

06-17-2003

Attorney Docket No. 016354-US

Form PTO-1595

REI

(Rev. 10-02)

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

U.S. Department of Commerce

U.S. Patent and Trademark

Office



102475142

Tab settings

1. Name of conveying party(ies):

CPRX LLC

6-13-03

2. Name and address of receiving party(ies)

Name: ADVANCED CIRCULATORY SYSTEMS, INC.

Internal Address:

7615 Golden Triangle Drive
Suite A
Technology Park #5
Eden Prairie, Minnesota 55344Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No.

3. Nature of conveyance:

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

Street Address: 7615 Golden Triangle Drive
Suite A

Execution Date: 25 April 2003

City: Eden Prairie State: MN ZIP: 55344

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):
09/854,238 filed 05/11/2001
10/119,203 filed 04/08/2002

B. Patent No(s): 5,551,420 issued 09/03/1996
5,692,498 issued 12/02/1997
6,062,219 issued 05/16/2000
6,526,973 issued 03/04/2003
6,062,219 issued 05/16/2000

Additional numbers attached? ☒ Yes ☐ No

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

Name: Darin J. Gibby
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
(415) 576-0200

6. Total number of applications and patents involved 28

7. Total fee (37 CFR 3.41): -----\$1120.00

- ☐ Enclosed
- ☒ Authorized to be charged to deposit account

8. Deposit account number: 20-1430

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

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.

Darin J. Gibby
Name of Person Signing
Atty. Reg. No. 38,464

Signature

June 10, 2003
Date

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

Mail documents to be recorded with required cover to:

Commissioner of Patents and Trademarks, Mail Stop Assignments
P.O. Box 1450
Alexandria, VA 22313-1450

DE 7106845 v1

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FINANCE SECTION

PATENT
REEL: 014162 FRAME: 0377

Form PTO-1595 (Rev. 10-02) OMB No. 0651-0027 (exp. 6/30/2005)		RECORDATION FORM COVER SHEET PATENTS ONLY		U.S. Department of Commerce U.S. Patent and Trademark Office	
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Patent No.		Issue Date			
5,730,122		03/24/1998			
6,029,667		02/29/2000			
6,155,257		12/05/2000			
6,234,985		05/22/2001			
6,224,562		05/01/2001			
6,312,399		11/06/2001			
6,463,327		10/08/2002			
6,425,393		07/30/2002			
6,459,933		10/01/2002			

Application No.	Filing Date
10/224,263	08/19/2002
09/704,231	11/01/2000
10/158,528	05/29/2002
09/854,404	05/11/2001
09/967,029	09/28/2001
10/410,229	04/08/2003
10/251,080	09/20/2002
10/225,319	09/25/2002
09/532,601	03/22/2000
10/401,493	03/28/2003
10/396,007	03/24/2003
09/966,945	09/28/2001

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:17 PM 04/29/2003
FILED 01:16 PM 04/29/2003
SRV 030276783 - 3649782 FILE

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Plan of Merger") is made and entered into as of this 25th day of April, 2003, by and between CPRx LLC, a Minnesota limited liability company (the "Merging Company"), and Advanced Circulatory Systems, Inc., a Delaware corporation (the "Surviving Entity").

INTRODUCTION

A. The Merging Company is a limited liability company duly organized and existing under the laws of the State of Minnesota.

B. The Surviving Entity is a corporation duly organized and existing under the laws of the State of Delaware, and was formed on April 22, 2003.

C. The Boards of Directors of both the Merging Company and the Surviving Entity have determined that it is advisable and in the best interests of their respective entities, members and shareholders, as applicable, that the Merging Company merge with and into the Surviving Entity upon the terms and conditions herein provided, and have approved this Plan of Merger.

D. Section 322B.76 of the Minnesota Limited Liability Company Act permit a Minnesota limited liability company to merge with and into a corporation formed and existing under the laws of another state; and Section 264 of the Delaware General Corporation Law permit a Delaware corporation to merge with a limited liability company formed and existing under the laws of another state.

E. The members of the Merging Company and the shareholders of the Surviving Entity have approved this Plan of Merger and have directed their respective officers to cause the merger contemplated herein

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the Merging Company and the Surviving Entity hereby agree to merge as follows:

1. Merger. Subject to the terms and conditions hereinafter set forth, the Merging Company shall be merged with and into the Surviving Entity, which shall be the surviving entity in the merger (the "Merger"). The Merger shall be effective as of the 30th day of April, 2003 (the "Effective Time").

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2. Principal Office of the Surviving Entity. The principal executive office of the Surviving Entity in the State of Minnesota is: 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344.

3. Principal Office of the Merging Entity. The principal executive office of the Merging Entity in the State of Minnesota is: 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344.

4. Organizational Documents of Surviving Entity. The certificate of incorporation and bylaws of the Surviving Entity, as in effect immediately prior to the Effective Time, shall remain without change or amendment until further amended in accordance with the provisions thereof and applicable law.

5. Directors and Officers. The directors and officers of the Surviving Entity at the Effective Time shall remain unchanged, holding the same titles and positions and shall continue to serve in accordance with the bylaws of the Surviving Entity.

6. Succession. At the Effective Time, the Surviving Entity shall succeed to all rights, title and interests of the Merging Company in the manner of and as more fully set forth in Section 322B.75 of the Minnesota Limited Liability Company Act and Section 259 of the Delaware General Corporation Law; and the separate existence of the Merging Company shall cease.

7. Further Assurances. From time to time, as and when required by the Surviving Entity or by its successors and assigns, there shall be executed and delivered on behalf of the Merging Company such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in or to confer of record or otherwise in the Surviving Entity the title to and possession of all the interests, assets, rights, privileges, immunities, powers, franchises and authority of the Merging Company, and otherwise to carry out the purposes and intent of this Plan of Merger; and the officers and directors of the Surviving Entity are fully authorized in the name and on behalf of the Merging Company or otherwise to take any and all such actions and to execute and deliver any and all such deeds and other instruments.

8. Membership Interests, Options and Warrants of the Merging Company. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each unit representing a membership interest of the Merging Company outstanding immediately prior thereto shall be cancelled. In addition, each option and warrant to purchase a membership interest in the Merging Company outstanding immediately prior to the Effective Time shall be cancelled. All membership interests and rights to purchase membership interests that are cancelled pursuant to this Section 8 shall be exchanged for shares of capital stock and rights to purchase capital stock of the Surviving Entity as set forth in Section 9 below.

9. Capital Stock, Options and Warrants of the Surviving Entity. At the Effective Time, all issued and outstanding shares of capital stock of the Surviving Entity shall remain outstanding. In addition, for each unit representing a membership interest in the Merging Company that is cancelled pursuant to Section 8, one share of common stock of the Surviving Entity shall be issued in

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exchange. Shares of common stock issued hereunder shall be evidenced by one or more stock certificates registered in the name(s) of the persons or persons in whose name the corresponding cancelled membership interests of the Merging Company were registered. Furthermore, for each option or warrant to purchase a unit representing a membership interest in the Merging Company that is cancelled pursuant to Section 8, an option or warrant, as applicable, to purchase one share of common stock of the Surviving Entity shall be issued in exchange.

All options to purchase shares of common stock of the Surviving Entity that are issued pursuant to this Section 9 shall be issued pursuant to the Surviving Entity's 2003 Stock Option Plan, and shall be evidenced by the Surviving Entity's execution and delivery of Stock Option Agreements with the persons whose options to purchase membership interests in the Merging Company were cancelled pursuant to Section 8. All warrants to purchase shares of common stock of the Surviving Entity that are issued pursuant to this Section 9 shall be evidenced by the Surviving Entity's execution and delivery of warrants to the persons whose warrants to purchase membership interests in the Merging Company were cancelled pursuant to Section 8. Options and warrants issued by the Surviving Entity pursuant to this Section 9 shall contain substantially the same terms and conditions, including the same period of time for any exercise, of the corresponding options or warrants cancelled under Section 8, as were in effect at the Effective Time.

10. Limited Liability Company Certificates. At and after the Effective Time, any outstanding certificates which, prior to that time, represented the membership interests of the Merging Company shall be deemed cancelled.

11. Amendment. This Plan of Merger may be amended in any manner (except that Section 9 and any of the other principal terms may not be amended without the approval of the members of the Merging Company) as may be determined in the judgment of the Board of Directors of the Merging Company, or the Board of Directors of the Surviving Entity, to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purposes and intent of this Plan of Merger.

12. Abandonment. This Plan of Merger and the Merger contemplated hereby have been approved by the members of the Merging Company, and the shareholders of the Surviving Entity. At any time before the Effective Time, this Plan of Merger may be terminated and the Merger contemplated hereby may be abandoned by the Board of Directors of the Merging Company or the Board of Directors of the Surviving Entity, or both, notwithstanding approval of this Plan of Merger by the members and shareholders of the constituent entities.

13. Agreement on Tax Treatment. The Merging Company and the Surviving Entity hereby agree that, for income-tax purposes, the Merger shall be treated as being a transfer of all of the Merging Company's assets to the Surviving Entity in exchange for capital stock of the Surviving Entity, consistent with "situation one" described in Revenue Ruling 84-111.

14. Effects of the Merger; Rights and Duties of the Surviving Entity. At the Effective Time and for all purposes, the separate existence of the Merging Company shall cease and the Merging Company shall be merged with and into the Surviving Entity which, as the surviving entity,

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shall thereupon and thereafter possess all the rights, privileges, immunities, licenses and franchises (whether of a public or private nature) of the Merging Company; and all property (real, personal and mixed), all debts due on whatever account, all choses in action, and all and every other interest of or belonging to or due to the Merging Company shall continue and be taken and deemed to be transferred to and vested in the Surviving Entity without further act or deed; and the title to any real estate, or any interest therein, vested in the Merging Company shall not revert or be in any way impaired by reason of such Merger; and the Surviving Entity shall thereupon be responsible and liable for all the liabilities and obligations of the Merging Company; and, to the extent permitted by law, any claim existing, or action or proceeding pending, by or against the Merging Company may be prosecuted as if the Merger had not taken place, or the Surviving Entity may be substituted in the place of such company. Neither the rights of creditors nor any liens upon the property of the Merging Company shall be impaired by the Merger. If at any time the Surviving Entity shall consider or be advised that any further assignment or assurances in law or any other actions are necessary or desirable to vest the title of any property or rights of the Merging Company in the Surviving Entity according to the terms hereof, the officers and directors of the Surviving Entity are empowered to execute and make all such proper assignments and assurances and do any and all other things necessary or proper to vest title to such property or other rights in the Surviving Entity, and otherwise to carry out the purposes of this Plan of Merger.

15. **Covenants Mandated by Delaware Law.** The Surviving Entity shall keep a copy of this executed Agreement and Plan of Merger on file at its principal executive office. Copies shall be available to any shareholder of the Surviving Entity, and any member of the Merging Company, upon request and without cost.

16. **Consent to Service of Process in Minnesota.** It is agreed that, upon and after the issuance of a certificate of merger by the Minnesota Secretary of State:

(a) Advanced Circulatory Systems, Inc., as the Surviving Corporation, agrees it may be served with process in the State of Minnesota in any proceeding for the enforcement of any obligation of a constituent company organized under the laws of the State of Minnesota which is a party to the merger, consolidation or exchange, and in any proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of such constituent company organized under the laws of the State of Minnesota against Advanced Circulatory Systems, Inc., as the Surviving Corporation;

(b) The Minnesota Secretary of State shall be and hereby is irrevocably appointed as the agent of Advanced Circulatory Systems, Inc., as the Surviving Corporation, to accept service of process in any proceeding, and the address which process may be forwarded shall be the principal executive office of Advanced Circulatory Systems, Inc., as the Surviving Corporation, located at: 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344; and

(c) Advanced Circulatory Systems, Inc., as the Surviving Corporation, will promptly pay to the dissenting owners of any ownership interests of each constituent limited liability company or constituent corporation organized under the laws of the State of

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Minnesota which is a party to the merger, consolidation or exchange, the amount, if any, to which they shall be entitled under sections 302A.473 or 322B.586, as the case may be, of the statutes of the State of Minnesota with respect to the rights of dissenting shareholders.

17. **General Provisions.** Except as otherwise provided in this Plan of Merger, nothing herein expressed or implied is intended, nor shall be construed, to confer upon or give any person, firm or corporation, other than the constituent entities and their respective members and shareholders, any rights or remedies under or by reason of this Plan of Merger. This Plan of Merger and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Minnesota.

Signature Page Follows

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IN WITNESS WHEREOF, this Agreement and Plan of Merger, having first been duly approved by resolution of the Board of Directors and members of the Merging Company as required by the Minnesota Limited Liability Company Act and the Merging Company's member control agreement, and the Board of Directors and shareholders of the Surviving Entity as required by the Delaware General Corporation Law, has been executed on behalf of each of the constituent entities by their respective duly authorized officers as of the date first above written.

MERGING COMPANY:

CPRx LLC

a Minnesota limited liability company



ROBERT COHEN

Chief Executive Officer

SURVIVING ENTITY:

ADVANCED CIRCULATORY SYSTEMS, INC.

a Delaware corporation



ROBERT COHEN

Chief Executive Officer

Signature Page - Agreement and Plan of Merger

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ARTICLES OF MERGER

OF

CPRx LLC

a Minnesota limited liability company

WITH AND INTO

ADVANCED CIRCULATORY SYSTEMS, INC.

a Delaware corporation

COPY
*6040-LLC*To the Secretary of State
State of Minnesota:

THE UNDERSIGNED, Robert Cohen, a manager of CPRx LLC, a Minnesota limited liability company (the "Merging Company"), and Michael Black, the Chief Financial Officer of Advanced Circulatory Systems, Inc., a Delaware corporation (the "Surviving Entity"), hereby certify as follows:

1. Attached hereto is the Agreement and Plan of Merger for the merger of the Merging Company with and into the Surviving Entity, which has been duly adopted by the board of governors of the Merging Company, and the board of directors of the Surviving Entity. These Articles of Merger, together with the attached Agreement and Plan of Merger, shall constitute one single document.

2. The Agreement and Plan of Merger have also been authorized and approved by the members of the Merging Company and the shareholders of the Surviving Entity, pursuant to the Minnesota Limited Liability Company Act and the Delaware General Corporation Law, respectively.

3. The merger shall be effective as of the later of the 30th day of April, 2003, or the filing of these Articles of Merger with the Minnesota Secretary of State, and the filing of the Agreement and Plan of Merger with the Delaware Secretary of State, as provided in Section 264 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the undersigned manager of the Merging Company, and the Chief Financial Officer of the Surviving Entity, have executed this document on behalf of their respective entities on this 25th day of April, 2003.

MERGING ENTITY:CPRx LLC
a Minnesota limited liability companyRobert Cohen
Chief Executive Officer**SURVIVING ENTITY:**ADVANCED CIRCULATORY SYSTEMS, INC.
a Delaware corporationMichael Black
Chief Financial Officer

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "**Plan of Merger**") is made and entered into as of this 25th day of April, 2003, by and between CPRx LLC, a Minnesota limited liability company (the "**Merging Company**"), and Advanced Circulatory Systems, Inc., a Delaware corporation (the "**Surviving Entity**").

INTRODUCTION

A. The Merging Company is a limited liability company duly organized and existing under the laws of the State of Minnesota.

B. The Surviving Entity is a corporation duly organized and existing under the laws of the State of Delaware, and was formed on April 22, 2003.

C. The Boards of Directors of both the Merging Company and the Surviving Entity have determined that it is advisable and in the best interests of their respective entities, members and shareholders, as applicable, that the Merging Company merge with and into the Surviving Entity upon the terms and conditions herein provided, and have approved this Plan of Merger.

D. Section 322B.76 of the Minnesota Limited Liability Company Act permit a Minnesota limited liability company to merge with and into a corporation formed and existing under the laws of another state; and Section 264 of the Delaware General Corporation Law permit a Delaware corporation to merge with a limited liability company formed and existing under the laws of another state.

E. The members of the Merging Company and the shareholders of the Surviving Entity have approved this Plan of Merger and have directed their respective officers to cause the merger contemplated herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the Merging Company and the Surviving Entity hereby agree to merge as follows:

1. Merger. Subject to the terms and conditions hereinafter set forth, the Merging Company shall be merged with and into the Surviving Entity, which shall be the surviving entity in the merger (the "**Merger**"). The Merger shall be effective as of the later of (a) the 30th day of April, 2003, or (b) the filing of this Agreement and Plan of Merger with the Delaware Secretary of State, and the filing of articles of merger with the Minnesota Secretary of State, as required by Section 322B.73 of the Minnesota Limited Liability Company Act are filed with the Minnesota Secretary of State (the "**Effective Time**").

2. Principal Office of the Surviving Entity. The principal executive office of the Surviving Entity in the State of Minnesota is: 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344.

3. Principal Office of the Merging Entity. The principal executive office of the Merging Entity in the State of Minnesota is: 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344.

4. Organizational Documents of Surviving Entity. The certificate of incorporation and bylaws of the Surviving Entity, as in effect immediately prior to the Effective Time, shall remain without change or amendment until further amended in accordance with the provisions thereof and applicable law.

5. Directors and Officers. The directors and officers of the Surviving Entity at the Effective Time shall remain unchanged, holding the same titles and positions and shall continue to serve in accordance with the bylaws of the Surviving Entity.

6. Succession. At the Effective Time, the Surviving Entity shall succeed to all rights, title and interests of the Merging Company in the manner of and as more fully set forth in Section 322B.75 of the Minnesota Limited Liability Company Act and Section 259 of the Delaware General Corporation Law; and the separate existence of the Merging Company shall cease.

7. Further Assurances. From time to time, as and when required by the Surviving Entity or by its successors and assigns, there shall be executed and delivered on behalf of the Merging Company such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in or to confer of record or otherwise in the Surviving Entity the title to and possession of all the interests, assets, rights, privileges, immunities, powers, franchises and authority of the Merging Company, and otherwise to carry out the purposes and intent of this Plan of Merger; and the officers and directors of the Surviving Entity are fully authorized in the name and on behalf of the Merging Company or otherwise to take any and all such actions and to execute and deliver any and all such deeds and other instruments.

8. Membership Interests, Options and Warrants of the Merging Company. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each unit representing a membership interest of the Merging Company outstanding immediately prior thereto shall be cancelled. In addition, each option and warrant to purchase a membership interest in the Merging Company outstanding immediately prior to the Effective Time shall be cancelled. All membership interests and rights to purchase membership interests that are cancelled pursuant to this Section 8 shall be exchanged for shares of capital stock and rights to purchase capital stock of the Surviving Entity as set forth in Section 9 below.

9. Capital Stock, Options and Warrants of the Surviving Entity. At the Effective Time, all issued and outstanding shares of capital stock of the Surviving Entity shall remain outstanding.

In addition, for each unit representing a membership interest in the Merging Company that is cancelled pursuant to Section 8, one share of common stock of the Surviving Entity shall be issued in exchange. Shares of common stock issued hereunder shall be evidenced by one or more stock certificates registered in the name(s) of the persons or persons in whose name the corresponding cancelled membership interests of the Merging Company were registered. Furthermore, for each option or warrant to purchase a unit representing a membership interest in the Merging Company that is cancelled pursuant to Section 8, an option or warrant, as applicable, to purchase one share of common stock of the Surviving Entity shall be issued in exchange.

All options to purchase shares common stock of the Surviving Entity that are issued pursuant to this Section 9 shall be issued pursuant to the Surviving Entity's 2003 Stock Option Plan, and shall be evidenced by the Surviving Entity's execution and delivery of Stock Option Agreements with the persons whose options to purchase membership interests in the Merging Company were cancelled pursuant to Section 8. All warrants to purchase shares of common stock of the Surviving Entity that are issued pursuant to this Section 9 shall be evidenced by the Surviving Entity's execution and delivery of warrants to the persons whose warrants to purchase membership interests in the Merging Company were cancelled pursuant to Section 8. Options and warrants issued by the Surviving Entity pursuant to this Section 9 shall contain substantially the same terms and conditions, including the same period of time for any exercise, of the corresponding options or warrants cancelled under Section 8, as were in effect at the Effective Time.

10. Limited Liability Company Certificates. At and after the Effective Time, any outstanding certificates which, prior to that time, represented the membership interests of the Merging Company shall be deemed cancelled.

11. Amendment. This Plan of Merger may be amended in any manner (except that Section 9 and any of the other principal terms may not be amended without the approval of the members of the Merging Company) as may be determined in the judgment of the Board of Directors of the Merging Company, or the Board of Directors of the Surviving Entity, to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purposes and intent of this Plan of Merger.

12. Abandonment. This Plan of Merger and the Merger contemplated hereby have been approved by the members of the Merging Company, and the shareholders of the Surviving Entity. At any time before the Effective Time, this Plan of Merger may be terminated and the Merger contemplated hereby may be abandoned by the Board of Directors of the Merging Company or the Board of Directors of the Surviving Entity, or both, notwithstanding approval of this Plan of Merger by the members and shareholders of the constituent entities.

13. Agreement on Tax Treatment. The Merging Company and the Surviving Entity hereby agree that, for income-tax purposes, the Merger shall be treated as being a transfer of all of the Merging Company's assets to the Surviving Entity in exchange for capital stock of the Surviving Entity, consistent with "situation one" described in Revenue Ruling 84-111.

14. Effects of the Merger; Rights and Duties of the Surviving Entity. At the Effective Time and for all purposes, the separate existence of the Merging Company shall cease and the Merging Company shall be merged with and into the Surviving Entity which, as the surviving entity, shall thereupon and thereafter possess all the rights, privileges, immunities, licenses and franchises (whether of a public or private nature) of the Merging Company; and all property (real, personal and mixed), all debts due on whatever account, all choses in action, and all and every other interest of or belonging to or due to the Merging Company shall continue and be taken and deemed to be transferred to and vested in the Surviving Entity without further act or deed; and the title to any real estate, or any interest therein, vested in the Merging Company shall not revert or be in any way impaired by reason of such Merger; and the Surviving Entity shall thenceforth be responsible and liable for all the liabilities and obligations of the Merging Company; and, to the extent permitted by law, any claim existing, or action or proceeding pending, by or against the Merging Company may be prosecuted as if the Merger had not taken place, or the Surviving Entity may be substituted in the place of such company. Neither the rights of creditors nor any liens upon the property of the Merging Company shall be impaired by the Merger. If at any time the Surviving Entity shall consider or be advised that any further assignment or assurances in law or any other actions are necessary or desirable to vest the title of any property or rights of the Merging Company in the Surviving Entity according to the terms hereof, the officers and directors of the Surviving Entity are empowered to execute and make all such proper assignments and assurances and do any and all other things necessary or proper to vest title to such property or other rights in the Surviving Entity, and otherwise to carry out the purposes of this Plan of Merger.

