

08-06-2001

ECORDATION FORM COVER SHEET

Docket No.:



TRADEMARKS ONLY

15046.0

Tab 5

To

101800552

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

1. Name of conveying party(ies):
POWERSCHOOL, INC.

17/29/01

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State **California**
 Other _____

Additional names(s) of conveying party(ies) Yes No

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

Name: Apple Computer, Inc.

Internal Address: _____

Street Address: 1 Infinite Loop

City: Cupertino State: CA ZIP: 95014

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **California**
 Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from
Additional name(s) & address(es) Yes N

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: April 30, 2001

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

A. Trademark Application No.(s)
See Exhibit A

Additional numbers Yes No

B. Trademark Registration No.(s)

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

Name: Jonathan W. Richards

Internal Address: _____

WORKMAN, NYDEGGER & SEELEY

Street Address: 60 East South Temple

City: Salt Lake City State: UT ZIP: 84111

6. Total number of applications and registrations involved:..... 10

7. Total fee (37 CFR 3.41):.....\$ \$265.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
23-3178

~~08/03/2001 DWTNE 00000125 76115677~~

01 FC:481 40.00 OP
02 FC:482 225.00 OP

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.

Jonathan W. Richards *Jonathan W. Richards* 23 July 2001
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and

18

TRADEMARK

EXHIBIT A

Pending U.S. Trademark Applications

<u>Mark</u>	<u>Serial No.</u>	<u>Filed</u>
POWERSCHOOL (Class 42)	76/115,677	August 23, 2000
POWERSCHOOL & Design (Class 9)	75/835,777	October 28, 1999
POWERSCHOOL & Design (Class 42)	76/115,053	August 23, 2000
POWERGRADE (Class 42)	76/120,324	August 31, 2000
WHERE EDUCATION CLICKS! (Class 9)	75/835,785	October 28, 1999
WHERE EDUCATION CLICKS! (Class 42)	76/115,052	August 23, 2000
MISCELLANEOUS DESIGN (Class 9)	76/115,051	August 23, 2000
MISCELLANEOUS DESIGN (Class 42)	76/115,687	August 23, 2000

Issued U.S. Trademark Registrations

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
POWERSCHOOL (Class 9)	2,304,150	December 28, 1999
POWERGRADE (Class 9)	2,304,146	December 28, 1999

I hereby certify that the attached Agreement of Merger of Apple Computer, Inc., a California Corporation, and Powerschool, Inc., a California corporation, is a true and correct copy of the original signed on April 30, 2001.

Signed this 23RD day of July, 2001.


Jonathan W. Richards

State of California



SECRETARY OF STATE

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

That the attached transcript of 14 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

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

MAY 01 2001



Secretary of State

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

APR 30 2001

BILL JONES, Secretary of State

**AGREEMENT OF MERGER
OF APPLE COMPUTER, INC.,
A CALIFORNIA CORPORATION
AND
POWERSCHOOL, INC.,
A CALIFORNIA CORPORATION**

This Agreement of Merger (the "Agreement"), is made and entered into as of 4/30/01, 2001 by and between Apple Computer, Inc., a California corporation ("Apple") and PowerSchool, Inc., a California corporation ("PowerSchool" and, together with Apple, the "Constituent Corporations").

RECITALS

A. Apple and PowerSchool have entered into that certain Agreement and Plan of Reorganization dated March 13, 2001 (the "Reorganization Agreement"), providing, among other things, for the execution and filing of this Agreement and the merger of PowerSchool into Apple upon the terms set forth in the Reorganization Agreement and this Agreement (the "Merger"). Terms used but not defined herein shall have the meanings set forth in the Reorganization Agreement.

B. The respective Boards of Directors of each of the Constituent Corporations deem it advisable and in the best interests of each of such corporations and their respective shareholders that PowerSchool be merged into Apple and have approved this Agreement and the Merger.

C. The Reorganization Agreement, this Agreement and the Merger have been approved by the shareholders of PowerSchool.

D. The holders of PowerSchool's Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock have agreed to convert their preferred stock into shares of PowerSchool's common stock effective immediately prior to the Effective Time (as defined below).

