

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
EP MedSystems, Inc.		07/02/2008	CORPORATION: NEW JERSEY
RECEIVING PARTY DATA			
Name:	Dot Medical Products Limited		
Street Address:	3 Bailey Court, Green Street		
City:	Macclesfield, Cheshire		
State/Country:	UNITED KINGDOM		
Postal Code:	SK10 1JQ		
Entity Type:	CORPORATION: UNITED KINGDOM		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2143271	ALERT	
CORRESPONDENCE DATA			
Fax Number:	2027725858		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	202.772.5800		
Email:	trademarks@blankrome.com		
Correspondent Name:	Susan B. Flohr c/o Blank Rome LLP		
Address Line 1:	600 New Hampshire Ave., N.W.		
Address Line 4:	Washington, DISTRICT OF COLUMBIA 20037		
ATTORNEY DOCKET NUMBER:	137703.00107		
DOMESTIC REPRESENTATIVE			
Name:			
Address Line 1:			

Address Line 2:

Address Line 3:

Address Line 4:

NAME OF SUBMITTER:

Susan B. Flohr

Signature:

/sbf/

Date:

09/06/2013

Total Attachments: 42

source=Alert Asset Sale Agreement#page1.tif  
source=Alert Asset Sale Agreement#page2.tif  
source=Alert Asset Sale Agreement#page3.tif  
source=Alert Asset Sale Agreement#page4.tif  
source=Alert Asset Sale Agreement#page5.tif  
source=Alert Asset Sale Agreement#page6.tif  
source=Alert Asset Sale Agreement#page7.tif  
source=Alert Asset Sale Agreement#page8.tif  
source=Alert Asset Sale Agreement#page9.tif  
source=Alert Asset Sale Agreement#page10.tif  
source=Alert Asset Sale Agreement#page11.tif  
source=Alert Asset Sale Agreement#page12.tif  
source=Alert Asset Sale Agreement#page13.tif  
source=Alert Asset Sale Agreement#page14.tif  
source=Alert Asset Sale Agreement#page15.tif  
source=Alert Asset Sale Agreement#page16.tif  
source=Alert Asset Sale Agreement#page17.tif  
source=Alert Asset Sale Agreement#page18.tif  
source=Alert Asset Sale Agreement#page19.tif  
source=Alert Asset Sale Agreement#page20.tif  
source=Alert Asset Sale Agreement#page21.tif  
source=Alert Asset Sale Agreement#page22.tif  
source=Alert Asset Sale Agreement#page23.tif  
source=Alert Asset Sale Agreement#page24.tif  
source=Alert Asset Sale Agreement#page25.tif  
source=Alert Asset Sale Agreement#page26.tif  
source=Alert Asset Sale Agreement#page27.tif  
source=Alert Asset Sale Agreement#page28.tif  
source=Alert Asset Sale Agreement#page29.tif  
source=Alert Asset Sale Agreement#page30.tif  
source=Alert Asset Sale Agreement#page31.tif  
source=Alert Asset Sale Agreement#page32.tif  
source=Alert Asset Sale Agreement#page33.tif  
source=Alert Asset Sale Agreement#page34.tif  
source=Alert Asset Sale Agreement#page35.tif  
source=Alert Asset Sale Agreement#page36.tif  
source=Alert Asset Sale Agreement#page37.tif  
source=Alert Asset Sale Agreement#page38.tif  
source=Alert Asset Sale Agreement#page39.tif  
source=Alert Asset Sale Agreement#page40.tif  
source=Alert Asset Sale Agreement#page41.tif  
source=Alert Asset Sale Agreement#page42.tif

**DATED 2 July 2008**

**(1) EP MedSystems, Inc**

**and**

**(2) Dot Medical Products Limited**

---

# **Asset Sale Agreement**

---

Relating to the acquisition  
of the certain Assets  
of EP MedSystems, Inc.

**THIS AGREEMENT** is made the 2nd day of July 2008

**BETWEEN:**

- (1) **The Seller:** **EP MEDSYSTEMS, INC.** (Incorporated in the United States of America under the laws of the State of New Jersey) whose principal office is at 575 Route 73 North, Building D, West Berlin, New Jersey 08091, USA; and
- (2) **The Buyer:** **DOT MEDICAL PRODUCTS LIMITED** (Incorporated in the United Kingdom under Company No. 05126523) whose registered office is at 3 Bailey Court, Green Street, Macclesfield, Cheshire, England SK10 1JQ;

**NOW IT IS AGREED AS FOLLOWS:**

**Definitions and interpretation**

**1.1 Definitions**

In this agreement the following words and expressions have the following meanings unless inconsistent with the context:

- 1.1.1 'the Accounting Date' means December 31 2007
- 1.1.2 'in the Agreed Terms' means in the form of a draft agreed between the Parties before the Effective Date and signed on behalf of each of the Parties for identification only,
- 1.1.3 'the Assets' means all the assets, properties and rights of the Business to be sold to the Buyer pursuant to clause 2.1 of this agreement,
- 1.1.4 'the Book Debts' means all book and other debts accrued or accruing due to the Seller in respect of the Business as at the Transfer Date whether or not invoices have been raised for such debts,
- 1.1.5 'the Business' means the assets and know-how related to design, manufacture and sale of the Products now carried on by the Seller,
- 1.1.6 'the Buyer's Group' and 'the Seller's Group' mean the group of companies comprising the Buyer or the Seller, as the case may be, its subsidiaries and holding companies and the subsidiaries of any such holding companies, and 'Group' shall be construed accordingly,
- 1.1.7 'the Buyer's Solicitors' means SAS Daniels LLP of County Chambers, 6-8 Chestergate, Macclesfield, Cheshire SK11 6BA (fax number 01625 500502), and the person at the firm authorized to accept notices is Tim R Lomas or such other person as may be notified to the Seller from time to time,
- 1.1.8 'Claim' means a claim under this agreement,
- 1.1.9 'Confidential Information' as defined in clause 15,
- 1.1.10 'the Contracts' means the contracts and engagements of the Seller, entered into in the course of the Business, which remain to be performed (in whole or in part) by the Seller (other than in relation to warranty or guarantee obligations) at the Effective Date, including those listed in Schedule 1, but excluding contracts with any employees of the Seller
- 1.1.11 'Disclosed' means fairly disclosed in or under the Disclosure Letter and the Schedules to this Agreement,

- 1.1.12 'the Disclosure Letter' means the letter bearing the same date as this agreement in the Agreed Terms (including the documents appended to it), written by the Seller to the Buyer and qualifying the Warranties,
- 1.1.13 'the Effective Date' means the date of this agreement.
- 1.1.14 'the Equipment' means all the machinery and equipment and loose tools owned or used by the Seller in the Business at the Effective Date including, but without limitation, those items described in Schedule 4,
- 1.1.15 'the Excluded Assets' means the assets mentioned in clause 3 and listed in Schedule 2 owned by the Seller but excluded from the sale to the Buyer,
- 1.1.16 'Final Completion' means the performance by the Parties of all their respective obligations under Schedule 8 or upon the expiry of one (1) month's notice in writing given by the Buyer to the Seller requesting the Seller to cease manufacture of the Alert PA Catheter and Alert Cable, or twelve (12) months from the Effective Date, whichever event shall occur first.
- 1.1.17 'the Final Payment' has the meaning given to that term in clause 2.3.3,
- 1.1.18 'the Goodwill' means the goodwill of the Seller in connection with the Business and the exclusive right for the Buyer or its assignee to use the name 'Alert Catheter' and to represent itself as carrying on the Business in succession to the Seller, including the benefit of all pending contracts, orders and engagements and the right to all lists of customers and suppliers of the Business,
- 1.1.19 'Group' means in relation to a company (wherever incorporated) that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company; and each company in a group is a member of the group,
- 1.1.20 'the Initial Payment' means the first of three payments to the Seller payable within 24 hours of the Effective Date,
- 1.1.21 'the Intellectual Property Rights' means all industrial and intellectual property rights of the Seller, whether registered or unregistered, including without limitation patents, trade marks and service marks whether registered or unregistered, registered designs, unregistered designs and copyrights and any applications for any of the foregoing in any part of the world, and the copyright in (including in particular the 'Alert Companion Software') all drawings, plans, specifications, designs and computer software owned by the Seller and used in or for the purposes of the Business, and all Know-how and confidential information so owned and used including (but without prejudice to the generality of the foregoing) the Patents,
- 1.1.22 'Interest' means interest payable during the period from the date on which the payment is due to the date of payment inclusive of both days, both before and after any judgment, at the Interest Rate then prevailing,
- 1.1.23 'the Interest Rate' means the rate of 4% a year above the base lending rate of National Westminster Bank Plc,
- 1.1.24 'the Intermediate Payment' means the second of three payments to the Seller payable within 4 weeks of the Effective Date.

