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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 SYNOPSISYS, INC., a Delaware corporation,

13 Plaintiff and Counter-Defendant,

14 v.

15 MAGMA DESIGN AUTOMATION, a Delaware  
corporation, LUKAS VAN GINNEKEN,

16 Defendants and Counter-Claimant.

17  
18 AND RELATED COUNTER-CLAIMS  
19

Case No. C-04-03923 MMC

**PLAINTIFF SYNOPSISYS, INC.'S  
OPPOSITION TO DEFENDANT  
MAGMA DESIGN AUTOMATION,  
INC.'S MOTION TO DISMISS THE  
THIRD, FOURTH, FIFTH, SIXTH  
AND SEVENTH CAUSES OF  
ACTION**

Date: May 20, 2005

Time: 9:00 a.m.

Dept.: 7

Judge: Hon. Maxine M. Chesney

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1 **I. INTRODUCTION.**

2 Magma’s Motion to Dismiss (the “Motion”) utterly fails to apply the proper standard  
3 governing motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). The Motion  
4 simply does not acknowledge, much less address, the specific allegations that Magma committed  
5 fraud in order to conceal the fact or nature of its misconduct. These allegations result in an  
6 estoppel with respect to any applicable statute of limitations as to any claim. The Motion does  
7 not address the impact of the conspiracy allegations which, as the “last overt act” in furtherance  
8 of the conspiracy has not been fully achieved, are independently sufficient to resolve at the  
9 pleading stage the limitations issue in favor of Synopsys. The Motion does not address the fact  
10 that the limitations period has not started to run under the inducing breach of contract claim, as  
11 the conduct by Magma constituting interference with the discrete obligations owed to Synopsys,  
12 is continuing. Though Magma may disagree with these factual assertions, and may have the  
13 right to defend against them at trial, a 12(b)(6) motion is *not* the place for the parties to debate  
14 the merits of the factual allegations in the First Amended Complaint (the “FAC”). Rather, under  
15 Rule 12(b)(6), the factual allegations must be presumed to be true for purposes of the Motion.

16 Magma’s failure to acknowledge this legal standard infects the entire Motion. A perfect  
17 example is Magma’s argument concerning the 1997 letter sent from its counsel to Synopsys (the  
18 “Pillsbury Letter”). Synopsys has alleged in great detail why the Pillsbury Letter contained a  
19 series of knowingly false misrepresentations and that it justifiably relied upon the  
20 misrepresentations therein to its detriment. If these allegations are assumed to be true (as they  
21 must on a Rule 12(b)(6) motion), there is no question that Magma’s fraud equitably estops  
22 Magma from asserting the statute of limitations.<sup>1</sup> The Motion, however, ignores the applicable  
23 legal standard under Rule 12(b)(6), and instead attempts to advance Magma’s *own*  
24 characterization of a portion of the Pillsbury Letter in an attempt to prove that Synopsys acted

25 <sup>1</sup> Indeed, as van Ginneken – the co-founder of Magma -- has admitted in a Declaration (e-  
26 filed in this matter on April 11, 2005) that the statements in the Pillsbury Letter were false  
27 when made (see, ¶ 36 of Exhibit “A” attached hereto [sans exhibits thereto], for which  
28 judicial notice is requested pursuant to Federal Rules of Evidence 201 and Lee v. City of  
Los Angeles 250 F. 3d 668, 688-89 (9<sup>th</sup> Cir. 2001)), Magma’s characterization of the  
Pillsbury Letter do not pass Rule 11 muster.

1 unreasonably in relying upon the statements made therein. Magma’s disputing characterizations  
2 of the Pillsbury Letter are not appropriate on Rule 12(b)(6) motion; rather, this is an issue  
3 reserved for determination by the trier of fact.

4 Similarly, Synopsys alleges in great detail the efforts by Magma to fraudulently conceal  
5 the egregious conduct of its co-founder, Dr. van Ginneken (“van Ginneken”). From 1997 to the  
6 present Magma affirmatively concealed the theft and plagiarism of Synopsys’ inventions.  
7 Though it is clear that the FAC invokes the doctrine of equitable estoppel, the Motion *entirely*  
8 *ignores* this doctrine and the allegations made by Synopsys concerning that subject. The Motion  
9 does not explain why Synopsys’ allegations are deficient under this doctrine, does not  
10 acknowledge the numerous fraudulent statements attributed to Magma and does not cite any case  
11 law applying or discussing the doctrine at all. By failing to acknowledge the equitable estoppel  
12 doctrine, much less explain why it does not apply, Magma fails to address one of the main bases  
13 for why the limitations period did not commence prior to 2004.

14 This case is the ultimate example of a situation in which the limitations period cannot be  
15 asserted on the basis of fraud. Indeed, it is difficult to conceive of a situation in which the  
16 doctrine of equitable estoppel is more clearly applicable. In 1997 Synopsys directly  
17 communicated with Magma about its hiring of van Ginneken, and explicitly asked for assurances  
18 that confidentiality of Synopsys’ information would be preserved. In response, Magma made a  
19 series of knowingly false statements designed to lure Synopsys into believing that Magma would  
20 not use any Synopsys information, and even assured Synopsys that it would remind van  
21 Ginneken to comply with his obligations to Synopsys. As explicitly alleged by Synopsys (and as  
22 van Ginneken has already admitted under oath in this case), these representations to Synopsys  
23 were *knowingly false* and, in fact, at the time Magma made these representations *it had already*  
24 *started the process of secretly exploiting Synopsys confidential information*. Synopsys has  
25 specifically alleged this fraud, and has specifically alleged all of the elements required to invoke  
26 the doctrine of equitable estoppel. Accordingly, the Motion must be denied.

27 The Motion also goes seriously awry by ignoring the vast mass of factual allegations  
28 contained in the FAC that provide a detailed description of the existence of a conspiracy between



1 Magma and van Ginneken, the activities in furtherance thereof (which activities by Magma also  
2 constitutes on-going interference with the contractual obligations of van Ginneken to Synopsys),  
3 and the continuation of these activities through the present. The Motion entirely ignores the  
4 existence of these allegations. As the allegations are assumed to be true under Rule 12(b)(6), for  
5 purposes of this Motion the limitations period have not yet even begun to run.

## 6 **II. SUMMARY OF FACTUAL BACKGROUND.**

### 7 **A. van Ginneken’s Employment at Synopsys and Conception of Inventions.**

8 In 1995 or 1996, van Ginneken (as an employee of Synopsys) conceived of numerous  
9 inventions relating to the application of the concept of “fixed timing” or “constant delay.” FAC,  
10 ¶¶22-34. Though, as Magma itself has alleged, the bare concept of constant delay was contained  
11 in one or more public domain articles published since 1990, van Ginneken’s inventions went far  
12 beyond the bare concept contained in the public domain. Indeed, as Synopsys has alleged, his  
13 inventions applied the concept of constant delay to [“logic synthesis, placement, and/or related  
14 tasks.”] FAC ¶24. In other words, van Ginneken started from the bare concept of constant delay  
15 and used that concept to conceive of and document for Synopsys a large number of valuable  
16 inventions that were extremely useful in the EDA field. FAC ¶¶ 35-40.

### 17 **B. van Ginneken Misappropriates Synopsys Inventions and Conspires With** 18 **Magma.**

19 In 1996 van Ginneken decided to leave Synopsys, seeking to take another position where  
20 he could use the inventions developed at Synopsys (FAC ¶ 41). He met with Magma  
21 representatives and formed a conspiracy with the founders of Magma, both to develop products  
22 using the inventions developed at Synopsys (FAC ¶ 43) for the purpose of using the inventions  
23 as the core technical foundation for Magma’s products. FAC ¶ 44. These conspirators engaged  
24 in extensive copying and plagiarism of the information created at Synopsys in order to obtain  
25 patents on the Synopsys inventions (FAC ¶¶ 46-48, and Exhibit B thereto).

