

12-20-2002

Form PTO-1595
(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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102317019

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

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

1. Name of conveying party(ies):

Khepri Pharmaceuticals, Inc.

2. Name and address of receiving party(ies)

Name: Arris Pharmaceutical Corporation

Internal Address: _____

Street Address: 180 Kimball Way

City: South San Francisco State: CA Zip: 94080

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

3. Nature of conveyance:

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

12/20/1995

Execution Date: _____

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) 08/536,861

B. Patent No.(s) _____

Additional numbers attached? ☐ Yes ☒ No

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

Name: David J. Brezner, Esq.

Internal Address: _____

Street Address: 4 Embarcadero Center

Suite 3400

City: San Francisco State: CA Zip: 94111

6. Total number of applications and patents involved: ☐

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

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number: _____

DO NOT USE THIS SPACE

9. Signature.

David J. Brezner

Name of Person Signing

Signature

12/16/02

Date

Total number of pages including cover sheet, attachments, and documents: ☐ 21

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

Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

12/19/2002 GTOM11 00000186 08536861

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40.00 OP

PATENT
REEL: 013585 FRAME: 0061

State of Delaware
Office of the Secretary of State

PAGE 1

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:
"KHEPRI PHARMACEUTICALS, INC." A DELAWARE CORPORATION,
WITH AND INTO "CHAPPE ACQUISITION CORP." UNDER THE NAME OF
"KHEPRI PHARMACEUTICALS, INC.", A CORPORATION ORGANIZED AND
EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED
AND FILED IN THIS OFFICE THE TWENTY-SECOND DAY OF DECEMBER, A.D.
1995, AT 9 O'CLOCK A.M.

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




Edward J. Freel, Secretary of State

AUTHENTICATION:

2554697 8100M

DATE: 7765404

95C305324

12-22-95

PATENT
REEL: 013585 FRAME: 0062

AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER, dated as of December 20, 1995 (the "Merger Agreement"), is made and entered into by CHAPEL ACQUISITION CORP., a Delaware corporation ("Sub" or "Surviving Corporation"), and KHEPRI PHARMACEUTICALS, INC., a Delaware corporation (the "Company"). (The Company and Sub are hereinafter collectively referred to as the "Constituent Corporations.")

RECITALS

A. Arris Pharmaceutical Corporation, a Delaware corporation ("Parent"), the Company and Sub have entered into an Agreement and Plan of Merger and Reorganization, dated as of November 7, 1995 (the "Reorganization Agreement"), providing, among other things, for the execution and filing of this Merger Agreement and the merger of the Company with and into Sub upon the terms set forth in the Reorganization Agreement and this Merger Agreement (the "Merger").

B. The respective Boards of Directors of each of the Constituent Corporations deem it advisable and in the best interests of each of such corporations and their respective stockholders that Sub be merged with and into the Company.

C. The stockholders of each of the Constituent Corporations have approved the Merger by written consent as required by the General Corporation Law of the State of Delaware (the "Delaware Law") and in accordance with each respective Constituent Corporation's Certificate of Incorporation.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements contained in this Merger Agreement, Parent and the Constituent Corporations hereby agree that the Company shall be merged with and into Sub in accordance with the provisions of the laws of the State of Delaware, upon the terms and subject to the conditions set forth as follows (certain capitalized terms are defined in Article 4 of this Merger Agreement):

ARTICLE I

THE MERGER

1.1 **Filing.** This Merger Agreement, together with the officers' certificates of each of the Constituent Corporations required by Delaware Law, shall be filed with the Secretary of State of the State of Delaware on the date specified in the Reorganization Agreement.

1.2 **Effectiveness.** The Merger shall become effective on the date this Merger Agreement is duly filed with the Secretary of State of the State of Delaware (the "Effective Time").

1.3 **Merger.** At the Effective Time, the Company shall be merged with and into Sub and the separate corporate existence of the Company shall thereupon cease. Sub shall be the Surviving Corporation in the Merger and the separate corporate existence of Sub, with all of its purposes, objects, rights, privileges, powers, immunities and franchises, shall continue unaffected and unimpaired by the Merger.

