

09-24-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies): 9-22-03

Great Smokies Diagnostic Laboratory, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State North Carolina Other

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: Effective Date: June 23, 2003

2. Name and address of receiving party(ies)

Name: Experion Life Sciences Incorporated

Internal Address:

Address:

Street Address: 63 Zillicoa Street

City: Asheville State: NC Zip: 28801

- 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

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

A. Trademark Application No.(s) 78/092,366; 76/378,979; 76/379,076; 76/503,837; 76/503,838; 76/503,839; 76/503,840; 76/504,130; 78/278,630; 78/278,651; 78/246,911

B. Trademark Registration No.(s) 2,228,098; 2,293,994; 2,760,042; 2,760,043

Additional number(s) attached Yes No

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

Name: David M. Carter

Internal Address: P.O. Box 2985

Street Address: 56 Central Avenue

Suite 101

City: Asheville State: N.C. Zip: 28802

6. Total number of applications and registrations involved:

15

7. Total fee (37 CFR 3.41).....\$ 390.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy 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.

David M. Carter

Name of Person Signing

Signature

September 16, 2003

Date

Total number of pages including cover sheet, attachments, and document: 14

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01 FC:8521 02 FC:8522

40.00 UP 350.00 OP

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

TRADEMARK REEL: 002829 FRAME: 0295

CERTIFICATE OF MERGER

MERGING

**GREAT SMOKIES DIAGNOSTIC LABORATORY, INC.,
a North Carolina corporation,**

INTO

**EXPERION LIFE SCIENCES INCORPORATED,
a Delaware corporation**

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of Delaware **DOES HEREBY CERTIFY** as of June 23, 2003:

FIRST: That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
Great Smokies Diagnostic Laboratory, Inc.	North Carolina
Experion Life Sciences Incorporated	Delaware

SECOND: That an Agreement and Plan of Merger providing for the merger (the "Merger") of Great Smokies Diagnostic Laboratory, Inc. and Experion Life Sciences Incorporated has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the General Corporation Law of Delaware ("DGCL").

THIRD: That the name of the surviving corporation of the Merger is Experion Life Sciences Incorporated, a Delaware corporation.

FOURTH: That the Certificate of Incorporation of the Surviving Corporation, as in effect immediately prior to the Merger, shall be the Certificate of Incorporation of the Surviving Corporation .

FIFTH: That the executed Agreement and Plan of Merger is on file at an office of the Surviving Corporation, the address of which is 63 Zillicoa Street, Asheville, NC 28801.

SIXTH: That a copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the authorized capital stock of each foreign corporation which is a party to the merger is as follows:

LIBC/1743115.2

<u>Corporation</u>	<u>Class</u>	<u>Number of Shares</u>	<u>Par Value Per Share</u>
Great Smokies Diagnostic Laboratory, Inc.	Common Stock	4,996,043	\$0.01
	Preferred Stock	2,503,957	\$0.01

EIGHTH: That this Certificate of Merger shall be effective upon filing.

[Signature page follows]

IN WITNESS WHEREOF, said Experion Life Sciences Incorporated has caused this Certificate of Merger to be signed by its duly authorized officer as of the date first set forth above.

EXPERION LIFE SCIENCES INCORPORATED

By: /s/ Thomas J. Flynn
Thomas J. Flynn, President and Secretary

[Signature Page to Certificate of Merger]

TOTAL P.04

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is dated as of June 23, 2003, by and among Experion Life Sciences Incorporated, a Delaware corporation ("Experion"), and Great Smokies Diagnostic Laboratory, Inc., a North Carolina corporation ("GSDL," and together with Experion the "Constituent Corporations").

