

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MEDTRONIC, INC.
Petitioner

v.

NUVASIVE, INC.
Patent Owner

Case IPR2013-00506
Patent 8,361,156

**MOTION FOR OBSERVATION REGARDING CROSS-EXAMINATION
OF RICHARD A. HYNES, M.D.**

EXHIBITS

Ex. #	Exhibit Description
NUVA 2101	U.S. Patent No. 7,905,840 to Pimenta et al.
NUVA 2102	Declaration in Support of the <i>Pro Hac Vice</i> Admission of Michael A. Amon; Declaration of Charles Forthaus (Not Filed)
NUVA 2103	Vetebral Spacer-PR Brochure (Not Filed)
NUVA 2104	Forthaus Memo regarding Vertebral Spacer-PR Brochure (Not Filed)
NUVA 2105	myspinetools.com front page (Not Filed)
NUVA 2106	myspinetools.com Terms of Use (Not Filed)
NUVA 2107	Launch Binder (Not Filed)
NUVA 2108	Webpage Toad MySQL (Not Filed)
NUVA 2109	Reserved
NUVA 21010	U.S. Patent 8,512,408 (Hynes) (Not Filed)
NUVA 21011	Synthes SVS-PR Guide
NUVA 21012	Medtronic Sofamor Danek Boomerang brochure
NUVA 21013	Hynes Deposition Transcript
NUVA 21014	510(k) Summary Medtronic Sofamor Danek K122037
NUVA 21015	510(k) Summary Telamon® PEEK Spinal System K110562
NUVA 21016	Synthes Vertebral Spacer – AR Brochure
NUVA 21017	DePuy Spine Saber Surgical Technique Brochure
NUVA 21018	Declaration of Barton L. Sachs, M.D. in IPR2013-00206

NUVA 2019	Moro, et al., “An Anatomic Study of the Lumbar Plexus with Respect to Retroperitoneal Endoscopic Surgery”
NUVA 2020	Declaration of Dr. Hansen A. Yuan, M.D.
NUVA 2021	Curriculum Vitae of Dr. Hansen A. Yuan, M.D.
NUVA 2022	NuVasive - CoRoent XL Brochure
NUVA 2023	Redacted Engineering Drawings
NUVA 2024	Redacted Deposition of Steven DeRidder
NUVA 2025	Clydesdale® Spinal System Brochure
NUVA 2026	Clydesdale® Spinal System Images
NUVA 2027	Medtronic Direct Lateral Interbody Fusion DLIF Surgical Technique Brochure
NUVA 2028	Medtronic DILF-Direct Lateral Interbody Fusion Brochure
NUVA 2029	Clydesdale® Spinal System Image
NUVA 2030	Declaration of Patrick Miles
NUVA 2031	Declaration of Theodore G. Obenchain, M.D.
NUVA 2032	The Relationship between Cross Sectional Area and Strength of Back Muscles in Patients with Chronic Low Back Pain
NUVA 2033	Printout, U.S. News & World Report
NUVA 2034	Lumbar Vertebral Body Replacement
NUVA 2035	Lumbar – Minimally Invasive Approach (PLIF)
NUVA 2036	Mathews Deposition Transcript (non-confidential portion)
NUVA 2037	Second Hynes Deposition Transcript
NUVA 2038	Josse Deposition Transcript

NUVA 2039	Patent Owner's Objection to Evidence Under 37 CFR § 42.64(b)(1), dated 9/12/2014
NUVA 2040	Email from Michael A. Amon to Jeff E. Schwartz, dated 9/9/2014

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NuVasive, Inc. (“Patent Owner”) submits this motion for observation regarding cross-examination during the September 30, 2014 deposition of Richard A. Hynes, a reply declarant of Medtronic, Inc. (“Petitioner”). Patent Owner submits the following observations based on Dr. Hynes’ testimony.

Observation #1

In Ex. 2037, at 26:23-29:10 and 185:8-12, Dr. Hynes testified to his financial relationship with Petitioner and in particular at 185:8-12 he agreed that “over a 12-month period ending in June 2013, Medtronic paid you and your L.L.C. \$767,000 for designing new products, training and other services.” That testimony is relevant because at ¶ 1 of Dr. Hynes’ first declaration, he testifies he is an independent expert.

Observation #2

In Ex. 2037, at 181:18-24, 182:11-22, 183:24-184:9, and 184:18-24, Dr. Hynes considered and did not disagree with the following statements: “If we were to write it up today, Dr. Yuan would be one of the top 5 or 10 of all surgeons” and “Dr. Yuan is pretty much one of the grandfathers of modern day spine surgery.” That testimony is relevant to the credibility of Dr. Yuan.

Observation #3

In Ex. 2037, at 86:20 to 87:8, Dr. Hynes testified that removing the corpus and the disc above and below the corpus in the lumbar spine during a vertebral body

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