

05-31-2000



101369513

SHEET
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Docket No.:

41803-4

Tab settings

To the Honorable Commissione

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Winfield Medical



05-02-2000

U.S. Patent & TMOfo/TM Mail Rcpt. Dt. #31

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

Name: Maxxim Medical, Inc.

Internal Address: 10300 49th Street North

Street Address: 10300 49th Street North

City: Clearwater State: FL ZIP: 34622

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

- Association
- Limited Partnership

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

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

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

Execution Date: June 26, 1998

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,836,113 1,612,904
1,621,041
1,585,468

Additional numbers Yes No

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

Name: Kenneth M. Bush

Internal Address: SIROTE & PERMUTT, P.C.

P.O. Box 55727

Birmingham, AL 35255-5727

Street Address: SIROTE & PERMUTT, P.C.

2311 Highland Ave.

City: Birmingham State: AL ZIP: 35205

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41): \$ 160.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501346

05/31/2000 DNGUYEN 00000048 1836113

DO NOT USE THIS SPACE

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

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.

Kenneth M. Bush

Name of Person Signing

Signature

5-2-00
Date

EE857302464US

Total number of pages including cover sheet, attachments, and

9

TRADEMARK

REEL: 002080 FRAME: 0416

Repln. Ref'd 05/31/2000 DNGUYEN 015381400
DAR=501346 Name/Number:1836113 \$48.00 CR
FC: 704

A0510584



SECRETARY OF STATE

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pages

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

Jul 01 1998



Bill Jones

Secretary of State

A0510584

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

JUN 26 1998

AGREEMENT OF MERGER

BILL JONES, Secretary of State

THIS AGREEMENT OF MERGER is made and entered into as of this 26th day of June, 1998, by and among **MAXXIM MEDICAL, INC.**, a Delaware corporation ("Maxxim"), **MAXXIM MERGER COMPANY**, a California corporation which is a wholly-owned subsidiary of Maxxim (the "Disappearing Corporation"), and **WINFIELD MEDICAL**, a California corporation (the "Surviving Corporation"). The Disappearing Corporation and the Surviving Corporation are sometimes together referred to below as the "Constituent Corporations." In consideration of the covenants and conditions contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Background and Purpose.** Maxxim and the Constituent Corporations are parties to that certain Agreement and Plan of Reorganization (the "Reorganization Agreement") dated June 26, 1998, pursuant to which the parties have agreed that Maxxim shall acquire the Surviving Corporation by the merger of the Disappearing Corporation with and into the Surviving Corporation (the "Merger"). This Agreement describes the principal terms upon which the Merger will be consummated.

2. **Disappearing Corporation.** The Disappearing Corporation is duly organized, existing and in good standing under the laws of the State of California. The Disappearing Corporation has One Thousand (1,000) shares of authorized capital stock, of which One Thousand (1,000) shares are issued and outstanding.

3. **Surviving Corporation.** The Surviving Corporation is duly organized, existing and in good standing under the laws of the State of California. The Surviving Corporation has Two Million (2,000,000) shares of authorized common stock, of which Eight Hundred Twenty-Two Thousand Four Hundred Sixty-Two (822,462) shares are issued and outstanding, and has Two Hundred Fifty Thousand (250,000) shares of authorized preferred stock, of which no shares are issued and outstanding.

4. **Boards of Directors Approval.** The Boards of Directors of the Constituent Corporations deem it to be in the best interests of the corporations and their shareholders that the Disappearing Corporation be merged with and into the Surviving Corporation in accordance with California General Corporation Law Section 1100 *et seq.* The Boards hereby adopt on behalf of their corporations the plan of reorganization set forth in this Agreement of Merger.

5. **Merger.** Upon the terms and subject to the conditions precedent contained in this Agreement and the Reorganization Agreement, at the Effective Time (as defined below) the Disappearing Corporation shall be merged with and into the Surviving Corporation. At the Effective Time, the Surviving Corporation shall survive the Merger, its corporate existence shall continue unaffected by the Merger and the Disappearing Corporation's separate existence shall cease. Without any other transfer or documentation, at the Effective Time of the Merger, the Surviving Corporation shall: (a) succeed to all of the Disappearing Corporation's rights and property; and (b) be subject to all the Disappearing Corporation's liabilities and obligations.

After the Effective Time the Surviving Corporation's proper officers and directors may perform any acts necessary or desirable to vest or confirm the Surviving Corporation's possession of and title to any property or rights of the Disappearing Corporation, or otherwise carry out this Agreement's purposes, including the execution and delivery of deeds, assurances, assignments or other instruments.

6. **Conversion of Shares.** At the Effective Time and by virtue of the Merger, the rights of the shareholders of the Constituent Corporations and the conversion of their shares shall be as follows:

(a) **Conversion of Surviving Corporation's Capital Stock.** At and as of the Effective Time, (i) each share of the Surviving Corporation's common stock (other than any dissenting shareholders' shares) shall be converted into the right to receive an amount equal to approximately Thirty Six and 60/100 Dollars (\$36.60) in cash, after deduction of the Surviving Corporation's estimated transactional costs and subject to adjustment as provided in the Reorganization Agreement, and (ii) the shares of each shareholder dissenting to the Merger shall be converted into the right to receive payment from the Surviving Corporation with respect thereto in accordance with the provisions of the California General Corporation Law.

(b) **Conversion of Disappearing Corporation's Capital Stock.** At and as of the Effective Time, each share of the Disappearing Corporation's common stock shall be converted into one (1) share of common stock of the Surviving Corporation.

