

1 Chris Scott Graham (State Bar No. 114498)
chris.scott.graham@dechert.com
2 Michael N. Edelman (State Bar No. 180948)
michael.edelman@dechert.com

3 **DECHERT LLP**

4 1117 California Avenue
Palo Alto, CA 94304-1013
Telephone: 650.813.4800
5 Facsimile: 650.813.4848

6 Attorneys for Plaintiff and Counter-Defendant,
SYNOPSISYS, INC.

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
16 Delaware corporation,

17 Defendant and Counter-Claimant.

Case No. C-04-03923 MMC

**PLAINTIFF SYNOPSISYS, INC.'S NOTICE
OF MOTION AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT ESTABLISHING
UNFAIR COMPETITION**

Date: May 20, 2005

Time: 9:00 a.m.

Courtroom: 7

Judge: Hon. Maxine M. Chesney

18
19 AND RELATED COUNTERCLAIMS

20
21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

I. INTRODUCTION 1

II. FACTUAL BACKGROUND.....2

 A. Lukas van Ginneken’s Employment With Synopsys2

 B. van Ginneken Conceives of the Inventions Later Stolen by Magma4

 C. Magma Misappropriates Synopsys’ Inventions7

 D. Magma Defrauds Synopsys In Order to Hide Its Misconduct.....10

 E. Magma Receives Patents on Synopsys’ Inventions, and Then Attempts to
 Assert Those Patents Against Synopsys11

 F. van Ginneken Confesses to Magma’s Illegal Conduct11

 G. Magma Admits That Its Prior Representations to Synopsys and this Court
 About the Conception of the Inventions in the Patents Were False12

III. ANALYSIS13

 A. Synopsys’ Claim for Unfair Competition.....13

 B. The Facts Underlying Synopsys’ Unfair Competition Claim Have Been
 Admitted by Magma and Its Co-Founder14

 C. Magma’s Conduct Constitutes Unfair Competition Under California Law16

IV. CONCLUSION.....17

1 **TABLE OF AUTHORITIES**

2 **STATE CASES**

3 Page(s)

4 Cel-Tech Comm., Inc. v. L.A. Cellular Tel. Co.,
5 20 Cal. 4th 163, 973 P.2d 527, 83 Cal. Rptr. 2d 548 (1999)13, 16

6 People ex rel. Renne v. Servantes,
7 86 Cal. App. 4th 1081, 103 Cal. Rptr. 2d 870 (2001).....13

8 Smith v. State Farm Mut. Auto. Ins. Co.,
9 93 Cal. App. 4th 700, 113 Cal. Rptr. 2d 399 (2001).....13, 14, 16

10 South Bay Chevrolet v. General Motors Acceptance Corp.,
11 72 Cal. App. 4th 861, 85 Cal. Rptr. 2d 301 (1999).....14

12 Wilner v. Sunset Life Ins. Co.,
13 78 Cal. App. 4th 952, 93 Cal. Rptr. 2d 413 (2000).....14

14 **FEDERAL STATUTES**

15 F.R.C.P. §1112, 13

16 **STATE STATUTES**

17 Cal. Lab. Code § 28703

18 Cal. Bus. & Prof. Code § 172001, 2, 13, 14, 15, 16, 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION

TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT at 9:00 a.m. on May 20, 2005, or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, plaintiff and counter-defendant Synopsys, Inc. (“Synopsys”) will move for partial summary judgment on Synopsys’ claim for unfair competition. Specifically, Synopsys seeks an order establishing that Magma has committed unfair competition within the meaning of California Business & Professions Code Section 17200 *et seq.*

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Lukas van Ginneken (“van Ginneken Decl.”), the Declaration of Michael N. Edelman (“Edelman Decl.”), all pleadings and documents on file with the Court, the argument of counsel, and any documentary evidence which may be presented at the time of the hearing. A proposed order granting the motion is filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

It is beyond dispute that defendant Magma Design Automation, Inc. (“Magma”) has committed unfair competition in violation of California law. Magma’s acts of unfair competition have been admitted under oath by Lukas van Ginneken (“van Ginneken”), Magma’s co-founder and former Chief Scientist. Dr. van Ginneken has admitted to misappropriating Synopsys’ inventions for the benefit of Magma, and to illegally utilizing those inventions for Magma’s benefit. Dr. van Ginneken has also admitted that the inventions which were misappropriated by Magma were utilized as a technical foundation for Magma’s products. Further, Magma has confessed that its patents contain dozens of inventions that were conceived at Synopsys. As a result of the numerous confessions by Magma and its co-founder, and the devastating documentary evidence produced by Synopsys in this case, Magma’s violation of

///
///

1 California Business & Professions Code Section 17200 has been established as a matter of law.
2 Accordingly, Synopsys' motion for partial summary judgment should be granted.¹

