

EXHIBIT 11
TO TRENT TANNER DECLARATION ISO
NUVASIVE'S COMBINED MOTIONS IN LIMINE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

NUVASIVE, INC., a Delaware)
corporation,)
)
Plaintiff,)

vs.) Case No. 3:18-CV-00347
) CAB-MDD

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

Veritext Legal Solutions

Page 2	Page 4
<p>1 The Zoom video deposition of RYAN DONAHOE,</p> <p>2</p> <p>3</p> <p>4</p> <p>5 taken before Richard Derrick Ehrlich, Registered</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Merit Reporter, Certified Realtime Reporter, taken</p> <p>10</p> <p>11</p> <p>12</p> <p>13 pursuant to the Federal Rules of Civil Procedure,</p> <p>14</p> <p>15</p> <p>16</p> <p>17 commencing at 9:00 a.m., on the 6th day of November,</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 I N D E X</p> <p>2 Page</p> <p>3 Exam by Nimalka Wickramasekera 7</p> <p>4 Exam by Paul Tripodi 334</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 Page</p> <p>8 Exhibit No. 1 - 9</p> <p>9 Defendants' Second Notice of Deposition to</p> <p>10 NuVasive, Inc., Pursuant to Rule 30(b)(6)</p> <p>11</p> <p>12 Exhibit No. 2 - 9</p> <p>13 Defendants' Notice of Taking Remote Virtual</p> <p>14 Deposition of Ryan Donahoe</p> <p>15</p> <p>16 Exhibit No. 3 - 26</p> <p>17 United States Patent '334 B2</p> <p>18 Exhibit No. 4 - 26</p> <p>19 United States Patent '156 B2</p> <p>20</p> <p>21 Exhibit No. 5 - 142</p> <p>22 April 26, 2003 letter from NuVasive to the FDA</p> <p>23 Exhibit No. 6 - 156</p> <p>24 Appendix IV, Predicate Device Information</p> <p>25</p> <p>26 Exhibit No. 7 - 166</p> <p>27 Section I, Premarket Submission Cover Sheet</p> <p>28 Exhibit No. 8 - 168</p> <p>29 510(k) Premarket Notification</p> <p>30</p> <p>31 Exhibit No. 9 - 187</p> <p>32 Interoffice Memo, November 10, 2003</p> <p>33 Exhibit No. 10 - 191</p> <p>34 "Take Your Pick" Radiolucent, Configurable</p> <p>35 Fusion Confirmation</p> <p>36 Exhibit No. 11 - Vertebral Spacer - PR 192</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S</p> <p>2 On behalf of the Plaintiff:</p> <p>3 Paul D. Tripodi</p> <p>4 WILSON SONSINI GOODRICH & ROSATI P.C.</p> <p>5 633 West Fifth Street</p> <p>6 Suite 1550</p> <p>7 Los Angeles, CA 90071</p> <p>8 323.210.2900</p> <p>9 ptripodi@wsgr.com</p> <p>10 Mike Doyle</p> <p>11 In-house counsel for NuVasive, Inc.</p> <p>12 7475 Lusk Boulevard</p> <p>13 San Diego, CA 92121</p> <p>14</p> <p>15 On behalf of the Defendants:</p> <p>16</p> <p>17 Nimalka Wickramasekera</p> <p>18 WINSTON & STRAWN LLP</p> <p>19 333 South Grand Avenue</p> <p>20 Suite 3800</p> <p>21 Los Angeles, CA 90071-1543</p> <p>22 213.615.1700</p> <p>23 nwickramasekera@winston.com</p> <p>24</p> <p>25 Craig Hunsaker</p> <p>26 In-house counsel for Alphatec Spine, Inc.</p> <p>27 5818 El Camino Real</p> <p>28 Carlsbad, CA 92008</p> <p>29 760.494.6801</p> <p>30 jhamilton@atecspine.com</p> <p>31</p> <p>32 Videographer:</p> <p>33 Jonathan Popham</p> <p>34 Concierge:</p> <p>35 Bill Craddock</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p>	<p>1 E X H I B I T S (Continued)</p> <p>2 Exhibit No. 12 - 214</p> <p>3 Section VI, Rationale for Substantial</p> <p>4 Equivalence</p> <p>5 Exhibit No. 13 - 231</p> <p>6 CoRoent Radiolucent Systems, Design Rationale</p> <p>7</p> <p>8 Exhibit No. 14 - 242</p> <p>9 CoRoent XL & XLR</p> <p>10 Exhibit No. 15 - 254</p> <p>11 CoRoent Small Implants</p> <p>12</p> <p>13 Exhibit No. 16 - 254</p> <p>14 PEEK Cement Restrictors</p> <p>15 Exhibit No. 17 - 260</p> <p>16 Email from Matt Copp</p> <p>17</p> <p>18 Exhibit No. 18 - 260</p> <p>19 "Quality You Can See"</p> <p>20 Exhibit No. 19 - 260</p> <p>21 "Quality You Can See"</p> <p>22</p> <p>23 Exhibit No. 20 - 283</p> <p>24 Spreadsheet</p> <p>25 Exhibit No. 21 - 297</p> <p>26 List of notes and sketches</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p>

