

10-15-2001

Attorney Docket No 12258-007001



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101873789

10-4-01

Commissioner for Trademarks: Please retain the attached copies of an original document.

1. Name of conveying party(ies):
 InfraReDx, L.L.C.

Individual(s)
 Association
 General Partnership
 Limited Partnership
 Corporation—State
 Other Kentucky member-managed limited liability company

Additional name(s) attached? Yes No

2. Name and address of receiving party(ies):
 InfraReDx, Inc.
 125 Cambridge Park Drive
 Cambridge, Massachusetts 02140

Individual(s) Citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation—State Delaware
 Other _____

If the assignee is not domiciled in the United States, a domestic representative designation is attached. Yes No

Additional names/addresses attached? Yes No

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

Execution Date: November 17, 1999

4. Application number(s) or trademark number(s):
 A. Trademark Application No(s):
75/631,766

Additional numbers attached? Yes No

B. Trademark No(s):
007 - 4 000

5. Name/address of party to whom correspondence concerning document should be mailed:
 Timothy A. French
 Fish & Richardson P.C.
 225 Franklin Street
 Boston, Massachusetts 02110-2804

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR §3.41): \$40.00
 Enclosed
 Authorized to charge Deposit Account.

8. Deposit Account No.: 06-1050
 Please apply any additionally charges, or any credits, to our Deposit Account No. 06-1050.

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 the attached is a true copy of the original document.

Sean F. Heneghan
Name of Person Signing

October 4, 2001
Date

Total number of pages including cover sheet, attachments, and document: 27

recording form cover sheet (patent) (firstclass).doc

CERTIFICATE OF MAILING BY EXPRESS MAIL

Express Mail Label No. EL 856744695 US

I hereby certify under 37 CFR §1.10 that this correspondence is being deposited with the United States Postal Service as Express Mail Post Office to Addressee with sufficient postage on the date indicated below and is addressed to the Commissioner for Trademarks, Box ASSIGNMENTS, Washington, D.C. 20231

October 4, 2001
Date of Deposit

Signature

DEREK DOHERTY
Typed Name of Person Signing Certificate

TRADEMARK
REEL: 002382 FRAME: 0206

FROM CORPORATION TRUST-COVER, DE 302-674-8940 (THU) 11/18/99 16:34/ST. 16:33/NO. 4260103071 P 2

State of Delaware

PAGE 1

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 INCORPORATION OF "INFRARED X, INC.", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF NOVEMBER, A.D. 1999, AT 6 O'CLOCK P.M.

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



E. J. Freel

Edward J. Freel, Secretary of State

3127144 8100

991491001

AUTHENTICATION:

0089084

DATE:

11-16-99

INFRAREDx, INC.

CONTRIBUTION AGREEMENT

CONTRIBUTION AGREEMENT, dated as of November 17, 1999 by and among InfraRedx, Inc., a Delaware corporation (the "Corporation"); InfraRedx, LLC, a Kentucky member-managed limited liability company (the "LLC"); the individuals and entities listed under the heading "Member" on Exhibit A attached hereto (each a "Member" and collectively the "Members"); and William E. Charash ("Charash").

WHEREAS, the Members collectively are the record and beneficial owners of 100% of the interests in the LLC and each Member of the LLC wishes to transfer 100% of its limited liability company interest (the "LLC Interests") to the Corporation in exchange for shares of capital stock of the Corporation;

WHEREAS, Charash is the record and beneficial owner of 100% of the shares of capital stock of Infrascopes, Inc. ("Infrascopes") and wishes to transfer 100% of such shares ("Infrascopes Shares") to the Corporation in exchange for shares of capital stock of the corporation;

WHEREAS, the parties intend that the federal income tax consequences of the contribution of the LLC Interests to the Corporation in exchange for capital stock of the Corporation be determined under Section 351 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the parties hereto agree that simultaneously with the contribution of the LLC Interests, the LLC will be dissolved, and all assets and liabilities and property of every description shall be transferred and assigned to the Corporation, and the independent existence of the LLC shall cease upon the filing of the articles of dissolution with the Secretary of State of the Commonwealth of Kentucky.

