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NOV 28 2018

Clerk of the Court
Superior Court of CA County of Santa Clara
BY [Signature] DEPUTY

M. Rosales

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ASML US, INC., a Delaware corporation,
Plaintiff,
v.
XTAL, INC., a Delaware corporation,
Defendant.

Case No. 16-CV-295051

SPECIAL VERDICT FORMS

Dept.: 8
Judge: Hon. Sunil R. Kulkarni

You are being given 5 separate special verdict forms. After all verdict forms have been completed and signed, notify the bailiff that you are ready to present your verdict in the courtroom.



JUDGE KULKARNI
11/28/18

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**SPECIAL VERDICT FORM FOR ASML'S CLAIM OF
INDUCING BREACH OF CONTRACT**

ASML v XTAL, Case No. 16-cv-295051

We answer the questions submitted to us as follows:

1. Was there a contract between ASML and any of the following individuals?

Song Lan 12 Yes ___ No

Wanyu Li 12 Yes ___ No

Hua-yu Liu 12 Yes ___ No

Zongchang Yu 12 Yes ___ No

Jiangwei Li 12 Yes ___ No

Jie Lin 12 Yes ___ No

If your answer to question 1 is yes for any of these individuals, then answer question 2 (but only for those individuals to which you answered yes to answer 1). If you answered no for all of the individuals, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did XTAL know of any of the contracts between ASML and any of the following individuals?

Song Lan 12 Yes ___ No

Wanyu Li 12 Yes ___ No

Hua-yu Liu 11 Yes 1 No

Zongchang Yu 12 Yes ___ No

Jiangwei Li 12 Yes ___ No

Jie Lin 12 Yes ___ No

If your answer to question 2 is yes for any of the individuals, then answer question 3 (but only for those individuals to which you answered yes to answer 2). If you answered no for all of the individuals, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Did XTAL intend to cause any of the following individuals to breach his or her contract with ASML?

1 Song Lan 9 Yes 3 No
 2 Wanyu Li 12 Yes ___ No
 3 Hua-yu Liu 9 Yes 3 No
 4 Zongchang Yu 12 Yes ___ No
 5 Jiangwei Li 12 Yes ___ No
 6 Jie Lin 12 Yes ___ No

7 *If your answer to question 3 is yes for any of the individuals, then answer question 4 (but only for those*
 8 *individuals to which you answered yes to answer 3). If you answered no for all of the individuals, stop*
 9 *here, answer no further questions, and have the presiding juror sign and date this form.*

10 4. Did XTAL's conduct cause any of the following individuals to breach his or her
 11 contract with ASML?

12 Song Lan 12 Yes 0 No
 13 Wanyu Li 12 Yes ___ No
 14 Hua-yu Liu 11 Yes 1 No
 15 Zongchang Yu 12 Yes ___ No
 16 Jiangwei Li 12 Yes ___ No
 17 Jie Lin 12 Yes ___ No

18 *If your answer to question 4 is yes for any of the individuals, then answer question 5 (but only for those*
 19 *individuals to which you answered yes to answer 4). If you answered no for all of the individuals, stop*
 20 *here, answer no further questions, and have the presiding juror sign and date this form.*

21 5. Was XTAL's conduct a substantial factor in causing harm to ASML or causing
 22 XTAL to be unjustly enriched?

23 12 Yes ___ No

24 *If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no*
 25 *further questions, and have the presiding juror sign and date this form.*

26 6. What are ASML's damages, if any?

