

09-07-2001

IEET



TO THE ASSISTANT COMMISSIONER OF P.

101838096

Attached original documents or copy thereof.

9-7-01

1. Name of conveying party:

Masimo Corporation

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State of California
- Other:

Additional name(s) of conveying party(ies) attached?

Yes No

2. Name and address of receiving party:

Name: Masimo Corporation

Internal Address:

Street Address: 2852 Kelvin Avenue
City: Irvine State: CA ZIP: 92614

9-7-01

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State of Delaware
- 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) and address(es) attached?

Yes No

3. Nature of conveyance:

- Assignment
- Merger of Masimo Corporation, a California corporation, into Masimo Corporation, a Delaware corporation
- Security Agreement
- Change of Name
- Other:

Execution Date: (If multiple assignors, list execution dates in numerical order corresponding to numbers indicated in 1 above) June 20, 1996

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

a. Trademark Application No(s):

b. Trademark Registration Nos:

- 1,951,663
- 1,906,425
- 1,991,550
- 1,941,315
- 2,018,361
- 2,000,434
- 1,896,713

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2001 SEP -7 PM 12:37
ASSIGNMENT DIVISION

Additional numbers attached? Yes No

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

Name: Deborah S. Shepherd
KNOBBE, MARTENS, OLSON & BEAR, LLP
Customer No. 20,995

Internal Address: Sixteenth Floor
Street Address: 620 Newport Center Drive
City: Newport Beach State: CA ZIP: 92660
Attorney's Docket No.:

MASIMOT.068T/069T/070T/071T/072T/073T/074T

7. Total fee (37 CFR 1.21(h)): \$190

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 11-1410

Please charge this account for any additional fees which may be required, or credit any overpayment to this account.

6. Total number of registrations involved: 7

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.

Deborah S. Shepherd
Name of Person Signing

Deborah Shepherd
Signature

September 4, 2001
Date

09/07/2001 JJALLANR 00000041 1951663

01 FC:481
02 FC:482

40.00 OP
150.00 OP

TRADEMARK
REEL: 002362 FRAME: 0764

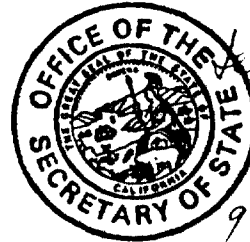
Mail documents to be recorded with required cover sheet information to:

U.S. Patent and Trademark Office
Attn: Assignment Division
Crystal Gateway-4
1213 Jefferson Davis Highway, Suite 320
Arlington, VA 22202

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083101

State of California

SECRETARY OF STATE



9 pages

CORPORATION DIVISION

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

That the annexed transcript was prepared by and in this office from the record on file, 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

July 1, 1966



Bill Jones

Secretary of State

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AGREEMENT AND PLAN OF MERGER
OF MASIMO CORPORATION,
A DELAWARE CORPORATION
AND
MASIMO CORPORATION,
A CALIFORNIA CORPORATION

JUN 21 1996

Bill Jones
Secretary of State

THIS AGREEMENT AND PLAN OF MERGER, dated as of June 20, 1996 (this "Agreement"), is between MASIMO CORPORATION, a Delaware corporation ("Masimo Delaware"), and MASIMO CORPORATION, a California corporation ("Masimo California"), which corporations are sometimes referred to herein as the "Constituent Corporations".

RECITALS

A. Masimo Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 31,000,000 shares, 21,000,000 of which are designated "Common Stock", \$.001 par value, and 9,000,000 of which are designated "Preferred Stock", \$.001 par value. As of June 20, 1996, 100 shares of Common Stock were issued and outstanding, all of which were held by Masimo California. No shares of Preferred Stock were outstanding.

B. Masimo California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 31,000,000 shares, 21,000,000 of which are designated "Common Stock", no par value and 9,000,000 of which are designated "Preferred Stock", no par value. As of June 20, 1996, 5,402,000 shares of Common Stock were outstanding and 7,557,086 shares of Preferred Stock were outstanding.

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

D. The respective Boards of Directors of Masimo Delaware and Masimo California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

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

1.
MERGER

1.1 *Merger.* In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, Masimo California shall be merged with and into Masimo Delaware (the "Merger"), the separate existence of Masimo California shall cease and Masimo Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation", and the name of the Surviving Corporation shall be "Masimo Corporation."