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, each of the Constituent Corporations hereby agrees that PowerSchool shall be merged into Apple in accordance with the Reorganization Agreement and the provisions of the laws of the State of California, upon the terms and subject to the conditions set forth as follows:

ARTICLE I

THE CONSTITUENT CORPORATIONS

1.1 Apple. Apple is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 905,000,000 shares, 900,000,000 of which are designated "Common Stock," and 5,000,000 of which are designated "Preferred Stock." As of April 23, 2001, 346,674,576 shares of Common Stock were issued and outstanding and no shares of Preferred Stock were issued and outstanding.

1.2 PowerSchool. PowerSchool is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 60,210,434 shares, 48,689,189 of which are designated "Common Stock," and 11,521,245 of which are designated "Preferred Stock." Of PowerSchool's Preferred Stock, 1,310,111 shares are designated as Series A Preferred Stock, 6,204,819 shares are designated as Series B Preferred Stock, 2,738,949 shares are designated as Series C Preferred Stock and 1,266,666 shares are designated as Series D Preferred Stock. As of the date of this Agreement, 8,946,165 shares of Common Stock are issued and outstanding, 1,310,811 shares of Series A Preferred Stock are issued and outstanding, 6,204,819 shares of Series B Preferred Stock are issued and outstanding, no shares of Series C Preferred Stock are issued and outstanding and 666,664 shares of Series D Preferred Stock are issued and outstanding.

ARTICLE II

THE MERGER

2.1 The Merger. At the Effective Time (as defined in Section 2.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the General Corporation Law of the State of California ("California Law"), PowerSchool shall be merged into Apple, the separate corporate existence of PowerSchool shall cease and Apple shall continue as the surviving corporation. The surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

2.2 Filing and Effectiveness. This Agreement, together with the officers' certificates of each of the Constituent Corporations required by California Law (the "Officers' Certificates"), shall be filed with the Secretary of State of the State of California at the time specified in the Reorganization Agreement. The Merger shall become effective upon the acceptance by the Secretary of State of the State of California of the filing of this Agreement and the Officers' Certificates (the "Effective Time").

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of California Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of PowerSchool shall vest in the Surviving Corporation, and all debts, liabilities and duties of PowerSchool shall become the debts, liabilities and duties of the Surviving Corporation.

2.4 Articles of Incorporation and Bylaws. At the Effective Time, the Articles of Incorporation and Bylaws of the Surviving Corporation shall be the Apple Articles of Incorporation and Bylaws as in effect immediately prior to the Effective Time without amendment.

2.5 Effect of Merger on the Capital Stock of the Constituent Corporations.

(a) Definitions. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"Apple Common Stock" shall mean shares of the common stock, no par value, of Apple.

"Apple Option" shall mean any option to purchase shares of Apple Common Stock issued pursuant to the terms of Section 2.5(c)(i) hereof in connection with the substitution of a PowerSchool Option.

"Closing Date" shall mean date on which the Merger closes pursuant to the terms of the Reorganization Agreement.

"Common Stock Exchange Ratio" shall mean the quotient obtained by dividing (x) the Common Stock Merger Shares by (y) the Total Outstanding Common Shares, rounded to the fourth decimal place; *provided*, that the Common Stock Exchange Ratio shall be appropriately adjusted to reflect fully the effect of any stock split, reverse stock split, stock dividend, reorganization or like change with respect to Apple Common Stock occurring after the date of this Agreement and prior to the Effective Time.

"Common Stock Consideration" shall mean (i) \$62,000,000 minus (ii) the Series B Liquidation Preference.

"Common Stock Merger Shares" shall mean the number of shares of Apple Common Stock equal to the quotient obtained by dividing (x) the Common Stock Consideration by (y) the Trading Price, rounded up to the nearest whole number of shares of Apple Common Stock.

"Escrow Shares" shall mean that number of shares of Apple Common Stock equal to ten percent (10%) of the Merger Shares.

"Merger Shares" shall mean the number of shares of Apple Common Stock equal to the number obtained by dividing (x) \$62,000,000 by (y) the Trading Price, rounded up to the nearest whole number of shares of Apple Common Stock.

