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David H. Yamashita, Clerk of the Superior Court
County of Santa Clara, California
By: C. FUJIHARA
Deputy Clerk

C. FUJIHARA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA

14 JASMINE NETWORKS, INC.,
15 Plaintiff,

16 v.

17 MARVELL SEMICONDUCTOR, INC.,
18 et al.
19 Defendants.

CASE NO. 1-01-CV-801411

~~PROPOSED~~ ORDER GRANTING
MARVELL SEMICONDUCTOR'S
MOTION TO DISMISS JASMINE'S
SECOND AMENDED COMPLAINT
FOR LACK OF STANDING

Date: June 3, 2009
Time: 9:00 a.m.
Department: 13, Judge T. Edwards

Complaint Filed: September 12, 2001
Trial Date: May 11, 2009

22 AND RELATED CROSS-COMPLAINT

1 **ORDER**

2 This matter is before the Court on the motion of defendant and cross-complainant
3 Marvell Semiconductor, Inc. (“Marvell”) to dismiss Plaintiff Jasmine Networks, Inc.’s
4 (“Jasmine”) Second Amended Complaint for lack of standing.

5 The Court has read and considered the moving as well as opposing papers on this motion,
6 and has listened to extensive oral arguments of Counsel. It has also conducted its own research
7 and analysis of the issue of standing in a trade secrets case under California law, weighing also
8 federal authorities, opinions of commentators, and policy considerations.

9 A threshold issue is whether or not there was an explicit or implicit adjudication by the
10 Bankruptcy Court of the issue of Jasmine’s standing to continue to maintain its action against
11 Marvell for misappropriation of trade secrets, and whether or not this Court is bound by any such
12 adjudication. The Court finds nothing in the record to indicate that the Bankruptcy Court
13 actually or implicitly litigated or otherwise adjudicated the issue of Jasmine’s standing to sue
14 Marvell either under Federal or California law. Therefore, the Court must conduct its own
15 analysis of the standing issues raised by Marvell’s motion, for the question of standing is a
16 jurisdictional issue and this affects the Court’s power to proceed with Jasmine’s case any further.

17 The standing issue raised by Marvell appears to be one of first impression. Neither
18 Counsel nor the Court has found an appellate decision that determines whether a former owner,
19 in this case Jasmine, who is neither an owner nor licensee, has standing to maintain an action for
20 misappropriation of a trade secret that it has sold to a third party. Apparently, there is no
21 appellate authority directly on point.

22 The majority of the cases and commentators cited by Counsel indicate that a trade secret
23 is an item of unique, intangible property that belongs only to its owner or to an exclusive
24 licensee, that is, a licensee with sole possession, and that the legislative purpose and public
25 policy underlying trade secret law is to protect or vindicate the property interests and rights of
26 the owner or licensee from misappropriation by another. This purpose and policy is reflected,
27 for example, in the language of CACI jury instructions 4400 and 4401, which require the
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1 specification of the plaintiff's interest in the trade secret as being either that of owner or licensee.

2 In the Court's view, having considered the cases and commentaries cited by Counsel, a
3 former owner of a trade secret lacks the requisite property interests and rights that trade secret
4 law seeks to protect. Although there are persuasive arguments and legitimate equities on both
5 sides of this issue, it is the Court's opinion a former owner lacks the necessary standing to sue
6 for the misappropriation of property that it no longer owns because the former owner no longer
7 has a protectable interest in the property.

8 Thus I find that Marvell has shown sufficient good cause to grant its motion.

9 GOOD CAUSE APPEARING THEREFORE,

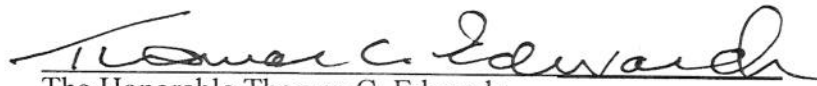
10 **IT IS HEREBY ORDERED THAT:**

11 1. Marvell's Motion to Dismiss Jasmine's Second Amended Complaint for Lack of
12 Standing is GRANTED; and

13 2. Jasmine's Second Amended Complaint is dismissed in its entirety, with prejudice.

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Dated: JUNE 3, 2009


The Honorable Thomas C. Edwards
JUDGE OF THE SUPERIOR COURT

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