

FORM PTO-1618A
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U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

JAN 18 2000

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger
Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership
- Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

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FOR OFFICE USE ONLY

01 FC:481	40.00 OP
02 FC:482	75.00 OP
03 FC:998	10.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027. Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

Express Mail EL406734819US

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655039.1

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trade Application Number(s)

Registration Number(s)

<input type="text" value="75/430,650"/>	<input type="text" value="75/183,173"/>	<input type="text"/>	<input type="text" value="2,249,926"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75/430,476"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,165,835"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75/430,946"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties Enter the total number of properties involved.

#

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)


Deposit Account Number: #

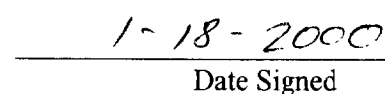
Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.


Melissa M. Manwaring, Esq.


Signature


Date Signed

ASSIGNMENT OF UNITED STATES TRADEMARKS AND APPLICATIONS

WHEREAS, NetDynamics, Inc., a California corporation having its principal place of business at 185 Constitution Drive, Menlo Park CA 94025, is the owner of the following trademarks for which applications are currently pending in the United States Patent and Trademark Office:

Trademark	Serial No.	Filing Date
WEBDYNAMICS	75/183,173	October 15, 1996
AGENTBEANS	75/430,946	February 9, 1998
BUSINESSBEANS	75/430,650	February 9, 1998
PROCESSBEANS	75/430,476	February 9, 1998

WHEREAS, Sun Microsystems, Inc., a Delaware corporation having its principal place of business at 901 San Antonio Road, Palo Alto, CA 94303, is desirous of acquiring said trademarks, applications, and any registrations resulting therefrom,

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, NetDynamics, Inc., does hereby assign unto Sun Microsystems, Inc., all right, including common law rights, title and interest in the United States of America and all other countries and jurisdictions of the world in and to said trademarks together with the goodwill of the business symbolized by said trademarks and applications thereof, and that portion of the business which is ongoing and existing to which the trademarks pertain.

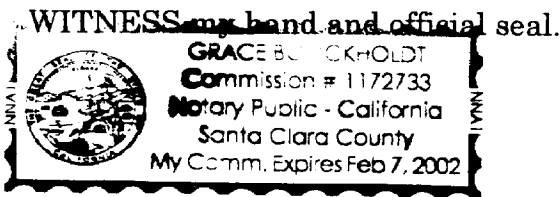
Signed at Cupertino, CA, this 6th day of January, 2000.

NetDynamics, Inc.

By: [Signature]
Name: Michael E. Lehman
Title: Vice President Corporate Resources and Chief Financial Officer

State of CALIFORNIA
County of SANTA CLARA

On this 6th day of JANUARY, 2000, before me, GRACE BROCKHOLDT, a Notary Public in and for the State of CALIFORNIA, personally appeared MICHAEL E. LEHMAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



[Signature]
Notary Public

ASSIGNMENT OF REGISTERED TRADEMARKS

WHEREAS, NetDynamics, Inc., a California corporation having its principal place of business at 185 Constitution Drive, Menlo Park, CA 94025, is the owner of the following trademarks now registered in the United States Patent and Trademark Office:

Trademark	Reg. No.	Reg. Date
WEBEXTEND	2,165,835	June 16, 1998
NETDYNAMICS	2,249,926	June 1, 1999

WHEREAS, Sun Microsystems, Inc., a Delaware corporation, having its principal place of business at 901 San Antonio Road, Palo Alto, CA 94303, is desirous of acquiring said trademarks,

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, NetDynamics, Inc., does hereby assign unto Sun Microsystems, Inc., all right, including common law rights, title and interest in the United States of America and all other countries and jurisdictions of the world in and to said trademarks together with the goodwill of the business symbolized by said trademarks and applications and registrations thereof.

Signed at Cupertino, CA, this 6th day of January, 2000.

NetDynamics, Inc.

