

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT2825499

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
SCOTT ALLISON	01/07/2009
ROYCE BARRACLOUGH	01/07/2009
JAMES REVENAUGH	01/07/2009
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	IHC HEALTH SERVICES, INC.
<b>Street Address:</b>	36 SOUTH STATE STREET
<b>Internal Address:</b>	SUITE 2200
<b>City:</b>	SALT LAKE CITY
<b>State/Country:</b>	UTAH
<b>Postal Code:</b>	84111
<b>PROPERTY NUMBERS Total: 1</b>	
<b>Property Type</b>	<b>Number</b>
<b>Application Number:</b>	14019230
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	(412)945-5933
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>	
<b>Phone:</b>	4124718815
<b>Email:</b>	assignments@webblaw.com
<b>Correspondent Name:</b>	THE WEBB LAW FIRM
<b>Address Line 1:</b>	420 FT. DUQUESNE BLVD., SUITE 1200
<b>Address Line 4:</b>	PITTSBURGH, PENNSYLVANIA 15222
<b>ATTORNEY DOCKET NUMBER:</b>	6333-133403
<b>NAME OF SUBMITTER:</b>	CHRISTIAN E SCHUSTER
<b>SIGNATURE:</b>	/christian e schuster/
<b>DATE SIGNED:</b>	04/23/2014
<b>Total Attachments: 12</b>	
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**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)**

Scott Allison  
Royce Barraclough  
James Revenaugh

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

**3. Nature of conveyance/Execution Date(s):**

Execution Date(s) January 7, 2009

- ☒ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Joint Research Agreement  
☐ Government Interest Assignment  
☐ Executive Order 9424, Confirmatory License  
☐ Other \_\_\_\_\_

**2. Name and address of receiving party(ies)**

Name: IHC Health Services, Inc.

Internal Address: \_\_\_\_\_

Street Address: 36 South State Street

Suite 2200

City: Salt Lake City

State: UT

Country: US Zip: 84111

Additional name(s) & address(es) attached? ☐ Yes ☒ No

**4. Application or patent number(s):**

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

14/019,230

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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

Name: \_\_\_\_\_

Internal Address: The Webb Law Firm

Street Address: One Gateway Center  
420 Ft. Duquesne Blvd., Ste 1200

City: Pittsburgh

State: PA Zip: 15222

Phone Number: 412-471-8815

Fax Number: 412-945-5933

Email Address: assignments@webblaw.com

**6. Total number of applications and patents involved: 1**

**7. Total fee (37 CFR 1.21(h) & 3.41) \$ \_\_\_\_\_**

- ☐ Authorized to be charged by credit card  
☐ Authorized to be charged to deposit account  
☐ Enclosed  
☐ None required (government interest not affecting title)

**8. Payment Information**

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

**9. Signature:**



Signature

April 23, 2014

Date

Christian E. Schuster

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents:

12

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

Doc. No.

**PATENT  
REEL: 032735 FRAME: 0883**

**CONFIDENTIAL**

**COPY**

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**Patent Assignment and Royalty Agreement**

This Patent Assignment and Royalty Agreement is dated as of January 6, 2009 and is by and between the following Parties:

Intermountain: IHC Health Services, Inc. ("Intermountain")  
a Utah corporation  
36 South State Street, Suite 2200  
Salt Lake City, UT 84111

Cardiac: Cardiac Assist, Inc. ("Cardiac")  
a Delaware corporation  
240 Alpha Drive  
Pittsburgh, PA 15238

who hereby agree as follows:

1. **Patent Application and Inventors.** The "Patent Application" shall mean U.S. Patent Application 11/328,961 entitled "Right Ventricular Assist Device Apparatus and Methods" filed on January 1, 2006. The inventors of the invention claimed in the Patent Application include three employees of Intermountain: Scott Allison, Royce Baraclough, and James Revenaugh, M.D. These inventors have executed the Assignments attached hereto as Exhibit A. The other inventors of this invention are employees or former employees of Cardiac, and Cardiac will be responsible for obtaining assignments from them, if not already done.

2. **Patent Rights.** The "Patent Rights" shall mean (a) the Patent Application; (b) any divisions, continuations, continuations-in-part, reissues, extensions and restorations of the Patent Application and/or any patents granted on any of the foregoing; and (c) any other patent applications and patents claiming priority based on, or issuing directly or indirectly from, the Patent Application. However, the Patent Rights do not include any improvements by Intermountain or any of its employees or contractors to any of the inventions described or claimed in the Patent Application or any patent rights to any inventions made by Intermountain or any of its employees or contractors after the filing date of the Patent Application.

3. **Assignment of Patent Rights.** In consideration of the Royalty and this Agreement, Intermountain hereby sells, assigns and transfers to Cardiac all rights, title and interest that Intermountain may have in and to the Patent Rights. This assignment is subject to the reservation of rights and the license described herein. This assignment is only an assignment of patent rights and does not include or apply to any trade secrets, copyrights, know-how, trademarks, or other forms of intellectual property outside the scope of applicable patent laws.

4. **Reservation and License.** Intermountain reserves and retains for itself and other members of the Intermountain Organization the non-exclusive right to exercise the Patent Rights and to make, have made, use, and practice all inventions claimed by the Patent Rights, but only by, within or for Intermountain or other members of the Intermountain Organization. In addition, Cardiac grants to Intermountain and the other members of the Intermountain Organization an irrevocable, non-exclusive license of the Patent Rights, but such license of Patent Rights may only be exercised by, within or for Intermountain or other members of the Intermountain Organization. Intermountain and the Intermountain Organization may allow their contractors, consultants and Affiliated Healthcare Providers to exercise the reserved, retained or licensed Patent Rights, but only in connection with: (i) services for Intermountain or another member of the Intermountain Organization or (ii) healthcare services to patients of Intermountain or any of the communities served by Intermountain.

5. **Intermountain Organization and Affiliated Healthcare Providers.** The "Intermountain Organization" means Intermountain and Intermountain Health Care, Inc. ("Parent") and all corporations and entities, now or hereafter, owned or controlled, directly or indirectly, by Intermountain or Parent ("Intermountain Subsidiaries") and all hospitals, health care facilities, clinics, physician offices, health plans, insurance services, and other operations, now or hereafter, owned, leased, operated or managed by Intermountain or Parent or any of the Intermountain Subsidiaries. The term "Affiliated Healthcare Providers" means physicians, clinics and other healthcare providers who are not employed by or part of Intermountain or the Intermountain Organization, but who have admitting privileges at a hospital of Intermountain or other member of the Intermountain Organization, or have some other business or professional relationship with Intermountain or other member of the Intermountain Organization relating to the delivery of healthcare to patients of Intermountain or other member of the Intermountain Organization.

6. **Control and Discretion.** Subject only to the express provisions (e.g., Section 4) of this Agreement, Cardiac shall have complete and sole control and discretion over all Patent Rights, including, without limitation, the prosecution, issuance, maintenance, abandonment, licensing, defense and enforcement of Patent Rights. Cardiac shall have the right to enforce the Patent Rights including the right to sue for patent infringement and to recover and obtain all damages, awards and remedies. Intermountain has no obligation to share in or pay for any of the costs, expenses or attorneys' fees relating to any of the foregoing.

7. **Warranty.** Intermountain warrants that it has not assigned, conveyed or licensed the Patent Rights to any other person or entity. Except for this limited warranty, the assignment of Patent Rights to Cardiac is made strictly on an "as is" basis without warranty of any kind, and all warranties, express, implied, statutory or otherwise, are disclaimed and excluded by Intermountain. Without limiting the generality of the foregoing disclaimer, Intermountain makes no warranty of validity or enforceability or that any patent will issue from the Patent Application. All reliance on the Patent Rights will be at the sole risk of Cardiac.

8. **Royalties.** As consideration for the assignment by Intermountain of its Patent Rights

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under this Agreement, Cardiac shall pay to Intermountain a royalty equal to one half of one Percent (0.5%) of Net Sales as defined below.

- (a) **Licensed Procedure, Licensed Product, Cardiac Products.** A "Licensed Procedure" shall mean any percutaneous right ventricular procedure or any other procedure or method that is within the scope of any claim in the Patent Rights and practiced in the United States. A "Licensed Product" means any system, device, kit, component or product within the scope of any claim in the Patent Rights. "Cardiac Products" means any system, device, kit, component or other product that is a Licensed Product or that is used in a Licensed Procedure. However, Cardiac Products will not include any controllers.
- (b) **Net Sales.** "Net Sales" shall mean the gross revenues, payments, and other consideration given or paid by or for any Licensed Products or for any Cardiac Product used in a Licensed Procedure to Cardiac or any of its Affiliates or to any licensees or sublicensees of any Patent Rights, to the extent that Cardiac or its Affiliate, licensee or sublicensee knows or has reason to know that the Cardiac Product may be used in a Licensed Procedure. "Net Sales" do not apply to procedures and methods practiced outside of the United States. Cardiac will use reasonable efforts to determine which Cardiac Products may be used in a Licensed Procedure and will report the same to Intermountain. For example and without limiting the foregoing, with respect to Cardiac Products that are kits, components, pumps or cannula Cardiac will use reasonable efforts to obtain from hospitals and any other users reports as to which of these Cardiac Products were used in Right Ventricular Assist Device procedures, rather than Left Ventricular Assist Device procedures. If and to the extent that Cardiac cannot get this information, then Net Sales will be based on reasonable, good faith estimates. Cardiac will require its Affiliates, licensees and sublicensees to do the same and to comply with this Section. The parties will work in good faith to ensure an accurate calculation of Net Sales. If a Licensed Procedure is performed and not reported to or discovered by Cardiac, despite its reasonable efforts to receive reports and information relevant to this determination, it cannot be considered a Licensed Procedure even though Cardiac Products may have been used to perform the Licensed Procedure. Net Sales shall not include any taxes, duties, or other government assessments or any cost of shipping Cardiac's Products used for Licensed Procedures. If and to the extent that any Net Sales are refunded or include bona fide allowances or credits extended to purchasers in the ordinary course of business and are separately and actually credited or paid to the purchasers of Cardiac Products used for Licensed Procedures (e.g., for damaged, outdated or returned products), Net Sales will be equitably adjusted to account for such refunds, allowances, or credits for purposes of calculating the royalties payable to Intermountain.

Net Sales prior to January 1, 2009 are not considered to be part of this Agreement. On and after January 1, 2009, royalties are payable on all Net Sales, but not on any

Net Sales to the extent that they occur after the last to expire of the Patent Rights.

- (c) **Protection against Circumvention.** In the event that any Cardiac Products used for a Licensed Procedure are sold, leased or otherwise commercialized in conjunction with other products, goods or services (e.g. "bundling"), then there will be an equitable allocation of the revenue, payment or other consideration received between the Cardiac Products used for a Licensed Procedure and the non-royalty-generating products, goods or services (i.e., the allocation attributable to the Cardiac Products used for the Licensed Procedure will be Net Sales). Cardiac shall act in good faith towards Intermountain to ensure that fair and reasonable royalties are paid without circumvention. If any Cardiac Products used for a Licensed Procedure are sold, leased or otherwise commercialized at a reduced fee or price for the purpose of promoting other products, goods or services or for the purpose of facilitating the sale, license or lease of other products, goods or services, then Cardiac will pay to Intermountain a royalty based upon Net Sales that are not less than the fair market value of the Cardiac Products used for a Licensed Procedure. However, it is recognized that good faith discounts may be offered by Cardiac and it is agreed that such discounting will not be construed as "less than fair market value" and the Net Sales on which the royalty is based may reflect such discounts and nothing herein prohibits such discounts.
- (d) **Affiliates.** An "Affiliate" of Cardiac means any person, entity or group that is owned or controlled by Cardiac, or that is an owner of or that controls Cardiac, or that is owned (in whole or in part) or controlled by another person, entity or group that also is an owner of or that controls Cardiac. Ownership or Control may be direct or indirect.
- (e) **Royalty Payments.** Cardiac shall pay Intermountain all royalties with respect to Net Sales in each six month period of a calendar year (i.e., the period of January to June and the period of July to December) within 60 days of the end of such period. All royalties shall be paid in United States dollars. To the extent that Net Sales are in a form other than United States dollars, the Net Sales and royalty will be based on foreign exchange rates (as constituted on the last day of such period) reasonably designated by Intermountain. To the extent that Net Sales are in the form of nonmonetary consideration, Net Sales and the royalty will be based upon the fair market value of such consideration (or if there is no fair market value, then the value to Cardiac or the applicable Affiliate, licensee or sublicensee). It is the responsibility of Cardiac to collect for payment to Intermountain, or to otherwise ensure payment to Intermountain, the royalties applicable to Net Sales of Affiliates, licensees and sublicensees.

- (f) **Reports.** Within 60 days following the close of each such six month period, Cardiac shall provide Intermountain with a written report showing Net Sales in such period and the amount of royalties payable with respect thereto. If there are no Net Sales in any such period, the report shall so state. Cardiac shall ensure that its Affiliates and all licensees and sublicensees of any Patent Rights comply with all of these royalty and reporting obligations.
- (g) **Examinations and Audits.** Upon the written request of Intermountain and, except as otherwise provided below, at Intermountain's expense, Cardiac must allow its books and records to be examined and audited by accountants or auditors designated by Intermountain (during reasonable times and with reasonable advance notice so as to minimize interference with Cardiac's business operations) for the purpose of determining Cardiac's compliance with its obligations under this Agreement. In the event that any such examination or audit shall determine that royalties actually paid for the examined or audited period were deficient by \$10,000 or more, then Cardiac shall pay 75% of the expenses incurred by Intermountain in connection therewith, in addition to all previously unpaid royalties (i.e., the deficiency) and applicable interest. Intermountain and its auditors or accountants must not disclose Cardiac's books and records, nor any of the specific information contained therein, to any third parties except as reasonably necessary if Cardiac is in breach of this Agreement. Cardiac shall require that Affiliate, licensees and sublicensees of any Patent Rights to agree to similar provisions concerning the right of Intermountain and its auditors and accountants to examine and audit their respective books and records.
- (h) **Overdue Payments.** In the event Cardiac fails to pay any amount when due hereunder, such amount shall bear interest at the rate equal to the lesser of (a) one and one-half percent (1.5%) per month or (b) the maximum interest rate permitted by applicable law from such due date until the date when such amount is paid in full.

9. **Recordations and Further Assurances.** Intermountain will cooperate with Cardiac, at Cardiac's expense, in the recordation of this Agreement (and/or patent assignment and/or notice of patent assignment) with the USPTO and such other government or patent offices, agencies or ministries anywhere in the world as reasonably requested by Cardiac. Each Party will sign such further documents and give such further written assurances as the other Party may reasonably request to better or more fully evidence or effectuate this Agreement or its intent or the assignment or license of Patent Rights, but this does not include any request that is inconsistent with this Agreement.

10. **Termination.** This Agreement and the royalty obligations will terminate on the last to expire or terminate of the Patent Rights.



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11. **Governing Law.** This Agreement is made in and shall be governed by and enforced in accordance with the laws of the state of Utah and the United States of America. In the event of any litigation between the Parties concerning this Agreement or its subject matter, such litigation will be conducted exclusively in a state or federal court sitting in Pennsylvania if Intermountain is the plaintiff or exclusively in a state or federal court sitting in Utah if Cardiac is the plaintiff. The Parties consent to such exclusive venue and jurisdiction.

12. **Entire Agreement.** This Agreement: (i) represents the entire agreement between the Parties relating to the subject matter of this Agreement, (ii) supersedes all prior agreements, understandings, letters, representations and warranties relating to the subject matter of this Agreement, whether written or oral, and (iii) may only be amended by a writing signed by duly authorized representatives of both Parties.

13. **Headings.** Section headings used herein are for convenience only and shall not be used to broaden or limit this Agreement.

14. **Relationship.** Neither Party is the partner, joint venturer, agent or representative of the other Party. Each Party is an independent contractor. Neither Party has the authority to make any representations or warranties or incur any obligations or liabilities on behalf of the other Party. Neither Party shall make any representation to a third party inconsistent with this Section.

15. **Construction.** This Agreement represents the wording selected and negotiated by the Parties to define their agreement and no rule of strict construction shall apply against or in favor of either Party. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the *whole* shall include any part thereof.

16. **Execution.** This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each person signing below represent that he/she is duly authorized to execute this Agreement for and on behalf of the Party for whom he/she is signing.

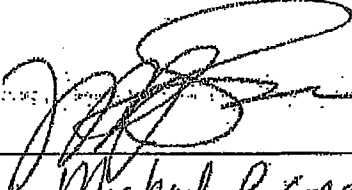
AGREED TO AND ACCEPTED BY:

Cardiac Assist, Inc.

By (signature):

Name (print):

Title:

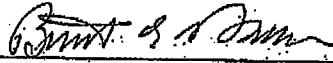
  
Michael P. Bar, CPA  
CEO, Pres

IHC Health Services, Inc. ("Intermountain")

Patent Assignment and Royalty Agreement: Project 05LD08- Page 6

Execution Copy

By (signature):



Name (print):

Brent Wallace, MD  
Chief Medical Officer

Title:

Exhibit A

Execution Copy

Assignments by Intermountain Employees

EXHIBIT A

## ASSIGNMENT

We, Scott Allison, Royce Baraclough, and James Revenaugh, MD who are employees of IHC Health Services, Inc., have invented an invention and/or improvement (hereinafter called the "invention") for which an application for United States Letters Patent was filed in the United States Patent and Trademark Office as entitled "Percutaneous right ventricular assist apparatus and method", otherwise known as Serial No. 11/328,961 filed on January 9, 2006 (hereinafter called the "application").

The "Assignee", IHC Health Services, Inc., a corporation of the State of Utah, having a principal place of business at 36 South State Street, Suite 2200, Salt Lake City, UT 84111, desires to acquire the entire right, title and interest in, to, and under said invention and in, to, and under any patent, intellectual property, or similar legal protection to be obtained therefore in the United States of America, its territorial possessions, and in any and all foreign countries.

In consideration of \$10.00 and other good and valuable consideration paid to each of us by the Assignee, the promise, receipt, sufficiency, and adequacy of which we hereby acknowledge, we HEREBY SELL, ASSIGN, AND TRANSFER TO THE ASSIGNEE, its successors, and assigns:

The entire right, title, and interest in and to said invention and application throughout the world, including, without limitation, any Letters Patent which may issue thereon, any subsequent application claiming priority to the above-identified application under 35 U.S.C. § 119(e), reissue, reexamination, division, continuation-in-part, extension, continuation, and all derivative and priority intellectual property rights or legal equivalent thereof under any and all applicable laws, regulations, conventions, or treaties relating to patents and intellectual property arising from said invention and application, including all intellectual property rights under the International Convention and the Patent Cooperation Treaty; the same for its legal representatives, successors, and assigns, as fully and entirely as the same would have been held by us had this assignment and sale not been made;

The right to file foreign patent applications on said invention in its own name, wherever such right may be legally exercised, including the right to claim the benefits of the International Convention for such application.

We hereby authorize and request the United States Commissioner of Patents and Trademarks, and such Patent Office officials in foreign countries as are duly authorized by their patent laws to issue patents or any legal equivalent thereof, to issue any and all patents on said invention to the Assignee as the owner of the entire interest, for the sole use and benefit of said Assignee, its successors, assigns, licensees, and legal representatives.

We hereby bind ourself, our heirs, legal representatives, administrators and assigns by way of example but not of limitation, the following:

EXHIBIT A copy

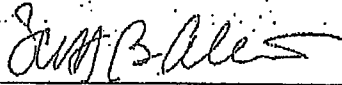
LAM Project No: 05LD08

Warrant and covenant of the full right to convey entire right, title, and interest in said invention and that no assignment, grant, sale, license, agreement, or encumbrance affecting the rights and property herein conveyed has been made (except as affirmatively indicated otherwise herein) or will be made or entered into which would conflict with this Assignment.

Prompt execution of all original, continuation-in-part, extension or continuation, divisional, substitute, reissue, and other United States and foreign patent applications, Letters Patent, and legal equivalents on said invention, and all lawful documents requested and expensed by the Assignee or its legal representative to further the prosecution, maintenance, issue, enforcement, and exploitation of any of such patent applications, Letters Patent, and legal equivalents.

Good faith cooperation to the best of our ability, and at the expense of the Assignee, in the execution of all lawful documents, the production of facts, evidence, nullification, reissue, extension, interference, infringement, and/or litigation proceedings involving said invention.

This assignment and agreement shall be binding and applicable upon our heirs, assigns, representatives, successors, and legal representatives of the parties.

  
\_\_\_\_\_  
Scott Allison

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

On this 7th day of January, 2009, personally appeared before me Scott Allison, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to on this Assignment, and acknowledged that he executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC  
COMMISSION EXPIRATION 10-23-10

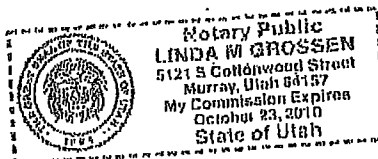


EXHIBIT A CONT

I, Scott Allison, am in receipt of \$10 from IHC Health Services, Inc. as consideration for the "Percutaneous right ventricular assist apparatus and method" patent assignment dated 1/7, 2008 2009

Scott Allison  
Scott Allison

1/7/2009  
Date

I, Royce Barraclough, am in receipt of \$10 from IHC Health Services, Inc. as consideration for the "Percutaneous right ventricular assist apparatus and method" patent assignment dated 1/7, 2008 2009

Royce Barraclough  
Royce Barraclough

1/7/2009  
Date

I, James Revenaugh, am in receipt of \$10 from IHC Health Services, Inc. as consideration for the "Percutaneous right ventricular assist apparatus and method" patent assignment dated 1/7, 2008 2009

James Revenaugh  
James Revenaugh

1/7/09  
Date