27 a. Past economic loss

28

1 i) Lost profits \$ ϕ

2 ii) Other past economic loss \$ 64,914,000

3 Total Past Economic Damages (add i) and ii): \$ 64,914,000

4 b. Prejudgment interest on past economic loss: \$ ϕ

5 c. Future economic loss

6 i) Lost profits: \$ 71,000,000

7 ii) Other future economic loss: \$ ϕ

8 Total Future Economic Damages (add i) and ii): \$ 71,000,000

9 **TOTAL DAMAGES** (add a., b., and c.): \$ 135,914,000

10 **In answering this question (Question 6), do not reduce or increase your finding because of damages arising from other claims for which you may find XTAL responsible.**

11

12 *Answer question 7.*

13 7. ASML has presented two theories of unjust enrichment as a remedy for XTAL's

14 inducing breach of contract: (1) disgorgement of XTAL's profits; and (2) avoided research and

15 development costs. Identify the theory you find most appropriately compensates ASML for

16 XTAL's unjust enrichment by placing an X next to one of the two unjust enrichment theories

17 below, and fill in the amount of money to the right of the check box. You must place an X and fill

18 in an amount next to only one of the two measures of unjust enrichment.

19

20 Disgorgement of XTAL's Profits \$ _____

21 XTAL's Avoided Research and Development Costs 13
X \$ 64,800,000

22

23 *Answer question 8.*

24 8. Did ASML prove, by clear and convincing evidence, that XTAL acted with malice,

25 oppression, or fraud in inducing any of the individuals listed above to breach their contracts with

26 ASML?

27 X Yes 1 No

1 **NAME REDACTED**
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4 Dated: 11-26-2015
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**SPECIAL VERDICT FORM FOR ASML'S CLAIM OF
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

ASML v XTAL, Case No. 16-cv-295051

We answer the questions submitted to us as follows:

1. Did any of the following individuals owe a fiduciary duty (specifically, a duty of undivided loyalty) to ASML?

Song Lan 12 Yes No

Wanyu Li 12 Yes No

Hua-yu Liu 11 Yes 1 No

If your answer to question 1 for any of the individuals is yes, then answer question 2 (but only for those individuals to which you answered yes to question 1). If you answered no for all individuals, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did any of the following individuals breach his or her fiduciary duty (specifically, a duty of undivided loyalty) to ASML?

Song Lan 12 Yes ~~1~~ No

Wanyu Li 12 Yes No

Hua-yu Liu 10 Yes 2 No

If your answer to question 2 for any of the individuals is yes, then answer question 3 (but only for those individuals to which you answered yes to answer 2). If you answered no for all individuals, stop here, answer no further questions, and have the presiding juror sign and date this form.

And Did XTAL know that: a) the individuals for whom you checked "yes" for questions 1, 2, and 3 owed an undivided duty of loyalty to ASML; and b) know that these individuals were going to breach this duty?

13
X Yes No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Questions 1 AND 2

1 4. Did XTAL give substantial assistance or encouragement to the individuals for
2 whom you checked "yes" for questions 1, 2, and 3, for their breach of their duty of undivided
3 loyalty to ASML?

4 12 Yes No

5 *If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no*
6 *further questions, and have the presiding juror sign and date this form.*

7 5. Was XTAL's conduct a substantial factor in causing harm to ASML or causing
8 XTAL to be unjustly enriched?

9 12 Yes No

10 *If your answer to question 5 is ~~no~~^{yes}, then answer question 6. If you answered ~~yes~~^{no}, then stop here, answer no*
11 *further questions, and have the presiding juror sign and date this form.*

12 6. What amount of damages, if any, were caused by XTAL's aiding and abetting of
13 breaches of fiduciary duty to ASML?

14 a. Past economic loss

15 i) Lost profits \$ Ø

16 ii) Other past economic loss \$ 98,000,000

17 Total Past Economic Damages (add i) and ii): \$ 98,000,000

18 b. Prejudgment interest on past economic loss: \$ Ø

19 c. Future economic loss

20 i) Lost profits: \$ 71,000,000

21 ii) Other future economic loss: \$ Ø

22 Total Future Economic Damages (add i) and ii): \$ 71,000,000

23 **TOTAL DAMAGES** (add a., b., and c.): \$ 169,000,000

24 **In answering this question (Question 6), do not reduce or increase your finding because of damages**
25 **arising from other claims for which you may find XTAL responsible.**

26 *Answer question 7.*

27

28

1 7. ASML has presented two theories of unjust enrichment as a remedy for XTAL's
2 aiding and abetting of breach of fiduciary duty: (1) disgorgement of XTAL's profits; and (2)
3 avoided research and development costs. Identify the theory you find most appropriately
4 compensates ASML for XTAL's unjust enrichment by placing an X next to one of the two unjust
5 enrichment theories below, and fill in the amount of money to the right of the check box. You
6 must place an X and fill in an amount next to only one of the two measures of unjust enrichment.

