

NuVasive[®] Turns to LexisNexis[®] PatentAdvisorSM for USPTO Feedback

NuVasive

Overview

Institution: NuVasive[®]

Location: Corporate headquarters in San Diego, CA; 3 locations in the United States, and doing business in 37 countries worldwide.

Institution: Healthcare Industry

Customer Profile: NuVasive is an innovative medical device company focused on developing minimally disruptive surgical products and procedures for the spine. Founded in 1999, it has grown to become the third-largest such company in the world. Much of its competitive advantage derives from the speed of its innovation, making intellectual property protection a critical component of its success.

Business Situation: Process improvement is a cornerstone at NuVasive. While approachable for many areas of the company's operations, navigating patent applications through the USPTO was largely viewed as opaque and outside the control of the IP team to significantly impact beyond timely submissions and compliance with IDS requirements. The NuVasive IP team needed to understand why certain patent applications were taking longer than others to reach allowance so they could more accurately advise their business counterparts regarding the timing of patent protection for each new product as well as devise strategies to increase the efficiency of getting new patents issued in a timely manner.

Solution: LexisNexis[®] PatentAdvisorSM provided NuVasive with both the data analysis and the feedback tools the company needed. This operational intelligence enabled IP team leaders to make informed decisions more quickly, devise more effective patent prosecution strategies, monitor the growth of its entire patent portfolio and ensure efficient prosecution strategies were in place.

Benefits: The intellectual property group at NuVasive was able to integrate PatentAdvisor into its workflow immediately to provide context and insight into a previously uncertain process. Its many benefits include:

- Clarity and ease of use
- Comprehensive presentation of information
- Greater certainty around prosecution costs
- Ongoing actionable intelligence

NuVasive develops surgical products and procedures for the human spine, helping to improve the lives of hundreds of thousands of patients who have suffered from debilitating back, neck or leg pain. Founded in 1999, NuVasive grew from a tiny start-up to the world's third-largest spine company in little more than a decade.

Despite that growth, the San Diego-based company recognized that it owes much of its success to retaining the agility of a start-up. NuVasive remains singularly focused on conceiving, developing and introducing new products to the spinal therapy market at high speed, a focus that is aptly represented in the company's mascot, a cheetah.

Continuous process improvement is also a vital component of NuVasive's success. Historically viewed as opaque and hard to significantly influence, the prosecution efforts before the USPTO were hard to estimate, especially the timing patent issuance. The IP team was eager to find solutions to bring clarity and predictability to explain and avoid the delay associated with certain patent applications within its portfolio.

Situation

As the NuVasive product line grew to more than 90 offerings, Jonathan Spangler, Vice President and Chief Patent Counsel for NuVasive, noticed a significant lag between the launch of various products and the issuance of the respective patent applications directed to those products. As a result, those products were "naked" from an IP protection standpoint for longer than the typical patent application pendency period.

An internal audit revealed that a significant bottleneck for a NuVasive patent journey was the company's lack of insight into the processes driving the U.S. Patent and Trademark Office.

Spangler said the process of shepherding the company's patent applications from filing through to approval was driven by intuition and by trial and error rather than data.

"It was an opaque process," Spangler said. "At a critical moment, we would often get bogged down inside the USPTO. I knew it didn't have to be that way. We needed something to provide us with operational intelligence and clarity."

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- Jonathan Spangler

Chief Patent Counsel - NuVasive

Solution

Spangler began researching products and services that could offer concrete feedback about how the USPTO operates in today’s innovation-driven economy. After hearing about LexisNexis PatentAdvisor at an IP conference, he began comparing the service to others on the market.

“The answer to our needs turned out to be PatentAdvisor,” Spangler said.

The suite of analytics and reporting functions within PatentAdvisor—predicated on a continuously updated copy of the full USPTO database of filings—removed intuition and guesswork from the NuVasive patent prosecution process. It offered the IP department access to hard data, upon which they could base concrete, measurable decisions.

