UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.
Petitioners,

v.

NUVASIVE, INC.,
Patent Owner.

_____

Case No. IPR2019-00362
United States Patent No. 8,361,156

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PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

Patent Owner argues the following: (1) most interbody implants available in the late-1990's were allograft bone; (2) Petitioner "asserts a POSA would have wanted a 38 mm-wide implant;" (3) "a POSA would not have made the modular implant proposed by Petitioner because it would have been less safe and would increase invasiveness;" and (4) implementing a "marker configuration [that would] 'allow[] surgeons to align the markers with the spinous process during and after the implant is inserted laterally" fails because Baccelli does not teach the configuration and it is impermissibly based on hindsight. Response, 13, 1–2, 25, 38.[1] None of this is true. Moreover, Patent Owner's arguments concerning the orientation of four radiopaque markers disclosed in Baccelli (EX1008) and combined with a Brantigan (EX1007) implant that otherwise has no markers overlooks the undisputed teaching that the Brantigan implant can be inserted using different approaches, including lateral.

Patent Owner argues there is no motivation to combine the cited references based on a strawman—Patent Owner's assertion that Petitioner "theorized sequential insertion of pieces into the disc space, moving the pieces around, and ***assembling them within the disc space***"—that Patent Owner contends "increase risks to patients and make the procedure more invasive, not less invasive." Response, 12. Petitioner never makes this argument.

It is undisputed that Michelson (EX1032), and Brantigan teach modular implants. Neither requires assembly. Indeed, Patent Owner's suggested assembly of modular implants conflicts with the cited art and fact that insertion of modular non-bone spinal implants from a lateral approach to the spine was known and widely

[1] Unless otherwise noted, all emphasis is added and internal citations and quotations are omitted.

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