3 **II. FACTUAL BACKGROUND**

4 **A. Lukas van Ginneken's Employment With Synopsys.**

5 In 1995, Lukas van Ginneken was hired by Synopsys to work on the development of
6 Synopsys' logic synthesis and related technologies. Declaration of Lukas van Ginneken ("van
7 Ginneken Decl."), ¶ 1. van Ginneken was given the responsibility to work on research pertaining
8 to logic synthesis, and was asked to make contributions to the technical vision for Synopsys'
9 logic synthesis team. *Id.* van Ginneken understood that, given his prior experience in the field,
10 Synopsys was relying upon him to provide leadership and vision to the development of Synopsys'
11 products and technology. *Id.*

12 On May 17, 1995, van Ginneken signed a Proprietary Information and Inventions
13 Agreement (the "Agreement") with Synopsys. *Id.*, Exh. 1. The Agreement provided, among
14 other things, that (a) all information defined as "Proprietary Information" shall be the sole
15 property of Synopsys, (b) Synopsys shall be the sole owner of "all patents, copyrights and other
16 rights in connection therewith," and (c) van Ginneken "hereby assign[s] to the Company any
17 rights I may have or acquire in such Proprietary Information." Declaration of Michael Edelman
18 ("Edelman Decl."), Exh. 1 at ¶ 3(A).

19 The term "Proprietary Information" is broadly defined in the Agreement to include
20 information that "has been created, discovered, developed or otherwise become known to the
21 Company (including, without limitation, information created discovered or developed by, or
22 made known to, me during the period of or arising out of my employment by the Company)
23 and/or in which property rights have been assigned, licensed or otherwise conveyed to the
24 Company." Edelman Decl., Exh. 1 at ¶ 1. For instance, Proprietary Information is defined in the
25

26 ¹ This motion solely seeks the issuance of an order establishing that Magma has committed
27 unfair competition in violation of California law. Magma has asserted various "procedural"
28 defenses to this claim, including defenses based upon the statute of limitations and laches.
Though Synopsys believes these defenses are frivolous, and will ultimately be dismissed at
summary judgment or trial, these defenses are not the subject of this motion.

1 Agreement to include “trade secrets, processes, data and know-how, computer software,
2 improvements, inventions, works of authorship, techniques, marketing plans, strategies, forecasts
3 and copyrightable material and customer lists.” Id. at ¶ 1.

4 The Agreement also contains a provision explicitly assigning all of van Ginneken’s
5 inventions to Synopsys. In particular, the Agreement provides that “all Inventions which I make,
6 conceive, reduce to practice or develop (in whole or in part, either alone or jointly with others)
7 during my employment shall be the *sole property* of the Company to the maximum extent
8 permitted by Section 2870 of the California Labor Code . . .” Edelman Decl., Exh. 1 at ¶ 3(D).
9 (emphasis added). Under the Agreement, Synopsys is deemed to be “the *sole owner* of all
10 patents, copyrights, trade secrets rights, rights with respect to other intellectual property or other
11 rights in connection therewith (including, without limitation, such rights in algorithms or
12 software).” Id. at ¶ 3(D) (emphasis added). The Agreement further provides that van Ginneken
13 “hereby assign[s] to the Company any rights I may have or acquire in such Inventions.” Id., at ¶
14 3(D).²

15 When he signed the Agreement, van Ginneken attached a list of “inventions or
16 improvements” which he had contributed to before his employment at Synopsys. van Ginneken
17 Decl., ¶ 4. The pre-employment inventions or improvements listed by van Ginneken do not
18 disclose the inventions ultimately claimed in the main patents at issue in this case, U.S. Patent
19 No. 6,453,446 or U.S. Patent No. 6,725,438 (hereinafter collectively referred to as the “Patents”).
20 Id., ¶ 5. Indeed, van Ginneken has attested that he did not conceive of any of the inventions
21 disclosed in the Patents before he joined Synopsys. Id., ¶ 5.

22 After signing the Agreement, van Ginneken started his employment at Synopsys on or
23 about June 26, 1995. Id., ¶ 6. van Ginneken never objected to the scope or terms of the
24 Agreement, and never asked Synopsys for any waiver from the enforcement of its provisions. Id.,
25

26 ² The term “Inventions” is broadly defined under the Agreement to include any “improvements,
27 inventions, works of authorship, processes, techniques, know-how, formulae, data, ideas and
28 other information (including, without limitation, my algorithms or software), whether or not
patentable, made or conceived or reduced to practice or learned by me, either alone or jointly
with others, during the term of my employment.” Id. at ¶ 3(C).

1 ¶7. Further, van Ginneken has attested that he is unaware of any facts which would indicate that
2 the Agreement is not fully valid and enforceable against him. Id., ¶ 3.

3 **B. van Ginneken Conceives of the Inventions Later Stolen by Magma.**

4 In or about early 1996, as part of van Ginneken’s job to research and explore new product
5 ideas for Synopsys, van Ginneken conceived the idea of creating an Electronic Design
6 Automation (“EDA”) product that would use the concept of fixed timing. van Ginneken Decl., ¶
7 8. Under the concept of fixed timing, the timing delays of a chip design are held constant and
8 “fixed,” in contrast to determining timing delay at a later point in the design flow. Because fixed
9 timing involves holding the timing delay constant, it can also be referred to as “constant delay.”
10 Id., ¶ 9.

