

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

IN RE NEO WIRELESS, LLC	§	2:22-MD-03034-TGB
PATENT LITIG.	§	HON. TERRENCE G. BERG
	§	
	§	
	§	
	§	

NEO WIRELESS, LLC,	§	2:22-cv-11769-TGB
<i>Plaintiff,</i>	§	HON. TERRENCE G. BERG
v.	§	
MERCEDES-BENZ USA, LLC,	§	JURY TRIAL DEMANDED
<i>Defendant.</i>	§	
	§	

**PLAINTIFF NEO WIRELESS, LLC'S RESPONSE TO DEFENDANT
MERCEDES-BENZ USA, LLC'S MOTION TO DISMISS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ALLEGED WILLFULNESS AND INDUCEMENT FACTS	2
III.	APPLICABLE STANDARD.....	4
IV.	ARGUMENT	4
	A. Neo's Factual Allegations Support Its Legal Conclusions of Willful and Indirect Infringement.	4
	B. Mercedes's Pre-Suit Knowledge and Subsequent Actions Allow the Court to Plausibly Infer Mercedes Willfully Infringed.	8
	1. Neo Plausibly Alleged Mercedes Received Pre-Suit Notice of the Asserted Patents.....	9
	2. In Addition to Pre-Suit Knowledge, Neo Allege Additional Facts that Allow the Court to Infer Mercedes's Culpability.....	14
	3. At a Minimum, Neo Plausibly Alleged Intentional (and Thereby Egregious) Infringement Since the Filing of the Complaint	17
	C. Neo Adequately Pleaded Mercedes Had Knowledge of And Encouraged Others to Directly Infringe the Asserted Patents.	18
	1. Neo Sufficiently Alleged Mercedes Had Pre-Suit and Post-Suit Knowledge of the Asserted Patents.....	18
	2. Neo Sufficiently Alleged Mercedes Intended to Induce Infringement Through Numerous Concrete Facts and Examples.	20
	D. In the Alternative, Neo Requests Leave to Amend.....	23
V.	CONCLUSION	24

TABLE OF AUTHORITIES

Cases

<i>Acqis LLC v. Lenovo Group</i> No. 6:20- cv-00967, 2022 WL 2705269 (W.D. Tex. July 12, 2022).....10
<i>Addiction & Detox. Inst., LLC v. Aharonov</i> No. 14-10026, 2015 WL 631959 (E.D. Mich. Feb. 13, 2015).....13
<i>Ashcroft v. Iqbal</i> 556 U.S. 662 (2009) passim
<i>Bayer Healthcare LLC v. Baxalta Inc.</i> 989 F.3d 964 (Fed. Cir. 2021)9
<i>Brice Env. Servs. Corp. v. Arcadis U.S., Inc.</i> No. 3:21-CV-00141, 2022 WL 1032930 (D. Alaska Apr. 6, 2022)15
<i>DSU Med. Corp. v. JMS Co., Ltd.</i> 471 F.3d 1293 (Fed. Cir. 2006) iv, 20
<i>Eko Brands, LLC v. Adrian Rivera Maynez Enter., Inc.</i> 946 F.3d 1367 (Fed. Cir. 2020)8
<i>FluorDX LLC v. Quidel Corp.</i> No. 19-CV-1998, 2020 WL 4464475 (S.D. Cal. Aug. 4, 2020)15
<i>Georgetown Rail Equip. Co. v. Holland L.P.</i> 867 F.3d 1229 (Fed. Cir. 2017)8
<i>Halo Elecs., Inc. v. Pulse Elecs., Inc.</i> 579 U.S. 93 (2016) 8, 13, 17
<i>In re Bill of Lading Transmission & Processing Sys. Pat. Litig.</i> 681 F.3d 1323 (Fed. Cir. 2012) 16, 18

::

<i>IOENGINE, LLC v. PayPal Holdings, Inc.</i> 2019 WL 330515 (D. Del. Jan. 25, 2019)	iv, 13
<i>JDS Technologies, Inc. v. Avigilon USA Corp.</i> No. 15-10385, 2015 WL 3603525 (E.D. Mich. June 5, 2015).....	12, 13, 19
<i>John Keeler & Co., Inc. v. Heron Point Seafood, Inc.</i> 2016 WL 6839615 (N.D. Ohio July 8, 2016).....	13
<i>Lifetime Indus., Inc. v. Trim-Lok, Inc.</i> 869 F.3d 1372 (Fed. Cir. 2017)	18
<i>Malibu Boats, LLC v. MasterCraft Boat Co.</i> No. 3:16-cv-82-TAV-HBG, 2016 WL 8286158 (E.D. Tenn. Oct. 28, 2016).....	13
<i>Mengelkamp v. Lake Metro. Hous. Auth.</i> 549 F. App'x 323 (6th Cir. 2013).....	7
<i>Mentor Graphics Corp. v. EVE-USA, Inc.</i> 851 F.3d 1275 (Fed. Cir. 2017)	16
<i>Michigan Motor Techs. LLC v. Volkswagen Aktiengesellschaft</i> 472 F. Supp. 3d 377 (E.D. Mich. 2020)	passim
<i>Mobile Telecomms. Techs., LLC v. BlackBerry Corp.</i> No. 3:12-cv-1652, 2016 WL 1642927 (N.D. Tex. Apr. 26, 2016)	11
<i>Nalco Co. v. Chem-Mod, LLC</i> 883 F.3d 1337 (Fed. Cir. 2018)	18, 21
<i>Nat'l Inst. for Strategic Tech. Acquisition and Commercialization v.</i> <i>Nissan of N. Am.</i> No. 11-11039, 2012 WL 3600289 (E.D. Mich. 2012)	passim
<i>Rhodes v. R & L Carriers, Inc.</i> 491 F. App'x 579 (6th Cir. 2012).....	6, 7

:::

<i>Serv. Sols. U.S., LLC v. Autel U.S. Inc.</i> No. 13-10534, 2013 WL 5701063 (E.D. Mich. Oct. 18, 2013)	19
<i>Sony Corp. v. LG Elecs. U.S.A., Inc.</i> 768 F. Supp. 2d 1058 (C.D. Cal. 2011).....	13
<i>Watson Carpet & Floor Covering, Inc. v. Mohawk Indus., Inc.</i> 648 F.3d 452 (6th Cir. 2011).....	16
<i>WCM Indus., Inc. v. IPS Corp.</i> 721 Fed. Appx. 959 (Fed. Cir. 2018)	8, 16

Statutes

35 U.S.C. § 271(b) (2012)	18
---------------------------------	----

Other Authorities

Edward A. Hartnett, <i>Taming Twombly, Even After Iqbal</i> 158 U. Pa. L. Rev. 473 (2010).....	5
---	---

Rules

Fed. R. Civ. P. 12(b)(6).....	15, 24
Fed. R. Civ. P. 8	6

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.