

EXHIBIT C Part 4

Issues Addressed

Substantial Evidence Supports the Damages Award

Power Integrations Supports the Verdict

**Substantial Evidence Supports the
\$0.50 Royalty Rate**

Marvell's Attacks On The Number Of Accused Chips
Used In The U.S. Are Irrelevant, Waived And Baseless

Marvell Is Not Entitled
To A New Trial Or Remittitur

Substantial Evidence Supports the \$0.50 Royalty Rate



Marvell's challenges to the \$0.50 royalty rate fall flat

- The royalty rate is based on Marvell's domestic use of the CMU invention



Marvell's arguments go to weight not admissibility and therefore are not grounds for granting a Rule 50 motion.

Agrizap, Inc. v. Woodstream Corp., 520 F.3d 1337, 1341 (Fed. Cir. 2008)

- Marvell had a full opportunity to cross examine Ms. Lawton

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- **Contrary to Marvell's assertion, Ms. Lawton did not testify that a \$0.50 royalty would put Marvell out of business**

percent.” (12/10/12 Tr. 259:19-21.) Thus, regardless of CMU's protestations to the contrary (Opp. 15), Ms. Lawton's opinion is that Marvell should pay royalties that would drop its margins below 50%, leaving it without what it believed to be the return necessary to make its business worthwhile.

Dkt. 855 at
15-16, n.4



A The excess profits analysis goes to the issue of what does Marvell say is adequate profit for its business. And, in fact, Dr. Armstrong testified that if they achieved a 50 percent gross margin in storage, that they would be doing their jobs really, really well in terms of both price and cost. So that's a benchmark -- a relevant benchmark as to what we call the adequate return.

Ms. Lawton,
12/10/12 Tr.
at 259:12-18

- **Marvell's gross margin with a \$0.50 royalty would be 49.32%**

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Ms. Lawton's *excess profits analysis* is methodologically sound

- **This Court properly rejected Marvell's numerous *Daubert* challenges**
See Dkt. 451, Dkt. 607, 12/6/12 Tr. at 5-10, Dkt. 713
 - **Ms. Lawton's trial testimony was consistent with her report**
- **The Federal Circuit has approved similar excess profits analyses.**
See, e.g., Energy Transp. Group, Inc. v. William Demand Holding A/S, 697 F.3d 1342, 1356-57 (Fed. Cir. 2012); *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301 (Fed. Cir. 2009); *TWM Mfg. Co. v. Dura Corp.*, 789 F.2d 895, 899 (Fed. Cir. 1986)
- **Ms. Lawton's analysis gives credit to Marvell for all of its non-infringing contributions to the chips**
- **Marvell's expert has used an excess profits analysis**
See Dkt. 396, Ex. 20 at 3092-94
- **Ms. Lawton explained to the jury why Marvell's assertion that its average margin on non-infringing storage products is equal to or higher than its margin for infringing products is improper**
 - **One set of non-infringing chips did not include a read channel**
 - **The other set, according to Marvell, contained an MNP**

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Ms. Lawton's *operating profits analysis* is methodologically sound

- This Court properly rejected Marvell's numerous *Daubert* challenges

See Dkt. 451, Dkt. 607

- Ms. Lawton's trial testimony was consistent with her report

- The Federal Circuit has approved similar operating profits analyses.

See Energy Transp. Group, Inc. v. William Demand Holding A/S, 697 F.3d 1342, 1357 (Fed. Cir. 2012) (affirming damages analysis based on "premium operating profits over non-Infringing devices")

- Ms. Lawton relied on Marvell's own definition of "comparable chips"

- Marvell's "sample size" argument misrepresents Ms. Lawton's analysis and in any event, goes to the weight of the evidence

- Ms. Lawton considered all sales of "comparable chips" and the related pricing premiums

See LaserDynamics, inc. v. Quanta Computer, Inc., 694 F.3d 51, 79 (Fed. Cir. 2012) (an expert opinion may be derived from a "small sample size" where the facts indicate that it is "a reasonable attempt to value" the technology)

- Ms. Lawton relied on Dr. Bajorek who testified regarding Marvell documents identifying the MNP as the "*key*" or "*only*" difference between relevant chips

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Marvell's waived its non-infringing alternatives argument



“The law is crystal clear that a party may not base its motion for a judgment n.o.v. on a ground that was not argued in its motion for directed verdict.”