11 The inventions van Ginneken conceived while employed by Synopsys were designed to
12 implement this concept of fixed timing/constant delay into an EDA tool that performed logic
13 synthesis, placement, and/or related tasks. Id., ¶ 10. The fixed timing inventions van Ginneken
14 conceived at Synopsys (and which therefore belong to Synopsys) are the very same inventions
15 that were later disclosed in the Patents issued to Magma. Id., ¶ 10. Indeed, van Ginneken has
16 confessed under oath that the fixed timing inventions he conceived at Synopsys “were the same
17 inventions that were later disclosed in the Patents.” Id., ¶ 10. Further, **Magma has conceded**
18 **under oath that the vast majority of inventions contained in the Patents were conceived**
19 **before van Ginneken left Synopsys.** Edelman Decl., Exh. 2 at 3:16-4:2.

20 After initially conceiving of his inventions, van Ginneken participated in a meeting with
21 other Synopsys personnel to discuss ideas for Synopsys’ next-generation synthesis product (code
22 named “NGSS” or “Synzilla”). van Ginneken Decl., ¶ 12. During this meeting, van Ginneken
23 set out the basic concept for his fixed timing inventions. Id. He was directed to research the issue
24 further and report his findings at a later meeting. Id.

25 During a subsequent meeting in 1996, van Ginneken gave a further presentation to
26 Synopsys personnel concerning the fixed timing inventions he had conceived while employed at
27 Synopsys. Id., ¶ 13. During the meeting, van Ginneken discussed how Synopsys could
28 implement the inventions in Synopsys tools. Id. During the course of this meeting, van

1 Ginneken was successful in convincing others at Synopsys that the company should consider
2 redirecting its efforts towards implementing these inventions. Id.

3 The conception of the fixed timing inventions by van Ginneken is thoroughly documented
4 in Synopsys' records. van Ginneken Decl., ¶ 14. For instance, in early 1996, van Ginneken filled
5 out an invention disclosure form attesting that the fixed timing inventions were conceived by
6 himself alone. van Ginneken Decl., Exh. 2; Edelman Decl., Exh. 3. This invention disclosure,
7 under the title "Constant Delay Synthesis," states as follows:

8 Constant delay synthesis is an entirely different paradigm for delay optimization in
9 logic synthesis. It promises to radically simplify the design process from
10 behavioral synthesis down to physical desing [sic]. It is probably more of a
11 philosophy than an algorithm. Using this philosophy many common optimization
algorithms, such as mapping, retiming, behavioral synthesis, delay [&] area
optimization, placement can be reformulated in a much simpler form.

12 van Ginneken Decl., ¶ 15. In this disclosure, van Ginneken truthfully represented his
13 understanding that he was the sole inventor of the fixed timing inventions. Id., ¶ 16. van
14 Ginneken also truthfully represented that the fixed timing inventions were being considered as the
15 "cornerstone" of the NGSS project at Synopsys. Id., ¶ 17. van Ginneken further stated his
16 understanding that "[i]t is important that Synopsys acquires patent protection in this area, even
17 though some prior art exists." Id., ¶ 18.

18 van Ginneken's conception of the fixed timing inventions is further documented in the
19 performance reviews he received at Synopsys. For instance, in his performance review for the
20 period March 1, 1996 to April 1, 1997, Synopsys stated that "[o]ver the past year within the
21 Advanced Technology Group, you have had basically one objective: driving through the next
22 generation synthesis effort based on constant delay." van Ginneken Decl., ¶ 19 & Exh. 3;
23 Edelman Decl., Exh. 4. The review further stated:

24 Your primary objective over the past year has been driving the technical direction
25 of the Synzilla project, bringing to fruition your ideas on applying constant delay
26 to Synopsys next generation synthesis effort. This project represents a major
27 milestone and direction for Synopsys, and your efforts have been instrumental in
28 effecting the project. One year ago, Synzilla was an idea in your head; it is

1 currently a staffed project that has met aggressive milestones and schedules and
2 that has strong support from outside partners.

3 van Ginneken Decl., ¶ 19 & Exh. 3.

4 Similarly, another of van Ginneken’s performance reviews discussed the presentation of
5 the fixed timing inventions by van Ginneken during one of the internal Synopsys meetings in
6 early 1996:

7 Lukas, you demonstrated true vision and original thinking in one of the NGSS
8 meetings when you presented your ‘constant delay’ ideas. I think that in the
9 process of one hour, you presented a change in the synthesis paradigm to the best
10 technical minds at Synopsys, they accepted that the idea has a lot of merit, and the
team initiated a project to investigate this further. This is really exciting!

