order denying an intervenor's motion regarding the preliminary injunction. The CIT denied the motions without comment and the intervenor petitioned for a writ of mandamus to direct the CIT to set forth its reasons for denying the motions because otherwise the Federal Circuit would be unable to adequately consider its appeal.	Denied. The Federal Circuit denied the petition for permission to appeal, holding that it did not have jurisdiction because the appeal did not comply with Rule 3 of the Fed. R. of App. P. specificity requirement. Further, the Federal Circuit stated that "any party who wishes to seek review of any trial court's ruling may do so on appeal after final judgment."	N/A	International Trade
<i>Halcomb v. Ofc. Sgt. At Arms</i> , Case No. 2007-M859 (Fed. Cir. 2007).	No information available.	Dismissed.	N/A	Civil Rights Action
<i>Christopher Village, L.P. v. United States</i> , 25 F. App'x 922 (Fed. Cir. 2001).	Seeking appeal of the district court's order "denying Christopher Village's motion for class certification."	Dismissed. "[A] party may not seek interlocutory review of the denial of class certification under the rules of the Court of Federal Claims."	N/A	Contract Claim [ <i>Christopher Village v. United States</i> , 50 Fed. Cl. 635 (Fed. Cl. 2001). ]

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<i>Boynton v. Headwaters, Inc.</i> , 321 F. App'x 943 (Fed. Cir. 2008).	Seeking review of an order by the district court that granted class certification.	Dismissed. "[T]here is no statute authorizing an appeal to this court instead of the regional circuit" with regard to "orders granting class certification [that] do not involve an order certified by the district court."	N/A	Intellectual Property
<i>Buckner v. Woods</i> , 232 F.3d 910 (Fed. Cir. 2000).	No information available.	Dismissed. "[T]here was no certified order and the petition was [untimely]."	N/A	Civil Rights Action [ <i>Buckner v. Woods</i> , 187 F.3d 634 (6th Cir. 1999).]
<i>Allen v. FBI</i> , 91 F.3d 171 (Fed. Cir. 1996).	Seeking appeal of the district court's order that "no discovery would be conducted until further order of the court."	Dismissed. "Allen misunderstands the procedures governing a petition for appeal . . . . In this case, the district court did not certify its ruling."	N/A	Discovery
<i>McNeilus Truck and Manufacturing, Inc. v. Heil Co.</i> , 95 F.3d 1162 (Fed. Cir. 1996).	No information available.	Dismissed. "Because the time limit for filing a petition for permission to appeal is jurisdictional and we have no authority to enlarge the time, McNeilus's petition must be dismissed as untimely."	N/A	Intellectual Property [ <i>Heil Co v. McNeilus Truck and Mfg., Inc.</i> , 11 F.3d 141 (Fed. Cir. 1997).]



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<i>Insituform Techs., Inc. v. Cat Contracting Inc.</i> , 73 F.3d 378 (Fed. Cir. 1995).	Filing a "protective" petition for permission to appeal along with a notice of appeal on the ground that the district court action is "final except for an accounting."	Dismissed. "Cat Contracting's petition for permission to appeal is untimely."	N/A	Intellectual Property
<i>Cell Genesys, Inc. v. Applied Research Sys. ARS Holding</i> , 263 F. App'x 53 (Fed. Cir. 2008).	No information available.	Dismissed. "Cell Genesys, Inc.'s motion [to withdraw its petition] is granted and the petition is dismissed."	N/A	Intellectual Property
<i>Brazos Elec. Power Co-op., Inc. v. United States</i> , 129 F.3d 134 (Fed. Cir. 1997).	Seeking appeal of the district court's order to transfer its case to the Court of Federal Claims.	Dismissed. "The order that Brazos seeks permission to appeal was not certified by the district court for interlocutory appeal."	N/A	Jurisdiction [ <i>Brazos Elec. Power Co-op, Inc. v. United States</i> , 144 F.3d 784 (Fed. Cir. 1998).]
<i>In re Damarlane</i> , 135 F.3d 773 (Fed. Cir. 1997).	Seeking appeal of a "judgment of the Supreme Court of the Federated States of Micronesia."	Dismissed. "This court has authority . . . to certify an unpaid judgment entered <i>against</i> the United States . . . [h]owever, there is no right of appeal to this court following an adverse judgment rendered by that court." (Emphasis in original.)	N/A	Standing

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<i>TV Interactive Data Corp. v. Microsoft Corp.</i> , 146 F. App'x 481 (Fed. Cir. 2005).	No information available.	Dismissed. "This petition is dismissed as having been docketed in error."	N/A	Intellectual Property [ <i>TV Interactive Data Corp. v. Microsoft Corp.</i> , 2005 WL 2277121 (N.D. Cal. Sept. 19, 2005). ]
<i>Techsearch, LLC v. Intel Corp.</i> , 230 F.3d 1375 (Fed. Cir. 1999).	No information available.	Dismissed. Intel's petition is dismissed as untimely.	N/A	Intellectual Property [ <i>Techsearch LLC v. Intel Corp.</i> , 1999 WL 412610 (N.D. Ill. June 01, 1999). ]
<i>CP Mfg., Inc. v. Machinefabriek Bollegraaf Appingedam B.V.</i> , 56 F. App'x 483 (Fed. Cir. 2003).	No information available.	Dismissed. The motion to dismiss is granted "due to settlement of the underlying cause of action."	N/A	Unknown
<i>Giese v. Vector Labs., Inc.</i> , 185 F.3d 881 (Fed. Cir. 1999).	Seeking appeal of the district court's denial of Vector's motion for leave to amend its complaint. The district court did not certify its order for interlocutory appeal.	Dismissed. There is no support for "Vector's argument that the district court's order in this case is appealable."	N/A	Intellectual Property

