

07-23-2002

Attorney's Docket No.: W00512/20028 (PCL/CAC)



102164594

FORM COVER SHEET MARKS ONLY

FORM PTO-1594
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Commissioner of Patents and Trademarks : Please record the attached original documents or copy thereof.

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

7.18.02

- Individual(s)
- General Partnership
- Corporation
- Other - California Limited Liability Company
- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: December 29, 1998

2. Name and address of receiving party(ies)

Name: **Smith Industrial Supply Co.**
Internal Address:
Street Address: **2364 Baumann Avenue**
San Lorenzo, CA 94580

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)
2,071,831

Additional numbers attached? Yes No

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

Name: Peter C. Lando
Address: **WOLF, GREENFIELD & SACKS, P.C.**
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

6. Total number of applications and registrations
involved:..... [1]

7. Total fee (37 CFR 3.41).....\$ 40.00
 Please charge Deposit Account No. 500214

OFFICE OF PATENT RECORDS
 2002 JUL 18 AM 10:16
 FINANCE SECTION

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.

Peter C. Lando
Name

Peter C. Lando
Signature

11 July 2002
Date

Total number of pages including cover sheet, attachments, and document: [5]

Mail documents to be recorded with required cover sheet information to:
Box Assignment, Commissioner of Patents and Trademarks, Washington, DC 20231

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AGREEMENT AND PLAN OF MERGER

THIS IS AN AGREEMENT AND PLAN OF MERGER dated as of December 29, 1998, ("Agreement") by and between Bioblast, LLC, a California limited liability company ("Mergee"), and Smith Industrial Supply Co., a California corporation ("Smith"). Mergee and Smith are sometimes hereinafter collectively referred to as the "Constituent Entities."

BACKGROUND

In order to take advantage of more modern corporate law statute and a more fully-developed body of corporate case law, the members and the Board of Directors of Smith and the members of Mergee have duly approved this Agreement and its execution and delivery.

TERMS

The parties hereto agree as follows:

Article I

Merger. Subject to the terms and conditions hereof, at the Effective Time (as defined in Article I hereof) Mergee shall be merged with and into Smith (the "Merger") pursuant to the provisions of the California Corporations Code the separate existence of Mergee shall cease, and Smith shall be the surviving corporation ("Surviving Corporation") and continue its existence under California Law under the name "Smith Industrial Supply Co."

Effect of Merger. At the effective time of the Merger, the Surviving Corporation shall possess all the rights, privileges, powers and franchises of a public as well as of a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Entities; and all and singular, the rights, privileges, powers and franchises of each of the Constituent Entities, and all property, real, personal and mixed, and all debts due to any of said Constituent Entities on whatever account, for membership interests and stock subscriptions as well as all other things in action or belonging to each of Constituent Entities shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectual the property of the Surviving Corporation as they were of the several and respective Constituent Entities, and the title to any real estate vested by deed or otherwise in any of such Constituent Entities, shall not revert or be in any way impaired by reason of this Agreement; but all rights of creditors and all liens upon any property of any of said Constituent Entities shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Entities shall thenceforth attach to said Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Member Approval. Subsequent to the execution of this Agreement, Mergee shall submit this Agreement to each of its members for their approval pursuant to the applicable provisions of the California Corporations Code.

Instruments of Merger. Following the approval of this Agreement by the members of Mergee, upon fulfillment or waiver of the other conditions specified in Article IV hereof and provided that this Agreement has not been terminated pursuant to Article V hereof, the parties hereto will cause the Merger to be consummated by filing with the Secretary of State of the State of California the appropriate Certificate of Merger duly executed between and by Mergee and Smith Industrial Supply in accordance with the respective requirement of the California Corporations Code and this Agreement.

Effective Time. The Merger shall become effective as of the date and time that the Certificate of Merger is duly filed with the Secretary of State of California, (such date and time being herein sometimes referred to as the "Effective Time").

Article II

Certificate of Incorporation; Bylaws. The Certificate of Incorporation of the Surviving Corporation shall be the same as the Certificate of Incorporation of Smith as in effect at the Effective Time without further shareholder action. The Bylaws of the Surviving Corporation shall be the same as the Bylaws of Smith in effect at the Effective Time without further shareholder action.

Directors. The directors of Smith Industrial Supply immediately prior to the Effective Time shall continue as the directors of the Surviving Corporation after the Effective Time, to hold office until the expiration of their current terms, or their prior resignation, removal or death.

Officers. The officers of Smith immediately prior to the Effective Time shall continue as the officers of the Surviving Corporation after the Effective Time, to hold office until at the pleasure of the Board of Directors of the Surviving Corporation.

Article III

Conversion of Membership Interest. At the Effective Time: Each membership interest of Mergee ("Membership Interest") outstanding immediately prior to the Effective Time shall, without any action on the part of the holder thereof, be canceled and no cash, securities or other consideration shall be delivered in exchange therefor. The issued and outstanding common stock in Smith shall not be affected by the Merger.

Article IV

Conditions of Merger. Consummation of the Merger is subject to the satisfactions of the following conditions on or before the Effective Time:

Member & Shareholder Approval. The Merger shall have received the requisite approval of the members of Mergee and sole shareholder of Smith;

Third Party Consents. All required consents of third parties with respect to the transactions contemplated by this Agreement are obtained.

These conditions regarding third-party consents set forth above may be waived at the discretion of the Board of Directors of the Company.

Article V

Modification and Termination. Notwithstanding satisfaction of the conditions set forth in Article IV hereof, at any time before the Effective Time, (a) this Agreement may be modified in any manner not inconsistent with its general purpose by the members of Mergee and the Board of Directors of Smith, provided that no modification, unless adopted and approved by the members of Mergee in the manner prescribed under California law, shall (i) change any of the terms of the Certificate of Incorporation or (ii) change the terms of this Agreement, if any such change would adversely affect the members of Mergee; and (b) this Agreement may be terminated and abandoned, or its consummation deferred for a reasonable period, if in the opinion of Mergee's members, or in the case of deferral, of an authorized member, such action would be in the best interests of Mergee and its members.

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

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

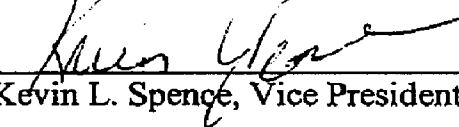
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CONSTITUENT ENTITIES:


BIOBLAST, LLC.

A California Limited Liability Company

Smith Industrial Supply Co. (Member)

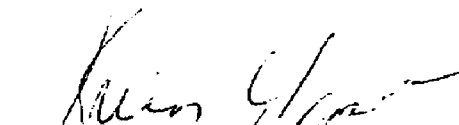
By: 
Kevin L. Spence, Vice President

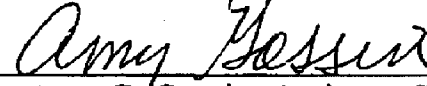
Thomas Warren (Member)



SMITH INDUSTRIAL SUPPLY CO.

A California Corporation

By: 
Kevin L. Spence, Vice President

By: 
Amy G. Gossin, Assistant Secretary