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1 VIDEOGRAPHER: Good morning. We are going
 2 on the record at 11:05 a.m. Central time on
 3 November 6th, 2020.
 4 Please note that the microphones are
 5 sensitive and may pick up whispering, private
 6 conversations, and cellular interference. Audio
 7 and video recording will continue until all
 8 parties agree to go off the record.
 9 This is Media No. 1 of the video deposition
 10 of Ryan Donahoe taken by counsel for the
 11 defendant in the matter of NuVasive,
 12 Incorporated., vs. Alphatec Holdings,
 13 Incorporated., and Alphatec Spine,
 14 Incorporated., filed in the United States
 15 District Court for the Southern District of
 16 California, San Diego Division, Case Number
 17 3:18-CV-00347-CAB-MDD.
 18 This deposition is being held at multiple
 19 locations via videoconference.
 20 My name is Jonathan Popham from Veritext,
 21 and I'm the videographer. The court reporter is
 22 Richard Ehrlich, also from Veritext. And also
 23 joining us today is Bill Craddock as our virtual
 24 concierge technician.

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1 I'm not authorized to administer an oath.
 2 I'm not related to any party in this action, nor
 3 am I financially interested in the outcome.
 4 Counsel will now, please, state their
 5 appearances and affiliations for the record.
 6 MR. TRIPODI: I'm Paul Tripodi of Wilson
 7 Sonsini Goodrich & Rosati on behalf of NuVasive,
 8 Inc., and NuVasive's 30(b)(6) designee, Ryan
 9 Donahoe.
 10 With me today here in the conference room
 11 is Mike Doyle, in-house counsel at NuVasive.
 12 MS. WICKRAMASEKERA: Good morning. This is
 13 Nimalka Wickramasekera from Winston & Strawn on
 14 behalf of the Alphatec defendants, and with me
 15 is my colleague Billy Wardlaw.
 16 VIDEOGRAPHER: Is there anyone else joining
 17 us?
 18 MS. WICKRAMASEKERA: Yes. Craig Hunsaker
 19 from Alphatec is our corporate representative.
 20 MR. TRIPODI: Pardon my -- pardon me,
 21 Nimalka. I'm not sure that I recognize the name
 22 "Billy Wardlaw." Is that someone on your
 23 Winston team?
 24 MS. WICKRAMASEKERA: Yes.

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1 MR. TRIPODI: Okay.
 2 VIDEOGRAPHER: Okay. If that's everyone,
 3 will the court reporter please swear in the
 4 witness?
 5 RYAN DONAHOE, DEPONENT, SWORN
 6 MS. WICKRAMASEKERA: May I proceed?
 7 VIDEOGRAPHER: Yes, please.
 8 EXAMINATION
 9 BY MS. WICKRAMASEKERA:
 10 Q Good morning, Mr. Donahoe. Could you please
 11 state and spell your name for the record?
 12 A Ryan Donahoe, R-Y-A-N, D-O-N-A-H-O-E.
 13 Q And who are you employed by?
 14 A NuVasive.
 15 Q And what's your address?
 16 A The work address or home address?
 17 Q Home address.
 18 A Home address, 2815 Santa Fe Vista Court,
 19 Encinitas, California 92024.
 20 Q And what's your current title at NuVasive?
 21 A Vice president of research and development for
 22 the spine business unit.
 23 Q Okay. I'm going to mark two exhibits off the
 24 bat.

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1 Let me know once you see Exhibit 1, which
 2 is the Alphatec 30(b)(6) notice to NuVasive, and
 3 Exhibit 2, which is your deposition notice.
 4 Can you introduce Exhibit OA and OD,
 5 please?
 6 CONCIERGE: That's for me, right, Nimalka?
 7 MS. WICKRAMASEKERA: Yes.
 8 CONCIERGE: And is it OA1 and OB2 or ...
 9 MS. WICKRAMASEKERA: OA is going to be
 10 Exhibit 1, and OD -- I'm sorry. I said "OC,"
 11 but it was OD should be Exhibit 2.
 12 CONCIERGE: Okay. One moment. Stand by.
 13 MR. TRIPODI: Are these in the witness's
 14 collection of documents that were -- that were
 15 delivered to us?
 16 MS. WICKRAMASEKERA: OA should be -- yes.
 17 They should both be in the -- in the exhibit
 18 box.
 19 MR. TRIPODI: So, Mr. Donahoe, if you would
 20 go ahead and retrieve those from the collection
 21 that you have. They should be -- A and B should
 22 be -- they should be the first two in the box, I
 23 believe.
 24 THE DEPONENT: All right. I have A and B.

