


**EXHIBIT 3 TO NUVASIVE, INC.'S  
NOTICE OF LODGMENT OF WITNESS  
DEPOSITION DESIGNATION CLIP REPORTS**

NuVasive v. Alphatec - Video

 **Robinson, Scott (Vol. 01) - 10/29/2019**

1 CLIP (RUNNING 00:13:10.424)

 SR-ALL

**SR-ALL FINAL 30 SEGMENTS (RUNNING 00:13:10.424)**



**1. PAGE 7:19 TO 7:24 (RUNNING 00:00:11.066)**

19 Q. Good morning, Mr. Robinson.  
20 A. Hello.  
21 Q. Would you please state and spell your  
22 name for the record.  
23 A. Scott Robinson. S-c-o-t-t,  
24 R-o-b-i-n-s-o-n.

**2. PAGE 8:03 TO 8:06 (RUNNING 00:00:12.534)**

03 Q. Who is your current employer?  
04 A. Alphatec Spine.  
05 Q. How long have you been employed there?  
06 A. Since March of 2010; going on 10 years.

**3. PAGE 26:08 TO 26:17 (RUNNING 00:00:22.423)**

08 Topic 2 is -- I'm just going to read  
09 it -- "When and under what circumstances Alphatec  
10 first became aware of each of the patents-in-suit  
11 and what actions Alphatec took upon becoming aware  
12 of the patents-in-suit."  
13 Did I read that correctly?  
14 A. Yes.  
15 Q. Do you understand that you have been  
16 designated by Alphatec to provide Alphatec's  
17 knowledge with respect to that topic?

**4. PAGE 26:21 TO 27:08 (RUNNING 00:00:54.943)**

21 THE WITNESS: Yes.  
22 BY MS. DEVINE:  
23 Q. What can you tell me about Topic 2?  
24 A. There were -- as part of our development  
25 procedure, we requested from our legal department  
00027:01 an evaluation of the IP landscape. I know that  
02 there were -- there were several patents, and I  
03 believe they are listed in a document here  
04 somewhere, that were in possession of our legal  
05 department.  
06 As far as what actions took place by  
07 Alphatec, that would have been within our legal  
08 department.

**5. PAGE 27:09 TO 27:12 (RUNNING 00:00:09.083)**

09 Q. When you say as part of your development  
10 procedure you requested an evaluation of the IP  
11 landscape, at what point during the development  
12 procedure was the request made?

**6. PAGE 27:20 TO 27:20 (RUNNING 00:00:02.180)**

20 Q. My only question is what date?

**7. PAGE 27:23 TO 28:07 (RUNNING 00:00:36.212)**

23 THE WITNESS: It was early 2013. The --  
24 and it is -- I believe your question was at what

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25 part during the development?  
00028:01 BY MS. DEVINE:  
02 Q. Yes.  
03 A. It is early in the development. So,  
04 basically, when concepts are first established,  
05 once a product has enough of a form to have  
06 features that can be evaluated, we initiate a  
07 conversation to evaluate existing IP.

**8. PAGE 33:01 TO 33:04 (RUNNING 00:00:09.332)**

00033:01 Q. So you said that request to legal to  
02 evaluate the IP landscape was made in early 2013;  
03 is that right?  
04 A. To the best of my knowledge.

**9. PAGE 58:11 TO 58:15 (RUNNING 00:00:15.159)**

11 Q. So can you tell me, during the  
12 development of the Battalion products, which job  
13 title you held?  
14 A. I believe I was a senior design engineer  
15 and then a project engineer.

**10. PAGE 218:09 TO 218:10 (RUNNING 00:00:08.291)**

09 So I'm asking did Alphatec actually adopt  
10 features of XLIF in developing Battalion?

**11. PAGE 218:12 TO 218:24 (RUNNING 00:00:47.583)**

12 THE WITNESS: I think, as you've stated,  
13 I mean, they share some similar-looking features.  
14 You know, a shim. Now you've mentioned a, you  
15 know, a generally three-blade -- three primary  
16 blades with an optional fourth blade. There are  
17 probably other similarities that I don't want to  
18 guess at what else be the same. I haven't -- I'm  
19 not familiar enough with the Nuvasive system to be  
20 able to answer.  
21 BY MS. DEVINE:  
22 Q. Did Alphatec adopt those directly from  
23 XLIF, or is it just happenstance that there are  
24 similarities?

**12. PAGE 219:01 TO 219:13 (RUNNING 00:00:47.594)**

00219:01 THE WITNESS: I think kind of as  
02 previously stated, I mean, I -- we ended up going  
03 with a three-blade design because that's what we  
04 got the most feedback on from the -- you know, what  
05 at the time was an undeveloped team. But later on  
06 we had a surgeon team that had the most to say  
07 about a three-blade retractor.  
08 BY MS. DEVINE:  
09 Q. Did the original idea of trying a  
10 three-bladed retractor come from Nuvasive's XLIF?  
11 A. I wouldn't be able to say where its  
12 origins were. There were multiple three-blade  
13 retractor systems on the market at that time.

**13. PAGE 228:07 TO 228:12 (RUNNING 00:00:22.229)**

07 Q. The court reporter has handed you a  
08 document marked Robinson Exhibit 12, which is Bates  
09 numbered ATEC LLIF 000137018 to 137039. And,  
10 Mr. Robinson, take your time, and my question is  
11 just going to be:  
12 Do you recognize this documents?

