

04-05-1999



FORM PTO-1594  
(Rev. 6-93)

COVER SHEET U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

101000908

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

3-29-99

1. Name of conveying party(ies):  
 Netspeed, Inc.

: Individual(s) : Association  
 : General Partnership : Limited Partnership  
 X Corporation-State (Texas)  
 : Other \_\_\_\_\_

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

3. Nature of conveyance:  
 : Assignment X Merger  
 : Security Agreement : Change of Name  
 : Other \_\_\_\_\_

Execution Date: March 9, 1998

2. Name and address of receiving party(ies):  
 Name: Cisco Systems, Inc.  
 Internal Address: \_\_\_\_\_  
 Street Address: 170 West Tasman Drive  
 City: San Jose State: CA ZIP 95134

: Individual(s) citizenship \_\_\_\_\_  
 : Association \_\_\_\_\_  
 : General Partnership \_\_\_\_\_  
 : Limited Partnership \_\_\_\_\_  
 X Corporation-State California  
 : Other \_\_\_\_\_

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

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s)  
75/309,461; 75/309,486; 75/342,463

Additional numbers attached? : Yes X No

B. Trademark Registration No.(s)  
2,175,349 (formerly 75/051,496)

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Cooley Godward LLP  
 Internal Address: Attn: Janet Cullum, Esq.  
 Street Address: 5 Palo Alto Square  
3000 El Camino Real  
 City: Palo Alto State: CA ZIP 94306-2155

04/02/1999 JSHABAZZ 00000143 75309461

6. Total number of applications and registrations involved: Four (4)

7. Total fee (37 CFR 3.41):..... \$ 115.00  
 X Enclosed  
 : Authorized to be charged to deposit account

8. Deposit account number:  
03-3118 (for any underpayment or credit of any overpayment)  
 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

01 FO:481 40.00 BP  
02 FO:482 75.00 DP

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.*

Janet Cullum 3/25/99  
 Janet Cullum Date

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

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

# AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is made and entered into as of March 9, 1998, by and between Cisco Systems, Inc., a California corporation ("Acquiror"), and NetSpeed, Inc., a Texas corporation ("Target").

## RECITALS:--

A. The Boards of Directors of Target and Acquiror believe it is in the best interests of their respective companies and the shareholders of their respective companies that Target and Acquiror combine into a single company through the statutory merger of Target with and into Acquiror (the "Merger") and, in furtherance thereof, have approved the Merger.

B. Pursuant to the Merger, among other things, each outstanding share of capital stock of Target ("Target Capital Stock") shall be converted into shares of Acquiror Common Stock (as defined in Section 3.2 below), at the rate set forth herein.

C. Target and Acquiror desire to make certain representations and warranties and other agreements in connection with the Merger.

D. The parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code"), and to cause the Merger to qualify as a reorganization under the provisions of Sections 368(a)(1)(A) of the Code.

E. Concurrent with the execution of this Agreement and as an inducement to Acquiror to enter into this Agreement, certain of the affiliates of Target who are shareholders, officers or directors have on the date hereof entered into an agreement to vote the shares of Target's Capital Stock owned by such person in the manner set forth in the Shareholder Agreements referenced herein and attached as Exhibit C hereto.

## AGREEMENT:

NOW, THEREFORE, in consideration of the covenants and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

### ARTICLE I

#### THE MERGER

1.1 The Merger. At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement, the Agreement of Merger and Articles

of Merger attached hereto as Exhibit A (collectively, the "Agreement of Merger"), and the applicable provisions of the California Corporations Code ("California Law") and the Texas Business Corporation Act ("Texas Law"), Target shall be merged with and into Acquiror, the separate corporate existence of Target shall cease and Acquiror shall continue as the surviving corporation. Acquiror as the surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

1.2 Closing; Effective Time. The closing of the transactions contemplated hereby (the "Closing") shall take place as soon as practicable after the satisfaction or waiver of each of the conditions set forth in Article VI hereof or at such other time as the parties hereto agree (the "Closing Date"). The Closing shall take place at the offices of Brobeck, Phleger & Harrison LLP, Two Embarcadero Place, 2200 Geng Road, Palo Alto, California, or at such other location as the parties hereto agree. In connection with the Closing, the parties hereto shall cause the Merger to be consummated by filing the Agreement of Merger, together with the required officers' certificates, with the Secretary of State of the State of California, in accordance with the relevant provisions of California Law (the time of such filing being the "Effective Time").

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Agreement of Merger and the applicable provisions of California Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of Target shall vest in the Surviving Corporation, and all debts, liabilities and duties of Target shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Articles of Incorporation; Bylaws.

(a) At the Effective Time, the Articles of Incorporation of Acquiror, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation of the Surviving Corporation until thereafter amended as provided by California Law and such Articles of Incorporation.