### 26 **C. Magma Provides Numerous Fraudulent Statements to Synopsys to Hide The** 27 **Wrongdoing.**

28 In July of 1997, Synopsys sent a letter to inquire as to whether Magma would ensure that

1 van Ginneken was not using any Synopsys proprietary technology in his work at Magma. FAC ¶  
2 50. Contrary to Magma’s statements in the Motion, the 1997 letter from Synopsys did not make  
3 any “accusations” of trade secret misappropriation against Magma. Rather, Synopsys expressed  
4 certain concerns to Magma about the hiring of van Ginneken, and asked Magma to provide certain  
5 representations in return so that Synopsys need not worry about the misappropriation of Synopsys  
6 proprietary material. *Id.* Unbeknownst to Synopsys, at the time this letter was sent Magma was  
7 *already* in the process of misappropriating Synopsys proprietary information. *Id.* ¶ 51. Indeed,  
8 Magma was *already* in the process of utilizing the very inventions that van Ginneken had  
9 conceived at Synopsys, and was preparing applications to the PTO containing language  
10 plagiarized from Synopsys’ confidential information. *Id.* ¶ 53.

11 Magma knew that its theft would be revealed if it responded honestly to Synopsys’ 1997  
12 letter. Rather than choose the road of honesty, Magma chose the road of fraud and deceit.  
13 Despite the fact that Magma was busy prosecuting a patent application containing the very  
14 inventions stolen from Synopsys, Magma sent the Pillsbury Letter to Synopsys that contained a  
15 series of false misrepresentations. As alleged at ¶¶ 49-56 of the FAC :

- 16 • Magma assured Synopsys that “Dr. van Ginneken intends to honor his obligations  
17 under” his inventions agreement with Synopsys. This allegation was knowingly false.  
18 Indeed, van Ginneken never had any intention to honor his obligations, but instead was  
19 in the process of plagiarizing Synopsys confidential documentation and  
20 misappropriating Synopsys’ inventions.
- 21 • Magma assured Synopsys that it would take “appropriate steps to protect...the trade  
22 secrets of its former employees.” This allegation was knowingly false. Indeed,  
23 Magma never had any intention of taking any steps to protect Synopsys’ confidential  
24 information, but rather had already taken steps to misappropriate information  
25 belonging to Synopsys.
- 26 • Magma assured Synopsys that van Ginneken would “not improperly use or disclose  
27 any confidential information” of Synopsys. This allegation was knowingly false, as  
28 van Ginneken was already in the process of misappropriating Synopsys confidential  
information at the time this representation was made.
- Magma assured Synopsys that “van Ginneken will protect Synopsys’ proprietary  
information during his employment.” This allegation was knowingly false, as  
evidenced by the fact that van Ginneken was already misappropriating Synopsys’  
proprietary information at the time this representation was made.
- Magma likewise falsely assured Synopsys that van Ginneken “will continue to abide  
by the terms” of his promise not to use Synopsys’ proprietary information.

As the above indicates, Synopsys has alleged that the Pillsbury Letter contained at least

1 five different affirmative representations that were knowingly false. Each of these representations  
2 were designed to lull Synopsys into a false sense of security. FAC ¶ 53. However, though each  
3 of these representations were specifically alleged in the FAC to constitute fraud, the Motion does  
4 not address any of the false representations recited above. FAC ¶¶ 49-56.

5 Rather than address the allegations concerning these false representations, Magma instead  
6 focuses on yet another fraudulent representation by Magma buried in a different paragraph in the  
7 Pillsbury Letter. In response to Synopsys' reference to constant delay techniques in its letter, this  
8 sentence in the Pillsbury Letter stated that "Moreover, the alleged trade secrets surrounding  
9 constant delay techniques alleged by Synopsys have been published by several authors as early as  
10 1990." Motion at 4:5-7, 8:19-23. This statement was yet another instance of egregious fraud by  
11 Magma. By making this statement Magma deliberately created the impression that the only  
12 constant delay techniques of which it was aware were in public domain articles relating to the bare  
13 concept of constant delay. FAC ¶ 54. This is the same position recited by Magma as a defense in  
14 its Amended Answer. ¶¶ 83-86 (Magma alleges that "[t]he concept of constant delay has existed  
15 in the public domain since at least 1995" and was based on articles going back to 1991). It is  
16 these public domain articles describing the bare *concept* of constant delay (not the particular  
17 application of constant delay to EDA tools that van Ginneken invented at Synopsys) that Magma  
18 referred to in the Pillsbury Letter. Accordingly, by referring to "constant delay techniques  
19 ...published by several authors as early as 1990," Magma attempted to assuage Synopsys by  
20 deliberately creating the impression that any work it might do in the future concerning constant  
21 delay would be based only on public domain techniques "published . . . as early as 1990" rather  
22 than based on the confidential inventions developed by van Ginneken at Synopsys in 1995-1996.

23 At the time the Pillsbury Letter was sent, however, Magma *knew* its representations  
24 concerning public domain articles were false. FAC ¶¶ 53-56. In reality, Magma's secret  
25 development work was *not* based on public domain techniques that were "published . . . as early  
26 as 1990." Rather, as Synopsys could not possibly have known, Magma's development work was  
27 actually based on Synopsys draft patent applications that had been stolen and plagiarized by van  
28 Ginneken. FAC ¶ 5. Indeed, at the time the Pillsbury Letter was sent, Magma was already in the

1 process of utilizing the particular constant delay inventions that were conceived by van Ginneken  
2 at Synopsys, which had *never* been placed in the public domain. FAC ¶ 54. Yet again, Magma  
3 was falsely leading Synopsys into a false sense of security at the same time that it was secretly  
4 misappropriating Synopsys' inventions.

5 The overriding message that the Pillsbury Letter sent was loud and clear: Magma was not  
6 using any information belonging to Synopsys, and would take additional steps to ensure that  
7 Synopsys confidential information was not misappropriated. FAC ¶¶ 49-56. Over and over again  
8 the Pillsbury Letter assured Synopsys that it had nothing to worry about, and in fact implied that  
9 Synopsys did not even have any justification for raising any concerns in the first place. *Id.* ¶ 52.  
10 In light of the secret activity at Magma that was occurring at the same time this letter was sent, the  
11 Pillsbury Letter is an extraordinarily egregious example of fraud.<sup>2</sup> Magma's attempt to downplay  
12 the fraudulent nature of this situation cannot be squared with the record. *Id.* ¶¶ 49-56.

#### 13 **D. Magma Sends Patent Assertion Letter and Synopsys Discovers the Truth.**

14 On July 1, 2004, after the issuance of the '446 and '438 Patents, Magma sent a letter to  
15 Synopsys "expressing concern over Synopsys' plans to implement a gain-based delay model in  
16 its Design Compiler Product." (Motion at 5:11-12.) In furtherance of Magma's conspiracy and  
17 fraud, Magma's 2004 letter did not mention that these patents contained inventions that had been  
18 misappropriated from Synopsys, or that the content of these two patents had been plagiarized  
19 from Synopsys confidential information. The sending of this letter triggered the events that  
20 resulted in Synopsys discovering the truth and pursuing this suit.

### 21 **III. ARGUMENT.**

#### 22 **A. Motions to Dismiss under Rule 12(b)(6) Are Highly Disfavored.**

23 "[A] complaint should not be dismissed for failure to state a claim unless it appears  
24 beyond doubt that the plaintiff can prove no set of facts in support of his claim which would  
25 entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102 (1957).

26 When considering a motion to dismiss under Rule 12(b)(6), not only must the court treat all facts

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27 <sup>2</sup> Synopsys at this time only claims Magma was using Pillsbury as an instrument to carry out  
28 the fraudulent scheme, but was not a knowing participant thereto. FAC ¶¶ 51-53.

1 alleged in the complaint as true (see Parks Sch. of Bus. v. Symington, 51 F.3d 1480, 1484 (9th  
2 Cir. 1995)), but *all doubts are to be resolved in favor of the nonmoving party*. Keams v. Tempe  
3 Tech. Inst., 39 F.3d 222, 224 (9th Cir. 1994). Moreover, where a complaint is capable of  
4 multiple inferences, the court must adopt that inference which supports a claim. Columbia  
5 Natural Resources, Inc. v. Tatum, 58 F.3d 1101, 1109 (6th Cir. 1995).

