IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CARNEGIE MELLON UNIVERSITY, Plaintiff, v. MARVELL TECHNOLOGY GROUP, LTD., and MARVELL SEMICONDUCTOR, INC., Defendants.	))))))))))	Civil Action No. 2:09-cv-00290-NBF

PLAINTIFF CARNEGIE MELLON UNIVERSITY'S BRIEF IN SUPPORT OF ITS MOTION FOR PREJUDGMENT AND POST-JUDGMENT INTEREST

I. INTRODUCTION

On December 26, 2012, after a nearly four-week trial, a unanimous jury awarded CMU $1,169,140,271, the precise amount that CMU had requested. (Dkt. 762 at ¶ 17). CMU files this motion to request that this Court add prejudgment interest in the amount of $321,767,068.17 to that award. That amount is calculated by applying the 6% Pennsylvania statutory rate compounded quarterly to the jury's award, as in *University of Pittsburgh v. Varian Medical Systems, Inc.*, No. 08-cv-1307, 2012 WL 1436569 (W.D. Pa. April 25, 2012). This amount will need to be revised to reflect the royalties earned between July 28, 2012 and January 14, 2013.

Courts as a rule award prevailing patent holders prejudgment interest under 35 U.S.C. § 284 because such awards are consistent with the congressional purpose of fully compensating patent owners for infringement. *Gen. Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655 (1983). Here, the Pennsylvania statutory interest rate of 6%, compounded quarterly, is the appropriate measure of prejudgment interest because, as the Federal Circuit and courts in this district have held, the state statutory rate provides a consistent benchmark and adequately compensates patentees without having a punitive effect on infringers. Furthermore, the statutory rate of the forum state is particularly appropriate where, as here, the infringement period was long (approximately ten years) and there is a risk of non-payment (Marvell's SEC filings state that Bermuda may not enforce a money judgment against it rendered by United States courts).

In the alternative, the Court should award prejudgment interest in an amount calculated to reflect CMU's actual investment returns for each quarter of the damages period, as applied to Marvell's actual sales during each quarter. This calculation reflects the harm CMU suffered as a

direct result of Marvell's failure to pay royalties during the damages period, and the present total of prejudgment interest using this rate would be $280,326,930.68.[1]

After awarding prejudgment interest, the Court also should award post-judgment interest. Awards of post-judgment interest are automatic under 28 U.S.C. § 1961. Such an award should be calculated on the total money award, including damages, enhanced damages, prejudgment interest and attorneys' fees. *See, e.g.*, *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 290 (9th Cir. 1995); *Bernback v. Greco*, 127 Fed. Appx. 45, 46 (3d Cir. 2005). Accordingly, in this case the calculation of post-judgment interest should be deferred until resolution of the parties' motions regarding willfulness, prejudgment interest and attorneys' fees, but CMU respectfully requests that the Court include the award of post-judgment interest in any final judgment.

II. FACTUAL BACKGROUND

After almost four years of litigation and a four week jury trial, the jury returned a verdict on December 26, 2012, finding that Marvell directly and indirectly infringed both of CMU's patents; that Marvell had failed to prove that CMU's patents were invalid; that Marvell was aware of both patents prior to litigation, knew or should have known that its actions would infringe, and had no objectively reasonable defense to infringement; and that Marvell owed CMU damages in the amount of $1,169,140,271. (Dkt. 762 at ¶ 17). On January 14, 2013, the Court entered judgment on the jury's verdict. (Dkt. 769).

The trial record and the record created through extensive motion practice reflect the manner in which CMU's damages were calculated, including the fact that the damages period

[1] As a further alternative, the Court could award prejudgment interest calculated by applying the prime rate during the infringement period, compounded quarterly. The prime rate has also been widely used both inside and outside this Circuit as a reasonable approximation of the harm that a patentee suffers from the loss of use of royalties to which it is entitled, and the Federal Circuit has upheld the use of this metric in calculating prejudgment interest.