7
8 Disgorgement of XTAL's Profits _____ \$ _____
9 XTAL's Avoided Research and Development Costs X \$ 98,000,000

10
11 *Answer question 8.*

12 8. Did ASML prove, by clear and convincing evidence, that XTAL acted with malice,
13 oppression, or fraud in aiding and abetting these breaches of fiduciary duty to ASML?

14 ¹⁰
X Yes ² No

15
16 **NAME REDACTED**

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18 Dated: 11-26-18

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1 **SPECIAL VERDICT FORM FOR ASML'S PENAL CODE SECTION 502(C) CLAIM**

2 *ASML v XTAL, Case No. 16-cv-295051*

3 We answer the questions submitted to us as follows:

4 1. Did someone acting as an agent or employee of XTAL at that time knowingly
5 access and without permission add, alter, damage, delete, or destroy any ASML data, ASML
6 computer software, or ASML computer programs that exist (whether internally or externally) on
7 an ASML computer, ASML computer system, or ASML's computer network?

8 11 Yes 1 No

9 *Answer question 2.*

10 2. Did someone acting as an agent or employee of XTAL at that time knowingly
11 access and without permission take, copy, or make use of any data from an ASML computer,
12 ASML computer system, or ASML computer network, where the data exists (whether internally or
13 externally) on a ASML computer, ASML computer system, or ASML's computer network?

14 11 Yes 1 No

15 *Answer question 3.*

16 3. Did someone acting as an agent or employee of XTAL at that time knowingly
17 access and without permission take or copy any supporting documentation for data on ASML
18 computers, ASML computer systems, or ASML's computer networks, where the data or
19 documentation exists (whether internally or externally) on a ASML computer, ASML computer
20 system, or ASML's computer network?

21 11 Yes 1 No

22 *If you answered yes to question 1, 2, or 3, then answer question 4. If you answered no for questions 1, 2,*
23 *and 3, stop here, answer no further questions, and have the presiding juror sign and date this form.*

24 4. What are ASML's damages from this misconduct (in other words, the conduct for
25 which you answered "yes" for questions 1, 2, or 3)?

26 \$1,200,000

27 **In answering this question (Question 4), do not reduce or increase your finding because of damages**
28 **arising from other claims for which you may find XTAL responsible.**

1 *Answer question 5.*

2 5. Did ASML prove, by clear and convincing evidence, that XTAL acted with malice,
3 oppression, or fraud when committing, ratifying, or authorizing this misconduct (in other words,
4 the conduct for which you answered "yes" for Questions 1, 2, or 3)?

5 10 Yes 2 No

6

7 **NAME REDACTED**

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Dated: 11-26-18

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1 SPECIAL VERDICT FORM FOR ASML'S CLAIM OF
2 AIDING AND ABETTING VIOLATION OF PENAL CODE SECTION 502(C)

3 *ASML v XTAL, Case No. 16-cv-295051*

4 We answer the questions submitted to us as follows:

5 1a. Did a third party knowingly access and without permission add, alter, damage,
6 delete, or destroy any ASML data, ASML computer software, or ASML computer programs that
7 exist (whether internally or externally) on an ASML computer, ASML computer system, or
8 ASML's computer network?

9 9 Yes 3 No

10 *Answer question 1b.*

11 1b. Did a third party knowingly access and without permission take, copy, or make use
12 of any data from an ASML computer, ASML computer system, or ASML computer network,
13 where the data exists (whether internally or externally) on a ASML computer, ASML computer
14 system, or ASML's computer network?

15 12 Yes 0 No

16 *Answer question 1c.*

17 1c. Did a third party knowingly access and without permission take or copy any
18 supporting documentation for data on ASML computers, ASML computer systems, or ASML's
19 computer networks, where the data or documentation exists (whether internally or externally) on a
20 ASML computer, ASML computer system, or ASML's computer network?