- 1.1.25 'Know-how' means information (including that comprised in or derived from data disks, tapes, manuals, source codes, flowcharts, catalogues and instructions) relating to the Business and the products manufactured for the Business,
- 1.1.26 'the Liabilities' means the liabilities of the Business outstanding at the Transfer Date, comprising the aggregate amount owed by the Seller in connection with the Business to or in respect of trade creditors as recorded in the books of account of the Business as at the Transfer Date and all other claims against the Business, but not including liabilities for VAT or taxation on profits or chargeable gains save for those liabilities the Buyer has expressly agreed to assume or be responsible for,
- 1.1.27 'the Manufacturer' means a manufacturing company or site designated by the Buyer to manufacture any or all of the Products.
- 1.1.28 the 'Patents' means the Patents listed in Schedule 3,
- 1.1.29 "the Parties" means the Seller and the Buyer and 'party' shall be construed accordingly,
- 1.1.30 'the Products' means the products manufactured by the Business, and listed in Schedule 5,
- 1.1.31 'the Seller's Solicitors' means Morgan Lewis of Condor House, 5-10 St Paul's Churchyard, London EC4M 8AL (fax number: 020 3201 5001), and the person at the firm authorized to accept notices is Anthony Warnock-Smith or such other person as may be notified to the Buyer from time to time,
- 1.1.32 'the Stocks' means the stock-in-trade of the Business at the Transfer Date, including goods and other assets purchased for resale, stores, spare parts, raw materials and components purchased for incorporation into products for sale, Work-in-Progress and any items which, although subject to reservation of title by the suppliers, are under the control of the Seller, together with finished products of the Business,
- 1.1.33 'Subsidiary' means a "subsidiary" as defined in section 736 of the Companies Act 1985 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company,
- 1.1.34 'Substantiated Claim' means a claim in respect of which liability is admitted by the Seller or which has been adjudicated on by a court of competent jurisdiction and no right of appeal lies in respect of such adjudication or the parties are prevented by passage of time or otherwise from making an appeal,
- 1.1.35 'the Systems' means the computer systems, products and software used by the Seller for the purposes of the Business, or any equipment and systems incorporating such computer systems, products or software,
- 1.1.36 'the Transfer Date' means the date at which all the obligations related to Assets in Schedule 6 and the Transfer of Manufacturing plan outlined in Schedule 8 have been completed by the Seller to occur within six months of the Effective Date and also represents the latest date when Final Payment has been received by the Seller,

- 1.1.37 'Transfer of Manufacturing Plan' means the plan agreed between the parties for the smooth transfer of the Business to the Buyer based on the plan set out in Schedule 8,
- 1.1.38 'the Warranties' means the warranties, representations and undertakings set out in Schedule 7,
- 1.1.39 'Work-in-Progress' means all the Products that are in intermediate stages of completion at the Transfer Date, and
- 1.1.40 'working day' means any day, other than Good Friday, Christmas Day or a Bank Holiday, upon which the clearing banks in the United Kingdom are open for business.

## 1.2 Interpretation

In this agreement:

- 1.2.1 the terms 'in writing' and 'written' shall include email,
- 1.2.2 words importing one gender shall be construed as importing any other gender,
- 1.2.3 words importing the singular shall be construed as importing the plural and vice versa,
- 1.2.4 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa,
- 1.2.5 where any party comprises more than one person the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of those persons,
- 1.2.6 the clause headings do not form part of this agreement and shall not be taken into account in its construction or interpretation,
- 1.2.7 any reference to a clause or a paragraph or a schedule is to one in this agreement so numbered, and
- 1.2.8 in the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it, and any and every order, instrument, regulation, direction or plan made or issued under the statute or deriving validity from it.

## 2. Sale and purchase of the Business

- 2.1 Subject to the provisions of this agreement the Seller shall sell and the Buyer shall purchase the Business and the Assets as a going concern, free from all charges, liens, equities and encumbrances, with effect from the Effective Date, including the Assets as listed below
- 2.1.1 the Goodwill
- 2.1.2 the Equipment
- 2.1.3 the Stocks their value to be determined pursuant to clause 6,
- 2.1.4 the benefit of the Contracts so far as the Seller can assign them, subject to the burden of them

- 2.1.5 the Intellectual Property Rights
- 2.1.6 the Know How,
- 2.1.7 all documents relating to the Business the Buyer may reasonably require to enable it effectively to carry on the Business in succession to the Seller, including:
  - 2.1.7.1 all lists, data and particulars of suppliers, clients and customers, sales and stock records, price lists, catalogues, sales literature and publicity material of the Business,
  - 2.1.7.2 all computer programs and information relating to the Business,
  - 2.1.7.3 all designs, drawings, plans, sales, publications, advertising and promotional material and terms and conditions of sale which relate to the Business and/or the Products,
  - 2.1.7.4 a list of all distributors of the Products and copies of all current agreements with them,
- 2.1.8 all rights and claims of the Seller against third parties (including without limitation all rights in connection with such third parties' guarantees, conditions, indemnities, warranties and representations) with respect to the Business so far as the Seller can assign them except those comprised in the Excluded Assets, and
- 2.1.9 without in any way limiting the generality of the foregoing, all other assets (if any) of whatever nature employed in the Business at the Effective Date except the Excluded Assets.
- 2.2 The consideration for the sale by the Seller of the Business and the Assets shall be the sum of ONE MILLION U.S. DOLLARS (\$1,000,000.00) and the value of the Stocks as determined in accordance with clause 6.
- 2.3 The consideration shall be paid as follows:
  - 2.3.1 \$300,000 (part of the consideration) in cash within 24 hours of the Effective Date (the "Initial Payment");
  - 2.3.2 as to \$300,000 (part of the consideration) in cash within 4 weeks of the Effective Date (the "Intermediate Payment");
  - 2.3.3 the balance of \$400,000 on the Transfer Date (the "Final Payment");
  - 2.3.4 all such payments to be in accordance with clause 5.3; and
  - 2.3.5 as to the value of the Stock in accordance with clause 6.
- 2.4 The Seller sells the Business (including the Assets) with full title guarantee.
- 2.5 The Buyer purchases the Business in reliance inter alia on the Warranties subject to the Disclosure Letter and with the benefit of the covenants given to the Buyer by the Seller in this agreement.
- 3. **Excluded Assets and Liabilities**

The assets and other items described or mentioned in Schedule 2 are excluded from the sale and purchase of the Business and retained by the Seller.



4. **Risk and insurance**

4.1 Any individual elements of the Assets in the possession of Seller shall be at the risk of the Seller from the Effective Date so long as such Assets remain the possession of the Seller, including shipment and delivery to Buyer.

4.2 Section 47 of the Law of Property Act 1925 shall not apply to this agreement.

5. **Completion**

5.1 Completion of the sale and purchase shall take place on the Effective Date at the offices of the Buyer's Solicitors or at such other place as they may reasonably direct, the final signed form of this agreement being transmitted by and between the Parties by email.

5.2 At or before the Transfer Date the Seller shall deliver or cause to be delivered to the Buyer:

5.2.1 duly executed assignments in the Agreed Terms of the Goodwill and such of the Intellectual Property Rights and the Systems as are capable of assignment,

5.2.2 duly executed transfers, assignments and other documents in the Agreed Terms necessary to vest title in the Patents to the Buyer together with all deeds and documents relating to the title of the Seller to the Patents,

5.2.3 all of the Assets that are capable of passing by delivery according to the time schedule outlined in Schedule 6,

5.2.4 all appropriate deeds of release relating to the Assets so as to ensure that the Assets are free from encumbrance, Buyer shall provide all such documents it requests of Seller, and signature is subject to Seller approval.

PROVIDED THAT the Seller shall in any event comply with the provisions of clause 8.1

5.3 The Buyer shall ensure that the Initial Payment is transmitted electronically to the bank account of the Seller's Solicitors, details of which shall be given to the Buyer on or before the Effective Date and that the Intermediate Payment and Final Payment shall be transmitted electronically to the said bank account.

6. **The Stocks**

6.1 For the purposes of clause 2.1.3 the Parties shall jointly procure that as soon as practicable after the Transfer Date and in any event within 14 days of the Transfer Date a joint physical stock take and valuation of the Stocks as at the Transfer Date is carried out for the purpose of determining the price to be paid for the Stocks which shall be valued at cost.

6.2 If the Parties fail to agree the valuation of the Stocks under clause 6.1 each party shall within 7 days submit to the other party its own valuation of the Stocks and provided the valuations do not differ by more than 10% of the higher valuation the final agreed valuation of the Stock shall be the mean average of the two valuations. However, if the two valuations differ by more than 10% of the higher valuation an independent accountant shall be jointly appointed within 7 days in order to value the Stocks and such independent valuation shall be the final agreed valuation for the price to be paid for the Stocks and the costs of the independent accountant shall be payable by the Seller and the Buyer in equal shares

6.3 The amounts due from the Buyer to the Seller in respect of the Stocks shall be paid by electronic transmission to the bank account specified in clause 5.3 of this agreement.

**7. The Contracts**

7.1 The Buyer agrees with the Seller with effect from the Effective Date to assume the obligations of and become entitled to the benefits of the Seller under the Contracts. The Buyer shall carry out, perform and complete all the obligations and liabilities created by or arising under the Contracts (except for any obligations or liabilities attributable to a breach on the part of the Seller or its employees, agents or sub-contractors) and shall indemnify the Seller and keep it fully indemnified against all liabilities, losses, actions, proceedings, costs, claims demands and expenses brought, made against or incurred by the Seller in respect of non-performance, or defective or negligent performance, of the Contracts by the Buyer.

7.2 The Seller shall on the Effective Date and with effect therefrom assign to the Buyer or to the order of the Buyer all the Contracts that are capable of assignment without the consent of other parties, or procure such assignment.

7.3 This agreement does not constitute an assignment in law or equity of any contract that requires the consent of a third party before it can be assigned. The following provisions shall apply in respect of such contracts:

7.3.1 The Seller shall at the Buyer's request and cost use reasonable endeavours with the co-operation of the Buyer to procure any necessary novation or consent.

