

EXHIBIT D Part 2

CMU Is Entitled to a Permanent Injunction



There is a serious risk that Marvell will attempt to evade paying or will be unable to pay future royalties

Marvell admits that, despite facing a \$1.17 billion judgment, it has not set aside any reserves, thus enabling it to continue unabated dissipation of liquid assets.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the reporting period of 2013
Commission file number 0-20871

Marvell Technology Group Ltd.
Marvell Technology Group Ltd.
22 Victoria Street, Waltham, MA 01974
Tel: 508.261.1000
www.marvell.com

Securities registered pursuant to Section 12(b) of the Act:
Common shares, \$0.01 par value per share
Securities registered pursuant to Section 12(g) of the Act:
The "CMU" Stock Market Litigation

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant is a shell company pursuant to Rule 101 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☐ No ☒

Indicate by check mark whether the registrant has submitted material contracts and entered into contracts with its affiliates, if any, since its last annual meeting. Yes ☐ No ☒

Indicate by check mark if the registrant is a foreign private issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

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MARVELL TECHNOLOGY GROUP LTD. NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Technology license obligations include the liabilities under the subscription agreements for technology licenses between the Company and various vendors.

Purchase Commitments

Under the Company's manufacturing relationships with its foundry partners, cancellation of all outstanding purchase orders are allowed but require payment of all costs and expenses incurred through the date of cancellation. As of February 2, 2013, these foundries had incurred approximately \$212.1 million of manufacturing costs and expenses relating to the Company's outstanding purchase orders.

Intellectual Property Indemnification

The Company has agreed to indemnify certain customers for claims made against the Company's products, where such claims allege infringement of third party intellectual property rights, including, but not limited to, patents, registered trademarks, and/or copyrights. Under the aforementioned indemnification clauses, the Company may be obligated to defend the customer and pay for the damages awarded against the customer under an infringement claim as well as the customer's attorneys' fees and costs. The Company's indemnification obligations generally do not expire after termination or expiration of the agreement containing the indemnification obligation. Generally, there are limits on and exceptions to the Company's potential liability for indemnification. Although historically the Company has not made significant payments under these indemnification obligations, the Company cannot estimate the amount of potential future payments, if any, that it might be required to make as a result of these agreements. The maximum potential amount of any future payments that the Company could be required to make under these indemnification obligations could be significant.

The Company has recorded an accrual of \$5.7 million in fiscal 2013 related to an ongoing litigation matter. The amount recorded does not relate to the litigation with Carnegie Mellon University ("CMU"). Other than the matter for which the Company has recorded an accrual of \$5.7 million, the Company has not recorded an accrual for contingent losses associated with these matters based on its belief that losses, while reasonably possible, are not probable.

MTGL's FY2013 10-K, at 87

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Carnegie Mellon Litigation. On March 6, 2009, CMU filed a complaint in the U.S. District Court for the Western District of Pennsylvania naming Marvell Semiconductor, Inc. ("MSI") and the Company as defendants and alleging patent infringement. CMU has asserted U.S. Patent Nos. 6,201,839 and 6,438,180 (collectively, the

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There is a serious risk that Marvell will attempt to evade paying or will be unable to pay future royalties

If Marvell continues its aggressive share repurchase and dividend programs after paying damages for past infringement, Marvell will render itself unable to pay royalties for future infringement.

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The Court should credit Marvell's promise to pay the final judgment only if Marvell:

1. Certifies its commitment to pay in a binding writing wherein it waives all defenses to enforcement under Bermuda law or otherwise; *and*
2. Deposits post-judgment royalties into an escrow account beginning on the date of the Court's decision awarding such royalties.

Actions speak louder than words.

