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10   **UNITED STATES DISTRICT COURT**

11   **NORTHERN DISTRICT OF CALIFORNIA**

12   **SAN FRANCISCO DIVISION**

13

SYNOPSYS, INC., a Delaware Corporation,	Case No. C-04-03923 MMC
Plaintiff,	**DEFENDANT MAGMA DESIGN AUTOMATION, INC. 'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AS TO THE SECOND THROUGH SIXTH CAUSES OF ACTION IN SYNOPSYS, INC.'S SECOND AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**
v.	
MAGMA DESIGN AUTOMATION, INC., a Delaware Corporation, and LUKAS VAN GINNEKEN,	
Defendants.	Hearing Date: July 15, 2005 Time: 9:00 a.m. Courtroom: 7, 19th Floor Judge: Hon. Maxine M. Chesney

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NOTICE OF MOTION AND MOTION

2   PLEASE TAKE NOTICE THAT on July 15, 2005, at 9:00 a.m., or as soon thereafter as

3   the matter may be heard, in Courtroom 7, 19th floor, of the United States District Court for the

4   Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San

5   Francisco, California, Defendant Magma Design Automation, Inc. ("Magma") will and hereby

6   does respectfully move the Court for an order granting summary judgment under Rule 56 of the

7   Federal Rules of Civil Procedure dismissing the Second, Third, Fourth, Fifth, and Sixth Causes of

8   Action alleged in Synopsys, Inc.'s ("Synopsys") Second Amended Complaint ("SAC").

9   Magma brings its Motion on the ground that Synopsys's Second through Sixth Causes of

10 Action are barred by the applicable statutes of limitations. Magma's Motion is based on this

11 Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the

12 Declarations of Peter Obstler ("Obstler Decl."), Lukas van Ginneken ("van Ginneken Decl."),

13 Rajeev Madhavan ("Madhavan Decl."), Robert Smith ("Smith Decl."), Joe Hutt ("Hutt Decl."),

14 Patrick Groeneveld ("Groeneveld Decl."), Olivier Coudert ("Coudert Decl.") and Expert Witness

15 Carl Sechen ("Sechen Decl.") submitted herewith, the pleadings and other papers on file with the

16 Court, the oral argument of counsel, and such further evidence and argument as may be presented

17 at or before any hearing on Magma's Motion.

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MAGMA'S MOTION FOR SUMMARY JUDGMENT RE: 1
SECOND AMENDED COMPLAINT
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1   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.   INTRODUCTION**

3   More than four years before it filed this action, Synopsys had compelling reasons to

4   suspect that Magma was using the allegedly misappropriated confidential information that is the

5   subject of this lawsuit. Magma's PCT patent application, published to the world on July 8, 1999,

6   contains what Synopsys now maintains is "verbatim copying" of all of the constant delay

7   concepts and techniques allegedly conceived by Lukas van Ginneken at Synopsys and

8   misappropriated by Magma. As this Court previously found, if Synopsys "had reviewed

9   Magma's PCT application, it would have been on actual notice of the claims it now asserts

10   against Magma." (May 18, 2005 Order ("Order") at 9:7-9.) The Court held, however, that

11   Synopsys was not chargeable with constructive notice of the PCT application "unless and until

12   Synopsys had reason to suspect that its confidential information had been misappropriated."

13   (Order at 10:11-14.)

14   The undisputed facts establish overwhelming grounds for such suspicion. Between early

15   1998 and September 2000, Magma repeatedly disclosed to Synopsys detailed descriptions of

16   Magma's use of the same constant delay concepts and techniques discussed in the PCT

17   application.[1] In March 1998, for example, van Ginneken – who joined Magma in 1997 – made a

18   verbal and written presentation to Synopsys about Magma's use of constant delay. The testimony

19   about this presentation, as well as the written presentation itself, demonstrate that van Ginneken

20   revealed to Synopsys, in great detail, Magma's use of the allegedly misappropriated concepts and

21   techniques. Magma also repeatedly informed both Synopsys and the public of its pending patent

22   applications on these concepts and techniques. Thus, Synopsys had both actual and constructive

23   notice more than four years before September 2004 of all of the misappropriation claims it now

24   asserts, and each claim is barred by the applicable statutes of limitations. *See* Order at 9:18-10:2;

25

_____

26   [1]   Magma's use of these concepts is not unlawful or improper and nothing in this motion should
     be construed as an admission to the contrary. For purposes of evaluating whether Synopsys
27   claims are time barred, however, the Court must assume that Magma's use constitutes the injury
     alleged in order to determine when Synopsys was on notice of its claims. Accordingly, this
28   motion does not address the merits of any of Synopsys's misappropriation claims.

1   *see also Fox v. Ethicon Endo-Surgery*, 27 Cal. Rptr. 3d 661, 668 (2005) (when plaintiff has

2   reason to suspect an injury and wrongful cause, plaintiff is required to conduct a reasonable

3   investigation).

4   In light of Magma's disclosures, Synopsys's argument that it failed to take timely action

5   to protect its alleged confidential information because Magma concealed the use and origin of this

6   information cannot withstand scrutiny. Magma's disclosures to Synopsys and to the public

7   between 1998 and 2000 revealed extensive information about Magma's use of each allegedly

8   misappropriated concepts and techniques, including "constant delay synthesis," "sizing driven

9   placement," "area estimation," "buffer insertion" and "stretching constant delays," among others.

10 The similarities between Magma's disclosures and confidential information allegedly

11 misappropriated from Synopsys are striking and immediately apparent. Any reasonable person

12 would have been on notice of the misappropriation claims, and thus any equitable tolling of the

13 statute based on fraudulent concealment ended well before September 2000. *See Garamendi v.*

14 *SDI Vendome S.A.*, 276 F. Supp. 2d 1030, 1042-44 (C.D. Cal. 2003).

15   The truth is that Synopsys did not care about protecting what it then believed were

16 infeasible fixed timing concepts and techniques. Between 1998 and September 2000, senior

17 Synopsys executives, including Chief Executive Officer Aart De Geus and Chief Technology

18 Officer Raul Camposano, told Magma and the rest of the industry that Synopsys had tried the

19 constant delay and gain-based synthesis concepts used by Magma and the concepts did not work.

20   Regardless of the reasons for its failure to take action, Synopsys was on both actual and

21 constructive notice of its claims more than four years before September 2004. Accordingly,

22 based on the undisputed facts, Magma is entitled to summary judgment with respect to the

23 Second through Sixth Causes of Action of the Second Amended Complaint on the ground that the

24 claims are barred by the applicable statutes of limitations.[2]

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27 _____
    [2] In addition to this motion, Magma has filed a Cross-Motion for Summary Judgment as to the
    Sixth Cause of Action for Unfair Competition in conjunction with its Opposition to Synopsys's
28 Motion for Partial Summary Judgment on its UCL Claim.

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1   **II.   BACKGROUND**

2   **A.   Facts Relating To Van Ginneken And Constant Delay**

3   From May 1995 to May 1997, van Ginneken was employed at Synopsys. (Van Ginneken

4   Dep. at 11:12-12:4, 14:9-10.)[3] There, as part of a joint development project between Synopsys

5   and IBM, van Ginneken worked on the application of the concept of constant delay to logic

6   synthesis and physical design of integrated circuits. (*Id.* at 12:9-13:14.) All of the constant delay

7   concepts and techniques that Synopsys claims were misappropriated by Magma were developed

8   by van Ginneken as part of the IBM-Synopsys joint project. (*Id.* at 92:16-21.)

