**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

Moskowitz Family LLC,

Plaintiff,

v.

Medtronic, Inc., Medtronic Sofamor Danek, Inc., Medtronic Sofamor Danek USA, Inc., Warsaw Orthopedic, Inc., and Titan Spine, Inc.,

Defendants.

No. 25-cv-769 (PJS/DLM)

**PRETRIAL SCHEDULING ORDER (PATENT FORM)**

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this Court, and in order to secure the just, speedy and inexpensive determination of this action, the following schedule will govern these proceedings unless modified pursuant to Local Rule 16.3 or sua sponte by the Court.

This Pretrial Scheduling Order has been prepared with the input of counsel for the parties and the parties are required to diligently work to meet the deadlines. The parties are expected to work cooperatively throughout this litigation to narrow the issues in dispute, to use reasonable, good faith and proportional efforts to preserve, request, identify and produce relevant information and resolve discovery disputes, and to keep the Court timely informed of developments in the case that could significantly affect the case management schedule.[1]

[1] Parties who agree to seek a modification of this Scheduling Order may file a joint motion with the proposed order to the Court.

## PRESERVATION OF DOCUMENTS AND ELECTRONIC DISCOVERY

The parties have discussed the scope of discovery, including relevance and proportionality and any issues about preserving discoverable information. The parties will further discuss a plan and protocol for any electronic discovery and any preservation issues before and shall jointly file a proposed e-discovery order, identifying any terms on which the parties disagree. The parties are advised that an e-Discovery Guide is available on the Court's website ***http://www.mnd.uscourts.gov***.

## DEADLINES FOR INITIAL DISCLOSURES AND FACT DISCOVERY

1. The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before **September 17, 2025**.

2. The parties must commence fact discovery procedures in time to be completed on or before **April 9, 2027**.

## ADDITIONAL DISCOVERY LIMITATIONS

The following discovery limitations apply:

1. No more than a total of **35** interrogatories, counted in accordance with Rule 33(a), shall be served by each side.

2. No more than **125** document requests shall be served by each side. Objections to document requests must meet the requirements of amended Rule 34(b)(2)(B)-(C). If the responding party is producing copies of documents or copies of electronically stored information and the copies are not produced with the responses, another reasonable time must be specified in the response. If the requesting party disagrees that this is reasonable, the parties must meet and confer to agree on the timetable for production.

3. No more than **50** requests for admissions shall be served by each side, excluding requested directed to the admissibility of documents or other evidence.

4. No more than **100 hours** of factual depositions, excluding expert witness depositions, shall be taken by each side. The limit on fact

deposition hours may be increased by agreement of the parties. If agreement cannot be reached, either side may request that the Court increase the number of fact deposition hours upon a showing of good cause.

If Plaintiff serves a single 30(b)(6) notice, but Defendants provide multiple Rule 30(b)(6) witnesses for different Defendants, the same topics will only count toward this limit once. Defendants shall make good faith efforts to coordinate designations so that testimony on overlapping topics is consolidated where possible.

5. The following additional limitations on discovery procedures apply: **The parties agree to exchange privilege logs no later than 45 days before the close of fact discovery.**

**PATENT SPECIFIC DEADLINES AND DISCLOSURES**

1. Plaintiff's Infringement Claim Charts

(a) Plaintiff's Claim Chart must be served on or before **October 30, 2025**.

(b) Plaintiff's Claim Chart must provide a complete and detailed explanation of:

(i) Which claim(s) of the asserted patent(s) it alleges are infringed;

(ii) Which specific product(s) or method(s) of Defendant literally infringe each claim;

(iii) Where each element of each claim is found in each product or method, including the basis for each contention that the element is present; and

(iv) If there is a contention by Plaintiff that there is infringement of any claims under the doctrine of equivalents, Plaintiff must separately indicate this on its Claim Chart and, in addition to the information required for literal infringement, Plaintiff must also explain each function, way, and result that it contends are equivalent, and why it contends that any differences are not substantial.

(c) Plaintiff may amend its Claim Chart only by leave of the Court for good cause shown. By way of example, absent undue prejudice to the non-moving party, good cause could include Plaintiff's discovery of new information that was only made available to Plaintiff through discovery, assuming diligence in pursuing such discovery. Amendments to the chart may only address the newly discovered information and leave of Court must be sought no later than **14 days** after the new information is made available in a deposition. Leave of Court must be sought no later that **60 days** after new information is made available in documents.