(b) The Bylaws of Acquiror, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended.

1.5 Directors and Officers. At the Effective Time, the directors of Acquiror, as in effect immediately prior to the Effective Time, shall be the directors of the Surviving Corporation, until their respective successors are duly elected or appointed and qualified. The officers of Acquiror, as in effect immediately prior to the Effective Time, shall be the officers of the Surviving Corporation, until their respective successors are duly elected or appointed and qualified.

1.6 Effect on Capital Stock. By virtue of the Merger and without any action on the part of Acquiror, Target or the holders of any of Target's securities:

(a) Conversion of Target Capital Stock. The maximum number of shares of Acquiror Common Stock to be issued (including Acquiror Common Stock to be

interest (the items referenced in clauses (i) and (ii) herein collectively called "Target Authorizations"), and all of such Target Authorizations are in full force and effect, except where the failure to obtain or have any such Target Authorizations would not reasonably be expected to have a Material Adverse Effect on Target.

2.10 Title to Property. Target and its subsidiaries have good and marketable title to all of their respective properties, interests in properties and assets, real and personal, reflected in the Target Balance Sheet or acquired after the Target Balance Sheet Date (except properties, interests in properties and assets sold or otherwise disposed of since the Target Balance Sheet Date in the ordinary course of business), or with respect to leased properties and assets, valid leasehold interests in, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (i) the lien of current taxes not yet due and payable; (ii) such imperfections of title, liens and easements as do not and will not materially detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties; and (iii) liens securing debt which is reflected on the Target Balance Sheet. The plants, property and equipment of Target and its subsidiaries that are used in the operations of their businesses are in good operating condition and repair, subject to normal wear and tear. All properties used in the operations of Target and its subsidiaries are reflected in the Target Balance Sheet to the extent generally accepted accounting principles require the same to be reflected. Schedule 2.10 to the Target Disclosure Schedule identifies each parcel of real property owned or leased by Target or any of its subsidiaries.


2.11 Intellectual Property.

(a) Target and its subsidiaries own, or are licensed or otherwise possess legally enforceable rights to use all patents, trademarks, trade names, service marks, copyrights, and any applications therefor, maskworks, net lists, schematics, technology, know-how, trade secrets, inventory, ideas, algorithms, processes, computer software programs or applications (in source code and/or object code form), and tangible or intangible proprietary information or material (collectively, "Intellectual Property") that are used or proposed to be used in the business of Target and its subsidiaries as currently conducted or as proposed to be conducted by Target and its subsidiaries. Target has not (i) licensed any of its Intellectual Property in source code form to any party or (ii) entered into any exclusive agreements relating to its Intellectual Property with any party.

(b) Schedule 2.11 to the Target Disclosure Schedule lists: (i) all patents and patent applications and all registered and unregistered trademarks, trade names and service marks, registered and unregistered copyrights, and maskworks, included in the Intellectual Property, including the jurisdictions in which each such Intellectual Property right has been issued or registered or in which any application for such issuance and registration has been filed; (ii) all licenses, sublicenses and other agreements as to which Target is a party and pursuant to which any person is authorized to use any Intellectual Property; and (iii) all licenses, sublicenses and other agreements as to which Target is a party and pursuant to which Target is authorized to use any third party patents, trademarks or copyrights, including software (collectively, "Third Party Intellectual Property Rights") which are incorporated in, are, or form a part of any Target product.

IN WITNESS WHEREOF, Target and Acquiror have caused this Agreement and Plan of Reorganization to be executed and delivered by their respective officers thereunto duly authorized, all as of the date first written above.

CISCO SYSTEMS, INC.

By:   
Name: Larry Carter  
Title: Vice President, Chief Financial officer and Secretary

NETSPEED, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

IN WITNESS WHEREOF, Target and Acquiror have caused this Agreement and Plan of Reorganization to be executed and delivered by their respective officers thereunto duly authorized, all as of the date first written above.

**CISCO SYSTEMS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NETSPEED, INC.**

By: \_\_\_\_\_  
Name: John McHale  
Title: CEO

**[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]**

**SCHEDULE 2.11(b)**

**TARGET INTELLECTUAL PROPERTY**

1. See attached list for the listing of the items required by Section 2.11(b)(i).

2.

3. MATERIAL REDACTED

4.

5. NetSpeed and logo.

6. Target uses commercially available software in the ordinary course of its business pursuant to and in accordance with the standard license agreements provided by such software vendors.

**NETSPEED, INC.**  
**STATUS REPORT OF DOMESTIC AND FOREIGN**  
**TRADEMARKS AND SERVICE MARKS**

MARK	FILE NO.	TM/ SM	COUNTRY	SERIAL/ REG. NO. & DATE	INTL. CL.	GOODS/SERVICES	REMARKS	DRAWINGS
MATERIAL REDACTED								

DAVID: 3/29/99