

RECORDATION FORM C
TRADEMARKS C



101261524

TO THE ASSISTANT COMMISSIONER OF PATENTS AND TRADEMARKS: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): (If multiple assignors, list numerically)

IDEC Pharmaceuticals Corporation

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State CALIFORNIA
- Other:

1/1/000

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

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

Name: IDEC Pharmaceuticals Corporation

Internal Address:

Street Address: 11011 Torreyana Road
City: San Diego State: CA ZIP: 92121

- Individual
- 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) and address(es) attached?
 Yes No

RECEIVED
2000 JAN 10 AM 11:5
OPR/FINANCE

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other: CHANGE IN STATE OF INCORPORATION FROM CALIFORNIA TO DELAWARE

Execution Date: (If multiple assignors, list execution dates in numerical order corresponding to numbers indicated in 1 above) April 4, 1997

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

- a. Trademark Application No(s):
75/238932; 75/442605; 75/517089
- b. Trademark Registration No(s):
1,790,060; 1,816,328; 1,820,412; 1,931,959;
2,122,911; 2,194,252

Additional numbers attached? Yes No

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

Name: AnneMarie Kaiser
KNOBBE, MARTENS, OLSON & BEAR, LLP
Customer No. 20,995

Internal Address: Sixteenth Floor
Street Address: 620 Newport Center Drive
City: Newport Beach State: CA ZIP: 92660
Attorney's Docket No.:

IDECO.007T/.022T/.027T/.033T/.038T/.042T/.044T/.050T/.051T

7. Total fee (37 CFR 3.41): \$240

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 11-1410

Please charge this account for any additional fees which may be required, or credit any overpayment to this account.

5. Total number of applications and registrations involved: 9

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.

AnneMarie Kaiser
Name of Person Signing

AnneMarie Kaiser
Signature

Jan. 7, 2000
Date

Total number of pages including cover sheet, attachments and document: 20

Mail documents to be recorded with required cover sheet information to: ANNEMARIE KAISER

02/07/2000 DNGUYEN 00000243 75238932

01 FC:481
02 FC:482

40.00 DP
200.00 OP

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
IDEC PHARMACEUTICALS CORPORATION

**Purnuant to the General Corporation Law
of the State of Delaware**

The undersigned, being the sole incorporator of IDEC Pharmaceuticals Corporation (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The present name of the Corporation is IDEC Pharmaceuticals Corporation.
2. The name under which the Corporation was incorporated was "IDEC Pharmaceuticals Corporation", and its original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 1, 1997.
3. The Certificate of Incorporation of the Corporation is hereby amended by striking out Article IV thereof and substituting in lieu thereof a new Article IV which is set forth in the Amended and Restated Certificate of Incorporation hereinafter provided for.
4. The provisions of the Certificate of Incorporation of the Corporation, as herein amended, are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled Amended and Restated Certificate of Incorporation of IDEC Pharmaceuticals Corporation, without any further amendments other than the amendments herein certified and without any discrepancy between the provisions of the Certificate of Incorporation as herein amended and the provisions of the said single instrument hereinafter set forth.
5. The amendment and the restatement of the Certificate of Incorporation set forth herein has been duly adopted by the sole incorporator of the Corporation in accordance with the provisions of Section 241 of the General Corporation Law of the State of Delaware.
6. The text of the Corporation's Certificate of Incorporation is hereby amended and restated to read as set forth in full as follows:

BPHPA1\KAR1\0217077.WP
04/03/97

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
IDEC PHARMACEUTICALS CORPORATION

ARTICLE I

The name of this corporation is IDEC Pharmaceuticals Corporation.

ARTICLE II

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

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

(A) Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is Fifty-Eight Million (58,000,000) shares. Fifty Million (50,000,000) shares shall be Common Stock, par value \$0.001 per share, and Eight Million (8,000,000) shares shall be Preferred Stock, par value \$0.001 per share.

