

**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**

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## 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)

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