6 The policy of viewing motions to dismiss with disfavor is particularly strong with respect  
7 to statutes of limitations issues and the mere fact that the dates alleged in the complaint are  
8 beyond the statutory period is *not* enough to support a Rule 12(b)(6) dismissal, which should be  
9 granted “only if the assertions of the complaint, read with required liberality, *would not permit*  
10 *the plaintiff*” to prove that the statute of limitations does not apply. Cervantes v. City of San  
11 Diego, 5 F.3d 1273, 1275 (9th Cir. 1993) (emphasis added). The Ninth Circuit has also held that  
12 the date when a plaintiff is on “notice” of its claim is generally a question of fact for the jury, and  
13 indeed it is improper to even resolve this issue on summary judgment when there are facts in  
14 dispute. Lundy v. Union Carbide Corp., 695 F.2d 394, 397-398 (9th Cir. 1982). This logic has  
15 been extended to the context of constructive notice as well. Briskin v. Ernst & Ernst, 589 F.2d  
16 1363, 1367-1368 (9th Cir. 1978) (deciding as a matter of law whether or not a reasonably  
17 prudent person would have read articles in a trade journal did not “commend itself to [the court]  
18 as [a principle] that is, or will become, the law of California.”)

19 In the context of equitable estoppel,<sup>3</sup> the Ninth Circuit has stated that it “must reverse [a  
20 granting of a motion to dismiss] if the factual and legal issues are not sufficiently clear to permit  
21 us to determine *with certainty*” that the statute of limitations was applicable. Supermail Cargo,  
22 Inc. v. U.S., 68 F.3d 1204, 1206-1207 (9th Cir. 1995) (emphasis added). “In fact, a complaint  
23 cannot be dismissed unless it appears beyond doubt that that the plaintiff can prove no set of

24 <sup>3</sup> Fraudulent concealment is often treated as a subset, or a part, of equitable estoppel. See  
25 Guerrero v. Gates, 357 F.3d 911, 919 (9th Cir. 2004) (“*Equitable estoppel, also termed*  
26 *fraudulent concealment*, halts the statute of limitations where there is active conduct by  
27 the defendant above and beyond the wrongdoing upon which the plaintiff’s claim is filed,  
28 to prevent the plaintiff from suing in time.”) (emphasis added). Although estoppel may  
result from a defendant’s fraud, misrepresentation, or concealment, “actual fraud in the  
technical sense, bad faith, or an intent to mislead are not essential to create such an  
estoppel.” Industrial Indem. Co. v. Industrial Acc. Commission, 115 Cal.App.2d 684,  
690, 252 P.2d 649, 652-653 (1953).

1 facts that would establish the timeliness of the claim.” Id. at 1207. See also O’Connor v. Boeing  
2 North American, Inc., 311 F.3d 1139, 1151 (9th Cir. 2002) (where more than one inference can  
3 be drawn as to whether plaintiff was aware of the cause of action for limitations purposes,  
4 summary judgment is improper). California courts also hold that resolution of statute of  
5 limitations issues normally involves issues of fact precluding summary judgment. Sylve v.  
6 Riley, 15 Cal.App.4th 23, 26 (1993). In particular, “whether an estoppel exists...is a question of  
7 fact and not of law.” Shaffer v. Debbas, 17 Cal.App.4th 33, 43 (1993).

8 It is well-settled that a motion to dismiss under Rule 12(b)(6) is not the vehicle for  
9 disputing facts or the proper interpretation of facts. But that is precisely what Magma is asking  
10 this court to do on the Motion. Every argument asserted by Magma relies upon *factual*  
11 arguments which, in turn, rely upon Magma’s characterizations of the documents attached to the  
12 FAC. These arguments are not appropriate on a Rule 12(b)(6) motion. All that is relevant at this  
13 stage is whether Synopsys is sufficiently pled facts to support a theory which would avoid any  
14 limitations bar. Synopsys has clearly done so.

15 **B. Magma’s Complete Failure to Address the Theories Invoked by Synopsys In**  
16 **the FAC Requires the Denial of the Motion.**

17 Initially, the most striking thing about the Motion is that it does not acknowledge, much  
18 less address, the theories that Synopsys invokes on the face of the FAC. Synopsys specifically  
19 alleges facts demonstrating that any statutes of limitation either have not run, or cannot be  
20 asserted as a defense. Apart from the fraudulent misrepresentations and concealment as  
21 described therein, Synopsys specifically alleges facts demonstrating that a conspiracy was  
22 formed which thereby prevented any limitations period from beginning to run until the last overt  
23 act in furtherance of the conspiracy. Synopsys’ reliance on these theories is clear from the face  
24 of the FAC. Having failed to address the doctrines of equitable estoppel, fraudulent  
25 concealment, conspiracy and continuing inducement, Magma has not met its burden of  
26 persuasion on this Motion (and cannot satisfy that obligation by addressing these theories for the  
27 first time in its reply). In short, since the Motion does not even attempt to address the very  
28 doctrines on which the FAC clearly relies, the Motion should be denied.

1                   **1.     Synopsis Has Adequately Pled Facts Which Would Estop Magma**  
2                   **From Asserting a Statute of Limitations Defense And Has Alleged**  
3                   **the Precise Type of Diligence Contemplated by the Case Law.**

4                   Under the doctrine of equitable estoppel, when a defendant has fraudulently concealed  
5                   the facts on which a cause of action depends, the defendant is estopped from asserting the statute  
6                   of limitations as a defense. El Pollo Loco v. Hashim, 316 F.3d 1032, 1041 (9th Cir. 2003)  
7                   (applying California law). A case directly on point, legally and factually, is Callaway Golf Co.  
8                   v. Dunlop Slazenger Group Americas, Inc., 318 F.Supp.2d 222 (D.Del. 2004) (applying  
9                   California law). Similar to the facts in this action, Dunlop claimed that Callaway had obtained a  
10                  patent on technology developed by its former employees who had left Dunlop to join Callaway.  
11                  After these employees had resigned from Dunlop, Dunlop sent a letter to Callaway in June 1997  
12                  stating that “any emergence in the marketplace of a [golf ball] similar to the [ball] developed by  
13                  Dunlop would certainly be an act which would warrant litigation by Dunlop...” Id. at 223.  
14                  Dunlop also sought assurances that Callaway would not utilize “Dunlop’s proprietary  
15                  information in the development of the [golf] ball.” Id. Callaway responded that “it could not  
16                  ‘confirm that any information obtained by [the former employee was] ‘proprietary’ or otherwise  
17                  qualifies as a trade secret.” Id. at 223-22. *Callaway also assured Dunlop that it would not*  
18                  *utilize Dunlop’s proprietary information.* Id. at 224.

19                  In Oct. 2001, Callaway asserted the patent (which was based on technology stolen from  
20                  Dunlop), by suing Dunlop. Dunlop counterclaimed for, *inter alia*, trade secret misappropriation,  
21                  conversion, and patent title. Id. Callaway tried to assert that the letter from Dunlop to Callaway  
22                  constituted actual notice of the misappropriation in 1997. Id. at 224-225. The court did more  
23                  than disagree. Commenting that, *at most*, the letter in 1997 suggested that Dunlop “was aware of  
24                  the possibility that Callaway *might misappropriate* its trade secrets in the future, but it [did] not  
25                  suggest, as Callaway asserts, that Dunlop discovered or should have discovered that [the former  
26                  employee] had misappropriated its trade secrets, and thus triggered the running of the statute of  
27                  limitations.” Id. at 225. Moreover, the court found that the assurances that Callaway gave  
28                  Dunlop that it would respect the proprietary rights of others gave “Dunlop *the assurances it*  
                    *needed to refrain from litigation.*” Id. at 225 (emphasis added). The comment by Calloway that

1 it could not confirm that any information obtained by Dunlop’s former employee was proprietary  
2 or otherwise “qualif[ied] as a trade secret” was deemed by the court to be irrelevant. Id.

