

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

LIFE UNIVERSITY, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
BRAIN SYNERGY INSTITUTE, LLC,	)	
KBCR, LLC, and CARRICK BRAIN	)	
CENTERS	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY RELIEF**

The Plaintiff, Life University, Inc. (“the University”), hereby files this Declaratory Judgment Complaint against Defendants Brain Synergy Institute, LLC, KBCR, LLC, and Carrick Brain Centers (hereafter collectively referred to as “Defendants”), and avers as follows:

**NATURE OF THE ACTION**

1. The University is an institution of higher education specializing in chiropractic and health science education. Founded in 1974, the University offers professional, graduate and undergraduate degree programs in the broad fields of science, healthcare and business. Further, the University provides a variety of technical and continuing education programs.

2. This lawsuit seeks to put an end to Defendants' unjustified and incorrect assertions that the University infringes any valid or enforceable claim of U.S. Patent No. 6,800,062 ("the '062 Patent").

3. The '062 Patent issued on October 5, 2004, and is entitled "Comprehensive Vertigo Management." A true and correct copy of the '062 Patent is attached hereto as Exhibit A. Defendants wrongly assert that the University's purchase and use of a GyroStim™ multi-axis rotating chair, manufactured and sold by UltraThera Technologies, Inc., infringes at least claims 2 and 13 of the '062 Patent.

4. Defendants' conduct has caused, and continues to cause, the University to have a reasonable apprehension of a lawsuit, and there exists a justiciable controversy between Defendants and the University as to infringement of the '062 Patent.

5. By this lawsuit, the University seeks a declaratory judgment that the University's use of the GyroStim™ chair does not infringe any valid or enforceable claim of U.S. Patent No. 6,800,062. The University further seeks an award of attorneys' fees to compensate the University for the cost of needlessly having to defend itself against incorrect claims of infringement.

## **PARTIES**

6. Life University, Inc. is a nonprofit corporation organized under the laws of the State of Georgia, having an address at 1269 Barclay Circle SE, Marietta, Georgia 30060.

7. On information and belief, Brain Synergy Institute, LLC is a Texas limited liability company, having a place of business at 633 Bobbi Ct., Keller, Texas 76248.

8. On information and belief, KBCR, LLC is a Texas limited liability company, having a place of business at 633 Bobbi Ct., Keller, Texas 76248.

9. On information and belief, Carrick Brain Centers is a Texas limited liability company having a place of business at 633 Bobbi Ct., Keller, Texas 76248.

## **JURISDICTION AND VENUE**

10. This is an action for declaratory relief under the patent laws of the United States, Title 35 of the United States Code, §§ 1 *et seq.*, with a specific remedy sought under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial and continuing justiciable controversy exists between the University and Defendants that requires a declaration of rights by this Court.

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over Brain Synergy Institute, LLC, KBCR, LLC, and Carrick Brain Centers by virtue of the purposeful contact with this district, including, correspondence from counsel for Brain Synergy Institute, LLC to the University accusing the University of infringing the '062 Patent and threatening litigation if the University does not cease all use of the GyroStim™ device. The University has its principle place of business within this district. In addition, the Court has personal jurisdiction over these Defendants by virtue of the purposeful contact with this district by these Defendants conducting, on information and belief, substantial business with customers residing in this district.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

#### **FACTUAL BACKGROUND**

14. The University offers undergraduate, graduate and professional programs. The University is committed to excellence in teaching, learning, research and the overall student experience. The University specializes, *inter alia*, in chiropractic and health science education. For instance, the University's chiropractic program is nationally recognized for its teaching excellence.

15. The University invests substantial time and effort in its research and teaching efforts and in the treatment of chiropractic patients. In doing so, the University uses, for example, the GyroStim™ multi-axis rotating chair.

16. On information and belief, Brain Synergy Institute, LLC also does business under the corporate names KBCR, LLC and Carrick Brain Centers.

