

EXHIBIT 3

1 APPEARANCES:

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1 to happen. And you can make objections as they examine their
2 witnesses on direct about what they knew and didn't know and
3 what they did and hopefully everyone can kind of keep this
4 corralled into the right kind of questions.

5 But we need to move on. All right. I don't even
6 understand number four, irrelevant and unproven allegations of
7 misconduct.

8 ATTORNEY FODEMAN: I think that's the one I think I
9 screwed us up on, Judge, if I may? That was the one I jumped
10 in on Mr. Nisbet and I said I think we're copasetic --

11 THE COURT: Where you saying that they can't ask Dr.
12 Youssef how much he gets paid? Sure they can.

13 ATTORNEY FODEMAN: That's number 4.

14 THE COURT: Yes.

15 ATTORNEY FODEMAN: And we're all good there, I think.

16 THE COURT: So that one is moot.

17 ATTORNEY FODEMAN: We never did number three.

18 THE COURT: No.

19 ATTORNEY MORGAN: And number three, I think, is
20 narrowed somewhat as well by the papers. Like Your Honor
21 mentioned, they agree they're not going to bring up other
22 litigation between the parties, so that's good.

23 Where there still seems to be a dispute though is they
24 elicited at depositions, and we provided the testimony so this
25 is not nebulous. We provided the deposition testimony that we

1 are worried they're going to try to bring out at trial where
2 they're asserting that NuVasive had a general animosity towards
3 Alphatec and that's the reason that they sued.

4 And we have a number of cases that we've provided to
5 Your Honor that why a patentee sues for infringement is just
6 not relevant at all, period. And the case that they cited in
7 response isn't a patent case, just not applicable. So we just
8 think that this sort of sideshow should not be admissible at
9 all, and we just want to keep it out because once they've rung
10 that bell, its hard to unring it.

11 THE COURT: There's a line certainly with regard to
12 infringement, it's a strict liability statute whether you knew
13 or didn't know if you're infringing, you're infringing. So
14 your motivations and bias are irrelevant. However, you can
15 cross that line when it comes to your allegations of
16 willfulness, and I think that if there's bias with regard to
17 how it's postured that their behavior was willful because these
18 people used to work for NuVasive and that's going to imply some
19 kind of intentional theft, I think they're entitled to defend
20 on that.

21 ATTORNEY MORGAN: But, Your Honor, willfulness only
22 looks at their subjective belief. That's what the question is.

23 THE COURT: I'm saying if you open the door --

24 ATTORNEY MORGAN: Understood.

25 THE COURT: -- and I hear comments, argument, or

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