began on March 6, 2003. *See, e.g.*, Tr. (12/7/12) at 60-61. As Catharine Lawton, CMU's damages expert testified, Marvell's sales of MNP-type and NLD-type chips were used to measure the value of Marvell's infringing use of CMU's patented methods, and those sales spanned the damages period. *See id.* Using those sales and the Pennsylvania statutory rate of 6% set forth in 41 P.S. § 202, Ms. Lawton calculated that the total amount of prejudgment interest due on the existing judgment is $321,767,068.17. Ex. 1 (2/10/13 Declaration of Catharine M. Lawton ("Lawton Dec.")) at ¶ 10.[2]

In the interest of a complete record, CMU also provides two alternative calculations. As set forth in the attached declaration from CMU's Chief Investment Officer, Charles Kennedy, the average annual return on CMU's endowment during the damages period was 7.86%. Ex. 2 (2/8/13 Declaration of Charles A. Kennedy ("Kennedy Dec.")) at ¶ 8; *see also id.* at Ex. A (schedule of CMU's annual and quarterly returns during that period). Using those quarterly rates of return instead of the Pennsylvania statutory rate, Ms. Lawton calculated prejudgment interest on the existing judgment as $280,326,930.68. Ex. 1 (Lawton Dec.) at ¶ 13. She did the same calculation using prime rate over the damages period and arrived at a total of $209,253,457.74. *Id.* at ¶ 16.[3]

III. ARGUMENT

Section 284 provides that a prevailing patent holder is entitled to "damages adequate to compensate for the infringement . . . together with interest and costs as fixed by the court." 35

[2] "Ex. 1," "Ex. 2" and "Ex. 3" herein refers to the exhibits attached to the Declaration of Mark G. Knedeisen in Support of Plaintiff Carnegie Mellon University's Motion for Prejudgment and Post-Judgment Interest filed contemporaneously herewith. "Ex. A," "Ex. B" and "Ex. C" herein refer to schedules attached to said exhibits.

[3] Although Marvell provided CMU with its sales figures for infringing chips from March 2003 through July 28, 2012, Marvell has not yet provided its sales figures from July 29, 2012 to the January 14, 2013 date of judgment. *See* Ex. 1 (Lawton Dec.) at ¶ 5(a)(i). All of the prejudgment interest amounts should be revised to reflect the royalties owed for that period.

U.S.C. § 284. Accordingly, CMU is entitled to an award of prejudgment interest, *Gen. Motors*, 461 U.S. at 655, and the only issue to be determined is how that award should be calculated.

A. In Patent Cases Courts Ordinarily Award Prejudgment Interest with Compounding

Prejudgment interest awards" in patent cases are:

> necessary to ensure that the patent owner is placed in ***as good a position as he would have been had the infringer entered into a reasonable royalty agreement***. An award of interest from the time that the royalty payments would have been received merely serves to make the patent owner whole, since his damages consist not only of the value of the royalty payments but also of ***the foregone use of the money between the time of the infringement and the date of the judgment***.

Id. at 655-56 (emphasis added). Based on this Supreme Court precedent, prejudgment interest should be awarded from the beginning of the damages period—that is, March 2003—to the January 14, 2013 date of judgment. *See id.*

The interest rate used to calculate prejudgment interest and the frequency of compounding are left to the discretion of the district court. *See, e.g., Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 939 F.2d 1540, 1545 (Fed. Cir. 1991) ("A trial court is afforded wide latitude… and may award interest at or above the prime rate"). However, "[i]t has been recognized than ***an award of compound rather than simple interest assures that the patent owner is fully compensated***." *Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538, 1555 (Fed. Cir. 1995) (emphasis added); *see also, e.g., Varian*, 2012 WL 1436569 at *9; *Creative Internet Advertising Corp. v. Yahoo! Inc.*, 689 F.Supp.2d 858, 862 (E.D. Tex. 2010). Indeed, in *Dynamics Corp. of America v. United States*, the district court's ***refusal*** to compound the prejudgment interest awarded to the patentee was reversed as an abuse of discretion. *Dynamics Corp.*, 766 F.2d 518, 519-20 (Fed.Cir.1985); *see also Gorenstein Enters., Inc. v. Quality Care-USA, Inc.*, 874 F.2d 431, 437 (7th Cir. 1989) (affirming award of compound interest to trademark owner because the

infringer's "dilatory tactics denied [plaintiff] the use of its money, including the opportunity to obtain interest on interest") (citing, *inter alia*, *Dynamics Corp.*, 766 F.2d at 518-20).

