

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

**PATENT OWNER'S OBJECTION TO EVIDENCE UNDER
37 CFR § 42.64(b)(1)**

Under 37 C.F.R. 42.64(b)(1), Patent Owner, NuVasive, Inc., objects to exhibits, including objections to the exhibits filed on September 5, 2014, as follows. Most of the exhibits are not relevant to *inter partes* review of the challenged patent under the grounds and arguments contained in the Petition or under the grounds adopted in the Institution Decision. Rather, most of the exhibits identified below are not prior art, are not references upon which *inter partes* review has been granted, and will serve only to confuse the issues if permitted. Many of the exhibits contain hearsay, are not authenticated, and suffer from other admissibility and relevance issues. Moreover, the exhibits identified below are inadmissible under Federal Rule of Evidence 403 because they are substantially more prejudicial than probative at this late stage of the proceedings, after the Patent Owner's Response.

Documents				Objections
Title	IPR2013-00506	IPR2013-00507	IPR2013-00508	
Declaration of Loic Josse	Ex. 1116	Ex. 1014	Ex. 1116	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 602 (lack of personal knowledge) Fed. R. Evid. 802 (hearsay) Fed. R. Evid. 901 (failure to authenticate)

Premarket Approval Suppl. Decision for BAK Interbody Fusion System	Ex. 1118	Ex. 1016	Ex. 1118	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
NASS Memo, "Re: Lateral Interbody Fusion (XLIF, DLIF) of the Lumbar Spine", Dated January 5, 2010		Ex. 1017		Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
VerteStack System Brochure	Ex. 1120		Ex. 1120	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
Butterfly Surgical Technique	Ex. 1123	Ex. 1021	Ex. 1123	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
AlphaTec ARC Portal Access System GLIF Surgical Technique Guide		Ex. 1023		Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
US 7,815,682		Ex. 1028		Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
US 6,723,097	Ex. 1129		Ex. 1129	Fed. R. Evid. 401-403 (relevance; more

				prejudicial than probative)
US 8,623,088	Ex. 1131		Ex. 1131	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
NuVasive Maximum Access Surgery Tranforaminal Lumbar Interbody Fusion Booklet	Ex. 1132		Ex. 1132	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
European Patent Application No. 1290985A2	Ex. 1133	Ex. 1031		Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
VerteStack 510k- K031780	Ex. 1134		Ex. 1134	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
Sulzer Spine-Tech BAK Interbody Fusion System Brochure	Ex. 1135	Ex. 1033	Ex. 1135	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
Shih-Tien Wang et al., <i>Comparison of Stabilites between Obliquely and Conventionally Inserted Bagby and Kuslich Cages as Posterior Lumbar Interbody Fusion in a Cadaver Model</i> , 66 J. CHIN. MED. ASSOC. 676 (2003)	Ex. 1136		Ex. 1136	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)

Zimmer Spine BAK Interbody Fusion Systems Brochure	Ex. 1137	Ex. 1035	Ex. 1137	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
BAK PMA Clearance - p950002	Ex. 1138	Ex. 1036	Ex. 1138	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
Jie Zhao et al., <i>Posterior lumbar interbody fusion using one diagonal fusion cage with transpedicular screw/rod fixation</i> , 12 EUR. SPIN J. 173 (2003)	Ex. 1139		Ex. 1139	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802 (hearsay)
NuVasive XLIF Surgical Technique - MaXcess II	Ex. 1140	Ex. 1038	Ex. 1140	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
NuVasive XLIF Surgical Technique - MaXcess	Ex. 1141	Ex. 1039	Ex. 1141	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative) Fed. R. Evid. 802
NuVasive CoRoent XL 510k-K043405	Ex. 1143	Ex. 1041	Ex. 1143	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)
NuVasive XLIF Fact Sheet	Ex. 1145	Ex. 1043	Ex. 1145	Fed. R. Evid. 401-403 (relevance; more prejudicial than probative)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.