(B) Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of One Million Seven Hundred Fifty Thousand (1,750,000) shares, which may be issued in seven subseries designated as (i) "Series A-1 Preferred Stock," consisting of One Hundred Thousand (100,000) authorized shares; (ii) "Series A-2 Preferred Stock," consisting of One Hundred Fifty Thousand (150,000) authorized shares; (iii) "Series A-3 Preferred Stock," consisting of Seven Hundred Thousand (700,000) authorized shares; (iv) "Series A-4 Preferred Stock," consisting of Two Hundred Fifty Thousand (250,000) authorized shares; (v) "Series A-5 Preferred Stock," consisting of Three

BPHPA1\ACB\0213206.02
04/03/97

Hundred Fifty Thousand (350,000) authorized shares; (vi) "Series A-6 Preferred Stock," consisting of One Hundred Thousand (100,000) authorized shares; and (vii) "Series A-7 Preferred Stock," consisting of One Hundred Thousand (100,000) authorized shares, are as set forth below in this Article IV(B). The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such additional series and the designation thereof, or of any of them. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in the Corporation's Certificate of Incorporation, as amended and restated from time to time, and requirements and restrictions of applicable law ("Protective Provisions"), the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase the number of shares of any series (other than the Series A Preferred Stock), or decrease the number of shares of any series prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. The Series A Preferred Stock and the subseries thereof shall have the relative rights, preferences and restrictions set forth in Annex A hereto, which is incorporated by reference herein and made a part hereof.

(C) Common Stock.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed to the holders of the Common Stock as provided in Annex A hereto.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

The Board of Directors may from time to time make, amend, supplement or repeal the bylaws of the corporation by the requisite affirmative vote of directors as set forth in the bylaws of the corporation; provided, however, that the stockholders may change or repeal any bylaw adopted by the Board of Directors by the requisite affirmative vote of stockholders as set forth in the bylaws of the corporation; and, provided further, that no amendment or supplement to the bylaws of the corporation adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

ARTICLE VI

The number of directors of the corporation shall be fixed from time to time by, or in the manner provided in, the bylaws or amendment thereof duly adopted by the board of directors or by the stockholders of the corporation.

ARTICLE VII

Elections of directors need not be by written ballot unless the bylaws of the corporation shall so provide. The directors shall be classified into three classes, as nearly equal in number as possible as determined by the board of directors, with (i) the term of office of the first class to expire at the 1998 Annual Meeting of Stockholders, (ii) the term of office of the second class to expire at the 1999 Annual Meeting of Stockholders and (iii) the term of office of the third class to expire at the 2000 Annual Meeting of Stockholders. At each Annual Meeting of Stockholders, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding Annual Meeting of Stockholders after their election. Additional directorships resulting from an increase in the number of directors shall be apportioned among the classes as equally as possible as determined by the board of directors.

ARTICLE VIII

The Corporation is to have perpetual existence.

ARTICLE IX

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the corporation may provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the bylaws of the corporation.

ARTICLE X

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for any 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 an improper personal benefit. If the Delaware General Corporation Law is amended after approval of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection of a director of the Corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

ARTICLE XI

To the fullest extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) though bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others. Any repeal or modification of any of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such repeal or modification.

ARTICLE XII

The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the undersigned, the sole incorporator of the Corporation, has executed this Amended and Restated Certificate of Incorporation this 4th day of April, 1997.



Kenneth A. Rosenblum
Sole Incorporator

BPHPA1\ACS\0213206.02
04/03/97

5.

P.2

APR 04 '97 10:35AM BROBECK PHLEGER HARR

TRADEMARK
REEL: 002019 FRAME: 0941

**RIGHTS, PREFERENCES AND RESTRICTIONS OF THE
SERIES A-1, A-2, A-3, A-4, A-5, A-6 AND A-7 PREFERRED STOCK**

The rights, preferences, restrictions and other matters relating to the Series A Preferred Stock are as follows:

1. Certain Definitions.

"Affiliate" means an entity that, directly or indirectly, through one or more intermediaries, is controlled by IDEC or Genentech. As used herein, the term "control" will mean the direct or indirect ownership of fifty percent (50%) or more of the stock having the right to vote for directors thereof or the ability to otherwise control the management of the corporation or other business entity.