Moreover, courts frequently use quarterly compounding in patent cases to reflect the common provision in patent licenses for quarterly royalty payments, or, in cases where the record evidence includes patent licenses that provide for quarterly payments, to reflect the evidence. *See, e.g.*, *Varian*, 2012 WL 1436569 at *10 (infringing sales "shall be aggregated by quarter and interest shall be compounded quarterly" ***where the infringer's "licenses***… show that quarterly reporting is its standard practice") (emphasis added); *Energy Transp. Group, Inc. v. Sonic Innovations, Inc.*, No. 05-422, 2011 WL 2222066 at *18 (D. Del. June 7, 2011) (calculating interest based on "quarterly royalty payments [the infringer] would have made to" the patentee and thus compounding interest "on a quarterly basis"); *Rosco, Inc. v. Mirror Lite Co.*, No. CV-96-5658, 2009 WL 3587344 at *2 (E.D.N.Y. Oct. 26, 2009) ("prejudgment interest will be compounded quarterly so as to best approximate when [the patentee] would have received the royalty payments from" the infringer); *see also Church & Dwight Co. v. Abbott Labs.*, No. 05-2142, 2009 WL 2230941 at *8 (D.N.J. July 23, 2009) (accepting patentee's argument that interest "should be compounded quarterly because this method 'reflects the standard business practice of fiscal quarters that courts have frequently adopted'").

In other words, the frequency of compounding is chosen to reflect either standard business practices or the record evidence (if any) regarding the royalty payment schedule to which the parties would likely have agreed. *See, e.g., id.* (standard business practices); *Boeing Co. v. United States*, 86 Fed. Cl. 303, 324 (Fed. Cl. 2009) (awarding semiannually compounded interest where the record evidence showed that "the prior licenses involving the… patent required that royalties be paid on that periodic basis"). Here, Marvell's running royalty patent

licenses with ARM, DSP and Hitachi all provided that Marvell would pay royalties quarterly. Ex. 1 (Lawton Dec.) at ¶ 5(c). Accordingly, quarterly compounding here is appropriate.

1. The Court Should Award Prejudgment Interest at the Pennsylvania Statutory Rate of 6%

Use of the Pennsylvania statutory rate (the rate of the forum state) provides a consistent benchmark, fully compensates CMU for the loss of use of the royalty payments during the infringement period, and avoids a punitive effect on the infringer. *See, e.g., R.R. Dynamics, Inc. v. A. Stucki Co.*, 727 F.2d 1506, 1520 (Fed. Cir. 1984), *cert. denied*, 479 U.S. 871 (1984) (affirming Pennsylvania district court's award, in patent infringement case, of prejudgment interest at the Pennsylvania statutory rate of 6%) (citing *Gen. Motors*, 461 U.S. at 656-57); *Varian*, 2012 WL 1436569 at *9 (awarding patentee state statutory rate compounded quarterly, explaining that "***the statutory rate of interest in Pennsylvania, 6%.... adequately compensates Pitt for not having access to its money during the period of infringement while not being punitive in nature***") (emphasis added); *Air Vent, Inc. v. Vent Right Corp.*, 2011 WL 2117014, at *2 (W.D. Pa. May 24, 2011) (awarding patentee Pennsylvania 6% rate, compounded monthly, and noting that in setting the prejudgment interest rate "courts often use the statutory rate of the forum state"); *see also Bard Peripheral Vascular, Inc. v. W.L. Gore & Associates, Inc.*, No. CV-03-0597, 2009 WL 920300 at *2–*3 (D. Ariz. March 31, 2009) (awarding patentee state statutory rate of 10% and rejecting argument that T-bill rate or post-judgment rate of § 1961 should be used instead), *aff'd*, 670 F.3d 1171 (Fed. Cir. 2012), *vac. in part on other grounds*, 682 F.3d 1003 (Fed. Cir. 2012).

