

REC

05-26-1999

COVER SHEET

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

5-19-99



3 ONLY

101045316

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
Spine-Tech, Inc.

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation - State Minnesota  
 Other Certificate of Merger of Spine-Tech, Inc. with and into Sulzer Spine-Tech Inc.

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

2. Name and address of receiving party(ies):  
Name: **Sulzer Spine-Tech, Inc.**  
Internal Address: **Attn: General Counsel**  
Street Address: **4000 Technology Drive**  
  
City: **Angleton** State: **TEXAS** ZIP: **77515-4000**

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

If assignee 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) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:  
 Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other

Execution Date(s): **4/14/98**

4. Application number(s) or trademark number(s):  
A. Trademark Application No(s).  
  
U.S. Reg. 1,959,018  
U.S. Reg. 1,959,019  
U.S. Reg. 1,959,017  
U.S. Reg. 1,774,654

Additional numbers attached?  Yes  No

B. Trademark No(s)  
  
U.S. Reg. 1,959,018  
U.S. Reg. 1,959,019  
U.S. Reg. 1,959,017  
U.S. Reg. 1,774,654

5. Name and address of party to whom correspondence concerning document should be mailed:  
  
Name: **Harold D. Jastram**  
Internal Address: **3400 Plaza VII Building**  
Street Address: **45 South Seventh Street**  
City: **Minneapolis** State: **MN** ZIP: **55402**  
Our File No.: 12183/201-AA

6. Total number of applications and registrations involved: **4**

7. Total Fee (37 CFR 3.41) ..... \$115.  
 Enclosed  
 Authorized to be charged to deposit account  
 Authorized to charge any underpayment or credit any overpayment to deposit account.

8. Deposit account number:  
**15-0627**  
(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 D. Jastram                              Harold D. Jastram                              5/19/99  
Name of Person Signing:                              Signature                              Date

Total number of pages including cover sheet, attachments, and document: 12

Mail documents to be recorded with required cover sheet information to:  
U.S. Patent and Trademark Office, Office of Public Records, Crystal Gateway 4, Room 335  
Washington, D.C. 20231

05/25/1999 MTHA11 00000164 1959018

01 FC:481 40.00 OP  
02 FC:482 75.00 OP

**CERTIFICATE OF MERGER  
OF  
SPINE-TECH, INC.,  
a Minnesota corporation,  
WITH AND INTO  
SULZER SPINE-TECH INC.,  
a Delaware Corporation**

The undersigned corporation, Sulzer Spine-Tech Inc., a corporation duly organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name and state of incorporation of each of the constituent corporations are:
  - a. Spine-Tech, Inc. ("Spine-Tech"), a Minnesota corporation; and
  - b. Sulzer Spine-Tech Inc. ("Sulzer Spine-Tech"), a Delaware corporation.
2. An Agreement and Plan of Merger dated as of April 1, 1998, between Spine-Tech and Sulzer Spine-Tech has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of subsection (c) of Section 252 of the General Corporation Law of the State of Delaware.
3. The name of the surviving corporation is Sulzer Spine-Tech Inc.
4. The Certificate of Incorporation of Sulzer Spine-Tech shall be the certificate of incorporation of the surviving corporation.
5. The surviving corporation is a corporation of the State of Delaware.
6. The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation, 4000 Technology Drive, Angleton, Texas 77515-4000; Attention: General Counsel.
7. A copy of the Agreement and Plan of Merger will be furnished by surviving corporation, on request and without cost, to any stockholder of the constituent corporations.
8. The authorized capital stock of Sulzer Spine-Tech is 1,000 shares of common stock, \$1.00 par value.
9. The authorized capital stock of Spine-Tech is one share of common stock, \$.01 par value.

IN WITNESS WHEREOF, this Certificate of Merger has been executed by a duly authorized officer of Sulzer Spine-Tech as of the 1st day of April, 1998.

**SULZER SPINE-TECH INC.**

By: *W. W. [Signature]*

Its: *Vice President + Secretary*

# State of Minnesota

6331

## SECRETARY OF STATE

### CERTIFICATE OF MERGER

I, Joan Anderson Grove, Secretary of State of Minnesota, certify that: the documents required to effectuate a merger between the entities listed below and designating the surviving entity have been filed in this office on the date noted on this certificate; and the qualification of the individual merging entities to do business in Minnesota is terminated on the effective date of this merger.

Merger Filed Pursuant to Minnesota Statutes, Chapter:302A

State of Formation and Names of Merging Entities:

MN: SPINE-TECH, INC.

DE: SULZER SPINE-TECH INC.

State of Formation and Name of Surviving Entity:

DE: SULZER SPINE-TECH INC.

