

RECORDATION
07-27-2001

HEET



101789703

Tab settings =>>>

To the Honorable Commissioner of Patents

Record the attached original documents or copy thereof.

1. Name of conveying party(ies): 7-23-01
TheraSense, Inc.

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State California
 Other _____

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

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

Name: TheraSense, Inc.
Internal Address: _____
Street Address: 1360 South Loop Road
City: Alameda State: CA ZIP: 94502

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) & address(es) attached? Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: October 23, 2000

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

A. Trademark Application No.(s)
75/697,764
75/793,921

B. Trademark Registration No.(s)
2,455,840

Additional numbers attached? Yes No

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

Name: Suzanne M. Turner
Internal Address: Wilson Sonsini Goodrich & Rosati
Trademark Docket

Street Address: 650 Page Mill Road

City: Palo Alto State: CA ZIP: 94304

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41)..... \$ 90.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
23-2415 Attn: 18387-900
(Attach duplicate copy of this page if paying by deposit account)

07/26/2001 TDIAZI 00000081 76697764

DO NOT USE THIS SPACE

01 FC:481 40.00 OP
02 FC:902 50.00 OP

I, Suzanne M. Turner, statement and signature. 40.00 OP
50.00 OP
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.

Suzanne M. Turner

July 18, 2001

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 10

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

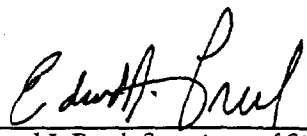
TRADEMARK
REEL: 002334 FRAME: 0970

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES: "THERASENSE, INC.", A CALIFORNIA CORPORATION, WITH AND INTO "THERASENSE, INC." UNDER THE NAME OF "THERASENSE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-THIRD DAY OF OCTOBER, A.D. 2000, AT 9 O'CLOCK A.M.

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




Edward J. Freel, Secretary of State

AUTHENTICATION: 0753040

DATE: 10-25-00

3283408 8100M

001536030

TRADEMARK
REEL: 002334 FRAME: 0971

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

THIS AGREEMENT AND PLAN OF MERGER dated as of October 20, 2000 (the "Agreement") is between TheraSense, Inc., a Delaware corporation ("TheraSense Delaware") and TheraSense, Inc., a California corporation ("TheraSense California"). TheraSense Delaware and TheraSense California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. TheraSense Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 70,609,647 shares, 50,000,000 of which are designated "Common Stock," \$0.001 par value, and 20,609,647 of which are designated "Preferred Stock," \$0.001 par value. Of such authorized shares of Preferred Stock, 4,500,123 shares are designated "Series A Preferred Stock," 7,609,524 shares are designated "Series B Preferred Stock" and 8,500,000 shares are designated as "Series C Preferred Stock." As of the date of this Agreement of Merger, 100 shares of Common Stock were issued and outstanding, all of which were held by TheraSense California. No shares of Preferred Stock were outstanding.

B. TheraSense California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 141,219,294 shares, 100,000,000 of which are designated "Common Stock," no par value, and 41,219,294 of which are designated "Preferred Stock," no par value. Of such authorized shares of Preferred Stock, 9,000,246 shares are designated "Series A Preferred Stock," 15,298,048 shares are designated "Series B Preferred Stock" and 17,000,000 shares are designated as "Series C Preferred Stock." As of the date of this Agreement and Plan of Merger, 10,182,895 shares of Common Stock, 8,891,550 shares of Series A Preferred Stock, 14,285,714 shares of Series B Preferred Stock and 16,980,320 shares of Series C Preferred Stock were issued and outstanding.

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

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

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

I. MERGER

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

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

(a) This Agreement and Merger shall have been adopted and approved by the shareholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof; and

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware.

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

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

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

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

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

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

III. MANNER OF CONVERSION OF STOCK

3.1 TheraSense California Common Shares. Upon the Effective Date of the Merger, two shares of TheraSense California Common Stock, no par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger, and without any action by the Constituent Corporations, by the holder of such shares or by any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation. No fractional share interests of Surviving Corporation Common Stock shall be issued. In lieu thereof, any fractional share interests to which a holder would otherwise be entitled shall be aggregated.