1.2 *Filing and Effectiveness.* The Merger shall become effective when the following actions have been completed:

(a) This Agreement has been adopted and approved by the stockholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement have been satisfied or duly waived by the party entitled to satisfaction thereof;

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

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

1.3 *Effect of the Merger.* Upon the Effective Date of the Merger, the separate existence and corporate organization of Masimo California shall cease and Masimo Delaware, as the Surviving Corporation, shall continue its corporate existence under the laws of the State of Delaware.

II.

CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 *Certificate of Incorporation.* The Certificate of Incorporation of Masimo Delaware as in effect immediately before the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended or repealed in accordance with the provisions thereof and applicable law.

2.2 *Bylaws.* The Bylaws of Masimo Delaware as in effect immediately before the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended or repealed in accordance with the provisions thereof and applicable law.

2.3 *Directors and Officers.* The directors and officers of Masimo California immediately before the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until the expiration of their current terms and until their successors have been duly elected and qualified, or until their prior resignation, removal or death, subject to the Certificate of Incorporation and the Bylaws of the Surviving Corporation.

III.

MANNER OF CONVERSION OF STOCK

3.1 *Masimo California Shares.* Upon the Effective Date of the Merger, each share of Masimo California Common Stock, no par value, issued and outstanding immediately before the Effective Date of the Merger shall by virtue of the Merger and without any action by the Constituent Corporations, by the holder of such shares or by any other person be converted into and exchanged for one-half (0.5) of one fully paid and nonassessable share of Common Stock, \$.001 par value, of the Surviving Corporation. Upon the Effective Date of the Merger, each share of Series A Preferred Stock, no par value, Series B Preferred Stock, no par value, and Series C Preferred Stock, no par value, of Masimo California issued and outstanding immediately before the Effective Date of the Merger shall by virtue of the Merger and without any action by the Constituent Corporations, by the holder of such shares or by any other person be converted into and exchanged for one-half (0.5) of one fully paid and nonassessable share of Series A Preferred Stock, \$.001 par value, Series B Preferred Stock, \$.001 par value, and Series C Preferred Stock, \$.001 par value, respectively, of the Surviving Corporation. No fractional shares, or cash in lieu thereof, shall be issued in the Merger and certificates representing shares of Masimo Delaware shall be rounded down to the nearest whole share.

3.2 *Masimo California Options, Stock Purchase Rights and Convertible Securities.* Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the Masimo California 1989 Incentive Stock Option, Nonqualified Stock Option and Restricted Stock Purchase Plan and all other employee benefit plans of Masimo California. Each outstanding and unexercised option, other right to purchase or security convertible into Masimo California Common Stock shall become an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock on the basis of one-half (0.5) of one share of the Surviving Corporation's Common Stock for each share of Masimo California Common Stock issuable pursuant to any such option, stock purchase right or convertible security, under the same terms and conditions, but at an exercise price per share equal to two (2) times the exercise price per share applicable to any such Masimo California stock option, stock purchase right or other convertible security at the Effective Date of the Merger. Each Preferred Stock Purchase Warrant convertible into Masimo California Series A Preferred Stock shall become a Preferred Stock Purchase Warrant convertible into the Surviving Corporation's Series A Preferred Stock on the basis of one (1) share of the Surviving Corporation's Series A Preferred Stock for each share of Masimo California Series A Preferred Stock issuable pursuant to any such Preferred Stock Purchase Warrant.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of stock options, stock purchase rights and convertible securities equal to one-half (0.5) of the number of shares of Masimo California Common Stock so reserved immediately before the Effective Date of the Merger. A number of shares of the Surviving Corporation's Series A Preferred Stock shall be reserved for issuance upon the exercise of Preferred Stock Purchase Warrants equal to the number of shares of Masimo California Series A Preferred Stock so reserved immediately before the Effective Date of the Merger.

3.3 *Masimo Delaware Common Stock.* Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of Masimo Delaware issued and outstanding immediately before the Effective Date of the Merger shall, by virtue of the Merger and without any action by Masimo Delaware, by the holder of such shares or by any other person be canceled and returned to the status of authorized but unissued shares.

