

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THE DOW CHEMICAL COMPANY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-737 (JJF)
)	
NOVA CHEMICALS CORPORATION)	
(CANADA), and NOVA CHEMICALS INC.)	
(DELAWARE),)	
)	
Defendants.)	

**NOVA’S MOTION FOR ENTRY OF FINAL JUDGMENT
PURSUANT TO FED. R. CIV. P 54(b)**

A jury trial was held in this case on the issues of validity, infringement, and damages from May 27, 2010, to June 14, 2010, and a bench hearing on the issue of whether the Plaintiff had standing was held before Judge Farnan on June 16, 2010. Judgment as to the jury verdict finding the validity, infringement, and damages was entered on June 18, 2010 (D.I. 538, “Judgment”) and an order holding that Plaintiff had standing was entered on July 30, 2010 (D.I. 604, “Order”). Defendants NOVA Chemicals Corporation and NOVA Chemicals Inc. (“NOVA”) hereby move the Court to enter final judgment with respect to the Judgment and Order, with an express determination pursuant to Fed. R. Civ. P. 54(b) that “there is no just reason for delay.” *See Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437 (1956) (trial court has discretion to enter final judgment under Rule 54(b)).

The Judgment was specifically designated as being pursuant to Fed. R. Civ. P. 54(b), albeit without an express statement that there “there is no just reason for delay.” (D.I. 538.) Judge Farnan had clearly contemplated that the Judgment and Order were final and ripe for appeal, having designated the case as “closed” on the court’s docket as of June 18, 2010, and expressly

characterized the Judgment as a “final judgment” (D.I. 604). The absence of any just reason for delay was also addressed by the Judge Farnan in denying Plaintiff’s motion for a permanent injunction given that there are “substantial issues for appeal, including the question of standing that exists in this action....” (D.I. 603 at 2.) The remaining claims, Plaintiff’s claim of willful infringement (D.I. 1, ¶18) and NOVA’s antitrust counterclaim (D.I. 40, Counts VII and VIII), were bifurcated for both discovery and trial in view of the party’s joint stipulation, entered by the Court on February 6, 2008 (D.I. 48), and do not render inappropriate the entry of final judgment. *W.L. Gore v. International Medical Prosthetics Research Associates, Inc.*, 975 F.2d 858, 864-865 (Fed. Cir. 1992) (Rule 54(b) certification of infringement claim proper notwithstanding unresolved, bifurcated antitrust counterclaim); *Intergraph Corp. v. Intel Corp.*, 253 F.3d 695, 699 (Fed. Cir. 2001) (“Even for claims that arise out of the same transaction or occurrence, sound case management may warrant entry of partial final judgment.”).

Accordingly, and to avoid any uncertainty that might exist for the Federal Circuit based on the present record, NOVA respectfully requests that the Court enter the Proposed Order attached hereto. Counsel for NOVA requested yesterday Dow’s position on the form of order attached hereto, but as of the time of the filing of this motion, no response has been received.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on August 17, 2010, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I hereby certify that on August 17, 2010, the attached document was Electronically Mailed to the following person(s):

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