

08-26-1999



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LYU.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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

1. Name of conveying party(ies):

Brocade Communications Systems, Inc.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State California
☐ Other _____

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

3. Nature of conveyance:

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

Execution Date: May 14, 1999

2. Name and address of receiving party(ies)

Name: Brocade Communications Systems, Inc.

Internal Address: _____

Street Address: 1901 Guadalupe Pkwy.

City: San Jose State: CA ZIP: 95131

- ☐ 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)

B. Trademark Registration No.(s)

2,238,497

2,153,602

2,186,789

2,201,107

Additional numbers attached? ☐ Yes ☒ No

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

Name: Andrew P. Bridges
Diane E. Turriff

Internal Address: _____

Wilson Sonsini Goodrich & Rosati

Professional Corporation

Street Address: 650 Page Mill Road

City: Palo Alto State: CA ZIP: 94304

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115.00

☒ Enclosed☐ Authorized to be charged to deposit account

If fee insufficient, please charge:

8. Deposit account number:

23-2415 Attn: 22369-TM1008

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

08/25/1999 MTHAI1 00000264 223697

DO NOT USE THIS SPACE

01 FC:481
02 FC:4829. 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.D Turriff
Name of Person SigningDiane E. Turriff
Signature20 Aug 1999
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

State of Delaware
Office of the Secretary of State

PAGE 1

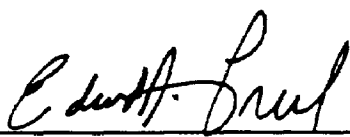
I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"BROCADE COMMUNICATIONS SYSTEMS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "BROCADE COMMUNICATIONS SYSTEMS, INC." UNDER THE NAME OF "BROCADE COMMUNICATIONS SYSTEMS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FOURTEENTH DAY OF MAY, A.D. 1999, AT 10 O'CLOCK A.M.

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





Edward J. Freel, Secretary of State

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AUTHENTICATION:

9745186

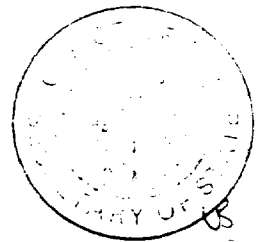
DATE:

05-14-99

TRADEMARK
REEL: 001948 FRAME: 0286



SECRETARY OF STATE



I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 31 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAY 20 1939

Bill Jones

Secretary of State

ENDORSED - FILED

In the Office of the Secretary of State
of the State of California**AGREEMENT AND PLAN OF MERGER OF
BROCADE COMMUNICATIONS SYSTEMS, INC.****(a Delaware corporation)**

MAY 14 1999

AND**BROCADE COMMUNICATIONS SYSTEMS, INC.
(a California corporation)**

BILL JONES, Secretary of State

THIS AGREEMENT AND PLAN OF MERGER dated as of May 13, 1999 (the "Agreement") is between Brocade Communications Systems, Inc., a Delaware corporation ("Brocade-Delaware"), and Brocade Communications Systems, Inc., a California corporation ("Brocade-California"). Brocade-Delaware and Brocade-California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. Brocade-Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 39,791,280 shares, \$.001 par value, of which 30,000,000 shares are designated as "Common Stock", 1,476,197 of which are designated as "Series A Preferred Stock", 833,750 of which are designated as "Series B Preferred Stock", 3,381,333 of which are designated "Series C Preferred Stock" and 4,100,000 of which are designated "Series D Preferred Stock". As of April 30, 1999, 1,000 shares of Common Stock were issued and outstanding, all of which are held by Brocade-California.

B. Brocade-California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 39,791,280 shares, no par value, of which 30,000,000 shares are designated as "Common Stock", 1,476,197 of which are designated as "Series A Preferred Stock", 833,750 of which are designated as "Series B Preferred Stock", 3,381,333 of which are designated "Series C Preferred Stock" and 4,100,000 of which are designated "Series D Preferred Stock". As of April 30, 1999, 7,797,551 shares of Common Stock, 1,425,000 shares of Series A Preferred Stock, 816,250 shares of Series B Preferred Stock, 3,333,333 shares of Series C Preferred Stock and 3,660,900 shares of Series D Preferred Stock were issued and outstanding.

C. The Board of Directors of Brocade-California has determined that, for the purpose of effecting the reincorporation of Brocade-California in the State of Delaware, it is advisable and in the best interests of Brocade-California and its shareholders that Brocade-California merge with and into Brocade-Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of Brocade-Delaware and Brocade-California, the shareholders of Brocade-California and the sole stockholder of Brocade-Delaware have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Brocade-Delaware and Brocade-California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. MERGER

(a) Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, Brocade-California shall be merged with and into Brocade-Delaware (the "Merger"), the separate existence of Brocade-California shall cease and Brocade-Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Brocade Communications Systems, Inc.

(b) Filing and Effectiveness. The Merger shall become effective when the following actions shall have been completed:

(i) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(ii) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the California General Corporation Law shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

(c) Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Brocade-California shall cease and Brocade-Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and Brocade-California's Boards of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Brocade-California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Brocade-California in the same manner as if Brocade-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

2. CHARTER DOCUMENTS DIRECTORS AND OFFICERS

(a) Certificate of Incorporation. The Certificate of Incorporation in the form attached hereto as Exhibit A (the "Certificate of Incorporation") shall be the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

(b) Bylaws. The Bylaws of Brocade-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

(c) Directors and Officers. The directors and officers of Brocade-Delaware immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

3. MANNER OF CONVERSION OF STOCK

(a) Brocade-California Common Stock. Upon the Effective Date of the Merger, each share of Common Stock of Brocade-California Common issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one share of fully paid and nonassessable Common Stock, \$0.001 par value, of the Surviving Corporation.

(b) Brocade-California Preferred Stock. Upon the Effective Date of the Merger, each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock of Brocade-California Common issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one share of fully paid and nonassessable Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, \$0.001 par value, respectively, of the Surviving Corporation.

(c) Brocade-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.001 par value, of Brocade-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Brocade-Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

(d) Stock Options and Warrants. At the Effective Date of the Merger, the Brocade-California 1999 Stock Option Plan, 1999 Director Option Plan, and 1999 Employee Stock Purchase Plan (the "Plans"), and all options and stock purchase rights relating to Common Stock (each a "Brocade Option") then outstanding under such plan, and all rights to acquire stock pursuant to any outstanding warrants of Brocade-California (each a "Brocade Warrant"), or otherwise, shall be assumed by Brocade-Delaware in accordance with provisions described below.

(i) Each Brocade Option and Brocade Warrant so assumed by Brocade-Delaware under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in the Plan and/or as provided in the respective agreements governing such Brocade Option or Brocade Warrant immediately prior to the Effective Date of the Merger.

(ii) It is the intention of the parties that the Brocade Options assumed by Brocade-Delaware qualify following the Effective Date of the Merger as incentive stock options as defined in

Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), to the extent the Brocade Options qualified as incentive stock options immediately prior to the Effective Date of the Merger.

(iii) Promptly following the Effective Date of the Merger, Brocade-Delaware will issue to each holder of an outstanding Brocade Option and Brocade Warrant a document evidencing the foregoing assumption of such Brocade Option and Brocade Warrant by Brocade-Delaware.

(iv) At the Effective Date of the Merger, Brocade-California shall assign to Brocade-Delaware any and all rights of repurchase pertaining to shares of Brocade-California Common Stock issued upon exercise of stock options, pursuant to stock purchase agreements or otherwise.

(e) Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Brocade-California Common Stock may, at such stockholder's option, surrender the same for cancellation to such institution as Brocade-Delaware shall appoint at the time to act as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Brocade-California Common shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of Brocade-California Common were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Brocade-California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's Common Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

4. GENERAL

(a) Covenants of Brocade-Delaware. Brocade-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

- (i) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law;
- (ii) File any and all documents with the appropriate tax authority of the State of California necessary for the assumption by Brocade-Delaware of all of the corporate and/or franchise tax liabilities of Brocade-California; and
- (iii) Take such other actions as may be required by the California General Corporation Law.