3.4 *Exchange of Certificates.* After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Masimo California Common Stock may, at such stockholder's option, surrender the same for cancellation to Stradling, Yocca, Carlson & Rauth, 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, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock into which the surrendered shares were converted as herein provided, rounded down to the nearest whole share. Until so surrendered, each outstanding certificate theretofore representing shares of Masimo California Common Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as adjusted pursuant to Section 3.1 above, into which such shares of Masimo California Common Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock 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 has been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock, Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to restrictions on transferability as the certificates of Masimo 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 Masimo Delaware 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 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 Masimo Delaware that such tax has been paid or is not payable.

IV. TRANSFER OF ASSETS AND LIABILITIES

4.1 *Transfer of Assets and Liabilities:* On the Effective Date, (i) the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all the disabilities, duties and restrictions of or upon each of the Constituent Corporations; (ii) all rights, privileges, powers and franchises of each of the Constituent Corporations, all property, real, personal and mixed, of each of the Constituent Corporations, all debts due to each of the Constituent Corporations on whatever account and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation; (iii) all property, rights, privileges, powers and franchises, as well as all other interests, shall be as effectively the property of the Surviving Corporation as they were of the Constituent Corporations before the Effective Date; and (iv) the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert to either of the Constituent Corporations or be in any way impaired by reason of the Merger. Notwithstanding the foregoing, (i) the liabilities of the Constituent Corporations and of their stockholders, directors and officers shall not be affected by the Merger; (ii) all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired notwithstanding the Merger; and (iii) any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place; provided, however, that the claims and rights of the creditors of either or both of the Constituent Corporations may be modified with the consent of such creditors; and, provided further, that all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation and accordingly may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

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

V. GENERAL

5.1 *Covenants of Masimo Delaware.* Masimo Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) 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.

(b) File all documents with the California Franchise Tax Board necessary for the assumption by Masimo Delaware of all of the franchise tax liabilities of Masimo California.

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

5.2 *Deferral.* Consummation of the merger may be deferred by the Board of Directors of Masimo California for a reasonable period of time if the Board of Directors determines that deferral would be in the best interests of Masimo California and its shareholders.

5.3 *Amendment.* The parties hereto, by mutual consent of their respective boards of Directors, may amend, modify or supplement this Agreement in such manner as may be agreed upon by them in writing at any time before or after adoption and approval of this Agreement by the stockholders of Masimo Delaware and Masimo California, but not later than the Effective Date; provided, however, that no such amendment, modification or supplement not adopted and approved by the stockholders of Masimo Delaware and Masimo California shall affect the rights of such stockholders or change any of the principal terms of this Agreement.

5.4 *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 Masimo California or of Masimo Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of Masimo California or by the stockholders of Masimo Delaware, or by both.

In the event of abandonment of this Agreement, as above provided, this Agreement shall become wholly void and of no effect, and no liability on the part of either Constituent Corporation or its Board of Directors or its stockholders shall arise by virtue of such termination except as provided in Section 5.5 hereof.

5.5 *Expenses.* If the Merger becomes effective, the Surviving Corporation shall assume and pay all expenses in connection therewith not theretofore paid by the respective parties. If for any reason the Merger shall not become effective, Masimo California shall pay all expenses incurred in connection with all the proceedings taken in respect of this Agreement or relating thereto.

5.6 *Registered Office.* The registered office of the Surviving Corporation in the State of Delaware is located at The Corporation Service Company, 1013 Centre Road, Wilmington, Delaware 19805, and The Corporation Service Company is the registered agent of the Surviving Corporation at such address.

5.7 *Agreement.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 23361 Madero, Suite #100, Mission Viejo, California 92691, and, upon request and without cost, copies thereof will be furnished to any stockholder of either Constituent Corporation.

5.8 *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, so far as applicable, the Merger provisions of the California General Corporation Law.

5.9 *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.

