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FORM PTO-1594

(Rev. 6-93)

OMB No. 0651-0011 (exp. 4/94)

REC

SHEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

Tab settings



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To the Honorable Commissioner of

Please record the attached original documents or copy thereof.

1. Name of conveying party (ies):

SuperGen, Inc.

- Individual(s)
- General Partnership
- Corporation-California
- Other

- Association
- Limited Partnership

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

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

Name: SuperGen, Inc.

Internal Address:

Street Address: Two Arroyo Lane, Suite 220

City: San Ramon State: CA ZIP: 94583

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

If assignment is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) and addresses attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: Nov. 3, 1997

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,730,233

Additional numbers attached? Yes No

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

Andrew P. Bridges

Name: Harold J. Milstein

Internal Address:

Street Address: Wilson Sonsini Goodrich & Rosati

650 Page Mill Road

City: Palo Alto State: CA ZIP: 94304

6. Total number of application and registrations involved: 1

7. Total fee (37 CFR 3.41) \$40.00

Enclosed

Authorized to be charged to deposit account

If fee is insufficient, please charge:

8. Deposit account number:

23-2415 Attn: 12636-TM1001

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

DO NOT USE THIS SPACE

9. Statement and signature.

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

Harold Milstein

Harold Milstein

4/30/98

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 11

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

TRADEMARK

REEL: 1726

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Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"SUPERGEN, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "SUPERGEN, INC." UNDER THE NAME OF "SUPERGEN, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF NOVEMBER, A.D. 1997, AT 10 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2745580 8100M

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AUTHENTICATION: 8736050

DATE: TRADEMARK 03-97

REEL: 1726 FRAME: 0739

**AGREEMENT AND PLAN OF MERGER
OF SUPERGEN, INC.,
A DELAWARE CORPORATION,
AND
SUPERGEN, INC.,
A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of November 3, 1997 (the "Agreement") is between SuperGen, Inc., a Delaware corporation ("SuperGen Delaware"), and SuperGen, Inc., a California corporation ("SuperGen California"). SuperGen Delaware and SuperGen California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. SuperGen Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 42,000,000 shares, \$0.001 par value, of which 40,000,000 shares are designated "Common Stock," and 2,000,000 shares are designated "Preferred Stock." The Preferred Stock of SuperGen Delaware is undesignated as to series, rights, preferences, privileges or restrictions.

B. SuperGen California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 42,000,000 shares, \$0.001 par value, of which 40,000,000 are designated "Common Stock," and 2,000,000 shares are designated "Preferred Stock." The Preferred Stock of SuperGen California is undesignated as to series, rights, preferences, privileges or restrictions.

C. The Board of Directors of SuperGen California has determined that, for the purpose of effecting the reincorporation of SuperGen California in the State of Delaware, it is advisable and in the best interests of SuperGen California and its shareholders that SuperGen California merge with and into SuperGen Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of SuperGen Delaware and SuperGen California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective shareholders and executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, SuperGen Delaware and SuperGen California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I

MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, SuperGen California shall be merged with and into SuperGen Delaware (the "Merger"), the separate existence of SuperGen California shall cease and SuperGen Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and SuperGen Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be SuperGen, Inc.

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

- (a) This Agreement and the Merger shall have been adopted and approved by the shareholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law;
- (b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;
- (c) An executed Certificate of Merger or an executed, acknowledged and certified counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and
- (d) An executed counterpart of this Agreement together with Officers' Certificates meeting the requirements of the California General Corporation Law shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence of SuperGen California shall cease and SuperGen Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and SuperGen California's Boards of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of SuperGen California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of SuperGen California in the same manner as if SuperGen Delaware had itself incurred them, all as

more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

II

CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* The Certificate of Incorporation of SuperGen Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 *Bylaws.* The Bylaws of SuperGen Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 *Directors and Officers.* The directors and officers of SuperGen California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their respective successors shall have been duly elected and qualified or until as otherwise provided by law, or the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III

MANNER OF CONVERSION OF STOCK

3.1 *SuperGen California Common Stock.* Upon the Effective Date of the Merger, each share of SuperGen California Common Stock, \$0.001 par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be changed and converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$.001 par value, of the Surviving Corporation.

3.2 *SuperGen California Options and Stock Purchase Rights.* Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the stock option plans (including without limitation the 1993 Stock Option Plan and the 1996 Directors Stock Option Plan) and all other employee benefit plans (including without limitation the 401(k) Plan) of SuperGen California. Each outstanding and unexercised option or other right to purchase or security convertible into SuperGen California Common Stock shall become an option or right to purchase or a security convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each share of SuperGen California Common Stock issuable pursuant to any such option, stock purchase right or convertible security, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such SuperGen California option, stock purchase right or convertible security at the Effective Date of the

Merger. There are no options, purchase rights for or securities convertible into Preferred Stock of SuperGen California.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights or convertible securities equal to the number of shares of SuperGen California Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.3 *SuperGen Delaware Common Stock.* Upon the Effective Date of the Merger, each share of Common Stock, \$0.001 par value, of SuperGen Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by SuperGen Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.4 *Exchange of Certificates.* After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of SuperGen California Common Stock may, at such stockholder's option, surrender the same for cancellation to ChaseMellon Shareholder Services, L.L.C. as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which such holders' shares of SuperGen California Common Stock were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore representing shares of SuperGen California Common Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of SuperGen California Common Stock were converted in the Merger.