"Approval Process Event" means a determination by the Joint Development Committee that the formulation of C2B8 and the process for C2B8 recovery are commercially viable as more fully described in Appendix I to the Development Plan.

"C2B8" means that certain monoclonal antibody to B cells more particularly described on Exhibit B to the Collaboration Agreement.

"Co-Promotion Territory" means the United States and Canada.

"Collaboration Agreement" shall mean the Collaboration Agreement dated the Effective Date between the Corporation and Genentech.

"Controlled," unless specified otherwise herein, means possession of the ability to grant a license or sublicense as provided for herein without violating the terms of any agreement or other arrangement with any entity other than the Corporation or Genentech.

"Development Plan" means the comprehensive plan for the development of C2B8, designed to generate the preclinical, process development/manufacturing scale-up, clinical and regulatory information required to obtain Regulatory Approval in the Co-Promotion Territory, and may be modified from time to time by the JDC. Development shall refer to all activities related to preclinical testing, toxicology, formulation, process development, manufacturing scale-up, quality assurance/quality control, clinical studies and regulatory affairs for a Licensed Product in connection with obtaining Regulatory Approvals of such Products.

"Effective Date" means March 16, 1995.

"First Anniversary Date" means the date which is twelve (12) calendar months following March 16, 1995.

"FDA Approval Date" means the date on which the United States Food and Drug Administration grants Regulatory Approval of C2B8 for manufacture and sale in the United States.

"FDA Approval Event" means the FDA Approval Date occurs on or before the Fifty-Four Month Anniversary Date.

"Fifty-Four Month Anniversary Date" means that date which is fifty-four (54) calendar months following March 16, 1995.

"Genentech" means Genentech, Inc., a Delaware corporation, and its Affiliates.

"IDEC" means IDEC Pharmaceuticals Corporation, a Delaware corporation, and its Affiliates.

"Joint Development Committee" or **"JDC"** means that committee established pursuant to Section 3.2 of the Collaboration Agreement.

"Licensed Product(s)" means any compound or composition of matter whose mechanism of action is initiated by interaction with the CD20 or CD19 B-cell determinant (including C2B8, but excluding Y2B8 (as defined in Section 2.2. of the Collaboration Agreement) and In2B8 (as defined in Section 2.2. of the Collaboration Agreement) unless the option set forth in Section 2.3 of the Collaboration Agreement is exercised) (a) developed by IDEC or (b) the intellectual property rights to which are owned or Controlled, in whole or in part, by IDEC, in either (a) or (b) as of the Effective Date or during the term of the Collaboration Agreement.

"Major European Country" means the United Kingdom, Italy, Germany, France or Spain.

"ML/MS Agreement" means the Preferred and Common Stock Purchase Agreement dated March 16, 1995 by and between ML/MS Associates, L.P. and IDEC, whereby IDEC reacquired the rights to certain technologies for the treatment of B-cell lymphomas funded and developed by ML/MS Partners pursuant to a Development Agreement and related agreements, dated as of February 17, 1988 and October 27, 1988.

"ML/MS Partners" shall mean ML Technology Ventures, L.P. and Morgan Stanley Ventures, L.P., and any assignee or successor to ML/MS Partners.

"National Exchange" shall mean the Nasdaq National Market or any other national exchange on which the Common Stock of the Corporation is listed.

"Option Agreement" means the Option Agreement to be dated as of the Effective Date between Genentech and the Corporation.

"Patent Milestone Event" means the notice of grant in the European Patent Office or issuance in a Major European Country of the first valid and enforceable letters patent covering C2B8.

"Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement dated the Effective Date between the Corporation and Genentech.

"Regulatory Approval" means any approvals (including pricing and reimbursement approvals), licenses, registrations or authorizations of any federal, state or local regulatory agency, department, bureau or other governmental entity, necessary for the manufacture and sale of a Licensed Product in a regulatory jurisdiction.

