

12-16-2004

Docket No.:

044007-00002

TRADEMARKS



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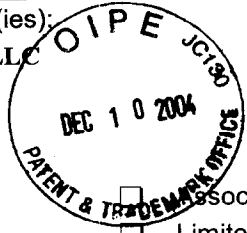
102906041

inal documents or copy thereof.

To the Director of the United States Patent and Trademark Office

1. Name of conveying party(ies):

ProEthic Laboratories, LLC



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

Additional names(s) of conveying party(ies)  Yes  No

2. Name and address of receiving party(ies):

Name: ProEthic Pharmaceuticals, Inc.

Internal Address: \_\_\_\_\_

Street Address: 5331 Perimeter Parkway Ct

City: Montgomery State: AL ZIP: 36116

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

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

3. Nature of conveyance:

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

Execution Date: July 26, 2004

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

A. Trademark / Service Mark Application No.(s)

76/297857    76/450214    76/489172  
76/313550    76/450215    76/533828  
76/412785    76/473693    76/563898

Additional numbers  Yes  No

B. Trademark / Service Mark Registration No.(s)

2782530    2698657  
2712009    2818425  
2889646

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

Name: C. Brandon Browning, Esq.

Internal Address: \_\_\_\_\_

Street Address: Sirote & Permutt, P.C.

P.O. Box 55727

City: Birmingham State: AL ZIP: 35255

6. Total number of applications and registrations involved:.....

20

7. Total fee (37 CFR 3.41):.....\$ \$515.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501346

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.

CARL WHATLEY, JR

Name of Person Signing

Carl Whatley, Jr

Signature

11/23/2004

Date

Total number of pages including cover sheet, attachments, and \_\_\_\_\_

Mail documents to be recorded with required cover sheet information to:

Mail Stop Recordation Services  
Director of the United States Patent and Trademark Office  
P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK

REEL: 003092 FRAME: 0587

12/15/2004 EQUIPER 00000244 76/297857 40.00 DP 475.00 DP 01 FC:45521 02 FC:45522

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

Docket No.  
044007-00002

Continuation Page 2

4. Trademark Registration No.(s) continued:

A. Trademark Application No.

76/576667

76/573002

76/570242

76/563899

76/609189

76/597790

JUL 30 2004

JUL 31 2004

TIME

Midnight Central Time

SECRETARY OF STATE

STATE OF ALABAMA )
MONTGOMERY COUNTY )

ARTICLES OF MERGER

These Articles of Merger (the "Articles"), dated this 26th day of July, 2004, are executed by and on behalf of ProEthic Laboratories, L.L.C., an Alabama limited liability company (the "Merging Entity"), and ProEthic Pharmaceuticals, Inc., a Delaware corporation (the "Surviving Entity" and together with the Merging Entity, the "Constituent Entities"), as follows:

WITNESSETH:

WHEREAS, the managers and the members of the Merging Entity and the board of directors of the Surviving Entity, in consideration of the mutual agreements of each of the parties hereto as set forth in the Plan and Agreement of Merger, dated July 9, 2004, by and between the Merging Entity and the Surviving Entity, deem it advisable, and generally for the welfare of each of said entities and their respective owners, that the Merging Entity merge itself with and into the Surviving Entity, as authorized by § 10-12-54 et seq. of the Alabama Limited Liability Company Act and § 264 of the General Corporation Law of the State of Delaware;

NOW, THEREFORE, the Merging Entity and the Surviving Entity hereby state the following:

1. Name, Jurisdiction and Formation Date. The names, jurisdiction and dates of formation or organization of the Constituent Entities are as follows:

Table with 3 columns: Name, Jurisdiction, Date of Formation. Rows include ProEthic Laboratories, L.L.C. (Alabama, June 5, 2001) and ProEthic Pharmaceuticals, Inc. (Delaware, July 8, 2004).

2. Agreement of Merger. A Plan and Agreement of Merger has been approved and executed by each of the Constituent Entities.

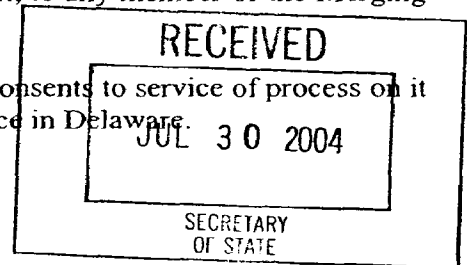
3. Name of Surviving Entity. The name of the surviving entity in the merger is ProEthic Pharmaceuticals, Inc.

