



19 November 2021

Corey Lian  
ASX Listings Compliance  
20 Bridge Street,  
Sydney NSW 2000

By email: [ListingsComplianceSydney@asx.com.au](mailto:ListingsComplianceSydney@asx.com.au)

Dear Corey

**Calix Limited (CXL) – Response to ASX Limited ACN 008 624 691 (ASX) in relation to patent application and disclosure query**

Calix Limited (**Calix** or the **Company**) refers to your letter of 16 November 2021 in respect of the announcement made by Calix on 12 November 2021 (**Announcement**).

In this letter, unless the context otherwise requires, capitalised terms which are not defined, have the meanings given to them in your letter.

The Company's responses to the questions and requests for information in your letter are set out below.

**1. Is the application identified at paragraph B the same application CXL references in the Patent Application Information?**

Yes, the application for the patent in respect of Calix's "ZESTY" technology (**ZESTY Patent Application**) is the same application referred to in the Patent Application Information.

**2. Does CXL believe the Patent Application Information is information which it was required to give to ASX under Listing Rule 3.1?**

The board of Calix (**Board**) believes that the information contained in the Announcement (which included reference to the Patent Application Information) was disclosed to the market in compliance with ASX Listing Rule 3.1.

**3. If the answer to question 2 is "yes", please explain the basis for that view, commenting specifically on:**

**a. the guidance (including the Code) extracted above; and**

**b. CXL's apparent delay in announcing the patent application on MAP and its compliance with listing rule 3.1.**

Background

We note that your letter characterises the Announcement as having the primary intention of communicating the ZESTY Patent Application to the market.



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However, the underlying reason for the Announcement was not the making of the ZESTY Patent Application, rather it was the Board's view of how the market would assess the value of the commercial implications of that application.

The Board's view was formed in the period following the lodgement of the ZESTY Patent Application because Calix was approached by several commercial and academic parties with proposals relating to the testing of the viability of the ZESTY technology and the commercial exploitation of the patented technology.

These approaches included the statements by Imperial College, London that, in their view, the application of the Calix technology in the manner represented by the ZESTY Patent Application was considered to have great potential.

The pace and momentum of the market's interest in the ZESTY technology, the scale of the addressable market and the public statements by Imperial College, London led the Board to conclude that the potential value of the technology represented in the ZESTY Patent Application was information which a reasonable person would expect to have a material effect on the price or value of Calix's securities and to which none of the exemptions in ASX Listing Rule 3.1A would apply.

#### Guidances and the Code

2.a The lodgement of the ZESTY Patent Application with AusPat, in itself, was not sufficient to warrant disclosure under ASX Listing Rules 3.1. As the ASX has noted, *'the fact that a patent application has been filed is seldom material, it is generally only after grant that a patent right becomes a material asset, which should be disclosed'*.

Calix has filed a number of patents since listing. The usual practice is not to disclose the applications as they are not regarded as material within meaning of ASX Listing Rule 3.1.

As set out above in the 'Background', the primary purpose of the Announcement was the disclosure of the potential value of the technology, given the market interest in the ZESTY technology and the statements by Imperial College, rather than the ZESTY Patent Application itself.

For these reasons, Calix did not disclose the ZESTY Patent Application on 18 October 2021.

Calix also confirms that the Announcement was not a guise to publish promotional, political or tendentious material, but simply to disclose information to the market, which a reasonable person would expect to have a material effect on the price or value of Calix's securities.

#### Date of application versus date of disclosure

2.b. The catalyst for the Announcement was the Board becoming aware of the materiality of the market's assessment of the value of the ZESTY technology. The Board became aware of the extent of the market's interest and the Imperial College communication on 11 November 2021.

Accordingly, Calix issued the announcement on 12 November 2021, rather than 18 October 2021.

**4. If the answer to question 2 is "no", please explain why CXL sought to release the Announcement on MAP.**

Not applicable.

**5. Is the patent application provisional or non-provisional, as defined by the Code above?**

The ZESTY Patent Application is provisional.

**6. Does the patent application:**

- a. confer any enforceable rights on CXL with respect to the invention that is the subject of the patent;**
- b. have any material impact on any material agreements between CXL and any third parties;**
- c. represent an asset that is reflected on CXL's balance sheet?**

6.a The ZESTY Patent Application is a provisional patent application, and therefore is not currently enforceable against third parties. This provisional patent application preserves Calix's priority date, giving Calix priority over any third party who files a competing patent application for the invention which is the subject matter of the ZESTY Patent Application. This priority period exists for 12 months from the date of filing the ZESTY Patent Application.

6.b. No, there is no material impact on any existing material agreements between Calix and any third parties.

6.c. At the time of preparing annual financial statements for Calix for the financial year ended 30 June 2021, the ZESTY Patent Application had not yet been made and, therefore, is not reflected on the Company's consolidated statement of financial position/balance sheet at that time. However, as is the usual practice of Calix, if the Australian Accounting Standards (AAS) require it, the ZESTY Patent Application costs will be reflected under the consolidated statement of financial position for the financial year ending 30 June 2022 – in particular, under note 9 (intangible assets) to the financial statements, which sets out the required accounting treatment under the AAS of patents held by the Company.

**7. Please confirm that CXL is complying with the Listing Rules and, in particular, listing rule 3.1.**

This is confirmed.

**8. Please confirm that CXL's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of CXL with delegated authority from the board to respond to ASX on disclosure matters.**

The above responses have been authorised and approved by Calix's Board.

If you have further questions or require any additional information, please let us know.

