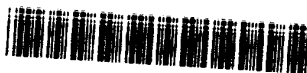
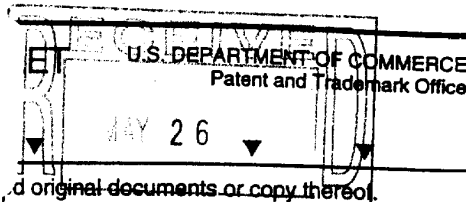


RECOF  
T

05-28-1998



100720256



Tab settings

To the Honorable Commissioner of Patents and Trademarks

and original documents or copy thereof

1. Name of conveying party(ies):

Kirby Building Systems, Inc.

- Individual(s)
- General Partnership
- Corporation-State (Tennessee)
- Other
- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: January 22, 1998

2. Name and address of receiving party(ies)

Name: Associated Building Systems, Inc.

Internal Address: P.O. Box 390

Street Address: 124 Kirby Drive

City: Portland State: TN ZIP: 37148

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

None

B. Trademark Registration No.(s)

1,863,468

1,863,469

Additional numbers attached?  Yes  No

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

Name: Robert P. Felber, Jr.

Internal Address: Tuke Yopp & Sweeney, PLC

Suite 1100

Street Address: 414 Union Street

City: Nashville State: TN ZIP: 37219

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41) \$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

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

05/27/1998 SCMT

01 FC:481  
02 FC:482

40<sup>00</sup> OP  
25<sup>00</sup> OP

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.

Robert P. Felber, Jr.  
Name of Person Signing

Signature

May 21, 1998

Date

Total number of pages including cover sheet, attachments, and document: 7

*State of Delaware*  
*Office of the Secretary of State*

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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 MERGER, WHICH MERGES:

"KIRBY BUILDING SYSTEMS, INC.", A TENNESSEE CORPORATION, WITH AND INTO "ASSOCIATED BUILDING SYSTEMS, INC." UNDER THE NAME OF "ASSOCIATED BUILDING SYSTEMS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SIXTH DAY OF JANUARY, A.D. 1998, AT 4:29 O'CLOCK P.M.



*Edward J. Freel*

Edward J. Freel, Secretary of State

2830784 8100M  
 981040639

AUTHENTICATION: 8896844

DATE: 12-18-98  
 TRADEMARK

REEL: 1731 FRAME: 0356

1-26-98  
4:29

**CERTIFICATE OF MERGER  
MERGING  
KIRBY BUILDING SYSTEMS, INC.  
INTO  
ASSOCIATED BUILDING SYSTEMS, INC.**

The undersigned corporation, ASSOCIATED BUILDING SYSTEMS, INC., does hereby certify that:

**FIRST:** The names and states of organization and form of entity of each of the constituent entities of the merger are as follows:

<u>NAME</u>	<u>STATE OF ORGANIZATION</u>	<u>FORM OF ENTITY</u>
Associated Building Systems, Inc.	Delaware	Corporation
Kirby Building Systems, Inc.	Tennessee	Corporation

**SECOND:** An Agreement and Plan of Merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with the requirements of Section 252 of the General Corporation Law of Delaware.

**THIRD:** The name of the surviving corporation of the merger is Associated Building Systems, Inc.

**FOURTH:** The Certificate of Incorporation of the surviving corporation, a Delaware corporation, shall be the Certificate of Incorporation of Associated Building Systems, Inc.

**FIFTH:** The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation, the address of which is P.O. Box 120598; Nashville, TN 37212.

**SIXTH:** A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation or to any partner of the limited partnership that is a party to the merger.

**SEVENTH:** The merger shall be effective at 5:00 p.m. Eastern Standard Time on January 30, 1998.

**EIGHTH:** The authorized capital stock of Kirby Building Systems, Inc. is 85,000 shares of common stock at no par value.

IN WITNESS WHEREOF, ASSOCIATED BUILDING SYSTEMS, INC. has caused this Certificate of Merger to be duly executed as of the 24 day of January, 1998.

ASSOCIATED BUILDING SYSTEMS, INC.

By W.R. Collier  
Name W.R. Collier  
Title Secretary

Secretary of State

Corporations Section

mes K. Polk Building, Suite 1800

shville, Tennessee 37243-0306

DATE: 01/27/98  
REQUEST NUMBER: 3441-1470  
TELEPHONE CONTACT: (615) 741-0537  
FILE DATE/TIME: 01/27/98 1057  
EFFECTIVE DATE/TIME: 01/30/98 1700  
CONTROL NUMBER: 0344756

TO:  
T CORP SYSTEM  
GATEWAY CTR  
6TH FL  
PITTSBURGH, PA 15222

RE:  
ASSOCIATED BUILDING SYSTEMS, INC.  
ARTICLES OF MERGER

THIS WILL ACKNOWLEDGE THE FILING OF THE ATTACHED ARTICLES OF MERGER WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A CORPORATION HAS ITS PRINCIPAL OFFICE IF SUCH OFFICE IS IN TENNESSEE AND IN THE COUNTY IN WHICH THE NEW OR SURVIVING CORPORATION SHALL HAVE ITS PRINCIPAL OFFICE IF SUCH OFFICE IS IN TENNESSEE.