7.3.2 Unless and until any such contract is novated or assigned with the necessary consent, the Seller shall hold the contract in trust for the Buyer and its successors in title to the Business absolutely, and the Buyer shall (if sub-contracting is permissible and lawful under the contract in question) perform all the obligations of the Seller under the contract as the Seller's sub-contractor.

7.3.3 Unless and until any such contract is novated or assigned with the necessary consent, the Seller will (so far as it lawfully may) give all such assistance to the Buyer at the Buyer's cost as the Buyer may reasonably require to enable the Buyer to enforce its rights under the contract, and will provide access to all relevant books, documents and other information in relation to the contract the Buyer may require from time to time.

7.3.4 If any contract is not novated or assigned, the Seller shall co-operate with the Buyer in any reasonable arrangements designed to provide for the Buyer the benefits under the contract, including enforcement, at the cost and for the account of the Buyer, of any and all rights of the Seller against the other party to the contract arising out of any cancellation by such other party or otherwise. If and to the extent that in respect of a contract any such arrangements cannot be made neither the Seller nor the Buyer shall have any further obligation to the other.

7.4 To the extent that any payment is made to the Seller in respect of the Contracts on or after the Effective Date, the Seller shall receive the same as trustee, shall record such payment separately in its books and shall account to the Buyer for the payment on the Effective Date, or if received thereafter within 14 days of receipt, together with Interest.

**8. Conduct of Business**

- 8.1 The Seller will use all reasonable commercial efforts to provide the Buyer with the physical Assets in the time frame described in Schedule 6.
- 8.2 After the Effective Date pending Final Completion the parties will use reasonable commercial efforts to transfer the Business and Assets to the Buyer and/or to the Manufacturer nominated by the Buyer and the parties will act to ensure that the transfer is effected in such a way as to minimize any adverse effect such transfer may have on the Business.
- 8.3 The Seller shall carry on the Business as a going concern, so far as is possible, prudently and in an efficient and business-like manner from the Effective Date subject to the Transfer of Manufacturing Plan in Schedule 8. During that period the Seller shall:
- 8.3.1 not sell or dispose of any of the Assets except for the sale of stocks in the course of normal day-to-day trading,
  - 8.3.2 use its best endeavours to maintain the trade, and trade connections, of the Business, and not by any action, omission, default or neglect knowingly damage or risk damage to them,
  - 8.3.3 settle the debts incurred by it in the course of the Business including (without limitation) salaries, wages and other emoluments payable to its employees,
  - 8.3.4 not enter into any material contract or incur capital expenditure related to the Business except with the prior written consent of the Buyer or at its request,
  - 8.3.5 not purchase any stocks without the written consent of the Buyer,
  - 8.3.6 not substantially depart from the ordinary course of the day-to-day conduct of the Business either as regards the scope or the manner of conducting it,
  - 8.3.7 not enter into any unusual or abnormal contract or commitment which is material to the Business,
  - 8.3.8 not grant, create or agree to grant or create any mortgage, charge, debenture or other incumbrance over or affecting any of the Assets other than those already in place,
  - 8.3.9 not to sell the Products to any person firm or company other than the Buyer,
  - 8.3.10 not to increase prices of Alert PA Catheter and Alert Cable
  - 8.3.11 not permit any of its insurances to lapse or do or omit to do any thing that would make any policy of insurance void or voidable.
- 8.4 Subject to the effect of the Transfer of Manufacturing Plan the Seller shall carry on the Business as agent for and on behalf of the Buyer with effect from the Effective Date to the date of Final Completion and shall account to the Buyer and be indemnified by the Buyer accordingly, provided that the Seller shall not be indemnified in respect of any liability arising out of its own acts omissions or defaults or those of its agents or sub-contractors or its employees.

8.5 The Parties shall comply with the Transfer of Manufacturing Plan with all reasonable speed.

**9. The Liabilities**

9.1 The Seller shall remain solely responsible for the discharge of all the Liabilities (save as otherwise expressly provided in this agreement) and shall indemnify the Buyer fully at all times from and against any and all claims, actions, proceedings, demands, liabilities, costs and expenses in connection with any of the Liabilities.

9.2 The Seller shall be responsible for, and shall indemnify the Buyer against, any and all claims, actions, proceedings, demands, liabilities, costs and expenses arising after the Effective Date in respect of any Products or parts of Products manufactured by the Seller before the date of Final Completion which arise as a result of any act, omission or default of the Seller or its employees, agents or sub-contractors occurring before the date of Final Completion, whether or not the defective products or parts were sold to the Buyer.

**10. Statement to customers**

As soon as practicable after the Effective Date the Seller shall join with the Buyer in agreeing and issuing a joint statement to the customers of the Business in the Agreed Terms informing them of the transfer of the Business to the Buyer.

**11. Supply of information and inspection of documents**

11.1 The Seller shall supply to the Buyer a list of the customers of the Business and such historical information, outstanding estimates, job files and other papers relating to the Business as the Buyer may reasonably require, provided that the Seller in complying with this obligation shall not be required to do anything that contravenes the provisions of such laws or statutes that the Seller may be subject to.

11.2 The Seller shall make available for inspection and reasonable use by the Buyer the books and other documents of the Seller relating to the Business that are being retained by the Seller. The Buyer shall be entitled, at its own expense, to make copies of such books and documents. The rights conferred by this clause 11.2 shall expire on the sixth anniversary of the Final Completion date.

11.3 The Buyer shall for the same period make available for inspection and reasonable use by the Seller all books of account and other documents handed over in pursuance of this agreement, and the Seller shall be entitled at its own expense to make copies of them.

11.4 Any books, documents or records referred to in this clause 11 shall be retained by the Seller or the Buyer as the case may be in the United Kingdom or the United States of America until at least 2014.

**12. Complaints by customers**

12.1 If any complaints are made after the Effective Date by customers of the Business in relation to Products delivered on or before Final Completion, the Buyer shall, upon such complaints coming to its notice, provide full particulars in writing to the Seller to enable the Seller to investigate the complaints. If the Seller requires any goods of the Business for replacement purposes the Buyer shall at the request in writing of the Seller supply the goods to the customer.

12.2 The Buyer shall take all reasonable steps to perform, in accordance with its normal business standards, the obligations of the Seller to provide after-sales

service or to meet warranty claims of customers arising in the normal course of the Business as a result of transactions carried out by the Seller before the Effective Date in so far as those are required by the Seller's standard conditions of sale, copies of which have been produced to the Buyer.

**13. The Warranties**

- 13.1 The Seller represents, warrants and undertakes to and with the Buyer and its successors in title that the Warranties are at the Effective Date true, accurate and not misleading in all respects, provided that the Buyer shall not be entitled to claim that any fact or combination of facts constitutes a breach of any of the Warranties if and to the extent that the fact or combination of facts has been Disclosed.
- 13.2 The remedies of the Buyer in respect of breach of any of the Warranties shall continue to subsist after the Effective Date.
- 13.3 Without restricting the rights of the Buyer or the ability of the Buyer to claim damages on any basis available to it, the Seller undertakes to the Buyer that in the event of a breach of any of the Warranties the Seller will forthwith on demand by the Buyer pay to the Buyer (or in the case of a liability to another person which has not been discharged, pay to the person to whom the liability has been incurred) an amount equal to any deficiency or liability of the Buyer that would not have arisen but for the facts, circumstances or events that constitute the breach.
- 13.4 Promptly upon the occurrence, or the Seller becoming aware of the impending or threatened occurrence, of any event that would, or might reasonably be expected to, cause or constitute a breach (or that would have caused or constituted a breach had the event occurred or been known to the Seller before the Effective Date of this agreement) of any of the Warranties, the Seller shall give written notice of the occurrence to the Buyer and shall use its best endeavours promptly to prevent or remedy the breach.
- 13.5 The provision of schedule 9 shall limit the liability of the Seller in relation to any Claim.

**14. Restrictions on the Seller**

- 14.1 The Seller undertakes either on its own account or in conjunction with others and whether directly or indirectly:
  - 14.1.1 for a period of one year from the Final Completion solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) from the Business or the Buyer the custom of any person, firm or company who was at any time during the period of twelve (12) months immediately preceding the Final Completion a client or customer of or supplier to the Business, negotiating with the Seller in relation to the Business for the supply of goods or services, or in the habit of dealing with the Seller in relation to the Business, for the purpose of offering to that client or customer or obtaining from that supplier goods or services similar to or materially competing with those of the Business or the Products,
  - 14.1.2 at any time after the Effective Date carry on business or trade under a name identical or similar to any names used by the Business or suggesting any connection with the Business or the Buyer,
  - 14.1.3 within three years after the Effective Date disclose any Know-How to any person, or