11 Id., ¶ 20; Edelman Decl., Exh. 5 at SY000045.

12 In order to obtain patent protection for the fixed timing and gain-based synthesis
13 inventions van Ginneken conceived while employed at Synopsys, he proceeded to work with
14 Synopsys’ patent counsel in order to draft a patent application. van Ginneken Decl., ¶ 21. A
15 patent application was ultimately drafted containing the same inventions that were later disclosed
16 in the Patents. Id., ¶ 21 & Exh. 5; Edelman Decl., Exh. 6. This draft was entitled “System and
17 Method for Constant Delay Synthesis,” and contained disclosure of van Ginneken’s inventions
18 for fixed timing, including use of fixed timing in relation to logic synthesis and placement, equal
19 slack sizing, area estimation, buffering, bipartitioning, iterative placement, and net weights. van
20 Ginneken Decl., ¶ 22. van Ginneken never disclosed this draft patent application to the public,
21 and has attested that he has no reason to believe it was not maintained by Synopsys as proprietary
22 and confidential. Id., ¶ 22.

23 After the creation of this draft, work on the application continued, and eventually a
24 subsequent draft was created. This draft was entitled “Method for Achieving Timing Closure of
25 Digital Networks and Method for Area Optimization of Digital Networks Under Timing
26 Closure.” van Ginneken Decl., ¶ 23 & Exh. 6; Edelman Decl., Exh. 7. This draft more
27 thoroughly disclosed the inventions van Ginneken conceived while employed at Synopsys, and
28 described in detail the use of fixed timing in relation to network slack, library independent

1 optimization, mapping for delay, post mapping optimization, pin swapping, boundary moves, area
2 estimation, net weights, buffering, stretching, placement, partitioning, and final or discrete sizing.
3 van Ginneken Decl., ¶ 23. van Ginneken never disclosed this draft patent application to the
4 public, and has no reason to believe that it was not maintained by Synopsys as proprietary and
5 confidential. Id., ¶ 23.

6 In addition to the preparation of the draft patent applications, van Ginneken also authored
7 an internal “white paper” on the fixed timing inventions. van Ginneken Decl., ¶ 24. This
8 confidential white paper was titled “The Constant Delay Methodology,” and set forth several
9 aspects of the inventions contained in the Patents. Id., ¶ 24; Edelman Decl., Exh. 8. This paper
10 contained, for instance, a description of the use of fixed timing as it related to logical effort and
11 gain, sizing and placement, buffering, transition time effects, area optimization, and area
12 estimation. van Ginneken Decl., ¶ 24.

13 After this white paper was created, van Ginneken authored a new paper with the title
14 “Driving on the Left-Hand Side of the Performance Speedway.” Id., ¶ 25; Edelman Decl., Exh.
15 9. Once again, this paper provided a description of numerous aspects of the inventions van
16 Ginneken conceived of at Synopsys, and that are contained in the Patents. van Ginneken Decl., ¶
17 25.

18 By the middle of 1996, Synopsys had extensive confidential documentation describing, in
19 great detail, the inventions van Ginneken conceived while employed at Synopsys. Id., ¶ 26.
20 Synopsys did not ever give van Ginneken permission to take or use this documentation, or any of
21 the inventions described therein, for the benefit of another company. Id., ¶ 26. To the contrary,
22 van Ginneken understood that, under the Agreement, these inventions were and are the property
23 of Synopsys, and were assigned to Synopsys the instant that they were conceived. Id., ¶ 26.

24 **C. Magma Misappropriates Synopsys’ Inventions.**

25 van Ginneken has attested that, at some point in 1997, he decided to resign from Synopsys
26 to pursue other opportunities. van Ginneken Decl., ¶ 27. Instead, however, of pursuing ideas at
27 another company that were unrelated to Synopsys’ confidential information, van Ginneken has

28 ///

1 admitted that he sought to take another position where he could continue utilizing the fixed timing
2 and gain-based synthesis inventions he conceived at Synopsys. Id., ¶ 27.

3 In May of 1997, van Ginneken formally resigned from Synopsys in order to join Magma,
4 which had been incorporated on April 1, 1997. Id., ¶ 28. In his resignation letter, he stated that
5 he was resigning to join a “newly formed startup company,” and stated that his departure “should
6 not be construed as a lack of faith in the technical approaches which I have been advocating.” Id.,
7 ¶ 28; Edelman Decl., Exh. 10.

8 van Ginneken’s departure to Magma occurred in conjunction with a massive theft of
9 Synopsys’ inventions and confidential information. Unbeknownst to Synopsys, Magma took the
10 inventions contained in Synopsys’ confidential draft applications and white papers and used these
11 inventions as the basis for Magma’s own secret patent applications to the Patent and Trademark
12 Office. van Ginneken Decl., ¶¶ 30, 33, 38. Though this misappropriation has already been
13 conceded by Magma and van Ginneken, it was already self-evident from comparing the language
14 of Synopsys’ draft patent applications to the patents drafted for Magma. This comparison reveals
15 the rampant plagiarism that took place from Synopsys’ confidential material. Edelman Decl.,
16 Exh. 11.

17 Attached to this memorandum as Exhibit A is a chart listing just some of the portions of
18 the Patents that were blatantly copied from Synopsys materials. The plagiarism reflected by this
19 chart is jaw-dropping. This chart conclusively reveals the extraordinary misappropriation by
20 Magma; indeed, practically the entirety of Synopsys’ draft patent application was copied into the
21 secret patent applications filed by Magma. It is impossible to review this chart and come to any
22 conclusion but that the Patents contain a wealth of inventions misappropriated from Synopsys.

