

EXHIBIT C
TO DASHE DECLARATION

1 NIMALKA R. WICKRAMASEKERA (SBN: 268518)
nwickramasekera@winston.com
2 DAVID P. DALKE (SBN: 218161)
ddalke@winston.com
3 WINSTON & STRAWN LLP
333 S. Grand Avenue
4 Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
5 Facsimile: (213) 615-1750

6 GEORGE C. LOMBARDI (*pro hac vice*)
glombardi@winston.com
7 BRIAN J. NISBET (*pro hac vice*)
bnisbet@winston.com
8 SARANYA RAGHAVAN (*pro hac vice*)
sraghavan@winston.com
9 WINSTON & STRAWN LLP
35 West Wacker Drive
10 Chicago, IL 60601-9703
Telephone: (312) 558-5600
11 Facsimile: (312) 558-5700

12 CORINNE STONE HOCKMAN (*pro hac vice*)
chockman@winston.com
13 WINSTON & STRAWN LLP
1111 Louisiana Street, 25th Floor
14 Houston, TX 77002-5242
Telephone: (713) 651-2600
15 Facsimile: (713) 651-2700

16 Attorneys for Defendants
ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**
20 **SAN DIEGO DIVISION**

21 NUVASIVE, INC., a Delaware
22 corporation,
23 Plaintiff,
24 v.
25 ALPHATEC HOLDINGS, INC., a
26 Delaware corporation and ALPHATEC
SPINE, INC., a California corporation,
27 Defendants.

Case No. 3:18-CV-00347-CAB-MDD
[Assigned to Courtroom 4C – Honorable
Cathy Ann Bencivengo]

**DEFENDANTS’ UPDATED
PRELIMINARY INVALIDITY
CONTENTIONS FOR U.S. PATENT
NOS. 8,361,156 AND 8,187,334**

Complaint Filed: February 13, 2018

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Amended Complaint Filed: September 13,
2018
Jury Trial Demanded

1 **DEFENDANTS’ UPDATED PRELIMINARY INVALIDITY CONTENTIONS**
2 **FOR U.S. PATENT NOS. 8,361,156 AND 8,187,334**

3 In accordance with the applicable rules of this Court, Defendants Alphatec
4 Holdings, Inc. and Alphatec Spine, Inc. (collectively, “Alphatec”) hereby provide the
5 following Updated Preliminary Invalidation Contentions for the following patents and
6 claims asserted by Plaintiff NuVasive, Inc. (“NuVasive”) in its Updated Preliminary
7 Infringement Contentions served on October 1, 2020 (“Infringement Contentions”):

- 8 • Claims 1, 2, 5, 10, 13, 15, 18, 19, 24, and 27 of U.S. Patent No. 8,361,156 (the
9 “156 patent”);
10 • Claims 16 and 18 of U.S. Patent No. 8,187,334 (the “334 patent”) (collectively,
11 the “Asserted Claims” of the “Implant Patents”).

12 Defendants’ Updated Preliminary Invalidation Contentions specifically address the
13 above-listed claims of the Implant Patents. Defendants contend that each of the
14 Asserted Claims is invalid as demonstrated herein. Defendants expressly reserve the
15 right to disclose invalidity contentions with respect to other claims of these patents
16 and/or other patents, and to respond to or rebut NuVasive’s arguments for claims
17 asserted or arguments made following its Infringement Contentions. Defendants
18 incorporate all previous invalidity contentions, including their contentions in the Joint
19 Discovery Plan (Doc. No. 292).

20 **I. GENERAL STATEMENT AND RESERVATION OF RIGHTS**

21 These invalidity contentions are preliminary, and based upon information
22 currently available to Defendants, prior to completion of fact discovery or expert
23 discovery related to the Implant Patents. Therefore, Defendants reserve the right to
24 amend or supplement these Updated Preliminary Invalidation Contentions, including
25 pursuant to the Court’s Scheduling Order (Doc. No. 293) and should NuVasive provide
26 any additional positions regarding validity in response to Alphatec’s interrogatories.
27 Further, additional facts, documents, and things, whether known or unknown to
28 Defendants, may become relevant to Defendants’ defenses. Accordingly, Defendants

1 reserve their right to revise, supplement, or amend these Updated Preliminary Invalidity
2 Contentions as additional grounds or evidence of invalidity are identified in this case,
3 in response to any of Plaintiff's arguments, and/or to address any additional patents or
4 claims that are asserted hereafter.

5 Defendants take no position here regarding the appropriate construction of any
6 claim term, if any. For example, statements purporting to describe claim limitations are
7 not to be taken as admissions that such terms are definite or comply with 35 U.S.C. §
8 112. Defendants maintain that Plaintiff's Infringement Contentions are insufficient to
9 show infringement of any asserted claim under any claim construction. These Updated
10 Preliminary Invalidity Contentions shall not be treated as an admission that any of
11 Defendants' accused products infringe the Asserted Claims or as an admission to the
12 scope of any of the Asserted Claims.

13 Defendants object to the disclosure of information and/or documents that are
14 protected by the attorney-client privilege, attorney work-product doctrine, or any other
15 applicable privilege or immunity. Defendants reserve the right to object to the
16 admissibility of these Updated Preliminary Invalidity Contentions or the information
17 contained herein.

18 **II. PRIORITY DATE**

19 **A. Priority Date of the '156 Patent**

20 In its Infringement Contentions, Plaintiff contends that the '156 patent is entitled
21 to a priority date at least as early as March 29, 2004, which is the filing date of U.S.
22 Provisional Application No. 60/557,536 ("Provisional Application"). Plaintiff bears the
23 burden of proving, on a claim-by-claim basis, that the Provisional Application provides
24 written description support for each and every limitation of the Asserted Claims.
25 Plaintiff has not met this burden. Defendants reserve their right to challenge the priority
26 date claimed by Plaintiff for the '156 patent.

27 Plaintiff is not entitled to a priority date of March 29, 2004 at least because the
28 Provisional Application fails to disclose or provide support for the following, as claimed

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