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01-21-2003



Docket No.:
56413-020 (VASL-112)

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To the Honorable Commissioner of Patents and Trademarks

102342299 and attached original documents or copy thereof.

1. Name of conveying party(ies): 2002 DEC 20 AM 10: 45
Vascutech, Inc.

FINANCE SECTION

12-20-02

- Individual(s)
- General Partnership
- Corporation-State Massachusetts
- Other _____
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Agreement And Plan Of Merger
- Merger
- Change of Name

Execution Date: June 15, 1998

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

Name: Vascutech, Inc.

Internal Address: _____

Street Address: 164 Middlesex Turnpike

City: Burlington State: MA ZIP: 01803

- 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,940,686

Additional numbers

Yes No

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

Name: Mark G. Lappin, P.C.

Internal Address: McDermott, Will & Emery

Street Address: 28 State Street

City: Boston State: MA ZIP: 02109

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

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-1133

DO NOT USE THIS SPACE

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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.

Scott A. Ouellette
Name of Person Signing

Signature

December 18, 2002

Date

Total number of pages including cover sheet, attachments, and

10

TRADEMARK

REEL: 002652 FRAME: 0088

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger is dated as of June 15, 1998, between Vascutech, Inc., a Massachusetts corporation ("Vascutech Massachusetts"), as approved by vote of its Board of Directors on June 15, 1998, and Vascutech, Inc., a Delaware corporation ("Vascutech Delaware"), as approved by vote of its Board of Directors on June 15, 1998.

WHEREAS, Vascutech Massachusetts is a corporation duly organized and validly existing under the laws of the Commonwealth of Massachusetts and has an authorized capital of 1,000,000 shares of common stock, without par value (the "Massachusetts Common Stock"), of which 280,182.99 shares are issued, outstanding and entitled to vote on this Agreement and Plan or Merger (this "Agreement") and the merger transaction contemplated by and provided for herein (the "Merger");

WHEREAS, Vascutech Delaware is a corporation duly organized and validly existing under the laws of the State of Delaware and has an authorized capital of 1,000,000 shares of common stock, par value \$0.01 per share (the "Delaware Common Stock"), of which no shares are issued or outstanding, and 150,000 shares of preferred stock, par value \$0.01 per share, of which no shares are issued or outstanding;

WHEREAS, the respective Boards of Directors of Vascutech Massachusetts and Vascutech Delaware deem it advisable and expedient and to the advantage, welfare and best interests of each such corporation to merge Vascutech Massachusetts with and into Vascutech Delaware pursuant to the provisions of the General Corporation Law of the State of Delaware (the "GCL") and the Business Corporation Law of the Commonwealth of Massachusetts (the "BCL") upon the terms and conditions hereinafter set forth for the purpose of reincorporation by Vascutech Massachusetts in the State of Delaware;

WHEREAS, the respective Boards of Directors of Vascutech Massachusetts and Vascutech Delaware have, by resolutions duly adopted, approved this Agreement and the Merger and directed that this Agreement be executed by the undersigned officers;

WHEREAS, no shares of capital stock of Vascutech Delaware were issued prior to the adoption by its Board of Directors of resolutions approving this Agreement and the Merger and, accordingly, this Agreement and the Merger have been authorized by the Incorporator of Vascutech Delaware pursuant to Section 251(f) of the GCL; and

WHEREAS, the Board of Directors of Vascutech Massachusetts has, by resolutions duly adopted, directed that this Agreement and the Merger be submitted to a vote or consent of its stockholders;

NOW, THEREFORE, in consideration of the premises and of the mutual agreement of the parties hereto, this Agreement and the terms and conditions hereof and the mode of carrying the same into effect, together with any provisions required or permitted to be set forth herein, are hereby determined and agreed upon for submission to the stockholders of Vascutech Massachusetts as required by the provisions of the BCL, and Vascutech Massachusetts and Vascutech Delaware hereby agree as follows:

1. **Merger.** Upon the terms and subject to the conditions hereof and in compliance with the provisions of the GCL and the BCL, Vascutech Massachusetts shall, on the Effective Date (as hereinafter defined), be merged with and into Vascutech Delaware, which shall be the surviving corporation and which shall continue to exist as the surviving corporation (sometimes hereinafter referred to as the "Surviving Corporation") under the name "Vascutech, Inc." pursuant to the provisions of the GCL. The separate existence of Vascutech Massachusetts (sometimes hereinafter referred to as the "Terminating Corporation") shall cease on the Effective Date in accordance with the provisions of the GCL and the BCL.

2. **Certificate of Incorporation.** The Certificate of Incorporation of Vascutech Delaware, as in force and effect immediately prior to the Effective Date, shall be the Certificate of Incorporation of the Surviving Corporation and shall continue in full force and effect until amended and changed in the manner prescribed by the provisions of the GCL.

3. **By-Laws.** The By-Laws of Vascutech Delaware as in force and effect immediately prior to the Effective Date shall be the By-Laws of the Surviving Corporation and shall continue in full force and effect until changed, altered or amended as therein provided and in the manner prescribed by the provisions of the GCL.

4. **Board of Directors.** The Directors of Vascutech Delaware immediately prior to the Effective Date shall be the Directors of the Surviving Corporation to hold such offices, subject to the provisions of the laws of the State of Delaware and the Certificate of Incorporation and By-Laws of the Surviving Corporation, until their successors are duly elected and qualified.

5. **Officers.** The officers of Vascutech Delaware immediately prior to the Effective Date shall be the officers of the Surviving Corporation to hold such offices, subject to the provisions of the laws of the State of Delaware and the Certificate of Incorporation and By-Laws of the Surviving Corporation.

6. **Conversion of Shares.**

(a) As of the Effective Date and by virtue of the Merger and without any action on the part of the holders thereof:

(i) Each share of Massachusetts Common Stock, if any, which is held by Vascutech Massachusetts as treasury stock shall be canceled automatically and cease to exist and shall not become or be converted into the right to receive cash or any other property or value in lieu thereof; and

(ii) Each issued and outstanding share of Massachusetts Common Stock shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and shall become one validly issued, fully paid and non-assessable share of Delaware Common Stock.

(b) Notwithstanding the provisions of Section 6(a)(ii) hereof, any shares of Massachusetts Common Stock as to which the holder thereof shall have perfected appraisal rights under Sections 85-98 of the BCL shall have only the rights accorded to it pursuant to such Sections 85-98.

7. **Stock Certificates.** At and after the Effective Date, all of the outstanding certificates which immediately prior to the Effective Date represented shares of Massachusetts Common Stock shall be deemed for all purposes to evidence ownership of, and to represent, shares of Delaware Common Stock, into which the share of Common Stock formerly represented by such certificates have been converted as herein provided. The registered owner on the books and records of Vascutech Delaware of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to Vascutech Delaware, have and be entitled to exercise any voting and other rights with respect to and to receive any dividends and other distributions upon the shares of Delaware Vascutech Stock evidenced by such outstanding certificate as above provided. After the Effective Date, each holder of an outstanding certificate which immediately prior to the Effective Date represented shares of Massachusetts Common Stock shall surrender the same to the Vascutech Delaware and each holder shall be entitled upon such surrender to receive a new certificate for a like number of shares of Delaware Common Stock.

8. **Options.** Each option to purchase shares of Massachusetts Common Stock, including without limitation, options granted under the Vascutech, Inc. 1997 Stock Option Plan, the Vascutech Inc. 1998 Stock Option Plan and any Vascutech, Inc. Non-Qualified Stock Option Agreement or Vascutech, Inc. Incentive Stock Option Agreement which are outstanding immediately prior to the Effective Date, shall, by virtue of the Merger and without any action on the part of the holders thereof, be converted into and become an option to purchase the same number of shares of Delaware Common Stock at the same option price per share, and upon the same terms and subject to the same conditions as set forth in such plan or other agreements, as in effect at the Effective Date.

The same number of shares of Delaware Common Stock shall be reserved for purposes of such plan and other agreements as is equal to the number of shares of Massachusetts Common Stock so reserved as of the Effective Date. As of the Effective Date, Vascutech Delaware hereby assumes such plan and other agreements and obligations of Vascutech Massachusetts under such plan and other agreements including the outstanding options or awards or portions thereof granted pursuant to such plan and other agreements.

9. **Other Employee Benefit Plans.** As of the Effective Date, Vascutech Delaware hereby assumes any and all other employee benefit plans of Vascutech Massachusetts (and all obligations of Vascutech Massachusetts thereunder) in effect as of the Effective Date or with respect to which employee rights or accrued benefits are outstanding as of the Effective Date.

10. **Effective Date.** The Merger shall become effective on the date (the "Effective Date") of the last to be filed of an appropriate Certificate of Merger in the office of the State Secretary of the State of Delaware pursuant to and in compliance with the GCL and appropriate Articles of Merger in the office of the Secretary of State of the Commonwealth of Massachusetts pursuant to and in compliance with the BCL.

11. **Effect of Merger.** Upon the effectiveness of the Merger, the separate existence of the Terminating Corporation shall cease, and the Surviving Corporation shall possess all the rights, privileges, powers and franchises as well of a public as of a private nature, and be subject to all the restrictions, disabilities and duties of the Terminating Corporation and the Surviving Corporation; and all and singular, the rights, privileges, powers and franchises of each of such corporations, and all property, real, personal and mixed, and all debts due to either of such corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations 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 effectually the property of the Surviving Corporation as they were of the Terminating Corporation and the Surviving Corporation and the title to any real estate vested by deed or otherwise, in either of such corporations, shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of either of such corporations shall be preserved unimpaired, and all debts, liabilities and duties of each of such corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it. Any action or proceeding, whether civil, criminal or administrative, pending by or against either the Terminating Corporation or the Surviving Corporation shall be prosecuted as if the Merger had not taken place or the Surviving Corporation may be substituted in such action or proceeding. All corporate acts, plans, policies, agreements, arrangements, approvals and authorizations of the Terminating Corporation, its shareholders, Board of Directors and committees thereof, officers and agents which were valid and effective immediately prior to the Effective Date shall be taken for all purposes as the acts, plans, policies, agreements, arrangements, approvals and authorizations of the Surviving Corporation and shall be as effective and binding

thereon as the same were with respect to the Terminating Corporation. The employees and agents of the Terminating Corporation shall become the employees and agents of the Surviving Corporation and continue to be entitled to the same rights and benefits which they enjoyed as employees and agents of the Terminating Corporation.

12. **Further Acts.** In the event that this Agreement shall have been fully approved upon behalf of Vascutech Massachusetts and Vascutech Delaware in the manner prescribed by the provisions of the GCL and the BCL, Vascutech Massachusetts and Vascutech Delaware will cause to be executed and filed and/or recorded any document prescribed by the laws of the State of Delaware or the Commonwealth of Massachusetts and will cause to be performed all necessary acts within such states and elsewhere to effectuate the Merger, subject, however, to any provision herein for abandoning or terminating this Agreement and the Merger before or after the approval of the same by the stockholders of Vascutech Massachusetts entitled to vote. The Board of Directors and the proper officers of Vascutech Massachusetts and Vascutech Delaware, respectively, are hereby authorized, empowered and directed to do any and all acts and things, and to make, execute, deliver, file and/or record any and all instruments, papers and documents which shall be or become necessary, proper or convenient to carry out or put into effect any of the provisions of this Agreement or the Merger.

13. **Termination and Abandonment.** Notwithstanding the approval of this Agreement and the Merger by the stockholders entitled to vote of Vascutech Massachusetts or the Incorporation of Vascutech Delaware, (i) this Agreement may be terminated and the Merger may be abandoned at any time prior to the filing of an appropriate Certificate of Merger in the office of the State Secretary of the State of Delaware and appropriate Articles of Merger in the office of the Secretary of State of the Commonwealth of Massachusetts in the event that the Board of Directors of either Vascutech Massachusetts or Vascutech Delaware so decide and (ii) subject to applicable law, this Agreement may be amended by an instrument in writing signed by an authorized officer of each of the parties hereto upon authorization by the Boards of Directors of the parties hereto, provided that, after stockholders of Vascutech Massachusetts have approved this Agreement, no amendment shall be so made which is materially adverse to such stockholders.

14. **Counterparts.** This Agreement may be executed in any number of counterparts and by any of the parties hereto on separate counterparts, each of which when so executed shall constitute an original and all of which together shall constitute one and the same document.

15. **Dissenters' Rights.** Former holders of Massachusetts Common Stock who, as of the Effective Date, do not have their shares converted into shares of Delaware Common Stock because they have duly exercised dissenters' rights in connection with the Merger shall have their shares treated in the manner prescribed by Sections 86-98 of the BCL.

IN WITNESS WHEREOF, this Agreement is duly executed by and on behalf of Vascutech Massachusetts and Vascutech Delaware as of the date first above written.

Vascutech, Inc., a Massachusetts corporation

[Seal]

By George W. LeMaitre
George W. LeMaitre
President

Attest:
George D. LeMaitre
George D. LeMaitre Clerk

By Cornelia W. LeMaitre
Cornelia W. LeMaitre
Treasurer

Vascutech, Inc., a Delaware corporation

[Seal]

By George W. LeMaitre
George W. LeMaitre
President

Attest:
Cornelia W. LeMaitre
Cornelia W. LeMaitre
Secretary

By George W. LeMaitre
George W. LeMaitre
Treasurer

CERTIFICATION

I, Cornelia W. LeMaitre, Secretary of Vascutech, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify, as such Secretary, that the Agreement and Plan of Merger to which this Certificate is attached, after having been first duly signed on behalf of the said corporation and having been signed on behalf of Vascutech, Inc., a corporation of the Commonwealth of Massachusetts, was duly adopted pursuant to subsection (f) of Section 251 of the General Corporation Law of Delaware without any vote of the stockholders of the surviving corporation; and no shares of the surviving corporation were issued prior to the adoption by the Board of Directors of the surviving corporation of the resolution approving the Agreement and Plan of Merger; and that subsection (f) of Section 251 of the General Corporation Law of Delaware is applicable; and that the Agreement and Plan of Merger was adopted by action of the Board of Directors of said surviving corporation and is the duly adopted agreement and act of the said corporation.

WITNESS my hand on this 15th day of June, 1998.

Cornelia W. LeMaitre
Cornelia W. LeMaitre, Secretary