

12-18-2001

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

12-28-2001



RECO

101929685

TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New 12-18-01
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

12/27/2001 DBYRNE 00000187 75607896

01 FC:481
02 FC:482

40.00 DP
50.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK
REEL: 002414 FRAME: 0085

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name Jennifer L. Scully

Address (line 1) Foster, Pepper & Shefelman, PLLC

Address (line 2) 1111 Third Avenue, Suite 3400

Address (line 3)

Address (line 4) Seattle, WA 98101

Correspondent Name and Address

Area Code and Telephone Number

Name Jennifer L. Scully

Address (line 1) Foster, Pepper & Shefelman, PLLC

Address (line 2) 1111 Third Avenue, Suite 3400

Address (line 3)

Address (line 4) Seattle, WA 98101

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

14

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

75607896

75607895

75607845

Number of Properties

Enter the total number of properties involved.

3

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41)

\$ 90.00

Method of Payment

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

6261

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Jennifer L. Scully

12/18/01

Name of Person Signing

Signature

Date Signed

RECORDATION FORM COVER SHEET CONTINUATION TRADEMARKS ONLY

Conveying Party

Mark if additional names of conveying parties attached

Enter Additional Conveying Party

Execution Date
Month Day Year

Name Darwin Networks Acquisition Corp.

August 3, 2001

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of receiving parties attached

Enter Additional Receiving Party

Name 9 Lives Communications, Inc.

DBA/AKA/TA

Composed of

Address (line 1) 2003 Western Avenue

Address (line 2) Suite 660

Address (line 3) Seattle

WA

State/Country

98101

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization Washington

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

75607896

75607895

75607845

STATE of WASHINGTON



SECRETARY of STATE

I, *SAM REED*, Secretary of State of the State of Washington and custodian of its seal,
hereby issue this

CERTIFICATE OF AMENDMENT

to

9 LIVES COMMUNICATIONS, INC.

a Washington Profit corporation. Articles of Amendment were filed for record in this
office on the date indicated below.

Changing name to INTERQUEST COMMUNICATIONS, INC.

UBI Number: 602 120 098

Date: September 10, 2001



*Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital*

A handwritten signature in cursive script that reads "Sam Reed".

Sam Reed, Secretary of State
2-953315-5

TRADEMARK

REEL: 002414 FRAME: 0088

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "Agreement"), is made and entered into as of August 3, 2001, by and between Darwin Networks, Inc., a Delaware corporation, and Darwin Networks Acquisition Corporation, a Delaware corporation, with offices at 9700 Ormsby Station Road, Louisville, Kentucky (collectively, "Seller"), and 9 Lives Communications, Inc., a Washington corporation, with offices at 2003 Western Avenue, Suite 660, Seattle, Washington ("Purchaser").

WITNESSETH:

WHEREAS Seller is an internet service provider ("ISP") which has filed for protection under Chapter 11 of the United States Bankruptcy laws; and

WHEREAS Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, certain assets of the Seller relating to its ISP business operations, on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth the parties hereto agree as follows:

ARTICLE 1

1.1. Purchase and Sale of Assets. Subject to Bankruptcy Court approval as set forth herein, Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell to Purchaser, the following assets of Seller (the "Assets"):

(a) The Seller-owned assets set forth on Exhibit "A" attached hereto and made a part hereof; Seller and Purchaser acknowledge that Exhibit A lists certain assets that are leased from and/or owned by Cisco and other third parties and that Seller is selling only those assets owned by Seller regardless of the inclusion on Exhibit A of items not owned by Seller;

(b) All of Seller's owned equipment in the Seattle, Washington and Redwood City, California AT&T Metro Pops, including, but not limited to, equipment racks, muxs, cables, and any other equipment used by Seller in these two facility locations, but excluding equipment manufactured by Cisco Systems or not owned by Seller;

(c) All of Seller's intellectual property rights, if any, in the tradename of "InterQuest" and any and all related or associated trademarks, tradenames and tradedress rights to such marks;

(d) All of Seller's right and interest in an to the internet domain names arising from 'Interquest', including, but not limited to, "interquest.net", "iqmail.net", "iqbilling.net", "iqlocal.net", as well as any other Interquest-related domain name utilized in hosting email and web pages in the Multiple Dwelling Unit ("MDU") business sector; provided, however, Seller makes no representation that it owns or has the right to use any of the specific domain names referred to in this subsection (d);

(e)

(f)

(g)

1.2. Assumption of Liabilities.

(a) The parties agree that this Agreement is intended as a sale of specific assets of Seller and is not intended to and shall not be deemed to create a partnership, joint venture or any other business relationship between Seller and Purchaser. Except as otherwise provided in this Agreement, Purchaser shall in no event assume or be responsible for any liens, claims, demands, liabilities, obligations or encumbrances of Seller, absolute or contingent, matured or unmatured, known or unknown, and, except as otherwise provided herein, the Assets shall be sold and conveyed to Purchaser free and clear of all liens, claims, demands, liabilities, obligations and encumbrances whatsoever. Without limiting the generality of the foregoing, Buyer assumes none of the following:

(i)

(ii)

(iii)

1.3. Purchase Price and Payment.

(a)

(b) Purchaser shall pay to Seller in immediately available funds at the Closing the Purchase Price.

1.4 Access Prior to Closing.

[REDACTED]

ARTICLE 2

CLOSING

2.1. Closing.

(a)

[REDACTED]
Agreement as the "Closing Date."

(b) Seller shall transfer and Purchaser shall accept physical possession/title of the Assets as of 12:01 p.m. on the Closing Date.

ARTICLE 3

RIGHT OF INSPECTION

3.1. Access for Review.

[REDACTED]

Purchaser

3.2. Contingencies. S

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

To induce Purchaser to enter into and perform this Agreement, Seller represents and warrants to Purchaser as follows:

4.1. Organization, Good Standing, Power, etc.

(a) Seller is a corporation organized under the laws of the State of Delaware.

(b) Seller is a corporation organized under the laws of the State of Delaware. Seller has full power and authority to execute, deliver and perform this Agreement.

4.2. Effect of Agreement.

4.3. Personal Property. Unless waived by Purchaser in its sole discretion, the Assets shall be transferred to Purchaser free and clear of all liens, mortgages, pledges, security interests, conditional sales agreements, charges, encumbrances and other adverse claims.

4.4. Brokerage. S

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF PURCHASER

To induce Seller to enter into this Agreement, Purchaser represents and warrants to Seller as follows:

5.1. Organization, Good Standing, Power, etc. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

7.1. Conditions Precedent. [redacted] covenants, [redacted] conditions hereof to [redacted]

(a) Te [redacted]

(b) All Required Consents shall have been obtained by the Closing Date.

(c) On the Closing Date, all representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as if made on and as of the Closing Date.

(d) On the Closing Date, Seller shall not be in material default in the performance of any covenant or agreement to be performed by Seller under this Agreement.

ARTICLE 8

CONDITION PRECEDENT TO OBLIGATION OF SELLER

8.1. Conditions Precedent. The obligations of Seller to perform and observe the covenants, agreements and conditions hereof to be performed and observed by them at or before the Closing Date shall be subject to the satisfaction of the following conditions.

(a) Tender of the Purchase Price and tender of the documents to be executed by Purchaser as of the Closing, as provided in Section 9.1 hereof.

(b) All Required Consents shall have been obtained by the Closing Date.

(c) On the Closing Date, all representations and warranties made by Purchaser in this Agreement shall be true and correct in all material respects as if made on and as of the Closing Date.

(d) On the Closing Date, Purchaser shall not be in material default in the performance of any covenant or agreement to be performed by Purchaser under this Agreement.

(e) The Sale Approval Order and other Required Consents shall have been obtained, and the Sale Approval Order shall be a final order and not have been stayed.

(f) No action, proceeding, investigation, regulation, or legislation shall be pending or overtly threatened which seeks to enjoin, restrain, or prohibit Seller, or to obtain substantial damages from Seller, in respect to the consummation of the transaction contemplated hereby, which, in the reasonable judgment of Seller, would make it inadvisable to consummate such transaction.

ARTICLE 9

CLOSING

9.1. Closing. The Closing shall take place on the Closing Date at the time and place provided in Article 2. At the Closing, Seller and Purchaser, as appropriate, shall execute and deliver the following documents:

(a) [REDACTED]

Each of the parties shall take such action and deliver such other documents, instruments, certificates, agreements and other items as may be required under this Agreement or otherwise and that are within its power in order to perform, fulfill and observe all covenants, conditions and agreements on its part to be performed, fulfilled and observed at or prior to the Closing Date (and not theretofore accomplished) and/or to cause all conditions precedent to the other party's obligations hereunder to be satisfied in full.

9.2. Taxes and Fees. [REDACTED]

9.3. Further Acts. If, at any time after the Closing Date, any further action by any of the parties to this Agreement is necessary or desirable to carry out the purposes of this Agreement, such party shall take all such necessary or desirable action or use such party's best efforts to cause such action to be taken.

ARTICLE 10

RISK OF LOSS

10.1. Damage or Taking. The risk of loss or damage to the Assets by fire or other casualty or condemnation (collectively herein a "Casualty") shall remain with Seller until the Closing Date. However, in the event of a Casualty, Seller shall have no obligation to restore or replace any of the Assets, but instead, at the option of Seller, (a) this Agreement shall be terminated, or (b) Purchaser shall acquire the Assets and Seller shall assign or pay over to Purchaser at Purchaser's option, any net proceeds hereafter actually collected by Seller on account of such Casualty occurring prior to the Closing Date, by way of insurance proceeds, if any, or condemnation awards.

ARTICLE 11

GENERAL

11.1. Amendment. Except as otherwise provided, herein, Purchaser and Seller may amend, modify or supplement this Agreement at any time, but only in writing duly executed on behalf of each of the parties.

11.2. Survival of Representations, Warranties, Agreements / Indemnification.

(a) The representations, warranties and agreements made herein shall survive the Closing notwithstanding any investigations which may have been made by any of the parties prior thereto, for a period of twelve (12) calendar months from the Closing Date. Any action based on any misrepresentation or breach of any representation or warranty shall be commenced on or before the expiration of said twelve (12) month period.

(b) Subject to the limitation contained in Section 11.2(c) hereof, Seller shall

[REDACTED]

Each Buyer Indemnified Party shall give Seller prompt written notice of any claim, assertion, event or proceeding (collectively, a "Buyer Claim") by or in respect of a third party of which such Buyer Indemnified Party has knowledge concerning any Losses as to which such Buyer Indemnified Party may request indemnification hereunder.

[REDACTED]

... Seller consents in writing to such payment or unless a final judgment from which no appeal may be taken by or on behalf of Seller is entered against the Buyer Indemnified Party for such Losses.

(c) [REDACTED]

[REDACTED]

Seller shall give Purchaser prompt written notice of any claim, assertion, event or proceeding (collectively, a "Seller Claim") by or in respect of a third party of which Seller has knowledge concerning any Losses as to which Seller may request indemnification hereunder. Purchaser shall have the right to direct, through counsel of its own choosing, the defense or settlement of any such Seller Claim at its own expense. If Purchaser elects to assume the defense of any such Seller Claim, Seller may participate in such defense, but in such case Purchaser shall retain the right to direct, through counsel of its own choosing, the defense or settlement of any such Seller Claim and the expenses of Seller shall be paid by Seller. Seller shall provide Purchaser with access to its records and personnel relating to any such Seller Claim during normal business hours, upon reasonable request, and shall otherwise cooperate with Purchaser in the defense or settlement thereof, and Purchaser shall reimburse Seller for all its reasonable out-of-pocket expenses in connection therewith. If Purchaser elects to direct the defense of any Seller Claim, Seller shall not pay, or permit to be paid, any part of any Losses arising from such Seller Claim, unless Purchaser consents in writing to such payment or unless a final judgment from which no appeal may be taken by or on behalf of Purchaser is entered against the Seller for such Losses.

* 11.3. Damages Following Default. If the purchase contemplated herein is not completed by reason of:

- (a) Any material default of Purchaser hereunder, or
- (b) Any material breach by Purchaser of any material representation, warranty, covenant or agreement herein, or
- (c) The failure of Purchaser to satisfy any conditions described in Section 9.1 hereof;

and Seller:

- (d) Is not then in material default under this Agreement, and
- (e) Is otherwise prepared to tender performance of the material matters required, and to satisfy the material obligations of Seller, under this Agreement;

then, in any such event and at the option of Seller, Seller may either waive such default and proceed to consummate the transaction contemplated by this Agreement or may terminate this Agreement without further obligations hereunder, and seek damages pursuant to applicable California law.

11.4. Seller Default. § [REDACTED]
def. [REDACTED] suffered or
[REDACTED] consequence of the breach of [REDACTED]
[REDACTED] except for its [REDACTED]

11.5. Entire Understanding. The terms set forth in this Agreement including its Exhibits are intended by the parties as a final, complete and exclusive expression of the terms of their

agreement and may not be contradicted, explained or supplemented by evidence of any prior agreement, any contemporaneous oral agreement or any consistent additional terms.

11.6. Headings. The headings preceding the text of sections of this Agreement are for convenience only and shall not be deemed a part hereof.

11.7. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

11.8. Parties in Interest. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto. This Agreement is not intended, nor shall it be construed, to confer any enforceable rights on any person not a party hereto.

11.9. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by overnight air courier service (with next day delivery), or by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties hereto at their respective addresses set forth below or to such other address as any party shall have previously designated by such a notice. Such notice or other communication shall be deemed given upon receipt or upon refusal to accept delivery.

Seller: Darwin Networks

9700 Ormsby Station Road
Louisville, KY 40223
Attention: Mr. Pat Mulloy or Mr. John Doll

Copies of notice to:

Latham & Watkins
Sears Tower, Suite 5800
233 South Wacker Drive
Chicago, Illinois 60606-6401
Attention: J. Douglas Bacon, Esq.

David Neier, Esq.
Greenberg Traurig LLP
885 3rd Avenue
New York, NY 10022

Purchaser: 9 Lives Communications, Inc.
12893 Alcosta Blvd., Ste A

Seattle, WA 98121
Attn: Dan Wilson

Copy of notice to:

Hoge, Fenton, Jones & Appel, Inc.
6155 Stoneridge Drive
Pleasanton, CA 94588
Attn: Patrick J. Kernan, Esq.

11.10. Expenses. [REDACTED]

11.11. Confidentiality. [REDACTED]

11.12. Assignment. [REDACTED]

11.13. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument.

11.14. Construction. The parties acknowledge that with respect to the transaction contemplated herein, (a) each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto, (b) neither party has received from the other any accounting, tax, legal or other advice, and (c) each party has relied solely on the advice of its own accounting, tax, legal and other advisors.

11.15. Severability. If any provision, clause or part of this Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of the Agreement, or the

application of such provision, clause or part under other circumstances, shall not be affected thereby.

11.16. Waiver. No waiver by either party of any breach or default shall be deemed a waiver of any subsequent or other breach or default. A party to this Agreement may waive a provision of this Agreement only by written notice to the other party.

11.17. Time. Time is of the essence of this Agreement and each and every provision hereof.

11.18. Termination; Post Closing Remedies; Breakup Fees.

(a) Termination.

(i)

(ii)

(iii)

(iv)

(v)

(b) In the Event of Termination; Remedies.

(i)

(ii)

(c) Limitation of Liability.

(d) IN WITNESS WHEREOF, the parties hereto have entered into and signed this Agreement as of the date and year first above written.

DARWIN NETWORKS, INC., a Delaware Corporation

By: John W. Dell

Its: VP- General Counsel

DARWIN NETWORKS ACQUISITION CORPORATION, a Delaware corporation

By: John W. Dell

Its: VP

9 LIVES COMMUNICATIONS, INC., a Washington Corporation

By: [Signature]

Its: CTO