

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE: AFLIBERCEPT PATENT
LITIGATION

MDL No: 1:24-MD-3103-TSK

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #1: INITIAL SCHEDULING CONFERENCE

The Court finds that the civil actions transferred to this Court as part of this MDL merit special attention as complex litigation matters and **ORDERS** the following:

1. APPLICABILITY OF ORDER: Prior to the initial conference and the entry of a comprehensive order governing all further proceedings in this case, the provisions of this order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multi-District Litigation (the "Panel") pursuant to its order on April 11, 2024 (ECF. No. 1), as well as all related actions originally filed in, transferred to, or removed to this Court. This order will also apply to any "tag-along" actions later filed in, removed to, or transferred to this Court.

2. CONSOLIDATION: The civil actions described in paragraph 1 of this order are consolidated for pretrial purposes only. Any tag-along actions later filed in, removed to, or transferred to

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this Court, will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

3. DATE OF INITIAL SCHEDULING CONFERENCE & AGENDA: Matters relating to pretrial and discovery proceedings in these cases will be addressed at an initial scheduling conference to be held on **May 17, 2024**, at **11:00 a.m.** by Zoom Videoconference:

By Video

<https://www.zoomgov.com/j/1615393258?pwd=RytYTGfhejlLTy9VRHFNVThnZ3o1QT09>

Meeting ID: 161 539 3258

Passcode: 476312

By Telephone

+1 646 828 7666 US (New York)

+1 551 285 1373 US

Meeting ID: 161 539 3258

Passcode: 476312

All counsel are expected to familiarize themselves with the Fed. Judicial Ctr., Manual for Complex Litigation (4th ed., 2004) (the "MCL") and be prepared at the conference to suggest procedures

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that will facilitate the expeditious, economical, and just resolution of this litigation. The items listed in sections 22.6, 22.61, 22.62, and 22.63 shall, to the extent applicable, constitute a tentative agenda for the conference. Counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan [see MCL § 11.421], amendment of pleadings, and consideration of any class action allegations and motions. If the parties have any suggestions as to the case management orders or additional agenda items including suggestions on counsel structure, these should be submitted on or before **May 10, 2024**.

4. POSITION STATEMENT & NOTICE OF PENDING MOTIONS: The plaintiff and the defendants shall submit to the Court on or before **May 10, 2024**, via e-mail at shannon_gibson@wvnd.uscourts.gov a concise written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues, as well as a list of all related cases pending in state or federal court, together with their current status, including any discovery taken to date, to the extent known. **These statements will NOT be filed with the Clerk of Court**, will not be binding, will not waive any claims or defenses, and may not be offered in evidence against a party in later proceedings. Each party is limited to one submission. Each party shall submit a courtesy copy of the position statement to

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opposing counsel. The statements shall also include an attachment detailing motions pending in the member cases of this MDL at the time of their transfer to this Court by the Panel. Each motion shall be identified by member case number and style, as well as by the document number assigned to the motion. Counsel shall also file the list of motions with the Clerk's office as "Notice of Pending Motions" in 1:24-md-3103 under "Other Documents." The Notice of Pending Motions filed in this MDL will serve as re-notice for resolution. The re-noticed motions will be considered pending as of the date of the filing of the Notice of Pending Motions.

5. APPEARANCE: Each party represented by counsel shall appear at the initial scheduling conference through its attorney by Zoom. Parties not represented by counsel must appear by Zoom. To minimize costs and facilitate a manageable conference, parties with similar interests may agree, to the extent practicable, to have an attending attorney represent their interest at the conference. By designating an attorney to represent its interest at the conference, a party will not be precluded from other representation during the litigation. Attendance at the conference will not waive objections to jurisdiction, venue, or service.

6. SERVICE: Prior to the initial scheduling conference, service of all papers shall be made on counsel of record appearing in these cases. The docket is the official record of the service

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list. The parties shall present to the Court at the initial scheduling conference a comprehensive list of attorneys and their office addresses, fax numbers, and e-mail addresses for purposes of service. Each attorney must designate with which party he or she is associated.

7. STAY: Pending the initial scheduling conference and further orders of this Court, all outstanding discovery proceedings are stayed, and no further discovery shall be initiated.

8. PREVIOUS ORDERS: Any orders, including protective orders, previously entered by this Court or any transferor court, shall remain in full effect unless modified by this Court.

