RUSS, AUGUST & KABAT Marc A. Fenster, State Bar No. 181067 1 Alexander C.D. Giza, State Bar No. 212327 2 Andrew D. Weiss, State Bar No. 232974 Fredricka Ung, State Bar No. 253794 12424 Wilshire Boulevard, 12<sup>th</sup> Floor 3 FILED CLERK U.S. DISTRICT COURT Los Angeles, California 90025 Tel: (310) 826-7474 Fax: (310) 826-6991 Email: mfenster@raklaw.com; 4 SEP 1 4 2011 5 Email: agiza@raklaw.com; CENTRAL DISTRICT OF CALIFORNIA 6 Email: aweiss@raklaw.com; and Email: fung@raklaw.com 7 Attorneys for NEUROGRAFIX, 8 NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC., and 9 IMAGE-BASED SURGICENTER CORPORATION 10 K&L GATES LLP Bradley W. Gunning (SBN: 251732) 10100 Santa Monica Blvd., 7th Floor 11 Los Angeles, California 90067 Tel: (310) 552-5000 Fax: (310) 552-5001 12 13 Email: brad.gunning@klgates.com 14 Attorneys for WASHINGTON RESEARCH 15 FOUNDATION 16 UNITED STATES DISTRICT COURT 17 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION 18 1-07591MM(FMOX) 19 NEUROGRAFIX, a California corporation; NEUROGRAPHY Case No. 20 INSTITUTÉ MEDICAL COMPLAINT FOR PATENT ASSOCIATES, INC., a California corporation; IMAGE-BASED SURGICENTER CORPORATION, a 21 INFRINGEMENT 22 JURY TRIAL DEMANDED California corporation; WASHINGTON RESEARCH FOUNDATION, a not-for-profit 23 24 Washington corporation, 25 vs. THE REGENTS OF THE 26 UNIVERSITY OF CALIFORNIA 27

COMPLAINT

Plaintiffs NeuroGrafix and Washington Research Foundation ("WRF") (collectively, "Plaintiffs") allege as follows:

1. This case is an action for patent infringement of United States Patent No. 5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35 U.S.C. §§271 and 280 through 285.

### **PARTIES**

- 2. Plaintiff NeuroGrafix is a California corporation with its principal place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California.
- 3. Plaintiff Neurography Institute Medical Associates, Inc. ("NIMA") is a California corporation with its principal place of business in Santa Monica, California.
- 4. Plaintiff Image-Based Surgicenter Corporation ("IBSC") is a California corporation with its principal place of business in Santa Monica, California.
- 5. Plaintiff WRF is a not-for-profit corporation incorporated and existing under the laws of the State of Washington.
- 6. On information and belief, defendant The Regents of the University of California ("The Regents") is a public corporation and agency of the State of California. The Regents is a 26-member board, established under Article IX, Section 9 of the California Constitution, which governs the University of California.

# JURISDICTION AND VENUE

- 7. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).
- 8. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendant is

advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

9. On May 12, 2011, The Regents entered into a stipulation wherein The Regents waived their sovereign immunity as to the patent infringement cause of action contained in this case. The Stipulation is attached to this Complaint as Exhibit A.

## FIRST CAUSE OF ACTION FOR PATENT INFRINGEMENT

- 10. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 6 above, inclusive, as if fully repeated and restated herein.
- 11. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit B.
- 12. Aaron G. Filler, Jay S. Tsurda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.
- 13. WRF holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998, retaining only certain potential reversion rights.
- 14. The Regents received notice of the '360 Patent by as late as November 1996. In 1995, inventor Aaron Filler joined the University of California Los Angeles ("UCLA") as a Spine Fellow and continued his prior research and development in the field of neural tract imaging. In July of 1996, Dr. Filler became an Assistant Professor in Neurosurgery at UCLA. In October of 1996, the United States Patent Office ("USPTO") granted the '360 Patent. After the '360 Patent issued, Dr. Filler used the technology of the '360 Patent while at UCLA, and The Regents was aware of this fact.

15.

carefully recording and publishing academic peer reviewed reports based on all imaging cases performed. However, Neil Martin – then the acting chairman of the Division of Neurosurgery at the University of California – took a firm position that the advances and developments in the '360 Patent did not merit further development by Dr. Filler. This led Dr. Filler to depart from the faculty UCLA and commence a private practice of medicine in May of 2001 to better assure the development of these technologies for the common good of patients throughout the world.