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<i>Vereda, LTDA. v. United States</i> , 250 F.3d 759 (Fed. Cir. 2000).	Seeking appeal of the Court of Federal Claims's order denying the United States' motion to dismiss. The lower court certified the following controlling question of law: "Whether a mortgagee may assert a viable Fifth Amendment taking claim in the United States Court of Federal Claims following the government's <i>in rem</i> administrative forfeiture of the property securing the mortgage after proceedings in the United States District Court."	Granted. "[A] substantial ground for difference of opinion exists . . . [and] if this court determines that the Court of Federal Claims lacks jurisdiction, then the entire lawsuit will be dismissed. Thus, the court deems the proper course is to grant the United States' petition for permission to appeal."	Reversed and remanded. "[W]e answer in the negative the [certified] question." <i>Vereda, Ltda. V. United States</i> , 271 F.3d 16367, 1376 (Fed. Cir. 2001).	Takings Clause
<i>Kollmorgen Corp. v. Yaskawa Elec. Corp.</i> , 21 F. App'x 893 (Fed. Cir. 2001).	Seeking appeal of the district court's order that concluded that the doctrine of collateral estoppel did not apply when a patentee who settles an earlier infringement case after a <i>Markman</i> ruling seeks to relitigate construction issues determined in the prior case because "a consensual settlement between the parties does not constitute a 'final judgment.'"	Granted. "[O]ther jurisdictions have reached different conclusions on facts that the district court acknowledged 'bear a striking similarity to the case at bar' . . . [and] the immediate determination of the question by this court will materially advance the ultimate termination of this action."	Dismissed. "The parties having so agreed, it is ordered that the proceeding is dismissed under Fed. Rule App. P. 42(b)." <i>Kollmorgen Corp. v. Yaskawa Elec. Corp.</i> , 33 F. App'x 496 (Fed. Cir. 2002).	Intellectual Property

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<i>Christian v. United States</i> , 44 F. App'x 958 (Fed. Cir. 2002).	Seeking appeal of the Court of Federal Claims's order that "concluded that the 1992 Army Lieutenant Colonel Selective Early Retirement Board (SERB) used instructions impermissibly favoring women and minorities. The trial court certified a class of over 1,000 nonminority males forced to retire pursuant to the SERB review and determined that all potential class members could recover back pay and benefits."	Granted. "[W]e agree with the trial court and both parties that the order satisfies the criteria and that granting the petition is appropriate because '[c]onsiderable efforts and resources will be wasted were individual plaintiffs to proceed with their proving their separate recovery amounts, only to find the case remanded to the Secretary [of the Army] by the Federal Circuit.'"	Reversed in part and remanded. <i>Christian v. United States</i> , 337 F.3d 1338 (Fed. Cir. 2003).	Due Process Clause Claim

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<i>Magnacoustics, Inc. v. Resonance Tech. Co.</i> , 104 F.3d 375 (Fed. Cir. 1996).	Seeking review of a California district court's <i>sua sponte</i> decision to re-transfer an action to a New York district court when a jury in California had found that the patent at issue was invalid, but had not reached liability and damages arising from the counterclaims.	Granted. "[W]e conclude that the questions presented meet the statutory criteria and that permissive appeal is warranted. In particular, we note that the district court asked that we review the transfer issue rather than continuing the intercontinental transfers."	Reverse. "[T]he mere fact that the counterclaims are all that remain in the suit at the present time is unimportant in light of the well established principle that the time to determine whether the action 'might have been brought' in the transferee court is the time that the action was commenced in the original court." <i>Magnacoustics, Inc. v. Resonance Tech. Co.</i> , 132 F.3d 49 (Fed. Cir. 1997).	Intellectual Property

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<i>Vectra Fitness, Inc. v. Pac. Fitness Corp.</i> , 135 F.3d 777 (Fed. Cir. 1998).	Seeking appeal of the district court's order granting Pacific's motion for partial summary judgment of invalidity concerning three claims of Vectra's patent.	Granted. "[W]e determine in our discretion that granting the petition is warranted. We note that certification was unopposed and that the issue presented involves statutory interpretation and is one of first impression."	Affirmed. <i>Vectra Fitness, Inc. v. TNWK Corp.</i> , 162 F.3d 1379 (Fed. Cir. 1998).	Intellectual Property
<i>Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.</i> , 144 F. App'x 106 (Fed. Cir. 2005).	Petitioning for appeal for the purpose of deciding whether the case should be assigned to a different judge under Seventh Circuit Rule 36.	Granted. "[W]e determine that granting the petition for the limited purpose of deciding the best course of action for the district court in this specific case is warranted and will conserve judicial resources."	Reversed district court's order requiring reassignment because of the "familiarity of the district court with this eight-year old, multi-patent case and no allegation of bias by any party."	Intellectual Property

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<i>Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.</i> , 144 F. App'x 106 (Fed. Cir. 2005).	Petitioning for appeal for the purpose of deciding whether the case should be assigned to a different judge under Seventh Circuit Rule 36.	Granted. "[W]e determine that granting the petition for the limited purpose of deciding the best course of action for the district court in this specific case is warranted and will conserve judicial resources."	Reversed district court's order requiring reassignment because of the "familiarity of the district court with this eight-year old, multi-patent case and no allegation of bias by any party."	Intellectual Property
<i>Air Measurement Tech., Inc. v. Akin Gump</i> , 206 F. App'x 980 (Fed. Cir. 2006).	Seeking appeal of the district court's denial of a motion to remand the case from federal court to state court. The district court certified the following controlling issue of law: "[w]hether a Texas state-law legal malpractice claim arising out of underlying patent prosecution and patent litigation necessarily raises a question of federal patent law, actually disputed and substantial, that a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities?"	Granted. "Defendant's petition for permission to appeal . . . is granted."	Affirmed. <i>Air Measurement Tech., Inc. v. Akin Gump</i> , 504 F.3d 1262 (Fed. Cir. 2007).	Intellectual Property

