Chris Scott Graham (State Bar No. 114498)
chris.scott.graham@dechert.com
Michael N. Edelman (State Bar No. 180948)
michael.edelman@dechert.com
DECHERT LLP
1117 California Avenue
Palo Alto, CA 94304-1106
Telephone: 650.813.4800
Facsimile: 650.813.4848

Attorneys for Plaintiff and Counter-Defendant,
SYNOPSYS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SYNOPSYS, INC., a Delaware corporation,

Plaintiff and Counter-Defendant,

v.

MAGMA DESIGN AUTOMATION, a Delaware corporation,

Defendant and Counter-Claimant.

AND RELATED COUNTERCLAIMS.

Case No. C-04-03923 MMC (JCS)

REDACTED: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SYNOPSYS, INC.'S OPPOSITION TO MAGMA DESIGN AUTOMATION, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO THE SECOND THROUGH SIXTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT

Date: July 29, 2005
Time: 9:00 a.m.
Courtroom: 7, 19th Floor
Before: Hon. Maxine M. Chesney

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I. INTRODUCTION.

Magma's motion takes the astonishing position that, even though the two core patents which are the subject of Synopsys' claims (Patent No. 6,453,446 and Patent No. 6,725,438) did not issue until September 17, 2002 and April 20, 2004, any state law remedy arising from the theft of these patented inventions is barred by the statute of limitations. There is no logic or precedent to support such an unconscionable result.

First, Magma's motion entirely fails to understand the nature and pervasive effect of the lengthy, fraudulent scheme by Magma that Synopsys has proven in this case. Beginning in 1997, Magma engaged in an intentional and deliberate campaign to get Synopsys to believe that, to the extent any constant delay-related inventions were to emanate from Magma, this was because the inventions had been independently developed by Magma's engineers from public domain sources. Magma knew that it was important to thoroughly defraud Synopsys on this point, and therefore spent several years attempting to do so.

This astonishing pattern of fraud by Magma had its intended corrosive effect. As a plethora of Synopsys witnesses testify, Synopsys was thoroughly convinced that Magma's constant delay work was the result of independent development by its team of engineers. As a result, Synopsys never suspected any theft of its confidential information, and never learned of any information that gave it reason to suspect such theft. Given the overwhelming evidence of fraud in this case, Magma is equitably estopped from asserting the statute of limitations.

Second, Magma's motion also fails to comprehend the nature and effect of Synopsys' conspiracy allegations. Under California law, claims for conspiracy do not *begin* to run until commission of the last overt act in furtherance of the conspiracy. Wyatt v. Union Mortgage Co., 24 Cal. 3d 773, 786 (1979). Synopsys has explicitly alleged that the main goal of the conspiracy between Magma and van Ginneken was to steal inventions in order to obtain *patents*, and thereafter to use that patent monopoly to threaten Synopsys. Since these patents did not even issue until September of 2002 and April of 2004, the statute of limitations could not have expired.

Third, Magma's entire motion rests on the assertion that this is a "trade secret" case. Magma desperately needs the Court to believe this so that it can invoke case law analyzing the running of the

statute of limitations under the Uniform Trade Secrets Act ("UTSA"). This assertion, however, is incorrect. Synopsys has *never* asserted a cause of action under the UTSA, and has *never* indicated that the gist of its claims is the misappropriation of trade secrets. Rather, this case has always been about the theft and conversion of Synopsys' *property*, i.e., the '446 and '438 Patents and the inventions contained therein. Indeed, regardless of whether Synopsys' inventions qualify as trade secrets, it is undisputed that these inventions are owned by Synopsys. As is true with the receipt of any stolen property, it is unjust for Magma to retain this property, and Magma's *continuing* retention of this property tolls the applicable limitations periods.

In short, Magma's motion entirely ignores the gist of Synopsys' claims as well as the pervasive fraud and conspiracy that Synopsys has alleged (and will prove to a jury) in this case. Accordingly, Magma's motion should be denied.[1]

II. FACTUAL BACKGROUND.

A. van Ginneken Conceives Fixed Timing Inventions At Synopsys.

In 1995, Synopsys hired van Ginneken to work in the development of Synopsys' logic synthesis and related technologies. Declaration of Lukas van Ginneken ("van Ginneken Decl."), ¶ 1, attached as Exh. A to Declaration of Michael Edelman ("Edelman Decl."). van Ginneken was given the responsibility to work on research pertaining to logic synthesis, and was asked to make contributions to the technical vision for the logic synthesis team. Id.

On or about May 17, 1995, van Ginneken signed a Proprietary Information and Inventions Agreement (the "Agreement") as a condition to his employment by Synopsys. van Ginneken Decl., ¶ 2. The Agreement provides that "all Inventions which I make, conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others) during my employment shall be the sole property of the Company . . ." Edelman Decl., Exh. B at ¶ 3(D). The Agreement further provides that Synopsys "shall be the sole owner of all *patents*, copyrights, trade secrets rights, rights with respect to

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[1] In conjunction with this opposition, Synopsys has submitted a lengthy 56(f) declaration, which demonstrates that the hearing on the motion should be continued for a host of reasons. Declaration of Shanee Williams, ¶¶ 2-79. However, for the reasons stated herein, Synopsys believes that the evidence already demonstrates that Magma's motion must be dismissed as a matter of law.

other intellectual property or other rights in connection therewith (including, without limitation, such rights in algorithms or software)." Id., Exh. B at ¶ 3(D) (italics added).

In early 1996, as part of his job to research and explore new product ideas for Synopsys, van Ginneken developed the idea of creating an EDA product that would perform particular inventions using the concept of constant delay. van Ginneken Decl., ¶ 8. Under this concept, the timing delays of a chip design are held constant and "fixed," in contrast to determining timing delay at a later point in the design flow. Id., ¶¶ 8-9. The inventions developed by van Ginneken were designed to implement this concept of constant delay into an EDA tool. Id., ¶ 10.

In early 1996, van Ginneken filled out an invention disclosure form attesting that his fixed timing inventions were conceived by him alone. This invention disclosure, under the title "Constant Delay Synthesis" states that van Ginneken was the sole inventor of the fixed timing inventions. van Ginneken Decl., ¶ 15; Edelman Decl., Exh. D. The disclosure further points out "it is important that Synopsys acquires patent protection in this area, *even though some prior art exists*." van Ginneken Decl., ¶ 18; Edelman Decl., Exh. D (emphasis added).

In order to obtain patent protection for the inventions developed by van Ginneken while employed at Synopsys, van Ginneken proceeded to work with Synopsys' outside patent counsel to draft two patent applications. van Ginneken Decl., ¶¶ 21-23. These draft patent applications were never disclosed by Synopsys to the public, but were instead maintained by Synopsys as proprietary and confidential. Id., ¶¶ 22-23; Edelman Decl., Exhs. E-F.