(b) Further Assurances. From time to time, as and when required by Brocade-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Brocade-California such deeds and other instruments, and there shall be taken or caused to be taken by Brocade-Delaware and Brocade-California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Brocade-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Brocade-California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Brocade-Delaware are fully authorized in the name and on behalf of Brocade-California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

(c) Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Brocade-California or Brocade-Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Brocade-California or by the sole stockholder of Brocade-Delaware, or by both.

(d) Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation, this Agreement shall not be amended except in compliance with the requirements of the California General Corporation Law and the Delaware General Corporation Law.

(e) Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at 1209 Orange Street, in the city of Wilmington, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

(f) Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1901 Guadalupe Parkway, San Jose, California 95131 and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

(g) Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and the provisions of the California General Corporation Law.

(h) Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of Brocade-Delaware and Brocade-California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

BROCADE COMMUNICATIONS SYSTEMS, INC.
a Delaware corporation

By: _____

Greg L. Reyes, President and Chief Executive Officer

ATTEST:


Larry W. Sonsini, Secretary

BROCADE COMMUNICATIONS SYSTEMS, INC.
a California corporation

By: _____

Greg L. Reyes, President and Chief Executive Officer

ATTEST:


Larry W. Sonsini, Secretary

BROCADE COMMUNICATIONS SYSTEMS, INC.
(California Corporation)

OFFICERS' CERTIFICATE

Greg L. Reyes and Larry W. Sonsini certify that:

1. They are the President and the Secretary, respectively, of Brocade Communications Systems, Inc., a corporation organized under the laws of the State of California.
2. The corporation has two authorized classes of stock, designated "Common Stock" and "Preferred Stock." There are authorized 30,000,000 shares of Common Stock and 9,791,280 shares of Preferred Stock, of which 1,476,197 shares are designated Series A Preferred Stock, 833,750 shares are designated Series B Preferred Stock, 3,381,333 shares are designated Series C Preferred Stock and 4,100,000 shares are designated Series D Preferred Stock.
3. There were 7,797,551 shares of Common Stock, 1,425,000 shares of Series A Preferred Stock, 816,250 shares of Series B Preferred Stock, 3,333,333 shares of Series C Preferred Stock and 3,660,900 shares of Series D Preferred Stock issued and outstanding as of the record date of the shareholders' approval of the Agreement and Plan of Merger attached hereto (the "Merger Agreement").
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of the Common Stock voting as a single class and more than 50% of the votes entitled to be cast by holders of outstanding shares of Preferred Stock voting as a single class.
6. Gregory L. Reyes and Larry W. Sonsini further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in San Jose, California on May 13 1999.



Gregory L. Reyes, President and Chief
Executive Officer



Larry W. Sonsini, Secretary

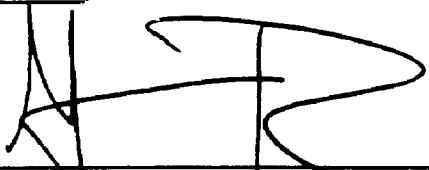
BROCADE COMMUNICATIONS SYSTEMS, INC.
(Surviving Corporation)

OFFICERS' CERTIFICATE

Gregory L. Reyes and Larry W. Sonsini certify that:

1. They are the President and the Secretary, respectively, of Brocade Communications Systems, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has two authorized classes of stock, designated "Common Stock" and "Preferred Stock." There are authorized 30,000,000 shares of Common Stock and 9,791,280 shares of Preferred Stock, of which 1,476,197 shares are designated Series A Preferred Stock, 833,750 shares are designated Series B Preferred Stock, 3,381,333 shares are designated Series C Preferred Stock and 4,100,000 shares are designated Series D Preferred Stock.
3. There are 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There are no shares of Preferred Stock outstanding.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by the sole Stockholder of outstanding shares of Common Stock.
6. Gregory L. Reyes and Larry W. Sonsini further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in San Jose, California on May 13, 1999.



Gregory L. Reyes, President and Chief
Executive Officer



Larry W. Sonsini, Secretary