15. Covenants Mandated by Delaware Law. The Surviving Entity shall keep a copy of this executed Agreement and Plan of Merger on file at its principal executive office. Copies shall be available to any shareholder of the Surviving Entity, and any member of the Merging Company, upon request and without cost.

16. Consent to Service of Process in Minnesota. It is agreed that, upon and after the issuance of a certificate of merger by the Minnesota Secretary of State:

(a) Advanced Circulatory Systems, Inc., as the Surviving Corporation, agrees it may be served with process in the State of Minnesota in any proceeding for the enforcement of any obligation of a constituent company organized under the laws of the State of Minnesota which is a party to the merger, consolidation or exchange, and in any proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of such constituent company organized under the laws of the State of Minnesota against Advanced Circulatory Systems, Inc., as the Surviving Corporation;

(b) The Minnesota Secretary of State shall be and hereby is irrevocably appointed as the agent of Advanced Circulatory Systems, Inc., as the Surviving Corporation, to accept service of process in any proceeding, and the address which process may be forwarded shall be the principal executive office of Advanced Circulatory Systems, Inc., as the Surviving

Corporation, located at: 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344; and

(c) Advanced Circulatory Systems, Inc., as the Surviving Corporation, will promptly pay to the dissenting owners of any ownership interests of each constituent limited liability company or constituent corporation organized under the laws of the State of Minnesota which is a party to the merger, consolidation or exchange, the amount, if any, to which they shall be entitled under sections 302A.473 or 322B.386, as the case may be, of the statutes of the State of Minnesota with respect to the rights of dissenting shareholders.

17. General Provisions. Except as otherwise provided in this Plan of Merger, nothing herein expressed or implied is intended, nor shall be construed, to confer upon or give any person, firm or corporation, other than the constituent entities and their respective members and shareholders, any rights or remedies under or by reason of this Plan of Merger. This Plan of Merger and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Minnesota.

Signature Page Follows

IN WITNESS WHEREOF, this Agreement and Plan of Merger, having first been duly approved by resolution of the Board of Directors and members of the Merging Company as required by the Minnesota Limited Liability Company Act and the Merging Company's member control agreement, and the Board of Directors and shareholders of the Surviving Entity as required by the Delaware General Corporation Law, has been executed on behalf of each of the constituent entities by their respective duly authorized officers as of the date first above written.

MERGING COMPANY:

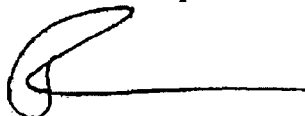
CPRx LLC
a Minnesota limited liability company



ROBERT COHEN
Chief Executive Officer

SURVIVING ENTITY:

ADVANCED CIRCULATORY SYSTEMS, INC.
a Delaware corporation



ROBERT COHEN
Chief Executive Officer

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 30 2003


Secretary of State

Signature Page – Agreement and Plan of Merger

Delaware

PAGE 1

The First State

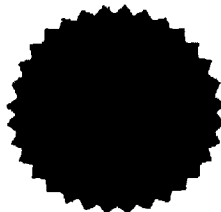
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"CPRX LLC", A MINNESOTA LIMITED LIABILITY COMPANY,

WITH AND INTO "ADVANCED CIRCULATORY SYSTEMS, INC." UNDER THE NAME OF "ADVANCED CIRCULATORY SYSTEMS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-NINTH DAY OF APRIL, A.D. 2003, AT 1:14 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AGREEMENT OF MERGER IS THE THIRTIETH DAY OF APRIL, A.D. 2003.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 2392386

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DATE: 04-30-03