

07-11-2001



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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

<p>1. Name of conveying party(ies): Examen, 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 California  <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies) Name: <u>Examen, Inc.</u> Internal Address: _____ Street Address: <u>3831 North Freeway Blvd. Ste 200</u> City: <u>Sacramento</u> State: <u>CA</u> Zip: <u>95834</u></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-State <u>Delaware</u>  <input type="checkbox"/> Other _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No  (Designations must be a separate document from assignment)  Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. Nature of conveyance:  <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: <u>10/24/96</u></p>	<p>4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) <u>1,871,631</u></p> <p>Additional number(s) attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Patricia L. Cotton</u> Internal Address: <u>Pillsbury Winthrop LLP</u> Street Address: <u>2550 Hanover Street</u> City: <u>Palo Alto</u> State: <u>CA</u> Zip: <u>94304</u></p>	<p>6. Total number of applications and registrations involved: <u>1</u></p> <p>7. Total fee (37 CFR 3.41).....\$ <u>40.00</u>  <input checked="" type="checkbox"/> Enclosed  <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: _____  (Attach duplicate copy of this page if paying by deposit account)</p>

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.

Patricia L. Cotton  
Name of Person Signing

Patricia L Cotton  
Signature

6/27/01  
Date

9

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

07/10/2001 DBYRNE 0000064 1871631

40.00

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

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State of California

SECRETARY OF STATE

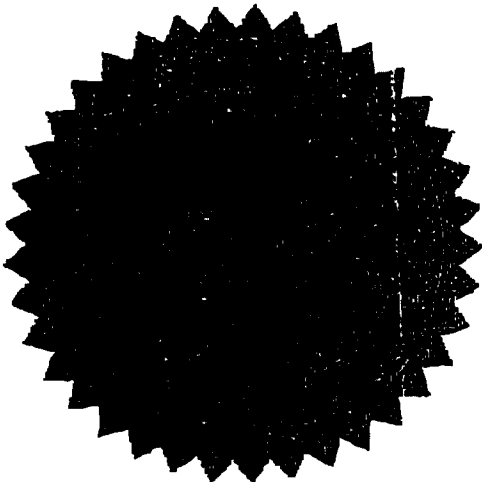
CORPORATION DIVISION

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this

NOV 6 1996



*Bill Jones*

Secretary of State

D530192

State of Delaware  
Office of the Secretary of State PAGE 1

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

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

ENDORSED-FILED  
In the office of the Secretary of State  
of the State of California

OCT 28 1996

BILL JONES, Secretary of State



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

AUTHENTICATION: 8163798

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STATE OF DELAWARE  
 SECRETARY OF STATE  
 DIVISION OF CORPORATIONS  
 FILED 09:00 AM 10/24/1996  
 960318063 - 2556777

## AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER ("Merger Agreement") is made and entered into as of October 24, 1996, by and between Examen, Inc., a California corporation ("Examen"), and Extemp Corporation, a Delaware corporation ("Extemp").

### WITNESSETH:

WHEREAS, Extemp is a corporation duly organized and existing under the laws of the State of Delaware;

WHEREAS, Examen is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, on the date of this Merger Agreement, Extemp has authority to issue 33,330,000 shares of Common Stock, par value \$.001 per share ("Extemp Common Stock"), of which 100 shares are issued and outstanding and owned by Examen and 10,000,000 shares of Preferred Stock, par value \$.001 per share, none of which is outstanding;

WHEREAS, on the date of this Merger Agreement, Examen has authority to issue 33,330,000 shares of Common Stock, with no par value ("Examen Common Stock"), of which 7,480,299 shares are issued and outstanding, and 10,000,000 shares of Preferred Stock, none of which is outstanding;

WHEREAS, the respective Boards of Directors of Extemp and Examen have approved this Merger Agreement and the Boards of Directors of Extemp and Examen have directed that this Merger Agreement be submitted to a vote of their stockholders.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Extemp and Examen hereby agree to merge as follows:

1. Merger. Examen shall be and it hereby is merged with and into Extemp (the "Merger"), and Extemp shall survive the Merger, effective upon the date when this Merger Agreement is made effective in accordance with applicable law (the "Effective Date").

2. Directors and Officers and Governing Documents. The director and the officers of Extemp immediately after the effectiveness of the Merger shall be the same as they were immediately prior thereto. The Bylaws of Extemp, as amended and in effect on the Effective Date, shall continue to be the Bylaws of Extemp as the surviving corporation without change or amendment until further amended in accordance with the provisions thereof and applicable laws. The Certificate of Incorporation of Extemp, as in effect on the Effective Date, shall continue to be the Certificate of Incorporation of Extemp as the surviving corporation except that paragraph FIRST shall be amended to read in its entirety as follows:

FIRST. The name of the corporation is Examen, Inc.