"PowerSchool Capital Stock" shall mean shares of PowerSchool Common Stock, PowerSchool Preferred Stock and shares of any other capital stock of PowerSchool.

"PowerSchool Common Stock" shall mean shares of common stock of PowerSchool.

"PowerSchool Option" shall mean an option to acquire shares of PowerSchool Common Stock pursuant to PowerSchool's 1999 Stock Option Plan.

"PowerSchool Preferred Stock" shall mean shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, and Series D Preferred Stock.

"PowerSchool Series A Preferred Stock" shall mean shares of Series A Preferred Stock of PowerSchool.

"PowerSchool Series B Preferred Stock" shall mean shares of Series B Preferred Stock of PowerSchool.

"PowerSchool Series C Preferred Stock" shall mean shares of Series C Preferred Stock of PowerSchool.

"PowerSchool Series D Preferred Stock" shall mean shares of Series D Preferred Stock of PowerSchool.

"PowerSchool Warrants" shall mean warrants to purchase shares of PowerSchool Capital Stock.

"Pro Rata Portion" shall mean, with respect to each Shareholder, an amount equal to the quotient obtained by dividing (x) the number of shares of Apple Common Stock received in the Merger by such Shareholder by (y) the number of shares of Apple Common Stock issued in the Merger in exchange for all shares of PowerSchool Capital Stock issued and outstanding at the Effective Time.

"Series B Accrued Dividend" shall mean the amount obtained by multiplying (x) \$0.2324 by (y) the quotient obtained by dividing the number of days which have elapsed between April 4, 2000 and the day prior to the Effective Time by 365.

"Series B Exchange Ratio" shall mean the number obtained by dividing (x) the sum of \$3.32 and the Series B Accrued Dividend, by (y) the Trading Price, rounded to the fourth decimal place; *provided*, that the Series B Exchange Ratio shall be appropriately adjusted to reflect fully the effect of any stock split, reverse stock split, stock dividend, reorganization or like change with respect to Apple Common Stock occurring after the date of this Agreement and prior to the Effective Time.

"Series B Liquidation Preference" shall mean the amount obtained by multiplying (x) the Total Outstanding Series B Shares by (y) the sum of \$3.32 and the Series B Accrued Dividend.

"Shareholder" shall mean each holder of any PowerSchool Capital Stock immediately prior to the Effective Time.

"Total Outstanding Common Shares" shall mean the aggregate number of shares of PowerSchool Common Stock issued and outstanding immediately prior to the Effective Time plus the aggregate number of shares of PowerSchool Common Stock issuable upon the exercise in full of all PowerSchool Options and all other rights to acquire PowerSchool Common Stock (other than PowerSchool Warrants which are terminated on or exercised as of the Effective Time) and any shares of PowerSchool Series B Preferred Stock not converted into shares of PowerSchool Common Stock prior to the Effective Time.

"Total Outstanding Series B Shares" shall mean the aggregate number of shares of PowerSchool Series B Preferred Stock issued and outstanding immediately prior to the Effective Time plus the aggregate number of shares of PowerSchool Series B Preferred Stock issuable upon the exercise in full of all PowerSchool Options and all other rights to acquire PowerSchool Series B Preferred Stock (other than PowerSchool Warrants) issued and outstanding immediately prior to the Effective Time.

"Trading Price" shall mean the average closing sales price of Apple Common Stock as reported on the Nasdaq National Market for the ten (10) consecutive trading days commencing on the eleventh trading day prior to the Closing Date and ending on and inclusive of the second trading day prior to the Closing Date.