While at UCLA, Dr. Filler continued research and development,

- 16. Just prior to his departure from UCLA, in March 2001, the Office of the President of the University of California required Dr. Filler to assign another invention to the Regents. This invention later granted at United States Patent No. 6,560,477 for magnetic resonance imaging of joints cites the '360 Patent on its cover page. The Regents therefore have been aware of the '360 Patent since March 2001.
- 17. Upon information and belief, after the departure of Dr. Filler, The Regents did not use the technology of the '360 Patent until January 2008.
- 18. Upon information and belief, The Regents have been and now are directly, jointly and/or indirectly infringing, by way of inducing infringement and/or contributing to the infringement of the '360 Patent in the State of California, in this judicial district, and elsewhere in the United States by, among other things, advertising, marketing, using, selling, and/or offering to sell products and services, including without limitation, the performance of and provision of equipment and methods for peripheral nerve MR Neurography and diffusion anisotropy based tractography. By making, using, importing, offering for sale, and/or selling such products, The Regents have injured the Plaintiffs and are thus liable to the Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271. If The Regents are not deemed to directly infringe any of the claims of the '360 Patent,

those who The Regents induce to infringe and/or whose infringement to which The Regents contribute are the end users of the above-referenced products and services.

- 19. The Regents knowingly, willfully, and deliberately infringed and, on information and belief, continue to infringe the '360 Patent in conscious disregard of Plaintiffs' rights, making this case exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.
- 20. As a result of The Regents infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless The Regents' infringing activities are enjoined by this Court.
- 21. The Regents' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a preliminary and permanent injunction restraining and enjoining The Regents and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

# PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter:

- 1. A judgment in favor of Plaintiffs that The Regents have infringed, directly and/or indirectly, by way of inducing and/or contributing to the infringement of the '360 Patent;
- 2. An injunction enjoining The Regents and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
- 3. A judgment and order requiring The Regents to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for The Regents' infringement of the '360 Patent as provided under 35 U.S.C. § 284;

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- An award to Plaintiffs for enhanced damages, as provided under 35 4. U.S.C. § 284, resulting from the knowing, deliberate, and willful nature of The Regents' prohibited conduct;
- A judgment and order finding that this is an exceptional case within 5. the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- Any and all other relief to which Plaintiffs may show themselves to be 6. entitled.

### JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

Dated: September 14, 2011

**RUSS AUGUST & KABAT** 

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	tente en	
	1	Dated: September 14, 2011
	2	,
	3	K&L GATES LLP
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	9	
	10	Attorneys for WASHINGTON RESEARCH FOUNDATION
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		GOVERN A ENTE
		COMPLAINT

		CIV-110	!
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Carolyn Chang (CSB No. 217933)		FOR COURT USE ONLY	
Fenwick & West LLP 801 California Street		,	
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ATTORNEY FOR (Name): The Regents of the University of Ca	alifornia		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS Angeles			•
STREET ADDRESS: 111 N. Hill Street		RECE	11/
MAILING ADDRESS:		IVECE:	AED
GITY AND ZIP CODE: LOS Angeles, CA 90012 BRANCH NAME: Central District		MAY 1 S	2011
PLAINTIFFIPETITIONER: Neurografix		FILING W	BNDOW 
DEFENDANT/RESPONDENT: The Regents of the University	of California	12110411	
REQUEST FOR DISMISSAL  Personal Injury, Property Damage, or Wrongful Death  Motor Vehicle Other  The Injury Demois		CASE NUMBER: BC447518	
Family Law Eminent Domain  Other (specify): Inverse Condemnation, Denial o	f Due Process etc		1
- A conformed copy will not be returned by the clerk uni		is provided with the document	1
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1. TO THE CLERK: Please dismiss this action as follows: a. (1) With prejudice (2) Without prejudice			
b. (1) Comptaint (2) Petition (3) Cross-comptaint filed by (name):		on (date):	
(4) Cross-complaint filed by (name):		on (date):	
(5) TEntire action of all parties and all causes of action			
(6) Other (specify): Dismissal pursuant to Stipu	lation and Voluntary	y Dismissal Without Prejudice	
<ol> <li>(Complete in all cases except family law cases.)</li> <li>Court fees and costs were waived for a party in this cased, the declaration on the back of this form must</li> </ol>		nay be obtained from the clerk. If this box is	
Date: May 13,2011	N. C	C1	
Carolyn Chang	- Caroly	n Chang 1900	-
(TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)	<i>V</i>	(SIGNATURE)	
*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.	Attorney or party witho Plaintiff/Petition Cross-Complai	er	
3. TO THE CLERK: Consent to the above dismissal is hereby give		\$ (64.5)	~
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** If a cross-complaint - or Response (Family Law) seeking affirmative	Attorney or party witho		.,
refiel — is on file, the attorney for cross-complethant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).	Plaintiff/Petition Cross-Complai	<del></del> -	-
(To be completed by clerk)			
4. Dismissal entered as requested on (date):			
5 Dismissal entered on (date);	as to only (name):		
6. Dismissal not entered as requested for the following re	easons (specify):		
a. Attorney or party without attorney notified on (date):     b. Attorney or party without attorney not notified. Filing	party failed to provide		
a copy to be conformed means to return	· ·		
Date: Clerk	c, by	, Deputy	
Form Adopted for Mandatory Use Judiplat Country of Collifornia REQUEST FOR CIV-170 (Res., July 1, 2008)	DISMISSAL	Code of Chil Procedure, § 591 et sec Gov. Code, § 68637(c); Cal. Poliss of Court, rule 3, 135 www.countinto.ca.go	