In short, because "35 U.S.C.A. § 284 does not specify a rate to be used for prejudgment interest, ***courts often use the statutory interest rate of the state in which they sit***." *Bowling v. Hasbro, Inc.*, C.A. No. 05-229 S, 2008 WL 4694549 at *9 (D.R.I. 2008) (awarding patentee state

statutory rate of 12%) (emphasis added). This is at least in part because "it is in the interest of justice to have a ***consistent rate*** at which prejudgment interest is awarded, and… ***the local statutory rate is an appropriate benchmark***." *Varian*, 2012 WL 1436569 at *10 (emphasis added); *see also Hall v. Meadwestvaco Corp.*, No. 03-30310, 2005 WL 1205554 at *5 (D. Mass. May 18, 2005) ("the court finds the state statutory rate of 12.0%, ***which litigants in [this state] invariably expect to pay***… to be most appropriate") (emphasis added).

There are also good reasons to ensure that the prejudgment interest rate is not set too low. The Supreme Court has warned that "a prejudgment interest award should not 'undercompensate' the rightful holder of the patent, thereby creating a 'windfall to the infringer and… an incentive to prolong litigation.'" *Bard Peripheral*, 2009 WL 920300 at *2 (citing *Gen Motors*, 461 U.S. at 655 n.10). Courts also have explained, particularly in cases where the rate chosen appeared to be high relative to other potential rates, that the prejudgment interest rate must be set in light of the fact that the "defendant who has violated the plaintiff's rights is in effect a debtor of the plaintiff…. At any time before actual payment or collection… the defendant may default and the plaintiff come up empty-handed." *Gorenstein*, 874 F.2d at 436 (***the "plaintiff is an unsecured, uninsured creditor, and the risk of default must be considered in deciding what a compensatory rate of interest would be***") (emphasis added); *see also Varian*, 2012 WL 1436569 at *9 (reasoning that the patentee has effectively "made a large, involuntary, unsecured loan to a debtor of uncertain credit-worthiness that is doing its utmost to avoid paying" and awarding the Pennsylvania statutory rate of 6%, compounded quarterly).[4] The "loan" at issue here is, in effect, a ***ten-year*** loan to a "borrower" whose willingness to repay has always been, to say the least, in doubt—and whose corporate domicile may complicate CMU's

[4] The Seventh Circuit has specifically cautioned district courts "against the danger of setting prejudgment interest rates too low by neglecting the risk, often nontrivial, of default." *Gorenstein*, 874 at 436-37.

efforts to collect the royalties that Marvell owes and therefore also justifies a higher rate.[5] Accordingly, the state statutory rate is the appropriate measure here. CMU thus seeks prejudgment interest in the amount of 6%.

2. In the Alternative, the Court Should Award Prejudgment Interest at a Rate Reflecting CMU's Actual Returns on Investment

In determining the appropriate rate of prejudgment interest, courts have used the plaintiff's rate of investment return during the period in question because an "award of prejudgment interest 'must be made with an eye toward putting the [funds] in the position [they] would have occupied but for'" the defendant's wrongful acts. *Klepeis v. J&R Equip., Inc.*, No. No. 10 Civ. 363, 2012 WL 2849390 at *2-3 (S.D.N.Y. May 31, 2012) (rejecting defendant's argument that the rate of prejudgment interest should be the -3.3% return of the S&P 500 index during the damages period, reasoning that it should instead "be calculated in a manner consistent with the rate of return ***realized*** by" plaintiff's actual investments, namely his retirement account) (emphasis added) (citing *Diduck v. Kaszycki & Sons Contractors, Inc.*, 974 F.2d 270, 286 (2d Cir. 1992)). Indeed, the Third Circuit has reversed and remanded for recalculation of prejudgment interest where the plaintiff had presented evidence "that ***its rate of return on investment was substantially above*** 6%" and yet the "special master decided… that 6% was an appropriate rate." *Arco Pipeline Co. v. SS Trade Star*, 693 F.2d 280, 281 (3d Cir. 1982) (emphasis added). Similarly, the Court of Federal Claims has rejected an argument that the Treasury Bill rate should be used because

[5] For example, as Marvell has noted in its SEC filings, "We are organized under the laws of Bermuda…. The United States and Bermuda do not currently have a treaty providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any federal or state court in the United States based on civil liability… would not be automatically enforceable in Bermuda." Ex. 3 (Marvell Technology Group, Ltd.'s 10-Q for quarter ended 10/27/2012, dated 11/29/12), at 44.