9   Logic synthesis, the field in which van Ginneken was working, refers to the translation of

10   high level descriptions of the functions that an integrated circuit must perform into an

11   interconnected set of logic gates. (A logic gate performs a simple logical function, such as

12   comparing two signals and producing a result.) Physical design refers to the actual physical

13   placement and wiring of the logic gates on a silicon chip. Once the logic gates are placed and

14   interconnected, each gate performs its specified function and communicates the result to the next

15   gate. The time that it takes for the gate to carry out its function and communicate the result is

16   referred to as the delay. As the demand or "load" on a gate increases, the delay increases. Under

17   the concept of constant delay, however, the delay for each gate is determined at the beginning of

18   the design process and held constant throughout the remainder of the process. Increases in a

19   gate's load imposed by changes in the design are accommodated by increasing the size of the gate

20   to provide more power so that the delay remains constant. (Sechen Decl. ¶ 12.)

21   While at Synopsys, van Ginneken prepared certain documents describing his work on

22   these constant delay concepts that Synopsys now claims were confidential. (SAC ¶¶ 34-39.) In

23   May 1996, van Ginneken and an IBM engineer, Dr. Prabhakar Kudva, co-authored a white paper

24   entitled "The Constant Delay Methodology" (the "White Paper"). (SAC ¶ 36; Obstler Decl. Ex.

25   SS; Van Ginneken Dep. at 139:5-25, 140:10-24, 155:11-20 and Ex. 24.) A few months later, van

26   _____

27   [3] Excerpts from and exhibits to the deposition of Lukas Van Ginneken ("Van Ginneken Dep.")
     are attached as Exhibit HH to the Declaration of Peter Obstler.

28

                                                        MAGMA'S MOTION FOR SUMMARY JUDGMENT
                                                        RE: SECOND AMENDED COMPLAINT
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1   Ginneken prepared a revised draft of the White Paper entitled "Driving on the Left-Hand Side of

2   the Performance Speedway" and submitted it for publication at the 1996 International Conference

3   on Computer-Aided Design ("ICCAD"). (This draft paper will be referred to herein as "Driving

4   on the Left-Hand Side.") (SAC ¶ 38; Obstler Decl. Ex. U, Van Ginneken Dep. at 54:20-55:15,

5   56:4-57:4, 87:1-9, 92:3-15.) Van Ginneken also worked with Synopsys's patent counsel to

6   prepare two draft patent applications covering constant delay techniques entitled "System and

7   Method for Constant Delay Synthesis" and "Method for Achieving Timing Closure of Digital

8   Networks and Method for Area Optimization of Digital Networks Under Timing Closure." (SAC

9   ¶¶ 34-36; Obstler Decl. Exs. UU, TT, Van Ginneken Dep. at 76:21-77:8.)

10   When IBM later learned of the plan to publish "Driving on the Left-Hand Side," IBM

11   protested that the paper contained IBM confidential information and failed to give attribution to

12   Kudva, the IBM engineer who co-authored the original draft of the paper. (Obstler Decl. Ex. Q,

13   Van Ginneken Dep. at 60:2-12, 86:12-87:9; Stok Dep. at 181:25-183:5, 183:20-186:11, 189:2-

14   191:10, 192:8-193:1.) Because of IBM's protests, the paper was withdrawn after it had already

15   been approved for publication by the 1996 ICCAD program committee. (Van Ginneken Dep. at

16   60:2-12, 86:12-87:9.)

17   In May 1997, van Ginneken left Synopsys and joined Magma. (SAC ¶ 41; Van Ginneken

18   Dep. at 14:9-10.) In July 1997, Synopsys wrote a letter to Magma expressing concerns about

19   whether van Ginneken intended to continue to honor his confidentiality obligations under his

20   Proprietary Information and Inventions Agreement ("PIIA") with Synopsys. (SAC Ex. C.,

21   Obstler Decl. Ex. MM.) Synopsys said that it "consider[ed] its logic synthesis algorithms, logic

22   optimization algorithms, including constant delay techniques, and placement algorithms as

23   proprietary." (*Id.*) On August 18, 1997, Magma responded ("Magma's 1997 Letter"), asserting

24   that van Ginneken intended to comply with his PIIA obligations. (SAC Ex. D. Obstler Decl. Ex.

25   NN.) Magma stated, however, that Magma considered "the alleged trade secrets surrounding

26   constant delay techniques" to be in the public domain. (*Id.*)

27   Synopsys now claims that van Ginneken and Magma misappropriated the allegedly

28   confidential constant delay concepts and techniques described in the White Paper authored by van

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1 Ginneken and Kudva, which was later submitted as "Driving on the Left-Hand Side," and in the

2 draft patent applications. (SAC ¶¶ 40-48.) Synopsys's misappropriation claim forms the basis

3 for the Second through Sixth Causes of Action in its Second Amended Complaint. (SAC ¶¶ 103-

4 145.)

5   **B.   The Court's May 18 Order**

6   Magma moved to dismiss Synopsys's misappropriation-based claims on the ground that

7 the claims are time-barred. In denying Magma's motion, the Court held that, "at this stage of the

8 proceedings," it could not find as a matter of law that either Magma's 1997 Letter or its public

9 statements made between 1998 and 2000 about "constant delay and gain-based synthesis

10 methodology" were sufficient to put Synopsys on notice of its misappropriation claims. (*See*

11 Order at 10:15-11:9; 11:10-20.) The Court noted that a finding that Synopsys was on

12 constructive notice of Magma's 1999 PCT application would be sufficient to establish Synopsys's

13 notice of the claims asserted against Magma. (*Id.* at 9:5-10.) The Court stated, however, that

14 Synopsys was not chargeable with constructive notice of the PCT application "unless and until

15 Synopsys had reason to suspect that its confidential information had been misappropriated." (*Id.*

16 at 10:11-14.) The Court further noted that because it had not yet been presented with a

17 comparison of Synopsys's alleged proprietary information to the content of Magma's statements

18 made between 1998 and 2000, "the Court cannot conclude as a matter of law that Magma's

19 statements about its technology were sufficient to put Synopsys on notice with respect to the

20 alleged misappropriation." (*Id.* at 11:14-20.)

21   **C.   Facts Relevant To Synopsys's Notice**

22   Since the Court's Order, Magma has marshaled evidence comparing Synopsys's alleged

23 proprietary and confidential information with Magma's 1998-2000 statements about its use of

24 constant delay. This comparison establishes, beyond dispute, that Synopsys was on notice of its

25 misappropriation claims well before September 17, 2000. Magma's disclosures – many of which

26 were made directly to Synopsys – clearly gave Synopsys "reason to suspect that its confidential

27 information had been misappropriated." (Order at 10:11-14.)

28   Synopsys alleges that Magma and van Ginneken misappropriated various concepts and

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1 techniques related to constant delay from "Driving on the Left-Hand Side," the White Paper and

2 the two draft patent applications. As described in "Driving on the Left-Had Side," these allegedly

3 misappropriated concepts and techniques are:

4   **Constant Delay**: Holding the delay associated with each gate constant during

5 logic synthesis and physical design.

6   **Constant Delay Synthesis**: Applying constant delay to the synthesis of digital

7 circuits.