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

MASIMO CORPORATION,
a Delaware corporation

By: Joe E. Kiani
Joe E. Kiani
President and Chief Executive Officer

MASIMO CORPORATION,
a California corporation

By: Joe E. Kiani
Joe E. Kiani
President and Chief Executive Officer

CERTIFICATE OF APPROVAL

OF

AGREEMENT AND PLAN OF MERGER

JOE E. KIANI and BRADLEY R. LANGDALE hereby certify that:

(a) They are the Chief Executive Officer and Secretary, respectively of Masimo Corporation, a California corporation (the "Corporation").


(b) The Agreement and Plan of Merger in the form attached hereto was duly approved by the Board of Directors and the shareholders of the Corporation.

(c) There are two classes of shares of the Corporation, consisting of Common Stock and Preferred Stock, and the number of shares outstanding and entitled to vote on the merger is 5,492,000 shares of Common Stock, 1,610,608 shares of Series A Preferred Stock, 2,250,000 shares of Series B Preferred Stock, and 3,696,478 shares of Series C Preferred Stock.

(d) The merger was approved by the holders of 82% of the outstanding shares of Common Stock, 83% of the outstanding shares of Preferred Stock, 62% of the outstanding shares of Series A Preferred Stock, 96% of the outstanding shares of series B Preferred Stock, and 83% of the outstanding Series C Preferred Stock entitled to vote thereon. The merger required the approval of a majority of the outstanding shares of Common Stock and Preferred Stock, each voting as a separate class, and the approval of each Series of Preferred Stock, each voting as a separate class. The votes cast in favor of the merger equaled or exceeded the percentage vote required for the Common Stock and Preferred Stock, each voting as a separate class, and for each series of Preferred Stock, each voting as a separate class.

The undersigned further declares 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 their own knowledge.

Dated: June 10, 1996


JOE E. KIANI, Chief Executive Officer


BRADLEY R. LANGDALE, Secretary

OFFICER'S CERTIFICATE

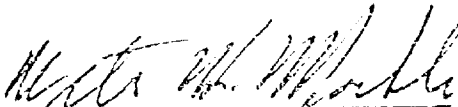
OF

MASIMO CORPORATION,

a Delaware corporation

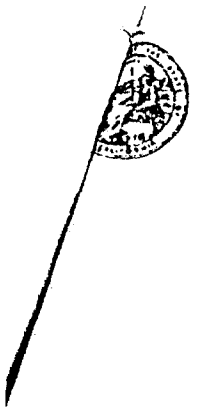
The undersigned, WILLIAM H. MARKLE, a Vice President of MASIMO CORPORATION, a corporation organized and existing under the laws of the State of Delaware ("Masimo Delaware"), hereby certifies, pursuant to the provisions of Sections 193 and 252 of the General Corporation Law of the State of Delaware, that Masimo Corporation, a California corporation ("Masimo California"), the sole stockholder of Masimo Delaware, has voted all outstanding shares of Masimo Delaware in favor of the merger of Masimo California with and into Masimo Delaware on the terms and conditions set forth in the Agreement and Plan of Merger to which this Certificate is appended.

IN WITNESS WHEREOF, I have subscribed my name to this Certificate as of June 20, 1996.


William H. Markle, Vice President

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TRADEMARK
REEL: 002362 FRAME: 0774



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
 P.O. BOX 942657
 SACRAMENTO, CALIFORNIA 94257 0540
 TELEPHONE (916) 845-4124

**Tax Clearance
 Certificate**

MASINO CORPORATION
 26052 MERIT CIR
 LAGUNA HILLS, CA. 92653

ISSUED TO: MASINO CORPORATION
 CORP # : 1639176

This certificate expires on 7-15-06

THIS IS TO CERTIFY THAT all taxes imposed on the above-named corporation under the Bank and Corporation Tax Law have been paid or are secured by bond, deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State at Sacramento, California. The original of this certificate may be retained for the files of the corporation.

The required Secretary of State forms to Dissolve, withdraw, or merge must be filed with the Office of the Secretary of State at 1500 Eleventh St., Third Floor, Sacramento, CA 95814-5701 by the expiration date of this notice.

NOTE: If the above process is not completed with the Secretary of State by the expiration date, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

357:CA:TC:HH

By Hartley Hermanson
 Authorized Signature
 Corporation Audit Tax Clearance Unit

F18 2570 (REV 4 85)

