

10-16-1998

NLY

To the Honorable Commissioner



the attached original documents or copy thereof.

100851398

1. Name of conveying party(ies):

NETRIGHT TECHNOLOGIES, INC.

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

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

3. Nature of conveyance:

MED 10-8-98

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

Execution Date: November 29, 1996

2. Name and address of receiving party(ies)

Name: NETRIGHT TECHNOLOGIES, INC.

Internal Address: 100 OCT - 3 PM 3:30

Street Address: 470 Mercury Drive

City: Sunnyvale State: CA ZIP 94086

- 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)

75/143,280

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: Silverman, Cass & Singer, Ltd.

Internal Address:

Street Address: 105 W. Adams Street

Suite 2700

City: Chicago State: IL ZIP: 60603

10/14/1998 INVENTOR - 00000116 75143280

01 FC1481

40.00 UP

DO NOT USE THIS SPACE

6. Total number of applications and registrations involved: 1

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

19-2250

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

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.

Herbert J. Singer

Name of Person Signing

Herbert J. Singer

Signature

October 5, 1998

Date

Total number of pages including cover sheet, attachments, and document: 12

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

TRADEMARK
REEL: 1799 FRAME: 0800

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:
"NETRIGHT TECHNOLOGIES, INC.", A ILLINOIS CORPORATION,
WITH AND INTO "NETRIGHT TECHNOLOGIES-DELAWARE, INC." UNDER THE NAME OF "NETRIGHT TECHNOLOGIES, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTEENTH DAY OF DECEMBER, A.D. 1996, AT 9 O'CLOCK A.M.



2676110 8100M

981296388

A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 9225064

DATE: 07-30-98

TRADEMARK
REEL: 1799 FRAME: 0801

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is entered into as of November 29, 1996 by and between NetRight Technologies, Inc., an Illinois corporation ("NetRight Illinois"), and NetRight Technologies-Delaware, Inc., a Delaware corporation ("NetRight Delaware").

WITNESSETH:

WHEREAS, NetRight Delaware is a corporation duly organized and existing under the laws of the State of Delaware.

WHEREAS, NetRight Illinois is a corporation duly organized and existing under the laws of the State of Illinois.

WHEREAS, on the date of this Merger Agreement, NetRight Delaware has authority to issue 15,000,000 shares of Common Stock, par value \$0.001 per share (the "NetRight Delaware Common Stock"), and 5,000,000 shares of Preferred Stock, par value \$0.001 per share of which 1,000 shares NetRight Delaware Common Stock are issued and outstanding and owned by NetRight Illinois.

WHEREAS, on the date of this Merger Agreement, NetRight Illinois has authority to issue 10,000,000 shares of Common A Stock and 2,000,000 shares of Common B Stock (the "NetRight Illinois Common Stock"), of which 990 shares of Common A Stock are issued and outstanding.

WHEREAS, the respective Boards of Directors for NetRight Delaware and NetRight Illinois have determined that, for the purpose of effecting the reincorporation of NetRight Illinois in the State of Delaware, it is advisable and to the advantage of said two corporations and their shareholders that NetRight Illinois merge with and into NetRight Delaware upon the terms and conditions herein provided. and

WHEREAS, the respective Boards of Directors of NetRight Delaware and NetRight Illinois, the stockholders of NetRight Illinois, and the sole stockholder of NetRight Delaware have adopted and approved this Merger Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, NetRight Illinois and NetRight Delaware hereby agree to merge as follows:

1. Merger. NetRight Illinois shall be merged with and into NetRight Delaware, and NetRight Delaware shall survive the merger ("Merger"), effective upon the date when this Merger Agreement is made effective in accordance with applicable law (the "Effective Date").

2. Governing Documents. The Certificate of Incorporation of NetRight Delaware shall be amended and restated to read in full as attached hereto as Exhibit A.

3. Directors and Officers. The directors and officers of NetRight Illinois shall become the directors and officers of NetRight Delaware upon the Effective Date and the members of the audit committee, compensation committee and pricing committee of NetRight Illinois shall become the members of such committees for NetRight Delaware.

4. Succession. On the Effective Date, NetRight Delaware shall succeed to NetRight Illinois in the manner of and as more fully set forth in Section 259 of the General Corporation Law of the State of Delaware.

5. Further Assurances. From time to time, as and when required by NetRight Delaware or by its successors and assigns, there shall be executed and delivered on behalf of NetRight Illinois 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, perfect or confirm, of record or otherwise, in NetRight Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of NetRight Illinois, and otherwise to carry out the purposes of this Merger Agreement and the officers and directors of NetRight Delaware are fully authorized in the name and on behalf of NetRight Illinois or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

6. Stock of NetRight Illinois.

a. Common Stock. Upon the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, each share of NetRight Illinois Common Stock outstanding immediately prior thereto shall be changed and converted into 6060.6061 fully paid and nonassessable shares of NetRight Delaware Common Stock.

b. Fractional Shares. No fractional shares which a NetRight Delaware stockholder would otherwise be entitled to receive by reason of the exchange of NetRight Illinois stock for NetRight Delaware stock shall be issued.