8   **Constant Delay Set Via Optimal Gain**: Selecting the best gain for each gate and

9 using that gain to determine the constant delay associated with that gate. (Gain is the ratio of a

10 gate's output load to its input load.)

11   **Buffer Insertion**: Adding a gate that performs no logical function but boosts

12 signal strength.

13   **Sizing Driven Placement**: Changing cell sizes during iterative placement in order

14 to hold the delays of each cell constant.

15   **Net Weight Placement**: Computing a net weight for each net that reflects the

16 degree to which additional load impacts the overall circuit area and applying those net weights

17 during placement. (A net refers to the wiring between the output of one date and an input of one

18 or more other gates.)

19   **Continuous Gate Sizing**: Using continuous sizing of a gate to maintain a

20 constant delay for that gate during logic synthesis and physical placement.

21   **Discrete Gate Sizing**: Using discrete gate sizes with the objective of maintaining

22 a constant delay for that gate during logic synthesis and physical placement.

23   **Area Minimization**: Formulating an equation that calculates the area of a circuit

24 and using that equation to minimize the area while maintaining constant delay.

25   **Area Estimation**: Computing a net weight for each net and using those net

26 weights to estimate circuit area in the constant delay paradigm.

27   **Stretching Constant Delays**: Adjusting (e.g., stretching or compressing) the

28 constant delay for gates during logic synthesis and physical placement.

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1   (Sechen Decl. ¶¶ 13-24.)

2   Between 1998 and 2000, Magma repeatedly disclosed to Synopsys and to the public

3   Magma's use of each of the concepts that Synopsys maintains were its trade secrets. The

4   following chart summarizes these disclosures, which are discussed in detail in the following

5   sections:

Concept	Magma's Disclosure Of Its Use Of This Concept
Constant Delay	• The March 1998 Meeting – van Ginneken Slides • April 1999 ISPD Conference – van Ginneken Slides • April 28, 1999 Press Release • Magma Web Site – Magma White Paper • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Slides • June 2000 DAC Conference – Groeneveld Panel Slides
Constant Delay Synthesis	• The March 1998 Meeting – van Ginneken Slides • April 1999 ISPD Conference – van Ginneken Slides • April 28, 1999 Press Release • Magma Web Site – Magma White Paper • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Slides • June 2000 DAC Conference – Groeneveld Panel Slides
Constant Delay Set Via Optimal Gain	• The March 1998 Meeting – van Ginneken Slides • April 1999 ISPD Conference – van Ginneken Slides • April 28, 1999 Press Release • Magma Web Site – Magma White Paper • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Slides
Buffer Insertion	• The March 1998 Meeting – van Ginneken Slides • April 1999 ISPD Conference – van Ginneken Slides • April 28, 1999 Press Release • Magma Web Site – Magma White Paper • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Slides • June 2000 DAC Conference – Groeneveld Panel Slides
Sizing Driven Placement	• The March 1998 Meeting – van Ginneken Slides

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Concept	Magma's Disclosure Of Its Use Of This Concept
	• April 28, 1999 Press Release • Magma Web Site – Magma White Paper • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Panel Slides
Net Weight Placement	• The March 1998 Meeting – van Ginneken Slides
Continuous Gate Sizing	• The March 1998 Meeting – van Ginneken Slides • April 1999 ISPD Conference – van Ginneken Slides • April 28, 1999 Press Release • Magma Web Site – Magma White Paper • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Panel Slides
Discrete Gate Sizing	• The March 1998 Meeting – van Ginneken Slides • April 1999 ISPD Conference – van Ginneken Slides • January 2000 ASP-DAC Conference • April 2000 EDP Workshop • June 2000 DAC Conference – Groeneveld Slides
Area Minimization	• The March 1998 Meeting – van Ginneken Slides
Area Estimation	• The March 1998 Meeting – van Ginneken Slides
Stretching Constant Delays	• The March 1998 Meeting – van Ginneken Slides

(Sechen Decl. ¶¶ 25-37.)

These disclosures fully establish, as a matter of undisputed fact, that Synopsys had ample reason to be "on notice with respect to Magma's alleged misappropriation of Synopsys's technology." (Order at 11:17-18.)

1.   Magma's 1997 Letter

Magma's 1997 Letter stated that Magma believed that Synopsys's constant delay techniques were in the public domain and thus available for practice by other companies. Synopsys disagreed with that position, maintaining – as it does today – that the concepts and techniques described above are proprietary to Synopsys. Nevertheless, Synopsys now argues that Magma's 1997 Letter constituted a "comfort letter" because Magma stated in general terms that van Ginneken would honor his obligations under his PIIA with Synopsys. Synopsys maintains

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1   that it was justified in not responding to Magma's 1997 Letter or taking any further action

2   because Magma's general statements about van Ginneken's intent "were designed to lull

3   Synopsys into a false sense of security." (Synopsys's Opposition to Magma's Motion to Dismiss

4   at 5:1-2 (citing FAC ¶ 53).)

5   In fact, Synopsys did not consider Magma's 1997 Letter a "comfort letter." During a

6   1997 meeting between the parties shortly after Magma sent the letter, Paul Lippe, Synopsys's VP-

7   Business Development and General Counsel, informed Rajeev Madhavan, Magma's Chief

8   Executive Officer, that Synopsys viewed Magma's 1997 Letter as a hostile rebuke to its concerns

9   regarding van Ginneken's former work at Synopsys. Lippe further informed Madhavan that

10   Synopsys was both troubled and upset by the letter and suggested that Magma's response was an

11   extremely aggressive position for a start-up company to take on a routine PIIA letter involving an

12   ex-Synopsys employee. (Madhavan Decl. ¶15.)[4] Despite these concerns, Synopsys did nothing

13   to follow up or investigate.

2.   The March 1998 Meeting

15   In March 1998, Synopsys sent two of its executives, Joe Hutt, Synopsys's Director of

16   Advanced Technology, and Anton Domic, a Synopsys Vice President, to discuss Synopsys's

17   possible acquisition of Magma. Hutt and Domic met with Rajeev Madhavan, Magma's CEO and

18   founder, Karen Vahtra, co-Founder and Director of Technical Marketing, and van Ginneken.

19   (Van Ginneken Decl. ¶ 2; Hutt Decl. ¶ 3; Madhavan Decl. ¶ 16.)

20   At the meeting, Magma made several presentations to Synopsys, including a technical

21   presentation by van Ginneken of Magma's use of concepts relating to constant delay synthesis

22   and gain-based synthesis. (Van Ginneken Dep. at 215:15-17; Van Ginneken Decl. ¶¶ 2-3, Ex.

23

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24   [4]   Synopsys's after-the-fact argument that it had viewed Magma's 1997 letter as a "comfort letter" is in stark contrast to the reactions of other EDA companies who received similar letters
25   from Magma. For example, in response to an inquiry from Avant! about Magma's recruitment of two former Avant! employees, Magma's counsel asserted that Avant!'s alleged trade secrets were
26   in the public domain and that the ex-Avant! employees intended to honor their confidentiality obligations owed to Avant!. In contrast to Synopsys's allegations, Avant! did not construe
27   Magma's letter as anything close to a "comfort letter." Rather, Avant! responded that Magma's letter "does not allay Avant!'s concerns" and Avant! is continuing its "investigation into
28   Magma's" employment of former Avant! employees. (Obstler Decl. Ex. WW.)

