

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. IPR2019-00361
United States Patent No. 8,187,334

**PETITIONERS' NOTICE OF APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Notice is hereby given, pursuant to 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. §§ 90.2(a), 90.3(a); and Federal Circuit Rule 15(a)(1), that Petitioners Alphatec Holdings, Inc., and Alphatec Spine, Inc. (“Petitioners”) appeal to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s Final Written Decision entered on July 8, 2020 (Paper No. 59) in the above-captioned *inter partes* review of U.S. Patent No. 8,187,334 (“the ’334 patent”), and from all underlying orders, decisions, rulings, and opinions. This notice is timely filed within 63 days of the issuance of the Board’s Final Written Decision. 37 C.F.R. § 90.3(b)(1).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Petitioners indicate that the issues on appeal include, but are not limited to: (1) whether the Board erred in holding that claims 6–9 and 18 of the ’334 patent have not been shown to be unpatentable under 35 U.S.C. § 103 based on the combination of the Brantigan, Baccelli, Berry, and Michelson prior art references; (2) whether the Board erred in holding that claim 18 of the ’334 patent has not been shown to be unpatentable under 35 U.S.C. § 103 based on the combination of the Frey, Michelson, and Berry prior art references; (3) whether the Board’s decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (4) whether the Board’s subsidiary findings (including but not limited to its application of collateral estoppel, the scope and content of the prior art, the differences between the claims and the

prior art, and the motivation to combine prior art references) were unsupported by substantial evidence and/or rested on legal error; and (5) all other issues decided adversely to Petitioners in any orders, decisions, rulings and/or opinions.

Petitioners are filing one copy of this Notice of Appeal with the Director of the United States Patent and Trademark Office, and a copy of this Notice of Appeal is being filed electronically with the Board. In addition, a copy of this Notice of Appeal is being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit, along with the required docketing fee.

Date: September 8, 2020

Respectfully submitted,

/Jovial Wong/
Jovial Wong
Reg. No. 60,115

Lead Counsel for Petitioners

CERTIFICATE OF FILING

I certify that the foregoing was filed electronically with the Board through the PTAB E2E System, and a paper copy was served by Priority Mail Express on September 8, 2020 with the Director of the United States Patent and Trademark Office, at the following address:

Director of the U.S. Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

I further certify that a true and correct copy of the foregoing Notice of Appeal, along with the required filing fee, was filed electronically with the Court of Appeals for the Federal Circuit via CM/ECF on September 8, 2020. Per Fed. Cir. Rule 15(a)(1), one copy of this Notice of Appeal is being filed by Priority Mail Express with the Clerk's office of the United States Court of Appeals for the Federal Circuit on September 8, 2020, at the following address:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, D.C. 20439

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), I certify that, on September 8, 2020, true and correct copies of the foregoing **PETITIONERS' NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT** was served by via email to the following counsel for the Patent Owner:

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