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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAMY ABDOU,

Plaintiff,

vs.

ALPHATEC SPINE, INC.,

Defendant.

CASE NO. 12-CV-1804 BEN (RBB)

ORDER:

**(1) STRIKING ALPHATEC SPINE,
INC.'S MOTION FOR
RECONSIDERATION OF THE
ORDER CONSTRUING CLAIMS**

**(2) GRANTING LEAVE TO RE-
FILE MOTION FOR
RECONSIDERATION AS A
MOTION FOR SUMMARY
JUDGMENT**

[Docket No. 81]

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On June 9, 2014, Defendant Alphatec Spine, Inc. filed a Motion for Reconsideration of the Order Construing Claims. (Docket No. 81.) Alphatec argues that under the new indefiniteness standard established by *Nautilus v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (June 2, 2014), claims 8-20 of U.S. Patent No. 7,951,153 and claims 28-42 of U.S. Patent No. 8,172,855 are indefinite under 35 U.S.C. § 112, ¶ 2.

The issue of indefiniteness under 35 U.S.C. § 112, ¶ 2 was not fully briefed by the parties in their claim construction briefs or fully addressed by the Court in the Order Construing Claims. In addition, indefiniteness is an issue more appropriately addressed on summary judgment. *See id.* at 2127 (raising the issue of indefiniteness

1 under 35 U.S.C. § 112, ¶ 2 on summary judgment). Accordingly, Alphatec's Motion
2 for Reconsideration of the Order Construing Claims is **STRICKEN** from the docket.
3 Alphatec is **GRANTED** leave to re-file the motion as a motion for summary judgment
4 within seven (7) days of the date this Order is filed.

5 **IT IS SO ORDERED.**

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7 DATED: June 2, 2014


8 HON. ROGER T. BENITEZ
United States District Judge