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12 *Attorneys for Plaintiff NuVasive, Inc.*

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA  
15 SAN DIEGO DIVISION

16 NUVASIVE, INC., a Delaware  
corporation,

17 Plaintiff,

18 v.

19  
20 ALPHATEC HOLDINGS, INC., a  
Delaware corporation, and ALPHATEC  
21 SPINE, INC., a California corporation,

22 Defendants.

) Case No. 18-cv-00347-CAB-MDD

) **NUVASIVE, INC.’S NOTICE**  
) **REGARDING IPR FINAL**  
) **WRITTEN DECISIONS FOR**  
) **U.S. PATENT NOS. 8,187,334**  
) **AND 8,361,156**

) Judge: Hon. Cathy Ann Bencivengo  
) Magistrate Judge: J. Dembin

1 Pursuant to the Court’s May 12, 2020 Status Conference (Doc. No. 286),  
 2 Plaintiff NuVasive, Inc. (“NuVasive”) hereby submits this Notice Regarding Final  
 3 Written Decisions For Defendants Alphatec Holdings, Inc.’s and Alphatec Spine,  
 4 Inc.’s (“Alphatec”) IPR Petitions relating to NuVasive’s asserted U.S. Patent Nos.  
 5 8,361,156 (“the ’156 patent”) and 8,187,334 (“the ’334 patent”).

6 On July 8, 2020, the Patent Trial and Appeal Board (“PTAB”) issued final  
 7 written decisions, summarized below, regarding Alphatec’s IPR petitions:

Case No.	Patent No.	Decision
9 IPR2019- 10 00362 11 (Exh. A)	8,361,156  Challenged claims: 1-3, 5, 9, 10, 12-21, 23, 24 and 27	<p><b>ALL CHALLENGED CLAIMS VALID</b></p> <ul style="list-style-type: none"> <li>• Petitioner did <u>not</u> show by a preponderance of the evidence that the challenged claims are unpatentable (pp. 3, 25-61; 62-66; and 72)</li> <li>• Petitioner also did <u>not</u> establish that NuVasive is estopped from taking any specific position in the IPR proceeding (p. 11)</li> <li>• Claim construction:                             <ul style="list-style-type: none"> <li>○ “<i>longitudinal length</i>” means “the implant’s longer dimension ‘extending from a proximal end of said proximal wall to a distal end of the distal wall’ and ‘is greater than said [implant’s] maximum lateral width.’” (p. 18)</li> <li>○ “<i>proximate</i>” means “near” (p. 19)</li> <li>○ “<i>proximate to said medial plane</i>” means “near or approximately at the midpoint of the longitudinal length” (p. 19)</li> </ul> </li> </ul>

1 2 3 4 5 6 7 8 9 10 11 IPR2019-00361 (Exh. B)	8,187,334  Challenged claims: 6-9, and 18	<b>CLAIM 18 VALID; CLAIMS 6-9 INVALID</b> <ul style="list-style-type: none"> <li>• Patent Owner “collaterally estopped” by “issue preclusion” from prior proceeding in IPR2013-507 finding invalidity of claim 1 for purposes of determining patentability of dependent claims 6-9 and 18 (p. 27)</li> <li>• Petitioner has shown by a preponderance of the evidence that challenged dependent <u>claims 6-9</u> are unpatentable (pp. 34-45; 81)</li> <li>• Petitioner has <u>not</u> shown by a preponderance of the evidence that challenged <u>claim 18</u> is unpatentable (pp. 45-64; 81)</li> <li>• Claim construction: no express claim constructions for any terms (p. 19)</li> </ul>
12 13 14 15 IPR2019-00546 (Exh. C)	8,187,334  Challenged claims: 16	<b>ALL CHALLENGED CLAIMS VALID</b> <ul style="list-style-type: none"> <li>• Petitioner has <u>not</u> shown by a preponderance of the evidence that claim 16 is unpatentable (pp. 33; 57-58).</li> <li>• Claim construction: no express claim constructions for any terms (pp. 18-19)</li> </ul>

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17 NuVasive has attached copies of the PTAB’s final written decisions hereto  
18 as Exhibits A, B, and C. NuVasive is prepared to provide its recommendations for  
19 further proceedings in connection with this action during the Court’s upcoming  
20 telephonic status conference scheduled for July 23, 2020 (Doc. No. 286).  
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Dated: July 15, 2020

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### TABLE OF EXHIBITS

EXHIBIT NO.	PAGE NUMBER(S)
A	5 - 77
B	78 - 159
C	160 - 221

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