

## BUSINESSPEOPLE OF THE YEAR

## Knobbe's Re, Jensen: Leading Masimo Charge vs. Apple

**LEGAL:** Watch case gets national headlines

■ By KEVIN COSTELLOE

The most recent legal win by **Knobbe Martens** partners **Joseph Re** and **Steve Jensen** created front-page coverage for their client **Masimo Corp.** (Nasdaq: MASI) in the **Wall Street Journal** and other national publications.

Their victory against the world's most valuable publicly traded company forced **Apple Inc.** to halt imports of its watches in the patent dispute, albeit briefly. That ban, which took effect Dec. 26, is temporarily on hold while a federal appeals court studies the ruling by the **U.S. International Trade Commission (ITC)**.

"We're fighting a very large company with very endless resources to fight with lawyers," Jensen told the Business Journal.

"Every day" the case feels like the plucky biblical David battling the giant Goliath, he said.

Masimo's victory at the ITC, announced in October, was the latest for the pair in representing the Irvine-based medical device maker over the past three decades in a variety of intellectual property, trade theft and patent disputes.

They were the winning lawyers for Masimo in a case that caused **Royal Philips Electronics** to pay \$300 million in 2016 and opened a licensing agreement between the two companies.

The pair in 2006 helped Masimo win hundreds of millions of dollars against its then-primary rival, **Nellcor**, now a unit of **Medtronic**. That case paved the way for Masimo (Nasdaq: MASI) to go public in 2007, where it now sports a nearly \$6 billion market cap.



**Joseph Re**  
Partner  
Knobbe Martens



**Steve Jensen**  
Partner  
Knobbe Martens



The Masimo W1 competes with Apple's watches

"The very existence of Masimo was riding on the Nellcor litigation, so that is an inflection point of success for patients worldwide having access to Masimo's life-saving technology," Jensen said in November.

"I would argue that our win there has saved many thousands of lives, prevented blindness in many thousands of babies, and saved billions of healthcare dollars, and led to further innovations from Masimo that no other company has matched. That is pretty hard to beat," according to Jensen.

The Apple deal could prove just as important; the **Wall Street Journal** said Masimo CEO **Joe Kiani** "bet his company" on the Apple dispute, which is being battled in a variety of jurisdictions.

Still ongoing is a civil lawsuit seeking \$1.85 billion from Apple, a case that resulted in a mistrial last May and is rescheduled for the fall.

Re and Jensen are the Business Journal's

**Businesspeople of the Year**, in the legal sector.

### Engineering Background

The pair are longtime partners at Knobbe Martens, which consistently ranks as the biggest Orange County law firm on the Business Journal's annual list with 141 OC lawyers and 284 firmwide.

Re earned a degree in civil engineering in 1982 from New Jersey's **Rutgers University** where he was selected by the student body to deliver its commencement address. Three years later, he earned a law degree from New York's **St. John's University**. He spent two years as a clerk for **Howards Markey**, then chief judge of the **U.S. Court of Appeals for the Federal Circuit**.

He joined Knobbe Martens in 1987, becoming famous for trying numerous high-stakes technology cases in the federal courts throughout the country for well over 30 years. He's won several awards over the years, such as **The California Lawyer** in 2004 naming him "California Attorney of the Year" and **Law360** website calling him "MVP of the Year – Intellectual Property" in 2014.

Re has served as president of the

# ORANGE COUNTY BUSINESS JOURNAL

Vol. 47, No. 2

THE COMMUNITY OF BUSINESS™

January 8-14, 2023

**American Intellectual Property Law Association** and the **Federal Circuit Bar Association**. Since 1990, Re has authored numerous appellate briefs on behalf of the **American Intellectual Property Law Association** as amicus curiae before the Supreme Court and various appellate courts.

In 1990, Re recruited Jensen to join Knobbe Martens.

“Steve joined the firm when I was already a partner,” Re said. “If you think Steve’s a dinosaur, wait till you get a load of me.”

Jensen, who worked on wireless and radar systems for **Hughes Aircraft** while a college student in 1984, earned a degree in electrical engineering from **Brigham Young University** in 1987 before getting a JD from **UCLA** in 1990.

Jensen is “fluent” in technologies like semiconductors, optics and solid-state cooling, according to his profile on Knobbe Martens’ website. For a time, he even was acting senior vice president of Masimo’s OEM business where he negotiated a variety of transactions.

