

When Apple Comes Calling, 'It's the Kiss of Death'

by Aaron Tilley in the Wall Street Journal, April 20, 2023

It sounded like a dream partnership when [Apple](#) Inc. reached out to Joe Kiani, the founder of a company that makes blood-oxygen measurement devices. He figured his technology was a perfect fit for the Apple Watch.

Soon after meeting him, Apple began hiring employees from his company, [Masimo](#) Corp., [MASI 0.21%increase; green up pointing triangle](#) including engineers and its chief medical officer. Apple offered to double their salaries, Mr. Kiani said. In 2019, Apple published patents under the name of a former Masimo engineer for sensors similar to Masimo's, documents show. The following year, Apple launched a watch that could measure blood oxygen levels.

"When Apple takes an interest in a company, it's the kiss of death," said Mr. Kiani. "First, you get all excited. Then you realize that the long-term plan is to do it themselves and take it all."

Mr. Kiani is one of more than two dozen executives, inventors, investors and lawyers who described similar encounters with Apple. First, they said, came discussions about potential partnerships or integration of their technology into Apple products. Then, they said, talks stopped and Apple launched its own similar features.

Apple said that it doesn't steal technology and that it respects the intellectual property of other companies. It said Masimo and other companies cited in this article are copying Apple, and that it would fight the claims in court.

Apple has tried to invalidate hundreds of patents owned by companies that have accused Apple of violating their patents. According to lawyers and executives at some smaller companies, Apple sometimes files multiple petitions on a single patent claim and attempts to invalidate patents unrelated to the initial dispute.

Many large companies, particularly in tech, have been known to scoop up employees and technology from smaller potential rivals. Software developers have given a name to what they describe as Apple's behavior in such cases: sherlocking. The term refers to an episode about two decades ago, when Apple released a software product called "Sherlock" that helped users find files on its Mac computers and perform internet searches.

After an outside company built a tool that had a few more capabilities, which it called "Watson," Apple released an updated version of Sherlock with many of the same features. According to the engineer who built Watson, which he subsequently sold, Apple co-founder Steve Jobs personally called him to defend the move.

Companies that allege Apple copied them fight back in two ways: complaining publicly to get attention from regulators interested in Apple's market power, or filing lawsuits against Apple.

App developer Blix Inc. has alleged that Apple stole its technique for anonymizing email addresses during online service sign-ups when the company launched its "Sign in with Apple" feature in 2019. Tile Inc., the maker of object-tracking devices that once integrated seamlessly with the iPhone, has faced off against Apple after the company launched a similar product called the AirTag in 2021.

Currently, [the Justice Department is investigating](#) whether Apple favors its own products over those of third-party developers such as Tile, according to people familiar with the matter.

Many of the patent battles focus on technology that smaller companies said they developed and that Apple appropriated for its watch. Apple said many of the patent violation claims it faces are based on rivals' patents that are overly broad.

"The truth, is these companies are blatantly copying our products or stifling competition by using invalid patents," an Apple spokeswoman said. "We will continue to fight these baseless claims in court and to advance technologies on behalf of our customers and public health."

Since its founding, Apple has had a reputation for innovation, and it spends enormous amounts of money developing its own technology. In its 2022 fiscal year ended in September, its research and development budget was \$26 billion, up nearly 20% from the prior year.

Under Chief Executive Tim Cook, Apple has tried to boost profit margins and differentiate its products by designing more components of its products in-house. It sometimes uses acquisitions to gain access to technology, and typically avoids licensing agreements with smaller operators, according to executives and patent lawyers who have attempted to strike deals with Apple.

Apple said it pays licensing fees to many companies of different sizes. The spokeswoman said it has licensed more than 25,000 patents from smaller companies over the past three years.

In 2016, a company called AliveCor Inc. announced a watchband accessory for conducting electrocardiograms that could pair with the newly released Apple Watch. Before the product launched, AliveCor founder David Albert was invited to Apple's Cupertino, Calif., headquarters, where he met for 45 minutes with Apple Chief Operating Officer Jeff Williams, the leader of Apple's healthcare initiatives.

Mr. Albert said he placed a prototype of the device onto Mr. Williams's wrist and checked his heart rhythm. Mr. Albert recalled Mr. Williams telling him: "We'd like to find a way to work with you, but we might compete with you." Mr. Williams didn't respond to requests for comment.

In 2017, AliveCor became the first medical-device accessory for the Apple Watch approved by the Food and Drug Administration.

In 2018, Apple released its Series 4 watch, which could perform an electrocardiogram without the AliveCor accessory. Around that time, Apple changed its operating system in a way that AliveCor's hardware and software integration no longer worked with the watch. A year later, AliveCor stopped selling the Apple Watch accessory.

The Apple spokeswoman said the company had been developing its own electrocardiogram for the Apple Watch since 2012, three years before it launched the watch.

