

05-31-2000



FORM PTO-1618A

Expires 6/30/99  
OMB 0651-0027

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U.S. Department of Commerce  
Patent & Trademark Office  
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RECORDATION FORM COVER SHEET  
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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
  - Change of Name
  - Other
- Effective Date  
Month Day Year  
October 1, 1999

OPR/FINANCE  
2000 MAY -5 PM 3:01

Conveying Party

Mark if additional names of receiving parties attached

Name Interwoven, Inc.

Execution Date  
Month Day Year  
October 1, 1999

Formerly [ ]

Individual  General Partnership  Limited Partnership  Corporation  Association

Other [ ]

Citizenship/State of Incorporation/Organization California

Receiving Party

Mark if additional names of receiving parties attached

Name Interwoven, Inc.

DBA/AKA/TA [ ]

Composed of [ ]

Address (line 1) 885 North San Antonio Road

Address (line 2) Los Altos, California 94022

Address (line 3) [ ]

Individual  General Partnership  Limited Partnership  Corporation  Association

Other [ ]

Citizenship/State of Incorporation/Organization Delaware

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

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02 FC:482

40.00 DP  
25.00 DP

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

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**Domestic Representative Name and Address**

Enter the first Receiving Party Only

Name [ \_\_\_\_\_ ]

Address (line 1) [ \_\_\_\_\_ ]

Address (line 2) [ \_\_\_\_\_ ]

Address (line 3) [ \_\_\_\_\_ ]

Address (line 4) [ \_\_\_\_\_ ]

**Correspondence Name and Address**

Area Code and Telephone Number 650-833-2065

Name Daniel R. Cook

Address (line 1) Gray Cary Ware & Freidenrich LLP

Address (line 2) 400 Hamilton Avenue

Address (line 3) Palo Alto, CA 94301-1825

Address (line 4) [ \_\_\_\_\_ ]

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

# 12

**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)
75/289881 [ ] [ ]   [ ] [ ] [ ] [ ]	
75/424500 [ ] [ ]   [ ] [ ] [ ] [ ]	
[ ] [ ] [ ] [ ]   [ ] [ ] [ ] [ ]	

**Number of Properties**

Enter the total amount of properties involved. #

2

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ 65.00

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:

# 07-1907

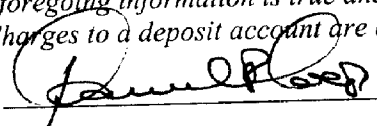
Authorization to charge additional fees:

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 a deposit account are authorized, as indicated herein.

Daniel R. Cook



4-28-00

Name of Person Signing

Signature

Date Signed

FILED

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

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AGREEMENT AND PLAN OF MERGER

*Bill Jones*  
BILL JONES, Secretary of State

THIS AGREEMENT AND PLAN OF MERGER (this "Merger Agreement") is made as of October 1, 1999 by and between Interwoven, Inc. a California corporation ("Interwoven (CA)"), and Interwoven, Inc., a Delaware corporation ("Interwoven (DE)"). Interwoven (CA) and Interwoven (DE) are hereinafter sometimes collectively referred to as the "Constituent Corporations."

**RECITALS**

A. Interwoven (CA) was incorporated on March 1, 1995. Its current authorized capital stock consists of: (1) 40,000,000 shares of Common Stock, no par value ("Interwoven (CA) Common Stock"), of which 9,864,855 shares are issued and outstanding; and (2) 25,000,000 shares of Preferred Stock, no par value ("Interwoven (CA) Preferred Stock") of which (i) 1,120,000 shares of Series A Preferred Stock, (ii) 3,039,505 shares of Series B Preferred Stock, (iii) 7,159,743 shares of Series C Preferred Stock, (iv) 3,741,217 shares of Series D Preferred Stock and (v) 3,483,058 shares of Series E Preferred Stock are issued and outstanding.

B. Interwoven (DE) was incorporated on July 22, 1999. Its authorized capital stock consists of: (1) 75,000,000 shares of Common Stock, with a par value of \$0.001 per share ("Interwoven (DE) Common Stock"), of which 1,000 shares are issued and outstanding; and (2) 25,000,000 shares of Preferred Stock, \$0.001 par value ("Interwoven (DE) Preferred Stock"), none of which shares are issued and outstanding.

C. The respective Boards of Directors of Interwoven (CA) and Interwoven (DE) deem it advisable and to the advantage of each of the Constituent Corporations that Interwoven (CA) merge with and into Interwoven (DE) upon the terms and subject to the conditions set forth in this Merger Agreement for the purpose of effecting a change of the state of incorporation of Interwoven (CA) from California to Delaware.