(d) If Plaintiff seeks leave to amend its Claim Chart, it will meet and confer with Defendant before filing a motion. If the parties do not agree and the dispute is not resolved, Plaintiff may file its motion pursuant to Local Rule 7.1.

2. Defendants' Responsive Claim Chart

(a) Defendants' Responsive Claim Chart must be served on or before **January 28, 2026**.

(b) Defendants' Responsive Claim Chart must indicate with specificity which elements on Plaintiff's Claim Chart it admits are present in their accused device or process, and which they contend are absent, including in detail the basis for their contention that the element is absent. And, as to the doctrine of equivalents, Defendant must indicate on its chart its contentions concerning any differences in function, way, and result, and why any differences are substantial.

(c) Defendant may amend their Responsive Claim Chart only by leave of Court for good cause shown.

3. Defendants' Prior Art and Invalidity Chart

(a) Defendant's Prior Art and Invalidity Chart must be served **January 28, 2026**.

(b) Defendant's Prior Art and Invalidity Chart must list all of the prior art on which it relies and provide a complete and detailed explanation with respect to:

(i) Which claim(s) alleged to be infringed are invalid;

(ii) Which specific prior art, if any, invalidates each claim;

(iii) Where in such prior art each element of the allegedly invalid claims may be found; and

(iv) Whether a basis for invalidity other than prior art is alleged, specifying what the basis is and whether such allegation is based upon 35 U.S.C. §§ 101, 102, 103, 112, or another statutory provision.

(c) Defendant's Prior Art and Invalidity Chart may only be amended for good cause.

(d) The parties stipulate that a prior art chart and statement will not be submitted in the form of expert reports.

4. Plaintiff's (which includes any party who alleges infringement) Response to Prior Art and Invalidity Chart

(a) Plaintiff's response to Defendant's Invalidity Chart must be served **within 90 days of its receipt of Defendant's prior art chart and invalidity statement**. Plaintiff must respond specifically to each allegation of invalidity set out in Defendant's Invalidity Chart, and include Plaintiff's position on why the prior art or other statutory reference does not invalidate the asserted patent claims.

(b) Plaintiff's response to Defendant's Invalidity Chart may only be amended for good cause shown.

5. Claim Construction Exchanges

(a) The parties must simultaneously exchange a list of claim terms, phrases, or clauses that the party believes need to be construed by the Court by **May 7, 2026**, at an agreed upon time.

(b) The parties must simultaneously exchange their proposed definitions for each of the terms, phrases, or clauses on the list by **May 21, 2026**.

(c) The parties must meet and confer to attempt to narrow the list and will prepare a final list by **May 29, 2026**.

(d) When exchanging their preliminary claim constructions, the parties must provide a preliminary identification of extrinsic evidence, including without limitation: dictionary definitions, citations to learned treatises and prior art, and testimony of percipient or expert witnesses that they contend support their respective claim constructions.

(i) The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced.

(ii) With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness's proposed testimony.

6. Request for Claim Construction hearing and Joint Statement to the Court

(a) If the parties request a claim construction hearing, they must jointly contact the Courtroom Deputy to Chief Judge Patrick J. Schiltz, at 651-848-5480, no later than **June 1, 2026**, to obtain a hearing date that is not less than **42 days** after the parties' Joint Statement is filed on the date stated below in (b). Parties are reminded that the scheduling of a claim construction hearing requires considerable advance notice (typically three to four months), and it is recommended that they contact the district judge's chambers before the deadline set by this paragraph to determine whether a date can be reserved or set availability and whether a date can be reserved. The parties must be prepared to inform the Court about the number of claim terms still at issue and offer proposals for time limitations for the hearing. Counsel should endeavor to accept the earliest date the Court has available within this time frame to keep the events and deadlines set forth in this Scheduling Order on track.

