

02-22-1999

1 SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



Tab Settings

To the Honorable Commissioner of Patents and Trademarks 100970455

1. Name of conveying party(ies):

KAM Acquisition, Inc., merging with
Kamterter Products, Inc.

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

3. Nature of conveyance:

- ☐ Assignment ☒ Merger
☐ Security Agreement ☒ Change of Name
☐ Other

Execution Date: January 30, 1998

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

Name: Vigortech, Inc.

Internal Address:

Street Address: 1025 North 33rd St.

City: Lincoln State: NE ZIP: 68503

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)

B. Patent No.(s)

4,912,874

Additional numbers attached? ☐ Yes ☒ No

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

Name: Vincent L. Carney

Internal Address:

Street Address: P.O. Box 80836

City: Lincoln State: NE ZIP: 68501

6. Total number of applications and patents involved:

1

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

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

02/18/1999 DNGUYEN 00000101 4912874

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.

Vincent L. Carney
Name of Person Signing

Vincent L. Carney
Signature

February 12, 1999
Date

Total number of pages comprising cover sheet

1

PATENT

REEL: 9764 FRAME: 0294

STATE OF

NEBRASKA

**United States of America,
State of Nebraska**

} ss.



**Department of State
Lincoln, Nebraska**

**I, Scott Moore, Secretary of State of the State of Nebraska do hereby
certify;**

the attached is a true and correct copy of Articles of Merger of

KAMTERTER ACQUISITION, INC.

with registered office located in Lincoln, Nebraska, merging into

KAMTERTER PRODUCTS, INC.

**with registered office located in Lincoln, Nebraska, changing
corporate name to**

VIGORTECH, INC.

as filed in this office on January 30, 1998.

In Testimony Whereof,

**I have hereunto set my hand and
affixed the Great Seal of the State
of Nebraska on August 21
in the year of our Lord, one thousand
nine hundred and ninety-eight.**



Scott Moore

SECRETARY OF STATE

**PATENT
REEL: 9764 FRAME: 0295**

1608591 MO
0518724 MI NN

JAN 30 1998
STATE OF NEBRASKA
SECRETARY'S OFFICE
Received filed and recorded on
film roll no. 985
at page 154

ARTICLES OF MERGER
OF KAM ACQUISITION, INC.
WITH AND INTO
KAMTERTER PRODUCTS, INC.

See now 87229
Secretary of State
By *SH 910028* 145 pm

The undersigned corporation, organized and existing under the Nebraska Business Corporation Act, sets forth the following information:

1. Attached to these Articles of Merger and made a part hereof is a copy of the Agreement and Plan of Merger.
2. The Agreement and Plan of Merger was approved in the manner prescribed by the Nebraska Business Corporation Act.
3. Kamterter Products, Inc. will be the surviving corporation. The Articles of Incorporation of KAM Acquisition, Inc. in effect immediately prior to the Merger shall be the Articles of Incorporation of the surviving corporation.
4. The name of the surviving corporation shall be changed effective upon the merger to Vigortech, Inc.
5. The shareholders approved the merger on January 26, 1998 and voted as follows:

Designation (class or series) of voting group	Number of shares outstanding	Total No. of votes entitled to be cast	Total No. of votes cast		
			FOR	AGAINST	ABSTAIN
Common Stock	2,638,019	2,638,019	2,336,447	32,500	31,139

6. The number of shares cast for the plan of merger was sufficient for approval.
7. The name of the corporation to be merged with Kamterter Products, Inc. is KAM Acquisition, Inc., a Nebraska corporation.
8. The sole shareholder of KAM Acquisition, Inc. approved the merger and voted as follows:

Designation (class or series) of voting group	Number of shares outstanding	Total No. of votes entitled to be cast	Total No. of votes cast		
			FOR	AGAINST	ABSTAIN
Common Stock	1,000	1,000	1,000	0	0

The number of shares cast for the plan of merger was sufficient for approval.

9.

The effective date of the Merger is January 30, 1998.

Dated this 30th day of January, 1998.

KAMTERTER PRODUCTS, INC.

By: John A. Eastin
Authorized Officer

President, John A. Eastin
(Print or type name and title)

KAM ACQUISITION, INC.

By: Luther C. Kissan, IV
Authorized Officer

LUTHER C. KISSAN, IV, ASSISTANT SECRETARY
(Print or type name and title)

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of January 30th, 1998, by and among MONSANTO COMPANY, a Delaware corporation ("Monsanto"), KAM ACQUISITION, INC., a newly formed Nebraska corporation and wholly owned subsidiary of Monsanto ("Buyer"), and KAMTERTER PRODUCTS, INC., a Nebraska corporation ("KAM");

WITNESSETH:

WHEREAS, Buyer has previously purchased more than eighty percent (80%) of the issued and outstanding capital stock of KAM pursuant to that certain Stock Purchase Agreement (the "Purchase Agreement") dated January 29, 1998 by and among the parties hereto and each of the individuals listed on the signature pages thereto (individually, a "Seller" and collectively, "Sellers") and Kamterter II, LLC, a Nebraska limited liability company; and

WHEREAS, certain individuals and entities own the remaining issued and outstanding capital stock of KAM (individually, a "KAM Shareholder" and collectively "KAM Shareholders"); and

WHEREAS, the Purchase Agreement contemplates a merger of Buyer with and into KAM immediately after the consummation of the transactions contemplated in the Purchase Agreement; and

WHEREAS, the Boards of Directors of each of Buyer and KAM, and an authorized committee or designee of the Board of Directors of Monsanto, (i) have approved the merger of Buyer with and into KAM upon the terms and conditions set forth herein and (ii) deem such merger to be in the best interests of their respective shareholders; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements, and upon and subject to the terms and the conditions hereinafter set forth, the parties do hereby agree as follows:

ARTICLE I

THE MERGER

1.01 The Merger. Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.02), Buyer shall be merged with and into KAM in accordance with this Agreement and the separate corporate existence of Buyer shall thereupon cease (the "Merger"). KAM shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation") and shall be a wholly owned subsidiary of Monsanto. The Merger shall have the effects specified in Section 21-20,133 of the Nebraska Business Corporations Act ("NBCA").

1.02 Effective Time. If all the conditions to the Merger set forth in Articles VI and VII shall have been fulfilled or waived in accordance herewith, the parties hereto shall cause the Articles of Merger in the form of Exhibit L02 (the "Articles of Merger") meeting the requirements of Section 28-20,132 of the NBCA to be properly executed and filed with the Secretary of State of Nebraska in accordance with such Section on the Closing Date. The Merger shall become effective at the time of filing of the Articles of Merger or at such later time which the parties hereto shall have agreed upon and designated in such filing as the effective time of the Merger (the "Effective Time").

1.03 Conversion of Shares.

(a) At the Effective Time, each of the issued and outstanding shares of capital stock of KAM owned by the KAM Shareholders as of the Closing Date (the "Outstanding KAM Shares") other than Dissenting Shares (as defined below) shall, automatically and without any action on the part of the respective holders thereof, convert into the right to receive: (a) Six Million Three Hundred Thousand Dollars (\$6,300,000), multiplied by the number of Outstanding KAM Shares, divided by the number of shares of issued and outstanding capital stock of KAM immediately prior to the Effective Time (the "Initial Payment"); plus (b) payment, if any, under that certain Non-Negotiable Promissory Note of even date herewith executed by Monsanto in favor of the Shareholders Representative, for the benefit of the Shareholders, in connection with the consummation of the transactions contemplated by the Purchase Agreement (the "Subsequent Payment" and together with the Initial Payment, the "Merger Payment"). Any KAM Shareholder's rights to receive the Merger Payment shall in all cases be subject to Monsanto's and Buyer's rights hereunder, and in the Purchase Agreement, including those rights set forth in Article XI thereof.

(b) Notwithstanding any provision to the contrary in this Agreement, Outstanding KAM Shares held by a KAM Shareholder who has not approved the Merger and who has

demand, and is entitled by law to exercise, appraisal rights for such Outstanding KAM Shares in accordance with Section 21-20,132 of the NBCA ("Dissenting Shares") shall not be converted into the right to receive any portion of the Merger Payment, unless such KAM Shareholder fails to perfect or withdraws or otherwise loses his or her right to appraisal in accordance with the NBCA. If, after the Effective Time, such KAM Shareholder fails to perfect or withdraws or loses his or her right to appraisal, such Outstanding KAM Shares held by such KAM Shareholder shall be treated as if they had been converted as of the Effective Time into a right to receive a portion of the Merger Payment, as provided herein, without interest thereon.

1.04 Distribution of Merger Payment. After the Effective Time, KAM Shareholders shall receive the Initial Payment for the Outstanding KAM Shares promptly upon surrender to Monsanto of the certificate or certificates evidencing such Outstanding KAM Shares, duly endorsed in blank or accompanied by duly executed stock transfer powers, with signatures guaranteed. In any event, notwithstanding whether such certificates representing all of the Outstanding KAM Shares have been so surrendered, (i) no dividend payable to holders of record of stock of the Surviving Corporation shall be paid to any holder of such outstanding certificate(s) of Outstanding KAM Shares and (ii) any holder of such outstanding certificate(s) of Outstanding KAM Shares shall not have any voting or other rights in the Surviving Corporation.

1.05 Method of Payment. All payments from one party to another under this Agreement shall be made by wire transfer of immediately available federal funds to an account designated in writing by the Shareholders Representative.

1.06 Effect of the Merger. From and after the Effective Time and pursuant to the NBCA, the Surviving Corporation shall possess all rights, privileges, immunities, powers and purposes of each of Buyer and KAM, and all of the property, real and personal, including causes of action and every other asset of Buyer and KAM shall vest in the Surviving Corporation without further act or deed.

ARTICLE II

ARTICLES OF INCORPORATION AND BYLAWS AND OFFICERS AND DIRECTORS OF THE SURVIVING CORPORATION

2.01 Articles of Incorporation. The Articles of Incorporation of Buyer in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation, until duly amended in accordance with applicable law.

2.02 Bylaws. The Bylaws of Buyer in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation, until duly amended in accordance with applicable law.

2.03 Directors. The directors of Buyer immediately prior to the Effective Time shall be the directors of the Surviving Corporation as of the Effective Time.

2.04 Officers. The officers of Buyer immediately prior to the Effective Time shall be the officers of the Surviving Corporation as of the Effective Time.

2.05 Name. The name of the Surviving Corporation shall be Vigortech, Inc.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SHAREHOLDERS

3.01 Title and Authority. The representations and warranties of Sellers set forth in Article III of the Purchase Agreement are hereby incorporated by reference, and KAM Shareholders hereby jointly and severally make the same such representations and warranties to Monsanto and Buyer.

3.02 Representations Regarding KAM. The representations and warranties of Sellers and KAM set forth in Article IV of the Purchase Agreement are hereby incorporated by reference, and KAM Shareholders hereby jointly and severally make the same such representations and warranties to Monsanto and Buyer.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER AND MONSANTO

The representations and warranties of Monsanto and Buyer set forth in Article V of the Purchase Agreement are hereby incorporated by reference, and Monsanto and Buyer hereby jointly and severally make the same such representations and warranties to KAM Shareholders.

ARTICLE V

COVENANTS OF THE PARTIES

5.01 Dissenting Shareholders. KAM shall give Monsanto prompt notice of any demands received by KAM for appraisal of shares pursuant to Section 21-20,141 of the NBCA, and Monsanto shall have the right to direct all negotiations and proceedings with respect to such demands. Monsanto shall not make any payment with respect to, or settle or offer to settle, any such demands, without the written consent of KAM, which consent shall not be unreasonably withheld or delayed.

5.02 Further Assurances. KAM, KAM Shareholders, Monsanto and Buyer, respectively, hereby covenant to and agree with one another that if at any time after the Effective Time the Surviving Corporation shall consider or be advised that any further deeds, assignments, or assurances are necessary, desirable or proper to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, the title to any property or rights of Buyer or KAM acquired or to be acquired by reason of, or as a result of, the Merger, or to otherwise carry out the intent and purposes of this Agreement or any other agreement entered into in connection herewith, each of them and their respective officers and directors will execute and deliver all such deeds, assignments and assurances in law and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise to carry out the intent and purposes of this Agreement. The parties further agree that the officers and directors of the Surviving Corporation are fully authorized in the name of KAM or otherwise to take any and all such action.

ARTICLE VI

CONDITIONS TO OBLIGATIONS OF KAM SHAREHOLDERS

Each of the obligations of KAM Shareholders to be performed hereunder shall be subject to the satisfaction (or waiver by the Shareholders Representative) at or prior to the Closing Date of each of the following conditions:

6.01 Articles of Merger. The Surviving Corporation shall have executed and delivered the Articles of Merger in accordance with Section 1.02.

6.02 Purchase Agreement. The consummation of the transactions contemplated in the Purchase Agreement shall have occurred.

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF BUYER AND MONSANTO

The obligations of Buyer and Monsanto to be performed hereunder shall be subject to the satisfaction (or waiver by Monsanto) on or before the Closing Date of each of the following conditions:

7.01, Absence of Appraisal Demands. KAM shall not have received any notice of any KAM Shareholder's intent to pursue appraisal rights pursuant to Section 21-20,141 of the NBCA with respect to the Merger.

7.02 Purchase Agreement. The consummation of the transactions contemplated in the Purchase Agreement shall have occurred.

7.03 Articles of Merger. The Surviving Corporation shall have executed and delivered the Articles of Merger in accordance with Section 1.02.

ARTICLE VIII

CLOSING; SHAREHOLDERS REPRESENTATIVE

8.01 Closing Date. Subject to the satisfaction or waiver of the conditions set forth herein, the consummation of the Merger (the "Closing") shall take place immediately after the consummation of the transactions contemplated in the Purchase Agreement (the "Closing Date").

8.02 Shareholders Representative.

(a) As of the Closing, KAM Shareholders shall be deemed to have accepted John A. Eastin as the Shareholders Representative for the purposes set forth in Section 10.02 of the Purchase Agreement. Each KAM Shareholder who votes in favor of the Merger, by such vote, confirms such appointment and authority and acknowledges and agrees that such appointment is irrevocable and coupled with an interest, it being understood that the willingness of Monsanto and Buyer to enter into this Agreement is based, in part, on the appointment of the Shareholders Representative to act on behalf of KAM Shareholders.

(b) The Shareholders Representative shall not incur any liability with respect to any action or inaction taken by him except those involving his own willful misconduct or gross negligence. Nothing set forth in this Section 8.02(b) shall in any way relieve KAM Shareholders of their obligations under this Agreement or the Purchase Agreement.

ARTICLE IX

INDEMNIFICATION AND RELEASE BY KAM SHAREHOLDERS

9.01 Indemnification. KAM Shareholders hereby acknowledge and accept their obligations, pursuant to Article XI of the Purchase Agreement, to jointly and severally indemnify and reimburse Monsanto and Buyer for any and all Losses incurred by any Monsanto Protected Party.

9.02 Release. By voting in favor of the Merger, each KAM Shareholder (a) affirmatively releases and forever discharges, Buyer, Monsanto and KAM from, and (b) affirmatively covenants and agrees never to institute or cause to be instituted any suit or other form of action against any of Buyer, Monsanto and KAM based upon any and all claims, demands, indebtedness, agreements, promises, obligations, damages or liabilities of any nature whatsoever, in law or in equity, whether known or unknown, and whether or not contingent, that such KAM Shareholder ever had, ever

claimed to have, now has, or may hereafter claim to have against any of Buyer, Monsanto, KAM, or any Monsanto Protected Party by reason of any matter, cause, thing, act or omission occurring at any time up to and including the Effective Time.

ARTICLE X

MISCELLANEOUS

10.01 Entire Agreement. This Agreement (including the Exhibits), the Purchase Agreement (including the Exhibits and Schedules thereto, and the agreements referenced therein), that certain Confidentiality Agreement dated November 26, 1996, by and between KAM and Monsanto, and that certain Research and Development Agreement dated November 26, 1997, by and between KAM and Monsanto together constitute the sole understanding of the parties with respect to the subject matter hereof, and supersede any previous agreements between any of the parties; provided, however, that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement.

10.02 Parties Bound by Agreement; Successors and Assigns. The terms, conditions and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and assigns thereof. Without the prior written consent of Monsanto, KAM may not assign its rights, duties or obligations hereunder or any part thereof to any other person or entity. Buyer and Monsanto may assign their respective rights and duties hereunder in whole or in part (before or after the Closing) to one or more entities but if it does so, it shall remain liable for all of Monsanto's or Buyer's (as applicable) obligations hereunder.

10.03 Expenses. Except as otherwise provided herein, KAM, Monsanto and Buyer shall each pay all costs and expenses incurred by each of them, or on their behalf respectively, in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of their own financial consultants, accountants and counsel.

10.04 Notices. Any notice required or permitted to be given hereunder shall be given in accordance with Section 13.09 of the Purchase Agreement.

10.05 No Third-Party Beneficiaries. With the exception of the parties to this Agreement and the Protected Parties, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

10.06 Gender and Number. Where the context requires, the use of a pronoun of one gender or the neuter is to be deemed to include a pronoun of the appropriate gender, singular words are to be deemed to include the plural, and vice versa.

10.07 References. Whenever reference is made in this Agreement to any Article, Section, or Exhibit, such reference shall be deemed to apply to the specified Article or Section of this Agreement or the specified Exhibit to this Agreement.

10.08 Provisions of Purchase Agreement. Sections 13.02, 13.04, 13.05, 13.06, 13.10, 13.13, 13.15 and 13.17 of the Purchase Agreement are hereby incorporated by reference and made a part hereof.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf as of the date indicated on the first page hereof.

KAM:

KAMTERTER PRODUCTS, INC.

By: John A. Eastin
Name: John A. Eastin
Title: President

BUYER:

LCK KAM ACQUISITION, INC.

By: Donald L. Suttner
Name: DONALD L. SUTTNER
Title: AUTHORIZED SIGNATORY

LCK MONSANTO:

MONSANTO COMPANY

By: Donald L. Suttner
Name: DONALD L. SUTTNER
Title: DIRECTOR, SEED ENHANCEMENT TECHNOLOGY

VINCENT L. CARNEY
ATTORNEY AT LAW
PATENTS AND TRADEMARKS
P.O. BOX 80836
LINCOLN, NEBRASKA 68501-0836
TELEPHONE (402) 465-8808
FACSIMILE (402) 465-8810

February 12, 1999

Honorable Commissioner of
Patents and Trademarks
Box ASSIGNMENTS
Washington, D.C. 20231

Re: Recording Merger and Name Change for
U.S. Patent 4,912,874; My Case 128-32-1-1

Dear Sir:

Enclosed herewith is a certified copy of the articles of merger of KAM Acquisition, Inc., merging into Kamterter Products, Inc., changing their name to Vigortech, Inc., with an assignment cover sheet for recording the change in title for U.S. Patent 4,912,874. Also enclosed is a check for \$40.00 to cover the cost of recording this document.

Respectfully submitted,


Vincent L. Carney

Reg. No. 20,688
P.O. Box 80836
Lincoln, NE 68501-0836
(402) 465-8808

--Our Ref: 128-32-1-1

DIR:L2-12-99

RECORDED: 02/16/1999

PATENT
REEL: 9764 FRAME: 0307