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21 UNITED STATES DISTRICT COURT

22 SOUTHERN DISTRICT OF CALIFORNIA

23 WARSAW ORTHOPEDIC, INC.;
24 MEDTRONIC SOFAMOR DANEK
25 U.S.A., INC.; MEDTRONIC PUERTO
26 RICO OPERATIONS CO.; and
27 OSTEOTECH, INC.

28 Plaintiffs,

v.

NUVASIVE, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. 3:12-cv-02738 CAB (MDD)

NUVASIVE, INC.'S SUPPLEMENTAL
RESPONSE TO PLAINTIFFS'
INTERROGATORY NO. 11

Case No. 3:12-cv-02738 CAB (MDD)

1 non-bone, radiolucent construction, that include at least a predefined number
2 radiopaque markers located in specific areas of the implants, anti-migration features, and
3 at least one fusion aperture. These features of U.S. Patent Nos. 8,187,334 and 8,361,156,
4 among others, allow NuVasive's CoRoent implants, used in NuVasive's XLIF
5 procedure, to promote bone growth and fusion when osteoinductive material is placed
6 in the fusion aperture and the implant implanted in the interbody space of a patient, and
7 for the implant's location to be determined relative to the vertebral bodies under
8 fluoroscopy. This allows surgeons to safely and reproducibly place the CoRoent
9 implants in the best position within the interbody space, which increases the success of
10 the fusion procedure, and is one of the factors that has contributed to XLIF's
11 commercial success.

12 The success of the XLIF procedure, the MaXcess line of retractors and the
13 NeuroVision nerve monitoring system (which relate to U.S. Patent Nos. D652,922;
14 8,000,782; 8,005,535; 8,016,767; and 8,192,356), and the CoRoent XL line of implants
15 (which relate to U.S. Patent Nos. 8,187,334 and 8,361,156) is exemplified by the
16 phenomenal growth of NuVasive from a small start-up company in 1997 to a company
17 that today provides products, training and support to doctors who perform thousands of
18 XLIF procedures per year. Since its introduction in 2003, more than 100,000 spinal
19 levels have been treated using the XLIF methods and systems, improving the lives of
20 patients, many of whom could not be safely or effectively treated with other surgical
21 approaches and procedures.

22 Equally important, is the widespread adoption of XLIF by surgeons and the
23 positive reviews surgeons give the pioneering XLIF procedure. For example, in the
24 December 15, 2010 issue of SPINE – one of the preeminent peer reviewed journals for
25 spine surgeons – several articles discuss the many advantages of XLIF over conventional
26 surgical approaches for lumbar fusion. Conventional surgical approaches “have been
27 associated with high morbidities that can often offset the benefits of intervention.
28

1 Moreover, the XLIF procedure, and NuVasive's tools for performing the XLIF
2 procedure, including the MaXcess Retractor, the CoRoent XL line of implants, and the
3 NeuroVision nerve monitoring system are being copied by NuVasive's competitors,
4 including at least Medtronic, Globus and others.

5 Additional evidence of the non-obviousness of the claimed inventions can be
6 found in the skepticism of surgeons at the time of invention as to the safety and efficacy
7 of traversing the psoas muscle for lateral spinal surgical procedures. Surgeons at that
8 time generally either avoided the psoas muscle entirely or retracted it during lateral
9 surgical procedures.

10 Pursuant to Fed. R. Civ. P. 26(e), NuVasive reserves its right to supplement its
11 response to this interrogatory, as necessary, as the evidence develops.

12
13 Dated: September 3, 2013

FISH & RICHARDSON P.C.

14 By: 

15 Jonathan J. Lamberson

16 Attorneys for Defendant/Counterclaimant
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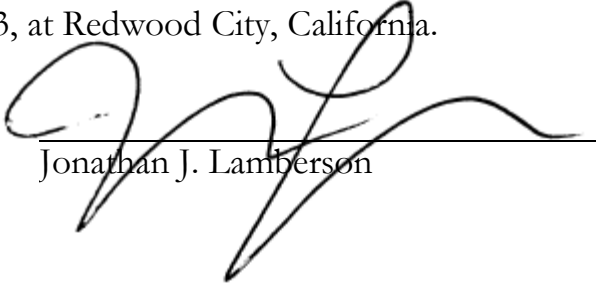
1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that a true and correct copy of the above and
3 foregoing document has been served on September 3, 2013 to the following individuals
4 via electronic mail.

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19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed this 3rd day of September, 2013, at Redwood City, California.

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Jonathan J. Lamberson

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