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**14. PAGE 228:13 TO 229:02 (RUNNING 00:01:01.658)**

13 A. I believe I do recognize this document,  
14 yes.  
15 Q. Okay. What is it?  
16 A. It's a business case presentation that  
17 was very likely given to our leadership team. The  
18 date on the cover would tell me that we had a  
19 business project management office that would have  
20 been making decisions on what products to -- what  
21 products were in product development they were  
22 going to continue funding and which ones they were  
23 not going to continue funding. So either Bryan or  
24 Jon would have given this presentation to a group  
25 of mostly executive level Alphatec employees to  
00229:01 make a case to continue working on our lateral  
02 program.

**15. PAGE 229:07 TO 229:22 (RUNNING 00:01:00.884)**

07 Q. If you turn to Page 137020, which is  
08 Page 3 of the presentation, do you see the two  
09 graphics of the patient positioning on that page?  
10 A. Yes, I do.  
11 Q. Do you know where those are from?  
12 A. I don't. I mean, I see images like that  
13 all the time. Just fairly generic patient  
14 positioning images.  
15 Q. Would it surprise you to know that come  
16 from Nuvasive literature?  
17 A. I don't know if surprise is the word. I  
18 guess it depends on the scope of the Nuvasive  
19 literature.  
20 Q. What do you mean?  
21 A. I think by this point Nuvasive had  
22 published a book about lateral surgery.

**16. PAGE 229:23 TO 229:24 (RUNNING 00:00:05.703)**

23 Q. Can you turn to the seventh page of the  
24 PowerPoint, which is Bates labeled 137024. Do you

**17. PAGE 229:25 TO 230:19 (RUNNING 00:00:39.827)**

25 see that there appears to be a slide on top of a  
00230:01 slide?  
02 A. I do.  
03 Q. Do you know why that is?  
04 A. I don't.  
05 Q. Do you see that the slide on top the  
06 slide states: "Massive OUS potential"?  
07 A. Yes.  
08 Q. And underneath that, there's some header  
09 that says, "Develop and expand across Latin  
10 America."  
11 Do you see that?  
12 A. Yes, I do.  
13 Q. And three bullet points down it says,  
14 "Currently in nine countries."  
15 Do you see that?  
16 A. Yes.  
17 Q. Was Alphatec currently in nine countries  
18 with the lateral procedure as of the date of this  
19 presentation, June 2014?

**18. PAGE 230:21 TO 231:13 (RUNNING 00:00:38.711)**

21 THE WITNESS: Not to my knowledge.  
22 BY MS. DEVINE:

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23 Q. So do you know what that references?  
24 A. I -- what "currently in nine  
25 countries" --  
00231:01 Q. Mm-hmm.  
02 A. -- references?  
03 Q. Mm-hmm.  
04 A. No, I don't know any specifics about  
05 that, no.  
06 Q. Do you think it could be Nuvasive?  
07 A. I believe that's a possibility.  
08 Q. Are you aware that Nuvasive tends to  
09 market with purple?  
10 A. I am aware, yes.  
11 Q. And this slide within a slide here is  
12 colored with Nuvasive purple, correct?  
13 A. Close enough, yes.

**19. PAGE 231:14 TO 231:15 (RUNNING 00:00:07.285)**

14 Q. Does Alphatec regularly present to  
15 management with information about Nuvasive?

**20. PAGE 231:17 TO 231:21 (RUNNING 00:00:19.576)**

17 THE WITNESS: I'm not sure where that  
18 slide came from. I would say that generally any  
19 company has some idea of what the competition is up  
20 to just as a case to be aware of the landscape in  
21 which we're doing business.

**21. PAGE 232:08 TO 233:04 (RUNNING 00:00:38.820)**

08 Q. So Page 10, which is Bates labeled  
09 137027. Are you on that page?  
10 A. Yes.  
11 Q. And it states: "What is the project  
12 scope?"  
13 Do you see that?  
14 A. Yes.  
15 Q. And it states: "Retractor system."  
16 Do you see that?  
17 A. Yes.  
18 Q. And it states: "Access system  
19 specifically designed to create a safe reproducible  
20 surgical pathway."  
21 Do you see that?  
22 A. I do, yes.  
23 Q. Are you aware that Nuvasive markets its  
24 XLIF system as a safe reproducible system?  
25 A. Only generally, no specifics.  
00233:01 Q. What retractor is pictured here?  
02 A. I believe that's a MAS retractor.  
03 Q. Which is the Nuvasive retractor, correct?  
04 A. It's the Nuvasive retractor.

**22. PAGE 233:05 TO 233:11 (RUNNING 00:00:33.877)**

05 Q. So this team of Bryan Larsen and Jon  
06 Costabile was presenting to management the project  
07 scope of LLIF with a picture of the Nuvasive MAS  
08 retractor, correct?  
09 A. Without knowing to what end they wanted  
10 an image on the slide, they were showing an image  
11 of a MAS retractor during a management update.

**23. PAGE 233:21 TO 234:02 (RUNNING 00:00:17.417)**

21 Q. But this particular slide is about a  
22 retractor system, correct?

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