B. van Ginneken Is Denied Ability To Obtain Public Credit For His Inventions.

In addition to creating the patent applications, van Ginneken also created a "white paper" describing Synopsys' constant delay work, and a revised version of this paper entitled "Driving on the Left-Hand Side of the Performance Speedway." van Ginneken Decl., ¶¶ 24-25; Edelman Decl., Exhs. G-H. van Ginneken had created this latter paper in anticipation of presenting a tutorial session on Synopsys' work at the 1996 ICCAD conference. Declaration of Narendra Shenoy ("Shenoy Decl."), ¶ 10. However, van Ginneken was not permitted to submit the paper due to concerns about revealing confidential information. Id. The inability of van Ginneken to receive credit for his inventions

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caused him to be upset. Damiano Decl., ¶ 13. It is now clear that this episode provided the motivation for van Ginneken's decision to conspire with Magma.

C. van Ginneken Secretly Meets With Magma.

In the spring of 1997, while van Ginneken was still employed at Synopsys, van Ginneken secretly met with other co-founders of Magma (including Rajeev Madhavan) in order to discuss the possibility of working with them. Edelman Decl., Exh. C at 26:2-5. van Ginneken admits that he began working with Magma so that he "could continue utilizing the inventions I conceived at Synopsys." van Ginneken Decl., ¶ 27.

After his secret meetings with Magma, van Ginneken sent a letter to Synopsys in which he announced his resignation, and stated that his departure "should not be construed as a lack of faith in the technical approaches which I have been advocating." Edelman Decl., Exh. I; van Ginneken Decl., ¶ 28. In his exit interview at Synopsys, van Ginneken further represented that he was not taking *any* Synopsys proprietary information. Edelman Decl., Exh. J.

In July of 1997, van Ginneken secretly signed an inventions agreement with Magma. Edelman Decl., Exh. K. In attachments to this agreement, van Ginneken *explicitly informed* Magma of the "Driving on the Left Hand Side" paper he had created at Synopsys, and the existence of other Synopsys confidential information. Id.

D. The Conspiracy Between Magma And van Ginneken To Steal And Patent Synopsys' Inventions.

1. van Ginneken Steals Documents From Synopsys.

van Ginneken has *admitted* that, after his secret meetings with Magma's other co-founders, van Ginneken stole *two drawers* of documents from Synopsys. Edelman Decl., Exh. C at 352:18-25. van Ginneken never received permission from Synopsys to take these documents. Id. at 357:17-20. The draft patent applications van Ginneken created at Synopsys were contained within the file drawers that he cleaned out to take to Magma. Id. at 353:8-20.

Though van Ginneken contends that his draft patent applications were not taken along with the other documents in these two file drawers, Magma and van Ginneken have failed to offer any other explanation for the rampant plagiarism from Synopsys' patent applications that is apparent in the '446

and '438 Patents. Indeed, van Ginneken has admitted that *another* confidential Synopsys document originally contained in these file drawers found its way into Magma's files. Edelman Decl., Exh. C at 352:1-7; 358:6-19.

2. van Ginneken And Magma Plagiarize The Stolen Documents To Draft The Magma Patent Applications.

After having stolen two drawers of documents from Synopsys, van Ginneken then began to plagiarize the Synopsys documentation in order to submit patent applications to the PTO. This plagiarism was rampant. Synopsys has identified *dozens* of different passages in the Magma specifications which contain precisely the same wording as in the Synopsys patent applications. Edelman Decl., Exh. L. Magma has never offered any innocent explanation for this conduct.

In addition to the plagiarism from Synopys' draft applications, there are two other columns of the specification drafted by Magma that were plagiarized from yet *another* Synopsys white paper. Edelman Decl., Exh. M. In his deposition, van Ginneken admitted that the language contained in this Synopsys document and Magma's patent specification was "strikingly similar," but absurdly refused to concede that plagiarism had taken place. Id., Exh. C at 424:7-429:1.

At some point after the patents were drafted, Magma was provided an invention disclosure form by the Pillsbury firm. Edelman Decl., Exh. Q. This form asked for Magma to provide information about, among other things, the date of conception of the inventions and to declare that the inventions were the property of Magma. Id. Magma could not truthfully fill out this form, or else Pillsbury would learn of Magma's theft. Accordingly, Magma declined to fill out the form, as evidenced by Magma's concession that a copy of the filled-out form does not exist. Id., Exhs. R, S.

On December 24, 1997, a provisional application was filed with the PTO. Id., Exh. V. This provisional application contained the same specification as was ultimately included in the issued '446 and '438 Patents, and therefore contained a specification which is comprised of dozens of inventions and passages that were plagiarized from Synopsys. Id., Exhs. L, M. Given this evidence, Magma has now admitted that practically all of the inventions contained in these patents were conceived by van Ginneken *before* he resigned from Synopsys. Id., Exhs. N, L, O.

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E. Magma And van Ginneken Engage In Pattern Of Fraud To Convince Synopsys That It Independently Developed Its Products.

1. First Instance Of Fraud: Magma's 1997 Letter Falsely Assures Synopsys That Its Information Would Be Protected.

Shortly after van Ginneken resigned, Synopsys learned that van Ginneken had joined Magma. On July 23, 1997, Synopsys sent a letter to Magma asking for assurances that Magma would not utilize any information protected under the Agreement between van Ginneken and Synopsys. Id., Exh. T.

Though Synopsys did not know it, at the time this letter was sent, Magma already was in receipt of the stolen goods, and had *already* entered into a conspiracy with van Ginneken to patent the constant delay inventions that he had conceived at Synopsys. Indeed, van Ginneken has conceded that the very reason he joined Magma was so that he could continue utilizing the inventions he conceived at Synopsys, and has also conceded that "[a]s of *July* 1997, Magma was in possession of inventions and information set forth in the confidential patent applications drafted for Synopsys." van Ginneken Decl., ¶ 35 (italics added).

Rather than coming clean to Synopsys, Magma instead decided to embark on a remarkable campaign of fraud and deceit. Magma knew there was no point denying that it was working on the concept of constant delay, as this would be obvious when Magma ultimately released its product. Magma also knew, however, that the bare concept of constant delay was already in the public domain, and that there existed some prior art relating to this concept. Edelman Decl., Exh. D (stating that patent protection will be difficult due to existence of prior art). Accordingly, in order to ensure that it would be able to develop its products without suspicion, Magma embarked on a campaign to convince Synopsys that Magma was independently developing its product from constant delay-related information in the public domain.

