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Infamous Voice Mail Suit Revived

By Laura Ernde

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Eight years after lawyers and officers at a Silicon Valley company accidentally left a voice mail spilling the beans about stealing trade secrets from a rival, the lawsuit against Marvell Semiconductor Inc. might finally be headed for trial.

On Tuesday, a state appellate court revived the marathon suit, which had been dismissed earlier this year on the theory that Jasmine Networks Inc. lost its right to sue when it sold the trade secrets in question.

"Despite the impressive efforts by Marvell's counsel to conjure up a 'current ownership rule,' we find no support for such a rule," 6th District Court of Appeal Justice Conrad L. Rushing wrote. "Defendants have offered no persuasive argument from policy for our adoption of such a rule." *Jasmine Networks Inc. v. Superior Court of Santa Clara County (Marvell Semiconductor Inc.)*, H034441.

Barring further appeals, the case should be set for trial within a few months, said an ecstatic Christopher Sullivan at McGrane Greenfield in San Francisco, who represents Jasmine Networks.

Marvell attorney Steven M. Bauer at Latham & Watkins did not immediately return a call for comment Tuesday.

The ruling was the latest in a series of setbacks against Marvell, which began with the now-infamous voice mail message mistakenly left by Marvell's then-general counsel Matthew Gloss, along with in-house patent attorney Eric Janofsky and a company engineering executive.

The three men thought they had hung up after leaving a message for one of Jasmine's in-house lawyers, but the voice mail continued to record as they openly discussed the theft of trade secrets on speakerphone. Marvell fought all the way to the California Supreme Court to get the voice mail erased based on attorney-client privilege, but the court punted the case back to the 6th District, allowing to stand its ruling that the lawyers waived the privilege by

discussing possible fraud.

Earlier this year, Santa Clara County Superior Court Judge Thomas C. Edwards admitted the voice mail into evidence over objections that it had been edited by Jasmine.

Marvell's other setback came in January, when the company's lawyers were disqualified due to a potential conflict of interest. Quinn Emanuel Urquhart Oliver & Hedges had hired Robert Feldman, who had advised Jasmine in the case when he was at Wilson Sonsini Goodrich & Rosati.

In Tuesday's ruling, Rushing said Marvell's new lawyers at Latham & Watkins tried to prove their point by acting as though it had already been proven.

"Of course a major part of our job is to resist such devices, and to declare, when so it seems to us, that the emperor in fact has no clothes," Rushing wrote. "And Marvell's imperator is naked as a jaybird."

Plaintiffs don't have to show that they currently own the disputed trade secrets. Jasmine owned the trade secret at the time of the alleged infringement, which is sufficient to sustain a case, the court ruled.

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