

## A confidential Masimo design document was in possession of a top Nellcor engineer

**THOMAS YORKEY (Nellcor Employee) TESTIMONY**

030104 am trial transcript (pages 1282-1358)

page 1330

Q. Okay. Have you ever seen Exhibit 2419 before?

A. I believe so.

Q. Yes. And these are confidential and proprietary documents of Masimo, aren't they?

A. That's the way they are labeled, yes.

Q. And you received this document, as I understand, from marketing organization; isn't that right? A. Around 1998 or so, as Masimo was introducing their products into the marketplace, the sales force and marketing became interested in understanding who Masimo was as they were now someone that they were dealing with customers. To the extent there was information about their products that was available, that was oftentimes collected by the sales force and marketing group, people knew that I had some history with understanding Masimo technology and would me some of the documentation. This is an example where Masimo was introducing a board that would be integrated into a larger monitor. And --

Q. Mr. Yorkey, can you answer my question?

MR. SWINTON: He is answering the question, your Honor.

THE COURT: Yes, he's answering the question.

MR. RE: I asked him a yes or no.

THE WITNESS: I'm trying to answer the question.

Q. My question was you received this document from somebody within Nellcor's marketing organization. Yes or no?

MR. SWINTON: And, your Honor, I object. As you noted, he was answering the question, and what Mr. Re has now been able to do is overrule her Honor in allowing Mr. Yorkey -- Dr. Yorkey to answer the question.

THE COURT: Doctor Yorkey, you can answer yes or no and then answer the question if you want to say more. Do it.

THE WITNESS: Yes, your Honor. Yes, I received this document from marketing or a salesperson.

## Top Nellcor engineers were directed to write computer code to “resemble” Masimo’s patents

**THOMAS YORKEY (Nellcor Employee) TESTIMONY**

030104 am patent infringement trial transcript (pages 1282-1358)

page 1294

Q. Well, you personally wrote computer software code that would resemble Masimo's software; is that right?

A. I did. That was actually so I could better understand the opportunity that Masimo and Nellcor might bring was a business opportunity.

Q. Yeah, but you wrote the code according to Masimo's patents, didn't you?

A. I did, yes.

Q. Okay. And Dr. Swedlow knew you were doing this, didn't he?

A. Yes, he did.