To further this goal, van Ginneken met in secret with Rajeev Madvahan and an attorney at the Pillsbury law firm to discuss how to respond to Synopsys' letter. Edelman Decl., Exh. C at 320:2-322:11. After this meeting, Magma drafted and sent a response to Synopsys' letter. Id., Exh. U. This letter was extraordinarily deceptive. In the letter, Magma stated that it is free to use constant delay techniques which were "in the public domain." Id., Exh. U. At the same time, Magma represented that, other than techniques in the public domain, Magma would *not* be using any information

encompassed by the Agreement between van Ginneken and Synopsys. Id. Magma further assured Synopsys that van Ginneken would comply with the obligations of his Agreement with Synopsys, and that Magma would remind van Ginneken to do so. Id.

These representations were completely false. Indeed, Magma *knew* when the letter was sent that the reassurances in the letter concerning the protection of Synopsys' information were false. van Ginneken Decl., ¶ 36. As van Ginneken has testified, "at or about the time these statements were made, Magma *already* was using the inventions and information from the confidential patent applications drafted for Synopsys . . ." Id., ¶ 36 (emphasis added).

The deceptiveness of the letter, however, ran even deeper than that. Not only did the letter falsely indicate that Magma would respect Synopsys' information, but it also gave Synopsys an immediate explanation for why any constant delay-related work by Magma would not be a reason for suspicion, i.e., because that work would be independently developed from "constant delay techniques" in the public domain. Indeed, this letter, and the numerous similar representations made by Magma to Synopsys over the next several years, accomplished its goal of convincing Synopsys that Magma's constant delay work was based on independently developed information. Shenoy Decl., ¶ 20; Camposano Decl., ¶ 7.

2. Second Instance Of Fraud: Magma Again Represents To Synopsys In February Of 1998 That Its Product Has Been Independently Developed.

The August, 1997 letter was only the beginning of Magma's remarkable campaign of fraud. In February of 1998, three representatives of Synopsys, Antun Domic, Joe Hutt, and Sang Wang, visited Magma's facilities. Domic Decl., ¶ 3. At this brief meeting, Magma *again* highlighted its false representation that, though it was developing a constant delay product, this product had been independently developed. Id., ¶ 6. van Ginneken has admitted the fraud that occurred at this meeting:

> Q. Did Magma represent that the fixed timing inventions it was working on were *Magma-created* inventions?
> A. Yes, I believe so.
> Q. And was that a true statement?
> A. That's probably not true. Or not -- *certainly not completely true.*

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Edelman Decl., Exh. C at 378:10-16 (italics added). Synopsys saw no reason to be suspicious of this representation. Domic Decl., ¶ 11. Given the material that existed in the public domain, Magma's representation was completely plausible. Herndon Decl., ¶¶ 14(D), 30, 45-47.

3. Third Instance Of Fraud: van Ginneken Again Falsely Assures Synopsys In 1998 That Its Information Would Be Protected.

On April 2, 1998, unbeknownst to Synopsys, Magma submitted a utility patent application for the fixed timing inventions, containing the same plagiarized specifications as contained in the provisional applications. Edelman Decl., Exh. X. One week after these applications were filed, van Ginneken sent a letter to Synopsys and IBM stating that certain aspects of his work at Synopsys had been revealed in an article by Professor Ralph Otten. Id., Exh. Y. This letter unmistakably conveys van Ginneken's understanding that the work he did relating to constant delay at Synopsys was proprietary and confidential to Synopsys. Id.

After this letter was sent, Narendra Shenoy of Synopsys began communications with van Ginneken and another engineer at IBM about the possibility of submitting a new draft of the constant delay paper which would at least reflect the appropriate authors of the constant delay work. Shenoy Decl., Exh. 13. During these communications, van Ginneken never once mentioned the fact that, shortly before, Magma had submitted patent applications that were *plagiarized* from Synopsys' materials. Id., ¶ 19.

During these communications, van Ginneken added a footnote to the draft in which he explicitly recognized that the information contained in the paper came from his work at Synopsys. Edelman Decl., Exh. Z. Further, at Synopsys' request, van Ginneken removed any reference in the draft to two other employees who (unbeknownst to Shenoy) were actually employed at Magma. Shenoy Decl., ¶ 16. Through these actions, van Ginneken again fraudulently represented that he understood the obligations of his Agreement with Synopsys, and was complying with them. Id., ¶ 18. The truth, of course, was far different.

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4. Fourth Instance Of Fraud: Magma Agrees To Partner With Synopsys, And Again Falsely Assures Synopsys That Its Information Will Be Protected.

By the middle of 1998, Magma had been so successful in hiding the theft and its receipt of the stolen property that Synopsys agreed that Magma could participate in the "In-Sync" program sponsored by Synopsys. Synopsys never would have agreed to allow Magma to participate in its programs if it had suspicions about the development of Magma's products. Goldman Decl., ¶¶ 7-8.

In furtherance of Magma's participation, Magma and Synopsys signed a "Marketing Loan Agreement" on July 31, 1998 to govern the parties' rights and obligations during their relationship. Edelman Decl., Exh. CC. The Marketing Loan Agreement provided, among other things, that Magma *would protect Synopsys' confidential information*. Id., at ¶ 2.1. Synopsys placed trust and confidence in Magma to comply with this obligation. Goldman Decl., ¶ 7. Incredibly, Magma made the representation that it would protect Synopsys' confidential information even though it knew that its own products and patents were being built based on the information and inventions that had been stolen from Synopsys.

5. Fifth Instance Of Fraud: Magma Again Represents That It Had Independently Developed Its Fixed Timing Approach From Public Domain Articles.

In December of 1998, Magma invited Synopsys to attend a meeting at Magma's facilities in order to discuss a possible business arrangement between the parties. The attendees at the meeting for Synopsys were Aart de Geus, Raul Camposano, and Robert Dahlberg. The presentation at the meeting was brief, and included an overview of Magma's fixed timing product. de Geus Decl., ¶ 3; Camposano Decl., ¶ 7; Dahlberg Decl., ¶¶ 3-4.

Despite the fact that Magma had already spent over a year plagiarizing patent applications from Synopsys in order to file patents of its own, Magma again made clear at the meeting that it had *independently* developed its fixed timing inventions. Dahlberg Decl., ¶ 6. Magma represented it had independently come up with its own product concepts, and the slides purportedly presented at the meeting reflected Magma's assertion that its ideas had been independently developed. Edelman Decl., Exh. DD. At no point during this meeting did Magma even hint at the truth about how Magma had developed its technology.

F. The Cover Up Of Magma's Theft.

In the summer of 1998, Magma retained litigation counsel at the Orrick, Herrington & Sutcliffe firm in order to perform a due diligence process. Edelman Decl., Exh. MM. Magma indicated to Orrick that it wanted the firm to conduct due diligence on whether Magma employees had stolen confidential information from their former employers. Id. From the beginning of this process, Magma's concerns were squarely focused on Synopsys. Id.

