

DATED2002

Mr L.A. SCOTT and MR. D.H. BROUGH

and

VIAMED ELECTROMEDICAL EQUIPMENT Ltd.

PATENT LICENCE

MARTIN L. COHEN AND CO.
SOLICITORS
DARLINGTON

THIS AGREEMENT is made the _____ day of _____
Two thousand and two **BETWEEN (1) Mr. L.A. SCOTT and MR.D.H. BROUGH** whose registered office is at 26 Oakland Ave, Hartlepool, TS25 OLD ("the Licensor") and **(2) VIAMED ELECTROMEDICAL EQUIPMENT LIMITED** whose registered office is at 15 Station Road, Crosshills, Keighley, West Yorkshire, BD20 7DT ("the Licensee")
IT IS AGREED or **THIS DEED WITNESSES** as follows:-

1. Definitions

The following terms shall have the following meanings:-

"Accounting reference date"	31st March in each year of the term
"Commencement Date"	The date hereof
"Default Notice"	The notice specified in clause 13.1
"Expiry Date"	2012
"Invention"	The invention which is the subject of the Patent Application
"Licence"	A licence in the form set out in part 4 of the schedule
"Minimum Royalties"	The amounts specified in clause 6
"Net selling price"	The gross invoice price of the products at which a purchaser was or would have been invoiced in a bona fide arm's length contract of sale but deducting the costs of packaging and transport insurance charges customs duties allowances made for defective products normal trade discounts sales taxes excise excise duty VAT or other similar tax charged on and included in the invoice price to the purchaser
"Patent Application"	The patent applications listed in part 1 of the schedule
"products"	The products and any spare parts for them making use of the invention specified in part 2 of the Schedule
"Royalties"	The payment specified in clause 5

“Supply”

Any disposition of the products whether under a contract of sale hire leasing or otherwise including the supply by the licensee to itself for it's own use but excluding supply to itself for the purposes of supply to others

“Term”

The period starting on the commencement Date and ending on the expiry Date unless earlier terminated as provided by clause 14

“Territories”

The territories specified in part 3 of the schedule

2. Recitals

2.1 The Licensor is entitled to the benefit of the patent Applications

2.2 The Licensor has agreed to grant to the licensee a license under the patent Application on the terms of this agreement

3. Grant

3.1 In consideration of the Licensee's payment of the royalties the Licensor agrees to grant to the Licensee for the term:

An exclusive License to make or supply the products within the territories

3.2 Within 14 days of the date of this agreement the Licensor shall execute the Licence

3.3 The Licensor shall at the request of the licensee execute any further document which may be necessary to give effect to this Agreement in any of the territories outside the United Kingdom

4. Licensee to register Licence (and sublicences)

The Licensee shall register the Licence at the relevant patent office within three months from the commencement Date

5. Royalties

5.1 The Licensee shall pay to the Licensor Royalties at the rate of Twenty per cent of the net selling price on each supply of the products in the Territories by the Licensee

5.1.1 The above mentioned royalties are to be paid by the Licensee to the Licensor at 3 monthly intervals referenced from the accounting date in the year that this agreement is signed the first date of payment being the 3 monthly interval ending after the date this agreement is signed.

5.1.2 The Licensee will incur a 10% charge on any outstanding monies due on these payment dates for sales made and payments received (but not forwarded to the Licensor) for each month after such payment date

5.2 The Royalties payable in respect of the supply of any of the products by the Licensee shall be calculated on the current Net selling price for the products on the open market of the relevant part of the territories at the time of each supply and not on the cash received or receivable by the Licensee in respect of such supply

5.2.1 The Licensee will provide to the licensor a written itemised breakdown of all cost's incurred in the manufacture of the product's including sales, marketing and carriage cost's for each of the territories

5.2.2 In the event of a change in the cost's of sub-section 5.2.1 affecting the value of the royalties payable to the licensor the licensee shall provide to the licensor a written statement of such increase or decrease in cost's

5.3 Every supply of the products under a contract of sale shall be invoiced within thirty days and shall be deemed to have been made on the date when invoiced a copy of this invoice shall be forwarded to the licensor for his records on this date

5.4 For every supply of the products under a contract of hire or leasing by the Licensee the Licensee shall pay royalties of Twenty per cent of the rentals payable by the hirer or lessee these royalties will be due on all monies received in excess of the total cost's incurred in the production of the product's

5.5 In the event of the supply of any of the products incorporated in any larger equipment or apparatus manufactured and sold or otherwise disposed of by the Licensee or any subLicensee it shall be invoiced separately from the larger equipment or apparatus and at the Net Selling Price which would have been charged had such products been sold separately in the ordinary course of business

5.6 In the event of the supply by the Licensee to a person, firm or company (whether or not a sublicensee under this agreement) whose commercial policy is controlled by the Licensee or by any member of a group of companies of which the Licensee is a member and between any of which companies there shall at the time of such disposal subsist (whether directly or indirectly) the relationship of holding company or subsidiary (as defined in the companies Act 1985 section 736) the Royalties due and payable on such supply shall be calculated on the Net Selling Price for such products on the open market in accordance with clause 5.2

