

FORM PTO-16:8A
Expires 06/30/99
OMB 0651-0027

10-13-2000



J.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

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MRP
9.21.00

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

Formerly

Execution Date
Month Day Year

- 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

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.)

- Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

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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

EL482714863US TRADEMARK
REEL: 2154 FRAME: 0932

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

650-858-7889

Name

Barbara Nesbet, Esq.

Address (line 1)

Fenwick & West LLP

Address (line 2)

Two Palo Alto Square

Address (line 3)

Palo Alto, California 94306

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).

Trade Application Number(s)

Registration Number(s)

75/337,180		

Number of Properties Enter the total number of properties involved.

1

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

\$ 40.00

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:

50-0261

Authorization to charge additional fees:

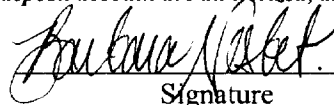
Yes No

Statement and Signature

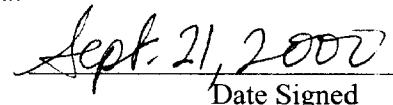
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Barbara Nesbet, Esq.

Name of Person Signing



Signature



Date Signed

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:

"BROADBASE INFORMATION SYSTEMS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "BROADBASE SOFTWARE, INC." UNDER THE NAME OF "BROADBASE SOFTWARE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTEENTH DAY OF SEPTEMBER, A.D. 1999, AT 4:30 O'CLOCK P.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

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991381608

AUTHENTICATION: 9967019

DATE: 09-13-99

TRADEMARK
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the conditions set forth in this Merger Agreement for the purpose of effecting a change of the state of incorporation of BroadBase California 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 BroadBase California shall merge with and into Broadbase Delaware on the following terms, conditions and other provisions:

1. **Merger and Effective Date.** On the Effective Date (as defined below), BroadBase California shall be merged with and into Broadbase Delaware (the "Merger"), and Broadbase Delaware shall be the surviving corporation of the Merger (the "Surviving Corporation"). The parties shall file a duly executed copy of this Merger Agreement, along with all required officers' certificates, with each of (i) the Secretary of State of the State of California and (ii) the Secretary of State of the State of Delaware, and the effective date shall be the date which satisfies both Section 1108 of the General Corporation Law of the State of California and Section 252 of the General Corporation Law of the State of Delaware (relating to the effective date of a merger between foreign and domestic corporations in each jurisdiction) (the "Effective Date").

2. **Effect of Merger.** On the Effective Date, the separate corporate existence of BroadBase California shall cease; the corporate identity, existence, powers, rights and immunities of Broadbase Delaware as the Surviving Corporation shall continue unimpaired by the Merger; and Broadbase Delaware 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 BroadBase California, all without further act or deed.

3. **Governing Documents.** On the Effective Date, the Certificate of Incorporation of Broadbase Delaware in effect immediately prior to the Effective Date shall become the Certificate of Incorporation of the Surviving Corporation and the Bylaws of Broadbase Delaware in effect immediately prior to the Effective Date shall become the Bylaws of the Surviving Corporation.

4. **Directors and Officers.** On the Effective Date, the directors and officers of Broadbase Delaware shall be and become the directors and officers (holding the same titles and positions) of the Surviving Corporation, and after the Effective Date shall serve in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation.

5. **Shares of BroadBase California.** On the Effective Date, each share of BroadBase California Common Stock of outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and nonassessable, issued and

outstanding share of Broadbase Delaware Common Stock. On the Effective Date, each share of BroadBase California Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock outstanding immediately prior thereto shall be automatically changed and converted into one fully paid and nonassessable, issued and outstanding share of Broadbase Delaware Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock, respectively.

6. **Shares of Broadbase Delaware.** On the Effective Date, all of the previously issued and outstanding shares of Broadbase Delaware Common Stock shall be automatically retired and cancelled.

