

MRD 9-30-98

10-16-1998

Attorney Docket No. 014058-000000

FORM PTO-1595
(Rev. 6-93)



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

100853459

To the Honorable Asst. Commissioner for Patents: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Anergen, Inc., a California corporation

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

2. Name and address of receiving party(ies):
Name: Anergen, Inc., a Delaware corporation

Internal Address:

Street Address: 301 Penobscot Drive

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other:

Execution Date: June 30, 1998

City: State: California
ZIP: 94063

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or patent number(s).
If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)
08/462,351 (See attached listing of additional applications.)

B. Patent No.(s)
5,194,425 (See attached listing of additional patents.)

Additional numbers attached? Yes No

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

Name: Kevin L. Bastian
TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
(415) 576-0200

10/13/1998 SBURNS 00000076 201430 08462351
01 FC:581 2480.00 CH

6. Total number of applications and patents involved:

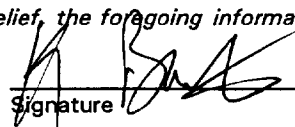
7. Total fee (37 CFR 3.41):..... \$2,480.00

Enclosed Charge Fees to Deposit Account
 Charge any additional fees associated with this paper or during the pendency of this application, or credit any overpayment, to deposit account

8. Deposit account number: 20-1430

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.

Kevin L. Bastian
Name of Person Signing  Signature 9/30/98 Date

Atty. Reg. No. 34,774 Total number of pages including cover sheet, attachments, and document:

10. Change Correspondence Address to that of Part 5? Yes No

OMB No. 0651-0011 (exp. 4/94)

Mail documents to be recorded with required cover sheet information to:
Do not detach this portion
Asst. Commissioner for Patents
Box Assignments
Washington, D.C. 20231

PATENT
REEL: 9507 FRAME: 0551

1. Additional name(s) of conveying party(ies):
(Continued from Page 1)

2. Additional name(s) and address(es) of receiving party(ies):
(Continued from Page 1)

4. Additional application number(s) or patent number(s):
(Continued from Page 1)

A. Patent Application No.(s)	B. Patent No.(s)
07/795,897	5,130,297
08/108,831	5,284,935
07/793,938	5,260,422
07/978,946	5,468,481
08/208,072	5,734,023
08/397,533	5,763,585
08/476,520	5,595,881
08/483,021	5,334,391
08/143,575	5,750,356
08/329,010	
08/470,535	
08/023,815	
08/268,882	
08/481,853	
07/987,751	
07/992,942	
08/208,501	
08/338,553	
08/485,617	
08/136,216	
08/470,397	
08/288,143	
08/783,749	
08/890,187	
08/315,539	
08/979,628	
08/485,605	
08/977,650	
60/014,790	
08/832,583	
08/640,344	
09/073,109	
08/480,002	
08/657,581	
08/483,241	
08/855,925	
08/482,133	
60/005,964	
US89/02784	
US92/03391	
US90/10030	
US92/10031	
US94/12231	
US94/01919	
US93/12264	
US93/12351	
US96/09581	
US95/10048	
US95/12575	
US96/09721	
US97/08699	
US97/05461	
US97/04360	
US96/10102	

ANERGEN, INC. INTELLECTUAL PROPERTY

Atty. Docket	Serial No.	Date Filed	U.S. Patent No.	Date Issued
014058 00021OUS	07/367751	06/21/89	5,194,425	03/16/93
014058 00022OUS	07/576084	08/30/90	5,130,297	07/14/92
014058 00023OUS	07/635840	12/28/90	5,284,935	02/08/94
014058 00024OUS	07/690840	04/23/91	5,260,422	11/09/93
014058 000241US	07/869293	04/14/92	5,468,481	11/21/95
014058 000242US	08/462351	06/05/95		
014058 00140OUS	07/795897	11/19/91		
014058 00141OUS	08/108831	08/18/93		
014058 00160OUS	07/793938	11/19/91		
014058 00161OUS	07/978946	11/18/92		
014058 001611US	08/208072	03/03/94		
014058 001612US	08/397533	03/02/95		
014058 001613US	08/476520	06/07/95		
014058 001614US	08/483021	06/07/95	5,734,023	03/31/98
014058 00210OUS	08/143575	10/25/93		
014058 00211OUS	08/329010	10/25/94		

Atty. Docket	Serial No.	Date Filed	U.S. Patent No.	Date Issued
014058 002111US	08/470535	06/06/95		
014058 002600US	08/023815	02/25/93		
014058 002610US	08/268882	06/30/94		
014058 002611US	08/481853	06/07/95		
014058 002800US	07/987751	12/04/92		
014058 002900US	07/992942	12/17/92		
014058 002910US	07/208501	03/09/94		
014058 002911US	08/338553	11/18/94		
014058 002920US	08/485617	06/07/95		
014058 003200US	08/136216	10/13/93		
014058 003210US	08/227372	04/14/94	5,763,585	06/09/98
014058 003211US	08/470397	06/06/95		
014058 003400US	08/288143	08/09/94	5,595,881	01/21/97
014058 003410US	08/783749	01/16/97		
014058 003600US	07/890187	05/29/92	5,334,391	08/02/94
014058 003700US	08/315539	09/30/94		
014058 003710US	08/979628	11/28/97		

Atty. Docket	Serial No.	Date Filed	U.S. Patent No.	Date Issued
014058 00380OUS	08/485605	06/07/95		
014058 00400OUS	08/657939	05/31/96	5,750,356	05/12/98
014058 00401OUS	08/977650	11/24/97		
014058 00470OUS	60/014790	04/03/96		
014058 00471OUS	08/832583	04/02/97		
014058 00480OUS	08/640344	04/30/96		
014058 00540OUS	09/073109	05/05/98		
014058 00560OUS	08/480002	06/07/95		
014058 00561OUS	08/657581	06/07/96		
014058 00570OUS	08/483241	06/07/95		
014058 00571OUS	08/855925			
014058 00580OUS	08/482133	06/07/95		
014058 00590OUS	60/005964	10/27/95		
014058- 000210PC	US89/02784	06/23/89		
014058-000 2410PC	US92/03391	04/23/92		
014058- 001400PC	US92/10030	11/18/92		
014058- 001610PC	US92/10031	11/18/92		
14058-002110PC	US94/12231	10/25/94		

Atty. Docket	Serial No.	Date Filed	U.S. Patent No.	Date Issued
014058-002600PC	US94/01919	02/24/94		
014058-002900PC	US93/12264	12/16/93		
014058-002910PC	US93/12351	12/16/93		
014058-002920PC	US96/09581	06/05/96		
014058-003400PC	US95/10048	08/09/95		
014058-003700PC	US95/12575	09/29/95		
014058-003800PC	US96/09721	06/06/96		
014058-004010PC	US97/08699	05/20/97		
014058-004710PC	US97/05461	04/02/97		
014058-004800	US97/04360	03/18/97		
014058-005500PC	US96/10102	06/07/96		

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State of California

SECRETARY OF STATE



*2
14 pages*

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

JUL 21 1998



Bill Jones

Secretary of State

State of Delaware

Office of the Secretary of State

ENDORSED - FILED
 In the office of the Secretary of State
 of the State of California
 JUL 16 1998
 BILL JONES, Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"ANERGEN, INC.", A CALIFORNIA CORPORATION,
 WITH AND INTO "ANERGEN, INC." UNDER THE NAME OF "ANERGEN, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTEENTH DAY OF JULY, A.D. 1998, AT 1:30 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

2873820 8100M

981270492

AUTHENTICATION: 9192661

DATE: 07-13-98

PATENT
REEL: 9507 FRAME: 0558

**AGREEMENT AND PLAN OF MERGER
OF ANERGEN, INC.,
A DELAWARE CORPORATION,
AND
ANERGEN, INC.,
A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of June 30, 1998 (this "Agreement") is between Anergen, Inc., a Delaware corporation ("Anergen Delaware"), and Anergen, Inc., a California corporation ("Anergen California"). Anergen Delaware and Anergen California are also referred to herein as the "Constituent Corporations."

RECITALS

A. Anergen Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has authorized capital of 70,000,000 shares, \$.001 par value, of which 60,000,000 shares are designated "Common Stock" and 10,000,000 shares are designated "Preferred Stock." The Preferred Stock of Anergen Delaware is undesignated as to series, rights, preferences, privileges or restrictions. As of the date hereof, 1,000 shares of Common Stock were issued and outstanding, all of which are held by Anergen California, and no shares of Preferred Stock were issued and outstanding.

B. Anergen California is a corporation duly organized and existing under the laws of the State of California and has authorized capital of 50,000,000 shares, no par value, of which 40,000,000 are designated "Common Stock" and 10,000,000 shares are designated "Preferred Stock," of which 1,157,894 shares are designated as Series A-1 Preferred Stock, 740,740 shares are designated as Series A-2 Preferred Stock, 3,002,648 shares are designated as Series B Preferred Stock and 15,000 shares are designated as Series C Preferred Stock. As of June 30, 1998, 18,891,892 shares of Common Stock were issued and outstanding, and no shares of Preferred Stock were issued and outstanding.

C. The Board of Directors of Anergen California has determined that, for the purpose of effecting the reincorporation of Anergen California in the State of Delaware, it is advisable and in the best interests of Anergen California and its shareholders that Anergen California merge with and into Anergen Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of Anergen Delaware and Anergen California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective sole stockholder and shareholders, and executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Anergen Delaware and Anergen California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1.

MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California Corporations Code, Anergen California shall be merged with and into Anergen Delaware (the "Merger"), the separate existence of Anergen California shall cease and Anergen Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and Anergen Delaware shall be, and is herein also referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Anergen, Inc.

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and the Merger shall have been adopted and approved by the shareholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California Corporations Code;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Certificate of Merger or an executed, acknowledged and certified counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) An executed Certificate of Merger or an executed, acknowledged and certified counterpart of this Agreement meeting the requirements of the California Corporations Code shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence of Anergen California shall cease and Anergen Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger; (ii) shall be subject to all actions previously taken by its and Anergen California's Boards of Directors; (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Anergen California in the manner as more fully set forth in Section 259 of the Delaware

General Corporation Law; (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger; and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Anergén California in the same manner as if Anergén Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California Corporations Code.

II.

CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* The Certificate of Incorporation of Anergén Delaware as in effect immediately prior to the Effective Date of the Merger, a copy of which is attached hereto as Appendix A, shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 *Bylaws.* The Bylaws of Anergén Delaware as in effect immediately prior to the Effective Date of the Merger, shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 *Directors and Officers.* The directors and officers of Anergén California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their respective successors shall have been duly elected and qualified or until as otherwise provided by law, or the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III.

MANNER OF CONVERSION OF STOCK

3.1 *Anergén California Common Stock.* Upon the Effective Date of the Merger, each share of Anergén California Common Stock, no par value, issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be changed and converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$.001 par value, of the Surviving Corporation.

3.2 *Anergén California Options and Stock Purchase Rights.* Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the stock option plans (including without limitation the 1988 Stock Option Plan, the 1996 Stock Plan and the 1995 Director Option Plan) and all other employee benefit plans (including without limitation the 1991 Employee Stock Purchase Plan and the 1992 Consultant Stock Plan) of Anergén California. Each outstanding and unexercised option or other right to purchase a security convertible into Anergén California Common Stock shall become an

option or right to purchase or a security convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each share of Anergen California Common Stock issuable pursuant to any such option, stock purchase right or convertible security, on the same terms and conditions set forth in the stock option plans, other employee benefit plans and/or as provided in the respective option or stock purchase agreements governing such option stock purchase right or convertible securities, and at an exercise price per share equal to the exercise price applicable to any such Anergen California option, stock purchase right or convertible security at the Effective Date of the Merger. It is the intention of the parties that the stock options of Anergen California assumed by Anergen Delaware qualify following the Effective Date of the Merger as incentive stock options as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), to the extent that the stock options of Anergen California qualified as incentive stock options immediately prior to the Effective Date of the Merger. At the Effective Date of the Merger, Anergen California shall assign to Anergen Delaware any and all rights of repurchase pertaining to shares of Anergen Delaware Common Stock issued upon exercise of stock options, stock purchase rights and otherwise. There are no options, purchase rights for or securities convertible into Preferred Stock of Anergen California.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights or convertible securities equal to the number of shares of Anergen California Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.3 *Anergen Delaware Common Stock.* Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of Anergen Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Anergen Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.4 *Certificates.* After the Effective Date of the Merger, each outstanding certificate theretofore representing shares of Anergen California Common Stock shall be deemed for all purposes to represent the same number of whole shares of the Surviving Corporation's Common Stock.

IV.

GENERAL

4.1 *Covenants of Anergen Delaware.* Anergen Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code;

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by Anergén Delaware of all of the franchise tax liabilities of Anergén California; and

(c) Take such other actions as may be required by the California Corporations Code.

4.2 *Further Assurances.* From time to time, as and when required by Anergén Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Anergén California such deeds and other instruments, and there shall be taken or caused to be taken by Anergén Delaware and Anergén California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Anergén Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Anergén California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Anergén Delaware are fully authorized in the name and on behalf of Anergén California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 *Abandonment.* At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Anergén California or Anergén Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Anergén California or by the sole stockholder of Anergén Delaware, or by both.

4.4 *Amendment.* The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (i) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (ii) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (iii) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

4.5 *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

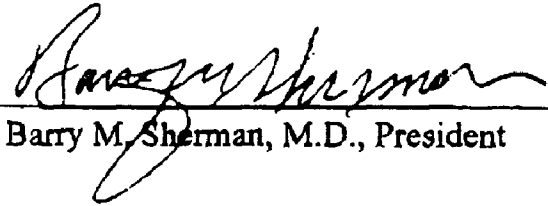
4.6 *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 301 Penobscot Drive, Redwood City, CA 94063 and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

4.7 *Governing Law.* This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.


4.8 *Counterparts.* In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of Anergen Delaware and Anergen California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

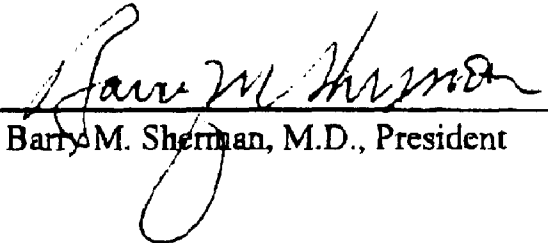
ANERGEN, INC.
a Delaware corporation

By: 
Barry M. Sherman, M.D., President


ATTEST:


David V. Smith,
Chief Financial Officer

ANERGEN, INC.
a California corporation

By: 
Barry M. Sherman, M.D., President

ATTEST:


David V. Smith,
Chief Financial Officer

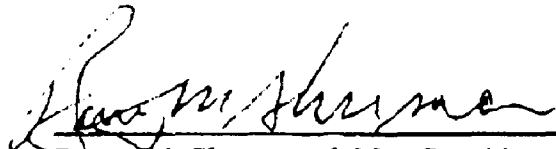
ANERGEN, INC.
(California Corporation)

OFFICERS' CERTIFICATE

Barry M. Sherman, M.D. and David V. Smith certify that:

1. They are the President and the Chief Financial Officer, respectively, of Anergen, Inc., a corporation organized under the laws of the State of California.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock". There are authorized 40,000,000 shares of Common Stock and 10,000,000 shares of Preferred Stock, of which 1,157,894 shares are designated as Series A-1 Preferred Stock, 740,740 shares are designated as Series A-2 Preferred Stock, 3,002,648 shares are designated as Series B Preferred Stock and 15,000 shares are designated as Series C Preferred Stock.
3. There were 18,851,000 shares of Common Stock and no shares of Preferred Stock outstanding as of the record date (the "Record Date") of the shareholders' meeting at which the Agreement and Plan of Merger attached hereto (the "Merger Agreement") was approved. All shares of Common Stock outstanding were entitled to vote on the merger.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of Common Stock outstanding as of the Record Date, voting as a single class.
6. Barry M. Sherman, M.D. and David V. Smith further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Redwood City, California on June 20, 1998.



Barry M. Sherman, M.D., President



David V. Smith, Chief Financial Officer

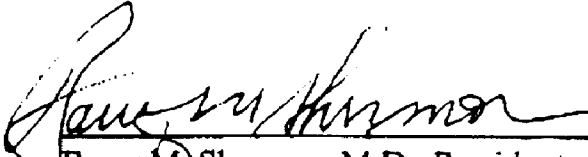
ANERGEN, INC.
(Surviving Corporation)

OFFICERS' CERTIFICATE

Barry M. Sherman, M.D. and David V. Smith certify that:

1. They are the President and Chief Financial Officer, respectively, of Anergen, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock". There are authorized 60,000,000 shares of Common Stock and 10,000,000 shares of Preferred Stock. The Preferred Stock is undesignated as to series, rights, preferences or restrictions.
3. There were 100 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There were no shares of Preferred Stock outstanding.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.
6. Barry M. Sherman, M.D. and David V. Smith further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Redwood City, California on June 30, 1998.



Barry M. Sherman, M.D., President



David V. Smith, Chief Financial Officer

APPENDIX A

Certificate of Incorporation of Anergem Delaware

CERTIFICATE OF INCORPORATION**OF****ANERGEN, INC.****ARTICLE I**

The name of this corporation is Anergen, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, zip code 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated respectively Common Stock and Preferred Stock. The total number of shares of all classes of stock which the Corporation has authority to issue is Seventy Million (70,000,000), consisting of Sixty Million (60,000,000) shares of Common Stock, \$0.001 par value (the "Common Stock"), and Ten Million (10,000,000) shares of Preferred Stock, \$0.001 par value (the "Preferred Stock").

The shares of Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors. The Board of Directors of the Corporation is expressly authorized, by filing a certificate pursuant to the applicable law of the State of Delaware, to: (i) establish from time to time the number of shares to be included in each such series; (ii) fix the rights, preferences, restrictions and designations of the shares of each such series, including but not limited to the fixing or alteration of the dividend rights, dividend rate, conversion rights, conversion rate, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, voting rights and liquidation preferences of any series of Preferred Stock for which no shares have been issued and are outstanding; (iii) increase the number of shares of any series at any time; and (iv) decrease the number of shares of any series prior or subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall

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be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V

The name and mailing address of the incorporator are as follows:

Anna Itol
William Santini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

The election of directors need not be by written ballot unless a stockholder demands election by written ballot at a meeting of stockholders and before voting begins or unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

The number of directors which constitute the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE X

To the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

At the election of directors of the Corporation, each holder of stock of any class or series shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE XII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Delaware) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE XIII

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation.

The undersigned incorporator hereby acknowledges that the foregoing Certificate of Incorporation is her act and deed and that the facts stated herein are true.

Dated: May 1, 1998


Anna Itoi

