

06-19-2003



102477645

To the Honorable Commissioner of Patents and Trademarks, please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Argus Software, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: January 10, 2002

2. Name and address of receiving party(ies)

Name: Varian Medical Systems, Inc.

Internal Address:

Street Address: 3100 Hansen Way

City: Palo Alto State: CA Zip: 94306

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2090294; 1,893,965; 2,078,251; 1,941,984; 2,226,551; 1,941,982; 1,893,965

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Kelly Phair McCarthy

Internal Address: Tomlinson Zisko LLP

2nd Floor

Street Address: 200 Page Mill Road

City: Palo Alto State: CA Zip: 94306

6. Total number of applications and registrations involved:

7

7. Total fee (37 CFR 3.41).....\$ 190.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

501440

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kelly Phair McCarthy

Name of Person Signing

Signature

6/12/03

Date

Total number of pages including cover sheet, attachments, and document: 17

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

06/17/2003 6TON11 00000178 501440 2090294

01 FC:8521 40.00 DA 02 FC:8522 150.00 DA

**AGREEMENT AND PLAN OF MERGER**

by and among

**Varian Medical Systems, Inc.**

**Varian Medical Systems New Zealand, Ltd.,**

**Argus Software, Inc.**

and

**Michael Erickson, as Shareholder Representative**

Dated as of January 10, 2002

**AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Sub, the Company and, with respect to Articles 1, 9 and 10 only, the Shareholder Representative, hereby agree as follows:

REDACTED CONFIDENTIAL INFORMATION  
SECTIONS 1.1 through 1.2  
PAGES 2 through 13

(a) Effective Time. At the Effective Time, and upon the terms and subject to the conditions of this Agreement, the CCC and the DGCL, Sub shall be merged with and into the Company, the separate corporate existence of Sub shall cease, and the Company shall continue as the surviving corporation. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the “Surviving Corporation.”

(b) Closing. Unless this Agreement shall have been terminated pursuant to Section 10.1, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place (i) at the offices of Varian Medical Systems, Inc., 3100 Hansen Way, Palo Alto, California 94304-1038, as promptly as practicable (and in any event within five (5) days) after satisfaction (or the extent permitted, the waiver) of the conditions set forth in Articles 6 and 7 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the waiver or fulfillment of those conditions) or (ii) at such other time, date or place as Parent and the Company may mutually agree.

2.2 Effective Time. As promptly as practicable after the satisfaction (or the extent permitted, the waiver) of the conditions set forth in Articles 6 and 7, and provided that this Agreement has not been terminated pursuant to Section 10.1, the parties hereto shall cause the Merger to be consummated by executing and filing an agreement of merger together with the appropriate officer’s certificates, in form and substance reasonably acceptable to the Company and Parent, as contemplated by the CCC (the “Agreement of Merger”), with the Secretary of State of California as provided in Section 1108 of the CCC and a certificate of merger, in form and substance reasonably acceptable to the Company and Parent, as contemplated by the DGCL (the “Certificate of Merger”) with the Secretary of State of Delaware as provided in Section 252 of the DGCL. The time of acceptance by the Secretary of State of California of the filing of the Agreement of Merger being referred to herein as the “Effective Time”.

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Agreement of Merger, the Certificate of Merger and the applicable provisions of the CCC and the DGCL.

2.4 Articles of Incorporation; Bylaws.

(a) Articles of Incorporation. At the Effective Time, the Articles of Incorporation of the Company as in effect immediately prior to the Effective Time, as amended as set forth in Exhibit B hereto, shall be the Articles of Incorporation of the Surviving Corporation, until duly amended in accordance with applicable law.

(b) Bylaws. At the Effective Time, the Bylaws of the Company, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter duly amended in accordance with applicable law, the Articles of Incorporation of the Surviving Corporation and such Bylaws.

2.5 Directors and Officers. The directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation, and the officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation, in

each case until their respective successors are duly elected or appointed and qualified in the manner provided in the Articles of Incorporation and Bylaws of the Surviving Corporation and in accordance with applicable law. Upon request of Parent, the Company shall cause each or any director and officer of the Company to tender his or her resignation prior to the Effective Time, with each such resignation to be effective as of the Effective Time.