17. On information and belief, Defendants, and in particular Brain Synergy Institute, LLC (“BSI”), claims to be the owner by assignment of U.S. Patent No. 6,800,062.

18. The ’062 Patent was filed on July 3, 2002, and issued on October 5, 2004. The ’062 Patent identifies John M. Epley as the sole inventor.

19. On or about May 8, 2013, BSI (through counsel) contacted the University by letter, informing the University that BSI owned the ’062 Patent and asserted that the University’s use of the GyroStim™ chair infringes the ’062 Patent (a true and correct copy attached hereto as Exhibit B). In its May 8 letter, a copy of the ’062 Patent was provided as well as a claim chart (a true and correct copy attached hereto as Exhibit C) allegedly demonstrating the “literal and direct infringement of claims 2 and 13” and “demand[ed] that Life University cease all use of the Gyrostim chair.” *See* Exhibit B. BSI further noted that it was “willing to discuss a resolution of this issue prior to initiating litigation” but indicated that

“if an informal resolution cannot be reached, BSI intends to move forward and initiate an action for patent infringement in the appropriate United States District Court.” *See id.*

20. The University denies that it has infringed any valid or enforceable claim of the '062 Patent.

21. As a result of Defendants' assertions that the University is infringing the '062 Patent, and the University's denial of the same, an actual and justiciable controversy exists between the parties of sufficient immediacy and reality to warrant grant of a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 as to the alleged infringement of the method and apparatus claimed in the '062 Patent by the University's use of the GyroStim™ chair.

**FIRST CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '062 PATENT)**

22. The University restates and incorporates by reference the allegations in paragraphs 1 through 21 above, as fully set forth herein.

23. An actual controversy has arisen and now exists between the parties with respect to the alleged infringement of the '062 Patent. The University contends that neither purchase nor use of the GyroStim™ chair infringes any valid or enforceable claim of the '062 Patent. Upon information and belief, Defendants dispute *these* contentions.

24. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to the alleged infringement of the '062 Patent is necessary and appropriate under the circumstances.

25. The University is entitled to a declaratory judgment that it has not infringed and does not infringe, directly or indirectly, any valid or enforceable claim of the '062 Patent.

**SECOND CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT OF INVALIDITY OF THE '062 PATENT)**

26. The University restates and incorporates by reference the allegations in paragraphs 1 through 25 above.

27. The '062 Patent is invalid for failure to meet one or more of the requirements of patentability under 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 102, 103 and 112.

28. The claims of the '062 Patent are invalid because the alleged inventions claimed therein are anticipated in view of the prior art to one having ordinary skill in the art and thus fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 102.

29. The claims of the '062 Patent are invalid because the alleged inventions claimed therein are obvious in view of the prior art to one having

ordinary skill in the art and thus fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 103.

30. By way of example, and without limiting the allegation of this complaint, the University contends that at least U.S. Patent Nos. 4,710,128; 5,830,158; 5,919,149; 5,919,150; 6,063,046; 6,219,578; 6,497,649; and 6,796,947, or a combination thereof, renders at least one of the claims of the '062 Patent obvious.

31. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to invalidity of the '062 Patent is necessary and appropriate under the circumstances.

32. The University is entitled to a declaratory judgment that any valid or enforceable claims of the '062 Patent are invalid.

**REQUEST FOR RELIEF**

WHEREFORE, the University prays for relief as follows:

A. For a judicial declaration that the University does not infringe any valid or enforceable claims of U.S. Patent No. 6,800,062;

B. For a judicial declaration that the claims of U.S. Patent No. 6,800,062 are invalid;

C. For an order declaring that Defendants have improperly sought to



extend the scope of its purported patent rights through unjustified claims for infringement;

D. For an order awarding the University its costs, expenses, and reasonable attorneys' fees as provided by law; and

E. For such other and further relief as the Court deems just and proper.

Respectfully submitted, this 23rd day of May, 2013.

MEUNIER CARLIN & CURFMAN, LLC

/s/ Anthony B. Askew

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