The PatentAdvisor suite of online tools includes several powerful services designed to provide intellectual property-driven corporations and IP law firms with the information they need to make better strategic decisions. It offers actionable information, increasing the efficiency of the patent prosecution process and helping professionals develop higher quality IP in a more cost-effective and timely manner.

Particularly attractive to Spangler was the ability to display a comprehensive overview of every patent in the NuVasive portfolio. Available at a glance, statistical data on a company’s every prosecution and appeal effort is viewable through PatentAdvisor with the ability to sort and filter information by art unit or by individual patent examiner.

The reporting functions available in the PatentAdvisor suite enabled the NuVasive team to quickly see whether their patent application action times were on par with averages for its assigned examiner and art unit, helping manage timing expectations. It also helped quickly identify patent applications that were straying from the statistical norms of similar applications and determine what the next steps should be.

Benefits

According to Spangler, implementing PatentAdvisor has brought several benefits to NuVasive.

- **Clarity and ease of use**

When a patent application runs into a rejection from a USPTO patent examiner, Spangler’s team can quickly and easily use PatentAdvisor to intelligently search the entire USPTO database for a solution. Previous

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applications handled by that examiner or another examiner in the same art unit often will offer insights into how previous applicants successfully addressed the concerns raised during claim rejections and other office actions.

- **Comprehensive presentation of information**

The PatentAdvisor Briefcase function provides the NuVasive IP team with a broad tactical overview of the company’s portfolio as it stands within the legal IP framework by enabling them to have the ability to create their own custom dashboards with their specific data sets at any time. NuVasive characterizes each of its IP holdings within one of four tiers, ranked by importance, and the Briefcase function makes that information digestible across the company’s full product range.

- **Greater certainty around prosecution ROI**

PatentAdvisor provides the NuVasive intellectual property staff with metrics that place their applications within the landscape of similar inventions vying for patent allowances. Equipped with that context, the IP team can evaluate whether one of its applications is following an examiner’s path to final rejection or is somehow atypical and needs special attention.

That information helps the IP department decide when to appeal, when to request an interview and even when to conclude that abandonment is the best business decision for a particular application. When Spangler and his team believe that an application may receive an allowance with the investment of additional resources, PatentAdvisor provides them with the data they need to make the appropriate investment or divestment decision.

“That information is crucial,” Spangler said. “The data that PatentAdvisor reveals is a feedback mechanism we use to decide if more resources should be allocated for a specific patent application.”

- **Ongoing actionable intelligence**

NuVasive IP staff members have integrated the analytics and reports from PatentAdvisor into their daily workflow, which has made the discussion and presentation of PatentAdvisor data a standard feature of the company’s IP staff meetings. A newly arrived rejection from the USPTO, for example, might prompt a strategic planning meeting in which the team assesses the examiner and determines how to respond and whether to request an interview.

“Our people previously were sometimes reluctant to communicate when the turnaround time on a patent issuance was dragging,” Spangler said. “PatentAdvisor has changed that. We can now review and address these applications with more insight and highlight the success we are having as a direct result of this tool.”

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- Jonathan Spangler

Chief Patent Counsel - NuVasive

In the wake of its implementation, PatentAdvisor has overhauled the way NuVasive expands and maintains its intellectual property holdings.

Spangler and his staff are no longer drafting their applications and responses in the absence of any context for the USPTO’s approach to other inventions in their industry sector. Equipped with the institutional intelligence offered through PatentAdvisor, NuVasive is able to plot an informed and enhanced course for its patent prosecution strategy.

“I think of the days before we started using it as the ‘before PatentAdvisor’ era,” jokes Spangler.

With its speed, intuitive ease of use and ability to cohesively present the strategic position of all NuVasive IP holdings, PatentAdvisor has become the backbone around which the company’s continued innovations for spinal patients worldwide can continue to grow.

About LexisNexis

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