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۵	12	Attorneys for Defendant The REGENTS OF THE UNIVERSITY OF					
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FENWICK & WEST LLF Attorneys at Law Mountain View	14						
FENWIC ATTO MO	15	SUPERIOR COURT OF THE STATE OF CALIFORNIA					
74	16	COUNTY OF LOS ANGEL	ES - CENTRAL DISTRICT				
	17						
	18	NEUROGRAFIX; IMAGE-BASED	Case No. BC 447518				
	19	SURGICENTER; INSTITUTE FOR NERVE MEDICINE MEDICAL GROUP; CENTER	The Honorable Judge Shook, Dept. 53				
	20	FOR ADVANCED SPINAL: NEUROSURGERY MEDICAL GROUP;					
	- 21	NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES,	STIPULATION AND VOLUNTARY				
	22	Plaintiffs,	DISMISSAL WITHOUT PREJUDICE				
	23	v.	Complaint Filed: Oct. 15, 2010				
	24	The REGENTS OF THE UNIVERSITY OF					
	25	CALIFORNIA; NEIL MARTIN, CHAIRMAN OF THE DEPARTMENT OF NEUROSURGERY, UCLA; DOES 1-20,					
	26	Defendants.					
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		STIPULATION AND VOLUNTARY DISMISSAL	CASE NO. BC 447518				

WHEREAS, in exchange for dismissal of these claims and an agreement not to pursue these or any other state law claims against The Regents, Dr. Martin, or any other agent or employee of The Regents relating to their alleged use of Neurography, including magnetic resonance neurography, diffusion weighted neurography, and diffusion tensor imaging, The Regents agree to waive Eleventh Amendment sovereign immunity in federal court only with respect to a claim for infringement of U.S. Patent No. 5,560,360;

### NOW THEREFORE, THE PARTIES, BY COUNSEL, HEREBY STIPULATE:

- 1. Plaintiffs agree to voluntarily dismiss Case No. BC 447518 ("Action") without prejudice, with each party to bear its own litigation costs and attorneys' fees related to the Action, the dismissal to be filed concurrently herewith;
- 2. Plaintiffs agree they will not assert against The Regents, Dr. Martin, and/or any other agent or employee of The Regents in any state or federal court any state law claims based on the alleged use of Neurography, including magnetic resonance neurography, diffusion weighted neurography, and diffusion tensor imaging by The Regents, Dr. Martin, and or any other agent or employee of The Regents; and
- 3. In exchange for Plaintiffs' agreement in paragraph 2 above, The Regents agree to waive sovereign immunity, whether pursuant to the Eleventh Amendment, inherent, or otherwise, and expressly consent to being sued, only with respect to a claim for infringement of U.S. Patent No. 5,560,360 that is filed within 90 days of dismissal of this Action. Except as expressly waived in this Stipulation, The Regents, Dr. Martin, and/or any other agent or employee of The Regents reserve all rights and defenses.

	2	SO STIPULATED.	·
	M> 4-	Dated: May, 2011	FENWICK & WEST LLP
	5 6		By:
	7 8 9		Attorneys for Defendants THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
	10	Dated: May 12, 2011	STRASSBURG, GILMORE & WEI, LLP
e4	11 12		By: Justin Strassburg
FRIMICK & WEST LLP Aptorneys at Law Mountain View	13 14	Blood Carlon Control	Attorneys for Plaintiffs NEUROGRAFIX; IMAGE-BASED SURGICENTER CORPORATION:
FEHWIC APPE MO	15 16		INSTITUTE FOR NERVE MEDICINE MEDICAL GROUP INC.; CENTER FOR ADVANCED SPINAL NEUROSURGERY MEDICAL GROUP
	17 18		INC., and NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC.
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	28	STIPULATION AND VOLUNTARY DISMISSAL	3 CASE NO. BC 447518

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	2	SO STIPULATED.	
	3	Dated: May 12, 2011	TYPENTY OF THE OLD
	4	Dated: May 12, 2011	FENWICK & WEST LLP
	5		- COMOTIMA CHAMA
	6		By: Carolyn Chang by
	7		Attorneys for Defendants THE REGENTS OF THE UNIVERSITY
	8   9		OF CALIFORNIA
	10	Dated: May, 2011	STRASSBURG, GILMORE & WEI, LLP
	11		·
۵.	12		By: Justin Strassburg
EST LLI TLAW YEW	13		_
FENWICK & WEST LLP ATTORNEYS AT LAW MOUNTAIN VIEW	14		Attorneys for Plaintiffs NEUROGRAFIX; IMAGE-BASED SURGICENTER CORPORATION;
PENWIG ATTO MO	15		INSTITUTE FOR NERVE MEDICINE MEDICAL GROUP INC.; CENTER FOR
	16		ADVANCED SPINAL NEUROSURGERY MEDICAL GROUP
	17		INC., and NEUROGRAPHY INSTITUTE MEDICAL ASSOCIATES, INC.
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		STIPULATION AND VOLUNTARY DISMISSAL	3 CASE NO. BC 447518

