

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 ORTHOPEDIC, INC.  
Patent Owner

Patent Number: 8,251,997 B2  
Issue Date: August 28, 2012

METHOD FOR INSERTING AN ARTIFICIAL IMPLANT BETWEEN TWO  
ADJACENT VERTEBRAE ALONG A CORONAL PLANE

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Case IPR2013-00206

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**PETITIONER'S NOTICE OF APPEAL TO THE  
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Petitioner respectfully gives Notice pursuant to 37 C.F.R. § 90.2(a) and 35 U.S.C. § 142 that it hereby appeals the Board's July 10, 2014 Final Written Decision that claims 9-16 and 24-30 of U.S. Patent No. 8,251,997 have not been shown to be unpatentable to the United States Court of Appeals for the Federal Circuit, and from all other underlying orders, decisions, rulings and opinions that are adverse to Petitioner, including the Board's August 28, 2014 Decision regarding Petitioner's Request for Rehearing.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), issues on Petitioner's appeal may include the Board's determination that claims 9-16 and 24-30 have not been shown to be unpatentable under 35 U.S.C. § 103 in view of the grounds of unpatentability summarized at pp. 5 and 31-33 of the Board's final written decision and in view of the evidence discussed in Petitioner's Petition for Rehearing (denied on August 28, 2014), challenges to any findings supporting that determination, the Board's failure to properly consider evidence of record, the Board's legal errors in undertaking the obviousness analysis, the Board's findings that conflict with the evidence of record and are not supported by substantial evidence, or any other issues decided adversely to Petitioner.

Simultaneous with this submission, a copy of this Notice of appeal is being filed with the Board. In addition, three copies of this Notice of Appeal, along with the required

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Our Ref. 13958-0112IP2

docketing fees, are being filed with the Clerk's Office for the United States Court of Appeals  
for the Federal Circuit.

Respectfully submitted,

Dated: August 29, 2014

/Stephen R. Schaefer, Reg. No. 37,927/

Stephen R. Schaefer, Reg. No. 37,927

(Trial No. IPR2013-00206)

*Attorney for Petitioner*

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Our Ref. 13958-0112IP2

### **CERTIFICATE OF SERVICE**

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on August 29, 2014, a complete and entire copy of the foregoing was provided via email to the Patent Owner by serving the correspondence email addresses of record as follows:

Thomas H. Martin  
Wesley C. Meinerding  
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1557 Lake O'Pines Street, NE  
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Email: [tmartin@martinferraro.com](mailto:tmartin@martinferraro.com)  
Email: [docketing@martinferraro.com](mailto:docketing@martinferraro.com)

Moreover, I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's Patent Review Processing System (PRPS), the original version of the foregoing NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT was filed by hand on August 29, 2014 with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office  
c/o Office of the General Counsel  
Madison Building East, 10B20  
600 Dulany Street  
Alexandria, VA 22314-5793

Moreover, I hereby certify that three true and correct copies of the foregoing NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL

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CIRCUIT and the prescribed fees were filed by hand on August 29, 2014, with the Clerk's  
Office of the United States Court of Appeals for the Federal Circuit:

Mr. Daniel E. O'Toole, Circuit Executive and Clerk of the Court  
United States Court of Appeals for the Federal Circuit  
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/Jessica K. Detko/

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