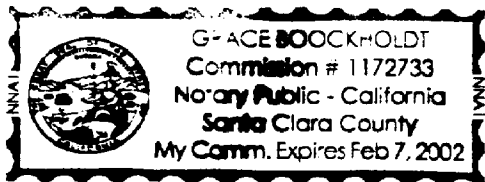
By: *Michael E. Lehman*

Name: **Michael E. Lehman**
Title: **Vice President Corporate Resources and Chief Financial Officer**

State of CALIFORNIA
County of SANTA CLARA

On this 6th day of January, 2000, before me, GRACE BROCKHOLDT, a Notary Public in and for the State of CALIFORNIA, personally appeared MICHAEL E. LEHMAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity(ies), and that by his/~~her~~ signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Grace Brockholdt
Notary Public

State of California

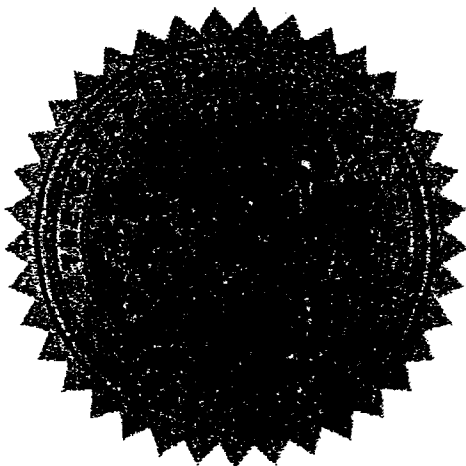


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 17 page(s) was prepared by and in this office from the record on file, 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

DEC 17 1998



Bill Jones

Secretary of State

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FILED
In the office of the Secretary of State
of the State of California

AUG 28 1998

Bill Jones
L. JONES, Secretary of State

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**AGREEMENT OF MERGER
OF APOLLO ACQUISITION CORP.,
A CALIFORNIA CORPORATION
AND
NETDYNAMICS, INC.,
A CALIFORNIA CORPORATION**

This Agreement of Merger (the "Agreement"), is made and entered into as of August 28, 1998 by and between NetDynamics, Inc., a California corporation ("NetDynamics" or the "Company"), and Apollo Acquisition Corp., a California corporation ("Merger Sub" and, together with NetDynamics, the "Constituent Corporations") and a wholly owned subsidiary of Sun Microsystems, Inc., a Delaware corporation ("Parent").

RECITALS

A. Parent, NetDynamics, Merger Sub and certain shareholders of NetDynamics named therein have entered into that certain Agreement and Plan of Reorganization dated June 30, 1998 (the "Reorganization Agreement"), providing, among other things, for the execution and filing of this Agreement of Merger and the merger of Merger Sub with and into NetDynamics upon the terms set forth in the Reorganization Agreement and this Agreement of Merger (the "Merger").

B. The respective Boards of Directors of each of the Constituent Corporations deem it advisable and in the best interests of each of such corporations and their respective shareholders that Merger Sub be merged with and into NetDynamics and have approved this Agreement and the Merger.

C. The Reorganization Agreement, this Agreement and the Merger have been approved by the shareholders of NetDynamics and by the sole shareholder of Merger Sub.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, each of the Constituent Corporations hereby agrees that Merger Sub shall be merged with and into NetDynamics in accordance with the Reorganization Agreement and the provisions of the laws of the State of California, upon the terms and subject to the conditions set forth as follows:

ARTICLE I

THE CONSTITUENT CORPORATIONS

1.1 NetDynamics. NetDynamics is a corporation duly organized and existing under the laws of the State of California and, as of the date of this Agreement, has an authorized capital of seventeen million five hundred sixty-six thousand five hundred seventy-seven (17,566,577) shares, thirteen million five hundred thousand (13,500,000) of which are designated "Common Stock", no par value, 5,504,711 of which are issued and outstanding, and four million sixty-six thousand five hundred seventy-seven (4,066,577) of which are designated "Preferred Stock", no par value, one million nine hundred six

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thousand three hundred seventy-one (1,906,371) of which are designated Series A Preferred Stock, all of which are issued and outstanding, nine hundred forty thousand two hundred six (940,206) of which are designated Series B Preferred Stock, all of which are issued and outstanding, and one million two hundred twenty thousand (1,220,000) of which are designated Series C Preferred Stock, all of which are issued and outstanding. NetDynamics was incorporated under the laws of the State of California on May 30, 1995.

