

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE NEO WIRELESS, LLC
PATENT LITIG.

Case No. 2:22-md-03034-TGB

Hon. Terrence G. Berg

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S PRIOR ART ELECTIONS**

CONCISE STATEMENT OF ISSUE

Should the Court strike Defendants' invalidity contention regarding the third-party "Project Angel" prior art where:

- In November 2022 and May 2023, Defendants disclosed to Neo the detailed information they possessed regarding Project Angel in their "preliminary" invalidity contentions, including (i) how Project Angel was relevant to each of the asserted patents, and (ii) the extent of the inventors' involvement with Project Angel;
- In December 2022, Defendants amended their defenses and counterclaims to plead unenforceability of the asserted patents based on Project Angel;
- In March and April 2023, Defendants served document and deposition subpoenas regarding Project Angel on several third-party corporations and the third-party inventors of the patents Neo asserts in this case;
- After receiving the third-party documents and taking the inventors' depositions, Defendants supplemented their invalidity and unenforceability contentions regarding Project Angel; and
- Fact discovery remains open and expert discovery has not started, so that Neo and its expert will have plenty of time to respond to Defendants' Project Angel contentions?

Defendants Answer: No.

TABLE OF CONTENTS

CONCISE STATEMENT OF ISSUE i

TABLE OF AUTHORITIES iii

I. INTRODUCTION1

II. ARGUMENT.....3

 A. Defendants have diligently and transparently pursued Project Angel throughout this case3

 1. Defendants’ November 2022 preliminary invalidity contentions provided extensive details on Project Angel 3

 2. Defendants diligently sought third-party discovery to support their contentions regarding Project Angel 6

 B. Neo’s arguments in its motion lack merit9

 1. Defendants did not “waive” Project Angel..... 9

 2. Defendants have good cause for including Project Angel in their current invalidity contentions 10

 3. Neo’s cited cases are not on point 12

 C. Neo is not unfairly prejudiced by Defendants’ inclusion of Project Angel in their invalidity contentions14

III. CONCLUSION.....15

TABLE OF AUTHORITIES

Cases

Funai Elec. Co., Ltd. v. Daewoo Elecs. Corp.,
No. C 04-01830 CRB, 2006 WL 3456607 (N.D. Cal. Nov. 29, 2006).....14

Garrity Power Servs. LLC v. Samsung Elecs. Co.,
No. 2:20-CV-00269-JRG, 2021 WL 4894262 (E.D. Tex. Oct. 19, 2021)....12

Pisony v. Commando Consts., Inc.,
No. 6:17-cv-00055-ADA, 2020 WL 4934463 (W.D. Tex. Aug. 24, 2020)..11

Thought, Inc. v. Oracle Corp.,
No. 12-05601, 2013 WL 5587559 (N.D. Cal. Oct. 10, 2013).....2, 11

I. INTRODUCTION

The Court should deny Neo Wireless LLC’s (“Neo’s”) motion to strike the prior art called “Project Angel.” Defendants disclosed Project Angel in their invalidity contentions served in *November 2022* and in *May 2023*. In their amended pleadings filed in *December 2022*, Defendants also detailed how Project Angel rendered the asserted claims invalid and unenforceable. Neo never moved to strike those prior art disclosures and pleadings until now – a full year later – after the facts confirm Defendants’ defenses.

Because Project Angel was a third-party system involving technology developed by AT&T and Motorola, Defendants served several subpoenas on the relevant witnesses and corporations. Over the course of several months, Defendants (and Neo) received third-party documents regarding Project Angel. The last batch of documents were received in *September 2023*. Defendants also deposed third-parties Titus Lo and Ruifeng Wang, who are named inventors of Neo’s asserted patents and who testified about their involvement with Project Angel. Neo attended those depositions. And according to the agreed schedule, Defendants then served updated invalidity contentions in December 2023, citing the subpoenaed documents and the named inventors’ testimony.

Yet, Neo now argues that Defendants did not chart Project Angel in December 2022, pursuant to the Court’s schedule. But at that time, Defendants did not possess

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