

10-29-2002



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OCT 25 PM 12:13

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10-25-02

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID # 102175414
- Correction of PTO Error  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_
- Corrective Document  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

Conveyance Type

- Assignment  License
  - Security Agreement  Nunc Pro Tunc Assignment
  - Merger  Change of Name
  - Other PURCHASE AND SALE AGREEMENT
- Effective Date  
Month Day Year  
JUNE 29, 1999

Conveying Party

Mark if additional names of conveying parties attached

Name ALLERGAN, INC.

Execution Date  
Month Day Year  
JUNE 29, 1999

Formerly \_\_\_\_\_

- Individual  General Partnership  Limited Partnership  Corporation  Association

Other \_\_\_\_\_

Citizenship/State of Incorporation/Organization DELAWARE

Receiving Party

Mark if additional names of receiving parties attached

Name MERZ PHARMACEUTICALS, LLC

DBA/AK/A \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 4215 TUDOR LANE

Address (line 2) \_\_\_\_\_

Address (line 3) GREENSBORO NC 27410

- Individual  General Partnership  Limited Partnership  Corporation  Association

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Other LIMITED LIABILITY COMPANY

Citizenship/State of Incorporation/Organization NORTH CAROLINA

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Registration Number(s)**

<input type="text" value="1704479"/>	<input type="text" value="1337414"/>	<input type="text" value="2043431"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

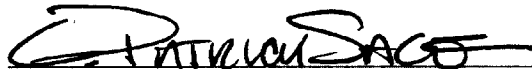
Yes

No

**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. Charges to deposit account are authorized, as indicated herein.

G. PATRICK SAGE



OCTOBER 8, 2002

Name of Person Signing

Signature

Date Signed

RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY

FORM PTO-1618C  
Expires 06/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year  
JUNE 29, 1999

Name ALLERGAN SALES, INC.

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship State of Incorporation/Organization CALIFORNIA

**Receiving Party**

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual  General Partnership  Limited Partnership

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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OFFICE OF  
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FINANCIAL SECTION

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06/01/2002 6TOM11 00000045 1704479  
01 FC:481 40.00 DP  
02 FC:482 50.00 DP

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Address (line 4)

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Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1704479"/>	<input type="text" value="1337414"/>	<input type="text" value="2043431"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

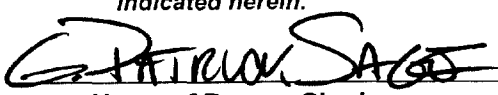
Method of Payment: Enclosed  Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.) Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**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. Charges to deposit account are authorized, as indicated herein.

  
Name of Person Signing

  
Signature

JULY 22, 2002  
Date Signed

RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY

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Trademark Application Number(s)

Registration Number(s)



# PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement"), dated this \_\_\_th day of June 1999 is entered into among MERZ PHARMACEUTICALS, LLC, a limited liability company ("Buyer"), ALLERGAN, INC., a Delaware corporation, and ALLERGAN SALES, INC., a California corporation (collectively, with Allergan, Inc., "Seller").

## RECITALS

WHEREAS, Seller manufactures, markets and distributes certain alpha hydroxy acid-based ("AHA") skin care products, including Seller's product lines sold under the trademark "Aquaglycolic";

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller certain assets hereinafter described, and Seller desires to grant to Buyer, and Buyer desires to obtain from Seller, a license to certain rights hereinafter described, all upon the terms and conditions and for the purchase price hereinafter set forth; and

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, which are hereby incorporated as part of this Agreement, and the mutual covenants set forth herein, Buyer and Seller hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

The following terms (except as otherwise expressly provided) for all purposes of this Agreement shall have the following respective meanings (it being understood that the term defined in this Agreement, whether in this Article 1 or otherwise, shall include in the singular number the plural, and in the plural number the singular):

1.1 "Acquired Assets" shall have the meaning set forth in Section 2.1.

1.2 "Affiliate(s)" shall mean with respect to any Person (as defined below), an Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person. A Person shall be deemed to control corporation (or other entity), if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation (or other entity) whether through the ownership of voting securities, by contract or otherwise.

1.3 "Agreement" shall mean this Purchase and Sale Agreement, including the Exhibits and Schedules attached hereto.

