

1 Todd G. Miller (SBN 163200), miller@fr.com  
2 Michael A. Amon (SBN 226221), amon@fr.com  
3 Craig E. Countryman (SBN 244601), countryman@fr.com  
4 Fish & Richardson P.C.  
5 12390 El Camino Real  
6 San Diego, CA 92130  
7 Phone: 858-678-5070/Fax: 858-678-5099

6 Frank E. Scherkenbach (SBN 142549), scherkenbach@fr.com  
7 Fish & Richardson P.C.  
8 One Marina Park Drive  
9 Boston, MA 02210-1878  
10 Phone: 617-542-5070/Fax: 617-542-8906

10 Jonathan J. Lamberson (SBN 239107), lamberson@fr.com  
11 Keeley I. Vega (SBN 259928), kvega@fr.com  
12 Neil A. Warren (SBN 272770), warren@fr.com  
13 Fish & Richardson P.C.  
14 500 Arguello St., Ste. 500  
15 Redwood City, CA 94063  
16 Telephone: 650-839-5070/Fax: 650-839-5071

15 Attorneys for Defendant/Counterclaimant NUVASIVE, INC.

17 UNITED STATES DISTRICT COURT

18 SOUTHERN DISTRICT OF CALIFORNIA

19 WARSAW ORTHOPEDIC, INC.;  
20 MEDTRONIC SOFAMOR DANEK  
21 U.S.A., INC.; MEDTRONIC PUERTO  
22 RICO OPERATIONS CO.; and  
23 OSTEOTECH, INC.

23 Plaintiffs,

24 v.

25 NUVASIVE, INC.,

26 Defendant.

27 AND RELATED COUNTERCLAIMS.  
28

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  
17 NUVASIVE, INC.

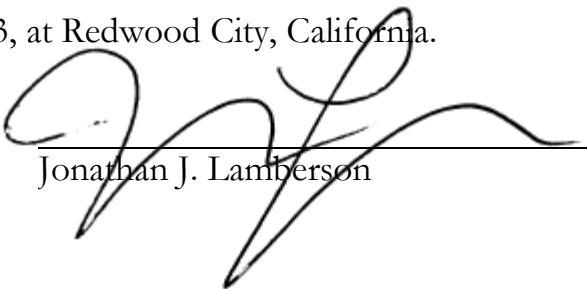
18  
19 50920632.doc

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.

5  
6 Luke L. Dauchot, SBN 229829  
7 Alexander F. MacKinnon, SBN 146883  
8 Nimalka R. Wickramaseker, SBN 26814  
9 Sharre Lotfollahi, SBN 258913  
10 Kirkland & Ellis LLP  
11 333 South Hope Street  
12 Los Angeles, CA 90017  
13 Phone: 213-680-8400  
14 Fax: 213-680-8500  
15 Service email: [Medtronic-NuVasiveIII@kirkland.com](mailto:Medtronic-NuVasiveIII@kirkland.com)  
16 Personal emails: [lrauchot@kirkland.com](mailto:lrauchot@kirkland.com);  
17 [nimalka.wickramasekera@kirkland.com](mailto:nimalka.wickramasekera@kirkland.com);  
18 [alexander.mackinnon@kirkland.com](mailto:alexander.mackinnon@kirkland.com); [sharre.lotfollahi@kirkland.com](mailto:sharre.lotfollahi@kirkland.com)

19 I declare under penalty of perjury that the foregoing is true and correct.  
20 Executed this 3<sup>rd</sup> day of September, 2013, at Redwood City, California.

21  
22  
23  
24  
25  
26  
27  
28  
  
Jonathan J. Lamberson

50920632.doc