WITNESSETH:

WHEREAS, GSDL is a corporation duly incorporated and validly existing under the laws of the State of North Carolina;

WHEREAS, Experion is a corporation duly incorporated and validly existing under the laws of the State of Delaware;

WHEREAS, upon the terms and subject to the conditions of this Merger Agreement and in accordance with the Delaware General Corporation Law (the "Act") and Chapter 55 of the General Statutes of the State of North Carolina (the "BCA"), the Constituent Corporations desire to enter into a business combination transaction pursuant to which GSDL will merge with and into Experion with Experion surviving, which merger is intended to constitute a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended;

WHEREAS, the Board of Directors and shareholders of GSDL have approved this Merger Agreement as required pursuant to Section 55-11-03 of the BCA; and

WHEREAS, the Board of Directors of Experion has adopted and approved this Merger Agreement in accordance with Section 252 of the Act.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, each of the Constituent Corporations agrees as follows:

1. The Merger. In accordance with the relevant provisions of the Act and the BCA, at the Effective Time (as hereinafter defined), GSDL shall be merged with and into Experion (the "Merger"). As a result of and following the Merger, the separate existence of GSDL and its Board of Directors shall cease to exist and Experion shall continue as the surviving entity of the Merger and shall operate under the name "Experion Life Sciences Incorporated" (the "Surviving Corporation"), and all identity, rights, assets and liabilities of GSDL shall be vested in the Surviving Corporation in accordance with Section 55-11-07 of the BCA and Section 252 of the Act.

2. The Effective Time. The Merger shall become effective (the "Effective Time") immediately at 12:00 p.m., Boston time on June 23, 2003.

3. Authorized Capital Stock. The Surviving Corporation shall be authorized to issue Ninety Six Million (96,000,000) shares of capital stock, par value \$0.001 per share, of which Forty One Million (41,000,000) shares, par value \$.001 per share, shall be designated Preferred Stock (the "Preferred Stock"), of which Thirty One Million (31,000,000) shares shall be originally designated as Series A Preferred Stock (the "Series A Preferred Stock"); and of which Fifty Five Million (55,000,000) shares, par value \$0.001 per share, shall be designated as Common Stock (the "Common Stock"), as set forth with more detail in the Certificate of Incorporation of the Surviving Corporation.

4. Certificate of Incorporation. The Certificate of Incorporation of Experion, as in effect as of the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

5. By-laws. The By-laws of Experion, as in effect as of the Effective Time, shall be the By-laws of the Surviving Corporation until thereafter changed, amended or repealed as provided therein, the Certificate of Incorporation or by applicable law.

6. Purposes. The purposes of the Surviving Corporation shall be as set forth in the Certificate of Incorporation as in effect on the date hereof until such time as such purposes may be changed or amended as provided in the Certificate of Incorporation of Experion and by applicable law.

7. Directors and Officers of the Surviving Corporation. The directors and officers of GSDL as set forth on Exhibit A attached hereto holding office immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers of the Surviving Corporation, until their respective successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Certificate of Incorporation and By-Laws, and the committees of the Board of Directors of Experion immediately prior to the Effective Time shall, from and after the Effective Time be the committees of the Surviving Corporation.

8. Conversion and Cancellation of Shares; Assumption of Capital Stock Obligations. Upon the Effective Time, by virtue of the Merger and without any further action on the part of either of the Constituent Corporations:

(a) each share of capital stock of GSDL owned by GSDL prior to the Effective Time shall be canceled;

(b) each holder of GSDL common stock, par value \$0.01 per share (the "GSDL Common Stock") shall receive one (1) share of Common Stock of the Surviving Corporation for every share of GSDL Common Stock such stockholder held immediately prior to the Effective Time (the "Common Conversion Ratio");

(c) each holder of GSDL Series A Redeemable Preferred Stock, par value \$0.01 per share (the "GSDL Series A Redeemable Preferred Stock"), shall receive 131.1562115 shares of Series A Preferred Stock of the Surviving Corporation for every share of GSDL Series A Redeemable Preferred Stock such stockholder held immediately prior to the Effective Time;

(d) each holder of GSDL Series A Convertible Preferred Stock, par value \$0.01 per share (the "GSDL Series A Convertible Preferred Stock"), shall receive 2.359311912 shares of Series A Preferred Stock of the Surviving Corporation for every share of GSDL Series A Convertible Preferred Stock such stockholder held immediately prior to the Effective Time;

(e) each holder of GSDL Series B Redeemable Preferred Stock, par value \$0.01 per share (the "GSDL Series B Redeemable Preferred Stock"), shall receive 106.8560881 shares of Series A Preferred Stock of the Surviving Corporation for every share of GSDL Series B Redeemable Preferred Stock such stockholder held immediately prior to the Effective Time;

(f) each holder of GSDL Series B Convertible Preferred Stock, par value \$0.01 per share (the "GSDL Series B Convertible Preferred Stock"), shall receive 3.449694336 shares of Series A Preferred Stock of the Surviving Corporation for every share of GSDL Series B Convertible Preferred Stock such stockholder held immediately prior to the Effective Time;

(g) all outstanding options to purchase shares of GSDL Common Stock that have been issued pursuant to GSDL's stock option plans or otherwise ("Options"), whether vested or unvested, shall be assumed by Experion, and each such Option outstanding immediately prior to the Effective Time shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable under such Option at the Effective Time, such number of shares of Common Stock of the Surviving Corporation as is equal to the number of shares of GSDL Common Stock subject to the unexercised, unexpired portion of such Option multiplied by the Common Conversion Ratio (with any fraction resulting from such multiplication to be rounded to the nearest whole number). The exercise price per share of each such assumed Option shall be equal to the exercise price of the unexercised portion of such Option immediately prior to the Effective Time divided by the Common Conversion Ratio. The term, exercisability, vesting schedule, status as an "incentive stock option" under Section 422 of the Code, if applicable, and all of the other terms of the Options shall otherwise remain unchanged ;

(h) all outstanding warrants to purchase shares of GSDL Common Stock ("Warrants") shall be assumed by Experion, and each such Warrant outstanding immediately prior to the Effective Time shall be deemed to constitute a right to acquire, on the same terms and conditions as were applicable under such Warrant at the Effective Time, such number of shares of Common Stock of the Surviving Corporation as is equal

to the number of shares of GSDL Common Stock subject to the unexercised, unexpired portion of such Warrant multiplied by the Common Conversion Ratio (with any fraction resulting from such multiplication to be rounded to the nearest whole number). The exercise price per share of each such assumed Warrant shall be equal to the exercise price of such Warrant immediately prior to the Effective Time divided by the Common Conversion Ratio;

(i) after giving effect to the transactions contemplated by Sections 8(a)-(h), the shares of capital stock of GSDL issued and outstanding immediately prior to the Effective Time shall be canceled;

(j) notwithstanding anything in this Merger Agreement to the contrary, any holder of shares of capital stock of GSDL who perfects such holder's dissenter's rights of appraisal in accordance with and as contemplated by Article 13 of the BCA shall be entitled to receive the value of such shares in cash as determined pursuant to Article 13 of the BCA; provided, however, that no such payment shall be made to any dissenting shareholder unless and until such dissenting shareholder has complied with the applicable provisions of BCA and surrendered to the Surviving Corporation the certificate or certificates representing the shares for which payment is being made. In the event that after the Effective Time a dissenting shareholder of GSDL fails to perfect, or effectively withdraws or loses, such holder's right to appraisal of and payment for such holder's shares, the Surviving Corporation shall issue and deliver the consideration to which such holder of shares of capital stock of GSDL is entitled as set forth in this Section 8 (without interest) upon surrender by such holder of the certificate or certificates representing shares of capital stock of GSDL held by such holder; and

(k) the shares of capital stock of Experion issued and outstanding immediately prior to the Effective Time, if any, shall be canceled and the stockholder of Experion immediately prior to the Effective Time shall receive no consideration therefor.

9. Stock Option Plan. Experion shall assume all of GSDL's obligations with respect to the 2000 Stock Option and Grant Plan, as amended, of GSDL in effect as of the Effective Time (the "Plan") and, from and after the Effective Time, Experion agrees to assume the outstanding awards under the Plan (as provided in Section 8(g) hereof) as if such awards were granted by Experion. The parties agree that all references to "Company" or "Corporation" under the Plan shall mean and include the Surviving Corporation.

