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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 FLOWRIDER SURF, LTD., a Canadian
10 corporation, and SURF WAVES, LTD., a
11 company incorporated in the United
12 Kingdom,

12 Plaintiffs,

13 v.

14 PACIFIC SURF DESIGNS, INC., a
15 Delaware corporation,

16 Defendant.

17 AND RELATED COUNTERCLAIMS.
18

Case No.: 3:15-cv-01879-BEN-BLM

**ORDER DENYING DEFENDANT'S
REQUEST FOR ENTRY OF
PARTIAL FINAL JUDGMENT**

19 On May 26, 2017, this Court dismissed U.S. Patent No. 6,491,589 (the “’589
20 Patent”) and Plaintiff FlowRider Surf, Ltd. for lack of standing and stayed the rest of the
21 case while U.S. Patent No. 8,088,016 (the “’016 Patent”) undergoes inter partes review
22 with the Patent Trial and Appeal Board of the U.S. Patent Office. (Order, ECF No. 222).
23 Defendant Pacific Surf Designs, Inc. (“PSD”) now requests that the Court enter judgment
24 regarding the ’589 Patent. (*See* Notice, ECF No. 226).

25 The district court may enter separate judgment in a case involving multiple parties
26 or multiple claims pursuant to Rule 54(b) when “there is no just reason for delay.” Fed. R.
27 Civ. P. 54(b). The Ninth Circuit has indicated that entry of partial judgment should not be
28 granted as a matter of course but rather “reserved for the unusual case in which the costs

1 and risks of multiplying the number of proceedings and of overcrowding the appellate
2 docket are outbalanced by pressing needs of the litigants for an early and separate judgment
3 as to some claims or parties.” *Morrison-Knudsen Co., Inc. v. Archer*, 655 F.2d 962, 965
4 (9th Cir. 1981).

5 Here, PSD seeks judgment as to the dismissed claim of infringement of the ’589
6 Patent so that it may seek its attorneys’ fees for litigating that claim. But Plaintiff’s claim
7 for infringement of the ’016 Patent remains in the case, as do PSD’s counterclaims.
8 Entering judgment on the ’589 Patent now and allowing PSD to move for its attorneys’
9 fees could result in duplicative litigation—PSD may later move for its attorneys’ fees on
10 the remaining claims. Moreover, Plaintiffs could appeal the Court’s order on the motion
11 to dismiss now, while additional appeals might be made once the remainder of the litigation
12 concludes. This would result in piecemeal appeals. The Court is not convinced that this
13 is such an “unusual case” justifying the entry of partial final judgment.

14 The Court **DENIES** PSD’s request for entry of partial final judgment.

15 **IT IS SO ORDERED.**

16 Dated: June 13, 2017

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18 Hon. Roger T. Benitez
19 United States District Judge
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