

EXHIBIT K

TO TANNER DECLARATION

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18 *Attorneys for Plaintiff NuVasive, Inc.*

19 UNITED STATES DISTRICT COURT

20 SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION

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

Case No. 18-cv-00347-MDD-CAB
**PLAINTIFF NUVASIVE,
INC.’S SUPPLEMENTAL
OBJECTIONS AND
RESPONSES TO
DEFENDANTS’ FIRST SET OF
INTERROGATORIES (NOS. 1-
4, 8, 10, 11)**



- 1 • DHF-06-008 (re shims and XLIF kit components):
2 NUVA_ATEC0011053 – NUVA_ATEC0012429,
3 NUVA_ATEC0012466 – NUVA_ATEC0012541,
4 NUVA_ATEC0012598 – NUVA_ATEC0012617,
5 NUVA_ATEC0012621 – NUVA_ATEC0012839,
6 NUVA_ATEC0012936 – NUVA_ATEC0012952;
- 7 • DHF-06-018 (re dilators): NUVA_ATEC0014000 –
8 NUVA_ATEC0014446;
- 9 • DHF-08-012 (re shims and XLIF kit components):
10 NUVA_ATEC13829 – NUVA_ATEC0013999;
- 11 • DHF-09-020 (re access system): NUVA_ATEC0012953 –
12 NUVA_ATEC0013828;
- 13 • DHF-14-020 (re dilators): NUVA_ATEC0012927 –
14 NUVA_ATEC0012935.

15 Discovery is ongoing and NuVasive reserves its right to amend or
16 supplement its response to this interrogatory.

17 **INTERROGATORY NO. 3:**

18 For each asserted claim of the patents-in-suit, describe in detail the facts
19 and circumstances relating to the first written description, offer for sale, sale,
20 public disclosure, public use, or disclosure to any person other than a named
21 inventor of the claimed invention, including, without limitation, the identities of
22 the persons involved in each such event, the identities of the persons most
23 knowledgeable regarding each such event, the date on which each such event
24 occurred, and the identification of each document that reflects or relates to such
25 facts and circumstances.

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

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1 NuVasive incorporates by reference each of the General Objections.
2 NuVasive objects to this interrogatory on the grounds that it contains at least three
3 discrete subparts, is compound, and constitutes at least three interrogatories.
4 NuVasive objects to this interrogatory as vague and ambiguous with respect to the
5 term “the circumstances.” NuVasive objects to this interrogatory on the grounds
6 and to the extent it is overly broad, unduly burdensome, not proportional to the
7 needs of the case, and not relevant to any claim or defense in this case.
8 Specifically, NuVasive objects to the interrogatory to the extent it calls for
9 NuVasive to “describe in detail” the circumstances relating to the first descriptions,
10 disclosures and sales of the claimed inventions. NuVasive objects to this
11 interrogatory to the extent it seeks “Privileged Information.” NuVasive objects to
12 this interrogatory to the extent it calls for legal conclusions. NuVasive objects to this
13 interrogatory to the extent it attempts the shift the burden of proof regarding
14 invalidity to NuVasive. NuVasive objects to this interrogatory to the extent it seeks
15 information no longer in NuVasive’s possession, custody, or control.

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

20 Additionally, Alphatec has admitted that NuVasive’s “eXtreme Lateral
21 Interbody Fusion” product (or “XLIF”), which includes the MaXcess access
22 system and CoRoent XL implants, embodies the asserted claims of the patents-in-
23 suit. Doc. No. 48 at 16. Based on information available to NuVasive at this time,
24 NuVasive states that it launched aspects of XLIF in October 2003 at the North
25 American Spine Society (NASS) Annual Meeting, including its MaXcess access
26 system, and specifically MaXcess I. Persons involved in this this launch include
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1 Pat Miles, Eric Finley, and Scot Martinelli. In addition, MaXcess III launched on
2 September 12, 2006, and MaXcess III Solid launched on November 13, 2008.

3 In October 2004, at NASS, NuVasive launched the CoRoent XL implant
4 as part of XLIF. The persons involved in the launch of CoRoent XL are Matthew
5 Curran, Matthew Copp, Scot Martinelli, Patrick Miles, and David Ivanko.

6 In addition, pursuant to Local Patent Rule 3.2(b) and Fed. R. Civ. P. 33(d),
7 NuVasive further states that it will produce and has produced non-privileged
8 documents from which the information requested can be ascertained, including
9 documents bearing the following Bates numbers:

10 NUVA_ATEC0000001 – NUVA_ATEC0000290;

11 NUVA_ATEC0000544 – NUVA_ATEC0014446;

12 NUVA_ATEC0014504 – NUVA_ATEC0015487;

13 NUVA_ATEC0016164 – NUVA_ATEC0016948;

14 NUVA_ATEC0016949 – NUVA_ATEC0039458;

15 NUVA_ATEC0039459 – NUVA_ATEC0040421;

16 Discovery is ongoing and NuVasive reserves its right to amend or
17 supplement its response to this interrogatory.

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

19 In addition to its previously asserted General and Specific Objections,
20 NuVasive continues to object that this interrogatory is overly broad, unduly
21 burdensome, and not proportional to the needs of the case because it seeks a
22 “detailed” description of information spanning nearly two decades that is no longer
23 readily accessible to NuVasive due to the passage of time and relevant personnel
24 departing the company over the intervening 15-plus years. In light of this,
25 NuVasive maintains that its previous response and citation to documents pursuant
26 to Fed. R. Civ. P. 33(d) is proper at least because the burden of deriving the
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