(b) any healthcare organization, including, but not limited to, hospitals, group purchasing organization, hospices, nursing homes, physician practice groups, ambulatory surgery centers and managed care organizations (such as HMOs, PPOs, PSOs, PBMs, and the like), but in each case, only to the extent that any such healthcare organization is purchasing Product for or on behalf of a dispensing healthcare provider (as described in clause (a) of this Section 1.25) and

(c) any distributor or wholesaler that services any of the healthcare provider or healthcare organizations described in clauses (a) and (b), respectively, of this Section 1.25 but, in each case, only to the extent that any such distributor or wholesaler is purchasing Product for or on behalf of a dispensing healthcare provider (as described in clause (a) of this Section 1.25).

Notwithstanding the foregoing, the term "Physician" and or "Direct Dispensing Physician" shall not include (i) the persons named in Schedule 1.25 hereof, (ii) plastic surgeons or (iii) 75 other non-dermatologist physicians.

1.26 "Product(s)" shall mean the Aqua Glycolic aesthetic skin care product line (a more fully described in Schedule 1.26 attached hereto).

1.27 "Purchase Price" shall have the meaning set forth in Section 2.2(a)(1).

1.28 "Regulatory Permits" shall mean the pending or approved United States and worldwide regulatory permits, waivers, certificates, consents and approvals (including applications therefor) to own, manufacture, assemble, market, distribute and/or sell the Product in the Territory that are owned by Seller and set forth on Schedule 1.28.

1.29 "Required Consents" shall have the meaning set forth in Section 5.4(b).

1.30 "License Agreement" shall mean the License Agreement in the form attached hereto as Exhibit A or a license or sublicense which Seller is able to negotiate with Licensor Tristrata and Polystrata in any other form that affords Buyer substantially the same or similar rights as the License attached hereto as Exhibit A.

1.31 "Third Party Claim" shall have the meaning set forth in Section 8.4(a).

1.32 "Trademark Rights" shall mean those trademarks listed on Schedule 1.32 including applications and registrations therefor and the associated goodwill.

## ARTICLE 2

### THE TRANSACTION

2.1 **The Transaction.** At the Closing, subject to the terms and conditions set forth in this Agreement, Seller shall sell, convey, transfer, assign, and deliver to Buyer, and Buyer shall purchase and accept from Seller, all of Seller's right, title and interest to the following assets (in each case, subject to any rights of Seller pursuant to Section 5.14 below) (the "Acquired Assets"): (1) the Trademark Rights, including all goodwill associated therewith; (2) rights to th



(iv) Seller shall use commercially reasonable efforts to preserve intact the Acquired Assets and preserve its relationships with customers, suppliers and other Person having business dealings with the Seller with respect to the Products in the Territory (other than distributors).

**5.2 Additional Pre-Closing Covenants.** Subject to the terms and conditions hereinafter provided, prior to the Closing, each of the Parties shall:

(a) use commercially reasonable efforts to do, or cause to be done, all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement and to cooperate with each other in connection with the foregoing, including without limitation, obtaining, making and causing to become effective all Required Consents and all approvals, consents or authorizations of any Governmental Authority required for the consummation of the transactions contemplated by this Agreement;

(b) use all reasonable efforts to defend all lawsuits or other legal proceedings challenging this Agreement or the consummation of the transactions contemplated hereby;

(c) use all reasonable efforts to lift or rescind any injunction or restraining order or other order adversely affecting the ability of the parties to consummate the transaction contemplated hereby; and

(d) effect all necessary registrations and filings and submissions of information required or requested by Governmental Authorities with respect to the transaction contemplated hereby.

**5.3 Transfer of Assets.** Buyer agrees to take all necessary actions, at Buyer's sole expense, to transfer the legal ownership of the Trademark Rights and other Acquired Assets from Seller to Buyer. Seller agrees to provide reasonable assistance to Buyer to effect such transfers at Buyer's expense. Buyer shall be responsible for all shipping charges, insurance and other costs to transport the Acquired Assets, and shall assume all risk of loss pertaining to the tangible Acquired Assets, upon delivery F.C.A. Seller's plant (until then risk of loss shall be on Seller).

#### **5.4 Required Consents.**

(a) Notwithstanding any contrary provision herein, to the extent that the assignment of any Assumed Contract or other Acquired Asset to Buyer hereunder shall require the consent, approval or waiver of any Person, this Agreement shall not constitute an agreement to assign the same if such an assignment would not be valid or would constitute a breach thereof. Any assignment to Buyer of any such Assumed Contract or Acquired Asset that requires the consent, approval or waiver of a third party shall be made subject to such consent, approval or waiver being obtained.