21 12 Yes 0 No

22 *If you answered yes to question 1a, 1b, or 1c, then answer question 2. If you answered no for questions 1a,*
23 *1b, and 1c, stop here, answer no further questions, and have the presiding juror sign and date this form.*

24 2. Did XTAL know that the third party or third parties were going to engage in
25 misconduct (in other words, the conduct for which you answered "yes" above for questions 1a, 1b,
26 or 1c)?

27 10 Yes 2 No

1 *If you answered yes to this question, then answer question 3. If you answered no to this question,*
2 *stop here, answer no further questions, and have the presiding juror sign and date this form.*

3 3. Did XTAL give substantial assistance or encouragement to the third party or third
4 parties to engage in this misconduct (in other words, the conduct for which you answered "yes"
5 above for questions 1a, 1b, or 1c)?

6 10 Yes 2 No

7 *If you answered yes to this question, then answer question 4. If you answered no to this question,*
8 *stop here, answer no further questions, and have the presiding juror sign and date this form.*

9 4. Was XTAL's conduct a substantial factor in causing harm to ASML?

10 11 Yes 1 No

11 *If you answered yes to this question, then answer question 5. If you answered no to this question,*
12 *stop here, answer no further questions, and have the presiding juror sign and date this form.*

13 5. What amount of damages, if any, was caused by the third parties' misconduct (in
14 other words, the conduct for which you answered "yes" above for questions 1a, 1b, or 1c)?

15 \$ 1,200,000

16 **In answering this question (Question 5), do not reduce or increase your finding because of damages**
17 **arising from other claims for which you may find XTAL responsible.**

18 *Answer question 6.*

19 6. Did ASML prove, by clear and convincing evidence, that XTAL acted with malice,
20 oppression, or fraud in aiding and abetting the third party's (or third parties') misconduct (in other
21 words, the conduct for which you answered "yes" above for questions 1a, 1b, or 1c)?

22 10 Yes 2 No

24 **NAME REDACTED**

26 Dated: 11-26-18

**SPECIAL VERDICT FORM FOR ASML'S
TRADE SECRET MISAPPROPRIATION CLAIM**

ASML v XTAL, Case No. 16-cv-295051

We answer the questions submitted to us as follows:

1. Do you find that ASML was the owner of any of the following items of information?

<u>Alleged Trade Secret</u>	<u>Yes</u>	<u>No</u>
#1: Tachyon Source Code as of Nov. 6, 2013	12	
#2: Tachyon Line End Check Source Code	12	
#3: Main Tachyon Model Apply Source Code	12	
#4: Tachyon Model Calibration Flow Source Code	12	
#5: Tachyon Model User Manuals	12	
#6: Tachyon Model Review Package	12	
#7: Tachyon After Etch Image ("AEI") Model PowerPoint	12	
#8: Tachyon SMO Update	12	
#9: Tachyon OPC+ Software Manuals	12	
#10: Tachyon SMO PowerPoint	12	

If you answered "yes" to any of the alleged trade secret questions above, then answer question 2.

If you answered no to all of the alleged trade secret questions above, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. For the items of information for which you marked "yes" in question 1, do you find that any of them was secret at the time of the alleged misappropriation? For items for which you marked "no" in question 1, mark them "Not Applicable" or "N/A" here.

<u>Alleged Trade Secret</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
#1: Tachyon Source Code as of Nov. 6, 2013	12		
#2: Tachyon Line End Check Source Code	12		
#3: Main Tachyon Model Apply Source Code	12		
#4: Tachyon Model Calibration Flow Source Code	12		
#5: Tachyon Model User Manuals	9	3	
#6: Tachyon Model Review Package	12		
#7: Tachyon After Etch Image ("AEI") Model	11	1	

1	PowerPoint			
2	#8: Tachyon SMO Update	12		
3	#9: Tachyon OPC+ Software Manuals	9	3	
4	#10: Tachyon SMO PowerPoint	10	2	

5 If you answered "yes" to any of the alleged trade secret questions above, then answer question 3.
6 If you answered no to all of the alleged trade secret questions above, stop here, answer no further
7 questions, and have the presiding juror sign and date this form.