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

CONTRIBUTION OF MEMBER LLC INTERESTS1.01 Transfer of Limited Liability Company Interests of the Members in Exchange for Capital Stock of the Corporation.

(a) Each Member hereby contributes, transfers, and assigns to the Corporation 100% of such Member's LLC Interest.

(b) In exchange for the contribution described in Section 1.01(a), the Corporation agrees to issue to the Members shares of Common Stock of the Corporation, \$.01

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par value per share (the "Common Stock"), in the amounts set forth opposite such Member's name on Exhibit A attached hereto.

(c) The LLC and each Member hereby consents to the transfers of the LLC Interests to the Corporation.

1.02 Investment Representations. In connection with the receipt by each Member of shares of capital stock of the Corporation pursuant to this Agreement, each such Member severally represents and warrants and agrees as follows:

(a) Such Member has been advised that such shares are not being registered under the Securities Act of 1933, as amended (the "Securities Act"), that there is no public market for such shares, and that there is no plan to register such shares under the Securities Act.

(b) Such Member is acquiring such shares for his (its) own account and not with a view to reselling or otherwise distributing such shares in violation of any relevant Federal or state securities laws. Such Member will not resell or otherwise dispose of such shares unless and until a registration statement under the Securities Act is then in effect with respect to such shares or an exemption from the registration requirements of such act is then, in fact, applicable to such transfer.

1.03 Representations and Warranties of the Members. Each Member hereby represents and warrants as follows:

(a) Such Member has good and marketable title to and unrestricted power to sell the LLC Interests free and clear of any mortgage, lien, pledge charge, securities interest or other encumbrance of any kind (collectively, "Liens" and each a "Lien") and, upon exchange to the Corporation thereof in accordance with the terms of this Agreement, the Corporation will obtain good and marketable title to such interests free and clear of any Lien. The LLC Interests to be sold by such Member are registered in the name of such Member. The LLC Interests transferred hereunder collectively comprise 100% of the LLC Interests outstanding on the date hereof.

(b) Such Member has the legal power, right and authority to enter into and perform this Agreement. The execution, delivery and performance of this Agreement by such Member (a) requires no action by or in respect of, or filing with, or consent of, any governmental body, agency or official or any person and (b) do not contravene, or constitute a default under, any provision of applicable law or regulation or of any agreement, judgment, injunction, order, decree or any other instrument binding upon such Member. This Agreement has been duly executed and delivered by such Member and constitutes a valid and binding obligation of such Member, enforceable in accordance with its terms.

(c) If such Member is serving as trustee or executor with respect to its LLC Interests, such Member is duly authorized and empowered by the instruments creating such trust or trusts or by the will of which such Member is acting as executor and under applicable law to

- 3 -

enter into and perform this Agreement, with respect to the LLC Interests held by such Member and to consummate the transactions contemplated herein.

ARTICLE II

CONTRIBUTION OF INFRASCOPE SHARES

2.01 Transfer of Infrascop Shares in Exchange for Capital Stock of the Corporation.

(a) Charash hereby contributes, transfers, and assigns to the Corporation 100% of his interest in Infrascop.

(b) In exchange for the contribution described in Section 2.01(a), the Corporation agrees to issue to Charash shares of Common Stock of the Corporation in the amounts set forth opposite his name on Exhibit A attached hereto.

(c) Charash, as the sole stockholder of Infrascop, hereby consents to the transfers of the Infrascop Shares to the Corporation.

2.02 Investment Representations. In connection with the receipt by Charash of shares of capital stock of the Corporation pursuant to this Agreement, Charash represents and warrants and agrees as follows:

(a) He has been advised that such shares are not being registered under the Securities Act of 1933, as amended (the "Securities Act"), that there is no public market for such shares, and that there is no plan to register such shares under the Securities Act.

