

Daily Journal

COVER STORY

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TOP DEFENSE VERDICT OF 2010

Jasmine Networks, Inc. v. Marvell Semiconductor, Inc.



Margaret Tough, Steven Bauer and James Lynch

S. Todd Rogers | Daily Journal

For years, attorneys representing Marvell Technology Group Ltd. fought hard to keep out an incriminating voice mail left by its general counsel on the voice mail of a rival company's executive.

Marvell lost that battle, but the company's legal team at Latham & Watkins won the war, when a Santa Clara County jury in November exonerated the company on all counts, including trade secrets misappropriation.

Dealing with the voice mail — which Marvell unsuccessfully tried to block from the trial by arguing it was protected by attorney-client privilege — was the biggest challenge for Steven Bauer, who served as lead counsel.

"Our theory with the jury was that the voice mail raises a lot of questions, but that evidence at trial will provide the answers," he said.

"I think it was important for our credibility that we didn't try to get around the voice mail," Bauer said. "We went straight at it."

Matthew Gloss, who was Marvell's general counsel in August 2001, left a message on the voice mail of Virginia Wei, Jasmine Technology Inc.'s director of business and legal affairs asking her to return his call.

Gloss failed to hang up, and kept chatting with Marvell's in-house patent attorney, Eric Janofsky, and its vice president of engineering, Kaushik Banerjee. The conversation included musings taking Jasmine's technology and putting it into Marvell's products as well as the possibility other Marvell executives

might go to jail.

Jasmine's attorneys argued the voice mail was essentially a confession, but Bauer maintained it was the uninformed speculation of three executives who were new to the company or uninformed about the actions of other company officials.

Bauer was first to introduce the transcript of the voicemail, as the Latham team worked from the beginning to blunt its impact.

"We wanted to make it our piece of evidence, and not let the plaintiffs define it," said James Lynch, another member of the trial team. He said Gloss, during his testimony, was able to explain why the "troubling" snippets in the voice mail did not tell the whole story.

"He just exuded credibility," Lynch said of Gloss.

Jasmine, which long ago filed for bankruptcy, argued some of its own engineers were helping steal secrets for Marvell even as the companies negotiated an agreement to acquire some of Jasmine's technology. The company originally sought more than \$200 million in compensatory damages.

The case was a close call for the jury, which deliberated for eight days — asking to hear Gloss' entire testimony read back to them along the way. They started almost evenly divided, before gradually moving towards a defense verdict.

Casey Neale, one of the jurors, echoed many of Bauer's closing arguments in an interview shortly after the verdict.

"You have a legal team discussing hypothetical situations," Neale said of the voice mail conversation. "[Jasmine] was trying to use it as a confession and it wasn't."

Another juror, Kenny Vogel, said the voice mail did not prove Marvell stole trade secrets. "It gave you something but not enough."

Christopher Sullivan, a partner with Trepel McGrane Greenfield and one of Jasmine's trial attorneys, said he believed jurors "were demanding too much direct evidence" in addition to the voice mail.

"Our jury selection strategy was important," Bauer said. "We wanted a jury that was analytical and skeptical, and asked them to be analytical and skeptical."

Latham & Watkins was hired to represent Marvell six weeks before the case was scheduled to go to trial in 2009 after Quinn Emanuel Urquhart & Sullivan was disqualified because of a conflict.

Bauer bought some time by persuading Judge Thomas Edwards that Jasmine did not have standing to sue because it had sold the trade secrets in the case. The 6th District Court of Appeal overturned that decision, and Judge William Elfving presided over the trial, which started in September.

Latham's trial team included partners Margaret Tough, Charles Crompton and Matthew Rawlinson.

"We would not settle this case as a matter of principle, so we needed to hire trial lawyers who were 100 percent committed to trying

and winning the case" said Jim Laufman, Marvell's general counsel, in a statement. "And that's what they did."

— Craig Anderson

Trade Secrets Misappropriation

Santa Clara County Superior Court

San Jose

Santa Clara County Superior Court Judge William Elfving

Defendant's attorneys: Latham & Watkins, Steven Bauer, James Lynch, Margaret Tough, Charles Crompton and Matthew Rawlinson in San Francisco

Plaintiffs' attorneys: Trepel McGrane Greenfield, Anthony Trepel in San Jose, Christopher Sullivan and Maureen Harrington in San Francisco