

MRD 10/13/00

11-17-2000



U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

101519328

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To the Honorable Commissioner of Patent and Trademarks: Please record the attached original documents or copy thereof.

<p>1. Name of conveying party(ies):</p> <p>POWERSCREEN USA INC.</p> <p><input type="checkbox"/> Individual(s)                      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership              <input type="checkbox"/> Limited Partnership  <input checked="" type="checkbox"/> Corporation - State of Delaware  <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies):</p> <p>POWERSCREEN USA LLC  11001 Electron Drive  Louisville, Kentucky 40299</p> <p><input type="checkbox"/> Individual(s) citizenship _____  <input type="checkbox"/> Association _____  <input type="checkbox"/> General Partnership _____  <input type="checkbox"/> Limited Partnership _____  <input checked="" type="checkbox"/> Corporation - <u>State of Kentucky</u>  <input type="checkbox"/> Other _____</p> <p>Domestic representative is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment                      <input checked="" type="checkbox"/> Merger  <input type="checkbox"/> Security Agreement              <input type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____</p> <p>Execution Date: March 31, 1997</p>	

<p>4. (A.) Trademark Application No.(s)</p>	<p>4. (B.) Trademark Registration No.(s)</p> <p>377131</p>
<p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	

<p>5. Correspondence should be mailed to:</p> <p><b>VICTOR M. TANNENBAUM  ABELMAN, FRAYNE &amp; SCHWAB</b>  150 East 42nd Street  New York, New York 10017</p>	<p>6. Total number of applications and registrations involved:..... <b>5</b></p> <p>7. Total fee (37 CFT 3.41): ..... \$ <u>40.00</u>  <input checked="" type="checkbox"/> Enclosed  (The said Deposit Account should be charged for any official fee not fully covered by the enclosed check)  <input type="checkbox"/> Authorized to be charged to deposit account  Deposit account number: 01-0035  (Attach duplicate copy of this page if paying by deposit account)</p>
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DO NOT USE THIS SPACE

8. 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.*

VICTOR M. TANNENBAUM                                            10/13/00  
Name of Person Signing                      Signature                      Date

Total number of pages comprising cover sheet, attachments and documents: **7**

State of Delaware  
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:

"POWERSCREEN USA INC.", A DELAWARE CORPORATION,

WITH AND INTO "POWERSCREEN USA LLC" UNDER THE NAME OF "POWERSCREEN USA LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF KENTUCKY, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SEVENTH DAY OF MARCH, A.D. 1997, AT 4:30 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AGREEMENT OF MERGER IS THE THIRTY-FIRST DAY OF MARCH, A.D. 1997.

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*Edward J. Freel*  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

DATE: 09-05-00

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 04:30 PM 03/27/1997  
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**PLAN AND AGREEMENT OF MERGER**

**OF**

**POWERSCREEN USA INC.**

**INTO**

**POWERSCREEN USA LLC**

Pursuant to the provisions of Section 264 of the Delaware General Corporation Law, KRS § 275.345, KRS § 275.350, KRS § 275.355, and KRS § 275.360, Powerscreen USA Inc., a Delaware corporation ("PUSA"), and Powerscreen USA LLC, a Kentucky limited liability company and the sole shareholder of PUSA ("Acquisition Company"), do hereby adopt the following Plan and Agreement of Merger:

**ARTICLE I**

The Plan of Merger whereby PUSA will be merged with and into Acquisition Company (the "Plan") is attached hereto as Exhibit A and is incorporated herein by reference to the extent not inconsistent herewith.

Acquisition Company shall be the "acquiring company" and "surviving business entity" and PUSA shall be the "distributor or transferor corporation" for federal, state and local tax purposes.

Pursuant to Sections 264 and 103 of the Delaware General Corporation Law and KRS § 275.060, the merger of PUSA into the Acquisition Company pursuant to the Plan shall be effective as of 11:59 p.m. on March 31, 1997.

**ARTICLE II**

The Plan was duly authorized and approved by each of the constituent business entities in accordance with Section 264 of the Delaware General Corporation Law and KRS 275.350.

As to PUSA, the Plan was duly adopted by a resolution adopted by a unanimous written consent in lieu of a special meeting of its Board of Directors on March 25, 1997, and approved by the sole shareholder of PUSA by a written consent in lieu of a special meeting of the shareholders on March 27, 1997. All issued and outstanding shares of PUSA's common stock voted in favor of the Plan, there being 100 issued and outstanding common shares.

As to Acquisition Company, the Plan of Merger was duly adopted by a resolution adopted by a unanimous written consent by the members of Acquisition Company on March 27, 1997.

### ARTICLE III

Acquisition Company as the surviving business entity, hereby agrees that it may be served with process in Delaware in any proceeding for enforcement of any obligation of PUSA, as well as for the enforcement of any obligation of Acquisition Company arising from the merger, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to Section 262 of the Delaware General Corporation Laws, and Acquisition Company hereby irrevocably appoints the Delaware Secretary of State as its agent to accept service of process in any suit or other proceedings and a copy of such process shall be mailed by the Delaware Secretary of State to Acquisition Company at the following address

Powerscreen USA LLC  
11001 Electron Drive  
Louisville, Kentucky 40299

IN WITNESS WHEREOF, PUSA and Acquisition Company have caused this Plan and Agreement of Merger to be signed by their respective representative on March 27, 1997.

POWERSCREEN USA INC.

