



THIS RESEARCH REPORT EXPRESSES SOLELY OUR OPINIONS. We are short sellers. We are biased. So are long investors. So is Insulet. So are the banks that raised money for the Company. If you are invested (either long or short) in Insulet, so are you. Just because we are biased does not mean that we are wrong. Use BOC Texas, LLC's research opinions at your own risk. This report and its contents are not intended to be and do not constitute or contain any financial product advice. Investors should seek their own financial, legal and tax advice in respect of any decision regarding any securities discussed herein. You should do your own research and due diligence before making any investment decisions, including with respect to the securities discussed herein. We have a short interest in Insulet's securities and a long interest in EOFLOW's. We therefore stand to realize significant gains in the event that the price of Insulet's securities declines or EOFLOW's rises. Please refer to our full disclaimer located on the last page of this report.

COMPANY: Insulet Corporation | NASDAQ: PODD
INDUSTRY: Health Care Equipment

PRICE (AS OF
CLOSE 5/13/2024)
USD 161.02
MARKET CAP
USD 11.3 BN

We are short Insulet Corporation (the “Company” or “Insulet”), the world’s leading manufacturer of insulin delivery patch pumps, and long its upstart Korean competitor EOFLOW Co. Ltd. (KOSDAQ: A294090), because **undisclosed to investors**, last week the Court of Appeals for the Federal Circuit killed a preliminary injunction that protected Insulet’s key monopoly against competition from EOFLOW. The appellate court decision **instantly** restores EOFLOW’s business from court-induced purgatory, clears the path for Medtronic (or another industry heavyweight) to acquire EOFLOW and shatters Insulet’s U.S. monopoly on tubeless automated insulin delivery (“AID”) systems.

Incredibly, not only have investors and analysts not noticed this highly material legal defeat, but Insulet, to our knowledge, has failed to disclose this material event to investors despite ample opportunity to do so on its recent earnings call, in an 8-K or in its newly issued 10-Q. Insulet bragged about winning the preliminary injunction on a prior earnings call, meaning it should have been equally forthright about its defeat on the Q1 2024 earnings call, held two days after the ruling. In our opinion, it is highly misleading for Insulet to conceal from investors that the appellate court killed the very injunction which protected its competitive moat and was so material to its stock that, when the injunction was granted, its market capitalization gained \$1.8 billion. **This injunction is now dead. Competition is here.**

Insulet’s business is built on a monopoly over tubeless insulin patch pumps, which represent the vast majority of Insulet’s revenues. EOFLOW threatened this monopoly with its launch of a competing tubeless patch pump, “EOPatch,” which the Korean startup could cost-effectively manufacture at scale. EOFLOW had already launched in Asia and Europe and was preparing to launch in Insulet’s core U.S. market. EOFLOW’s upstart business was so valuable that in May 2023, **Medtronic** announced that it planned to acquire EOFLOW for \$738 million so that Medtronic could add EOPatch to its existing AID system and quickly offer tubeless AID systems in the U.S. to directly compete with Insulet’s flagship product, the OmniPod 5.

Facing an existential competitive threat, Insulet sued EOFLOW in federal court, accusing it of stealing its trade secrets and infringing its patents. Insulet applied for a temporary restraining order and preliminary injunction to prevent EOFLOW from (a) sharing any information with Medtronic, and (b) selling EOPatch anywhere in the world.

In a stunning development, in October 2023, just weeks after Insulet first sued EOFLOW, the U.S. district court granted the preliminary injunction against EOFLOW. As a result of the injunction, EOFLOW’s stock collapsed almost 90% and Medtronic, completely ringfenced from EOFLOW, backed out of the proposed \$738 million acquisition. Insulet’s share price rallied, gaining \$1.8 billion in market capitalization on the news that the court had seemingly protected its tubeless patch pump monopoly and barred a well-capitalized competitor from acquiring the Korean startup.

EOFLOW appealed the decision and the appellate court heard oral arguments on May 6, 2024. The market had already priced in an Insulet victory **but last week, one day after oral argument, the court of appeals issued an order that killed the preliminary injunction against EOFLOW**, holding that “**Insulet has not met its burden of proving the extraordinary relief of a preliminary injunction.**” The appellate court stayed the preliminary injunction ahead of its forthcoming written opinion.

We were not surprised, as we had been following the litigation closely. The lower court’s opinion was fatally flawed and riddled with several clear legal errors. **The appellate court agreed** and all that is left is for the appellate court to write an opinion explaining its reasoning and fashioning an order to address the injustice done to EOFLOW at the district court level. But make no mistake, last week the appellate court killed Insulet’s prized injunction that protected its cherished competitive moat.

This presents a massive asymmetric opportunity for investors. As to **Insulet**, we anticipate an immediate **15%+ drop** in share price as the stock reverses the gains it made upon the granting of the injunction and as investors awaken to the restoration of an imminent competitive threat to Insulet’s flagship product monopoly. As to **EOFLOW**, the appellate court order gives an immediate lifeline to a desperate business, permitting not only EOFLOW to once again sell competing tubeless patch pumps but to reengage with potential acquirors, like Medtronic, who are eager to aggressively challenge Insulet’s valuable monopoly. Prior to Insulet’s complaint, EOFLOW shares traded at **KRW ~28,500**. Following the injunction, EOFLOW shares traded to a low of **KRW 3,390** in February 2024, meaning that investors could see a **~600% gain** if, as we expect, EOFLOW recovers to its pre-injunction price.

- I. Undisclosed to investors, the Court of Appeals killed the preliminary injunction.** On May 7, 2024, just one day after the appellate court heard oral argument, the appellate court issued an order that killed the lower court's preliminary injunction against EOfFlow. We believe that investors and analysts remain unaware of this highly material legal defeat, because Insulet, to our knowledge, has failed to disclose this material event to investors despite ample opportunity to do so on its Q1 2024 earnings call or in its subsequent 10-Q, published three days after the ruling. The appellate court issued a short two paragraph order stating that **"Insulet has not met its burden to show that it should be granted the extraordinary relief of a preliminary injunction."** The appellate court's order stayed the lower court's preliminary injunction pending a further order of the appellate court, and the appellate court promised that it would explain its reasoning in a forthcoming opinion.

IT IS ORDERED THAT:

The district court's preliminary injunction order dated October 24, 2023 is stayed pending further order of the court.

As will be explained in a forthcoming opinion, Insulet has not met its burden to show that it should be granted the extraordinary relief of a preliminary injunction. To the extent that the April 24, 2024 Second Amended Preliminary Injunction (which is not part of this appeal) relies on reasoning similar to that which resulted in the October 24, 2023 order, the district court should consider whether to stay the April 24, 2024 order as well.

Source: May 7, 2024, Court of Appeals Order, PACER ECF-48

We were surprised by the appellate court's quick timing, but not by the result. We encourage any interested investor to [listen](#) to the oral argument for themselves. The appellate court was especially skeptical that Insulet had met its burden of proving to the lower court that Insulet was likely to succeed on the merits. Specifically, the appellate court's pointed questioning suggests that the court has major concerns that Insulet did not sufficiently prove that its lawsuit was likely to survive EOfFlow's statute of limitations defense, or that Insulet had even sufficiently identified any specific trade secrets that EOfFlow possessed or may have used. **Put simply, the preliminary injunction is dead and EOfFlow is free to directly compete with Insulet and reengage with Medtronic or another potential acquirer.**

- II. Undisclosed appellate court ruling shatters Insulet's core monopoly.** Insulet lost \$1.7 billion in market capitalization as its stock tanked in May 2023 on news of Medtronic's planned acquisition of EOfFlow. On the flip side, Insulet's shares rallied on large volume on news that the district court granted a temporary restraining order ("TRO") and preliminary injunction which had, at least temporarily, frozen EOfFlow's business and killed the Medtronic deal. There is some symmetry to the price movement, as Insulet lost ~\$1.7 billion of market capitalization on the Medtronic announcement and gained ~\$1.8 billion on the news that the district court's injunction killed EOfFlow and the deal. **Now that investors are learning that the appellate court killed the injunction, we expect the market to quickly wipe out the \$1.8 billion in market capitalization that Insulet regained when it won the injunction.** However, we would not be surprised if, this time, Insulet's share price soon plummeted even further as investors face the harsh reality that its days of enjoying a monopoly over tubeless patch pump systems are over.

Notably, while Insulet has remained silent, EOfFlow already announced in a Korean regulatory filing that it is now free to resume selling competing tubeless insulin patch pumps. Korean investors duly noticed, sending EOfFlow's stock up over 80% since the ruling.

All signs suggest that Medtronic will seek to renegotiate a purchase of EOfFlow now that the preliminary injunction is effectively dead. Medtronic's goal was to use EOfFlow to "accelerate the introduction of an AID patch" to compete with OmniPod 5. Medtronic stated in SEC filings after the preliminary injunction ruling that it **"will continue to monitor the [EOfFlow] appeals process."** News reports after Medtronic backed out of the deal suggest that Medtronic and EOfFlow still have a **"significant mutual interest"** in doing a deal.