In December of 1998, an attorney at Orrick (William Anthony) accompanied by a professor from Michigan (Professor Marios Papaefthymiou) conducted a series of interviews purportedly to investigate whether any of the Magma employees had stolen trade secret information from their prior employers. Edelman Decl., Exh. JJ. When van Ginneken was interviewed, van Ginneken confessed to Anthony and Papaefthymiou that the

Id., Exh. JJ at p. 114.

In a follow-up report by Papaefthymiou to Magma, Papaefthymiou explicitly reported of the concerns raised by van Ginneken's statements. Edelman Decl., Exh. KK. Unknown to Papaefthymiou, of course, Magma already knew of those concerns, and had spent the last two years trying to bury them through false representations to Synopsys. Accordingly, when Magma got hold of Papaefthymiou's report, it whitewashed the report so that it would omit any concern about Synopsys' information. Edelman Decl., Exh. LL. This is reflected below:

This activity was secretly occurring at the same time as Magma was meeting with Synopsys in December of 1998. In the parties' meeting, however, Magma did not say anything to Synopsys about the due diligence process it was undergoing, about the Professor's findings, or about van Ginneken's statement that the ideas Magma were using came from Synopsys. All of this information was carefully concealed from Synopsys.

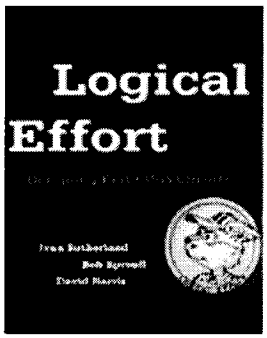
G. Magma Repeats False Story Of Independent Development In Press Releases And White Papers.

As of 1999, the fraud against Synopsys had been so pervasive and extensive that Synopsys had been thoroughly hoodwinked. During the previous two years, Synopsys had received a series of false representations from Magma that its constant delay work would be based on public domain sources, and had been explicitly assured that this development would not be based on Synopsys' information.

To its credit, Synopsys believed and accepted these representations. Based on Magma's representations, Synopsys believed that, to the extent there were any similarities between Magma's constant delay and Synopsys' work, this was a result of the fact that both parties independently developed their products from similar public domain sources. Damiano Decl., ¶ 17; Camposano Decl., ¶ 7. As Synopsys' expert testifies, this reliance on Magma's representations was both reasonable and justifiable. Herndon Decl., ¶¶ 48-56.

However, though it had already succeeded in duping Synopsys, Magma still had another trick up its sleeve. Beginning in 1999, Magma began to issue public releases on the features and technology in its products. Edelman Decl., Exhs. OO, PP, QQ. Incredibly, even though Magma knew it had only arrived at these inventions by plagiarizing information stolen from Synopsys, Magma represented to the public that these inventions came from "back of the envelope" design techniques and "popular VLSI design text books." Edelman Decl., Exh. OO.

For instance, Magma placed on its web site a description of its technology which contained an entire section indicating that its technology was derived from a public domain textbook by Ivan Sutherland. Magma even went so far to as to paste a copy of the book's cover:



Edelman Decl., Exh. OO. Further, to drive the point home, Magma included a list of references which purportedly described the "scientific foundation" behind its technology:

> **References**
>
> The following references describe the scientific foundation behind FixedTiming:
>
> - Ivan Sutherland, Bob Sproull, David Harris, "Logical Effort: Designing Fast CMOS Circuits," 1999, Morgan Kaufmann Publishers, Inc., San Francisco, CA
> - Glasser and Dobberpuhl, "The Design and Analysis of VLSI Circuits," Addison Wesley, Reading, Mass., 1985.
> - Mead & Conway, "Design and Analysis of VLSI Circuits," Addison-Wesley, Reading, Mass., 1980.
> - Sutherland and Sproull, "Logical Effort: Designing for Speed on the Back of an Envelope," invited paper, ICCAD, 1991.
> - Lehman, Watanabe, Grodstein and Harkness, "Logic Decomposition during Technology Mapping," proceedings ICCAD, 1995

Edelman Decl., Exh. OO.

These passages constituted a fraud on both Synopsys and the public. In fact, these public domain papers had *not* been the "scientific foundation" for Magma's technology. Instead of independently developing its products from these sources, Magma had in fact only created its technology from plagiarizing Synopsys' own patent applications. This fact, however, was carefully omitted from Magma's disclosures.

H. The Main Goals Of The Conspiracy Begin To Be Achieved Through Issuance Of '446 And '438 Patents.

At the same time that Magma was making these false representations to Synopsys and the public, Magma *continued* to prosecute applications plagiarized from Synopsys' documentation, in order to ultimately assert those patents against Synopsys. Indeed, Magma and its counsel engaged in a series of communications in an attempt to speed up the prosecution of the patents and obtain issuance of the patents as soon as possible. Edelman Decl., Exh. RR. Further, in 2002, shortly before the issuance of the '446 Patent, van Ginneken engaged in further communications with Magma' s counsel concerning Synopsys. Id., Exh. SS at 10-11.

On September 17, 2002 and April 20, 2004, Magma finally achieved one of the main goals of its conspiracy -- the issuance of the '446 and '438 Patents. Edelman Decl., Exhs. TT, UU. Magma's use of plagiarized Synopsys information, however, did not remotely end with the issuance of the '446

and '438 Patents. To this day, Magma is still prosecuting several other applications around the world which contain the specification plagiarized from Synopsys, including a continuation application in the United States and foreign applications in Canada, Europe, Japan and Israel. Edelman Decl., Exhs. WW, XX, YY, ZZ. Incredibly, Magma *continues* to prosecute these applications despite the fact that these applications were plagiarized from Synopsys' material.

I. Magma Threatens Synopsys With The '446 Patent And '438 Patent, And Synopsys Discovers The Shocking Truth.

Now that Magma was armed with two broad patents on the application of constant delay, Magma could finally follow through with its plan to use those patents against Synopsys. Accordingly, on July 1, 2004, only two months after the issuance of the '438 Patent, Magma sent a letter to Synopsys claiming concern over Synopsys' potential infringement of the '446 and '438 Patents. Edelman Decl., Exh. AAA. Consistent with Magma's lengthy pattern of deception, the letter avoided any hint that these patents had been drafted by plagiarizing Synopsys' own patent applications. Id.

After receiving this letter, Synopsys investigated further and discovered the shocking truth. Shenoy Decl., ¶ 21. Realizing the magnitude of the fraud and deception that Magma had perpetrated, Synopsys promptly filed a complaint for patent infringement, contending that the '446 and '438 Patents were truly owned by Synopsys. In the letter to Magma and van Ginneken accompanying a copy of the complaint, Synopsys asked Magma and van Ginneken to take steps to correct the PTO records on ownership of the '446 and '438 Patents, and to take all other never steps necessary to effectuate Synopsys' ownership of the patents. Edelman Decl., Exh. BBB. Neither Magma nor van Ginneken have ever agreed to take the steps that Synopsys requested.