Yours faithfully

Darren Charles  
Company Secretary

16 November 2021

Reference: 42652

Mr Darren Charles  
Chief Financial Officer & Company Secretary  
Calix Limited  
Level 1, 9-11 Bridge St  
Pymble, NSW 2073

By email:

Dear Mr Charles

**Calix Limited ('CXL'): Query Letter**

ASX refers to the following:

- A. CXL's announcement titled "Calix files new patent for zero emissions iron and steel" released on the ASX Market Announcements Platform ('MAP') on 12 November 2021 (the 'Announcement'), disclosing that:
- "[CXL] is pleased to announce the filing of a patent covering a new application of its core technology for the production of zero CO2 emissions iron and steel."*
- (the 'Patent Application Information')
- B. The AusPat website<sup>1</sup>, which appears to show that the most recent patent filed by CXL was titled "PROCESSES AND METHODS FOR PRODUCTION OF IRON AND STEEL" (2021903330). AusPat's records indicate that this patent was lodged on 18 October 2021<sup>2</sup>.
- C. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- D. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:
- "an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."*
- E. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.
- "3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*
- 3.1A.1 One or more of the following applies:*
- *It would be a breach of a law to disclose the information;*
  - *The information concerns an incomplete proposal or negotiation;*

<sup>1</sup> <http://pericles.ipaaustralia.gov.au/ols/auspat/quickSearch.do?queryString=calix+ltd&resultsPerPage=&includeAbstractText=on>

<sup>2</sup> <http://pericles.ipaaustralia.gov.au/ols/auspat/applicationDetails.do?applicationNo=2021903330>

- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- The information is generated for the internal management purposes of the entity; or
- The information is a trade secret; and

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.”

F. Guidance Note 8, published by ASX with respect to each listed entity’s obligations under Listing Rule 3.1, which provides (relevantly):

- “Entities should not use an announcement under Listing Rule 3.1 as a guise to publish material that is really promotional, political or tendentious in nature rather than being information that a reasonable person would expect to have a material effect on the price or value of its securities.” (at section 4.15).
- “The concept of “materiality” in terms of its capacity to influence a person whether to acquire or dispose of shares must refer to information which is non-trivial at least. It is insufficient that the information “may” or “might” influence a decision: it is “would” or “would be likely” that is required to be shown ...”(at section 4.2, n 20).

G. The Code of Best Practice for Reporting by Life Science Companies (2<sup>nd</sup> edition)<sup>3</sup> published by ASX and AusBiotech (the ‘Code’), which provides:

**“The fact that a patent application has been filed is seldom material, it is generally only after grant that a patent right becomes a material asset, which should be disclosed. If information relating to patent filings or progress on patent applications is made, however, communication to the market should be balanced and informative. Particular care needs to be taken to ensure that investors are not given a misleading impression of the breadth of protection afforded by a patent, the likelihood of grant of a patent or the ability of the company to enforce its patent rights.”**

The Code goes on to define a “patent application” as:

**“Patent application**

*There are two types of patent applications: provisional and non-provisional. A non-provisional application establishes the filing date and initiates the examination process. A non-provisional utility patent application must include a specification, including a claim or claims; drawings, when necessary; an oath or declaration; and the prescribed filing fee. A provisional patent application allows filing without a formal patent claim, oath or declaration, or any information disclosure (prior art) statement. It provides the means to establish an early effective filing date and automatically becomes abandoned after one year. It also allows the term “patent pending” to be applied.”*

Although the Code was published to provide guidance to Life Sciences entities, the principle is of general application to all technology businesses.

## Request for information

<sup>3</sup> [https://www.asx.com.au/documents/research/Code\\_of\\_Best\\_Practice\\_for\\_Reporting\\_by\\_Life\\_Science\\_Companies.pdf](https://www.asx.com.au/documents/research/Code_of_Best_Practice_for_Reporting_by_Life_Science_Companies.pdf)

Having regard to the above, ASX asks CXL to respond separately to each of the following questions and requests for information:

1. Is the application identified at paragraph B the same application CXL references in the Patent Application Information?
2. Does CXL believe the Patent Application Information is information which it was required to give to ASX under Listing Rule 3.1?
3. If the answer to question 2 is “yes”, please explain the basis for that view, commenting specifically on:
  - a. the guidance (including the Code) extracted above; and
  - b. CXL’s apparent delay in announcing the patent application on MAP and its compliance with listing rule 3.1.
4. If the answer to question 2 is “no”, please explain why CXL sought to release the Announcement on MAP.
5. Is the patent application provisional or non-provisional, as defined by the Code above?
6. Does the patent application:
  - a. confer any enforceable rights on CXL with respect to the invention that is the subject of the patent;
  - b. have any material impact on any material agreements between CXL and any third parties;
  - c. represent an asset that is reflected on CXL’s balance sheet?
7. Please confirm that CXL is complying with the Listing Rules and, in particular, listing rule 3.1.
8. Please confirm that CXL’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of CXL with delegated authority from the board to respond to ASX on disclosure matters.

#### **When and where to send your response**

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **5:00 PM AEDT Friday, 19 November 2021**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, CXL’s obligation is to disclose the information ‘immediately’. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require CXL to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceSydney@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

#### **Trading halt**

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in CXL’s securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;

- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in CXL's securities under Listing Rule 17.3.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to CXL's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that CXL's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

### **Release of correspondence between ASX and entity**

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

### **Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Kind regards

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**Corey Lian**  
Compliance Adviser, Listings Compliance (Sydney)