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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 CALIX NETWORKS, INC., a Delaware
 Corporation,

20 Plaintiff,

21 vs.

22 WI-LAN, INC., a Canadian Corporation,

23 Defendant.
 24

Case No. 09-6038 CRB

**STIPULATION AND [PROPOSED] ORDER
 TO CONSOLIDATE CASE NOS. CV-09-6038
 CRB AND CASE NO. C-11-00004 EMC FOR
 ALL PURPOSES**

Complaint Filed: December 28, 2009

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1 Pursuant to Federal Rule of Civil Procedure 42 and Local Rule 7-12, Plaintiff Calix, Inc.,
2 formerly known as Calix Networks, Inc. (“Calix”) and Defendant Wi-LAN, Inc. (“Wi-LAN”), by
3 and through their respective undersigned counsel, hereby stipulate and agree as follows:

4 1. Calix filed the instant lawsuit against Wi-LAN on December 28, 2009. This lawsuit
5 seeks declaratory judgments that U.S. Patent No. 5,956,323 (“the ‘323 patent”) and U.S. Patent No.
6 6, 763,019 (“the ‘019 patent”) are invalid, not infringed, and unenforceable, and also asserts claims
7 against Wi-LAN for breach of contract and related claims. On October 10, 2010, Wi-LAN filed its
8 First Amended Answer and Counterclaim, alleging infringement of the ‘323 and ‘019 patents by
9 Calix. [Doc. # 77.]

10 2. On April 1, 2010, Wi-LAN filed an action, *Wi-Lan v. CALIX, Inc.* Case No. 2:10-CV-
11 117-TJW, against Calix asserting infringement of the ‘323 and ‘019 patents in the U.S. District
12 Court for the Eastern District of Texas (“the Texas Action”). On November 29, 2010, Calix filed an
13 Answer and Counterclaims, asserting the same Counterclaims in the Texas Action which it had
14 asserted as claims for relief in its earlier-filed suit against Wi-LAN in California.

15 3. Pursuant to Calix’s unopposed Motion to Transfer Venue filed in the Texas Action,
16 the District Court for the Eastern District of Texas, in an Order dated December 6, 2010, transferred
17 the Texas Action to the Northern District of California. For the Court’s convenience, the Transfer
18 Order is attached as Exhibit A hereto. Thereafter, the Clerk for the United States District Court for
19 the Northern District of California gave notice on January 3, 2011 that the Texas Action was
20 transferred, and would proceed under the new Case No. C-11-00004 EMC. [Docket No. 28] For the
21 Court’s convenience, a copy of the Clerk’s Notice of Transferred Case is attached hereto as Exhibit
22 B. This action and Case No. C-11-00004 EMC are thus both pending in this District.

23 4. Both this case and Case No. C-11-00004 involve the same parties (Calix and Wi-
24 LAN), the same two patents (the ‘323 and ‘019 patents), at least some of the same accused products,
25 and substantially the same questions of law and questions of fact – whether Calix has infringed the
26 ‘323 and ‘019 patents and whether those patents are invalid and/or unenforceable. Calix’s other
27
28

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1 claims in this case are the same as its Counterclaims in Case No. C-11-00004. Accordingly, the
2 parties agree that the two cases should be consolidated for all purposes under the Case Number
3 assigned for this case, Case No. CV-09-6038 CRB, and should proceed according to the timeline set
4 forth in the parties' October 29, 2010 Joint Case Management Statement [Docket No. 78] and this
5 Court's November 5, 2010 Minute Order. [Docket No. 79].

6 DATED: March 23, 2011 Respectfully submitted,
7
8 REED SMITH LLP

9
10 By: /s/ William Overend
11 William Overend
12 Attorneys for Plaintiff
13 CALIX NETWORKS, INC.

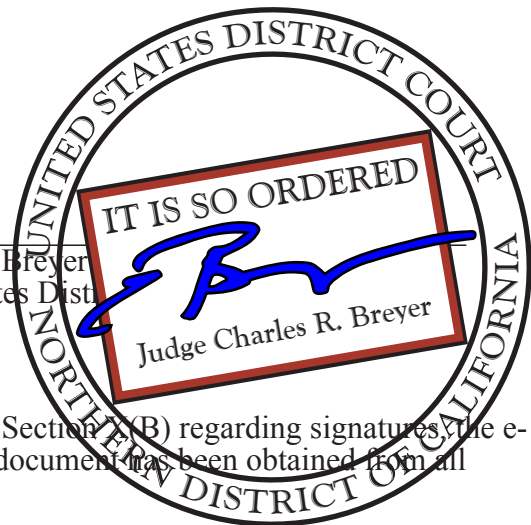
14 DATED: March 23, 2011. Respectfully submitted,
15
16 MCKOOL SMITH, P.C.

17 By: /s/ Michael G. McManus
18 Michael G. McManus
19 Attorneys for Defendant
20 WI-LAN, INC.

21 Pursuant to Stipulation, IT IS SO ORDERED.

22 DATED: March 25, 2011

23
24
25 Charles R. Breyer
United States Dist



26
27 1 Filer's Attestation: Pursuant to General Order No. 45, Section 7(B) regarding signatures, the e-
28 filer hereby attests that concurrence in the filing of this document has been obtained from all
signatories.