

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

ON BEHALF OF THE PETITIONER:

JOVIAL WONG, ESQ.
DAVID P. DALKE, ESQ.
NIMALKA R. WICKRAMASEKERA, ESQ.
Winston & Strawn LLP
1700 K Street, NW
Washington, D.C. 20006

ON BEHALF OF THE PATENT OWNER:

MICHAEL T. ROSATO, ESQ.
SONJA R. GERRARD, ESQ.
JAD A. MILLS, ESQ.
Wilson Sonsini Goodrich & Rosati
701 5th Avenue, Suite 5100
Seattle, Washington 98104

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 PROCEEDINGS

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3 JUDGE JUNG: All right, we'll proceed on the record. This is the
4 oral hearing for IPR2019-00361, 362, and 546. Petitioner Alphatec Holding
5 and Alphatec Spine challenge certain claims of U.S. Patent Numbers
6 8,187,334 and 8,361,156 both of which are owned by NuVasive
7 Incorporated. Starting with the Petitioner's Counsel and followed by Patent
8 Owner's Counsel, please state your names for the record.

9 MR. WONG: Good morning, Your Honors. Jovial Wong from
10 Winston & Strawn for Petitioner. Also with me are co-counsel, and
11 hopefully you can see them as well, Nimalka Wickramasekera and David
12 Dalke.

13 JUDGE JUNG: Thank you, welcome.

14 MR. ROSATO: Good afternoon, Your Honor, Michael Rosato, on
15 behalf of Patent Owner, and I have with me co-counsel Sonja Gerrard and
16 Jad Mills.

17 JUDGE JUNG: Thank you. First, thank you all for your flexibility in
18 conducting this all-video hearing today. We know that this is a departure
19 from our typical practice. Given that, we want to start off by clarifying a
20 few items. First, our primary concern is your right to be heard. If at any
21 time during the proceeding you encounter technical or other difficulties that
22 you feel fundamentally undermines your ability to adequately represent your
23 client, please to let us know immediately. For example, by contacting the
24 team members who provided you a connection information.

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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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