

1 GEORGE A. RILEY (S.B. #118304)
2 PETER OBSTLER (S.B. #171623)
3 CHRISTOPHER D. CATALANO (S.B. #208606)
4 LUANN L. SIMMONS (S.B. #203526)
5 O'MELVENY & MYERS LLP
6 Embarcadero Center West
7 275 Battery Street
8 San Francisco, CA 94111-3305
9 Telephone: (415) 984-8700
10 Facsimile: (415) 984-8701

11 Attorneys for Defendant
12 MAGMA DESIGN AUTOMATION, INC.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

13 SYNOPSISYS, INC., a Delaware
14 Corporation,

15 Plaintiff,

16 v.

17 MAGMA DESIGN AUTOMATION,
18 INC., a Delaware Corporation, and
19 LUKAS VAN GINNEKEN,

20 Defendants.

Case No. C04-03923 MMC

**MAGMA DESIGN AUTOMATION,
INC.'S NOTICE OF MOTION AND
MOTION TO DISMISS THE THIRD,
FOURTH, FIFTH, SIXTH, AND
SEVENTH CAUSES OF ACTION IN
SYNOPSISYS, INC.'S AMENDED
COMPLAINT UNDER FED. R. CIV. P.
12(B)(6)**

Date: May 6, 2005

Time: 9:00 a.m.

Courtroom: 7, 19th Floor

Judge: Hon. Maxine M. Chesney

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AND RELATED COUNTERCLAIMS.

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE THAT on May 6, 2005, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 7 of the United States District Court
4 for the Northern District of California, San Francisco Division, located at 450 Golden
5 Gate Avenue, San Francisco, California, Defendant Magma Design Automation, Inc.
6 (“Magma”) will and hereby does respectfully move the Court for an order dismissing with
7 prejudice the Third, Fourth, Fifth, Sixth, and Seventh causes of action in plaintiff
8 Synopsys, Inc.’s (“Synopsys”) First Amended Complaint (“FAC”).

9 Magma brings its Motion on the grounds that (1) the applicable statutes of
10 limitations bar Synopsys’s Third Cause of Action for inducing breach of contract, Fourth
11 Cause of Action for fraud, Fifth Cause of Action for conversion, Sixth Cause of Action
12 for unjust enrichment/constructive trust, and Seventh Cause of Action for unfair
13 competition; (2) the equitable doctrine of laches bars the Sixth Cause of Action for unjust
14 enrichment/constructive trust; and (3) Synopsys’s Fourth Cause of Action for fraud fails
15 to state a claim for relief under Rules 9(b) and 12(b)(6) of the Federal Rules of Civil
16 Procedure. Magma’s motion is based on this Notice of Motion and Motion, the
17 Memorandum of Points and Authorities set forth below, the Declaration of Christopher D.
18 Catalano (“Catalano Decl.”) and Magma’s Request for Judicial Notice (“RJN”) submitted
19 herewith, the pleadings and other papers on file with the Court, the oral argument of
20 counsel, and such further evidence and arguments as may be presented at or before any
21 hearing on Magma’s motion.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 In the First Amended Complaint (FAC), Synopsys asserts five new causes of action
4 against Magma for inducement of breach of contract, fraud, conversion, unjust
5 enrichment, and unfair competition. Each of these claims is time-barred by both the
6 applicable statutes of limitations and the doctrine of laches.

7 Synopsys bases these claims on the theory that Defendant Lukas van Ginneken
8 misappropriated confidential information when he left Synopsys to join Magma, and then
9 conspired with Magma to conceal the misappropriation from Synopsys. Synopsys admits,
10 however, that it knew of or suspected the alleged misappropriation as early as 1997. In
11 July 1997, after van Ginneken left Synopsys, Synopsys threatened Magma that van
12 Ginneken’s work on constant delay at Magma could result in legal action because this
13 work implicated Synopsys’s trade secrets. Magma responded that it considered all of
14 Synopsys’s alleged trade secrets to be in the public domain. (FAC ¶¶ 51-52 and Exs. C,
15 D.) Synopsys also admits that, as early as 1996, it had representations from van
16 Ginneken, confidential documents and draft patent applications allegedly indicating that
17 the alleged trade secrets were not public. (FAC ¶¶ 35-40,110.) Finally on July 8, 1999,
18 Magma disclosed its use of the allegedly confidential information to the world in an
19 international patent application published under the Patent Cooperation Treaty (the “PCT
20 Application”). Despite having both actual and constructive notice of the alleged
21 misappropriation by 1999, Synopsys failed to pursue any claims arising out of trade secret
22 misappropriation against Magma until it filed the FAC on March 17, 2005.

23 The statutes of limitations on Synopsys’s claims for inducement of breach of
24 contract (two years), fraud (three years), conversion (three years), unjust enrichment
25 (three years), and unfair competition (four years) have run. Each of these five new causes
26 of action added by Synopsys in the FAC accrued more than four years prior to the date
27 that Synopsys filed this action. *See Forcier v. Microsoft Corp*, 123 F. Supp. 2d 520, 526-
28 530 (N.D. Cal. 2000). Similarly, Synopsys’s equitable claims for unjust enrichment and a

1 constructive trust are barred by laches. *See Kling v. Hallmark Cards, Inc.*, 225 F.3d 1030,
2 1036 (9th Cir. 2000).

3 Synopsys's Fourth Cause of Action for fraud fails for two additional reasons. First,
4 because it knew or should have known about the alleged misappropriation, Synopsys
5 cannot establish that it justifiably relied to its detriment on any of the alleged
6 misrepresentations that form the basis for its fraud claim. *See Chavez v. Citizens for a*
7 *Fair Labor Law*, 84 Cal. App. 3d 77, 80, 148 Cal. Rptr. 278, 280 (1978). Second,
8 Synopsys fails to plead the content, speaker, and time or place of the allegedly actionable
9 statements with the specificity required under Rule 9(b).

