

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

STC.UNM,

Plaintiff,

v.

INTEL CORPORATION,

Defendant.

Civil No. 10-CV-01077-RB-WDS

**STC'S MOTION TO DISMISS INTEL'S AMENDED COUNTERCLAIM AND
STRIKE INTEL'S AFFIRMATIVE DEFENSE FOR UNENFORCEABILITY**

STC previously filed a motion to dismiss Intel's third counterclaim because the allegations did not establish the materiality required to plead inequitable conduct. See Doc. No. 28. Intel's response to the motion was to file an amended counterclaim, tacitly admitting that its original allegations were indeed deficient. See Doc. No. 38.

But the amended allegations, even if taken as true, still fail to establish the materiality component that is required for an inequitable conduct charge. Accordingly, pursuant to Fed. R. Civ. P. 12(b)(6) & (f)(2), STC's motion should be granted, and Intel's third counterclaim should be dismissed (Amended Answer, at ¶¶64-94), and fifth affirmative defense stricken (*Id.* at ¶¶20-49).

Dated: February 28, 2011

Respectfully submitted,

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Certificate of Conference: The undersigned contacted counsel for Intel regarding the relief requested herein. Intel opposes the instant motion.

/s/ Steven R. Pedersen

Certificate of Service: I hereby certify that on February 28, 2011, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Steven R. Pedersen