

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.
Petitioner

v.

WARSAW ORTHOPEDIC, INC.
Patent Owner

Cases IPR2013-00206 (Patent 8,251,997 B2) (SCM)
IPR2013-00208 (Patent 8,251,997 B2)¹

Before SALLY C. MEDLEY, LORA M. GREEN, and STEPHEN C. SIU,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This order addresses an issue that is the same in both cases. Therefore, we exercise discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers since doing so may cause confusion.

IPR2013-00206 and IPR2013-00208
Patent 8,251,997 B2

A conference call was held on August 6, 2013 with counsel for the respective parties and a panel of administrative patent judges. The purpose of the conference call was for NuVasive, Inc. (“NuVasive”) to seek authorization to file a motion to submit additional evidence and updated information in response to Warsaw’s preliminary response. Warsaw opposed the request.

Counsel for NuVasive explained that Warsaw, in its preliminary response, relied upon evidence from a district court case related to U.S. Patent 5,860,973 (“the ’973 patent”); an uninvolved patent. As a result, NuVasive is of the impression that Warsaw did not provide the Board with a complete evidentiary record of certain of the district court documents. NuVasive seeks authorization to file certain exhibits to provide clarification for the record. The documents that NuVasive seeks to submit into the record were discussed. In addition, NuVasive seeks authorization to submit an update of the district court case related to the uninvolved ’973 patent.

Upon consideration, the Board has determined that neither the filing of the documents nor an update of the district court case related to the ’973 patent are necessary at this point in the proceeding. Accordingly, NuVasive’s request to file a motion to submit additional evidence and updated information is *denied*.

IPR2013-00206 and IPR2013-00208
Patent 8,251,997 B2

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