"Registration Rights Agreement" means the 1995 Registration Rights Agreement dated as of the Effective Date between Genentech, ML/MS Associates, L.P. and the Corporation.

"Third Anniversary Date" means that date which is thirty-six months following March 16, 1995.

2. Dividend Provisions.

a. Series A-1, A-2, A-3, A-4, A-5 and A-6 Preferred Stock Dividend Provisions. No dividend or other distribution shall be paid, or declared and set apart for payment (other than dividends of Common Stock on the Common Stock of the Corporation and dividends payable on the Series A-7 Preferred Stock pursuant to Section 2(b) below), on the shares of any class or series of capital stock of the Corporation unless and until a dividend of equal or greater amount (calculated as if the shares of Series A-1, A-2, A-3, A-4, A-5 and A-6 Preferred Stock had been converted Common Stock on the date the dividend is declared) is first declared and paid with respect to any series of Series A Preferred Stock.

b. Series A-7 Preferred Stock Dividend Provisions. Cumulative dividends shall accrue from the date of issuance of the Series A-7 Preferred Stock at a fluctuating rate per annum equal to the sum of two percent (2%) plus the "Prime Rate" as announced by the Bank of America, San Francisco Branch, from time to time. Accrued dividends shall be payable quarterly in arrears on the first day of each quarter, commencing with the first day of the first quarter following the earlier of the FDA Approval Date or the Fifty-Four Month Anniversary Date. On the earlier of the FDA Approval Date or the Fifty-Four Month Anniversary Date, all dividends accrued through such date shall be paid. Any accumulation of dividends on the Series A-7 Preferred Stock shall not bear interest. No dividend or other distribution shall be paid, or declared and set apart for payment (other than dividends of Common Stock on the Common Stock of the Corporation), on the shares of any class or

series of capital stock of the Corporation unless and until such dividends have been paid. The Corporation shall take any and all corporate action necessary to declare and pay such dividends described in this Section 2(b).

3. Liquidation Preference. The holders of Series A Preferred Stock share a liquidation preference as follows:

a. Series A-1, A-2, A-3, A-4, A-5, A-6 and A-7 Preferred Stock Liquidation Preference. In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, subject to the rights of series of Series A Preferred Stock that may from time to time come into existence, the holders of Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock, shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock and any other series of Series A Preferred Stock by reason of their ownership thereof, an amount per share equal to the Original Issue Price (defined below) for such subseries plus an amount equal to (i) the declared but unpaid dividends and distributions on such share in the case of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5 and Series A-6 Preferred Stock and (ii) the accrued but unpaid dividends and distributions on such share in the case of the Series A-7 Preferred Stock. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of series of Series A Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock on an as-converted to Common Stock basis in proportion to the amount of such stock owned by each such holder. The "Original Issue Price" for each subseries shall mean the price at which the initial share of such subseries is issued.

b. Upon the completion of the distribution required by subparagraph (a) of this Section 3 and any other distribution that may be required with respect to series of Series A Preferred Stock that may from time to time come into existence, if assets remain in this Corporation, the holders of the Common Stock of this Corporation, shall receive all of the remaining assets of this Corporation.

c. If (i) a single shareholder or group of affiliated shareholders, other than a holder of the Series A Preferred Stock, or a Controlled Affiliate thereof, who would be required to file a Schedule 13D under the Securities Exchange Act of 1934, as amended, acquires or obtains the right to acquire voting stock of the Corporation so that its total holdings of such stock equal or exceed fifty percent (50%) of the then outstanding voting stock of the Corporation, or (ii) any third party (i.e., a party other than a holder or a Controlled Affiliate) acquires or obtains the right to acquire all or substantially all of the assets of the Corporation, then such event shall be considered a liquidation under this Section 3. For purposes hereunder,

"Controlled Affiliate" shall mean a party that, directly or indirectly, through one or more intermediaries, is controlled by such holder.