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<i>Voda v. Cordis Corp.</i> , 122 F. App'x 515 (Fed. Cir. 2005)	Seeking appeal of the district court's order granting Dr. Voda leave to amend his complaint and add claims of infringement of five foreign patents under supplemental subject matter jurisdiction to his suit for infringement of three United States patents.	Granted. "In this case, because of the paucity of law surrounding this issue, we grant Cordis's petition."	Vacated and remanded. "We find that considerations of comity, judicial economy, convenience, fairness, and other exceptional circumstances constitute compelling reasons to decline jurisdiction . . . And therefore, hold that the district court abused its discretion by assuming jurisdiction." <i>Voda v. Cordis Corp.</i> , 476 F.3d 887, 898 (Fed. Cir. 2007).	Intellectual Property
<i>Marriott Int'l Resorts v. United States</i> , 122 F. App'x 490 (Fed. Cir. 2005).	Seeking appeal of the Court of Federal Claims's order that determined that the discovery documents were relevant and rejected the United States' assertion of privilege because it held that only the head of the relevant agency could assert the privilege.	Granted. "In this case, in view of the split among the circuits and within the Court of Federal Claims, we agree with the United States that the circumstances warrant granting the petition."	Reversed and remanded. <i>Marriott Int'l Resorts v. United States</i> , 437 F.3d 1302, 1308 (Fed. Cir. 2006).	Discovery



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<i>Tesoro Haw. Corp. v. United States</i> , 89 F. App'x 732 (Fed. Cir. 2004).	"The certified orders involve questions regarding, inter alia, the legality of price determinations for fuel supplied to the Defense Energy Support Center, the legality of individual and class deviations, and waiver."	Granted. "In this case, the circumstances warrant granting the petition" because "our review of these orders may help resolve many other cases pending at the Court of Federal Claims."	Reversed. <i>Tesoro Haw. Corp. v. United States</i> , 405 F.3d 1339 (Fed. Cir. 2005).	Contract Claim
<i>Zoltek Corp. v. United States</i> , 96 F. App'x 711 (Fed. Cir. 2004).	Seeking review of two orders: (1) the Court of Federal Claims decision that Zoltek could not sue for compensation from the United States regarding the United States' use of a process for which Zoltek has a patent because the claim arose in another country; and (2) the order of the Court of Federal Claims that it did have jurisdiction over Zolteks complaint because it could be brought as a takings case pursuant to the Tucker Act.	Granted. "In this case, the circumstances warrant granting the petitions."	Affirmed the first order and reversed the second order. <i>Zoltek Corp. v. United States</i> , 442 F.3d 1345, 1353 (Fed. Cir. 2006).	Intellectual Property

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<i>Neb. Public Power Dist. V. United States</i> , 219 F. App'x 980 (Fed. Cir. 2007).	Seeking review of a district court's determination that the United States was not precluded from asserting a contract delay provision as a defense because the writ of mandamus issued by the United States Court of Appeals for the District of Columbia Circuit regarding the provision was void.	Granted. "In this case, we conclude that interlocutory appeal is warranted."	Reversed and remanded. "We are satisfied that the D.C. Circuit's order was confined to the issue of statutory interpretation and did not impermissibly invade the jurisdiction of the Court of Federal Claims to adjudicate the parties' rights and remedies under the contract between them." <i>Neb. Public Power Dist. v. United States</i> , 590 F.3d 1357 (Fed. Cir. 2010.)	Contract Claim
<i>Stark v. Advanced Magnetics, Inc.</i> , 79 F.3d 1165 (Fed. Cir. 1996).	Stark appeals the district court's order ruling that an omitted inventor may not seek correction pursuant to 35 U.S.C. § 256, despite his own lack of deceptive intent, if the named inventors acted with deceptive intent.	Granted. "In this case, we conclude that the order meets the statutory criteria and that permissive appeal is warranted. Further, the district court and the parties wish for the court to address the relevant issue."	Vacated and remanded. <i>Stark v. Advanced Magnetics, Inc.</i> , 119 F.3d 1551 (Fed. Cir. 1997).	Intellectual Property

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<i>Pioneer Hi-Bred Int'l v. J.E.M. AG Supply, Inc.</i> , 1998 WL 780948 (Fed. Cir. Oct. 27, 1998).	Seeking appeal of the district court's order denying J.E.M. AG Supply's summary judgment motion on the issue of patent invalidity.	Granted. "Such a ruling is within this court's complete discretion. Before the district court, the parties did not dispute the facts, and the district court specifically stated that the issue involved in the summary judgment motion was purely a legal one. Upon consideration of the district court's orders and the parties' submission, we determine in our discretion that granting the petition is warranted."	Affirmed. <i>Pioneer Hi- Bred Int'l, Inc. v. J.E.M. AG Supply, Inc.</i> , 200 F.3d 1374 (Fed. Cir. 2000).	Intellectual Property

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<i>Studiengesellschaft Kohle v. Shell Oil Co.</i> , 77 F.3d 502 (Fed. Cir. 1995).	The district court certified the following controlling question of law: "Where the Court has found the relevant patent claims invalid, may the Licensor recover damages for breach of contract for past royalties due on processes allegedly covered by such claims, from the date of the alleged breach until the date that the Licensee first challenged the validity of the claims."	Granted. "The issue that arises in this petition encompasses a controlling question of law and is appropriate for immediate appeal."	Affirmed. Answered the certified question in the affirmative and remanded "to the district court for enforcement of the license . . . And, if necessary, computation of back royalties." <i>Studiengesellschaft Kohle v. Shell Oil Co.</i> , 112 F.3d 1561 (Fed. Cir. 1997).	Intellectual Property
<i>Taylor v. PPG Indus., Inc.</i> , 256 F.3d 1315 (Fed. Cir. 2001).	Seeking appeal of the district court's order granting "PPG's motion for summary judgment on Taylor's federal antitrust claim and, after determining that Louisiana law governed the state law claims, dismissed the claims brought under Pennsylvania and California law. . . . The district court certified its ruling that federal patent law does not preempt Taylor's Louisiana state law claims."	Granted. "This is a highly unusual case. As noted above, the district court ruled on various matters in this case in a single order. The district court entered final judgment pursuant to Rule 54(b) with respect to some portions of the order . . . . Allowing the appeals to proceed simultaneously will promote judicial efficiency."	Dismissed. <i>Taylor v. PPG Indus., Inc.</i> , 32 F. App'x 553, 553 (Fed. Cir. 2002).	Intellectual Property