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**CMU has established
all four factors of the eBay test**

A plaintiff seeking a permanent injunction in a patent case must show that:

- 1. it has suffered an irreparable injury;**
- 2. remedies available at law, including monetary damages, are inadequate to compensate for that injury;**
- 3. considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and**
- 4. the public interest would not be disserved by a permanent injunction.**

eBay Inc. v. MercExchange, LLC, 547 U.S. 388 (2006)

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**CMU has satisfied
eBay factors 1 and 2**

Absent an injunction, CMU would suffer irreparable harm because an award of future royalties is an inadequate remedy.



The Federal Circuit and district courts have held that the risk that monetary damages for future infringement will be uncollectible supports a finding of irreparable harm which, by definition, cannot be remedied by the award of such damages.

See, e.g., Robert Bosch LLC v. Pylon Mfg. Corp., 659 F.3d 1142, 1154-55 (Fed. Cir. 2011); *Custom Designs of Nashville, Inc. v. Alsa Corp.*, 727 F. Supp. 2d 719, 726-27 (M.D. Tenn. 2010); *Retractable Technologies, Inc. v. Occupational & Med. Innovations, Ltd.*, 6:08 CV 120, 2010 WL 3199624, at *5 (E.D. Tex. Aug. 11, 2010); *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, No. 2:04-cv-32, 2007 WL 869576, at *2 (E.D. Tex. Mar. 21, 2007), vacated and remanded on other grounds, 521 F.3d 1351 (Fed. Cir. 2008)

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Marvell's ability to pay ongoing royalties in the normal course of its business does *not* eliminate collection risk or irreparable harm.

- **Regardless of whether Marvell is able to pay future royalties, Marvell may still attempt to evade paying such royalties by asserting defenses to enforcement under Bermuda law.**
- **Marvell's share repurchase and dividend programs, which are not part of the normal course of business, render any operating profit numbers irrelevant to collection (as opposed to the amount awarded).**
- **When share repurchases and dividends are considered, Marvell has been hemorrhaging cash in almost every quarter in recent years.** Supp. Ex. C to Dkt. 853-1 (C. Lawton summary of Marvell financial data)
- **The Court should not allow Marvell to prefer its shareholders over its judgment creditor, CMU.**

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The “causal nexus” requirement is applicable only to preliminary injunctions, not permanent injunctions



Neither the Supreme Court nor the Federal Circuit has ever required a causal nexus to obtain a permanent injunction.



Although the Federal Circuit applied the “causal nexus” requirement while considering a *preliminary* injunction in 2012, subsequent decisions on *permanent* injunctions do not mention this requirement.

Compare Apple Inc. v. Samsung Electronics Co., 695 F.3d 1370, 1374 (Fed. Cir. 2012), and *Apple Inc. v. Samsung Electronics Co.*, 678 F.3d 1314, 1325 (Fed. Cir. 2012), with *Presidio Components, Inc. v. Am. Technical Ceramics Corp.*, 702 F.3d 1351 (Fed. Cir. 2012) and *Edwards Lifesciences AG v. Core Valve, Inc.*, 699 F.3d 1305 (Fed. Cir. 2012)

Even if the “causal nexus” requirement were applicable to permanent injunctions, CMU has met that standard, which merely requires a link between the infringement and the irreparable harm.

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eBay factor 3 favors CMU

Balance of Hardships

- CMU has a strong interest in obtaining adequate relief for Marvell's continued, willful infringement and, given the collection risks, a permanent injunction is the only effective remedy.



“One [like Marvell] who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.”

Broadcom Corp. v. Qualcomm Inc., 543 F.3d 683, 704 (Fed. Cir. 2008) (citing *Windsurfing Int'l, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986))

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eBay factor 4 favors CMU

Public Interest

- The public has an interest in a strong patent system in which the rights of patent holders – including the right to exclude – are enforced.



Giving strong patent protection to research organizations like CMU is important because “the public interest is advanced by encouraging investment by research organizations into future technologies and... promot[ing] the progress of science and the useful arts.”

Commonwealth Scientific & Indus. Research Organisation v. Buffalo Tech. Inc.,
492 F. Supp. 2d 600, 607 (E.D. Tex. 2007)

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If the Court is inclined to permit Marvell to infringe during the requested two-year transition period, Marvell's burden of hardships and public interest arguments are moot.