J. Magma's Initial Answer Vigorously Claims Its Technology Is Independently Developed From Articles In The Public Domain.

Magma's response to the lawsuit was vigorous. Rather than admit that its fraud and conspiracy had been discovered, Magma answered the complaint by deriding the "groundless" nature of Synopsys' ownership claims. Edelman Decl., Exh. CCC at ¶ 3. Further, in its Answer, Magma repeated exactly the same lie that had previously deluded Synopsys, i.e., that its constant delay inventions had been solely developed from public domain sources. Id. at ¶ 77. Indeed, Magma specifically alleged that

Magma "drew from the extensive work available in the public domain" to create the inventions in its patents. Id., Exh. 83. In this motion, however, Magma is now contending that Synopsys acted unreasonably in relying upon the very same representation by Magma that was its initial basis for defense of this lawsuit.

K. Magma And van Ginneken Continue To The Present To Thwart Synopsys' Rights.

After the filing of this lawsuit, Magma engaged in a series of acts in furtherance of its conspiracy with van Ginneken. On February 4, 2005, Magma and van Ginneken entered into a secret agreement which required van Ginneken to assist Magma in prosecuting this action, in exchange for a release of all liability by Magma. Edelman Decl., Exh. EEE. Pursuant to this agreement, van Ginneken contacted Professor Otten in order to dig up "prior art" relating to a slide show that Otten had presented years earlier. Id., Exh. C at 401:5-22. These slides were forwarded to Magma's counsel. Id., Exh. C at 401:25-402:2. In addition, Magma and van Ginneken have engaged in dozens of communications after the filing of the lawsuit in order to strategize on ways to defeat Synopsys' claims. Id., Exh. FFF. To this day, Magma *continues* to prosecute patent applications around the world plagiarized from Synopsys' documents. Id., Exhs. WW, XX, YY, ZZ.

III. ANALYSIS.

A. Magma Has Not Presented Any Evidence To Indicate That Synopsys Suspected Or Had Reason To Suspect Theft Of Synopsys' Information.

The determination of whether a claim is barred by the statute of limitations presents a *question of fact*, which cannot be determined on summary judgment unless the evidence is "susceptible of only one legitimate inference[.]" Romano v. Rockwell Int'l., Inc., 14 Cal. 4th 479, 487 (1996). In order for the running of a statute of limitations to commence, the defendant must demonstrate that Synopsys suspected injury, or was in the possession of facts sufficient to place a reasonable person on notice. Clark v. Healthcare Corp., 83 Cal. App. 4th 1048, 1059 (2000). It is *not* enough for a plaintiff to have "reason to suspect" an injury; rather, a plaintiff must also have reason to suspect the injury's *factual cause*. Id.

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Here, Magma has failed to provide *any* evidence that, before 2004, Synopsys suspected injury from any wrongful conduct by Magma. To the contrary, Synopsys' witnesses unanimously attest that they did *not* have any suspicion that Magma had possession of stolen information from Synopsys at any time before 2004, or that Magma had done anything wrong to Synopsys. Shenoy Decl., ¶ 21; Camposano Decl., ¶ 12; de Geus Decl., ¶ 9. Rather, Synopsys accepted Magma's representation that its constant delay work was based on techniques from the public domain, not on any information protected under van Ginneken's Agreement.

Synopsys has also presented overwhelming evidence that it did *not* have any reason to suspect that Magma had done anything wrong to Synopsys before 2004. In reality, it would have been impossible for Synopsys to see through the fog of Magma's fraud in order to suspect the truth. To suspect theft, Synopsys would have had to suspect that: (1) Magma had deliberately lied to Synopsys when it represented in 1997 that it would not utilize any information protected by van Ginneken's Agreement, (2) Magma's CEO deliberately lied to senior representatives of Synopsys in 1998 that Magma had independently developed its product, and (3) Magma deliberately lied to the public when it made repeated, explicit representations in its white papers about the public domain origin of its products. It never occurred to Synopsys to suspect such a massive and elaborate fraud. How could it have?

Magma's *only* argument for why Synopsys should have suspected a theft of its confidential information is that the content of the disclosures that Magma made concerning its use of constant delay between 1998 and 2000 is purportedly similar to certain information in Synopsys' documents. However, Magma's entire analysis is based on a list of eleven "concepts" that is manufactured out of whole cloth by its expert, Dr. Sechen. Synopsys has *never* identified these eleven concepts as defining the basis for its state law claims. Further, Magma's expert does not explain how he came up with these concepts, or why he included those concepts rather than the wealth of detailed information in Synopsys' draft patent applications. In essence, not only has Magma made up a purported "trade secret" claim that Synopsys has never asserted, but it also has manufactured a list of "trade secrets" that Synopsys has never identified.

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As Synopsys' expert explains, a proper identification of the information in Synopsys' documents demonstrates that Magma did *not* disclose information that would have revealed the theft. Herndon Decl., ¶¶ 30-47. Synopsys' applications do not, for instance, simply describe the bare concept of constant delay (which was already in the public domain), but rather specify a particular flow for how constant delay should be applied in particular contexts, and provides over *30* different specific concepts to demonstrate how that flow would occur. This information is not disclosed *anywhere* in Magma's disclosures to Synopsys. Herndon Decl., ¶¶ 27, 30-44.

In any event, even assuming that Magma's identification of eleven "concepts" accurately represents the scope of Synopsys' claims, Magma's motion would still have to fail. The relevant question is not whether there is any overlap between Synopsys' documents and Magma's disclosures, but instead whether Synopsys had reason to suspect that any such overlap was the result of *wrongful conduct* by Magma. It is on this point that Magma's motion completely falls apart. Magma explicitly represented to Synopsys that it was only going to use constant delay techniques in the public domain. It never occurred to anyone at Synopsys that Magma had wrongfully developed its approach by plagiarizing confidential documents stolen from Synopsys.

In order to have some reason to suspect theft or Magma's possession of stolen property, Synopsys would have needed far more information than a purported overlap in a few concepts. Rather, Synopsys would have needed some reason to suspect that the *manner* in which Magma obtained or developed its technology was wrongful. Yet, that was precisely the information that Magma carefully *concealed* from Synopsys. Magma did *not* disclose to Synopsys that it had plagiarized Synopsys' draft applications. Magma did *not* disclose to Synopsys that the ideas for its technology had come from documents taken from Synopsys. Magma did *not* disclose to Synopsys that, rather than studying the public domain papers on constant delay and deriving its technology therefrom, Magma had copied Synopsys' confidential documents. Instead, Magma's disclosures deliberately omitted this information in order to hide the theft. Herndon Decl., ¶¶ 51-55.