7. Stock Certificates. On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of NetRight Illinois stock shall be deemed for all purposes to evidence ownership of and to represent the shares of NetRight Delaware stock into which the shares of NetRight Illinois stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of NetRight Delaware or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to NetRight Delaware or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of NetRight Delaware stock evidenced by such outstanding certificate as above provided.

8. Outstanding Common Stock of NetRight Delaware. Forthwith upon the Effective Date, the One Thousand (1,000) shares of NetRight Delaware Common Stock presently issued and outstanding in the name of NetRight Illinois shall be canceled and retired and resume the status of authorized and unissued shares of NetRight Delaware Common Stock, and no shares of NetRight Delaware Common Stock or other securities of NetRight Delaware shall be issued in respect thereof.

9. Covenants of NetRight Delaware. NetRight Delaware covenants and agrees that it will, on or before the Effective Date:

a. Qualify to do business as a foreign corporation in the State of Illinois, and in all other states in which NetRight Illinois is so qualified and in which the failure so to qualify would have a material adverse impact on the business or financial condition of NetRight Delaware. In connection therewith, NetRight Delaware shall irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the Illinois Corporations Code and under applicable provisions of state law in other states in which qualification is required hereunder.

b. File any and all documents with the Illinois Tax Board necessary to the assumption by NetRight Delaware of all of the franchise tax liabilities of NetRight Illinois.

10. Amendment. At any time before or after approval and adoption by the stockholders of NetRight Illinois, this Merger Agreement may be amended in any manner as may be determined in the judgment of the respective Boards of Directors of NetRight Delaware and NetRight Illinois 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 Merger Agreement.

11. Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either NetRight Illinois or NetRight Delaware or both, notwithstanding approval of this Merger Agreement by the sole stockholder of NetRight Delaware and the stockholders of NetRight Illinois.

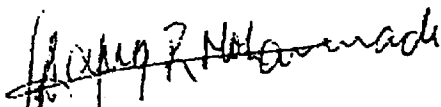
12. Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by resolution of the Board of Directors of NetRight Illinois and NetRight Delaware, is hereby executed on behalf of each of said two corporations by their respective officers thereunto duly authorized.

NetRight Technologies-Delaware, Inc.,
a Delaware corporation

By: 
Mahmood Panjwani, President

NetRight Technologies, Inc., an Illinois
corporation

By: 
Rafiq R. Mohammadi, President

CERTIFICATE OF SECRETARY

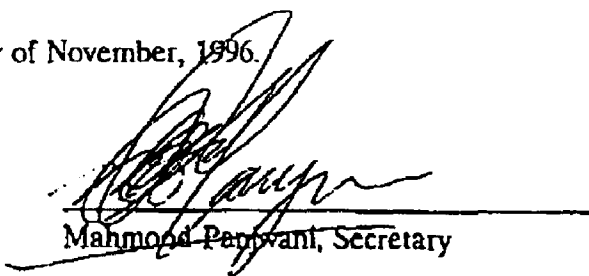
OF

NETRIGHT TECHNOLOGIES-DELAWARE, INC.

(a Delaware corporation)

I, Mahmood Panjwani, the Secretary of NetRight Technologies-Delaware, Inc., a Delaware corporation (the "Corporation"), hereby certifies that the Agreement and Plan of Merger to which this Certificate is attached was duly signed on behalf of the Corporation by its Secretary under the corporate seal of the Corporation and was duly approved and adopted by a unanimous vote of the outstanding stock entitled to vote thereon by written consent of the sole stockholder of the Corporation dated November 29, 1996.

Executed effective on the 29th day of November, 1996.



Mahmood Panjwani, Secretary

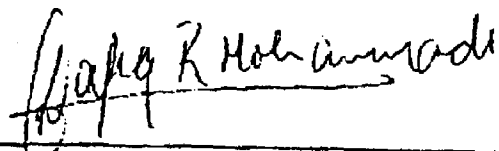
CERTIFICATE OF APPROVAL OF
AGREEMENT AND PLAN OF MERGER OF

NetRight Technologies, Inc.
(an Illinois corporation)

Rafiq R. Mohammadi certifies that:

1. He is the duly elected and acting President of NetRight Technologies, Inc., an Illinois corporation (the "Corporation").
2. This Certificate is attached to the Agreement and Plan of Merger dated as of November 29, 1996, providing for the merger of the Corporation with and into a Delaware corporation.
3. The Agreement and Plan of Merger in the form attached hereto (the "Merger Agreement") was approved by the Board of Directors of the Corporation at a meeting duly noticed and held on November 29 1996.
4. The total number of outstanding shares of the Corporation entitled to vote on the merger was 990 shares of Common Stock.
5. The principal terms of the Merger Agreement were approved by an affirmative vote which exceeded the vote required, such vote being a majority of the outstanding shares of the Corporation, a majority of the total number of outstanding shares of Common Stock.

