

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.
Petitioner

v.

WARSAW ORTHOPEDIC, INC.
Patent Owner

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

Case IPR2013-00208

DECLARATION OF BARTON L. SACHS, M.D., M.B.A.,

F.A.C.P.E., F.A.C.H.E.

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TABLE OF CONTENTS

	<u>Page</u>
I. ASSIGNMENT	1
II. QUALIFICATIONS.....	2
III. PERSON OF ORDINARY SKILL IN THE ART.....	8
IV. MATERIALS CONSIDERED	9
V. BACKGROUND AND SUMMARY OF '997 PATENT	9
A. Anatomy of the Human Spine.....	10
B. Interbody Spinal Fusion Procedures	15
C. The '997 Patent	30
D. Conception and Reduction to Practice of the '997 Patent	31
VI. CLAIM INTERPRETATION.....	35
VII. THE PRIOR LITIGATION BETWEEN THE PARTIES.....	45
VIII. NUVASIVE'S PROPOSED GROUNDS OF REJECTION DO NOT RENDER THE '997 PATENT OBVIOUS	49
A. Proposed Grounds of Unpatentability.....	49
1. Claims 1–8 (IPR2013-00206).....	49
2. Claims 9–30 (IPR2013-00208).....	50
B. Prior Art References.....	51
1. U.S. Patent No. 4,545,374 (“Jacobson”).....	51
2. Hansjörg F. Leu and Adam Schreiber, Percutaneous Fusion of the Lumbar Spine: A Promising Technique (“Leu”)	66
3. Brantigan '327.....	72

4.	Michelson '247	87
5.	U.S. Patent No. 5,569,290 (“McAfee ’290”).....	93
C.	Combinations Suggested By Petitioner.....	93
1.	Jacobson in view of Leu and Brantigan (Claims 1–8, 17–23)	93
2.	Jacobson in view of Leu and Michelson ’247 (Claims 1–8, 9–16, 24–30)	98
IX.	SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS.....	100
X.	APPLICABLE LEGAL PRINCIPLES	103

I, Barton L. Sachs M.D., M.B.A., F.A.C.P.E., F.A.C.H.E. of Charleston, South Carolina declare that:

I. ASSIGNMENT

1. I am a Professor of Orthopaedics and an Interim Chief Medical Officer at the Medical University of South Carolina. I also serve as an Adjunct Professor of Bioengineering at Clemson University, Department of Engineering and Biomechanics. I am a practicing spine surgeon, specializing in minimally invasive surgery, spinal arthroplasty and spine deformities, spine reconstruction, and deformity surgery.

2. I have been retained by counsel for Warsaw Orthopedic, Inc. (“Warsaw” or “Patent Owner”). I understand that the Patent Trial and Appeal Board (“PTAB” or “Board”) has instituted an *inter partes* review of Warsaw’s U.S. Patent No. 8,251,997 (the “’997 patent”) based upon a petition filed by NuVasive, Inc. (“NuVasive” or “Petitioner”).

3. I have been asked to opine on the subject of the validity of claims 1–30 of the ’997 patent in light of the grounds of rejection at issue in this *inter partes* review. I have also been asked to review and respond to the Declaration of Dr. Paul McAfee (the “McAfee Declaration” or “Ex. 1001”) submitted in support of NuVasive’s petition for *inter partes* review.

4. In forming my opinions as set forth in this declaration, I have relied upon my education, research, training, and experience in the area of spinal surgery. I have also relied on my review and analysis of the prior art and information provided to me in connection with this case.

5. I am being compensated for my work as an expert with respect to this *inter partes* review, but my compensation is not contingent in any way on the content of my opinions or the outcome of this proceeding.

II. QUALIFICATIONS

6. I received my Bachelor of Arts, cum laude, with honors in Biology in 1973 from Harvard University and my Doctorate of Medicine in 1977 from State University of New York. Following medical school, I served as a Resident in orthopaedics at the Case Western Reserve University Hospitals of Cleveland, Ohio, from 1977 to 1982. From 1982 to 1983, I was the Chief Resident in Orthopaedic Surgery at Case Western. In 1998, I received a Masters of Business Administration from Rensselaer Polytechnic Institute in Troy, New York.

7. I have completed a number of fellowships. From June through August of 1974, I was a Clinical and Educational Research Fellow at the Department of Orthopaedic Surgery at the S.U.N.Y. Upstate Medical Center in Syracuse, New York, sponsored by Richard T. Chiroff, M.D. From November of 1978 through October of 1979, I held a Research Fellowship in Cartilage Disease

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