It is difficult to conceive of how Magma can dispute this argument, especially given Magma's assertions in this motion. In Magma's view, all of the basic concepts that it disclosed were, at minimum, close to information that was already in the public domain. If, however, this information

was already close to information in the public domain, then why would Synopsys have reason to suspect that Magma had derived this information *wrongfully*? Clearly, it was far more logical for Synopsys to believe that any overlap between Synopsys' information and Magma's disclosures was due to the fact that both parties started from the same articles in the public domain, rather than that Magma had conducted massive theft and then lied to Synopsys.

In short, the evidence is overwhelming that Synopsys did not suspect and had no reason to suspect Magma's wrongful conduct until 2004. Accordingly, the motion must be denied.[2]

B. Magma Is Equitably Estopped To Assert The Statute Of Limitations.

The facts in this case also equitably estop Magma from relying on its statute of limitations defense. "Where the delay in commencing action is induced by the conduct of the defendant *it cannot be availed of by him as a defense*." Vu v. Prudential Prop. & Cas. Ins. Co., 26 Cal. 4th 1142, 1153 (2001) (italics added). There are four elements required to establish equitable estoppel: "(1) the party to be estopped must know the facts; (2) he must intend that this conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury. Spray, Gould & Bowers v. Associated Int'l. Ins. Co., 71 Cal. App .4th 1260, 1267-68 (1999). Here, there can be no serious dispute that each of these elements are met.

First, it is undisputed that Magma falsely represented it would avoid use of Synopsys' information, and that it would be independently developing its products from constant delay techniques in the public domain. Magma secretly *knew* that these assertions were false. Indeed, when these representations were made, Magma was already in possession of documentation stolen from Synopsys, and was submitting patent applications to the PTO that were plagiarized from Synopsys' documents. van Ginneken Decl., ¶ 36. Since Magma knew the facts which were concealed from Synopsys, the first element of equitable estoppel is satisfied.

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[2] Magma relies upon the case of Alamar Biosciences, Inc. v. Difco Labs., Inc., 1995 WL 912345 (E.D.Cal. 1995) to support its contention that Synopsys was "on notice" of its claims against Magma. In Alamar, however, the court found that the plaintiff had in fact been suspicious that defendant had stolen its trade secrets. Id. at *3. Here, however, there is *no evidence* that Synopsys suspected theft in the first place. In addition, the court noted in Alamar that the plaintiff had not approached and warned the defendant. Id. at *6. Here, Synopsys did approach and warn Magma, and received the necessary assurances from Magma.

Second, the evidence here overwhelmingly indicates a course of deceitful conduct by Magma designed to mislead Synopsys into believing that its rights would be protected. Magma's false statements were not mere denials in response to charges made by Synopsys, but rather were voluntary, affirmative representations which lulled Synopsys into a sense of security. Since Magma intended for its representations to be acted upon, and Synopsys had every reason to rely upon Magma's representations, the second element of equitable estoppel is satisfied.

Third, as Synopsys' witnesses have repeatedly asserted, Synopsys was completely ignorant of the facts surrounding the development of Magma's technology when Magma made these fraudulent statements. Synopsys did not know, and could not possibly have suspected, that van Ginneken had stolen two file drawers of Synopsys' documents and that Magma then used them to submit plagiarized applications to the PTO. Synopsys did not know, and could not possibly have suspected, that Magma was lying to Synopsys and the public when it represented that its fixed timing technology had been developed from articles in the public domain. The information demonstrating the theft was carefully hidden from Synopsys. Accordingly, the third element of equitable estoppel is satisfied.

Fourth, there is no dispute that Synopsys relied upon Magma's numerous representations to its considerable injury. Because Synopsys believed Magma's representation that its technology had been independently developed, and that it would not utilize any Synopsys confidential or proprietary information, Synopsys was lulled into a sense of security while Magma was secretly filing patent applications that were plagiarized from Synopsys' material. The evidence presented by Synopsys is overwhelming that its reliance on Magma's written and verbal representations was actual and justifiable. Herndon Decl., ¶¶ 48-56; Damiano Decl., ¶¶ 14-18.

The reasonableness of a party's reliance on fraudulent representations is an intensely factual issue which depends on a myriad of factual questions. Vu, 26 Cal. 4th at 1153. Here, the facts overwhelmingly point in favor of a finding that Synopsys' reliance was reasonable. Magma provided explicit assurances that it would respect Synopsys' confidential information, and that it would *only* use constant delay techniques in the public domain. Edelman Decl., Exh. U. Magma's subsequent disclosures repeated these representations, and emphasized the fact that Magma had independently developed its technology from the "scientific foundation" of public domain articles. Id., Exh. OO, PP,

QQ. These representations to Synopsys were being made at the same time that Magma had become a contracting partner of Synopsys, and *had agreed in writing to respect the confidential information of Synopsys*. Id., Exh. U.

Despite the clear evidence that all of the elements of equitable estoppel are satisfied, Magma contends that Synopsys will not be able to prevail because "by September 2000, it possessed all the information upon which it now basis [sic] its misappropriation claims." Motion, p. 22. This is simply incorrect. Herndon Decl., ¶¶ 27, 30-56. The information on which Synopsys bases its claims is the plagiarism and theft of Synopsys' documents and inventions. Synopsys was not in possession of *any* information to indicate that this wrongful conduct had occurred, and was not in possession of *any* information to indicate that dozens of misappropriated inventions and concepts in Synopsys' documentation were being used by Magma.

Magma's motion also fails to recognize the consequences of the egregious fraud that has been established by this record. Once it is determined that Synopsys was defrauded, Magma cannot claim that Synopsys should have investigated to ferret out the fraud. Weatherly v. Universal Music Publishing Group, 125 Cal. App. 4th 913, 919-920 (2004) ("The recipient of a fraudulent representation of fact is justified in relying on its truth, although he might have ascertained the falsity of the representation had he undertaken an investigation") (quoting Storage Services v. Oosterbaan, 214 Cal. App. 3d 498, 508 (1989)). Further, "[w]hen intentional concealment tolls a statute of limitations, something closer to actual notice than mere inquiry notice is required to end the tolling period." Garamendi v. SDI Vendome S.A., 276 F. Supp. 2d 1030, 1042 (C.D. Cal. 2003).

In short, Magma is equitably estopped from asserting the statute of limitations in this case. Accordingly, Magma's motion should be denied.

C. Magma's Motion Must Be Denied, Because Synopsys Has Demonstrated An Ongoing Conspiracy With The Goal Of Obtaining Patents.

