

EXHIBIT 3

1 APPEARANCES:

2 For the Plaintiff:

3 Wilson Sonsini Goodrich and Rosati
4 Erik J. Carlson
5 633 West Fifth Street, Suite 1550
6 Los Angeles, CA 90071

7 Wilson Sonsini Goodrich and Rosati
8 Natalie Jordana Morgan.
9 12235 El Camino Real, Suite 200
10 San Diego, CA 29130.

11 Wilson Sonsini Goodrich and Rosati
12 Morris Fodeman
13 1301 Avenue of the Americas, 40th Floor
14 New York, NY 10019.

10

11 For The Defendants:

12 Winston & Strawn LLP
13 Nimalka M. Wickramasekera
14 333 S. Grand Avenue
15 Los Angeles, California 90071

16 Winston & Strawn LLP
17 Brian J. Nisbet.
18 Saranya Raghaven.
19 George C. Lombardi (telephonic appearance)
20 35 West Wacker Drive
21 Chicago, Illinois 60601

18

19

20

21

22

23

24

25

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

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.