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Attorneys for Defendant/Counterclaimant NUVASIVE, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WARSAW ORTHOPEDIC, INC.;
MEDTRONIC SOFAMOR DANEK
U.S.A., INC.; MEDTRONIC PUERTO
RICO OPERATIONS CO.; and
OSTEOTECH, INC.

Plaintiffs,

v.

NUVASIVE, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. 3:12-cv-02738 CAB (MDD)

NUVASIVE, INC.'S OBJECTIONS
AND RESPONSES TO PLAINTIFFS'
SECOND SET OF
INTERROGATORIES (NOS. 11-13)

MSD 1166
IPR2013-00506
IPR2013-00508

1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant and
2 Counterclaimant NuVasive, Inc. (“NuVasive”) hereby responds to Plaintiffs and
3 Counterclaim Defendants Warsaw Orthopedic, Inc., Medtronic Sofamor Danek USA,
4 Inc.; Medtronic Puerto Rico Operations Co.; and Osteotech, Inc., and Counterclaim
5 Defendants Medtronic, Inc. and Medtronic Sofamor Danek Deggendorf, GmbH,
6 (collectively “Medtronic”) Second Set of Interrogatories to NuVasive as follows:

7 **RESERVATION OF RIGHTS**

8 This response is made in accordance with the Federal Rules of Civil Procedure
9 and is based upon information currently available to NuVasive. This response is made
10 without prejudice to NuVasive’s right to amend and/or supplement its responses and
11 to use or rely upon subsequently discovered information in any future proceedings.
12 NuVasive reserves the right to later object to the admissibility into evidence of any of
13 this information on any permissible grounds, including grounds not identified below.

14 **GENERAL OBJECTIONS**

15 1. NuVasive objects to these interrogatories, including the Instructions and
16 Definitions, on the ground and to the extent that they are inconsistent with, enlarge
17 upon, or exceed the scope of discovery authorized by the Federal Rules of Civil
18 Procedure, the Local Rules of the Southern District of California, any applicable orders
19 of this Court, or any stipulation or agreement between the parties. In responding to
20 these interrogatories, NuVasive will only comply with the obligations imposed on it by
21 the Federal Rules of Civil Procedure, the Local Rules of the United States District
22 Court for the Southern District of California, any applicable orders of this Court, and
23 any stipulation or agreement between the parties.

24 2. NuVasive objects to these interrogatories on the ground and to the extent
25 that they call for information subject to attorney-client privilege, attorney work product
26 protection, community of interest protection, joint defense protection, or that is
27 otherwise immune from discovery. For convenience, NuVasive uses the terms
28

1 “privilege” or “privileged” herein to refer to information subject to attorney-client
2 privilege, attorney work product protection, community of interest protection, joint
3 defense protection, or that is otherwise immune from discovery. Any disclosure
4 NuVasive makes of such information is inadvertent and shall not constitute a waiver of
5 the applicable privilege or immunity as to such information.

6 3. NuVasive objects to these interrogatories on the ground and to the extent
7 that they seek to obtain information not within NuVasive’s possession, custody, or
8 control.

9 4. NuVasive objects to these interrogatories on the ground and to the extent
10 that they seek information already in Plaintiffs’ possession, information that is a matter
11 of public record or information that is otherwise equally available to Plaintiffs.

12 5. NuVasive objects to these interrogatories on the ground and to the extent
13 that they call for information which is confidential or proprietary to, or the trade secrets
14 of, a third party, and which NuVasive is under an obligation and duty to a third party to
15 not disclose. NuVasive will not disclose such information without the third parties’
16 consent, unless required by court order or law.

17 6. NuVasive objects to these interrogatories on the ground and to the extent
18 that they contain discrete subparts. Each subpart should count as a separate
19 interrogatory toward the limit on interrogatories imposed by the Federal Rules of Civil
20 Procedure or by Order of the Court.