Effective Date of Merger: 4/14/98

Name of Surviving Entity After Effective Date of Merger:

SULZER SPINE-TECH INC.

This certificate has been issued on: 4/14/98



*Joan Anderson Grove*  
Secretary of State.

TRADEMARK

ARTICLES OF MERGER

5032

These Articles of Merger relate to the merger (the "Merger") of Spine-Tech, Inc., a Minnesota corporation ("Spine-Tech"), with and into Sulzer Spine-Tech Inc., a Delaware corporation ("Sulzer Spine-Tech").

(a) The Agreement and Plan of Merger, dated as of April 1, 1998 (the "Plan of Merger"), in fully executed form, is attached hereto as Exhibit A. As provided in the Plan of Merger, Sulzer Spine-Tech shall continue as the surviving corporation under the corporate name it possesses immediately prior to the effective time of the Merger.

(b) The Merger is permitted by the laws of the State of Delaware, the jurisdiction under which Sulzer Spine-Tech is organized, and the Plan of Merger was adopted and approved by Sulzer Spine-Tech in accordance with the General Corporation Law of the State of Delaware.

(c) The Plan of Merger has been approved by Spine-Tech pursuant to Chapter 302A of the Minnesota Statutes.

(d) Sulzer Spine-Tech, the surviving corporation following the Merger, hereby agrees:

(1) that it may be served with process in the State of Minnesota in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against it; and

(2) that the Secretary of State of Minnesota shall be and hereby is irrevocably appointed as its agent to accept service of process in any such proceeding and the address to which process may be forwarded is Sulzer Medica USA Inc., 4000 Technology Drive, Angleton, Texas 77515; Attention: General Counsel.

Date: April 1, 1998.

SPINE-TECH, INC.

By: *Lawrence Patrick*  
Its: VICE President + Secretary

SULZER SPINE-TECH INC.

By: *Lawrence Patrick*  
Its: VICE President + Secretary

503268

## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "Agreement"), dated as of April 1, 1998, is by and between **Spine-Tech, Inc.**, a Minnesota corporation ("Spine-Tech"), and **Sulzer Spine-Tech Inc.**, a Delaware corporation ("Surviving Corporation"). Spine-Tech and Surviving Corporation are hereinafter sometimes collectively referred to as the "Constituent Corporations".

In consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

### ARTICLE I

#### TERMS & CONDITIONS OF MERGER

Section 1.1. Merger. At the Effective Time (as defined in Section 3.4 hereof), Spine-Tech shall merge with and into Surviving Corporation (the "Merger"), and the separate existence of Spine-Tech shall cease. Surviving Corporation shall be the surviving corporation in the Merger and its separate corporate existence, with all its purposes, object, rights, privileges, powers and franchises, shall continue unaffected and unimpaired by the Merger.

### ARTICLE II

#### MODE OF CARRYING MERGER INTO EFFECT

Section 2.1. Effect. At the Effective Time, Surviving Corporation shall continue to be governed by the laws of the State of Delaware; shall possess all the rights, privileges, immunities and franchises, of a public as well as a private nature, possessed by Spine-Tech and Surviving Corporation; all of the property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all choses in action, and all and every other interest, of or belonging to Spine-Tech or Surviving Corporation, shall be taken and deemed to be transferred to and vested in Surviving Corporation without further act or deed; and Surviving Corporation shall thenceforth be responsible and liable for all of the liabilities and obligations of each of Spine-Tech and Surviving Corporation; and any claims or action or proceeding pending by or against Spine-Tech or Surviving Corporation may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in the place of Spine-Tech or Surviving Corporation; and neither the rights of creditors nor any liens upon the property of Spine-Tech or Surviving Corporation shall be impaired by the Merger.

Section 2.2 Additional Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or

assets of Spine-Tech acquired or to be acquired by Surviving Corporation as a result of, or in connection with, the Merger or to otherwise carry out this Agreement, the officers and directors of the Surviving Corporation shall and will be authorized to execute and deliver, in the name and on behalf of the Constituent Corporations or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the Constituent Corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or to otherwise carry out this Agreement.

### ARTICLE III

#### AMENDMENTS TO THE CERTIFICATE OF INCORPORATION

Section 3.1. Certificate of Incorporation. No amendments or changes in the certificate of incorporation of Surviving Corporation will be effected by the Merger. The certificate of incorporation of the Surviving Corporation shall continue to act as its certificate of incorporation.

Section 3.2. Bylaws. The Bylaws of Surviving Corporation, as in effect at the Effective Time, shall continue in full force and effect following the Effective Time as the Bylaws of the Surviving Corporation until otherwise amended as provided by law or by such Bylaws.