7. **Stock Certificates.** On and after the Effective Date, all of the outstanding certificates that, prior to that date, represented shares of BroadBase California Common Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Broadbase Delaware Common Stock into which such shares of BroadBase California Common Stock are converted as provided herein. On and after the Effective Date, all of the outstanding certificates that, prior to that date, represented shares of BroadBase California Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Broadbase Delaware Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock, respectively, into which such shares of BroadBase California Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock are converted as provided herein. The registered owner on the books and records of BroadBase California of any such outstanding stock certificate for BroadBase California Common Stock or BroadBase California Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to Broadbase Delaware 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 Broadbase Delaware Common Stock or Broadbase Delaware Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock, respectively, evidenced by such outstanding certificate as above provided.

8. **Options; Warrants; Debentures.** Upon the Effective Date, all outstanding and unexercised portions of all options to purchase BroadBase California Common Stock under the BroadBase California 1996 Equity Incentive Plan, and all other outstanding options or warrants to purchase BroadBase California Common Stock or BroadBase California Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock, shall become options or warrants to purchase one share of Broadbase Delaware Common Stock or BroadBase California Series A Stock, Series B Stock, Series C Stock, Series D Stock or Series E Stock, respectively, at the price set forth in such BroadBase California option and/or warrant documents, with the same vesting schedule and other material terms and conditions applying. Upon the Effective Date, all outstanding debentures

convertible into shares of BroadBase California Series D Stock shall become debentures convertible into the same number of shares of Broadbase Delaware Series D Stock at the conversion price set forth in such BroadBase California debenture and with all material terms and conditions of such BroadBase California debenture applying.

9. **Fractional Shares.** No fractional shares of Broadbase Delaware Common Stock or Broadbase Delaware Series A, Series B, Series C, Series D Stock or Series E Stock will be issued in connection with the Merger. In lieu thereof, Broadbase Delaware shall pay each shareholder of BroadBase California who would otherwise be entitled to receive a fractional share of Broadbase Delaware Common Stock or Broadbase Delaware Series A, Series B, Series C, Series D Stock or Series E Stock (assuming the aggregation of (i) all shares held by the same holder of more than one stock certificate representing shares of BroadBase California Common Stock and (ii) the aggregation of all shares held by the same holder of more than one stock certificate representing shares of the same series of BroadBase California Preferred Stock) a cash amount equal to the applicable fraction multiplied by the fair market value of a share of Broadbase Delaware Common Stock or Broadbase Delaware Series A, Series B, Series C, Series D Stock or Series E Stock, as the case may be, as determined by the Board of Directors of Broadbase Delaware in good faith (the "*Fair Market Value Per Share*"). Upon exercise of each assumed option or warrant of BroadBase California to purchase Broadbase California Common Stock or Broadbase California Series A, Series B, Series C, Series D Stock or Series E Stock, and upon conversion of each assumed debenture of BroadBase California convertible into BroadBase California Series D Stock, cash will be paid by Broadbase Delaware in lieu of any fractional share of Broadbase Delaware Common Stock or Broadbase Delaware Series A, Series B, Series C, Series D Stock or Series E Stock issuable upon exercise of such option or warrant, or fractional share of Broadbase Delaware Series D Stock issuable upon conversion of such debenture, 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.** On the Effective Date, the obligations of BroadBase California under or with respect to every plan, trust, program and benefit then in effect or administered by BroadBase California for the benefit of the directors, officers and employees of BroadBase California or any of its subsidiaries shall become the lawful obligations of Broadbase Delaware 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 upon the Effective Date, Broadbase Delaware hereby expressly adopts and assumes all obligations of BroadBase California 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 BroadBase California 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 BroadBase California, 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 BroadBase California, 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 BroadBase California and by the sole stockholder of Broadbase Delaware, prior to or on the Effective Date.

13. **Abandonment.** At any time before the Effective Date, this Merger Agreement may be terminated and the Merger abandoned by the Board of Directors of BroadBase California or Broadbase Delaware, notwithstanding approval of this Merger Agreement by the Boards of Directors and shareholders of Constituent Corporations BroadBase California and Broadbase Delaware.

