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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

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U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

WARSAW ORTHOPEDIC, INC.;)
MEDTRONIC SOFAMOR DANEK U.S.A.,)
INC.; MEDTRONIC PUERTO RICO)
OPERATIONS CO.; and OSTEOTECH, INC.)
)
Plaintiffs,)
)
v.)
)
NUVASIVE, INC.,)
)
Defendant.)

Case No. 3:12CV 438

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiffs Warsaw Orthopedic, Inc. (“Warsaw”), Medtronic Sofamor Danek U.S.A., Inc. (“Sofamor Danek USA”), Medtronic Puerto Rico Operations Co. (“MPROC”), and Osteotech, Inc. (“Osteotech”) (collectively “Plaintiffs”) bring this Complaint against Defendant NuVasive, Inc. (“NuVasive”), alleging as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Warsaw is an Indiana corporation, with its principal place of business in Warsaw, Indiana. Warsaw owns intellectual property and manufactures and sells medical devices and instruments in this judicial District for use in connection with spine surgery.

2. Plaintiff Sofamor Danek USA is a Tennessee corporation, with its principal place of business in Memphis, Tennessee. Sofamor Danek USA researches, develops, and distributes medical devices and instruments for use in connection with spine surgery.

3. Plaintiff MPROC is a Cayman Islands corporation, with its principal place of business in Humacao, Puerto Rico. MPROC manufactures and sells medical devices and instruments for use in connection with spine surgery.

4. Plaintiff Osteotech is a Delaware corporation, with its principal place of business in Eatontown, New Jersey. Osteotech makes and sells biologic and regenerative therapy products for use in the repair of the musculoskeletal system.

5. Defendant NuVasive is a Delaware corporation, with its principal place of business in San Diego, California. NuVasive manufactures and sells various medical devices and instruments for use in the spine, including spinal implants and bone graft products.

6. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and seeks damages and injunctive relief pursuant to 35 U.S.C. §§ 271, 281, 283–285.

7. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Acts of Congress relating to patents.

8. NuVasive has had, and continues to have, regular and systematic contacts with the State of Indiana and with this judicial District by selling or offering to sell products that infringe the patents at issue in this case, or by conducting other business within this judicial District.

9. Venue is proper in this judicial District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and/or 1400(b).

COUNT I

10. Paragraphs 1–9 are incorporated into this count by reference.

11. United States Patent No. 8,021,430 (the “’430 patent,” a copy of which is attached hereto as Exhibit A), entitled “Anatomic Spinal Implant Having Anatomic Bearing Surfaces,” issued on September 20, 2011. Plaintiff Warsaw is the owner of the ’430 patent by written

assignment. Warsaw has granted to Plaintiff MPROC, via written agreements, the exclusive license under the '430 patent to use, make, have made, import, offer for sale, and sell. MPROC has granted to Plaintiff Sofamor Danek USA, via written agreements, the exclusive sub-license under the '430 patent to import, offer for sale, and sell. As a result of these agreements and Warsaw's ownership of the '430 patent, Plaintiffs Warsaw, MPROC, and Sofamor Danek USA have standing to bring suit for infringement of the '430 patent.

12. NuVasive is infringing and has infringed the '430 patent by making, using, offering for sale, and selling infringing products, including but not limited to its CoRoent XL family of spinal implants (*e.g.*, CoRoent XL Thoracic, CoRoent XL Standard, CoRoent XL Lordotic, CoRoent XL Wide Lordotic, CoRoent XL Wide Standard, CoRoent XL Coronal Tapered Lordotic, CoRoent XL Coronal Tapered Standard, and CoRoent Keeled) for use in its eXtreme Lateral Interbody Fusion ("XLIF") surgical procedure, as well as its CoRoent Large family of spinal implants (*e.g.*, CoRoent Large Wide and Narrow) for use in transforaminal or posterior surgical approaches, within the United States.

13. NuVasive's infringement of the '430 patent has been without permission, consent, authorization, or license of Plaintiffs.

14. NuVasive's infringement of the '430 patent has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

COUNT II

15. Paragraphs 1–9 are incorporated into this count by reference.

16. United States Patent No. 5,676,146 C2 (the "'146 patent," a copy of which is attached hereto as Exhibit B), entitled "Surgical Implant Containing A Resorbable Radiopaque

Marker and Method of Locating Such Within A Body,” issued on December 25, 2007. The original application issued as a patent on October 14, 1997, and reexamination certificates for the ’146 patent issued on April 18, 2000 and December 25, 2007.

17. Plaintiff Osteotech was the owner of the ’146 patent from original issuance until April 15, 2011. Osteotech obtained its ownership by written assignment. As owner of the ’146 patent during this time period, Osteotech has standing to sue for infringement of the ’146 patent that occurred between original issuance of the patent and April 15, 2011.

18. Plaintiff Warsaw is the current owner of the ’146 patent by written assignment from Osteotech. As a result of this assignment, Warsaw has been the owner of the ’146 patent since April 15, 2011. The April 15, 2011 assignment from Osteotech to Warsaw did not transfer to Warsaw the right to sue for damages for infringement that took place before the assignment.

19. Warsaw has granted to Plaintiff Sofamor Danek USA, via written agreements, an exclusive license under the ’146 patent to import, offer for sale, and sell. As a result of these agreements and Warsaw’s ownership of the ’146 patent, Plaintiffs Warsaw and Sofamor Danek USA have standing to bring suit for infringement of the ’146 patent that occurred from April 15, 2011 to the present, and going forward.

20. NuVasive is infringing and has infringed the ’146 patent from 2008 to the present by making, using, offering for sale, and selling infringing products, including but not limited to its Osteocel Plus bone graft product, within the United States.

21. NuVasive’s infringement of the ’146 patent has been without permission, consent, authorization, or license of Plaintiffs.

22. NuVasive's infringement of the '146 patent has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

1. Adjudge that NuVasive has infringed and is infringing the '430 patent;
2. Adjudge that NuVasive has infringed and is infringing the '146 patent;
3. Preliminarily and permanently enjoin NuVasive and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, and assigns, and all of those acting for it and on its behalf, or acting in concert with it, from further infringement of the '430 and '146 patents;
4. Award compensatory damages to Plaintiffs, together with interest;
5. Order an accounting to the extent necessary to provide complete monetary relief to Plaintiffs;
6. Award Plaintiffs their costs and, where appropriate, reasonable attorney fees under 35 U.S.C. § 285; and
7. Award Plaintiffs any other such relief as the Court deems just and proper.

DATED: August 17, 2012

Respectfully submitted,

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JURY TRIAL DEMAND

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

DATED: August 17, 2012

Respectfully submitted,

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