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

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA
17

18 WARSAW ORTHOPEDIC, INC.,

19 Plaintiff,

20 v.

21 NUVASIVE, INC.,

22 Defendant.

23 NUVASIVE, INC.,

24 Counterclaimant,

25 v.

26 MEDTRONIC SOFAMOR DANEK USA, INC.,

27 Counterclaim Defendant.

28 AND RELATED COUNTERCLAIMS.

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

NUVASIVE, INC.’S NOTICE OF APPEAL

Judge: Hon. Cathy Ann Bencivengo

Courtroom: 2, 4th floor

1 Notice is hereby given that Defendant and Counterclaimant NuVasive, Inc. (“NuVasive”)
2 appeals to the United States Court of Appeals for the Federal Circuit from the Judgment entered by
3 the District Court pursuant to Federal Rule of Civil Procedure 54(b) on March 2, 2012 (D.I. 486) in
4 those parts adverse to NuVasive, and from all underlying decisions, orders, and rulings related
5 thereto, supporting, or incorporated into that Judgment as adverse to NuVasive, including but not
6 limited to:

- 7 • The District Court’s judgment that United States Patent No. 5,860,973 (“the ‘973
8 patent”) is not invalid by reason of anticipation or obviousness (D.I. 486, 458 &
9 460);
- 10 • The District Court’s judgment that the ‘973 patent is not unenforceable by reason of
11 inequitable conduct (D.I. 486 & 467);
- 12 • The District Court’s judgment that United States Patent No. 6,945,933 (“the ‘933
13 patent”) is infringed by NuVasive (D.I. 486, 458 & 460);
- 14 • The District Court’s judgment that United States Patent No. 6,592,586 (“the ‘586
15 patent”) is infringed by NuVasive (D.I. 486, 458 & 460);
- 16 • The District Court’s judgment of damages in the amount of \$101,196,000 for
17 NuVasive’s adjudged infringement (D.I. 486, 458 & 460);
- 18 • The District Court’s judgment that Warsaw is entitled to lost profits damages, and
19 the amount of damages (D.I. 486, 458 & 460);
- 20 • The District Court’s denial of NuVasive’s Renewed Motion for Judgment as a
21 Matter of Law or, in the Alternative, a New Trial (D.I. 458 & 460);
- 22 • The District Court’s denial of NuVasive’s motions *in limine*, (D.I. 332 & 336), and
23 all evidentiary rulings adverse to NuVasive;
- 24 • The District Court’s jury instructions, including instructions issued over NuVasive’s
25 objection, and NuVasive proposed instructions the District Court rejected (D.I. 386);
- 26 • The District Court’s Order construing the disputed claim terms of the ‘973, ‘933 and
27 ‘586 patents (D.I. 149); and

- All other Orders entered by the District Court in this case that are appealable by NuVasive.

Dated: March 5, 2012

FISH & RICHARDSON P.C.

By: s/ Jonathan J. Lamberson

Jonathan J. Lamberson

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 5, 2012 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/ Jonathan J. Lamberson
Jonathan J. Lamberson

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