

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALPHATEC HOLDINGS, INC. and ALPHATEC SPINE, INC.,
Petitioner,

v.

NUVASIVE, INC.,
Patent Owner.

Cases¹

IPR2019-00361 (Patent 8,187,334 B2)

IPR2019-00362 (Patent 8,361,156 B2)

IPR2019-00546 (Patent 8,187,334 B2)

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

JUNG, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ We exercise our discretion to issue one Order to be entered in each proceeding. The parties are not authorized to use a multiple-case caption.

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

A conference call was held on May 16, 2019, between counsel for Alphatec Holdings, Inc. and Alphatec Spine, Inc. (collectively “Petitioner”), counsel for NuVasive, Inc. (“Patent Owner”), and Judges Pothier, Jung, and McShane to discuss Petitioner’s request for authorization to file a limited reply to Patent Owner’s Preliminary Response in each of the above-captioned proceedings.

In particular, Petitioner sought authorization to file a reply limited to Patent Owner’s arguments that the Petition: (1) fails to meet the requirements of 35 U.S.C. § 312; (2) contradicts prior Board decisions affirmed by the Federal Circuit; and (3) fails to address objective indicia of nonobviousness. In responses to questions by the Board, Petitioner indicated that the present records of these cases include sufficient evidence for the Board to determine whether the Petition fails to meet the requirements of 35 U.S.C. § 312 and whether the Petition contradicts previous Board findings. Petitioner also agreed that any issue concerning objective indicia of nonobviousness would not by itself be sufficient to serve as a basis for denying institution and that the issue could be further developed during trial, if the cases are instituted. Patent Owner responded that Petitioner failed to show good cause for authorizing a limited reply.

Under these circumstances, we determine that Petitioner has not demonstrated good cause to file a reply to Patent Owner’s Preliminary Response.

It is hereby:

ORDERED that Petitioner’s request for authorization to file a reply to Patent Owner’s Preliminary Response is *denied*.

IPR2019-00361 (Patent 8,187,334 B2)
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