	1	[PROPOSED] ORDER GRANTING STIPULATION AND VOLUNTARY DISMISSAL				
	2	Upon presentation of the Stipulation and Voluntary Dismissal, it is hereby ordered that				
	3	1. This Action is hereby dismissed without prejudice.				
	4	•	•			
	5	DATED:, 2011				
	6	, , , , , , , , , , , , , , , , , , , ,	THE HONORABLE JOHN P. SHOOK JUDGE OF THE SUPERIOR COURT			
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		[PROPOSED] ORDER GRANTING	CASE NO. BC 447518			

1 PROOF OF SERVICE 2 The undersigned declares as follows: I am a citizen of the United States and employed in San Francisco County, State of 3 California. I am over the age of eighteen years and not a party to the within-entitled action. My 4 5 business address is Fenwick & West LLP, 555 California Street, 12th Floor, San Francisco, California 94104. On the date set forth below, I served a copy of the following document: 6 7 REQUEST FOR DISMISSAL on the interested party in the subject action by placing a true copy thereof as indicated below. 8 9 addressed as follows: 10 Justin K. Strassburg Strassburg, Gilmore & Wei, LLP 11 600 S. Lake Ave., Suite 305 Pasadena, CA 91106 12 Facsimile: (626) 683-9944 Perwick & West LLP 13 Attorners at Law Mountain Vilw 14 BY US MAIL: by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar 15 with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly 16 deposited with the United States Postal Service that same day with postage prepaid. 17 BY OVERNIGHT COURIER: by placing the document(s) listed above in a sealed envelope with a prepaid shipping label for express delivery and causing such envelope to 18 be transmitted to an overnight delivery service for delivery by the next business day in the ordinary course of business. 19 BY FACSIMILE: by causing to be transmitted via facsimile the document listed above X 20 to the addressee at the facsimile number set forth above. 21 I declare under penalty of perjury under the laws of the State of California that the 22 foregoing is true and correct. 23 Kim McIntyre Date: May 13, 2011 24 25 26 2.7 28 CASE NO. BC 447518

# United States Patent [19]

Filler et al.

[11] Patent Number:

5,560,360

[45] Date of Patent:

Oct. 1, 1996

[54]	IMAGE NEUROGRAPHY AND DIFFUSION	
	ANISOTROPY IMAGING	

[75] Inventors: Aaron G. Filler, Seattle; Jay S.
Tsurda, Mercer Island; Todd L.
Richards, Seattle, all of Wash.;
Franklyn A. Howe, London, England

[73] Assignee: University of Washington, Seattle,

Wash,

[21] Appl. No.: 28,795

[22] Filed: Mar. 8, 1993

### [30] Foreign Application Priority Data

Mar. 9, 1992 Mar. 13, 1992 Mar. 30, 1992 May 5, 1992 May 21, 1992 Jul. 31, 1992	[GB] [GB] [GB] [GB] [GB]	United Kingdom	9205541 9207013 9209648 9210810 9216383
Jan. 22, 1993	[GB]	United Kingdom	9301268

[51]	Int. Cl.6	************************************	A61B 5/055
[52]	U.S. Cl.	*******************************	128/653.2; 324/307
			440 tram + 270 5

[56]

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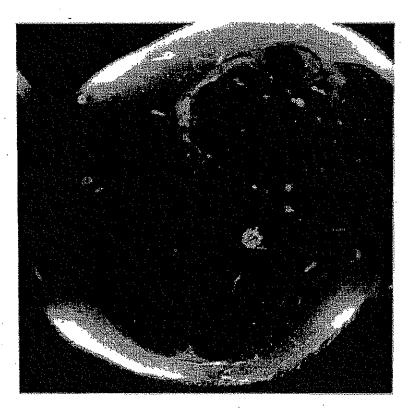
Primary Examiner—Marvin M. Lateef
Assistant Examiner—Brian L. Casler
Attorney, Agent, or Firm—Christensen, O'Connor, Johnson & Kindness PLLC

### [57]

#### ABSTRACT

A neurography system (10) is disclosed for generating diagnostically useful images of neural tissue (i.e., neurograms) employing a modified magnetic resonance imaging system (14). In one embodiment, the neurography system selectively images neural tissue by employing one or more gradients to discriminate diffusion anisotropy in the tissue and further enhances the image by suppressing the contribution of fat to the image. The neurography system is part of a broader medical system (12), which may include an auxiliary data collection system (22), diagnostic system (24), therapeutic system (26), surgical system (28), and training system (30). These various systems are all constructed to take advantage of the information provided by the neurography system regarding neural networks, which information was heretofore unavailable.