1.2 Merger Sub. Merger Sub is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 1,000 shares, all of which are designated "Common Stock", no par value. As of the date of this Agreement, 1,000 shares of Common Stock are outstanding and held by Parent. Merger Sub was incorporated under the laws of the State of California on June 11, 1998.

ARTICLE II

THE MERGER

2.1 The Merger. At the Effective Time (as defined in Section 2.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the General Corporation Law of the State of California ("California Law"), Merger Sub shall be merged with and into NetDynamics, the separate corporate existence of Merger Sub shall cease and NetDynamics shall continue as the surviving corporation and as a wholly-owned subsidiary of Parent. The surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

2.2 Filing and Effectiveness. This Agreement, together with the officers' certificates of each of the Constituent Corporations required by California Law (the "Officers' Certificates"), shall be filed with the Secretary of State of the State of California at the time specified in the Reorganization Agreement. The Merger shall become effective upon the filing of this Agreement and the Officers' Certificates with the Secretary of State of the State of California (the "Effective Time").

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in 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 Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

2.4 Articles of Incorporation. At the Effective Time, the Articles of Incorporation of the Surviving Corporation shall be amended in full to read as set forth on Exhibit A attached hereto.

2.5 Effect of Merger on the Capital Stock of the Constituent Corporations.

(a) Certain Definitions. For all purposes of this Agreement, the following terms shall have the following meanings:

"Company Capital Stock" shall mean shares of Company Common Stock, Company Series A Preferred, Company Series B Preferred, Company Series C Preferred Stock and shares of any other capital stock of NetDynamics.

"Company Common Stock" shall mean shares of common stock of NetDynamics.

"Company Preferred Stock" shall mean, collectively, shares of Company Series A Preferred, Company Series B Preferred and Company Series C Preferred.

"Company Series A Preferred" shall mean shares of Series A Preferred Stock of the Company.

"Company Series B Preferred" shall mean shares of Series B Preferred Stock of the Company.

"Company Series C Preferred" shall mean shares of Series C Preferred Stock of the Company.

"Exchange Ratio" shall mean an amount equal to (x) the Common Participating Consideration divided by (y) Total Outstanding Shares.

"Merger Shares" shall mean 3,314,774 shares of Parent Common Stock.

"Parent Common Stock" shall mean shares of Common Stock, \$0.00067 par value per share, of Parent.

"Shareholder" shall mean each holder of any Company Capital Stock immediately prior to the Effective Time.

"Total Outstanding Shares" shall mean the aggregate number of shares of Company Common Stock outstanding immediately prior to the Effective Time plus the aggregate number of shares of Company Common Stock issuable, with or without the passage of time or satisfaction of other conditions, upon exercise or conversion of all options, warrants and other rights (other than the Company Preferred Stock) to acquire or receive shares of Company Common Stock outstanding immediately prior to the Effective Time.

"Total Participating Shares" shall mean the number equal to the Total Outstanding Shares plus the total number of shares of Company Common Stock issuable upon conversion of the shares of Company Series A Preferred and Company Series B Preferred issued and outstanding immediately prior to the Effective Time pursuant to the Articles of Incorporation of the Company as then in effect minus the total number of Section 2.5(b)(ii)(C) Shares (as defined below) on an as-converted basis into Company Common Stock.

"Trading Price" shall mean \$48.26875 per share.

(b) Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, NetDynamics or the holders of any shares of Company Capital Stock, each share of Company Common Stock, Company Series A Preferred, Company Series B Preferred and Company Series C Preferred issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares, as defined in Section 2.6) will be canceled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such share of Company Common Stock, Company Series A Preferred, Company Series B Preferred or Company Series C Preferred and upon the terms and subject to conditions set forth below and throughout this Agreement, including, without limitation, Sections 2.5(e) and (f) hereof and the escrow provisions set forth in Article VII of the Reorganization Agreement and/or described in Section 2.7(b) hereof, the following:

(i) Preferred Stock Consideration. Prior and in preference to any delivery of Parent Common Stock in respect of shares of Company Common Stock, the holders of Company Series A Preferred, Company Series B Preferred and Company Series C Preferred will be entitled to receive the following; provided that, if the Merger Shares are insufficient to permit the receipt of the respective amounts of shares of Parent Common Stock set forth below in this Section 2.5(b)(i), then holders of Company Series A Preferred, Company Series B Preferred and Company Series C Preferred will be entitled to their pro rata share of the Merger Shares available in proportion to the respective amounts which would be received by them if the respective amounts were paid in full:

(a) Each share of Company Series C Preferred issued and outstanding immediately prior to the Effective Time, shall be converted into the right to receive that number of shares of Parent Common Stock equal to \$7.00 divided by the Trading Price. Such number (\$7.00 divided by the Trading Price) multiplied by the number of shares of Company Series C Preferred issued and outstanding immediately prior to the Effective Time is herein referred to as the "Series C Consideration".

(b) Each share of Company Series B Preferred issued and outstanding immediately prior to the Effective Time, shall be converted into the right to receive that number of Shares of Parent Common Stock equal to \$5.4042 divided by the Trading Price. Such number (\$5.4042 divided by the Trading Price) multiplied by the number of shares of Company Series B Preferred issued and outstanding immediately prior to the Effective Time is herein referred to as the "Series B Consideration".

(c) Each share of Company Series A Preferred issued and outstanding immediately prior to the Effective Time, shall be converted into the right to receive that number of Shares of Parent Common Stock equal to \$0.985 divided by the Trading Price. Such number (\$0.985 divided by the Trading Price) multiplied by the number of shares of Company Series A Preferred issued and outstanding immediately prior to the Effective Time is herein referred to as "Series A Consideration," and collectively with the Series B Consideration and the Series C Consideration, the "Preferred Stock Consideration."

(ii) Participating Consideration. After delivery of the shares pursuant to Section 2.5(b)(i), the remaining Merger Shares shall be distributed as follows:

(A) Each holder of shares of Company Common Stock, issued and outstanding immediately prior to the Effective Time, shall be converted into the right to receive the number of shares of Parent Common Stock equal to (x) the Merger Shares minus the Preferred Stock Consideration minus the Section 2.5(b)(ii)(C) Consideration multiplied by (y) a fraction, the numerator of which shall be the number of shares of Company Common Stock held by such holder immediately prior to the Effective Time, and the denominator of which shall be the Total Participating Shares, rounded to the nearest whole number. Such number of shares of Parent Common Stock per share of Company Common Stock multiplied by the Total Outstanding Shares is herein referred to as the "Common Participating Consideration".

(B) Subject to the limitations in Section 2.5(b)(ii)(C), each holder of shares of Company Series A Preferred and Company Series B Preferred, issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive the number of shares of Parent Common Stock equal to the Merger Shares minus the Preferred Stock Consideration minus the Section 2.5(b)(ii)(C) Consideration multiplied by a fraction, the numerator of which shall be the number of shares of Company Common Stock issuable upon conversion of the shares of Company Series A Preferred and Company Series B Preferred held by such holder immediately prior to the Effective Time pursuant to the Articles of Incorporation of the Company as then in effect, and the denominator of which shall be the Total Participating Shares, rounded to the nearest whole number.

(C) Notwithstanding anything to the contrary contained in Section 2.5(b)(ii)(B), and in accordance with the Articles of Incorporation of the Company, (1) under no circumstances shall the holder of any share of Company Series A Preferred be entitled pursuant to this Section 2.5(b)(ii) to receive in excess of 0.0612 shares of Parent Common Stock in respect of any such share, and (2) under no circumstances shall the holder of any share of Company Series B Preferred be entitled pursuant to this Section 2.5(b)(ii) to receive in excess of 0.3359 shares of Parent Common Stock in respect of any such share. Any shares of Company Series A Preferred and Company Series B Preferred held by a holder who, pursuant to this Section 2.5(b)(ii)(C) becomes entitled to a lesser share of the Merger Shares than such holder would otherwise be entitled are referred to herein as "Section 2.5(b)(ii)(C) Shares", and the number of the Merger Shares paid in respect of Section 2.5(b)(ii)(C) Shares pursuant to Section 2.5(b)(ii), subject to this Section 2.5(b)(ii)(C), is referred to herein as the "Section 2.5(b)(ii)(C) Consideration".

