



Tab settings =>>>▼

101741588

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

1. Name of conveying party(ies): 6401
 VA Linux Systems, Inc. (CA)

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-California
 Other: address change

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

Name: VA Linux Systems, Inc.
 Internal Address: _____
 Street Address: 4701 Bayside Parkway
 City: Fremont State: CA ZIP: 94538

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State Delaware JUN - 4 2001
 Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
 (Designations must be a separate document from assignment)
 Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

Assignment X Merger
 Security Agreement Change of Name
 Other:

Execution Date: December 7, 1999

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)
75/779,598 FULLON
75/779,599 VA TLC
75/ 799,880 STARTX

B. Trademark Registration No.(s)
2,445,538 DESIGN (ORB)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Andrew P. Bridges / Jennifer A. Golinveaux
 Internal Address: Wilson Sonsini Goodrich & Rosati

 Street Address: 650 Page Mill Road

 City: Palo Alto State: CA ZIP: 94304

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41) \$115.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
23-2415 Attn: 21513-900
 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.

Jennifer A. Golinveaux [Signature] 5/30/01
 Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 4

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

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:

"VA LINUX SYSTEMS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "VA LINUX SYSTEMS, INC." UNDER THE NAME OF "VA LINUX SYSTEMS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SEVENTH DAY OF DECEMBER, A.D. 1999, AT 10 O'CLOCK A.M.

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



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

Edward J. Freel, Secretary of State

3087994 8100M

991521654

AUTHENTICATION: 0122167

DATE: 12-07-99

TRADEMARK
REEL: 002309 FRAME: 0594

**AGREEMENT AND PLAN OF MERGER OF
VA LINUX SYSTEMS, INC.
(a Delaware corporation)
AND
VA LINUX SYSTEMS, INC.
(a California corporation)**

THIS AGREEMENT AND PLAN OF MERGER dated as of December 6, 1999 (the "Agreement") is between VA Linux Systems, Inc., a Delaware corporation ("VA Linux-Delaware"), and VA Linux Systems, Inc., a California corporation ("VA Linux-California"). VA Linux-Delaware and VA Linux-California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. VA Linux-Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 1,000 shares, \$.001 par value, designated as "Common Stock." As of October 30, 1999, 1,000 shares of Common Stock were issued and outstanding, all of which are held by VA Linux-California.

B. VA Linux-California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 270,149,322 shares, \$.001 par value, 250,000,000 of which are designated as "Common Stock" and 20,149,322 of which are designated as "Preferred Stock." Of such authorized shares of Preferred Stock, 12,149,322 of which are designated as "Series A Preferred Stock" and 8,000,000 of which are designated as "Series B Preferred Stock." As of September 30, 1999, 15,085,426 shares of Common Stock, 12,149,322 shares of Series A Preferred Stock and 7,772,000 shares of Series B Preferred Stock were issued and outstanding.

C. The Board of Directors of VA Linux-California has determined that, for the purpose of effecting the reincorporation of VA Linux-California in the State of Delaware, it is advisable and in the best interests of VA Linux-California and its shareholders that VA Linux-California merge with and into VA Linux-Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of VA Linux-Delaware and VA Linux-California, the shareholders of VA Linux-California and the sole stockholder of VA Linux-Delaware have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

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

1. MERGER

(a) Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, VA Linux-California shall be merged with and into VA Linux-Delaware (the "Merger"), the separate existence of VA Linux-California shall cease and VA Linux-Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be VA Linux Systems, Inc.

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

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

(ii) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the California General Corporation Law 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."

(c) Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of VA Linux-California shall cease and VA Linux-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 VA Linux-California's Boards of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of VA Linux-California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations 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 VA Linux-California in the same manner as if VA Linux-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

2. CHARTER DOCUMENTS DIRECTORS AND OFFICERS

(a) Amended and Restated Certificate of Incorporation. The Amended and Restated Certificate of Incorporation, attached hereto as Exhibit A (the "Certificate of Incorporation"), is the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

(b) Bylaws. The Bylaws of VA Linux-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.