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<i>Rexam Indus. Corp. v. Eastman Kodak Co.</i> , 152 F.3d 944 (Fed. Cir. 1998).	Seeking appeal of the magistrate judge's order denying Rexam's motion for summary judgment on the issue of priority. The magistrate judge certified the following two questions: "(1) Can a patent applicant that prevails in an interference before the Board of Patent Appeals and Interferences based only on the constructive reduction to practice represented by its patent application, continue to contest priority in succeeding civil action under 35 U.S.C. § 146, notwithstanding the patent applicant's acquiescence, during pendency of that Section 146 action, in entry of final judgment against it on priority grounds in another interference involving the same invention but a different adversary? (2) If the answer to the above question is in the negative, must the Board's decision awarding priority to the patent applicant and against a patentee be reversed, with judgment entered in favor of the patentee regarding priority?"	Granted. "Upon consideration of the magistrate judge's orders and the parties' submissions, we determine in our discretion that granting the petition is warranted."	Affirmed. "[W]e therefore answer the first certified question in the affirmative, and do not reach the second certified question." <i>Rexam Indus. Corp. v. Eastman Kodak Co.</i> , 182 F.3d 1366, 1371 (Fed. Cir. 1999).	Intellectual Property

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<i>Int'l Gamco, Inc. v. Multimedia Games</i> , 206 F. App'x 978 (Fed. Cir. 2006).	Seeking appeal of the district court's denial of a motion to dismiss for lack of standing. The district court certified for interlocutory appeal the following issue: "[W]hether an exclusive patent license, with exclusive right of enforcement, restricted to the activities of a specific enterprise within a specified geographical territory, is sufficient to confer standing on the exclusive licensee to bring a patent infringement action in its own name only."	Granted. "We agree [with the district court] that the order meets the statutory requirements . . . And that granting the petition is appropriate."	Reversed. "[An] exclusive enterprise licensee, like field of use licensee, did not hold all substantial rights in licensed patent within licensed territory, and thus did not have standing to sue in its own name without joining patent owner." <i>Int'l Gamco, Inc. v. Multimedia Games</i> , 504 F.3d 1273 (Fed Cir. 2007).	Intellectual Property

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<i>Hoescht Marion Roussel, Inc. v. Par Pharm., Inc.</i> , 95 F.3d 1165 (Fed. Cir. 1996).	Seeking review of the district court's order denying the motion to strike the jury trial demand.	Granted. "We agree that the jury trial issue presents a controlling question of law and is appropriate for review at this time."	Remand. "This appeal is likely moot" because Par filed a motion to withdraw its jury demand. "However, rather than dismissal, remand to the district court is warranted so that it may rule on the motion to withdraw or take other action."	Intellectual Property
<i>Hoescht Marion Roussel, Inc. v. Par Pharm., Inc.</i> , 95 F.3d 1165 (Fed. Cir. 1996).	Seeking review of the district court's order denying the motion to strike the jury trial demand.	Granted. "We agree that the jury trial issue presents a controlling question of law and is appropriate for review at this time."	Remand. "This appeal is likely moot" because Par filed a motion to withdraw its jury demand. "However, rather than dismissal, remand to the district court is warranted so that it may rule on the motion to withdraw or take other action."	Intellectual Property

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<i>Ad Global Fund, L.L.C. v. United States</i> , 167 F. App'x 171 (Fed. Cir. 2006).	Seeking appeal of the Court of Federal Claims's order denying Ad Global's motion for summary judgment. "The trial court held that [26 U.S.C.] § 6229 is facially ambiguous and that the cases espouse conflicting views among circuits. The trial court ultimately decided that § 6229 is not a separate statute of limitations but serves to extend the time period set forth in § 6501."	Granted. "We agree that the order meets the statutory requirements . . . And that granting the petition is appropriate. We note in particular that resolution of this issue will affect the resolution of other pending cases."	Affirmed. <i>Ad Global Fund, L.L.C. v. United States</i> , 481 F.3d 1351 (Fed. Cir. 2007).	Statutory Interpretation
<i>Nisus Corp. v. Perma-Chink Sys., Inc.</i> , 107 F. App'x 225 (Fed. Cir. 2004).	Seeking review of the district court's order pertaining to assignor estoppel.	Granted. "We believe that judicial efficiency would be best served by granting Perma-Chink's petition and reviewing the order as a whole with Nisus appeal of part of the district court's order pursuant to the district court's Rule 54(b) certification."	Affirmed. (no explanation) <i>Nisus Corp. v. Perma-Chink Sys., Inc.</i> , 128 F. App'x 156 (Fed. Cir. 2005).	Intellectual Property