In its Complaint, Synopsys has alleged that Magma committed its unlawful acts in furtherance of a conspiracy with van Ginneken. Under California law, the limitations period does not *begin* to run until the last overt act has been taken in furtherance of the conspiracy. Wyatt, 24 Cal.3d at 786. Since the torts committed by Magma are part of an *ongoing* conspiracy with van Ginneken, it is impossible

for the limitations period to have expired. Synopsys has explicitly alleged in its Second Amended Complaint that the main goal of the conspiracy was to *obtain patents* from the inventions misappropriated by Magma, and thereafter to use those patents to harm competitors and increase investment in the company. Second Amended Complaint, ¶ 42. The existence of this conspiracy is supported by overwhelming evidence. Edelman Decl., ¶¶ 3-65. Since the '446 and '438 Patents did not issue until September 17, 2002 and April 20, 2004, respectively, the limitations period could not possibly have expired.

Further, even if the main goal of the conspiracy is considered to be the misappropriation of confidential information rather than the patenting of stolen inventions, the statute of limitations still has not come close to expiring. Magma cannot seriously dispute that the obtaining of patents which are based upon Synopsys' confidential and proprietary information is an overt act in furtherance of a conspiracy to misappropriate that information. Indeed, it is the obtaining of those patents which enabled Magma to threaten Synopsys in the first place. Edelman Decl., Exh. AAA. Since Magma *continues* to conspire with van Ginneken to prosecute stolen inventions before patent offices around the world, it cannot seriously argue that the statute of limitations for Synopsys' claims has expired.

Magma cites the case of Intermedics, Inc. v. Ventritrex, Inc., 822 F. Supp. 634, 650 (N.D. Cal. 1993), in support of the proposition that Synopsys' conspiracy allegations are barred. Yet, the Intermedics decision explicitly recognized the "last overt act" doctrine for conspiracy claims, and only determined that the limitations period had run in that case because the *plaintiff* had explicitly asserted that the sole goal of the conspiracy was to misappropriate its trade secrets. Id. at 648. The plaintiff did *not* allege, as does Synopsys here, that the goal of the conspiracy was to obtain patents based upon the plaintiff's information.[3]

Moreover, because Synopsys has presented evidence to demonstrate that the goal of the conspiracy was to exclude Synopsys from the marketplace by Magma's assertion of stolen patent

[3] Further, Magma ignores the fact that the Intermedics court had the benefit of a jury's finding of certain facts. 822 F. Supp. at 649, 650 (noting jury's findings). As a result of these findings, the court was able to determine for that *particular* conspiracy when the object and goal had been largely achieved. This was consistent with well-settled California law that "whether the defendants conspired together, *and if so, for what purpose, [are] questions of fact.*" Wells v. Lloyd, 6 Cal. 2d 70, 83 (1936) (emphasis added).

rights, Magma's conspiracy here implicates the policies against practices "in restraint of trade." The California Supreme Court, in the very case on which Intermedics built its analysis, has held that anticompetitive schemes constitute a continuing conspiracy. People v. Zamora, 18 Cal. 3d 538, 560, n.21 (Cal. 1976). Moreover, it has been held that where the object of the conspiracy as pled is the attainment of a government license, the last overt act in that conspiracy is the issuance of the license by the government. See U.S. v. Hitt, 107 F.Supp.2d 29, 33-37 (D.D.C. 2000) (concluding that, because the prosecution had alleged that the goal of the conspiracy was the attainment of government licenses, the last overt act was the *granting* of the licenses).

To the extent that Magma purports to dispute the goal of its conspiracy, this is an issue of fact to be determined at trial. California law requires that the scope of each conspiracy be determined on the facts of each case. See Livett v. F. C. Financial Associates, 124 Cal. App. 3d 413, 421 (1981) ("We believe that the nature and scope of the conspiracy in this case requires factual analysis, and that the record discloses substantial issues of fact which require resolution by trial. We are therefore forced to reverse the judgment as to all defendants parties to this appeal").

Magma also claims that Synopsys' conspiracy allegations are barred under this court's decision in Forcier v. Microsoft Corp., 123 F. Supp. 2d 520 (N.D. Cal. 2000). This contention is bizarre, because Forcier did not involve any claims of conspiracy. Rather, Forcier was a straightforward trade secret case under the UTSA, and the court held that the gist of all the plaintiff's claims was an allegation of trade secret misappropriation. Id. at 527. Moreover, Forcier did not involve an agreement to assign patents, but rather a simple confidentiality agreement. Id. at 522-523. This is completely different from the instant case. Synopsys has *not* alleged that Magma has misappropriated any trade secrets, or that it is entitled to remedies under the UTSA. Rather, Synopsys has alleged the existence of a *conspiracy* to patent inventions that were previously assigned to Synopsys. The conspiratorial exercise of wrongful dominion over patents is not coterminous with a claim for trade secret misappropriation.

In short, Synopsys has demonstrated that a conspiracy was formed to obtain *patents* based upon misappropriated information, and that this conspiracy has continued to the present. Under California law, therefore, the limitations period for Synopsys' claims has not even commenced.

D. The Entire Foundation For Magma's Argument Is Fatally Flawed, Because This Litigation Is About The Theft Of Synopsys' Property In Patents Rather Than Trade Secret Misappropriation.

Rather than focus on the claims that Synopsys has actually asserted in this case, Magma's motion instead attempts to recast this litigation as a "trade secret" case under the Uniform Trade Secrets Act ("UTSA"). A plain reading of the Second Amended Complaint, however, makes clear that this is *not* a trade secret case. Synopsys has *not* asserted any cause of action under the UTSA, and has not contended that it is entitled to remedies available under the UTSA. Rather, from the beginning of this litigation, the gist of Synopsys' claims has been that it possesses legal and equitable title to the '446 and '438 Patents and the inventions contained therein, and therefore Synopsys is entitled to confirmation of its full and exclusive rights to this *property*. Since the patents did not even come into existence until less than three years before the state law claims were filed, it is impossible for the statute of limitations to have expired.

Because the gist of Synopsys' claims is the return of property which Magma illegally possesses and has unjustly retained, the logic of the UTSA cases on the statute of limitations is completely inapplicable. Indeed, in Cadence Design Systems, Inc. v. Avant! Corp., 29 Cal. 4th at 224, the California Supreme Court made clear that patents and trade secrets are fundamentally different: "Thus, the legal protection accorded trade secrets is fundamentally different from that given to patents, in which the patent owner acquires a limited term monopoly over the patented technology." Here, Magma has unjustly retained property in the form of *patents* that have already been assigned to Synopsys, and which Magma has no right to exploit. Accordingly, the entire line of UTSA cases relied upon by Magma is completely inapposite.[4]

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[4] Indeed, since Synopsys' claims are based on Magma's unjust retention and concealment of stolen property, this case is indistinguishable from a charge of concealment of stolen property under California Penal Code § 496. Under California law, concealing stolen property is a *continuing* act, because it "consists of the act of intentionally secreting stolen property in violation of the affirmative duty to return it – or at least to disclose its whereabouts – to its rightful owner." Williams v. Superior Court, 81 Cal. App. 3d 330, 344 (1978). Magma cannot invoke the limitations period here because it *continued* to conceal its possession of stolen property until 2004.

