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\*\*E-Filed 12/5/08\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

INICOM NETWORKS, INC., Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

NVIDIA CORPORATION, et al.,

Defendants.

Case Number C 08-4332 JF (PVT)

ORDER VACATING HEARING ON  
MOTION TO CONSOLIDATE CASES

[Re: Docket No. 32 ]

On December 2, 2008, Defendant NVIDIA Corporation (“NVIDIA”) filed a motion to consolidate six actions currently pending in this district<sup>1</sup> and two actions expected to be transferred to this district pursuant to the stipulation of the parties.<sup>2</sup> NVIDIA noticed its motion for hearing on January 23, 2009 before the undersigned judge.

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<sup>1</sup> *Nakash v. NVIDIA Corp.*, Case No. C 08-4312 JW (HRL); *Inicom Networks, Inc. v. NVIDIA Corp., et al.*, Case No. C 08-4332 JF (PVT); *Feinstein v. NVIDIA Corp.*, Case No. 08-4596 RS; *Cormier v. NVIDIA Corp.*, Case No. C 08-5082 HRL; *National Business Officers Ass’n, Inc. v. NVIDIA Corp., et al.*, Case No. C 08-5179 HRL; and *West v. NVIDIA Corp.*, Case No. C 08-5217 PVT.

<sup>2</sup> *Olivos v. NVIDIA Corp., et al.*, Case No. C 08-3895 LDW (ETB) (E.D.N.Y.); and *Sielicki v. NVIDIA Corp., et al.*, Case No. C 08-802 SS (W.D. Tex.).

1 Under this Court's Civil Local Rules, an application to relate one or more cases must be  
2 submitted to the judge assigned to the earliest filed (or "low number") case. Civ. L. R. 3-12(b).  
3 The Civil Local Rules do not expressly address motions to consolidate; however, as a matter of  
4 practice, the judge assigned to the low number case considers the issue of consolidation in  
5 conjunction with the issue of related case status. Here, the earliest filed case is *Nakash v.*  
6 *NVIDIA Corp.*, Case No. C 08-4312 JW (HRL), assigned to Judge James Ware. Accordingly,  
7 NVIDIA's motion to consolidate should have been filed in *Nakash* for determination by Judge  
8 Ware.

9 In its moving papers, NVIDIA acknowledges that Case No. C 08-4312 JW (HRL) is the  
10 low number case, but requests an exception to the practice described above on the ground that the  
11 undersigned judge would move the case(s) along more rapidly than would Judge Ware. NVIDIA  
12 represents that while Court staff has indicated that the undersigned judge would schedule any  
13 appropriate motions for hearing in mid-January 2009, Judge Ware would not schedule such  
14 motions until March 2009.

15 While judges certainly may agree to the reassignment of a case or cases notwithstanding  
16 the Court's ordinary practice, Judge Ware's orders issued on December 3, 2008 make clear that  
17 he is not be amenable to such reassignment here, at least at the present time. In his Order  
18 Granting In Part And Denying In Part Motions To Relate Cases, filed in the instant case as  
19 docket number 37, Judge Ware expresses concern that the parties may be judge-shopping, and  
20 states expressly that he will not transfer any of the subject cases to the undersigned judge. That  
21 order also expressly addresses the issues of related case status and consolidation that are raised in  
22 the instant motion. A Related Case Order, filed in the instant case as docket number 38,  
23 reiterates Judge Ware's conclusions regarding the related case issue. In light of Judge Ware's  
24 orders, the undersigned will vacate the hearing on NVIDIA's motion to consolidate, and will  
25 direct the parties to raise any and all issues of related case status and consolidation before Judge  
26 Ware.

**ORDER**

- (1) The hearing on Defendant NVIDIA's motion to consolidate cases is VACATED;
- (2) The parties shall direct any future motions regarding related case status or consolidation to Judge Ware; and
- (3) The instant case, which has not been related to or consolidated with the matters pending before Judge Ware, remains set for a Case Management Conference before the undersigned judge on January 30, 2009 at 10:30 a.m.

DATED: 12/5/08



JEREMY FOGEL  
United States District Judge

1 Copies of Order served on:  
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