(b) Shares to be Issued; Effect on Capital Stock. The maximum number of shares of Apple Common Stock to be issued (including, without limitation, Apple Common Stock reserved for issuance upon exercise of Apple Options issued pursuant the Reorganization Agreement) in exchange for the acquisition by Apple of all PowerSchool Capital Stock shall be equal to the number of Merger Shares. At the Effective Time, by virtue of the Merger and without any action on the part of Apple, PowerSchool or the Shareholders, upon the terms and conditions set forth below in this Section 2.5(b) and elsewhere in this Agreement, each share of PowerSchool Capital Stock issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares (as defined in Section 2.6 hereof)) shall be canceled and extinguished and automatically converted into the right to receive, upon surrender of the certificate representing such share of PowerSchool Capital Stock in the manner set forth in Section 2.7(c) hereof, an amount of shares of Apple Common Stock, as follows:

(i) Series B Preferred Stock. Prior and in preference to any distribution of the Merger Shares to holders of PowerSchool Common Stock, to the extent not converted prior to the Effective Time, each share of PowerSchool Series B Preferred Stock issued and outstanding immediately prior to the Effective Time shall be exchangeable for a fraction of a share of Apple Common Stock equal to the Series B Exchange Ratio (the "Series B Preferential Consideration").

(ii) Common Stock Consideration. After full payment of the Series B Preferential Consideration in respect of all outstanding PowerSchool Series B Preferred Stock, each share of PowerSchool Common Stock issued and outstanding immediately prior to the Effective Time shall be exchangeable for a fraction of a share of Apple Common Stock equal to the Common Stock Exchange Ratio.

(c) Cancellation of PowerSchool Options; Cancellation of PowerSchool Warrants.

(i) PowerSchool and its Board of Directors will take all action necessary such that, at the Effective Time, all of PowerSchool Options and PowerSchool's 1999 Stock Option Plan (the "Plan") will be canceled. As soon as practicable following the Closing but effective as of the Effective Time and contingent on consummation of the Merger, Apple shall issue a non-qualified Apple Option in substitution for each canceled PowerSchool Option held by a continuing employee of Apple or the Surviving Corporation. Subject to Section 5.15 of the Reorganization Agreement, each Apple Option issued in substitution of a PowerSchool Option pursuant to this Section 2.5(c) shall be subject to the terms and conditions set forth in Apple's 1997 Employee Stock Option Plan, as amended and restated effective as of October 11, 2000, and (A) such Apple Option will be exercisable for that number of whole shares of Apple Common Stock equal to the product of the number of shares of PowerSchool Common Stock that were issuable upon exercise of such PowerSchool Option immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Apple Common Stock, and (B) the per share exercise price for the shares of Apple Common Stock issuable upon exercise of such Apple Option shall be equal to the quotient obtained by dividing the exercise price per share of PowerSchool Common Stock at which such substituted PowerSchool Option was exercisable immediately prior to the Closing Date by the Common Stock Exchange Ratio, rounded up to the nearest whole cent.

(ii) At the Effective Time, each outstanding PowerSchool Warrant not exercised prior to the Effective Time shall be canceled and extinguished.

(d) Substituted Agreement. As soon as practicable following the Closing, Apple shall issue to each holder of a PowerSchool Option to be substituted by Apple pursuant to Section 2.5(c) hereof and Section 5.15 of the Reorganization Agreement an Apple option agreement document evidencing the substitution of such PowerSchool Option by Apple, and each former holder of a PowerSchool Option so substituted by Apple shall acknowledge the receipt of the same.

(e) Withholding Taxes. Any number of shares of Apple Common Stock issuable pursuant to Section 2.5 hereof shall be subject to, and reduced by, the amount of any state, federal and foreign withholding taxes incurred (and not previously paid by or on behalf of such Shareholder or PowerSchool) in connection with the acquisition of PowerSchool Capital Stock upon the exercise of PowerSchool Options.

(f) Fractional Shares. No fractional shares of Apple Common Stock shall be issued in the Merger. In lieu thereof, any fractional share shall be rounded to the nearest whole share of Apple Common Stock (with 0.5 or more share being rounded up).

2.6 Dissenting Shares.

(a) Dissenting Shares for Holders of PowerSchool Capital Stock.

(i) Notwithstanding any provision of this Agreement to the contrary, any shares of PowerSchool Capital Stock held by a holder who has demanded and perfected appraisal rights for such shares in accordance with California Law and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal rights ("Dissenting Shares"), shall not be converted into or represent a right to receive Apple Common Stock pursuant to Section 2.5, but the holder thereof shall only be entitled to such consideration as may be determined to be due with respect to Dissenting Shares pursuant to California Law.