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1   A.) In addition to other subjects, van Ginneken's presentation included a "fairly extensive"

2   discussion of constant delay in which van Ginneken went over "the overall methodology and how

3   constant delay was used, how we used library analysis, logic optimization, how it was used with

4   placement, stretching and compressing idea." (*Id.* at 211:11-17.) Using a set of slides, van

5   Ginneken presented all of the concepts that are disclosed in the documents alleged by Synopsys to

6   be confidential:

7

Outline
- Sutherlands Theory of Logical Effort
- Constant Delay and Timing Closure
- Flow and Methodology

Optimize a chain of gates

Maximize path gain $H = \Pi\, h_i$

Under $D = \Sigma\, d_i = \tau\, \Sigma\, p_i + \tau\, \Sigma\, f_i$

Maximize $\Pi\, f_i$ with constant $\Sigma\, f_i$
Has known solution
$f_i = $ constant

Note
The variable part of the delay is the same for all gates regardless of function

Constant Delay
- Pick delays upfront
- Use a gain dependent delay model
- Compare all gates to the inverter
- The initial delay gives the best gain without inserting buffers

Calculating loads

(1) $C_i = \Sigma_{j \in fanout}\, C_j / h_j + L_i$
(2) $\underline{c} = M\,\underline{c} + \underline{L}$
(3) $\underline{c} = (I-M)^{-1}\underline{L}$

Loads are calculated from outputs to inputs

Note
Equation 3 has a solution if there is enough gain in the design

Calculating weights

The circuit area $A = \Sigma\, a_i\, C_i$
(1) $w_i = \Sigma_{j \in fanin}\, w_j / h_j + a_i$
(2) $\underline{w} = M\,\underline{w} + \underline{a}$
(3) $A = \underline{ac} = \underline{wL}$

Weights are calculated from inputs to outputs

Note
Equation 3 means that area depends fully on wire length

Placement formulation

$A = \underline{wL}$

The active area of the circuit can be expressed as a weighted sum of wire lengths

Note
Placement programs normally like to optimize a weighted sum of wire lengths

Recommendations
- Use realistic timing constraints
- They must be met before placement
- Need sizing driven placement
- Need to buffer long wires

Warning
Long wires with high resistance can compromise delay

Methodology
- Pick delays to meet delay constraints
- Optimize gain
- Check that system gain is OK
- Meet the delays by sizing

Sign off
Optimizing gain will decrease the sensitivity to capacitance variations

Buffer insertion
- Buffers have a lot of gain, about 10x
- Inserting buffers always costs delay
- Inserting buffers saves area
- If the wires have resistance, then buffers can reduce delay

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(Van Ginneken Dep. at 210:6-217:11; 379:7-380:9; Van Ginneken Decl., Ex. A. at pp. 1-11; Madhavan Decl ¶ 16.; Hutt Decl. ¶ 3; Sechen Decl.¶¶ 25-37).

These slides demonstrate that van Ginneken's presentation included detailed information regarding Magma's use of the same concepts as those contained in the allegedly confidential information misappropriated from Synopsys.[5] As van Ginneken testified, each of the concepts illustrated in the slides is set forth in his paper "Driving on the Left-Hand Side" and in the Synopsys draft patent applications (Van Ginneken Dep. at 210:6-217:11.). A comparison of those documents and these concepts confirms van Ginneken's testimony. (Sechen Decl.¶¶ 25-37.) Madhavan, moreover, informed Synopsys at this meeting that Magma had patent applications pending relating to the concepts described in the van Ginneken slide presentation. (Hutt Decl. ¶ 3; Madhavan Decl. ¶16.) Despite Magma's obvious use of the concepts and techniques that Synopsys claims as proprietary, Synopsys did nothing after the meeting to investigate Magma's use of constant delay.

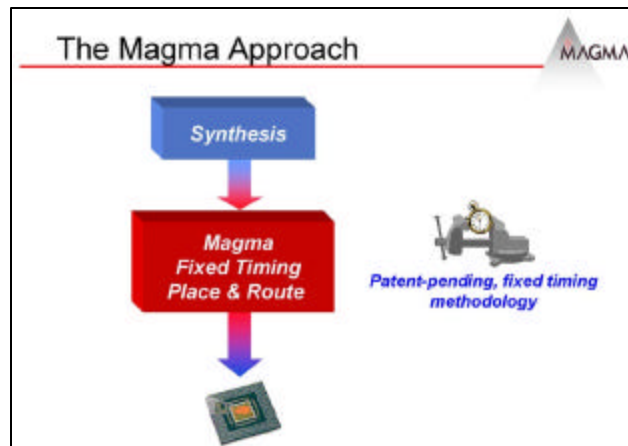### 3.   The 1998 Redraft of the ICCAD 96 Paper

In April and May 1998, van Ginneken – while at Magma – cooperated with Synopsys and IBM to redraft the paper, "Driving on the Left-Hand Side." (Van Ginneken Dep. at 178:19-23; Hutt Decl. ¶ 4.) In 1996, Synopsys had withdrawn from publication the version of the paper that

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[5]   Again, Magma's use of these concepts is not unlawful or improper and nothing in this motion should be construed as an admission to the contrary. Although this motion does not address the merits of any of Synopsys's misappropriation claims, Magma's opposition to Synopsys's motion for partial summary judgment on the UCL claim introduces compelling evidence that the alleged confidential information upon which Synopsys predicates its misappropriation claims was, in fact, public. For purposes of determining whether Synopsys's misappropriation claims are time-barred, however, the sole issue before the Court is when Synopsys was on notice of Magma's use of the information, not whether that information was public.

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1   van Ginneken had submitted to the 1996 ICCAD because the paper did not acknowledge IBM's

2   contribution to the described constant delay concepts. (Van Ginneken Dep. at 60:2-12, 86:12-

3   87:9; Stok Dep. at 181:25-183:5, 183:20-186:11, 189:2-191:10, 192:8-193:1.) The 1998

4   redrafted paper, however, included IBM engineer Prabhakar Kudva and Synopsys engineer

5   Narendra Shenoy in addition to van Ginneken. (Van Ginneken Dep. at 92:23-93:12.) Van

6   Ginneken requested that Hamid Savoj and Patrick Groeneveld from Magma be added to the

7   acknowledgements section since they had also contributed to the development of constant delay

8   and gain-based synthesis technology. (Van Ginneken Dep. at 40:22-41:16, 94:6-10.) Rajeev

9   Madhavan similarly informed Synopsys's Raul Camposano that Magma employees had

10 contributed to technology related to constant delay and gain-based concepts and requested that

11 Magma employees be acknowledged in the paper. (Madhavan Decl. ¶ 18.) Despite the fact that

12 Synopsys was alerted to the contributions of Magma employees to the paper that Synopsys claims

13 contains misappropriated confidential information, Synopsys did nothing to investigate the issue.

14   **4.   The December 1998 Meeting**

15   In December 1998, Magma and Synopsys met again to discuss a possible business

16 relationship. Robert Smith, Magma's VP of Marketing, attended for Magma along with

17 Madhavan. The Synopsys delegation included Aart De Geus, Synopsys's CEO, Raul

18 Camposano, Synopsys's CTO, and Robert Dahlberg, a Synopsys Vice President. Magma again

19 made a technical presentation with slides about its technology in which it disclosed its use of

20 constant delay and gain-based concepts. Magma further disclosed that it had patents pending that

21 related to this technology:

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1   Madhavan Decl. ¶ 19, Ex. J ; Smith Decl. ¶ 4, Ex. J.)