In addition, after the Effective Date of the Merger, each holder of an outstanding certificate representing a right to purchase or security convertible into SuperGen California Common Stock may, at such holder's option, surrender the same for cancellation to ChaseMellon Shareholder Services, L.L.C., as Exchange Agent, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing a right to purchase or security convertible into the Surviving Corporation's Common Stock into which such holder's right to purchase or security convertible into SuperGen California Common Stock was converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore representing a right to purchase or security convertible into SuperGen California Common Stock shall be deemed for all purposes to represent a right to purchase or security convertible into the Surviving Corporation's Common Stock into which such right to purchase or security convertible into SuperGen California Common Stock was converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock, any right to purchase stock or any security convertible into stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation,

the right to purchase Common Stock of the Surviving Corporation or security convertible into Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock of the Surviving Corporation, the right to purchase Common Stock of the Surviving Corporation or security convertible into the Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of SuperGen California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of SuperGen Delaware stock, the right to purchase SuperGen Delaware stock or security convertible into SuperGen Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to SuperGen Delaware or the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of SuperGen Delaware that such tax has been paid or is not payable.

IV

GENERAL

4.1 *Covenants of SuperGen Delaware.* SuperGen Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

- (a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law;
- (b) File any and all documents with the California Franchise Tax Board necessary for the assumption by SuperGen Delaware of all of the franchise tax liabilities of SuperGen California; and
- (c) Take such other actions as may be required by the California General Corporation Law.

4.2 *Further Assurances.* From time to time, as and when required by SuperGen Delaware or by its successors or assigns, there shall be executed and delivered on behalf of SuperGen California such deeds and other instruments, and there shall be taken or caused to be taken by SuperGen Delaware and SuperGen California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by SuperGen Delaware

the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of SuperGen California and otherwise to carry out the purposes of this Agreement, and the officers and directors of SuperGen Delaware are fully authorized in the name and on behalf of SuperGen California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 *Abandonment.* At any time before the filing of this Agreement with the Secretary of State of the State of Delaware, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either SuperGen California or SuperGen Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of SuperGen California or by the sole stockholder of SuperGen Delaware, or by both.

4.4 *Amendment.* The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement, if in the case of clause (2) or (3) such alteration or change would adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

4.5 *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

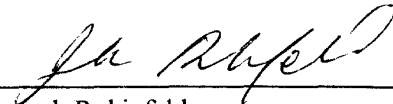
4.6 *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at Two Annabel Lane, Suite 220, San Ramon, California 94583 and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

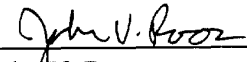
4.7 *Governing Law.* This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California General Corporation Law.

4.8 *Counterparts.* In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of SuperGen Delaware and SuperGen California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

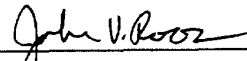
SUPERGEN, INC.,
a Delaware corporation

By: 
Joseph Rubinfeld
President


(Name) John V. Roos
(Title) Secretary

SUPERGEN, INC.,
a California corporation

By: 
Joseph Rubinfeld
President


(Name) John V. Roos
(Title) Secretary

SUPERGEN, INC.
a Delaware corporation


OFFICERS' CERTIFICATE

Joseph Rubinfeld and John V. Roos certify that:

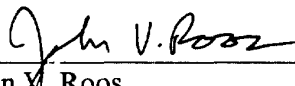
1. They are the President and Secretary, respectively, of SuperGen, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has an authorized capital of 42,000,000 shares, \$0.001 par value, of which 40,000,000 shares are designated "Common Stock," and 2,000,000 shares are designated "Preferred Stock."
3. There were 100 shares of Common Stock and no shares of Preferred Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Agreement").
4. The principal terms of the Agreement were approved by the Board of Directors and by the vote of the holders of Common Stock which equaled or exceeded the vote required.
5. The percentage vote was 100% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

Joseph Rubinfeld and John V. Roos further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed at San Ramon, California on November 3 1997.



Joseph Rubinfeld
President



John V. Roos
Secretary

SUPERGEN, INC.
a California corporation

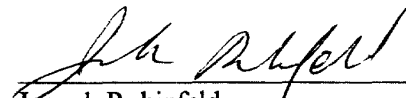
OFFICERS' CERTIFICATE

Joseph Rubinfeld and John V. Roos certify that:

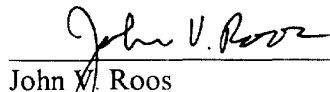
1. They are the President and Secretary, respectively, of SuperGen, Inc., a corporation organized under the laws of the State of California.
2. The corporation has authorized capital of 42,000,000 shares, \$0.001 par value, of which 40,000,000 shares are designated "Common Stock," and 2,000,000 shares are designated "Preferred Stock."
3. There were 16,952,292 shares of Common Stock and no shares of Preferred Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Agreement").
4. The principal terms of the Agreement were approved by the Board of Directors and by the vote of holders of Common Stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

Joseph Rubinfeld and John V. Roos further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed at San Ramon, California, on November 3 1997.



Joseph Rubinfeld
President



John V. Roos
Secretary