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14 Attorneys for Defendants  
 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  
 Delaware corporation and  
 23 ALPHATEC SPINE, INC., a  
 California corporation

24 Defendants.

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

**DEFENDANTS’ NOTICE PURSUANT  
 TO 35 U.S.C. § 282**

**Judge:** Hon. Cathy Ann Bencivengo

**Courtroom:** 15A

**Trial Date:** December 8, 2021

1 Pursuant to 35 U.S.C. § 282, Defendants Alphatec Holdings, Inc. and Alphatec  
2 Spine, Inc. (collectively, “Alphatec”) hereby identify certain patents, publications, and  
3 documents to be relied upon as showing, inter alia, anticipation, obviousness, or state  
4 of the art relating to the asserted patents.

5 Alphatec affirmatively states that it has already provided notice to Plaintiff of the  
6 identity of certain patents, publications, and documents within the ambit of § 282  
7 through the pleadings and correspondence in this case and, more particularly, through  
8 Alphatec’s expert witness reports and testimony, Alphatec’s prior responses to  
9 interrogatories, and Alphatec’s invalidity contentions. Alphatec expressly incorporates  
10 herein by reference all of the patents, publications, and documents of persons within the  
11 ambit of §282 previously cited in these pleadings and correspondence. The listing of  
12 identified patents, publications, and documents is provided pursuant to the statutory  
13 provisions of 35 U.S.C. § 282. Nothing in this notice should be construed to limit  
14 Alphatec’s contentions regarding why any prior art was conceived, published, or  
15 reduced to practice, or the manner in which any prior art satisfies any requirement of  
16 35 U.S.C. §§ 102, 103. In addition, listing these patents, publications, and documents  
17 should not be construed as a representation that Alphatec will use every one of the  
18 references in its presentation of evidence at trial. No implications therefore should be  
19 taken that reliance upon these materials is necessary to Alphatec’s defenses.

20 Alphatec reserves the right to amend and/or supplement this notice.  
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1           **I.        ASSERTED PATENTS**

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| Patent No. | Country | Date Issued      | Named Inventor(s)  |
|------------|---------|------------------|--|
| 7,819,801  | USA     | October 26, 2010 | Patrick Miles<br>Scot Martinelli<br>Eric Finley<br>James Gharib<br>Allen Farquhar<br>Norbert Kaula<br>Jeffrey Blewett<br>Goretti Medeiros (legal representative) |
| 8,439,832  | USA     | May 14, 2013     | Patrick Miles<br>Scot Martinelli<br>Eric Finley<br>James Gharib<br>Allen Farquhar<br>Norbert Kaula<br>Jeffrey Blewett<br>Goretti Medeiros (legal representative) |
| 9,974,531  | USA     | May 22, 2018     | Patrick Miles<br>Scot Martinelli<br>Eric Finley  |

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18           **II.       SECTION 282 PERSONS**

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20           Inventors of patents or authors of publications that are included in the following  
21 sections, as well as the following persons:

22

| Person(s) with Knowledge | Addresses  |
|--------------------------|--|
| Dr. Barton Sachs         | 837 Bridgetown Pass<br>Mt. Pleasant, SC 29464  |
| Dr. Charles Branch       | Department of Neurological Surgery<br>Wake Forest Baptist Medical Center<br>Medical Center Boulevard<br>Winston-Salem, NC 27157-1029 |

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2 **III. SECTION 282 PATENTS, PUBLICATIONS, DOCUMENTATION OF**  
3 **PRIOR INVENTION / USE / OFFER FOR SALE**