2   At this meeting, De Geus stated that he was not interested in entering into a business

3   relationship with Magma. De Geus told Magma that he understood the concepts Magma had

4   explained and that Synopsys had previously experimented with these same concepts. De Geus

5   said he believed that these concepts did not work and he suggested that Magma was wasting its

6   time and would not develop a successful product. (Smith Decl. ¶ 5 ; Madhavan Decl. ¶ 19.)

7   **5.   April 1999 ISPD Conference**

8   On April 14, 1999, van Ginneken participated as a panel member in the International

9   Symposium on Physical Design ("ISPD") Conference in Monterey, California. At the conference

10   van Ginneken gave a slide presentation disclosing concepts related to Magma's technology. (Van

11   Ginneken Dep. at 215:18-217:11; van Ginneken Decl.¶ 4, Ex. B; Groeneveld Decl. ¶ 4, Ex. B.)

12   During the presentation, van Ginneken discussed the constant delay and gain-based concepts he

13   was working on at Magma. (*Id.*) The slides presented by van Ginneken contained descriptions of

14   at least six of the allegedly misappropriated constant delay concepts and techniques that Synopsys

15   claims were confidential and proprietary: Constant Delay, Constant Delay Synthesis, Constant

16   Delay Set Via Optimal Gain, Buffer Insertion, Continuous Gate Sizing and Discrete Gate Sizing.

17   (Sechen Decl. ¶¶ 27-30, 33, 34.)

18   Also on the ISPD panel with van Ginneken was Raul Camposano, Synopsys's CTO. (van

19   Ginneken Dep. at 215:18-218:11.) During the panel, Camposano referred to van Ginneken's

20   presentation and remarked, "Some startups present some pretty familiar ideas." (*Id.* at 217:3-4.)

21   Camposano's statement confirmed what van Ginneken believed – that Camposano recognized

22   that the constant delay and gain based concepts that van Ginneken was working on at Magma

23   were the same concepts that van Ginneken had been working on at Synopsys and Synopsys no

24   longer cared about protecting these concepts because Synopsys believed they did not work. (*See*

25   *id.* at 217:5-11.)

26   **6.   Magma's Product Release: April 1999 Through September 2000**

27   In the spring of 1999, Magma began a product release program in which its first products

28   were presented to the public.

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a.   April 28, 1999 Press Release

2   The product release program included a nine-page press release issued on April 28, 1999,

3 announcing the release of Magma's "patent-pending Fixed Timing methodology" and the

4 incorporation of that methodology into its new "Blast Fusion" system and products. (Smith Decl.

5 ¶ 6, Ex. K.) The release contained diagrams and a detailed descriptions of at least six concepts

6 disclosed in documents that Synopsys alleges were confidential: Constant Delay, Constant Delay

7 Synthesis, Constant Delay Set Via Optimal Gain, Buffer Insertion, Sizing Driven Placement and

8 Continuous Gate Sizing. (Sechen Decl. ¶¶ 27-31, 33.)   The press release resulted in an April 29,

9 1999 EE Times article that contained a diagram of Magma's product methodology and included

10 disclosures of at least these same three concepts. (Obstler Decl. ¶ 17.)

11

b.   June 1999 DAC Conference

12   At the Design Automation Conference ("DAC") in New Orleans in June 1999, Magma

13 demonstrated its products. As part of the demonstrations, Magma provided detailed descriptions

14 of constant delay and gain-based synthesis concepts and explained how these concepts were being

15 utilized. (Smith Decl. ¶ 7, Ex. L; Madhavan Decl. ¶ 20.)

16

c.   Magma Web Site

17   During the product release program, Magma made detailed information available,

18 including a white paper, on its web site. (Smith Decl. ¶ 8, Ex. C; Hutt Decl. ¶ 8, Ex. C) The

19 Magma white paper publicly available on the Magma web site contained numerous diagrams and

20 detailed descriptions of at least six concepts disclosed in documents that Synopsys alleges were

21 confidential: Constant Delay, Constant Delay Synthesis, Constant Delay Set Via Optimal Gain,

22 Buffer Insertion, Sizing Driven Placement and Continuous Gate Sizing. (Sechen Decl. ¶¶ 27-31,

23 33.)

24

d.   Magma Product Press Coverage

25   During the product release program, Magma received detailed media coverage regarding

26 its Fixed Timing Methodology and its Blast Fusion products. Numerous newspaper articles

27 appeared during the release cycle discussing Magma's use of constant delay and gain-based

28 synthesis concepts in its products. Among these was an article dated January 17, 2000, entitled

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1 "Magma readies assault in RTL synthesis arena." In that article, Bob Smith, Magma's VP of

2 Marketing, described, among other things, Magma's use of gained-based synthesis. In response

3 to Smith's statements, Sanjiv Kaul, Synopsys's Vice President and General Manager of Physical

4 Synthesis, was quoted that Magma was not "a major competitive threat" and "challenged

5 Magma's notion that timing can be determined up front and constant." Kaul stated:

6   You can't guarantee timing early and have the best possible time
         you can get out of silicon . . . [a]nd you can't hold one of the
7   variables constant and not affect other things. When you use the
         const-delay algorithm, it usually comes at the expense of area and
8   power.

9 (Obstler Decl. Ex. Y.)

10   Magma's presentations and publicly available materials during the product release

11 program extensively documented Magma's use of constant delay and gain-based synthesis

12 concepts. According to van Ginneken, these materials would have made it "easy" for Synopsys

13 to figure out "that the inventions Magma was using were inventions conceived at Synopsys."

14 (Van Ginneken Dep. at 379:10-380:9.) It is "inconceivable" that Synopsys did not review the

15 publicly available information at this time (Smith Decl. ¶ 9; Hutt Decl. ¶ 8.)

16   **7.   The PCT Publishes Magma's Patent Application On July 8, 1999**

17   On July 8, 1999, an international patent application was published to the world under the

18 Patent Cooperation Treaty. (Obstler Decl., Ex. XX.) Magma is named as the assignee and van

19 Ginneken is named as the sole inventor on the PCT Application. (*Id.*) The PCT Application is

20 based on the United States patent application filed by Magma on April 2, 1998 ("the '446

21 Application") that resulted in U.S. Patent No. 6,453,446 ("the '446 Patent").[6] (*Id.* at 1.) The PCT

22 Application and the '446 Application (Obstler Decl., Ex. ZZ.) are substantially identical and

23 share:

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   [6] Synopsys has asserted a claim for infringement of the '446 Patent against Magma. (SAC,
26 ¶¶ 92-102; Obstler Decl., Ex. AAA ('446 Patent).) Synopsys has asserted a claim for
   infringement of U.S. Patent No. 6,725,438 ("the '438 Patent") against Magma. (SAC, ¶¶ 92-102.)
27 Like the '446 Patent, the '438 Patent was issued to Magma and van Ginneken is named as its sole
   inventor. (Obstler Decl., Ex. YY ('438 Patent).) The '438 Patent is a continuation of the April 2,
28 1998 application. (*Id.* at 1.)

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1   (1)   The same inventor (Lukas van Ginneken);

2   (2)   The same title ("Timing Closure Methodology");

3   (3)   The same abstract; and

4   (4)   Substantially identical specifications and claims.

