

EXHIBIT H
TO DASHE DECLARATION

From: "Dashe, Christina" <cdashe@wsgr.com>
Date: Wednesday, November 11, 2020 at 9:24 AM
To: "Nisbet, Brian" <BNisbet@winston.com>, "Hockman, Cori S." <CHockman@winston.com>, "Tripodi II, Paul" <ptripodi@wsgr.com>, WSGR - NUVA/ATEC <nuva/atec@wsgr.com>, NuVa-HG <NuVa-HG@hilgersgraben.com>
Cc: "Wickramasekera, Nimalka" <NWickramasekera@winston.com>, Alphatec Service <AlphatecService@winston.com>
Subject: Re: NUVA/ATECIP - ATEC Invalidity Positions

That works.

From: "Nisbet, Brian" <BNisbet@winston.com>
Date: Wednesday, November 11, 2020 at 9:24 AM
To: "Dashe, Christina" <cdashe@wsgr.com>, "Hockman, Cori S." <CHockman@winston.com>, "Tripodi II, Paul" <ptripodi@wsgr.com>, WSGR - NUVA/ATEC <nuva/atec@wsgr.com>, NuVa-HG <NuVa-HG@hilgersgraben.com>
Cc: "Wickramasekera, Nimalka" <NWickramasekera@winston.com>, Alphatec Service <AlphatecService@winston.com>
Subject: RE: NUVA/ATECIP - ATEC Invalidity Positions

[External]
How about 2 then?

From: Dashe, Christina <cdashe@wsgr.com>
Sent: Wednesday, November 11, 2020 11:21 AM
To: Nisbet, Brian <BNisbet@winston.com>; Hockman, Cori S. <CHockman@winston.com>; Tripodi II, Paul <ptripodi@wsgr.com>; WSGR - NUVA/ATEC <nuva/atec@wsgr.com>; NuVa-HG <NuVa-HG@hilgersgraben.com>
Cc: Wickramasekera, Nimalka <NWickramasekera@winston.com>; Alphatec Service <AlphatecService@winston.com>
Subject: Re: NUVA/ATECIP - ATEC Invalidity Positions

1-2 pm Pacific is literally the only time today that does not work for me. I am generally free before or after.

From: "Nisbet, Brian" <BNisbet@winston.com>
Date: Wednesday, November 11, 2020 at 9:15 AM
To: "Dashe, Christina" <cdashe@wsgr.com>, "Hockman, Cori S." <CHockman@winston.com>, "Tripodi II, Paul" <ptripodi@wsgr.com>, WSGR - NUVA/A TEC <nuva/atec@wsgr.com>, NuVa-HG <NuVa-HG@hilgersgraben.com>
Cc: "Wickramasekera, Nimalka" <NWickramasekera@winston.com>, Alphatec Service <AlphatecService@winston.com>
Subject: RE: NUVA/A TECIP - A TEC Invalidation Positions

[External]

Christina,

Thanks for that clarification. How about 1 PM pacific?

Brian

From: Dashe, Christina <cdashe@wsgr.com>
Sent: Tuesday, November 10, 2020 5:35 PM
To: Nisbet, Brian <BNisbet@winston.com>; Hockman, Cori S. <CHockman@winston.com>; Tripodi II, Paul <ptripodi@wsgr.com>; WSGR - NUVA/A TEC <nuva/atec@wsgr.com>; NuVa-HG <NuVa-HG@hilgersgraben.com>
Cc: Wickramasekera, Nimalka <NWickramasekera@winston.com>; Alphatec Service <AlphatecService@winston.com>
Subject: Re: NUVA/A TECIP - A TEC Invalidation Positions

Brian -

We are not seeking *ex parte* emergency relief, which is why we agreed to a meet and confer under Judge Bencivengo's chambers rules. We would like to discuss a shortened briefing schedule for any motion given the upcoming expert reports.

Please provide your availability for a meet and confer tomorrow.

