

ESTTA Tracking number: **ESTTA412251**

Filing date: **06/01/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	NuVasive, Inc.
Granted to Date of previous extension	06/01/2011
Address	7475 Lusk Blvd. San Diego, CA 92121 UNITED STATES

Attorney information	Jonathan Spangler NuVasive, Inc. 7475 Lusk Blvd. San Diego, CA 92121 UNITED STATES ip@nuvasive.com, jspangler@nuvasive.com, rschermerhorn@nuvasive.com Phone:858-909-1807
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Applicant Information

Application No	77840076	Publication date	02/01/2011
Opposition Filing Date	06/01/2011	Opposition Period Ends	06/01/2011
Applicant	Alphatec Spine, Inc. 5818 El Camino Real Carlsbad, CA 92008 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Spinal implants composed of artificial material, namely, cages, spacers, vertebral body replacement implants and fusion implants and associated spinal implant instruments for use in connection with spinal implant surgery

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3721898	Application Date	05/12/2009
Registration Date	12/08/2009	Foreign Priority Date	NONE
Word Mark	SOLAS		

Design Mark	<h1>SOLAS</h1>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2006/09/28 First Use In Commerce: 2006/09/28 Promoting the exchange of information and resources within the scientific research and medical communities to achieve advances in the field of health care; Promoting public awareness of advancements in the field of spine surgery

Attachments	77734760#TMSN.jpeg (1 page)(bytes) Solus Opposition (6-1-11).PDF (5 pages)(84449 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jonathan Spangler/
Name	Jonathan Spangler
Date	06/01/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/840,076

By Alphatec Spine, Inc.

For the mark: SOLUS

Published in the Official Gazette on February 1, 2011

NuVasive, Inc.

Opposer,

v.

Alphatec Spine, Inc.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

NuVasive, Inc., a corporation organized and existing under the laws of Delaware, having its principal place of business at 7475 Lusk Boulevard, San Diego, California 92121, believes it will be damaged by the registration of the mark shown in the following intent-to-use application, and hereby opposes the same through this Notice of Opposition:

Mark	Application Serial Number	Int'l Class	Registration Basis
SOLUS	77/840,076	10	Filed under Section 1(b).

This opposition is based on 15 U.S.C. §1063 and the grounds of opposition are as follows:

1. NuVasive, Inc. ("NuVasive") was founded in 1999 with a commitment to the development of better surgical solutions for spine patients. Today, NuVasive continues to revolutionize minimally disruptive surgical solutions, allowing surgeons to treat spine conditions

while minimizing the surgical trauma experienced by patients. The faster, safer, more reproducible spinal solutions from NuVasive have dramatically expanded options for surgeons.

2. NuVasive believes that the education of professionals in the spine industry is integral to the development and evolution of minimally disruptive spine surgery. In order to advance the science and art of lateral access surgery and to foster research, training initiatives and peer-to-peer communication in the industry, in September 2006, NuVasive founded a Society for surgeons and others interested in lateral access spinal surgery, which it operates under the SOLAS mark.

3. NuVasive has continuously used its SOLAS mark in connection with the promotion and exchange of information and resources within the scientific research and medical communities to achieve advances in the field of healthcare and in connection with the promotion of public awareness of advancements in the field of spinal surgery since at least as early as September 2006. In addition to such common law rights, NuVasive is the owner of U.S. Registration No. 3,721,898 dated December 8, 2009 for the mark SOLAS in International Class 35. Registration No. 3,721,898 is valid and subsisting.

4. NuVasive has expended considerable time, effort and expense in promoting its Society and the SOLAS mark and the services offered under such mark, with the result that surgeons and other professionals in the industry have come to know, rely upon and recognize the services of NuVasive by such mark. The SOLAS mark is well and favorably known in the industry, and NuVasive has built up significant, exclusive and valuable goodwill in the SOLAS mark.

5. On October 2, 2009, Alphatec Spine, Inc. ("Applicant") filed an application to register the mark SOLUS as a trademark for "spinal implants composed of artificial material namely, cages, spacers, vertebral body replacement implants and fusion implants and associated

spinal implant instruments for use in connection with spinal implant surgery” in International Class

10. The application was designated Application Serial No. 77/840,076 (the “Application”).

6. Upon information and belief, Applicant had actual knowledge of NuVasive’s use of SOLAS prior to the filing of the Application.

7. Upon information and belief, Applicant has not filed an allegation of use in connection with the Application.

8. NuVasive has priority over Applicant as a result of its earlier registration and continuous use of the SOLAS mark. NuVasive’s common law rights and statutory priority dates precede the filing date of the Application by more than 3 years, and upon information and belief, any priority date upon which Applicant may rely.

9. The mark Applicant seeks to register so resembles the SOLAS mark as to be likely, when used in connection with the goods recited in the Application opposed herein, to cause confusion, or to cause mistake, or to deceive. Applicant’s mark is substantially similar to the SOLAS mark when compared visually, and is identical to the SOLAS mark when compared phonetically.

10. The goods identified in the Application are highly related to the services NuVasive offers under its SOLAS mark.

11. Upon information and belief, Applicant will market the goods identified in the Application to the same potential purchasers to whom NuVasive renders its services in connection with its SOLAS mark.

12. Upon information and belief, Applicant’s goods will be distributed in the same trade channels in which NuVasive’s services are rendered.

13. Upon information and belief, Applicant’s goods will be advertised in the same marketing channels in which NuVasive’s services are advertised.

14. Purchasers and prospective purchasers are likely to mistakenly believe that NuVasive is the source of the goods offered under the SOLUS mark or that such goods are sponsored, endorsed, or approved by NuVasive, or are in some way affiliated, connected, or associated with NuVasive, all to the detriment of NuVasive. Registration of Applicant's mark should therefore be refused under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d) and 1063.

15. Registration of Applicant's mark would be a further source of damage to NuVasive, as it would confer upon Applicant various statutory presumptions to which it is not entitled in view of NuVasive's long prior rights in the SOLAS mark.

WHEREFORE, NuVasive, Inc. prays that Application Serial No. 77/840,076 in International Class 10 be rejected, and that registration of the mark therein be refused.

Date: 6/1/11

Respectfully submitted,

By 
Jonathan Spangler, Esq.
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San Diego, CA 92121
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Facsimile: (858) 909-2007
Attorneys for Opposer,
NUVASIVE, INC.

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2011, I have caused a true and correct copy of the attached Notice of Opposition to be served on Alphatec Spine, Inc. by mailing such copy by United States Mail (First-Class, postage pre-paid) to Alphatec Spine, Inc. at the following address:

Alphatec Spine, Inc.
5818 El Camino Real
Carlsbad, California 92008-8816



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