

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent of: Michelson  
U.S. Patent No.: 8,251,997 Attorney Docket No.: 13958-0112IP2  
Issue Date: August 28, 2012  
Appl. Serial No.: 13/306,583  
Filing Date: November 29, 2011  
Title: METHOD FOR INSERTING AN ARTIFICIAL IMPLANT BETWEEN TWO  
ADJACENT VERTEBRAE ALONG A CORONAL PLANE

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**PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 8,251,997  
PURSUANT TO 35 U.S.C. §§ 311–319, 37 C.F.R. § 42**

## TABLE OF CONTENTS

I.	<b>MANDATORY NOTICES UNDER 37 C.F.R § 42.8</b> .....	1
	A.Real Party-In-Interest Under 37 C.F.R. § 42.8(b)(1) .....	1
	B.Related Matters Under 37 C.F.R. § 42.8(b)(2).....	1
	C.Lead And Back-Up Counsel Under 37 C.F.R. § 42.8(b)(3) .....	1
	D.Service Information .....	1
II.	<b>PAYMENT OF FEES – 37 C.F.R. § 42.103</b> .....	2
III.	<b>REQUIREMENTS FOR IPR UNDER 37 C.F.R. § 42.104</b> .....	2
	A.Grounds for Standing Under 37 C.F.R. § 42.104(a).....	2
	B.Challenge Under 37 C.F.R. § 42.104(b) and Relief Requested .....	2
	C.Claim Construction under 37 C.F.R. §§ 42.104(b)(3).....	3
	1. “a single elongated portion removably attached to said distal end of said third surgical instrument” (claim 9).....	4
	2. “positioning a single elongated portion removably attached to said distal end of said third surgical instrument over the disc space” (claim 9).....	5
	3. “positioning said third surgical instrument such that at least part of one of said at least two elongated portions is over one of the two adjacent vertebrae and at least part of another of said at least two elongated portions is over the other of the two adjacent vertebrae” (claim 17) .....	5
	4. “positioning said third surgical instrument such that the midpoint of the width of said first elongated portion is over the disc space and said second elongated portion is over one of the two adjacent vertebrae and said third elongated portion is over the other of the two adjacent vertebrae” (claim 24) .....	6
	5. “the length of said implant being sized to occupy substantially the full transverse width of the vertebral bodies of the two adjacent vertebrae, the length of said implant being greater than the depth of the disc space” (claims 9 and 17) .....	6
	6. “the length of said implant being sized to occupy the full transverse width of the vertebral bodies of the two adjacent vertebrae, the length of said implant being greater than the depth of the disc space” (claim 24) .....	8
IV.	<b>SUMMARY OF THE `997 PATENT</b> .....	8
	A.Brief Description .....	8
	B.Summary of the Prosecution History of the `997 Patent.....	9
V.	<b>THERE IS A REASONABLE LIKELIHOOD THAT AT LEAST ONE CLAIM OF THE `997 PATENT IS UNPATENTABLE</b> .....	10
VI.	<b>[GROUND 1] – Obviousness under §103 by Jacobson in view of Leu, McAfee, and Michelson `247</b> .....	17

VII.	[GROUND 2] – Obviousness under §103 by Jacobson in view of Leu, McAfee, Michelson ‘247, and Frey .....	24
VIII.	[GROUND 3] – Obviousness under §103 by Jacobson in view of Leu and Brantigan.....	26
IX.	[GROUND 4] – Obviousness under §103 by Jacobson in view of Leu, Brantigan, and Frey.....	33
X.	[GROUND 5] – Obviousness under §103 by Jacobson in view of Leu and Michelson ‘247 .....	34
XI.	[GROUND 6] – Obviousness under §103 by Jacobson in view of Leu, Michelson ‘247, and Frey .....	42
XII.	[GROUND 7] – Obviousness under §103 by Michelson ‘661 in view of McAfee and Lynn.....	43
XIII.	[GROUND 8] – Obviousness under §103 by Michelson ‘661 in view of Lynn ...	51
XIV.	CONCLUSION .....	60

## EXHIBITS

NUVASIVE 1001	Declaration of Dr. McAfee, M.D., M.B.A.
NUVASIVE 1002	U.S. Patent No. 8,251,997 to Michelson (“997 patent”)
NUVASIVE 1003	Select Prosecution History of the ‘997 patent
NUVASIVE 1004	U.S. Pat. No. 4,545,374 to Jacobson (“Jacobson”)
NUVASIVE 1005	Leu et al., <i>Percutaneous Fusion of the Lumbar Spine</i> , Spine Vol. 6, No. 3, pp. 593-604 (September 1992) (“Leu”)
NUVASIVE 1006	U.S. Pat. No. 5,192,327 to Brantigan (“Brantigan”)
NUVASIVE 1007	U.S. Pat. No. 4,917,704 to Frey et al. (“Frey”)
NUVASIVE 1008	U.S. Pat. No. 5,015,247 to Michelson (“Michelson ‘247”)
NUVASIVE 1009	U.S. Pat. No. 5,569,290 to McAfee (“McAfee”)
NUVASIVE 1010	U.S. Pat. No. 5,772,661 to Michelson (“Michelson ‘661”)
NUVASIVE 1011	U.S. Pat. No. 8,343,224 to Lynn et al. (“Lynn”)

NuVasive, Inc. (“Petitioner”) petitions for *Inter Partes* Review (“IPR”) under 35 U.S.C. §§ 311–319 and 37 C.F.R. § 42 of claims 9-30 of U.S. Patent No. 8,251,997. Below, NuVasive demonstrates there is a reasonable likelihood of prevailing in its challenge of at least one of claims 9-30 identified in this petition as being unpatentable.

**I. MANDATORY NOTICES UNDER 37 C.F.R § 42.8**

**A. Real Party-In-Interest Under 37 C.F.R. § 42.8(b)(1)**

NuVasive, Inc. is the real party-in-interest for the instant petition.

**B. Related Matters Under 37 C.F.R. § 42.8(b)(2)**

Petitioner is not aware of any reexamination certificates or pending prosecution concerning the ‘997 patent, and is aware of a Certificate of Correction. Petitioner is a named defendant in litigation concerning the ‘997 patent, *Warsaw Orthopedic, Inc. et al. v. NuVasive, Inc.* (originally filed in N.D. Ind. as Case No. 3:12-cv-00438-JD-CAN on Aug. 17, 2012, and transferred to S.D. Cal. on Nov. 8, 2012, as Case No. 3:12-cv-02738-CAB (MDD)). The ‘997 patent was added by amended complaint filed Aug. 28, 2012, served on Petitioner that same day. Petitioner is concurrently filing an IPR petition for claims 1-8 of the ‘997 patent.

**C. Lead And Back-Up Counsel Under 37 C.F.R. § 42.8(b)(3)**

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**D. Service Information**

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