Thanks,

Christina

From: "Nisbet, Brian" <BNisbet@winston.com>
Date: Tuesday, November 10, 2020 at 2:42 PM
To: "Dashe, Christina" <cdashe@wsgr.com>, "Hockman, Cori S." <CHockman@winston.com>, "Tripodi II, Paul" <ptripodi@wsgr.com>, WSGR - NUVA/A TEC <nuva/atec@wsgr.com>, NuVa-HG <NuVa-HG@hilgersgraben.com>
Cc: "Wickramasekera, Nimalka" <NWickramasekera@winston.com>, Alphatec Service

<AlphatecService@winston.com>

Subject: RE: NUVA/ATECIP - ATEC Invalidity Positions

[External]

Christina,

There appears to be some confusion over whether NuVasive intends to file its motion seeking emergency relief ex-parte. As noted in our original response, NuVasive is required to bring this request through a normal and proper Motion to Strike Alphatec's Preliminary Invalidity Contentions and Alphatec should be provided a full opportunity to respond. But based on your email Friday, and other communications with Paul, it is unclear to us whether NuVasive intends to file this as an ex-parte motion seeking emergency relief. If that is the case, please provide the basis for that emergency relief, which we believe is inappropriate given how long this issue has been known to NuVasive and the fact that NuVasive now appears to be relying on dates of first sale of the embodying products that directly contradict its own discovery responses on this issue. In addition, please provide the legal authorities supporting your substantive positions other than the statute provided below. If NuVasive is not filing an ex-parte motion, we are still happy to meet and confer to discuss the substantive issues.

Our authority supporting the assertion that an ex-parte motion is not appropriate include at least the following: *Langer v. McHale*, No. 13CV2721-CAB-NLS, 2014 WL 4922351, at *2 (S.D. Cal. Aug. 20, 2014) (J. Bencivengo) ("Ex parte applications are a form of emergency relief that will only be granted upon an adequate showing of good cause or irreparable injury to the party seeking relief." *K. Clark v. Time Warner Cable*, 2007 WL 1334965 at *1 (C.D. Cal. May 3, 2007) (citing *Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995)). The moving party must be "without fault" in creating the need for ex parte relief or establish that the "crisis [necessitating the ex parte application] occurred as a result of excusable neglect." *Id.* An ex parte application seeks to bypass the regular noticed motion procedure; consequently, the party requesting ex parte relief must establish a basis for giving the application preference. *See id.* United States District Court Southern District of California Civil Local Rule 7.1(e) outlines the procedures for filing regular motions. *Kashani v. Adams*, 2009 WL 1068862 at *2 (S.D. Cal. Apr. 21, 2009) (citing S.D. Cal. Civ. R. 7.1(e)). Ex parte proceedings are reserved for emergency circumstances. *Id.*")

Thanks,

Brian

From: Dashe, Christina <cdashe@wsgr.com>

Sent: Tuesday, November 10, 2020 3:19 PM

To: Hockman, Cori S. <CHockman@winston.com>; Tripodi II, Paul <ptripodi@wsgr.com>; WSGR - NUVA/ATEC <nuva/atec@wsgr.com>; NuVa-HG <NuVa-HG@hilgersgraben.com>

Cc: Nisbet, Brian <BNisbet@winston.com>; Wickramasekera, Nimalka

<NWickramasekera@winston.com>; Alphatec Service <AlphatecService@winston.com>

Subject: Re: NUVA/ATECIP - ATEC Invalidity Positions

Counsel -

We disagree that we have not provided the legal basis for our arguments that Alphatec is estopped. However, we are willing to meet and confer to discuss pursuant to Judge Bencivengo's Procedure IV.

Please provide your availability tomorrow (11/11) for a meet and confer.

Regards,

Christina

On 11/7/20, 5:05 AM, "Hockman, Cori S." <CHockman@winston.com> wrote:

[External]

Christina,

We will not drop our on-sale bar/public use defense or indefiniteness invalidity arguments. Please provide the legal basis for your arguments that Alphatec is estopped. Once that is provided, we can be available to meet and confer on these issues and before you file anything with the Court, per Judge Bencivengo's Procedure IV.

Thanks,
Cori

Cori S. Hockman

Associate Attorney

Winston & Strawn LLP

D: +1 713-651-2746

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[Winston & Strawn LLP]

From: Dashe, Christina <cdashe@wsgr.com>

Sent: Friday, November 6, 2020 3:15 PM

To: Hockman, Cori S. <CHockman@winston.com>; Tripodi II, Paul <ptripodi@wsgr.com>; WSGR - NUVA/ATEC <nuva/atec@wsgr.com>; NuVa-HG <NuVa-HG@hilgersgraben.com>

Cc: Nisbet, Brian <BNisbet@winston.com>; Wickramasekera, Nimalka

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