5   (*Compare* Obstler Decl., Ex. XX *with* Ex. ZZ.)   In its Order, the Court found that Synopsys does

6   not dispute that "had [it] reviewed Magma's PCT application, it would have been on actual notice

7   of the claims it now asserts against Magma." (Order at 9:7-9.)

8   **8.   January 2000 ASP-DAC Conference**

9   In January 2000, Patrick Groeneveld presented information at a panel at the Asia South

10   Pacific Design Automation Conference in Tokyo, Japan. Also on the panel was a representative

11   of Synopsys. (Groeneveld Decl. ¶ 6; Coudert Decl. ¶ 4.) The slides presented by Groeneveld

12   describe at least seven of the allegedly misappropriated constant delay concepts and techniques

13   that Synopsys claims were confidential and proprietary: Constant Delay, Constant Delay

14   Synthesis, Constant Delay Set Via Optimal Gain, Buffer Insertion, Sizing Driven Placement,

15   Continuous Gate Sizing and Discrete Gate Sizing. (Sechen Decl. ¶¶ 27-31, 33, 34.) Groeneveld

16   represented that his slides related to technology being developed by Magma. (Groeneveld Decl. ¶

17   6, Ex. D.)

18   **9.   April 2000 EDP Workshop**

19   In April 2000, Patrick Groeneveld presented information at the Workshop on Electronic

20   Design Processes ("EDP") in Monterey. (Groeneveld Decl. ¶ 7, Ex. E.) The slides presented by

21   Groeneveld describe at least seven of the allegedly misappropriated constant delay concepts and

22   techniques that Synopsys claims were confidential and proprietary: Constant Delay, Constant

23   Delay Synthesis, Constant Delay Set Via Optimal Gain, Buffer Insertion, Sizing Driven

24   Placement, Continuous Gate Sizing and Discrete Gate Sizing. (Sechen Decl. ¶¶ 27-31, 33, 34.)

25   Groeneveld represented that his slides related to technology being developed by Magma.

26   (Groeneveld Decl. ¶ 7.)

27   **10.   June 2000 DAC Conference**

28   In June 2000, Patrick Groeneveld presented a Tutorial at DAC in Los Angeles.

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1   (Groeneveld Decl. ¶ 8, Ex. F; Hutt Decl. ¶ 9, Ex. F.) The slides presented by Groeneveld

2   describe at least five of the allegedly misappropriated constant delay concepts and techniques that

3   Synopsys claims were confidential and proprietary: Constant Delay, Constant Delay Synthesis,

4   Constant Delay Set Via Optimal Gain, Buffer Insertion and Discrete Gate Sizing. (Sechen Decl.

5   ¶¶ 27-30, 34.) Groeneveld represented that his slides related to technology being developed by

6   Magma. (Groeneveld Decl. ¶ 9.)

23   Patrick Groeneveld participated on a panel and presented slides at the Design Automation

24   Conference in June 2000,. (Groeneveld Decl. ¶ 9, Ex. G; Hutt Decl ¶ 10, Ex. G.) The slides

25   presented by Groeneveld describe at least five of the allegedly misappropriated constant delay

26   concepts and techniques that Synopsys claims were confidential and proprietary: Constant Delay,

27   Constant Delay Synthesis, Buffer Insertion, Sizing Driven Placement and Continuous Gate

28   Sizing. (Sechen Decl. ¶¶ 27-28, 30-31, 33.) Groeneveld represented that his slides related to

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1 technology being developed by Magma. (Groeneveld Decl. ¶ 9.)

2 **III.   ARGUMENT**

3   In its Second through Sixth Causes of Action, Synopsys has asserted a series of tort claims

4 based on an alleged conspiracy to misappropriate trade secret information. All of these claims are

5 time-barred because the undisputed facts demonstrate that Synopsys was on actual and

6 constructive notice of the underlying alleged misappropriation more than four years before it filed

7 suit. *See Forcier v. Microsoft Corp.*,123 F. Supp. 2d 520, 526-530 (N.D. Cal. 2000).

8   **A.   Synopsys Was On Notice Of Its Claims Before September 17, 2000**

9   Because the alleged misappropriation upon which Synopsys bases its claims took place in

10 1997 (*see* SAC ¶ 44.), well outside the applicable limitations period, Synopsys has the burden of

11 proving facts necessary to toll the statute of limitations for each of the claims it asserts. *See*

12 *Alamar Biosciences, Inc. v. Difco Labs., Inc.*, No. Civ. S-941856 DFL PAN, 1995 WL 912345 at

13 * 3 (E.D. Cal. Oct. 13, 1995) (citing *California Sansome Co. v. U. S. Gypsum*, 55 F.3d 1402,

14 1406 (9th Cir. 1995)). Synopsys must come forward with specific evidence showing "'(1) the

15 time and manner of discovery *and* (2) the inability to have made earlier discovery despite

16 reasonable diligence.'" *Fox v. Ethicon Endo-Surgery, Inc.*, 27 Cal. Rptr. 3d at 668 quoting

17 *McKelvey v. Boeing* 74 Cal. App. 4th 151, 160, 86 Cal. Rptr. 2d 645 (emphasis original). In

18 assessing the sufficiency of the evidence of delayed discovery, "the court places the burden on the

19 plaintiff to 'show diligence' and conclusory allegations will not withstand a dispositive motion."

20 *Id.* Synopsys cannot meet its burden.

21   "A plaintiff has reason to discover a cause of action when he or she 'has reason at least to

22 suspect a factual basis for its elements.'" *Fox*, 27 Cal. Rptr. 3d 661, 667 (quoting *Norgart v.*

23 *Upjohn* 21 Cal.4th 383, 398 (1999)). "[A] plaintiff 'need not know the specific facts necessary to

24 *establish* the cause of action' in order for [its] claims to accrue." *Garamendi*, 276 F. Supp. 2d at

25 1039 (*quoting Norgart,* 21 Cal. 4th at 398 (emphasis in original)). "Rather than examining

26 whether the plaintiff suspects facts supporting each specific legal element of a particular cause of

27 action, [the Court looks] to whether the plaintiffs have reason to at least suspect that a type of

28 wrong doing has injured them." *Fox*, 27 Cal. Rptr. 3d at 667.

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1   Here, it is undisputed that Magma made numerous disclosures to Synopsys and the public

2   between 1998 and 2000 that provided Synopsys with actual knowledge of Magma's use the

3   alleged confidential information at issue in this lawsuit. (Sechen Decl. ¶¶ 25-37.)   As set forth

4   above, a detailed comparison of Synopsys's alleged proprietary information with Magma's

5   statements about its technology establishes beyond dispute that Synopsys had compelling reasons

6   before September 2000 to not merely suspect, but confirm, that Magma was using all eleven

7   concepts and techniques contained in the alleged confidential documents. (*Id.*)

8   The similarities are striking between the alleged confidential Synopsys materials and

9   Magma's disclosures of its use of constant delay to Synopsys before September 2000. For

10   example, in the paper "Driving on the Left-Hand Side," van Ginneken discussed the concept of

11   "Area Estimation," the process of deriving a formula used to estimate the area of a circuit.