- 14.1.4 within eight years use any Know-How for any purpose but will use all reasonable endeavours to prevent the publication or disclosure of any Know-How.
- 14.2 Each covenant contained in clause 14.1 shall be construed as a separate covenant, and if one or more of the covenants is held to be against the public interest or unlawful or in any way an unreasonable restraint of trade the remaining covenants shall continue to bind the Seller.
- 14.3 If any covenant contained in clause 14.1 would be void as drawn but would be valid if the period of application were reduced or if some part of the covenant were deleted so as to be less onerous on the Seller, the covenant in question shall apply with such modification as may be necessary to make it valid and effective.
- 14.4 The Seller shall promptly refer to the Buyer all enquiries relating to the Business the Seller may in future receive, including enquiries or orders for any stocks, spare parts, accessories and other equipment manufactured or sold in connection with the Business, and assign to the Buyer (so far as the Seller is able) all orders relating to the Business.
15. **Confidential information**
- 15.1 The Seller acknowledges that it has information in respect of the Business and financing of the Business and the dealings, transactions, affairs, plans and proposals of the Business all of which information is or may be secret or confidential and important to the Business. In this clause 15 such information is called 'the Confidential Information' and includes, without limitation, confidential or secret information relating to the trade secrets, Know-how, ideas, business methods, finances, prices, business plans, sales targets, sales statistics, customer lists, customer relationships, computer systems and computer software of the Business. The Seller further acknowledges that the disclosure of the Confidential Information (whether directly or indirectly) to actual or potential competitors of the Business would place the Business at a competitive disadvantage and would do damage to its business. The Seller accordingly agrees to enter into the restrictions contained in clause 15.2.
- 15.2 The Seller shall not for a period of three years after the Effective Date:
- 15.2.1 disclose the Confidential Information to any person except those authorized by the Buyer, or
- 15.2.2 through failure to exercise all due care and diligence cause or permit any unauthorised disclosure of the Confidential Information.
- 15.3 The Seller shall not for a period of eight years after the Effective Date use the Confidential Information for the Seller's own purposes or for any purposes other than those of the Business.
- 15.4 The restrictions in clauses 15.2 and 15.3 shall cease to apply to information that becomes available to the public generally otherwise than through the fault of the Seller.
16. **Costs**
- The Parties shall each pay their own costs in connection with the negotiation, preparation and implementation of this agreement, any agreement incidental to or referred to in this agreement. The transfer of the Assets not transferable by delivery, fees for registration of assignments of the Intellectual Property Rights

and any licences required to be obtained in connection with the Assets shall be the cost and responsibility of the Buyer.

17. **Further assurance**

Each of the Parties undertakes with the other to execute and deliver all documents and take any other steps reasonably required to complete the terms of this agreement with all reasonable speed.

18. **Assignment**

18.1 The Parties shall be entitled to assign the benefit of this agreement to any member of their respective Groups, provided that:

18.1.1 if the assignee ceases to be a member of the Seller's Group or Buyer's Group (as the case may be) at any time during the currency of this agreement, the assignee shall immediately cease to have the benefit of this agreement which shall revert to the assignor, who shall continue at all times to be bound by the terms of this agreement save in so far as performed by the assignee.

18.2 Except as provided in clause 18.1, this agreement is personal to the Parties and may not be assigned at law or in equity without the prior written consent of the other party and without the assignee entering into a supplemental deed on the same terms as those described in clause 18.1.1 and giving such guarantees as the other Party may reasonably require.

19. **Announcements**

19.1 No announcement of any kind shall be made in respect of the subject matter of this agreement except:

19.1.1 as specifically agreed between the Parties, or

19.1.2 if an announcement is required by any recognised stock exchange or other securities market or by law.

19.2 Any announcement by either party required by any recognised stock exchange or other securities market or by law shall in any event only be issued after prior consultation with the other party.

20. **Merger**

Completion shall not in any way prejudice or affect the operation of any of the provisions of this agreement that contemplate or are capable of operation after the Effective Date, and accordingly all such provisions shall continue in full force and effect after the Effective Date, which shall not constitute a waiver by either party of any breach of this agreement whether or not known to either party at the Effective Date.

21. **Entire agreement and representations**

This agreement contains the whole agreement between the Parties in respect of all matters referred to and supersedes any prior written or oral agreement between them relating to it, and the Parties confirm that they have not entered into this agreement on the basis of any representations that are not expressly incorporated in this agreement. However, nothing in this agreement purports to exclude liability for any fraudulent statement or act.

22. **Severance**

If any term or provision in this agreement is in whole or in part held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.

23. **Variations**

No variations to this agreement shall be effective unless in writing and signed on behalf of each party by a director or other authorized person.

24. **Rescission and waiver**

Neither party shall have the right to rescind this agreement after Completion. Any remedy or right conferred upon any party for breach of this agreement shall be in addition to and without prejudice to all other rights and remedies available to that party, and no exercise or pursuit, or failure to exercise or pursue, such a right or remedy shall constitute a waiver by a party of any other right or remedy.

25. **Relevant law**

This agreement shall be governed by and construed in accordance with law of England and Wales. The parties submit to the non-executive jurisdiction of the High Court of England and Wales and agree that in the event of any action being begun in respect of this agreement the process by which it is begun may be served on them in accordance with clause 26.

26. **Notices**

26.1 Any notice required to be given by either party to the other shall be in writing in the English language, and shall be served by delivering it by hand (including by overnight courier) or by sending it by pre-paid first class post or fax or via email to either:

26.1.1 in the case of the Buyer, at 575 Route 73 North, Building D, West Berlin, New Jersey 08091, USA Fax number+1 856 753 0373; email: [irankin@dot-medical.com](mailto:irankin@dot-medical.com), marked for the attention of Ian Rankin, or

26.1.2 in the case of the Seller, 3 Bailey Court, Green Street, Macclesfield, Cheshire SK10 1JQ United Kingdom, Fax +44 1625 668855; email: [jcaruso@epmedsystems.com](mailto:jcaruso@epmedsystems.com), marked for the attention of James Caruso.

26.2 Any notice so served shall be deemed to have been served:

26.2.1 if delivered by hand, at the time of such delivery,

26.2.2 if sent by first class post before 1600 hours, on the fourth day after posting, and in proving service it shall be sufficient to prove that the letter was properly stamped, addressed and placed in the post,

26.2.3 if sent by fax, one hour after the time of transmission, and in proving service it shall be sufficient to prove that the fax was duly dispatched to the fax number of the addressee; or

26.2.4 if sent via email, at the time of sending.

26.3 In the case of service of a notice upon the Buyer at its registered office or other address, the notice shall be addressed to Ian Rankin of the Buyer or such other person as the Buyer shall direct,



26.4 In the case of service of a notice upon the Seller at its registered office or other address, the notice shall be addressed to David Bruce and James Caruso of the Seller.

27. **Counterparts**

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

28. **Contracts (Rights of Third Parties) Act 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this agreement shall confer on any third party any right to enforce or any benefit of any term of this agreement.

AS WITNESS this agreement has been entered into on the date stated at the beginning of it.

**SELLER**

Signed by **David Bruce**  
for and on behalf of **EP MedSystems, Inc.**

---

**BUYER**

Signed by **Ian Rankin**  
for and on behalf of **Dot Medical Products Limited**

---

SCHEDULE 1

Contracts  
(set out particulars of contracts)

None

SCHEDULE 2  
Excluded Assets

- 1 All the statutory books and statutory records of the Seller.
- 2 The Book Debts together with all cheques, bills, notes and securities receivable for them.
- 3 Any amounts recoverable by the Seller in respect of Taxation paid or payable by the Seller in connection with matters or events occurring on or before the Transfer Date.
- 4 All cash in hand or at the bank.
- 5 The Liabilities.
- 6 The benefit of any insurance claims and repayments arising before the Transfer Date in relation to the Business.

### SCHEDULE 3

#### The Patents

- **9 issued patents**
  - **1 ALERT PA**
    - **I-02) Construction of the ALERT PA catheter including balloon and electrodes**
  - **6 ALERT RA/CS**
    - **I-04) Recording/defibrillating catheter used with an external patch**
    - **I-08) Defibrillation method shocking the CS and an external patch**
    - **I-10) similar to I-04 above**
    - **I-11\_ Triple array defibrillation catheter (Montenaro) shocking between SVC, RA and CS (or RV) with a BALLOON**
    - **I-14\_ Triple array defibrillation catheter and method of using the same**
    - **I-15\_ Triple array defibrillation catheter and method of using the same**
  - **2 ALERT Companion**
    - **I-06) Constant current mode defibrillator**
    - **I-07) European version of I-06**
- **6 licensed patents**
  - **5 ALERT PA**
    - **A-01, 02, 03) Alt ALERT PA defibrillation method**
    - **A-04 Alt Companion defibrillation method**
    - **AS-13) ALERT PA with recording bands for LA and RA signals**
  - **1 ALERT Companion**
    - **A-05) InControl patent rate limited shocking over 120bpm**
- **1 infringement against EPMed research project started (R-06)**
- **1 registered trademark – ALERT (T-04)**



#	Patent Title	Product	Patent #	US/ EU	Docket #	Attorney Owner	Status	Next Action	When?	Priority
1-14	Triple array defibrillation catheter and method of using the same (expanded claims to include "at least one electrode")	ALERT	6,718,205	US	4426-38B	Lehrer	Filed 1-8-02	Find status - BBYrd Response due 8/21/03 - Wait		Done Low
1-15	Triple array defibrillation catheter and method of using the same (with inflatable flotation balloon)	ALERT	09/977,165 6,807,447	US	4426-46	Lehrer	Filed 10-15-01 Response filed 7/29/03	To be issued 4/6/4 Maintenance fee due	4/06/07	Done
								Find status - BBYrd Maintenance fee due	4-19-07	