We ultimately see no feasible path for Insulet to protect the much touted "competitive moat" on which its nosebleed valuation critically depends. Insulet trades at 29.4x FY2024E EV/EBITDA and 52.1x FY2024E P/EPS. These growth multiples are impossible to reconcile with the competitive landscape that Insulet quixotically disavows. **We think last week's appellate court decision is the first step** towards Insulet imminently losing its monopoly, its leadership position, and its growth prospects as

OmniPod's platform becomes commoditized. For the first time in its history, Insulet will have to compete with newer tubeless insulin pumps and AID system technologies that are now on the doorstep of the U.S. market and across the world.

III. The market unduly left EOFlow for dead. In Korea, investors have an incredible asymmetric opportunity. Less than one year ago, Medtronic planned to purchase EOFlow for USD 738 million and its shares traded at around KRW 28,500. Recently, EOFlow shares traded to a low of KRW 3,390, down almost 90% since May 2023. The only thing that has changed is Insulet's lawsuit and its aftermath. We expect last week's appellate court's ruling to cause EOFlow's share price to recover to its pre-injunction trading price of around **KRW 23,700**, reflecting a **potential ~600% gain** from EOFlow's post-injection lows.

All signs suggest that Medtronic will seek to renegotiate a purchase of EOFlow now that the preliminary injunction is effectively dead. Still, EOFlow is well positioned to compete on its own. Before the Medtronic deal, EOFlow had already commercially launched EOPatch in Korea in 2021 and in Europe in 2022, had obtained regulatory approvals in several other countries, and submitted an FDA premarket approval application for the U.S. market. It had also made strides towards incorporating its patch pump into a full AID system to compete with OmniPod 5 by announcing an important partnership with Diabeloop, the owner of an AID system controller and algorithm that is a primary component of a full AID system already approved, marketed, and sold in Europe.

Insiders are buying, suggesting that the stock is poised to rip. EOFlow's founder and CEO, who already owned over 10% of EOFlow's outstanding shares, has recently been increasing his personal EOFlow stock holdings. This includes a late April 2024 open market cash purchase of over \$500,000 of EOFlow shares.

IV. What Happens Next: Appellate Court Highlights Fatal Flaws in Insulet's Lawsuit. The death of the preliminary injunction is *fait accompli*, but the appellate court's forthcoming opinion on why it killed it may still be interesting for investors, as we expect that it will highlight why Insulet's lawsuit is likely to fail. The appellate court already decided that "Insulet has not met its burden to show that it should be granted the extraordinary relief of a preliminary injunction," but it has not yet stated its reasoning. Nonetheless, there is very little mystery here. The appellate court telegraphed at oral argument that its forthcoming opinion is likely to hold and explain that Insulet failed to prove that it was likely to succeed on the merits at trial. When the appellate court addresses that legal predicate for a preliminary injunction, we expect that its forthcoming opinion will inevitably highlight that **Insulet's lawsuit is likely time barred by the statute of limitations**, and also that Insulet has **failed to set forth sufficient evidence that EOFlow possessed or used any of Insulet's trade secret**. But this is unimportant for now because the preliminary injunction is dead.

EOFlow is now free to launch its competing tubeless insulin patch pump at scale and challenge the monopoly upon which Insulet's business and share price are built. Furthermore, as of last week, EOFlow is immediately a tempting acquisition target. Indeed, Medtronic and EOFlow reportedly [still have a mutual interest in concluding a deal](#). In sum, we think this litigation setup, and Insulet's failure to disclose the material and crushing legal defeat, creates a unique asymmetrical investment opportunity, long EOFlow and short Insulet.

I. Undisclosed to Investors, the Court of Appeals Killed the Preliminary Injunction.

On May 7, 2024, just one day after the appellate court heard oral argument, the appellate court issued an order that killed the lower court's preliminary injunction against EOfFlow. We believe that investors and analysts have not noticed this highly material legal defeat, because Insulet, to our knowledge, has failed to disclose this material event to investors despite ample opportunity to do so on its Q1 2024 earnings call, held just two days after the ruling.

Insulet had initially reacted to the competitive threat by suing EOfFlow in federal district court on August 3, 2023. Insulet's lawsuit alleges that EOfFlow violated Insulet's patents and stole its trade secrets. The core of Insulet's allegations center around the fact that, in 2017-2018, EOfFlow hired three former Insulet executives "to oversee the development, manufacturing, regulatory approval and marketing of EOPatch." Shortly after filing its lawsuit, Insulet applied for a TRO and a preliminary injunction.

In a ruling that surprised the market and sent Insulet's stock soaring, the district court granted a temporary restraining order and then a preliminary injunction pending trial on the merits. The Court's preliminary injunction crushed EOfFlow's business by prohibiting it from (a) manufacturing, marketing, and selling to new users, and (b) sharing technical information with Medtronic. Ringfenced by the preliminary injunction, Medtronic backed out of the EOfFlow acquisition, giving Insulet and its investors a temporary reprieve pending EOfFlow's appeal.

Following the granting of the preliminary injunction, Insulet's stock soared as investors believed it had won a critical legal battle preserving its monopoly. By contrast, EOfFlow's stock has tanked almost ~90% since the preliminary injunction order, with the Korean startup's valuation falling from \$738 million to a market capitalization low of under \$90 million. We think **this share price action is set to reverse**.

On May 7, 2024, the appellate court issued a short two paragraph order stating that "**Insulet has not met its burden to show that it should be granted the extraordinary relief of a preliminary injunction.**" The appellate court's order stayed the lower court's preliminary injunction pending a further order of the appellate court, and the appellate court promised that it would explain its reasoning in a forthcoming opinion. This is a slightly unusual order to bifurcate the decision and the opinion, but the speed with which the appellate court issued its ruling clearly indicates that it did not want to delay the miscarriage of justice to EOfFlow for a single day longer than necessary.

IT IS ORDERED THAT:

The district court's preliminary injunction order dated October 24, 2023 is stayed pending further order of the court.

As will be explained in a forthcoming opinion, Insulet has not met its burden to show that it should be granted the extraordinary relief of a preliminary injunction. To the extent that the April 24, 2024 Second Amended Preliminary Injunction (which is not part of this appeal) relies on reasoning similar to that which resulted in the October 24, 2023 order, the district court should consider whether to stay the April 24, 2024 order as well.

Source: May 7, 2024, Court of Appeals Order, PACER ECF-48

The following day, chastened by the appellate court's reversal, the lower court duly stayed the injunction.¹ This left no ambiguity that the injunction was dead, and that EOfFlow was free to sell competing products, as EOfFlow happily announced to investors in a Korean securities filing.

¹ The district court's order also stayed a subsequent second injunction it had ordered to further restrict EOfFlow.

ORDER**SAYLOR, C.J.**

In light of the Order of the Federal Circuit dated May 7, 2024, the Second Amended Preliminary Injunction dated April 24, 2024, is hereby STAYED pending further order of the court.

So Ordered.

/s/ F. Dennis Saylor IV
F. Dennis Saylor IV
Chief Judge, United States District Court

Dated: May 8, 2024, at 11:30 a.m., in Boston, Massachusetts

Source: District Court Order, May 8, 2024, PACER ECF-368

We were surprised by the appellate court’s quick timing, but not by the result. The lower court’s preliminary injunction ruling is riddled with reversible legal errors that go to the very core of the parties’ claims and defenses. Although an appellate court usually gives high deference to a lower court’s factual findings under the “abuse of discretion” standard of review, the lower court in this case repeatedly abused its discretion by failing *to even attempt to assess* key facts on core issues. As succinctly stated by one legal expert we had consulted before the appellate court’s May 7, 2024 decision, “... *that’s reversible error. I mean I can’t see any other way around it.*”

The appellate court’s questioning at oral argument further cemented our conviction that the appellate court would not allow the preliminary injunction to stand. We encourage any interested investor to [listen](#) to the oral argument for themselves.² The appellate court was especially skeptical that Insulet had met its burden of proving to the lower court that Insulet was likely to succeed on the merits, especially as to whether its claims were time barred by the statute of limitations or whether Insulet sufficiently identified any specific trade secrets that EOFLOW possessed or may have used. The appellate court even referred to the lower court’s failure to consider the statute of limitations as a “**fatal defect.**”

In the legal experience of the Blue Orca investment team, which includes decades of experience as a securities litigator at a white shoe law firm, and a tour of duty as a federal law clerk, rarely do appellate court judges sound so overly hostile and incredulous. We expect that the appellate court’s promised forthcoming opinion will address many, if not all, of the reversible errors made by the lower court in failing to properly assess the legal elements required for Insulet to win a preliminary injunction – especially that Insulet did not prove that it was likely to successfully defeat EOFLOW’s statute of limitations defense. **Put simply, the preliminary injunction is dead.**

² The oral argument recording is available on YouTube [here](#) beginning at 1:25:07, with most of the fireworks [starting](#) in earnest at 1:37:00.

II. Undisclosed Appellate Court Ruling Shatters Insulet's Core Monopoly.

Last week's appellate court order cleared the path for EOfFlow to resume selling competing tubeless patch pumps and opened the door for Medtronic or another acquirer to reengage on a purchase of EOfFlow. That means Insulet's shares are primed to fall, and we expect that when the appellate court's decision hits the news wires, **it will wipe out at least the \$1.8 billion in market capitalization that Insulet regained when the lower court froze EOfFlow's business and killed the Medtronic deal.** But this is likely just the beginning.

