

07-27-2001

U.S. DEPARTMENT OF COMMERCE

7-23-01



101790241

SR SHEET

Y

Patent and Trademark Office
Docket No. 024770-2000

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

1. Name of Conveying party(ies):

Digital Anvil, Inc.

- Individual(s)
- General Partnership
- Texas Corporation
- Association
- Limited Partnership
- Other

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

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

Name: Digital Anvil, Inc.
Street Address: 316 Congress Avenue
Austin, Texas 78701

- Individual(s) citizenship: _____
- Association: _____
- General Partnership: _____
- Limited Partnership: _____
- Corporation-State: Delaware
- Other: _____

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other: Change in State of Incorporation
- Merger
- Change of Name

Execution Date: March 26, 1999

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

A. Trademark Application No.(s) 75/575,150, 75/447,647 and 75/470,756

Additional numbers attached? Yes No

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

Rochelle D. Alpert
Brobeck, Phleger & Harrison LLP
Spear Street Tower
One Market
San Francisco, CA 94105

6. Total number of applications and trademark registrations involved: 3

7. Total fee (37 C.F.R. § 3.41): \$90

- Enclosed
- Authorized to be charged to deposit account, referencing Attorney Docket: [DOCKET NUMBER]

8. Deposit account number: 02-3950

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.21 which may be required by this paper, or to credit any overpayment to Deposit Account No. 02-3950.

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.

Name: Rochelle D. Alpert

Rochelle D. Alpert
Signature

July 18, 2001
Date

Total number of pages comprising cover sheet, attachment and document: 7

07/26/2001 TBIAZ1 00000100 73575150

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

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

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FAX NO.

P. 12

FROM CORPORATION TRUST 302-655-5049

(FRI) 3.26'99 14:26/ST. 14:24/NO. 4862069261 P 3

CERTIFICATE OF INCORPORATION

OF

DIGITAL ANVIL, INC.

ARTICLE I.

The name of this Corporation shall be Digital Anvil, Inc.

ARTICLE II.

The address of the registered office of the Corporation in the State of Delaware is the Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware, 19801. The name of the registered agent at that address is the Corporation Trust Company.

ARTICLE III.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV.

The name and mailing address of the incorporator of the Corporation is:

Mark J. Pietrantonio
301 Congress Avenue, Suite 1200
Austin, TX 78701

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ARTICLE V.

A. Authorized Shares. The aggregate number of shares that the Corporation shall have authority to issue is 10,000,000 all of which shares shall be Common Stock with a par value of \$0.001 per share.

B. Common Stock. Each share of Common Stock shall be equal to every other share of Common Stock. The holders of shares of Common Stock shall be entitled to one vote for each share of such stock upon matters presented to the stockholders.

ARTICLE VI.

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the Delaware General Corporation Law; or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is hereafter amended to authorize Corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended. Any repeal or modification of the foregoing paragraph by stockholders shall not adversely affect any right or protection of a director existing at the time of such repeal or modification.

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ARTICLE VII.

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Corporation. The number of directors constituting the initial Board of Directors is three (3). During the period that Microsoft Corporation is a stockholder of either the Corporation or Digital Anvil Holdings, Inc., a Texas corporation ("Parent") (or their respective successors), one director of the Corporation shall be designated by Microsoft Corporation (the "Microsoft Representative"). The names and addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are duly elected and qualified are as follows:

Mr. Marten Davies
316 Congress Avenue
Austin, Texas 78701

Mr. Christopher Roberts
316 Congress Avenue
Austin, Texas 78701

Mr. Shane Kim
One Microsoft Way
Redmond, WA 98052

B. The Corporation shall not, without the approval of the Microsoft Representative, (i) enter into any contract, license or other agreement or arrangement with (a) Parent, (b) any entity controlled by Parent, (c) any entity under common control with Parent, or (d) any officer, director, partner, manager or greater than ten percent (10%) owner, stockholder, partner or member of any of the entities identified in the preceding paragraphs (a) - (c), or (e) any entity in which any of the persons identified in the preceding paragraph (d) individually or in the aggregate have a greater than ten percent (10%) ownership interest (all of the foregoing, the "Control Group") other than transactions in the ordinary course of business not exceeding the aggregate of \$100,000 in any 12 month period; (ii) pay dividends or distributions payable in cash

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or property of the Corporation unless such dividends or distributions are to be paid or passed through the Corporation to the holders of all of the issued and outstanding shares of the Parent's Series A Preferred Stock, par value \$0.001 per share ("Series A Preferred Stock") and Series B Preferred Stock, par value \$0.001 ("Series B Preferred Stock") or the equivalent shares of Parent's common stock issued upon the conversion thereof; (iii) guarantee any debts or obligations of any member of the Control Group; (iv) incur debt or liability for obligations of any member of the Control Group; (v) pledge or grant a security interest in any of the Corporation's assets for the benefit of any member of the Control Group; or (vi) loan any money or credit to any person of the Control Group.

C. The following matters must be approved by holders of a majority of the then outstanding shares of (i) Series A Preferred Stock and (ii) Series B Preferred Stock, each voting as separate classes; ~~provided; however,~~ that so long as Advanced Micro Devices, Inc., a Delaware corporation ("AMD"), holds at least 250,000 shares (as adjusted for stock splits, combinations, reclassifications or other similar events) of Series B Preferred Stock of Parent or the equivalent shares of Parent's common stock, par value \$0.001 per share, issued upon the conversion thereof and additional shares of Series B Preferred stock of Parent are outstanding and held by others, AMD shall be entitled to vote on such matters as a separate class on the following matters, and AMD's approval must be obtained before any action may be taken on such matters: (a) any sale, lease, exchange, or other disposition of all or substantially all of the assets, equity or property of the Corporation; (b) any merger, consolidation, share exchange or reorganization of the Corporation, including without limitation, any merger, consolidation or reorganization with Parent; (c) any amendment to the Certificate of Incorporation of the Corporation adversely affecting the rights of any holders of Series A Preferred Stock or Series B

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ARTICLE XI

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

[SIGNATURE PAGE FOLLOWS]

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FROM CORPORATION TRUST 302-655-5049

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THE UNDERSIGNED, being the incorporator named herein, for the purpose of forming a corporation to do business both within and without the State of Delaware and in pursuance of the General Corporation Law of Delaware, does make and file this Certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly has hereunto set his hand this 26th day of March, 1999.

Mark J. Pietrangone
 Mark J. Pietrangone
 Incorporator

[SIGNATURE PAGE TO CERTIFICATE OF INCORPORATION]