4. Series A Preferred Stock Conversion. The holders of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

a. Series A-1, Series A-2, Series A-3, Series A-4 and Series A-5 Preferred Stock Conversion. Each share of Series A-1, Series A-2, Series A-3, Series A-4 and Series A-5 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of this Corporation or any transfer agent for such stock, into ten (10) fully paid and nonassessable shares of Common Stock (the "Conversion Rate" for the Series A-1 Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and the Series A-5 Preferred Stock).

b. [Intentionally omitted.]

c. Series A-6 Preferred Stock Conversion.

(1) "Series A-6 Conversion Number" means the number calculated according to the following formulas: (i) If the FDA Approval Date occurs prior to the Fifty-Four Month Anniversary Date, then the Series A-6 Conversion Number shall equal the average closing price for the Common Stock during the period beginning on the FDA Approval Date and ending on the date which is twenty (20) trading days following the FDA Approval Date, as reported on the National Exchange; or (ii) if the Fifty-Four Month Anniversary Date occurs prior to the FDA Approval Date, then the Series A-6 Conversion Number shall equal the average closing price for the Common Stock during the period beginning on the date which is twenty (20) trading days prior to the Fifty-Four Month Anniversary Date and ending on the Fifty-Four Month Anniversary Date, as reported on the National Exchange.

(2) The Series A-6 Preferred Stock shall not be convertible until the earlier of (i) twenty (20) trading days following the FDA Approval Date or (ii) the Fifty-Four Month Anniversary Date. Thereafter, each share of Series A-6 Preferred Stock shall be convertible, at the option of the holder thereof, into the number of shares of fully paid and nonassessable shares of Common Stock as equals seventy-five (75) divided by the Series A-6 Conversion Number (the "Conversion Rate" for the Series A-6 Preferred Stock).

d. Series A-7 Preferred Stock Conversion.

(1) "Series A-7 Conversion Number" means the average closing price for the Common Stock during the period beginning on the twentieth (20th) trading day preceding the date on which the holder gives notice of such holder's intention to convert (the "Notice Date") and ending on the Notice Date, as reported on the National Exchange.

(2) Each share of Series A-7 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the Fifty-Four Month Anniversary Date at the office of this Corporation or any transfer agent for such stock, into such number of shares of fully paid and nonassessable shares of Common Stock as equals (A) one hundred (100) divided by (B) the Series A-7 Conversion Number (the "Conversion Rate" for the Series A-7 Preferred Stock).

c. Automatic Conversion. (i) Each share of Series A-1, Series A-2, Series A-3, Series A-4 and Series A-5 Preferred Stock; (ii) each share of Series A-6 Preferred Stock that has become convertible at the option of the holder pursuant to Section 4(c); and (iii) each share of Series A-7 Preferred Stock that has become convertible at the option of the holder pursuant to Section 4(d), shall, in each case, automatically be converted into shares of Common Stock at its then effective Conversion Rate immediately upon the transfer of ownership by the initial holder to a third party which is not an Affiliate of such holder. For purposes hereunder, "Affiliate" shall mean a party that, directly or indirectly, through one or more intermediaries, controls or is controlled by such holder.

f. Mechanics of Conversion of Series A Preferred Stock. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued; provided, however, that in the event of an automatic conversion pursuant to Section 4(e), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Series A Preferred Stock are delivered to the Corporation or its transfer agent as provided herein. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series A-1, Series A-2, Series A-3, Series A-4, Series A-5 and Series A-6 Preferred Stock being converted and any accrued but unpaid dividends on the shares of Series A-7 Preferred Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, or in the case of automatic conversion pursuant to Section 4(e), on the date of transfer to the new non-Affiliate holder; and the person or persons entitled to receive the shares of Common Stock issuable upon

such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

g. Conversion Rate Adjustments of Series A Preferred Stock for Splits and Combinations. The Conversion Rate of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock shall be subject to adjustment from time to time as follows:

(1) In the event the Corporation should at any time or from time to time after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date"), fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Rate of the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(2) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Rate for the applicable series of Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares. Any adjustment under Section 4(g)(1) or (2) shall become effective at the close of business on the date the split, subdivision, stock dividend, other distribution or combination becomes effective.

h. Distributions. In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends), then, in each such case for the purpose of this subsection 4(h), the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

i. Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision or combination provided for elsewhere in this Section 4 or a change in control provided for in Section 3(c)) provision shall be made so that the holders of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the applicable Conversion Rate then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

j. No Impairment. This Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

k. No Fractional Shares and Certificate as to Adjustments.