Insulet lost \$1.7 billion in market capitalization as its stock tanked in May 2023 on news of Medtronic's planned acquisition of EOfFlow. Not only was EOfFlow on the cusp of shattering Insulet's critical monopoly for tubeless, wearable insulin pump patches, but its acquisition by Medtronic raised the specter of a well-capitalized and sophisticated competitor harnessing EOfFlow's technology to quickly bring to market a tubeless AID system that would compete with OmniPod 5. Investors appreciated the competitive threat and puked Insulet's stock.

On the flip side, Insulet's shares rallied on large volume on news that the district court granted a TRO and preliminary injunction which had, at least temporarily, frozen EOfFlow's business and killed the Medtronic deal. There was symmetry to the share price movements, as Insulet lost ~\$1.7 billion of market capitalization on the initial EOfFlow announcement and gained ~\$1.8 billion on the news that the district court's injunction killed EOfFlow's business and the Medtronic deal.

Incredibly, not only have investors and analysts not noticed this highly material legal defeat, but Insulet, to our knowledge, has failed to disclose this material event to investors despite ample opportunity to do so on its Q1 2024 earnings call, held two days after the ruling. Nor did Insulet disclose the defeat in an 8-K or in its 10-Q, filed three days after the ruling. We think it is highly misleading for Insulet to not disclose this ruling, especially considering that Insulet saw it as sufficiently material to announce on an earnings call when it won the preliminary injunction. In our opinion, it is highly misleading for Insulet to conceal from investors that the appellate court killed the very injunction which protected its competitive moat and was so important to the stock that, when it was granted, caused Insulet's stock to gain \$1.8 billion in market capitalization. **This injunction is now dead.**

However, we would not be surprised if, this time, Insulet's share price plummeted even further on the appellate court ruling as investors face the harsh reality that its days of enjoying a monopoly over tubeless patch pump systems are coming to an end. As of today, however, Insulet now faces an upstart competitor with the capability to manufacture competing devices at scale who not only appears to be an attractive acquisition target by industry behemoths like Medtronic, but could soon take market share as an independent device manufacturer.

1. We expect the appellate court's decision to shave \$1.8 billion or more from Insulet's market capitalization.

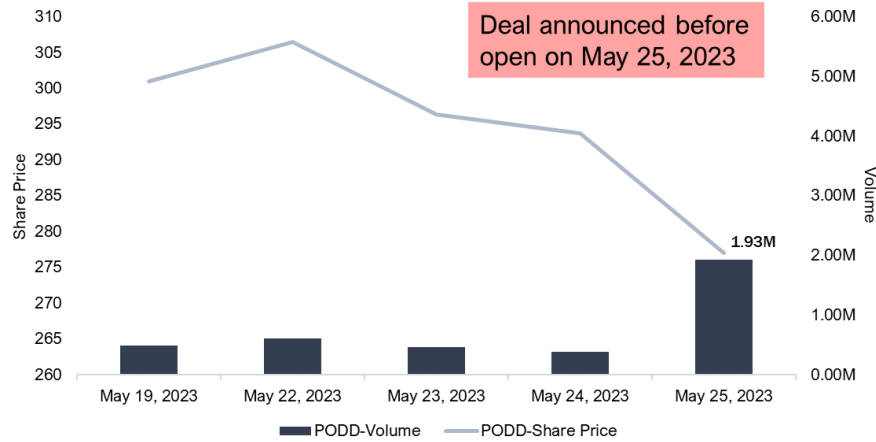
EOfFlow loomed as a competitive threat for some time before Insulet took action. Rumors of Medtronic's interest in acquiring EOfFlow had been circulating for months, [since at least February 2023](#), before Medtronic finally announced the acquisition on May 25, 2023. Still, Insulet's shares fell sharply on the news of Medtronic's planned acquisition of EOfFlow and the imminent competitive threat to sales of Insulet's flagship product.

Insulet, Tandem fall as Medtronic to buy insulin pump maker

May 25, 2023 11:53 AM ET | **Insulet Corporation (PODD) Stock, TNDM Stock** | MDT | By: Dulan Lokuwithana, SA News Editor | 1 Comment

Source: [News article, May 25, 2023](#)

The news caused Insulet's share price to **plummet** on a ~4x increase in average trading volume, **shedding as much as \$1.7 billion of market capitalization** during the day.



Source: Capital IQ

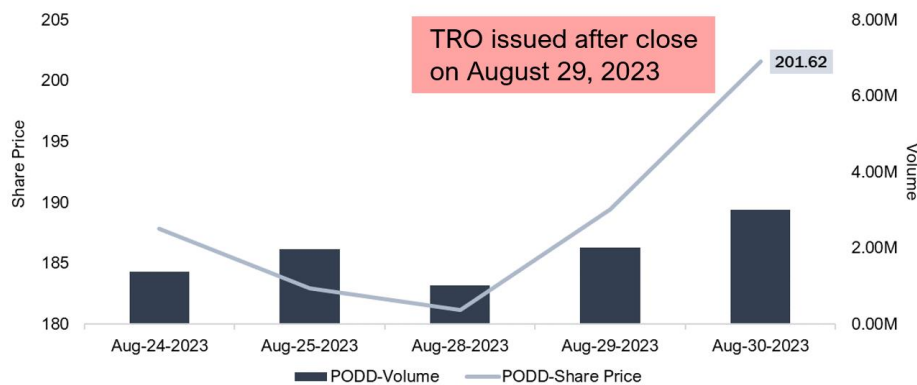
On August 29, 2023, Insulet won a TRO against EOfFlow which, five weeks later, the district court agreed to convert into a preliminary injunction order. The district court’s orders effectively enjoined EOfFlow from sharing any technical information with Medtronic, and from otherwise manufacturing, marketing or selling its competing device to new users anywhere in the world. Investors cheered the news that Insulet had, at least preliminarily, thwarted EOfFlow’s and Medtronic’s competitive threat.

Insulet gains amid winning TRO in dispute with EOfFlow, CEO insider buy

Aug. 30, 2023 10:51 AM ET | **Insulet Corporation (PODD) Stock** | MDT, TNDM | By: Joshua Fineman, SA News Editor

Source: [News article, Aug. 30, 2023](#)

News of Insulet’s victory at the lower court in securing a TRO against EOfFlow sent Insulet’s share **skyrocketing as much as 11%** in intraday trading on ~3x average trading volume.



Source: Capital IQ

EOfFlow appealed the preliminary injunction order to the Court of Appeals for the Federal Circuit, but on December 6, 2023, Medtronic—ringfenced from EOfFlow by the preliminary injunction order—had little choice but to back out of its plan to purchase EOfFlow. Analysts noted that “[w]e think this update solidifies [Insulet’s monopolistic position in the insulin patch pump space.](#)” Insulet’s share price **jumped again** on the news.

Predictably, whereas the bad news of Medtronic's planned EOFLOW acquisition shaved as much as \$1.7 billion from Insulet's market cap, the good news of the lower court's injunction orders and Medtronic's abandoned EOFLOW deal combined to return \$1.8 billion back to Insulet's market capitalization.

Trading Date	Event	Change in Share Price ³	Shares Outstanding	Change in Market Capitalization	Total Change in Market Capitalization
5/25/23	News of Medtronic's planned acquisition of EOFLOW	-\$24.99	69.7 million	-\$1.7 billion	-\$1.7 billion
8/30/23	News of district court's TRO against EOFLOW	\$20.83	69.8 million	\$1.46 billion	\$1.8 billion
12/7/23	News of Medtronic backing out of EOFLOW purchase	\$5.45	69.8 million	\$380 million	

Source: *Capital IQ*

But we think that last week's appellate court opinion will cause Insulet's share price recovery to unwind now that EOFLOW is free to sell competing tubeless patch pumps and the path is clear for Medtronic (or another acquirer) to renegotiate an acquisition of EOFLOW. With the basis of Insulet's recovery reversed, we expect it to cede back the \$1.8 billion in market capitalization that it regained when the district court froze EOFLOW's business and killed the Medtronic deal. At today's share price, a \$1.8 billion drop in market capitalization equates to a **share price drop of ~15%+**.

Insulet's failure to disclose the appellate ruling also raises questions about management's credibility, which will only add further negative pressure to the stock. Investors do not like being misled (by commission or omission). In our opinion, it was highly misleading for Insulet not to promptly disclose this devastating legal defeat to investors, despite ample opportunity on its Q1 2024 earnings call, which took place **two days after the appellate court announced its decision killing the injunction**.

First, we believe that news of this defeat is highly material, as the litigation had already resulted in substantial swings in Insulet's share price. Any litigation which causes ~\$1.8 billion in market capitalization movement up and down, depending on the outcome, should, in our opinion, be disclosed promptly.

Moreover, Insulet felt the litigation was sufficiently material to brag to investors when it won the preliminary injunction on its Q3 2023 earnings call.