10 **II. STATEMENT OF FACTS.**

11 In the FAC, Synopsys alleges an elaborate plot by Magma and van Ginneken to
12 conceal the misappropriation of Synopsys's confidential constant delay techniques
13 purportedly developed by van Ginneken during his employment at Synopsys. Synopsys,
14 however, does not allege a claim for trade secret misappropriation because, as the
15 allegations in the FAC demonstrate, Synopsys was on notice of the alleged
16 misappropriation more than three years prior to filing this action. Instead, Synopsys
17 attempts to plead around the time bar on its trade secret claim by recasting that claim into
18 independent claims for inducement of breach of contract, fraud, conversion, unjust
19 enrichment, and unfair competition. The allegations in the FAC establish that each of
20 these causes of action, like a trade secret misappropriation claim, is time-barred.¹

21 **A. Van Ginneken's Employment Agreement With Synopsys.**

22 From May 1995 through May 1997, Lukas van Ginneken worked for Synopsys.

23 ¹ Rule 12(b)(6) requires both liberal construction of the complaint and that the factual allegations averred therein be
24 taken as true. *Oscar v. University Students Co-operative Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992), *cert. denied*, 506
25 U.S. 1020, 113 S. Ct. 655 (1992). "Nonetheless, conclusory allegations without more are insufficient to defeat a
26 motion to dismiss for failure to state a claim." *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988).
27 In light of this standard, the allegations from the Amended Complaint are assumed true solely for purposes of this
28 motion. Furthermore, the Court must assume that the allegations regarding the veracity of Magma's alleged
statements about van Ginneken and constant delay raise factual issues that are not ripe for adjudication on a motion
to dismiss under Rule 12(b)(6). In bringing this motion, Magma does not waive but expressly preserves its right to
defend against Synopsys's misappropriation claims on the additional grounds that Magma's alleged statements about
constant delay were true and all of the alleged trade secrets were in the public domain as of August 18, 1999.

1 (FAC, ¶¶ 10, 42.) In May 1995, as a condition of his employment with Synopsys, van
2 Ginneken signed a Proprietary Information and Inventions Agreement (the “PIAA”).
3 (FAC, ¶ 11 and Ex. A.) Under the PIAA, van Ginneken agreed, among other things, to
4 keep all “Proprietary Information” of Synopsys confidential and not disclose such
5 information to third parties without Synopsys’s written consent. (FAC, Ex. A at 1.) This
6 Proprietary Information included information and inventions that van Ginneken developed
7 while working for Synopsys. (*Id.*)

8 During his employment with Synopsys, van Ginneken worked on a methodology
9 for creating electronic design automation (“EDA”) products that used the concept of fixed
10 timing, also referred to as “constant delay.” Under the concept of constant delay, the
11 timing delays of a chip design are held constant or fixed in contrast to the approach
12 whereby the timing delay is determined at a later point in the chip design process. (*See*
13 FAC, ¶¶ 22-23.) In connection with this 1996 work, van Ginneken worked on draft patent
14 applications and white papers setting forth various aspects of the constant delay paradigm.
15 (FAC, ¶¶ 35-40.) According to Synopsys, the draft patent applications and white papers
16 were maintained as confidential and never disclosed. (*See id.*)

17 **B. Van Ginneken Joins Magma In May 1997.**

18 In or about May 1997, van Ginneken resigned from Synopsys to join Magma, an
19 EDA company. (FAC, ¶ 42.) On July 23, 1997, Synopsys wrote a letter to Magma
20 stating that under the PIAA, “van Ginneken is required to keep as confidential any and all
21 Proprietary Information” of Synopsys. (FAC, Ex. C at 1.) Synopsys also explained that
22 “Synopsys considers its logic synthesis algorithms, logic optimization algorithms,
23 including constant delay techniques, and placement algorithms as proprietary.” (*Id.*)
24 Synopsys warned Magma that “any failure by Dr. van Ginneken to comply with his
25 obligations under the [PIAA] or general legal principles may result in legal action against
26 both Dr. van Ginneken and Magma” (*Id.* at 2.)

27 On August 18, 1997, Magma’s counsel, Pillsbury Madison & Sutro LLP,
28 responded on behalf of Magma to Synopsys’s July 23 letter (“the Pillsbury Letter”).

1 (FAC, ¶¶ 51-52 and Ex. D.) In that letter, Magma’s counsel stated that the purported
2 trade secrets about which Synopsys had professed concern were not trade secrets at all:

3 As you know, the technical skills possessed by Dr. van Ginneken did not
4 originate during his employment at Synopsys. At the time Dr. van
5 Ginneken commenced employment with Synopsys he possessed
6 considerable experience in the areas of logic synthesis algorithms, logic
7 optimization algorithms and placement algorithms as reflected in Exhibit A
8 to the Synopsys Agreement. Additionally, the alleged trade secrets
9 surrounding constant delay techniques alleged by Synopsys have been
published by several authors as early as 1990. Moreover, a substantial
amount of Dr. van Ginneken’s experience in some of the above areas was
gained by him during his employment at IBM. . . . Dr. van Ginneken will
protect Synopsys’s proprietary information during his employment at
Magma just as he protected IBM’s proprietary information while being
employed at Synopsys.

10 (FAC, Ex. D at 2.)

11 At the time it received the Pillsbury Letter, Synopsys believed that Magma’s
12 statement about Synopsys’s constant delay trade secrets being public was not true:

13 Further, it was not true that the constant delay ideas that Magma and van
14 Ginneken were pursuing were in the public domain; to the contrary,
15 according to van Ginneken’s own representations to Synopsys, the
inventions had been developed at Synopsys and had been contained solely
in confidential Synopsys documents.