3. Succession. On the Effective Date, Extemp shall succeed to Examen in the manner of and as more fully set forth in Section 259 of the General Corporation Law of the State of Delaware. All corporate acts, plans, policies, agreements, arrangements, approvals and authorizations of Examen, its shareholders, Board of Directors and committees thereof, officers and agents which were valid and effective immediately prior to the Effective Date, shall be taken for all purposes as the acts, plans, policies, agreements, arrangements, approvals and authorizations of Extemp and shall be as effective and binding thereon as the same were with respect to Examen. The requirements of any plans or agreements of Examen involving the issuance or purchase by Examen of shares of its capital stock shall be satisfied by the issuance or purchase of a like number of shares of Extemp.

4. Further Assurances. From time to time, as and when required by Extemp or by its successors and assigns, there shall be executed and delivered on behalf of Examen such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest, perfect or confirm, of record or otherwise, in Extemp the title to and possession of all the property, interest, assets, rights, privileges, immunities, powers, franchises and authority of Examen and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of Extemp are fully authorized in the name and on behalf of Examen or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

5. Common Stock of Examen. Upon the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, each share of Examen Common Stock issued and outstanding immediately prior thereto shall be changed and converted into one fully paid and non-assessable share of Extemp Common Stock.

6. Stock Certificates. On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of Examen Common Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of Extemp Common Stock into which the shares of Examen Common Stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of Extemp or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to Extemp or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of Extemp Common Stock evidenced by such outstanding certificate as above provided.

7. Options. As of the Effective Date, all of the outstanding options to purchase Examen shares, including but not limited to options issued under Examen's 1994 Stock Option Plan, as amended ("Options"), whether vested or unvested, shall be assumed by Extemp, and shall be deemed to constitute an option to acquire such number of shares of Extemp Common Stock as is equal to the number of Examen Common Stock subject to the unexercised portion of such Option. The exercise price per share, the term, exercisability, vesting schedule and all of the other terms of each such assumed Option shall remain unchanged.

8. Other Employee Benefit Plans. As of the Effective Date, Extemp hereby assumes all obligations of Examen under any and all employee benefit plans in effect as of said date or with respect to which employee rights or accrued benefits are outstanding as of said date.

9. Common Stock of Extemp. Forthwith upon the Effective Date, the 100 shares of Extemp Common Stock presently issued and outstanding in the name of Examen shall be cancelled and retired and resume the status of authorized and unissued shares of Extemp Common Stock, and no shares of Extemp Common Stock or other securities of Extemp shall be issued in respect thereof.

10. Amendment. Subject to applicable law, at any time before or after approval and adoption by the stockholders of Examen, this Merger Agreement may be amended, supplemented or modified by the written agreement of Examen and Extemp.

11. Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either Examen or Extemp, or both, notwithstanding

approval of this Merger Agreement by the stockholders of Extemp or the shareholders of Examen or both.

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

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by resolutions of the Boards of Directors of Extemp and Examen, is hereby executed on behalf of each of said corporations by their respective officers thereunto duly authorized.

EXAMEN, INC.  
A California corporation

By:   
William K. Retzer, President

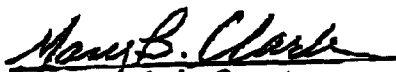
ATTEST:

  
Mary B. Clark, Secretary

EXTEMP CORPORATION  
A Delaware corporation

By:   
William K. Retzer, President

ATTEST:

  
Mary B. Clark, Secretary

**CERTIFICATE OF THE SECRETARY  
OF  
EXTEMP CORPORATION**

I, Mary B. Clark, Secretary of Extemp Corporation, a Delaware corporation ("Extemp"), do hereby certify that the Merger Agreement to which this Certificate is attached, after having been first duly executed on behalf of Extemp by its President and Secretary, was duly adopted by the written consent of 100% of the stockholders of Extemp entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the 24 day of October 1996.

  
Mary B. Clark, Secretary



**CERTIFICATE OF THE SECRETARY  
OF  
EXAMEN, INC.**

I, **Mary B. Clark**, Secretary of **Examen, Inc.**, a California corporation ("**Examen**"), do hereby certify that the Merger Agreement to which this Certificate is attached, after having been first duly executed on behalf of **Examen** by its President and Secretary, was duly approved and adopted by the holders of the outstanding stock entitled to vote thereon by the written consent of a majority of the shareholders.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the 27 day of October, 1996.

  
**Mary B. Clark, Secretary**