REDACTED CONFIDENTIAL INFORMATION  
SECTIONS 2.6 through 3.21  
PAGES 15 through 33

3.22 Intellectual Property, General. Section 3.22(a) of the Disclosure Schedule sets forth with respect to Proprietary Rights of the Company: (i) for each patent or patent application, the number and date of application or issuance for each country in which a patent application has been made or patent issued, (ii) for each trademark, tradename or service mark, whether or not registered, the date first used, the application serial number or registration number, the class of goods covered, the nature of the goods or services, the countries in which the names or mark is used and the expiration date for each country in which a trademark has been registered, (iii) for each copyright for which registration has been sought, whether or not registered, the date of creation and first publication of the work, the number and date of registration for each country in which a copyright application has been registered, (iv) for each mask work (if any), whether or not registered, the date of first commercial exploitation and if registered, the registration number and date of registration, and (v) all such Proprietary Rights in the form of licenses (excluding licenses that are commonly available on standard commercial terms, such as software “shrink-wrap” licenses). True and correct copies of all Proprietary Rights (including all pending applications, application related documents and materials and written materials relating to Trade Secrets) owned, controlled or used by or on behalf of the Company or in which the Company has any interest whatsoever have been provided or made available to Parent.

(b) Adequacy. The Proprietary Rights of the Company are all those necessary for the normal conduct of the Business as presently conducted and for the design, manufacture and sale of all products of the Company and Products Under Development.

(c) Royalties and Licenses. The Company has no obligation to compensate any Person for the use of any of its Proprietary Rights. The Company has not granted to any Person any license, option or other rights to use in any manner any of its Proprietary Rights, whether requiring the payment of royalties or not, other than in end user agreements in the ordinary course of business consistent with past practices.

(d) Ownership. The Company owns or has a valid right to use its Proprietary Rights, and such Proprietary Rights will not cease to be valid rights of the Company by reason of the execution, delivery and performance of this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby.

(e) Absence of Claims. The Company (i) has not received any notice alleging, or otherwise have knowledge of facts that might give rise to, invalidity with respect to any of the Proprietary Rights of the Company or (ii) has not received any notice of alleged infringement of any rights of others due to any activity by the Company. To the knowledge of the Company, the Company's use of its Proprietary Rights in its past, current and planned products do not and would not infringe upon or otherwise violate the valid rights of any third party anywhere in the world. No other Person (A) has notified the Company that it is claiming any ownership of or right to use any of the Company's Proprietary Rights or (B) to the knowledge of the Company, is infringing upon any such Proprietary Rights in any way.

(f) Protection of Proprietary Rights. All of the pending applications for the Proprietary Rights owned by the Company have been duly filed and all other actions to protect such Proprietary Rights have been taken. The Company has taken reasonable steps necessary or appropriate (including, entering into appropriate confidentiality and nondisclosure agreements with officers, directors, subcontractors, Employees, licensees and customers in connection with the Assets or the Business) to safeguard and maintain the secrecy and confidentiality of, and the proprietary rights in, the Proprietary Rights that are material to the Business. The Company does not have knowledge of any breach of any such confidentiality or nondisclosure agreement by any party thereto. Except for the rights granted in end user agreements in the ordinary course of business consistent with past practices, no Person other than the Company has the right to use any of the Proprietary Rights owned by the Company.

REDACTED CONFIDENTIAL INFORMATION  
SECTIONS 2.23 through 10.15  
PAGES 34 through 53

JUN. 5. 2003 1:47PM

VARIAN MEDICAL 650-424-5998

NO. 6711 P. 2

IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused this Agreement to be duly executed on its behalf by its officer thereunto duly authorized, as of the day and year first above written.

Varian Medical Systems, Inc.  
a Delaware corporation

By: Joseph B. Phair  
Name: Joseph B. Phair  
Title: Vice President, Administration  
General Counsel and Secretary

Varian Medical Systems New Zealand, Ltd.  
a Delaware corporation

By: Joseph B. Phair  
Name: Joseph B. Phair  
Title: Secretary and Director

Argus Software, Inc.  
a California corporation

By: \_\_\_\_\_  
Name: Richard Stark  
Title: President and Chief Executive Officer

Shareholder Representative

By: \_\_\_\_\_  
Name: Michael Erickson



JUN. 5. 2003 1:47PM

VARIAN MEDICAL 650-424-5998

NO. 6711 P. 3

IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused this Agreement to be duly executed on its behalf by its officer thereunto duly authorized, as of the day and year first above written.