Finally, an important update on our intellectual property portfolio, which is a key asset enabling our continued growth. In August, we filed a suit in the U.S. against EOFLOW and other affiliated parties to stop the misappropriation of Insulet's proprietary trade secrets. Last month, after requesting preliminary relief and obtaining some initial evidence, the court granted our request for a preliminary injunction against EOFLOW, which prohibits EOFLOW from manufacturing, marketing or selling to any new customer any product that we designed, developed or manufactured using or relying on Insulet's trade secrets.

The court also extended the prior injunction issue to restrain EOFLOW from disclosing to any third party information that contains, derives from or incorporates Insulet's confidential information. In granting Insulet's motion, the court found "very substantial, indeed, strong evidence of misappropriation" and "that Insulet is likely to succeed on the merits of its trade secrets claim."

Source: [Insulet's Q3 2023 Earnings Call](#)

If the EOFLOW litigation was sufficiently material to merit discussion when Insulet won the injunction, we think Insulet had an equal obligation to be forthright with investors when it lost the injunction. But, to our knowledge, Insulet did not disclose the defeat, despite ample opportunity on either an earnings call or a 10-Q, meaning that today investors and analysts appear unaware of the defeat.

³ Calculated from previous day's close price to next trading day's intraday high/low price.

2. Shattered Monopoly Creates Existential Crisis.

Insulet's share price could easily fall far harder. That is because the appellate court's promised forthcoming opinion is likely to hold that Insulet did not satisfy its burden of proving that it had a likelihood of success on the merits at trial. The appellate court's opinion is likely to reveal to investors, for the first time, that the statute of limitations may by itself doom Insulet's lawsuit. In other words, we think that last week's appellate court order, along with its promised forthcoming opinion, may cause investors to appreciate that Insulet's much touted "competitive moat" has come to an end.

Insulet's business, revenues and margins are contingent on its near monopoly over tubeless patch pump systems of which the OmniPod 5 is currently the only available option in the U.S., the largest diabetes market in the world. This enviable market position is set to shatter upon competition from EOfFlow, and perhaps Medtronic or another strategic acquiror.

Although it was just launched in August 2022, OmniPod 5 already accounts for [~60% of Insulet's FY2023 total revenue](#). Management expects even better in the future and its FY2024 forward guidance calls for OmniPod 5 to drive improved revenue and margin growth. Furthermore, management guides that OmniPod 5 will drive that record growth *purely on volume* without the benefit of the [big lift](#) in pricing it received in FY2023.

Importantly, the foundation of management's optimism and growth projections is the Company's monopoly on tubeless, wearable insulin pumps. Management repeatedly emphasizes that the tubeless, wearable feature "makes our product unique and clearly differentiated from competitors' offers" and is "fueling our growth." The tubeless design, according to management, is what "underpins our competitive advantages."

Omnipod 5 is the only FDA-cleared, fully disposable pod-based AID system. This makes our product unique and clearly differentiated from competitors' offers. These product attributes underpin our competitive advantages and are key to fueling our growth, further establishing our leadership position and expertise in the diabetes market. The fully on-body wearable AID experience of Omnipod 5 dramatically reduces the daily burden of living with diabetes. And its simplicity, ease of use and broad and affordable access are also key drivers of its rapid adoption.

Source: [Insulet's Q4 2023 Earnings Call](#)

Expressly baked into Insulet's future growth forecasts is **management's repeated and confident insistence that it has no competition on the horizon.**

James R. Hollingshead

President, CEO & Director

Thanks, Matt. I'll do those in reverse order. The first one is on the tubeless form factor. We obviously watch our competitor pipelines as closely as we can. And in terms of what is out there publicly that we can see, we don't see anything coming in that time frame that's even close to what we have in market right now with Omnipod 5. Just in terms of the whole package, the convenience, the ease of use, the scalability, the wear experience, automated needle insertion, we could go on and on about the feature set, but we are very confident in our competitive position.

We're never complacent. We have a lot of respect for our competitors, and we know that because Omnipod 5 -- Omnipod in general, but Omnipod 5 has been so successful, everybody wants to chase it. So that just makes sense, and that's how competition works. But we are very confident in our competitive position, and we don't see anything coming in anybody's pipeline that even matches what we have, and we're going to continue to drive innovation. So we're going to extend our lead.

Source: [Insulet's Q4 2023 Earnings Call](#)

James R. Hollingshead

President, CEO & Director

As to patch pump companies, there's patch pumps -- we're the leader in patch pump. There's not really a viable patch pump competitor that we see on the horizon. And so that's another reason that we're very, very bullish on our position and expect to continue to lead the market.

Source: [Insulet's Q3 2023 Earnings Call](#)

Insulet sizes up competition as Tandem, Medtronic plan new insulin patch-pumps

Insulet CEO Jim Hollingshead said the company is “very confident” in its competitive position as rivals develop their own patch pumps.

Published Feb. 29, 2024

Source: [News article, Feb. 29, 2024](#)

Not anymore. Last week’s appellate court order immediately frees EOfFlow to continue selling competing patch pumps and will clear the path for Medtronic reengage on a potential purchase of EOfFlow.

EOfFlow stated this plainly in its corporate filing announcing the appellate victory, telling investors that “due to the decision to suspend the effect of this second revised injunction, decision, production, marketing and sales of our company’s Eo-Patch are possible...” Korean investors duly noticed, sending EOfFlow’s stock up over 80% since the ruling.

EOfFlow (A294090)

Settlement of Lawsuit (Charging More Than Certain Amount)

Date : 2024-05-09 15:23



	<p>2. Due to the decision to suspend the effect of this second revised injunction decision, production, marketing and sales of our company's Eo-Patch are possible until a separate decision is made by the court.</p>
<p>10. Other references concerning investment decisions</p>	<p>1. 상기 '자기자본'은 한국채택국제회계기준에 따라 작성된 최근 사업연도말 (2022년 12월 31일) 연결자본총계에서 공시일 현재까지의 자본금 및 자본잉여금의 증감액을 반영한 금액입니다.</p> <p>2. 금번 2차 수정 가치분 결정에 대한 효력정지 결정으로 법원의 별도 결정이 있을 때까지는 당사 이오패치의 생산, 마케팅 및 판매가 가능합니다.</p> <p>※Relevant Disclosure 2024-04-25 소송등의판결 · 결정</p>

Source: *Material Management Information Related to Judgment, filed May 8, 2024 (available on [DART](#))*

More damning for Insulet’s competitive prospects, all signs suggest that [Medtronic remains interested](#) in acquiring EOfFlow, and Medtronic’s expressly stated purpose in its previous attempt to acquire EOfFlow was to quickly offer users a tubeless AID system to compete with OmniPod 5.

We ultimately see no feasible path for Insulet to protect the much touted “competitive moat” on which its nosebleed valuation critically depends. Insulet trades at 29.4x FY2024E EV/EBITDA and 52.1x FY2024E P/EPS. These growth multiples are impossible to reconcile with the competitive landscape that Insulet quixotically disavows.

In our view, Insulet will soon lose its monopoly, its leadership position, and its growth prospects as OmniPod 5 becomes commoditized and competes with newer tubeless insulin pumps and AID system technologies that are now on the doorstep of the U.S. market. **Competition is not just coming, it’s now here.**

III. The Market Unduly Left EOFlow for Dead. EOFlow is Back.

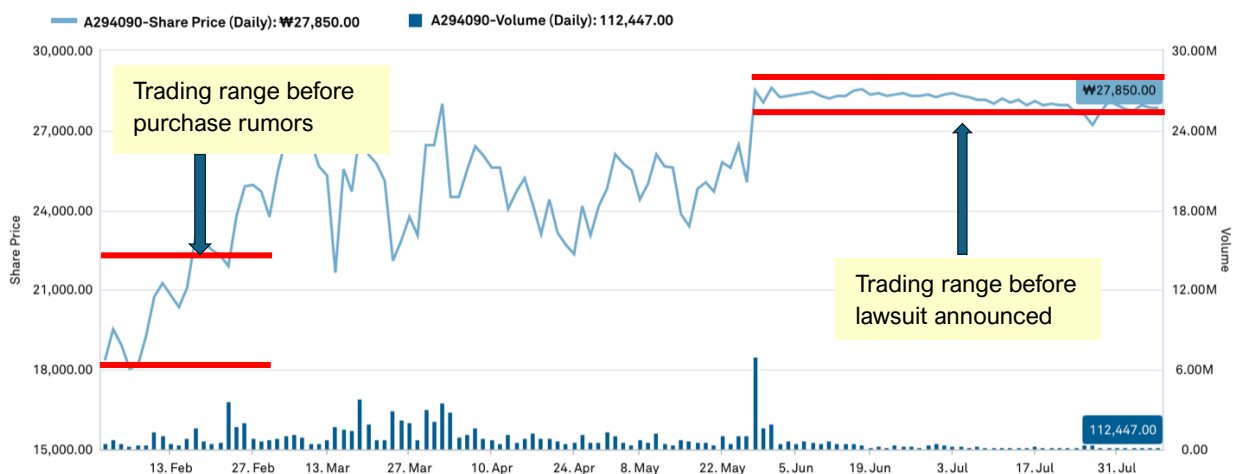
Investors have an incredible asymmetric opportunity. Less than one year ago, Medtronic planned to purchase EOFlow for \$738 million and its shares traded at around KRW 28,500. Recently, EOFlow's shares traded as low as KRW 3,390, down almost 90% since May 2023. What changed? Only that Insulet sued EOFlow alleging theft of trade secrets and, just weeks later, a district court judge in Boston issued an injunction that froze EOFlow's business and killed the pending Medtronic acquisition. **We understand why the market lost confidence in EOFlow's future, but last week's appellate court decision shows that this was a mistake.**

Last week's appellate court decision kills the lower court order that ended the Medtronic deal, froze EOFlow's business, and annihilated its share price. We think this appellate ruling will quickly restore the market's May 2023 view of EOFlow and reverse much of the damage done to EOFlow's share price. Equally important, we expect that last week's appellate court order, and its promised forthcoming opinion, will reveal to investors that the statute of limitations, and other issues as well, are likely to doom Insulet's lawsuit.