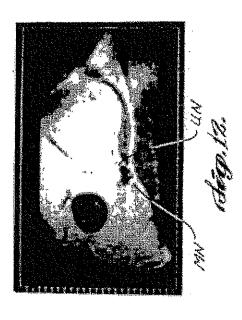
### 66 Claims, 17 Drawing Sheets

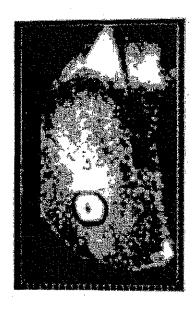


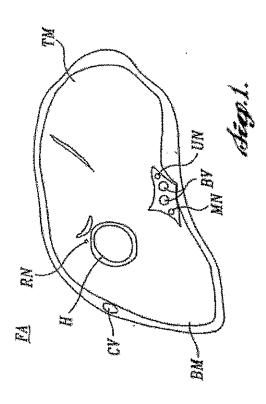


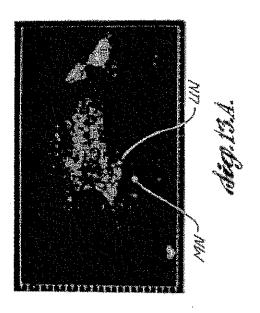
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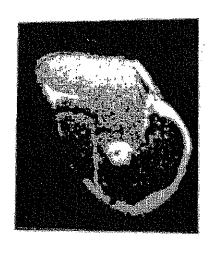




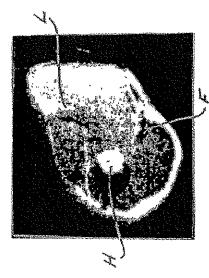


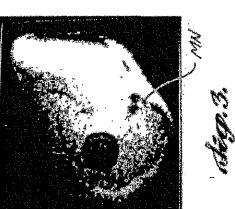


U.S. Patent Oct. 1, 1996 Sheet 2 of 17 5,560,360



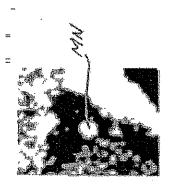








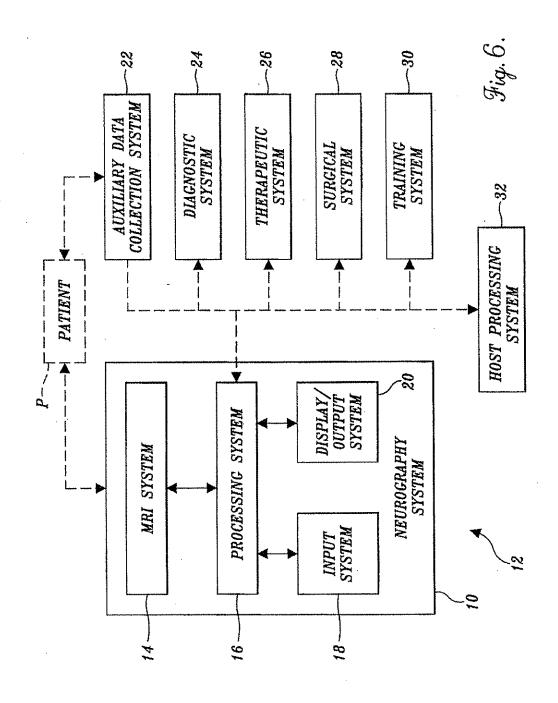






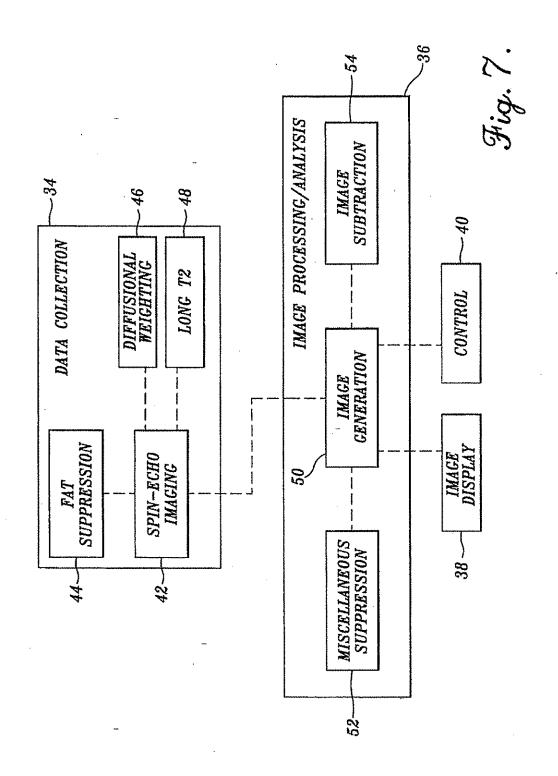
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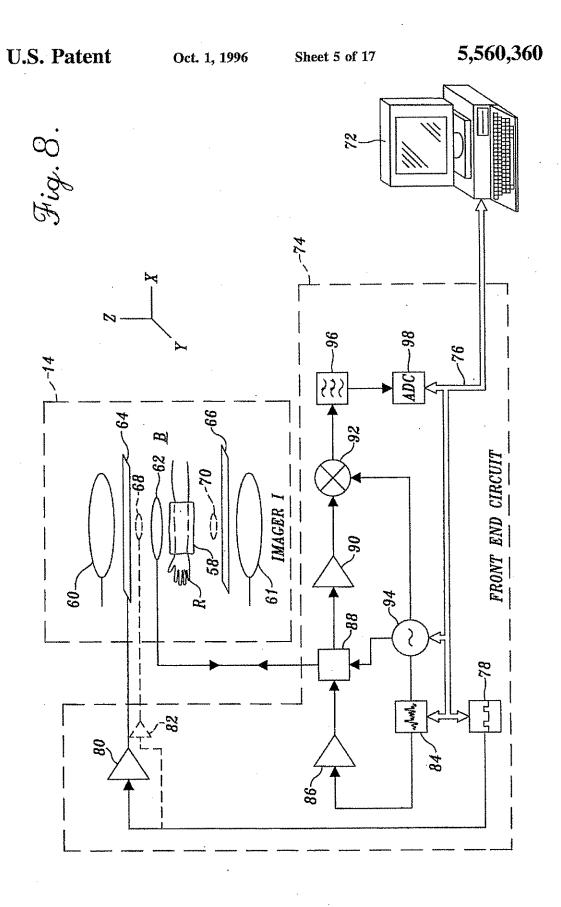
Sheet 3 of 17