Varian Medical Systems, Inc.  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

Varian Medical Systems New Zealand, Ltd.  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

Argus Software, Inc.  
a California corporation

By: Richard H. Stark  
Name: Richard Stark  
Title: President and Chief Executive Officer

Shareholder Representative

By: Michael Erickson  
Name: Michael Erickson

REDACTED CONFIDENTIAL INFORMATION  
EXHIBITS A through B

**ARGUS SOFTWARE, INC**

**DISCLOSURE SCHEDULE**

**TO**

**AGREEMENT AND PLAN OF MERGER**

**DATED AS OF JANUARY 23 2002**

This Disclosure Schedule is furnished by Argus Software, Inc. a California corporation (the "Company"), as of the date first set forth above pursuant to and as part of the Agreement and Plan of Merger (the "Agreement") dated as of January \_\_, 2002, by and among the Company, Varian Medical Systems, Inc. a Delaware corporation ("Parent") and Varian Medical Systems New Zealand, Ltd., a Delaware corporation. Unless otherwise provided herein, the defined terms in this Disclosure Schedule shall have the same meaning assigned to them in the Agreement. All attachments hereto are incorporated into this Disclosure Schedule.

Any information disclosed in this Disclosure Schedule shall be deemed disclosed only for purposes of the section of the Agreement that corresponds to the numbered section of the Disclosure Schedule under which it is disclosed, unless it is disclosed in such a way as to make its relevance to the disclosure required by another section of the Agreement reasonably apparent based on the substance of such disclosure of information, notwithstanding the omission of a cross-reference to such other section of the Agreement.

This Disclosure Schedule relates to certain matters concerning the disclosures required and transactions contemplated by the Agreement. This Disclosure Schedule is qualified in its entirety by reference to specific provisions of the Agreement, and is not intended to constitute, and shall not be construed as an admission that such information is or is not material or constitutes or does not constitute a Material Adverse Effect or Material Adverse Change, either individually or in the aggregate, except to the extent required by the Agreement. Copies of all agreements, contracts and documents referenced in this Disclosure Schedule have been provided to or made available by the Company to Parent.

REDACTED CONFIDENTIAL INFORMATION  
SECTIONS 3.1 through 3.20  
PAGES 1 through 12

**3.22 Intellectual Property.**

(a) General. The information required in Section 3.22 of the Agreement is set forth on Attachment 3.22 hereto.

REDACTED CONFIDENTIAL INFORMATION  
SECTIONS 3.22(b) though 3.30  
PAGES 12 through 14

REDACTED CONFIDENTIAL INFORMATION  
ATTACHMENTS 3.2(a) through 3.21

## ATTACHMENT 3.22

## INTELLECTUAL PROPERTY

(ii) Trademarks:

<u>Country</u>	<u>Mark</u>	<u>Serial No.</u>	<u>Filed</u>	<u>Reg. No</u>
USA	ARGUS SOFTWARE	74/441,916	09/29/93	2,090,294
USA	LOGO	74/441,915	09/29/93	1,893,965
USA	ARGUS SOFTWARE & LOGO	74/441,917	09/29/93	2,078,251
USA	QC4	74/441,918	09/29/93	1,941,984
USA	QCWATCH	75/174,173	09/30/96	2,226,551
USA	QC <sup>4</sup>	74/441918	10/01/01	1,941,982
USA	LOGO	74/441915	10/01/01	1,893,965

(iii) Copyrights: The following product names and trade names have been in common use since their development:

Product Names:

- QC4 Linac
- QC4 Sim
- QC4 HDR
- QC4 CT Sim
- QCWatch Mspec
- QCWatch R&F
- QCWatch CT
- QCWatch Film Processor

Trade Names:

- QCIM

(vi) Licenses: See license description in Section 3.11(a)(ii) above.

REDACTED CONFIDENTIAL INFORMATION  
ATTACHMENTS 3.24 through 5.1