21 7. NuVasive objects to these interrogatories on the ground and to the extent
22 that they are vague and ambiguous. NuVasive will make every effort to construe these
23 interrogatories in good faith consistent with its obligations under the Federal Rules of
24 Civil Procedure and applicable local rules.

25 8. NuVasive objects to these interrogatories on the ground and to the extent
26 that they purport to define a term or phrase used in any of the claims of the patents-in-
27 suit.

1 9. NuVasive objects to these interrogatories to the extent they call for a legal
2 conclusion. For example, the Court has not yet construed the patent claim language.
3 NuVasive's responses should not be construed as admissions of any particular legal
4 characterization made by these interrogatories.

5 10. NuVasive objects to these interrogatories on the ground and to the extent
6 that they are overly broad and unduly burdensome.

7 11. NuVasive objects to these interrogatories on the ground and to the extent
8 that they seek information not relevant to any claim or defense in this litigation and are
9 not reasonably calculated to lead to the discovery of admissible evidence.

10 12. NuVasive objects to these interrogatories as impermissibly premature to
11 the extent that they call for expert opinion or testimony. Expert discovery has not yet
12 started in this case.

13 13. NuVasive objects to these interrogatories to the extent they are premature
14 in light of the sequenced disclosures called for by the Patent Local Rules of the
15 Southern District of California or any applicable scheduling order entered in this case.

16 14. NuVasive objects to the various requirements for identification of a
17 person, a business, a communication, a document, and information withheld under any
18 claim of privilege or any other basis on the grounds that they are vague, ambiguous,
19 overly broad, and unduly burdensome. Plaintiffs' requirements are unreasonable and
20 exceed the requirements under the Federal Rules of Civil Procedure and the Local
21 Rules.

22 15. NuVasive objects to the definitions of "NuVasive," "Defendant," "you,"
23 or "your" to the extent they include persons or entities that are separate and distinct
24 from NuVasive and over which NuVasive has no control.

25 16. NuVasive objects to the definitions of "NuVasive," "Defendant," "you,"
26 or "your" as overly broad and unduly burdensome to the extent they encompass
27 persons or entities having no relevance to this action.
28

1 17. NuVasive objects to the definitions of “Accused NuVasive Products” and
2 “Alleged Invention” as vague, ambiguous, and overbroad.

3 18. NuVasive objects to these interrogatories as premature to the extent they
4 seek information relating to United States Patent Nos. 8,251,997 or 8,444,696.
5 NuVasive will provide such information after entry by the Court of any applicable
6 schedule.

7 19. NuVasive objects to these interrogatories as overly broad, unduly
8 burdensome, and harassing to the extent they seek information regarding products not
9 accused of infringement in this case.

10 20. Subject to all its General and Specific Objections and limitations,
11 NuVasive will respond to these interrogatories based on information available to it after
12 a reasonable investigation. NuVasive’s investigation is ongoing, and NuVasive reserves
13 the right to supplement its responses. NuVasive also reserves the right to produce or
14 use any information disclosed and/or discovered after service of this response in
15 support of or in opposition to any motion, in depositions, or at trial.

16 21. NuVasive incorporates by reference the foregoing General Objections in
17 its Specific Response to each interrogatory. NuVasive may repeat a General Objection
18 for emphasis or some other reason. The failure to repeat any such objection with
19 respect to a particular interrogatory does not waive that objection. Moreover,
20 NuVasive does not waive its right to amend its objections. Any specific objections to
21 the following requests are in addition to, and not in lieu of, the foregoing objections.

22 22. NuVasive is willing to discuss its objections in a good faith attempt to
23 resolve or narrow any differences between the parties.

24 **SPECIFIC OBJECTIONS AND RESPONSES**

25 **INTERROGATORY NO. 11:**

26 State whether NuVasive contends that any item of prior art identified in
27 Plaintiffs’ Disclosure of Invalidity Contentions, or in any amendments thereto, does not
28

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