

THE RECORDER

133RD YEAR NO. 214

www.callaw.com

WEDNESDAY, NOVEMBER 4, 2009

A trade secret win

Keker wins tech case worth up to \$2B

By Zusha Elinson
RECORDER STAFF WRITER

An Alameda County jury handed Keker & Van Nest and semiconductor giant TSMC a clear victory in a hard-fought trade-secrets trial on Tuesday morning.

The jury found that rival semiconductor manufacturer SMIC, represented by Wilson Sonsini Goodrich & Rosati, misappropriated trade secrets and broke a 2005 settlement between the two companies by continuing to use the information. The case will now proceed to the damages phase, at which Keker lawyers could ask for as much as \$2 billion.

To add insult to injury, the jury was not convinced by Wilson Sonsini's counterclaim that TSMC failed to meet and confer in good faith after the settlement was allegedly breached. The jury deliberated for three days and came to the verdict Monday afternoon, but waited until Tuesday morning to read it, citing child-care issues.

At trial, the Keker lawyers, led by San Francisco partner Jeffrey Chanin, riffed on the very simple theme that SMIC was a thief. Chanin compared the company to a masked robber during closing arguments last week.

"It was compelling because it was true," Chanin said



JASON DOY

METAPHOR MAN: In a successful closing argument for client TSMC, Keker & Van Nest lawyer Jeffrey Chanin compared rival SMIC to a masked bandit.

Tuesday. "I don't think there was any question about it — when you have the COO of your company e-mailing for the technology of the other company, what other conclusions can you reach?"

Through the nine-week trial, held in Alameda County Superior Court, Chanin worked with Keker partners Brian Ferrall and Ashok Ramani.

The Wilson trial team, led by Palo Alto partner David Steuer, tried to convince the jury that the recipes for making semiconductors that SMIC allegedly stole weren't

actually trade secrets, noting that some are now available on the Internet.

But the jury found that 61 of the 65 alleged trade secrets at issue in the trial were, in fact, trade secrets when SMIC took them with the help of former TSMC employees.

The two companies originally settled the trade-secret dispute in 2005 with SMIC agreeing to pay TSMC \$175 million. But TSMC claimed SMIC didn't comply with the agreement, and filed the current lawsuit in 2006.

The jury concluded that

SMIC broke the settlement agreement for the first time on Feb. 4, 2005, just five days after the agreement was signed. Throughout the course of the litigation, Wilson Sonsini lawyers mounted several defenses. At one point, they claimed that TSMC's general counsel had doctored the settlement agreement, but Judge Steven Brick ruled against them.

In closing arguments, Wilson's Steuer said that TSMC was using red herrings to distract the jury from the real issues. Chanin saw it the opposite way.

"There's been a lot of misdirection — if we want to talk about red herrings, there was an abundance of fish on the other side," Chanin said. "It was an effort to tar TSMC in the minds of the jury and it didn't work."

"We tried hard to present a good defense to the jury," a downcast Steuer said on Tuesday. "That's the way trials go sometimes."

Wilson has already appealed some of the trade-secret issues, and a separate trial has yet to be held on an unclear hands defense the firm wasn't allowed to use during this trial. The damages trial on Tuesday's verdict will begin Thursday before the same jury.

Reporter Zusha Elinson's e-mail address is zelinson@alm.com.