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COVER STORY

Trade secret theft verdict is \$223M

Semiconductor company alleged employee poaching

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A Santa Clara County Superior Court jury awarded \$223 million for trade secrets theft and additional damages to a semiconductor design company after concluding its proprietary software was stolen by employees poached by a competitor.

Jurors found last week that Xtal Inc. induced six employees to breach their contracts with ASML US Inc. and steal trade secrets from their former employer to be applied at their new jobs.

“The jury stood up and said intellectual property has to be protected,” plaintiff’s attorney Patrick Ryan of Bartko, Zankel, Bunzel & Miller said Friday. “The global and Silicon Valley economies lives and dies on intellectual property.”

ASML and Xtal provide chipmakers

with hardware and software for chip manufacturing processes.

ASML accused Xtal of poaching its employees and hiring them on the condition that they bring over trade secrets on the company’s computational lithography technology.

Xtal allegedly told the employees it hired from ASML to continue working for both companies for easier access to proprietary information and to poach contracts from large customers, such as Samsung Electronics Co. Ltd. ASML also contended its former employees used its source code, programming language scripts, and business information to aid in Xtal’s illicit affairs.

Plaintiffs alleged breach of contract and civil conspiracy, among other claims. *ASML US Inc. v. Xtal Inc.*, 16-CV-295051 (Santa Clara Super. Ct., filed May 11, 2016).

The defense was represented by Donald Putterman of Putterman Landry & Yu.

“We disagree with the verdict and are

considering our response at this time,” he said Friday.

The jury also awarded damages for inducing former employees to breach their contracts, for aiding and abetting former employees to breach their duty of loyalty as well as \$1.2 million in forensic investigation costs for breach of the state’s fraud statute.

Plaintiffs may also be awarded punitive damages, to be determined at a later date, because the jury found Xtal acted with malice, fraud and oppression.

Email communications between Xtal executives and ASML employees revealed directives to steal trade secrets before taking positions at Xtal, according to Ryan.

Xtal contended its competitor “made it too easy” to access and steal proprietary information, Ryan added, but the jury disagreed and found ASML took reasonable steps to protect its intellectual property.