(b) The parties must file their joint statement no later than **June 11, 2026**. The statement must include the following:

(i) The date of the claim construction hearing;

(ii) Any request for an informal pre-claim construction conference to discuss proposals to simplify or streamline the claim construction process before any

claim construction hearing is scheduled. The parties must also propose timing and topics for discussion;

(iii) A list of terms, phrases, or clauses, and constructions on which the parties agree;

(iv) A list of terms, phrases or clauses that they believe require the Court's claim construction. The parties must also identify all references from the patent specification or prosecution history to support their separate proposals for each term, phrase, or clause. They must also identify any extrinsic evidence on which they intend to rely either in support of their proposed construction or to oppose any other party's proposed construction;

(v) The identity of every witness, including experts, that any party proposes to offer testimony relating to claim construction; and for each expert, a summary of the opinion to be offered in sufficient detail to permit a meaningful deposition of the expert;

(vi) Proposals for any technology tutorial as part of claim construction;

7. Claim Construction Hearing

(a) Following the receipt of the parties' Joint Statement, the Court will issue an order for the claim construction hearing:

(i) Confirming the date and time of the hearing and any time limitations;

(ii) Informing the parties on whether it will receive extrinsic evidence, and if so, the particular evidence it will receive;

(iii) Informing the parties on whether the extrinsic evidence in the form of testimony must be in the form of affidavits or in the form of live testimony; and

(iv) Providing a briefing schedule.

(b) The parties may jointly request that the hearing be canceled

following their submission of the Joint Statement.

(c) If a party's claim construction proposals are not adopted by the Court or the Court issues a claim construction different from either parties' proposals, the party may request permission to amend their contentions, only related to that particular term/phrase. Such requests must be made to the magistrate judge no later than **14 days** after the Court's claim construction order.

**DEADLINES FOR EXPERT DISCOVERY**

Disclosure of the identity of expert witnesses under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B), and production of the written report prepared and signed by the expert witness, must be made as follows:

1. Plaintiff anticipates calling up to **3-5** experts. Defendant anticipates calling up to **5-7** experts. Each party may take one deposition per expert.

2. Disclosure of the identities of expert witnesses under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B) (accompanied by the written report prepared and signed by the expert witness) and the full disclosures required by Rule 26(a)(2)(C), shall be made as follows:

   a) Identities by the party with the burden of proof on or before **May 7, 2027**.

      Disclosures by the party with the burden of proof on or before **May 14, 2027**.

   b) Identities by the responding party on or before **June 18, 2027**.

      Disclosures by the responding party on or before **June 25, 2027**.

   c) Rebuttal identities and disclosures on or before **July 9, 2027**.

3. Expert discovery, including depositions, shall be completed by **July 30, 2027**.

4. If a claim construction order is not issued by the District Court prior to the deadline for initial expert disclosures, the parties are on notice that their experts should address both parties' respective positions. In the event the Court issues a claim construction order that adopts a claim construction different from either parties' proposals, the party may seek to amend the scheduling order to permit limited discovery or to update the expert reports only as to the Court's different claim construction. Such request must be made to the magistrate judge no later than **14 days** after the Court's claim construction order.

**PRIVILEGE LOG**

Unless otherwise ordered, the parties are not obligated to identify on their privilege logs any documents, communications, or other materials that came into existence on or after the date that Plaintiff's first complaint was filed in this action. Defendant may postpone the waiver of any applicable attorney-client privilege on topics relevant to claims of willful infringement, if any, until **September 4, 2026**, provided that all relevant privileged documents are produced no later than **October 2, 2026**. All additional discovery regarding the waiver will take place after **October 2, 2026** and must be completed by **April 9, 2027**.

**NON-DISPOSITIVE MOTION DEADLINES**

1. Except as otherwise specifically set forth this section, all motions that seek to amend the pleadings or to add parties must be filed and served on or before **June 15, 2026**. If the non-movant argues futility in opposition to a motion to amend, the movant may file a reply brief in support of the motion to amend within three (3) business days after the opposition is filed.

2. As the Local Rules provide, the parties may conduct discovery related to a charge of willful infringement without pleading those defenses in order to encourage parties to explore whether there is a substantial basis for such pleading before pleading them. *See* Advisory Notes to LR 16.2. Accordingly, motions seeking to amend the pleadings to add a claim for willful infringement must be filed, served, and **June 15, 2026**. If the non-movant argues futility in opposition to a motion to amend, the movant may

file a reply brief in support of the motion to amend within three (3) business days after the opposition is filed.

3. Except as otherwise specifically set forth this section, all non-dispositive motions and supporting documents, including those that relate to fact discovery, shall be filed and served on or before **April 16, 2027**.

