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20 NUVASIVE, INC.

21 UNITED STATES DISTRICT COURT  
22 SOUTHERN DISTRICT OF CALIFORNIA

23 WARSAW ORTHOPEDIC, INC.,

24 Plaintiff,

25 v.

26 NUVASIVE, INC.,

27 Defendant.

28 NUVASIVE, INC.,

Counterclaimant,

v.

MEDTRONIC SOFAMOR DANEK  
USA, INC.,

Counterclaim

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. 3:08-CV-1512 CAB (MDD)

**NUVASIVE, INC.'S NOTICE OF  
APPEAL**

Judge: Hon. Cathy Ann Bencivengo

Courtroom: 2, 4<sup>th</sup> floor

1 Notice is hereby given that Defendant and Counterclaimant NuVasive, Inc.  
2 appeals to the United States Court of Appeals for the Federal Circuit from the Final  
3 Judgment entered by the District Court in those parts adverse to NuVasive, and from all  
4 underlying decisions, orders, and rulings related thereto, supporting, or incorporated into  
5 that Judgment as adverse to NuVasive, including but not limited to:

- 6 • The District Court's judgment that United States Patent No. 5,860,973 is  
7 not invalid by reason of anticipation or obviousness (D.I. 486, 458 & 460);
- 8 • The District Court's judgment that the '973 patent is not unenforceable by  
9 reason of inequitable conduct (D.I. 486 & 467);
- 10 • The District Court's judgment that United States Patent No. 6,945,933 is  
11 infringed by NuVasive (D.I. 486, 458 & 460);
- 12 • The District Court's judgment of damages in the amount of \$101,196,000  
13 for NuVasive's adjudged infringement (D.I. 486, 458 & 460);
- 14 • The District Court's judgment that Warsaw is entitled to lost profits  
15 damages, and the amount of damages (D.I. 486, 458 & 460);
- 16 • The District Court's denial of NuVasive's Renewed Motion for Judgment  
17 as a Matter of Law or, in the Alternative, a New Trial (D.I. 458 & 460);
- 18 • The District Court's denial of NuVasive's motions *in limine*, (D.I. 332 &  
19 336), and all evidentiary rulings adverse to NuVasive;
- 20 • The District Court's jury instructions, including instructions issued over  
21 NuVasive's objection, and NuVasive proposed instructions the District  
22 Court rejected (D.I. 386);
- 23 • The District Court's Order construing the disputed claim terms of the '973  
24 and '933 patents (D.I. 149);
- 25 • The District Court's Order awarding pre-judgment interest to Warsaw (D.I.  
26 504);
- 27 • The District Court's Order regarding the ongoing royalty (D.I. 592); and  
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- All other Orders entered by the District Court in this case that are appealable by NuVasive.

Dated: August 20, 2013

FISH & RICHARDSON P.C.

By: *s/ Michael A. Amon*  
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Michael A. Amon

Attorneys for Defendant/Counterclaimant/  
Counterclaim Defendant NUVASIVE, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 20, 2013 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ LR 5.4(d). Any other counsel of record will be served by U.S. mail or hand delivery.

By: s/ Michael A. Amon  
Michael A. Amon

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