7. **Stock Certificates.** At and after the Effective Time, all of the Disappearing Corporation's outstanding stock certificates shall be deemed to represent ownership of the Surviving Corporation's shares into which the Disappearing Corporation's shares have been converted (as provided above). The holders of the Surviving Corporation's certificates immediately prior to the Effective Time shall after the Effective Time surrender such certificates to First Union National Bank, as Paying Agent, and upon receipt thereof, the Paying Agent, on behalf of Maxxim, shall make cash payments to the shareholders of the Surviving Corporation as provided above.

8. **Articles of Incorporation.** The Surviving Corporation's Articles of Incorporation as amended and in effect immediately prior to the Effective Time shall continue to be its Articles of Incorporation without change as a result of the Merger.

9. **Bylaws.** The Surviving Corporation's Bylaws as amended and in effect immediately prior to the Effective Time shall continue to be its Bylaws without change as a result of the Merger.

10. **Submission to Shareholders.** This Agreement shall be submitted for adoption and approval by the shareholders of each of the Constituent Corporations in conformity with the laws of the State of California. Upon the adoption and approval of this Agreement by the

shareholders of each of the Constituent Corporations, the Agreement shall be signed by the duly authorized officers of each of the Constituent Corporations.

11. **Effective Time.** Provided this Agreement is not abandoned, the Effective Time of the Merger shall be at the close of business on the date when this Agreement of Merger with officers' certificates attached is duly filed in the office of the California Secretary of State in accordance with California General Corporation Law Section 1103.

12. **Abandonment of Merger.** Any time prior to the Effective Time, this Merger may be abandoned without further obligation or liability by action of the board of directors of either of the Constituent Corporations, notwithstanding approval of the Merger by their shareholders.

13. **Counterparts.** This Agreement of Merger may be executed in any number of counterparts, each of which shall constitute an original instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective duly authorized officers, as of the date first written above.

"MAXXIM"


MAXXIM MEDICAL, INC.,
a Delaware corporation

By: 
Kenneth W. Davidson, President

By: 
Peter M. Graham, Secretary

"DISAPPEARING CORPORATION"

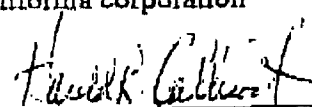
MAXXIM MERGER COMPANY,
a California corporation

By: 
Kenneth W. Davidson, President

By: 
Kenneth W. Davidson, Secretary

"SURVIVING CORPORATION"

WINFIELD MEDICAL,
a California corporation

By: 
Harold R. Callicott, President

By: 
Carolyn M. Durden, Secretary

OFFICERS' CERTIFICATE REGARDING MERGER
CERTIFICATE OF OFFICERS OF WINFIELD MEDICAL

The undersigned, Harold R. Callicoa and Carolyn M. Durden, do hereby certify that:

1. They are the President and Secretary, respectively, of Winfield Medical, a California corporation (the "Corporation").

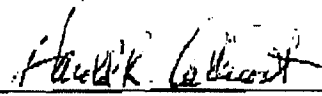
2. The total number of outstanding shares of each class of the Corporation entitled to vote on the merger described in the Agreement of Merger to which this certificate is attached is Eight Hundred Twenty-Two Thousand Four Hundred Sixty-Two (822,462) shares of Common Stock, no par value, and no shares of Preferred Stock.

3. The principal terms of the Agreement of Merger in the form attached were approved by the Corporation by a vote of a number of shares of each class which exceeded the vote required. The sole class entitled to vote was the Corporation's Common Stock, and a majority vote was required of such class.

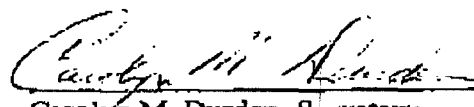
4. No vote of the shareholders of Maxxim Medical, Inc. was required.

Each of the undersigned declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true of his or her own knowledge.

IN WITNESS WHEREOF, the undersigned have executed this Officers' Certificate the 26th day of June, 1998.



Harold R. Callicoa, President



Carolyn M. Durden, Secretary

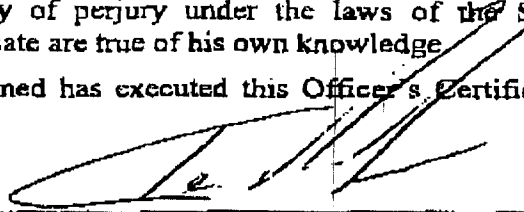
OFFICER'S CERTIFICATE REGARDING MERGER
CERTIFICATE OF OFFICERS OF MAXXIM MERGER COMPANY

The undersigned, Kenneth W. Davidson, does hereby certify that:

1. He is the President and Secretary of Maxxim Merger Company, a California corporation (the "Corporation").
2. The total number of outstanding shares of each class of the Corporation entitled to vote on the merger described in the Agreement of Merger to which this certificate is attached is One Thousand (1,000) shares of Common Stock, par value \$.01 per share.
3. The principal terms of the Agreement of Merger in the form attached were approved by the Corporation by a vote of a number of shares of each class which exceeded the vote required. The sole class entitled to vote was the Corporation's Common Stock, and a majority vote was required of such class.
4. No vote of the shareholders of Maxxim Medical, Inc. was required.

The undersigned declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true of his own knowledge.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate the 26th day of June, 1998.



Kenneth W. Davidson, President and Secretary