In 2021, AliveCor filed a patent-infringement complaint before the International Trade Commission, a federal agency that investigates unfair trade practices, alleging that Apple violated three of its patents. In December, the commission ruled in favor of AliveCor, barring imports into the U.S. of all Apple Watches with the heart-sensing capabilities.

Separately, Apple took the dispute to the Patent Trial and Appeal Board system, which was set up to invalidate bad patents and help companies defend themselves against so-called patent trolls, litigants who file broad patents on numerous technologies without producing any real products. That board invalidated the AliveCor patents under dispute, thereby nullifying the import ban. AliveCor has appealed that ruling.

Apple also has sought to invalidate seven other AliveCor patents, AliveCor said.

Apple said that when it files multiple patent board petitions against companies, all stem from the original dispute.

AliveCor board chairman and investor Vinod Khosla, a venture capitalist, said he now steers companies in which he has invested away from having any talks with Apple. "Apple will talk to everybody and then try to steal the best people who are developing the technology," he said.

Since 2012, Apple has attempted to invalidate more patent claims before the Patent Trial and Appeal Board than any other petitioner, according to intellectual-property research firm Patexia.

Executives and lawyers involved in such cases said it can cost about a half-million dollars to defend against each petition, a high cost for small tech companies.

Apple said it is selective in how it uses the patent system, and that it isn't its intent to drown any company in legal filings. The Apple spokeswoman said its use of the petition system is consistent with other similarly situated companies.

Andrei Iancu, who stepped down as director of the U.S. Patent and Trademark Office in 2021, said the patent system "is tilted in favor of the largest established firms. This is not a coincidence. It's the result of decades of policy push to implement a variety of policies in the patent system that make it increasingly more difficult to enforce patents."

A spokesman for the Patent and Trademark Office said it is committed to a patent system that serves all U.S. innovators, and that the appeal board is a "neutral judicial body."

In 2013, an Apple manager contacted Valencell Inc. about a possible partnership, according to Valencell. The Raleigh, N.C.-based company had developed sensing technology that enables heart-rate monitoring when a user is moving, such as when running. Such technology is essential for wearable devices that track exercise and health data.

In the ensuing discussions, Apple repeatedly sought information from Valencell about its technology and discussed the possibility of licensing it, testing a prototype for several months, according to Valencell. Soon before the Apple Watch launched in 2015 with its own heart-monitoring feature, Apple ended discussions with Valencell.

The following year, Valencell sued Apple in federal district court in North Carolina, alleging that Apple had violated four of its patents. Apple filed petitions to the patent appeal board seeking to invalidate those four patents. Apple also filed another seven petitions against Valencell patents in areas unrelated to the initial case, according to Valencell.

Valencell President Steven LeBoeuf said the company, weary of fighting Apple, settled out of court with it in 2019. He declined to disclose the terms of the settlement.

Masimo, the developer of blood-oxygen measurement devices, unveiled the mobile pulse oximeter designed to work as an accessory with Apple devices at a trade show in 2013.

Adrian Perica, then head of mergers and acquisitions at Apple, told Masimo executives in an email, seen by The Wall Street Journal, that Apple wanted to “dig deep” into Masimo’s technology and what the company had coming next. “Let’s discuss any ideas you have about how Apple could or should integrate some [of] these technologies in our products,” Mr. Perica wrote.

A few months later, Mr. Kiani said, he got a call from his chief medical officer, Michael O’Reilly, informing him he was joining Apple, which he said had agreed to double his salary and pay him millions in Apple shares. Mr. O’Reilly didn’t respond to requests for comment.

Mr. Kiani said Apple urged him not to worry about the hiring of Mr. O’Reilly, and the two companies continued to talk about potential plans. Apple went on to hire 30 of Masimo’s employees, he said.

In 2014, Apple hired Marcelo Lamego, a former Masimo employee who was chief technical officer at Masimo spinoff company Cercacor Laboratories Inc., which licenses Masimo’s technology. In an email before he was hired, Mr. Lamego told Mr. Cook that he could “add a significant value” to Apple “without conflicting with the large IP I have developed for Masimo and Cercacor during the same period.” Mr. Lamego didn’t respond to requests for comment.

In 2020, Masimo sued Apple in federal district court in Southern California, accusing the company of gaining access to proprietary information by hiring Masimo employees. The trial is under way now.

In 2021, Masimo also filed a patent-infringement complaint against Apple before the International Trade Commission. In January, a commission judge issued an initial finding that some models of the Apple Watch had infringed on one of Masimo’s patents. The investigation is expected to be completed by next month.

According to Mr. Kiani, Apple continues to try to hire Masimo employees. Apple said it doesn’t specifically target Masimo employees.

Mr. Kiani said that Masimo has so far spent \$55 million on its lawsuits against Apple and defending its patents before the appeal board. He estimates it is likely to cost his company more than \$100 million in the end.

Write to Aaron Tilley at aaron.tilley@wsj.com