23 Given this devastating evidence, van Ginneken and Magma have been left with no choice
24 but to **concede**, under oath, that the Patents issued to Magma contained dozens of inventions
25 misappropriated from Synopsys. van Ginneken Decl., ¶ 30, 36-38; Edelman Decl., Exh. 2 at
26 3:16-6:21. For instance, van Ginneken has made all of the following confessions under oath:

- 27 • van Ginneken has **admitted** that he used the inventions contained in Synopsys’ draft
28 patent applications for Magma’s benefit. Id., ¶ 30.

- 1 • van Ginneken has **admitted** that the inventions from Synopsys’ patent applications
2 formed the basis for the patent applications van Ginneken helped prepare for Magma.
Id., 30.
- 3 • van Ginneken has **admitted** that he used, for Magma’s benefit, his knowledge of the
4 information contained in at least one of the white papers that he had created for
Synopsys. Id., ¶¶ 30, 33.
- 5 • van Ginneken has **admitted** that Magma and van Ginneken used the inventions that he
6 conceived while employed at Synopsys as the technical foundation for Magma’s
products. Id., 31.
- 7 • van Ginneken has **admitted** that, during the course of using the inventions belonging
8 to Synopsys, Magma labeled these inventions as Magma’s “FixedTiming”
methodology, and incorporated Synopsys’ inventions into Magma’s products. Id., ¶
9 34.
- 10 • van Ginneken has **admitted** that Synopsys did not ever provide any permission to him
or Magma to take its inventions. Id., ¶ 32.
- 11 • van Ginneken has **admitted** that his conduct in misappropriating Synopsys’ inventions
12 was a breach of his contractual obligations to Synopsys. Id., 46.

13 Magma’s confessions have been similar. Faced with the devastating evidence that
14 Synopsys has produced in this litigation, Magma has been left with no choice but to concede the
15 truth of Synopsys’ allegations of unfair competition. For instance:

- 16 • Magma has **admitted** that 17 (out of 19) inventions claimed in the ‘438 Patent issued
17 to Magma were conceived by van Ginneken **before** van Ginneken left for Synopsys.
Edelman Decl., Exh. 2 at 5:5-19. Magma has therefore admitted that these 17
18 inventions were misappropriated from Synopsys.
- 19 • Magma has **admitted** that over thirty (30) of the inventions claimed in the ‘438 Patent
issued to Magma were conceived by van Ginneken **before** van Ginneken left for
20 Synopsys. Edelman Decl., Exh. 2 at 3:16-4:2. Magma has therefore admitted that
these inventions were misappropriated from Synopsys.
- 21 • Magma has **admitted** that the inventions in the ‘446 Patent and the ‘438 Patent, which
22 were misappropriated from Synopsys, served as the basis for Magma’s FixedTiming
methodology -- which lies at the core of Magma’s entire product line. Edelman Decl.,
23 Exh. 12.

24 As these confessions by Magma and its co-founder indicate, the misappropriation of Synopsys’
25 inventions is not disputed in this case. Magma has committed very serious acts of unfair
26 competition.

27 ///

28 ///

1 **D. Magma Defrauds Synopsys In Order to Hide Its Misconduct.**

2 The facts supporting Magma’s cover-up of its misappropriation are also not disputed in
3 this case. Not only has Magma’s co-founder confessed to taking Synopsys’ inventions, but he has
4 also confessed that Magma lied to Synopsys about this theft.

5 On July 23, 1997, Synopsys sent a letter to Magma expressing its concern over the hiring
6 of van Ginneken, and asking for assurances that its confidential information would be protected.
7 Edelman Decl., Exh. 13. Magma responded with a August 18, 1997 letter from its outside
8 counsel, Pillsbury, Madison & Sutro LLP. *Id.*, Exh. 14. In this letter, Magma and van Ginneken
9 made a series of representations and assurances to Synopsys, including the following: (1) “Dr.
10 van Ginneken intends to honor his obligations under his Proprietary Information Agreement with
11 Synopsys,” (2) “Magma is in the practice of taking appropriate steps to protect . . . the trade
12 secrets of its employees’ former employers,” (3) “Dr. van Ginneken will protect Synopsys’
13 proprietary information during his employment at Magma,” (4) “Magma is confident that Dr. van
14 Ginneken has and will continue to abide by the terms of the Magma Agreement in the
15 performance of his duties for Magma,” and (5) “Magma will reiterate to Dr. van Ginneken his
16 duty to abide by his Synopsys Agreement.” van Ginneken Decl., ¶ 36; Edelman Decl., Exh. 14.

17 van Ginneken has **admitted** under oath that, at the time that this letter was sent, he knew
18 that certain of these statements were false. van Ginneken Decl., ¶ 36. For instance, van
19 Ginneken has attested that the representation that he intended to honor his obligations under his
20 Agreement with Synopsys was knowingly false. *Id.* van Ginneken has likewise admitted that the
21 representation that he would protect Synopsys’ proprietary information during his employment at
22 Magma was also knowingly false. *Id.* Indeed, at the time these statements were made, Magma
23 and van Ginneken were **already** using the inventions and information from the confidential patent
24 applications drafted for Synopsys (and the information contained in at least one confidential
25 Synopsys white paper), to develop Magma’s products and draft Magma’s patent applications. *Id.*
26 Put bluntly, the August 18, 1997 letter from Magma to Synopsys was a complete fraud, calculated
27 to induce Synopsys to refrain from pursuing its legal rights.