10. Additional Actions. If, at any time on and after the Effective Time, the Surviving Corporation or its successors and assigns shall consider or be advised that any further assignments or assurances in law or any organizational or other acts are necessary or desirable (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation title to and possession of any property or right of the Surviving Corporation acquired or to be acquired by reason of, or as a result of, the Merger, or (b) otherwise to carry out the purposes of this Merger Agreement, GSDL and its Board of Directors shall be deemed to have granted to the Surviving Corporation

an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such property or rights in the Surviving Corporation and otherwise to carry out the purposes of this Merger Agreement.

11. Effect of Merger. The effect of the Merger hereunder shall be as described in Section 55-11-06 of the BCA and Section 252 of the Act, including, without limitation, the following:

(a) all of the estate, rights, privileges, powers, property (real, personal and mixed), licenses, permits, trademarks, copyrights, and franchises of, and all debts and liabilities owed to, GSDL shall be transferred to and vested in the Surviving Corporation by operation of law and without further act or deed; and

(b) the rights of creditors of the Constituent Corporations shall not in any manner be impaired, but the Surviving Corporation shall be deemed to have assumed, and shall be liable for, all liabilities and obligations of the Constituent Corporations in the same manner and to the same extent as if the Surviving Corporation had itself incurred such liabilities and obligations.

12. Abandonment. Notwithstanding anything to the contrary in this Merger Agreement, this Merger Agreement may be terminated and abandoned by the Board of Directors of either Constituent Corporation notwithstanding favorable action on the Merger by the Board of Directors or the stockholders of either of the Constituent Corporations at any time prior to the date of filing the Articles of Merger with the North Carolina Secretary of State and the Certificate of Merger with the Delaware Secretary of State.

13. General.

(a) Governing Law. This Merger Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Delaware, excluding the conflicts of law provisions thereof.

(b) Complete Agreement; Amendments. This Merger Agreement constitutes the full and complete agreement of the parties hereto with respect to the subject matter hereof. No amendment, modification or termination of any provision of this Merger Agreement shall be valid unless in writing and signed by all of the parties hereto.

(c) Waivers and Further Agreements. Any waiver by any party of a breach of any provision of this Merger Agreement shall not operate or be construed as a waiver of any other breach of that provision or of any other provision hereof. Each of the parties hereto agrees to execute all such further instruments and documents and to take all such further action as any other party may reasonably require in order to effectuate the terms and purposes of this Merger Agreement.

(d) Third Parties. Except as expressly provided herein, nothing in this Merger Agreement is intended to confer on any persons, other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this Merger Agreement.

(e) Assignment. This Merger Agreement shall not be assigned without the prior written consent of the parties hereto.

(f) Counterparts. This Merger Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which shall be one and the same document.

(g) Captions. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Merger Agreement.

14. Tax Treatment. For federal income tax purposes the transaction contemplated by this Merger Agreement shall be treated as a tax-free reorganization described in Section 368(a) of the Internal Revenue Code of 1986, as amended.

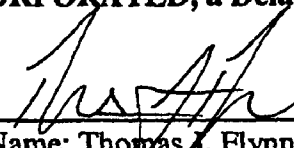
[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger as of the date first set forth above.

**GREAT SMOKIES DIAGNOSTIC
LABORATORY, INC., a North Carolina
corporation**

By: _____
Name: Frank Taylor
Title: Chief Executive Officer

**EXPERION LIFE SCIENCES
INCORPORATED, a Delaware corporation**

By:  _____
Name: Thomas J. Flynn
Title: President

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger as of the date first set forth above.

**GREAT SMOKIES DIAGNOSTIC
LABORATORY, INC., a North Carolina
corporation**

By: _____

Name: Frank Taylor

Title: Chief Executive Officer

**EXPERION LIFE SCIENCES
INCORPORATED, a Delaware corporation**

By: _____

Name: Thomas J. Flynn

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

EXHIBIT A

Surviving Corporation - Board of Directors:

Frank Taylor
Jeffrey Bland
André de Bruin
Scott Hilinski
Thomas Flynn
Stephen A. Barrie

Surviving Corporation – Officers:

Chief Executive Officer – Frank Taylor
President – Frank Taylor
Chief Operating Officer – C. Edward Hull
Treasurer and Chief Financial Officer – Sarah Stephenson
Secretary – Maureen Sher

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