3 The cases cited by Magma do not help its position, as they point *precisely* to the kind of  
4 inquiry Synopsys conducted in 1997 as being sufficient to estop defendants from asserting the  
5 statute of limitations as a defense. Alamar Biosciences, Inc. v. Difco Laboratories, Inc., 1995  
6 WL 912345, \*5 (E.D.Cal., Oct. 13, 1995), which Magma cites for the proposition that a PCT  
7 application constitutes constructive notice of trade secret misappropriation, specifically  
8 distinguishes the proposition Magma advances by noting that a “reasonably diligent” plaintiff  
9 would have asked the defendant if it had been using its technology and concluded that the statute  
10 of limitation was not tolled because, in part, “[plaintiff] did not have its attorneys, or any other  
11 [of its] personnel, contact [defendant] and ask whether [defendant] was using its [technology.]”  
12 The court noted that the plaintiff, in order to show that it had taken reasonable steps to protect its  
13 trade secrets, could have filed suit or “even approach[ed] and warn[ed] [defendant].” *Id.* at \*6.  
14 Similarly, the court in Wise v. Hubbard, 769 F.2d 1, 2-3 (1st Cir. 1985), cited by Magma, noted  
15 that “*if plaintiff had inquired of [defendant] what he had done with the [technology] and*  
16 *[defendant] had said ‘nothing’ or words to that effect, this might have constituted an act of*  
17 *positive concealment. But there was no inquiry.*” (emphasis added). Unlike plaintiffs in Alamar  
18 and Wise, Synopsys did in fact approach Magma in 1997 – and Magma assured Synopsys no less  
19 than five times that Synopsys proprietary information would not be appropriated.

20 Synopsys clearly alleged Magma’s representations in the Pillsbury Letter were known by  
21 Magma at the time to be false. FAC ¶53. Specifically, Synopsys alleges that at the time it made  
22 its inquiry of Magma, Magma had already misappropriated Synopsys confidential information  
23 and had already begun to develop its products and patent applications based on that stolen  
24 property. Id. Further, as pointed out above, the sentence in the Pillsbury Letter regarding  
25 constant delay technology having been published by authors in the early 1990s was also intended  
26 to – and did -- mislead Synopsys. Id. ¶54. When it made these representations Magma had  
27 information and documents in its possession that show that they were false. Id. ¶55. Synopsys  
28 has clearly alleged facts sufficient to defeat this Motion, and which (at minimum) create a



1 question of fact whether Magma is estopped from asserting the statute of limitations as a defense.

2 Magma's relies heavily on Forcier v. Microsoft Corp., 123 F.Supp.2d 520, 526-530  
3 (N.D.Cal. 2000), to argue that Synopsys decided not to assert a trade secret cause of action in  
4 order to "avoid the discovery rule" and that the court in Forcier rejected a similar attempt.  
5 (Motion at 9:16-28). But this is contrary to the allegations in the FAC, and Magma's scheme  
6 was much more than "mere" misappropriation and use of trade secrets. The object of the  
7 conspiracy as alleged by Synopsys was to obtain the information for use as the core technical  
8 foundation for Magma's products (FAC, ¶ 44) and the last overt acts in furtherance of this  
9 conspiracy is the issuance to Magma of patents based on these inventions. FAC, ¶¶ 46, 56, 72-  
10 74. Patent protection for the core technical foundation of Magma's products, of course, did not  
11 exist until the patents issue.

12 Even if Synopsys had asserted a trade secret misappropriation claim, Magma would still  
13 be estopped from asserting the statute of limitations defense for that claim because of its  
14 concealment of material facts. The California Supreme Court's enunciation that a claim for trade  
15 secret misappropriation arises only once, when the initial misappropriation occurs (Cadence  
16 Design Systems, Inc. v. Avant! Corp., 29 Cal.4th 215, 227 (2002)), did not abrogate the rule that  
17 the fraudulent concealment doctrine applies to "all cases." Regents of the Univ. of Cal. v.  
18 Superior Court (Molloy), 20 Cal.4th 509, 533 (1999) (emphasis added). Indeed, the Callaway  
19 Golf court cited Cadence immediately prior to its conclusion that a competitor's assurances that  
20 it would not use a competitor's technology constituted the "assurances [that competitor] needed  
21 to refrain from litigation." Callaway Golf, supra, 318 F.Supp.2d at 225 (emphasis added).  
22 Additionally, there was no fraudulent concealment alleged by the plaintiff in Forcier. Instead, he  
23 argued that the only reason he had not filed suit within the statute of limitations period was that  
24 he had erroneously believed that the defendant had gone out of business. 123 F.Supp.2d at 526.  
25 Synopsys alleges in the FAC that Magma concealed its theft by affirmatively representing to  
26 Synopsys that Magma would respect Synopsys trade secrets and technology and would only use  
27 the technology surrounding constant delay that was in the public domain. FAC, ¶¶ 49-56.

28 ///

1                   **2. Constructive Notice Is Not Sufficient to Bar Synopsys' Claims.**

2                   Magma's assertion that the 1999 PCT application which matured into the '446 Patent  
3 constituted constructive notice has to be considered in the context of Magma's affirmative  
4 misrepresentations. Magma is not allowed to 1) affirmatively represent to Synopsys that  
5 everything van Ginneken would use was either going to be developed at Magma or was already  
6 in the public domain, and then; 2) assert that its foreign patent applications is where Synopsys  
7 should have been looking all along for evidence of the theft of its property. This principle was  
8 articulated by the California Supreme Court over sixty years ago: "The fact that an investigation  
9 would have revealed the falsity of the representation will not alone bar [a victim of fraudulent  
10 concealment's] recovery...and it is well established that he is not held to constructive notice of a  
11 public record which would reveal the true facts." Seeger v. Odell, 18 Cal.2d 409, 415 (1941)  
12 (citing Restatement of Torts, §540 (1938)). See also Hewitt v. Klages, 92 Cal.App.596, 598  
13 (1928) (fact that plaintiff could have discovered that a property was burdened by lien by  
14 checking public record would not bar a fraud action). Magma's constructive notice argument is  
15 even more explicitly negated by Garamendi v. SDI Vendome, SA, 276 F.Supp.2d 1030, 1038  
16 (E.D.Cal. 2003), cited by Magma for the proposition that a plaintiff is held to discover its cause  
17 of action when it suspects or should suspect that someone has done something wrong to it.  
18 Motion at 7:11-14. However, the opinion states explicitly that "constructive notice" is not  
19 enough to start a statute of limitations running if there was intentional concealment:

20                   When intentional concealment tolls a statute of limitations, something closer to  
21 actual notice than mere inquiry notice is required to end the tolling period...[I]f a  
22 plaintiff suspects that she has been wronged but does not know the specific facts  
23 that constitute the wrong, the statute may be tolled until she learns of those facts if  
24 the defendant takes steps to conceal them. Again, this is true even if the plaintiff  
25 is already on inquiry notice as to her claim. Although few courts have considered  
26 in detail the difference between "inquiry notice" and the near-actual type of notice  
27 sufficient to end a period of equitable tolling, the D.C. Circuit Court of Appeals  
28 offered the following explanation: By "notice", we refer to an awareness of  
sufficient facts to identify a particular cause of action, be it a tort, a constitutional  
violation or a claim of fraud. We do not mean the kind of notice – based on hints,  
suspicions, hunches or rumors – that requires a plaintiff to make inquiries in the  
exercise of due diligence, but not to file suit.(internal citations and quotation  
marks omitted).<sup>4</sup>

<sup>4</sup> The court noted that although no California court has explicitly adopted this formulation, the  
D.C. Circuit Court of Appeals case standing for this proposition, Hobson v. Wilson, 737 F.2d

1           Although the court in Garamendi ultimately found that the plaintiff had actual notice of  
2 the claims within the statute of limitations period (276 F.Supp.2d at 1043) this formulation of the  
3 discovery rule in the context of the concealment of the cause of action itself has also recently  
4 been re-affirmed by the California court of appeals. In Weatherly v. Universal Music Publishing  
5 Group, 125 Cal.App.4th 913, 919-920 (2004), the court, in interpreting a recent Ninth Circuit  
6 case, El Pollo Loco, Inc. v. Hashim, 316 F.3d 1032, 1039 (9th Cir. 2003), held that a defendant  
7 who had lied to a plaintiff in telling him that he had been receiving his full payments under an  
8 agreement was estopped from taking advantage of that misrepresentation in invoking the statute  
9 of limitations as a defense: “*The recipient of a fraudulent misrepresentation of fact is justified in*  
10 *relying on its truth, although he might have ascertained the falsity of the representation of the*  
11 *representation had he undertaken an investigation.*” Weatherly, 125 Cal.App.4th at 919  
12 (quoting Storage Services v. Oosterbaan, 214 Cal.App.3d 498, 508 (1989)).<sup>5</sup> (emphasis added).

