

EXHIBIT 8

TO THE DECLARATION OF
BRIAN J. NISBET IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

**EXHIBIT D TO DR. YOUSSEF OPENING EXPERT REPORT
U.S. PATENT NO. 8,187,334 (Battalion)**

CLAIM	ACCUSED INSTRUMENTALITY
<p>[1A] A spinal fusion implant of non-bone construction positionable within an interbody space between a first vertebra and a second vertebra, said implant comprising:¹</p>	<p><u>Accused Instrumentality:</u> all versions of the Battalion™ Lateral Spacer having a length to two and half times the width of the Battalion™ Lateral Spacer².</p> <p>To the extent the preamble is limiting, the Battalion™ Lateral Spacer is a spinal fusion construction positionable within an interbody space between a first vertebra and a second vertebra.</p> <p>In particular, the Battalion™ Lateral Spacer, indicated for spinal fusion procedures, is a spinal fusion replacement and an intervertebral body fusion system. The Battalion™ Lateral Spacer comprises PEEK Optima LT1 with/without titanium coated endplates and tantalum markers. The Battalion™ Lateral Spacer is configured to be placed into an interbody space between a first and second vertebra for use with autogenic or allogenic bone graft and supplemental fixation.</p> <p>Alphatec’s corporate witness, Scott Robinson confirmed “[Alphatec] used PEEK for the Battalion™ implant.” Robinson Dep. Tr. at 33:1-3.</p> <p>Additionally, Alphatec has confirmed that “[t]here are not significant differences” between the Battalion™ and Transcend implants, and thus the Battalion implants practice this limitation for the reasons set forth in Exhibit E for the Transcend lateral implants. <i>See</i> Robinson Dep. Tr. at 89:12-19; Robinson Dep. Tr. at 65:17-22.</p>

¹ Claim 1 is not asserted, but claims that depend from claim 1 are asserted. Claim 1 is thus included here to provide context.

² NuVasive incorporates by reference the Declaration of Jim A. Youssef in Support of NuVasive’s Motion for Preliminary Injunction and all exhibits attached to the Declaration (Doc. Nos. 37-45 to 37-74), as well as the Reply Declaration of Jim A. Youssef in Support of NuVasive’s Motion for Preliminary Injunction and all exhibits attached to the reply declaration (Doc Nos. 77-56 to 77-99) and the Expert Report of Blake English, dated November 8, 2019, and all exhibits attached to the expert report.

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	<p>Additionally, Alphatec has confirmed that “[t]here are not significant differences” between lateral and Transcend implants, and thus the Battalion implants practice this limitation as the Transcend lateral implants. <i>See</i> Robinson Dep. Tr. at 89:12-19, 95:23-97:4; Aleali D also Exhibit E.</p>
CLAIM	ACCUSED INSTRUMENTALITY
<p>[18] The spinal fusion implant of claim 1, wherein said maximum lateral width of said implant is approximately 18 mm.</p>	<p>Accused Instrumentality: all versions of the Battalion™ Lateral Spacer having a width of approximately 18 mm.</p> <p>The Battalion™ Lateral Spacer is the spinal fusion implant of claim 1, wherein said maximum lateral width of said implant is approximately 18 mm.</p> <p>For example, at least two versions of the Battalion™ Lateral Spacer have a maximum lateral width of approximately 18 mm.</p> <div data-bbox="756 1234 1624 1516" style="border: 1px solid black; padding: 5px;"> <p>Battalion Lateral Spinal Spacer System - 00190376039466 Battalion Lateral Spacer, PEEK, 0°, 18 mm Wide, 16 x 60 mm Company Name: ALPHATEC SPINE, INC. Version or Model: 27024-0085-S Device IDs: • 00190376039466 (Primary) • Metal-polymer composite spinal fusion cage Device Sizes: • Length: 60 Millimeter • Width: 18 Millimeter • Height: 16 Millimeter</p> </div> <p align="center">[D.I. 1-15 (Ex. AM to Complaint) at 1 (annotated)]</p> <div data-bbox="773 1570 1624 1915" style="border: 1px solid black; padding: 5px;"> <p>Battalion Lateral Spinal Spacer System - 00190376040301 Battalion, LLIF Spacer, PEEK, 15 Deg, 18mm Wide, 14 x 50mm, Sterile Company Name: ALPHATEC SPINE, INC. Version or Model: 27024-0473-S Device IDs: • 00190376040301 (Primary) • Metal-polymer composite spinal fusion cage Device Sizes: • Width: 18 Millimeter • Height: 14 Millimeter • Length: 50 Millimeter</p> </div>

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[D.I. 37-68 (Ex. W to Decl. of Jim A. Youssef, M.D. in support of NuVasive Prelim. Inj. (FDA Access GUDID Database search results for “Battalion Lateral Spinal Spacer System 00190376040301”)) at 1 (ann

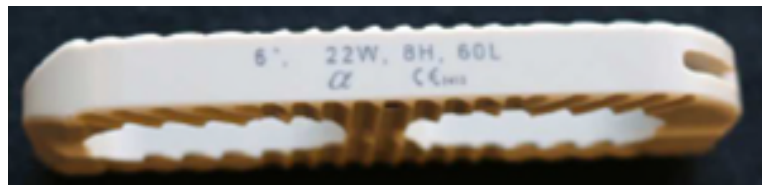


[NUVA_ATEC0000530 (depicting a width of 18mm, height of 8mm, and len

As another example, Alphatec offers a version of the Battalion™ Lateral Spacer that is approximately 18 mm.

Battalion Lateral Spinal Spacer System - 00190376040998	
Battalion Lateral Spacer, PEEK, 0°, 22 mm Wide, 14 x 60 mm	
Company Name: ALPHATEC SPINE, INC.	Version or Model: 27024-0713-S
Device IDs:	GMDN Terms:
• 00190376040998 (Primary)	• Metal-polymer composite spinal fusion cage
Device Sizes:	
• Height: 14 Millimeter	
• Width: 22 Millimeter	
• Length: 60 Millimeter	

[Ex. AM to Complaint at 1 (annotated)]



[NUVA_ATEC0000421 (depicting a width of 22mm, height of 8mm, and len

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IMPLANT TOTE I.D.

18mm Width - Parallel

Height	45mm Length	50mm Length	55mm Length	60mm Length	Lord
8mm	27024-0032-S	27024-0047-S	27024-0062-S	27024-0077-S	0°
10mm	27024-0034-S	27024-0049-S	27024-0064-S	27024-0079-S	0°
12mm	27024-0036-S	27024-0051-S	27024-0066-S	27024-0081-S	0°
14mm	—	27024-0053-S	—	—	0°

22mm Width - Parallel

Height	45mm Length	50mm Length	55mm Length	60mm Length	Lord
8mm	27024-0662-S	27024-0677-S	27024-0692-S	27024-0707-S	0°
10mm	27024-0664-S	27024-0679-S	27024-0694-S	27024-0709-S	0°
12mm	27024-0666-S	27024-0681-S	27024-0696-S	27024-0711-S	0°
14mm	—	27024-0683-S	—	—	0°

[ATEC_LLIF000612817 - ATEC_LLIF000612824 at 612819 (anno

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