

02-26-2002

Form PTO-1594

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U.S. Department of Commerce
Patent and Trademark Office

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

1. Name of conveying party(ies):
Wild Brain, Inc.

Individual(s) Corporation-CA
 General Partnership Association
 Limited Partnership
 Other: _____

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

2. Name and address of receiving party(ies):
Wild Brain, Inc.

Street Address:
2650 18th Street

City / State:
San Francisco, CA 94110

Individual(s) Corporation-DE
 General Partnership Association
 Limited Partnership
 Other: _____

If Assignee is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be separate document from Assignment.)

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

3. Nature of conveyance:

Assignment Security Agreement
 Merger Change of Name
 Other: _____

Execution Date: **June 1, 1999**

4. Trademark Application Number(s) or Registration Number(s):

A. Trademark Application No.(s)

B. Registration No.(s)
1,985,627
2,389,599

Additional numbers attached? Yes No

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

Name: **Philip H. Miller, Esq.**
Address: **Irell & Manella LLP**
1800 Avenue of the Stars
Suite 900

City: **Los Angeles**
State: **CA**
Zip: **90067**

6. Total no. of applications and registrations involved: **2**

7. Total fee (37 CFR 3.41): **\$ 65.00**

Enclosed
 Authorized to charge to deposit account

8. Deposit account number: **09-0946**

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.

Philip H. Miller

Name of person signing

Philip H. Miller

Signature

February 20, 2002

Date

Total number pages including cover sheet, attachments, and documents: **9**

02/26/2002 DBYRNE 00000293 1985627
01 FC:481 40.00 OP
02 FC:482 25.00 OP

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER OF "WILD BRAIN, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF JUNE, A.D. 1999, AT 9 O'CLOCK A.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

3043341 8100

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AUTHENTICATION: 0496813

DATE: 06-14-00

TRADEMARK
REEL: 002449 FRAME: 0002

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "*Merger Agreement*") is entered into as of June 1, 1999, by and between Wild Brain, Inc., a California corporation ("*Wild Brain California*"), and Wild Brain, Inc., a Delaware corporation ("*Wild Brain Delaware*"). Wild Brain California and Wild Brain Delaware are hereinafter sometimes collectively referred to as the "*Constituent Corporations*."

RECITALS

A. Wild Brain California was incorporated on January 3, 1995. Its current authorized capital stock consists of 10,000,000 shares of Common Stock, no par value ("*Wild Brain California Common Stock*"), of which 2,700,000 shares are issued and outstanding.

B. Wild Brain Delaware was incorporated on May 19, 1999. Its authorized capital stock consists of 10,000,000 shares of Common Stock, with a par value of \$0.001 per share ("*Wild Brain Delaware Common Stock*"), of which one thousand (1,000) shares are issued and outstanding.

C. The respective Boards of Directors of Wild Brain California and Wild Brain Delaware deem it advisable and to the advantage of each of the Constituent Corporations that Wild Brain California merge with and into Wild Brain Delaware upon the terms and subject to the conditions set forth in this Merger Agreement for the purpose of effecting a change of the state of incorporation of Wild Brain California from California to Delaware.

D. The Boards of Directors of each of the Constituent Corporations have approved this Merger Agreement.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization set forth in this Merger Agreement and do hereby agree that Wild Brain California shall merge with and into Wild Brain Delaware on the following terms, conditions and other provisions:

1. Merger and Effective Time. At the Effective Time (as defined below), Wild Brain California shall be merged with and into Wild Brain Delaware (the "*Merger*"), and Wild Brain Delaware shall be the surviving corporation of the Merger (the "*Surviving Corporation*"). The Merger shall become effective upon the close of business on the date when a duly executed copy of this Merger Agreement, along with all required officers' certificates, is filed with the Secretary of State of the State of California, or upon the close of business on the date when a duly executed copy of this Merger Agreement, along with all required officers' certificates, is filed with the Secretary of State of the State of Delaware, whichever later occurs (the "*Effective Time*").

2. Effect of Merger. At the Effective Time, the separate corporate existence of Wild Brain California shall cease; the corporate identity, existence, powers, rights and

immunities of Wild Brain Delaware as the Surviving Corporation shall continue unimpaired by the Merger; and Wild Brain Delaware shall succeed to and shall possess all the assets, properties, rights, privileges, powers, franchises, immunities and purposes, and be subject to all the debts, liabilities, obligations, restrictions and duties of Wild Brain California, all without further act or deed.

3. **Governing Documents.** At the Effective Time, the Certificate of Incorporation of Wild Brain Delaware in effect immediately prior to the Effective Time shall become the Certificate of Incorporation of the Surviving Corporation and the Bylaws of Wild Brain Delaware in effect immediately prior to the Effective Time shall become the Bylaws of the Surviving Corporation.

4. **Directors and Officers.** At the Effective Time, the directors and officers of Wild Brain Delaware shall be and become the directors and officers (holding the same titles and positions) of the Surviving Corporation, and after the Effective Time shall serve in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation.

5. **Conversion of Shares of Wild Brain California.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, each share of Wild Brain California Common Stock issued and outstanding immediately prior thereto shall be converted into one fully paid and nonassessable share of Wild Brain Delaware Common Stock.

6. **Cancellation of Shares of Wild Brain Delaware.** At the Effective Time, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, all of the previously issued and outstanding shares of Wild Brain Delaware Common Stock that were issued and outstanding immediately prior to the Effective Time shall be automatically canceled and returned to the status of authorized but unissued shares.

7. **Stock Certificates.** At and after the Effective Time, all of the outstanding certificates that, prior to that date, represented shares of Wild Brain California Common Stock shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Wild Brain Delaware Common Stock into which such shares of Wild Brain California Common Stock are converted as provided herein. The registered owner on the books and records of Wild Brain California of any such outstanding stock certificate for Wild Brain California Common Stock shall, until such certificate is surrendered for transfer or otherwise accounted for to Wild Brain Delaware or its transfer agent, be entitled to exercise any voting and other rights with respect to, and to receive any dividend and other distributions upon, the shares of Wild Brain Delaware Common Stock evidenced by such outstanding certificate as provided above.

8. **Conversion of Options.** At the Effective Time, all outstanding and unexercised portions of all options to purchase Wild Brain California Common Stock under the Wild Brain California 1999 Equity Incentive Plan (the "*Existing Plan*"), and all other outstanding options to purchase Wild Brain California Common Stock, shall become options to purchase the same number of shares of Wild Brain Delaware Common Stock at the same

exercise price per share but otherwise shall, to the extent permitted by law and otherwise reasonably practicable, have the same term, exercisability, vesting schedule, status as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "*Code*"), if applicable, and all other material terms and conditions (including but not limited to the terms and conditions applicable to such options by virtue of the Existing Plan). Continuous employment with Wild Brain California will be credited to an optionee for purposes of determining the vesting of the number of shares of Wild Brain Delaware Common Stock subject to exercise under a converted Wild Brain California option at the Effective Time. At the Effective Time, the Existing Plan shall be canceled, and Wild Brain Delaware shall adopt the Wild Brain Delaware 1999 Equity Incentive Plan.

9. **Fractional Shares.** No fractional shares of Wild Brain Delaware Common Stock will be issued in connection with the Merger.

10. **Employee Benefit Plans.** At the Effective Time, the obligations of Wild Brain California under or with respect to every plan, trust, program and benefit then in effect or administered by Wild Brain California for the benefit of the directors, officers and employees of Wild Brain California or any of its subsidiaries shall become the lawful obligations of Wild Brain Delaware and shall be implemented and administered in the same manner and without interruption until the same are amended or otherwise lawfully altered or terminated. Effective at the Effective Time, Wild Brain Delaware hereby expressly adopts and assumes all obligations of Wild Brain California under such employee benefit plans.

11. **Further Assurances.** From time to time, as and when required by the Surviving Corporation or by its successors or assigns, there shall be executed and delivered on behalf of Wild Brain California such deeds, assignments and other instruments, and there shall be taken or caused to be taken by it all such further action, as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Wild Brain California, and otherwise to carry out the purposes of this Merger Agreement. The officers and directors of the Surviving Corporation are fully authorized in the name of and on behalf of Wild Brain California, or otherwise, to take any and all such actions and to execute and deliver any and all such deeds and other instruments as may be necessary or appropriate to accomplish the foregoing.