4. All non-dispositive motions and supporting documents that relate to expert discovery shall be filed and served on or before **August 27, 2027**.

**DISCOVERY DISPUTES**

Before moving for an order relating to discovery, the movant must request an informal conference with the Court. The purpose of this call is to explore narrowing the discovery dispute, confirm that informal dispute resolution is considered, and to discuss the most efficient way to brief disputed issues. Accordingly, before moving for an order relating to discovery, the movant must request an informal conference with the Court by submitting a **SHORT JOINT EMAIL** to chambers at Micko_Chambers@mnd.uscourts.gov stating:

a) the discovery dispute;

b) whether all parties agree to informal dispute resolution; and

c) any other information that would be helpful to the parties and the Court in resolving the dispute in a just, speedy, and inexpensive way. No attachments are permitted. The Court will then schedule a conference call.

The informal conference is required to ensure that the dispute is presented and resolved consistent with Fed. R. Civ. P. 1. It does not mean that the parties all concede to informal dispute resolution.

**NON-DISPOSITIVE MOTIONS**

If a non-dispositive motion is filed, it must comply with the Electronic Case Filing Procedures for the District of Minnesota, Local Rules 7.1, and for discovery motions, also be in the form prescribed by Local Rule 37.1.

The "Meet and Confer" requirement must include attempts to meet and confer through personal contact, rather than solely through correspondence.

All non-dispositive motions must be scheduled for hearing by calling or emailing Magistrate Judge Micko's Courtroom Deputy at 651-848-1900 or Micko_Chambers@mnd.uscourts.gov prior to filing. Even if the parties agree that a motion can be submitted on the papers without oral argument, the Courtroom Deputy must be contacted to set the date for submission of the matter to the Court. The matter will be deemed submitted upon receipt of the last filing. The Court will determine whether to hold a hearing.

Ideally, if the parties are not able to resolve their dispute following their meet and confer and motion practice is necessary, the parties would jointly contact the Court to obtain a hearing date that works for both sides.

Once the moving party has secured a hearing date, it must promptly serve and file the notice of hearing informing all parties of the nature of the motion and the date, time and location of the hearing. The moving party may serve and file the motion and remaining motion papers in accordance with the dates prescribed by Local Rule 7.1, unless a different briefing schedule is set. A party may not call chambers and secure a hearing date or "hold" a hearing date without that party promptly serving and filing a

notice of hearing.

Counsel may not notice additional motions for hearing on an already existing hearing date without first contacting the Court for permission.

Local Rule 37.1 governs the form of discovery motions. Counsel must adhere to the Rule; however, they should prepare their documents to offer a clear presentation of the discovery dispute in an efficient and effective way. The status of each dispute should be clear to the Court without having to cross-reference multiple exhibits. Your arguments should be precise. To the extent a burden is asserted, support for this position must be included. One suggested approach is set forth below.

| |
|---|
| Insert the actual discovery request |
| Insert the actual response and objections |
| Insert position after meet and confer to make clear any compromise positions offered by either side |
| Legal argument |
| Specific relief sought |

The Court will give the parties permission to exceed the word limits for their memorandum if the additional words will help avoid the need to cross-reference multiple exhibits in order to understand the:

- requests at issue;
- responses and basis for objections;
- parties' positions after their meet and confer sessions;
- legal arguments; and

- specific relief sought.

If a party seeks to exceed the limits, they must obtain permission by filing and serving a letter pursuant to Local Rule 7.1(f)(1)(D). The letter should reference this Scheduling Order.

**INFORMAL DISPUTE RESOLUTION**

Prior to initiating any non-dispositive motion, parties should consider whether the matter can be informally resolved without a formal non-dispositive motion. Typically, if the informal dispute resolution ("IDR") process is used, the matter is not briefed and declarations and sworn affidavits are not filed. Consequently, the matter is not appropriate for appeal to the District Judge or the Federal Circuit. Therefore, all parties must agree to use the IDR process. If there is no agreement to resolve a dispute though IDR, then the dispute must be presented to the Court through formal motion practice.

If the parties agree to pursue the IDR process, the parties must jointly contact chambers to schedule a remote hearing. The parties will then be allowed to each email to Micko_Chambers@mnd.uscourts.gov a short letter setting forth the issue(s) to be resolved. If not otherwise specified by the Court, the letter submissions shall be no more than three (3) pages in length and should be served and submitted at least two (2) business days before the remote conference.