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1 outside of the inserter are trials. The trials
 2 are specific to the shape of CoRoent. And so
 3 what I was saying is unless Alphatec copied the
 4 shape of CoRoent, then their implants could be
 5 used with our trials. However, it would be far
 6 less safe and effective because the trial
 7 wouldn't match the shape and size of the
 8 implant.
 9 BY MS. WICKRAMASEKERA:
 10 Q Okay. So setting aside the trials and the
 11 implant inserter, what are the other instruments
 12 that are designed for use with the CoRoent?
 13 A There's an implant removal instrument that's
 14 specifically designed for use with CoRoent.
 15 There are discectomy instruments that are
 16 specifically designed for the use with CoRoent.
 17 Here's the MaXcess retractor that's specifically
 18 designed for use with CoRoent. Those are kind
 19 of the main categories of instruments.
 20 Q Okay. Can the MaXcess retractors, the implant
 21 removal instrument -- I missed what the third
 22 instrument you said was. I can see in the
 23 transcript -- can you just --
 24 A They're disc removal instruments.

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1 Q Okay. So can the implants, the disc removal
 2 instruments, and the MaXcess retractors be used
 3 with competitor implants?
 4 A In theory, they could be used, but as I
 5 mentioned, would likely generate a less safe and
 6 effective result.
 7 Q And is the same true with respect to Alphatec's
 8 implants? Can the MaXcess retractors and the
 9 disc removal instruments be used with the
 10 Alphatec implants?
 11 MR. TRIPODI: Objection. Form.
 12 Foundation. Speculation.
 13 THE DEPONENT: I'd have to look
 14 specifically. When I mentioned other
 15 manufacturers' implants could be used -- you
 16 know, again, as I mentioned, if they copied the
 17 shapes and size of our implants, then they could
 18 be used but generate a less safe and effective
 19 result.
 20 So the same applies to Alphatec. If they
 21 had copied the shapes and the features and the
 22 insertion receptacles of our CoRoent implants,
 23 then yes, they can use the -- those implants
 24 with the NuVasive system.

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1 BY MS. WICKRAMASEKERA:
 2 Q What are you referring to as the insertion
 3 receptacle of the implant?
 4 A So the insertion receptacle is a threaded hole
 5 with what we call a racetrack feature inside the
 6 lateral aspect of the implant. It's how you
 7 connect the implant to the inserter.
 8 Q Okay. So is the MaXcess retractor designed
 9 specifically for use with the CoRoent implant?
 10 MR. TRIPODI: Objection. Form.
 11 THE DEPONENT: Yes.
 12 BY MS. WICKRAMASEKERA:
 13 Q Okay. Can you use a MaXcess retractor to insert
 14 other implants, other competitor implants?
 15 MR. TRIPODI: Objection. Form.
 16 THE DEPONENT: Again, if those implants
 17 have copied the shape and size of CoRoent, then
 18 yes, you can use them with the MaXcess
 19 retractor.
 20 BY MS. WICKRAMASEKERA:
 21 Q Do you recall, Mr. Donahoe, that you were
 22 previously deposed in a lawsuit between NuVasive
 23 and Medtronic?
 24 A Yes.

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1 Q Do you recall that that lawsuit involved
 2 infringement of the Medtronic patents related to
 3 a retractor?
 4 A It's quite some time ago. I do recall that it
 5 was related to retractors and -- or retractors
 6 and implants, yes.
 7 Q And do you recall that your testimony was played
 8 before a jury in the trial between Medtronic and
 9 NuVasive?
 10 A I don't recall. I wasn't in the trial room to
 11 know what they played or didn't play.
 12 Q Do you recall that NuVasive was found to
 13 infringe a Medtronic patent regarding the design
 14 of the MaXcess retractor?
 15 MR. TRIPODI: Objection. Form. Outside
 16 the notice.
 17 THE DEPONENT: I don't recall the exact
 18 conclusion of the trial.
 19 BY MS. WICKRAMASEKERA:
 20 Q Okay. You don't know what the design of the
 21 MaXcess retractor was based on, do you?
 22 MR. TRIPODI: Objection. Form. Outside
 23 the notice.
 24 THE DEPONENT: So as I mentioned, the

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