

**FILED UNDER SEAL – PURSUANT TO PROTECTIVE ORDER**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

IN RE NEO WIRELESS, LLC  
PATENT LITIG.

Case No. 2:22-md-03034-TGB  
HON. TERRENCE G. BERG  
JURY TRIAL DEMANDED

**PLAINTIFF NEO WIRELESS, LLC'S RESPONSE IN OPPOSITION  
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

**FILED UNDER SEAL**

**FILED UNDER SEAL – PURSUANT TO PROTECTIVE ORDER**

**TABLE OF CONTENTS**

<b>I.</b>	<b>COUNTER-STATEMENT OF MATERIAL FACTS .....</b>	<b>1</b>
A.	Participation in 3GPP or ETSI.....	1
B.	Infringement of the '908 and '302 Patents .....	1
C.	Infringement of the '941 Patent .....	4
D.	Infringement of the '450 Patent .....	6
E.	Pre-Suit Damages and Willful Infringement .....	7
<b>II.</b>	<b>THE ACCUSED PRODUCTS INFRINGE THE '908 &amp; '302 PATENTS.....</b>	<b>12</b>
A.	The Accused Products Meet the Court's Construction of Random Access Signal and Probing Signal Terms in the '908 and '302 Patents. ....	12
1.	The Court Should Reject Defendants' Eleventh Hour Attempt at Claim Construction.....	13
2.	Neo Correctly Applies the Court's Claim Constructions.....	14
3.	Defendants' Reliance on German Proceedings Is Improper and Should Be Disregarded.....	21
B.	The Accused Products Meet the Court's Construction of Random Access Signal and Probing Signal Terms in the '908 and '302 Patents Under the Doctrine of Equivalents.....	23
1.	Neo's Doctrine of Equivalents Theory Does Not Vitate the Court's Construction of Random Access Signal or Probing Signal.....	23
2.	Neo's Theory Satisfies the Doctrine of Equivalents Tests.....	25
C.	The Accused Products Meet the Court's Construction of "Associated With" in the '908 Patent. ....	27

**FILED UNDER SEAL – PURSUANT TO PROTECTIVE ORDER**

1.	Defendants’ Non-Infringement Argument Contradicts the Court’s Claim Construction of “associated with.”	27
2.	For Both Procedures in LTE Random Access, the Zadoff-Chu Sequences Meet the Plain Meaning of the Claim.	29
3.	To be Sure, Defendants’ Motion Does Not Affect the Merits of Any Claim or Defense in the Case.	31
<b>III.</b>	<b>THE ACCUSED PRODUCTS INFRINGE THE ’941 &amp; ’450 PATENTS</b>	<b>31</b>
A.	The Accused Products Infringe the ’941 Patent.	31
B.	The Accused Products Infringe the ’450 Patent.	35
<b>IV.</b>	<b>NEO IS ENTITLED TO PRE-SUIT DAMAGES UNDER 35 U.S.C. § 287 AND CAN PROVE WILLFUL PATENT INFRINGEMENT.</b>	<b>37</b>
A.	Defendants Have Not Shown that Summary Judgment of No Pre-Suit Damages is Appropriate.	37
1.	Under the Rule of Reason Inquiry, it Would be Unreasonable to Expect Neo to Force its Licensees to Mark.	38
2.	At Minimum, Neo is Entitled to Pre-Suit Damages for Infringing Acts [REDACTED] and After Actual Notice.	39
B.	Defendants Have Not Shown that Summary Judgment of No Willful Infringement is Appropriate.	43
<b>V.</b>	<b>CONCLUSION</b>	<b>45</b>

**FILED UNDER SEAL – PURSUANT TO PROTECTIVE ORDER**

**STATEMENT OF ISSUES PRESENTED**

1. Whether, drawing all inferences in favor of Neo, a reasonable jury could conclude by a preponderance of the evidence that an LTE random access preamble is a “random access signal” and an LTE SRS is a “probing signal” for the asserted claims of the ’908 and ’302 Patents, respectively, under the Court’s constructions, either literally or under the doctrine of equivalents.
  - a. Whether the Court ought to entertain new claim interpretation arguments for the terms “probing signal” and “random access signal” that were never raised during the claim construction process.
  - b. Whether a DSSS signal must be generated by modulating (multiplying) a sequence with information bits contrary to the embodiments of the ’908 and ’302 Patents.
2. Whether a sequence is “associated with” a base station under the Court’s construction if it has an association with the base station that is independent of whether it is also assigned by the base station.
3. Whether, drawing all inferences in favor of Neo, a reasonable jury could conclude by a preponderance of the evidence that the bitmap contained in the LTE downlink control message is a mobile station-specific transmission parameter capable of indicating, as alternatives, both distributed subcarriers

**FILED UNDER SEAL – PURSUANT TO PROTECTIVE ORDER**

and localized subcarriers as subchannel configurations in accordance with the Court’s construction of the asserted claims of the ’941 Patent.

- a. Whether the Court’s construction of the asserted claims of the ’941 Patent allows for a mobile station-specific transmission parameter to be capable of conveying other information as long as it is also capable of indicating, as alternatives, both distributed subcarriers and localized subcarriers as subchannel configurations.
4. Whether, drawing all inferences in favor of Neo, a reasonable jury could conclude by a preponderance of the evidence that the LTE PDCCH is a “segment comprising N time-frequency resource units within a time interval, each unit containing a set of frequency subcarriers in a group of OFDM symbols, where N=2, 4, or 8,” as recited in claim 7 of the ’450 Patent.
  5. Whether, drawing all inferences in favor of Neo, Neo is entitled to pre-suit damages under 35 U.S.C. § 287.
    - a. Whether Neo complied with § 287 under the rule of reason.
    - b. Whether Neo is entitled to pre-suit damages for infringing acts prior to licensing its patents and for infringing acts after providing notice letters to Defendants.
  6. Whether, drawing all inferences in favor of Neo, a reasonable jury could conclude by a preponderance of the evidence that Defendants willfully

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.