> that approach fails to take into account how the patentee would have invested the funds had it received the royalties on a timely basis. The latter ***must also be accounted for if the patentee is to be made whole***.

Boeing, 86 Fed. Cl. at 323 (emphasis added) (citing, *inter alia*, *Brunswick Corp. v. United States*, 36 Fed. Cl. 204, 218-19 (Fed. Cl. 1996) (patentee is "entitled to receive that measure of compensation that would place it in the economic position it would have held had royalties been timely paid and prudently invested to produce return and preserve the principal")).[6]

Here, the annual average rate of return that CMU realized on its endowment during the damages period was 7.86%. Ex. 2 (Kennedy Dec.) at ¶ 8. However, CMU's actual quarterly rates of return fluctuated from one quarter to the next, as did Marvell's sales. *See*, *e.g.*, *id.* at Ex. A. Accordingly, to properly capture the impact that Marvell's nonpayment of royalties had on CMU—in other words, to determine what impact the loss of use of the royalty monies actually had on CMU—it is necessary to perform a more detailed calculation. *See* Ex. 1 (Lawton Dec.) at ¶¶ 6, 11-13. Specifically, in view of the jury's clear determination that a running royalty of $0.50 per chip was the appropriate measure of damages in this case, Ms. Lawton applied the actual investment rate of return that CMU earned in each quarter to the royalty payments CMU should have received in that quarter, and then compounded quarterly. *Id.* at ¶¶ 6-7, 11-13. Because CMU's actual investment returns fluctuated from one quarter to the next, this calculation results in a somewhat lower total prejudgment interest award than the fixed 6% annual rate provided by Pennsylvania statute. *Id.*

[6] In *Boeing*, where—unlike here—there was no record evidence of what return the patentee had earned on actual investments, the court awarded prejudgment interest at the prime rate because that rate "more closely approximates the yield that [the patentee] would have expected had it received the royalties and reinvested them." *Id.*

3. As a Further Alternative, the Court Could Award Prejudgment Interest by Applying the Prime Rate During the Damages Period

Although only the third best alternative here, other courts have awarded prejudgment interest in an amount calculated either by averaging the prime rate over the entire infringement period or by applying the historical prime rate to damages for each month, quarter or year within the infringement period. *See, e.g.*, *Creative Internet Advertising*, 689 F. Supp. 2d at 873-74 (awarding interest "calculated by multiplying the damages by the average prime rate, compounded annually" from the date of infringement to final judgment); *Ziggity Sys., Inc. v. Val Watering Sys.*, 769 F. Supp. 752, 831 (E.D. Pa. 1990) (granting patentee's request for annually compounded interest calculated at each year's average prime rate, which ranged from 8.65% to 10.92%) (citing *Gorenstein*, 874 F.2d at 436); *Advanced Display Sys., Inc. v. Kent Stat Univ.*, No. 3-96-CV-1480, 2002 WL 1489555 at *9 (N.D. Tex. July 10, 2002) (awarding interest "at the average prime rate from… the date… the infringement commenced, until the date of judgment"); *Energy Transp. Group, Inc. v. Sonic Innovations, Inc.*, No. 05-422, 2011 WL 2222066 at *18-19 (D. Del. June 7, 2011) (rejecting infringer's argument "that the court should adopt the treasury bill rate" and instead awarding interest at the historical prime rate, compounded quarterly). Courts using this metric have reasoned that because "the prime rate represents the cost of borrowing money," it is an appropriate "measure of the harm suffered as a result of the loss of the use of money over time." *Edwards Lifesciences AG v. CoreValve, Inc.*, No. 08-91-GMS, 2011 WL 446203 (D.Del. Feb. 7, 2011).

Marvell should pay a prejudgment interest rate greater than prime given the facts of this case. Courts have recognized the economic reality that the prime rate normally applies to ***short-term*** loans to ***creditworthy*** borrowers. *See, e.g.*, *Mobil Oil Corp. v. Amoco Chems. Corp.*, 915 F. Supp. 1333, 1371 (D. Del. 1995) ("The prime rate is an interest rate on ***short term*** debt….