9. MASTER DOCKET FILE: Any pleading or paper shall be filed electronically according to this district's Administrative Procedures for Electronic Case Filing, available under the CM/ECF section of this Court's website at wvnd.uscourts.gov. The Clerk of the Court will maintain a master docket case under the style "IN RE: AFLIBERCEPT PATENT LITIGATION" and the case number will be 1:24-MD-3103. All papers filed in these actions shall bear the case number. When a pleading is intended to be applicable to all actions, this shall be indicated by the words, "THIS DOCUMENT RELATES TO ALL CASES." When a pleading is intended to apply to fewer than all cases, this Court's civil action number for each individual case to which the document relates shall appear

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immediately after the words, "THIS DOCUMENT RELATES TO . . .," and shall be filed electronically in each member case to which the document applies. For an example of the pleading style, please refer to the caption on this order.

10. FILING: Any pleading or paper filed in any of these actions shall be filed electronically with the Clerk of the Court and not with the transferor district court.

a. FILING UNDER SEAL: To file any other document under seal, a party must first electronically file a motion for leave to file under seal.

I. If the motion for leave to file under seal does **NOT** need to be sealed itself:

1. Under the "**Motions**" category, use the event "**Leave to File Document.**" The filer shall add "**UNDER SEAL**" to docket text and attach the memorandum of law in support of motion for leave to file under seal and proposed order.

2. File the document(s) that need to be sealed as a separate docket entry. Use the event "**Motion (SEALED)**" if the document is a motion; if the document(s) is not a motion, use the event "**Other Document (SEALED - ATTORNEY USE ONLY).**"

II. If the motion needs to be sealed itself, the filer shall:

1. Under the "**Motions**" category, use event "**To**

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Seal," attach the memorandum of law in support of the motion for leave to file under seal and proposed order.

2. File the document(s) that need to be sealed as a separate docket entry. Use the event "**Motion (SEALED)**" if the document(s) is a motion; if the document(s) is not a motion, use the event "**Other Document (SEALED - ATTORNEY USE ONLY)**."

11. DOCKETING: When an action that properly belongs as a part of this litigation is filed in this district or transferred here from another court, the Clerk of this Court shall:

a. File a copy of this order in the separate file for such action, and

b. Make an appropriate entry on the master docket.

12. APPEARANCES: Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court. Attorneys admitted to practice and in good standing in any United States district court are admitted pro hac vice in this litigation, and the requirements of Local Rule of General Procedure 83.02 are waived, provided counsel has complied with Local Rule of General Procedure 83.02 (a) (2).

13. HEARINGS: The Court will not generally conduct motion hearings. If the Court deems a hearing necessary, it will schedule a hearing in due course.

14. REMAND STIPULATIONS: In the event that a case is remanded, counsel shall jointly furnish to the Clerk of the Court

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a designation, by document number, of the contents of the record to be transmitted for remand to the transferor court.

15. PRESERVATION OF EVIDENCE: All parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in possession, custody, or control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in these actions. "Documents, data, and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic messages, voice mails, e-mails, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as tapes, discs and cards, printouts, document image files, web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, checking statements, worksheets, summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts, jottings and notes, studies or drafts of studies or other similar material. Information that serves to identify, locate, or link such material, such as

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file inventories, file folders, indices, and metadata, is also included in this definition. Until the parties reach an agreement on a preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data, and tangible things containing information potentially relevant to the subject matter of this litigation. Counsel is under an obligation to the Court to exercise all reasonable efforts to identify and notify parties and nonparties, including employees of corporate or institutional parties.

16. DISCOVERY: All discovery disputes are automatically referred to the Honorable James P. Mazzone, United States Magistrate Judge.

17. FILING OF DISCOVERY REQUESTS: Discovery requests and responses are not to be filed with the Clerk nor sent to the undersigned, except when specifically directed by the Court. Certificates of service of discovery materials shall be filed.

18. LIAISON COUNSEL: Counsel for the plaintiff and counsel for the defendants shall, to the extent they have not already done so, confer and seek consensus on one recommendation for the position of the plaintiff's liaison counsel and three recommendations for the defendants' liaison counsel. On or before **May 10, 2024**, the parties should submit the recommendations along with each nominee's resume or curriculum vitae, educational background, licensing status, a short list of relevant experience

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with cases in similar areas, and a certificate of good standing from the highest court from the individual's jurisdiction. **These recommendations should not be filed with the Clerk of the Court;** instead they should be e-mailed to shannon_gibson@wvnd.uscourts.gov. At this stage, liaison counsel will be responsible for coordinating administrative matters. The duties of liaison counsel are enumerated in the MCL. The Court will give great weight to the recommendations submitted and supporting materials when selecting liaison counsel.

19. COMMUNICATIONS: Unless otherwise ordered, counsel must communicate with the Court in writing, with courtesy copies to all counsel. Communications with the Court and submissions that are not to be filed with the Clerk may be sent to shannon_gibson@wvnd.uscourts.gov. The communication of information among and between counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded counsel's work product.

DATED: April 26, 2024



THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA