

02-13-2002



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PATENTS ONLY

11-26-01

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party:
Edward Mendell Co., 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(s): **October 31, 1997**

2. Name and address of receiving party:

Name: **Penwest Pharmaceuticals Co.**

Street Address: **2981 Route 22**

City: **Patterson** State: **New York** ZIP: **12563**

Country: **United States**

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.
Filed on

B. Patent No.(s) **5,455,046**

Additional numbers attached? ☐ Yes ☒ No

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

Name: **Davidson, Davidson & Kappel, LLC**

Internal Address: _____

Street Address: **485 Seventh Avenue, 14th Floor**

City: **New York** State: **New York** ZIP: **10018**

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: **50-0552**

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.

Leslye B. Davidson
Name of Person Signing

Signature

November 13, 2001
Date

Total number of pages including cover sheet, attachments, and document: **[11]**

Docket No. **540.91195**

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

11/27/2001 LMJELLER 00000038 5455046

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40.00 BP

PATENT
REEL: 012559 FRAME: 0233

STATE of WASHINGTON



SECRETARY of STATE

I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,

hereby certify by this certificate that the attached is a true and correct copy of

CERTIFICATE OF AMENDMENT

of

PENWEST PHARMACEUTICALS CO.

Amending and Restating
Articles

as filed in this office on October 31, 1997.



Date: February 29, 2000

Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

Ralph Munro, Secretary of State

200-001

Assignment of Application for Patent

Whereas, Anand R. BAICHWAL

of 5 Kendell Drive, Wappingers Falls, New York 12590, U.S.A.

has invented certain new and useful
improvements in SUSTAINED RELEASE HETERODISPERSE HYDROGEL SYSTEMS FOR
INSOLUBLE DRUGS (Title of Invention)
for which he is about to make application for
 (He has made—or is about to make.)

Letters Patent of the United States of America:

And Whereas, EDWARD MENDELL CO., INC.

of 2981 Route 22, Patterson, New York 12563, U.S.A.

is, desirous of acquiring an interest therein and in the
 Letters Patent to be obtained therefor from the United States;

Now Therefore, be it known by all whom it may concern, that for and in consideration of One Dollars (\$1.00-----)
 and other valuable consideration to me in hand paid, the receipt of which is hereby
 acknowledged I have assigned, sold, and set over, and by these presents do assign, sell,
 and set over unto the said EDWARD MENDELL CO., INC.

~~for the territory of the United States of America, and for all foreign countries~~

† for the territory of the United States of America, and for all foreign countries
 * all right, title, and interest in and to the said invention, as fully set forth and
described in the specification prepared and executed by me on September 1, 1993
filed 19, serial No., preparatory to
obtaining Letters Patent therefor; said invention, application and Letters Patent to be held and
enjoyed by the said EDWARD MENDELL CO., INC.
for its own use and behoof, and for

to the full end of the term for which said Letters Patent are granted, as fully and entirely as the same
would have been held by had this assignment and sale not been made.

Anand R. BAICHWAL

(Inventor's full signature.)

† Either one of these lines MUST be cancelled.

* State whether the full and exclusive right, or what part of the whole interest is assigned.

SEP - 9 '93

RECORDED
 PATENT AND TRADEMARK
 OFFICE

STATE of WASHINGTON



SECRETARY of STATE

I, **RALPH MUNRO**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF AMENDMENT

to

PENWEST PHARMACEUTICALS CO.

a Washington Profit corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Amending and Restating Articles

UBI Number: 601 299 584

Date: October 31, 1997



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

RALPH MUNRO

Ralph Munro, Secretary of State
2-438413-3

PATENT

1997 2202 4255 001 - 010

REEL: 012559 FRAME: 0236

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF

PENWEST PHARMACEUTICALS CO.

FILED
STATE OF WASHINGTON
OCT 31 1997
RALPH MUNRO
SECRETARY OF STATE

11/05/1997 - 41114
0.00 ON 10/31/1997
AM - 10/31/1997 - 9

Pursuant to RCW 23B.10.070 of the Washington Business Corporation Act, Edward Mendell Co., Inc., a Washington corporation, hereby amends and restates its Articles of Incorporation as follows:

ARTICLE 1. NAME

The name of the corporation is Penwest Pharmaceuticals Co.

ARTICLE 2. PURPOSE

The purpose of the corporation is to engage in any business, trade or activity which may lawfully be conducted by a corporation organized under the Washington Business Corporation Act.

ARTICLE 3. REGISTERED OFFICE AND AGENT

The address of the registered office of the corporation is 4700 Two Union Square, 601 Union Street, Seattle, Washington 98101, and the name of its registered agent is Bogle & Co.

ARTICLE 4. SHARES

The total number of shares of stock which the corporation has authority to issue is 40,000,000 shares, consisting of 39,000,000 shares of common stock, par value \$0.001 per share, and 1,000,000 shares of preferred stock, par value \$0.001 per share.

The preferred stock may be issued from time to time in one or more series in any manner permitted by law and these Restated Articles of Incorporation, as determined from time to time by the Board of Directors and stated in the resolution or resolutions providing for the issuance thereof, prior to the issuance of any shares thereof. The Board of Directors shall have the authority to fix and determine and to amend, subject to the provisions hereof, the designations, preferences, limitations and relative rights of the shares of any series that is wholly unissued or to be established. Unless otherwise provided in the resolution establishing any series, the Board of Directors shall have the authority, after the issuance of shares of a series whose number it has designated, to amend the resolution establishing such series to decrease the number of shares of that series, but not below the number of shares of such series then outstanding.

ARTICLE 5. PREEMPTIVE RIGHTS

No preemptive rights shall exist with respect to shares of stock or securities convertible into shares of stock of the corporation.

ARTICLE 6. CUMULATIVE VOTING

The right to cumulate votes in the election of directors shall not exist with respect to shares of stock of the corporation.

ARTICLE 7. DURATION

The period of the corporation's duration shall be perpetual.

ARTICLE 8. DIRECTORS

The directors shall be divided into three classes, designated Class I, Class II and Class III. Initially, Class I directors shall be elected for a term ending at the first annual meeting of shareholders after their election, Class II directors shall be elected for a term ending at the second annual meeting of shareholders after their election, and Class III directors shall be elected for a term ending at the third annual meeting of shareholders after their election. At each annual meeting of shareholders thereafter, successors to the class of directors whose term expires at that annual meeting shall be elected to serve until the third succeeding annual meeting of shareholders. If the number of directors is changed in the manner provided by the Bylaws, any increase or decrease shall be apportioned among the classes so that the number of directors in each class is as nearly equal as possible. A director shall hold office until the annual meeting of shareholders at which such director's term expires and until such director's successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Vacancies on the Board of Directors, including vacancies resulting from an increase in the number of directors, may be filled only by the affirmative vote of a majority of all the directors then in office (although less than a quorum) or by the sole remaining director. The term of a director elected to fill a vacancy shall expire at the next shareholders' meeting at which directors are elected.

A director may be removed only for cause by affirmative vote of the holders of not less than two-thirds of the shares entitled to vote in the election of such director.

ARTICLE 9. BYLAWS

The Board of Directors shall have the power to adopt, amend or repeal the Bylaws of the corporation. The shareholders shall also have the power to adopt, amend or repeal the Bylaws of the corporation upon the affirmative vote of the holders of not less than two-thirds of the shares entitled to vote thereon.

ARTICLE 10. AMENDMENTS TO ARTICLES OF INCORPORATION

The corporation reserves the right to amend or repeal these Restated Articles of Incorporation in any manner permitted by law, and the rights of the shareholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles 6, 8, 9, 10, 12 and 13 may be amended or repealed only upon the affirmative vote of the holders of not less than two-thirds of the shares entitled to vote thereon.

ARTICLE 11. LIMITATION OF DIRECTOR LIABILITY

To the fullest extent permitted by the Washington Business Corporation Act as the same exists or may hereafter be amended, a director of the corporation shall not be liable to the corporation or its shareholders for monetary damages for conduct as a director. Any amendment to or repeal of this Article 11 shall not adversely affect any right or protection of a director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

ARTICLE 12. SPECIAL SHAREHOLDERS' MEETINGS

If the corporation is not a "Public Company" (as hereinafter defined), then special meetings of the shareholders may be called at any time by the Board of Directors, the Chairman of the Board of Directors or the President of the corporation or by the holders of at least 25% of all the votes entitled to be cast on any issue proposed to be considered at such special meeting in accordance with RCW 23B.07.020. If the corporation is a Public Company, then special meetings of the shareholders may be called by the Board of Directors, the Chairman of the Board of Directors or the President of the corporation and may not be called by any other person. "Public Company" means a corporation that has a class of equity securities registered with the Securities and Exchange Commission pursuant to Section 12 or 15 of the Securities Exchange Act of 1934, as amended.

ARTICLE 13. SPECIAL VOTING REQUIREMENTS

In addition to any affirmative vote required by law, by these Restated Articles of Incorporation or otherwise, any "Business Combination" (as hereinafter defined) involving the corporation shall be subject to approval in the manner set forth in this Article 13.

Section 13.1. Definitions. For the purposes of this Article:

13.1.1. "Business Combination" means (i) a merger, share exchange or consolidation of the corporation or any of its Subsidiaries with any other corporation; (ii) the sale, lease, exchange, mortgage, pledge, transfer or other disposition or encumbrance, whether in one transaction or a series of transactions, by the corporation or any of its Subsidiaries of all or a substantial part of the corporation's assets otherwise than in the usual and regular course of business; or (iii) any agreement, contract or other arrangement providing for any of the foregoing transactions.

13.1.2. "Continuing Director" means any member of the Board of Directors who was a member of the Board of Directors on October 1, 1997 or who is elected to the Board of Directors after October 1, 1997 upon the recommendation of a majority of the Continuing Directors voting separately and as a subclass of directors on such recommendation.

13.1.3. "Subsidiary" means a corporation, a majority of the outstanding voting shares of which are owned, directly or indirectly, by the corporation.

Section 13.2. Vote Required for Business Combinations.

13.2.1. Supermajority Vote. Except as provided in subsections 13.2.2 and 13.2.3 hereof, the affirmative vote of the holders of not less than two-thirds of the outstanding shares entitled to vote thereon and, to the extent, if any, provided by resolution adopted by the Board of Directors authorizing the issuance of a class or series of common stock or preferred stock, the affirmative vote of the holders of not less than two-thirds of the outstanding shares of such class or series, voting as a separate voting group, shall be required for the adoption or authorization of a Business Combination.

13.2.2. Majority Vote. Notwithstanding subsection 13.2.1 hereof, if a Business Combination shall have been approved by a majority of the Continuing Directors, voting separately and as a subclass of directors, and if such Business Combination is otherwise required to be approved by the corporation's shareholders pursuant to the Washington Business Corporation Act, then the affirmative vote of the holders of not less than a majority of the outstanding shares entitled to vote thereon and, to the extent, if any, provided by resolution adopted by the Board of Directors authorizing the issuance of a class or series of common stock or preferred stock, the affirmative vote of the holders of not less than a majority of the outstanding shares of such class or series, voting as a separate voting group, shall be required for the adoption or authorization of such Business Combination.

13.2.3. No Shareholder Vote. Notwithstanding subsection 13.2.1 or 13.2.2 hereof, if a Business Combination shall have been approved by a majority of the Continuing Directors, voting separately and as a subclass of directors, and if such Business Corporation is not otherwise required to be approved by the corporation's shareholders pursuant to the Washington Business Corporation Act, then no vote of the shareholders of the corporation shall be required for approval of such Business Combination.

DATED: October 30, 1997

Edmund O. Belsheim, Jr.
Edmund O. Belsheim, Jr.
Senior Vice President

CERTIFICATE OF OFFICER

I, Edmund O. Belsheim, Jr., hereby certify that:

1. I am the duly elected Senior Vice President of Penwest Pharmaceuticals Co. (formerly Edward Mendell Co., Inc.) (the "Corporation").

2. The Amended and Restated Articles of Incorporation of the Corporation attached hereto as Exhibit A (the "Restatement") supersede the original Articles of Incorporation of the Corporation and any amendments thereto and restatements thereof.

3. The Restatement includes amendments to the Articles of Incorporation which require shareholder approval.

4. The Restatement provides for a reclassification of issued shares, in that the Restatement changes the par value of the capital stock of the Corporation from no par value to \$0.001 par value per share. The certificates evidencing the issued and outstanding shares of common stock of the Corporation shall from and after the effectiveness of the Restatement be deemed to evidence a like number of shares of common stock of the Corporation having a par value of \$0.001 per share.

5. The Restatement was approved by the Board of Directors of the Corporation on October 8, 1997 and by the sole shareholder of the Corporation on October 8, 1997 in accordance with the provisions of RCW 23B.10.030 and RCW 23B.10.040.

Date: October 30, 1997

Edmund O. Belsheim Jr.
Edmund O. Belsheim, Jr.
Senior Vice President

Attachment

a:\officer