

No. 2015-1670

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

NUVASIVE, INC.,

Appellant,

v.

MEDTRONIC, INC.,

Appellee.

Appeal from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in No. IPR2013-00506

CORRECTED NUVASIVE'S OPENING BRIEF

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July 23, 2015

U.S. Patent No. 8,361,156, Claim 1 (A54)

1. A spinal fusion implant of non-bone construction positionable within an interbody space between a first vertebra and a second vertebra, said implant comprising:

an upper surface including anti-migration elements to contact said first vertebra when said implant is positioned within the interbody space, a lower surface including anti-migration elements to contact said second vertebra when said implant is positioned within the interbody space, a distal wall, a proximal wall, a first sidewall, and a second sidewall generally opposite from the first sidewall, wherein said distal wall, proximal wall, first sidewall, and second sidewall comprise a radiolucent material;

wherein said implant has a longitudinal length extending from a proximal end of said proximal wall to a distal end of said distal wall, said implant has a maximum lateral width extending from said first sidewall to said second sidewall along a medial plane that is generally perpendicular to said longitudinal length, and said longitudinal length is greater than said maximum lateral width;

at least a first fusion aperture extending through said upper surface and lower surface and configured to permit bone growth between the first vertebra and the second vertebra when said implant is positioned within the interbody space, said first fusion aperture having: a longitudinal aperture length extending generally parallel to the longitudinal length of said implant, and a lateral aperture width extending between said first sidewall to said second sidewall, wherein the longitudinal aperture length is greater than the lateral aperture width; and

at least first and second radiopaque markers oriented generally parallel to a height of the implant, wherein said first radiopaque marker extends into said first sidewall at a position proximate to said medial plane, and said second radiopaque marker extends into said second sidewall at a position proximate to said medial plane.

CERTIFICATE OF INTEREST

Counsel for NuVasive, Inc. certifies the following:

1. The full name of every party represented by me is: NuVasive, Inc.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: N/A.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: N/A.
4. The names of all law firms and the partners and associates that have appeared for the party in the lower trial court or agency or are expected to appear for the party in this Court are:

Michael T. Rosato, Paul D. Tripodi, II, Richard L. Torczon, Andrew S. Brown, and Grace J. Pak of Wilson Sonsini Goodrich & Rosati.

Stephen R. Schaefer, Stuart Nelson, and Michael A. Amon of Fish & Richardson.

July 23, 2015

/s/ Michael T. Rosato

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