

EXHIBIT 28

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

Scott Robinson Highly Confidential - Attorneys' Eyes Only
October 29, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

NUVASIVE, INC., a Delaware
corporation,

Plaintiff,

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

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

Defendants.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF SCOTT ROBINSON

ALPHATEC HOLDINGS, INC. RULE 30(b)(6) WITNESS

SAN DIEGO, CALIFORNIA

OCTOBER 29, 2019

Reported By:
PATRICIA Y. SCHULER
CSR No. 11949

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<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF CALIFORNIA</p> <p>3 SAN DIEGO DIVISION</p> <p>4</p> <p>5 NUVASIVE, INC., a Delaware</p> <p>6 corporation,</p> <p>7</p> <p>8 Plaintiff,</p> <p>9</p> <p>10 v. Case No. 3:18-CV-00347</p> <p>11 -CAB-MDD</p> <p>12</p> <p>13 ALPHATEC HOLDINGS, INC., a</p> <p>14 Delaware corporation and</p> <p>15 ALPHATEC SPINE, INC., a</p> <p>16 California corporation,</p> <p>17 Defendants.</p> <p>18</p> <hr/> <p>19 Videotaped deposition of SCOTT ROBINSON, taken</p> <p>20 on behalf of the Defendants at 12235 El Camino Real,</p> <p>21 Suite 100, San Diego, California, at 9:18 a.m. and</p> <p>22 ending at 6:27 p.m., on October 29, 2019, before</p> <p>23 PATRICIA Y. SCHULER, Certified Shorthand Reporter</p> <p>24 No. 11949.</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 I-N-D-E-X</p> <p>2 WITNESS: EXAMINATION</p> <p>3 SCOTT ROBINSON PAGE</p> <p>4 MS. DEVINE 7</p> <p>5</p> <p>6</p> <p>7 E-X-H-I-B-I-T-S</p> <p>8 PLAINTIFF'S PAGE</p> <p>9 Exhibit 1 Defendants' Responses and 15</p> <p>10 Objections to Nuvasive Inc.'s</p> <p>11 Notice of Deposition of Alphatec</p> <p>12 Pursuant to Rule 30(b) (6)</p> <p>13</p> <p>14 Exhibit 2 Nuvasive, Inc.'s Notice of 22</p> <p>15 Deposition of Alphatec Holdings,</p> <p>16 Inc. and Alphatec Spine, Inc.</p> <p>17 Pursuant to Rule 30(b) (6)</p> <p>18</p> <p>19 Exhibit 3 Nuvasive's Notice of Deposition 25</p> <p>20 of Scott Robinson</p> <p>21</p> <p>22 Exhibit 4 LinkedIn profile for Scott 50</p> <p>23 Robinson</p> <p>24 Exhibit 5 Course Program and Travel 83</p> <p>25 Itinerary, Bates stamped</p> <p>ATEC_LLIF000626779</p> <p>18 Exhibit 6 Conduct Internal Training 6.4.9, 91</p> <p>19 Bates stamped ATEC_LLIF000002354</p> <p>20 through 2397</p> <p>21 Exhibit 7 Surgical Technique Guide, Bates 98</p> <p>22 stamped ABOU003617 through 3640</p> <p>23</p> <p>24 Exhibit 8 Document Bates stamped NUVA_ATEC 182</p> <p>25 001447 to 0014475</p> <p>26 Exhibit 9 Document Bates stamped ATEC_LLIF 207</p> <p>27 00004548 to 4561</p> <p>28</p> <p>29</p> <p>30</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 FOR PLAINTIFF:</p> <p>3 WILSON SONSINI GOODRICH & ROSATI, P.C.</p> <p>4 BY: WENDY L. DEVINE, ESQ.</p> <p>5 BY: CHRISTINA DASHE, ESQ.</p> <p>6 BY: PAUL D. TRIPOD, II, ESQ.</p> <p>7 One Market Plaza, Spear Tower</p> <p>8 Suite 3300</p> <p>9 San Francisco, California 94105</p> <p>10 wdevine@wsgr.com</p> <p>11 FOR DEFENDANTS:</p> <p>12 WINSTON STRAWN LLP</p> <p>13 BY: NIMALKA R. WICKRAMASEKERA, ESQ.</p> <p>14 333 South Grand Avenue, Suite 3800</p> <p>15 Los Angeles, California 90071-1543</p> <p>16 nwickramasekera@winston.com</p> <p>17</p> <p>18 Also Present:</p> <p>19 Tyson Marshall</p> <p>20 Videographer:</p> <p>21 Craig Ellingson</p> <p>22 Collette Stark</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 E-X-H-I-B-I-T-S (CONTINUED)</p> <p>2 PLAINTIFF'S PAGE</p> <p>3 Exhibit 10 Document Bates stamped 212</p> <p>4 ATEC_LLIF000003809 through 3818</p> <p>5</p> <p>6 Exhibit 11 Document Bates stamped ATEC LLIF 221</p> <p>7 0003829 to 3835</p> <p>8 Exhibit 12 Document Bates stamped ATEC_LLIF 228</p> <p>9 000137018 to 137039</p> <p>10</p> <p>11 Exhibit 13 Document Bates stamped ATEC_LLIF 258</p> <p>12 000745897 to 745926</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 SAN DIEGO, CALIFORNIA; TUESDAY, OCTOBER 29, 2019
 2 9:18 a.m.
 3 THE VIDEOGRAPHER: We are on the record
 4 at 9:18 a.m. on October 29, 2019. Audio and video
 5 recording will continue to take place until all
 6 parties agree to go off the record. Please note
 7 that microphones are sensitive and may pick up
 8 whispering and private conversations.
 9 This is the video-recorded deposition of
 10 Scott Robinson taken by counsel for the plaintiff
 11 in the matter of Nuvasive, Inc., a Delaware
 12 corporation versus Alphatec Holdings, et al., filed
 13 in the United States District Court, Southern
 14 District of California, San Diego division.
 15 This deposition is being held at Wilson,
 16 Sonsini, Goodrich & Rosati, located at 12235 El
 17 Camino Real, San Diego, California 92130. My name
 18 is Craig Ellingson. I'm the videographer on behalf
 19 of U.S. Legal Support, located at 1230 Columbia
 20 Street, Suite 400, San Diego, California 92101.
 21 The court reporter is Patricia Schuler,
 22 on behalf of U.S. Legal Support. I am not related
 23 to any party in this action nor am I financially
 24 interested in the outcome.
 25 Counsel will state their appearances for