D. The Boards of Directors of each of the Constituent Corporations have approved this Merger Agreement.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization set forth in this Merger Agreement and do hereby agree that Interwoven (CA) shall merge with and into Interwoven (DE) on the following terms, conditions and other provisions:

1. **Merger and Effective Time.** At the Effective Time (as defined below), Interwoven (CA) shall be merged with and into Interwoven (DE) (the "Merger"), and Interwoven (DE) shall be the surviving corporation of the Merger (the "Surviving Corporation"). The Merger shall become effective upon the close of business on the date when a duly executed copy of this Merger Agreement, along with all required officers' certificates, is filed with the Secretary of State of the State of Delaware, (the "Effective Time").

2. **Effect of Merger.** At the Effective Time, the separate corporate existence of Interwoven (CA) shall cease; the corporate identity, existence, powers, rights and immunities

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of Interwoven (DE) as the Surviving Corporation shall continue unimpaired by the Merger; and Interwoven (DE) shall succeed to and shall possess all the assets, properties, rights, privileges, powers, franchises, immunities and purposes, and be subject to all the debts, liabilities, obligations, restrictions and duties of Interwoven (CA), all without further act or deed.

3. **Governing Documents.** At the Effective Time, the Certificate of Incorporation of Interwoven (DE) in effect immediately prior to the Effective Time shall become the Certificate of Incorporation of the Surviving Corporation and the Bylaws of Interwoven (DE) in effect immediately prior to the Effective Time shall become the Bylaws of the Surviving Corporation.

4. **Directors and Officers.** At the Effective Time, the directors and officers of Interwoven (DE) shall be and become the directors and officers (holding the same titles and positions) of the Surviving Corporation and after the Effective Time shall serve in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation.

5. **Conversion of Shares of Interwoven (CA).** Subject to the terms and conditions of this Agreement, at the Effective Time, each share of Interwoven (CA) Common Stock outstanding immediately prior thereto shall be automatically changed and converted into two-thirds ( $\frac{2}{3}$ ) of a fully paid and nonassessable, issued and outstanding share of Interwoven (DE) Common Stock. At the Effective Time: each share of Interwoven (CA) Series A Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and non-assessable, issued and outstanding share of Interwoven (DE) Series A Preferred Stock; each share of Interwoven (CA) Series B Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and non-assessable, issued and outstanding share of Interwoven (DE) Series B Preferred Stock; each share of Interwoven (CA) Series C Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and non-assessable, issued and outstanding share of Interwoven (DE) Series C Preferred Stock; each share of Interwoven (CA) Series D Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and non-assessable, issued and outstanding share of Interwoven (DE) Series D Preferred Stock; each share of Interwoven (CA) Series E Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and non-assessable, issued and outstanding share of Interwoven (DE) Series E Preferred Stock.

6. **Cancellation of Shares of Interwoven (DE).** At the Effective Time, all of the previously issued and outstanding shares of Interwoven (DE) Common Stock that were issued and outstanding immediately prior to the Effective Time shall be automatically eliminated and canceled.

7. **Stock Certificates.** At and after the Effective Time, all of the outstanding certificates that, prior to that date, represented shares of Interwoven (CA) Common Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Interwoven (DE) Common Stock into which such shares of Interwoven (CA) Common Stock are converted as provided herein. The registered owner on the books and records of Interwoven

(CA) of any such outstanding stock certificate for Interwoven (CA) Common Stock shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to Interwoven (DE) or its transfer agent, be entitled to exercise any voting and other rights with respect to, and to receive any dividend and other distributions upon, the shares of Interwoven (DE) Common Stock evidenced by such outstanding certificate as above provided.

8. **Conversion of Options and Warrants.** At the Effective Time, all outstanding and unexercised portions of all options to purchase a share of Interwoven (CA) Common Stock under the (i) Interwoven (CA) 1996 Stock Option Plan, (ii) Interwoven (CA) 1998 Stock Option Plan, shall become options to purchase two-thirds (2/3) the number of shares of Interwoven (DE) Common Stock (subject to the elimination of fractional shares as provided in Section 9 below) at an exercise price per share equal to 150% of the exercise price per share of the option to purchase Interwoven (CA) Common Stock and shall, to the extent permitted by law and otherwise reasonably practicable, have the same term, exercisability, vesting schedule, status as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), if applicable, and all other material terms and conditions (including but not limited to the terms and conditions applicable to such options by virtue of the Interwoven (CA) Stock Plans). Continuous employment with Interwoven (CA) will be credited to an optionee for purposes of determining the vesting of the number of shares of Interwoven (DE) Common Stock under a converted Interwoven (CA) option at the Effective Time. Additionally, at the Effective Time, Interwoven (DE) shall adopt and assume the Interwoven (CA) Stock Plans. At the Effective Time, all outstanding and unexercised portions of all warrants to purchase or acquire Interwoven (CA) Preferred Stock shall become warrants to purchase or acquire, on the same terms and conditions, the same number of shares of the same series of Interwoven (DE) Preferred Stock.