Williams v. Runyon, 130 F.3d 568, 571-72 (3d Cir. 1997)



An issue is not raised in a Rule 50(a) motion unless the moving party specifies the “law and facts on which the moving party is entitled to judgment.”

Fed. R. Civ. P. 50(a)(2); *Chemical Leaman Tank Lines, Inc. v. Aetna Cas. & Surety Co.*, 89 F.3d 976, 993 (3d Cir. 1996)

Marvell did not move for judgment as a matter of law based on a failure to evaluate non-infringing alternatives and made a strategic choice not to present any evidence on the issue

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Marvell's did not meet *its burden* to show acceptable, non-infringing alternatives were available



When an “alleged substitute [is] not on the market,” there is an inference that it is not available, and the *infringer* “has the burden to overcome th[at] inference” if it asserts that the substitute impacts the reasonable royalty.

SynQor, Inc. v. Artesyn, 709 F.3d 1365, 1382 (Fed. Cir. 2013)

Marvell made the strategic choice not to present any evidence regarding acceptable, non-infringing alternatives and there was no evidence that any alleged alternatives were on the market

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Despite Marvell's failure to satisfy its burden, CMU's experts testified regarding the absence of acceptable, non-infringing "alternatives"

- Marvell's 7500 and 5575 chips are non-infringing alternatives but not acceptable – **Nobody bought them**
- Based on Marvell testimony, Ms. Lawton concluded that Marvell would not have licensed a proprietary design from another company
12/7/12 Tr. at 216-18, 230
- Ms. Lawton analyzed whether Marvell could use IBM as a foundry but determined it would be prohibitively expensive Id. at 227-28, 231; 12/10/12 Tr. at 214
- Ms. Lawton evaluated whether Marvell could move its operations overseas but determined, based on Dr. Bajorek's testimony and Marvell's stipulation regarding its U.S. activities, that such a move was not feasible
12/7/12 Tr. at 218-24; 12/10/12 Tr. at 212-14
- Ms. Lawton also relied on Dr. Bajorek's "must have" opinion and Dr. McLaughlin's testimony that Marvell had no alternative to use CMU's patented technology to combat the growing media noise problem

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Substantial evidence supports a per-chip royalty structure



17 Q. And I've also seen licenses that, instead
18 of a percentage of the selling price, there's a
19 fixed per-chip royalty. Are you familiar with
20 those?

21 A. There's been lic- -- yeah, **technology**
22 **licenses that we've done** -- that I've -- I've been
23 involved with **with fixed, you know, per chip** --

16 Q. I said, the concept of a running royalty
17 as a percentage versus a fixed price, what are the
18 factors that go into that decision?

20 THE WITNESS: Yeah, I mean, it's just what
21 -- whichever we think is going to be fair -- but it
22 **really doesn't matter too much**. Right? That --
23 that's a -- we -- I mean, for -- for a given
24 product, we can compute how much that fixed price is
25 on royalty, and it varies with the ASP, or the
:01 product, which is good, **but sometimes fixed is**
02 **better, because, you know, it's more predictable**,
03 so -- yeah, it's case by case.

11 Q. And do you know why it was a **fixed fee per**
12 **unit**, as opposed to a percentage per chip?

14 THE WITNESS: I don't recall exactly. I
15 think that **that's the way they wanted it**, but I -- I
16 don't remember. It really, you know, to us, it, you
17 know, **it's -- doesn't matter that much**.

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And in particular, CMU had entered into a running royalty license agreement on a magnetic media that was -- magnetic media patent that was stated as an amount, cents per disk.