#	Patent Title	Product	Patent #	US/ EU	Docket #	Attorney Owner	Status	Next Action	When?	Priority
A-01	Temporary atrial defibrillation catheter and method	ALERT	5,571,159	US		Eck, Ali License	Issued 8/5/96			
A-02	Method of atrial defibrillation employing a temporary implanted catheter	ALERT	5,653,734	US		Eck, Ali License	Issued 8/5/97			
A-03	Apparatus and method for temporary atrial defibrillation with external defibrillator and implanted transvenous catheter and electrodes	ALERT	5,928,269	US		Eck, Ali License	Issued 7/27/99			
A-04	Atrial defibrillator apparatus and method of use	ALERT	6,181,967	US		Eck, Ali License	Issued 1/30/03			
A-05	Atrial defibrillator and method for providing interval timing prior to cardioversion	ALERT	5,207,219	US		InControl non-ex. license	Issued 5-4-93			
A-13	Pulmonary artery catheter for left and right atrial recording	ALERT	6,552,378	US	4426-45	Lehrer/ Saksena	Allowed 10-8-02 Issued 3/21/03	Find status - BBYrd	Done	High

**I-02**

**5,697,965**      **Method of making an atrial defibrillation catheter**

**Application Number 08625872**

**Abstract**

A catheter for facilitating intracardiac atrial defibrillation includes an elongated flexible member that has a proximal end and a distal end. The flexible member further has a plurality of lumens that extend from the proximal end to the distal end thereof. An opening is formed through the flexible member adjacent the distal end thereof. One of the lumens communicates with the opening. A balloon envelope is secured to the periphery of flexible member and surrounds the opening. Connected to one end of the lumen associated with the opening is an air inlet tube. A syringe is provided to supply air through the inlet tube, through the lumen and out the opening in order to inflate the balloon envelope. A plurality of spaced apart electrode bands are secured around the periphery of the flexible member in a predetermined pattern. A plurality of electrical leads extend through the proximal end of the flexible member and through corresponding lumens to supply electrical current to the electrode bands.

**Inventor(s):** Griffin, III; Joseph C.

**Assignee:** ProCath Corporation, a wholly owned subsidiary of EP MedSystems, Inc.

**Filed:** 4-1-96

**Issued:** 12-16-97

**Licensed:** N/A

**I-04**

**5,931,863**      **Electrophysiology catheter**

**Application Number 09081501**

**Abstract**

A defibrillation electrophysiology catheter for stimulating the heart and sensing the resulting activity of the heart for determining a patient's potential to have an arrhythmia occur under uncontrolled circumstances and for defibrillating the heart if fibrillation occurs accidentally during the testing is disclosed. The catheter is provided with electrodes formed on the distal surface of the catheter which is placed near the patient's heart. The electrodes may be placed on the catheter in a variety of configurations. An external electrode in the form of a patch or pad is placed on the patient's back. Energy is applied to the system in order to shock the heart and defibrillate the same. The procedure is less invasive than the procedures requiring the electrodes to be implanted at or near the patient's heart and chest wall and requires less energy and time than the procedures requiring the use of two external paddles.

**Inventor(s):** Griffin, III; Joseph C., Jenkins; David A.

**Assignee:** ProCath Corporation, a wholly owned subsidiary of EP MedSystems, Inc.



**Filed:** 5-20-98

**Issued:** 8-3-99

**Licensed:** N/A

**I-06**

5,974,339 High energy defibrillator employing current control circuitry

Application Number 08979059

**Abstract**

A defibrillator for providing a constant low pulsed current to a patient's heart has a high voltage capacitor for storing electrical energy. An inductor connected to the capacitor smooths out the discharge curve and produces a low current low frequency defibrillator pulse supplied to a patient's heart. The pulse is usually biphasic.

**Inventor(s):** Baker, Jr.; Ross G. (Houston, TX); Gordon; Pat L. (Austin, TX)

**Assignee:** ProCath Corporation, a wholly owned subsidiary of EP MedSystems, Inc.

**Filed US:** 11-26-97 serial number 08/979,059

**Issued US:** 10-26-99

**Filed EPC:** 11-09-98 serial number 98957675.6

**Issued US:** 10-26-99

**Licensed:** N/A

**I-08**

5,085,117 Method of defibrillating employing coronary sinus and external patch electrodes

Application Number 09318027

**Abstract**

A defibrillation electrophysiology catheter for stimulating the heart and sensing the resulting activity of the heart for determining a patient's potential to have an arrhythmia occur under uncontrolled circumstances and for defibrillating the heart if fibrillation occurs accidentally during the testing is disclosed. The catheter is provided with electrodes formed on the distal surface of the catheter which is placed near the patient's heart. The electrodes may be placed on the catheter in a variety of configurations. An external electrode in the form of a patch or pad is placed on the patient's back. Energy is applied to the system in order to shock the heart and defibrillate the same. The procedure is less invasive than the procedures requiring the electrodes

to be implanted at or near the patient's heart and chest wall and requires less energy and time than the procedures requiring the use of two external paddles.

**Inventor(s):** Griffin, III; Joseph C., Jenkins; David A.

**Assignee:** ProCath Corporation, a wholly owned subsidiary of EP MedSystems, Inc.

**Filed:** 5-25-99

**Issued:** 7-4-00

**Licensed:** N/A

**I-10**

6,173,285 Electrophysiology catheter

Application Number 09318026

**Abstract**

A defibrillation electrophysiology catheter for stimulating the heart and sensing the resulting activity of the heart for determining a patient's potential to have an arrhythmia occur under uncontrolled circumstances and for defibrillating the heart if fibrillation occurs accidentally during the testing is disclosed. The catheter is provided with electrodes formed on the distal surface of the catheter which is placed near the patient's heart. The electrodes may be placed on the catheter in a variety of configurations. An external electrode in the form of a patch or pad is placed on the patient's back. Energy is applied to the system in order to shock the heart and defibrillate the same. The procedure is less invasive than the procedures requiring the electrodes to be implanted at or near the patient's heart and chest wall and requires less energy and time than the procedures requiring the use of two external paddles.

**Inventor(s):** Griffin, III; Joseph C., Jenkins; David A.

**Assignee:** ProCath Corporation, a wholly owned subsidiary of EP MedSystems, Inc.

**Filed:** 5-25-99

**Issued:** 1-9-01

**Licensed:** N/A

**I-11**

6,385,489 Triple array defibrillation catheter and method of using the same

Application Number 09399080

**Abstract**

A catheter for facilitating intracardiac atrial defibrillation that includes an elongated flexible member that has a proximal end and a distal end is disclosed. Three spaced apart electrode arrays

are secured around the periphery of the flexible member in a predetermined pattern so that a first electrode array is positioned within the superior vena cava, a second electrode array is positioned within the right atrium, and a third electrode array is positioned within the coronary sinus. Alternatively, the third electrode array may be positioned in the right ventricle rather than the coronary sinus. Electrical leads extend through the proximal end of the flexible member to supply electrical current to the electrode arrays, thereby defibrillating or cardioverting the heart.

**Inventor(s):** Griffin, III; Joseph C. (Atco, NJ); Montecero; Annbale S. (Rome, IT)

**Assignee:** EP MedSystems, Inc.

**Filed:** 9-17-99

**Issued:** 5-7-02

**Licensed:** N/A

**I-14**

6,718,205

**4426-38B** Triple array defibrillation catheter and method of using the same (expanded claims to include "at least one electrode")

Application Number 10041526

**Abstract (draft)**

A catheter for facilitating intracardiac atrial defibrillation that includes an elongated flexible member that has a proximal end and a distal end is disclosed. Three spaced apart electrode arrays are secured around the periphery of the flexible member in a predetermined pattern so that a first electrode array is positioned within the superior vena cava, a second electrode array is positioned within the right atrium, and a third electrode array is positioned within the coronary sinus. Alternatively, the third electrode array may be positioned in the right ventricle rather than the coronary sinus. Electrical leads extend through the proximal end of the flexible member to supply electrical current to the electrode arrays, thereby defibrillating or cardioverting the heart.

**CIP of:** 6,385,489 10/041,526

**Inventor(s):** Griffin, III; Joseph C.

**Assignee:** EP MedSystems, Inc.

**Filed:** 1-8-02

**Allowed:**

**Issued:** 4/6/04

**Licensed:** N/A

**I-15**

**6,807,447**      **4426-46**      Triple Array Defibrillation Catheter and Method of Using the Same

Application Number 09977165

**Abstract (draft)**

A catheter for facilitating intracardiac atrial defibrillation that includes an elongated flexible member that has a proximal end and a distal end is disclosed. An opening is formed through the flexible member adjacent the distal end thereof. One of the lumens communicates with the opening. A balloon envelope is secured to the periphery of flexible member and surrounds the opening. Connected to one end of the lumen associated with the opening is an air inlet tube. A syringe is provided to supply air through the inlet tube, through the lumen and out the opening in order to inflate the balloon envelope. Three spaced apart electrode arrays are secured around the periphery of the flexible member in a predetermined pattern so that a first electrode array is positioned within the superior vena cava, a second electrode array is positioned within the right atrium, and a third electrode array is positioned within the coronary sinus. Alternatively, the third electrode array may be positioned in the right ventricle rather than the coronary sinus. Electrical leads extend through the proximal end of the flexible member to supply electrical current to the electrode arrays, thereby defibrillating or cardioverting the heart.

