

**EXHIBIT G**  
**TO DASHE DECLARATION**

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 ALPHATEC HOLDINGS, INC. and  
 9 ALPHATEC SPINE, INC.

10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN DIEGO DIVISION**

14 NUVASIVE, INC., a Delaware  
 corporation,

15 Plaintiff,

16 v.

17 ALPHATEC HOLDINGS, INC., a  
 18 Delaware corporation and ALPHATEC  
 SPINE, INC., a California corporation,

19 Defendants.

**Case No. 3:18-CV-00347-CAB-MDD**

*[Assigned to Courtroom 4C – Honorable  
 Cathy Ann Bencivengo]*

**DEFENDANTS’ AMENDED  
 INVALIDITY CONTENTIONS FOR  
 U.S. PATENT NOS. 9,924,859;  
 9,974,531; AND 8,187,334**

Complaint Filed: February 13, 2018  
 Amended Complaint Filed: September 13,  
 2018

Jury Trial Demanded

1                   **DEFENDANTS’ AMENDED INVALIDITY CONTENTIONS FOR U.S.**  
2                   **PATENT NOS. 9,924,859; 9,974,531; 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 Amended Invalidity Contentions for the following patents asserted by  
6 Plaintiff NuVasive, Inc. (“NuVasive”) in its Disclosure of Asserted Claims and  
7 Infringement Contentions served on November 9, 2018 (“Infringement Contentions”)  
8 and its Amended Complaint (Doc. No. 110):

- 9                   • Claims 1-26 and 28-36 of U.S. Patent No. 9,924,859 (the “’859 patent”);  
10                  • Claims 1-39 of U.S. Patent No. 9,974,531 (the “’531 patent”); and  
11                  • Claims 6-9, 16, and 18 of U.S. Patent No. 8,187,334 (the “’334 patent”)  
12                  (collectively, the “asserted claims” of the “Asserted Patents”).

13 Defendants’ Amended Invalidity Contentions for Asserted Patents specifically address  
14 the above-listed patents and claims. Defendants contend that each of the asserted claims  
15 is invalid as demonstrated herein. Defendants expressly reserve the right to disclose  
16 invalidity contentions with respect to other claims of these patents and/or other patents,  
17 and to respond to or rebut NuVasive’s arguments for claims asserted or arguments made  
18 following its Infringement Contentions.

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

20                  These invalidity contentions are preliminary, and based upon information  
21 available to Defendants at an early state of litigation, prior to claim construction,  
22 completion of fact discovery, or expert discovery, in light of the volume of asserted  
23 claims, including asserted claims with very long chains of dependency, and in light of  
24 the fact that NuVasive has not meaningfully responded to Alphatec’s interrogatory  
25 concerning NuVasive’s positions regarding validity. Therefore, Defendants reserve the  
26 right to amend or supplement these Amended Invalidity Contentions or any charts  
27 appended hereto, including pursuant to the Court’s Case Management Order (Doc. Nos.  
28 101 and 109) and should NuVasive provide any positions regarding validity in response

1 to Alphatec's interrogatories. Further, additional prior art not included in these  
2 Amended Invalidity Contentions and/or facts, documents, and things, whether known  
3 or unknown to Defendants, may become relevant to Defendants' defenses.  
4 Accordingly, Defendants reserve their right to revise, supplement, or amend these  
5 Amended Invalidity Contentions as additional grounds or evidence of invalidity are  
6 identified in this case, in response to any of Plaintiff's arguments, following the Court's  
7 issuance of a *Markman* ruling, and/or to address any additional patents or claims that  
8 are asserted hereafter. Defendants also reserve their right to identify references that  
9 would disclose, practice, or render obvious any limitation(s) Plaintiff alleges are  
10 missing from the prior art references cited or referred to in these Amended Invalidity  
11 Contentions.

12 Defendants' disclosures with respect to each prior art reference identified herein  
13 should not be considered exhaustive. This approach does not preclude Defendants from  
14 relying on any non-cited portion of the identified prior art references. Because the prior  
15 art to Plaintiff's patents is so prolific as to its disclosure of minimally invasive tools and  
16 implants to perform lateral spinal fusion surgery, failure to describe any prior art  
17 reference as disclosing any particular limitation is not an admission that such reference  
18 does not disclose such limitation. Additionally, disclosure of a particular prior art  
19 reference that refers, relies upon, or discusses other material is also a disclosure of the  
20 other material.

21 Defendants take no position here regarding the appropriate construction of any  
22 claim term, if any. Statements purporting to describe claim limitations or apply prior  
23 art to claim limitations are not to be taken as admissions that such terms are definite or  
24 comply with 35 U.S.C. §§ 101 and 112. Defendants maintain that Plaintiff's  
25 Infringement Contentions are insufficient to show infringement of any asserted claim  
26 under any claim construction. These Amended Invalidity Contentions shall not be  
27 treated as an admission that any of Defendants' accused products infringe the asserted  
28 claims or as an admission to the scope of any of the asserted claims.

1 Defendants object to the disclosure of information and/or documents that are  
2 protected by the attorney-client privilege, attorney work-product doctrine, or any other  
3 applicable privilege or immunity. Defendants reserve the right to object to the  
4 admissibility of these Amended Invalidity Contentions or the information contained  
5 herein.

## 6 **II. IDENTIFICATION OF PRIOR ART**

### 7 **A. Priority Date**

#### 8 **1. Priority Date of the '859 Patent**

9 In its Infringement Contentions, Plaintiff contends that the '859 patent is entitled  
10 to a priority date at least as early as August 23, 2010, which is the filing date of U.S.  
11 Provisional Application No. 61/376,163. Plaintiff bears the burden of proving, on a  
12 claim-by-claim basis, that the provisional application provides written description  
13 support for each and every limitation of the asserted claims. Plaintiff has not met this  
14 burden. Plaintiff is not entitled to a priority date of August 23, 2010, at least because  
15 the Provisional Application fails to disclose or provide support for the following, as  
16 claimed by the '859 patent: "first blade connector," "second blade connector," "third  
17 blade connector," "a crosslink," "a first holding...and a second holding element," as  
18 recited in claim 1, as well as "first rotatable actuator," "second rotatable actuator," as  
19 recited in claim 11, as well as "third rotatable actuator," as recited in claim 9, and  
20 "tooth," as recited in claims 15 and 32. Defendants reserve their right to challenge the  
21 priority date claimed by Plaintiff for the '859 patent.

#### 22 **2. Priority Date of the '531 Patent**

23 In its Infringement Contentions, Plaintiff contends that the '531 patent is entitled  
24 to a priority date at least as early as September 25, 2003, which is the filing date of U.S.  
25 Provisional Application No. 60/506,136. Plaintiff bears the burden of proving, on a  
26 claim-by-claim basis, that the provisional application provides written description  
27 support for each and every limitation of the asserted claims. Plaintiff has not met this  
28 burden. Plaintiff is not entitled to a priority date of September 25, 2003, at least because

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