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| <b>Title</b>   | <b>Author</b> | <b>Priority Date</b> | <b>Issue Date / Publication Date</b> | <b>DTX</b>           |
|--|---------------|----------------------|--------------------------------------|----------------------|
| U.S. Patent No. 6,945,933  | Branch        | June 26, 2002        | September 20, 2005                   | DTX-0524             |
| U.S. Patent No. 6,174,311  | Branch        | October 28, 1998     | January 16, 2001                     | DTX-0555             |
| W.A. Friedman and S.L. Kanter, The lateral percutaneous approach to discectomy, Int'l Radiology in Bone and Joint 149 (1988) | Friedman      | 1988                 | 1988                                 | DTX-0515             |
| U.S. Patent No. 5,928,139  | Koros         | July 8, 1998         | July 27, 1999                        | DTX-0523             |
| European Patent No. 0951868  | Büttner-Janz  | October 27, 1999     | October 27, 1999                     | DTX-0543<br>DTX-0544 |
| U.S. Patent No. 5,681,265  | Maeda         | August 17, 1995      | October 28, 1997                     | DTX-0520             |
| [International Patent Publication No. WO 01/37728  | Kelleher      | November 11, 1999    | May 31, 2001                         | DTX-0527             |
| International Patent Publication No. WO 03/005887  | Blewett       | January 23, 2003     | January 23, 2003                     | DTX-0526             |
| U.S. Patent No. 6,575,899  | Foley         | October 20, 2000     | June 10, 2003                        | DTX-0557             |
| U.S. Patent No. 6,074,343  | Nathanson     | April 16, 1999       | June 13, 2000                        | DTX-0550             |

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26 **IV. SECTION 282 DOCUMENTS ESTABLISHING STATE OF THE ART**

27 In addition to those documents listed in Section III above and the documents  
28 listed on the face of the asserted patents, all of which may be used to establish the

1 state of the art in the relevant time period for the asserted patents, the following  
 2 documents may also be relied upon to establish the state of the art in the relevant time  
 3 period:  
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| 5 <b>Document</b>   | <b>Date for</b>       | <b>DTX</b>            |
|---|-----------------------|-----------------------|
|   | <b>Identification</b> |                       |
| 6 U.S. Patent No. 6,196,969 (Bester)  | May 21, 1999          | DTX-0556              |
| 7 U.S. Patent No. 5,192,327 (Brantigan)   | March 22, 1991        | DTX-0531              |
| 8 German Patent Application No. 100 48 790.4<br>(Cistac)  | October 2, 2000       | DTX-0513,<br>DTX-0514 |
| 9 U.S. Patent No. 5,407,293 (Crainich)  | April 29, 1993        | DTX-0504              |
| 10 U.S. Patent No. 6,602,190 (Dobrovolny)   | May 25, 2001          | DTX-0563              |
| 11 WA Friedman, Percutaneous Discectomy: An<br>Alternative to Chemonucleolysis?,<br>12 Neurosurgery, 13:542–547 (1983)              | November 1983         | DTX-0528              |
| 13 Friedman, et al. 1987 Article, Monitoring of<br>Sensory Evoked Potentials is Highly Reliable<br>14 and Helpful in Operating Room | 1987                  | DTX-0575              |
| 15 U.S. Patent No. 6,500,180 (Foley '180)   | October 20,<br>1999   | DTX-0503              |
| 16 U.S. Patent No. 6,152,871 (Foley '871)   | September 25,<br>1998 | DTX-0553              |
| 17 U.S. Patent No. 5,792,044 (Foley '044)   | March 22, 1996        | DTX-0548              |
| 18 U.S. Patent Application Publication No.<br>2003/0032966 (Foley '966)   | September 27,<br>2002 | DTX-0579              |
| 19 U.S. Patent Application Pub. No.<br>2002/0165550 (Frey)  | April 10, 2002        | DTX-0517              |
| 20 U.S. Patent No. 3,384,078 (Gauthier)   | November 1,<br>1965   | DTX-0561              |
| 21 U.S. Patent No. 2,532,162 (Goss)   | January 9, 1948       | DTX-0562              |
| 22 U.S. Patent No. 4,545,374 to Jacobson (Oct. 8,<br>23 1985) (Jacobson)  | September 3,<br>1982  | DTX-0533              |
| 24 Steven L. Kanter and William A. Friedman,<br>25 Percutaneous Discectomy: An Anatomical<br>Study, 16:2 Neurosurgery (1985)        | 1985                  | DTX-0529              |
| 26 U.S. Patent No. 6,139,493 (Koros '493)   | July 8, 1998          | DTX-0552              |

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