4. Effective Date and Time of the Merger. The effective date and time of the merger shall be at midnight Central Time on July 31, 2004.

5. Plan and Agreement of Merger on File. The Agreement and Plan of Merger is on file at the place of business of the Surviving Entity. The street address of the place of business of the Surviving Entity is 5331 Perimeter Parkway Court, Montgomery, AL 36116.

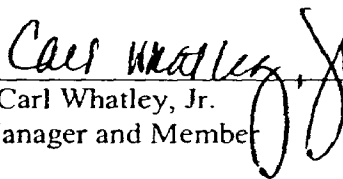
6. Copy of Plan and Agreement of Merger. A copy of the Plan and Agreement of Merger will be furnished by the Surviving Entity, upon request and without cost, to any member of the Merging Entity and to any shareholder of the Surviving Entity.

7. Consent to Service of Process. The Surviving Entity consents to service of process on it by registered mail addressed to the Surviving Entity at its registered office in Delaware.



IN WITNESS WHEREOF, duly authorized representatives of the Merging Entity and the Surviving Entity have executed these Articles of Merger on date and year written above.

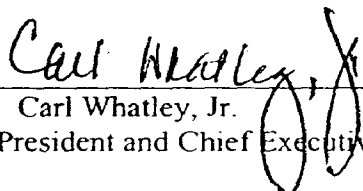
PROETHIC LABORATORIES, L.L.C.



By: Carl Whatley, Jr.  
Its Manager and Member

(MERGING ENTITY)

PROETHIC PHARMACEUTICALS, INC.



By: Carl Whatley, Jr.  
Its President and Chief Executive Officer

(SURVIVING ENTITY)

**PLAN AND AGREEMENT OF MERGER  
BETWEEN  
PROETHIC LABORATORIES, LLC  
AND  
PROETHIC PHARMACEUTICALS, INC.**

THIS PLAN AND AGREEMENT OF MERGER (this "*Agreement*"), is made and entered into as of the 9<sup>th</sup> day of July, 2004, by and between ProEthic Laboratories, LLC, an Alabama limited liability company ("*LLC*" or the "*Merging Entity*") and ProEthic Pharmaceuticals, Inc., a Delaware corporation ("*Corporation*" or the "*Surviving Entity*" and together with the Merging Entity collectively referred to herein as the "*Constituent Entities*") as follows:

WITNESSETH

WHEREAS, the Members and the Managers of the LLC and the Board of Directors of the Corporation have approved the merger of the LLC with and into the Corporation (the "*Merger*"), upon the terms and subject to the conditions set forth in this Agreement, whereby the memberships in the LLC will be converted into shares of the Corporation's common stock, \$.001 par value per share ("*Corporation Common Stock*"), under the terms and conditions set forth in this Agreement; and

WHEREAS, for federal income tax purposes, it is intended that the Merger shall qualify as a contribution to a controlled corporation under the provisions of §351 of the Internal Revenue Code of 1986, as amended (the "*Code*").

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Merger.** Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Alabama Limited Liability Company Act (the "*LLC Act*") and the Delaware General Corporation Law (the "*DGCL*"), the Merging Entity shall be merged with and into the Surviving Entity at the Effective Time (as defined in Section 3 hereof). Following the Effective Time, the separate existence of the Merging Entity shall cease, and the Surviving Entity shall continue as the Surviving Entity under the name of ProEthic Pharmaceuticals, Inc. and shall succeed to and assume all the rights and obligations of the LLC in accordance with the DGCL.

2. **Closing.** The closing of the Merger contemplated by this Agreement (the "*Closing*") shall take place at such date and at such place and time as LLC and Corporation shall agree (such date, the "*Closing Date*").

3. **Effective Time.** Subject to the provisions of this Agreement, the parties shall (a) file with the Secretary of State of Delaware a certificate of merger (the "*Certificate of Merger*") executed in accordance with the DGCL; (b) file with the Secretary of State of Alabama articles of merger (the "*Articles of Merger*") executed in accordance with the LLC Act; and (c) shall make all other filings or records required under the DGCL and the LLC Act as soon as practical on or after the Closing Date. The Merger shall become effective at such time as the last of the Certificate of Merger or the Articles of Merger is accepted for record by the Secretary of State of Delaware or the Secretary of State of Alabama, respectively, or at such other time as specified in the Certificate of Merger and Articles of Merger (the "*Effective Time*").

#### **4. Effect of Merger.**

**4.1 General.** The Merger shall have the effect set forth in the LLC Act and the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time of the Merger, (i) the Surviving Entity shall possess all assets and property of every description, and every interest therein, wherever located, and the rights, privileges, immunities, powers, franchises and authority, of a public as well as of a private nature, of each of the Constituent Entities, (ii) all obligations belonging to or due each of the Constituent Entities shall be vested in, and become the obligations of, the Surviving Entity without further act or deed, (iii) title to any real estate or any interest therein vested in either of the Constituent Entities shall not revert or in any way be impaired by reason of the Merger, (iv) all rights of creditors and all liens upon any property of either of the Constituent Entities shall be preserved unimpaired, and (v) the Surviving Entity shall be liable for all of the debts and obligations of each of the Constituent Entities, and any claim existing, or action or proceeding pending, by or against either of the Constituent Entities may be prosecuted to judgment with right of appeal, as if the Merger had not taken place.

**4.2 Certificate of Incorporation of the Surviving Entity.** The Certificate of Incorporation of the Corporation, in effect as of the Effective Time, shall become the Certificate of Incorporation of the Surviving Entity from and after the Effective Time and until thereafter amended as provided by law.

**4.3 Bylaws of the Surviving Entity.** The Bylaws of the Corporation shall be the Bylaws of the Surviving Entity from and after the Effective Time and until thereafter altered, amended or repealed in accordance with the DGCL, the Certificate of Incorporation of the Surviving Entity and said Bylaws.

**4.4 Directors.** The Board of Directors of the Corporation at the Effective Time shall, from and after the Effective Time, be the Board of Directors of the Surviving Entity until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Entity's Certificate of Incorporation and applicable law.

**4.5 Officers.** The officers of the Corporation at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Entity until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Entity's Certificate of Incorporation and Bylaws.

**4.6 Assets, Liabilities.** At the Effective Time, the assets, liabilities, reserves and accounts of each of the Constituent Entities shall be taken upon the books of the Surviving Entity at the amounts at which they respectively shall be carried on the books of said persons immediately prior to the Effective Time, except as otherwise set forth in this Agreement and subject to such adjustments, or elimination of intercompany items, as may be appropriate in giving effect to the Merger in accordance with generally accepted accounting principles.

**4.7 Tax Treatment.** The parties hereto acknowledge that for federal income tax purposes, it is intended that the Merger shall qualify as a transfer to a controlled corporation under the provisions of §351 of the Code.

#### **5. Effect of the Merger on the Securities.**

**5.1 Effect on Membership Units of LLC.** As of the Effective Time, by virtue of the Merger and without any action on the part of any holder of any security of either of the

Constituent Entities, each membership unit in the LLC shall be converted into one share of Corporation Common Stock.

**5.2 Issuance of Certificates.** At or after the Closing, each member of the LLC shall be entitled to receive in exchange for his LLC membership certificate a stock certificate from the Corporation for the same number of shares of Corporation Common Stock as the number of membership units reflected on the member's membership certificate.

**5.3 Effect of Merger on LLC Options.** At the Closing, each option to purchase membership units in the LLC (the "LLC Options") will be canceled and replaced by an option to purchase that number of shares of Proethic Pharmaceuticals, Inc, common stock equal to the number of membership units purchasable under the LLC Option at the same exercise price set forth in the LLC Option.

**6. Reasonable Best Efforts.** Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement, including, without limitation, the obtaining of all necessary waivers, consents and approvals and the effecting of all necessary registrations and filings.

**7. Amendment and Modification.** This Agreement may be amended, modified or supplemented only by written agreement (referring specifically to this Agreement) of the Corporation and the LLC with respect to any of the terms contained herein; provided, however, that after any approval and adoption of this Agreement by the members of the LLC, no such amendment, modification or supplementation shall be made which under applicable law requires the approval of the members of the LLC, without the further approval of such members.

**8. Waiver.** Neither this Agreement nor any term or condition hereof or right hereunder may be waived or shall be deemed to have been waived or modified in whole or part by any party or by the forbearance of any party to exercise any of its rights hereunder, except by written instrument executed by or on behalf of that party; and in the case of breach by any party of any agreement or undertaking hereunder, a nondefaulting party may nevertheless accept from the defaulting party any payment or performance hereunder and may continue to operate under this Agreement without in any way waiving its rights or remedies.

**9. Descriptive Headings; Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The term "person" shall mean and include an individual, a partnership, a joint venture, a corporation, a limited liability company, an association, a trust, a Governmental Entity or an unincorporated organization or other entity.

**10. Entire Agreement; Assignment.** This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof. This Agreement is not intended to confer upon any person not a party hereto any rights or remedies hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

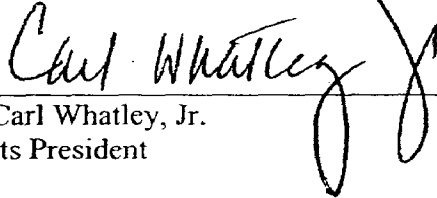
**11. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the provisions thereof relating to conflicts of law.

12. **Severability.** In case any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect against a party hereto, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby and such invalidity, illegality or unenforceability shall only apply as to such party in the specific jurisdiction where such judgment shall be made.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

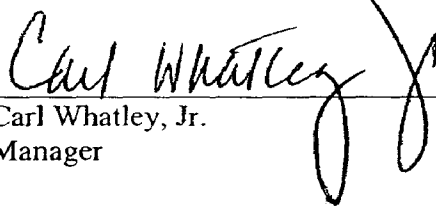
**IN WITNESS WHEREOF,** each of the parties hereto have caused this Agreement to be executed and delivered to the other parties hereto, all as of the date first above written.

**PROETHIC PHARMACEUTICALS, INC.**

By:   
\_\_\_\_\_  
Carl Whatley, Jr.  
Its President

(CORPORATION)

**PROETHIC LABORATORIES, L.L.C.**

By:   
\_\_\_\_\_  
Carl Whatley, Jr.  
Manager

(LLC)



# Delaware

PAGE 1

*The First State*

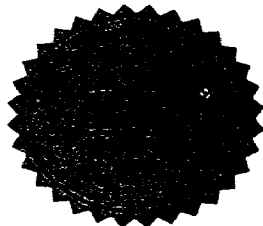
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"PROETHIC LABORATORIES, L.L.C.", A ALABAMA LIMITED LIABILITY COMPANY,

WITH AND INTO "PROETHIC PHARMACEUTICALS, INC." UNDER THE NAME OF "PROETHIC PHARMACEUTICALS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF JULY, A.D. 2004, AT 12:32 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF JULY, A.D. 2004, AT 12 O'CLOCK A.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: 3267734

3826639 8100M

040559718

DATE: 07-30-04

TRADEMARK  
REEL: 003092 FRAME: 0595

**CERTIFICATE OF MERGER  
OF  
PROETHIC LABORATORIES, L.L.C.  
INTO  
PROETHIC PHARMACEUTICALS, INC.**

This Certificate of Merger (the "Certificate"), dated this 26<sup>th</sup> day of July, 2004, is executed by and on behalf of ProEthic Laboratories, L.L.C., an Alabama limited liability company (the "Merging Entity"), and ProEthic Pharmaceuticals, Inc., a Delaware corporation (the "Surviving Entity" and together with the Merging Entity, the "Constituent Entities"), as follows:

**WITNESSETH:**

WHEREAS, the members and the managers of the Merging Entity and the board of directors of the Surviving Entity, in consideration of the mutual agreements of each of the parties hereto as set forth in the Plan and Agreement of Merger, dated July 9, 2004, by and between the Merging Entity and the Surviving Entity, deem it advisable, and generally for the welfare of each of said entities and their respective owners, that the Merging Entity merge itself with and into the Surviving Entity, as authorized by § 10-12-54 et seq. of the Alabama Limited Liability Company Act and § 264 of the General Corporation Law of the State of Delaware ("DGCL");

NOW, THEREFORE, the Merging Entity and the Surviving Entity hereby state the following:

1. **Name and State of Domicile.** The names and states of domicile of the Constituent Entities are as follows:

<u>Name</u>	<u>State of Domicile</u>
ProEthic Laboratories, L.L.C.	Alabama
ProEthic Pharmaceuticals, Inc.	Delaware

2. **Agreement of Merger.** A Plan and Agreement of Merger between the Constituent Entities has been approved, adopted, certified, executed and acknowledged by each of the Constituent Entities in accordance with the requirements of § 264 of DGCL.

3. **Name of Surviving Entity.** The name of the surviving entity in the merger is ProEthic Pharmaceuticals, Inc.

4. **Certificate of Incorporation.** The Certificate of Incorporation of ProEthic Pharmaceuticals, Inc. shall be the Certificate of Incorporation of the Surviving Entity.

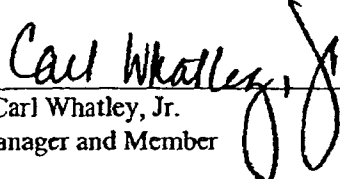
5. **Plan and Agreement of Merger on File.** The executed Plan and Agreement of Merger is on file at the office of the Surviving Entity located at 5331 Perimeter Parkway Court, Montgomery, AL 36116.

6. **Copy of Plan and Agreement of Merger.** A copy of the Plan and Agreement of Merger will be furnished by the Surviving Entity, on request and without cost, to any member of the Merging Entity and to any stockholder of the Surviving Entity.

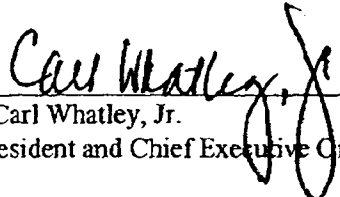
7. **Effective Date and Time** . The merger shall be effective at midnight ~~Eastern~~  
Time on July 31, 2004.

IN WITNESS WHEREOF, duly authorized representatives of the Merging Entity and the  
Surviving Entity have executed this Certificate of Merger on date and year written above.

PROETHIC LABORATORIES, L.L.C.

  
By: Carl Whatley, Jr.  
Its Manager and Member  
(MERGING ENTITY)

PROETHIC PHARMACEUTICALS, INC.

  
By: Carl Whatley, Jr.  
Its President and Chief Executive Officer  
(SURVIVING ENTITY)

NANCY L. WORLEY  
SECRETARY OF STATE



First Floor, State Capitol  
Suite S-105  
600 Dexter Avenue  
P.O. Box 5616  
Montgomery, Alabama 36103-5616

## State of Alabama

July 30, 2004

Dede Harbin/Cathy Crittenden  
Sirote & Permutt  
PO Box 55727  
Birmingham AL 35255-5725

Re: Articles of Merger merging ProEthic Laboratories, L.L.C., an  
Alabama Limited Liability Company into ProEthic Pharmaceuticals,  
Inc., a Delaware Corporation  
Effective: July 31, 2004 @ Midnight Central Time

Dear Sir or Madam:

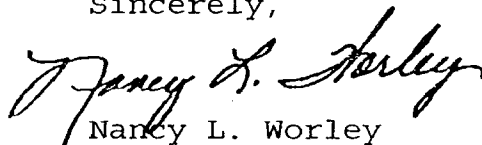
This will acknowledge receipt of your recent letter enclosing original and two copies of the above captioned merger and your checks in the amounts of \$ 10.00 made payable to the Secretary of State and \$30.00 made payable to the Montgomery County Probate Judge.

Please be advised that said instrument is being filed in this office as of July 30, 2004 with an effective date July 31, 2004 at Midnight Central Time.

I am forwarding a certified copy of merger and your check in the amount of \$30.00 to the Judge of Probate of Montgomery county.

If this office may be of further assistance in this or any other matter, please contact Sharon Viox in the Corporation Division at (334)242-5328.

Sincerely,

  
Nancy L. Worley  
Secretary of State

NLW:slv

cc: Judge of Probate Montgomery County

OFFICE (334) 242-7206, FAX (334) 242-4993, E-MAIL [sos@sos.al.gov](mailto:sos@sos.al.gov) • ELECTIONS (334) 242-7210, FAX (334) 242-2444  
CORPORATIONS (334) 242-5324, FAX (334) 240-3138 • UCC (334) 242-5231, FAX (334) 353-8269 • LEGAL (334) 242-7202, FAX (334) 353-9155  
LANDS & TRADEMARKS (334) 242-5325, FAX (334) 240-3138 • PUBLIC INFORMATION (334) 242-7224, FAX (334) 353-8993

RECORDED: 12/10/2004

TRADEMARK  
REEL: 003092 FRAME: 0598