[which is] generally recognized as debt that is for less than a year") (emphasis added); *Till v. SCS Credit Corp.*, 541 U.S. 465, 479 (2004) (the "prime rate… reflects the financial market's estimate of the amount a commercial bank should charge a ***creditworthy*** commercial borrower to compensate for the opportunity costs of the loan, the risk of inflation and the ***relatively slight risk*** of default") (emphasis added); *see also St. Clair IP Consultants, Inc. v. Fuji Photo Film Co.*, 674 F. Supp. 2d 555, 561 (D. Del. 2009) (citing *Till* to support an award of prejudgment interest at the prime rate), *rev'd on other grds.* (claim construction and noninfringement), 412 Fed. Appx. 270 (Fed. Cir. 2011). Here, the CMU "loan" to Marvell is effectively long-term and, as noted above, there is a risk of non-payment. Such circumstances favor a rate greater than prime. *See, e.g.*, *Krippelz v. Ford Motor Co.*, 670 F. Supp. 2d 815, 818 (N.D. Ill. 2009), *vac. on other grounds* (invalidity), 667 F.3d 1261 (Fed. Cir. 2012) (awarding prejudgment interest at a rate of ***prime plus 1%*** where the infringement period was ***ten years*** long and "[a]s evidenced by [defendant's] credit rating and current financial situation ***there is a risk of non-repayment here***") (emphasis added); *Varian*, 2012 WL 1436569 at *6, *9 (awarding Pennsylvania statutory 6% where the infringer, whose creditworthiness was unclear, had through its infringement effectively forced the patentee university to grant it "a large, involuntary, unsecured loan" over an infringement period of "at least 10 years, which the Court finds to be a significant period of time").[7]

Nonetheless, CMU provides information about the use of the prime rate should the Court decide to award interest at that rate. The average prime rate over the 2003-2013 damages period

[7] Furthermore, CMU provided evidence that the actual investment returns on its long-term investments during the damages period were higher than prime, so those investment returns are a superior alternative to the prime rate. *Cf. Boeing*, 86 Fed. Cl. at 323 (***in the absence of evidence*** of actual investment returns, awarding prejudgment interest at the prime rate because it "***approximates*** the yield that [the patentee] would have expected had it received the royalties and reinvested them") (emphasis added).

was 4.87%. Ex. 1 (Lawton Decl.) at ¶ 15 (further noting that the average annual prime rate during this period ranged from a low of 3.25% to a high of 8.05%). The Federal Circuit has repeatedly held that "***it is not necessary that a patentee demonstrate that it borrowed at the prime rate*** in order to be entitled to prejudgment interest at that rate." *Uniroyal*, 939 F.2d 1545 (emphasis added) (affirming award of interest at prime) (citing *Studiengesellschaft Kohle, m.b.H. v. Dart Indus., Inc.*, 862 F.2d 1564, 1579-80 (Fed.Cir.1988)). Rather, where the average or actual historical prime rate is used, it represents a ***reasonable approximation***. *See, e.g., Judkins v. HT Window Fashions Corp.*, 704 F. Supp. 2d 470, 479 (W.D. Pa. 2010) (emphasis added), *aff'd*, 416 Fed. Appx. 903 (Fed. Cir. 2011) (prime approximates "the interest rate [the patentee] ***would have paid*** had [it] borrowed money during the time of… infringement"); *Stryker Corp. v. Intermedics Orthopedics, Inc.*, 891 F. Supp. 751, 833 (E.D.N.Y. 1995) (agreeing with plaintiff's argument that prime both "reflects the costs of the plaintiff's borrowing… and… compares closely with the plaintiff's rate of returns on investment").

Such a metric is thus used, like the state statutory rate, as a reasonable barometer of "a full compensatory award to" the patentee that also avoids a "punitive" effect on the infringer. *Judkins*, 704 F. Supp. 2d at 479; *see also Church & Dwight*, 2009 WL 2230941 at *8 (recognizing that "the prime rate represents the real-world, time value of money" and thus awarding prejudgment interest at that rate).