In all events, as of last week, the path is now clear for Medtronic to purchase EOFlow so that Medtronic can execute on its plan to quickly offer users a tubeless AID system to compete with OmniPod 5. And EOFlow now suddenly has the lifeline it needs to compete on its own regardless of interest from likely acquirors.

1. EOFlow's share price falls almost 90% due to a district court ruling that was just reversed.

In late February 2023, Korean news sources [reported on a rumor](#) that Medtronic was seeking to acquire EOFlow and had started to conduct due diligence. In the weeks before the rumors of Medtronic's interest in a deal, EOFlow shares traded in an approximate range of KRW 18,000 – KRW 22,000, at a market capitalization of roughly \$430 million - \$520 million. After the May 25, 2023 news of Medtronic's definitive agreement to purchase EOFlow for \$738 million, EOFlow shares traded at around KRW 27,000 – KRW 28,000, just under the price of Medtronic's planned public tender offer. The share price continued to hold that narrow range for approximately the next two months.



Source: Capital IQ

Then, on August 8, 2023, Insulet issued an 8-K that announced it had sued EOFlow for stealing its trade secrets and infringing its patents. This news was followed by a cascading series of further bad news, **all stemming directly from Insulet's August 2023 lawsuit**: a temporary restraining order; a preliminary injunction; a prolonged halt of trading; and, finally, Medtronic backing out of the \$738 million deal.

EOFlow's share price collapsed. Most of that drop occurred in the aftermath of the district court's preliminary injunction order which knocked EOFlow's share price from **KRW 23,700** prior to the preliminary injunction to a low of **KRW 3,390**. Needless to say, Insulet's litigation has made EOFlow's stock price chart look very ugly.



Source: Capital IQ

This setup, however, creates a massive asymmetric opportunity for investors. Last week's appellate court order (and forthcoming opinion) are a lifeline for a desperate business, permitting EOFlow not only to continue selling competing tubeless patch pumps, but also to reengage with Medtronic or other potential acquirors.

We expect EOFlow's share price to recover to its pre-injunction trading price of around **KRW 23,700**, meaning that investors can see a ~600% gain if EOFlow stock recovers from its post-injunction lows. Our conviction of the opportunity presented here is only strengthened by the fact that EOFlow's founder and CEO, who already owned over 10% of EOFlow's outstanding shares, has recently been increasing his personal EOFlow stock holdings. This includes a recent April 2024 open market cash purchase of more than \$500,000 of EOFlow shares.⁴

2. Medtronic and EOFlow still reportedly have "mutual interest" in completing a deal.

All signs suggest that Medtronic will soon seek to renegotiate a purchase of EOFlow, including Medtronic's own statements that it "**will continue to monitor the [EOFlow] appeals process**" and reports in the media that Medtronic and EOFlow still have a "**significant mutual interest**" in a deal.

In May 2023, Medtronic announced that it planned to acquire EOFlow for \$738 million.⁵ In an [8-K](#) and on its earnings call on the same day, Medtronic stated that the acquisition "will accelerate our speed to market" and allow Medtronic to offer patients an AID system that combines EOFlow's tubeless pump with Medtronic's algorithm and next generation continuous glucose monitor.

And just this morning, we announced our intent to acquire EOFlow, the manufacturer of the EOPatch, a tubeless, wearable and fully disposable insulin delivery device. The EOPatch is already available in Europe, South Korea and the UAE, and **this will accelerate our speed to market in the fast-growing patch pump space** with a product that has demonstrated manufacturability. In addition, upon close, we'll work quickly to integrate our clinically proven meal detection technology algorithm, which is in the MiniMed 780G system, into the EOPatch and seek marketing authorization.

Source: [Medtronic's Q4 2023 Earnings Call](#)

Medtronic's expressed goal was to "**work quickly to integrate**" EOFlow's device with Medtronic's existing AID system. [Medtronic stated](#) that with the EOFlow purchase, Medtronic was "shifting to offense."

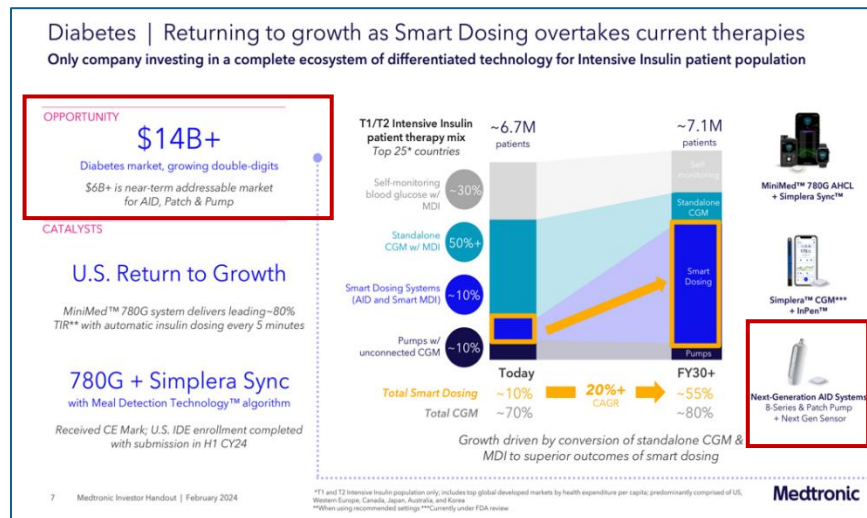
⁴ According to records [filed with the Korean stock exchange](#), EOFlow's CEO's stock holdings increased by 191,900 shares between December 13, 2023 and April 22, 2024. These purchases came after the CEO was forced to sell over 2 million shares in late 2023 to repay a personal loan secured by his personal shares. See [local Korea news article, Nov. 22, 2023](#).

⁵ The financial mechanics of the planned transaction generally involved Medtronic agreeing to make private and public tender offers for all outstanding EOFlow shares at a price of KRW 30,000 per share. At the time, this represented a 20% premium to EOFlow's share price.

"Look, we have not blinked when it comes to diabetes, and we're **shifting to offense** as we continue to invest heavily in assembling our ecosystem of durable pumps, smart pens, **patch pumps**, sensors, algorithms, and customer service with multiple programs under development," CEO Geoff Martha said during [Medtronic's fiscal fourth-quarter earnings call](#) Thursday. "Having this ecosystem is really important because we believe the market will move from CGM first to **automated insulin delivery**, and we are well positioned for that trend."

Source: [News article, May 25, 2023; Medtronic's Q4 2023 Earnings Call](#)

Since that time, Medtronic's intent to quickly bring a tubeless AID system to the U.S. market has remained steadfast. [Medtronic reiterated](#) this intent to compete with Insulet as recently as March 12, 2024, when it stated that "we're on a tear in diabetes" and that its priorities included bringing a patch pump to market. Medtronic's February 22, 2024, investor deck illustrates Medtronic's priorities and its focus:



Source: [Medtronic's February 2024 Investor Handout](#)

Medtronic could theoretically develop a tubeless pump internally instead of acquiring EOfFlow, but that is not going to happen—especially if Medtronic is serious about competing in the U.S. market anytime soon. We interviewed a former Medtronic executive who was skeptical that Medtronic would or could develop a tubeless pump in-house, noting that Medtronic has already spent 15 years unsuccessfully attempting to do exact that.

Q: I'm just wondering what makes more sense for Medtronic if it wants to get to market sooner? Is it developing in-house or is it potentially purchasing another company?

A: Now, has Medtronic struggled for the past 15 years to bring its own patch up to the market? It has. And I think that's where leadership is just doubting the internal ability to execute. Hence, that's why, in my opinion, there was the \$700 million intention to buy [EOfFlow].

--Former Medtronic executive

In our opinion, Medtronic will be eager to reengage with EOfFlow. Medtronic already conducted the due diligence necessary to validate EOfFlow's technology and manufacturing, and EOfFlow still remains Medtronic's quickest and best path to market. Medtronic stated in [SEC filings](#) after the preliminary injunction ruling that it "**will continue to monitor the [EOfFlow] appeals process.**" Importantly, news reports as recently as December 2023, after Medtronic

was forced by the injunction to back out of the deal, indicate that Medtronic and EOfFlow still have a “**significant mutual interest**” in a deal.