E. Synopsys' Claim For Inducing Breach Of Contact Is Predicated On Continuing Breaches By van Ginneken Stretching Up To The Present, And Therefore The Limitations Period On That Claim Could Not Have Expired.

Magma's inability to convert this case into a "trade secret" case dooms its motion, because the statute of limitations on the claims that Synopsys has *actually* asserted could not possibly have expired. Synopsys' claim for inducing breach of contract is a perfect example.

Under California law, where a contract delineates multiple or ongoing obligations, each failure to perform results in a new breach. McGrath v. Butte, 30 Cal. App. 2d 734, 736 (1939); Peterson v. Highland Music, Inc., 140 F.3d 1313, 1321 (9th Cir. 1998). Further, where a written contract imposes an affirmative obligation but does not specify or limit the time for performance, a cause of action for breach arises under California law only after a demand for performance is made. Cutujian v. Benedict Hills Estates Assoc., 41 Cal. App. 4th 1379, 1386-87 (1996).

Here, the Agreement between Synopsys and van Ginneken imposes multiple, *continuing* obligations on van Ginneken. For instance, the Agreement obligates van Ginneken to "perform, during and *after* my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at the Company's expense, in obtaining, maintaining, and enforcing patents, copyrights, trade secret rights, rights with respect to such Inventions and/or other Inventions I may have or may at any time assign to the Company in any and all countries." Edelman Decl., Exh. B at ¶ 3(D) (emphasis added). The Agreement does not specify any end date for the performance of these obligations.

Synopsys has demonstrated that Magma has interfered with the *continuing* obligations that are owed by van Ginneken to Synopsys. Since 2004, for instance, Magma and van Ginneken have conspired to deny to Synopsys a confirmation of its full and excusive ownership in the '446 and '438 Patents, despite Synopsys' written request. Edelman Decl., Exh. AAA. Magma has also induced van Ginneken in *2005* to locate purported prior art in an effort to invalidate the very patents van Ginneken was obligated to enforce under his Agreement. Id., Exh. C at 401:5-22, 398:15-21. Further, Magma entered into a secret agreement with van Ginneken in *2005*, pursuant to which he would continue to agree to provide assistance to Magma to defeat Synopsys' claims. Id., Exh. EEE. van Ginneken's continuing breach of his obligations to Synopsys precludes Magma's limitations defense.

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This result is in accord with other cases that have addressed this issue. For instance, in Goldwasser v. Smith Corona Corp., 817 F. Supp. 263 (D. Conn. 1993), aff'd, 26 F.3d 137 (Fed.Cir. 1994), an IBM programmer invented certain improvements in word processing software and implemented them in software entitled "Point Writer." Goldwasser then filed a patent application in his own name for his inventions. After Goldwasser resigned from IBM, he filed a patent infringement case against Smith-Corona, and IBM intervened claiming ownership of the patent under Goldwasser's employment agreement. Id. at 266. Goldwasser contended that the statute of limitations began to run when IBM rejected the program. The court rejected this contention, reasoning that even if IBM had notice of Goldwasser's invention and patent application, "IBM was under no obligation to do anything – such as making a demand that Goldwasser assign the patent application to IBM – with respect to the PointWriter program." Id. at 271. Rather, a breach of the employment agreement occurred "only after IBM demanded assignment and Goldwasser refused to do so." Id. at 271-72; see also Imatec v. Apple Computer, 81 F. Supp. 2d 471, 483 n. 5 (2000) (where employee made present assignment of invention, it vested ownership in plaintiff by operation of law; limitations period only starts to when demand is made and inventor refuses to assign the patents); Andreaggi v. Relis, 171 N.J. Super. 203, 235-236 (1979) (limitations period starts running when patent issued and there is a refusal to assign).[5]

As was true in Goldwasser, van Ginneken's breach of his obligation to aid in protecting and enforcing Synopsys' inventions occurred *after* Magma and van Ginneken were explicitly informed of Synopsys' demands in September of 2004. Magma's inducement of van Ginneken to violate obligations in 2004 and 2005 clearly falls within the statute of limitations.[6]

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[5] An employee's contractual obligation to assign patents is specifically enforceable. Cubic Corp. v. Marty, 185 Cal. App. 3d 438, 448 (1986). Further, where a party induces another to breach a contract to convey property, specific performance may be obtained against the party inducing the breach and in possession of the wrongfully acquired property. Caras v. Parker, 149 Cal. App. 2d 621, 630 (1957). Yet, Magma refuses to return to Synopsys what is already Synopsys' property by operation of law.

[6] The Intermedics decision itself supports this argument. In that case, the court was only able to conclude that the statute began to run on a breach of contract claim because the "breaches of contract...would consist *entirely* of the same acts of misappropriation." Id. at 644 (italics added). Here, however, the breaches alleged by Synopsys also consist of van Ginneken's independent, *continuing* obligation to protect and enforce inventions assigned to Synopsys.

F. Synopsys' Claim For Conversion Did Not Accrue As A Matter Of Law Until The Issuance Of The '446 And '438 Patents.

Under California law, conversion is a *continuing tort*. As the California Supreme Court has stated: "[Conversion] is a *continuing tort* as long as the person entitled to the use and possession of his *property* is deprived thereof." De Vries v. Brumback, 53 Cal.2d 643, 647 (1960) (italics added). Since Magma *continues* to use and possess the property of Synopsys (both the inventions assigned to Synopsys and the patents that belong to Synopsys), it is impossible for the statute of limitations on Synopsys' conversion claim to have started to run.

Further, "[t]he action for conversion properly lies where there is some substantial interference with possession or the right thereto, and the plaintiff in a conversion action recovers the *full value* of the property, in effect forcing the defendant to buy it. Where the act does not amount to a dispossession, but consists of intermeddling with or use of or damage to the property, the normal action will be for *trespass*, in which the plaintiff recovers only the actual damages suffered by the impairment of the property or loss of its use." 5 Witkin, Summary of California Law, Torts, Section 610, p. 708 (emphasis in original).

As a result of this particular aspect of conversion claims, the courts have determined that the conversion of patented inventions is not complete (and the limitations period does not begin to run) until the issuance of the *patents*. Prescott v. Morton Int'l, Inc., 769 F. Supp. 404, 406-409 (D.Mass. 1990) (stating that the "issuance of the patent is the final act of conversion"). Here, the '446 and '438 Patents did not issue until less than three years before this action was brought. Accordingly, Synopsys' conversion claim could not be barred as a matter of law.

IV. CONCLUSION.

For all the reasons stated above, Magma's motion should be denied.

Dated: June 29, 2005

DECHERT LLP

By:/s/Michael N. Edelman
Michael N. Edelman
Attorneys for Plaintiff and Counter-Defendant,
SYNOPSYS, INC.