8 3. For the items of information for which you marked "yes" in question 2, do you find
9 that any of them has actual or potential independent economic value because it was secret? For
10 items for which you marked "no" or "N/A" in question 2, mark them "Not Applicable" or "N/A"
11 here.

12	<u>Alleged Trade Secret</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
13	#1: Tachyon Source Code as of Nov. 6, 2013	12		
14	#2: Tachyon Line End Check Source Code	12		
15	#3: Main Tachyon Model Apply Source Code	12		
16	#4: Tachyon Model Calibration Flow Source Code	12		
17	#5: Tachyon Model User Manuals	9	3	
18	#6: Tachyon Model Review Package	12		
19	#7: Tachyon After Etch Image ("AEP") Model PowerPoint	9	3	
20	#8: Tachyon SMO Update	12		
21	#9: Tachyon OPC+ Software Manuals	9	3	
22	#10: Tachyon SMO PowerPoint	9	3	

23 If you answered "yes" to any of the alleged trade secret questions above, then answer question 4.
24 If you answered no to all of the alleged trade secret questions above, stop here, answer no further
25 questions, and have the presiding juror sign and date this form.

4. For the items of information for which you marked "yes" in question 3, do you find that ASML made reasonable efforts under the circumstances to keep those items secret? For items for which you marked "no" or "N/A" in question 3, mark them "Not Applicable" or "N/A" here.

Trade Secret	Yes	No	N/A
#1: Tachyon Source Code as of Nov. 6, 2013	12		
#2: Tachyon Line End Check Source Code	12		
#3: Main Tachyon Model Apply Source Code	12		
#4: Tachyon Model Calibration Flow Source Code	12		
#5: Tachyon Model User Manuals	10	2	
#6: Tachyon Model Review Package	12		
#7: Tachyon After Etch Image ("AEP") Model PowerPoint	10	2	
#8: Tachyon SMO Update	12		
#9: Tachyon OPC+ Software Manuals	10	2	
#10: Tachyon SMO PowerPoint	10	2	

If you answered "yes" to any of the alleged trade secret questions above, then answer question 5. If you answered no to all of the alleged trade secret questions above, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Did XTAL acquire any ASML trade secrets (in other words, items of information for which you marked "yes" in response to questions 1, 2, 3, and 4) by improper means? For items for which you marked "no" or "N/A" in question 4, mark them "Not Applicable" or "N/A" here.

Alleged Trade Secret	Yes	No	N/A
#1: Tachyon Source Code as of Nov. 6, 2013	12		
#2: Tachyon Line End Check Source Code	12		
#3: Main Tachyon Model Apply Source Code	12		
#4: Tachyon Model Calibration Flow Source Code	9	9	
#5: Tachyon Model User Manuals	12		
#6: Tachyon Model Review Package	9	3	
#7: Tachyon After Etch Image ("AEP") Model	11	1	

1	PowerPoint			
2	#8: Tachyon SMO Update	12		
3	#9: Tachyon OPC+ Software Manuals	12		
4	#10: Tachyon SMO PowerPoint	11	1	

5 *Answer question 6.*

6 6. Did XTAL disclose any ASML trade secrets (in other words, items of information
7 for which you marked "yes" in response to questions 1, 2, 3, and 4)? For items for which you
8 marked "no" or "N/A" in question 4, mark them "Not Applicable" or "N/A" here.