(b) He is acquiring such shares for his own account and not with a view to reselling or otherwise distributing such shares in violation of any relevant Federal or state securities laws. He will not resell or otherwise dispose of such shares unless and until a registration statement under the Securities Act is then in effect with respect to such shares or an exemption from the registration requirements of such act is then, in fact, applicable to such transfer.

2.03 Representations and Warranties of the Members. Charash hereby represents and warrants as follows:

(a) He has good and marketable title to and unrestricted power to sell the Infrascop Shares free and clear of any mortgage, lien, pledge charge, securities interest or other encumbrance of any kind (collectively, "Liens" and each a "Lien") and, upon exchange to the Corporation thereof in accordance with the terms of this Agreement, the Corporation will obtain good and marketable title to such shares free and clear of any Lien. The Infrascop Shares to be sold by him are registered in his name. The Infrascop Shares transferred hereunder collectively comprise 100% of the outstanding stock of Infrascop on the date hereof.

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(b) He has the legal power, right and authority to enter into and perform this Agreement. His execution, delivery and performance of this Agreement (a) requires no action by or in respect of, or filing with, or consent of, any governmental body, agency or official or any person and (b) do not contravene, or constitute a default under, any provision of applicable law or regulation or of any agreement, judgment, injunction, order, decree or any other instrument binding upon him. This Agreement has been duly executed and delivered by him and constitutes his valid and binding obligation, enforceable in accordance with its terms.

(c) If he is serving as trustee or executor with respect to his Infrascopie Shares, he is duly authorized and empowered by the instruments creating such trust or trusts or by the will of which he is acting as executor and under applicable law to enter into and perform this Agreement, with respect to his Infrascopie Shares and to consummate the transactions contemplated herein.

ARTICLE III

THE DISSOLUTION

3.01 Dissolution of LLC. The parties agree that in connection with the completion of the transactions contemplated by Article I hereof, and in accordance with the provisions of this Agreement and the Kentucky Limited Liability Company Act, at the Effective Time (as hereinafter defined), the LLC shall be dissolved, and all assets and liabilities and property of every description shall be transferred and assigned to the Corporation (the "Dissolution") and the separate existence of the LLC shall thereby cease upon the filing of the Certificate of Cancellation in the Office of the Secretary of State of the Commonwealth of Kentucky.

3.02 Effect of the Dissolution.

(a) At the Effective Time, all of the estate, property, rights, privileges, powers and franchises of the LLC and all of its property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all membership interest or stock subscriptions and other choices in action belonging to either of them, shall be transferred to and vested in the Corporation, without further act or deed, and all claims, demands, property and other interest shall be the property of the Corporation, and the title to all real estate vested in the LLC shall not revert or be in any way impaired by reason of the Dissolution, but shall be vested in the Corporation.

(b) From and after the Effective Time, the rights of creditors or any liens upon property of the LLC shall not in any manner be impaired, nor shall any liability or obligation, including taxes due or to become due, or any claim or demand in any cause existing against such corporation or limited liability company, or any stockholder, director, officer or member thereof, as the case may be, be released or impaired by the Dissolution, but the Corporation shall be deemed to have assumed, and shall be liable for, all liabilities and obligations of each of the LLC

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in the same manner and to the same extent as if the Corporation had itself incurred such liabilities or obligations.

3.03 Additional Actions. If, at any time after the Effective Time, the 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 Corporation its right, title or interest in, to or under any of the rights, properties or assets of the LLC acquired or to be acquired by the Corporation as a result of, or in connection with, the Dissolution or to otherwise carry out this Agreement, the officers and stockholders of the Corporation shall be authorized to execute and deliver, in the name and on behalf of the LLC, or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the LLC, or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the LLC, 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 Corporation to otherwise carry out this Agreement.

3.04 Certificate of Incorporation. At the Effective Time, the Certificate of Incorporation of the Corporation filed with the Secretary of State of Delaware, as in effect immediately prior to the Effective Time, shall be the Certificate of and shall govern the Corporation until amended, amended and restated or terminated as provided by law.

