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102003319

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

1. Name of conveying party(ies): *MPL 2-14-02*  
 SS8 Networks, Inc.

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State California  
 Other \_\_\_\_\_

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

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

Name: SS8 Networks, Inc.  
 Internal Address: \_\_\_\_\_  
 Street Address: 91 East Tasman Drive  
 City: San Jose State: CA ZIP: 95134

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State 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) & address(es) attached?  Yes  No

3. Nature of conveyance:

Assignment                       Merger  
 Security Agreement               Change of Name  
 Other \_\_\_\_\_

Execution Date: March 28, 2001

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

A. Trademark Application No.(s)  
76/130,504

B. Trademark Registration No.(s)  
572 14 000

Additional numbers attached?  Yes  No

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

Name: John L. Slafsky/Sara L. Eisner  
 Internal Address: \_\_\_\_\_  
 \_\_\_\_\_  
Wilson Sonsini Goodrich & Rosati  
 Street Address: 650 Page Mill Road  
 \_\_\_\_\_  
 \_\_\_\_\_  
 City: Palo Alto State: CA ZIP: 94304

6. Total number of applications and registrations involved: ..... 1

7. Total fee (37 CFR 3.41) ..... \$ 40.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: if fee insufficient please use  
23-2415 Attn: 09826-900  
 (Attach duplicate copy of this page if paying by deposit account)

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.*

Sara L. Eisner                      *Sara L. Eisner*                      1/28/02  
 Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments, and document: 10

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

03/05/2002 6T0N11 00000179 76130504

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

00646373

MAR 28 2001

State of Delaware

PAGE 1

Office of the Secretary of State

BILL JONES, Secretary of State

I, HARRIET SMITH WINDSOR, 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, WHICH MERGES:

"SS8 NETWORKS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "SS8 NETWORKS, INC." UNDER THE NAME OF "SS8 NETWORKS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-EIGHTH DAY OF MARCH, A.D. 2001, AT 12:05 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3326536 8100M

AUTHENTICATION: 1050824

010152549

DATE: 03-28-01

TRADEMARK  
REEL: 002453 FRAME: 0823

**AGREEMENT AND PLAN OF MERGER OF  
SS8 NETWORKS, INC., A DELAWARE CORPORATION,  
AND SS8 NETWORKS, INC., A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of March 27, 2001 (the "**Agreement**"), is between SS8 Networks, Inc., a Delaware corporation ("**SS8 Networks Delaware**"), and SS8 Networks, Inc., a California corporation ("**SS8 Networks California**"). SS8 Networks Delaware and SS8 Networks California are sometimes referred to herein as the "Constituent Corporations."

**RECITALS**

A. SS8 Networks Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 112,000,000 shares, \$.001 par value, of which 66,000,000 shares are designated Common Stock and 46,000,000 shares are designated Preferred Stock. The Preferred Stock is divided into 19,500,000 shares of Series A Voting Preferred Stock, 1,000,000 shares of Series A Non-Voting Preferred Stock and 25,500,000 shares of Series B Preferred Stock. As of the date hereof, 1,000 shares of Common Stock of SS8 Networks Delaware were issued and outstanding, all of which are held by SS8 Networks California.

B. SS8 Networks California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 112,000,000 shares, \$.001 par value, of which 66,000,000 shares are designated Common Stock and 46,000,000 shares are designated Preferred Stock. The Preferred Stock is divided into 19,500,000 shares of Series A Voting Preferred Stock, 1,000,000 shares of Series A Non-Voting Preferred Stock and 25,500,000 shares of Series B Preferred Stock. As of the date hereof, 12,588,334 shares of Common Stock, 19,000,000 shares of Series A Voting Preferred Stock, 1,000,000 shares of Series A Non-Voting Preferred Stock and 25,267,329 shares of Series B Preferred Stock were issued and outstanding.

C. The Board of Directors of SS8 Networks California has determined that, for the purpose of effecting the reincorporation of SS8 Networks California into the State of Delaware, it is advisable and in the best interests of SS8 Networks California and its shareholders that SS8 Networks California merge with and into SS8 Networks Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors and shareholders of SS8 Networks Delaware and SS8 Networks California have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, SS8 Networks Delaware and SS8 Networks California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

## ARTICLE I

### MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, SS8 Networks California shall be merged with and into SS8 Networks Delaware (the "Merger"), the separate existence of SS8 Networks California shall cease, SS8 Networks Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be "SS8 Networks, Inc."

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

(a) This Agreement and the Merger shall have been adopted and approved by the shareholders or 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 shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Agreement of Merger or an executed counterpart of this Agreement, or other document, meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) An executed Agreement of Merger or an executed counterpart of this Agreement meeting the requirements of the California General Corporation Law shall have 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 of SS8 Networks California shall cease, and SS8 Networks Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and SS8 Networks California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of SS8 Networks California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of SS8 Networks California in the same manner as if SS8 Networks Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

## ARTICLE II

### CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of SS8 Networks Delaware as in effect immediately prior to 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 in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of SS8 Networks Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of SS8 Networks California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## ARTICLE III

### MANNER OF CONVERSION OF STOCK

3.1 SS8 Networks California Common Stock. Upon the Effective Date of the Merger, each share of SS8 Networks California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$.001 par value, of the Surviving Corporation.

