

4 26 00

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

05-15-2000

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**



101355622

**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

Execution Date  
Month Day Year

Name

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  Association
- 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.)

05/11/2000 DMUYEN 00000449 071907 2065918

FOR OFFICE USE ONLY

01 FC:481 40.00 CH  
02 FC:482 75.00 CH

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. 20271

**TRADEMARK**

**REEL: 002071 FRAME: 0650**

**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).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2065918"/>	<input type="text" value="1745549"/>	<input type="text" value="1742775"/>
<input type="text" value="1732719"/>	<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:

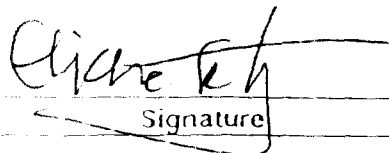
Yes  No

**Statement and Signature**

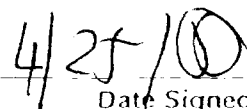
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Eliane Setton

Name of Person Signing



Signature



Date Signed

*Office of the Secretary of State*

---

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:

"NCUBE", A CALIFORNIA CORPORATION,

WITH AND INTO "NCUBE CORPORATION" UNDER THE NAME OF "NCUBE CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTY-FIRST DAY OF MARCH, A.D. 1999, AT 9 O'CLOCK A.M.

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



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

Edward J. Freel, Secretary of State

3020209 8100M

AUTHENTICATION: 9663568

991127274

DATE: 03-31-99

**TRADEMARK**  
**REEL: 002071 FRAME: 0652**

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is entered into as of this 31st day of March, 1999 by and between nCUBE, a California corporation ("nCUBE California"), and nCUBE Corporation, a Delaware corporation ("nCUBE Delaware").

WITNESSETH:

WHEREAS, nCUBE Delaware is a corporation duly organized and existing under the laws of the State of Delaware;

WHEREAS, nCUBE California is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, on the date of this Merger Agreement, nCUBE Delaware has authority to issue (i) 15,000,000 shares of Common Stock, par value \$.001 per share (the "nCUBE Delaware Common Stock"), of which 10,000 shares are issued and outstanding and owned by nCUBE California, and (ii) 500,000 shares of undesignated Preferred Stock, of which no shares are issued and outstanding.

WHEREAS, on the date of this Merger Agreement, nCUBE California has authority to issue 400,000,000 shares of Common Stock (the "nCUBE California Common Stock"), of which 235,967,182 shares are issued and outstanding;

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

WHEREAS, the respective Boards of Directors of nCUBE Delaware and nCUBE California, the shareholders of nCUBE California, and the sole stockholder of nCUBE Delaware have adopted and approved this Merger Agreement;

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

1. Merger. nCUBE California shall be merged with and into nCUBE Delaware, and nCUBE 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 nCUBE Delaware shall be the Certificate of Incorporation of the surviving corporation. The Bylaws of nCUBE Delaware shall be the Bylaws of the surviving corporation.
3. Directors and Officers. The directors and officers of nCUBE Delaware shall continue as the directors and officers of the surviving corporation upon the Effective Date.

4. Succession. On the Effective Date, nCUBE Delaware shall succeed to nCUBE California 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 nCUBE Delaware or by its successors and assigns, there shall be executed and delivered on behalf of nCUBE California 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 nCUBE Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of nCUBE California, and otherwise to carry out the purposes of this Merger Agreement and the officers and directors of nCUBE Delaware are fully authorized in the name and on behalf of nCUBE California 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 nCUBE California.

a. Common Stock. Upon the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, each 50 shares of nCUBE California Common Stock outstanding immediately prior thereto shall be changed and converted into one (1) fully paid and nonassessable share of nCUBE Delaware Common Stock.

b. Fractional Shares. No fractional shares which a nCUBE Delaware stockholder would otherwise be entitled to receive by reason of the exchange of nCUBE California stock for nCUBE Delaware stock shall be issued. In lieu of any fractional shares to which a holder would otherwise be entitled (determined on a certificate by certificate basis), nCUBE Delaware shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the Effective Date as determined by the Board of Directors of nCUBE Delaware.

7. Stock Certificates. On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of nCUBE California stock shall be deemed for all purposes to evidence ownership of and to represent the shares of nCUBE Delaware stock into which the shares of nCUBE California stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of nCUBE 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 nCUBE 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 nCUBE Delaware stock evidenced by such outstanding certificate as above provided.

