

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.

Petitioner

v.

WARSAW ORTHOPEDIC, INC.

Patent Owner

Case IPR2013-00206

Patent No. 8,251,997

PATENT OWNER'S NOTICE OF APPEAL

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

Pursuant to 37 C.F.R. § 90.2(a) and 35 U.S.C. §§ 141(c) and 142, Warsaw Orthopedic, Inc. (“Patent Owner”) respectfully gives Notice that it hereby appeals the Board’s July 10, 2014 Final Written Decision that claims 17–23 of the ’997 patent are 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 Patent Owner, including, without limitation, certain holdings in the Board’s September 23, 2013 Institution of *Inter Partes* Review (Paper 17).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), issues on Patent Owner’s appeal may include the Board’s determination that claims 17–23 of the ’997 patent have been shown to be unpatentable under 35 U.S.C. § 103 in view of the grounds of unpatentability including U.S. Patent No. 4,545,374 to Jacobson (“Jacobson ’374”), U.S. Patent No. 5,192,327 to Brantigan (“Brantigan ’327”), challenges to any findings supporting that determination, the Board’s factual findings with respect to Jacobson ’374 and Brantigan ’327, the Board’s failure to collaterally estop Petitioner from re-litigating the disclosures of Brantigan ’327, 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, and other issues decided adversely to Patent Owner.

Simultaneous with this filing and in accordance with 37 C.F.R. § 90.2(a)(1), this Notice of Appeal is filed with the Director of the United States Patent and Trademark Office, filed with the Board, and served upon Petitioner in accordance with 37 C.F.R. § 42.6(e). In addition, three copies of this Notice of Appeal, along with the required fees, are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully Submitted,

Dated: September 9, 2014



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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that a copy of this NOTICE OF APPEAL was served in its entirety via electronic mail to APSI@fr.com (referencing Attorney Docket No. 13958-0112IP2):

Stephen R. Schaefer
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402

Michael T. Hawkins
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402

Additionally, pursuant to 37 C.F.R. § 90.2(a)(1), the undersigned hereby certifies that a copy of this NOTICE OF APPEAL was electronically filed with the Patent Trial and Appeal Board in accordance with 37 C.F.R. § 42.6(b) and the original of this NOTICE OF APPEAL filed by hand with the Director of the United States Patent and Trademark Office in accordance with 37 C.F.R. 104.2 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, the undersigned hereby certifies that three true and correct copies of the foregoing NOTICE OF APPEAL and the prescribed fees were filed by hand on September 9, 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
717 Madison Place, N.W., Suite 401
Washington, DC 20005

Date of Service: 9 SEP 14

Signature: 

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