**CIP of:** 6,385,489

**Inventor(s):** Griffin, III; Joseph C.

**Assignee:** EP MedSystems, Inc.

**Filed:** 10-15-01

**Allowed:**

**Issued:** 10/19/2004

**Licensed:** N/A

**A1**

**5,571,159**      Temporary atrial defibrillation catheter and method

**Abstract**

Atrial fibrillation disorders are treated by locating low impedance electrodes positioned on a single catheter body passing through the pulmonary artery valve to locate the electrodes respectively in the right atrium and the pulmonary artery. Thus an electrical energy impulse of the order of three joules is passed through a heart and tissue path establishing a field gradient for resetting atrially fibrillating cells to convert atrial fibrillation into sinus rhythm. A special non-implantable catheter for temporary use provided for this treatment method is characterized by an inflatable balloon on the distal tip end, two low impedance energy discharging electrodes spaced to reside respectively in the right atrium and the pulmonary artery and a flexible polymer catheter body sheath of a diameter of the order of two millimeters. Inflating and deflating of the distal balloon facilitates the positioning of the catheter and guarantees a stable position during the application of the electrical energy shock for conversion of atrial fibrillation.

**Inventor(s):** Ali; Eckhard

**Assignee:** None

**Filed:** 4-4-94

**Issued:** 8-5-96

**Licensed:** Exclusively to EP MedSystems, Inc. by Alt.

**A2**

**5,653,734**      Method of arial defibrillation employing a temporary implanted catheter

**Abstract**

Atrial fibrillation disorders are treated by locating low impedance electrodes positioned on a single catheter body passing through the pulmonary artery valve to locate the electrodes respectively in the right atrium and the pulmonary artery. Thus an electrical energy impulse of the order of three joules is passed through a heart and tissue path establishing a field gradient for resetting atrially fibrillating cells to convert atrial fibrillation into sinus rhythm. A special non-implantable catheter for temporary use provided for this treatment method is characterized by an inflatable balloon on the distal tip end, two low impedance energy discharging electrodes spaced to reside respectively in the right atrium and the pulmonary artery and a flexible polymer catheter body sheath of a diameter of the order of two millimeters. Inflating and deflating of the distal balloon facilitates the positioning of the catheter and guarantees a stable position during the application of the electrical energy shock for conversion of atrial fibrillation.

**Division of:** 5,571,159

**Inventor(s):** Alt, Eckhard

**Assignee:** None

**Filed:** 4-4-96

**Issued:** 8-5-97

**Licensed:** Exclusively to EP MedSystems, Inc. by Alt.

**A-03**

**5,928,269**      Apparatus and method for temporary atrial defibrillation with external defibrillator and implanted transvenous catheter and electrodes

**Abstract**

Apparatus is disclosed for temporary treatment of atrial fibrillation of a patient's heart for limited periods of time. An external control unit generates electrical shock impulses; and is electrically connected to spaced-apart defibrillation electrodes of a flexible catheter adapted for temporary implantation in the body of a patient. One of the defibrillation electrodes is positioned in the right atrium of the patient's heart and the other defibrillation electrode is positioned elsewhere proximate the heart to establish a vector through the atrial chambers. A shock impulse is selectively applied from the control unit across the electrodes with a magnitude to establish an

adequate field gradient between them so as to cardiovert atrial fibrillation to sinus rhythm. Monitoring of intracardiac and/or surface ECG activity enables detection of the QRS complex to trigger the selective application for delivery of a shock impulse in synchronization with the QRS complex.

**CIP of:** 5,653,734

**Inventor(s):** Alt; Eckhard

**Assignee:** None

**Filed:** 8-5-97

**Issued:** 7-27-99

**Licensed:** Exclusively to EP MedSystems, Inc. by Alt.

**A-04**

6,181,967      Atrial defibrillator apparatus and method of use

**Abstract**

A method for external treatment of dysrhythmias including fibrillation of a patient's heart utilizes an externally located control box which generates electrical waveforms including shocks of variable energy content sufficient for terminating the dysrhythmias. A lead having transvenous defibrillation electrodes is inserted through a portion of the patient's venous system to position the electrodes to produce an electric field vector through the patient's heart when an electrical shock of sufficient energy content is applied across the electrodes. The control box is electrically connected to the lead to deliver electrical shocks from the control box to the electrodes, and to deliver a representation of the patient's ECG waveform to the control box. A display screen on the control box aids in synchronously triggering the electrical shocks in response to detection of the QRS complex of the ECG waveform. The energy content of each electrical shock is adjusted from the control box to a value within a range from one to thirty joules, to terminate a detected event of fibrillation.

**CIP of:** 5,928,269

**Inventor(s):** Alt; Eckhard

**Assignee:** None

**Filed:** 7-27-99

**Issued:** 1-30-01

**Licensed:** Exclusively to EP MedSystems, Inc. by Alt.

**A-05**

5,207,219      Atrial defibrillator and method for providing interval timing prior to cardioversion

**Abstract**

An implantable atrial defibrillator provides cardioverting electrical energy to the atria of a human heart in need of cardioversion. The atrial defibrillator includes a first detector for detecting ventricular activations of the heart, a second detector for detecting atrial activity of the heart, and an atrial fibrillation detector responsive to the second detector for determining when the atria of the heart are in need of cardioversion. The atrial defibrillator also includes a cardioverting stage for applying the cardioverting electrical energy to the atria of the heart when the atria of the heart are in need of cardioversion and when the time between immediately successive ventricular activations is greater than a preselected minimum time interval.

**Inventor(s):** Adams, John M., et al.

**Assignee:** InControl, Inc. from Inventors (InControl, Inc. assets acquired by Guidant)

**Filed:** 10-23-92

**Issued:** 5-4-93

**Licensed:** Non-exclusively to EP MedSystems, Inc. by InControl, Inc.

**A-13**

**6,532,378      4426-45      Pulmonary artery catheter for left and right atrial recording**

Application Number 09761056

Window Opens 3-11-2010 Closes 3-11-2011

**Abstract (draft)**

A catheter for facilitating intracardiac atrial defibrillation that includes an elongated flexible member that has a proximal end and a distal end is disclosed. At least one electrode array to facilitate defibrillation is secured around the periphery of the flexible member in a predetermined pattern. At least one sensing / pacing electrode to facilitate mapping or pacing of the heart is secured around the periphery of the flexible member in a predetermined pattern. Electrical leads extend through the proximal end of the flexible member to supply electrical current to the electrode, thereby defibrillating or cardioverting the heart or mapping or pacing the heart. Said mapping electrode also provides the means to sense left heart signals through the pulmonary artery for the treatment of focal atrial fibrillation.

**Inventor(s):** Saksena, Sanjeav., and Griffin, III, Joseph C.

**Assignee:** EP MedSystems, Inc.

**Filed:** 1-16-01

**Allowed:** 10-8-02

**Issued:** 3-21-03

**Licensed:** N/A

# SCHEDULE 4

## Equipment

The Equipment described below is the minimum required for the manufacture of the Products and is to be transferred to Buyer designated Manufacturer.

PCC #	DESCRIPTION	MODEL #	SERIAL #	LOCATION	PRODUCT
243	Green Spot - UV machine	1000	11101	118	ALL
199	EFD - loctite adhesive	1000XL	673291T	118	ALL
197	MEIJI - microscope	EMZ	79316	118	ALL
350	Light source fiber optic, Fostec	20500	58805	118	ALL
351	Freezer, Kelvinator	UC744-411000	358760	118	VF
112	Green Spot	1000	10723	118	
347	EFD	1000XL	556492T	118	
196	MEIJI	EMZ	79373	118	
348	Light source fiber optic, Fostec	20500	58806	118	
242	Green Spot	1000	11243	118	
035	EFD	1000XL	604342T	118	
114	MEIJI	EML	55168	118	
113	Light source fiber optic, Fostec	20500	34855	118	
053	Scale, Pelouze		Inventory 127		
198	Green Spot	1000	10971	127	
201	EFD	1000XL	673292T	127	
195	MEIJI	EMZ	79378	127	
354	Light source fiber optic, Fostec	20500	58804	127	
352	Dehumidifier, Goldstar	DH3010B	012KA29469	118	
353	Dehumidifier, Goldstar	DH3010B	012KA25547	118	
388	Multimeter, Fluke	10	69910401	cmfg	AL/EP/CS
389	Multimeter, Fluke	10	78010009	cmfg	
392	Multimeter, Fluke	10	79150022	cmfg	
391	Multimeter, Fluke	10	78010005	cmfg	



PCC #	DESCRIPTION	MODEL #	SERIAL #	LOCATION	PRODUCT
393	Multimeter, Fluke	10	76350266	cmfg	
062	Tray Sealer	FM2	SA3457	110	AL/EP
267	Tray Sealer, table			110	AL/EP
034	Hospital Sealer, DoBoy	952484	90M24132	110	ALL
100	Sealer, film packaging, U-Line	KF-200HC		110	EP
242	Ultrasonic Cleaner, L&R	Q140H W/T	01003-630408	107	EP
364	Vise, PanaVise	301		107	
385	Vise, PanaVise	301		107	
514	Vise, PanaVise	301		107	
092	Swager, Fenn			107	AL/EP/CS
253	Smoke Absorber, Hakko	493	49319D0020	107	
250	Smoke Absorber, Hakko	493		107	
248	Smoke Absorber, Hakko	493		107	
219	Solder station, Weller	EC1002	599	107	AL/EP/CS
127	Solder station, Weller		402	107	
247	Solder station, Weller	EC2002M	400	107	
387	Solder station, Weller	EC2002M	601	107	
065	Solder Pot, American Beauty			107	AL/EP/CS
244	Solder Pot, American Beauty			107	
345	Heat Block, Thermolyne	HP46515	1067971033849	107	EP/CS
344	Heat Block, Thermolyne	HP46515	1067991165032	107	
133	Dip Pot, Eraser			107	CS
356	Oven, Grieve			107	EP
081	Mold Mach., Illinois Precision	TTM-HS2	10280	107	EP/CS DEFL
090	Wire Stripper, Eraser	RT2	AR-2301	107	AL/EP/CS
228	Wire Stripper, Eraser	RT2		107	
079	Heat Thermometer, Trend			cmfg	AL/EP/CS
080	Heat Thermometer, Trend			cmfg	
229	Heat Thermometer, Trend			cmfg	
089	Heat Gun, Leister			cmfg	ALL
040	Heat Gun, Leister			cmfg	
185	Heat Gun, Leister			cmfg	
186	Heat Gun, Leister			cmfg	
236	Heat Gun, Leister			cmfg	
058	Band Welder, Weld Sentry	1-254-02-05	940601	107	CS
PCC #	DESCRIPTION	MODEL #	SERIAL #	LOCATION	PRODUCT