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<i>Eolas Techs. v. Microsoft Corp.</i> , 163 F. App'x 899 (Fed. Cir. 2006).	Seeking appeal of the decision to assign a case, on remand, to the same judge who had presided over the prior trial. Under Seventh Circuit Rule 36, "[w]henver a case tried in a district court is remanded by this court for a new trial, it shall be reassigned by the district court for trial before a judge other than the judge who heard the prior trial. . . ." The certified issue is "whether the Seventh Circuit or local rule should apply to this case in particular or to all Federal Circuit remands to district courts in the Seventh Circuit, or both."	Granted. "We conclude that it is appropriate to exercise our discretion and grant Microsoft's petition for permission to appeal. We note that this is not the first time that this issue has been brought to the attention of this court."	Reversed. "Because this court defers to the law of the regional circuit on the issue of reassignment and Seventh Circuit Rule 36 requires reassignment, this court reverses the district court's denial of Microsoft's motion to reassign the case." <i>Eolas Techs., Inc. v. Microsoft Corp.</i> , 457 F.3d 1279 (Fed. Cir. 2006).	Intellectual Property
<i>PSEG Nuclear, L.L.C. v. United States</i> , 140 F. App'x 955 (Fed. Cir. 2005).	Seeking appeal of the Court of Federal Claims's determination that it lacked jurisdiction to hear the claims filed by sixty-five nuclear utilities against the Department of Energy alleging breach of contract and a violation of the Fifth Amendment takings clause because the Department of Energy failed to begin removing the utilities' spent nuclear fuel by the date stipulated in the contract.	Granted. "We conclude that the petition for permission to appeal should be granted. Many similar cases are pending in the Court of Federal Claims and a decision on the jurisdictional issue will resolve this threshold issue without further investment of resources by the Court of Federal Claims."	Reversed. "[T]here is no statutory provision conferring jurisdiction over PSEG's claims on another court. . . . Therefore, we hold that the Court of Federal Claims has jurisdiction." <i>PSEG Nuclear, L.L.C. v. United States</i> , 465 F.3d 1343 (Fed. Cir. 2006).	Jurisdiction

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<i>Symbol Tech., Inc. v. Lemelson Medical, Educ. &amp; Research Found., Ltd.</i> , 243 F.3d 558 (Fed. Cir. 2000).	Seeking appeal of the district court's order granting the motion to dismiss on the grounds that it is "improper to introduce the equitable doctrine of laches into the statutory scheme of continuation practice."	Granted. "We determine in our discretion to grant Symbol's petition, in part because the issue affects not only this case, but many other cases as well."	Reversed and remanded. "There is nothing in the legislative history to suggest that Congress did not intend to carry forward the defense of prosecution laches as well." <i>Symbol Tech., Inc. v. Lemelson Medical</i> , 277 F.3d 1361, 1366 (Fed. Cir. 2002).	Intellectual Property
<i>Tri-Star Elec. Int'l Inc. v. Preci-Dip Duratal</i> , 345 F. App'x 565 (Fed. Cir. 2009).	Seeking appeal of the district court's denial of Preci-Dip's motion to dismiss because the original assignment agreement of a patent either continued to exist under Ohio law, notwithstanding the merger, or the original assignment agreement should be reformed under the equitable doctrine of contract reformation to reflect the parties' clear intention despite a mistake in drafting.	Granted. "We determine that granting the petition in these circumstances is warranted."	Affirmed. "[W]e affirm the district court's ruling that the assignment transferred ownership to Tri-Start of California." <i>Tri-Star Elecs. Int'l, Inc. v. Preci-Dip Duratal</i> , 2010 WL 3504772 (Fed. Cir. 2010).	Intellectual Property

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<i>Shire LLC v. Sandoz, Inc.</i> , 345 F. App'x 535 (Fed. Cir. 2009).	Sandoz petitioned for permission to appeal the issue of whether a patentee who settles an earlier infringement case after a <i>Markman</i> ruling has issued is precluded under the doctrine of collateral estoppel from re-litigating claim-construction issues determined in the prior case. The district court refused to give preclusive effect to the first district court's claim construction.	Granted. "We determine that granting the petition in these circumstances is warranted."	Dismissed. "The parties having so agreed, it is ordered that the proceeding is dismissed under Fed. Rule App. P. 42(b)." <i>Shire LLC v. Sandoz, Inc.</i> , 368 F. App'x 116 (Fed. Cir. 2009).	Intellectual Property
<i>Zoltek Corp. v. United States</i> , 2009 WL 3169301 (Fed. Cir. Sept. 30, 2009).	Seeking appeal of the district court's order granted Zoltek's motion to transfer and determination that although the applicable statute granted immunity to the United States and its contractors regarding patent infringement, that provision is rendered inapplicable when the claim arises in a foreign country.	Granted. "We determine that granting the petition in these circumstances is warranted."	Not yet decided.	Intellectual Property
<i>Sky Techs. L.L.C. v. SAP America, Inc.</i> , 296 F. App'x 10 (Fed. Cir. 2008).	Seeking appeal of the district court's order denying the motion to dismiss and holding that under state law title of the patent transferred by operation of law and no written assignment was needed.	Granted. "We determine that granting the petition in these circumstances is warranted."	Affirmed. <i>Sky Tech. L.L.C. v. SAP AG</i> , 576 F.3d 1374, 1382 (Fed. Cir. 2009).	Intellectual Property: Patents

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<i>Salman Ranch, Ltd. v. United States</i> , 273 F. App'x 926 (Fed. Cir. 2008).	Seeking appeal of the Court of Federal Claims's denial of Salman's denial of summary judgment because the lower court determined the statute of limitations had not run on the IRS tax claims against Salman.	Granted. "We determine that granting the petition in these circumstances is warranted."	Reversed and remanded. The statute of limitations does bar the government's claim. <i>Salman Ranch, Ltd. V. United States</i> , 573 F.3d 1362 (Fed. Cir. 2009).	Statute of Limitations
<i>Wolfchild v. United States</i> , 260 F. App'x 261 (Fed. Cir. 2007).	Seeking appeal of the Court of Federal Claims's denial of the United States' motion to dismiss for lack of jurisdiction and granting of Plaintiff's motion for partial summary judgment that the Appropriations Act created a trust for the benefit of the Loyal Mdewakanton and that the trust was breached by the United States. The Court certified the following issues for certification: "(1) Whether a trust was created in connection with and as a consequence of the 1888, 1889, and 1890 Mdewakanton and their lineal descendants, which trust included land, improvements to land, and monies as the corpus; and (2) If the Appropriations Act created such a trust, whether Congress terminated that trust with enactment of the 1980 Act."	Granted. "We determine that granting the petition in these circumstances is warranted."	Reversed and remanded. <i>Wolfchild v. United States</i> , 559 F.3d 1228 (Fed. Cir. 2009).	Statutory Interpretation