3.2 TheraSense California Preferred Shares.

(a) Upon the Effective Date of the Merger, two shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of TheraSense California, no par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of TheraSense California Common Stock as set forth in the TheraSense California Articles of Incorporation, as amended, shall, by virtue of the Merger, and without any action by the Constituent Corporations, by the holder of such shares or by any other person, be converted into or exchanged for one fully paid and nonassessable share of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, \$0.001 par value, of the Surviving Corporation, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which share of Preferred Stock shall be convertible into the shares of the Surviving Corporation's Common Stock, \$0.001 par value, as such share of TheraSense California Preferred Stock was so convertible into immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

3.3 TheraSense California Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of TheraSense California under, and continue, the option plans (including without limitation the 1997 Stock Option Plan) and all other employee benefit plans of TheraSense California. Each outstanding and unexercised option, other right to purchase, or security convertible into TheraSense California Common Stock or TheraSense California Preferred Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for every two shares of TheraSense California Common Stock or Preferred Stock, as the case may be, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to double the exercise price applicable to any such TheraSense California Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to TheraSense California Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 3.1 and 3.2, respectively, hereof.

(b) A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise of options, stock purchase rights and convertible securities equal to half the number of shares of TheraSense California Common Stock and TheraSense California Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

(c) The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion (unless the holder was entitled to a fractional interest immediately prior to the Merger). In lieu thereof, any fractional share interests to which a holder of an assumed Right (other than an option issued pursuant to TheraSense Delaware's 1997 Stock Option Plan) would otherwise be entitled upon exercise or conversion shall be aggregated (but only with other similar Rights which have the same per share terms). To the extent that after such aggregation, the holder would still be entitled to a fractional share with respect thereto upon exercise or conversion, the holder shall be entitled upon the exercise or conversion of all such assumed Rights pursuant to their terms (as modified herein), to one full share of Common Stock or Preferred Stock in lieu of such fractional share. With respect to each class of such similar Rights, no holder will be entitled to more than one full share in lieu of a fractional share upon exercise or conversion.

Notwithstanding the foregoing, with respect to options issued under the TheraSense California 1997 Stock Option Plan that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

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

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of TheraSense California Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of TheraSense California Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of TheraSense California Common Stock or Preferred Stock, as the case may be, were converted in the Merger.

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

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

If any certificate for shares of the Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

IV. GENERAL

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

(a) Qualify to do business as a foreign corporation in the State of California and, in connection therewith, irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by TheraSense Delaware of all of the franchise tax liabilities of TheraSense California.

(c) Take such other actions as may be required by the California General Corporation Law.

4.2 Further Assurances. From time to time, as and when required by TheraSense Delaware or by its successors or assigns, there shall be executed and delivered on behalf of TheraSense California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by TheraSense Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of TheraSense California and otherwise to carry out the purposes of this Agreement, and the officers and directors of TheraSense Delaware are fully authorized in the name and on behalf of TheraSense California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either TheraSense California or of TheraSense Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of TheraSense California or by the sole stockholder of TheraSense Delaware, or by both.

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

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

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1360 South Loop Road, Alameda, California 94502, and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.


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


4.8 FIRPTA Notification. (a) On the Effective Date of the Merger, TheraSense California shall deliver to TheraSense Delaware, as agent for the shareholders of TheraSense California, a properly executed statement (the "Statement") substantially in the form attached hereto as Exhibit A. TheraSense Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of TheraSense California immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of TheraSense California, (i) such shareholders shall be considered to have requested that the Statement be delivered to TheraSense Delaware as their agent and (ii) TheraSense Delaware shall be considered to have received a copy of the Statement at the request of the TheraSense California shareholders for purposes of satisfying TheraSense Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) TheraSense California shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

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


THERASENSE, INC.
a Delaware corporation

By: 
Charlie Llamas, Chief Financial Officer


Karen Dempsey
Secretary

THERASENSE, INC.
a California corporation

By: 
Charlie Llamas, Chief Financial Officer


Karen Dempsey
Secretary