

# EXHIBIT 2 (PART 1)

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

# FISH & RICHARDSON P.C.

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1859-1951

April 6, 2012

Attorney Docket No.: 13958-0099003/104US4

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Presented for filing is a new continuation patent application of:

Applicant: MATTHEW CURRAN AND MARK PETERSON

Title: SYSTEMS AND METHODS FOR SPINAL FUSION

Assignee:

Enclosed are the following papers, including those required to receive a filing date under 37 C.F.R. § 1.53(b):

	<u>Pages</u>
Specification	25
Claims	10
Abstract	1
Declaration	3
Drawing(s)	20

Enclosures:

- Application Data Sheet, 5 pages.
- New disclosure information, including:  
Information disclosure statement, 1 page.  
PTO-1449, 11 pages.  
References, 0 items.
- Statement under rule 3.73, 9 pages.

This application is continuation of United States Patent Application Serial Number 13/440,062 filed April 5, 2012, which is a continuation of United States Patent Application Serial Number 13/079,645 filed April 4, 2011, which is continuation of United States Patent Application Serial Number 11/093,409 filed March 29, 2005 (now U.S. Patent No. 7,918,891), which claims the benefit of the filing date under 35 USC 119(e) of United States Provisional Application entitled "Systems and Methods for Spinal Fusion," serial No. 60/557,536 filed March 29, 2004.

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Basic Filing Fee			\$380
Search Fee			\$620
Examination Fee			\$250
Total Claims 46	over 20	<b>26 x \$60</b>	\$1560
Independent Claims 2	over 3	<b>0 x \$250</b>	\$0
Fee for Multiple Dependent claims			\$0
Application size fee for each 50 pages over 100			
	No ( 25 +20)*.75) - 100)/50 = No0 x		\$0
Total Filing fee			\$2810

The filing fee in the amount of \$2810 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 13958-0099003.

If this application is found to be incomplete, or if a telephone conference would otherwise be helpful, please call the undersigned at (612) 335-5070.

Please direct all correspondence to the following:

**26191**

PTO Customer Number

Respectfully submitted,

/Michael T. Hawkins/

Michael T. Hawkins

Reg. No. 57,867

Enclosures

MTH/kmo

60763337.doc

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<b>Application Data Sheet 37 CFR 1.76</b>		Attorney Docket Number	13958-0099003
		Application Number	
Title of Invention	Systems and Methods for Spinal Fusion		
The application data sheet is part of the provisional or nonprovisional application for which it is being submitted. The following form contains the bibliographic data arranged in a format specified by the United States Patent and Trademark Office as outlined in 37 CFR 1.76. This document may be completed electronically and submitted to the Office in electronic format using the Electronic Filing System (EFS) or the document may be printed and included in a paper filed application.			

### Secrecy Order 37 CFR 5.2

Portions or all of the application associated with this Application Data Sheet may fall under a Secrecy Order pursuant to 37 CFR 5.2 (Paper filers only. Applications that fall under Secrecy Order may not be filed electronically.)

### Applicant Information:

<b>Applicant 1</b>					<input type="button" value="Remove"/>
<b>Applicant Authority</b>		<input checked="" type="radio"/> Inventor		<input type="radio"/> Legal Representative under 35 U.S.C. 117	
				<input type="radio"/> Party of Interest under 35 U.S.C. 118	
<b>Prefix</b>	<b>Given Name</b>	<b>Middle Name</b>		<b>Family Name</b>	<b>Suffix</b>
	Matthew			Curran	
<b>Residence Information (Select One)</b> <input checked="" type="radio"/> US Residency <input type="radio"/> Non US Residency <input type="radio"/> Active US Military Service					
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<b>Postal Code</b>	92009	<b>Country i</b>	US		
<b>Applicant 2</b>					<input type="button" value="Remove"/>
<b>Applicant Authority</b>		<input checked="" type="radio"/> Inventor		<input type="radio"/> Legal Representative under 35 U.S.C. 117	
				<input type="radio"/> Party of Interest under 35 U.S.C. 118	
<b>Prefix</b>	<b>Given Name</b>	<b>Middle Name</b>		<b>Family Name</b>	<b>Suffix</b>
	Mark			Peterson	
<b>Residence Information (Select One)</b> <input checked="" type="radio"/> US Residency <input type="radio"/> Non US Residency <input type="radio"/> Active US Military Service					
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<b>Citizenship under 37 CFR 1.41(b) i</b>		US			
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<b>Postal Code</b>	97504	<b>Country i</b>	US		
All Inventors Must Be Listed - Additional Inventor Information blocks may be generated within this form by selecting the <b>Add</b> button.					<input type="button" value="Add"/>

### Correspondence Information:

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 For further information see 37 CFR 1.33(a).

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<b>Application Data Sheet 37 CFR 1.76</b>		Attorney Docket Number	13958-0099003	
		Application Number		
Title of Invention	Systems and Methods for Spinal Fusion			
Customer Number	26191			
Email Address		<input type="button" value="Add Email"/>	<input type="button" value="Remove Email"/>	

**Application Information:**

Title of the Invention	Systems and Methods for Spinal Fusion			
Attorney Docket Number	13958-0099003	Small Entity Status Claimed	<input type="checkbox"/>	
Application Type	Nonprovisional			
Subject Matter	Utility			
Suggested Class (if any)		Sub Class (if any)		
Suggested Technology Center (if any)				
Total Number of Drawing Sheets (if any)	20	Suggested Figure for Publication (if any)	2	

**Publication Information:**

<input type="checkbox"/> Request Early Publication (Fee required at time of Request 37 CFR 1.219)
<input type="checkbox"/> <b>Request Not to Publish.</b> I hereby request that the attached application not be published under 35 U.S.C. 122(b) and certify that the invention disclosed in the attached application <b>has not and will not</b> be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing.

**Representative Information:**

Representative information should be provided for all practitioners having a power of attorney in the application. Providing this information in the Application Data Sheet does not constitute a power of attorney in the application (see 37 CFR 1.32). Enter either Customer Number or complete the Representative Name section below. If both sections are completed the Customer Number will be used for the Representative Information during processing.

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Customer Number	26191		

**Domestic Benefit/National Stage Information:**

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, or 365(c) or indicate National Stage entry from a PCT application. Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78(a)(2) or CFR 1.78(a)(4), and need not otherwise be made part of the specification.

Prior Application Status		<input type="button" value="Remove"/>
Application Number	Continuity Type	Prior Application Number Filing Date (YYYY-MM-DD)
	Continuation of	13/440,062 2012-04-05
Prior Application Status		<input type="button" value="Remove"/>
Application Number	Continuity Type	Prior Application Number Filing Date (YYYY-MM-DD)

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