28 ///

1 **E. Magma Receives Patents on Synopsys’ Inventions, and Then Attempts to**
2 **Assert Those Patents Against Synopsys.**

3 On September 17, 2002, the ‘446 Patent was issued to Magma. van Ginneken Decl., ¶
4 44; Edelman Decl., Exh. 15. Thereafter, the ‘438 Patent was issued to Magma. van Ginneken
5 Decl., ¶ 45; Edelman Decl., Exh. 16. Both Magma and van Ginneken have now **conceded** that
6 these patents contain inventions misappropriated from Synopsys. *Id.*, van Ginneken has
7 admitted that these patents contain inventions that he solely conceived at Synopsys, and then
8 misappropriated for Magma’s benefit. van Ginneken Decl., ¶¶ 10, 30-38. Magma has likewise
9 admitted that dozens of the inventions in these patents were conceived by van Ginneken at
10 Synopsys. Edelman Decl., Exh. 2 at 3:16-4:2, 5:5-19.

11 Rather, however, than admit its fraud when the patents were issued and acknowledge that
12 the patents it received from the PTO contained stolen inventions, Magma did precisely the
13 opposite: It sent a letter to Synopsys in the summer of 2004 accusing Synopsys of infringing the
14 ‘446 and ‘438 patents -- which contained the very same inventions that had been stolen from
15 Synopsys! Edelman Decl., Exh. 17. Triggered by this letter, Synopsys discovered the theft of its
16 inventions, and also discovered the fraud that had been perpetrated by Magma in order to cover-
17 up this theft.

18 On September 17, 2004, Synopsys brought the instant action for patent infringement,
19 alleging that the ‘446 and ‘438 Patents were truly owned by Synopsys, and that Magma was
20 infringing both of those patents. Edelman Decl., Exh. 18. Thereafter, Synopsys filed its First
21 Amended Complaint adding claims against Magma for unfair competition, inducing breach of
22 contract, conversion, and unjust enrichment/constructive trust against Magma. *Id.*, Exh. 19. The
23 instant motion focuses solely on Synopsys’ claim for unfair competition against Magma.

24 **F. van Ginneken Confesses to Magma’s Illegal Conduct.**

25 In March of 2005, van Ginneken signed a declaration **confessing** to Magma’s acts of
26 unfair competition. In his declaration, van Ginneken admits that the inventions contained in the
27 Patents were solely conceived by him at Synopsys, and that the inventions were misappropriated
28 for Magma. van Ginneken Decl., ¶¶ 22-23, 30-45. van Ginneken further admits under oath that

1 he breached his obligations to Synopsys under the Agreement by, among other things, (a) failing
2 to keep proprietary information of Synopsys in trust and confidence, and (b) using and disclosing
3 Synopsys' proprietary information to and on behalf of Magma without the written consent of
4 Synopsys. Id., ¶ 46. van Ginneken further attests he has reason to believe that, at a minimum, his
5 supervisor at Magma knew that the fixed timing inventions Magma was using were conceived by
6 van Ginneken at Synopsys, and were encompassed by his Agreement with Synopsys. Id., ¶ 29.
7 van Ginneken's confession, by itself, conclusively demonstrates the scope and egregiousness of
8 Magma's theft.

9 **G. Magma Admits That Its Prior Representations to Synopsys and this Court**
10 **About the Conception of the Inventions in the Patents Were False.**

11 As discussed above, Magma has also confessed that the inventions in the Patents were
12 conceived by van Ginneken at Synopsys. Edelman Decl., Exh. 2. Not only has Magma been left
13 no choice but to make this confession, but it has also confessed that its prior allegations on this
14 subject were false. When Magma's original and amended answers were filed, Magma vigorously
15 took the position that Magma was the owner of all the inventions in the '446 and '438 Patents.
16 Indeed, Magma explicitly alleged that it was the exclusive owner of the patents, and that "Dr. van
17 Ginneken developed the inventions disclosed in the Magma Patents after he co-founded Magma
18 in 1997." Edelman Decl., Exh. 20, ¶ 3. Magma further explicitly alleged that "Dr. van Ginneken
19 conceived of the inventions disclosed and claimed in the Magma Patents." Id., ¶ 81. Incredibly,
20 Magma alleged that Synopsys' claim of ownership to the patents was "groundless," and
21 characterized this litigation as a "baseless lawsuit." Id., ¶ 111.

