

**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
NEO WIRELESS, LLC, Plaintiff, v. MERCEDES-BENZ USA, LLC Defendant.	Case No. 2:22-CV-11769-TGB Hon. Terrence G. Berg

**DEFENDANT MERCEDES-BENZ USA, LLC'S
REPLY BRIEF IN SUPPORT OF ITS
MOTION TO DISMISS UNDER RULE 12(b)(6) (DKT. NO. 74)**

TABLE OF CONTENTS

	Page
I. MBUSA’s Lack of Pre-Suit Knowledge of the Asserted Patents Is Fatal to Neo’s Willful- And Indirect-Infringement Claims.....	1
II. Even if Neo’s Alleged Notice Letter Were Shared with MBUSA, such Bare Pleading is Inadequate to Show Plausible Pre-Suit Knowledge of Infringement	4
III. Neo Cannot Rely on the Complaint to Save its Willful- and Indirect-Infringement Claims	5
IV. Neo’s Improper Request to Amend its Complaint Must Be Denied.....	6
V. Conclusion	6

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Auto. Parts Antitrust Litig.</i> , No. 12-MD-02311, 2015 WL 13722910 (E.D. Mich. Aug. 25, 2015)	3
<i>U.S. ex rel. Kreipke v. Wayne State Univ.</i> , Case No. 12-14836, 2015 WL 400970 (E.D. Mich. Jan. 28, 2015)	6
<i>McRO, Inc. v. Namco Bandai Games Am., Inc.</i> , 23 F. Supp. 3d. 1113 (N.D. Cal. 2013)	2
<i>Midwest Energy Emissions Corp. v. Vistra Energy Corp.</i> , No. 19-1334-RGA-CJB, 2020 WL 3316056 (D. Del. June 18, 2020)	2
<i>Nat’l Inst. for Strategic Tech. Acquisition & Commercialization v. Nissan of N. Am.</i> , No. 19-1334-RGA-CJB, 2020 WL 3316056 (D. Del. June 18, 2020)	2
<i>Neo Wireless, LLC v. Mercedes-Benz USA, LLC</i> , Case No. 2:22-CV-11769-TGB (E.D. Mich.), ECF No. 1	1
<i>Schwendimann v. Stahls’, Inc.</i> , 510 F. Supp. 3d 503 (E.D. Mich. 2021)	4
<i>Se. Texas Inns, Inc. v. Prime Hosp. Corp.</i> , 462 F.3d 666 (6th Cir. 2006)	3
<i>U.S. Philips Corp. v. ATI Techs., Inc.</i> , No. 05CIV.8176(LAP), 2008 WL 2073928 (S.D.N.Y. May 8, 2008)	3
<i>Xiros, Ltd. v. Depuy Synthes Sales, Inc.</i> , No. W-21-CV-00681-ADA, 2022 WL 3592449 (W.D. Tex. Aug. 22, 2022) (distinguishing <i>ACQIS LLC v. Lenovo Grp. Ltd.</i> , No. 6:20-CV-00967-ADA, 2022 WL 2705269 (W.D. Tex. July 12, 2022) on this basis)	2

..

ZapFraud, Inc. v. Barracuda Networks, Inc.,
528 F. Supp. 3d 247 (D. Del. 2021).....5, 6

Other Authorities

Rule 12(b)(6).....6

...

Neo Wireless, LLC's ("Neo's") claims should be dismissed because it failed to plausibly allege that MBUSA willfully or indirectly infringed the Asserted Patents.¹ *First*, Neo cannot plausibly show that MBUSA had the requisite pre-suit knowledge of the Asserted Patents. *Second*, Neo cannot plausibly show that MBUSA had pre-suit knowledge of infringement of the Asserted Patents. *Third*, Neo cannot rely on the Complaint to provide notice of the Asserted Patents. *Finally*, Neo's request to amend must be denied because amendment would be futile and the request is procedurally improper.

I. MBUSA's Lack of Pre-Suit Knowledge of the Asserted Patents Is Fatal to Neo's Willful- And Indirect-Infringement Claims

The single sentence in the Complaint that Neo relies on to show pre-suit knowledge by MBUSA cannot bear the weight Neo puts on it. It does no more than allege MBUSA having "knowledge" through its parent/subsidiary relationship: "[o]n information and belief, [MBUSA], through its parent company, obtained actual knowledge of the Asserted Patents and its infringement thereof." Complaint, *Neo Wireless, LLC v. Mercedes-Benz USA, LLC*, Case No. 2:22-CV-11769-TGB (E.D. Mich.), ECF No. 1 ¶ 65 (the "**Complaint**"). Yet courts generally agree that

¹ In line with this Court's order to "coordinate to avoid duplicative briefing," (Dkt. No. 27 at 1), MBUSA incorporates by reference co-defendants Honda, Nissan, and VW's arguments in opposition to Neo's willful- and indirect-infringement claims reflected in their briefing in support of their respective Motions to Dismiss. (Dkt. Nos. 50, 53, 76 and 79.)

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.