

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

**NOTICE OF SUPPLEMENTAL EVIDENCE
UNDER 37 C.F.R. § 42.64(b)(2)**

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In response to Petitioner's Objection to Evidence filed on October 7, 2013, Warsaw submits the following items of supplemental evidence pursuant to 37 C.F.R. § 42.64(b)(2). Warsaw reserves the right to serve additional supplemental evidence pursuant to the Board's October 15, 2013 order. *See* Paper 21.

- WARSAW2020 Excerpts from Deposition of L. Boyd, dated February 18, 1999 from *Sofamor Danek Holdings, Inc. v. U.S. Surgical Corp.*, Case No. 98-2369 GA (JSG) (W.D. Tenn.)
- WARSAW2021 Excerpts from Deposition of L. Boyd, dated December 3, 2010 from *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD) (S.D. Cal.)
- WARSAW2022 Excerpts from Deposition of D. Imre, dated October 5, 2001 from *Medtronic Sofamor Danek, Inc. v. Osteotech, Inc.*, Case No. 99-2656-G/V (W.D. Tenn.)
- WARSAW2023 Excerpts from Deposition of B. Estes, dated November 10, 2003 from *Medtronic Sofamor Danek, Inc. v. Karlin Technology, Inc.*, Case No. 01-2373-JPM (W.D. Tenn.)
- WARSAW2024 Excerpts from Deposition of G. Michelson, dated November 19, 2010 from *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD) (S.D. Cal.)
- WARSAW2025 Excerpts from Deposition of J. Pafford, dated April 3, 2003 from *Medtronic Sofamor Danek, Inc. v. Karlin Technology, Inc.*, Case No. 01-2373-JPM (W.D. Tenn.)
- WARSAW2026 Excerpts from Trial Testimony - *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD) (S.D. Cal.)

WARSAW2027 Stipulation dated November 2, 2010 from *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD) (S.D. Cal.)

WARSAW2028 Excerpts from Deposition of L. Boyd, dated November 13, 2003 from *Medtronic Sofamor Danek, Inc. v. Karlin Technology, Inc.*, Case No. 01-2373-JPM (W.D. Tenn.)

The Patent Trial and Appeal Board is hereby authorized to charge any fees associated with this proceeding to Deposit Account No. 50-3726 (Customer ID 22882).

Respectfully Submitted,

Dated: October 22, 2013



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EXHIBIT APPENDIX

WARSAW2001	Excerpts from Deposition of Dr. Michelson, dated November 19, 2010
WARSAW2002	Letter to Dr. Michelson from J. Pafford, dated March 28, 1994.
WARSAW2003	Memorandum from Larry Boyd re: Michelson Devices - Interbody Fusion Devices, dated January 26, 1994
WARSAW2004	Dezider Imre Invoice, dated December 26, 1993
WARSAW2005	Memorandum from Larry Boyd re: Meeting with Dr. Gary Karlin Michelson, dated January 11, 1994
WARSAW2006	Memorandum from Larry Boyd re: Notes on Threaded Dowel Concepts of Dr. Michelson, dated January 11, 1994
WARSAW2007	Letter to Dr. Michelson from L. Boyd, dated January 13, 1994
WARSAW2008	Excerpts from Trial Testimony - <i>Warsaw Orthopedic, Inc. v. NuVasive, Inc.</i> , Case No. 08-CV-1512 MMA (MDD)
WARSAW2009	License Agreement between Sofamor Danek Group, Inc. and Karlin Technology, Inc., dated December 31, 1993
WARSAW2010	U.S. Patent No. 5,860,973
WARSAW2011	Memorandum of Decision Following Bench Trial on Inequitable Conduct, <i>Warsaw Orthopedic, Inc. v. NuVasive, Inc.</i> , Case No. 08-CV-1512 MMA (MDD), dated February 14, 2012

- WARSAW2012 Excerpts from NuVasive's Reply in Support of Its Renewed Motion for Judgment as a Matter of Law or A New Trial, *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD), dated December 23, 2011
- WARSAW2013 Excerpts from NuVasive's Memorandum of Points and Authorities in Support of Its Renewed Motion for Judgment as a Matter of Law or a New Trial, *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD), dated October 27, 2011
- WARSAW2014 Excerpts from NuVasive's Closing Argument Regarding Inequitable Conduct Committed During the Prosecution of the '973 Patent, *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD), dated December 23, 2011
- WARSAW2015 Excerpts from NuVasive's Proposed Findings of Fact and Conclusions of Law Regarding the Unenforceability of U.S. Patent No. 5,860,973 for Inequitable Conduct, *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, Case No. 08-CV-1512 MMA (MDD), dated December 23, 2011
- WARSAW2016 Letter to R. Jansen from P. McAfee, M.D., dated January 16, 1995
- WARSAW2017 Excerpts from Deposition of Dr. Bruce E. Van Dam, dated January 27, 2011
- WARSAW2018 Baulot, et al., "Complementary Anterior Spondylodesis by Thoracoscopy - Technical Note Regarding an Observation," *Lyon Surg.* 90:347-51, November 28, 1994
- WARSAW2019 Rosenthal, et al., "Removal of a Protruded Thoracic Disc Using Microsurgical Endoscopy," May 2004
- WARSAW2020 Excerpts from Deposition of L. Boyd, dated February 18, 1999 from *Sofamor Danek Holdings, Inc. v. U.S. Surgical Corp.*, Case No. 98-2369 GA (JSG) (W.D. Tenn.)

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