Report: There's still 'mutual interest' with EOfFlow, Medtronic despite deal falling through

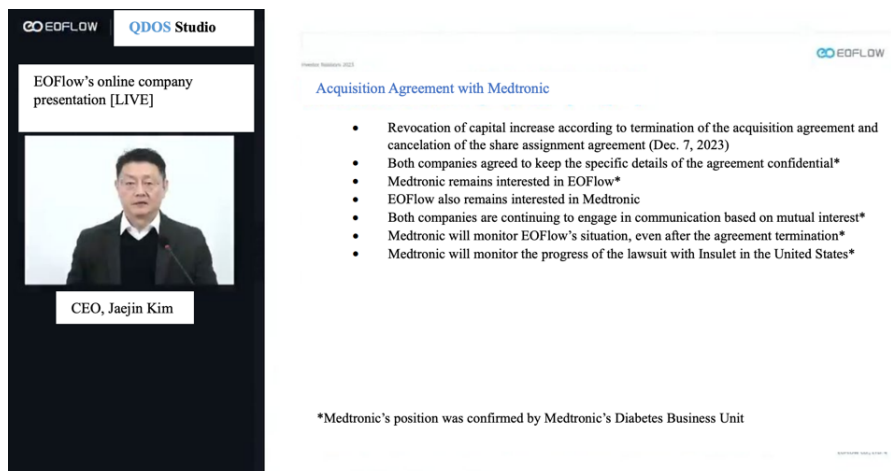
DECEMBER 8, 2023 BY SEAN WHOOLEY

Source: [News article, December 8, 2023](#)

After Medtronic backed out of the deal, EOfFlow held an investor call and its CEO addressed the status of EOfFlow’s relationship with Medtronic, including that “the two companies will make an effort to ensure the eventual success of this deal.”

“Medtronic continues to be interested in EOfFlow. Similarly, we also maintain our interest in Medtronic. We believe, more than anyone, that the two companies will make an effort to ensure the eventual success of this deal. Both companies are continually having discussion on the basis of what each others’ basic stance is. We were even talking with them as recently as last weekend. Additionally, Medtronic plans to continue monitoring EOfFlow’s situation, even after the termination of the agreement. Furthermore, they have talked about continuing to monitor the situation of the progress of the Insulet lawsuit. The things I have mentioned have been agreed to with Medtronic’s Diabetes Business Unit.”

Source: *Certified translation of Dec. 11, 2023 investor call (PACER ECF No. 278-3)*



Source: *Certified translation of Dec. 11, 2023 investor call (PACER ECF No. 278-3)*

In fact, as recently as last week, Insulet admitted its belief that Medtronic would reengage on the EOfFlow acquisition once the preliminary injunction is vacated. At oral argument on May 6, 2024, Insulet’s attorneys expressed doubt that Medtronic’s acquisition of EOfFlow could even be characterized as “cancelled,” and stated that **Insulet “certainly rejects the premise that the Medtronic deal is definitively off.”**

[Appellate court judge]: “On Medtronic, on the second page they say that they may still be interested, but as I’m sure you know in the prior page, I think Mr. Kim says the acquisition agreement was terminated. And it’s been cancelled. We can take that as correct. Can we not?”

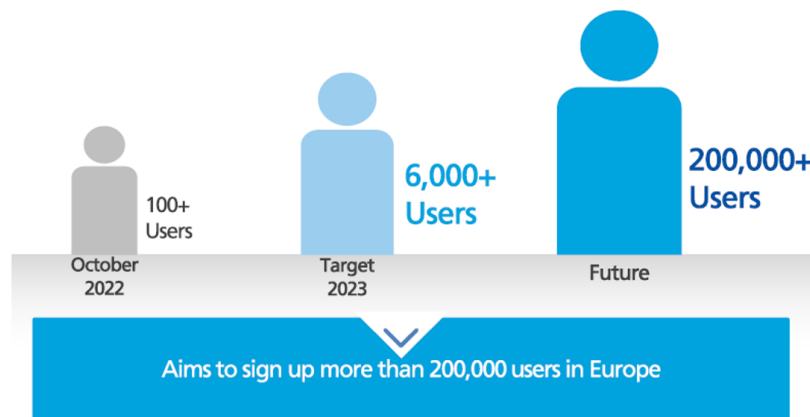
[Insulet lawyer]: Respectfully, no your honor. . . So I guess the question is what did the CEO mean by “cancelled” . . . so we certainly reject the premise that Medtronic is definitively off.”

Source: [Court of Appeals for Federal Circuit, Oral Argument, May 6, 2024 \(audio recording\)](#)

Importantly, it is highly unlikely that Medtronic backed out of the EOFLOW transaction in December 2023 because it somehow lost confidence in EOFLOW's technology or EOFLOW's chances of winning on the merits at trial. Rather, we think it is clear that Medtronic backed out of the May 2023 deal because the district court unfairly slapped EOFLOW with a preliminary injunction that prevented it from consummating the merger and relegated EOFLOW to court-induced purgatory. EOFLOW remains Medtronic's best, and perhaps only, foreseeable path to fulfill its stated desire to quickly bring to market a tubeless AID system to compete with OmniPod 5.⁶

3. EOFLOW is well positioned to compete on its own.

We think EOFLOW is an obvious and highly attractive acquisition target for Medtronic or a host of suitors looking to enter the insulin patch pump market. But to be clear, EOFLOW does not need Medtronic to be successful and compete with Insulet. At the time of the preliminary injunction in Summer 2023, EOFLOW's patch pump was already commercially available outside the U.S. and EOFLOW was making continuing advancements in product development, marketing, manufacturing, and sales. Aside from Insulet's OmniPod, no tubeless insulin pump competitor was even close. EOFLOW had already commercially launched EOPatch in Korea in 2021 and in Europe in 2022. EOPatch had gained over 3,000⁷ new users, mostly in Korea, and was targeting 6,000 global users in 2023 and 200,000 European users in the longer term.



Source: [EOFLOW Investor Presentation, November 2022](#)

Further, regulators had already approved EOPatch in several other countries clearing the path for EOFLOW to penetrate new markets. Additionally, EOFLOW had a pending FDA premarket approval application for the U.S. market.⁸ And, as of October 2022, third-party studies and EOFLOW internal sales data showed that existing EOPatch users had high satisfaction rates and high rates of repurchase.

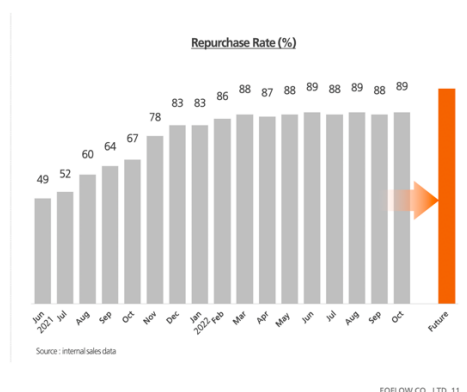
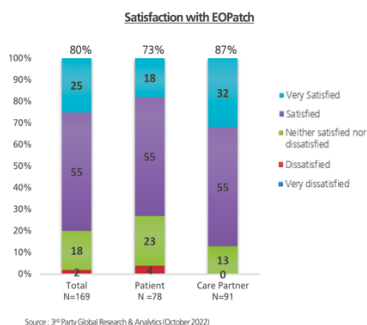
⁶ Since late 2023, three companies have filed FDA premarket submissions for their own versions of patch pumps. It is unlikely that Medtronic would find any of these companies to be viable or attractive acquisition targets. For example, Embecta submitted a premarket application for a tubeless pump that is designed for only Type 2 diabetes. Similarly, Roche Diabetes and PharmaSense made premarket submissions for patch pump designs that are *modular* or not otherwise disposable. And, at least Embecta and PharmaSense both lack the proven manufacturing capability that Medtronic found highly attractive in EOFLOW.

⁷ See PACER ECF 156, discussing EOFLOW's estimated 3,000 users.

⁸ EOFLOW withdrew its application after the announcement of the Medtronic acquisition, presumably so that it and Medtronic could make a renewed, coordinated submission after the acquisition closed. The FDA 501(k) premarket approval process can take less than 6 months.

02. Korea Market (3) EOPatch User Experience Survey & Repurchase Rate

Survey was conducted to identify satisfaction of EOPatch, N=169 complete (Patient N=78, Care Partner N=91)
How satisfied are you with your EOPatch pump?



Source: [EOFlow Investor Presentation, November 2022](#)

One of EOFlow’s key competitive advantages compared to other upstart tubeless insulin pump companies is that EOFlow has already solved the difficult problem of cost-effectively manufacturing a tubeless insulin pump at scale. EOFlow already has an automated assembly line capable of producing [three million units a year](#). In fact, EOFlow’s advanced manufacturing capability is one of the reasons that Medtronic was eager to acquire EOFlow in May 2023.

One of the reasons we were very excited by EOFlow is their manufacturing, and how much progress they’ve made on it... The manufacturing is one of the biggest challenges with getting a patch up to market. You got to make a device that is super accurate to dose insulin... [EOFlow brings] a lot of assets in that regard.