(ii) Notwithstanding the provisions of subsection (a), if any holder of shares of PowerSchool Capital Stock who demands appraisal of such shares under California Law shall effectively withdraw or lose (through failure to perfect or otherwise) the right to appraisal, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive Apple Common Stock as provided in Section 2.5 (and be subject to the provisions of Section 7.2 of the Reorganization Agreement), without interest thereon, upon surrender of the certificate representing such shares.

(iii) PowerSchool shall give Apple (i) prompt notice of any written demands for appraisal of any shares of PowerSchool Capital Stock, withdrawals of such demands, and any other instruments served pursuant to California Law and received by PowerSchool and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under California Law. PowerSchool shall not, except with the prior written consent of Apple or as required under California law, voluntarily make any payment with respect to any demands for appraisal of capital stock of PowerSchool or settle or offer to settle any such demands.

(iv) Notwithstanding the foregoing, to the extent that Apple or PowerSchool (i) makes any payment or payments in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement or (ii) incurs any other costs or expenses in respect of any Dissenting Shares (excluding payments for such shares) (together "Dissenting Share Payments"), Apple shall be entitled to recover under the terms of Article VII of the Reorganization Agreement the amount of such Dissenting Share Payments.

2.7 Surrender of Certificates.

(a) Exchange Agent. The Secretary of Apple (or such agent as Apple shall reasonably appoint) shall serve as the exchange agent (the "Exchange Agent") in the Merger.

(b) Apple to Provide Apple Common Stock. Promptly after receipt by Apple of confirmation of the filing of this Agreement, Apple shall make available to the Exchange Agent for exchange in accordance with this Section 2 and Article I of the Reorganization Agreement the shares of Apple Common Stock issuable pursuant to Section 2.5 hereof in exchange for outstanding shares of PowerSchool Capital Stock; *provided that*, on behalf of the Shareholders, Apple shall make a deposit of the Escrow Shares to constitute an escrow fund (the "Escrow Fund") out of the aggregate number of shares of Apple Common Stock otherwise issuable to the Shareholders pursuant to Section 2.5 hereof. Each Shareholder shall be deemed to have contributed his or her Pro Rata Portion of the Escrow Shares to the Escrow Fund. Pursuant to Article VII of the Reorganization Agreement, the Escrow Fund shall serve as indemnity for Apple against certain losses that may be incurred by Apple for a period of twelve (12) months following the Effective Time.

(c) Exchange Procedures. On or after the Closing Date, the Shareholders will surrender the certificates representing their shares of PowerSchool Capital Stock (the "PowerSchool Stock Certificates") to the Exchange Agent for cancellation together with a duly completed and validly executed letter of transmittal in such form and having such provisions that Apple may reasonably request. Upon surrender of a PowerSchool Stock Certificate for cancellation to the Exchange Agent, or such other agent or agents as may be appointed by Apple, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, subject to the terms of Section 2.7(e) hereof, the holder of such PowerSchool Stock Certificate shall be entitled to receive from the Exchange Agent in exchange therefor, a certificate representing the number of whole shares of Apple Common Stock (less the number of shares of Apple Common Stock to be deposited in the Escrow Fund on such holder's behalf pursuant to Section 2.7(b) hereof and Article VII of the Reorganization Agreement) to which such holder is entitled pursuant to Section 2.5(b) hereof, and PowerSchool Stock Certificate so surrendered shall be canceled. Until so surrendered, each outstanding PowerSchool Stock Certificate will be deemed from and for all corporate purposes, to evidence only the ownership of the number of full shares of Apple Common Stock into which such shares of PowerSchool Common Stock shall have been so converted.

(d) Distributions With Respect to Unexchanged Shares. No dividends or other distributions declared or made after the Effective Time with respect to Apple Common Stock with a record date after the Effective Time will be paid to the holder of any unsurrendered PowerSchool Stock Certificate with respect to the shares of Apple Common Stock represented thereby until the

holder of record of such PowerSchool Stock Certificate shall surrender such Certificate. Subject to applicable law, following surrender of any such PowerSchool Stock Certificate, there shall be paid to the record holder of the certificates representing whole shares of Apple Common Stock issued in exchange therefor, without interest, at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Apple Common Stock.