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1 the record, after which the court reporter will
 2 swear in the witness.
 3 MS. DEVINE: Wendy Devine from Wilson,
 4 Sonsini, Goodrich & Rosati on behalf of Nuvasive,
 5 Inc. With me are my co-counsel Christina Dashe and
 6 Paul Tripod of the same firm.
 7 MS. WICKRAMASEKERA: Nimalka
 8 Wickramasekera from Winston Strawn on behalf of the
 9 witness, the defendants. And with me is Tyson
 10 Marshall, vice president and associate general
 11 counsel of Alphatec.
 12
 13 SCOTT ROBINSON,
 14 having been administered an oath, was examined and
 15 testified as follows:
 16
 17 EXAMINATION
 18 BY MS. DEVINE:
 19 Q. Good morning, Mr. Robinson.
 20 A. Hello.
 21 Q. Would you please state and spell your
 22 name for the record.
 23 A. Scott Robinson. S-c-o-t-t,
 24 R-o-b-i-n-s-o-n.
 25 Q. And what is your current address?

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1 A. 712 Apple Ridge, Encinitas, California
 2 92024.
 3 Q. Who is your current employer?
 4 A. Alphatec Spine.
 5 Q. How long have you been employed there?
 6 A. Since March of 2010; going on 10 years.
 7 Q. Mr. Robinson, have you ever had your
 8 deposition taken before?
 9 A. No. This is the first.
 10 Q. Okay. So I am just going to go over a
 11 few ground rules so we're on the same page.
 12 Do you understand when I ask you a
 13 question, you need to give me a verbal answer?
 14 A. Yes.
 15 Q. If you don't understand my question,
 16 would you please let me know?
 17 A. Yes.
 18 Q. And if you do answer my question, do you
 19 understand that I am going to take that as meaning
 20 that you understood the question that I was asking?
 21 A. Yes.
 22 Q. Do you understand that you are providing
 23 testimony under oath today?
 24 A. I understand I am presenting testimony on
 25 nonprivileged information in the topics outlined.