3.05 Directors and Officers. Until the election and qualification of their successors in accordance with the Certificate of Incorporation and By-laws of the Corporation, the persons who serve as directors of the board of the Corporation immediately prior to the Effective Time shall remain as directors of the board of the Corporation.

3.06 Conditions: Effective Time.

(a) The Dissolution is conditioned upon (i) the fulfillment of all actions and conditions contemplated by Article I of this Agreement; (ii) the adoption of this Agreement by the Manager of the LLC and its individual Members; (iii) the adoption of this Agreement by the Board of Directors of the Corporation; and (iv) the execution and filing of articles of dissolution with the Secretary of State of the Commonwealth of Kentucky as required under section 275.315 of the Kentucky Revised Statute Annotated.

(b) If the conditions referred to in Section 3.06(a) above are satisfied, the Dissolution shall become effective upon filing of the articles of dissolution described above (the "Effective Time").

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ARTICLE IV

MODIFICATION; TERMINATION; MISCELLANEOUS

4.01 **Parties-in-Interest.** This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective heirs, administrators, executors, legal representatives, successors, and assigns, but no other person shall acquire or have any rights under this Agreement.

4.02 **Entire Agreement; Modification; Waiver.** This Agreement contains the entire agreement and understanding among the parties with respect to the subject matter hereof and supersedes all prior representations or warranties other than those set forth, provided for or referred to herein. All documents and instruments executed and delivered pursuant to or in connection with this Agreement are expressly made a part of this Agreement, as fully as though completely set forth herein, and all references to this Agreement herein, in any of such writings or elsewhere shall be deemed to refer to and include all such writings. Neither this Agreement nor any provision hereof may be modified, amended, waived, discharged, or terminated, in whole or in part except in writing signed by the party to be charged. No waiver of any such provision or of any breach of or default under this Agreement shall be deemed or shall constitute a waiver of any other provisions, breach, or default, nor shall any such waiver constitute a continuing waiver.

4.03 **All Actions Under Articles I, II and III Deemed Contemporaneous.** The parties hereto agree that notwithstanding anything to the contrary contained herein, all actions and conditions set forth in Articles I and II of this Agreement shall be deemed to have been undertaken and completed simultaneously as of the date first above written except for any such actions or conditions which the parties agree in writing shall be deemed prior or subsequent to the date hereof.

4.04. **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.

4.05 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof.

4.06 **Certain Filings.** The Corporation shall comply with its reporting obligations under Treasury Regulation Section 1.351-3(b) and any comparable provisions of state, local, and foreign law.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed and delivered as a sealed instrument as of the date first above written.

INFRAREDX, INC.

By: James E. Muller
Name:
Title: *President, Infraredx*

INFRAREDX, L.L.C.

By: _____
Name:
Title:

William E. Charash

MEMBERS:

MARQUARD FAMILY PARTNERSHIP, LTD.

By: _____
Name: William A. Marquard
Title: General Partner

Hilary J. Boone, Jr.

Orrie M. Friedman

Leon I. Charash

IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed and delivered as a sealed instrument as of the date first above written.

INFRAREDX, INC.

By: _____
Name:
Title:

INFRAREDX, L.L.C.

By: William E Charash
Name:
Title:

William E Charash
William E. Charash

MEMBERS:

MARQUARD FAMILY PARTNERSHIP, LTD.

By: _____
Name: William A. Marquard
Title: General Partner

Hilary J. Boone, Jr.

Orrie M. Friedman

Leon I. Charash

IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed and delivered as a sealed instrument as of the date first above written.

INFRAREDIX, INC.

By: _____
Name:
Title:

INFRAREDIX, L.L.C.

By: _____
Name:
Title:

William E. Charash

MEMBERS:

MARQUARD FAMILY PARTNERSHIP, LTD.

By: William A. Marquard
Name: William A. Marquard
Title: General Partner

Hilary J. Boone, Jr.

Orrie M. Friedman

Leon I. Charash

IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed and delivered as a sealed instrument as of the date first above written.