1.4 **Further Action.** If at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Merger Agreement or to vest the Surviving Corporation with the full right, title and possession to all assets, property, rights, privileges, immunities, powers and franchises of either or both of the Constituent Corporations, the officers and directors of the Surviving Corporation are fully authorized in the name of either or both of the Constituent Corporations or otherwise to take all such action.

ARTICLE 2

CORPORATE GOVERNANCE MATTERS

2.1 **Certificate of Incorporation.** From and after the Effective Time and until thereafter amended as provided by law, the Certificate of Incorporation of Sub as in effect immediately prior to the Effective Time shall be the Certificate of the Surviving Corporation without change or amendment, except that Article I of the Certificate of Incorporation of the Surviving Corporation shall be amended to change of the name of the Surviving Corporation to be "Khepri Pharmaceuticals, Inc.," which Article I shall be amended to read in its entirety as follows:

"I.

The name of this corporation is Khepri Pharmaceuticals, Inc."

The Certificate of Incorporation of the Surviving Corporation, as so amended, shall remain the Certificate of Incorporation of the Surviving Corporation until amended in accordance with the terms thereof and the Delaware Law.

2.2 **By-laws.** The By-laws of Sub in effect immediately prior to the Merger shall be the By-laws of the Surviving Corporation unless and until amended as provided by law.

2.3 **Directors.** The sole director of Sub immediately prior to the Effective Time shall be the sole director of the Surviving Corporation from and after the Effective Time to serve in such capacity until the next annual meeting of stockholders, or otherwise as provided in the Certificate of Incorporation of the Surviving Corporation.

2.4 **Officers.** The officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation from and after the Effective Time to serve in such capacities as provided in the Bylaws of the Surviving Corporation.

ARTICLE 3

MANNER OF CONVERTING SHARES OF THE CONSTITUENT CORPORATIONS

3.1 Conversion of Shares.

(a) Subject to Sections 3.3(b) and 3.4, at the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Sub, the Company or any stockholder of the Company:

(i) Each share of the Company's Common Stock, \$.001 par value ("Company Common Stock"), outstanding immediately prior to the Effective Time shall be converted into the right to receive 0.081484 (the "Common Exchange Ratio") of a share of Parent's Common Stock, \$.001 par value ("Parent Common Stock").

(ii) Each share of the Company's Series A Preferred Stock, \$.001 par value ("Series A Preferred Stock"), outstanding immediately prior to the Effective Time shall be converted into the right to receive (A) 0.053434 of a share of Parent Common Stock and (B) the right to receive an additional payment for the type and amount of consideration payable on December 30, 1996 in accordance with Section 3.1(b)(i) or 3.1(e)(i), as applicable.

(iii) Each share of the Company's Series B Preferred Stock, \$.001 par value ("Series B Preferred Stock"), outstanding immediately prior to the Effective Time shall be converted into the right to receive (A) 0.106872 of a share of Parent Common Stock and (B) the right to receive an additional payment for the type and amount of consideration payable on December 30, 1996 in accordance with Section 3.1(b)(ii) or 3.1(e)(ii), as applicable.

(iv) Each share of the Company's Series C Preferred Stock, \$.001 par value ("Series C Preferred Stock"), outstanding immediately prior to the Effective Time shall be converted into the right to receive (A) 0.080169 of a share of Parent Common Stock and (B) the right to receive an additional payment for the type and amount of consideration payable on December 30, 1996 in accordance with Section 3.1(b)(iii) or 3.1(e)(iii), as applicable.

The Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock are collectively referred to herein as the "Company Preferred Stock."

(b) In addition to the right to receive the fraction of a share of Parent Common Stock specified in Sections 3.1(a)(ii)(A), 3.1(a)(iii)(A) or 3.1(a)(iv)(A), as the case may be, each

share of Company Preferred Stock outstanding immediately prior to the Effective Time shall also have the right to receive the consideration specified in Section 3.1(b)(i) through (iii), as applicable (the "Stock Consideration"), or the consideration set forth in Sections 3.1(e)(i), 3.1(e)(ii) or 3.1(e)(iii) below (the "Cash Consideration"), as applicable, at Parent's absolute discretion, on December 30, 1996. The Stock Consideration and the Cash Consideration, as applicable, are referred to herein as the "Second Payment."