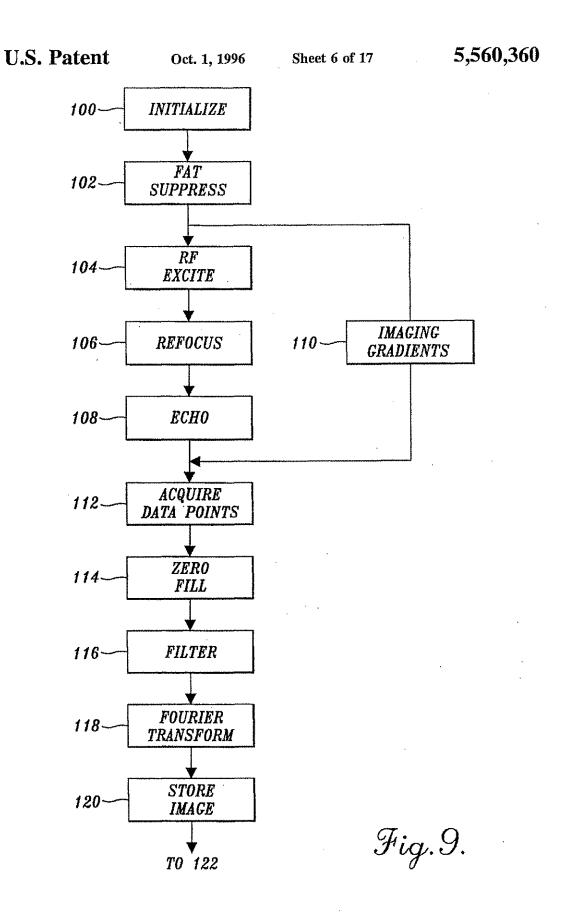


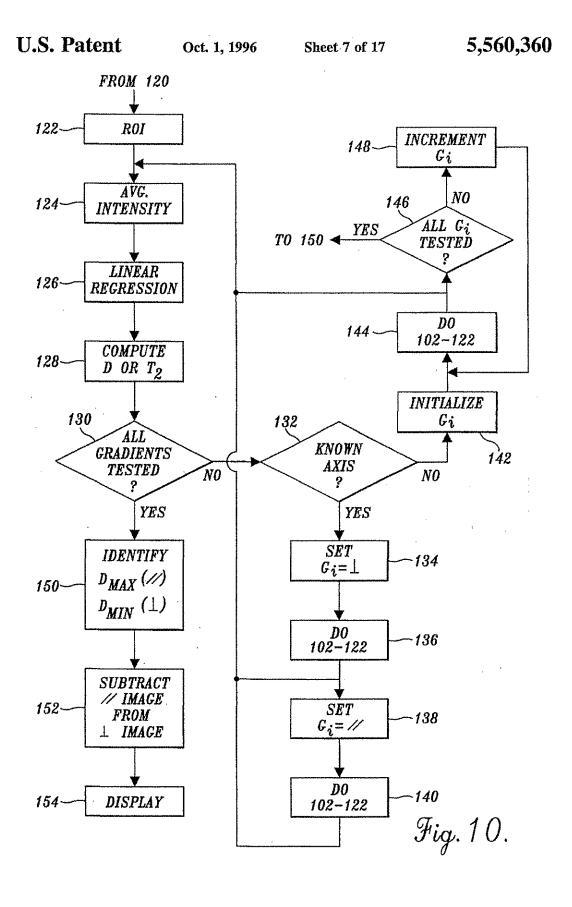
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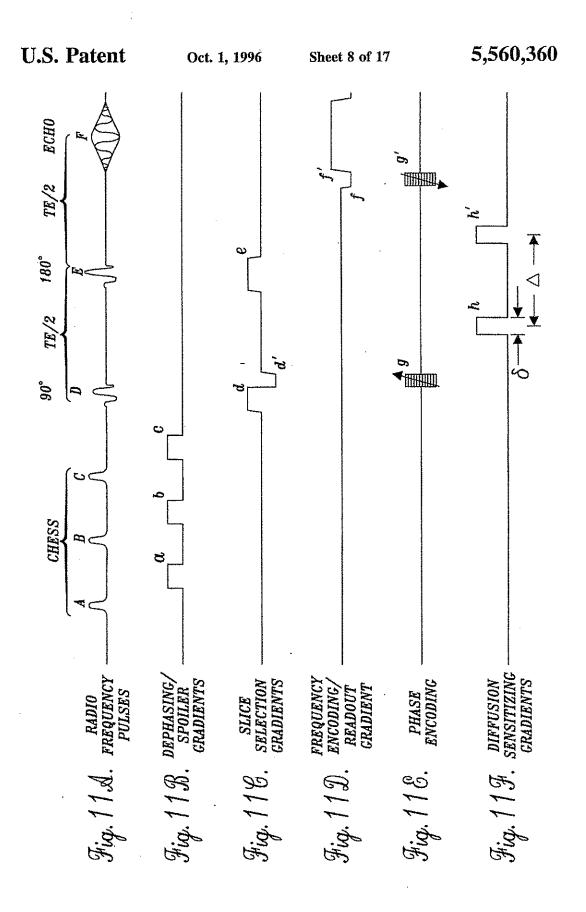
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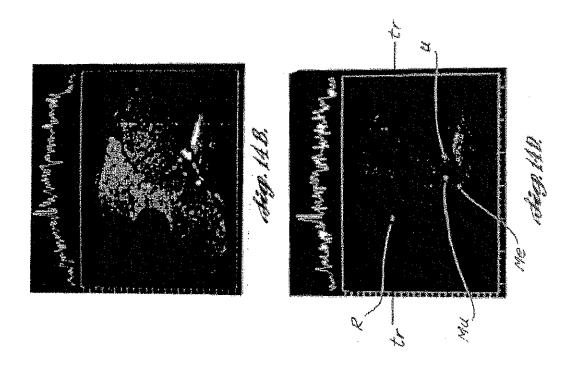




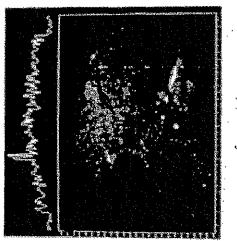




