

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

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

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):

Xanodyne Pharmacal, Inc.

- Individual(s)
- General Partnership
- Corporation-State
- Other \_\_\_\_\_
- Association
- Limited Partnership

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

2. Name and address of receiving party(ies)

Name: Xanodyne Pharmaceuticals, Inc.

Internal Address: Suite 300

Street Address: 7300 Turfway Road

City: Florence State: KY Zip: 41042

- 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
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: 2/6/04

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

A. Trademark Application No.(s) 76/501361;  
76/501362; 76/436666; 76/386963

B. Trademark Registration No.(s) 0,729,648;  
2,733,288; 2,639,572; 2,559,752;

Additional number(s) attached  Yes  No

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

Name: Kurt A. Summe

Internal Address: Wood, Herron & Evans, LLP  
2700 Carew Tower

Street Address: 441 Vine Street

City: Cincinnati State: OH Zip: 45202

6. Total number of applications and registrations involved: 11

7. Total fee (37 CFR 3.41).....\$ 290.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

23-3000

**DO NOT USE THIS SPACE**

9. Signature.

Kurt A. Summe  
Name of Person Signing

  
Signature

June 23, 2004  
Date

Total number of pages including cover sheet, attachments, and document: 21

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

CH \$290.00 233000 76501361

4. Application/patent numbers - Continued

A. 76/386,964

B. 0,738,956  
2,765,408

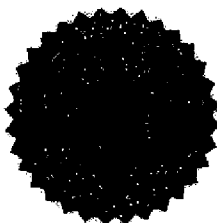
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "XANODYNE PHARMACAL, INC.", CHANGING ITS NAME FROM "XANODYNE PHARMACAL, INC." TO "XANODYNE PHARMACEUTICALS, INC.", FILED IN THIS OFFICE ON THE SIXTH DAY OF FEBRUARY, A.D. 2004, AT 1:02 O'CLOCK P.M.

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



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 2916670

DATE: 02-06-04

TRADEMARK

REEL: 002878 FRAME: 0332

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FEB. 6. 2004 3:47PM

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NO. 1485 P. 3

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:09 PM 02/06/2004  
FILED 01:02 PM 02/06/2004  
SRV 040083599 - 3236996 FILE

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**XANODYNE PHARMACAL, INC.**

It is hereby certified that:

1. The present name of the corporation (hereinafter called the "Corporation" or the "Company") is Xanodyne Pharmacal, Inc., which was originally incorporated under the name UBE PHARMACEUTICALS, INC., and the date of filing the original certificate of incorporation of the Corporation with the Secretary of State of the State of Delaware was May 31, 2000.

2. This restated certificate of incorporation amends and restates in its entirety the provisions of the certificate of incorporation of the Corporation.

3. The provisions of the certificate of incorporation of the Corporation heretofore amended and/or supplemented, and as herein amended, are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled Restated Certificate of Incorporation of Xanodyne Pharmacal, Inc., without any further amendments other than the amendments herein certified and without any discrepancy between the provisions of the certificate of incorporation as heretofore amended and supplemented and the provisions of the said single instrument hereinafter set forth.

4. The amendments and the restatement of the certificate of incorporation herein certified have been duly adopted by the stockholders in accordance with the provisions of Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware.

5. The text of the certificate of incorporation of the Corporation is hereby amended and restated in its entirety to read as follows:

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**XANODYNE PHARMACEUTICALS, INC.**

**FIRST:** The name of the corporation is Xanodyne Pharmaceuticals, Inc.

**SECOND:** The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. 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 is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**FOURTH:**

**4.1 Authorization of Stock.**

(a) The total number of shares of Common Stock which the Corporation is authorized to issue shall be 55,000,000 shares of Common Stock, with a par value of \$.001 per share, of which 54,800,000 are of a class designated as Series C-V Common Stock ("Voting Common Stock"), with a par value of \$.001 per share, and 200,000 are of a class designated as Series C-NV Common Stock ("Nonvoting Common Stock"), with a par value of \$.001 per share, (collectively, the Voting Common Stock and the Nonvoting Common Stock are referred to as "Common Stock" or "Common"). All shares of Common Stock issued and outstanding on the date on which this Restated Certificate is filed with the Secretary of State of the State of Delaware shall be deemed to be shares of Voting Common Stock.

(b) The total number of shares of Preferred Stock which the Corporation is authorized to issue shall be 33,827,373 shares of Preferred Stock, with a par value of \$.001 per share, of which 17,000,000 are of a class designated as Series A Convertible Preferred Stock, with a par value of \$.001 per share (the "Series A Preferred Stock"); 2,266,667 are of a class designated as Series B Convertible Preferred Stock, with a par value of \$.001 per share (the "Series B Preferred Stock"); 4,500,000 are of a class designated as Series W Convertible Preferred Stock, with a par value of \$.001 per share (the "Series W Preferred Stock"); 2,875,000 are of a class designated as Series X Convertible Preferred Stock, with a par value of \$.001 per share (the "Series X Preferred Stock"); 1,912,000 are of a class designated as Series Y Convertible Preferred Stock, with a par value of \$.001 per share (the "Series Y Preferred Stock"); and 5,273,706 are of a class designated as Series Z Convertible Preferred Stock, with a par value of \$.001 per share (the "Series Z Preferred Stock") (the Series A Preferred Stock, the Series B Preferred Stock, the Series W Preferred Stock, the Series X Preferred Stock, the Series Y Preferred Stock and the Series Z Preferred Stock are collectively referred to as "Preferred Stock").

The above referenced Common and Preferred shares of stock shall be subject to the powers, rights, preferences and restrictions as detailed in the remainder of this Article Fourth.

JOHN D. POFFENBERGER  
 BRUCE TITTEL  
 DONALD F. FREI  
 DAVID J. JOSEPHIC  
 DAVID S. STALLARD  
 J. ROBERT CHAMBERS  
 GREGORY J. LUNN  
 KURT L. GROSSMAN  
 CLEMENT H. LUKEN, JR.  
 THOMAS J. BURGER  
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 KEITH R. HAUPT  
 THEODORE R. REMAKLUS  
 THOMAS W. HUMPHREY  
 SCOTT A. STINEBRUNER  
 DAVID H. BRINKMAN

**WOOD, HERRON & EVANS, L.L.P.**  
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 441 Vine Street  
 Cincinnati, Ohio 45202-2917  
 Telephone: 513-241-2324  
 Facsimile: 513-421-7269  
 EMAIL: info@whepatent.com

*PATENT, TRADEMARK, COPYRIGHT  
 AND UNFAIR COMPETITION LAW  
 AND RELATED LITIGATION*

EDMUND P. WOOD 1923-1968  
 TRUMAN A. HERRON 1935-1976  
 EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN  
 C. RICHARD EBY

DAVID E. PRITCHARD  
 J. DWIGHT POFFENBERGER, JR.  
 BEVERLY A. LYMAN, Ph.D.  
 KATHRYN E. SMITH  
 KRISTI L. DAVIDSON  
 P. ANDREW BLATT, Ph.D.  
 DAVID E. JEFFERIES  
 WILLIAM R. ALLEN, Ph.D.  
 JOHN PAUL DAVIS  
 DOUGLAS A. SCHOLER  
 BRETT A. SCHATZ  
 DAVID W. DORTON, M.M.E.

LARRY D. MOORE, B.S.E.E.

TECHNICAL ADVISOR  
 HENRY M. LABODA, Ph.D.

**FACSIMILE COVER SHEET**

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 please notify us immediately by calling 513 \  
 241-2324.  
 Ask for sender's secretary.

TO: M.S. Assignment Recordation Services  
 United States Patent and Trademark Office

RE: Name Change Recordation

FROM: Kurt A. Summe, Esquire

Our Ref.: XANO-01

Pages (including cover page): 21

Fax No.: 1 703 306 5995

Date: June 23, 2004

MESSAGE: Please record the attached Name Change for the 11 trademark applications listed.

Encl.

KAS:cmp

The information in this facsimile message is  
**ATTORNEY-CLIENT PRIVILEGED, WORK PRODUCT and/or CONFIDENTIAL INFORMATION**

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**TRADEMARK**

**RECORDED-06/23/2004**

**REEL: 002878 FRAME: 0335**