16 (FAC, ¶ 110.) Synopsys also claims that, as early as 1996, it possessed internal
17 confidential documents and draft patent applications purportedly establishing that its
18 constant delay techniques were not in the public domain. (*Id.*; *see also* FAC, ¶¶ 35-40.)
19 Despite its alleged concerns and knowledge, Synopsys never responded to the Pillsbury
20 Letter or took any further action to protect its alleged trade secrets or enforce the PIAA
21 prior to filing this action.

22 **C. The PCT Application Is Published In July 1999.**

23 On July 8, 1999, an international patent application was published to the world
24 under the Patent Cooperation Treaty.² (Catalano Decl., Ex. A.) Magma is named as the
25 assignee and van Ginneken is named as the sole inventor on the PCT Application. (*Id.*)

26
27 ² On a motion to dismiss for failure to state a claim, the Court may take judicial notice of matters of public record.
28 *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). *See* Magma’s Request for Judicial Notice
submitted herewith.

1 The PCT Application is based on the United States patent application filed by Magma on
2 April 2, 1998 (“the ‘446 Application”) that resulted in U.S. Patent No. 6,453,446 (“the
3 ‘446 Patent”).³ (*Id.* at 1.) The PCT Application and the ‘446 Application (Catalano Decl.,
4 Ex. B) are substantially identical and share:

- 5 (1) The same inventor (Lukas van Ginneken);
- 6 (2) The same title (“Timing Closure Methodology”);
- 7 (3) The same abstract; and
- 8 (4) Substantially identical specifications and claims.

9 (*Compare* Catalano Decl., Ex. A *with* Ex. B.)

10 **D. Synopsys Investigates And Files This Lawsuit In 2004.**

11 On July 1, 2004, Magma sent Synopsys a letter expressing concern over
12 Synopsys’s plans to implement a gain-based delay model in its Design Compiler product.
13 (FAC, ¶ 76 and Ex. E.) According to Synopsys, this letter “prompted an investigation,
14 which revealed” that inventions in the Magma Patents had been misappropriated from
15 Synopsys, and that “Magma had repeatedly misled Synopsys in order to hide evidence of
16 its wrongful conduct.” (Synopsys’s Motion for Leave to File Amended Complaint, Ex. A
17 at ¶¶ 9, 77; *see also* FAC, ¶¶ 9, 77.)⁴

18 On September 17, 2004, Synopsys filed its original complaint against Magma
19 asserting a single cause of action for alleged infringement of three U.S. Patents: U.S.
20 Patent No. 6,378,114, issued to Synopsys, and the ‘446 and ‘438 Patents, both of which
21 are issued to Magma. Magma answered and counterclaimed on October 21, 2004, and
22

23 ³ Synopsys has asserted a claim for infringement of the ‘446 Patent against Magma and van Ginneken. (FAC,
24 ¶¶ 83-93; Catalano Decl., Ex. C (‘446 Patent).) Synopsys, has asserted a claim for infringement of U.S. Patent
25 No. 6,725,438 (“the ‘438 Patent”) against Magma and van Ginneken. (FAC, ¶¶ 83-93.) Like the ‘446 Patent, the
‘438 Patent was issued to Magma and van Ginneken is named as its sole inventor. (Catalano Decl., Ex. D (‘438
Patent).) The ‘438 Patent is a continuation of the April 2, 1998 application. (*Id.* at 1.)

26 ⁴ In the FAC, Synopsys intentionally deleted allegations about the “triggered” investigation “prompted” by Magma’s
27 letter as contained in the proposed version of the FAC that Synopsys agreed to file under the Court’s March 4, 2005
28 Stipulated Order granting Synopsys leave to file an amended complaint. (*Compare* FAC, ¶¶ 9, 77 *with* Synopsys’s
Motion for Leave to File an Amended Complaint, Ex. A at ¶¶ 9, 77.) After Synopsys filed the FAC, Magma
discovered the change and requested that Synopsys file the version of the FAC that the parties had agreed to under
Court’s Stipulation and Order. (Catalano Decl., ¶¶ 2-4.) Synopsys refused Magma’s request. (*Id.*, ¶ 4.)

1 filed an amended answer and counterclaims on November 24, 2004.

2 On February 14, 2005, Synopsys filed a motion for leave to file an amended
3 complaint. By stipulated order dated March 4, 2005, Magma agreed that it would not
4 oppose the filing of the proposed amended complaint submitted with Synopsys's motion
5 and that it would respond to the amended complaint no later than April 1, 2005. On
6 March 17, 2005, Synopsys filed its FAC.

7 In the FAC, Synopsys adds a defendant (van Ginneken) and six new causes of
8 action: (1) breach of contract (Second Cause of Action against van Ginneken only);
9 (2) inducing breach of contract (Third Cause of Action against Magma only); (3) fraud
10 (Fourth Cause of Action against both defendants); (4) conversion (Fifth Cause of Action
11 against both defendants); (5) unjust enrichment/constructive trust (Sixth Cause of Action
12 against both defendants); and (6) unfair competition under Sections 17200 and 17203 of
13 the California Business and Professions Code (Seventh Cause of Action against both
14 defendants). (*See* FAC, ¶¶ 83-137.) All of the new causes of action alleged by Synopsys
15 against Magma turn on the central allegation that van Ginneken misappropriated
16 Synopsys's confidential information when he joined Magma in May of 1997. (*Id.*, ¶¶ 52-
17 55, 63, 64, 101-103, 108-110, 122, 124, 130, 134, 135.)

18 **III. ARGUMENT.**

19 The applicable statutes of limitations bar the Third, Fourth, Fifth, Sixth, and
20 Seventh Causes of Action against Magma. In addition, the equitable doctrine of laches
21 bars the Sixth Cause of Action for unjust enrichment and/or constructive trust. The Court
22 should also dismiss the Fourth Cause of Action for fraud because it fails to state a claim
23 for relief under Rules 9(b) and 12(b)(6).