(c) Company Stock Options and Warrants to Purchase Company Capital Stock.

(i) At the Effective Time, each outstanding option to purchase shares of Company Common Stock issued pursuant to the Company's 1995 Stock Option Plan (the "Stock Option Plan") or otherwise (each a "Company Option"), whether or not exercisable, will be assumed by Parent. Each Company Option so assumed by Parent under this Agreement will continue to have, and be subject to, the same terms and conditions governing such Company Option immediately prior to the Effective Time (including, without limitation, any vesting schedule or repurchase rights), except that (i) each

Company Option will be exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Option immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock, and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Option will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Option was exercisable immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent. It is the intention of the parties that Company Options assumed by Parent following the Closing will, to the extent permitted by applicable law, qualify as incentive stock options as defined in Section 422 of the Code, to the extent Company Options qualified as incentive stock options immediately prior to the Closing. After the Effective Time, Parent will issue to each holder of an outstanding Company Option a notice describing the foregoing assumption of such Company Options.

(ii) At the Effective Time, each outstanding warrant to purchase Company Capital Stock (a "Company Warrant") shall not be assumed by Parent and shall be canceled and extinguished.

(iii) Prior to the Effective Time, the Company shall take all action necessary to effect the transactions anticipated by this Section 2.5(c) under all Company Option agreements and any outstanding Company Warrants and any other plan or arrangement of the Company.

(d) Capital Stock of Merger Sub. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of shares of common stock of Merger Sub immediately prior to the Effective Time shall upon the Effective Time evidence ownership of such shares of capital stock of the Surviving Corporation.

(e) Withholding Taxes. Any number of shares of Parent Common Stock issuable pursuant to Section 2.5(b) and any cash amount payable to any Shareholder pursuant to Section 2.5(g) shall be subject to, and reduced by, the amount of any state, federal and foreign withholding taxes incurred (and not previously paid by or on behalf of such Shareholder or the Company) in connection with the acquisition of Company Capital Stock upon the exercise of Company Options or Company Warrants, any Company Capital Stock that had its vesting accelerated or the payment of a bonus in the form of Company Capital Stock, if any, by such Shareholder. Any such reduction in the number of shares of Parent Common Stock pursuant to this subsection shall be calculated based upon the Trading Price.

(f) Shareholder Loans. In the event that any Shareholder has outstanding loans from the Company as of the Effective Time, the number of shares of Parent Common Stock issuable pursuant to Section 2.5(b) and any cash amounts payable to such person pursuant to Section 2.5(g) shall be reduced by an amount equal to and in satisfaction of the outstanding principal plus accrued interest of

such Shareholder's loans as of the Effective Time. Any such reduction in the number of shares of Parent Common Stock pursuant to this subsection shall be calculated based upon the Trading Price.

(g) Fractional Shares. No fraction of a share of Parent Common Stock will be issued, but in lieu thereof, each holder of shares of Company Capital Stock (including Company Capital Stock issuable upon exercise of outstanding Company Options or Company Warrants at the Effective Time) who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder) shall be entitled to receive from Parent an amount of cash (rounded to the nearest whole cent) equal to the product of (i) such fraction and (ii) the Trading Price.

2.6 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of NetDynamics Capital Stock held by a holder who has exercised and perfected appraisal rights for such shares in accordance with Chapter 13 of the General Corporation Law of California and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal rights ("Dissenting Shares"), shall not be converted into or represent a right to receive the consideration for Company Capital Stock pursuant to Section 2.5, but the holder thereof shall only be entitled to such rights as are granted by California Law.

(b) Notwithstanding the provisions of subsection (a), if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) his or her appraisal rights, then, as of the later of Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for NetDynamics Capital Stock as provided in Section 2.5, without interest thereon, upon surrender of the certificate representing such shares.