FOR: ARTICLES OF MERGER

ON DATE: 01/27/98

FROM:  
T CORPORATION SYSTEM (PITTSBURGH, PA)  
GATEWAY CENTER  
6TH FLOOR  
PITTSBURGH, PA 15222-0000

RECEIVED: FEES \$50.00 \$50.00  
TOTAL PAYMENT RECEIVED: \$100.00

RECEIPT NUMBER: 00002237132  
ACCOUNT NUMBER: 00000021

*Riley C Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE  
TRADEMARK

REEL: 1731 FRAME: 0358



**FILED**

RECEIVED  
SECRETARY OF STATE

98 JAN 27 AM 10:57

RILEY DARNELL  
SECRETARY OF STATE  
To the Secretary of State  
State of Tennessee

ARTICLES OF MERGER  
MERGING  
KIRBY BUILDING SYSTEMS, INC.,  
INTO  
ASSOCIATED BUILDING SYSTEMS, INC.

Pursuant to the provisions of the Tennessee Business Corporation Act, the domestic business corporation, foreign business corporations and foreign limited partnership herein named do hereby submit the following Articles of Merger.

1. The names of the constituent entities to the merger are:

<u>NAME</u>	<u>STATE OF ORGANIZATION</u>	<u>FORM OF ENTITY</u>
Associated Building Systems, Inc.	Delaware	Corporation
Kirby Building Systems, Inc.	Tennessee	Corporation

2. Annexed hereto as Exhibit A and made a part hereof is the Agreement and Plan of Merger for merging Kirby Building Systems, Inc. into Associated Building Systems, Inc.

3. All of the shareholders of Kirby Building Systems, Inc. entitled to vote on the foregoing Agreement and Plan of Merger consented to taking such action without a meeting, and the holders of the number of shares that would be necessary to authorize or take such action at a meeting of the shareholders of the corporation duly approved and adopted the aforesaid Agreement and Plan of Merger without a meeting of said shareholders on written consent signed by them on Dec 22, 1997 in accordance with the provisions of Section 48-17-104 of the Tennessee Business Corporation Act.

4. The merger of Kirby Building Systems, Inc. into Associated Building Systems, Inc. is permitted by the laws of the State of Delaware and has been authorized in compliance with said laws.

5. Associated Building Systems, Inc. will continue its existence as the surviving corporation pursuant to the provisions of the laws of the State of Delaware.

6. The merger shall be effective at 5:00 p.m. Eastern Standard Time on January 30, 1998.

Executed on January 22, 1998.

KIRBY BUILDING SYSTEMS, INC.

By [Signature]  
Name: W.R. Corrick  
Title: Secretary

ENTERED  
PHILLIP G. SIMPSON  
PROPERTY ASSESSOR  
JAN 30 1998  
MAP - Merger  
CHARTER

Kathryn Brown, Register  
Sumner County Tennessee  
Rec #: 305009 Instrument 416695  
Rec'd: 5.00 NBK: 63 Pg 380  
State: 0.00 Recorded  
1/30/1998 at 1:44 PM  
Total: 5.00 in Record Book  
777 Pg 735

RECEIVED  
 SECRETARY OF STATE **AGREEMENT AND PLAN OF MERGER**

98 JAN 27 4:10:58  
 THIS AGREEMENT AND PLAN OF MERGER ("Agreement") dated as of the 22nd day of January, 1998 by and among ASSOCIATED BUILDING SYSTEMS, INC., a Delaware corporation ("ABS", or the "Surviving Corporation"), and KIRBY BUILDING SYSTEMS, INC., a Tennessee corporation ("Kirby") (ABS and Kirby being herein sometimes collectively referred to as the "Constituent Entities").

## WITNESSETH:

WHEREAS, the Constituent Entities desire that Kirby be merged with and into ABS, with ABS being the surviving corporation, upon the terms and conditions set forth herein;

WHEREAS, the Board of Directors and the stockholders of ABS have adopted resolutions approving this Agreement in accordance with the Delaware General Corporation Law (the "DGCL"); and

WHEREAS, the Board of Directors and the stockholders of Kirby have adopted resolutions approving this Agreement in accordance with the Tennessee Business Corporation Act (the "TBCA"); and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, ABS and Kirby hereby agree as follows:

1. **Terms of Merger.** On the Effective Date (as hereinafter defined), Kirby shall be merged with and into ABS pursuant to the provisions of the DGCL and the TBCA (the "Merger").
2. **Surviving Corporation.** The corporation surviving the Merger shall be ABS.
3. **Treatment of Shares.** Upon the Effective Date, (a) the shares of capital stock of ABS issued and outstanding immediately prior to the Merger shall remain outstanding, without change therein by reason of the Merger and (b) each share of capital stock of Kirby prior to the Merger shall, by virtue of the Merger, be deemed retired and canceled without necessity of further action.
4. **Effective Date.** If this Agreement is not terminated as contemplated by Section 8 hereof, a Certificate of Merger shall be delivered to the Delaware Secretary of State for filing, and Articles of Merger shall be delivered to the Tennessee Secretary of State for filing. The Merger shall become effective at 5:00 p.m. Eastern Standard Time on January 30, 1998 (the "Effective Date").
5. **Certificate of Incorporation.** The Certificate of Incorporation of ABS, amended as provided by applicable law, from and after the Effective Date, shall be, and may be separately certified as, the Certificate of Incorporation of the Surviving Corporation.
6. **By-Laws.** The By-Laws of ABS, as in effect on the Effective Date, shall be the By-Laws of the Surviving Corporation, to remain unchanged until amended in accordance with the provisions thereof and of applicable law.
7. **Directors and Officers.** Upon the Effective Date, the Board of Directors of the Surviving Corporation shall consist of those persons who were directors of ABS immediately prior to the Effective Date, and the officers of the Surviving Corporation shall be the persons who were officers of ABS immediately prior to the Effective Date, each such person to hold, in accordance with the By-Laws and at the pleasure of the Board of Directors of the Surviving Corporation, the same office or offices with the Surviving Corporation as such person then held with ABS.
8. **Termination and Amendment.** This Agreement may be terminated by the Board of Directors of either ABS or Kirby at any time prior to the Effective Date. In addition, the Boards of Directors of ABS and Kirby may amend this Agreement at any time prior to the Effective Date.

RECEIVED  
SECRETARY OF STATE  
98 JAN 27 AM 10:58  
SECRETARY OF STATE

3-1-1 1-1-2

**Miscellaneous.** Upon the Effective Date, all the property, rights, privileges, franchises, patents, trademarks, licenses, registrations and other assets of every kind and description of Kirby shall be transferred to, vested in and devolve upon ABS without further act or deed and all property, rights, and every other interest of ABS and Kirby shall be effectively the property of ABS as they were of ABS and Kirby, respectively. Kirby hereby agrees from time to time, as and when requested by ABS or by its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and instruments and to take or cause to be taken such further or other action as ABS may deem necessary or desirable to take and confirm to ABS title to and possession of any property of Kirby acquired or to be acquired by reason of or as a result of the Merger herein provided for and otherwise to carry out the intent and purposes hereof. The proper officers and directors of ABS and Kirby are fully authorized in the name of Kirby to take any and all such action.

IN WITNESS WHEREOF, ABS and Kirby have caused this Agreement to be executed as of the date first above written.

ASSOCIATED BUILDING SYSTEMS, INC.

By W. G. Gattich  
Title: Secretary

KIRBY BUILDING SYSTEMS, INC.

By W. G. Gattich  
Title: Secretary

198 737

TUKE YOPP & SWEENEY, PLC

ATTORNEYS

NATIONSBANK PLAZA, SUITE 1100

414 UNION STREET

NASHVILLE, TENNESSEE 37219

ROBERT P. FELBER, JR.

TELEPHONE (615) 313-3300

FACSIMILE (615) 313-3310

DIRECT DIAL: (615) 313-3327  
E-MAIL ADDRESS: rfelber@tys.com

May 21, 1998

VIA U.S. EXPRESS MAIL

United States Patent and Trademark Office  
Office of Public Records  
Crystal Gateway 4  
Room 335  
Washington, D.C. 20231

Re: Recordation of Merger Document

Dear Sir or Madam:

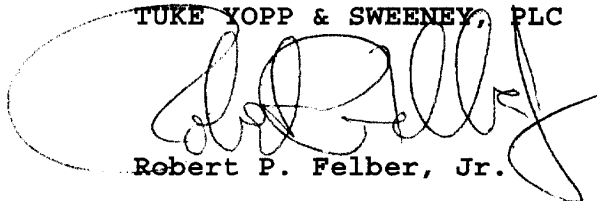
Enclosed for recordation with your office please find one completed and signed Recordation Form Cover Sheet (Form PTO-1595) and attached copies of the Certificate of Merger and Articles of Merger of Kirby Building Systems, Inc. with and into Associated Building Systems, Inc. This merger affects U.S. Trademark Registration Nos. 1,863,468 and 1,863,469.

We are also enclosing our check in the amount of \$65.00 made payable to the "Commissioner of Patents and Trademarks" in payment of the recordation fee for the enclosed document (\$40 + \$25 = \$65).

If you should have questions regarding the enclosed materials, please contact the undersigned at (615) 313-3327.

Very truly yours,

TUKE YOPP & SWEENEY, PLC



Robert P. Felber, Jr.

RPF/klb

cc: Ms. M. Joline West

220771.2 5/21/98

RECORDED: 05/26/1998

EXPRESS MAIL MAILING LABEL NO.:

EM56684453US

TRADEMARK

REEL: 1731-1  
DATE OF DEPOSIT: 5/21/98