9	<u>Alleged Trade Secret</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
10	#1: Tachyon Source Code as of Nov. 6, 2013	12		
11	#2: Tachyon Line End Check Source Code	12		
12	#3: Main Tachyon Model Apply Source Code	13	9	
13	#4: Tachyon Model Calibration Flow Source Code	3	9	
14	#5: Tachyon Model User Manuals	12		
15	#6: Tachyon Model Review Package	2	10	
16	#7: Tachyon After Etch Image ("AEI") Model PowerPoint	10	2	
17	#8: Tachyon SMO Update	3	9	
18	#9: Tachyon OPC+ Software Manuals	12		
19	#10: Tachyon SMO PowerPoint	12		

20 *Answer question 7.*

21 7. Did XTAL use any ASML trade secrets (in other words, items of information for
22 which you marked "yes" in response to questions 1, 2, 3, and 4)? For items for which you marked
23 "no" or "N/A" in question 4, mark them "Not Applicable" or "N/A" here.

24	<u>Alleged Trade Secret</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
25	#1: Tachyon Source Code as of Nov. 6, 2013	12		
26	#2: Tachyon Line End Check Source Code	12		
27	#3: Main Tachyon Model Apply Source Code		12	
28	#4: Tachyon Model Calibration Flow Source Code	3	9	

1	#5: Tachyon Model User Manuals	12		
2	#6: Tachyon Model Review Package	3	9	
3	#7: Tachyon After Etch Image ("AEI") Model PowerPoint	10	2	
4	#8: Tachyon SMO Update	2	10	
5	#9: Tachyon OPC+ Software Manuals	12		
6	#10: Tachyon SMO PowerPoint	12		

7
8 *If you answered yes to any part of question 5, 6, or 7, then answer question 8. If you answered no*
9 *to all parts of questions 5, 6, and 7, stop here, answer no further questions, and have the presiding*
10 *juror sign and date this form.*

11 8. Was XTAL's acquisition, use, or disclosure of ASML trade secrets (in other words,
12 items of information for which you marked "yes" in response to questions 1, 2, 3, and 4) a
13 substantial factor in causing ASML harm or in causing XTAL to be unjustly enriched?

14 12 Yes No

15 *If you answered "yes" to this question, then answer question 9. If you answered no, then stop*
16 *here, answer no further questions, and have the presiding juror sign and date this form.*

17 9. What amount of damages, if any, were caused by XTAL's misappropriation of
18 ASML's trade secrets (in other words, items of information for which you marked "yes" in
19 response to questions 1, 2, 3, and 4)?

- 20 a. Past economic loss
- 21 i) Lost profits \$ 0
- 22 ii) Other past economic loss \$ 152,000,000
- 23 Total Past Economic Damages (add i) and ii): \$ 152,000,000
- 24 b. Prejudgment interest on past economic loss: \$ 0
- 25 c. Future economic loss
- 26 i) Lost profits: \$ 71,000,000
- 27 ii) Other future economic loss: \$ 0
- 28 Total Future Economic Damages (add i) and ii): \$ 71,000,000

1 TOTAL DAMAGES (add a., b., and c.): \$ 223,000,000

2 In answering this question (Question 9), do not reduce or increase your finding because of damages
3 arising from other claims for which you may find XTAL responsible.

4 Answer question 10.

5 10. ASML has presented two theories of unjust enrichment as a remedy for XTAL's
6 misappropriation of trade secrets (in other words, items of information for which you marked
7 "yes" in response to questions 1, 2, 3, and 4). The two theories are: (1) disgorgement of XTAL's
8 profits, and (2) avoided research and development costs. Identify the theory that you find most
9 appropriately compensates ASML for XTAL's unjust enrichment by placing an X next to one of
10 the two unjust enrichment theories below, and fill in the amount of money to the right of the check
11 box. You must place an X and fill in an amount next to only one of the two measures of unjust
12 enrichment.

14	Disgorgement of XTAL's Profits	<u> </u>	\$ <u> </u>
15	XTAL's Avoided Research and Development Costs	<u> X </u>	\$ <u>152,000,000</u>

17 Answer question 11.

18 11. Did ASML prove, by clear and convincing evidence, that XTAL acted willfully
19 and maliciously in misappropriating ASML's trade secrets (in other words, items of information
20 for which you marked "yes" in response to questions 1, 2, 3, and 4)?

21 11 Yes 1 No

22 **NAME REDACTED**

25 Dated: 11-28-86