(c) NetDynamics shall give Parent (i) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of California Law and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. NetDynamics shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any such demands or offer to settle or settle any such demands. To the extent that Parent or NetDynamics makes any payment or payments in respect of any Dissenting Shares, Parent shall be entitled to recover under the terms of Article VII of the Reorganization Agreement the aggregate amount by which such payment or payments exceed the aggregate consideration that otherwise would have been payable in respect of such shares.

2.7 Surrender of Certificates.

(a) Exchange Agent. The Corporate Secretary of Parent or an institution selected by Parent and reasonably satisfactory to the Company shall serve as exchange agent (the "Exchange Agent") in the Merger.

(b) Parent to Provide Shares and Cash. Within ten (10) days after the Effective Time, Parent shall make available to the Exchange Agent for exchange in accordance with this Article I, Certificates representing the shares of Parent Common Stock and the cash issuable pursuant to Section 2.5(g) and any dividends or distributions to which Shareholders may be entitled pursuant to Section 2.7(d) in exchange for all of the outstanding shares of Company Capital Stock provided, however, that on behalf of the Shareholders, pursuant to Section 7.3 of the Reorganization Agreement, Parent shall deposit into an escrow account ten percent (10%) of the Merger Shares issued in respect of outstanding Company Capital Stock pursuant to Section 2.5(b) on behalf of the Shareholders (the "Escrow Amount"). The portion of the Escrow Amount contributed on behalf of each Shareholder shall be in proportion to the aggregate number of Merger Shares which such Shareholder would otherwise be entitled to receive in the Merger by virtue of ownership of outstanding shares of Company Capital Stock.

(c) Exchange Procedures. Within ten (10) days after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record (as of the Effective Time) of a certificate or certificates (the "Certificates") which immediately prior to the Effective Time represented outstanding shares of Company Capital Stock whose shares were converted into the right to receive shares of Parent Common Stock pursuant to Section 2.5, cash in lieu of any fractional shares pursuant to Section 2.5(g) and any dividends or other distributions payable pursuant to Section 2.7(d), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing shares of Parent Common Stock, cash in lieu of any fractional shares pursuant to Section 2.5(g) and any dividends or other distributions payable pursuant to Section 2.7(d). Upon surrender of Certificates for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holders of such Certificates shall be entitled to receive in exchange therefor certificates representing the number of whole shares of Parent Common Stock, payment in lieu of fractional shares which such holders have the right to receive pursuant to Section 2.5(g) and any dividends or distributions payable pursuant to Section 2.7(d), and the Certificates so surrendered shall forthwith be canceled. Until so surrendered, outstanding Certificates will be deemed from and after the Effective Time, for all corporate purposes, subject to Section 2.7(d) as to the payment of dividends, to evidence the ownership of the number of full shares of Parent Common Stock into which such shares of Company Capital Stock shall have been so converted and the right to receive an amount in cash in lieu of the issuance of any fractional shares in accordance with Section 2.5(g) and any dividends or distributions payable pursuant to Section 2.7(d).

(d) Distributions With Respect to Unexchanged Shares. No dividends or other distributions declared or made after the date of this Agreement with respect to Parent Common Stock with a record date after the Effective Time will be paid to the holders of any unsurrendered Certificates with respect to the shares of Parent Common Stock represented thereby until the holders of record of such Certificates shall surrender such Certificates. Subject to applicable law, following surrender of any such Certificates, the Exchange Agent shall deliver to the record holders thereof, without interest, certificates representing whole shares of Parent Common Stock issued in exchange therefor along with payment in lieu of fractional shares pursuant to Section 2.5(g) hereof and the amount of any such

dividends or other distributions with a record date after the Effective Time payable with respect to such whole shares of Parent Common Stock.

(e) Transfers of Ownership. If certificates for shares of Parent Common Stock are to be issued in a name other than that in which the Certificates surrendered in exchange therefor are registered, it will be a condition of the issuance thereof that the Certificates so surrendered will be properly endorsed and otherwise in proper form for transfer and that the persons requesting such exchange will have paid to Parent or any agent designated by it any transfer or other taxes required by reason of the issuance of certificates for shares of Parent Common Stock in any name other than that of the registered holder of the Certificates surrendered, or established to the satisfaction of Parent or any agent designated by it that such tax has been paid or is not payable.

