

NOTE: This order is nonprecedential.

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

ALEXSAM, INC.,
Plaintiff-Respondent

v.

HEALTHEQUITY, INC.,
Defendant-Petitioner

2020-146

On Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b) from the United States District Court for the District of Utah in No. 2:19-cv-00445-HCN-CMR, Judge Howard C. Nielson, Jr.

ON PETITION

Before REYNA, WALLACH, and CHEN, *Circuit Judges*.
REYNA, *Circuit Judge*.

ORDER

HealthEquity, Inc. petitions for permission to appeal from an interlocutory order of the United States District Court for the District of Utah denying its motion to dismiss, which the district court certified pursuant to 28 U.S.C. § 1292(b). AlexSam, Inc. opposes the petition.

Under § 1292(b), a district court may certify that an order that is not otherwise appealable is one involving a controlling question of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation. Ultimately, this court must exercise its own discretion in deciding whether to grant permission to appeal an interlocutory order. *See In re Convertible Rowing Exerciser Pat.Litig.*, 903 F.2d 822, 822 (Fed. Cir. 1990). In this case, we conclude that we should not permit an interlocutory appeal.

Accordingly,

IT IS ORDERED THAT:

The petition for permission to appeal is denied.

FOR THE COURT

October 14, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court