While the Masimo dispute gathers most of the attention, both lawyers made it clear they’re handling plenty of other legal matters as well. For example, Re does some work for **Amazon**.

“I defend them when people accuse them of taking things,” Re said. “I understand what it’s like to represent a big company.”

The pair said while they are the faces of the lawsuits, their team involves 20 to 25 people. Both lawyers spend time mentoring younger colleagues and teaching them the kind of patience and skills that litigators need.

“Supervising and mentoring younger lawyers is a big part of what we do,” Re said.

They like helping innovators.

“The best experience I’ve had is getting to know very talented innovators and company founders, and helping them to reach their goals,” Jensen said. “To me, it’s rewarding that things that my clients have invented are improving patients’ lives, are improving healthcare, and are improving people’s lives in general.

“I’m doing things that frankly I enjoy doing.”

## Biggest Case

Masimo’s Kiani, who co-founded the company in 1989, said he’s spending more than \$100 million on legal fees to defend the company’s technology against Apple.

The dispute dates to 2013 when Apple initially sought to work with Masimo on its pulse oximetry technology. Instead, Apple pulled out

of that collaboration and then poached more than 20 of Masimo’s and its spinoff **Cercacor**’s employees. In a recent interview with **Bloomberg News**, Kiani said Apple employees are working in unmarked buildings a few blocks away from Masimo’s Irvine headquarters.

In 2020, Masimo alleges that it discovered Apple took its technology for its watches, and the lawsuits began.

In October, the ITC ruled that some Apple watches violated Masimo’s patents by swiping technology used to measure oxygen levels in wearers’ blood streams. The ITC decision could have been reversed within 60 days by President **Joe Biden**, a friend of Kiani’s. Biden delegated the decision to U.S. Trade Representative **Katherine Tai**, who declined to stop the ban.

A day after the ban on Apple’s **Series 9** and **Ultra 2** watches took effect on Dec. 26, a federal appeals court permitted Apple to continue its imports while giving the ITC until Jan. 10 to respond to Apple’s request.

“This was merely an interim stay while the parties brief and the federal circuit (court of appeals) decided the stay pending appeal,” Jensen said. “Such interim stays are common.”

Jensen told the Business Journal that sometime after Jan. 15, the federal appeals court will decide on Apple’s request to stay the watch ban pending appeal. Separately, according to Apple, U.S. customs officials have reportedly set a target date of Jan. 12 to determine whether Apple’s redesigned watches conform with the rulings on imports.

“As the elder litigators, we are used to the

ride,” said Jensen, who like Re, is in his 60s.

## Santa Ana

In a separate case in a Santa Ana federal court, Masimo sued Apple for \$1.85 billion. After a four-week trial at the Ronald Reagan Federal Building and U.S. Courthouse in Santa Ana, the jury was hung and a mistrial declared in May.

“That’s set for retrial in late October 2024,” Jensen told the Business Journal last month. “I’m optimistic about that one.”

Apple has countersued Masimo in Delaware, a case that is expected to begin next spring.

Re and Jensen say they are in it for the long haul.

“I’m going to see this through,” said Jensen, who once thought of retiring by age 60. “I crossed the 60 mark, and I didn’t make it to retirement.”

His law partner Re agreed.

“I don’t plan on stopping until this is all resolved,” Re said before the interim stay. “I don’t mind if I have grandchildren and this is still going on.” ■

## Knobbe Martens

Knobbe Martens

- **FOUNDED:** 1962
- **HEADQUARTERS:** Irvine
- **OC LAWYERS:** 141 (284 firmwide)
- **FOCUS AREAS:** intellectual property, technology law
- **NOTABLE:** awaiting appeal in client Masimo case against Apple

## Roots in Italy

**Knobbe Martens** law partner **Joseph Re** can trace his ancestral home to Salina, a remote island off the northeast coast of Sicily.

“We still have the same house in the family since 1602,” he said.

Re, the eighth of 12 children, was born in New York and grew up in noisy, bustling Brooklyn where both his parents were prominent New York-area lawyers.

In earlier years, he’d often visit the island of Salina, which has about 2,600 residents and is best known for breathtaking sea views and outstanding food.

Re still makes the occasional 30-hour trek to visit the family home, which sleeps about 20 people.

“My dad was a big wig there on the island. Everyone’s got pictures of him with President Kennedy on their walls, all pretending they’re my cousins.

“I love it because it’s so way out there.”

—Kevin Costelloe