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<i>Ellamae Phillips Co. v. United States</i> , 267 F. App'x 943 (Fed. Cir. 2008).	Seeking appeal of the district court's decision that conversion of the land at issue to a public trail constituted a taking and thus, the United States is liable.	Granted. "We determine that granting the petition in these circumstances is warranted."	Vacated and remanded. "[W]e vacate the court's judgment and remand for further consideration of the dual questions whether the easement in this case covers trail use and, if so, whether the railroad terminated its right-of-way by abandonment." <i>Ellamae Phillips Co. v. United States</i> , 564 F.3d 1367 (Fed. Cir. 2009).	Takings Clause
<i>Allegheny Teledyne, Inc. v. United States</i> , 20 F. App'x 849 (Fed. Cir. 2001).	"These cases involve the interpretation and application of Cost Accounting Standard 413.50(c) (12), regarding the parties' rights to assets in pension plans when a segment closing occurs."	Granted. "We determine that granting the petition is appropriate."	Affirmed. "Because the Court of Federal Claims correctly interpreted the original CAS 413, we affirm all of its rulings before us on appeal." <i>Allegheny Teledyne, Inc. v. United States</i> , 316 F.3d 1366, 1369 (Fed. Cir. 2003).	Statutory Interpretation

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<i>Doe v. United States</i> , 67 F. App'x 596 (Fed. Cir. 2003).	Seeking review of the Court of Federal Claims ruling that "overtime [pay] may be deemed officially ordered and approved absent written order or approval from an authorized official based on equitable considerations" in the case of more than 9,000 Department of Justice attorneys for purposes of overtime compensation under the Federal Employees Pay Act.	Granted. "We note that a damages trial would necessarily be complex and time-consuming for both sides and the trial court. Thus, deciding the liability issue now serves the interests of all involved."	Reversed. "In holding that the DOJ is not liable for overtime on an inducement theory, we do not wish to be seen as countenancing any effort by DOJ or any other agency to evade the requirements of FEPA and the OPM regulation." <i>Doe v. United States</i> , 372 F.3d 1347 (Fed. Cir. 2004).	Statutory Interpretation
<i>Zenith Elec. Corp. v. ExZec, Inc.</i> , 152 F.3d 946 (Fed. Cir. 1998).	Seeking appeal of the district court's order denying a "motion to dismiss, stating that § 43(a) [of the Lanham Act] reaches a patentee who creates a false impression that it is the exclusive source of the product."	Granted. "We reiterate that ExZec has not objected to [the] petition on the merits. Upon consideration of the district court's orders and the parties' submissions, we determine in our discretion that granting the petition is warranted."	Affirmed. <i>Zenith Elec. Corp. v. ExZec, Inc.</i> , 182 F.3d 1340 (Fed. Cir. 1999).	Intellectual Property

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<i>Regents of the Univ. of Cal. v. Dakocytomation Cal., Inc.</i> , 517 F.3d 1364 (Fed. Cir. 2008).	Seeking appeal of the district court's grant of summary judgment of non-infringement involving construction of the term "heterogeneous mixture of labeled unique sequence nucleic acid fragments."	Granted. "While we have not generally certified motions for interlocutory appeal of claim construction, we determined that it was especially desirable in this case in view of the pendency of the related appeal on the denial of the preliminary injunction based on some of the same issues."	Affirmed. "[H]aving determined that the patentees limited the scope of the heterogeneous mixture to one that only contains unique sequences, the court's claim construction of 'heterogeneous mixture containing labeled unique sequence nucleic acid fragments' is affirmed." <i>Regents of Univ. of Cal. v. Dakocytomation</i> , 517 F.3d 1364 (Fed. Cir. 2008).	Intellectual Property
<i>Orleans Int'l, Inc. v. United States</i> , 219 F. Supp. 2d 1355 (CIT 2002), <i>appeal granted by</i> , 49 F. App'x 892 (Fed. Cir. 2002).	Seeking appeal of the CIT's order that determined that the CIT does not possess subject matter jurisdiction over plaintiff's constitutional challenge to the beef assessments applied to plaintiff's imports of beef and beef products pursuant to the Beef Promotion and Research Act of 1985.	Granted. CAFC granted petition because it was an issue of first impression, and a denial of the petition would result in time-consuming litigation.	Reversed and remanded. <i>Orleans Int'l, Inc. v. United States</i> , 224 F.3d 1375 (Fed. Cir. 2003).	International Trade

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<i>United States Enrichment Corp. v. United States</i> , 27 CIT 1925 (2003), 411 F.3d 1355 (Fed. Cir. 2005).	Seeking appeal to determine whether the CIT correctly decided four general issues regarding the Department of Commerce's classification of enrichment of uranium feedstock as a sale, its reasons for refusing to apply the tolling regulation in its decision, and its interpretation of reasonableness of countervailing duty in this test case with fifteen actions behind it.	Granted. No explanation given.	Affirmed in part and reversed in part. [ <i>Eurodif v. United States</i> , 411 F.3d 1355 (Fed. Cir. 2005)].	International Trade
<i>Eurodif S.A. v. United States</i> , 411 F.3d 1355 (Fed. Cir. 2005).	Whether the United States Department of Commerce's determination that the foreign enricher is the appropriate respondent, in AD proceedings for determining export price and constructed export price of low enriched uranium imported pursuant to enrichment transactions was correct.	Granted. No explanation given.	Affirmed in part and reversed in part.	International Trade