6. Minimum Royalties

6.1 The Licensor shall have the right to determine this agreement by giving notice in writing to the Licensee expiring on any Accounting Reference date if in respect of the previous year ending on such date payments (not being earlier than July 2004) by way of Royalties from the Licensee to the Licensor do not amount to the equivalent of the sale of 60 of the products

7. Validity of patents

7.1 Nothing in this Agreement (or in any Licence or Licences to be granted pursuant to it) shall be construed as a representation or warranty that the patents or any of them are valid or that supply of the products is not an infringement of any valid and subsisting patent not held by the Licensor

7.2 The Licensee shall at its own expense make all applications necessary and obtain in the Licensor's name patents in all countries in which it intends to market the products to the intent that the Licensor's exclusive right to the invention shall be protected at all times and will take all action necessary to protect such patents and applications

8. Invalidity or revocation of patents

If the grant of a patent applied for in the patent applications is refused or if the patents or any of them are declared invalid or revoked by a court or tribunal of competent jurisdiction all Royalties payable in respect of the patents so refused or declared invalid or revoked shall cease to be payable as from the date of such refusal or judgement or decision but the Licensor shall be entitled to all sums which shall have fallen due at such date whether paid or unpaid at such date and if the judgement or decision of the court or tribunal shall be reversed on appeal the Royalties shall as from the date of such reversal again become payable together with all Royalties which would have been payable but for the adverse judgement or decision

9. No warranty of information

Whilst the Licensor shall use all reasonable endeavours to ensure that the information it furnishes to the Licensee is accurate and reflects the Licensor's own experiences the Licensor shall be under no liability to the Licensee for any loss or damage sustained by the Licensee or any third party arising out of the manufacture use or supply of the products or deriving directly or indirectly out of the use by the Licensee of the patents or any other rights granted by this agreement or the provision of any information in connection with it

10. Challenge to validity of patents

The Licensee shall be at liberty at any time to challenge the validity of the patents but without prejudice to the right of the Licensor to terminate this agreement in the event of such a challenge

CONDITIONS

11. Licensor's obligations

The Licensor shall:

11.1 Supply of information

11.1.1 inform the Licensee of all technical information concerning the invention

11.1.2 supply the Licensee with any documents or drawings relevant to the invention

11.1.3 licence the Licensee to use such documents drawings and technical information

11.2 Improvements

If any improvement to the Invention is discovered:

11.2.1 disclose to the Licensee full details of the improvement

11.2.2 grant to the Licensee a non-exclusive royalty-free licence to make use of it

12. Licensee's obligations

12.1 Quality

Ensure that all of the products marketed by it are of good merchantable quality and comply with all laws and regulations in operation in the territory in which the relevant supply takes place

12.2 Marketing

Mark or cause to be marked in a legible manner on some conspicuous part of each of the products or if this is not possible owing to the nature of the products on the packaging of the products (words indicating that patents have been applied for and giving the patent application number and on the relevant patent being granted the patent number)

13. Default Notice

13.1 Breach of Agreement

In the event of a breach day the Licensee of any of the provisions of this agreement other than a fundamental breach specified in clause 14.7 the Licensor may serve notice requiring the breach to be remedied within the time stipulated in that notice but nothing in this clause shall require the Licensor to serve notice of any breach before taking action in respect of it

13.2 Compulsory licenses caused by the Licensee's conduct

13.2.1 If the Licensee is operating in any of the territories in a manner which would give rise to a right of any other person to apply for and be granted a compulsory Licence under any of the patents in such Territory the Licensor shall have the right in addition to any other remedy it may possess to serve a Default Notice on the Licensee

13.2.2 Such Default Notice shall be deemed withdrawn if the Licensee shall within 30 days after the date of such Default Notice produce evidence satisfactory to the Licensor establishing that no such right to compulsory Licence has arisen or (if it has arisen) that the Licensee has taken such steps as may be necessary to nullify such right

14. Termination

This agreement shall terminate:

14.1 Time

On the expiry Date

14.2 Underpayment of Royalties or underperformance

In the circumstances set out in clause 6.1

14.3 Conduct prejudicial

If Licensee engages in any conduct prejudicial to the business of the Licensor or the marketing of the products generally

14.4 Insolvency

If the Licensee goes in to Liquidation either compulsory or voluntary (except for the purpose of reconstruction or amalgamation) or if a receiver administrative receiver or administrator is appointed in respect of the whole or any part of its assets or if the Licensee makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or any similar occurrence under any jurisdiction affects the Licence

14.5 Invalidity or revocation of a patent

In the circumstances set out in clause 8

14.6 Challenge to validity of patents

In the circumstances set out in clause 10

14.7 Fundamental breach

On the occurrence of any of the following events which are fundamental breaches of this agreement:

14.7.1 Failure to comply with the terms of any Default Notice within the time stipulated in it

14.7.2 *(specify other events amounting to fundamental breaches as appropriate)*

14.8 Notice

If either of the parties gives to the other not less than 14 day's prior notice in writing (expiring not earlier than 2 years after the commencement Date on any Accounting reference Date)

15. Termination consequences

15.1 Procedure

On the expiry or other termination of this agreement the Licensee undertakes:

15.1.1 to dispose of all products in hand in accordance with the Licensor's directions

15.1.2 to return to the Licensor all samples and publicity promotional and advertising material

15.1.3 to sign such notification of cessation of use of the patents as required by the Licensor

15.1.4 to return to the Licensor all originals and copies of all documents and information in any form containing or covering in any way any part of the patents

15.1.5 to cease carrying on the activities permitted by this agreement

15.1.6 to pay to the Licensor Royalties based on the Net selling Price of the Licensee then current in respect of all stocks of the products manufactured by the Licensee remaining unsold and the Licensee shall then be free to sell or otherwise dispose of such stocks on which such Royalties have been paid

15.2 Existing rights

The termination of this agreement shall be without prejudice to any rights which have already accrued to either of the parties under this Agreement

16. General

16.1 Conversion into sterling

Any Net Selling Price not expressed in sterling shall be converted into sterling at the official rate of exchange in London at the close of business on the last day of the calendar month during which the products were sold

16.2 Receipt

The receipt of money by the Licensor shall not prevent the Licensor from questioning the correctness of any statement in respect of any money

16.3 Force majeure

16.3.1 If either party is prevented from fulfilling its obligations under this agreement by reason of any supervening event beyond its control including but not by way of limitation war national emergency flood earthquake strike or lockout (other than a strike or lockout induced by the party so incapacitated) the party unable to fulfil its obligations shall immediately give notice of this to the other party and shall do everything in its power to resume full performance

16.3.2 On such notice being given neither party shall be deemed to be in breach of its obligations under this Agreement

16.3.3 If and when the period of incapacity exceed six months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing

16.4 Whole Agreement

This Agreement contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement

16.5 No modification

This Agreement may not be modified except by an instrument in writing signed by both of the parties their duly authorised representatives

16.6 Headings

Headings contained in this Agreement are for reference purposes only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate

16.7 Joint and several

All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several

16.8 Proper law and jurisdiction

This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England and all parties agree to submit to the jurisdiction of the courts of England and Wales

16.9 Arbitration

Any difference between the parties concerning the interpretation or validity of this Agreement or the rights and liabilities of either of the parties shall in the first instance be referred to the arbitration of two persons (one to be nominated by each party) or their mutually agreed umpire in accordance with the provisions of the Arbitration Acts 1950 to 1979

16.10 Notices

16.10.1 Any notice consent or the like (in this clause referred to generally as "notice") required or permitted to be given under this Agreement shall not be binding unless in writing and may be given personally or sent to the party to be notified by pre-paid first class post or by telex or by facsimile transmission at its address as set out above or otherwise notified in accordance with this clause

16.10.2 Notice given personally shall be deemed given at the time of delivery

16.10.3 Notice sent by post in accordance with this clause shall be deemed given at the commencement of business on the second business day next following its posting

16.10.4 Notice sent by telex or facsimile transmission in accordance with this clause shall be deemed given at the time of its actual transmission

16.11 Reservation of rights

All rights not specifically and expressly granted to the Licensee by this Agreement are reserved to the Licensor

16.12 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms of conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement

16.13 Interpretation

16.13.1 Unless the context otherwise requires:

16.13.1.1 words and expressions that are defined in the Patents Act 1977 shall bear the same meaning in this Agreement

16.13.1.2 words importing the singular number shall include the plural and vice versa

16.13.1.3 words importing any particular gender shall include all other genders

16.13.1.4 reference to persons shall include bodies of persons whether corporate or incorporate

16.13.2 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as the same may from time to time be amended modified extended re-enacted or replaced (whether before or after the date of this Agreement) and including all subordinate legislation made under it from time to time

16.14 Survival of terms

The warranties and indemnity contained in this Agreement and the provisions for payment of and accounting in respect of Royalties and other money due to the Licensor under this Agreement shall survive the termination or expiry of this Agreement

16.15 VAT

All sums payable to the Licensor under this Agreement are exclusive of VAT which shall where applicable be paid in addition at the rate in force at the due time for payment subject to the Licensor either supplying a VAT invoice to the Licensee or informing the Licensee of it's VAT registration number

16.16 No agency or partnership

The parties are not partners or joint venturers nor is the Licensee entitled to act as the Licensor's agent nor shall the Licensor be liable in respect of any representation act or omission of the Licensee of whatever nature

SCHEDULE

part 1

The Patent Applications

9912504.9

part 2

The products

Foetal Heart Simulator

part 3

The Territories

World-wide

part 4

The Licence