22 Given the evidence of Magma's conduct as described above, Synopsys is frankly at a loss
23 to understand how Magma could (consistent with Federal Rule of Civil Procedure 11) have
24 chosen to make these assertions. In any event, Magma has now admitted that these
25 representations to the Court were false. Magma has **admitted** that the allegation that van
26 Ginneken conceived all of the inventions at Magma was false. For instance, Magma has now
27 conceded that the inventions in Claims 1-9, 19-26, and 33-54 of the '446 Patent were conceived
28 **before** van Ginneken resigned from Synopsys. Edelman Decl., Exh. 2 at 3:19 – 4:2. Magma has

1 likewise conceded that the inventions in Claims 1-16 and 19 of the '438 Patent were conceived
2 **before** van Ginneken resigned from Synopsys. Id. at 5:5-19.

3 These concessions mean that the entire tale Magma told to Synopsys and the Court in its
4 Answer was false. The parties now agree that the inventions contained in the patents issued to
5 Magma were conceived by Synopsys, not Magma. The parties also agree that these inventions
6 were conceived before Lukas van Ginneken resigned from Synopsys, not afterwards. These facts
7 are in keeping with the explicit confessions of misappropriation made by van Ginneken himself
8 throughout his declaration. Now that the misappropriation of Synopsys' inventions has been
9 conceded by Magma and its co-founder, the time is ripe for summary judgment on the unfair
10 competition claim.

11 **III. ANALYSIS.**

12 **A. Synopsys' Claim for Unfair Competition.**

13 California Business & Professions Code Section 17200 prohibits any activity that is
14 "unlawful," "unfair," and "fraudulent." Under California law, "unfair competition shall mean and
15 include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
16 misleading advertising. . . ." Cel-Tech Comm., Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163,
17 180, 973 P.2d 527, 83 Cal. Rptr. 2d 548 (1999). The scope of section 17200 is "sweeping." Id.
18 "The statute is intentionally broad to give the court maximum discretion to control whatever new
19 schemes may be contrived, even though they are not yet forbidden by law." People ex rel. Renne
20 v. Servantes, 86 Cal. App. 4th 1081, 1095, 103 Cal. Rptr. 2d 870 (2001).

21 "Unfair" conduct under section 17200 does not mean that the conduct has to be unlawful.
22 "It is not necessary for a business practice to be 'unlawful' in order to be subject to an action
23 under the unfair competition law. The 'unfair' standard, the second prong of [section 17200],
24 also provides an independent basis of relief." Smith v. State Farm Mut. Auto. Ins. Co., 93 Cal.
25 App. 4th 700, 718, 113 Cal. Rptr. 2d 399 (2001). The determination of whether a certain business
26 conduct is "unfair" within the scope of section 17200 is based upon equitable principles --
27 whether the conduct violates "the fundamental rules of honesty and fair dealing." Cel-Tech
28 Comm., Inc., 20 Cal. 4th at 181 (citing American Philatelic Soc. v. Claibourne, 3 Cal. 2d 689,

1 698-99, 46 P. 2d 135 (1935)). In making the determination, courts have weighed “the utility of
2 the defendant’s conduct against the gravity of the harm to the alleged victim” and examine
3 whether the practice “offends an established public policy or when the practice is immoral,
4 unethical, oppressive, unscrupulous or substantially injurious to consumers.” Smith, 93 Cal. App.
5 4th at 718 & 719.

6 Section 17200 also prohibits “fraudulent” conduct. Under section 17200, the term
7 “fraudulent” does not refer to the common law tort of fraud, but rather only requires a showing of
8 likelihood of deception. South Bay Chevrolet v. General Motors Acceptance Corp., 72 Cal. App.
9 4th 861, 888, 85 Cal. Rptr. 2d 301 (1999). Further, a claim under section 17200 may be based on
10 “a pattern of behavior” or “a course of conduct,” however even “a single instance” of a wrongful
11 conduct may suffice. Wilner v. Sunset Life Ins. Co., 78 Cal. App. 4th 952, 965, 93 Cal. Rptr. 2d
12 413 (2000).

13 **B. The Facts Underlying Synopsys’ Unfair Competition Claim Have Been**
14 **Admitted by Magma and Its Co-Founder.**

15 The facts underlying Synopsys’ claim for unfair competition under Section 17200 has
16 been admitted by Magma and its co-founder. Under penalty of perjury, van Ginneken has
17 admitted that Magma misappropriated from Synopsys the inventions contained in the ‘446 and
18 ‘438 Patents. van Ginneken Decl., ¶¶ 30-38. van Ginneken has also admitted that Magma used
19 these stolen inventions as a technical foundation for Magma’s products. Id., ¶ 31. Further, van
20 Ginneken has admitted that he violated his obligations to Synopsys because he failed to keep
21 proprietary information of Synopsys in trust and confidence, and used and disclosed Synopsys’
22 proprietary information to Magma without the written consent of Synopsys. Id. at ¶ 46. These
23 admissions by Magma’s co-founder and former Chief Scientist establish unfair competition as a
24 matter of law.

25 Magma’s admissions in this litigation also establish that it has committed unfair
26 competition. Magma has **conceded** that the vast majority of the inventions contained in the ‘446
27 Patent and ‘438 Patent were conceived by van Ginneken while he was employed at Synopsys.
28 Edelman Decl., Exh. 2 at 3:19-4:2, 5:5-19. Magma’s prosecution of patents containing

1 Synopsys’ stolen inventions, and its use of these inventions in its products, constitute blatant acts
2 of unfair competition.