13           This line of authority makes it clear that Magma is estopped from relying on a theory of  
14 “constructive notice” to hold Synopsys responsible for information it *could* have found out in  
15 1999 if it had been checking international patent applications given the factual allegation that it  
16 previously represented to Synopsys that it was ensuring that van Ginneken was not from stealing  
17 Synopsys technology and misled Synopsys into believing that the constant delay technology  
18 Magma would use would be in the public domain.

19                           **3. Even if Constructive Notice Were Sufficient, Such Notice is a Question**  
20                           **of Fact Inappropriate For Determination On a Motion to Dismiss.**

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21           1, 25 (D.C.Cir. 1984), *overruled on other grounds*, Leatherman v. Tarrant County Narcotics  
22 Intelligence & Coordination Unit, 507 U.S. 163, 113 S.Ct. 1160 (1993), has been cited  
23 approvingly by the California court of appeals (see Rita M. v. Roman Catholic Archbishop of  
24 Los Angeles, 187 Cal.App.3d 1453, 1460 (1986)) and is consistent with California Supreme  
25 Court precedent (see Berson v. Browning-Ferris Industries of California, Inc., 7 Cal.4<sup>th</sup> 926,  
931, (1994) (fraudulent concealment toll the statute of limitation until plaintiff discovers his  
“claim”) and Pashley v. Pacific Electric Co. 25 Cal.2d 226, 229 (1944) (“[W]hen the  
defendant is guilty of fraudulent concealment...the statute is deemed not to become operative  
until the aggrieved party discovers the existence of the cause of action”).

26           <sup>5</sup> Although language in some California cases implies that inquiry notice is enough to start the  
27 statute of limitations running again after there has been a fraudulent concealment, these cases  
28 did not, as recognized in Garamendi, consider “in detail” the question of what kind of notice is  
required to re-start the statute of limitations after a misrepresentation. 276 F.Supp.2d at 1043.

1           Apart from whether constructive notice is sufficient in the face of fraudulent concealment  
2 of a cause of action, the question of when a plaintiff is on “notice” is a question of fact that is  
3 inappropriate for determination on a Rule 12(b)(6) motion. In re Weisman, 5 F.3d 417, 421 (9th  
4 Cir. 1993) (“Whether the circumstances are sufficient to require inquiry as to another’s interest  
5 in property for the purposes of [California’s general constructive notice statute] is a question of  
6 fact, even where there is no dispute over the historical facts.”) See also In re Probasco, 839 F.2d  
7 1352, 1355 (9th Cir. 1988) (“Whether the circumstances are sufficient to put one on inquiry of  
8 another’s interest in property is a question of fact.”) This is why Magma cites cases that do not  
9 involve strict motion to dismiss analysis in support of its contention that the PCT Application  
10 constituted constructive notice to Synopsys. see, Motion at 10:15-28; 11:1-23. See Prescott v.  
11 Morton Int’l, Inc., 769 F.Supp. 404, 406 (D.Mass. 1990) (summary judgment), Medtronic  
12 Vascular, Inc. v. Advanced Cardiovascular Sys., Inc., 2005 WL 388592 at \*2, n.4 (D.Del., Feb.  
13 2, 2005) (considered “evidence in record”), Alamar Biosciences, Inc. v. Difco Laboratories, Inc.,  
14 1995 WL 912345 at \*5 (E.D.Cal., Oct. 13, 1995) (summary judgment), University Patents, Inc.  
15 v. Kligman, 1991 WL 86399 at \*2 (E.D.Pa., May 16, 1991) (summary judgment). (Wise v.  
16 Hubbard, 769 F.2d 1, 2-3 (1st Cir. 1985) was a motion to dismiss converted into a summary  
17 judgment only because there were no material issues of disputed fact.) Indeed, the discussion in  
18 the case most heavily relied upon by Magma, the Alamar decision, makes clear that the question  
19 of what constitutes constructive notice is usually a fact-intensive inquiry. Indeed, only after an  
20 examination of the facts surrounding the PCT Application in that action – and only after  
21 concluding that the facts indicated that a “reasonable plaintiff” in “these circumstances” would  
22 have checked the available patent applications, did the court in Alamar conclude the plaintiff had  
23 constructive knowledge of the patent. Alamar, 1995 WL 912345 at \*5.<sup>6</sup> Moreover, the  
24 conclusions or inferences Magma asks the court draw from the PCT Application in this action  
25 are not subject to judicial notice because they are fact issues inappropriate on a motion to

26 <sup>6</sup> For the reasons stated in this Section and in Section 2 above, Magma’s attempt to turn  
27 Synopsys’ allegations that Magma publicly represented its technology was “entirely  
28 developed from scratch” (FAC ¶65) (Motion at 12:21-28) into an admission that Synopsys  
knew that Magma was taking Synopsys technology is also unwarranted and improper.

1 dismiss: “As a general rule, a court may not take judicial notice of proceedings or records in  
2 another cause so as to supply, without formal introduction of evidence, facts essential to support  
3 a contention in a cause then before it.” M/V American Queen v. San Diego Marine Constr. Co.,  
4 708 F.2d 1483, 1491 (9th Cir. 1983).

5 **4. The PCT Application Is Irrelevant With Regard to the ‘438 Patent.**

6 Magma does not explain how the PCT Application could constitute constructive notice to  
7 Synopsys of the pendency of the ‘438 Patent. Magma only claims that the PCT Application  
8 “resulted in the [446 Patent and that] [t]he PCT Application and the ‘446 Application are  
9 substantially identical...” Motion at 5:1-4. It is not the law that the PCT Application “was  
10 sufficient by itself to put Synopsys on constructive notice of each and every new claim alleged  
11 against Magma in the FAC” (Motion at 11:9-12) insofar as those claims relate to the ‘438 Patent.

12 This point was addressed in Stark v. Advanced Magnetics, Inc., 29 F.3d 1570, 1575-1577  
13 (Fed.Cir. 1994). The plaintiff sued a corporation where he had formerly worked, requesting  
14 correction of inventorship for six patents assigned to the corporation, and suing the corporation  
15 for conversion, trade secret misappropriation, negligent misrepresentation and misrepresentation.  
16 The district court granted summary judgment to the defendant based on the fact that the *first*  
17 issued patent had been mentioned, along with the corporation’s collaboration with the plaintiff,  
18 in an annual report received by the plaintiff in 1989. Id. at 1572. Accepting the defendant’s  
19 arguments that all of the patents involved related technology, summary judgment was granted as  
20 to *all six* based on the fact that the plaintiff knew or should have known of the first patent. The  
21 Federal Circuit found this to be reversible error. While noting defendant’s claim that all of the  
22 six patents at issue “relate to the same invention,” the court took judicial notice that:

23 [M]ultiple patents are not permitted on the same invention, and that there must be  
24 differences between the six patents. And since patent applications are secret,  
25 knowledge by [plaintiff] of the pendency of the additional patents can not be  
26 presumed. We have been directed to nothing in the record to establish as an  
27 undisputed fact that [plaintiff] knew that additional patent applications were  
28 pending. We see no reason to depart from the general rule that each patent is a  
separate chose in action. *Thus it was incorrect to hold that correction of the five  
subsequently issued patents was barred, upon the court’s finding of lack of  
diligence as to the first.* We draw an analogy to the law of laches, where the  
general rule is that the laches period does not accrue until each patent issues, even

1 if the patents are interrelated. (Id. at 1576 (emphasis added, citation omitted)).<sup>7</sup>

2 **C. The Applicable Statutes of Limitation On Any Of The Asserted Claims Did**  
3 **Not Accrue Until the Last Overt Act in the Conspiracy Between van**  
4  **Ginneken and Magma to Patent Technology Stolen from Synopsys.**

5 Although Magma attempts to paint Synopsys' claims against Magma as a run-of-the-mill  
6 trade secret misappropriation suit, even a cursory review of the FAC makes clear that much more  
7 is involved here. The conspiracy between van Ginneken and others at Magma was not simply to  
8 misappropriate Synopsys technology. As made clear in the FAC, this conspiracy had at its *end*  
9 *object* the patenting of technology that belonged to Synopsys. This conspiracy began before van  
10 Ginneken even left Synopsys. The conspiracy was not just "trade secret misappropriation" but  
11 involved Magma literally plagiarizing a confidential Synopsys patent application, submitting its  
12 own applications based upon that plagiarism to the PTO, and then threatening Synopsys with  
13 patents issued in 2002 and 2004 on those applications. (FAC ¶¶ 43,46,73,76 Exh. B). Even now  
14 Magma has not yet achieved the end goal of the conspiracy as it continues to prosecute  
15 applications containing inventions misappropriated from Synopsys. (FAC ¶ 104). Given that  
16 Magma is still pursuing additional patents on Synopsys technology, it now ill suits Magma to  
17 assert a statute of limitations defense.

