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Judge finalizes software firm's \$845M trade theft verdict

By Gina Kim

Daily Journal Staff Writer

In a finalized ruling of a trade secrets theft case between two Silicon Valley companies, defendant XTAL Inc. must pay \$845 million to plaintiff company ASML US Inc., and will have most of its assets owned by ASML.

In May 2016, Dutch-based semiconductor chip processing software company ASML sued XTAL in Santa Clara County Superior Court for inducing ASML workers to share confidential information and improperly acquiring ASML's trade secrets, and violation of the Uniform Trade Secrets Act. *ASML US Inc. v. XTAL, Inc.*, 16-CV-295051 (Santa Clara Sup. Ct., May 11, 2016).

Judge Sunil R. Kulkarni presided over the trial last fall.

The plaintiff counsel trial team from Bartko Zankel Bunzel & Miller was led by Patrick M. Ryan and joined by Stephen Steinberg, Sean McTigue and Brian Smith, and supported by attorneys Andrew Winetroub, Joseph Fraresso, Alden Lee, Rishi Gupta and Chad DeVeaux. Richard Lapping of Trodella & Lapping LLP represented ASML's interests in XTAL's bankruptcy proceedings.

Defense counsel Donald J. Putterman, Constance J. Yu and George Chikovani of Putterman Landry & Yu could not be reached for comment.

XTAL was founded in 2014 by two former employees of ASML's subsidiary Brion Technologies.

At issue was software used to maximize the manufacturing of process chips used in smartphones, which Brion develops.

The jury returned a verdict on Nov. 28,



Courtesy photo

Patrick M. Ryan of Bartko Zankel Bunzel & Miller represented plaintiff company ASML US Inc. in a trade secrets case against now-bankrupt XTAL Inc.

in favor of ASML after three days of deliberating. XTAL filed for bankruptcy in December, which delayed entry of judgment and injunction. On Jan. 7, XTAL removed the case to bankruptcy court, which ordered the case remanded to state court.

Court documents show that XTAL tried unsuccessfully to sell its software that the jury found was contaminated with ASML's trade secrets, Ryan said.

The \$845 million judgment is largely uncollectable because of XTAL's bankruptcy, but ASML will end up owning most of XTAL's intellectual property through the

bankruptcy process. XTAL officials are also barred from continuing work in the same field of business as ASML for three years, and ordered to remove hard disks from all servers XTAL used for computational lithography.

During trial, Ryan said he honed in on the primary driver saved research and development model, by showing that "XTAL saved hundreds of millions of dollars by stealing trade secrets rather than developing their own technology from scratch, which is a very important development in trade secret cases."