INFRAREDX, INC.

By: _____
Name:
Title:

INFRAREDX, L.L.C.

By: _____
Name:
Title:

William E. Charash

MEMBERS:

MARQUARD FAMILY PARTNERSHIP, LTD.

By: _____
Name: William A. Marquard
Title: General Partner

Hilary J. Boone, Jr.

Hilary J. Boone, Jr.

Orrie M. Friedman

Leon I. Charash

- 7 -

IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed and delivered as a sealed instrument as of the date first above written.

INFRARED X, INC.

By: _____
Name:
Title:

INFRARED X, L.L.C.

By: _____
Name:
Title:

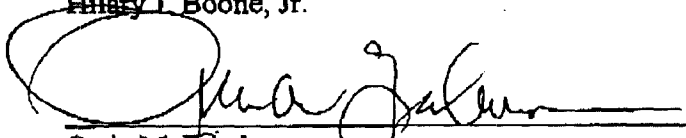
William E. Charash

MEMBERS:

MARQUARD FAMILY PARTNERSHIP, LTD.

By: _____
Name: William A. Marquard
Title: General Partner

Hillary I. Boone, Jr.



Orrie M. Friedman

Leon I. Charash

IN WITNESS WHEREOF, the parties hereto have caused this Contribution Agreement to be duly executed and delivered as a sealed instrument as of the date first above written.

INFRARED X, INC.

By: _____
Name:
Title:

INFRARED X, L.L.C.

By: _____
Name:
Title:

William E. Charash

MEMBERS:

MARQUARD FAMILY PARTNERSHIP, LTD.

By: _____
Name: William A. Marquard
Title: General Partner

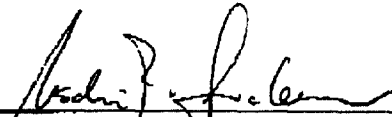
Hilary J. Boone, Jr.

Orrie M. Friedman

Leon I. Charash

Leon I. Charash

- 8 -



Uschi Ursula M. Graham

James E. Muller

Robert Lodder

Willy O'Conner

Pedro Moreno

UNIVERSITY OF KENTUCKY

By: _____
Name:
Title:

- 8 -

Uschi Ursula M. Graham

James E. Muller

James E. Muller

Robert Lodder

Willy O'Conner

Pedro Moreno

UNIVERSITY OF KENTUCKY

By: _____
Name:
Title:

Sent by: Frost & Jacobs Lexington

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11/16/99 16:09; ~~JetFax~~ #858; Page 12/12

- 8 -

Hilary J. Boone, Jr.

Orrie M. Friedman

Leon I. Charash

Uschi Ursula M. Graham

James E. Muller

Robert A. Lodder
Robert Lodder

Willy O'Conner

Pedro Moreno

UNIVERSITY OF KENTUCKY

By: _____
Name:
Title:

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- 8 -

Uschi Ursula M. Graham

James E. Muller

Robert Lodder

Willy O'Connor

Willy O'Connor

Pedro Moreno

UNIVERSITY OF KENTUCKY

By: _____
Name:
Title:

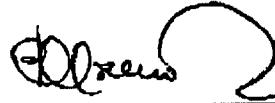
- 8 -

Uschi Ursula M. Graham

James E. Muller

Robert Lodder

Willy O'Conner



Pedro Moreno

UNIVERSITY OF KENTUCKY

By: _____

Name:

Title:

- 8 -

Uschi Ursula M. Graham

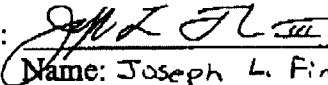
James E. Muller

Robert Lodder

Willy O'Comer

Pedro Moreno

**UNIVERSITY OF KENTUCKY
RESEARCH FOUNDATION**

By: 
Name: Joseph L. Fink III
Title: Special Assistant to the
Executive Director

BOOK 0566 PAGE 0817

0454779.06

ARTICLES OF DISSOLUTION

OF

INFRAREDx, LLC.

