

09-21-2000

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



U.S. Department of Commerce
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TRADEMARK

101464030

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
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.)

FOR OFFICE USE ONLY

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01 FC:481 40.00 DP
02 FC:482 50.00 DP

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

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="75/581,248"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75/580,983"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75/383,327"/>	<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.

Lisa Watanabe, Esq.
Name of Person Signing

Lisa Wa
Signature

Sept. 1, 2000
Date Signed

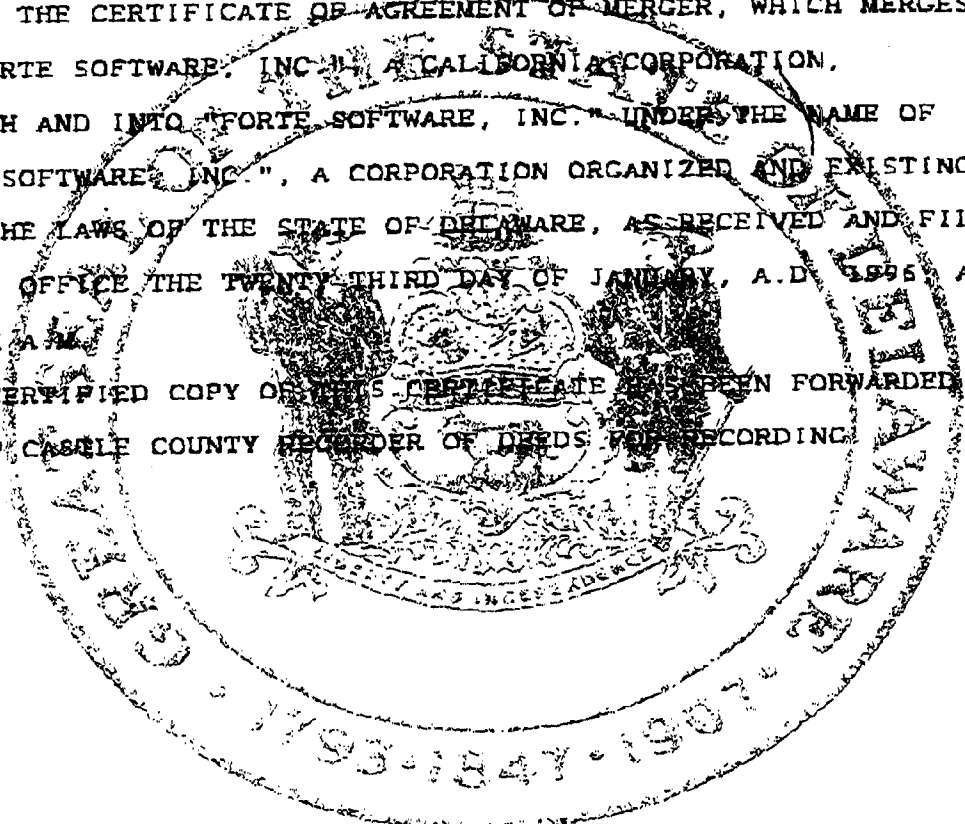
State of Delaware
Office of the Secretary of State

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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:

"FORTE SOFTWARE, INC.", A CALIFORNIA CORPORATION, WITH AND INTO "FORTE SOFTWARE, INC." UNDER THE NAME OF "FORTE SOFTWARE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-THIRD DAY OF JANUARY, A.D. 1996 AT 9 O'CLOCK A.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

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AUTHENTICATION: 7800623
DATE: 01-23-96

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STATE OF DELAWARE P.2
 SECRETARY OF STATE
 DIVISION OF CORPORATIONS
 FILED 09 00 AM 01/23/1996
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**AGREEMENT AND PLAN OF MERGER
 OF FORTE SOFTWARE, INC.
 A DELAWARE CORPORATION
 AND
 FORTE SOFTWARE, INC.
 A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of this 22 day of ~~January~~ 1996, (the "Agreement") is between Forte Software, Inc., a Delaware corporation ("Forte Delaware") and Forte Software, Inc., a California corporation ("Forte California"). Forte Delaware and Forte California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. Forte Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital stock of thirty-six million (36,000,000) shares, twenty-two million five hundred thousand (22,500,000) of which are designated "Common Stock", par value \$.01 per share, thirteen million five hundred thousand (13,500,000) of which are designated "Preferred Stock", par value \$.01 per share. As of January 17, 1996, 100 shares of Common Stock were issued and outstanding, all of which were held by Forte California. Of the authorized shares of Preferred Stock, four million nine hundred ninety-six thousand five hundred (4,996,500) shares of Preferred Stock are designated Series A Preferred Stock (the "Series A Preferred"), Two million four thousand one hundred fifty-two (2,004,151) shares of Preferred Stock are designated Series B Preferred Stock (the "Series B Preferred"), three million six hundred thousand (3,600,000) shares of Preferred Stock are designated Series C Preferred Stock (the "Series C Preferred") and two million two hundred fifty thousand (2,250,000) shares are designated Series D Preferred Stock (the "Series D Preferred"). No shares of Preferred Stock were outstanding.

B. Forte California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital stock of twenty-four million (24,000,000) shares, fifteen million (15,000,000) of which are designated "Common Stock", no par value, and nine million (9,000,000) of which are designated, and herein referred to as, "Preferred Stock", no par value. Of such authorized shares of Preferred Stock, three million three hundred thirty-one thousand (3,331,000) shares are designated Series A Preferred Stock (the "Series A Preferred"), one million three hundred thirty-six thousand non hundred and one (1,336,101) shares are designated Series B Preferred Stock (the "Series B Preferred"), two million four hundred thousand (2,400,000) shares are designated Series C Preferred Stock (the "Series C Preferred"), and one million five hundred thousand (1,500,000) shares are designated Series D Preferred Stock (the "Series D Preferred"). As of December 31, 1995, 2,636,182 shares of Common Stock were issued and outstanding, 3,331,000 shares of Series A Preferred were issued and outstanding, 1,286,101 shares of Series B Preferred were issued and outstanding, 2,083,841 shares of Series C Preferred were issued and outstanding, and 1,318,980 shares of Series D Preferred were issued and outstanding.

