

1-31-92

REC

06-02-2000

BT

Patent and Trademark Office

05/08/00



To the Honorable Commissioner of Patent:

101372527

and original documents or copy thereof.

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

2. Name and address of receiving party(ies)
Name: Sulzer Spine-Tech Inc.
Internal Address:



- Individual(s)
- General partnership
- Corporation-State
- Other _____

- Association
- Limited Partnership

Street Address: 4000 Technology Drive

05-08-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #57

City: Angleton State: Texas Zip: 77515-4000

Additional name(s) of conveying party(ies) attached? yes no

- Individual(s) citizenship _____
- Association _____
- General partnership _____
- Limited partnership _____
- Corporation-state Delaware
- Other _____

If assignee is not domiciled in the U.S., a domestic representative designation is attached: Yes No (Designation must be a separate document from Assignment).

Additional name(s) & address(es) attached? Yes No

3. Nature of Conveyance:

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

Execution Date: April 1, 1998

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

A. Trademark Application No.(s)
75/392,374

B. Trademark registration No.(s)
1,978,864

Additional numbers attached? yes no

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

Scott Q. Vidas
VIDAS, ARRETT & STEINKRAUS, P.A.
Suite 2000
6109 Blue Circle Drive
Minnetonka, MN 55343-9131

6. Total number of applications and registrations involved : 2

7. Total fee (37 CFR 3.41): \$65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit Account Number: **22-0350**
(Attach duplicate 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.

Scott Q. Vidas

[Signature]
Signature

5/1/00
Date

Total number of pages including cover sheet, attachments, and document: 1

OMB No. 0651-011 (exp. 4/94)

Do not detach this portion

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

05/31/2000 DNGUYEN 00000104 75392374

01 FC:481
02 F. 481
40.00 DE
25.00 JP

TRADEMARK
REEL: 002082 FRAME: 0187

**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: 

Its: VICE PRESIDENT + Secretary

State of Minnesota

65332

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.

ARTICLES OF MERGER

503268

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 P. ...*

Its: *VICE President + Secretary*

SULZER SPINE-TECH INC.

By: *Lawrence P. ...*

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. ...*
Its: *Vice President + Secretary*

SULZER SPINE-TECH INC.

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

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

**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.

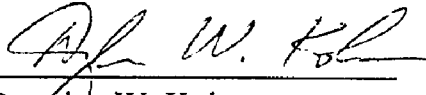


Lawrence H. Panitz

AFFIDAVIT

I, Douglas W. Kohrs, hereby certify that the attached Certificate of Merger is a true and correct copy of the original Certificate of Merger.

Sulzer Spine-Tech Inc.

By: 

Douglas W. Kohrs
General Manager/President

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATION**

In Re Application of:	Sulzer Spine-Tech Inc.
Serial No.:	75/392,374 74/548,495
Filed:	November 18, 1997 July 12, 1994
Mark:	BAK/PROXIMITY CERVI-LOK
Class(es):	10
TM Attorney:	Dana D. Latham



05-08-2000

U.S. Patent & TMO/TM Mail Rcpt Dt. #67

Box Assignment
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Docket No.: S56.4-6784 & S56.4-5002

TRANSMITTAL LETTER

- In regard to the above-identified application, we are submitting the attached:
1 Pg. Recordation Form Cover Sheet; Merger documents with attached Declaration; Check for \$65.00; VAS Transmittal Letter; and Postcard.
- With respect to fees:
 - No additional fee is required.
 - Attached is check(s) in the amount of \$65.00
 - Charge additional fee to our Deposit Account No. 22-0350.
- CONDITIONAL PETITION FOR EXTENSION OF TIME**
This conditional petition is being filed along with the papers identified in Item 1 above and provides for the possibility that Applicant has inadvertently overlooked the need for a petition and fee for extension of time or for a petition and fee for any other matter petitionable to the Commissioner as required. If any extension of time for the accompanying response is required or if a petition for any other matter is required, by petitioner, Applicant requests that this be considered a petition therefor.
- Notwithstanding paragraph 2 above, if any additional fees associated with this communication are required and have not otherwise been paid, including any fee associated with the Conditional Petition for Extension of Time, or any request in the accompanying papers for action which requires a fee as a petition to the Commissioner, please charge the additional fees to Deposit Account No. 22-0350. Please charge any additional fees or credit overpayment associated with this communication to the Deposit Account No. 22-0350.

VIDAS, ARRETT & STEINKRAUS

By

Scott Q. Vidas
Scott Q. Vidas, Esq.
Reg. No. 30,812

Suite 2000
6109 Blue Circle Drive
Minnetonka, MN 55343
Telephone: (612) 563-3000
Fax: (612) 563-3001

Julie A. Parle
Certificate Under 37 CFR 1.8: I hereby certify that this Transmittal Letter and the paper(s) as described herein, are being deposited in the U.S. Postal Service, as FIRST CLASS MAIL addressed to BOX Assignment, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on April 4, 2000

Julie A. Parle

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATION

In Re Application of:	SpineTech Inc.
Serial No.:	75/392,374
Filed:	November 18, 1997
Mark:	BAK/PROXIMITY
Class(es):	10
TM Attorney:	Scott Q. Vidas
Law Office:	
Notice of Allowance Issue Date:	December 29, 1998

Dana D. Latham
Legal Instruments Examiner
ITU/Divisional Unit
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Docket No.: S56.4-6784

RESPONSE PURSUANT TO 36 CFR 3.73(b); TMEP Sec. 502

This is in response to the inquiry of Dana D. Latham of March 3, 2000 regarding the chain of title of the above trademark.

Enclosed please find a copy of the CERTIFICATE OF MERGER document showing the merger of Spine-Tech, Inc., with Sulzer Spine-Tech, Inc. This document was executed in April 1, 1998 and filed with the Secretary of State of the State of Delaware on April 6, 1998.

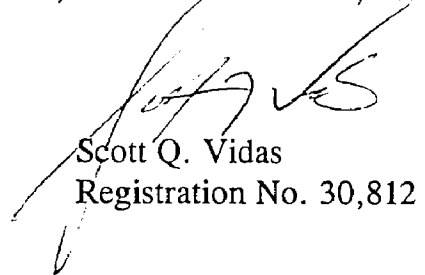
Applicant's attorneys trust that this documentation provides correct chain of title of this trademark. If further documentation is required, please do not hesitate to contact Applicant's attorney.

Respectfully submitted,

Vidas, Arrett & Steinkraus, P.A.

Date: March 31, 2000

By:



Scott Q. Vidas
Registration No. 30,812

6109 Blue Circle Drive, Suite 2000
Minnetonka, MN 55343-9131
Telephone: (612) 563-3000
Facsimile: (612) 563-3001

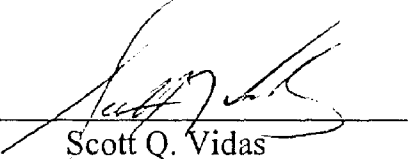
DECLARATION UNDER 37 C.F.R. Sec. 2.20

I, Scott Q. Vidas, declare that the attached documents are true and correct documents which show the Merger between Spine-Tech, Inc. and Sulzer Spine-Tech Inc.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

Signed at Minnetonka, Minnesota this 31st day of March , 2000.

by



Scott Q. Vidas