Source: [Medtronic ADA Analyst and Investor Briefing June 25, 2023](#)

EOFlow almost sold for \$738 million a year ago, and the market has only gotten hotter since then. The purchase price is notable because it is 3.5x the \$213.8 million price that Tandem Diabetes paid to acquire AMF’s developmental stage “Sigi” tubeless pump [just four months earlier](#). Whereas Medtronic planned to use EOFlow’s patch pump to get to market quickly, Tandem does not anticipate that Sigi will be ready to launch in the U.S. until 2027. By comparison, EOFlow was a bargain, meaning not only will the business be attractive to Medtronic and other potential acquirors,⁹ but that it has significant value as a stand-alone insulin patch pump manufacturer.

EOFlow’s prospects are not limited to only sales of its patch pump, but it has also made strides towards incorporating its patch pump into a full AID system to compete with OmniPod 5 and other AID systems in the U.S. and elsewhere. Most notably, in January 2023, EOFlow announced an important partnership with Diabeloop, the owner of an AID system controller and algorithm that is a primary component of a full AID system that is already approved, marketed, and sold in Europe, [Vicentra’s “Kaleido with DBLG1.”](#)

Diabeloop, EOFlow partner on wearable automated insulin delivery in Europe

JANUARY 12, 2023 BY SEAN WHOOLEY

Source: [News article, Jan. 12, 2023](#)

⁹ For example, Abbott Laboratories makes a highly regarded continuous glucose monitor that Tandem uses in its AID system, but Abbott does not itself own a full AID system. In late March 2024, however, [a patent owned by Abbott was published](#) that strongly suggests that Abbott is working on developing an innovative AID system based around a wearable patch insulin pump.

Additionally, although it is still in early-stage development, EOFLOW is one of the early leaders in developing the next generation of AID systems that combine a tubeless insulin pump with a continuous glucose monitor in one single device. Before the May 2023 Medtronic deal, EOFLOW was targeting a 2026 launch of its developmental stage “EOPancreas” device. EOFLOW also has several subsidiaries, joint ventures and minority investments that are also working to develop tubeless patch pumps capable of delivering medications other than insulin. For example, EOFLOW owns a 30% stake in a company, Ferrex Therapeutics, that is developing a drug that is deliverable by a tubeless patch to treat Iron Overload Disorder – estimated to be a \$8 billion market opportunity.

Finally, EOFLOW has sufficient cash to sustain its operations into 2025, including paying hefty estimated legal fees through trial in November 2024. According to EOFLOW’s 2023 annual report, it had KRW 14.8 billion (USD 11.4 million) of cash, and average monthly cash flow from operating activities of KRW 1.9 billion (USD 1.5 million). In February 2024, the Company successfully raised KRW 17 billion (USD 13 million) by issuing convertible bonds. Even if we assume that EOFLOW will incur an extra USD 2 million of legal fees in connection with the November 2024 trial, EOFLOW will still have sufficient cash to fight Insulet through a jury trial and maintain its operations into 2025.

	KRW BN	USD M
Est. monthly cash burn (Jan'24-Sep'24)	(1.9)	(1.5)
Est. monthly cash burn incl. additional legal fees (Oct'24-Nov'24)	(3.2)	(2.5)
Reported cash balance as of 12/31/23	14.8	11.4
Est. cash balance after Feb'24 convertible bond issuance	27.9	21.5
Est. cash balance at 09/30/24 before additional legal fees	14.3	11.0
Est. cash balance at 11/30/24 after jury trial	7.8	6.0

Source: [EOFLOW FY23 Annual Report](#)

Ultimately, we think EOFLOW represents a wonderful asymmetric opportunity for investors. A district court ruling sent EOFLOW shares crashing almost 90% but, as of last week, that ruling is now defunct. EOFLOW will not only be a highly attractive acquisition target (especially for Medtronic) but has the technology, cash, and manufacturing capability to successfully disrupt Insulet’s monopoly in the U.S. and around the world.

IV. What Happens Next: Appellate Court Highlights Fatal Flaws in Insulet's Lawsuit.

The death of the preliminary injunction is *fait accompli*, but the appellate court's forthcoming opinion on why it killed it is still notable for investors, as we expect that it will highlight why Insulet's claims are unlikely to succeed.

The appellate court already decided that "Insulet has not met its burden to show that it should be granted the extraordinary relief of a preliminary injunction," but it has not yet stated its reasoning. Nonetheless, there is very little mystery here. The appellate court's forthcoming opinion is likely to hold and explain that Insulet failed to prove that it was likely to succeed on the merits at trial. When the appellate court addresses that legal predicate for a preliminary injunction, we expect that its forthcoming opinion will inevitably highlight that Insulet's lawsuit faces a major statute of limitations problem, and also that Insulet has failed to set forth sufficient evidence that EOFLOW possessed or used any Insulet's trade secret.

At oral argument, the appellate court was manifestly disturbed that the lower court declined to consider EOFLOW's statute of limitations defense which included evidence that Insulet may have had repeated notice of EOFLOW's allegedly infringing product as early as 2018 and 2019, years before the relevant three-year statute of limitations. For example, one appellate court judge, referring to the lower court's failure to address EOFLOW's statute of limitations defense, flatly asked "Isn't that a fatal defect?" Another judge pointedly asked, "[the] statute of limitations was at issue, the lower court judge was wrong about that, correct?"

Similarly, a plaintiff is required to prove its allegedly stolen trade secrets with specificity, so it's notable when an appellate court judge states at oral argument that the breadth of the alleged trade secrets is "really astounding" and another judge asks if the alleged trade secrets in EOFLOW's possession are "far broader than anything what courts have said is a trade secret, isn't that correct?"

Insulet had almost five months to collect evidence before the lower court's October 2023 preliminary injunction decision. EOFLOW had eight weeks. Despite the disparity, Insulet was unable to prove that it was likely to succeed on the merits of its claims. All of this is important to investors because we think the appellate court's forthcoming opinion will inevitably highlight why Insulet's lawsuit is likely to be dismissed once the lower court applies the proper legal frameworks.

1. Statute of limitations Likely Bars Insulet's Claims.

The appellate court's opinion will likely hold that the lower court committed reversible error by expressly declining to consider EOFLOW's statute of limitations defense which included evidence that Insulet's claims are time-barred by the relevant *three-year* statute of limitations. Specifically, instead of considering EOFLOW's statute of limitations defense, the lower erred in deciding that the statute of limitations was "not the issue here." That, however, was just wrong. The statute of limitations was precisely the issue before the lower court, and it was reversible error for the lower court to decline to consider EOFLOW's statute of limitations defense.

Insulet's brought its claims under the Defense of Trade Secrets Act ("DTSA"). The DTSA expressly provides that claims expire *three years* after the date a misappropriation "is discovered **or reasonable diligence should have been discovered.**" EOFLOW presented compelling evidence to the lower court that with reasonable diligence Insulet should have discovered any potential trade secret claims in 2018 or 2019, far outside the DTSA's three-year statute of limitations period, including:

- In June 2018, Insulet representatives attended an industry conference where EOFLOW presented the EOPatch and also displayed a transparent version of the product. Insulet's head of R&D visited EOFLOW's booth at the conference and concluded at that time that the EOPatch "bore a stunning resemblance to OmniPod."
- After the June 2018 industry conference, Insulet representatives admitted that it "constantly watched" EOFLOW's operations.
- By 2018 or 2019, EOFLOW knew that EOFLOW had hired former Insulet employees.

- In March 2019, Insulet’s then VP of Strategy and Corporate Development contacted an EOFLOW executive requesting “an overview of EOFLOW.” The discussion did not involve Insulet raising potential trade secret claims; instead Insulet raised an opportunity for “potential collaboration between the two companies.”
- In July 2019, Insulet learned that EOFLOW announced that Korea regulators approved EOPatch.
- In September 2019, Insulet learned that EOFLOW announced a distribution agreement to commercialize EOPatch.¹⁰

For example, as to the first bullet above regarding Insulet’s interactions with EOFLOW at the June 2018 industry conference, EOFLOW showcased its product at a trade show, at which Insulet representatives reviewed and even commented on the EOPatch. Similar claims to Insulet’s have been dismissed under similar circumstances, when, like here, a plaintiff was on notice of a product from a trade show.

As Insulet admits, by 2018, EOFLOW was widely publicizing and marketing EOPatch Version 2. (Compl. ¶ 8.) EOPatch Version 2 was also presented at trade shows, including the June 2018 American Diabetes Association Conference that Insulet attended in Orlando, Florida. (Kim Decl. ¶ 13.) There, without any NDA or any other restriction, EOFLOW showcased EOPatch Version 2 with a clear case cover allowing attendees to inspect the device’s components. (*Id.*)



Insulet attended and approached EOFLOW’s booth to inspect EOPatch Version 2. (Benjamin Decl. ¶ 68.)

