EXHIBIT 25

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

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO DIVISION

N	IJV	AS	IVE.	IN	C
T .	υv	I	1 V L.		\sim

Plaintiff,

v.

CASE NO. 18-cv-00347-CAB-MDD

ALPHATEC HOLDINGS, INC. and ALPHATEC SPINE, INC.,

Defendants.

SUPPLEMENTAL REBUTTAL EXPERT REPORT OF KEITH R. UGONE, PH.D.

December 18, 2020



SUPPLEMENTAL REBUTTAL EXPERT REPORT OF KEITH R. UGONE, PH.D.

December 18, 2020

1. 11	OVERVIEW OF ASSIGNMENT					
II.	SUMMARY OF OPINIONS					
	Inglish Supplemental Damages Report					
	B. Reasonable Royalty For A License To The Patents-In-Suit	9				
	C. Monetary Damages Are Adequate To Compensate NuVasive For Alphatec's Alleged Infringement	S				
III.	QUALIFICATIONS AND EXPERIENCE	. 12				
IV.	FACTS, DATA, AND INFORMATION RECEIVED	. 13				
V.	OVERVIEW OF PARTIES					
	A. NuVasive	. 16				
	B. Alphatec	. 16				
VI.	OVERVIEW OF PATENTS-IN-SUIT					
VII.	MARKET AND PRODUCT OVERVIEW					
	A. Overview Of Spinal Fusion Surgery And Market For Lateral Lumbar Interbody Fusion Products					
	1. Spinal Fusion Surgery	. 19				
	2. Market For Lateral Lumbar Interbody Fusion Products	. 23				
	B. NuVasive's MAS Platform And Embodying Products	. 26				
	1. Description Of NuVasive's MAS Platform And XLIF Offerings	. 26				
	2. NuVasive's Sales Associated With Its MAS Platform/XLIF Procedure	. 27				
	C. Alphatec's Battalion Lateral System And Accused Products	. 28				
	1. Description Of Alphatec's Battalion Lateral System And Accused Products	. 28				
	2. Alphatec's Sales Associated With Its At-Issue Battalion Lateral System	. 34				
VIII.	SUMMARY OF NUVASIVE'S CLAIMED DAMAGES AS PRESENTED BY MR. INGLISH					
	A. Mr. Inglish's Claimed Lost Profits Opinion					
	B. Mr. Inglish's Claimed Royalty Opinion	. 38				
IX.	EVALUATION OF NUVASIVE'S CLAIMED LOST PROFITS DAMAGES AS					
	PRESENTED IN THE INGLISH SUPPLEMENTAL DAMAGES REPORT 4					
	A. Alphatec Had Acceptable Non-Infringing Alternatives	. 41				
	1. Acceptable Non-Infringing Alternatives To The Access Patents	. 42				



		2.	Acceptable Non-Infringing Alternatives To The Implant Patents	46
	B.		phatec's Sales Of The Battalion Lateral System Are Attributable To Factors are lated To The Patents-In-Suit	
		1.	Safety And Reproducibility Are Not Unique To The Patented Technology	. 52
		2.	Experienced Sales Representatives And Strong Relationships With Surgeons Are Key Drivers Of Demand For Lateral Spine Surgery Products/Platforms	
		3.	Non-Accused Lateral Spine Surgery Products Have Been Commercially Successful Without Using The Asserted Claims Of The Patents-in-Suit	
	C.		ck Of Evidence That NuVasive Would Have Made Alphatec's At-Issue Sales sent The Alleged Infringement	
		1.	Mr. Inglish Inappropriately Assumes NuVasive Would Have Made All Of Alphatec's Alleged "Diverted Sales" (In One Scenario)	
		2.	NuVasive Does Not Identify Alphatec As A "Significant Competitor"	. 71
		3.	Alphatec's At-Issue Battalion Lateral System Is Differentiated From NuVasive's MAS Platform/XLIF Offerings	
	D.	Ac	ljustments to NuVasive's Claimed Lost Profits	. 75
		1.	Adjustments To Mr. Inglish's Claimed Lost Profits Associated With The Access Patents	
		2.	Adjustments to Mr. Inglish's Claimed Lost Profits Associated With The Implant Patents	
	E.	Co	onclusion Relating To NuVasive's Lost Profits Claim	. 95
Χ.	RI	EAS	ONABLE ROYALTY FOR A LICENSE TO THE PATENTS-IN-SUIT	96
	A.	Pa	tent Infringement Royalty Damages	. 98
		1.	Hypothetical Negotiation Framework And The Georgia-Pacific Factors	. 98
		2.	Hypothetical Negotiation Date And Parties	100
		3.	Hypothetical Negotiation Predicates	102
	B.	Νι	Vasive's Negotiating Position	103
		1.	Claimed Benefits Of The Patents-In-Suit	104
		2.	The Significant Investment To Develop The Patented Products And MAS Platform / XLIF Procedure	
		3.	NuVasive Would Acknowledge That The Sales Of Its Embodying Products Is Attributable To Factors Unrelated To The Patents-In-Suit	
		4.	NuVasive Would Assert That Alphatec Would Be A Competitor With Respect To NuVasive's MAS Platform/XLIF Offerings	
	C.	Al	phatec's Negotiating Position	116



		1.	Alphatec Would Have Had Acceptable Non-Infringing Alternatives To The Patents-In-Suit	
		2.	Sales Of Alphatec's At-Issue Battalion Lateral System Are Not Attributable To The Patents-In-Suit	
		3.	Alphatec Was Under Significant Financial Stress At The Time Of The Hypothetical Negotiation	18
		4.	Alphatec Would Stress That There Are Numerous Competitors In The Lateral Surgery Market	
	D.	Va	alue Indicators For A License To The Patents-In-Suit	20
		1.	NuVasive's License Agreements 1	20
		2.	Alphatec's Agreements	23
	E.	Οι	atcome Of The Hypothetical Negotiation1	31
		1.	Running Royalty Payment Constrained By The Costs Of Implementing Non-Infringing Alternatives	
		2.	Running Royalty Payment Applied To All Sales	35
		3.	Conclusion As To The Outcome Of The Hypothetical Negotiation 1	37
XI.			ETARY DAMAGES ARE ADEQUATE TO COMPENSATE NUVASIVE	3



DOCKET

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.