9. **Fractional Shares.** No fractional shares of Interwoven (DE) Common Stock or Preferred Stock will be issued in connection with the Merger. In lieu thereof, Interwoven (DE) shall pay each shareholder of Interwoven (CA) who would otherwise be entitled to receive a fractional share of Interwoven Common Stock or Preferred Stock (assuming the aggregation of all shares held by the same holder of more than one stock certificate representing shares of Interwoven (CA) Common Stock or Preferred Stock, as the case may be) a cash amount equal to the applicable fraction multiplied by the fair market value (the "Fair Market Value") of a share of Interwoven (DE) Common Stock or Preferred Stock, as the case may be. Fair Market Value means, as of any date, the value of one share of Interwoven (DE) Common Stock determined by the Board of Directors of Interwoven (DE) in good faith (the "Fair Market Value Per Share").

Upon exercise of each assumed option of Interwoven (CA) to purchase Interwoven (DE) Common Stock, cash will be paid by Interwoven (DE) in lieu of any fractional share of Interwoven (DE) Common Stock, respectively, issuable upon exercise of such option, and the amount of cash received for such fractional share shall be the Fair Market Value Per Share upon exercise thereof multiplied by the applicable fraction, less the unpaid exercise price per share for such fraction.

10. **Employee Benefit Plans.** At the Effective Time, the obligations of Interwoven (CA) under or with respect to every plan, trust, program and benefit then in effect or administered by Interwoven (CA) for the benefit of the directors, officers and employees of Interwoven (CA) or any of its subsidiaries shall become the lawful obligations of Interwoven (DE) and shall be implemented and administered in the same manner and without interruption until the same are amended or otherwise lawfully altered or terminated. Effective at the Effective Time, Interwoven (DE) hereby expressly adopts and assumes all obligations of Interwoven (CA) under such employee benefit plans.

11. **Further Assurances.** From time to time, as and when required by the Surviving Corporation or by its successors or assigns, there shall be executed and delivered on behalf of Interwoven (CA) such deeds, assignments and other instruments, and there shall be taken or caused to be taken by it all such further action as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Interwoven (CA), and otherwise to carry out the purposes of this Merger Agreement. The officers and directors of the Surviving Corporation are fully authorized in the name of and on behalf of Interwoven (CA), or otherwise, to take any and all such actions and to execute and deliver any and all such deeds and other instruments as may be necessary or appropriate to accomplish the foregoing.

12. **Condition.** The consummation of the Merger is subject to the approval of this Merger Agreement and the Merger contemplated hereby by the shareholders of Interwoven (CA) and the sole stockholder of Interwoven (DE), prior to the Effective Time.

13. **Abandonment.** At any time before the Effective Time, this Merger Agreement may be terminated and the Merger abandoned by the Board of Directors of Interwoven (CA) or Interwoven (DE), notwithstanding approval of this Merger Agreement by the shareholders of Interwoven (CA) and the sole stockholder of Interwoven (DE).

14. **Amendment.** At any time before the Effective Time, this Merger Agreement may be amended, modified or supplemented by the Board of Directors of the Constituent Corporations, notwithstanding the approval of this Merger Agreement by the shareholders of Interwoven (CA) and the sole stockholder of Interwoven (DE); provided, however, that any amendment made subsequent to the adoption of this Agreement by the Shareholders of Interwoven (CA) or the sole Stockholder of Interwoven (DE) shall not: (i) alter or change the amount or kind of shares, securities, cash property and/or rights to be received in exchange for or upon conversion of any shares of any class or series of Interwoven (CA); (ii) alter or change any of the terms or conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any shares of any class or series of Interwoven (CA) or Interwoven (DE).

15. **Tax-Free Reorganization.** The Merger is intended to be a tax-free plan of reorganization within the meaning of Section 368(a)(1)(F) of the Code.