24 **A. The Applicable Statutes Of Limitations Bar The Third, Fourth, Fifth,**
25 **Sixth And Seventh Causes Of Action Against Magma.**

26 The five new claims added by Synopsys against Magma in the FAC constitute an
27 improper attempt to revive a time-barred trade secret misappropriation claim. Synopsys's
28 claims for inducing breach of contract, fraud, conversion, unjust enrichment/constructive

1 trust, and unfair competition are all based on the theory that van Ginneken and Magma
2 conspired to misappropriate and conceal the misappropriation of alleged trade secrets
3 relating to Synopsys's constant delay techniques. But the FAC establishes that Synopsys
4 was on both actual and constructive notice of the alleged misappropriation more than four
5 years prior to filing this action. Thus, like a trade secret misappropriation claim, each of
6 Synopsys's new claims accrued more than four years ago and is barred by the applicable
7 statutes of limitations. *See Forcier*, 123 F. Supp. 2d at 526-530 (dismissing breach of
8 contract, fraud, constructive fraud, and unfair competition claims based on trade secret
9 misappropriation where trade secret claim had accrued more than three years prior to
10 filing of the action).

11 “Under California law, a plaintiff is held to ‘discover’ [its] cause of action when
12 [it] ‘suspects or should suspect...that someone has done something wrong to [it].’”
13 *Garamendi v. SDI Vendome S.A.*, 276 F. Supp. 2d 1030, 1038 (C.D. Cal. 2003) (*quoting*
14 *Jolly v. Eli Lilly & Co.*, 44 Cal. 3rd 1103, 1110, 245 Cal. Rptr. 658, 751 P. 2d 923 (1988)).
15 “[A] plaintiff ‘need not know the specific facts necessary to establish the cause of action’
16 in order for [its] claims to accrue.” *Garamendi*, 276 F. Supp. 2d at 1039 (*quoting*
17 *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 398, 981 P. 2d 79, 88, 87 Cal. Rptr. 2d 453, 463
18 (1999)). Rather, a claim accrues when the plaintiff suspects or should suspect it has been
19 injured by defendant's wrongdoing. *Kline v. Turner*, 87 Cal. App. 4th 1369, 1374, 105
20 Cal. Rptr. 2d 699, 702 (2001); *see also Jolly*, 44 Cal. 3d at 1111. “Once the plaintiff has a
21 suspicion of wrongdoing, and therefore an incentive to sue, [it] must decide whether to
22 file suit or sit on [its] rights. So long as a suspicion exists, it is clear that the plaintiff must
23 go find the facts; [it] cannot wait for the facts to find [it].” *Jolly*, 44 Cal. 3d at 1111.

24 A plaintiff who knows or should know of a wrongdoing but fails to take legal
25 action prior to the running of the statute of limitations may not maintain the cause of
26 action. *See, e.g., Kline*, 87 Cal. App. 4th at 1372-74. In *Kline*, the court concluded that a
27 fraud claim asserted in 1999 had accrued in 1990 because plaintiff had sufficient
28 information to pursue legal action at that time but chose not to. *Id.* The court applied the

1 rule that a plaintiff's claim accrues when the plaintiff suspects or should suspect it has
2 been injured by defendant's wrongdoing:

3 The courts interpret discovery in this context to mean not when the plaintiff
4 became aware of the specific wrong alleged, but when the plaintiff
5 suspected or should have suspected that an injury was caused by
6 wrongdoing. The statute of limitations begins to run when the plaintiff has
7 information which would put a reasonable person on inquiry. A plaintiff
need not be aware of the specific facts necessary to establish a claim since
they can be developed in pretrial discovery. Wrong and wrongdoing in this
context are understood in their lay and not legal senses.

8 *Kline*, 87 Cal. App. 4th at 1374. Once on notice, a plaintiff cannot avoid the discovery
9 rule by failing to conduct a reasonable and diligent investigation of the facts. “[W]hen the
10 plaintiff has notice or information of circumstances to put a reasonable person on inquiry,
11 or has the opportunity to obtain knowledge from sources open to [her] investigation (such
12 as public records or corporation books), the statute commences to run.” *Id.* at 1374
13 (*quoting Parsons v. Tickner*, 31 Cal. App. 4th 1513, 1525, 37 Cal. Rptr. 2d 810 (1995)
14 (internal quotation marks omitted)).

15 Each of Synopsys's new claims against Magma accrued more than four years prior
16 to the filing of this action. On July 23, 1997, Synopsys sent Magma a letter asserting that
17 “Synopsys considers its logic synthesis algorithms, logic optimization algorithms,
18 including constant delay techniques, and placement algorithms as proprietary.” (FAC,
19 Ex. C at 1.) In response, Magma responded that “the alleged trade secrets surrounding
20 constant delay techniques alleged by Synopsys have been published by several authors as
21 early as 1990.” (FAC, ¶¶ 50-51 and Ex. D at 2.) Magma's letter unequivocally informed
22 Synopsys that it considered Synopsys's alleged trade secrets relating to constant delay
23 techniques to be in the public domain. (*Id.*)

24 Furthermore, Synopsys pleads that at the time Magma sent the Pillsbury Letter,
25 Synopsys already knew or suspected that Magma's representations about Synopsys's
26 constant delay trade secrets being in the public domain were false:

1 Further, it was not true that the constant delay ideas that Magma and van
2 Ginneken were pursuing were in the public domain; to the contrary,
3 **according to van Ginneken's own representations to Synopsys**, the
inventions had been developed at Synopsys and had been contained solely
in confidential Synopsys documents.