B. The Court Should Award Post-judgment Interest on the Damages Award, Attorney's Fees, and the Total Prejudgment Interest at the Rate Set Forth in 28 U.S.C. § 1961(a), Compounded Annually

Post-judgment interest at the federal statutory rate "***shall*** be allowed on ***any money judgment*** in a civil case recovered in a district court." 28 U.S.C. § 1961(a) (emphasis added). Once a judgment is obtained, post-judgment "interest thereon is mandatory without regard to the elements of which that judgment is composed." *Air Separation*, 45 F.3d at 290; *see also*

Bernback, 127 Fed. Appx. at 46 (setting forth rule for calculation of post-judgment interest on award of attorneys' fees and expenses); *Loughman v. Consol-Pennsylvania Coal Co.*, 6 F.3d 88, 99-100 (3d Cir. 1993) (holding plaintiffs entitled to post-judgment interest on punitive damages award); *Brown v. Petrolite Corp.*, 965 F.2d 38, 51 (5th Cir. 1992) (reversing lower court's denial of post-judgment interest on exemplary damages because "the plain language of the statute authorizes post-judgment interest on punitive damages, ***which are a part of the 'money judgment'***" and such an award "is ***consistent with the purpose of post-judgment interest***—compensation to a successful plaintiff for the intervening time between entitlement to and actual payment of an award of damages") (emphasis added).

Similarly, "it is well-established… that post-judgment interest also applies to the prejudgment interest component of a district court's monetary judgment." *Air Separation*, 45 F.3d at 290-91; *see also Sun Ship, Inc. v. Matson Navigation Co*., 785 F.2d 59, 63 (3d Cir.1986) ("28 U.S.C. § 1961 ... provides for post-judgment interest and ... that interest should be calculated on the amount of the district court's judgment—that is $4,272,864.88 plus prejudgment interest"); *Devex Corp. v. Gen. Motors Corp.*, 749 F.2d 1022, 1022 (3d Cir. 1984) (affirming lower court's award of post-judgment interest "on the original $19 million judgment," which consisted of approximately $8 million in royalties and $11 million in prejudgment interest); *Fuchs v. Lifetime Doors, Inc*., 939 F.2d 1275, 1280 (5th Cir.1991) ("[W]e direct the district court to award post-judgment interest on the entire amount of the judgment, including damages, prejudgment interest, and attorney's fees."); *Arthur Young & Co. v. Reves*, 937 F.2d 1310, 1338 (8th Cir.1991) ("28 U.S.C. § 1961 specifically authorizes post-judgment interest, and we believe such interest is appropriate on both the damages and prejudgment interest").

Post-judgment interest is calculated "from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield… for the calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a). Post-judgment interest is computed daily and compounded annually. *Id.* at § 1961(b). For the calendar week preceding the Court's January 14, 2013 entry of judgment, the applicable rate was 0.14%. Thus, upon resolution of the parties' motions regarding enhanced damages, prejudgment interest and attorneys' fees, the Court should calculate post-judgment interest on the total money judgment at a rate of 0.14%, compounded annually.

IV. CONCLUSION

CMU respectfully requests that the Court grant prejudgment interest in the amount of $321,767,068.17, representing the Pennsylvania state statutory rate of 6% applied to Marvell's sales through July 2012 and compounded quarterly. In the alternative, CMU respectfully requests prejudgment interest in the amount of $280,326,930.68, representing the application of CMU's actual quarterly investment returns to Marvell's sales through July 2012 and compounded quarterly. As an additional alternative, should the Court select the prime rate, it should award prejudgment interest in the amount of $209,253,457.74, representing the prime rate during the infringement period applied to Marvell's sales through July 2012 and compounded quarterly. Any of the foregoing amounts must be adjusted to include prejudgment interest on the award of supplemental damages.

CMU further requests annually compounded post-judgment interest on its entire money judgment, in an amount to be calculated upon determination of CMU's motions for enhanced damages and attorneys' fees, representing the federal statutory rate of the weekly average one-year constant maturity Treasury yield for the calendar week preceding January 14, 2013.

Respectfully submitted, Dated: February 11, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2013 the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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