If the parties wish to proceed with IDR in a manner other than that outlined above, they should notify chambers of their specific proposal when they jointly contact chambers to schedule the remote hearing.

**DISPOSITIVE MOTIONS**

**Chief Judge Patrick J. Schiltz**

All dispositive motions (notice of motion, motion, memorandum of law, affidavits and proposed order) shall be served, filed and heard on or before **October 8, 2027**.

Counsel for the moving party shall call Chief Judge Schiltz's Courtroom Deputy at 612-664-5483 to schedule the hearing. Parties are reminded that the scheduling of a dispositive motion requires considerable advance notice (typically three to four months). Parties should attempt to schedule all dispositive motions for the same hearing and should strive to avoid duplication in their briefing.

All dispositive motions shall be scheduled, filed and served in compliance with the Electronic Case Filing Procedures for the District of Minnesota and in compliance with Local Rule 7.1. When a motion, response or reply brief is filed on ECF, two paper courtesy copies (three-hole punched and unstapled, and if warranted, exhibits appropriately tabbed) of the pleading and all supporting documents shall be mailed or delivered to Chief Judge Schiltz's Courtroom Deputy at the same time as the documents are posted on ECF.

When scheduling a summary judgment hearing, the parties must notify the Court whether there will be cross-motions for summary judgment so that the Court may enter an appropriate briefing order. The parties should confer about the possibility of cross-motions before contacting chambers to schedule a summary judgment hearing.

**PRIVILEGE/PROTECTION**

The parties agree to follow the procedure set forth in Fed. R. Civ. P. 26(b)(5)(B) regarding information produced in discovery that is subject to a claim of privilege or protection as trial-preparation material. Pursuant to Fed. R. Evid. 502, the inadvertent production of any documents in this proceeding shall not constitute a waiver of any privilege or protection applicable to those documents in this or any other federal or state proceeding.

**HANDLING OF SEALED DOCUMENTS FILED IN CONNECTION WITH ALL MOTIONS**

Counsel must be familiar with Local Rule 5.6 on filing documents under seal in civil cases, effective February 27, 2017, and any amendments to that Local Rule. If a joint motion regarding continued sealing is filed pursuant to LR 5.6, it must comply with the Local Rule. For example:

> (A) Joint Motion's Contents. The joint motion must list by docket number each document filed under temporary seal in connection with the underlying motion and, for each such document:
>
> (i) briefly describe the document;
>
> (ii) explain why the parties agree that the document or information in the document should remain sealed or be unsealed or, if the parties disagree, briefly explain each party's position; and
>
> (iii) identify any nonparty who has designated the document or information in the document as confidential or proprietary.
>
> (B) Party to File Joint Motion. Unless the parties agree or the magistrate judge orders otherwise, the party who filed the first document under

temporary seal in connection with the underlying motion must file the joint motion.

The Advisory Comments to the Local Rule provide that the "joint motion must be filed using the Joint Motion Regarding Continued Sealing Form, which is available on the court's website." The current form includes a list of example explanations in a footnote. The designation of material as confidential or protected by any party pursuant to a protective order during the course of discovery as the sole basis for filing the material under seal is not a sufficient explanation to justify continued sealing.

*See* ***https://www.mnd.uscourts.gov/sites/mnd/files/forms/Joint-Motion-Form.pdf***.

**SETTLEMENT CONFERENCE**

The Court may sua sponte schedule status conferences or settlement conferences to explore options for alternative dispute resolution. In addition, the Court will in its discretion consider joint or *ex parte* requests that the Court schedule a settlement conference or otherwise assist in settlement negotiations, provided that the content of any *ex parte* request shall be strictly limited to the topic of settlement and shall not comment on any matter that may come before the Court for a ruling. Such requests shall be submitted by email to Micko_Chambers@mnd.uscourts.gov. The Court will treat *ex parte* requests as confidential unless otherwise advised.

**TRIAL**

This case will be ready for a **jury** trial on or about **February 8, 2028**. The anticipated length of trial is **7** days.

DATED: September 10, 2025

*s/Douglas L. Micko*
DOUGLAS L. MICKO
United States Magistrate Judge