

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NUVASIVE, INC.,  
Petitioner,

v.

ACANTHA LLC,  
Patent Owner.

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Case No. IPR2020-00706  
Patent No. RE43,008 E

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**SEPARATE PAPER ADDRESSING FILING OF TWO PETITIONS**

This Petition challenges claims 44-50, 53-54, 59-63, 66, 68-73, 75-78, 80-87, 90-91, 101, and 103-104 of U.S. Pat. RE43,008E (“the ’008 patent,” EX1001). Petitioner is simultaneously filing a petition for IPR of claims 1-5, 10-19, 21-22, and 29-32, 36-37 of the ’008 patent in IPR2020-00684. There is no overlap in challenged claims between the two petitions and the same references are asserted in each IPR. The number and size of the claims was simply too large to challenge in a single petition while complying with the statutory requirement for particularity and while complying with the Board’s word count limitations.

The ’008 patent contains 105 claims. Acantha served its Disclosure of Asserted Claims on March 6, 2020 asserting 61 claims, including 6 independent claims against NuVasive. The challenged claims alone amount to more than 3,500 words and would take up more than 25% of the allotted word count for a single petition. It was simply impractical to address the limitations of all asserted claims within the word limits of a single petition To maximize efficiency for the parties and the Board, NuVasive’s Petitions are tailored to challenging the asserted claims. This case is the very circumstance specifically identified by the Board where filing more than one petition is appropriate because “the patent owner has asserted a large number of claims in litigation.” November 2019 Consolidated Practice Guide, 59. NuVasive thus respectfully requests that both petitions be instituted.

Respectfully submitted:

/ Michael T. Rosato /

Michael T. Rosato, Lead Counsel

Reg. No. 52,182

WILSON SONSINI GOODRICH &  
ROSATI

Attorney for Petitioner

Dated: March 13, 2020

## CERTIFICATE OF SERVICE

This is to certify that I caused to be served a true and correct copy of the foregoing Paper Addressing Filing of Two Petitions by overnight courier (Federal Express or UPS), on this 13th day of March, 2020, on the Patent Owner at the correspondence address of record as follows:

Attn: Maryellen Hank  
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Dated: March 13, 2020

By:

/ Michael T. Rosato /  
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