4 (FAC, ¶ 110 (emphasis added).) Indeed, at the time of the Pillsbury Letter, Synopsys
5 reveals in the FAC that it possessed all the information on which it now bases its claim
6 that Magma's statement was not true, including van Ginneken's representations and
7 Synopsys's confidential internal documents and patent applications. (*Id.*; see also *Id.*, ¶¶
8 35-40.)

9 Despite Magma's statement that it considered Synopsys's constant delay
10 techniques to be public and Synopsys's belief to the contrary, Synopsys did not respond or
11 take any further action. Synopsys chose to sit on its hands even though it not only
12 believed that its constant delay techniques were confidential but had prepared its 1996
13 draft patent applications purportedly covering these techniques. As early as August 18,
14 1997, therefore, Synopsys possessed sufficient information to put it on actual notice of the
15 wrongdoing it alleges in the FAC.

16 In *Forcier*, the court rejected a similar attempt by a plaintiff to avoid the discovery
17 rule and revive a stale trade secret claim by pleading independent tort claims sounding in
18 breach of contract, fraud, and unfair competition. See *Forcier*, 123 F. Supp. 2d at 526-
19 530. The defendants allegedly misappropriated and then patented confidential
20 information relating to ink-processing technology obtained from the plaintiff under
21 confidentiality agreements. Plaintiff asserted claims for misappropriation of trade secrets,
22 fraud, constructive fraud, breach of contract, and unfair competition. *Id.* at 524. The
23 court found the trade secret misappropriation claim time-barred because plaintiff asserted
24 it more than three years after he suspected that an alleged misappropriation had occurred.
25 *Id.* at 526. The court also rejected plaintiff's argument that a new period of limitations
26 accrued for each wrongful act alleged in support of plaintiff's independent claims for
27 fraud, constructive fraud, breach of contract, and unfair competition:
28

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

10 *Id.* at 527 (quoting *Intermedics, Inc. v. Ventritex*, 822 F. Supp. 634, 646 (N.D. Cal. 1993));
11 *see also Cadence Design Systems, Inc. v. Avant! Corp.*, 29 Cal. 4th 215, 227, 57 P.3d 647,
12 654, 127 Cal. Rptr. 2d 169, 177 (2002) (misappropriation claim arises only once, when
13 initial misappropriation occurs, subject to discovery rule of CAL. CIV. CODE § 3426.6).
14 Because plaintiff's "claims for fraud, constructive fraud, breach of contract, and unfair
15 competition all arose out of the alleged misappropriation of his alleged trade secrets, . . .
16 the statute of limitations on all five claims began running at the same time." *Forcier*, 123
17 F. Supp. 2d at 527 (emphasis added). Synopsys's pleading tactics are no different from
18 those rejected in *Forcier*.

19 Synopsys was also on constructive notice of Magma's continued use of constant
20 delay techniques as of July 8, 1999, the publication date of Magma's PCT Application.
21 (See Catalano Decl. Ex. A.) Publication of a patent "makes conversion of a trade secret
22 presumptively knowable and thus starts the clock running on the statute of limitation."
23 *Prescott v. Morton Int'l, Inc.*, 769 F. Supp. 404, 406 (D. Mass. 1990) (citing *Wise v.*
24 *Hubbard*, 769 F.2d 1, 2-3 (1st Cir. 1985)). "Patents serve to 'put the world on notice'
25 with respect to what the patentee claims to own; thus, any trade secret in a patent is no
26 longer secret" and the statute of limitations begins to run. *Medtronic Vascular, Inc. v.*
27 *Advanced Cardiovascular Sys., Inc.*, No. Civ. 98-80-SLR, 2005 WL 388592 at * 1, n.4
28 (D. Del. Feb. 2, 2005) (citations omitted). Furthermore, publication of a PCT application,
like a U.S. patent, constitutes constructive notice to a person claiming that the subject
matter of the patent was misappropriated. *See, e.g., Alamar Biosciences, Inc. v. Difco*
Laboratories, Inc., No. Civ. S-941856 DFL PAN, 1995 WL 912345 at * 5 (E.D. Cal.
Oct. 13, 1995) (publication of PCT application put plaintiff on constructive notice of

1 claims arising from trade secret misappropriation where it suspected possible
2 misappropriation and patent search procedure was readily available).

3 The publication of Magma’s PCT Application is no exception. Magma’s PCT
4 Application is nearly identical to the ‘446 Application and contains all the information
5 that Synopsys now alleges was misappropriated by van Ginneken in violation of his
6 PIAA. (*Compare* FAC, ¶¶ 44-47, 103 and Ex. B with Catalano Decl. Ex. A.)
7 Furthermore, like the plaintiff in *Alamar*, Synopsys suspected that van Ginneken and
8 Magma had misappropriated confidential information relating to constant delay as early as
9 1997. (*See* FAC, ¶¶ 50-52, 110, Exs. C, D.) The publication of Magma’s PCT
10 Application on July 8, 1999, therefore, was sufficient by itself to put Synopsys on
11 constructive notice of each and every new claim alleged against Magma in the FAC. *See*
12 *Medtronic Vascular*, 2005 WL 388592 at * 1, n.4; *Alamar*, 1995 WL 912345 at * 5;
13 *Prescott*, 769 F. Supp. at 407; *see also, University Patents, Inc. v. Kligman*, Civ. A. Nos.
14 89-3525, 90-0422, 1991 WL 86399 at * 2 (E.D. Pa. May 16, 1991) (plaintiff’s tort claims
15 were time-barred under the applicable two-year statute of limitations because once the
16 patent issued, “plaintiffs’ duty of diligence clearly arose and the law required them to
17 investigate and discover potential claims relating to the history and exploitation of the
18 patent”); *see also Sontag Chain Stores Co. v. National Nut Co. of California*, 310 U.S.
19 281, 295, 60 S. Ct. 961, 967 (1940) (patents recorded in Patent Office provide
20 “[c]onstrutive notice of their existence ... to all the world”); *Wine Ry. Appliance Co. v.*
21 *Enterprise Ry. Equip. Co.*, 297 U.S. 387, 393, 56 S. Ct. 528, 529 (1936) (“issuance of a
22 patent and recordation in the Patent Office constitutes notice to the world of its
23 existence”).

