JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MASIMO CORPORATION, et al., Plaintiffs/Counterdefendants, v. TRUE WEARABLES, INC., et al., Defendants/Counterclaimants	Case No. 8:18-CV-02001-JVS-JDE FINDINGS OF FACT & CONCLUSIONS OF LAW Redacted

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After Plaintiffs waived their right to a jury trial (Dkt. 398), the Court presided over a bench trial. See Dkts.552, 553, 555, 556, 557. The Court received direct testimony via declaration before holding in-person proceedings for cross-examination, redirect, and recross. At the conclusion of trial, the parties submitted closing briefs (Dkts. 576-1, 579-1) and the Court held closing argument. See Dkt. 583. Under Rule 52(a) of Federal Rules of Civil Procedure, the Court now enters its findings of fact and conclusions of law.

I. Bench Trial Background

Plaintiffs' First Amended Complaint (Dkt. 42), Defendants' Answer and Counterclaims (Dkt. 46), and Plaintiffs' Answer to Counterclaims (Dkt. 49) are the operative pleadings. In sum, before trial the case was narrowed to encompass only the following claims and related defenses:

- Breach of contract: Whether Defendant, Dr. Marcelo Lamego, breached contracts with Plaintiffs, Masimo Corporation and Cercacor Labs, based on his employee confidentiality agreements, and whether those agreements are void as a restraint on trade;
- Breach of fiduciary duty: Whether Dr. Lamego breached his fiduciary duty of undivided loyalty to Cercacor based on representations made to the board of directors, and whether this claim is barred by the statute of limitations;
- Trade secret misappropriation: Whether Defendants misappropriated any of Trade Secrets 1, 5, 8, 9, 11, and/or 12 under Cal. Civ. Code § 3246.1 (CUTSA), and whether related defenses apply;
- Patent infringement: Whether Defendants infringe Claim 9 of the U.S. Patent No. 10,194,848, and whether Claim 9 is invalid for obviousness; and
- What, if any, equitable relief should be afforded to the parties?

See Dkt. 508 (Amended Joint Final Pretrial Conference Order).

II. Party Background

Plaintiff Masimo Corporation is a leader in pulse oximetry, which involves measuring oxygen in the blood. Joe Kiani founded Masimo in 1989. Kiani believed he could solve the "motion problem" in pulse oximetry, which prevented accurate pulse oximetry measurements when the patient was moving, leading to false alarms. Mohamed Diab is a scientist who joined Masimo about six months after its founding. Diab designed circuits and wrote the software that Masimo used to develop pulse oximetry technology. A pulse oximeter works by attaching a sensor to a patient to detect a physiological signal. Light sources in the sensor transmit light through the patient's tissue. The amount of light absorbed by the tissue and the corresponding detected signal can provide information about the patient's blood flow and blood content such as oxygen saturation ("SpO_2"). The detected signal is called a photoplethysmogram, photoplethysmograph, pleth, or "PPG" for short.

Historically, motion at the measurement site could corrupt the PPG and result in "noisy" and unreliable data. By the early 1990s, Kiani and Diab had discovered their first solution to the motion problem in pulse oximetry and had developed multiple algorithms for measuring oxygen saturation. Masimo named its technology Masimo "SET" for Signal Extraction Technology. Masimo also began working on an improved pulse rate algorithm. Masimo patented some of its technology and kept other aspects secret.

In 1998, Masimo Corp. spun off Cercacor (formerly known as Masimo Laboratories) to carry forward some portions of Masimo's business that were still in research and development. Kiani became Cercacor CEO, and Diab became the first employee, where he continued to work closely with Masimo. Masimo and Cercacor have a cross-licensing agreement that allows them to work together confidentially on new technologies. For example, Cercacor has focused on glucose

and other non-invasive parameters. Masimo and Cercacor refer to these parameters as "rainbow" parameters and named the technology "rainbow SET." Under the relevant cross-licensing agreement, Masimo uses Cercacor's technology and pays Cercacor a license fee and royalties.

Defendant Dr. Marcelo Lamego holds a Ph.D. in Electrical and Electronics Engineering from Stanford University. Upon graduating from Stanford in 2000, Dr. Lamego obtained employment as an Algorithm Engineer at Masimo Corporation. Dr. Lamego signed his first confidentiality agreement at that time. See JTX-307. In 2000, Dr. Lamego worked at Masimo for approximately six months. From 2001 to 2003, he joined the Boston Consulting Group, in São Paulo, Brazil, where he also worked as a professor at the University of São Paulo, teaching in the MBA program for Management and Product Engineering.

In January 2003, Masimo re-hired Dr. Lamego as a Research Scientist. At that time, Dr. Lamego signed a second Masimo confidentiality agreement. See JTX-308. In 2005, Dr. Lamego signed a third Masimo confidentiality agreement. See JTX-309.

In February 2007, after Diab began having health problems, Kiani selected Dr. Lamego as Masimo Labs' (now Cercacor) next Chief Technology Officer (CTO). To facilitate this transition, Masimo exposed Dr. Lamego to its technology, including providing access to Masimo's confidential information, such as the rainbow SET source code. Dr. Lamego also shared an office with Diab. Dr. Lamego was one of twelve employees with access to all rainbow directories on Masimo's network. See JTX-20; JTX-26. In his new role as CTO, Dr. Lamego signed another confidentiality agreement, agreeing that his work product would belong to Cercacor and that he would not use or disclose confidential information if he left Cercacor. See JTX-310.

From February 2007 to January 2014, Dr. Lamego served as Cercacor's CTO. In this role, he was responsible for the engineering team and Cercacor's

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