(e) Transfers of Ownership. If any certificate for shares of Apple Common Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it will be a condition of the issuance and/or delivery thereof that the certificate so surrendered will be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange will have paid to Apple or any agent designated by it any transfer or other taxes required by reason of the issuance of a certificate for shares of Apple Common Stock in any name other than that of the registered holder of the certificate surrendered, or established to the satisfaction of Apple or any agent designated by it that such tax has been paid or is not payable.

(f) No Liability. Notwithstanding anything to the contrary in this Section 2.7, neither the Exchange Agent, the Surviving Corporation, nor any party hereto shall be liable to a holder of shares of PowerSchool Capital Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

2.8 No Further Ownership Rights in PowerSchool Capital Stock. The shares of Apple Common Stock issued upon the surrender for exchange of shares of PowerSchool Capital Stock in accordance with the terms hereof shall be deemed to be full satisfaction of all rights pertaining to such shares of PowerSchool Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of PowerSchool Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, PowerSchool Stock Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Section 2.

2.9 Lost, Stolen or Destroyed Certificates. In the event any certificates evidencing shares of PowerSchool Capital Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such amount, if any, as may be required pursuant to Section 2.5 hereof; *provided, however*, that Apple may, in its discretion and as a condition precedent to the issuance thereof, require the Shareholder who is the owner of such lost, stolen or destroyed certificates to deliver a bond in such amount as it may reasonably direct against any claim that may be made against Apple or the Exchange Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

2.10 Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. None of the parties hereto shall take any action that is inconsistent with the treatment of the Merger as a reorganization, including taking any inconsistent position on any tax return, except as otherwise required pursuant to a final determination (as defined in Section 1313 of the Internal Revenue Code).

2.11 Taking of Necessary Action: Further Action. If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of PowerSchool, Apple and the officers and directors of PowerSchool and Apple are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action, so long as such action is not inconsistent with this Agreement.

ARTICLE III

MISCELLANEOUS

3.1 Termination by Mutual Agreement. Notwithstanding the approval of this Agreement by the shareholders of PowerSchool, this Agreement may be terminated at any time prior to the Effective Time by mutual agreement of the Board of Directors of PowerSchool and Apple.

3.2 Termination of Reorganization Agreement. Notwithstanding the approval of this Agreement by the shareholders of PowerSchool, this Agreement shall terminate immediately in the event that the Reorganization Agreement shall be terminated as therein provided, at any time prior to the Effective Time.

3.3 Effects of Termination. In the event of the termination of this Agreement, this Agreement shall become void and there shall be no liability on the part of either PowerSchool or Apple or their respective officers or directors, except as otherwise provided in the Reorganization Agreement.

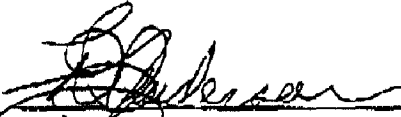
3.4 Amendment. This Agreement may be amended, at any time prior to the Effective Time, by the parties hereto at any time before or after approval hereof by the shareholders of PowerSchool, but, after any such approval, no amendment will be made which, under the applicable provisions of California law, requires the further approval of shareholders without obtaining such further approval. This Agreement shall not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

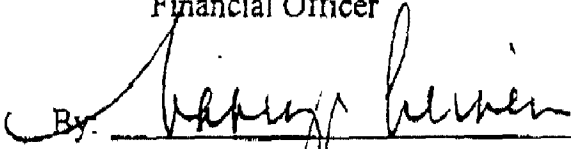
3.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

3.6 Governing Law. This Agreement shall be governed in all respects, including validity, interpretation and effect by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

APPLE COMPUTER, INC.

By: 
Name: Fred D. Anderson
Title: Executive Vice President and Chief
Financial Officer

By: 
Name: Nancy R. Heinen
Title: Senior Vice President, General Counsel
and Secretary

POWERSCHOOL, INC.