Section 3.3. Directors and Officers. The directors of Surviving Corporation and the officers of Spine-Tech at the Effective Time shall be the directors and officers of the Surviving Corporation and shall hold office from and after the Effective Time until their respective successors are duly elected or appointed and qualified.

Section 3.4. Effective Time. If this Agreement is duly approved and adopted by the sole shareholder of each of the Constituent Corporations in accordance with § 252(c) of the Delaware General Corporation Law, §302A.613 of the Minnesota Business Corporation Act, and the respective charters and bylaws of the Constituent Corporations and is not terminated under Article V hereof. Articles and a Certificate of Merger shall be filed as provided by §302A.615 of the Minnesota Business Corporation Act and §252 of the Delaware General Corporation Law. The Merger shall become effective at the latter of the time and date at which the Secretary of State of Delaware and the Secretary of State of Minnesota issues a certificate of merger with respect to the Merger (such time and date is herein referred to as the "Effective Time").

ARTICLE IV

CONVERSION OF SECURITIES

The sole share of outstanding Spine-Tech common stock shall be cancelled at the Effective Time. The outstanding securities of the Surviving Corporation shall remain unaffected by the Merger.

ARTICLE V

TERMINATION

This Agreement shall terminate forthwith in the event that the approval and adoption of this Agreement by the shareholder of Constituent Corporations are not forthcoming. In the event of the termination of this Agreement as provided above, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to each of the other parties.

Section 6.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law thereof.

Section 6.3. A copy of this signed Agreement and Plan of Merger shall be placed on file at the corporate offices of the Surviving Corporation, whose address is c/o General Counsel, 4000 Technology Drive, Angleton, Texas 77515.

Section 6.4. A copy of this Agreement and Plan of Merger shall be furnished by the Surviving Corporation on request and without cost to any stockholder of any Constituent Corporation.



IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be duly executed and delivered as of the date first above written.

SPINE-TECH, INC.

By: *Lawrence H. Smith*  
Its: *Vice President + Secretary*

SULZER SPINE-TECH INC.

By: *Lawrence H. Smith*  
Its: *Vice President + Secretary*

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
APR 14 1998  
*Joan Anderson Howe*  
Secretary of State

State of Minnesota

**SECRETARY OF STATE**

Certificate of Authority to Transact Business

I, Joan Anderson Grove, Secretary of State of Minnesota, do certify that: The following corporation has duly complied with the relevant provisions of Minnesota Statutes, Chapter 303, and is authorized to do business in Minnesota on and after this date with all the powers, rights and privileges, and subject to the limitations, duties and restrictions, set forth in that chapter.

Name of Corporation in Minnesota:

Sulzer Spine-Tech Inc.

Name of Corporation in State of Incorporation:

Sulzer Spine-Tech Inc.

Corporate Charter Number: 90819

State of Incorporation: DE

Registered Office in Minnesota:

405 2nd Ave S

Mpls

MN 55401

Name of Registered Agent: C T Corporation System Inc

This certificate has been issued on 04/14/1998.



*Joan Anderson Grove*  
Secretary of State.

TRADEMARK

REEL: 001901 FRAME: 0478

**CERTIFICATE OF INCORPORATION  
OF  
SULZER SPINE-TECH INC.**

**ARTICLE I**

The name of the corporation is Sulzer Spine-Tech Inc. (hereinafter referred to as the "Corporation").

**ARTICLE II**

The address of the registered office of the Corporation is 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

**ARTICLE IV**

The total number of shares of stock which the Corporation is authorized to issue is one thousand (1,000) shares of common stock, having a par value of one dollar (\$1.00) per share.

**ARTICLE V**

The business and affairs of the Corporation shall be managed by or under the direction of the board of directors, and the directors need not be elected by written ballot unless required by the bylaws of the Corporation.

**ARTICLE VI**

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the board of directors is expressly authorized to make, amend, and repeal the bylaws of the Corporation.

## ARTICLE VII

The Corporation reserves the right to alter, amend, or repeal any provision contained in this Certificate of Incorporation in the manner now or hereinafter prescribed by the laws of the State of Delaware. All rights herein conferred are granted subject to this reservation.

## ARTICLE VIII

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after the filing of the Certificate of Incorporation of which this article is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

## ARTICLE IX

The incorporator is Lawrence H. Panitz whose mailing address is 4000 Technology Drive, Angleton, Texas 77515.

I, the undersigned, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file, and record this Certificate of Incorporation, do certify that the facts herein stated are true, and, accordingly, have hereto set my hand this 9th day of March, 1998.



---

Lawrence H. Panitz