12. **Condition.** The consummation of the Merger is subject to the approval of this Merger Agreement and the Merger contemplated hereby by the shareholders of Wild Brain California and by the sole stockholder of Wild Brain Delaware, prior to or at the Effective Time.

13. **Abandonment.** At any time before the Effective Time, this Merger Agreement may be terminated and the Merger abandoned by the Board of Directors of Wild Brain California or Wild Brain Delaware, notwithstanding approval of this Merger Agreement by the shareholders of Wild Brain California and the sole stockholder of Wild Brain Delaware.

14. **Amendment.** At any time before the Effective Time, this Merger Agreement may be amended, modified or supplemented by the Boards of Directors of the

Constituent Corporations, notwithstanding approval of this Merger Agreement by the shareholders of Wild Brain California and the sole stockholder of Wild Brain Delaware; provided, however, that any amendment made subsequent to the adoption of this Merger Agreement by the shareholders of Wild Brain California or the sole stockholder of Wild Brain Delaware shall not: (i) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or upon conversion of any shares of any class or series of Wild Brain California; (ii) alter or change of any of the terms of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; or (iii) alter or change any of the terms or conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any shares of any class or series of Wild Brain California or Wild Brain Delaware.

15. **Tax-Free Reorganization.** The Merger is intended to be a tax-free plan of reorganization within the meaning of Section 368(a)(1)(F) of the Code.

16. **Governing Law.** This Merger Agreement shall be governed by and construed under the internal laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California, without reference to the principles of conflicts of law or choice of laws, except to the extent that the laws of the State of Delaware would apply in matters relating to the internal affairs of Wild Brain Delaware and the Merger.

17. **Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, it may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, this the parties hereto have caused this Merger Agreement to be duly executed on the date and year first above written.


WILD BRAIN, INC.,
a California corporation

WILD BRAIN, INC.,
a Delaware corporation

By: 
Jeffrey C. Ulin
Chief Executive Officer

By: 
Jeffrey C. Ulin
Chief Executive Officer

By: 
Jeff Fino, Secretary

By: 
Jeff Fino, Secretary

[Signature Page to Agreement and Plan of Merger]

WILD BRAIN, INC.
(a Delaware corporation)

OFFICERS' CERTIFICATE

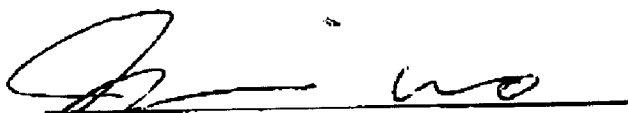
Jeffrey C. Ulin and Jeff Fino certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of Wild Brain, Inc., a Delaware corporation (the "**Corporation**").
2. The Corporation has one class of stock authorized, "Common Stock."
3. There were 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger in the form attached hereto (the "**Merger Agreement**").
4. The principal terms of the Merger Agreement were duly approved by the Board of Directors and by the vote of all of the outstanding shares of Common Stock.
5. The percentage vote required to approve the Merger Agreement was the majority of the outstanding shares of Common Stock.

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

Dated: June 1, 1999.


Jeffrey C. Ulin, Chief Executive Officer


Jeff Fino, Secretary

WILD BRAIN, INC.
(a California corporation)

OFFICERS' CERTIFICATE

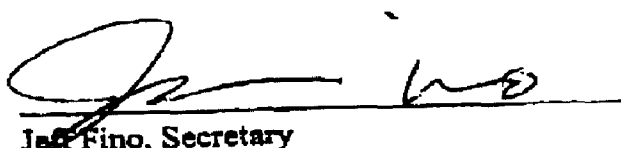
Jeffrey C. Ulin and Jeff Fino certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of Wild Brain, Inc., a California corporation (the "*Corporation*").
2. The Corporation has one class of stock authorized, "Common Stock."
3. There were 2,700,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger in the form attached hereto (the "*Merger Agreement*").
4. The principal terms of the Merger Agreement were duly approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required to approve the Merger Agreement was the affirmative vote of at least a majority of the outstanding shares of Common Stock.

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

Dated: June 1, 1999.


Jeffrey C. Ulin, Chief Executive Officer


Jeff Fino, Secretary

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