16. **Governing Law.** This Agreement shall be governed by and construed under the internal laws of the State of California as applied to agreements among California


residents entered into and to be performed entirely within California, without reference to the principles of conflicts of law or choice of laws, except to the extent that the laws of the State of Delaware would apply in matters relating to the internal affairs of Interwoven (DE) and the Merger.

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

**IN WITNESS WHEREOF**, this Merger Agreement is hereby executed on behalf of each of the Constituent Corporations and attested by their respective officers hereunto duly authorized.

**Interwoven, Inc.**  
a California corporation

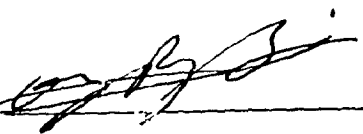
By: 

Martin W. Brauns  
President and Chief  
Executive Officer

**Interwoven, Inc.**  
a Delaware corporation

By: 

Martin W. Brauns  
President and Chief  
Executive Officer

By: 

Peng T. Ong  
Secretary

By: 

Peng T. Ong  
Secretary

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]



**INTERWOVEN, INC.**  
(a Delaware corporation)

**OFFICERS' CERTIFICATE**


Peng T. Ong and Matthew P. Quilter certify that:

1. They are the Chairman and the Assistant Secretary, respectively, of Interwoven, Inc., a Delaware corporation (the "*Corporation*").
2. The Corporation has two classes of stock authorized, "Common Stock" and "Preferred Stock."
3. There were 1,000 shares of Common Stock and no shares of Preferred Stock outstanding as of the effective date of an Action by Written Consent of the sole stockholder of the Corporation, pursuant to which the Agreement and Plan of Merger in the form attached hereto (the "*Merger Agreement*") was approved.
4. The principal terms of the Merger Agreement were duly approved by the Board of Directors and by the vote of all of the outstanding shares of the Corporation.
5. The percentage vote required to approve the Merger Agreement was a majority of the outstanding stock entitled to vote on the Merger Agreement.

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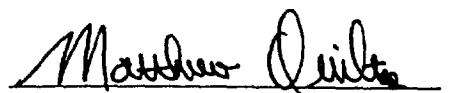
Peng T. Ong and Matthew P. Quilter further declare under penalty of perjury under the laws of the States of California and Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed in Santa Clara, California on October 1 , 1999.



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Peng T. Ong, Chairman



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Matthew P. Quilter, Assistant Secretary

**INTERWOVEN, INC.**  
(a California corporation)

**OFFICERS' CERTIFICATE**

Peng T. Ong and Matthew P. Quilter certify that:

1. They are the Chairman and the Assistant Secretary, respectively, of Interwoven, Inc., a California corporation (the "*Corporation*").

2. The Corporation has two classes of stock authorized, "Common Stock" and "Preferred Stock."

3. There were 9,699,730 shares of Common Stock and 18,543,523 shares of Preferred Stock (consisting of 1,120,000 shares of Series A Preferred Stock, 3,039,505 shares of Series B Preferred Stock, 7,159,743 shares of Series C Preferred Stock, 3,741,217 shares of Series D Preferred Stock and 3,483,058 shares of Series E Preferred Stock) outstanding as of the record date (the "*Record Date*") for, and entitled to vote by means of, an Action by Written Consent of the shareholders of the Corporation, pursuant to which the Agreement and Plan of Merger in the form attached hereto (the "*Merger Agreement*") was approved.

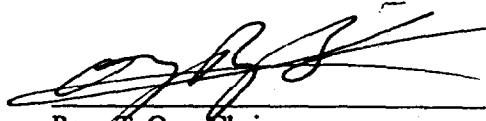
4. The principal terms of the Merger Agreement were duly approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.

5. The percentage vote required to approve the Merger Agreement was the affirmative vote of: (i) more than 50% of the votes entitled to be cast by holders of Common Stock outstanding as of the Record Date, voting as a separate class; (ii) more than 50% of the votes entitled to be cast by holders of Preferred Stock outstanding as of the Record Date, voting on an as-converted to Common Stock basis, and (iii) more than 60% of the votes entitled to be cast by holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock outstanding as of the Record Date, voting together as a single class on an as-converted to Common Stock basis.

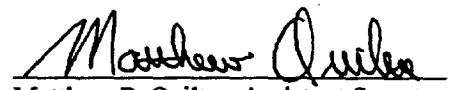
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Peng T. Ong and Matthew P. Quilter further declare under penalty of perjury under the laws of the States of California and Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed in Santa Clara, California on October 1 , 1999.



Peng T. Ong, Chairman



Matthew P. Quilter, Assistant Secretary