By: 
Name: Greg Portant
Title: President

By: _____
Name: C.K. Wong
Title: Secretary

[AGREEMENT OF MERGER]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

APPLE COMPUTER, INC.

By: _____
Name: Fred D. Anderson
Title: Executive Vice President and Chief
Financial Officer

By: _____
Name: Nancy R. Heinen
Title: Senior Vice President, General Counsel
and Secretary

POWERSCHOOL, INC.

By: _____
Name: Greg Porter
Title: President

By: CKWong
Name: C.K. Wong
Title: Secretary

[AGREEMENT OF MERGER]

TRADEMARK

REEL: 002339 FRAME: 0826

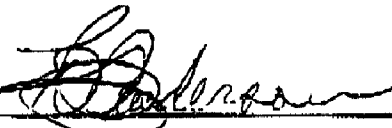
OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Fred D. Anderson and Nancy R. Heinen, hereby certify that:

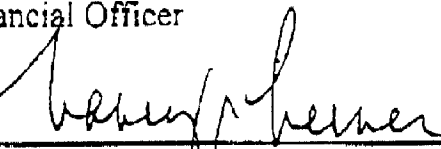
1. They are the Executive Vice President and Chief Financial Officer and the Senior Vice President, General Counsel and Secretary, respectively, of Apple Computer, Inc., a California corporation ("Apple").
2. The principal terms of the Agreement of Merger in the form attached to this Certificate (the "Merger Agreement") providing for the merger (the "Merger") of PowerSchool, Inc., a California corporation, into Apple was duly approved by the Board of Directors of Apple.
3. The vote of the shareholders of Apple was not required to approve the Merger or the principal terms of the Agreement of Merger pursuant to the provisions of Section 1201.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: April 30, 2001

Signature: 

Name: Fred D. Anderson
Title: Executive Vice President and Chief
Financial Officer

Signature: 

Name: Nancy R. Heinen
Title: Senior Vice President, General Counsel
and Secretary

POWERSCHOOL, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, Greg Porter and C.K. Wong, do hereby certify that:

1. They are the President and Secretary, respectively, of PowerSchool, Inc., a California corporation ("PowerSchool").

2. The principal terms of the Agreement of Merger in the form attached to this Certificate (the "Merger Agreement") providing for the merger (the "Merger") of PowerSchool into Apple Computer, Inc., a California corporation, were duly approved by the Board of Directors and by the shareholders of PowerSchool.

3. The authorized capital stock of PowerSchool consists of 60,210,434 shares, 48,689,189 of which are designated "Common Stock," and 11,521,245 of which are designated "Preferred Stock." Of the Preferred Stock, 1,310,111 shares are designated as Series A Preferred Stock, 6,204,819 shares are designated as Series B Preferred Stock, 2,738,949 are designated as Series C Preferred Stock and 1,266,666 are designated as Series D Preferred Stock. 8,946,165 shares of Common Stock were issued and outstanding and entitled to vote on the Merger and 8,182,294 shares of Preferred Stock were issued and outstanding and entitled to vote on the Merger, of which 1,310,811 shares were Series A Preferred Stock, 6,204,819 were shares of Series B Preferred Stock, and 666,664 were shares of Series D Preferred Stock. There were no outstanding shares of Series C Preferred Stock. The vote of more than 50% of the outstanding shares of Common Stock, more than 50% of the outstanding shares of Preferred Stock and more than 50% of the outstanding shares of Series B Preferred Stock and Series C Preferred Stock (both series voting together as a separate class) was required to approve the Merger.

4. The principal terms of the Merger Agreement were approved by the vote of a majority of the holders of the outstanding Common Stock, a majority of the holders of the outstanding Preferred Stock and a majority of the holders of the outstanding Series B Preferred Stock and Series C Preferred Stock (both series voting together as a separate class), which vote exceeded the vote required.

[Signature page to follow]

TRADEMARK

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: April 30, 2001.

Signature: 
Name: Greg Porter
Title: President

Signature: CKWONG
Name: C.K. Wong
Title: Secretary

