1 2 IN THE UNITED STATES DISTRICT COURT 3 FOR THE SOUTHERN DISTRICT OF CALIFORNIA 4 HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE 5 6 7 MEDTRONIC SOFAMOR DANEK, USA ) CASE NO. 08 CV 1512-MMA ET AL., 8 PLAINTIFF, 9 VS. AUGUST 30, 2011 10 NUVASIVE, INC., TUESDAY, 8:30 AM 11 TRIAL - DAY ONE DEFENDANT. 12 13 14 REPORTER'S TRANSCRIPT OF PROCEEDINGS 15 16 **APPEARANCES:** 17 FOR THE PLAINTIFF: LUKE L. DAUCHOT, ESQ. NIMALKA WICKRAMASEKERA, ESQ. 18 SHARRE LOTFOLLAHI, ESQ. ALEXANDER F. MACKINNON, ESQ. 19 MICHAEL DOBSZEWICZ, ESQ. KIRKLAND & ELLIS, LLP 20 JEFF SCHWARTZ, ESQ. DEWEY & LEBOEUF 21 22 23 FOR THE DEFENDANT: FRANK SCHERKENBACH, ESQ. TODD G. MILLER, ESQ. 24 JONATHAN J. LAMBERSON, ESQ. NEIL WARREN, ESQ. 25 KEELEY I. VEGA, ESQ. FISH & RICHARDSON, P.

ELIZABETH CESENA, CSR 12266, (619) 237-0100 USDC, SOUTHERN DISTRICT OF CA PO BOX 131037, SAN DIEGO, CA 92170

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USDC, SOUTHERN DISTRICT OF CA			

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1	Q DR. MICHELSON, I DON'T SEE TRANSLATERAL UP THERE?		
2	A THAT'S CORRECT.		
3	Q LET'S SPEAK ABOUT THE TERM TRANSLATERAL. THAT'S A TERM		
4	IN OPENING STATEMENT WE SAW IN THE CONTEXT OF YOUR '973		
5	PATENT.		
6	TO YOUR KNOWLEDGE, WAS THAT A TERM SPECIFICALLY IN		
7	THIS AREA THAT EXISTED BEFORE THE TIME THAT YOU INVENTED		
8	THIS IMPLANT?		
9	A WELL TO THE BEST OF MY KNOWLEDGE, I ACTUALLY CREATED		
10	THAT WORD. WITH THE IDEA OF THE TRANSCONTINENTAL RAILROAD		
11	IN MIND, THAT'S WHY I PICKED THE WORD TRANSLATERAL THAT		
12	TRANSCONTINENTAL RAILROAD CONNECTED THE ATLANTIC OCEAN TO		
13	THE PACIFIC OCEAN AND CROSSED THE ENTIRE CONTINENT AND MY		
14	CONCEPT OF A TRANSLATERAL IMPLANT WAS AN IMPLANT THAT WOULD		
15	ACTUALLY BE CAPABLE OF SITTING ON THIS APOPHYSEAL RING ON		
16	ONE SIDE AND GOING ALL THE WAY ACROSS AND SITTING ON THE		
17	APOPHYSEAL RING ON THE OPPOSITE SIDE.		
18	Q CAN WE PUT UP SLIDE FIVE, DAVE? CAN YOU PRESS.		
19	DOES THAT DEPICT TRANSLATERAL AS YOU USED IT IN		
20	YOUR '973 PATENT.		
21	A YES. AND ALSO ONE OTHER THING. IT'S COMING IN		
22	ESSENTIALLY PERPENDICULAR TO WHAT WE CALL THAT MID SAGITTAL		
23	LINE, SO WHILE THIS WAS THE FRONT AND THAT WAS THE BACK AND		
24	THINGS WENT IN FRONT TO BACK, THIS IS COMING IN AT 90 DEGREE		
25	ANGLE TO THE OLD TECHNOLOGY.		

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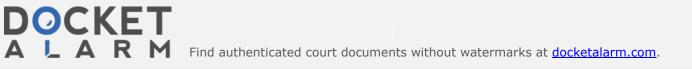
1	NEVER OPERATED ON AN ANIMAL. I'M NOT A VETERINARIAN. I		
2	DON'T WHAT SPINAL DISORDERS THEY GET, IF ANY, THEY WALK ON		
3	ALL FOURS. NO. THESE ARE ALL FOR HUMANS.		
4	Q YOUR HONOR, THIS IS PROBABLY A GOOD TIME TO TAKE A		
5	BREAK IF IT'S OKAY.		
6	THE COURT: SURE. WE'RE CLOSE TO QUITTING TIME IF		
7	THIS IS A CONVENIENT TIME FOR YOU, WE'LL DO THAT. WE'LL		
8	TAKE OUR EVENING RECESS. PLEASE REMEMBER THE ADMONITION WE		
9	TALKED ABOUT. DON'T TALK TO ANYONE ABOUT THE CASE OR GET		
10	ANY INFORMATION FROM OUTSIDE. HAVE A NICE EVENING. SEE		
11	YOU BACK HERE AT 9:00 O'CLOCK TOMORROW. THANKS.		
12	(EVENING RECESS TAKEN)		
13	SAN DIEGO, CALIFORNIA ) ) SS:		
14	COUNTY OF SAN DIEGO )		
15	I, ELIZABETH M. CESENA, CSR 12266, AN OFFICIAL REPORTER OF THE UNITED STATES DISTRICT COURT, SOUTHERN		
16	DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT I REPORTED IN SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE		
17	ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT, NUMBERED FROM PAGES 1 TO 183 INCLUSIVE, IS A FULL, TRUE AND		
18	CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON AUGUST 30, 2011.		
19			
20	SAN DIEGO, CALIFORNIA, DATED THIS 31ST DAY OF		
21	AUGUST, 2011. /S/ ELIZABETH CESENA		
22			
23	ELIZABETH M. CESENA, CSR 12266 OFFICIAL COURT REPORTER		
24	OFFICIAL COURT REPORTER		
25			

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4	HONORABLE MICHAEL M. ANELLO, DISTRICT JUDGE		
5			
6			
7	MEDTRONIC SOFAMOR DANEK, USA ET AL.,	) ) CASE NO. 08 CV 1512-MMA	
8	PLAINTIFF,		
9	VS.	) AUGUST 31, 2011	
10 11	NUVASIVE, INC.,	) WEDNESDAY, 9:00 AM	
12	DEFENDANT.	) TRIAL – DAY TWO	
13			
14	REPORTER'S TRANSCRIPT OF PROCEEDINGS		
15	REPORTER 5 TRANSCRIPT OF PROCEEDINGS		
16	APPEARANCES:		
17	FOR THE PLAINTIFF:	LUKE L. DAUCHOT, ESQ.	
18		NIMALKA WICKRAMASEKERA, ESQ. SHARRE LOTFOLLAHI, ESQ.	
19	1	ALEXANDER F. MACKINNON, ESQ. MICHAEL DOBSZEWICZ, ESQ.	
20		KIRKLAND & ELLIS, LLP	
21		JEFF SCHWARTZ, ESQ. DEWEY & LEBOEUF	
22		FRANK SCHERKENBACH, ESQ.	
23	, i i i i i i i i i i i i i i i i i i i	TODD G. MILLER, ESQ. JONATHAN J. LAMBERSON, ESQ.	
24	I	NEIL WARREN, ESQ. KEELEY I. VEGA, ESQ.	
25		FISH & RICHARDSON, P.C.	

H CESENA, CSR 12266, (619) 237-0100 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT



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