18 "A civil conspiracy generally requires three elements: (1) formation of the conspiracy (an  
19 agreement to commit wrongful acts); (2) operation of a conspiracy (commission of the wrongful  
20 acts); (3) damages resulting from operation of the conspiracy." People v. Beaumont Investment,  
21 Ltd., 111 Cal.App.4th 102, 137-138 (2003). It is well settled that where the plaintiff alleges a  
22 conspiracy, it is the *last overt act* which triggers the statute of limitation. Id. ("each month's  
23 collection of excess rent constitutes an overt act in furtherance of that conspiracy.") "Where a  
24 civil conspiracy is alleged and proved, the statute of limitations does not begin to run until the  
25 last over act pursuant to the conspiracy has been completed... So long as a person continues to  
26 commit harmful acts in furtherance of a conspiracy to harm another, he can neither claim unfair

27 <sup>7</sup> Stark also stands for the propositions that 1) a fraudulent concealment may toll the statute of  
28 limitations; 2) whether a belief in a misrepresentation was reasonable is a question of fact,  
and 3) that state causes of action surrounding later-issued patents "facially" avoid the period  
of the statute of limitation. 29 F.3d at 1576-1578.

1 prejudice at the filing of a claim against him nor disturbance of any justifiable repose upon the  
2 passage of time.” Wyatt v. Union Mortgage Co., 24 Cal.3d 773, 786 (1979). Moreover, the last  
3 over act doctrine is independent from the fraudulent concealment doctrine. See Maheu v. CBS,  
4 Inc., 201 Cal.App.3d 662, 673-674 (1988) (“Normally, the statute commences to run from the  
5 date of conversion, even though the injured person is ignorant of his or her rights, excepts where  
6 there was a fraudulent concealment ...Appellant has not alleged such concealment...However,  
7 while the conspiracy exists, the statute of limitations does not begin to run until the cessation of  
8 the wrongful acts commenced in furtherance of the conspiracy.”).

9 Magma cannot prevail by claiming that it and van Ginneken are legally incapable of  
10 conspiring because van Ginneken was a Magma employee during a portion of the time frame  
11 covered by the conspiracy. The benefit of the “agent’s immunity rule” only applies if the agents  
12 or employees are acting in their official capacity on behalf of the corporation and not as  
13 individuals for their own individual advantage or beyond the scope of their authority. Applied  
14 Equipment Corp. v. Litton Saudi Arabia, Ltd., 7 Cal.4th 503, 512, n.4 (1994). As alleged in the  
15 FAC, the conspiracy between van Ginneken and the other founders of Magma started before van  
16 Ginneken even resigned from Synopsys and continues through the present. see FAC ¶¶ 43, 104.  
17 Thus, the agent’s immunity rule would not apply. These allegations – that van Ginneken had  
18 conspired with the founders of Magma even before his employment there began – also make  
19 clear that van Ginneken (and Rajeev Madhavan) were acting in their own individual interests at  
20 the inception of the conspiracy. See Doctors Co. v. Superior Court (Valencia), 49 Cal.3d 39, 46-  
21 47 (1989) (where attorneys, acting as agents for principals, had a personal interest apart from  
22 their clients’ in furthering the conspiracy, agent’s immunity did not apply); Black v. Bank of  
23 America, N.T. & S.A., 30 Cal.App.4th 1, 5-6, n.3, (1994) (affirming dismissal of conspiracy-  
24 based claims against a single company and its employees because plaintiff had alleged that  
25 employees were working in the “course and scope” of their employment, but noting that  
26 exception could apply). Where a plaintiff can allege that agents of a corporation were acting  
27 outside the scope of their duties or for their own benefit, the agent’s immunity rule would not  
28 apply. Accuimage Diagnostics Corp. v. Terarecon, Inc., 260 F.Supp.2d 941, 947-948 (N.D.Cal.

1 2003). Nor should the personal benefit to van Ginneken from being *publicly* named on a patent  
2 as the inventor of a novel technology be lightly brushed aside.

3 The agent's immunity rule also does not apply where corporate officers "directly order[],  
4 authorize[], or participate[] in the tortious conduct...Personal liability, if otherwise justified, may  
5 rest upon a 'conspiracy' among the officers and directors to injure third parties through the  
6 corporation." Wyatt v. Union Mortgage, supra, 24 Cal.3d at 785. Synopsys has alleged that both  
7 van Ginneken and Madhavan directly participated in the conspiracy to steal Synopsys property  
8 and to represent to the world that it was originally developed by Magma. FAC, ¶¶43, 44, 71.

9 The statute of limitations period is fixed by reference to the limitations period for the kind  
10 of wrong that is alleged to be the *object* of the conspiracy. Maheu v. CBS, Inc., supra, 201  
11 Cal.App.3d at 673. Thus, it is necessary to examine the nature and scope of the particular  
12 conspiracy. Livett v. F.C. Financial Assoc., 124 Cal.App.3d 413, 418, 421 (1981). As discussed  
13 above, it is clear from the allegations in the FAC that the object of the conspiracy was not simply  
14 to misappropriate trade secrets, or plagiarize from the Synopsys technology -- and then to retire to  
15 live quietly with its theft. Instead, as alleged Magma intended to go further and it did: as a result  
16 of the conspiracy between van Ginneken, Rajeev Madhavan, and other founders at Magma, the  
17 object was to obtain patents based on the plagiarized information -- an object that was partially  
18 realized in 2002 and 2004 and that is still being pursued today. FAC ¶¶ 43, 46, 104. Courts have  
19 rejected statute of limitations defenses in similar situations where "[i]t was [defendants'] own  
20 conduct that kept the cause of action against them alive. Therefore, no considerations of justice or  
21 equity require us to overrule the consistent line of cases that has applied the 'last over act'  
22 doctrine to civil conspiracies." Wyatt v. Union Mortgage Co., supra, 24 Cal.3d at 787.

23 It is this continued "upping the ante" behavior on the part of Magma that also prohibits it  
24 from credibly claiming that this suit is just another trade secrets claim. In Intermedics, Inc. v.  
25 Ventritex, 822 F.Supp. 634, 648-650 (N.D.Cal. 1993), the court held that a plaintiff's trade secret  
26 misappropriation claim was barred by the statute of limitations. The court noted that because  
27 trade secret misappropriation was not a continuing tort, a conspiracy claim could not stretch out  
28 the statute of limitations period where the last overt act alleged by the plaintiffs occurred long



1 after the conspiracy to misappropriate trade secrets was largely achieved. *Id.* The court  
2 specifically relied, however, on the fact that the plaintiff asserted “that the object of the alleged  
3 conspiracy was to misappropriate trade secrets or confidential information...” *Id.* at 648. The  
4 court also noted that the “goal of the alleged conspiracy already had been *largely* achieved”  
5 during the limitations period. *Id.* at 648-649. (emphasis in original). In this case, as pointed out  
6 above, the *goal* of the conspiracy was not quite simply to steal trade secrets, confidential  
7 information, or other intellectual property, nor was that goal *largely achieved* at a time which  
8 would bar any of Synopsys’ claims against Magma.

9 The issuance of the U.S. Patent No. 6,453,446 (the “446 Patent”) which, as Synopsys  
10 has shown, contains large amounts of plagiarized content, occurred in 2002. Similarly, U.S.  
11 Patent No. 6,725,438 (the “438 Patent”) issued in 2004. FAC, ¶¶19, 73. Indeed, Magma  
12 continues at this very moment furthering the object of this conspiracy by pursuing what  
13 apparently is yet another patent containing Synopsys’ technology. *Id.* ¶104. See Beaumont,  
14 *supra*, 111 Cal.App.4th at 138 (where unlawful rent were still being collected through the time of  
15 trial, the statute of limitations had not run). Magma cannot assert the defense of the statute of  
16 limitations while continuing to seek the very goals of the original conspiracy.