## SCHEDULE 5

### The Products

- Alert PA Catheters for the purposes of Internal Cardioversion
- Alert RA/CS Catheters for the purposes of Internal Cardioversion
- Alert Cables for the purposes of connecting Alert Catheters to Companions
- Alert Companion 2 Energy Delivery System and subsequent versions
- One-Piece EP Diagnostic Catheter
- Multi-pin EP Diagnostic Catheters
- EPC-05P (or similar) One-piece Connector
- EPC-10P (or similar) One-Piece Connector
- EPC-10M (or similar) Multi-pin Cables

## SCHEDULE 6

### Assets

On signing this agreement and after receiving first payment from Distributor, Seller will provide to the Buyer the following items in the following time periods:

Within two (2) weeks of the Effective Date and receiving Initial Payment:

#### **General**

- All IP related to the Alert Internal Cardioversion Catheter and Equipment Business and exclusive rights to associated licenses.
- All IP related to the One-Piece and Multi-pin EP Diagnostic Catheter business and exclusive rights to associated licenses.
- Exclusive, unrestricted rights to manufacture Products and variations of Products at Buyer's designated Manufacturer
- Exclusive rights to continue supplying existing customers with Products.
- Contact details of all current customers for Products.
- Contact details of all current distributors for Products.
- Customer lists and trading history of Products for the last 5 years.
- All documents related to current and previous Royalty payment agreements

#### **Raw Materials and spare parts**

- Complete details of suppliers of Raw Materials and spare parts for manufacture of all the Products including supply continuity assessment.
- Copies of all confirmations from suppliers of Raw Materials supporting continuity of supply to Distributor.
- Inventory list of all Raw Materials and spare parts for manufacture of Products at Manufacturing site.
- Full specifications of all Raw Materials used in the Products.
- All BOM lists of Products.
- Documents related to sterilization validation of Products including sterility values to enable validation.
- Quantity, location and state of all Companion systems manufactured by seller.
- All software related to the Companion including access to change the software, flow diagrams and instructions for debugging to a level meaningful to a software engineer.
- A full history of software errors, bugs and updates related to the Companion,
- Full repair instructions and processes for repairing and requalifying the Companion.
- Inventory list of Companion components and spare parts.
- Inventory List of all manufacturing materials and equipment with specifications.

Within four (4) weeks of requesting by the Buyer

- Complete transfer of all regulatory documents associated with Products to Buyer designated site.
- Complete transfer of Design and Technical dossiers to Buyer designated site.
- Complete transfer of documents related to Manufacturing, Procurement, Incoming Inspection Documents, Engineering, Regulatory, to Buyer by File Transfer Protocol (FTP) or similar.

- Complete transfer of Equipment, with manuals and instructions to Buyer designated site at Seller's cost.
- Complete transfer of regulatory approvals to Buyer at Seller's cost which would allow continuation of manufacturing and selling of Products.
- Complete transfer of Inventory, Dunnage, Work-in-Progress, devices, raw materials and technical know-how to Buyer designated site at Seller's cost.

## SCHEDULE 7

### The Warranties

#### **1 Warranties as to the Seller**

- 1.1 The Seller is a company duly qualified, licensed or domesticated and in good standing as a foreign corporation authorized to do business in all jurisdictions within or outside the United Kingdom where this is necessary for the purposes of the Business, and has all requisite corporate power and authority to enter into and complete this agreement without obtaining the consent of any third party.
- 1.2 Compliance with the terms of this agreement and any document entered into by the Seller in accordance with it does not and will not conflict with or result in a breach of any of the provisions of the Seller's memorandum or articles of association or any agreement or other obligation made or given by the Seller.
- 1.3 The Seller has at all times carried on the Business for its own benefit and in all respects in accordance with its memorandum and articles of association for the time being in force and any other documents to which it is or has been a party.

#### **2 Warranties as to the Seller's books and records**

- 2.1 All of the Seller's accounts, books, ledgers, financial and other records of every kind relating to the Business have been fully maintained in accordance with generally accepted accounting practices and standards. There are no material inaccuracies or discrepancies of any kind contained or reflected in any of them, they give and reflect a true and fair view of the financial, contractual and trading position of the Seller in relation to the Business and of its plant, machinery and other fixed assets, debtors, creditors, stock-in-trade, work-in-progress and other current assets and liabilities in relation to the Business and will be fully written up to the date of Completion.
- 2.2 Without limiting paragraph 2.1, all proper records have been kept and all proper returns and payments made as required by applicable law in connection with the Business.

#### **3 Warranties as to conduct of the business since the Accounting Date**

Since the Accounting Date:

- 3.1 the Business has been carried on in the ordinary and usual course, without entering into any transaction, assuming any liability or making any payment not provided for in the accounts or the management accounts which is not in the ordinary course of the Business, and without interruption or alteration in the nature, scope or manner of the Business,
- 3.2 there has been no material deterioration in the financial position or prospects or turnover of the Business or value of the Assets, and
- 3.3 the Seller has not done or omitted to do anything that might prejudicially affect the Goodwill or the Know-how.

#### **4 Warranties as to consequence of acquisition of the business by the Buyer**

The acquisition of the Business or the Assets by the Buyer, or compliance with the terms of this agreement will not:

- 4.1 so far as the Seller is aware cause the Business to lose the benefit of any right or privilege it presently enjoys or cause any person who normally does business with the Business not to continue to do so on the same basis as previously,
- 4.2 give rise to or cause to become exercisable any right of pre-emption relating to the Business or any of the Assets,
- 4.3 result in a breach of or constitute a default under:
  - 4.3.1 the terms, conditions or provisions of any agreement, understanding, arrangement or instrument, or

4.3.2 any order, judgment or decree of any court or government agency to which the Seller is a party or by which the Seller is bound in relation to the Business, or

- 4.4 and to the best of the knowledge and belief of the Seller the relationship of the Business with clients, customers, suppliers and employees will not be adversely affected by the execution, completion, or implementation of this agreement.

## **5 Warranties as to the Assets**

- 5.1 The Seller has good and marketable title to all the Assets and owns all the Assets absolutely free from and not subject to any agreement, or commitment to give or create any mortgage, charge, lien, option, bill of sale, leasing agreement, hire purchase agreement, credit sale or conditional sale agreement or any other incumbrance or claim of any kind (excepting only liens arising in the ordinary course of trading), and in particular none of the Stocks are subject to any reservation of title in favour of any third party or are purchased generally on terms that ownership does not pass to the Seller until full payment is made to the supplier.
- 5.2 The Stocks have been fully paid for by the Seller and are of satisfactory quality.
- 5.3 So far as the Seller is aware, the Stocks are at their normal level having regard to current orders and to orders reasonably anticipated from customers of the Business.
- 5.4 The Assets comprise all assets now used in the Business and necessary for the continuation of the Business as currently carried on. No Asset is shared by the Business with any other person and the Business does not depend for its business upon any assets, facilities or services owned or supplied by any member of the Seller's Group.
- 5.5 Schedule 4 contains full and accurate details of the Equipment used in the Business.
- 5.6 The Equipment does not contravene any requirement or restriction having the force of law, are in good repair and condition, are regularly and properly maintained and fully serviceable.

## **6 Warranties as to material contracts**

The Seller is not in relation to the Business and/or the Assets a party to or subject to any agreement, transaction, obligation, commitment, understanding, arrangement or liability including without limitation the Contracts which:

- 6.1 involves agency, distributorship, franchising, marketing rights, information sharing, manufacturing rights, servicing or maintenance,
- 6.2 involves partnership, joint venture, consortium or similar arrangements,
- 6.3 is for the supply of goods and/or services by or to the Seller on terms under which retrospective or future discounts, price reductions or other financial incentives are given by or to the Seller dependent on the level of purchases or any other factor,
- 6.4 is not on arm's length terms or is in any way other than in the ordinary and proper course of the Business,
- 6.5 involves obligations, restrictions, expenditure or receipts of an unusual, onerous or exceptional nature and not in the ordinary course of the Business,
- 6.6 is a lease or loan agreement, debenture, guarantee or indemnity or a letter of credit or a contract for hire or rent, hire purchase or purchase by way of credit sale or periodical payment,
- 6.7 in any way restricts the Seller's freedom to carry on the whole or any part of the Business in any part of the United Kingdom or elsewhere in such manner as the Seller thinks fit.

**7        Warranty as to defaults**

Neither the Seller nor any other party to any agreement or arrangement to which the Seller is a party (including the Contracts) is in default under such agreement or arrangement, being a default that would be material in the context of the financial or trading position of the Business or in the context of its assets, nor has any threat or claim of any such default been made by or notified to the Seller nor, as far as the Seller is aware, are there any circumstances likely to give rise to such a default.

