

# EXHIBIT 22

TO THE DECLARATION OF BRIAN J.  
NISBET IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO NUVASIVE'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
AND MOTION TO EXCLUDE

**Confidential – Outside Counsel Only**

1 NIMALKA R. WICKRAMASEKERA (SBN: 268518)  
nwickramasekera@winston.com  
2 DAVID P. DALKE (SBN: 218161)  
ddalke@winston.com  
3 WINSTON & STRAWN LLP  
333 S. Grand Avenue  
4 Los Angeles, CA 90071-1543  
Telephone: (213) 615-1700  
5 Facsimile: (213) 615-1750

6 GEORGE C. LOMBARDI (*Pro Hac Vice*)  
glombardi@winston.com  
7 BRIAN J. NISBET (*Pro Hac Vice*)  
bnisbet@winston.com  
8 SARANYA RAGHAVAN (*Pro Hac Vice*)  
sraghavan@winston.com  
9 WINSTON & STRAWN LLP  
35 West Wacker Drive  
10 Chicago, IL 60601-9703  
Telephone: (312) 558-5600  
11 Facsimile: (312) 558-5700

12 CORINNE STONE HOCKMAN (*Pro Hac Vice*)  
chockman@winston.com  
13 WINSTON & STRAWN LLP  
800 Capitol Street, Suite 2400  
14 Houston, TX 77002-2925  
Telephone: (713) 651-2600  
15 Facsimile: (713) 651-2700

16 Attorneys for Defendants  
ALPHATEC HOLDINGS, INC. and ALPHATEC SPINE, INC.

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION**

19 NUVASIVE, INC., a Delaware  
20 corporation,

21 Plaintiff,

22 v.

23 ALPHATEC HOLDINGS, INC., a  
Delaware corporation and  
24 ALPHATEC SPINE, INC., a  
California corporation,

25 Defendants.  
26  
27  
28

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

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

[Magistrate: Hon. Mitchell D. Dembin]

**DEFENDANTS’ SUPPLEMENTAL  
RESPONSES TO PLAINTIFF  
NUVASIVE, INC.’S INTERROGATORIS  
NOS. 2, 7, 11, AND 17**

**Confidential – Outside Counsel Only**

Complaint Filed: February 13, 2018

1 Squadron retractor, Alphatec’s LLIF product offerings, LLIF interbody, and  
2 information stating that Alphatec planned to develop and release a “next generation”  
3 LLIF interbody in 2018. *E.g.* NUVA\_ATEC0318805 at 0318823–24, 0318826,  
4 0318829; NUVA\_ATEC0318771; NUVA\_ATEC0318760; NUVA\_ATEC0319014.  
5 NuVasive did not tell Alphatec that it believed Alphatec’s implant offerings might  
6 infringe the ’156 patent and the ’334 patent. Alphatec relied on NuVasive’s silence  
7 throughout that time period when it expended significant time and resources to launch  
8 its lateral products.

9 NuVasive is also judicially estopped from taking positions that are contrary to  
10 prior assertions concerning its damages claims, including whether posterior fixation  
11 products are eligible for lost profits damages or irreparable harm.

12 **INTERROGATORY NO. 17:**

13 Separately and for each and every Patents-in-Suit, identify and describe in detail  
14 any past, present or prospective alternative design or alternative method that You  
15 contend to be an acceptable, non-infringing alternative to the Accused Products. Such  
16 identification and description shall include an explanation of whether such alternative  
17 design actually exists and is currently or has been used by Alphatec or others, a detailed  
18 explanation of all steps Alphatec has taken to develop any alternative design (including,  
19 but not limited to the timeline for such development, all costs and cost estimates related  
20 to such development, and the people involved in such development), an explanation of  
21 the availability of the alleged non-infringing alternative, and a detailed explanation of  
22 whether and the extent to which Alphatec has taken any steps to implement any  
23 alternative design, and to the extent Alphatec has not implemented a non-infringing  
24 alternative described in response to this Interrogatory a detailed explanation of the  
25 reasons Alphatec decided not to implement such non-infringing alternatives, including  
26 an identification of all persons with knowledge of such facts and all documents relating  
27 to the foregoing.

Unitary PEEK Implant.

(See, e.g., <http://www.thespinemarketgroup.com/wp-content/uploads/2014/02/OsteoMed-primaLIF-Surgical.pdf>)

- Astura Medical implants, including without limitation the Sirion Lateral Lumbar Interbody Spacers.

(See, e.g., <https://asturamedical.com/product/sirion-llif-system/>)

- Life Spine implants, including without limitation the PLATEAU®-X spacer system.

(See, e.g., <https://lifespine.com/plateau-x/>)

- AltusSpine, including without limitation the Imola Lateral IBF System;

(See, e.g., <http://www.thespinemarketgroup.com/wp-content/uploads/2013/06/Imola-Lateral-IBF-System-Surgical-Technique.pdf>)

- ChoiceSpine implants, including without limitation the VEO® Lateral System.