(i) The Stock Consideration shall consist, for each share of Series A Preferred Stock outstanding immediately prior to the Effective Date, of a fraction of a share of Parent Common Stock given by the following formula: 0.020869 multiplied by the Time Adjustment (as defined in Section 3.1(c)(i)) multiplied by the Collar Adjustment (as defined in Section 3.1(c)(ii)).

(ii) The Stock Consideration shall consist, for each share of Series B Preferred Stock outstanding immediately prior to the Effective Date, of a fraction of a share of Parent Common Stock given by the following formula: 0.041739 multiplied by the Time Adjustment (as defined in Section 3.1(c)(i)) multiplied by the Collar Adjustment (as defined in Section 3.1(c)(ii)).

(iii) The Stock Consideration shall consist, for each share of Series C Preferred Stock outstanding immediately prior to the Effective Date, of a fraction of a share of Parent Common Stock given by the following formula: 0.031310 multiplied by the Time Adjustment (as defined in Section 3.1(c)(i)) multiplied by the Collar Adjustment (as defined in Section 3.1(c)(ii)).

(c) For purposes of this Merger Agreement:

(i) the "Time Adjustment" shall be the sum of (A) 1 plus (B) the product of (i) .065 times (ii) the number of days between the Effective Date and December 30, 1996, divided by 365.

(ii) The "Collar Adjustment" shall be as follows:

Collar Adjustment

If Second Payment Date Stock Price is:

A fraction, the numerator of which is Less than \$10.13625
\$10.13625 and the denominator of which is
the Second Payment Date Stock Price

1

\$10.13625 to \$13.71375

A fraction, the numerator of which is More than \$13.71375
\$13.71375 and the denominator of which is
the Second Payment Date Stock Price

(iii) the "Second Payment Date Stock Price" shall be the average closing price of Parent Common Stock on the Nasdaq National Market during the ninety (90) trading days ending on December 27, 1996.

(d) If any shares of Company Common Stock outstanding immediately prior to the Effective Time are unvested or are subject to a repurchase option, risk of forfeiture or other condition under any applicable restricted stock purchase agreement or other agreement with the Company, then the shares of Parent Common Stock issued in exchange for such shares of Company Common Stock will also be unvested and subject to the same repurchase option, risk of forfeiture or other condition, and the certificates representing such shares of Parent Common Stock may accordingly be marked with appropriate legends.

(e) The consideration to be paid, if Parent elects to pay the Cash Consideration, shall consist of an amount equal to the following formula:

(i) For each share of Series A Preferred Stock outstanding immediately prior to the Effective Date: \$0.248863 multiplied by the Time Adjustment (as defined in Section 3.1(c)(i)).

(ii) For each share of Series B Preferred Stock outstanding immediately prior to the Effective Date: \$0.497738 multiplied by the Time Adjustment (as defined in Section 3.1(c)(i)).

(iii) For each share of Series C Preferred Stock outstanding immediately prior to the Effective Date: \$0.373372 multiplied by the Time Adjustment (as defined in Section 3.1(c)(i)).

3.2 Closing of the Company's Transfer Books. At the Effective Time, holders of certificates representing shares of Company Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company, and the stock transfer books of the Company shall be closed with respect to all shares of such Company Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of the Company Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any of such shares of Company Stock (a "Company Stock Certificate") is presented to the Surviving Corporation or Parent, such Company Stock Certificate shall be canceled and shall be exchanged as provided in Section 3.3.

3.3 Exchange of Certificates.

(a) At or as soon as practicable after the Effective Time, Parent will send to the holders of Company Stock Certificates (i) a letter of transmittal in customary form and containing such provisions as Parent may reasonably specify, and (ii) instructions for use in effecting the surrender of Company Stock Certificates in exchange for certificates representing Parent Common Stock and, if applicable, the right to receive the Second Payment. Subject to Section 3.3(b), upon surrender of a Company Stock Certificate to Parent for exchange, together

with a duly executed letter of transmittal and such other documents as may be reasonably required by Parent, (1) the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor a certificate representing the number of shares of Parent Common Stock that such holder has the right to receive pursuant to the provisions of Section 3.1(a) and, if such Company Stock Certificate represents Company Preferred Stock, a certificate indicating (A) that the holder is entitled to the additional consideration set forth in Section 3.1(b) or 3.1(e), at Parent's election and (B) the nature of the contractual restrictions on transfer contained in the Reorganization Agreement and the number of shares subject to each such restriction, and (2) the Company Stock Certificate so surrendered shall be canceled. Until surrendered as contemplated by this Section 3.3, each Company Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive shares of Parent Common Stock and, if applicable, the right to receive the Second Payment as contemplated by this Section 3.3. If any Company Stock Certificate shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the issuance of any certificate representing Parent Common Stock, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit and to deliver a bond (in such sum as is customary) as indemnity against any claim that may be made against Parent or the Surviving Corporation with respect to such Company Stock Certificate.

(b) No fractional shares of Parent Common Stock shall be issued in connection with the Merger, and no certificates for any such fractional shares shall be issued. In lieu of such fractional shares, any holder of Company Stock who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock issuable to such holder) shall, upon surrender of such holder's Company Stock Certificate(s), have such fraction be rounded up to the nearest whole share. If the Stock Consideration is paid as the Second Payment, no fractional shares of Parent Common Stock shall be issued, and in lieu of such fraction of a share of Parent Common Stock, any holder of Company Preferred Stock who would otherwise be entitled to receive a fraction of a share Parent Common Stock (after aggregating all fractional shares of Parent Common Stock issuable to such holder) shall have such fraction be rounded up to the nearest whole share.

(c) Parent and the Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable to any holder or former holder of Company Stock pursuant to this Merger Agreement such amounts as Parent or the Surviving Corporation may be required to deduct or withhold therefrom under the Internal Revenue Code of 1986, as amended, or under any provision of state, local or foreign tax law. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Merger Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(d) Neither Parent nor the Surviving Corporation shall be liable to any holder or former holder of Company Stock for any shares of Parent Common Stock (or dividends or distributions with respect thereto), or for any cash amounts, delivered to any public official pursuant to any applicable abandoned property, escheat or similar law.

3.4 Dissenting Shares.

(a) Notwithstanding anything to the contrary contained in this Merger Agreement, any shares of Company Stock that are outstanding immediately prior to the Effective Time that were not voted in favor of the Merger and are held by stockholders who have complied with the applicable provisions of Section 262 of the Delaware Law ("Dissenting Shares") shall not be converted into or represent the right to receive Parent Common Stock in accordance with Section 3.1(a) and, if applicable, the right to receive the Second Payment in accordance with Section 3.1(b) or 3.1(e), as the case may be, and each holder of Dissenting Shares shall be entitled only to such rights as may be granted to such holder in Section 262 of the Delaware Law. From and after the Effective Time, a holder of Dissenting Shares shall not have and shall not be entitled to exercise any of the voting rights or other rights of a stockholder of the Surviving Corporation. If any holder of Dissenting Shares shall fail to perfect or shall waive, rescind, withdraw or otherwise lose such holder's right of appraisal under Section 262 of the Delaware Law, then such shares shall automatically be converted into and shall represent only the right to receive (upon the surrender of the certificate or certificates representing such shares) Parent Common Stock in accordance with Section 3.1(a) and, if applicable, the right to receive the Second Payment in accordance with Section 3.1(b) or 3.1(e), as the case may be.

(b) The Company (i) shall give Parent prompt written notice of any notice received by the Company of a stockholder's intent to demand payment for such stockholder's shares of Company Common Stock pursuant to Section 262 of the Delaware Law and of any other notice, demand or instrument delivered to the Company pursuant to the Section 262 of the Delaware Law, and (ii) shall give Parent's Representatives the opportunity to participate in all negotiations and proceedings with respect to any such notice, demand or instrument. The Company shall not make any payment or settlement offer with respect to any such notice or demand unless Parent shall have consented in writing to such payment or settlement offer.

3.5 Employee Options. At the Effective Time, all rights with respect to Company Common Stock under the Company's 1993 Stock Option Plan ("Company Options") that are then outstanding shall be converted into and become rights with respect to Parent Common Stock, and Parent shall assume each Company Option in accordance with the terms (as in effect as of the date hereof) of the stock option plan under which it was issued and the stock option agreement by which it is evidenced. From and after the Effective Time, (i) each Company Option assumed by Parent may be exercised solely for shares of Parent Common Stock, (ii) the number of shares of Parent Common Stock subject to each Company Option shall be equal to the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time multiplied by the Common Stock Exchange Ratio, rounding down to the nearest whole share (with cash, less the applicable exercise price, being payable for any fraction of a share), (iii) the per share exercise price under each such Company Option shall be adjusted by dividing the per share exercise price under such Company Option by the Common Stock Exchange Ratio and rounding up to the nearest cent and (iv) any restriction on the exercise of any Company Option shall continue in full force and effect and the term, exercisability, vesting schedule and other provisions of such Company Option shall otherwise remain unchanged; *provided, however*, that each such Company Option shall, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, stock dividend, recapitalization or other similar transaction subsequent to the Effective Time. The Company shall take all action that may be necessary (under the benefits plans pursuant to which Company

Options are outstanding and otherwise) to effectuate the provisions of this Section 3.5 and to ensure that, from and after the Effective Time, holders of Company Options have no rights with respect thereto other than those specifically provided herein.

3.6 Warrants. At the Effective Time, all rights with respect to Company Common Stock and Company Preferred Stock under each warrant to purchase Company Common Stock or Company Preferred Stock (each, a "Company Warrant") then outstanding shall be converted into and become rights with respect to Parent Common Stock, and Parent shall assume each Company Warrant in accordance with the terms (as in effect as of the date hereof) of such Company Warrants. From and after the Effective Time: (a) each Company Warrant assumed by Parent may be exercised solely for shares of Parent Common Stock; (b) the number of shares of Parent Common Stock issuable pursuant to each Company Warrant shall be equal to the number of shares of Parent Common Stock into which the Company Stock subject to the Company Warrant would have been converted pursuant to Section 3.1(a) and Section 3.1(b) (without reference to the Time Adjustment or Collar Adjustment) had the Company Warrant been exercised immediately prior to the Closing, in each case rounding all share numbers down to the nearest whole share (with cash, less the applicable exercise price, being payable for any fraction of a share); (c) the per share exercise price under each such Company Warrant shall be adjusted in such manner as shall keep the product of the number of shares each such warrant is exercisable for times such exercise price unchanged, and rounding up to the nearest cent and (d) any restriction on the exercise of any Company Warrant shall continue in full force and effect and the term, exercisability, schedule and other provisions of such Company Warrant shall otherwise remain unchanged; *provided, however*, that such Company Warrant shall, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, stock dividend, recapitalization or other similar transaction subsequent to the Effective Time. The Company shall take all action that may be necessary (under the Company Warrants and otherwise) to effectuate the provisions of this Section 3.6 and to ensure that, from and after the Effective Time, holders of Company Warrants have no rights with respect thereto other than those specifically provided herein.

ARTICLE 4

TERMINATION AND AMENDMENT

4.1 Termination. Notwithstanding the approval of this Merger Agreement by the stockholders of Sub and the Company, this Merger Agreement shall terminate forthwith in the event that prior to the Effective Time the Reorganization Agreement shall be terminated as therein provided.

4.2 Amendment. This Merger Agreement may be amended by the parties hereto at any time before or after approval hereof by the stockholders of the Company, but, after any such approval, no amendment shall be made without further approval by the stockholders of the Company if such amendment would (i) have a material adverse effect on the holders of any class or series of capital stock of either the Company or Sub, (ii) change any of the principal terms of this Merger Agreement, or (iii) change any term of the Certificate of Incorporation of the

Surviving Corporation. This Merger Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

4.3 Counterparts. This Merger Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Merger Agreement as of the date first written above.

Attest:

CHAPEL ACQUISITION CORP., a Delaware corporation

By: 

Daniel H. Petree
Secretary

By: 

John P. Walker
Chief Executive Officer and President

Attest:

KHEPRI PHARMACEUTICALS, INC., a Delaware corporation

By: 

Brian C. Cunningham
Secretary

By: 

Ronald D. Henriksen
President and Chief Executive Officer

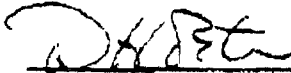
Chapel Acquisition Corp.
(Surviving Corporation)

CERTIFICATE OF SECRETARY

Daniel H. Petree hereby certifies that:

1. He is the Secretary of Chapel Acquisition Corp., a Delaware corporation (the "Corporation").
2. The Agreement of Merger to which this Certificate is attached was duly approved and adopted by the sole holder of the outstanding shares of capital stock of the Corporation entitled to vote thereon.
3. Such approval and adoption was effected by written consent given in accordance with Section 228 of the General Corporation Law of the State of Delaware.

Witness my hand this 20th day of December, 1995.



Daniel H. Petree, Secretary

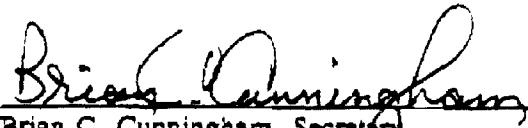
KHEPRI PHARMACEUTICALS, INC.
(Disappearing Corporation)

CERTIFICATE OF SECRETARY

Brian C. Cunningham hereby certifies that:

1. He is the Secretary of Khepri Pharmaceuticals, Inc., a Delaware corporation (the "Corporation").
2. The Agreement of Merger to which this Certificate is attached was duly approved and adopted by the holders of a majority of all of the outstanding shares of capital stock of the Corporation entitled to vote thereon.
3. Such approval and adoption was effected by written consent given in accordance with Section 228 of the General Corporation Law of the State of Delaware.

Witness my hand this 20th day of December, 1995.


Brian C. Cunningham, Secretary

2.9 Proprietary Assets.

(a) Part 2.9(a)(1) of the Disclosure Schedule sets forth, with respect to each Company Proprietary Asset and K Sub Proprietary Asset that has been registered, recorded or filed with any Governmental Body or with respect to which an application has been filed with any Governmental Body, (i) a list of such Company Proprietary Asset or K Sub Proprietary Asset (each identified as such), and (ii) the names of the jurisdictions covered by the applicable registration, recordation, filing or application. Part 2.9(a)(2) of the Disclosure Schedule identifies and provides a list of all other Company Proprietary Assets owned by the Company and K Sub Proprietary Assets owned by K Sub. Part 2.9(a)(3) of the Disclosure Schedule identifies and provides a list of each Company Proprietary Asset and K Sub Proprietary Asset that is owned by any other Person and that is licensed to or used by the Company or K Sub (except for any Company Proprietary Asset or K Sub Proprietary Asset that is licensed to the Company or K Sub, as the case may be, under any third party software license generally available to the public at a cost of less than \$5,000), and identifies the license agreement or other agreement under which such Company Proprietary Asset or K Sub Proprietary Asset is being licensed to or used by the Company or K Sub, as the case may be. Except as set forth in Part 2.9(a)(4) of the Disclosure Schedule, the Company or K Sub has good, valid and marketable title to all of the Proprietary Assets identified to it in Parts 2.9(a)(1) and 2.9(a)(2) of the Disclosure Schedule, free and clear of all Encumbrances, and has a valid right to use all Proprietary Assets identified in Part 2.9(a)(3) of the Disclosure Schedule. Except as set forth in Part 2.9(a)(5) of the Disclosure Schedule, neither the Company nor K Sub is obligated to make any payment to any Person for the use of any Company Proprietary Asset or K Sub Proprietary Asset. Except as set forth in Part 2.9(a)(6) of the Disclosure Schedule, the Company or K Sub, as the case may be, is free to use, modify, copy, distribute, sell, license or otherwise exploit each of the Company Proprietary Assets or K Sub Proprietary Assets, as the case may be, on an exclusive basis.

(b) The Company and K Sub have taken all reasonable measures and precautions necessary or appropriate to protect and maintain the confidentiality and secrecy of all Company Proprietary Assets and K Sub Proprietary Assets (except Company Proprietary Assets and K Sub Proprietary Assets whose value would not be materially impaired by public disclosure) and otherwise to maintain and protect the value of all Company Proprietary Assets.

(c) To the best knowledge of the Company, none of the Company Proprietary Assets or K Sub Proprietary Assets infringes or conflicts with any Proprietary Asset owned or used by any other Person. To the best knowledge of the Company, neither the Company nor K Sub is infringing, misappropriating or making any unlawful use of, and neither the Company nor K Sub has at any time infringed, misappropriated or made any unlawful use of, any Proprietary Asset owned or used by any other Person. To the best of the knowledge of the Company, no other Person is infringing, misappropriating or making any unlawful use of, and no Proprietary Asset owned or used by any other Person infringes or conflicts with, any Company Proprietary Asset or K Sub Proprietary Asset. Except as set forth in Part 2.9(c) of the Disclosure Schedule, neither the Company, nor, to the best knowledge of the Company, K Sub, has received any notice or other communication of any actual, alleged, possible or potential infringement, misappropriation or unlawful use of, any Proprietary Asset owned or used by any other person.

(d) The Company Proprietary Assets and K Sub Proprietary Assets constitute all the Proprietary Assets necessary to enable the Company and K Sub, as the case may be, to conduct its business in the manner in which such business is presently conducted and in the manner in which such business is currently proposed to be conducted by current management of the Company. Except as set forth in Part 2.9(d) of the Disclosure Schedule, (i) neither the Company nor K Sub has licensed any of the Company Proprietary Assets or K Sub Proprietary Assets to any Person on an exclusive basis, and (ii) neither the Company nor K Sub has entered into any covenant not to compete or Contract limiting its ability to exploit fully any of its Proprietary Assets or to transact business in any market or geographical area or with any Person.

(e) Except as set forth in Part 2.9(e) of the Disclosure Schedule, all current and former employees of the Company and K Sub have executed and delivered to the Company written agreements (containing no exceptions to or exclusions from the scope of their coverage except as set forth in such Part 2.9(e) of the Disclosure Schedule) that are identical in substance to the form of the Proprietary Information and Inventions Agreement attached to the Disclosure Schedule as Appendix 2.9(I). Part 2.9(e) of the Disclosure Schedule sets forth all arrangements pursuant to which either the Company or K Sub has ever engaged or received services from any consultant or independent contractor in connection with the design or development of any Proprietary Asset.

2.10 Contracts.

(a) The Company has delivered to Parent accurate and complete copies of each Company Contract and K Sub Contract that constitutes a "Material Contract" (as defined below). Attached hereto as part of the Disclosure Schedule is a list of each Contract that contemplates or involves (A) the payment or delivery of cash or other consideration on or after the date hereof in an amount or having a value in excess of \$25,000 in the aggregate, or (B) the performance of services on or after the date hereof having a value in excess of \$25,000 in the aggregate. For purposes of this Agreement, each of the following shall be deemed to constitute a "Material Contract":

(i) any Contract relating to the employment or engagement of, or the performance of services by, any consultant or independent contractor except contracts terminable on no more than two weeks notice with maximum aggregate payments of no more than \$25,000;

(ii) any Contract relating to the acquisition, transfer, use, development, sharing or license of any material portion of technology or any Proprietary Asset;

(iii) any Contract imposing any material restriction on the Company's or K Sub's right or ability (A) to compete with any other Person, (B) to acquire any product or other asset or any services from any other Person, to sell any product or other asset to or perform any services for any other Person or to transact business or deal in any other manner with any other Person, or (C) to develop or distribute any technology;

(iv) any Contract creating or involving any material agency relationship, distribution arrangement or franchise relationship;

EXHIBIT E TO THE DISCLOSURE SCHEDULE

PART 2.9(a)(1) PATENTS FILED BY THE COMPANY

#1. Cysteine Protease Inhibitors Patent (serial # 08/202,051)

Inventors: Palmer, Rasnick & Klaus

Filing Dates:

U.S. Patent Filed Feb. 25, 1994

Five Divisional Patents Filed September 8, 1995

1. Method of Making Cysteine Protease Inhibitors
2. Methods of Inhibiting Cysteine Proteases
3. Inhibited Cysteine Proteases
4. Methods of Treating Cysteine Protease Associated Disorders
5. Chiral Vinyl Sulfones

