

# **EXHIBIT 10**

**TO THE DECLARATION OF BRIAN J. NISBET  
IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY ADJUDICATION**

Case: 17-1666 Document: 41 Page: 211 Filed: 01/12/2018

### Electronic Acknowledgement Receipt

<b>EFS ID:</b>	12929893
<b>Application Number:</b>	95001888
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	7222
<b>Title of Invention:</b>	SURGICAL ACCESS SYSTEM AND RELATED METHODS
<b>First Named Inventor/Applicant Name:</b>	7691057
<b>Customer Number:</b>	30328
<b>Filer:</b>	Stephen R. Schaefer/Leslie Smith
<b>Filer Authorized By:</b>	Stephen R. Schaefer
<b>Attorney Docket Number:</b>	20330.0002.RX057
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**File Listing:**

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Oath or Declaration filed	13958-0076RX1-Dec132-Youssef.pdf	1594425 <small>87905ce9ee02284e2de4c6803cda69d1a9393227</small>	no	9

**Warnings:**

**Information:**

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2	13958-0076RX1-Reply.pdf	369008	yes	18
<b>Multipart Description/PDF files in .zip description</b>				
<b>Document Description</b>		<b>Start</b>	<b>End</b>	
Amendment/Req. Reconsideration-After Non-Final Reject		1	1	
Applicant Arguments/Remarks Made in an Amendment		2	16	
Claims		17	17	
Reexam Certificate of Mailing		18	18	
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<b>Total Files Size (in bytes):</b>			1963433	
<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  <b>If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</b></p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  <b>If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</b></p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  <b>If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</b></p>				

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Attorney's Docket No.: 13958-0076RX1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 7,691,057 Control No. : 95/001,888  
Inventor(s): Miles et al. Art Unit : 3993  
Serial No.: 10/759,811 Examiner : Beverly Meindl Flanagan  
Conf. No. : 7222  
Title : SURGICAL ACCESS SYSTEM AND RELATED METHODS

**Mail Stop "Inter Partes Reexam"**

Central Reexamination Unit  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF DR. JIM YOUSSEF UNDER 37 C.F.R. 1.132

I, Dr. Jim Youssef of Durango, Colorado, declare that:

1. I am an orthopaedic surgeon board certified by the American Board of Orthopaedic Surgery and fellowship trained in spine surgery. I received my medical degree from the University of California in 1991. I performed my orthopaedic surgery residency at Dartmouth-Hitchcock Medical Center in Lebanon, New Hampshire from 1992-1996. I was chief resident of Orthopaedic surgery at the VA Medical Center in White River Junction, Vermont from 1995-1996. Subsequently, I did my spine fellowship training at the University of California, Davis Medical Center from 1996-1997. I have been a practicing spine surgeon for the last fifteen years.
2. Since 2000, I have been the Medical Director of Spine Service at the Mercy Regional Medical Center in Durango, Colorado. I am the co-founder of Spine Colorado, a multidisciplinary comprehensive center focused on spine care. There I have an active surgical practice directed at the treatment of degenerative spine diseases and spinal injuries, which includes, among other things, spine surgery to the cervical and thoracolumbar regions of the spine. I have twice received Achievement Awards from the American Academy of Orthopaedic Surgeons. I am a founding member of the Society of Minimally Invasive Surgery, board member of the Society of Lateral Access Surgery ("SOLAS"), and the co-chair of the education committee for this society. I am a member of the American Orthopaedic Association, a leadership society in Orthopaedic surgery.
3. I have an active research department and I have participated not only in my own original research, but in several clinical trials involving new technology. In addition, I founded a non-

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profit organization focused on resources for medical collaboration. As a result of my academic interests and publications, I have been invited to speak and participate in Grand Rounds at a number of different hospitals throughout the United States and the rest of the world. I have given over 120 presentations at various spine or orthopaedic societies related to spine maladies, spine treatments, spine surgery and my own research, written 16 peer reviewed articles related to spine maladies, treatments, surgery and my own research, written numerous book chapters related spine maladies and treatments, served as a course founder and course director at the Annual Emerging Technologies Spine Education Summit since 2005, and served as faculty teaching Minimally Invasive Techniques for the Treatment of Thoracolumbar Spine Disorders in St. Louis, Missouri, along with numerous other courses. I have participated as faculty and course chairman for the annual AAOS Spine Surgery: State-of-the-Art Techniques and Science since 2005. In 2011, I co-authored a book chapter on Lateral Transpsoas Approach/Fusion on the Advanced Reconstruction: Spine. I was also the co-editor for the Spine chapter in the Orthopaedic Knowledge Update Volume 9. In addition, I currently serve on several editorial boards and review committees, including the editorial board for *Spine*, *The Journal of the American Academy of Orthopaedic Surgeons*, and the *Spine Arthroplasty Society Journal*. Furthermore, I am a named inventor on at least 3 patents, several of which read on commercially available spine implants used in surgery today.

4. I am not an employee of NuVasive, Inc., but instead was engaged to provide my independent analysis of the issues raised in the above-mentioned reexamination of U.S. Patent No. 7,691,057 (“the ‘057 patent”). I received no compensation for this declaration beyond my normal hourly compensation based on my time actually spent studying the matter, and I will not receive any added compensation based on the outcome of the above-mentioned reexamination of the ‘057 patent.

5. Based upon my knowledge and experience in this field, I am aware of the needs and the challenges orthopaedic surgeons face in performing spinal surgical procedures. I routinely perform and observe these spinal surgical procedures, and I am familiar with the various types of access systems that are used during spinal surgical procedures, including dilator instruments and retractor assemblies. I was a practicing spine surgeon prior to January 2003 and I am familiar

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