12   (Sechen Decl. ¶ 36.) In the paper, the formula is express as "$A=a^T c$." (Sechen Decl. Ex. U at

13   page 4.) In March 1998, van Ginneken presented the same concept of area estimation to

14   Synopsys in a slide that disclosed the same formula that is used to estimate the area of a circuit:

15   "$A=a^T c$." (Sechen Decl. Ex. A at slide no. 9.)

16   In "Driving on the Left-Hand Side," van Ginneken also discussed the concept of "Buffer

17   Insertion." Buffer insertion refers to the addition of a buffer (a gate that performs no logical

18   function and boosts signal strength) into a circuit path. (Sechen Decl. ¶ 30.) In the constant delay

19   paradigm, buffers are used to reduce overall circuit area in contrast to the traditional use of

20   buffers to reduce delay. (*Id.*) The paper states on page 5: "additionally, a buffer can save area."

21   (Sechen Decl. Ex. U at page 5.) In March 1998, van Ginneken presented the same concept of

22   buffer insertion to Synopsys in a slide that said: "Inserting buffers always costs delay, inserting

23   buffers saves area." (Sechen Decl. Ex. A at slide no. 13.)

24   In addition to Magma's detailed disclosures of it technology, Magma also disclosed to

25   Synopsys that it had patents pending in connection with its technology and fixed timing

26   methodology. (Madhavan Decl. ¶ 16, Ex. A.)

27   Even if one assumes – contrary to the evidence of direct communications described above

28   – that Synopsys did not have actual knowledge of Magma's use of the constant delay concepts

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1   and techniques at issue, Synopsys's claims are still time-barred. To the extent that Synopsys

2   lacked actual knowledge of Magma's use of any of the confidential information or concepts,

3   Synopsys certainly "had reason to suspect that its confidential information had been

4   misappropriated." At a minimum, therefore, Synopsys is "chargeable with notice of the

5   publication of Magma's PCT application" as of July 8, 1999. (*See* Order 9:7-9; 11:1-18.)

6   The evidence of constructive notice in this case even more compelling than *Alamar*

7   *Biosciences, Inc. v. Difco Labs., Inc.*, where the court found that the publication of a PCT

8   application put the defendant on constructive notice of its misappropriation claims. In *Alamar*,

9   the evidence showed that (1) plaintiff was concerned about its former employee's use of

10   confidential information soon after his departure; (2) defendant subsequently disclosed the

11   technical aspects of its technology at trade shows attended by plaintiff's employees; (3) plaintiff's

12   employees believed or were informed of defendant's possible use of the alleged trade secrets; and

13   (4) senior management met to discuss the possibility of misappropriation. 1995 WL 912345 at

14   *3-5. Based on these facts, the Court found that plaintiff strongly suspected misappropriation but

15   failed "to take the elementary step of checking readily available patent applications." *Id.* at * 5.[7]

16   Like the plaintiff in *Alamar*, Synopsys failed to take even the elementary step of checking

17   available patent applications even though: (1) Synopsys suspected that van Ginneken had taken

18   confidential information with him when he left Synopsys to join Magma; (2) Magma and van

19   Ginneken had revealed to Synopsys detailed technical information about Magma's use of

20   constant delay, including the specific techniques discussed in Synopsys's allegedly confidential

21   documents; and (3) Magma had told Synopsys that Magma had pending patent applications on

22   these constant delay techniques. Had Synopsys simply done a patent search, it would have found

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24   [7] *See also Medtronic Vascular*, 2005 WL 388592 at * 1, n.4; *Prescott*, 769 F. Supp. at 407; *see also*, *University*
     Patents, Inc. v. Kligman, Civ. A. Nos. 89-3525, 90-0422, 1991 WL 86399 at * 2 (E.D. Pa. May 16, 1991) (plaintiff's
25   tort claims were time-barred under the applicable two-year statute of limitations because once the patent issued,
     "plaintiffs' duty of diligence clearly arose and the law required them to investigate and discover potential claims
26   relating to the history and exploitation of the patent"); *see also Sontag Chain Stores Co. v. National Nut Co.*, 310
     U.S. 281, 295, 60 S. Ct. 961, 967 (1940) (patents recorded in Patent Office provide "[c]onstructive notice of their
27   existence … to all the world"); *Wine Ry. Appliance Co. v. Enterprise Ry. Equip. Co.*, 297 U.S. 387, 393, 56 S. Ct.
     528, 529 (1936) ("issuance of a patent and recordation in the Patent Office constitutes notice to the world of its
28   existence").

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1   Magma's PCT application and "been on actual notice of the claims it now asserts against

2   Magma." (Order 11:1-18.) Thus, Synopsys's claims are barred under the applicable statutes of

3   limitations as a matter of law.

4   **B.   Synopsys Cannot Establish Fraudulent Concealment**

5   Synopsys's contention that the statute should be tolled because Magma allegedly

6   concealed its use of the alleged confidential information at issue in this lawsuit is not plausible.

7   Synopsys has offered no evidence to establish that Magma's deception, as opposed to Synopsys's

8   own lack of diligence, caused it to forgo action against Magma. Indeed, the evidence shows that

9   Synopsys's inaction was the result of its own belief that constant delay technologies were

10 infeasible. (*See* Madhavan Decl. ¶ 19.)

11   "The rule of fraudulent concealment provides that a 'defendant's fraud in concealing a

12 cause of action against him tolls the applicable statute of limitations.'" *Garamendi v. SDI*

13 *Vendome S.A.*, 276 F. Supp. 2d 1030, 1041 (C.D. Cal. 2003) (quoting *Sanchez v. South Hoover*

14 *Hospital,* 18 Cal.3d 93, 99 (1976)). The rule prevents a culpable defendant from profiting from

15 his concealment "to the extent that it hindered an 'otherwise diligent' plaintiff in discovering his

16 cause of action." *Id.* (quoting *Sanchez*, 18 Cal.3d at 100). "[A]ny period of equitable tolling will

17 come to an end once the plaintiff has, or should have notice of his claim …. When intentional

18 concealment tolls a statute of limitations, something close to actual notice … is required to end

19 the tolling period." *Id.* at 1042 (citations omitted). Notice refers to an awareness of sufficient

20 facts to identify a particular cause of action. *Id.* at 1043 ((quoting *Hobson v. Wilson*, 737 F.2d 1,

21 35 (D.C. Cir. 1984), *overruled in part on other grounds*, *Leatherman v. Tarrant County Narcotics*

22 *Intelligence & Coordination Unit,* 507 U.S. 163 (1993).

23   Synopsys alleges that it first discovered the alleged misappropriation in July 2004, when

24 Magma expressed concerns that Synopsys was infringing the '446 and '438 Patents. At that

25 point, Synopsys allegedly compared the language of those patents to the White Paper and

26 Synopsys draft patent applications. (Order at 8:9-13 (citing FAC ¶ 77.) "Until then," Synopsys

27 claims, "Magma's alleged misrepresentations 'concerning the origin of the inventions and

28 technology in its products' had misled 'Synopsys and others into believing that those inventions

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1   and technology had been independently developed by Magma exclusively from public domain

2   sources.'"[8] (*Id.* at 8:13-17 (quoting FAC ¶ 70.)