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1 Q. Do you understand that you are under oath
 2 today as you testify, as you would be if you were
 3 testifying in a court of law?
 4 A. Yes.
 5 Q. And do you understand that I am entitled
 6 to complete and truthful answers to the best of
 7 your recollection?
 8 A. Yes.
 9 Q. Is there any reason, Mr. Robinson, that
 10 you cannot give your most truthful, accurate and
 11 complete testimony today?
 12 A. No.
 13 Q. Could you please tell me, Mr. Robinson,
 14 how you prepared for your deposition?
 15 A. There were a lot of documents. The
 16 complaint was reviewed. There were internal and
 17 external marketing documents that were produced by
 18 Alphatec. There was a design history file. There
 19 were, you know, as many documents related to this
 20 case as were made available.
 21 Q. Did you choose any of the documents that
 22 you reviewed to prepare for your deposition?
 23 A. I am not sure I understand the question.
 24 Q. Sure. So when you reviewed documents to
 25 prepare for your deposition, did you go out and

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1 at our change control history to understand the
2 nature and number of changes.
3 BY MS. DEVINE:
4 Q. Okay. Let's turn the page to the one
5 that is Bates labeled 1448.
6 Do you see the preface section here?
7 A. I do.
8 Q. What is the purpose of the preface
9 section?
10 A. I would imagine, just like a preface of a
11 book, it describes in very general terms what is --
12 what is contained within the system.
13 Q. Do you see in the first paragraph -- one,
14 two, three lines down -- there is a sentence that
15 begins "The system"?
16 A. Um-hmm.
17 Q. And it reads, "The system features a
18 three-bladed retractor system combined with broad
19 disk prep and implant offerings."
20 Did I read that correctly?
21 A. I believe so, yes.
22 Q. Would you agree that the Battalion
23 features a three-blade retractor system?
24 A. A three-blade retractor system is part of
25 the Battalion.

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1 Q. And does Alphatec consider the fact that
2 it is a three-bladed retractor to be a key feature
3 of the Battalion?
4 MS. WICKRAMASEKERA: Objection. Outside
5 the scope. Vague.
6 THE WITNESS: I think it is just -- it's
7 a description. It is a -- it's just a description
8 of one instrument within that system.
9 BY MS. DEVINE:
10 Q. Did Alphatec consider making the
11 Battalion Squadron retractor two-bladed?
12 A. There were talks about a two-bladed
13 system, three-bladed system, and four-bladed
14 system.
15 Q. Why did Alphatec choose a three-bladed
16 system?
17 A. I mean, there were a lot of three-blade
18 systems on the market. The surgeons who were part
19 of our design team offered the most feedback on --
20 well, they offered feedback on their experience,
21 and a lot of their experience was based off of a
22 three-blade system, so they seemed -- you know,
23 they had the most commentary on a three-bladed
24 system.
25 Q. If we go to the next page that's Bates

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1 labeled 14449, do you see Section 1, Preoperative
2 Planning?
3 A. I do.
4 Q. And that section reads, "The Squadron
5 Retractor Lateral Access System has been designed
6 to allow for the use of neuromonitoring based on
7 the surgeon's discretion, and may be used with many
8 commercially available neuromonitoring systems."
9 Did I read that correctly?
10 A. I believe so, yes.
11 Q. Is that a truthful and accurate
12 statement?
13 MS. WICKRAMASEKERA: Outside the scope.
14 THE WITNESS: I believe it's a truthful
15 and accurate statement, yes.
16 BY MS. DEVINE:
17 Q. And just generally to the best your
18 knowledge, are there any statements in Exhibit 8
19 that are not truthful and accurate?
20 A. Without reading through it verbatim, I
21 don't remember it word for word, I think that I
22 should generally be in agreement with everything
23 that is stated in the document.
24 Q. Can you turn to the page that's Bates
25 labeled 14450, and it goes on to the next page,

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1 14451. There's a discussion of retro peritoneal
2 access.
3 Do you see that?
4 A. Yes.
5 Q. Is this consistent with what we discussed
6 earlier with the surgeon using his or her finger to
7 navigate the muscles and other tissue down to the
8 surface of the psoas?
9 A. I believe so, yes.
10 Q. And if you look over on Page 14451, there
11 is a blowup of the dilator.
12 Do you see that?
13 A. Yes.
14 Q. And do you see it states, "Black lines
15 and silver triangle indicate orientation"?
16 A. Um-hmm.
17 Q. And is that consistent with what we
18 discussed earlier about the triangles and lines on
19 Alphatec's dilators?
20 MS. WICKRAMASEKERA: Objection. Vague.
21 THE WITNESS: I believe it is, yes.
22 BY MS. DEVINE:
23 Q. If you go to the next page, 14452, there
24 is a section on traversing the psoas that discusses
25 advancing -- strike that.

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