

1 **WILSON SONSINI GOODRICH & ROSATI P.C.**
MORRIS FODEMAN (*pro hac vice*)
2 mfodeman@wsgr.com
WENDY L. DEVINE (SBN 246337)
3 wdevine@wsgr.com
NATALIE J. MORGAN (SBN 211143)
4 nmorgan@wsgr.com
12235 El Camino Real
5 San Diego, CA 92130
(858) 350-2300

7 **HILGERS GRABEN PLLC**
MICHAEL T. HILGERS (*pro hac vice*)
8 mhilgers@hilgersgraben.com
575 Fallbrook Blvd, Suite 202
9 Lincoln, NE 68521
(402) 218-2106

10
11 *Attorneys for Plaintiff NuVasive, Inc.*

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14 SAN DIEGO DIVISION

| | | | |
|----|--|---|--|
| 15 | NUVASIVE, INC., a Delaware corporation, |) | CASE NO.: 18-cv-00347-CAB-MDD |
| 16 | |) | |
| 17 | Plaintiff, |) | PARTIES' PROPOSED JURY INSTRUCTIONS |
| 18 | v. |) | |
| 19 | ALPHATEC HOLDINGS, INC., a Delaware corporation, and ALPHATEC SPINE, INC., a California corporation, |) | Judge: Hon. Cathy Ann Bencivengo Courtroom: 15A |
| 20 | |) | |
| 21 | Defendants. |) | Trial Date: January 10, 2022 |

22
23
24
25
26
27
28



1 **ADDITIONAL COUNSEL INFORMATION:**

2 NIMALKA R. WICKRAMASEKERA (SBN: 268518)

3 nwickramasekera@winston.com

4 DAVID P. DALKE (SBN: 218161)

5 ddalke@winston.com

6 LEV TSUKERMAN (SBN: 319184)

7 ltukerman@winston.com

8 WILLIAM M. WARDLAW (SBN: 328555)

9 wardlaw@winston.com

10 WINSTON & STRAWN LLP

11 333 S. Grand Avenue

12 Los Angeles, CA 90071-1543

13 Telephone: (213) 615-1700

14 Facsimile: (213) 615-1750

15 GEORGE C. LOMBARDI (*pro hac vice*)

16 glombardi@winston.com

17 BRIAN J. NISBET (*pro hac vice*)

18 bnisbet@winston.com

19 SARANYA RAGHAVAN (*pro hac vice*)

20 sraghavan@winston.com

21 WINSTON & STRAWN LLP

22 35 West Wacker Drive

23 Chicago, IL 60601-9703

24 Telephone: (312) 558-5600

25 Facsimile: (312) 558-5700

26 ROBERT N. KANG (SBN: 274389)

27 rkang@winston.com

28 WINSTON & STRAWN LLP

101 California Street, 35th Floor

San Francisco, CA 94111-5840

Telephone: (415) 591-1000

Facsimile: (415) 491-1400

Attorneys for Defendants ALPHATEC HOLDINGS, INC.

AND ALPHATEC SPINE, INC.

21

22

23

24

25

26

27

28

PRELIMINARY JURY INSTRUCTIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROPOSED PRELIMINARY INSTRUCTION NO. 1

DUTY OF JURY

Members of the jury: You are now the jury in this case. It is my duty to instruct you on the law.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

At the end of the trial I will give you final instructions. It is the final instructions that will govern your duties.

Please do not read into these instructions, or anything I may say or do, that I have an opinion regarding the evidence or what your verdict should be.

Authorities: Ninth Circuit Manual of Model Civil Jury Instructions (Jan. 2017, updated Mar. 2021) at 1.3.

- Given
- Modified
- Denied



1 **PROPOSED PRELIMINARY INSTRUCTION NO. 2**

2 **UNITED STATES PATENTS**

3 **[NuVasive Proposed Language:** Patents are granted by the United States
4 Patent and Trademark Office (sometimes called the “PTO” or “USPTO”). A
5 patent gives the owner the right to exclude others from making, using, offering to
6 sell, or selling the claimed invention within the United States or importing it into
7 the United States. During the trial, the parties may offer testimony to familiarize
8 you with how one obtains a patent from the PTO, but I will give you a general
9 background here.] **[Alphatec Proposed Language:** This case involves a dispute
10 relating to a United States patent. Before summarizing the positions of the parties
11 and the legal issues involved in the dispute, let me take a moment to explain what a
12 patent is and how one is obtained. Patents are granted by the United States Patent
13 and Trademark Office (sometimes called “the PTO”). A valid United States patent
14 gives the patent holder the right to prevent others from making, using, offering to
15 sell, or selling the patented invention within the United States, or from importing it
16 into the United States, during the term of the patent without the patent holder’s
17 permission. A violation of the patent holder’s rights is called infringement. The
18 patent holder may try to enforce a patent against persons believed to be infringers
19 by means of a lawsuit filed in federal court.]

20 **[NuVasive Proposed Language:** To obtain a patent, an application for a
21 patent must be filed with the PTO by an applicant. The application includes a
22 specification, which should have a written description of the invention, how it
23 works, and how to make and use it so as to enable others skilled in the art to do so.
24 The specification concludes with one or more numbered sentences or paragraphs.
25 These are called the “claims” of the patent. The purpose of the claims is to
26 particularly point out what the applicant regards as the claimed invention and to
27 define the scope of the patent owner’s exclusive rights.] **[Alphatec Proposed**

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.