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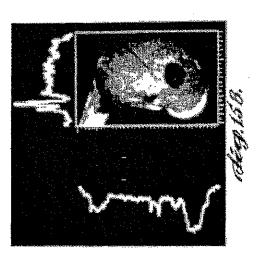


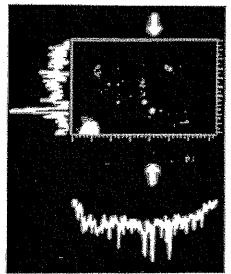


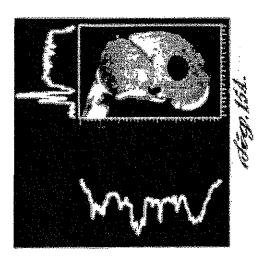


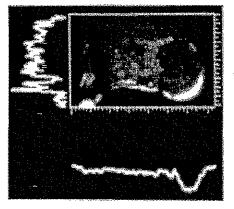
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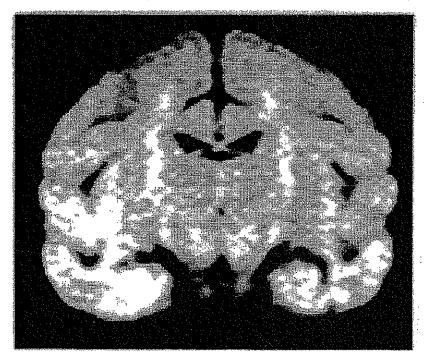