8. Options. Upon the Effective Date, each outstanding option or other right to purchase shares of nCUBE California stock, including those options granted under the 1997 Stock Option Plan (the "1997 Plan") of nCUBE California, shall be converted into and become an option or right to purchase the number of shares of nCUBE Delaware stock determined by dividing the number of shares of nCUBE California subject to the option or right to purchase by 50, rounded down to the nearest whole number, at a price per share equal to the exercise price of

the option or right to purchase nCUBE California stock multiplied by 50, rounded up to the nearest whole cent, and upon the same terms and subject to the same conditions as set forth in the 1997 Plan, and other agreements entered into by nCUBE California pertaining to such options or rights. A number of shares of nCUBE Delaware stock shall be reserved for purposes of such options and rights equal to the number of shares of nCUBE California stock so reserved as of the Effective Date divided by 50. As of the Effective Date, nCUBE Delaware shall assume all obligations of nCUBE California under agreements pertaining to such options and rights, including the 1997 Plan, and the outstanding options or other rights, or portions thereof, granted pursuant thereto.

9. Other Employee Benefit Plans. As of the Effective Date, nCUBE Delaware hereby assumes all obligations of nCUBE California under any and all employee benefit plans in effect as of said date or with respect to which employee rights or accrued benefits are outstanding as of said date.

10. Outstanding Common Stock of nCUBE Delaware. Forthwith upon the Effective Date, the Ten Thousand (10,000) shares of nCUBE Delaware Common Stock presently issued and outstanding in the name of nCUBE California shall be canceled and retired and resume the status of authorized and unissued shares of nCUBE Delaware Common Stock, and no shares of nCUBE Delaware Common Stock or other securities of nCUBE Delaware shall be issued in respect thereof.

11. Covenants of nCUBE Delaware. nCUBE 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 California, and in all other states in which nCUBE California is so qualified and in which the failure so to qualify would have a material adverse impact on the business or financial condition of nCUBE Delaware. In connection therewith, nCUBE Delaware shall irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California 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 California Franchise Tax Board necessary to the assumption by nCUBE Delaware of all of the franchise tax liabilities of nCUBE California.


12. Amendment. At any time before or after approval and adoption by the shareholders of nCUBE California, this Merger Agreement may be amended in any manner as may be determined in the judgment of the respective Boards of Directors of nCUBE Delaware and nCUBE California 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.

13. 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 nCUBE California or nCUBE Delaware or both, notwithstanding approval of this Merger Agreement by the sole stockholder of nCUBE Delaware and the shareholders of nCUBE California.


14. 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 nCUBE California and nCUBE Delaware, is hereby executed on behalf of each of said two corporations by their respective officers thereunto duly authorized.

nCUBE Corporation, a Delaware corporation

By:   
Mary Beth Myrdal, Vice President, Chief  
Financial Officer and Secretary

nCUBE, a California corporation


By:   
Mary Beth Myrdal, Vice President, Chief  
Financial Officer and Secretary

CERTIFICATE OF APPROVAL OF  
AGREEMENT AND PLAN OF MERGER OF  
nCUBE  
(a California corporation)

Mary Beth Myrdal certifies that:

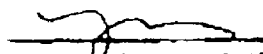
1. She is the duly elected and acting Vice President and Secretary of nCUBE, a California corporation (the "Corporation").
2. This Certificate is attached to the Agreement and Plan of Merger dated as of March 31, 1999, providing for the merger of the Corporation with and into a Delaware corporation.
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 March 29, 1999.
4. The total number of outstanding shares of the Corporation entitled to vote on the merger was 235,967,182 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 total number of outstanding shares of Common Stock.

Dated: March 31, 1999.

  
\_\_\_\_\_  
Mary Beth Myrdal, Vice President and Secretary

The undersigned, Mary Beth Myrdal, Vice President and Secretary of nCUBE, a California corporation, declares 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 her own knowledge.

Executed at Foster City, California, on March 31, 1999.

  
\_\_\_\_\_  
Mary Beth Myrdal, Vice President and Secretary

PA\892213.1  
1140417-900000

5

TRADEMARK  
REEL: 002071 FRAME: 0657



CERTIFICATE OF SECRETARY

OF

nCUBE CORPORATION

(a Delaware corporation)

I, Mary Beth Myrdal, the Secretary of nCUBE Corporation, a Delaware corporation (the "Corporation"), hereby certify that the Agreement and Plan of Merger to which this Certificate is attached was duly signed on behalf of the Corporation by its President and was duly approved and adopted by a vote of the outstanding stock entitled to vote thereon by written consent of the sole stockholder of the Corporation dated March 31, 1999.

Executed effective on the 31st day of March, 1999.

  
\_\_\_\_\_  
Mary Beth Myrdal, Secretary

PA892213.1  
1140417-900000

6