(f) No Liability. Notwithstanding anything to the contrary in this Section 2.7, none of the Exchange Agent, the Surviving Corporation or any party hereto shall be liable to a holder of shares of Company Capital Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

2.8 No Further Ownership Rights in Company Capital Stock. All consideration paid in respect of the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof, shall be deemed to be full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article II.

2.9 Lost, Stolen or Destroyed Certificates. In the event any Certificates evidencing shares of Company Capital Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such shares of Parent Common Stock and other amounts, if any, as may be required pursuant to Section 2.5(g) and Section 2.7(d); provided, however, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificates to deliver a bond in such sum as it may reasonably direct against any claim that may be made against Parent or the Exchange Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

2.10 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, Parent and Merger Sub, the officers and directors of the Company, Parent and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

2.11 Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368 of the Code.

ARTICLE III

MISCELLANEOUS

3.1 Termination by Mutual Agreement. Notwithstanding the approval of this Agreement by the shareholders of Merger Sub and NetDynamics, this Agreement may be terminated at any time prior to the Effective Time by mutual agreement of the Board of Directors of Merger Sub and NetDynamics.

3.2 Termination of Agreement and Plan of Reorganization. Notwithstanding the approval of this Agreement by the shareholders of Merger Sub and NetDynamics, this Agreement shall terminate forthwith in the event that the Reorganization Agreement shall be terminated as therein provided.

3.3 Amendment. This Agreement may be amended by the parties hereto at any time before or after approval hereof by the shareholders of either Merger Sub or NetDynamics, but, after any such approval, no amendment will be made which, under the applicable provisions of California Law, requires the further approval of shareholders without obtaining such further approval. This Agreement shall not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

3.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

3.5 Governing Law. This Agreement shall be governed in all respects, including validity, interpretation and effect by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

NETDYNAMICS, INC.

By: Zah Rinat
Zah Rinat
President

By: _____
Henry V. Barry
Secretary

APOLLO ACQUISITION CORP.

By: _____
Michael E. Lehman
President

By: _____
Michael E. Lehman
Secretary

[AGREEMENT OF MERGER]

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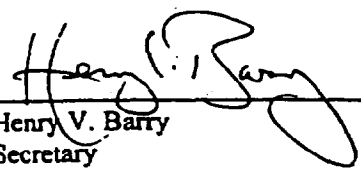
IN WITNESS WHEREOF, the parties have executed this Agreement.

NETDYNAMICS, INC.

By: _____

Zah Rinat
President

By: _____


Henry V. Barry
Secretary

APOLLO ACQUISITION CORP.

By: _____

Michael E. Lehman
President

By: _____

Michael E. Lehman
Secretary

[AGREEMENT OF MERGER]

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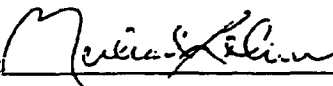
IN WITNESS WHEREOF, the parties have executed this Agreement.

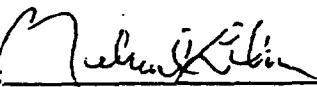
NETDYNAMICS, INC.

By: _____
Zah Rinat
President

By: _____
Henry V. Barry
Secretary

APOLLO ACQUISITION CORP.

By: 
Name: Michael E. Lehman
Title: President

By: 
Name: Michael E. Lehman
Title: Secretary

[AGREEMENT OF MERGER]

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Exhibit A

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

NETDYNAMICS, INC.

I

The name of this corporation is NetDynamics, Inc.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

This corporation is authorized to issue one class of stock, designated "Common Stock." The total number of shares of Common Stock which this corporation is authorized to issue is 1,000.

IV

Section 1. Limitation of Directors' Liability. The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. Indemnification of Directors and Officers. This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) of the corporation through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise in excess of that expressly permitted by said Section 317 for said agents to the fullest extent permissible under California law, subject to the limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to this corporation or its shareholders.

Section 3. Repeal or Modification. Any repeal or modification of the foregoing provisions of this Article V by the shareholders of the corporation shall not adversely affect any right of indemnification or limitation of an agent of the corporation relating to acts or omissions occurring prior to such repeal or modification.