(See, e.g., <https://choicespine.com/products/lateral-system/veo/>)

**THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:**

Subject to and without waiving the foregoing General and Specific Objections, Defendants respond: Alphatec’s LLIF Battalion Lateral Spacer and Transcend™ Implant do not infringe any valid claim of the ’156 and ’334 patents. In addition, the following products constitute non-infringing alternatives:

- Alphatec’s IdentTi™ implant;  
(See, e.g., <https://atecspine.com/lif-identiti-lif/>)
- U.S. Patent No. 5,192,327 (Brantigan);
- U.S. Patent No. 5,860,973 (Michelson);
- U.S. Patent Application No. 2002/0165550 (Frey);
- U.S. Patent App. Pub. No. 2003/0028249 (Baccelli);
- J.L. Berry et al., *A Morphometric Study of Human Lumbar and Selected*

1            *Thoracic Vertebrae*, Spine, Vol. 12, No. 4, 363 (1987);

- 2            • Medtronic implants, including without limitation CLYDESDALE®  
3            Spinal System;

4            (See, e.g., [https://www.medtronic.com/us-en/healthcare-](https://www.medtronic.com/us-en/healthcare-professionals/therapies-procedures/spinal-orthopaedic/olif/indications-safety-warnings/clydesdale-spinal-system.html)  
5            [professionals/therapies-procedures/spinal-orthopaedic/olif/indications-](https://www.medtronic.com/us-en/healthcare-professionals/therapies-procedures/spinal-orthopaedic/olif/indications-safety-warnings/clydesdale-spinal-system.html)  
6            [safety-warnings/clydesdale-spinal-system.html](https://www.medtronic.com/us-en/healthcare-professionals/therapies-procedures/spinal-orthopaedic/olif/indications-safety-warnings/clydesdale-spinal-system.html);

7            [http://www.thespinegroup.com/wp-](http://www.thespinegroup.com/wp-content/uploads/2014/09/Direct-Lateral-Surgical-Technique.pdf)  
8            [content/uploads/2014/09/Direct-Lateral-Surgical-Technique.pdf](http://www.thespinegroup.com/wp-content/uploads/2014/09/Direct-Lateral-Surgical-Technique.pdf))

- 9            • DePuy-Synthes implants, including without limitation the Oracle Cage,  
10            PROTI 360™ Ti Integrated Technology, CONCORDE Interbody System  
11            and Cougar LS Lateral Cage System;

12            (See, e.g., [https://www.jnjmedicaldevices.com/en-US/product/proti-](https://www.jnjmedicaldevices.com/en-US/product/proti-360degtm-ti-integrated-technology)  
13            [360degtm-ti-integrated-technology](https://www.jnjmedicaldevices.com/en-US/product/proti-360degtm-ti-integrated-technology);

14            [http://www.spinaldeformity.com/Educational/Surgical%20Technique%20](http://www.spinaldeformity.com/Educational/Surgical%20Technique%20Guides/Depuy/MIS%20Lateral%20Platform%20STG.pdf)  
15            [Guides/Depuy/MIS%20Lateral%20Platform%20STG.pdf](http://www.spinaldeformity.com/Educational/Surgical%20Technique%20Guides/Depuy/MIS%20Lateral%20Platform%20STG.pdf);

16            [http://synthes.vo.llnwd.net/o16/LLNWMB8/INT%20Mobile/Synthes%20](http://synthes.vo.llnwd.net/o16/LLNWMB8/INT%20Mobile/Synthes%20International/Product%20Support%20Material/legacy_Synthes_PDF/098052-180831_LR.pdf)  
17            [International/Product%20Support%20Material/legacy\\_Synthes\\_PDF/09](http://synthes.vo.llnwd.net/o16/LLNWMB8/INT%20Mobile/Synthes%20International/Product%20Support%20Material/legacy_Synthes_PDF/098052-180831_LR.pdf)  
18            [8052-180831\\_LR.pdf](http://synthes.vo.llnwd.net/o16/LLNWMB8/INT%20Mobile/Synthes%20International/Product%20Support%20Material/legacy_Synthes_PDF/098052-180831_LR.pdf);

19            [http://synthes.vo.llnwd.net/o16/LLNWMB8/US%20Mobile/Synthes%20](http://synthes.vo.llnwd.net/o16/LLNWMB8/US%20Mobile/Synthes%20North%20America/Product%20Support%20Materials/Catalogs/DSUSSP06140231_Spine_MIS_Lateral_Platform_Product_Catalog.pdf)  
20            [North%20America/Product%20Support%20Materials/Catalogs/DSUSSP](http://synthes.vo.llnwd.net/o16/LLNWMB8/US%20Mobile/Synthes%20North%20America/Product%20Support%20Materials/Catalogs/DSUSSP06140231_Spine_MIS_Lateral_Platform_Product_Catalog.pdf)  
21            [N06140231\\_Spine\\_MIS\\_Lateral\\_Platform\\_Product\\_Catalog.pdf](http://synthes.vo.llnwd.net/o16/LLNWMB8/US%20Mobile/Synthes%20North%20America/Product%20Support%20Materials/Catalogs/DSUSSP06140231_Spine_MIS_Lateral_Platform_Product_Catalog.pdf))

- 22            • Globus Medical implants, including without limitation the  
23            TransContinental® Spacer System and Caliber-L®;

24            (See, e.g., [https://www.globusmedical.com/products/transcontinental-](https://www.globusmedical.com/products/transcontinental-lateral-lumbar-interbody-spacer/)  
25            [lateral-lumbar-interbody-spacer/](https://www.globusmedical.com/products/transcontinental-lateral-lumbar-interbody-spacer/);

26            <https://www.globusmedical.com/expandabletechnology/caliber-l/>)

- 27            • Stryker Spine implants, including without limitation Cascadia;

28            (See, e.g., <https://www.stryker.com/us/en/portfolios/orthopaedics/spine-->

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.