(1) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Series A Preferred Stock or Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Series A Preferred Stock or Common Stock and the number of shares of Series A Preferred Stock or Common Stock issuable upon such aggregate conversion.

(2) Upon the occurrence of each adjustment or readjustment of the Conversion Rate of Series A Preferred Stock pursuant to this Section 4, this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (a) such adjustment and readjustment, (b) the Conversion Rate for such Series A Preferred Stock at the time in effect, and (c) the number of shares of Common

Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Stock.

1. Notices of Record Date. In the event of any taking by this Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series A Preferred Stock, at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

m. Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock, respectively, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock, respectively, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A-1, Series A-2, Series A-3, Series A-4, Series A-5, Series A-6 and Series A-7 Preferred Stock, respectively, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to its Certificate of Incorporation.

n. Notices. Any notice required to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this Corporation.

5. Voting Rights. The holders of shares of Series A Preferred Stock shall not have any voting rights, except as required under the General Corporation Law of Delaware.

6. Status of Unissued, Converted or Redeemed Stock. In the event any shares shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of this Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock. In the event the Corporation issues less than the number of authorized shares of any subseries of Series A Preferred Stock, the Certificate of Incorporation of this

Corporation shall be appropriately amended to effect a corresponding reduction in such subseries of Preferred Stock.

7. **Cancellation of Series A-3 Preferred Stock.** If the Approval Process Event has not occurred on or before the First Anniversary Date and if the Patent Milestone Event occurs prior to the Third Anniversary Date, then this Corporation may, at its option, cancel that number of shares of Series A-3 Preferred Stock (or if an insufficient number of shares of Series A-3 Preferred Stock are outstanding, then an equivalent number of outstanding shares of other subseries of Series A Preferred Stock or Common Stock) equal to \$2,500,000 divided by the Series A-3 Cancellation Price, where the "Series A-3 Cancellation Price" equals the higher of the (i) price paid per share for the Series A-3 Preferred Stock on the date of issuance, or (ii) fair market value of the Series A-3 Preferred Stock calculated as (A) the average closing price for the Corporation's Common Stock during the period beginning twenty-three (23) trading days prior to the date of cancellation and ending three (3) trading days prior to the date of cancellation, as reported on the National Exchange, multiplied by (B) the Conversion Rate for the Series A-3 Preferred Stock.

8. **Cancellation of Series A-7 Preferred Stock.** If the FDA Approval Date occurs on or before the Fifty-Four Month Anniversary Date, the Corporation shall cancel all of the then outstanding shares of Series A-7 Preferred Stock by crediting therefor an amount equal to the liquidation preference of such shares (including accrued but unpaid dividends) against the milestone payments due the Corporation pursuant to the Collaboration Agreement, such amount to be credited first to the milestone payment payable upon Regulatory Approval in the United States (as described in Section 7.4 of the Collaboration Agreement) and second, to the extent the aforesaid liquidation preference remains unpaid, to the milestone payment then payable on the date of regulatory approval in the first Major European Country (as described in Section 7.4 of the Collaboration Agreement) (collectively, the "Milestone Payments"). If at any time there is a Default Event (defined below), the Corporation shall immediately cancel all of the outstanding shares of Series A-7 Preferred Stock by paying the holders in cash an amount equal to the liquidation preference of such shares (including accrued but unpaid dividends) (an "Acceleration Event"). If the Corporation is unable to cancel such shares of Series A-7 Preferred Stock within seven (7) calendar days from the occurrence of the Default Event, then notwithstanding any provision herein to the contrary, the holder of such shares may, at its sole election, convert such shares into shares of Common Stock of the Corporation equal to the liquidation preference of such shares (including accrued but unpaid dividends) divided by the Original Issue Price for such subseries multiplied by the Conversion Rate for the Series A-7 Preferred Stock. If there is an Acceleration Event and the holder receives cash or converts to Common Stock in exchange for cancellation of the outstanding shares of Series A-7 Preferred Stock as described in the preceding sentence, the holder shall be obligated to pay, in cash, to the Corporation, any and all Milestone Payments as such payments become due under the Collaboration Agreement.