(c) Directors and Officers. The directors and officers of VA Linux-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

(a) VA Linux-California Common Stock. Upon the Effective Date of the Merger, each share of Common Stock of VA Linux-California Common 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 one share of fully paid and nonassessable Common Stock, \$0.001 par value, of the Surviving Corporation.

(b) VA Linux-California Preferred Stock. Upon the Effective Date of the Merger, each share of Series A Preferred Stock and Series B Preferred Stock of VA Linux-California Common 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 one share of fully paid and nonassessable Series A Preferred Stock and Series B Preferred Stock, \$0.001 par value, respectively, of the Surviving Corporation.

(c) VA Linux-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.001 par value, of VA Linux-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by VA Linux-Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

(d) Stock Options and Warrants. At the Effective Date of the Merger, the VA Linux-California 1998 Stock Option Plan (the "Option Plan"), and all options and stock purchase rights relating to Common Stock (each a "VA Linux Option") then outstanding under such plan, or otherwise, shall be assumed by VA Linux-Delaware in accordance with provisions described below.

(i) Each VA Linux Option so assumed by VA Linux-Delaware under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in the Option Plan and/or as provided in the respective option agreements governing such VA Linux Option immediately prior to the Effective Date of the Merger.

(ii) It is the intention of the parties that the VA Linux Options assumed by VA Linux-Delaware qualify following the Effective Date of the Merger as incentive stock options as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), to the extent the VA Linux Options qualified as incentive stock options immediately prior to the Effective Date of the Merger.

(iii) Promptly following the Effective Date of the Merger, VA Linux-Delaware will issue to each holder of an outstanding VA Linux Option a document evidencing the foregoing assumption of such VA Linux Option by VA Linux-Delaware.

(iv) At the Effective Date of the Merger, VA Linux-California shall assign to VA Linux-Delaware any and all rights of repurchase pertaining to shares of VA Linux-California Common Stock issued upon exercise of stock options, pursuant to stock purchase agreements or otherwise.

(e) Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of VA Linux-California Common Stock may, at such stockholder's option, surrender the same for cancellation to such institution as VA Linux-Delaware shall appoint at the time to act as exchange agent (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 into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of VA Linux-California Common shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of VA Linux-California Common 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 Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common 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 VA Linux-California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's Common 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 that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the 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 the Surviving Corporation that such tax has been paid or is not payable.

4. GENERAL

(a) Covenants of VA Linux-Delaware. VA Linux-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(i) 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 California General Corporation Law;

(ii) File any and all documents with the appropriate tax authority of the State of California necessary for the assumption by VA Linux-Delaware of all of the corporate and/or franchise tax liabilities of VA Linux-California; and

(iii) Take such other actions as may be required by the California General Corporation Law.

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

(c) 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 VA Linux-California or VA Linux-Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of VA Linux-California or by the sole stockholder of VA Linux-Delaware, or by both.

(d) Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation, this Agreement shall not be amended except in compliance with the requirements of the California General Corporation Law and the Delaware General Corporation Law.

(e) Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at 1209 Orange Street, in the city of Wilmington, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

(f) Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1382 Bordeaux, Sunnyvale, California 94089 and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

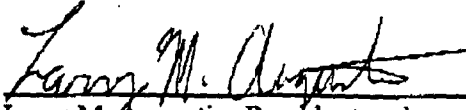
(g) Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and the provisions of the California General Corporation Law.

(h) 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.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of VA Linux-Delaware and VA Linux-California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

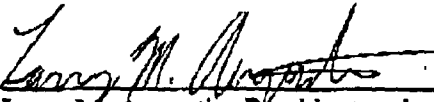
VA LINUX SYSTEMS, INC.
a Delaware corporation

By: 
Larry M. Augustin, President and
Chief Executive Officer

ATTEST:


Judith M. O'Brien, Secretary

VA LINUX SYSTEMS, INC.
a California corporation

By: 
Larry M. Augustin, President and
Chief Executive Officer

ATTEST:


Judith M. O'Brien, Secretary