

**The Inequitable Conduct Defense in Patent-Infringement Cases and  
Antitrust Liability in the Enforcement of Fraudulently-Procured Patents in the U.S.**

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Abstract

This article addresses the defense of “inequitable conduct” under U.S. Patent Law. A finding of inequitable conduct in relation to a patent may support a judgment that the patent-in-suit is unenforceable. We also discuss the counter-claim of triple damages under antitrust laws in the enforcement of a fraudulently-procured patent. Several leading cases are discussed to show the different elements that must be fulfilled to support a claim of inequitable conduct and a claim for the enforcement of a fraudulently-procured patent.

To provide a basis for discussing the adoption of “patent fraud claims” in the Fair Trade Act, we study two Taiwanese civil cases. These two cases reveal that the patent holder, O2 Micro International Limited, upon applying for the Taiwanese patent failed to disclose material information on the denial of its patent application in other countries, and thereby obtained a larger patent scope than it should have procured. Because there is no “patent unenforceable” defense in Taiwan’s Patent Law, we suggest that the Walker Process fraud as a patent procedural abuse approach should be adopted in Taiwan’s Fair Trade Act.

Keywords: Patent Infringement, Inequitable Conduct, Fraudulently-procured Patent, Walker Process Fraud, Antitrust Laws, Fair Trade Act.