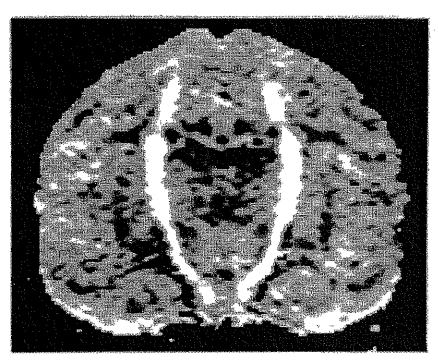


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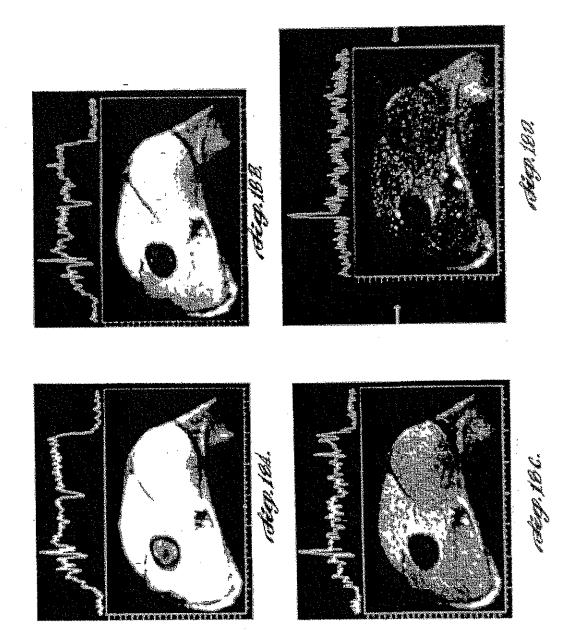


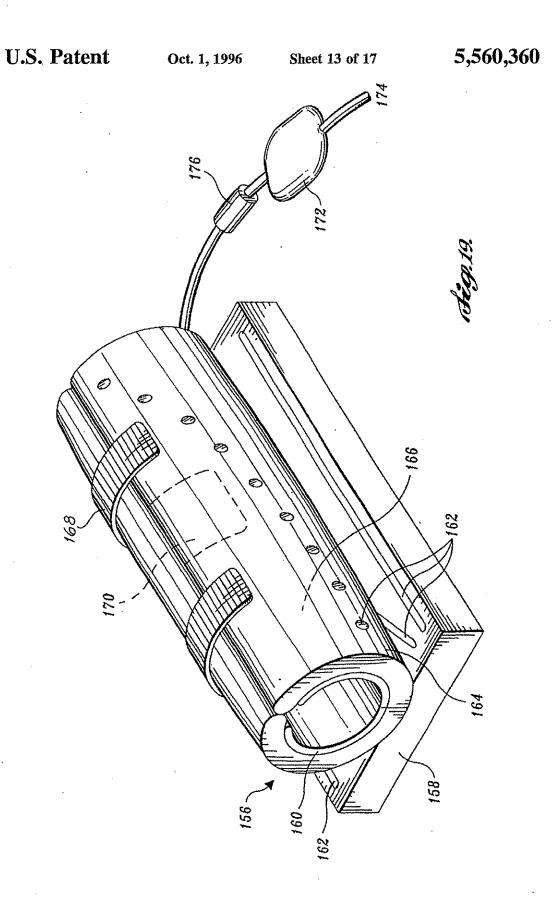
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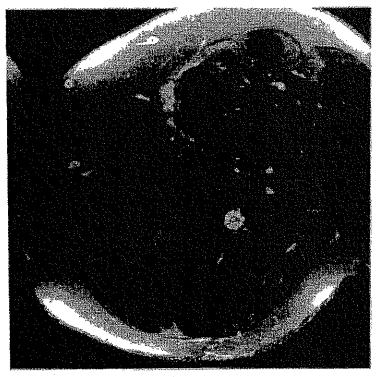
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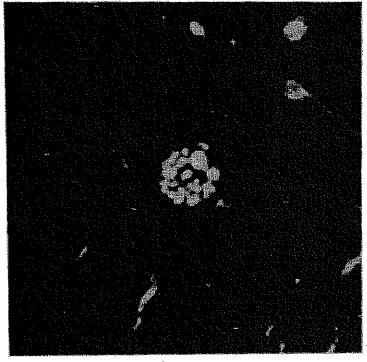


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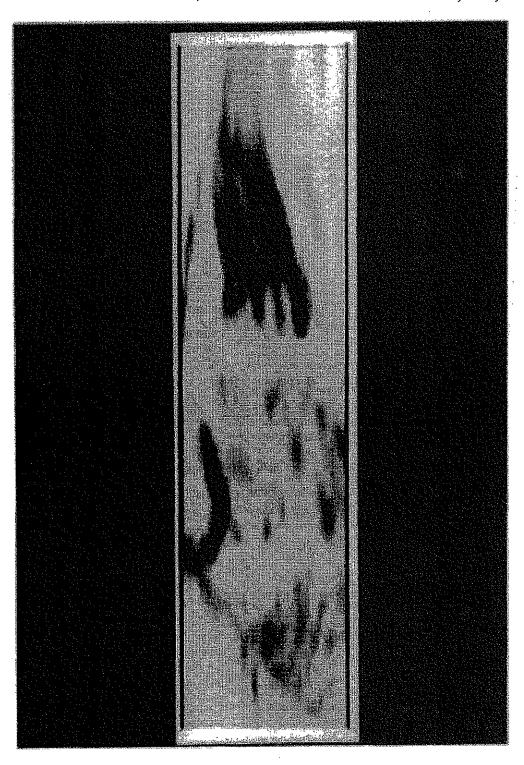


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