3 Further, even if Magma and its co-founder had not already made these confessions,
4 Magma’s unfair competition would otherwise have been self-evident from the written evidence
5 in this case. For instance, Synopsys’ ownership of the fixed timing and gain-based synthesis
6 inventions at Synopsys is demonstrated by extensive documentation, including contemporaneous
7 invention disclosure forms, draft Synopsys patent applications, and Synopsys white papers
8 drafted by van Ginneken. Edelman Decl., Exhs. 1-7. The theft of these inventions by Magma is
9 also clearly evident from a review of Magma’s plagiarized patents, which contain dozens of
10 passages lifted verbatim from Synopsys’ confidential documentation. Id., Exh. 11. The fraud
11 committed by Magma in order to cover-up its theft is also self-evident from the documentary
12 record. Id., Exhs. 13-14.

13 In short, the confessions by Magma and its co-founders, when combined with the
14 overwhelming documentary evidence, establish that Magma has committed unfair competition
15 under California law. Though the relief to which Synopsys is entitled (and Magma’s
16 “procedural” defenses to Synopsys’ unfair competition claim) may need to be further litigated by
17 the parties, there is no genuine dispute that Magma has engaged in acts of unfair competition.
18 Accordingly, Synopsys’ motion should be granted.

19 **C. Magma’s Conduct Constitutes Unfair Competition Under California Law.**

20 Under Section 17200, unfair competition is established if conduct is either “unlawful,”
21 “unfair,” or “fraudulent.” Here, the activities confessed to by Magma and its co-founder
22 establish that unfair competition has been committed under each of these prongs.

23 First, Magma’s activities in misappropriating Synopsys’ inventions and using these
24 inventions in its products is clearly unlawful. These activities violate California law prohibiting
25 breach of contract, misappropriation of trade secrets, and conversion, as well as the aiding and
26 abetting of such illegal activities. It cannot be seriously disputed that Magma is prohibited under
27 California law from misappropriating and exploiting inventions that were conceived by van
28 Ginneken and assigned to Synopsys. Further, Magma’s knowingly false representations to

1 Synopsys in 1997 constitute fraudulent representations in violation of California law. Since
2 Magma's misappropriation of Synopsys' inventions violate California law, the "unlawful" prong
3 of Section 17200 is satisfied and summary judgment is appropriate.

4 Second, Magma's conduct also constitutes unfair competition under California law
5 because it is "unfair" within the meaning of Section 17200, i.e., it violates the "fundamental rules
6 of honesty and self-dealing." Cel-Tech, 20 Cal. 4th at 181. Magma and its co-founder have
7 admitted misappropriating inventions that had been assigned to Synopsys, and to using those
8 inventions as a technical foundation for Magma's products. Further, when Synopsys contacted
9 Magma about its concern over the hiring of van Ginneken, Magma responded by making
10 knowingly false representations about its activities. Edelman Decl., Exh. 14. As van Ginneken
11 has attested, when those representations to Synopsys were made, Magma knew that those
12 representations were false, and knew it was already using inventions misappropriated from
13 Synopsys. van Ginneken Decl., ¶ 36. It is a considerable understatement to label this conduct as
14 "unfair."

15 The unfairness of Magma's conduct stretches far beyond the initial misappropriation of
16 Synopsys' inventions. Magma's co-founder has testified that, after Synopsys' inventions were
17 stolen, those inventions were then incorporated into Magma products and used as a technical
18 foundation for those products. van Ginneken Decl., ¶¶ 31, 34. Magma has likewise admitted
19 that the very inventions that were misappropriated from Synopsys now serve as the basis for the
20 FixedTiming methodology at the core of its entire product line. Edelman Decl., ¶ 12. The use of
21 these inventions for years constitutes a particularly egregious case of unfair competition. The
22 theft and use of Synopsys' inventions is clearly "immoral, unethical, oppressive, unscrupulous or
23 substantially injurious to consumers." Smith, 93 Cal. App. 4th at 718 & 719.

24 Third, Magma's conduct also constitutes unfair competition under the "fraudulent" prong
25 of Section 17200. Magma's co-founder has admitted that Magma misappropriated Synopsys'
26 inventions, and then intentionally deceived Synopsys about its conduct. van Ginneken Decl., ¶
27 36. Indeed, Magma's co-founder has admitted that statements made by Magma to Synopsys in
28 1997 were knowingly false, and that Magma made false assurances to Synopsys at the same time

1 that it was busy exploiting inventions belonging to Synopsys. Id. These false representations
2 constitute fraud under any conceivable definition of that term, and certainly satisfy the “likely to
3 deceive” standard for fraud under Section 17200.

4 In short, the facts admitted by Magma and its co-founder establish that Magma has
5 engaged in unlawful, unfair, and fraudulent activities. Accordingly, Synopsys’ motion should be
6 granted.

7 **IV. CONCLUSION.**

8 For all the reasons stated above, Synopsys’ motion should be granted.

9 Dated: April 11, 2005

DECHERT LLP

10

11

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

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28