John Y. Brown III
Secretary of State
Received and Filed
10/30/2000 01:42 PM
Fee Receipt: \$40.00
Perkins - LAOD

Pursuant to Section 275.315 of the Kentucky Limited Liability Company Act (the "Act"), the undersigned hereby dissolves InfraReDx, LLC, a Kentucky member-managed limited liability company (the "LLC"), and states the following:

1. The name of the limited liability company is InfraReDx, LLC;
2. The LLC has been dissolved by the written consent of a majority-in-interest of the members of the LLC pursuant to Section 275.285(2) of the Act;
3. The dissolution shall be effective as of the date of filing of these Articles of Dissolution.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Dissolution as of this 23 day of October, 2000.

INFRAREDx, LLC

James E. Muller
James E. Muller, M.D.
Member

Document No.: DN2000152149
Lodged By: MAIL CT 2913- 3046
Recorded On: 11/09/2000 09:03:18
Total Fees: 9.00
Transfer Tax: .00
County Clerk: Bobbie Holsclaw-JEFF CO KY
Deputy Clerk: CARHAR

END OF DOCUMENT
SOODS4835N.1084828_1

FROM CORPORATION TRUST-COVER, DE 302-674-9340 (THU) 11. 13' 99 16:34/ST. 16:33/NO. 4260103071 P 3

CERTIFICATE OF INCORPORATION

OF

INFRAREDx, INC.

FIRST. The name of the corporation is InfraRedx, Inc. (the "Corporation").

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

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

FOURTH. The total number of shares of capital stock that the Corporation shall have authority to issue is 5,000,000 shares of Common Stock with a par value of \$.01 per share (the "Common Stock").

FIFTH. The Corporation is to have perpetual existence.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

B. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

FROM CORPORATION TRUST-COVER, DE 502-674-8340 (THU) 11. 18' 99 16:34/ST. 16:33/NO. 4260103071 P 4

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SEVENTH. The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such 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 Title 8 of the Delaware Code or (iv) for any transaction from which such director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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

NINTH. The name and mailing address of the sole incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Laurence P. Naughton	Testa, Hurwitz & Thibault, LLP High Street Tower 125 High Street Boston, MA 02110

TENTH. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of

FROM CORPORATION TRUST-COVER, DE 302-674-8340 (THU) 11. 18' 99 16:35/ST. 16:33/NO. 4260103071 P 5

- 3 -

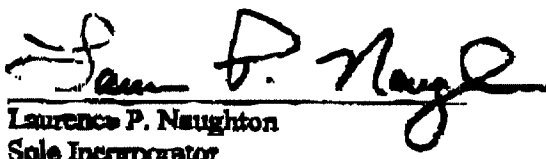
creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

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FROM CORPORATION TRUST-DOVER, DE 302-674-9340 (THU) 11.19.99 16:35/ST. 16:33/NO. 4260103071 P 6

- 4 -

I, **THE UNDERSIGNED**, being the sole incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 16th day of November, 1999.


Laurence P. Naughton
Sole Incorporator

FROM CORPORATION TRUST-DOVER DE 302-674-8940 (THU) 11.18'99 16:35/ST. 16:33/NO. 4260103071 P 7

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "INFRARED X, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTEENTH DAY OF NOVEMBER, A.D. 1999.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.



Edward J. Freel

Edward J. Freel, Secretary of State

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AUTHENTICATION: 0091283

DATE: 11-18-99



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Typed Drawing

Word Mark **INFRARED[®]X**

Goods and Services IC 010. US 026 039 044. G & S: Catheters; light sources for medical use; lasers for medical use; medical diagnostic apparatus, namely, near-infrared medical diagnostic apparatus

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75631766

Filing Date February 2, 1999

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Published for Opposition July 11, 2000

Owner (APPLICANT) InfraReDx L.L.C. LIMITED LIABILITY COMPANY
KENTUCKY 475 Woodlake Way Lexington KENTUCKY 40502

Attorney of Record Scot A. Duvall

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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