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<i>Me. Yankee Atomic Elec. Co. v. United States</i> , 215 F.3d 1346 (Fed. Cir. 1999).	The Court of Federal Claims certified the issue of whether a commercial nuclear utility that is no longer paying fees into a Nuclear Waste Fund must exhaust administrative remedies provided within the standard contracts for the acceptance and disposal of commercial spent nuclear fuel or whether they may now proceed in the Court of Federal Claims.	Granted. Noting that the Court of Federal Claims had recently decided a similar disputes clause issue differently . . . [thus,] [t]he petitions for permission to appeal are granted."	Affirmed. (no explanation) <i>Maine Yankee Atomic Power Co. v. United States</i> , 271 F.3d 1357 (Fed. Cir. 2001).	Contract Claim
<i>Ins. Co. of the West v. United States</i> , 230 F.3d 1378 (Fed. Cir. 2000).	Seeking review of the Court of Federal Claims order denying the United States' motion to dismiss, stating that "binding precedent recognizes the rights of equitable subrogation based on status as a third-party beneficiary."	Granted. This issue is also challenged in three other cases pending in the Court of Federal Claims. "Thus, the court deems the proper course is to grant the United States' petition for permission to appeal."	Affirmed and remanded. <i>Ins. Co. of the West v. United States</i> , 243 F.3d 1367, 1375 (Fed. Cir. 2001).	Contract Claim
<i>Kimberly-Clark v. First Quality</i> , Case No. 2010-M957 (Fed. Cir. 2010).	No information available. (District Court No. 09-CV-1685).	Not yet decided.	N/A	Intellectual Property
<i>Portney v. Ciba Vision Corp.</i> , Case No. 2010-M939 (Fed. Cir. 2010).	Seeking review of a patent claim construction order.	Not yet decided.	N/A	Intellectual Property
<i>St. Clair Intellectual v. Fujifilm</i> , Case No. 2010-M953 (Fed. Cir. 2010).	No information available. (Delaware District Court No. 08-cv-0373).	Not yet decided.	N/A	Intellectual Property

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<i>St. Clair Intellectual v. Nokia Corp.</i> , Case No. 2010-M952 (Fed. Cir. 2010).	No information available. (Delaware District Court No. 04- CV-1436).	Not yet decided.	N/A	Intellectual Property
<i>Gerber Scientific Int'l v. Satisloh AG</i> , 352 F. App'x 443 (Fed. Cir. 2009).	No information available.	Withdrawn. The parties' motion to withdraw their petition for permission to appeal is granted.	N/A	Intellectual Property
<i>B &amp; G Enter., Ltd. v. United States</i> , 230 F.3d 1370 (Fed. Cir. 1999).	No information available.	Withdrawn. The parties' motion to withdraw their petition for permission to appeal is granted.	N/A	Takings Clause
<i>Hewlett-Packard Co. v. United States</i> , 155 F.3d 571 (Fed. Cir. 1998).	No information available.	Withdrawn. "The motion to voluntarily withdraw is granted."	N/A	Contract Claim

## APPENDIX II

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>Certified by CIT?</i>	<i>CAFC Granted Petition?</i>	<i>CAFC Final Decision</i>
<i>Consolidated Fibers, Inc. v. United States</i> , 535 F. Supp. 2d 1345 (CIT 2008).	Seeking appeal of the CIT's order denying the motions to dismiss and asserting jurisdiction over the claim.	Denied. "The standards for reconsideration or for certification were not satisfied."	N/A	N/A
<i>Usinor Industeel, S.A. v. United States</i> , 215 F. Supp. 2d 1356 (CIT 2002).	Seeking appeal of the CIT's order that defines the term, "likely," for purposes of injury determinations in sunset reviews.	Denied. "[B]ecause the provision at issue is clear, there is no substantial ground for a difference of opinion."	N/A	N/A
<i>United States v. Dantzler Lumber &amp; Export Co.</i> , 17 CIT 178 (1993).	Seeking review of an order determining that a higher level of intent is not required for fraud in civil, as opposed to criminal proceedings; that a Government's failure to re-liquidate an entry within the statutory timeframe is not dispositive of the fact that the Government may still challenge the classification, rate, and amount of duty so liquidated; and finally, that a civil fraud prosecution, following a criminal prosecution for the same acts does not violate the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution.	Denied. "In short, they have failed to support their position that a basis exists for substantial difference of opinion on the three issues presented in their motion such that immediate consideration by the court of appeals is warranted."	N/A	N/A

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<i>Volkswagen of Am., Inc. v. United States</i> , 4 F. Supp. 2d 1259 (CIT 1998).	Seeking review of order suspending case pending disposition of a similar test case.	Denied. "Plaintiff fails to establish that there is a substantial difference of opinion on a controlling question of law."	N/A	N/A
<i>Chung Ling Co., Ltd. v. United States</i> , 805 F. Supp. 56 (CIT 1992).	Seeking review of an order regarding evidentiary issues.	Denied. Interlocutory review is not warranted for evidentiary issues.	N/A	N/A
<i>Totes-Isotoner Corp. v. United States</i> , 580 F. Supp. 2d 1371 (CIT 2008).	Seeking appeal of the CIT's order granting a motion to dismiss because the <i>Totes</i> complaint failed to state a claim.	Denied. Mere "disagreement with the court's grant of a motion to dismiss does not establish a 'substantial ground for difference of opinion,'" and the court's upcoming opinion can expeditiously lead to a final judgment.	N/A	N/A
<i>Nufarm America's Inc. v. United States</i> , Case No. 02-162, Order (Nov. 18, 2005); <i>see also</i> Mot. For Amendment of Order to Permit Interlocutory Appeal.	Seeking appeal of the CIT's order granting the United States' motion to dismiss the portion of Nufarm's complaint which claimed jurisdiction pursuant to § 1581(i).	Denied. No explanation given.	N/A	N/A