POWERSCREEN USA LLC

By: POWERSCREEN HOLDINGS USA INC.  
as Managing Member

By *Phyllis Scalzo*  
Phyllis Scalzo, Assistant Secretary

By *Phyllis Scalzo*  
Phyllis Scalzo, Assistant Secretary

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## Exhibit A

## PLAN OF MERGER

This is a plan of merger (the "Plan") of Powerscreen USA Inc. ("PUSA"), a Delaware corporation, and Powerscreen USA LLC ("Acquisition Company"), a Kentucky limited liability company and the sole shareholder of PUSA.

RECITALS

A. The authorized capital stock of PUSA consists of 1,000 shares of common stock with a par value of \$1.00 per share ("Subsidiary Common Stock"), of which 100 shares are issued, outstanding, fully paid and nonassessable.

B. The Acquisition Company has 100 units ("Acquisition Company Units") which are issued, outstanding, fully paid and nonassessable.

PLAN

1. Names and Surviving Entity. The names of the constituent business entities proposing to merge are Powerscreen USA Inc. and Powerscreen USA LLC. PUSA proposes to merge into Acquisition Company, which shall be the "Surviving Business Entity."

2. Terms and Conditions.

(a) Effective Time. Pursuant to Sections 264 and 103 of the Delaware General Corporation Law and KRS § 275.1-060, the merger of PUSA into the Acquisition Company shall be effective as of 11:59 p.m. on March 31, 1997 (the "Effective Time").

(b) Name. The Surviving Business Entity's name shall be Powerscreen USA LLC.

(c) Limited Liability. At and after the Effective Time, the Surviving Business Entity shall continue to have limited liability.

(d) Conversion of Stock and Units. At the Effective Time:

(i) No cash shall be allocated to the shareholders of PUSA. The issued and outstanding shares of Subsidiary Common Stock, without any action on the part of the holders thereof, shall be canceled.

(ii) The issued and outstanding units of Acquisition Company shall, without any action on the part of the holder thereof, become and be converted into an equal number of units of the Surviving Business Entity, and all outstanding certificates representing those units shall represent, instead of units in Acquisition Company, the right to receive units in the Surviving Business Entity at the rate of unit in the Surviving Business Entity per unit in Acquisition Company.

(c) Articles of Organization. The Articles of Organization of Acquisition Company at the Effective Time shall be the Articles of Organization of the Surviving Business Entity from and after the Effective Time and no changes to the Articles of Organization of Acquisition Company are desired

### ASSIGNMENT OF REGISTERED MARKS

THIS ASSIGNMENT OF REGISTERED MARKS (the "Assignment") is entered into as of February 28, 1994, by SIMPLICITY ENGINEERING, INC., a Delaware corporation (the "Assignor"), with a business address at 212 South Oak Street, Durand, Michigan 48429 to POWERSCREEN USA INC., a Delaware corporation (the "Assignee"), with a business address at 11001 Electron Drive, Louisville, Kentucky 40299.

WHEREAS the Assignor owns the following trademarks (the "Trademarks"), including, without limitation, all rights under a registration of the Trademarks on the Principal Register in the United States Patent and Trademark Office with the registration numbers and dates of issuance set forth below:

<u>Trademarks</u>	<u>Registration Nos.</u>	<u>Date of Issuance</u>
Simplicity	240,943	April 10, 1928
Simplicity	377,131	April 16, 1940
Simplicity	1,173,925	October 20, 1981
Simpli-Flo	551,788	December 4, 1951
Simplicity & Design	597,890	November 9, 1954

WHEREAS, the Assignee is purchasing substantially all of the assets of the Assignor pursuant to the terms and conditions of an Assets Purchase Agreement dated as of February 4, 1994, between the Assignor and the Assignee, and joined in by Lukens Inc. and Powerscreen International PLC (the "Assets Purchase Agreement"); and



WHEREAS, in consideration for the payment of the Purchase Price (as defined in the Assets Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Assignor, the Assignor hereby transfers to the Assignee, and the Assignee hereby acquires from the Assignor all of the Assignor's rights, title and interest in the Trademarks and their registrations;

NOW, THEREFORE, this agreement reflects Assignor's assignment, conveyance and transfer unto the Assignee all of its right, title and interest in and to the Trademarks, together with the good will of the business symbolized by the Trademarks, all proceeds of infringement suits, rights to sue for past, present and future infringements, and all rights corresponding to the Trademarks throughout the world including, without limitation, the registrations.

IN WITNESS WHEREOF, the undersigned, a duly authorized representative of each of the Assignor and the Assignee, has executed this Assignment as of February 28, 1994, but actually on the dates set forth below.

ASSIGNOR:

SIMPLICITY ENGINEERING, INC.

By 

Title: President

Date: February 28, 1994

ASSIGNEE:

POWERSCREEN USA INC.

By B. Cosgrove

Title: PRESIDENT

Date: FEB 28, 1994

STATE OF Delaware )  
 ) SS  
COUNTY OF New Castle )

On this 28<sup>th</sup> day of February, 1994, before me appeared C. O. Houghton, Jr., the person who signed this instrument, who acknowledged that he/she is a duly appointed officer of SIMPLICITY ENGINEERING, INC. (the "Assignor"), that he/she is duly authorized by the Assignor to sign this instrument, and that he/she has signed this instrument as a free act on behalf of the Assignor.

Roberta V. Davies  
NOTARY PUBLIC

My commission expires:  
11-21-95

STATE OF Delaware )  
 ) SS  
COUNTY OF New Castle )

On this 28<sup>th</sup> day of February, 1994, before me appeared B. Cosgrove, the person who signed this instrument, who acknowledged that he/she is a duly appointed officer of POWERSCREEN USA INC. (the "Assignor"), that he/she is duly authorized by the Assignor to sign this instrument, and that he/she has signed this instrument as a free act on behalf of the Assignor.

Roberta V. Davies  
NOTARY PUBLIC

My commission expires:  
11-21-95

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