

## **EXHIBIT 13**

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NUVASIVE, INC.  
Petitioner

v.

WARSAW ORTHOPEDIC, INC.  
Patent Owner

Patent Number: 8,251,997 B2  
Issue Date: August 28, 2012  
METHOD FOR INSERTING AN ARTIFICIAL IMPLANT BETWEEN TWO  
ADJACENT VERTEBRAE ALONG A CORONAL PLANE

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Case IPR2013-00206

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**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

Case IPR2013-00206  
U.S. Patent No. 8,251,997  
Our Ref. 13958-0112IP2

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**II. Claim Interpretations** ..... 1

    A. “Coronal plane” path to spine (claims 1, 9, 17 and 24) ..... 1

    B. “Elongated portion” (claims 9, 17 and 24) ..... 1

    C. Implant length/vertebrae width ratio: “Substantially the full traverse width (claims 1, 9 and 17) and the “full transverse width” (claim 24) ..... 2

**III. Jacobson discloses a direct lateral approach that meets the “coronal plane” path limitation and teaches the insertion of a fusion implant (Claims 9-30: Ground 6)** ..... 6

**IV. Brantigan ‘327 discloses the lateral insertion of an implant, and even if it didn’t, that is not necessary for obviousness (Claims 17-23: Grounds 3-4)** ..... 7

**V. Brantigan ‘327 meets the “substantially the full transverse width of the vertebrae” claim limitation (at least Claims 17-23: Grounds 3-4)** ..... 9

**VI. Michelson ‘247, when inserted laterally according to the teachings of Jacobson, would meet the “substantially” or “full” transverse width limitations (at least Claims 9-16 and 24-30: Grounds 1-2 and 5-6)** ..... 10

**VII. Claims 24-30: If this Board interprets the claim 24 limitation of “full transverse width” different from claims 9 and 17, then either Michelson ‘247 meets claim 24 (under Grounds 5-6) or the validity of claims 24-30 under Ground 8 should be considered** ..... 11

**VIII. The claimed “elongated portions”** ..... 12

**IX. The “non-combinable” arguments of Warsaw have no merit** ..... 12

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### EXHIBITS

NUVASIVE 1001	Declaration of Dr. McAfee, M.D., M.B.A.
NUVASIVE 1002	U.S. Patent No. 8,251,997 to Michelson (“997 patent”)
NUVASIVE 1003	Select Prosecution History of the ‘997 patent
NUVASIVE 1004	U.S. Pat. No. 4,545,374 to Jacobson (“Jacobson”)
NUVASIVE 1005	Leu et al., <i>Percutaneous Fusion of the Lumbar Spine</i> , Spine Vol. 6, No. 3, pp. 593-604 (September 1992) (“Leu”)
NUVASIVE 1006	U.S. Pat. No. 5,192,327 to Brantigan (“Brantigan”)
NUVASIVE 1007	U.S. Pat. No. 4,917,704 to Frey et al. (“Frey”)
NUVASIVE 1008	U.S. Pat. No. 5,015,247 to Michelson (“Michelson ‘247”)
NUVASIVE 1009	U.S. Pat. No. 5,569,290 to McAfee (“McAfee”)
NUVASIVE 1010	U.S. Pat. No. 5,772,661 to Michelson (“Michelson ‘661”)
NUVASIVE 1011	U.S. Pat. No. 8,343,224 to Lynn et al. (“Lynn”)
NUVASIVE 1012	Affidavit of Mr. Frank E. Scherkenbach in support of Petitioner’s Motion for <i>Pro Hac Vice</i> Admission
NUVASIVE 1013	Resume of Mr. Frank E. Scherkenbach, provided as an exhibit to Petitioner’s Motion for <i>Pro Hac Vice</i>

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- NUVASIVE 1014 Cover page and Affidavit of Henry Vernon Crock, AO, MD, MS, FRCS, FRACS, FRCS Ed (Hon), D. Sc (Honoris causa), of Melbourne, Australia, made September 11, 2012
- NUVASIVE 1015 Exhibit HVC-1 to Affidavit of Henry Vernon Crock, being a copy of Federal Court of Australia Practice Note CM7
- NUVASIVE 1016 Exhibit HVC-2 to Affidavit of Henry Vernon Crock, being a copy of the curriculum vitae of Henry Vernon Crock
- NUVASIVE 1017 Exhibit HVC-3 to Affidavit of Henry Vernon Crock, being a copy of Crock, "Observations on the Management of Failed Spinal Operations," in The Journal of Bone and Joint Surgery, Vol. 58-B, No. 2, pp. 193-199, May 1976
- NUVASIVE 1018 Exhibit HVC-4 to Affidavit of Henry Vernon Crock, being a copy of Crock, "Anterior Lumbar Interbody Fusion – Indications for its Use and Notes on Surgical Technique," in Clinical Orthopedics and Related Research, No. 165, May 1982
- NUVASIVE 1019 Exhibit HVC-5 to Affidavit of Henry Vernon Crock, being a copy of Fujimaki et al., "The Results of 150 Anterior Lumbar Interbody Fusion Operations Performed by Two Surgeons in Australia," in in Clinical Orthopedics and Related Research, No. 165, May 1982
- NUVASIVE 1020 Exhibit HVC-6 to Affidavit of Henry Vernon Crock, being a copy of Crock, A Practice of Spinal Surgery, Springer-Verlag, Wein, New York, Revised 1<sup>st</sup> Edition, 1983

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