A "Default Event" shall mean the occurrence of any of the following events:

(i) Distributions. Failure to make a required payment or distribution hereunder;

(ii) Material Adverse Event. At the end of any fiscal quarter, the total cash, cash equivalents and marketable debt investments of the Corporation shall be valued at less than the sum of the principal of and unpaid accrued interest on (i) all indebtedness of the Corporation to banks, insurance companies or financial institutions regularly engaged in the business of lending money, which is for money borrowed by the Corporation; (ii) all purchase money security interests in an amount not to exceed \$5,000,000 (as defined in the California Uniform Commercial Code); and (iii) the liquidation preference of the outstanding Series A-7 Preferred Stock. In such event, the Corporation shall provide holder with written notice thereof within twenty-four (24) hours of determining that such event has occurred.

(iii) Bankruptcy Commenced by the Corporation. If the Corporation:

(a) shall commence any proceeding in bankruptcy or seek reorganization, arrangement, readjustment of its debts, dissolution, liquidation, winding-up, composition or any other relief under the United States Bankruptcy Act, as amended, or under any other insolvency, liquidation, dissolution, arrangement, composition, readjustment of debt or any other similar act or law, of any jurisdiction, domestic or foreign, now or hereafter existing;

(b) shall admit its inability to pay its debts as they mature in any petition or pleading in connection with any such proceeding;

(c) shall apply for, or, in writing, consent to or acquiesce in, an appointment of a receiver, conservator, trustee or similar officer for it or for all or substantially all of its assets;

(d) shall make a general assignment for the benefit of creditors;

or

(e) shall admit in writing its inability to pay its debts as they mature;

(iv) Bankruptcy Commenced Against the Corporation. If any proceedings are commenced or any other action is taken against the Corporation in bankruptcy or seeking reorganization, arrangement, readjustment of its debts, dissolution, liquidation, winding-up, composition or any other relief under the United States Bankruptcy Act, as amended, or under any other insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or any other similar act or law, of any jurisdiction, domestic

or foreign, now or hereafter existing; or a receiver, conservator, trustee or similar officer for the Corporation or for all or substantially all of its assets is appointed; and in each such case, such event continues for ninety (90) days undismissed, unbounded and undischarged; and

(v) Material Breach. (A) Any breach of any material representation, warranty, covenant or obligation of the Corporation under (i) the Collaboration Agreement, which breach is not cured within sixty (60) days of written notice thereof from Genentech (or if such breach is not susceptible of cure within such period, the Corporation is not making diligent good faith efforts to cure such breach); (ii) the Preferred Stock Purchase Agreement, the Option Agreement or the Registration Rights Agreement, which breach is not cured within thirty (30) days after receipt of written notice of such breach from Genentech to the Corporation; or (iii) the ML/MS Agreement, to the extent such breach materially adversely affects the Corporation's ability to perform its obligations under the Collaboration Agreement; or (B) if, at any time, any of the Collaboration Agreement, the Series A Preferred Stock Agreement, the Option Agreement or the Registration Rights Agreement ceases to be in full force and effect.

* * *

BPMPA1\ACE\0213206.02
04/03/97

A-12.

State of Delaware
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 RESTATED CERTIFICATE OF "IDEC PHARMACEUTICALS CORPORATION", FILED IN THIS OFFICE ON THE FOURTH DAY OF APRIL, A.D. 1997, AT 2 O'CLOCK P.M.

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



Handwritten signature of Edward J. Freel in cursive.

Edward J. Freel, Secretary of State

2726078 8100

971110254

AUTHENTICATION:

8409304

DATE:

04-08-97