

## EXHIBIT 18

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12  
13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION  
15

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

**PLAINTIFF NUVASIVE, INC.’S  
FOURTH SUPPLEMENTAL  
RESPONSES TO DEFENDANTS’  
INTERROGATORY NOS. 3 AND  
13 (IMPLANT PATENT PHASE)**

**Judge:** Cathy A. Bencivengo

NUVASIVE’S FOURTH SUPP.  
RESPONSES TO DEFS’  
INTERROGATORY (NOS. 3 & 13)

18-cv-00347-CAB-MDD

1 Pursuant to Rule 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff  
2 NuVasive, Inc. (“NuVasive”), by and through its undersigned counsel, hereby  
3 supplements its responses to Defendants Alphatec Holdings, Inc. and Alphatec  
4 Spine, Inc.’s (collectively “Alphatec” or “Defendants”) Interrogatory Nos. 3 and  
5 13 as follows:

6 **GENERAL OBJECTIONS**

7 In addition to any specifically stated objections, NuVasive’s responses  
8 herein are subject to and incorporate the following general objections:

9 1. NuVasive asserts each of the following General Objections and  
10 expressly incorporates them into each response set forth below. By providing a  
11 response to any interrogatory, NuVasive does not waive or otherwise limit these  
12 General Objections. Furthermore, reference to any of these General Objections in  
13 any specific response shall not waive or otherwise limit the applicability of all of  
14 these General Objections to each and every response.

15 2. NuVasive objects to all definitions, instructions, and interrogatories to  
16 the extent that they are unduly burdensome and oppressive, overly broad, vague,  
17 ambiguous and/or to the extent they are inconsistent with and/or seek to impose  
18 upon NuVasive obligations beyond those required by the Federal Rules of Civil  
19 Procedure, the Local Rules of the United States District Court for the Southern  
20 District of California, or any Court Order in this matter, including this Court’s  
21 Scheduling Order. In responding to these interrogatories, NuVasive will only  
22 comply with the obligations imposed on it by the Federal Rules of Civil Procedure,  
23 the Local Rules of the United States District Court for the Southern District of  
24 California, any applicable orders of this Court, and any stipulation or agreement  
25 between the parties.

26 3. NuVasive objects to all definitions, instructions, and interrogatories to  
27 the extent that they seek the disclosure of information that is not relevant to any  
28 party’s claim or defense and proportional to the needs of the case.



1 burdensome, and inconsistent with and/or seek to impose upon NuVasive  
2 obligations beyond those required by the Federal Rules of Civil Procedure.

3 24. NuVasive objects to the definition of the terms “concerning” or  
4 “concern” as being overly broad, unduly burdensome, vague, ambiguous, and not  
5 proportional to the needs of this case. In particular, these terms are defined as  
6 “relating to, referring to,” which are terms included in the previous definition.  
7 NuVasive believes that including a previously defined term as the definition for a  
8 different term makes the definition overly broad.

9 25. NuVasive objects to the term “identify” as being overly broad and  
10 unduly burdensome in that it seeks to impose obligations beyond those imposed by  
11 the Federal Rules of Civil Procedure, because it necessarily results in compound  
12 interrogatories that, when counted according to their discrete subparts, exceed the  
13 number of interrogatories allowed by the Federal Rules. NuVasive will only  
14 provide responses to 25 interrogatories, counting separately all discrete subparts.  
15 By answering the following Interrogatories, NuVasive does not consent in any way  
16 to answering more than the 25 interrogatories, counting separately all discrete  
17 subparts, nor does it waive its objection to the number of discrete subparts  
18 contained within the present Interrogatories. Should Defendant seek further  
19 response to the below Interrogatories, NuVasive reserves its right to object on the  
20 basis that the present Interrogatories already contain well-over 25 discrete subparts.

21 **SUPPLEMENTAL RESPONSES TO INTERROGATORIES**

22 **INTERROGATORY NO. 3:**

23 For each asserted claim of the patents-in-suit, describe in detail the facts and  
24 circumstances relating to the first written description, offer for sale, sale, public  
25 disclosure, public use, or disclosure to any person other than a named inventor of  
26 the claimed invention, including, without limitation, the identities of the persons  
27 involved in each such event, the identities of the persons most knowledgeable  
28 regarding each such event, the date on which each such event occurred, and the

1 identification of each document that reflects or relates to such facts and  
2 circumstances.

3 **RESPONSE TO INTERROGATORY NO. 3:**

4 NuVasive incorporates by reference each of the General Objections.  
5 NuVasive objects to this interrogatory on the grounds that it contains at least three  
6 discrete subparts, is compound, and constitutes at least three interrogatories.  
7 NuVasive objects to this interrogatory as vague and ambiguous with respect to the  
8 term “the circumstances.” NuVasive objects to this interrogatory on the grounds  
9 and to the extent it is overly broad, unduly burdensome, not proportional to the  
10 needs of the case, and not relevant to any claim or defense in this case.

11 Specifically, NuVasive objects to the interrogatory to the extent it calls for  
12 NuVasive to “describe in detail” the circumstances relating to the first descriptions,  
13 disclosures and sales of the claimed inventions. NuVasive objects to this  
14 interrogatory to the extent it seeks “Privileged Information.” NuVasive objects to  
15 this interrogatory to the extent it calls for legal conclusions. NuVasive objects to  
16 this interrogatory to the extent it attempts the shift the burden of proof regarding  
17 invalidity to NuVasive. NuVasive objects to this interrogatory to the extent it seeks  
18 information no longer in NuVasive’s possession, custody, or control.

19 Subject to and without waiving the foregoing objections, NuVasive responds  
20 as follows: the first written description for each of the patents-in-suit is at least as  
21 early as the earliest priority date of the respective patent-in-suit based on the  
22 earliest filed parent patent application.

23 Additionally, Alphatec has admitted that NuVasive’s “eXtreme Lateral  
24 Interbody Fusion” product (or “XLIF”), which includes the MaXcess access  
25 system and CoRoent XL implants, embodies the asserted claims of the patents-in-  
26 suit. Doc. No. 48 at 16. Based on information available to NuVasive at this time,  
27 NuVasive states that it launched aspects of XLIF in October 2003 at the North  
28 American Spine Society (NASS) Annual Meeting, including its MaXcess access

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