

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NUVASIVE, INC.  
Petitioner

v.

WARSAW ORTHOPEDICS, INC.  
Patent Owner

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Case IPR2013-00206  
Patent No. 8,251,997

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**AFFIDAVIT OF MR. FRANK E. SCHERKENBACH IN SUPPORT OF PETITIONER'S  
MOTION FOR *PRO HAC VICE* ADMISSION**

**Mail Stop PATENT BOARD**  
Patent Trial and Appeal Board  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AFFIDAVIT OF MR. FRANK E. SCHERKENBACH IN SUPPORT  
OF PETITIONER'S MOTION FOR *PRO HAC VICE* ADMISSION**

I, Frank E. Scherkenbach, being duly sworn and upon oath, hereby attest to the following:

1. I am a member in good standing of the state Bars of California and Massachusetts, as well as the United States Court of Appeals for the Federal Circuit.
2. I have not been suspended or disbarred from practice before any court or administrative body.
3. I have never had an application for admission to practice before any court or administrative body denied.
4. No sanction or contempt citation has been imposed against me by any court or administrative body.
5. I have read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of the Code of Federal Regulations.
6. I will be subject to the USPTO Code of Professional Responsibility set forth in 37 C.F.R. §§ 10.20 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).
7. I have not applied to appear *pro hac vice* before the Office in any other proceeding in the last three (3) years. I am concurrently applying to appear *pro hac vice* before the Office in an *inter partes* review proceeding on the same patent that is at issue in the present *inter partes* review proceeding, IPR2013-00208.
8. I am an experienced litigation attorney with more than 20 years of experience representing clients in patent cases involving medical devices, computer software, and semiconductors. I regularly litigate patent cases in various forums including the United States Court of Appeals for the Federal Circuit, federal district courts, and the International Trade Commission. Through my experience in patent litigation matters, I have represented clients in

many phases of litigation including discovery, Markman hearings, jury trials, bench trials, and appeals. My biography is attached hereto as Exhibit A. I am lead counsel for Petitioner NuVasive, Inc. in *Warsaw Orthopedic, Inc., et al. v. Nuvasive, Inc.*, Case No. 3:12-cv-02738-CAB (MDD) (S.D. Cal.), a co-pending district court case in which Patent Owner Warsaw Orthopedics, Inc. has asserted U.S. Patent 8,251,997 against the Petitioner. I am also lead counsel for the Petitioner in a separate pending patent infringement matter, *Medtronic v. NuVasive*, Case No. 3:08-cv-01512-MMA-AJB (S.D. Cal.), which involves similar subject matter (including U.S. Patent Nos. 5,772,661 and 5,860,973) to this proceeding (including U.S. Patent Nos. 5,772,661 and 5,860,973) and in which I oversaw many phases of the litigation from discovery through trial, and will continue to be involved in an appeal to the Federal Circuit.

Respectfully submitted,

Date: July 23, 2013

FScherkenbach

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Sworn to and subscribed before me,  
this 23 day of July, 2013.

Margaret M. Trevino  
Notary Public  
My Commission Expires:

