

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT6608510

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
SIEMENS HEALTHCARE GMBH	07/10/2017
RECEIVING PARTY DATA	
Name:	VARIAN MEDICAL SYSTEMS PARTICLE THERAPY GMBH
Street Address:	MOTTMANNSTRASSE 2
City:	TROISDORF
State/Country:	GERMANY
Postal Code:	53842
PROPERTY NUMBERS Total: 10	
Property Type	Number
Patent Number:	7820989
Patent Number:	8148703
Patent Number:	8897417
Patent Number:	7763867
Patent Number:	7838852
Patent Number:	8380538
Patent Number:	6894300
Patent Number:	7257191
Patent Number:	7741623
Patent Number:	7545911
CORRESPONDENCE DATA	
Fax Number:	(650)804-1100
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Phone:	6504245881
Email:	ABIGAIL.EDESAN@VARIAN.COM
Correspondent Name:	VARIAN MEDICAL SYSTEMS, INC.
Address Line 1:	3100 HANSEN WAY
Address Line 4:	PALO ALTO, CALIFORNIA 94304
NAME OF SUBMITTER:	REETA K. WHITNEY

SIGNATURE:	/Reeta K. Whitney/
DATE SIGNED:	03/18/2021
Total Attachments: 25 source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page1.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page2.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page3.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page4.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page5.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page6.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page7.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page8.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page9.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page10.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page11.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page12.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page13.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page14.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page15.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page16.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page17.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page18.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page19.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page20.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page21.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page22.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page23.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page24.tif source=2017 signed assignment_Siemens Healthcare to VPT GmBH#page25.tif	

Patent Sale and Assignment Agreement

by and between

Varian Medical Systems Particle Therapy GmbH
Troisdorf, Germany

- hereinafter referred to as "Varian" -

and

Siemens Healthcare GmbH, Erlangen,
Federal Republic of Germany

- hereinafter referred to as "Siemens" -

- Varian and Siemens hereinafter referred to individually
as "Party" or collectively as "Parties" -

Effective Date: July 10, 2017

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Preamble

WHEREAS, Siemens is willing to transfer the rights and title to the patents set out in Annex 1 to Varian.

WHEREAS, Varian has examined the patents and its suitability to its business interest; and

WHEREAS, Varian is willing to acquire these patents;

NOW THEREFORE, in consideration of the promises and the mutual covenants and undertakings contained herein, the Parties agree as follows:

Article 1 Definitions

- 1.1. "Agreement" means this patent assignment agreement including all its Annexes.
- 1.2. "Assigned IPR" means (a) the specific patents and patent applications set forth in Annex 1 and the inventions covered by and disclosed in said patents and patent applications and all (b) patents or patent applications (i) which directly or indirectly claim priority from the patents or patent applications of the foregoing subsection (a) or (ii) from which the patents or patent applications of the foregoing subsection (a) directly or indirectly claim priority and (c) patents, patent applications, reissues, reexaminations, continuations, continuations in part, continuing prosecution applications, requests for continuing examinations, and divisions, of or issuing from any item in any of the foregoing subsections (a) and (b).
- 1.3. "Assignment Date" means five (5) working days after Siemens receives the payment as per Section 4.1
- 1.4. "Effective Date" means the date on which the latter of the Parties has validly executed this Agreement, whereby the exchange of electronically transmitted copies (e.g. PDF scan via email, telefax) carrying the signatures of the respective Parties shall be sufficient. The Effective Date shall be set forth on the first page of this Agreement.
- 1.5. "Executed Assignment" means an executed original of the Patent Assignment Agreement in Annex 3.

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- 1.6. "Ex-Affiliate" means (i) a former Siemens Affiliate or (ii) a legal entity which acquired a part of Siemens' and/or a Siemens Affiliate's business activities (whether by share or asset deal).
- 1.7. "Siemens Best IP Knowledge" means the actual positive knowledge of Mr. Nils Pirschel and Ekkehard Ruyter after reasonably diligent inquiry
- 1.8. "Affiliate" means a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with one Party respectively, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

Article 2 Assigned IPR

- 2.1. As of the Assignment Date and subject to the terms and conditions of this Agreement, Siemens hereby sells, transfers and assigns to Varian Siemens' entire right, title and interest in and to the Assigned IPR including:
 - 2.1.1. the right to initiate causes of action (whether known or unknown or whether currently pending, filed or otherwise) and other enforcement rights under, on account of, any Assigned IPR, including all causes of action and other enforcement rights for damages, injunctive relief and other remedies of any kind for past, current and future, whether such unauthorized use occurs before or after the Effective Date, and the right to collect royalties or other payments under or on account of any Assigned IPR and/or any of the foregoing;
 - 2.1.2. the entitlement to any patent(s) granted pursuant to any of the application(s) comprised in the Assigned IPR for the full term of such patents; and
 - 2.1.3. the right to apply for, prosecute and obtain patent or similar protection in Germany and all other countries of the world for an invention embodied by any of the applications contained in the Assigned IPR, including, without limitation, the right to claim priority from any such application(s).

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- 2.2. Siemens agrees to execute, at its own expense, all documentation reasonably necessary to perfect the transfer of such rights to Varian. Further, at the reasonable request of Varian, Siemens will -- to the extent it can - execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the transactions contemplated hereby, including, without limitation, execution, acknowledgment, and recordation of other such papers, and using commercially reasonable efforts to obtain the same from the respective inventors, as necessary or reasonably desirable for fully perfecting and conveying unto Varian the benefit of the transactions contemplated hereby.
- 2.3. Siemens further agrees to pay maintenance fee associated with the Assigned IPR which are due until June 30, 2017. As a heads up for Varian, Siemens will provide a list indicating any maintenance fees associated with the Assigned IPR which will become due on or before July 31, 2017. At its own expense and within 90 days after the Assignment Date, Varian undertakes and agrees to use commercially reasonable efforts to apply for and obtain recordation as new owner of the Assigned IPR in the register of the competent patent office. After the Assignment Date in accordance with this Agreement, the Assigned IPR shall be fully owned by Varian. As of the Assignment Date, but not before July 1, 2017, Varian alone shall be responsible for the handling and prosecution of the Assigned IPR, including payment of maintenance fees and other charges.
- 2.4. Varian hereby agrees that all agreements entered into by Siemens and/or a Siemens Affiliate prior to the Effective Date with respect to any or all of the Assigned IPR shall continue in full force and effect and shall be fully respected by Varian on the understanding that Siemens and/or a Siemens Affiliate shall continue to be entitled to any compensation (e.g. royalties) due under or to any other rights resulting from said agreements, if any. Should Varian transfer the Assigned IPR to a third party, Varian shall ensure that such third party is contractually bound to respect any pre-existing licenses. Such purchaser shall likewise be contractually bound to bind any subsequent purchasers to the same obligation.
- 2.5. As of the Assignment Date and subject to the terms and conditions of this Agreement, Varian accepts such purchase and assignment. Siemens will provide Varian with the Executed Assignment for the Assigned IPR on the Assignment Date.

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Article 3 License Retained by Siemens

Subject to the terms and conditions of this Agreement, Siemens and its Affiliates retain a non-exclusive, unrestricted, perpetual, worldwide, fully paid up license under the Assigned IPR ("Siemens License") to use such Assigned IPR, at Siemens or its Affiliate's discretion, for the right to make or have made, develop or have developed, import and have imported, export and have exported, sell or have sold or otherwise dispose of and exploit (i) any Siemens' products, or services covered by the Assigned IPRs (the "Products") and (ii) any Affiliates Products ((i) and (ii) together the "Covered Products", wherein the Covered Products only include the Products and Affiliates Products that are in existence as of the Effective Date of this Agreement or modifications thereto. The Siemens License shall apply to the reproduction and subsequent distribution of Covered Products under Siemens' or its Affiliate's trademarks and brands as they are distributed or performed by Siemens and its Affiliates or by authorized agents of Siemens and its Affiliates such as a distributor, replicator, VAR or OEM. For the avoidance of doubt, and subject to the immediately following paragraph, the have-made rights under the Siemens License shall be broadly interpreted and not requiring any detailed technical specification from Siemens or its Affiliates and shall extend to all suppliers of components or services to the extent that such supplier's components or services are made to be part of the Covered Products ("Supplier"). In addition, Siemens and its Affiliates agree that they shall notify Varian promptly if they learn of any non-compliance with respect to any of the license agreement terms. To the extent Varian has evidence to believe that a third party may use one of the Assigned IPR and upon Varian's request, said request not being made more often than 3 times a year and made only for a period of 10 years after the Effective Date, Siemens will provide to the extent it can information if said third party is a Supplier for Covered Products or modifications thereto.

The Siemens License, as to any Affiliates of Siemens, will terminate as to such Affiliate if and when such Affiliate ceases to meet the requirements of being a Affiliate of Siemens (each, a "Spinoff Entity") except with respect to Covered Products or modifications thereto that continue to be manufactured, practiced, used and/or sold or leased by such Spinoff Entity after the divestment. For the avoidance of doubt, the license held by such Spinoff Entity shall not extend to, and Covered Products shall not include, any products, processes or services of any purchaser of such Spinoff Entity, any affiliate of such purchaser or any other person. Siemens acknowledges and agrees that the Siemens License is not intended to cover foundry or contract manufacturing activities that Siemens or its Affiliates may undertake on behalf of any person that is not Siemens. As a result, Covered Products shall exclude any products or services manufactured, produced or provided by Siemens or its Affiliates on behalf of any person that is not Siemens (x) from designs received in substantially completed form from a source other than Siemens or its Affiliates and (y) for resale to such person that is not Siemens or its Affiliates (or

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to customers of, or as directed by, any person that is not Siemens or its Affiliates) on essentially an exclusive basis. The Siemens License is nontransferable (by operation of law or otherwise), and any attempted transfer will be void.

If Siemens receives a written request from either MIT (Marburger Ionenstrahl-Therapiezentrum) or HIT (Heidelberger Ionenstrahl-Therapiezentrum) or SPHIC (Shanghai Proton and Heavy Ion Therapy Center) ("Requesting Entities") requesting a license based on an pre-existing customer relationship with Siemens for the sole purpose of enabling the Requesting Entities to continue operating, replacing, maintaining, modifying and upgrading previously purchased Covered Products from Siemens, Siemens may grant such Requesting Entity a royalty-free, non-exclusive, non-sublicensable, nontransferable sublicense ("Requesting Entities Sublicense") to practice the foregoing rights and exploit any Covered Products (including as the same may have been upgraded or modified) covered by the Assigned IPRs ("Sublicensee Covered Products"). The Requesting Entities Sublicense shall include have-made rights that shall be broadly interpreted and not requiring any detailed technical specification from the Requesting Entities and extend to all suppliers of components to the extent that such supplier's components are made to be part of the Sublicensee Covered Products ("Requesting Entities Supplier"). Each Requesting Entities Sublicense shall require such Requesting Entities and the Requesting Entities Suppliers as outlined in Annex 4, to comply with said terms and conditions that are consistent with the Siemens License. In addition, Siemens and its Affiliates agree that they shall notify Varian promptly if they learn of any non-compliance with respect to any of the license agreement terms. To the extent Varian has evidence to believe that a third party may use one of the Assigned IPR and upon Varian's request, said request not being made more often than 3 times a year and made only for a period of 10 years after the Effective Date, Siemens will provide to the extent it can information if said third party is a licensed Requesting Entities Supplier for Covered Products or modifications thereto.

Article 4 Covenant Not to Sue; Limited Right to Sublicense

To the fullest extent permitted by law, Varian agrees that neither Varian nor any of its Affiliates nor any other third party to which Varian will license or sell the Assigned IPR (wholly or partially) shall assert a claim against Siemens, a Siemens Affiliate, an Ex-Affiliate (only for the period of time during which such Ex-Affiliate qualified as Siemens Affiliate), or any direct or indirect customer or business partner of Siemens, a Siemens Affiliate or an Ex-Affiliate (only for the period of time during which such Ex-Affiliate qualified as Siemens Affiliate), in any forum or proceeding anywhere in the world claiming that the manufacture, use, sale or any other disposition of any product or service by Siemens, a Siemens Affiliate, an Ex-Affiliate (only for the period of time during which such Ex-Subsidiary qualified as Siemens Affiliate) or any direct or indirect customer or business partner of Siemens, a Siemens Affiliate or an Ex-Affiliate (only

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for the period of time during which such Ex-Subsidiary qualified as Siemens Affiliate) infringe the Assigned IPR (wholly or partially).

Article 5 Compensation

- 5.1. As compensation for the sale and assignment as per Article 2 Varian agrees

to pay Siemens US-Dollars 2,600,000.00 (in words: two million six hundred thousand US Dollars) within 30 (thirty) days after the Effective Date

- 5.2. Payments to be made by Varian to Siemens under or in connection with this Agreement, shall be made by Varian to the following bank account of Siemens (unless and until written notice of change is given by Siemens):

JP Morgan Chase Bank London Account No. 25463202

Bank Code:

IBAN: GB34 CHAS609242 25463202

SWIFT-Code: CHAS GB 2L

For "invoice number"

Siemens' invoice number must be included in the reference line of the bank transfer form.

- 5.3. The interest on any overdue payment shall be calculated commencing on the date such payment became due, using an annual rate of 1 % per month. If such interest rate exceeds the maximum legal rate in the jurisdiction where a claim therefore is being asserted, the interest rate shall be reduced to such maximum legal rate.
- 5.4. Any and all taxes, charges, duties or imposts, if applicable - on the compensation hereunder shall be borne and discharged by Varian and no part thereof shall be deducted from the amounts payable to Siemens under or in connection with this Agreement, said amounts to be net to Siemens, free of any and all deductions.
- 5.5. If Varian does not make the payment as set forth in Section 5.1, then Siemens at its sole discretion may terminate this agreement.

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Article 6 Representations and Warranties

Siemens represents and warrants to Varian as of the Effective Date that:

- 6.1. Siemens is the owner of all right, title and interest in and to the Assigned IPR.
- 6.2. Siemens has full power and authority to enter into this Agreement and to make the assignments provided hereunder.
- 6.3. To Siemens Best IP Knowledge, Siemens has not been served with written notice of formal proceedings relating to the validity, nullification, deregistration, interference with, reissue, reexamination, opposition or voiding of the Assigned IPR.
- 6.4. Except for official communications from patent offices as part of the normal prosecution of the Assigned IPR and to Siemens Best IP Knowledge, Siemens has not been informed in writing about any intended formal proceedings challenging the validity and/or enforceability of or alleging the misuse of the Assigned IPR.
- 6.5. Subject to Article 2.4 and 3 which shall prevail in case of conflict, Siemens has the unrestricted right to grant the rights granted under this Agreement free and clear of any title defects, encumbrances, liens, security interests, mortgages, registrations, licenses, immunities or claims of any nature (including, without limitation, covenants not to sue, government grants, identifications to standard committees, or any other restriction on the rights relating to the Assigned IPR's) whether threatened, pending or otherwise held or claimed by anyone. To Siemens Best IP Knowledge entities listed on **Annex 2** are unlicensed with respect to the Assigned IPR and none of these entities has received a covenant not to sue or other immunity from Siemens regarding the Assigned IPR. There have been no exclusive licenses granted under the Assigned IPR's.
- 6.6. Neither Siemens nor any Siemens Affiliate has brought any suit, action or other legal proceeding for infringement of, or for breach of, any license or other agreement involving the Assigned IPR against any third party.
- 6.7. All maintenance fees, annuities, and the like due on the Assigned IPR for which a window period has opened have been timely paid through June 30, 2017.

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Article 7 Indemnification

Varian agrees to indemnify and hold Siemens, any Siemens Affiliate, Ex-Affiliate (only for the period of time during which such Ex-Affiliate qualified as Siemens Affiliate) and any direct or indirect customer or business partner of Siemens, a Siemens Affiliate or an Ex-Affiliate (only for the period of time during which such Ex-Affiliate qualified as Siemens Affiliate) forever harmless for any claims, losses, liabilities, demands, damages, costs and expenses, including attorneys' fees, resulting from any misrepresentation or breach by Varian of this Agreement or from the action of a Varian Affiliate or any third party for whom Varian is responsible.

Article 8 Disclaimers

- 8.1. Except as explicitly set forth in Article 6 Siemens makes no representation or warranty, express or implied, as to the validity or scope of protection of any Assigned IPR.

THE ASSIGNED IPR IS PROVIDED "AS IS" WITHOUT ANY REPRESENTATION OR WARRANTY, AND SIEMENS DISCLAIMS ALL EXPRESS, IMPLIED, STATUTORY, OR OTHER WARRANTIES AND CONDITIONS RELATING THERETO, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR USE.

- 8.2. Except for the assignment and licenses expressly granted in this Agreement, neither Party grants to the other by implication, estoppel or otherwise any license or other right to any of its intellectual property. In addition, neither Party grants any license, release or other right expressly, by implication, by estoppel or otherwise to any third party.
- 8.3. Siemens shall not be required hereunder to furnish or disclose to Varian technical or other information.
- 8.4. Siemens shall have no obligation to initiate any action or suit against a third party or to defend any action or suit brought by a third party which challenges or concerns the validity of any of the Assigned IPR.
- 8.5. Subject to Article 3, Siemens shall not intentionally engage in any act or conduct, or omit to perform any necessary act, the intended result of which would invalidate any portion of any of the Assigned IPR or their assignment to Varian or render any portion of them unenforceable.
- 8.6. Nothing contained in this Agreement shall be construed as:

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- (i) a warranty or representation as to the quality or performance of products or services made or performed by Varian and/or its Affiliates, or
- (ii) granting Varian and/or its Affiliate any right to use name, trade names or trademarks or other designation of Siemens and/or its Affiliate (including any contraction, abbreviation or simulation of any of the foregoing).

Article 9 Limitation of Liabilities

NEITHER PARTY SHALL TO THE EXTENT LEGALLY PERMISSIBLE, BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), INDEMNITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR BUSINESS INTERRUPTION OR LOST REVENUE, PROFITS OR SALES, COST OF CAPITAL, OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER LOSS, COSTS OR EXPENSES OF A SIMILAR TYPE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SIEMENS LIABILITY SHALL IN NO EVENT EXCEED THE COMPENSATION ACTUALLY PAID TO SIEMENS BY VARIAN UNDER THIS AGREEMENT.

Article 10 Arbitration

- 10.1. If any dispute arises in connection with this Agreement, the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such dispute. Each Party can request from the other Party that on both sides a senior representative becomes involved in the negotiations. Each Party is at any time entitled to terminate the settlement negotiations and to have recourse to an ADR proceeding set forth in the following section through written notification to the other Party.
- 10.2. If the Parties are not able to reach an amicable settlement pursuant to the preceding section they shall try to agree on an appropriate ADR proceeding (for example mediation, conciliation, expert determination, dispute board, adjudication). If they do not reach Agreement on the appropriate ADR proceeding within 14 days after failure of the settlement negotiations or if the dispute is not settled through an ADR proceeding within a period of two months after initiation of the ADR proceeding each Party may initiate an arbitration proceeding pursuant to the following section.

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- 10.3. All disputes arising out of or in connection with the present Agreement, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators. Each Party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within thirty (30) days after their appointment. Should the two arbitrators fail to reach agreement on the third arbitrator within the thirty-day period, the ICC shall select and appoint the third arbitrator. The seat of arbitration shall be Zurich, Switzerland. The procedural law of this seat applicable to international arbitration proceedings shall apply where the Rules are silent. The language to be used in the arbitration proceedings shall be English.

Article 11 Substantive Law

All disputes shall be settled in accordance with the provisions of this Agreement and all other agreements regarding its performance, otherwise in accordance with the substantive law in force in the Federal Republic of Germany without reference to other law. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply.

Article 12 Publicity

Either Party shall keep the financial terms of this Agreement confidential and shall not divulge any part thereof to any third party except with the prior written consent of the other Party or if required by applicable law, by Varian, in order to perfect Varian's interest in the Assigned IPRs with any governmental patent office (including, without limitation, recording the Executed Assignment in any governmental patent office), by Siemens to comply with its obligations with regard to 3rd parties benefiting from the Siemens License or the Requesting Entities Sublicense, but without disclosing any of the commercial content of the Agreement. Before any press release or the like relating to this Agreement is made, the content and time of release of such press release or the like shall be jointly agreed between the Parties.

Article 13 Miscellaneous

- 13.1. This Agreement is the complete Agreement between the Parties regarding this subject, and supersedes any prior or contemporaneous oral or written understandings between the Parties with respect to the subject matter thereof and constitutes the entire Agreement of the Parties with respect to such subject matter. The Agreement may not be

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modified except in writing which requires for Varian the signature of an authorized representative of Varian and for Siemens the signatures of two authorized representatives of Siemens. This requirement of written form can only be waived in writing. "Written form" or "in writing" as described above or throughout this Agreement shall include electronically transmitted copies (e.g. PDF scan via email, telefax) carrying the signatures of the respective Parties.

- 13.2. If any of the provisions of this Agreement shall be adjudged to be invalid, illegal, or unenforceable, unless the basic intentions of the Parties under this Agreement are substantially jeopardized, the validity, legality, and enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired thereby and shall be enforced to the maximum extent permitted by applicable law. In such a case the Parties shall come to an agreement approximating as closely as possible the arrangement originally envisaged in this Agreement.
- 13.3. No express or implied waiver by any of the Parties to this Agreement of any breach of any term, condition or obligation of this Agreement shall be construed as a waiver of any subsequent or continuing breach of that term, condition or obligation or of any other term, condition or obligation of this Agreement of the same or of a different nature. Any waiver, consent, or approval of any kind regarding any breach, violation, default, provision or condition of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing.
- 13.4. Each Party agrees, upon reasonable request by the other Party to consent to the registration of this Agreement to the extent required by applicable law and without expense to this Party. Each Party waives any and all claims or defenses arising by virtue of the absence of such registration that might otherwise limit or affect its obligations to the other Party.
- 13.5. Neither Party shall assign this Agreement or any right or interest under this Agreement (other than the right to receive payments), nor delegate any obligation to be performed under this Agreement, without the other Party's prior written consent, which consent shall not be unreasonably withheld.
- 13.6. All notices, requests, demands, consents, agreements and other communications required or permitted to be given under this Agreement shall be in writing and shall be mailed to the Party to whom notice is to be given and properly addressed as follow (in which case such notice shall be deemed to have been duly given on the day the notice is first received by the Party):

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If to Varian:

Varian Medical Systems Particle Therapy GmbH
Attn.: Vice President and General Manager
Mottmannstrasse 2
53842, Troisdorf, Germany

With a copy to:

Varian Medical Systems, Inc.
Attn.: Senior Vice President, General Counsel and Corporate Secretary
3100 Hansen Way
Palo Alto, CA 94304-1038

If to Siemens:

Siemens Healthcare GmbH
Intellectual Property Department
Attn.: Mr. Nils Pirschel
Hartmannstrasse 16
D-91052 Erlangen, Germany
Tel.: +49 9131 84 7800
Fax: +49 9131 84 7550
E-Mail: nils.pirschel@siemens-healthineers.com

With a copy to:

Siemens Healthcare GmbH
Legal
Henkestrasse 127
D-91052 Erlangen, Germany
Attn.: Mr. Hans Volkhard Lempp
Tel.: +49 9131 84-8544
Fax: +49 9131 84-2114

The above addresses can be changed by providing written notice to the other Party in accordance with this Section.

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- 13.7. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the Parties hereto and their respective successors or assigns any rights (including third-party beneficiary rights), remedies, obligations or liabilities under or by reason of this Agreement.
- 13.8. The section and article headings contained in this Agreement are inserted for convenience of reference only, are not part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. All references to Sections or Articles contained herein mean Sections or Articles of this Agreement unless otherwise stated.
- 13.9. This Agreement may be signed in counterparts with the same effect as if all Parties signed the same document. All counterparts shall be construed together and constitute one and the same contract.

IN WITNESS WHEREOF the Parties hereto have executed on the dates specified below.

**Varian Medical Particle
Therapy GmbH**

Place, Date:

Milpitas

6.30.17

Name:

Moataz Karmalany
(Print)

Title:

President and general manager
Worldwide particle Therapy

Siemens Healthcare GmbH

Place, Date:

Erlangen, 7.10.17

Dr. T. Zeuner

Name:

Dr. Torsten Zeuner
(Print)

Title:

GM Particle Therapy

Name:

Wolfgang Beitz
(Print)

Title:

Senior VP Finance
Advanced Therapies

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Annex 1

Assigned IPR

Siemens Internal	US & Foreign Coverage	US Patent	Title
200220352	US, DE, EP (DE,FR,IT)	6894300	Ion beam facility
200409831	US, US01, EP (DE, CH, FR, IT, AT, SE)	7820989 8148703	Method and apparatus for performing radiation treatment Apparatus for performing radiation treatment
200415511	US, JP, CN, EP(AT, CH, DE, FR, GB, IT, SE)	7638779	Medical radiotherapy assembly
200416231	US	7257191	Medical examination and treatment system
200513858	WOUS, EP (AT,CH,DE,FR,IT)	7812326	Treatment station for particle therapy
200514579	WOUS, DE	8897417	Method and device for planning a treatment
200514585	US, EP(BE,DE,FR,GB,NL)	7545911	Imaging device and therapy facility having such a device
200514997	WOUS, DE,	7741623	Patient positioning device
200515530	US, EP (AT, CH, DE, FR, IT)	7763867	Particle therapy system, method and device for requesting a particle beam
200516519	US01, DE, EP (AT,CH,FR)	7579603	Particle therapy device and method of designing a radiation path
200517738	US01, DE, EP (AT,CH,FR,GB,SE)	7838852	Medical radiation apparatus
200600183	US01	8380538	Fraction sequence concept for radiation therapy planning
200609044	US01, DE, EP (AT,CH,DE,FR,GB,IT,SE)	8772742	Radiation therapy system and method for adapting an irradiation field
200614751	US, EP(CH,DE,SE)	7682078	Method for determining a range of radiation

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DM2/9810357.1

200704197	US, EP (AT,BE,CH,DE,ES,FR,GB, IT,NL,SE)	7786433	Phantom and method for quality monitoring of a medical system
200704198	US, EP (AT,CH,DE,FR,GB,IT,SE)	7875846	Mounting device for phantom method for quality monitoring of a particle therapy system and particle therapy system
200705656	US	7812319	Beam guiding magnet for deflecting a particle beam
200707052	US, EP (AT,CH,DE,FR,IT)	7679049	Calibrating a positron emission tomography scanner
200707179	US, CN, EP (DE,FR,SE)	7816657	Particle therapy system
200707821	US, EP*, DE*	8702578	Positioning device and method for positioning a load
200714503	US	8391782	Wireless transmission of signals
200714696	US, EP (AT,CH,DE,FR,IT,SE)	8071966	Control device for controlling an irradiation procedure particle therapy unit and method for irradiating a target volume
200717589	WOUS, EP (AT,DE,FR)	8283645	Particle therapy installation
200717592	US, DE*	7875861	Positioning device for positioning a patient and method for operating a positioning device
200717594	US, EP*	8657743	Methods and systems for position-enabled control of a medical system
200719243	US,DE	7989785	Gantry particle therapy system and method for operating a gantry
200721739	US,DE	7868301	Deflecting a beam of electrically charged particles onto a curved particle path
200723728	US, EP (AT,DE,FR,IT)	8039822	Particle therapy apparatus and method for modulating a particle beam generated in an accelerator

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GM2/7810557.1

200726915	US, EP*	8173979	Generating and visualizing an ion beam profile
200801235	US01, CN	7978817	Carrying out and monitoring irradiation of a moving object
200806646	US, EP (AT,CH,DE,FR,IT)	7920675	Producing a radiation treatment plan
200810113	US	8053739	Particle beam generating system and method with measurement of the beam spot of the particle beam
200822287	US, EP (AT,CH,DE,FR)	8198608	Reducing the widening of a radiation beam
200902222	US, EP (AT,DE,FR)	8253121	Method for creating a therapy plan
200903325	US, DE, EP (AT,CH,DE,FR,GB,IT,NL,SE)	8530864	Optimization of control parameters for a particle irradiation system
201001077	US, CN, EP*, DE*	8637839	Method for operating a particle therapy system
201012674	US, CN	8704197	Accelerator and method for irradiating a target volume

**) Patent Application*

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DM27819357.1

Annex 2

Unlicensed Companies:

Ion Beam Applications

Mevion / Still River Systems

ProNova

Hitachi

Sumitomo (or Lioness)

Protom

Mitsubishi

Toshiba (except as for hardware, software and methods all related to treatment and therapy planning)

Schaer Proton AG

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2016L17724
DM(2/78)0557.1

Patent Assignment Agreement

This Patent Assignment Agreement (the "Agreement") is made and entered into this _____ day of _____ 2017 (the "Effective Date"), between Siemens Healthcare GmbH, Henkestrasse 127, 91052 Erlangen, Germany (the "Assignor") and Varian Medical Systems Particle Therapy GmbH Mottmannstrasse 2, 53842 Troisdorf, Germany (the "Assignee").

RECITALS

- A. Assignor is the owner of the United States Patents and non-United States patents which collectively shall be referred to herein as the "Patents" set forth on Appendix A hereto.
- B. Assignor and Assignee have agreed by way of a patent sale and assignment agreement (the "Purchase Agreement") dated _____, 2017, by and between Assignor and Assignee, the terms of which are incorporated herein by reference, that Assignor shall sell, transfer, and assign and set over unto Assignee and Assignee shall accept, all rights, title and interest in and to the Patents as specified in this Agreement. In the event of any conflict between the terms of this Patent Assignment Agreement and the referenced Purchase Agreement, the terms of the Purchase Agreement shall prevail.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, and the covenants and agreements in this Assignment, Assignor and Assignee agree as follows:

1. Assignor does hereby, transfer, convey, assign and deliver to Assignee all of Assignor's right, privilege, title and interest in, to and under the Patents and in the case of patent applications in and to any patents that may issue therefrom, including, in all instances, any counterparts of any of the foregoing in any jurisdiction throughout the world, and any and all divisions, continuations, reissues or reexaminations of any of the foregoing, including all damage claims for past infringement, all related claims for information, including on the sources and distribution channels of infringing products, claims for rendering of accounts, and claims for destruction of infringing goods and reasonable compensation (hereinafter "Damages") now or hereafter due or payable with respect thereto, and all causes of action (whether in law or equity) by reason of past, present and future infringements of the Patents, along with the right to sue for, counterclaim, recover and collect such Damages for the use and benefit of Assignee and its successors, assigns and other legal representatives. Assignee hereby accepts this assignment.
2. Insofar as this assignment concerns European patents and patent applications, Assignor hereby agrees that the Assignee shall record in the register with the European Patent Office and/or national patent offices; and Assignee hereby declares that Assignee has agreed to the assignment of the aforementioned Patents to it.
3. Assignor hereby authorizes and requests the Commissioner for Patents of the United States, and any officer of any country or countries foreign to the United States, whose duty it is to issue patents or other evidence or forms of intellectual property protection or applications as aforesaid, to issue the same to Assignee and its successors, assigns and other legal representatives in accordance with the terms of this instrument.

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4. Assignor authorizes and empowers Assignee, its successors, assigns and legal representatives or nominees, to invoke and claim for any application for patent or other form of protection for the inventions underlying the Patents, the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention which may henceforth be substituted for it, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable, and to invoke and claim such right of priority without further written or oral authorization from Assignor.

Assignor hereby consents that a copy of this Agreement shall be deemed a full legal and formal equivalent of any assignment, consent to file or like document that may be required in any country for any purpose and more particularly in proof of the right of Assignee or nominee to claim the aforesaid benefit of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention which may henceforth be substituted for it.

IN WITNESS WHEREOF, the Parties have executed this Assignment on the Effective Date.

Assignee:
Varian Medical Particle
Therapy GmbH

Assignor:
Siemens Healthcare GmbH

Place, Date:

Place, Date:

Name:

Name:

Name:

_____(Print)

_____(Print)

_____(Print)

Title:

Title:

Title:

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DM2/2810557.1

Appendix A Patent Assignment Agreement

Siemens Internal	US & Foreign Coverage	US Patent	Title
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201012674	US, CN	8704197	Accelerator and method for irradiating a target volume

**) Patent Application*

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Supplier Agreement

Annex 4

The following language or an equal thereof will be added to agreements with MIT, HIT or SPHIC for Requesting Entities Suppliers:

Siemens grants to "xxx" (MIT and/or HIT and/or SPHIC) a license to continue operating, replacing, maintaining, modifying and upgrading previously purchased Siemens Particle Therapy Products. The license includes have-made rights for all suppliers of components of "xxx" – those have made rights not requiring any detailed technical specification from "xxx" - to the extent that such supplier's components are made to be part of the "xxx"s previously purchased Siemens Particle Therapy Products. This license does not grant any rights to manufacture, sell, distribute, export or offer to sell to any other 3rd party.

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