24 Synopsys’s assertion that “it was only able to uncover this wrongdoing by Magma”
25 after its July “investigation” permitted it to compare its alleged trade secrets with
26 Magma’s patents is contradicted by its own factual allegations in the FAC. (*See* FAC,
27 ¶ 77; Motion for Leave to Amend, Ex. A at ¶ 77.) More than four years prior to the filing
28 of this action, virtually all of the information “revealed” during its July 2004 investigation

1 was available to Synopsys, including that: (1) Magma considered van Ginneken's work
2 and Synopsys's alleged constant delay trade secrets to be in the public domain; (2) van
3 Ginneken allegedly represented to Synopsys that he considered the constant delay
4 techniques to be proprietary trade secrets; (3) Synopsys possessed confidential documents
5 and draft patent applications relating to the constant delay techniques; (4) Synopsys had
6 prepared a patent application relating to the constant delay techniques in 1996; and
7 (5) Magma published a PCT Patent Application to the world naming van Ginneken as the
8 inventor and publicly disclosing Synopsys's allegedly confidential constant delay
9 techniques. Furthermore, the FAC contains references to additional information available
10 to Synopsys between 1998 and 2000 that put Synopsys on further notice of each of the
11 new claims it asserts against Magma.⁵ (*See generally* FAC, ¶¶ 62-71.) Accordingly, the
12 statutes of limitations have run on the Third Cause of Action for inducement of breach of
13 contract (two years, CAL. CIV. PROC. CODE § 339(1)), the Fourth Cause of Action for
14 Fraud (three years, CAL. CIV. PROC. CODE § 338(d)), the Fifth Cause of Action for
15 conversion (three years, CAL. CIV. PROC. CODE § 338(c)), the Sixth Cause of Action for
16 unjust enrichment/constructive trust (three years, *First Nationwide Savings v. Perry*, 11
17 Cal. App. 4th 1657, 1670, 15 Cal. Rptr. 2d 173, 181 (1992) and the Seventh Cause of
18 Action (four years, CAL. BUS. & PROF. CODE § 17208).

19
20
21 _____
22 ⁵ For example, in paragraph 65 of the FAC, Synopsys references public statements by Magma between 1998-2000
23 that its products were developed from concepts that were in the public domain. *See Parrino v. FHP, Inc.*, 146 F.3d
24 699, 706 (9th. Cir. 1998) (on a motion to dismiss, the Court may consider a document, the authenticity of which is
25 not contested, referenced in the plaintiff's complaint). These statements, many of which appeared in newspaper
26 articles, described and diagrammed in detail the constant delay and gain-based synthesis methodology allegedly
27 misappropriated from Synopsys. (*See, e.g.*, Catalano Dec., Ex. E (4/28/99 EE Times Article "Startup's design tool
28 comes with money-back guarantee") and Ex. F (1/17/00 EE Times Article "Magma readies assault in RTL synthesis
arena".) Far from concealing the conceptual foundation of Magma's products, these articles continued to put
Synopsys on actual and constructive notice that Magma considered constant delay and gain-based synthesis
techniques as not proprietary to Synopsys. As one of these articles makes clear, Synopsys did not concern itself with
Magma's use of the fixed timing methodology not because of any concealment by Magma but because Synopsys
believed that a constant delay model did not work and it did not care about Magma's use of that methodology in its
products. (*See id.*, Ex. F (quoting Sanjiv Kaul, Synopsys' VP and general manager of physical synthesis).)

1 **B. The Equitable Doctrine Of Laches Also Bars Synopsys’s Sixth Cause Of**
2 **Action For Unjust Enrichment And/Or Constructive Trust.**

3 Similarly, the doctrine of laches precludes Synopsys from recasting untimely legal
4 claims based on trade secret misappropriation as equitable claims for unjust enrichment
5 and constructive trust.

6 Laches is an appropriate basis to dismiss an untimely unjust enrichment claim
7 under Rule 12(b)(6). *Wylter Summit Partnership v. Turner Broadcasting System, Inc.*,
8 135 F.3d 658, 661 (9th Cir. 1998) (affirming dismissal of unjust enrichment claim based
9 on laches). A party asserting laches must show “(1) that the opposing party lacked
10 diligence in pursuing its claim, and (2) that prejudice resulted from that lack of diligence.”
11 *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1381 (9th
12 Cir. 1998). “[A]ny delay is to be measured from the time that the plaintiff knew or should
13 have known about the potential claim at issue. An indispensable element of lack of
14 diligence is knowledge, or reason to know, of the legal right, assertion of which is
15 delayed.” *Kling*, 225 F.3d at 1036 (citations and internal quotation marks omitted). In
16 measuring the delay, the “fraudulent concealment doctrine ‘does not come into play,
17 whatever the lengths to which a defendant has gone to conceal the wrongs, if the plaintiff
18 is on notice of a potential claim.’” *Snapp & Associates Ins. Services, Inc. v. Malcolm*
19 *Bruce Burlingame Robertson*, 96 Cal. App. 4th 884, 890-91, 117 Cal. Rptr. 2d 331, 335
20 (2002) (quoting *Rita M. v. Roman Catholic Archbishop*, 187 Cal. App. 3d 1453, 1460, 232
21 Cal. Rptr. 685, 690 (1986)).