C. The Board of Directors of Forte California has determined that, for the purpose of effecting the reincorporation of Forte California in the State of Delaware, it is

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advisable and in the best interests of Forte California that Forte California merge with and into Forte Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of Forte Delaware and Forte California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective sole stockholder and shareholders, and executed by the undersigned officers.

E. Forte Delaware is a wholly-owned subsidiary of Forte California.

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

1. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the General Corporation Law of the State of Delaware and the Corporations Code of the State of California, Forte California shall be merged with and into Forte Delaware (the "Merger"), the separate existence of Forte California shall cease and Forte Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Forte Software, Inc.

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

(a) This Agreement and the Merger shall have been adopted and approved by the shareholders of Forte California in accordance with the requirements of the Corporations Code of the State of California and the General Corporation Law of the State of Delaware;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof; and

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

(d) An executed counterpart of the Certificate of Merger, an executed counterpart of this Agreement or any other document filed with the Secretary of the State of the State of Delaware pursuant to section (c) above, 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."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Forte California shall cease and Forte 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 Forte California's Board of Directors, (iii) shall succeed, without other transfer, to all of

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the assets, rights, powers and property of Forte California in the manner more fully set forth in Section 259 of the General Corporation Law of the State of Delaware, (iv) shall continue to be subject to all of the debts, liabilities and obligations of Forte Delaware 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 Forte California in the same manner as if Forte Delaware had itself incurred them, all as more fully provided under the applicable provisions of the General Corporation Law of the State of Delaware and the Corporations Code of the State of California.

2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of Forte Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Forte 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.

2.3 Directors and Officers. The directors and officers of Forte 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

3.1 Forte California Common Shares. Upon the Effective Date of the Merger, every two (2) shares of Forte California Common Stock, no par value, 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 three (3) fully paid and nonassessable shares of Common Stock, par value \$.01 per share, of the Surviving Corporation. No fractional share interests of the Surviving Corporation Common Stock shall be issued but shall, instead, be paid in cash by Forte Delaware to the holder of such shares.

3.2 Forte California Preferred Shares. Upon the Effective Date of the Merger, every two (2) shares of Series A, Series B, Series C and Series D Preferred Stock of Forte California, no par value, respectively, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of Forte California Common Stock as set forth in the Amended and Restated Articles of Incorporation of Forte California, as amended, 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 or exchanged for three (3) fully paid and nonassessable shares of Series A, Series B, Series C and Series D Preferred Stock of the Surviving Corporation, par value \$.01 per share, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation.

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3.3 Forte California 1996 Stock Option Plan and Employee Stock Purchase Plan

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of Forte California under its 1996 Stock Option Plan (including non-qualified stock options that were not granted pursuant to the Company's 1996 Stock Option Plan) (the "1996 Plan"). Each outstanding and unexercised option to purchase Forte California Common Stock (an "Option") under the 1996 Plan shall become, on the basis of three (3) shares of the Surviving Corporation's Common Stock for every two (2) shares of Forte California Common Stock issuable pursuant to any such option, an option to purchase the Surviving Corporation's Common Stock on the same terms and conditions.

(b) Three (3) shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of Options equal to two (2) shares of Forte California Common Stock so reserved immediately prior to the Effective Date of the Merger.

(c) Following the Effective Date of the Merger, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

(d) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of Forte California under its Employee Stock Purchase Plan (the "Purchase Plan"). One share of the Surviving Corporation's Common Stock will be reserved for issuance under the Purchase Plan for each one share of Forte California so reserved for issuance prior to the Effective Date of the Merger.

3.4 Forte Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, par value \$.01 per share, of Forte Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Forte Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Forte California Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to such holders prior to any requested exchange (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 or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Forte California Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of Forte California Common Stock or Preferred Stock, as the case may be, 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

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Stock or Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock or Preferred 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 Forte California so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or other such additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of Forte Delaware 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 comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of 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 Forte Delaware that such tax has been paid or is not payable.

4. GENERAL

4.1 Covenants of Forte Delaware. Forte Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) 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 Corporations Code of the State of California.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by Forte Delaware of all of the franchise tax liabilities of Forte California.

(c) Take such other actions as may be required by the Corporations Code of the State of California.

4.2 Further Assurances. From time to time, as and when required by Forte Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Forte California such deeds and other instruments, and there shall be taken or caused to be taken by it 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 Forte Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Forte California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Forte Delaware are fully authorized in the name and on behalf of Forte California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 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 Forte California or of Forte Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of Forte California.

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4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange St., Wilmington, Delaware 19801. The Corporation Trust Corporation is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1800 Harrison Street, Fifteenth Floor, Oakland, California, 94612 and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.7 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, so far as applicable, the merger provisions of the California Corporations Code.


4.8 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.

IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of Forte Software, Inc., a Delaware Corporation, and Forte California, Inc., a California Corporation, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.


FORTE SOFTWARE, INC.
a Delaware corporation

By: 
Martin J. Sprinzen
President


ATTEST:


Roger E. Weismann
Assistant Secretary

FORTE SOFTWARE, INC., a California corporation

By: 
Martin J. Sprinzen
President

ATTEST:


Roger E. Weismann
Assistant Secretary