3   The technical details of Magma's disclosures between 1998 and 2000 preclude Synopsys

4   from establishing these allegations of fraudulent concealment. Magma's disclosures confirm

5   Magma's reliance on the same concepts and techniques as those described in the alleged

6   confidential White Paper and draft patent applications. (Sechen Decl. ¶¶ 25-37.) Furthermore,

7   Synopsys admits that it possessed all the information necessary to evaluate Magma's statements

8   and disclosures, including the White Paper, "Driving on the Left Hand Side," and the draft patent

9   applications. (SAC ¶ 118.) Indeed, by September 2000, Synopsys possessed all the information

10   upon which it now basis its misappropriation claims. *See DeBruyne v. Equitable Life Assur. Soc.*

11   *of the United States*, 920 F.2d 457, 466 n.18 (7th Cir. 1990) ("plaintiffs cannot avoid the statute

12   of limitations by possessing, but failing to read, documents that would put them on inquiry

13   notice"); *Marks v. CDW Computer Centers, Inc.*, 901 F. Supp. 1302, 1316 (N.D. Ill. 1995)

14   (accord).

15   The truth is that Synopsys failed to protect its alleged confidential information because it

16   believed that Magma's technology did not work, not because it was deceived by Magma.

17   Synopsys admitted as much both privately to Magma and to the public. (Obstler Decl. Ex. Y;

18   Madhavan Decl. ¶ 19; Hutt Dec ¶ 10.)

19   Regardless of Synopsys's reasons for failing to take action, any alleged tolling of the

20   statute of limitations periods came to an end well before September 2000 when Synopsys

21   indisputably possessed sufficient facts to discover the alleged misappropriation. *See Garamendi*,

22   276 F. Supp. 2d at 1043-44 (commissioner was not only suspicious but possessed sufficient

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24   [8] As set forth in Magma's opposition to Synopsys's motion for partial summary judgment on the
     UCL claim, Magma's defense that the alleged confidential information was in the public domain
25   is entirely consistent with its statute of limitations defense in this motion. In Magma's
     opposition, Magma introduces compelling evidence that the alleged confidential information
26   upon which Synopsys predicates its misappropriation claims was, in fact, public. Nonetheless,
     for purposes of determining whether Synopsys's misappropriation claims are time-barred, the
27   sole issue before the Court is simply when Synopsys was on notice of Magma's use of the
     information not whether that information was public.

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1   information not to delay suit and based on evidence was not justified on relying on alleged

2   misstatements); *Alamar*, 1995 WL 912345 * 6 (plaintiff cannot sustain burden on fraudulent

3   concealment claim where evidence shows it was not fooled by misstatements and decided not to

4   investigate in part because it thought that any of the allegedly stolen information was of little

5   value).

6   **C.   Synopsys Cannot Revive A Time-Barred Misappropriation Claim By
               Pleading Claims For Conspiracy Or Continuing Torts**

7   Synopsys's attempt to revive a time-barred misappropriation claim by pleading a

8   continuing tort claim or a conspiracy fails as matter of law. In *Forcier*, the court rejected a

9   similar attempt by a plaintiff to avoid the discovery rule and revive a stale trade secret claim by

10   pleading independent tort claims sounding in breach of contract, fraud, and unfair competition.

11   *See Forcier*, 123 F. Supp. 2d at 526-530. The defendants allegedly misappropriated and then

12   patented confidential information relating to ink-processing technology obtained from the

13   plaintiff under confidentiality agreements. Plaintiff asserted claims for misappropriation of trade

14   secrets, fraud, constructive fraud, breach of contract, and unfair competition. *Id.* at 524. The

15   court found the trade secret misappropriation claim time-barred because plaintiff asserted it more

16   than three years after he suspected that an alleged misappropriation had occurred. *Id.* at 526. The

17   court also rejected plaintiff's argument that a new period of limitations accrued for each wrongful

18   act alleged in support of plaintiff's independent claims for fraud, constructive fraud, breach of

19   contract, and unfair competition:

20

21   In essence, all these claims are based on the allegation that the
                defendants improperly used and disclosed Forcier's confidential
                trade secrets in order to design and develop ink-processing
22   technology, and to obtain patents based on this technology. The
                Court agrees with the district court in *Intermedics*, *supra*, that "it
23   would be 'anomalous' to reject the continuing tort doctrine for
                purposes of [the plaintiff's] claims of misappropriation of trade
24   secrets or confidential information, but not to accept an analogous
                'continuing breach' doctrine for purposes of [other claims] that are
25   based on the same alleged misappropriations.

26   *Id.* at 527 (*quoting Intermedics, Inc. v. Ventritex*, 822 F. Supp. 634, 646 (N.D. Cal. 1993)); *see*

27   *also Cadence Design Systems, Inc. v. Avant! Corp.*, 29 Cal. 4th 215, 227, 57 P.3d 647, 654, 127

28   Cal. Rptr. 2d 169, 177 (2002) (misappropriation claim arises only once, when initial

                                    - 23 -

1   misappropriation occurs, subject to discovery rule of CAL. CIV. CODE § 3426.6). Because

2   plaintiff's "claims for fraud, constructive fraud, breach of contract, and unfair competition all

3   arose out of the alleged misappropriation of his alleged trade secrets, . . . the statute of limitations

4   on all five claims began running at the same time." *Forcier*, 123 F. Supp. 2d at 527 (emphasis

5   added). Synopsys's pleading tactics are no different from those rejected in *Forcier*.

6   Synopsys's insistence that a civil conspiracy theory or an inducing breach of contract

7   claim creates a continuing harm exception to claims involving trade secret misappropriation is

8   without merit. A claim for trade secret misappropriation "arises only once, when the trade secret

9   is initially misappropriated, and each subsequent use or disclosure of the secret augments the

10 initial claim rather than arises as a separate claim." *Cadence Design Systems, Inc. v. Avant!*

11 *Corp.*, 29 Cal. 4th 215, 227, 57 P.3d 647, 127 Cal. Rptr. 2d 169 (2002). Continued

12 misappropriation of the trade secret thereafter does not restart or delay the running of the

13 limitations period. *Id.; see also Forcier v. Microsoft Corp,* 123 F. Supp. 2d 520, 527 (N.D. Cal.

14 2000) ("Because the Court concludes that [plaintiff's] claims for fraud, constructive fraud, breach

15 of contract, and unfair competition all arose out of the alleged misappropriation of his alleged

16 trade secrets, it finds that the statute of limitations on all five claims began running at the same

17 time."); *Intermedics, Inc. v. Ventritex, Inc.*, 822 F. Supp. 634, 650 (N.D. Cal. 1993) ("any

18 subsequent additional acts of misappropriation of trade secrets cannot be considered 'in

19 furtherance' of the alleged conspiracy and therefore are irrelevant to fixing the point where the

20 statute of limitations on this conspiracy claim begins running"). Synopsys's attempt to revive a

21 time-barred misappropriation claim under conspiracy and inducing breach theories fails as a

22 matter of law.

23 **IV.   CONCLUSION**

24   Because Synopsys was on actual and constructive notice more than four years before

25 September 2004 of the claims it now asserts in its Second Through Sixth Causes of Action in the

26 SAC, Magma is entitled to a summary judgment dismissing each of those claims as time barred

27 under Rule 56 of the Federal Rules of Civil Procedure.

28

MAGMA'S MOTION FOR SUMMARY JUDGMENT
RE: SECOND AMENDED COMPLAINT
C04-03923 MMC

1   Dated: June 10, 2005   GEORGE A. RILEY
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5   By: /s/ George A. Riley
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                            - 25 -   RE: SECOND AMENDED COMPLAINT
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