“We find [the balance of hardships] factor to be neutral at best in light of the district court’s carefully constructed sunset provisions.... [T]he sunset provisions [also] mitigate the harm to the public.”

Broadcom Corp. v. Qualcomm Inc., 543 F.3d 683, 704 (Fed. Cir. 2008)

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District courts have discretion to order monitoring as part of a permanent injunction



A district court “may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.”

35 U.S.C § 283.



“[O]nce the court determined to provide [injunctive] relief, ... it could not properly deny the one element of such relief that was necessary to make it effective.”

Trans-World Mfg. Corp. v. Al. Nyman & Sons, Inc., 750 F.2d 1552, 1564 (Fed. Cir. 1984)



“District courts are in the best position to fashion an injunction tailored to prevent or remedy infringement.”

TiVo Inc. v. EchoStar Corp., 646 F.3d 869, 890 n.9 (Fed. Cir. 2011)



“Upon a finding of patent infringement, an injunction may enjoin those acts which constitute direct, induced, or contributory infringement during the term of the patent.” In addition, the trial court may determine whether “additional conditions are necessary,” and accordingly “determine and ... fashion an appropriate remedy.”

Joy Technologies, Inc. v. Flakt, Inc., 6 F.3d 770, 777 (Fed. Cir. 1993)

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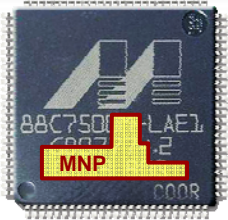
The Court should grant CMU the right to monitor Marvell's compliance with a permanent injunction

CMU did not waive its request for monitoring

The need for monitoring became apparent after Marvell claimed – for the first time – that it plans to implement an allegedly non-infringing design-around CMU's patents in its next generation C11000 chips.

Marvell's opposition to monitoring is fundamentally at odds with its argument that it would have freely provided information to CMU.

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Monitoring is necessary to protect CMU because:

- **Absent monitoring, CMU would have insufficient information to evaluate whether Marvell continues to infringe because Marvell keeps its designs secret**
- **Marvell's claim that its next generation C11000 chips will be non-infringing cannot be evaluated without monitoring rights**
- **Monitoring will allow CMU to ensure that Marvell does not simply design-around the Asserted Claims while infringing other claims**

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For monitoring to be effective, the Court must order Marvell to:

- **Provide CMU with a bi-annual statement identifying chips under development or sold;**
- and*
- **With respect to each new chip designed, taped out, made, and/or sold, allow CMU access to Marvell documents and engineers to ascertain the operation of the chip.**

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Courts have granted patentees the right to monitor compliance with permanent injunctions under appropriate circumstances.

See Joy Technologies, Inc. v. Flakt, Inc., 6 F.3d 770, 776-77 (Fed. Cir. 1993); Supp. Ex. F to Dkt. 853-1 (*Transocean Offshore Deepwater Drilling Inc. v. GlobalSantaFe Corp.* (4:03-cv-02910 S.D. Tex.), Dkt. 266), at 2-3; *see also* 35 U.S.C. § 283



“GlobalSantaFe shall provide Transocean with IADC reports on a monthly basis showing the daily activity on the Development Drillers to ensure that the auxiliary well center has not been used for operations to the seabed other than as set forth herein. One employee of Transocean shall be permitted to review those reports to ensure compliance with this order.”

Supp. Ex. F to Dkt. 853-1, (*Transocean Offshore Deepwater Drilling Inc. v. GlobalSantaFe Corp.* (4:03-cv-02910 S.D. Tex.), Dkt. 266), at 2-3

The cases on which Marvell relies to argue against monitoring are distinguishable and inapplicable to the circumstances here.

**CMU Is Entitled to Post-Judgment Royalties
of at Least \$0.50 and Up to \$1.50 Per Chip**