Source: EOFLOW’s Memorandum in Opposition to TRO and Preliminary Injunction, p. 4, PACER ECF-51

The lower court failed to assess whether this evidence triggered the statute of limitations. Nor did the lower court attempt to distinguish these facts with **five cases** that EOFLOW cited in support of the proposition that a competitor is put on sufficient notice to trigger the DTSA statute of limitations when it learns of a potentially infringing competing product at an industry trade show. This includes a recent 2023 case issued from a different judge in the same district court in Boston, in which the court ruled that a trade secret claim like the one brought by Insulet was time barred because the plaintiff saw the defendant’s product at a trade show, thus starting the clock.¹¹ This case seems directly on point and suggests that the statute of limitations will bar Insulet’s trade secret claims.

Additionally, the lower court did not even give lip service to the evidence EOFLOW put forward to show that in 2018-2019, with reasonable diligence, Insulet should have discovered that it had trade secret claims to assert. These

¹⁰ The full evidentiary record presented to the lower court is “under seal” and unavailable to the public. However, EOFLOW discusses its statute of limitations evidence in its legal briefing at the lower court and at the appellate court wherein it cites to specific affidavits. See, e.g., *EOFLOW’s Memorandum in Opposition to TRO and Preliminary Injunction, p. 4, PACER ECF-51.*

¹¹ See *EOFLOW’s Memorandum in Opposition to TRO and Preliminary Injunction, p. 4, ECF-5.*

additional facts include that after the key June 2018 conference, Insulet admitted that it was “constantly watching” EOFLOW’s operation, that Insulet contacted EOFLOW in 2019 to request an overview of EOFLOW with a view towards collaboration, that Insulet knew that EOFLOW had hired Insulet employees and had a commercial distribution agreement, and that Insulet had received Korean regulatory approval.

Instead of assessing EOFLOW’s statute of limitations defense, however, the lower court expressly stated: **“I express no opinion about the accrual of statute of limitations. That’s not the issue here.”**

According to EOFLOW, that put Insulet on inquiry notice, and, that, therefore, the relative time frame for measuring delay begins in 2018. I express no opinion about the accrual of the statute of limitations. That's not the issue here. The question is could Insulet at that point have filed for preliminary injunction? I think the answer to that is no.

Source: Hearing transcript, Oct. 4, 2023, PACER ECF-124

The lower court reasoned that the applicable question was not whether Insulet *had sufficient “inquiry notice” such that Insulet should have investigated* if it had a trade secret claim to assert. Instead, the lower court stated that the applicable question was whether Insulet had enough information to file a lawsuit and seek a preliminary injunction in 2018 or 2019. The lower court’s interpretation, however, defies the plain language of the DTSA that expressly provides that DTSA claims expire *three years* after the date a trade secret misappropriation is discovered ***or with reasonable diligence should have been discovered.***

At last week’s oral argument, the appellate court zeroed in on precisely this point, grilling Insulet’s counsel: *“Where does [the lower court] ever answer the question whether your client was **on inquiry notice** in 2018 or 2019? I see where he says your client doesn’t have enough to sue in 2018 or move for an injunction in 2018, **but where does he analyze what is really the test, which is with the exercise of reasonable diligence starting in 2018 or 2019, would you not have had a claim within 3 years?**”* (audio at 1:42:28). Insulet’s lawyer attempted to explain the unexplainable, but the appellate court judge responded that Insulet’s lawyer’s explanation ***“raises some suspicion to at least a normal observer.”*** (audio at 1:44:35).

The appellate court’s forthcoming decision will almost certainly hold that the lower court committed reversible error in failing to address EOFLOW’s statute of limitations defense. Indeed, in addition to some of the appellate court’s highly skeptical questioning discussed above, an appellate court judge stated plainly that *“[The] statute of limitations was at issue, **the [lower court] judge was wrong about that, correct?**”* (audio at 1:41:43). One appellate court judge pointedly asked, *“The district court did not deal with the statute of limitations, isn’t that absolutely essential to dealing with likelihood of success? **Isn’t that a fatal defect?**”* (audio at 1:40:56).

We had been following this litigation for months before oral argument and we had consulted an intellectual property law expert who was familiar with EOFLOW’s appeal and has deep experience with the Court of Appeals for the Federal Circuit. The expert confirmed the inescapable conclusion that the lower court’s failure to consider EOFLOW’s statute of limitations defense most likely constitutes reversible error, stating ***“it’s likely that that’s reversible error. I mean I can’t see any other way around it.”***

“I don’t know on the DTSA how you get out of that as it relates to the very hard three-year statute that [the appellate court] is going to look at. And if the judge didn’t consider this and didn’t weigh in on that evidence, it’s likely that that’s reversible error. I mean, I can’t see any other way around it.”

--Intellectual property law expert

In sum, we believe that the appellate court's forthcoming opinion will inevitably highlight to investors that Insulet's trade secret lawsuit is likely barred by the statute of limitations.

2. Insulet Will Be Challenged to Prove That EOFlow Possessed or Used Insulet Trade Secrets.

The law is clear that a plaintiff cannot succeed on a trade secret claim by merely pointing to categories of information that *may* qualify as a trade secret. Rather, trade secrets must be identified with specificity in a way that separates purported trade secrets from other information that is not a trade secret, such as information that could have been reverse engineered or that was otherwise publicly available to the defendant. A plaintiff that cannot identify trade secrets with specificity, cannot satisfy its burden of proving that it is likely to succeed on the merits of a trade secret claim.

Here, however, instead of specifically identifying what information in EOFlow's possession may constitute a trade secret, Insulet simply pointed to broad categories of Insulet information that may be in EOFlow's possession, such as CAD drawings, specifications models, testing, protocols and data. Neither Insulet, nor the lower court, bothered to make any effort to distinguish what information within these broad categories may constitute trade secrets versus publicly available information or information that EOFlow, for example, may have reverse engineered. In fact, the lower court expressly stated the dubious legal proposition that Insulet need not identify "the precise number and contours of the trade secrets at issue."

I also think there's little doubt that that information falls within the statutory definition of trade secret. Again, it involves CAD drawings, specifications, models, testing, protocols and data, manufacturing instructions, protocols, and so on.

Discovery has only been preliminary at this point. I think it would be unfair to require at this stage perfection as to the precise number and contours of the trade secrets at issue.

Source: Hearing transcript, Oct. 4, 2023, PACER ECF-124

This is reversible error by itself. Further compounding the error, however, after the October 4, 2023, hearing, the lower court signed a preliminary injunction order that not only failed to identify trade secrets with any level of specificity—even at the superficial category level—but the lower court's order mistakenly equated "trade secrets" with "confidential information."

3. For purposes of this Order, the term “Trade Secrets” shall mean any and all Confidential Information of Insulet, as defined in this Order, (a) that was copied, downloaded, removed, or otherwise taken from Insulet by Luis J. Malave, Steven DiIanni, Ian Welsford, or Robert Strand, or any other present or former employee or agent of Insulet, or (b) any information that contains, derives from, or incorporates such Confidential Information.
4. For purposes of this Order, the term “Confidential Information” shall mean (a) any and all information or materials that were marked “confidential” by Insulet and (b) any and all CAD files, drawings, or specifications created by Insulet, whether or not they were marked “confidential.”

Source: Preliminary Injunction Order, PACER ECF-126

Contrary to well-settled law, the lower court incorrectly equated “confidential information” with “trade secrets.” Obviously, all trade secrets are necessarily confidential, but that does not mean that all confidential information are trade secrets. The fact that a document may be stamped confidential or be in the possession of a former Insulet employee says absolutely nothing about whether the document fairly constitutes a trade secret. EOFLOW’s appellate court brief cites numerous cases that reject that type of superficial and conclusory analysis of what constitutes a trade secret.

The appellate court’s questions during oral argument suggest that the forthcoming opinion will hold that Insulet did not prove that it was likely to succeed on the merits because Insulet failed to sufficiently prove that EOFLOW possessed or used Insulet trade secrets. In fact, at one point, one of the appellate judges seemed exasperated about Insulet’s attempt to identify trade secrets via broad categories and without specificity, lamenting “*Let me move to that now, which is the likelihood of success on the merits. I mean the breadth of some of the paragraphs here is really astounding. Is it not? . . . I’m just at a loss with respect to the breadth of these findings.*” ([audio at 1:44:50](#))

An appellate court judge stating that she is “at a loss” and “astounded” at a lower court order is notable. But this was not all. Another appellate judge strongly suggested his view that the lower court’s construction of trade secret law was simply wrong, asking Insulet’s lawyer: “*the definition of trade secret in the order includes all information or material that were marked as confidential by Insulet. That’s far broader than anything what courts have said is a trade secret, isn’t that correct?*” ([audio at 1:56:20](#))

Similar to the statute of limitations issue, we strongly suspect that the appellate court’s forthcoming opinion will hold that Insulet failed to prove it would succeed on the merits because it failed to prove that EOFLOW possessed or used Insulet’s trade secrets.

In sum, even though the preliminary injunction is dead, the appellate court’s forthcoming opinion on why it killed the injunction will be valuable to investors insofar as it is likely to shine light on the reasons that Insulet is unlikely to succeed on its claims against EOFLOW, making the Korean upstart a particularly attractive acquisition target to a larger medical device player such as Medtronic, but also permitting EOFLOW to continue to challenge Insulet’s key monopoly both abroad and soon, in the U.S.

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