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14 Attorneys for Defendants  
 15 ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.

16 **UNITED STATES DISTRICT COURT**  
 17 **SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION**

18 NUVASIVE, INC., a Delaware  
 19 corporation,

20 Plaintiff,

21 v.

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

25 Defendants.

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

**DEFENDANTS’ FINAL DISCLOSURE  
 OF INVALIDITY  
 REFERENCES/COMBINATIONS TO  
 BE ASSERTED AT TRIAL**

**Judge:** Hon. Cathy Ann Bencivengo  
**Courtroom:** 15A  
**Trial Date:** December 8, 2021

1 In accordance with the Court’s Order Setting Pretrial and Trial Dates (Doc. No.  
 2 335) issued on September 7, 2021, Defendants Alphatec Holdings, Inc. and Alphatec  
 3 Spine, Inc. (collectively, “Alphatec”) hereby make the following final disclosure of  
 4 invalidity combinations and references to be asserted at trial against Plaintiff Nu Vasive,  
 5 Inc. (“Nu Vasive”):

Patent No.	Claim	Obviousness Combinations <sup>1</sup>
U.S. Patent No. 7,819,801	1	<ul style="list-style-type: none"> <li>• U.S. Patent No. 6,945,933 (“Branch”) in view of U.S. Patent No. 6,174,311 (“Branch ’311”)</li> <li>• Branch in view of Branch ’311 further in view of W.A. Friedman and S.L. Kanter, <i>The lateral percutaneous approach to discectomy</i>, Int’l Radiology in Bone and Joint 149 (1988) (“Friedman)</li> <li>• Branch in view of [Branch ’311 and U.S. Patent No. 5,928,139 (“Koros ’139”)] further in view of [European Patent No. 0951868 (“Büttner-Janž”) and U.S. Patent No. 5,681,265 (“Maeda”)] further in view of Friedman</li> </ul>
U.S. Patent No. 7,819,801	2	<ul style="list-style-type: none"> <li>• The combinations disclosed for claim 1</li> </ul>

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 28 <sup>1</sup> Alphatec reserves the right to rely on fewer references to the extent Nu Vasive does not dispute that certain limitations are disclosed in the references identified herein.

1 2 3 4 5 6 7 8	U.S. Patent No. 7,819,801	15	<ul style="list-style-type: none"><li>• Branch in view of Branch '311 further in view of Friedman</li><li>• Branch in view of [Branch '311 and Koros '139] further in view of [Büttner-Janz and Maeda] further in view of Friedman further in view of [International Patent Publication No. WO 01/37728 ("Kelleher") and International Patent Publication No. WO 03/005887 ("Blewett")]</li></ul>
9 10	U.S. Patent No. 7,819,801	16	<ul style="list-style-type: none"><li>• The combinations disclosed for claim 15</li></ul>
11 12 13 14 15 16 17	U.S. Patent No. 7,819,801	26	<ul style="list-style-type: none"><li>• Branch in view of Branch '311 further in view of U.S. Patent No. 6,575,899 ("Foley '899")</li><li>• Branch in view of Branch '311 further in view of Foley '899 further in view of Friedman</li><li>• Branch in view of [Branch '311 and Koros '139 and Foley '899] further in view of [Büttner-Janz and Maeda] further in view of Friedman</li></ul>

Patent No.	Claim	Obviousness Combinations <sup>2</sup>
U.S. Patent No. 8,439,832	1	<ul style="list-style-type: none"> <li>• Branch in view of Blewett</li> <li>• Branch in view of Kelleher</li> <li>• Branch in view of [Friedman and Blewett]</li> <li>• Branch in view of [Friedman and Kelleher]</li> <li>• Branch in view of [Friedman and Kelleher] further in view of [Büttner-Janz and Maeda]</li> <li>• Branch in view of [Friedman and Kelleher and Blewett] further in view of [Büttner-Janz and Maeda]</li> </ul>
U.S. Patent No. 8,439,832	3	<ul style="list-style-type: none"> <li>• The combinations disclosed for claim 1</li> </ul>
U.S. Patent No. 8,439,832	9	<ul style="list-style-type: none"> <li>• The combinations disclosed for claim 1</li> <li>• The combinations disclosed for claim 1, further in view of Koros '139</li> </ul>
U.S. Patent No. 8,439,832	10	<ul style="list-style-type: none"> <li>• The combinations disclosed for claim 1, further in view of Koros '139</li> <li>• The combinations disclosed for claim 1, further in view of Branch '311</li> </ul>

<sup>2</sup> Alphatec reserves the right to rely on fewer references to the extent Nu Vasive does not dispute that certain limitations are disclosed in the references identified herein.

Patent No.	Claim	Obviousness Combinations <sup>3</sup>
U.S. Patent No. 9,974,531	1	<ul style="list-style-type: none"> <li>• Branch</li> <li>• Branch in view of [Büttner-Janz and Maeda] and Friedman</li> <li>• Branch in view of U.S. Patent No. 6,074,343 (“Nathanson”)</li> <li>• Branch in view of Nathanson further in view of [Büttner-Janz and Maeda] and Friedman</li> </ul>
U.S. Patent No. 9,974,531	39	<ul style="list-style-type: none"> <li>• The combinations disclosed for claim 1</li> </ul>

In addition, Alphatec reserves the right to present testimony about the state of the art at the relevant time.

In making this disclosure, Alphatec reserves all rights it may have to assert unelected combinations and references in this action if permitted by the Court, or in another action against NuVasive or any other party.

Dated: October 8, 2021

WINSTON & STRAWN LLP

By: /s/ Nimalka R. Wickramasekera  
NIMALKA R. WICKRAMASEKERA

Attorneys for Defendants  
ALPHATEC HOLDINGS, INC. AND  
ALPHATEC SPINE, INC.

<sup>3</sup> Alphatec reserves the right to rely on fewer references to the extent NuVasive does not dispute that certain limitations are disclosed in the references identified herein.

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