

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

IN RE: NEO WIRELESS, LLC,  
PATENT LITIGATION

Case No. 2:22-MD-03034-TGB  
HON. TERRENCE G. BERG

**DEFENDANTS' RESPONSE TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT ON  
DEFENDANTS' INEQUITABLE CONDUCT AND  
UNCLEAN HANDS DEFENSES**

---

**– CONFIDENTIAL-ATTORNEYS' EYES ONLY –**

**THIS DOCUMENT IS CONFIDENTIAL AND IS  
ONLY BEING FILED UNDER SEAL.**

**IT IS NOT TO BE DISPLAYED, REVEALED OR MADE  
PUBLIC, EXCEPT BY ORDER OF THE COURT.**

## CONCISE STATEMENT OF THE ISSUES

1. Whether, when drawing all justifiable inferences in Defendants' favor, material fact disputes remain on Defendants' inequitable conduct claim that one or more inventors of the asserted patents intended to deceive the Patent Office during examination of those patents by failing to disclose AT&T's Project Angel where (i) it is undisputed that the inventors were aware of Project Angel, and (ii) Project Angel was demonstrably "but for" material to the patentability of the claims of those patents.

2. Whether Defendants may rely on their Project Angel disclosures produced during fact discovery to support their inequitable conduct allegations where the Court previously ruled Defendants may do so.

3. Whether, when drawing all justifiable inferences in Defendants' favor, material fact disputes remain on Defendants' allegations of unclean hands based on (i) Defendants' inequitable conduct claim, and (ii) Neo's refusal to dismiss its infringement claims on the '908 and '302 patents after Neo acquiesced to a German court's recent ruling, on a German counterpart to the '908 and '302, that the accused LTE standard does not practice a limitation recited in each of those patents.

4. Whether the "Adaptix" materials that Defendants and their experts rely on from a separate litigation involving third-party are inadmissible hearsay where those materials fall within an exception or exemption of the rule against hearsay,

where Defendants' experts may rely on hearsay materials in forming their opinions in this case, and where the facts presented in those materials are undisputed.

**CONTROLLING AUTHORITY**

***Regarding Inequitable Conduct:***

*Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276, 1287 (Fed. Cir. 2011)

*Aventis Pharma S.A. v. Hospira, Inc.*, 675 F.3d 1324, 1334 (Fed. Cir. 2012)

*Am. Calcar, Inc. v. Am. Honda Motor Co., Inc.*, 768 F.3d 1185, 1187, 1190 (Fed. Cir. 2014)

*Semiconductor Energy Lab'y Co. v. Samsung Elecs. Co.*, 204 F.3d 1368, 1374 (Fed. Cir. 2000)

***Regarding Unclean Hands:***

*Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245–46 (1933)

*Luv n' Care, Ltd. v. Laurain*, 98 F.4th 1081, 1094 (Fed. Cir. 2024)

## TABLE OF CONTENTS

CONCISE STATEMENT OF THE ISSUES .....	i
CONTROLLING AUTHORITY .....	iii
TABLE OF AUTHORITIES .....	vi
I. INTRODUCTION .....	1
II. DEFENDANTS’ RESPONSE TO NEO’S STATEMENTS OF FACTS .....	3
III. DEFENDANTS’ COUNTER-STATEMENT OF MATERIAL FACTS .....	9
IV. ARGUMENT .....	13
A. Genuine Fact Disputes Preclude Summary Judgment of Inequitable Conduct .....	13
1. Neo Advances the Wrong Legal Standard for Inequitable Conduct at the Summary Judgment Stage .....	13
2. There is a Genuine Dispute as to the Materiality of Project Angel .....	16
3. The Court Did Not Strike Defendants’ Inequitable Conduct Counterclaim .....	21
4. There is a Genuine Dispute Over Intent to Deceive the Patent Office Regarding Project Angel .....	22
a. Evidence Shows the Inventors Were Familiar with the Materiality of Project Angel .....	23
b. Evidence Shows the Inventors Deliberately Withheld Project Angel from the Patent Office .....	25
c. Materials from the <i>Adaptix</i> Litigation are Admissible at Trial .....	29

# 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.