NETDYNAMICS, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Zah Rinat and Henry V. Barry, hereby certify that:

1. They are the President and Secretary, respectively, of NetDynamics, Inc., a California corporation (the "Company").
2. The principal terms of the Agreement of Merger in the form attached to this Certificate (the "Merger Agreement") providing for the merger (the "Merger") of Apollo Acquisition Corp., a California corporation, with and into the Company were duly approved by the Board of Directors and shareholders of the Company.
3. The authorized capital stock of the Company consists of 13,500,000 shares of Common Stock and 4,066,577 shares of Preferred Stock. 5,445,771 shares of Company Common Stock were issued and outstanding, all of which were entitled to vote upon the Merger. 4,051,577 shares of Preferred Stock were issued and outstanding and entitled to vote on the Merger. The votes of more than 50% of the outstanding shares of Company Common Stock and more than 50% of the outstanding shares of Company Preferred Stock were required to approve the Merger and the principal terms of the Agreement of Merger.
4. The principal terms of the Merger Agreement were approved by the votes of the holders of a majority of the outstanding shares of Company Common Stock and a majority of the outstanding shares of Company Preferred Stock, which votes exceeded the votes required.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: 8-28-98

Signature: _____

Zah Rinat

Zah Rinat
President

Signature: _____

Henry V. Barry

Henry V. Barry
Secretary

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APOLLO ACQUISITION CORP.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Michael E. Lehman, does hereby certify that:

1. He is the President and Secretary of Apollo Acquisition Corp., a California corporation ("Apollo").
2. The principal terms of the Agreement of Merger in the form attached to this Certificate (the "Merger Agreement") providing for the merger (the "Merger") of Apollo with and into NetDynamics, Inc., a California corporation, was duly approved by the Board of Directors and by the sole shareholder of Apollo.
3. The authorized capital stock of Apollo consists of 1,000 shares of Common Stock. There were 1,000 shares of Apollo Common Stock issued and outstanding, all of which were entitled to vote upon the Merger. A vote of more than 50% of the outstanding shares of Apollo Common Stock was required to approve the Merger.
4. The principal terms of the Merger Agreement were approved by the consent of Apollo's sole shareholder, holding 100% of the Company's issued and outstanding shares, which vote exceeded the vote required.
5. No vote of the stockholders of Sun Microsystems, Inc., a Delaware corporation and the sole shareholder of Apollo, was required to approve the Merger Agreement or the Merger.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: 8-28-98

Signature: _____

Michael E. Lehman
Michael E. Lehman
President

Signature: _____

Michael E. Lehman
Michael E. Lehman
Secretary



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942857
SACRAMENTO, CALIFORNIA 94257-0540
TELEPHONE (916) 845-4124

**Tax Clearance
Certificate**

AUGUST 28, 1998

APOLLO ACQUISITION CORP.
650 PAGE MILL RD
PALO ALTO CA 94304-1001

ISSUED TO: APOLLO ACQUISITION CORP.

CORP. NO. 2110840

This certificate expires on NOVEMBER 15, 1998

THIS IS TO CERTIFY THAT all taxes imposed on the above-named corporation under the Bank and Corporation Tax Law have been paid or are secured by bond, deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State at Sacramento, California. The original of this certificate may be retained for the files of the corporation.

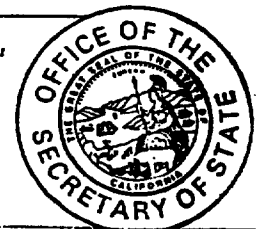
The required Secretary of State forms to dissolve, withdraw, or merge must be filed with the Office of the Secretary of State at 1500 Eleventh St., Third Floor, Sacramento, CA 95814-5701 by the expiration date of this notice.

NOTE: If the above process is not completed with the Secretary of State by the expiration date, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

357:RG:TC:HH

FRANCHISE TAX BOARD

By *Barthley Hermon*
Authorized Signature
Corporation Audit Tax Clearance Unit



FTB 2570 (REV - 95)

RECORDED: 01/18/2000

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