14. **Amendment.** At any time before the Effective Date, this Merger Agreement may be amended, modified or supplemented by the Boards of Directors of the Constituent Corporations, notwithstanding approval of this Merger Agreement by the shareholders of BroadBase California and by the sole stockholder of Broadbase Delaware; provided, however, that any amendment made subsequent to the adoption of this Agreement by the shareholders of BroadBase California or the sole stockholder of Broadbase Delaware shall not: (a) 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 BroadBase California, (b) alter or change of any of the terms of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (c) alter or change any of the terms or conditions of this Agreement if such alteration or change would adversely affect the holders of any shares of any class or series of BroadBase California or Broadbase Delaware.

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 Internal Revenue Code of 1986, as amended.

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 Broadbase Delaware and the Merger.

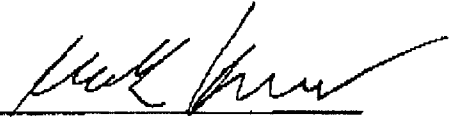
17. **Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, it may be executed in any number of counterparts, each of which shall be deemed to be an original.

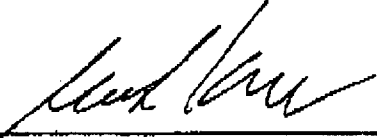
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IN WITNESS WHEREOF, this Merger Agreement is hereby executed on behalf of each of the Constituent Corporations and attested by their respective officers thereunto duly authorized.

BROADBASE INFORMATION SYSTEMS, INC.
a California corporation

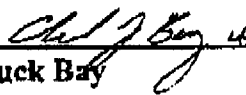
BROADBASE SOFTWARE, INC.
a Delaware corporation

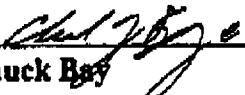
By: 
Mark Kremer
President and Chief Executive Officer

By: 
Mark Kremer
President and Chief Executive Officer

ATTEST:

ATTEST:


Chuck Bay
Secretary


Chuck Bay
Secretary

[Signature Page to Agreement and Plan of Merger]

BROADBASE SOFTWARE, INC.

(a Delaware corporation)

OFFICERS' CERTIFICATE

Mark Kremer and Chuck Bay certify that:

1. They are the President and the Secretary, respectively, of Broadbase Software, Inc., a corporation organized under the laws of the State of Delaware (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 attached hereto (the "Merger Agreement") was approved.

4. The Merger Agreement was approved by the Board of Directors and by the vote of 100% of the outstanding shares of the Corporation.

5. The percentage vote required was a majority of the outstanding stock entitled to vote on the Merger Agreement.

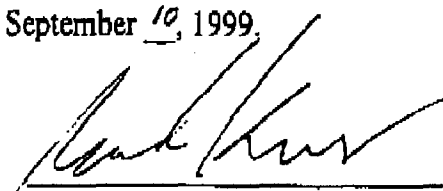
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Mark Kremer and Chuck Bay further declare under penalty of perjury under the laws of the States of California and Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed in Menlo Park, California on September 10, 1999.



Mark Kremer, President



Chuck Bay, Secretary

BROADBASE INFORMATION SYSTEMS, INC.

(a California corporation)

OFFICERS' CERTIFICATE

Mark Kremer and Chuck Bay certify that:

1. They are the President and the Secretary, respectively, of BroadBase Information Systems, Inc., a corporation organized under the laws of the State of California (the "Corporation").

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

3. There were 3,226,808 shares of Common Stock and 8,663,809 shares of Preferred Stock of the Corporation 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 attached hereto (the "Merger Agreement") was approved.

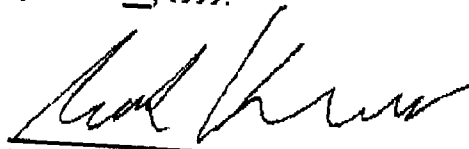
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.

5. The percentage vote required was the affirmative vote of: (i) a majority of the votes entitled to be cast by holders of Common Stock; and (ii) at least 66-2/3% of the votes entitled to be cast by holders of all series of Preferred Stock outstanding as of the Record Date, voting together as a single class on an as converted into Common Stock basis.

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Mark Kremer and Chuck Bay 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 Menlo Park, California on September 10, 1999.



Mark Kremer, President



Chuck Bay, Secretary

20115/00019/926926 V1