UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLS BANK INTERNATIONAL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 07-974 (RMC)**
	)	
ALICE CORPORATION PTY. LTD.,	)	
	)	
Defendant.	)	
	)	

ORDER

A threshold issue in this patent infringement lawsuit is whether the U.S. patent laws reach the acts of CLS Bank International ("CLS") that Alice Corporation Pty. Ltd. ("Alice") alleges constitute infringement. In a Memorandum Opinion and Order dated October 13, 2009, the Court held that they do. *See* Dkt. ## 77 & 78. The Court found that, within the meaning of 35 U.S.C. § 271(a), a system can be "used" within the United States even if its components are physically located outside the United States, and a method can be "sold" or "offered for sale" within the United States even if it is physically performed outside the United States. Pending before the Court is CLS's motion to certify the Court's October 13, 2009 Order for immediate appeal pursuant to 28 U.S.C. § 1292(b). *See* Dkt. # 80. Alice opposes.

Section 1292(b) provides, in relevant part:

> When 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.

28 U.S.C. § 1292(b).

The Court finds that its October 13, 2009 Memorandum Opinion and Order "involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). In the aftermath of the Federal Circuit's decision in *NTP, Inc. v. Research In Motion Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005), there is a substantial ground for difference of opinion about whether a system located entirely outside the United States can be "used" within the United States and 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). If the Federal Circuit agrees with CLS on any of these controlling questions of law, then the termination of the patent infringement case against CLS with regard to Alice's system patent claims, its method patent claims, or both, will be materially advanced. While Alice's concerns of delay are legitimate, the Court finds that they are outweighed by the potential time and cost savings to all. Accordingly, it is hereby

ORDERED that CLS's motion to certify Court's October 13, 2009 Order for immediate appeal [Dkt. # 80] is **GRANTED**; and it is

FURTHER ORDERED that the Court's October 13, 2009 Order [Dkt. # 78] is hereby **CERTIFIED** for immediate appeal pursuant to 28 U.S.C. § 1292(b).

SO ORDERED.

Date: December 3, 2009

/s/
ROSEMARY M. COLLYER
United States District Judge