(b) Seller will use commercially reasonable efforts at its expense to obtain all material required approvals and consents (or waivers thereof) to the assignment of the Assumed Contracts or other Acquired Assets specifically designated on Schedule 5.4(b) ("Required Consents"), which Seller agrees constitute all of the material approvals and consents necessary to this transaction. Each party shall cooperate with the other and take all reasonable steps to

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the respective duly authorized officers as of the date first above written.

**MERZ PHARMACEUTICALS LLC**

By: R. G. Boulton

Name: Robert G Boulton

Title: Vice Chairman

By: [Signature]

Name: Deepak Massand

Title: President & CEO

**ALLERGAN, INC.**

By: [Signature]

Name: GEORGE LAZICKAY

Title: CORP. V.P. CORPORATE DEVELOPMENT

**ALLERGAN SALES, INC.**

By: [Signature]

Name: GEORGE LAZICKAY

Title: VICE PRESIDENT

NOT  
LAWYER

Approved  
Law Department

SCHEDULE 1.32

Trademark Rights

AQUA GLYCOLIC

<u>Country</u>	<u>Application No.</u>	<u>Application Date</u>	<u>Registration No.</u>	<u>Registration Date</u>
Argentina	1952804	12/20/1994	1576042	9/20/1995
Australia	660098	5/ 4/1995	660098	5/ 4/1995
Austria	AM 4195/97	7/30/1997		
Benelux	895678	6/16/1997	621178	6/16/1997
Bolivia	031330	8/ 9/1996	68896-C	11/16/1998
Brazil	81851625	5/ 9/1995		
Canada	807519	3/19/1996		
Colombia	94/57720	12/21/1994		
Costa Rica	117009	10/ 2/1998	111753	2/10/1999
Cyprus	48610	8/27/1997		
Denmark	03811/1997	8/ 1/1997	04274/1974	10/10/1997
Ecuador	71089	8/16/1996		
Egypt	109264	8/21/1997		
El Salvador	N/A		00024	11/21/1997
France	94/550478	12/22/1994	94550478	7/13/1995
Germany	39732299.2	7/17/1997	39732299	10/ 7/1997
Greece	124857	6/20/1995	124857	6/20/1995
Guatemala	96-6614	8/27/1996	82503	2/ 4/1997
Hong Kong	01768/95	2/15/1995		
Iceland	690/1995	5/29/1995	1161/1995	10/30/1995
India	757280	8/ 6/1997		
Indonesia	D95-9582	6/ 7/1995	371055	10/14/1996
Ireland	176971	6/13/1995	176971	6/13/1995
Israel	98486	5/ 9/1995	98486	7/ 2/1997
Italy	MI95C 000003	2/ 1/1995		
Japan	09-151378	8/22/1997		
Jordan	46416	8/10/1997	46416	8/10/1997
Kuwait	40335	6/30/1998		
Mexico	271072	8/26/1996		
New Zealand	286894	1/ 5/1998	286894	1/ 5/1998
Nicaragua	97-03102	9/11/1997	37064CC	4/22/1998
Norway	947248	12/22/1994	171390	2/29/1996
Paraguay	27213	12/23/1994	179742	8/22/1995
Peru	021557	9/18/1996		
Philippines	4-1998-00550	1/27/1998		
Portugal	310109	5/18/1995	310109	5/15/1996
Saudi Arabia		3/21/1995	35767	11/ 6/1995
South Africa	95/16953	12/21/1995		
South Africa	96/0001	2/ 2/1996		
South Korea	95-21534	5/31/1995		
South Korea	95-21536	5/31/1995		
Sweden	97-06898	7/30/1997		
Switzerland	06231/1997	7/31/1997		
Thailand	343118	9/ 4/1997	Kor84967	9/ 4/1997
Turkey	160269	5/18/1995	160269	5/18/1995
UAE	22924	8/16/1997		

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United Kingdom	2018752	4/26/1995	2018752	4/26/1995
United States	74/127107	12/31/1990	1704479	8/4/1992
United States	73/475380	4/12/1984	1337414	5/21/1985
United States	75/079056	3/26/1996	2043431	3/11/1997
Uruguay	275.072	1/12/1995		
Venezuela	12140/96	7/31/1996		

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