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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 Plaintiff,) ~~NUVASIVE'S~~ SALPHATEC'S
17 v.) **PROPOSED JURY**
18) **INSTRUCTIONS**
19 ALPHATEC HOLDINGS, INC., a Delaware corporation, and ALPHATEC)
20 SPINE, INC., a California corporation,) Judge: Hon. Cathy Ann Bencivengo
21 Defendants.) Courtroom: 15A
22) Trial Date: January 10, 2022
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PRELIMINARY JURY INSTRUCTIONS

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~~NUVASIVE'S~~ SALPHATEC'S PROPOSED PRELIMINARY INSTRUCTION NO. 1

[Intentionally skipped due to agreement of the parties]



1 ~~NUVASIVE'S~~ ALPHATEC'S PROPOSED PRELIMINARY INSTRUCTION

2 NO. 2

3 UNITED STATES PATENTS

4 This case involves a dispute relating to a United States patent. Before
5 summarizing the positions of the parties and the legal issues involved in the dispute,
6 let me take a moment to explain what a patent is and how one is obtained.

7 Patents are granted by the United States Patent and Trademark Office (sometimes
8 called “the “PTO” or “USPTO”). A valid United States patent gives the ~~owner~~ patent
9 holder the right to ~~exclude~~ prevent others from making, using, offering to sell, or
10 selling the ~~claimed~~ patented invention within the United States, or from importing it
11 into the United States. ~~During the trial, the parties,~~ during the term of the patent
12 without the patent holder’s permission. A violation of the patent holder’s rights is
13 called infringement. The patent holder may ~~offer testimony to familiarize you with how~~
14 ~~one obtains a patent from the PTO, but I will give you a general background here.~~ try to enforce
15 a patent against persons believed to be infringers by means of a lawsuit filed in
16 federal court.

17 To obtain a patent, one must file an application ~~for a patent must be filed with the~~
18 with the PTO. The process of obtaining a patent is called patent prosecution. The
19 PTO ~~by an applicant.~~ is an agency of the federal government and employs trained
20 patent examiners who review applications for patents. The application includes what
21 is called a “specification,” which ~~should have~~ must contain a written description of the
22 claimed invention telling what the invention is, how it works, ~~and~~ how to make it
23 and how to use it so ~~as to enable~~ others skilled in the ~~art to do so.~~ field will know how
24 to make or use it. The specification concludes with one or more numbered sentences
25 ~~or paragraphs.~~ These are ~~called the “claims” of the patent.~~ The purpose of “claims.”
26 When the patent is eventually granted by the PTO, the claims ~~is to particularly point out~~
27 ~~what the applicant regards as the claimed invention and to~~ define the ~~scope of the patent owner’s~~

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1 ~~exclusive rights.~~ boundaries of its protection and give notice to the public of those
2 boundaries.

3 After ~~an~~ the applicant files the application ~~for a patent is filed with the PTO,~~
4 ~~the application is reviewed by a trained,~~ a PTO Patent Examiner. ~~The Patent~~
5 ~~Examiner~~ patent examiner reviews ~~(or examines)~~ the patent application to
6 determine whether the claims are patentable and whether the specification
7 adequately describes the ~~claimed~~ invention. ~~claimed.~~ In examining a patent
8 application, the ~~Patent Examiner~~ patent examiner reviews information about the
9 state of the technology at the time the application was filed. As part of that effort,
10 the patent examiner searches ~~records~~ for and reviews information that is publicly
11 ~~available to the PTO for what is referred to as “prior art,” and he or she also~~
12 ~~reviews prior art,~~ submitted by the applicant.

13 ~~When the parties are done presenting evidence,~~ or both. That information is
14 called “prior art.” Prior art is defined by law, and I will give you more ~~at a later~~
15 time specific instructions as to what constitutes prior art. ~~However, in this case.~~
16 ~~Generally~~ general, prior art ~~is previously existing technical information and~~
17 ~~knowledge against which the Patent Examiners determine whether or not the~~
18 ~~claims in the application are patentable.~~ includes things that existed before the
19 claimed invention, that were publicly known, or used in a publicly accessible way
20 in this country, or that were patented or described in a publication in any country.
21 The ~~Patent Examiner~~ patent examiner considers, among other things, whether each
22 claim defines an invention that is new, useful, and not obvious in view of ~~this~~ the
23 prior art. ~~In addition, the Patent Examiner may consider whether other~~
24 ~~requirements for a~~ A patent ~~are met.~~ lists the prior art that the examiner considered;
25 this list is called the “cited references.”

26 ~~Following~~ After the prior art search and examination of the application, the
27 ~~Patent Examiner advises~~ patent examiner then informs the applicant in writing what
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