17 **D. The Statute of Limitations On Synopsys’ Claims for Inducing Breach of**  
18 **Contract Has Not Run As The Wrongful Conduct Is Continuing.**

19 A claim for inducing breach of contract is based on the existence of a valid contract, a  
20 defendant who had knowledge thereof and intended to induce a breach, that the contract was in  
21 fact breach resulting in injury to plaintiff and the breach and resulting injury must have been  
22 proximately caused by defendant’s unjustified or wrongful conduct. Freed v. Manchester Service,  
23 165 Cal.App.2d 186, 189 (1958). Where a contract provides for a continuing set of duties, the  
24 statute of limitations for breach of contract arises whenever a new obligation is breached.  
25 Peterson v. Highland Music Co., 140 F.3d 1313, 1321 (9th Cir. 1998) (even though contract had  
26 been breached for thirty years, statute of limitation arose anew with later breaches). See also  
27 Cutujian v. Benedict Hills Estate Corp., 41 Cal.App.4<sup>th</sup> 1379, 1386-1387 (1996) (where a contract  
28 provides for an affirmative obligation but does not specify the time for performance, a cause of

1 action for breach occurs only after demand for performance is made and rejected.) California law  
2 also is clear that where (as here; FAC ¶ 104) a conspiracy to induce a breach of contract is plead,  
3 the statute of limitations accrues from the date of the last overt act in pursuance of the conspiracy.  
4 Kenworthy v. Brown, 248 Cal.App.2d 298, 302-303 (1967).

5 This analysis applies to cases in which a former employee was under an obligation to  
6 assign a patent on inventions by an “inventions agreement” with a former employer. In  
7 Goldwasser v. Smith Corona Corp., 817 F.Supp. 263 (D.Conn. 1993), *aff’d* 26 F.3d 137 (Fed.Cir.  
8 1994), the patent holder (an ex-employee of IBM) sued Smith Corona for patent infringement.  
9 IBM intervened and sought a declaratory judgment that it owned the patents in question. *Id.* at  
10 266. The ex-employee asserted that the six year statute of limitations had run on the breach of  
11 contract claim, and thus acted as a bar to IBM’s claim to ownership of the patent in question. The  
12 district court rejected this argument, noting that “IBM was under no obligation to do anything –  
13 such as making a demand that [the former employee] assign the patent application to IBM...IBM  
14 could demand assignment of the...[technology in question] at any time – either during the  
15 application process or after the PTO issues the patent.” *Id.* at 271. The breach of the employment  
16 agreement “occurred only after IBM demanded assignment and Goldwasser refused to do so.  
17 Only at that point would the breach...trigger the running of the statute of limitations.” *Id.* at 271-  
18 272. Moreover, the Goldwasser court remarked that statutes of limitations run separately on each  
19 patent “regardless of the relationship between the patents” – an analytical approach adopted by the  
20 Federal Circuit in Stark, *supra*, 29 F.3d 1570, 1575-1577. Similarly, in Fischer & Porter Co. v.  
21 Haskett, 354 F.Supp. 464, 476 (E.D.Pa. 1973), the court held that even though an employer was  
22 aware that a former employee had filed a patent application, the employer’s claim for ownership  
23 of the patents was not barred by laches or estoppel because the employer had no way of knowing  
24 the scope of any inventions claimed *until the patent issued*. Moreover, in Imatec, Ltd. v. Apple  
25 Computer, Inc., 81 F.Supp.2d 471, 483, n.5 (S.D.N.Y. 2000), it was held that statute of limitations  
26 for a patent ownership claim begins to run when the inventor refused to assign patents contrary to  
27 a contractual obligation. Synopsys alleges all elements for inducing breach of contract, (FAC  
28 ¶¶100-106), and has specifically alleged that Magma has continued inducing van Ginneken to

1 breach his agreement with Synopsys into 2004 and 2005, specifically through “the continued  
2 prosecution of a patent application containing inventions and information misappropriated from  
3 Synopsys,” (FAC ¶104). Nor is the result in Intermedics, Inc. v. Ventritex, Inc., supra, which  
4 found that a breach of contract claim accrued upon the first misappropriation of trade secrets,  
5 contradictory of this line of authority. First, and most fundamentally, the defendants in  
6 Intermedics did not patent the technology at issue – which would bar the plaintiff (and the rest of  
7 the world) from using technology that was stolen. Underlying the court's decision in Intermedics  
8 was that California had concluded that trade secret misappropriation was not a continuing tort (a  
9 conclusion clearly enunciated by the later Cadence decision). The court noted that California's  
10 conclusion is based on the rejection of the idea that "one has a right to exclude others from the use  
11 of his trade secret because he has a *right of property* in the idea." Id. at 644. (emphasis in  
12 original). This rationale does not extend to a situation where a trade secret misappropriator  
13 converts a non-property right into what is indisputably a property right with the right to exclude.  
14 See, e.g., Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 149 (1989) (federal patent  
15 system creates opportunity to obtain property right.) Display Research Laboratories, Inc. v.  
16 Telegen Corp., 133 F.Supp.2d 1170, 1174 (N.D.Cal. 2001) ("A patent does not exist until it is  
17 granted...In a patent, no vested right...is acquired under the preliminary proceedings leading up to  
18 its issuance.") Secondly, the court in Intermedics discussed at length that the specific contract at  
19 issue did not create a "series of separable obligations, each of which stood on its own terms, and  
20 the content of each of which was known in advance to both parties...[T]he obligations imposed by  
21 the contracts were, of necessity, abstract and devoid of specifics...We cannot hold that the  
22 contracts at issue created a series of discrete, severable obligations as to which separate breaches  
23 could be readily identified." 822 F.Supp. at 645-646. It would strain credulity for Magma to  
24 argue that obtaining separate patents on stolen technology was a breach that was "abstract and  
25 devoid of specifics" or that being issued separate patents was not a discrete breach that could be  
26 readily identified. Again, as the Federal Circuit itself has said, "each patent is a separate chose in  
27 action." Stark, supra, 29 F.3d at 1576. For the same reason, Forcier v. Microsoft, supra, is  
28 distinguishable. Apart from the absence of a conspiracy allegation or fraudulent concealment,

1 there is no mention made of an obligation on the part of the defendants to assign any patents  
2 resulting from the technology at issue. Moreover, the issuance of the patents in the case would  
3 not have made a difference in the result because it appeared that the plaintiff had actual notice of  
4 the prosecution of the patents more than four years prior to the date suit was filed. Id. at 524, 527.

5 **E. Magma's Laches Defense Fails Because of its Own Egregious Conduct.**

6 Magma also claims that laches bars Synopsys' cause of action for unjust  
7 enrichment/constructive trust. Motion at 13:1-14:14. First, laches is usually a question of fact,  
8 rather than law, making it inappropriate for determination upon a motion to dismiss. see  
9 Piscioneri v. City of Ontario, 95 Cal.App.4<sup>th</sup> 1037 (2002). As this court previously stated, even  
10 summary judgment may be improper on laches if there is a question of fact regarding concealment  
11 and regarding diligence. Order on Synopsys' Motion to Strike Magma's Affirmative Defenses,  
12 dated January 20, 2005, at pp. 9-10. Magma's laches arguments also fails because a defendant's  
13 own conduct that delayed or misled a plaintiff may estop the defendant from claiming the  
14 equitable defense of laches. Ornbaun v. Main 198 Cal. App. 2d 92, 99, 100 (1961). Thus,  
15 Magma's argument that the "fraudulent concealment doctrine does not come into play... if the  
16 plaintiff is on notice of a potential claim" (Motion at 13:14-18) is beside the point because  
17 Synopsys alleged that it was not on notice of its claims until 2004.

