

# **EXHIBIT 1**

**TO THE DECLARATION OF BRIAN J. NISBET  
IN SUPPORT OF DEFENDANTS' MOTION  
FOR FEES AND COSTS**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
THE HONORABLE CATHY ANN BENCIVENGO PRESIDING

NUVASIVE, INC., a Delaware Corporation,	)	
	)	
Plaintiff,	)	CASE NO. 18CV0347-CAB-MDD
	)	
vs.	)	SAN DIEGO, CALIFORNIA
	)	
ALPHATEC HOLDINGS, INC., a Delaware Corporation, and ALPHATEC SPINE, INC., a California corporation,	)	THURSDAY, DECEMBER 12, 2019
	)	
Defendants.	)	

Reporter's Transcript of Status Conference  
Pages 1-22

Proceedings reported by stenography, transcript produced by computer assisted software

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Mauralee Ramirez, RPR, CSR No. 11674  
Federal Official Court Reporter  
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APPEARANCES

For The Plaintiff:

Wilson Sonsini Goodrich & Rosati P.C.  
Paul D. Tripodi II  
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Los Angeles, California 90071

Hilgers Graben  
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For The Defendants:

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David Dalke  
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Los Angeles, California 90071

Winston & Strawn LLP  
Brian J. Nisbet  
35 West Wacker Drive  
Chicago, Illinois 60601

Also Present:

Mike Doyle, NuVasive VP of intellectual property  
Paul Gwilt, Hilgers Graben  
Craig Hunsaker, Alphatec general counsel  
Tyson Marshall, Alphatec director of legal affairs

1 San Diego, California; Thursday, December 12, 2019; 9:00 a.m.

2 (Case called)

3 MR. TRIPODI: Good morning, your Honor. On behalf of  
4 NuVasive Inc., Paul Tripodi of Wilson Sonsini Goodrich &  
5 Rosati. With me today is my co-counsel, Mike Hilgers of the  
6 Hilgers Graben firm. He'll be handling the bulk of the  
7 argument today. Also in the courtroom, we have the corporate  
8 representative from NuVasive, Mike Doyle, the vice president of  
9 intellectual property, and one of Mr. Hilgers' colleagues, Paul  
10 Gwilt.

11 One thing I wanted to note as part of my appearance,  
12 Mr. Doyle is not entitled under the protective order to receive  
13 highly confidential information. There are portions of the  
14 argument that we expect will be a potential discussion of  
15 Alphatec confidential information. If they would like him to  
16 clear the courtroom at that time, we can. I have no insight as  
17 to the other people who are in the courtroom.

18 THE COURT: All right. Thank you.

19 MS. WICKRAMASEKERA: Good morning, your Honor.  
20 Nimalka Wickramasekera from Winston & Strawn on behalf of the  
21 Alphatec defendants. With me is my co-counsel, Brian Nisbet  
22 and David Dalke. And also with me is Alphatec's general  
23 counsel, Craig Hunsaker, and Alphatec's associate general  
24 counsel, Tyson Marshall.

25 THE COURT: Thank you. Where to start? I have to

1 tell you, frankly, coming in here, my primary purpose for  
2 holding this hearing this morning was to figure out how much to  
3 sanction NuVasive for bringing this motion, which I think is  
4 entirely meritless and frivolous. It appears to the Court  
5 based on the materials that I've received and read for this  
6 hearing this morning that it was brought solely for the purpose  
7 of derailing the ability of Alphatec to finalize and finish  
8 discovery in this case and prepare their dispositive motions  
9 and to disrupt the Court's schedule and just take all of my  
10 dates and set them aside.

11 I cannot for the life of me figure out how after all  
12 this time we have been in this litigation with people that  
13 NuVasive has been fully aware of, have been involved, and are  
14 principles of the defendant company, that all of a sudden, you  
15 had some epiphany at a deposition, the transcript of which I've  
16 reviewed, where nothing of any significance appears to have  
17 happened, that you suddenly had this dawning sense of doom that  
18 they were disclosing and sharing information they weren't  
19 entitled to share with their counsel.

20 There's nothing here that seems to justify asking for  
21 the relief you're seeking. And to put this entire case on hold  
22 while you investigate defense counsel to determine whether or  
23 not they should ultimately -- because ultimately, your motion  
24 would be to disqualify them. You're not calling it that, but  
25 that would be the end result if you think that they have been

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