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>Certified by CIT?</i>	<i>CAFC Granted Petition?</i>	<i>CAFC Final Decision</i>
<i>Orleans Int'l, Inc. v. United States</i> , 219 F. Supp. 2d 1355 (CIT 2002), <i>appeal granted by</i> , 49 F. App'x 892 (Fed. Cir. 2002).	Seeking appeal of the CIT's order that determined that the CIT does not possess subject matter jurisdiction over plaintiff's constitutional challenge to the beef assessments applied to plaintiff's imports of beef and beef products pursuant to the Beef Promotion and Research Act of 1985.	Granted. "This order includes a controlling question of law with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of this litigation."	Granted. CAFC granted petition because it was an issue of first impression, and a denial of the petition would result in time-consuming litigation.	Reversed and remanded. <i>Orleans Int'l, Inc. v. United States</i> , 224 F.3d 1375 (Fed. Cir. 2003).
<i>Eurodif S.A. v. United States</i> , 27 CIT 1925 (2003), <i>aff'd in part, rev'd in part</i> , 411 F.3d 1355 (Fed. Cir. 2005); <i>see also</i> Def.'s Mot. For a Statement Pursuant to 28 U.S.C. § 1292(d)(1), Case Nos. 02-219, 02-221, Order (Dec. 2, 2003). Note that this case and <i>United States Enrichment Corp. v. United States</i> are member cases.	Whether the United States Department of Commerce's determination that the foreign enricher is the appropriate respondent, in AD proceedings for determining export price and constructed export price of low enriched uranium imported pursuant to enrichment transactions was correct.	Granted. Certified by the CIT because "there is substantial ground for difference of opinion, and an immediate appeal may materially advance the ultimate termination of the litigation."	Granted. No explanation given.	Affirmed in part and Reversed in part. <i>Eurodif v. United States</i> , 411 F.3d 1355 (Fed. Cir. 2005).

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>Certified by CIT?</i>	<i>CAFC Granted Petition?</i>	<i>CAFC Final Decision</i>
<i>United States Enrichment Corp. v. United States</i> , 27 CIT 1925 (2003), <i>aff'd in part, rev'd in part</i> , 411 F.3d 1355 (Fed. Cir. 2005).	Seeking appeal to determine whether the CIT correctly decided four general issues regarding the Department of Commerce's classification of enrichment of uranium feedstock as a sale, its reasons for refusing to apply the tolling regulation in its decision, and its interpretation of reasonableness of countervailing duty in this test case with fifteen actions behind it.	Granted. Certified by the CIT because all issues are controlling questions of law and an incorrect disposition of these issues would require reversal of a final judgment. Therefore, immediate appeal may materially advance the ultimate termination of litigation.	Granted. No explanation given.	Affirmed in part and reversed in part. <i>Eurodif v. United States</i> , 411 F.3d 1355 (Fed. Cir. 2005).
<i>Group Italglass U.S.A., Inc. v. United States</i> , 17 CIT 373 (1993).	Seeking review of the CIT's interpretation of heading 7010 of the HTSUS.	Granted. Controlling question of law, there is a substantial ground for difference of opinion, and order may materially advance the ultimate termination of the litigation.	Denied. "In this case, we decline to grant the petition because reviewing the order on appeal may not advance the ultimate termination of the litigation." 9 F.3d 977 (Fed. Cir. 1993).	N/A

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>Certified by CIT?</i>	<i>CAFC Granted Petition?</i>	<i>CAFC Final Decision</i>
<i>Federal Mogul Corp. v. United States</i> , Case No. 1992-M322 (Fed. Cir. 1992).	Seeking appeal of the CIT's order denying an intervenor's motion regarding the preliminary injunction. The CIT denied the motions without comment and the intervenor petitioned for a writ of mandamus to direct the CIT to set forth its reasons for denying the motions because otherwise the Federal Circuit would be unable to adequately consider its appeal.	Granted. No reason given.	Denied. The Federal Circuit denied the petition for permission to appeal, holding that it did not have jurisdiction because the appeal did not comply with Rule 3 of the Fed. R. of App. P. specificity requirement. Further, the Federal Circuit stated that "any party who wishes to seek review of any trial court's ruling may do so on appeal after final judgment."	N/A

<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>Certified by CIT?</i>	<i>CAFC Granted Petition?</i>	<i>CAFC Final Decision</i>
<i>United States v. UPS Customhouse Brokerage, Inc.</i> , 464 F. Supp. 2d 1364 (CIT 2006), <i>aff'd in part, rev'd in part</i> , 213 F. App'x 985 (Fed. Cir. 2006).	Seeking appeal of the CIT's order denying UPS Customhouse's motion for summary judgment. The CIT certified the following controlling issue of law: "Whether, pursuant to 19 U.S.C. § 1641(d)(1)(A), [Customs] may issue more than one penalty notice for a customs broker's alleged failure to exercise responsible supervision and control based upon the custom broker's alleged repeated misclassification of entered merchandise over a period of time and on multiple separate entry documents; and if so, whether the aggregate penalty sought from those multiple penalty notices may exceed \$30,000."	Granted. Order certified by the CIT because a resolution as to the interpretation of the statute will materially advance the ultimate termination for this litigation.	Denied. "We determine that granting the petition in these circumstances is not warranted."	N/A



<i>Case Name</i>	<i>Issue in Motion for Interlocutory Appeal</i>	<i>Certified by CIT?</i>	<i>CAFC Granted Petition?</i>	<i>CAFC Final Decision</i>
<i>Carnival Cruise Lines, Inc. v. United States</i> , 929 F. Supp. 1570 (CIT 1996), <i>appeal dismissed by</i> , 92 F.3d 1203 (1996).	Seeking appeal of the CIT's order holding that the entire Harbor Maintenance Tax, a portion of which was found unconstitutional in a different case ( <i>United States Shoe Corp v. United States</i> ), was not unconstitutional because the other provisions of the Harbor Maintenance Tax were severable.	Granted. The CIT <i>sua sponte</i> certified the order for permissive appeal. "The Court believes that both the issue of constitutionality and the issue of severability are threshold issues which ultimately should be resolved prior to addressing the remaining issues in this case."	Denied. "Because <i>United States Shoe</i> is presently on appeal to this court, we determine that permissive appeal is not warranted in the circumstance-es of this case."	N/A