18 But there is a more fundamental reason why Magma's laches argument fails. "Laches is  
19 an equitable remedy, and as a general rule, a party seeking equitable relief must come into court  
20 with clean hands." Cutler v. Cutler, 79 Cal.App.4<sup>th</sup> 460, 478-479 (2000). In fact, in the very case  
21 Magma cites, Danjac LLC v. Sony Corp., 263 F.3d 942, 955 (9th Cir. 2001), the court referred to  
22 the fact that "[o]ver the past eight-five years, various courts have held that laches does not bar a  
23 suit against a deliberate infringer. The principle appears to be based on the equitable principle  
24 that 'he who comes into equity must do equity.'" As noted therein:

25 It must be obvious to every one familiar with equitable principles that it is  
26 inequitable for the owner of a copyright, with full notice of an intended  
27 infringement, to stand inactive while the proposed infringer spends large sums of  
28 money in its exploitation, and to intervene only when his speculation has proved a  
success. Delay under such circumstances allows the owner to speculate without  
risk with the other's money; he cannot possibly lose, and he may win. *If the  
defendant be a deliberate pirate, this consideration might be irrelevant, and I think  
it such as to [one defendant]...*" Id. (quoting Haas v. Leo Feist, 234 F. 105, 108

1 (S.D.N.Y. 1916)) (emphasis added by the Ninth Circuit).

2 This rationale applies to cases involving patents and other intellectual property rights as  
3 well. In TMW Manufacturing Co. v. Dura Corp., 722 F.2d 1261, 1264-1269 (6th Cir. 1983), a  
4 patent infringement suit, the district court had held that the suit was barred because of a delay of  
5 more than 6 years. Id. at 1264. The Sixth Circuit, in a previous opinion, had overruled the  
6 district court once after this initial ruling stating “proof of plagiarism would not favor defendant's  
7 claim of laches” and remanded the case with guidelines for applying the defense of laches.  
8 TMW Manufacturing Co. v. Dura Corp., 592 F.2d 346, 349 (6th Cir. 1979) and TMW  
9 Manufacturing Co., 722 F.2d at 1264. On remand, the district court held that even though  
10 plaintiff had delayed filing suit for more than six years after the defendant started selling its  
11 infringing device, the laches defense was barred by “sufficient evidence of plagiarism which is  
12 egregious in this case... We cannot hold that the trial court abused its discretion in ruling that  
13 evidence of [defendant's] plagiarism barred [defendant] from raising the equitable defense of  
14 laches. The court's shifting of the burden of proof to [defendant] was reasonable in light of the  
15 difficulty of proving the actual act of copying.” Id. at 1269. The court also observed that  
16 “[d]irect evidence of copying is rarely, if ever, available.” Id. at 1268. Of course, in this case  
17 that rare type of evidence is not only available -- it is overwhelming. The Federal Circuit has  
18 adopted this approach. In Bott v. Four Star Corp., 807 F.2d 1567, 1575-1577 (Fed. Cir. 1986)  
19 *overruled on other grounds*, A.C. Aukerman Co. v. R.K. Chaides Construction Co., 960 F.2d  
20 1020 (Fed. Cir. 1992), the court held that a defendant's “knowing[] cop[y]ing” of the plaintiff's  
21 product defeated the defendant's “defense of laches... by its egregious conduct.”

22 Synopsys clearly alleges in the FAC the factual predicate that Magma is guilty of exactly  
23 the kind of egregious conduct that courts have used to bar defenses of laches in these kind of  
24 cases. FAC, ¶46. In fact, this type of egregious behavior is “*a dispositive, threshold inquiry that*  
25 *bars further consideration of the laches defense, not a mere factor to be weighed in balancing the*  
26 *equities, as the district court did in this case.*” Hermes Intern. v. Lederer de Paris Fifth Ave., Inc.,  
27 219 F.3d 104, 107 (2nd Cir. 2000) (emphasis added). Even a cursory review of Exhibit B to the  
28 FAC, which cites these word-for-word examples of plagiarism, is enough to conclusively refute

1 Magma’s argument that laches bars Synopsys’ claims for unjust enrichment/constructive trust.

2 ///

3 **F. Synopsys Has Adequately Pled A Claim for Fraud.**

4 Magma’s raises two arguments why Synopsys’ fraud claim should be dismissed. But  
5 again, Magma’s logic on both points requires too many implausible steps. First, Magma repeats  
6 its attempt to change the meaning of one sentence in the Pillsbury Letter to an outright challenge  
7 to Synopsys that “all of [its] alleged trade [were] in the public domain.” Motion at 1:13-15,  
8 14:22-25. Jumping from that conclusion to the next, Magma then argues that it can be inferred  
9 from the allegations that Synopsys knew these representations to be false in 1997. Motion at  
10 15:1-6. This is an improper attempt to turn Synopsys’ pleading of evidentiary facts, which show  
11 why Magma’s representations were not true *when given*, into a basis for dismissing its claim.  
12 This reading of the FAC is contrary to the legal standards on a motion to dismiss.

13 Although Magma argues essentially that Synopsys “knew” in 1997 that Magma was not  
14 telling the truth, the allegations of the FAC clearly set forth the fact that Synopsys did not know  
15 that Magma was concealing its intention to exploit technology that belonged to Synopsys. Again,  
16 Magma’s belated interpretation of the Pillsbury Letter is at odds with 1) the fact that Magma  
17 chose to exclude the white paper authored by van Ginneken from its letter to Synopsys (FAC  
18 ¶55); 2) Magma’s decision to patent what it simultaneously was representing to Synopsys was in  
19 the public domain; and 3) Magma’s continuing misrepresentations regarding the source of its  
20 technology as alleged in its Amended Answer (at ¶ 83<sup>8</sup>). Thus, Magma’s citations to Chavez v.  
21 Citizens for a Fair Labor Law, 84 Cal.App.3d 77, 80 (1978) (a political dispute in which the  
22 plaintiffs admitted in their complaint that they knew the representations at issue were false) and  
23 Hadland v. NN Investors Life Ins. Co., 24 Cal.App.4th 1578, 1589 (1994) (an appeal in which the  
24 court found there were “no ambiguities” in an insurance contract) are inapposite.

25 Magma’s argument that Synopsys has not pled fraud with particularity is limited to the  
26 allegations regarding the 1998 meeting, which was plead to set forth the on-going scheme to

27 <sup>8</sup> Synopsys does not contend by this statement that O’Melveny was a knowing participant in  
28 misrepresenting the facts to the Court. Synopsys at this time assumes that O’Melveny was  
not advised of the truth of the matter by Magma when the Amended Answer was filed.

1 conceal the 1997 conduct. Although the FAC clearly states that the gravamen of the fraud claim  
2 is the five specific instances in the Pillsbury Letter where Magma insisted it would not use  
3 Synopsys' proprietary information (FAC ¶¶ 49-56, 108) Magma does not so much as mention  
4 these representations in its Motion. That these representations were false is conclusively shown  
5 by van Ginneken's own admission that, at the very time the Pillsbury Letter was sent to Magma,  
6 Magma was already exploiting stolen Synopsys property. Exh. A hereto, ¶ 36. Also absent from  
7 the Motion to Dismiss is any mention of the other allegations of fraud in which specific  
8 examples of misrepresentations are given, (FAC ¶¶ 66-69), including a specific representation  
9 made by Madhavan that he came up with the idea for Magma's products while on an airline  
10 flight. FAC ¶ 67. Again, even those these specific misrepresentations are alleged by Synopsys  
11 in its fraud claim (FAC ¶¶ 107, 109-114), they are completely ignored by Magma – which does  
12 not at all address the adequacy of any allegation besides the 1998 meeting. Even without the  
13 allegations regarding this meeting, however, Synopsys has more than adequately pled specific  
14 instances of fraudulent misrepresentations on the part of Magma. "If particular averments of  
15 fraud are insufficiently pled under Rule 9(b), a district court should 'disregard' those averments,  
16 or 'strip' them from the claim. The court should then examine the allegations that remain to  
17 determine whether they state a claim." Vess v. Ciba Geigy, 317 F.3d 1097, 1105 (9th Cir. 2003)  
18 (citation omitted). Even if the allegations regarding the 1998 meeting are stricken, which is the  
19 most Magma is entitled to, Synopsys should be granted an opportunity to replead. See Ukiah  
20 Automotive Investments v. Mitsubishi Motors of North America, Inc., 2005 WL 19450, \*2  
21 (N.D.Cal. 2005) (granting leave to amend fraud claims).

#### 22 **IV. CONCLUSION.**

23 For the reasons set forth above, this Court is respectfully requested to deny the Motion.  
24

25 Dated: April 29, 2005

DECHERT LLP

26 By: /s/ Chris Scott Graham  
CHRIS SCOTT GRAHAM  
27 Attorneys for Plaintiff and Counter-Defendant,  
28 SYNOPSIS, INC.