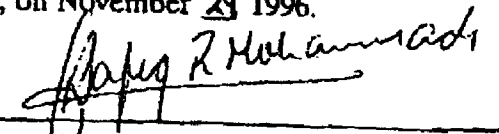
Dated: November 29 1996.



Rafiq R. Mohammadi, President

The undersigned, Rafiq R. Mohammadi, President of NetRight Technologies, Inc., an Illinois corporation, declares under penalty of perjury under the laws of the State of Illinois that the matters set forth in this Certificate are true and correct of his own knowledge.

Executed at CHICAGO, ILLINOIS, on November 29 1996.



Rafiq R. Mohammadi, President

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
NETRIGHT TECHNOLOGIES-DELAWARE, INC.**

(Pursuant to Section 245 of General Corporation Law of the State of Delaware)

NetRight Technologies, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, which was originally incorporated in Delaware under the name NetRight Technologies-Delaware, Inc. on October 23, 1996, (the "Corporation") certifies as follows:

1. The Corporation's Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors and stockholders in accordance with Sections 242 and 245 of the Corporation Law, and approved by the stockholders in accordance with Section 228 and 242 of the Corporation Law.

2. The Corporation's Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation as theretofore amended or previously supplemented.

3. The Corporation's Certificate of Incorporation is amended and restated to read in full as follows:

FIRST: The name of the Corporation is NetRight Technologies, Inc. (hereinafter sometimes referred to as the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is Incorporating Services, Ltd., 15 East North Street, in the City of Dover, County of Kent. The name of the registered agent at that address is Incorporating Services, Ltd.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

FOURTH: **Class of Stock.** The Corporation is authorized to issue two classes of stock to be designated as "Common Stock" and "Preferred Stock". The total number of shares of Common Stock which the Corporation is authorized to issue is Fifteen Million (15,000,000), \$0.001 par value per share and the total number of shares of Preferred Stock which the Corporation is authorized to issue is Five Million (5,000,000), \$0.001 par value per share.

FIFTH:

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- A. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.
- B. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.
- C. On and after the closing date of the first sale of the Corporation's Common Stock pursuant to a firmly underwritten registered public offering (the "IPO"), any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. Prior to such sale, unless otherwise provided by law, any action which may otherwise be taken at any meeting of the stockholders may be taken without a meeting and without prior notice, if a written consent describing such actions is signed by the holders of outstanding shares having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.
- D. Special meetings of stockholders of the Corporation may be called only (1) by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption) or (2) by the holders of not less than ten percent (10%) of all of the shares entitled to cast votes at the meeting.

SIXTH:

- A. The number of directors shall be two (2). A vacancy resulting from the removal of a director by the stockholders as provided in Article SIXTH, Section C below may be filled at a special meeting of the stockholders held for that purpose.

- B. Newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation or other cause (other than removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum, and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office to which they have been elected expires, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.
- C. Any director, or the entire Board of Directors, may be removed from office at any time, with or without cause, but only by the affirmative vote of the holders of at least a majority of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors. Vacancies in the Board of Directors resulting from such removal may be filled by a majority of the directors then in office, though less than a quorum, or by the stockholders. Directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office to which they have been elected expires, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director.

SEVENTH: The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the Corporation. Any adoption, amendment or repeal of Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any resolution providing for adoption, amendment or repeal is presented to the Board). The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of Bylaws of the Corporation by the stockholders shall require, in addition to any vote of the holders of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority (more than 50%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors.

EIGHTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of

the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

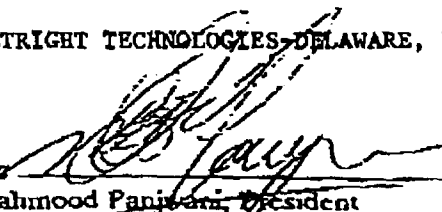
If the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing provisions of this Article EIGHTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

NINTH: The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of the stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority (more than 50%) of the voting power of all the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors shall be required to amend or repeal this Article NINTH, Article FIFTH, Article SIXTH, Article SEVENTH or Article EIGHTH.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate to be signed by a duly authorized officer on this 21 day of November, 1996.

NETRIGHT TECHNOLOGIES-DELAWARE, INC.

By 
Mahmood Panjwani, President