22 As set forth above, Synopsys was on notice of the alleged basis for its unjust
23 enrichment claim by August 1997 and again in July 1999. Despite having both actual and
24 constructive notice of its alleged claims against Magma, Synopsys chose to sit on its
25 hands. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 955 (9th Cir. 2001) (“unreasonable
26 delay” element of laches established where plaintiff failed to provide sufficient
27 justification for its delay).

28 Synopsys’s delay in filing suit has prejudiced Magma. Magma expressly informed

1 Synopsys in August 1997 that it considered Synopsys’s constant delay techniques to be in
2 the public domain. Synopsys did not respond or indicate that it disagreed with Magma’s
3 position.⁶ Magma relied on its unchallenged position that van Ginneken’s work on
4 constant delay was in the public domain and had no reason to suspect that Synopsys
5 disputed Magma’s position, let alone that Synopsys even cared about protecting its
6 alleged trade secrets regarding constant delay. Magma continued to develop and market
7 its core products.

8 Synopsys now seeks to profit from its seven-year delay by demanding that Magma
9 give it all “profits and royalties resulting from the manufacture, sale, distribution, and
10 marketing of each version of Magma’s products.” (*See* FAC, ¶ 132(b)). The doctrine of
11 laches does not permit a party to recast untimely legal claims in equity and then to profit
12 from its delay. *See, e.g., Danjaq*, 263 F.3d at 956 (finding that laches bars claims and
13 noting that it would be inequitable to permit plaintiff to profit from delay); *see also Hot*
14 *Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 824 (7th Cir. 1999).

15 **C. Synopsys’s Fourth Cause Of Action Fails To State A Claim For Fraud.**

16 Synopsys has failed to allege facts sufficient to state claim for fraud under
17 California law for two additional reasons. First, because it suspected that Magma’s
18 statements regarding constant delay were not true, Synopsys cannot establish the element
19 of justifiable reliance required to plead fraud. Second, Synopsys’s allegations regarding
20 alleged misrepresentations made by Magma in 1998 fail to meet the particularity
21 requirements of Rule 9(b).

22 **1. Synopsys Cannot Establish Justifiable Reliance.**

23 Because Synopsys alleges that it knew or suspected at the time it received the
24 Pillsbury Letter that Magma’s representations about Synopsys’s constant delay techniques
25 were false, Synopsys cannot state a claim for fraud. According to Synopsys, at the time it
26

27 ⁶ As set forth earlier, newspaper articles containing some of the 1998-2000 public statements referenced in the FAC
28 indicate that Synopsys did not pursue its claims against Magma because it had concluded that Magma’s use of the
constant delay methodology did not work. (*See* Catalano Decl., Ex. E.)

1 received the Pillsbury Letter, Synopsys not only suspected that van Ginneken and Magma
2 were in violation of the PIAA, but Synopsys possessed sufficient information, including
3 representations from van Ginneken and internal draft patent applications, to confirm those
4 suspicions. (See FAC, ¶¶ 35-46, 110.) Thus, Synopsys cannot establish that it was
5 justified in relying to its detriment on alleged misrepresentations that it believed were
6 false and for which it allegedly possessed sufficient information to investigate at the time.

7 A plaintiff, who by its own pleading, admits that it knew the defendant's alleged
8 misrepresentations were false at the time cannot state a claim for fraud as a matter of law.
9 See *Chavez*, 84 Cal. App. 3d at 80 (sustaining a demurrer on ground that plaintiffs allege
10 that they knew the misrepresentations were false at the time). Furthermore, to prove fraud
11 a "plaintiff must show not only actual reliance . . . , but justifiable reliance; *i.e.*, that the
12 circumstances were such as to make it reasonable for him to accept the defendant's
13 statements without an independent inquiry or investigation." 5 B.E. Witkin, Summary of
14 California Law, § 714 at p. 812 (9th ed. 1988); see also *Hadland v. NN Investors Life Ins.*
15 *Co.*, 24 Cal. App. 4th 1578, 1589, 30 Cal. Rptr. 2d 88, 95 (1994) (plaintiffs-insureds failed
16 to show justifiable reliance sufficient to support fraud claim because their "reliance on
17 representations [by insurance broker] about what they were getting for their money" that
18 contradicted the insurance policy language "was unjustified as a matter of law").
19 Synopsys cannot establish the detrimental reliance required to state a claim for fraud
20 under California law, where, as here it also alleges that it suspected the representations
21 were not true and possessed sufficient information to investigate the facts at the time.

22 **2. Synopsys Fails To Plead Fraud With Particularity Under**
23 **Rule 9(b).**

24 All of Synopsys's fraud allegations relating to alleged misrepresentations made by
25 Magma at a meeting with Synopsys in 1998 (FAC, ¶¶ 63-64, 111) run afoul of the
26 particularity requirements of Rule 9(b). Synopsys's failure to provide the required
27 specifics of the alleged misrepresentation in 1998 is particularly prejudicial in this case
28 because, as set forth above, Magma informed Synopsys in 1997 of its position regarding

1 constant delay and Synopsys admits that it suspected that Magma’s position was
2 inconsistent with information Synopsys possessed at that time. By failing to describe with
3 particularity the alleged 1998 misrepresentations, Synopsys fails to explain how the
4 alleged misrepresentations in 1998 were material and false and why it was justified in
5 relying on Magma’s alleged statements at that time.