Ms. Lawton,
12/10/12
Tr. at 112



And in the case of Marvell, Marvell had license, had entered into three licenses during the period or April of 2000 to April of 2001, that were also running royalties that were based on either a per chip, an amount per chip, or as a percentage of -- a percentage of revenue. Or in the third case, as an amount of dollars per platform that got developed. So all types of running royalties that Marvell had entered into at that time.

Ms. Lawton,
12/10/12
Tr. at 112

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Ms. Lawton considered the DSSC Agreements and the Intel offer

- Ms. Lawton determined that the DSSC Agreements and Intel offer were not probative of the form or amount of the reasonable royalty because they did not parallel the hypothetical negotiation

Ms. Lawton, 12/7/12 Tr. at 136-38, 163-64; 12/10/12 at 178-89

- The Court acknowledged that the jury could reach a similar conclusion

The Court finds none of these arguments persuasive. First, as the Court explained in its opinion on CMU's motion attacking Mr. Hoffman's opinion (Docket No. 449), the DSSC Agreements are obviously distinguishable from the end result of the hypothetical negotiation. To the extent that Ms. Lawton believes them irrelevant, she is entitled to that opinion – just as Mr. Hoffman is entitled to the belief that they are relevant. Ms. Lawton considered the DSSC Agreements and found that they do not offer guidance in determining a reasonable royalty in this case. (Docket No. 367-2 at 515-16). It is not the Court's place to question such a determination, for that is the realm of the jury. *Walker*, 46 Fed. Appx. at 695. To the extent that Ms. Lawton

Dkt. 451 at 10

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- **There is no legal basis to limit damages to chips that return to the U.S.**
- **In any event, Marvell waived any arguments regarding Ms. Lawton's estimate of the number of chips that return to the U.S.**
 - **Marvell did not make a *Daubert* motion**
 - **Marvell did not object to the testimony at trial**
 - **Marvell elicited testimony on this subject**
- **Ms. Lawton based her estimate on the same industry sources on which Marvell relies**
- **Ms. Lawton interviewed an industry source**
- **Ms. Lawton estimated the proportion of HDDs used in the U.S.; she did **not** assume all PCs in the U.S. contain a Marvell chip**

Ms. Lawton, 12/10/12 Tr. at 165, 200, 207-10; Dkt. 860 at Ex. 3

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Marvell falls far short of meeting the strict standards of Rule 59



Rule 59 requires Marvell to show that the damages award is a “miscarriage of justice” that “shocks the conscience” to justify invading the jury’s role in determining “the facts and the credibility of witnesses.”

See Wilburn v. Maritrans GP Inc., 139 F.3d 350, 364 (3d Cir. 1998)



To justify remittitur, the Court must determine that the damages are so “clearly unsupported and/or excessive” that the record justifies “substitution of the court’s judgment for that of the jury...”

See William A. Graham Co. v. Haughey, 646 F.3d 138, 143 (3d Cir. 2011)



The “review of a damage award is ‘exceedingly narrow’” and the burden is “difficult” and a “steep climb.”

See, e.g., Cortez v. Trans Union, LLC, 617 F.3d 688, 718 (3d Cir. 2010);
William A. Graham Co. v. Haughey, 646 F.3d 138, 143 (3d Cir. 2011)

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- **The jury's award is not "shocking"**
 - **It reflects the compelling evidence of high value (e.g., "must have," industry standard, "life or death")**
 - **It leaves Marvell with \$3,887,497,981 of operating profit on \$10,346,408,755 of revenue that it achieved because of its long exploitation of CMU's invention**
- **The jury instructions specifically emphasized a direct nexus to U.S. conduct**
- **Marvell waived its "causal nexus" challenge to the jury instruction**
- **Marvell's kitchen sink approach to "alternative" royalty rates is unsupportable**

**CMU's Presentation on Marvell's Motion
for Judgment as a Matter of Law, New Trial
and/or Remittitur with Respect to Damages**

May 1-2, 2013



Carnegie Mellon