

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE DIGITEK®
PRODUCTS LIABILITY LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #19
(Direct Filing in the Southern District of West Virginia)**

Certain Plaintiffs who are not citizens or residents of West Virginia or the Southern District of West Virginia have been filing and will continue to file cases either directly into this MDL, or into the United States District Court for the Southern District of West Virginia (hereinafter referred to as "directly filed" cases).

Defendants assert that venue is not proper in the Southern District of West Virginia under 28 U.S.C. § 1391 for such directly filed cases, and will not waive either the defense of improper venue or their rights under *Lexecon, Inc. v. Milberg, Weis*, 523 U.S. 26 (1998).

In an effort to simplify the process for filing cases in the MDL proceeding, while yet preserving all rights and defenses which the parties might otherwise possess, the parties have agreed and the Court hereby ORDERS as follows:

1. Defendants' right to contest venue in any "directly filed" case shall be preserved by Defendants' assertion of the affirmative defense of improper venue in the Master Answer.

2. Defendants agree to a limited waiver of the defense of improper venue for "directly filed" cases solely for the purpose of consolidated discovery and related pretrial proceedings in the MDL.

3. The defense of improper venue for the purpose of trial is not waived by Defendants and is expressly preserved.

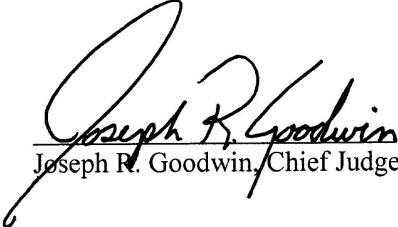
4. Once this Court declares a “directly filed” case to be ready for trial, Defendants shall have the right to assert any defense of improper venue preserved under this agreement and pretrial order either by motion, or by letter as set forth in PTO #16.

5. If the Court determines that venue rests in a district other than the Southern District of West Virginia, the case will be transferred for trial to the proper district by Order of the Court pursuant to 28 U.S.C. § 1404 or by an agreed-upon dismissal without prejudice of the “directly filed” case, which shall thereafter be filed in the proper venue and Defendants shall waive the statute of limitations in each such case.

IT IS SO ORDERED.

The court **DIRECTS** the Clerk to file a copy of this order in 2-08-md-1968 which shall apply to each member Digitek-related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2-09-cv-0291. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court’s website at www.wvsd.uscourts.gov.

ENTER: March 25, 2009


Joseph R. Goodwin, Chief Judge

STIPULATED AND AGREED TO BY:

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