6 Rule 9(b) provides that “[i]n all averments of fraud or mistake, the circumstances
7 constituting fraud or mistake shall be stated with particularity.” FED. R. CIV. P. 9(b). To
8 comply with Rule 9(b), “the pleader must state the time, place, and specific content of the
9 false representations as well as the identities of the parties to the misrepresentation.”
10 *Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.
11 1986) (plaintiff had failed to plead elements of wire and mail fraud with sufficient
12 specificity to satisfy Rule 9(b)). “Averments of fraud must be accompanied by ‘the who,
13 what, when, where and how’ of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*,
14 317 F.3d 1097, 1106 (9th Cir. 2003) (*quoting Cooper v. Pickett*, 137 F.3d 616, 627 (9th
15 Cir. 1997)). “[A] plaintiff must set forth more than the neutral facts necessary to identify
16 the transaction. The plaintiff must set forth what is false or misleading, and why it is
17 false.” *Id.* (*quoting Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.)*, 42 F.3d
18 1541, 1548 (9th Cir. 1994)); *see also Moore v. Kayport Package Express, Inc.*, 885 F.2d
19 531 (9th Cir. 1989) (“mere conclusory allegations of fraud are insufficient” to comply
20 with Rule 9(b)). “When an entire complaint, or an entire claim within a complaint, is
21 grounded in fraud and its allegations fail to satisfy the heightened pleading standard of
22 Rule 9(b), a district court may dismiss the complaint or claim.” *Vess*, 317 F.3d at 1107
23 (affirming dismissal of complaint “grounded in fraud” with prejudice under both Rule
24 9(b) and Rule 12(b)(6) where complaint did not satisfy 9(b)’s particularity requirements).

25 Here Synopsys fails to specify “the who, what, when, where and how” with respect
26 to the alleged 1998 misrepresentations during a meeting between Synopsys and Magma.
27 First, Synopsys has not alleged who attended the meeting. (FAC, ¶¶ 63-64.) *See Ukiah*
28 *Automotive Investments v. Mitsubishi Motors of North America, Inc.*, No. 04-3932 MMC,

1 2005 WL 19450, at * 1 (N.D. Cal. Jan. 3, 2005) (dismissing fraud claim for failure to
2 comply with Rule 9(b) where plaintiff did not “allege the name(s) of the person(s) who
3 made the specific representations set forth in Count I”). Second, Synopsys vaguely states
4 that the meeting occurred “in 1998” but does not say *when* in 1998 it allegedly occurred.
5 (FAC, ¶¶ 63-64.) *See Ukiah*, 2005 WL 19450, at * 1 (dismissing fraud claim for failure to
6 comply with Rule 9(b) where plaintiff did not “allege the time and place of any such
7 representations”). Similarly, Synopsys does not state *where* the meeting allegedly took
8 place. (FAC, ¶¶ 63-64.) *See Ukiah*, 2005 WL 19450, at * 1. Third, Synopsys has not
9 alleged the precise misstatements that the unnamed Magma personnel allegedly made.
10 Instead, Synopsys vaguely alleges that “Magma” stated that “the fixed timing
11 methodology being used at Magma” had been “developed at Magma.” (FAC, ¶ 64.)
12 These allegations are not only too general to provide Magma with notice of precisely what
13 was allegedly said but make it impossible to evaluate whether they are even actionable in
14 light of the representations made in the 1997 Pillsbury Letter. *See Schreiber*, 806 F.2d at
15 1401 (plaintiff must state “specific content of the false representations”).

16 Furthermore, Synopsys has failed to allege specific facts showing why the
17 purported misstatements made after it had already received the Pillsbury Letter in 1997
18 were false. *See Fecht v. Price Co.*, 70 F.3d 1078, 1083 (9th Cir. 1995) (Rule 9(b) requires
19 plaintiff to plead “evidentiary facts” showing why purported misstatement was false when
20 made); *Ukiah*, 2005 WL 19450, at * 1 (same; *citing Fecht* with approval). Synopsys’s
21 conclusory allegation that Magma’s statements were false because “this methodology had
22 been secretly misappropriated from Synopsys by Magma and van Ginneken” cannot
23 satisfy Rule 9(b) under the circumstances of this case. (*See* FAC, ¶ 109.) Again,
24 Synopsys’s conclusory assertion does not explain why the alleged statements in 1998
25 were false and why it relied on those statements in light of the Pillsbury Letter and its
26 alleged suspicions in 1997. And given how vague Synopsys’s allegations are, it is entirely
27 possible that Magma’s alleged statement about Magma’s development of “fixed timing
28 methodology” was limited to “fixed timing methodology” information that was not

1 allegedly taken from Synopsys. This would mean that Magma’s purported misstatement –
2 that its “fixed timing methodology” had been developed at Magma – was true.

3 Synopsys’s fraud allegations relating to the purported 1998 meeting do not comply with
4 Rule 9(b), providing yet another basis on which the Court should dismiss the Fourth
5 Cause of Action for fraud. *Vess*, 317 F.3d at 1107 (fraud allegations not complying with
6 Rule 9(b) are to be disregarded).

7 **IV. CONCLUSION.**

8 Synopsys’s Third, Fourth, Fifth, Sixth and Seventh Causes of Action are barred by
9 the applicable statutes of limitations and the doctrine of laches. Each of these claims is
10 based on the theory that Lukas van Ginneken and Magma misappropriated Synopsys’s
11 constant delay trade secrets. Synopsys knew or should have known of the alleged
12 misappropriation more than four years before filing this action. Because Synopsys’s
13 Third, Fourth, Fifth, Sixth and Seventh Causes of Action all arose out of this same alleged
14 misappropriation, these claims are time-barred. Synopsys’s Fourth Cause of Action also
15 fails for failure to state a claim for fraud. Accordingly, Magma respectfully requests that
16 the Court dismiss these claims with prejudice under Rules 9(b) and 12(b)(6).

17
18 Dated: April 1, 2005

18 GEORGE A. RILEY
19 PETER OBSTLER
20 CHRISTOPHER D. CATALANO
21 LUANN L. SIMMONS
22 O’MELVENY & MYERS LLP

22 By: /s/ George A. Riley
23 George A. Riley
24 Attorneys for Defendant
25 MAGMA DESIGN AUTOMATION, INC.

26 SF1:581770.7