

1 Luke L. Dauchot (S.B.N. 229829)
luke.dauchot@kirkland.com
2 Nimalka R. Wickramasekera (S.B.N. 268518)
nimalka.wickramasekera@kirkland.com
3 Sharre Lotfollahi (S.B.N. 258913)
sharre.lotfollahi@kirkland.com
4 Kirkland & Ellis LLP
333 South Hope Street
5 Los Angeles, California 90071
Telephone: (213) 680-8400
6 Facsimile: (213) 680-8500

7 Attorneys for Plaintiffs/Counterclaim Defendants,
WARSAW ORTHOPEDIC, INC.; MEDTRONIC
8 SOFAMOR DAN EK U.S.A., INC.; MEDTRONIC
PUERTO RICO OPERATIONS CO.; OSTEOTECH,
9 INC.; MEDTRONIC, INC.; MEDTRONIC
SOFAMOR DAN EK DEGGENDORF, GMBH;
10 MEDTRONIC LOGISTICS, LLC; MEDTRONIC
XOMED, INC.; and SPINALGRAFT
11 TECHNOLOGIES, LLC

12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 WARSAW ORTHOPEDIC, INC.;
16 MEDTRONIC SOFAMOR DAN EK
U.S.A., INC.; MEDTRONIC PUERTO
17 RICO OPERATIONS CO.; and
OSTEOTECH, INC.,

18 Plaintiffs,

19 vs.

20 NUVASIVE, INC.,

21 Defendant.

22
23 **AND RELATED COUNTERCLAIMS.**
24

) CASE NO. 3:12-cv-02738-CAB (MDD)

) **PLAINTIFFS' NOTICE OF MOTION**
) **AND MOTION FOR**
) **CLARIFICATION AND**
) **RECONSIDERATION OF ORDER**
) **GRANTING DEFENDANT'S MOTION**
) **FOR SUMMARY JUDGMENT OF**
) **NON-INFRINGEMENT OF THE '146**
) **PATENT**

) Date: April 12, 2016
) Judge: Hon. Cathy Ann Bencivengo
) Courtroom: 4C

) PER CHAMBERS, NO ORAL
) ARGUMENT UNLESS ORDERED BY
) THE COURT

1 PLEASE TAKE NOTICE THAT on April 12, 2016, or as soon as the matter
2 may be heard in the courtroom of the Honorable Cathy Ann Bencivengo at the United
3 States District Court for the Southern District of California, 221 West Broadway, San
4 Diego, California, Plaintiffs Warsaw Orthopedic, Inc., Medtronic Puerto Rico
5 Operations Co., Medtronic Sofamor Danek, USA, Inc., and Osteotech, Inc.; and
6 Counterclaim-Defendants Medtronic, Inc., Medtronic Logistics, LLC, Medtronic
7 Xomed, Inc., SpinalGraft Technologies, LLC, and Medtronic Sofamor Danek
8 Deggendorf, GmbH (collectively, “Plaintiffs”) will and do hereby move that the Court
9 grant Plaintiffs’ Motion For Clarification And Reconsideration Of Order Granting
10 Defendant’s Motion For Summary Judgment Of Non-Infringement Of The ’146
11 Patent.

12 This motion is based upon this Notice of Motion and Motion, Memorandum of
13 Points and Authorities, the supporting Declaration of Nimalka Wickramasekera and
14 the supporting Declaration of Dr. Julie Glowacki attached thereto, and attached
15 exhibits, other pleadings and papers filed in this action, and other arguments and
16 evidence that may properly come before the Court. Plaintiffs move for clarification
17 and reconsideration on the ground that clarification and reconsideration are necessary
18 to address the Court’s construction of certain claim terms in its infringement analysis.
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1 DATED: March 15, 2016

Respectfully submitted,

2 KIRKLAND & ELLIS LLP

3 /s/ Nimalka R. Wickramasekera

4 Luke L. Dauchot

Nimalka R. Wickramasekera

5 Sharre Lotfollahi

6 Attorneys for Plaintiffs/Counterclaim
7 Defendants, WARSAW ORTHOPEDIC,
8 INC.; MEDTRONIC SOFAMOR DANEK
9 U.S.A., INC.; MEDTRONIC PUERTO
10 RICO OPERATIONS CO.; OSTEOTECH,
11 INC.; MEDTRONIC, INC.; MEDTRONIC
12 SOFAMOR DANEK DEGGENDORF,
13 GMBH; MEDTRONIC LOGISTICS, LLC;
14 MEDTRONIC XOMED, INC.; and
15 SPINALGRAFT TECHNOLOGIES, LLC
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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 333 South Hope Street, Los Angeles, California 90071.

On March 15, 2016, true and correct copies of the foregoing document were served to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile, U.S. Mail and/or overnight delivery.

FEDERAL: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 15, 2016, in Los Angeles, California.

/s/ Nimalka R. Wickramasekera
Nimalka R. Wickramasekera