**8        Warranty as to powers of attorney**

No powers of attorney given by the Seller in connection with the conduct of the Business are in force. No person is entitled or authorized, as agent or otherwise, to enter into any contract, commitment or obligation on behalf of the Business not in the ordinary course of the Business.

**9        Warranties as to existing suppliers and customers**

- 9.1       Other than the Contracts, there are no other contracts, agreements or commitments, whether conditional or unconditional, and no arrangements or undertakings, whether legally binding or not, relating to the Business that are material in relation to the Business or that the Buyer would require to enable it to carry on the Business in the same manner as previously carried on by the Seller.

**10       Warranties as to the Intellectual Property Rights**

- 10.1      The Seller is the absolute beneficial owner, registered proprietor or licensee of the Intellectual Property Rights, and there are no subsisting licences or other agreements under which the Seller has granted to any third party any rights or interest in connection with the Intellectual Property Rights or any rights to any Know-how or confidential information relating to the Business.
- 10.2      The Business does not require any intellectual property rights other than the Intellectual Property Rights in order to use any of the processes employed in the Business, and so far as the Seller is aware the operations of the Business do not infringe and are not likely to infringe any patent or other rights of any kind vested in any other party or give rise to the payment of any royalty or similar sum, or involve the use of any confidential information of any other party.
- 10.3      The Seller owns the copyright in the designs of all its brochures, literature and marketing material, and so far as the Seller is aware none of them infringe any right of any other person or involve the unlicensed use of confidential information disclosed to the Seller by any person.
- 10.4      To the best of the Seller's knowledge, information and belief there has been no infringement of the Intellectual Property Rights at any time during the period of five (5) years before the Effective Date of this agreement.
- 10.5      To the best of the Seller's knowledge, there is no actual or prospective challenge to the validity of the Intellectual Property Rights.

**11       Warranty as to disclosure of trade secrets**

The Seller has not except in the ordinary and normal course of business disclosed any of its Know-how, trade secrets, confidential information, price lists, customers or suppliers relating to the Business to any person other than the Buyer, or permitted, undertaken or arranged such disclosure.

**12       Warranties as to insurance**

- 12.1      All the Assets are insured to their full value in accordance with generally accepted practice with a well established and reputable insurer against all risks customarily insured against in respect of assets and properties of that description.



- 12.2 There are in force policies of insurance against all other risks and liabilities (including but not limited to products liability and consequential loss of profits) usually covered by insurance by persons carrying on business of the same type as the Business.
- 12.3 To the best of the Seller's knowledge, information and belief there are no circumstances that could lead to any such insurance being revoked, vitiated or not renewed in the ordinary course.

**13 Warranties as to litigation**

- 13.1 The Seller is not engaged in any litigation, arbitration, prosecution or other legal proceedings in connection with the Business and in particular with any substantial customer or customers of the Business, and to the best of the Seller's knowledge and belief there are no facts likely to give rise to any legal proceedings. The Seller has not been a party to any undertaking or assurance given to any court or government agency relating to the Business and/or its assets which is still in force.

**14 Warranties as to licences and consents**

- 14.1 The Seller has obtained all necessary licences and consents from any person, authority or body for the proper carrying on of the Business and is not in breach of any of their terms or conditions.
- 14.2 the Seller knows of no reason why they should not be capable of being transferred to or obtained by the Buyer without the necessity for any special arrangement or expense.

**15 Warranty as to grants**

The Seller has not applied for or received any financial assistance from any national or local authority or governmental agency in connection with the Business.

**16 Warranties as to material information**

- 16.1 The information contained in this agreement and the Schedules to it, and all other information given by or on behalf of the Seller to the Buyer or any of its directors, officers, agents or employees or the Buyer's professional advisers in the course of the negotiations leading to this agreement, was when given and will at the Final Completion date remain true, complete and accurate in all material respects. To the best of its knowledge and belief, the Seller is not aware of any fact or matter not in the public domain in relation to the Business that would render any such information untrue, incomplete, inaccurate or misleading.

**17 Warranties as to investments, associations and branches**

The Seller:

- 17.1 is not and has not been a party to any joint venture, consortium or partnership arrangement or agreement or to any agreement or arrangement for sharing commissions or other income relating to the Business,
- 17.2 is not a member of any partnership, trade association, society or other group whether formal or informal relevant to or having any material influence over the Business as now carried on.

**18 Warranty as to guarantees and warranties**

The Seller has not given any guarantee, indemnity or warranty or made any representation in respect of any products sold or supplied or contracted to be sold or supplied by it, or in respect of any other aspect of the Business save for any guarantee, indemnity or warranty implied by law, and (save as aforesaid) has not accepted any liability or obligation to service, repair, maintain, take back or otherwise do or not do anything in respect of any products (or) services that would apply after delivery or supply.

**19 Warranties as to agreements concerning the Business**

- 19.1 There have been no arrangements nor undertakings (whether legally enforceable or not) between the Seller and any person who is directly or indirectly a shareholder or the beneficial owner of any interest in the Seller, any member of the Seller's Group, or any company in which the Seller is interested relating to the management of the Business, the ownership or transfer of ownership or the letting of any of the Assets, the provision of finance, goods, services or other facilities to or by the Seller, or otherwise in any way relating to the Business or the Assets.

**20 Warranty as to offers**

There is no outstanding offer or tender relating to the Business that is capable of being converted into an obligation of the Business by an acceptance or other act of some other person.

**21 Warranty as to defective products**

To its knowledge, the Seller has not manufactured or sold products that were, are or will become faulty or defective or that did not or do not comply with any warranties or representations expressly or impliedly made by the Seller or with all applicable laws, regulations, standards and requirements.

## SCHEDULE 8

### Transfer of Manufacturing Plan

Expressions in this Schedule refer to the transfer of the Business from Seller to Buyer.

1. Seller will continue manufacturing Alert PA Catheter and Alert Cable until requested to cease by Distributor or 12 months have lapsed since the Effective Date whichever occurs soonest.
2. Prices of Alert PA and Alert Cable will remain current. Manufacturing volumes of these products will decrease with time at the request of Buyer as manufacturing is transferred to Buyer designated Manufacturer.
3. Seller agrees to let staff designated by Buyer ("Staff") unrestricted access to the employees and processes related to the Products at the Seller's site.
4. Seller further agrees to let Staff video, photograph and record all aspects related to the process of manufacturing the Products.
5. Seller further agrees to train Staff to a standard whereby Staff can manufacture Alert PA and Alert Cable. Initial training will occur at Seller's site.
6. At the request of Buyer certain documents outlined in Schedule 6 will be made available to Buyer by File Transfer Protocol ("FTP").
7. At the request of Buyer all Equipment outlined in Schedule 4 will be shipped at Seller's cost and insurance to Manufacturer.
8. Seller will assist in the installation and will commission the Equipment in Manufacturer.
9. At the request of Buyer Work-in-Progress and some Raw materials will be purchased by Buyer from Seller at cost and shipped to Manufacturer in order to train Staff.
10. At the request of Buyer training of Staff by Seller will occur at Manufacturer and Staff will start manufacturing Alert PA Catheters and Alert Cables at the Manufacturing site under the supervision of trainers from the Seller.
11. Seller will assist Manufacturer in sterilization validity by providing advice and documents to support validation. Appropriate Sterilizer blocking ("Dunnage") will also be provided by Seller at no cost if it has been built prior to the execution of the Contract. If Dunnage is built by the Seller after the execution of this Contract it will be billed to the Buyer at Seller's cost.
12. As Manufacturer output increases Seller will work with Buyer to transfer Raw Materials and Work-in-Progress to Buyer at cost.
13. Seller will work with Buyer to offer advice related to manufacturing of Companion and Products as required for a period not exceeding one (1) year after the Effective Date..
14. At the request of Buyer Seller will cease all manufacturing of Products and parts thereof no later than twelve (12) months after the Effective Date.

## SCHEDULE 9

### Limitations on Claims

1. This Schedule 9 limits the liability of the Seller in relation to any Claim.
2. The liability of the Seller for all Substantiated Claims when taken together shall not exceed US\$750,000.
3. The Seller shall not be liable for a Claim unless such claim becomes a Substantiated Claim and:
  - 3.1 the amount of such Substantiated Claim, or of a series of connected Substantiated Claims of which such Substantiated Claim is one, exceeds US\$5,000; and
  - 3.2 the amount of all Substantiated Claims that are not excluded under paragraph 3(a) of this Schedule 8 when taken together, exceeds US\$50,000 in which event the whole amount of such Substantiated Claim, or series of connected Substantiated Claims, is recoverable (and not just the amount by which the limits are exceeded).
4. The Seller is not liable for any Claim to the extent that the Claim:
  - 4.1 relates to matters Disclosed; or
  - 4.2 relates to any matter specifically and fully provided for in the Accounts;
5. The Seller is not liable for a Claim unless the Buyer has given the Seller notice of the Claim, specifying (in reasonable detail) the nature of the Claim and the amount claimed within the period of 2 years beginning with the Effective Date and the liability of the Seller for any claim specified in such notice shall absolutely determine and cease (unless the amount payable in respect of the relevant claim has been agreed by the Seller within 3 months of the date of such written notice) or if legal proceedings have not been instituted in respect of such claim by the due service of process on the Seller within 3 months of such written notice.
6. Nothing in this clause applies to a Claim that arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the Seller.