PCT/European Application

Cysteine Protease Inhibitors (PCT/US95/02252)

Filed Feb. 24, 1995

#2. Reversible Protease Inhibitors (serial #'s 08/409,996; 08/409,533; 08/409,997 & 08/410,000)

Inventors: Klaus, Rasnick & Palmer

Filing Dates:

U.S. Patent plus three divisional patents Filed March 24, 1995

#3. Reversible Cysteine Protease Inhibitors (serial #'s 08/474,993; 08/473,535 & 08/480,752)

Inventors: Palmer, Rasnick & Klaus

Filing Dates:

U.S. Patent, plus two divisionals filed June 7, 1995

#4. Cathepsin O2 Protease (serial # 08/330,121)

Inventors: Brömme & Okamoto

Filing Dates:

Original U.S. Patent Filed Oct. 27, 1994

#5. Novel Nuclear Cyclophilin (serial # 08/482,728)

Inventors: Wang, Payan & Fisher

Filing Dates:

U.S. Patent filed June 7, 1995

#6. Novel Subtilisin Inhibitors

Inventors: Hartman *et al.*

Filing Dates:

U.S. Patent filed October 25, 1995

EXHIBIT F TO THE DISCLOSURE SCHEDULE

PART 2.9(a)(2) INVENTION DISCLOSURES

1. Creation, Analysis and use of chimeric proteins

Inventor: D. Brenner

Date: 2/4/95

Status: No current activity

2. Cytokine Transforming Enzymes (CT-8)

Inventor: Babe *et al.*

Date: 4/22/94

Status: No current activity

3. NEP Detergent Extraction and Purification

Inventor: K. Hayenga *et al.*

Date: 11/1/94

Status: No current activity

4. Purification of NEP Using Zwittergent Detergents

Inventor: K. Hayenga *et al.*

Date: 11/1/94

Status: No current activity

5. Phageless Phage Display Libraries

Inventor: D. Anderson & D. Estell

Date: 12/14/94

Status: Pending further results

6. Nucleophile Substrate Tagging

Inventor: D. Anderson & D. Brömme

Date: 12/28/94

Status: Pending further results

7. Supersensitive protein detection method for electrophoresis

Inventor: D. Anderson

Date: 8/25/95

Status: Pending further results

EXHIBIT G TO THE DISCLOSURE SCHEDULE

PART 2.9(a)(3) PROPRIETARY ASSETS LICENSED TO THE COMPANY

Per Genentech/Khepri License Agreement -- August 3, 1992:

US Patent # 4,960,700

Inventors: Malfroy-Camine et al.

Title: Compositions and Methods for the Synthesis
And Assay of A Mammalian Enkephalinase

Date Issued: October 2, 1990

US Patent 5,202,178

Inventors: Malfroy-Camine et al.

Title: Therapeutic use of Enkephalinase

Date Issued: November 16, 1993

European Patent Application # 87311365.8

Inventors: Malfroy-Camine et al.

Title: Compositions and Methods for the Synthesis
and Assay of Enkephalinase

Date Issued: March 15, 1995

Khepri Licenses/Option To License to Filed Patents

1. Option to License From Ohio State University

Title: Prevention of Invasive Pulmonary Aspergillosis with Serine
Protease Inhibitors. (OSURF Ref.: 941D13F)

Inventors: Kolattukudy *et al.*

Assignee: Ohio State University

Effective Date: May 25, 1994

2. Option to License From Rutgers University/Purdue University

Title: Proteinase Inhibitors for furin(Application #08/089,248 --
Originally Filed July 9, 1993 & PCT Application
PCT/US94/07779) Filed July 8, 1994).

Inventors: Laskowski and Anderson

Assignee: Purdue University and Rutgers University

Effective Date: July 1, 1993

3. License From The University of Chicago

Title: Methods and Compositions for Preparing Protein
Processing Enzymes (Serial Number 07/640,486 -- Filed July 28,
1993)

Inventors: Smeekens and Steiner

Assignee: University of Chicago/ARCH Development