

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALPHATEC HOLDINGS, INC. and ALPHATEC SPINE, INC.
Petitioners,

v.

NUVASIVE, INC.
Patent Owner.

Case IPR2019-00361 (Patent 8,187,334 B2)
Case IPR2019-00362 (Patent 8,361,156 B2)
Case IPR2019-00546 (Patent 8,187,334 B2)

Record of Oral Hearing
Held: April 3, 2020

Before DENISE M. POTHIER, HYUN J. JUNG, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

IPR2019-00361 (Patent 8,187,334 B2)
IPR2019-00362 (Patent 8,361,156 B2)
IPR2019-00546 (Patent 8,187,334 B2)

APPEARANCES

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The above-entitled matter came on for hearing on Friday, April 3, 2020, commencing at 12:51 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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1 Second, when not speaking, please mute yourself. Third, please
2 identify yourself each time you speak. This helps the court reporter prepare
3 an accurate transcript. Fourth, we have the entire record including
4 demonstratives. When referring to demonstratives, papers or exhibits,
5 please do so clearly and explicitly by slide or page number. Please also
6 pause a moment after identifying it to provide us time to find it. This also
7 helps with the accurate preparation of the hearing transcript. And finally,
8 please be aware that members of the public may be listening to this oral
9 hearing.

10 Turning to objections, Patent Owner has filed objections to several
11 slides in Petitioner's demonstratives. Petitioner did not file any objections,
12 and, Mr. Wong, I would like you to verify that Petitioner has no objections
13 to Patent Owner's demonstratives.

14 MR. WONG: That's correct, Your Honor.

15 JUDGE JUNG: Thank you. As a reminder, any arguments and
16 evidence that are not in the record will not be considered by the panel. The
17 demonstratives are not evidence and are used only as a visual aid. The
18 concern is that demonstratives may be used as a springboard to add new
19 arguments not in the record, and as mentioned before, new arguments and
20 evidence are not permissible. Rather than spending the time to go through
21 all of Patent Owner's objections now, we are going to decline to strike some
22 of the demonstratives at this time. However to be clear to the extent that
23 some of the graphics, characterizations, and arguments are not in the record,
24 they will be disregarded. The Board can discern the appropriateness of the

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1 arguments and evidence and the counsel can use their allotted time as they
2 see fit.

3 As discussed in the hearing order, each party has one hour of total
4 time to present its arguments, and each party may reserve time for rebuttal. I
5 will track time and interrupt when you have only a few minutes remaining,
6 and as backup, I would like each party to also independently track argument
7 time. With all that said, Mr. Wong, you may proceed when you're ready.

8 MR. WONG: Yes, thank you, Your Honors, and for Petitioners, the
9 argument will be handled by Ms. Wickramasekera and Mr. Dalke, so I will
10 be deferring to them.

11 JUDGE JUNG: Okay, thank you.

12 MS. WICKRAMASEKERA: Good morning, Your Honors, just
13 confirm that you can hear me?

14 JUDGE JUNG: I can hear you, and how much time would you like to
15 reserve for rebuttal?

16 MS. WICKRAMASEKERA: I'd like to reserve 30 minutes. I'm
17 hoping to go less than that in my opening, but at this stage, I think 30
18 minutes would be good.

19 JUDGE JUNG: Okay. I have right now on my computer 12:55, so
20 you may start when you're ready.

21 MS. WICKRAMASEKERA: Okay, thank you, Your Honor. Thank
22 you to everyone for coming into this oral argument during these difficult
23 times. We appreciate it. We've provided a set of slides that largely covers
24 many of the issues that we have briefed in our petition and that have been
25 fully briefed in the papers. We do not depart from anything in the papers,

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