

Filed on behalf of: NuVasive, Inc.
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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 No. IPR2019-00362
Patent No. 8,361,156

**PATENT OWNER'S OBJECTIONS TO EXHIBITS SUBMITTED BEFORE
INSTITUTION PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), NuVasive, Inc. (“Patent Owner”) submits the following objections to Alphatec Holdings, Inc. and Alphatec Spine, Inc. (“Petitioners”)’ Exhibit 1002, and any reference to or reliance on the foregoing Exhibit in the Petition or future filings by Petitioners. Patent Owner’s objections are made pursuant to the Code of Federal Regulations (“C.F.R.”) governing this proceeding, including without limitation 37 C.F.R. §§ 42.61-42.65 and § 42.6(a)(3). As required by 37 C.F.R. § 42.62, NuVasive’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS.

1. Objections to Exhibit 1002, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 401-402 (Relevance); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time); 37 C.F.R. § 42.6(a)(3). F.R.E. 702, 703 (Expert Foundation and Opinions); 37 C.F.R. § 42.65(a) (Underlying Bases).

Patent Owner objects to Exhibit 1002 because it purports to provide expert testimony, but this testimony is not based on sufficient facts and data, is not the product of reliable principles and methods, does not reliably apply the principles and methods to the facts of this case, does not disclose the underlying facts on which the testimony relies, and does not establish that experts in a particular field

would reasonably rely on those underlying facts in forming an opinion on the subject. F.R.E. 702, 703; 37 C.F.R. § 42.65(a). Exhibit 1002 should be excluded as irrelevant, confusing, and a waste of time. F.R.E. 401-403; 37 C.F.R. § 42.6(a)(3).

III. CONCLUSION

The aforementioned exhibit was filed together with the petition, prior to institution. Trial was instituted on July 9, 2019. These objections are made within 10 business days of institution pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: July 23, 2019

/ Michael T. Rosato /
Michael T. Rosato, Lead Counsel
Reg. No. 52,182

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Objections to Exhibits Submitted Before Institution Pursuant to 37 C.F.R. § 42.64(b)(1) was served on July 23, 2019, at the following electronic service addresses:

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Respectfully submitted,

Dated: July 23, 2019

/ Michael T. Rosato /

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