

# EXHIBIT 1

DECLARATION OF TRENT D. TANNER  
IN SUPPORT OF  
NUVASIVE'S OPPOSITION TO  
DEFENDANTS' MOTIONS IN LIMINE NOS. 1-10

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

NUVASIVE, INC., a Delaware corporation,  
Plaintiff,  
v.  
ALPHATEC HOLDINGS, INC., a Delaware corporation, and ALPHATEC SPINE, INC., a California corporation,  
Defendants.

CASE NO.: 18-cv-00347-CAB-MDD  
**[PROPOSED] PRETRIAL ORDER**  
Judge: Hon. Cathy Ann Bencivengo  
Courtroom: 15A  
Trial Date: December 8, 2021

1 Following pretrial proceedings pursuant to Fed. R. Civ. P. 16 and CivLR  
2 16.1.f.6.

3 **IT IS ORDERED:**

4 **I. NATURE OF THE CASE**

5 1. This is an action for patent infringement. In this case, Plaintiff  
6 NuVasive, Inc. (or “NuVasive” for short) alleges that Defendants Alphatec  
7 Holdings, Inc. and Alphatec Spine, Inc. (collectively “Alphatec” for short) infringe  
8 three U.S. Patents. The first patent is U.S. Patent Number 8,439,832, which the  
9 Court and Parties will often refer to by the last three digits of the patent number, so  
10 that is “the ’832 Patent.” The second patent is U.S. Patent Number 7,819,801, which  
11 the Court and Parties will often refer to as “the ’801 Patent.” The third patent is U.S.  
12 Patent Number 9,974,531, which the Court and Parties will often refer to as “the  
13 ’531 Patent”. The ’832 Patent, ’801 Patent, and ’531 Patent are the “Asserted  
14 Patents.” The Asserted Patents generally relate to the field of spine surgery.  
15 NuVasive owns the Asserted Patents. NuVasive alleges that certain of Alphatec’s  
16 surgical access systems and implants infringe the Asserted Patents.

17 2. **[NuVasive’s Position]:** The next paragraph of the neutral statement  
18 should read as follows: “The Court has already determined that Alphatec infringes  
19 the ’832 Patent. As to the ’801 Patent and the ’531 Patent, NuVasive has the burden  
20 of proving that the accused products infringe those patents by a preponderance of  
21 the evidence.”]; **[Alphatec’s Position]:** The next paragraph of the neutral statement  
22 should read as follows: “NuVasive has the burden of proving that the accused  
23 products infringe the ’801 Patent and the ’531 Patent by a preponderance of the  
24 evidence. Alphatec denies infringement of the ’801 Patent and ’531 Patent. You  
25 will not be asked to decide whether Alphatec has infringed the ’832 Patent.”]

26 3. Alphatec denies willful infringement as to each Asserted Patent.  
27 Alphatec also alleges that each of the Asserted Patents is invalid. Alphatec has the  
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1 burden of proving that each Asserted Patent is invalid by clear and convincing  
2 evidence.

3 4. NuVasive seeks damages for Alphatec's infringement of the Asserted  
4 Patents and contends that such infringement has been, and continues to be, willful.

5 5. Alphatec contends that NuVasive is not entitled to any damages  
6 because Alphatec does not infringe any valid claim of the Asserted Patents.

## 7 **II. CAUSES OF ACTION**

### 8 **A. NuVasive's Causes of Action**

9 6. NuVasive filed its Amended Complaint for Patent Infringement [Doc.  
10 No. 110] on September 13, 2018 ("Operative Complaint") originally alleging Eleven  
11 causes of action for patent infringement.

12 7. **NuVasive's Position:** Omit the following paragraph]; **Alphatec's**  
13 **Position:** "On September 3, 2021, the Court provided its Notes for Scheduling  
14 Conference, identifying the patents and issues remaining in this case after the  
15 Court's previous rulings [Doc. Nos. 281, 282, 333]. On September 7, 2021, the  
16 Court ordered NuVasive to provide a final disclosure of patent claims to be asserted  
17 at trial by September 24, 2021 [Doc. No. 335]."

18 8. On September 24, 2021, NuVasive provided its Final Disclosure of  
19 Patent Claims to be Asserted at Trial [Doc No. 336]. **NuVasive's Position:**  
20 "Pursuant to Doc. No. 336, the following causes of action will be tried to the jury at  
21 the December 2021 trial:

- 22 • **Third Cause of Action:** Direct and indirect infringement of the '832 Patent  
23 under 35 U.S.C. §§ 271(a)–(c);
- 24 • **First Cause of Action:** Direct and indirect infringement of the '801 Patent  
25 under 35 U.S.C. §§ 271(a)–(c);
- 26 • **Tenth Cause of Action:** Direct and indirect infringement of the '531 Patent  
27 under 35 U.S.C. §§ 271(a)–(c)."

28 9. **Alphatec's Position:** "Pursuant to Doc. No. 336, only the following  
causes of action remain to be tried to the jury":

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Dated: November 5, 2021

Respectfully submitted,

**WILSON SONSINI GOODRICH & ROSATI**

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