

1 Todd G. Miller (SBN 163200), miller@fr.com
Michael A. Amon (SBN 226221), amon@fr.com
2 Fish & Richardson P.C.
12390 El Camino Real
3 San Diego, CA 92130
4 Phone: 858-678-5070/Fax: 858-678-5099

5 Frank E. Scherkenbach (SBN 142549), scherkenbach@fr.com
Fish & Richardson P.C.
6 One Marina Park Drive
Boston, MA 02210-1878
7 Phone: 617-542-5070/Fax: 617-542-8906

8 Keeley I. Vega (SBN 259928), kvega@fr.com
9 Neil A. Warren (SBN 272770), warren@fr.com
Fish & Richardson P.C.
10 500 Arguello St., Ste. 500
11 Redwood City, CA 94063
Telephone: 650-839-5070/Fax: 650-839-5071

12 Attorneys for Defendant/Counterclaimant NUVASIVE, INC.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

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

18 Plaintiffs,

19 v.

20 NUVASIVE, INC.,

21 Defendant.

22 AND RELATED COUNTERCLAIMS.
23

Case No. 3:12-cv-02738 CAB (MDD)

NUVASIVE, INC.’S UNOPPOSED *EX*
PARTE APPLICATION TO CONTINUE
EARLY NEUTRAL EVALUATION
CONFERENCE AND ASSOCIATED DATES

Judge: Hon. Mitchell D. Dembin

Courtroom: E

24 Pursuant to the Court’s December 6, 2012 Order Scheduling Early Neutral Evaluation
25 Conference [D.I. 45], and the Court’s calendar permitting, Defendant NuVasive, Inc. (“NuVasive”)
26 files this *ex parte* request to continue the Early Neutral Evaluation Conference (“ENE”) (and
27 associated dates) from January 28, 2013 to February 21 or February 22, 2013. Counsel have met
28

1 and conferred and counsel for Plaintiffs has indicated that Plaintiffs do not oppose NuVasive's
2 request.

3 NuVasive's lead counsel, Frank E. Scherkenbach, would like to attend this hearing in
4 person. Unfortunately, he has two previously scheduled claim construction hearings in other cases
5 pending in the District of Delaware, the first set for January 25, 2013, and the second set for January
6 31, 2013. *See* Declaration of Michael Amon in Supp. of Unopposed *Ex Parte* Application ("Amon
7 Decl.") at ¶ 4. In addition, Mr. Scherkenbach has a separate commitment on January 28, 2013 on
8 the East Coast. As such, Mr. Scherkenbach is unable to attend the ENE in this case currently set for
9 January 28, 2013, at 9:30 a.m. *Id.* NuVasive respectfully requests the Court's move the ENE
10 hearing to February 21 or 22, 2013, if either date is convenient for the Court.

11 Pursuant to this Court's December 6, 2012 Order [D.I. 45] and Civil Local Rule 26.1,
12 NuVasive informed Plaintiffs' counsel of Mr. Scherkenbach's scheduling conflicts. *Id.* at ¶ 6. The
13 parties met and conferred regarding potential dates for a continued ENE. *Id.* at ¶¶ 6-7. During
14 discussions, counsel for Plaintiffs indicated that they are available on February 21 or February 22,
15 but are not available on other dates proposed by NuVasive (February 12 or February 13). Based on
16 the availability of all counsel, Plaintiffs represented that they would not oppose NuVasive's *ex parte*
17 request to continue the ENE to February 21 or February 22, 2013. *Id.* at ¶ 7. Plaintiffs indicated
18 that they would, however, oppose a continuance of the ENE beyond February 22, 2013. *Id.*

19 Accordingly, if the Court is able to accommodate this request, NuVasive asks that the ENE
20 be continued from January 28, 2013, to either February 21, or February 22, 2013. In addition, if the
21 Court is able to accommodate NuVasive's request to continue the ENE, NuVasive requests that the
22 dates contained in Section II and IV of the Court's order of December 6, 2012, [D.I. 45] also be
23 continued accordingly.

24 Respectfully submitted.

25 Dated: December 18, 2012

FISH & RICHARDSON P.C.

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By: s/Michael A. Amon

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Michael A. Amon

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Attorneys for Defendant/Counterclaimant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 18, 2012 to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civ LR 5.4(d). Any other counsel of record will be served by U.S. mail or hand delivery.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on December 18, 2012, at San Diego, California.

s/ Michael A. Amon

Michael A. Amon