3.2 SS8 Networks California Preferred Stock. Upon the Effective Date of the Merger, (i) each share of SS8 Networks California Series A Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series A Preferred Stock, \$.001 par value, of the Surviving Corporation; and (ii) each share of SS8 Networks California Series B Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series B Preferred Stock, \$.001 par value, of the Surviving Corporation.

3.3 SS8 Networks California Plans and Options; Warrants. Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the 1999 Stock Plan of SS8 Networks California. Each outstanding and unexercised option or warrant issued under such plan or otherwise by SS8 Networks California convertible into SS8 Networks California Common Stock (or Preferred Stock, as applicable) shall become an option or warrant convertible into the Surviving Corporation's Common Stock (or Preferred Stock, as applicable) on the basis of one share of the

Surviving Corporation's Common Stock (or Preferred Stock, as applicable) for each share of SS8 Networks California Common Stock (or Preferred Stock, as applicable) issuable pursuant to any such option or warrant on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such SS8 Networks California option or warrant at the Effective Date of the Merger.

A number of shares of the Surviving Corporation's Common Stock (or Preferred Stock, as applicable) shall be reserved for issuance upon the exercise of options and warrants equal to the number of shares of SS8 Networks California Common Stock (or Preferred Stock, as applicable) so reserved immediately prior to the Effective Date of the Merger.

3.4 SS8 Networks Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of SS8 Networks Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by SS8 Networks Delaware, the holder of such shares or any other person, be cancelled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of SS8 Networks California capital stock may, at such stockholder's option, surrender the same for cancellation to the exchange agent designated by the Surviving Corporation (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 appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of SS8 Networks California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of SS8 Networks California capital 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 shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of SS8 Networks 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 SS8 Networks 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 the 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 SS8 Networks Delaware that such tax has been paid or is not payable.

## ARTICLE IV

### GENERAL

4.1 Covenants of SS8 Networks Delaware. SS8 Networks 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 any and all documents with the California Franchise Tax Board necessary for the assumption by SS8 Networks Delaware of all of the franchise tax liabilities of SS8 Networks California; and

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

4.2 Further Assurances. From time to time, as and when required by SS8 Networks Delaware or by its successors or assigns, there shall be executed and delivered on behalf of SS8 Networks California such deeds and other instruments, and there shall be taken or caused to be taken by SS8 Networks Delaware and SS8 Networks California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or confirm of record or otherwise by SS8 Networks Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of SS8 Networks California and otherwise to carry out the purposes of this Agreement, and the officers and directors of SS8 Networks Delaware are fully authorized in the name and on behalf of SS8 Networks California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 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 SS8 Networks California or SS8 Networks Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of SS8 Networks California or by the sole stockholder of SS8 Networks Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders or stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would

materially adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 2025 Gateway Place, Suite 200, San Jose, CA 95110 and copies thereof will be furnished to any shareholder or stockholder of either constituent Corporation, upon request and without cost.

4.7 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.

4.8 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.

[Signature Page Follows]

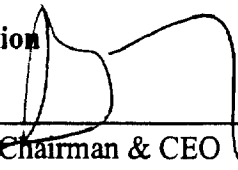


IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of SS8 Networks Delaware and SS8 Networks California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

ATTEST:

  
\_\_\_\_\_  
Jeffrey D. Saper, Secretary

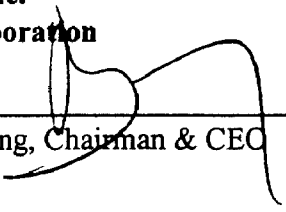
**SS8 Networks, Inc.**  
**a Delaware corporation**

By:   
\_\_\_\_\_  
Henry H. Wong, Chairman & CEO

ATTEST:

  
\_\_\_\_\_  
Jeffrey D. Saper, Secretary

**SS8 Networks, Inc.**  
**a California corporation**

By:   
\_\_\_\_\_  
Henry H. Wong, Chairman & CEO

(Signature page to Merger Agreement)

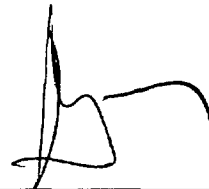
SS8 Networks, Inc.  
(Surviving Corporation)

OFFICERS' CERTIFICATE

Henry H. Wong and Jeffrey D. Saper certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of SS8 Networks, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has authorized capital of 112,000,000 shares, \$.001 par value, of which 66,000,000 shares are designated Common Stock and 46,000,000 shares are designated Preferred Stock. The Preferred Stock is divided into 19,500,000 shares of Series A Voting Preferred Stock, 1,000,000 of Series A Non-Voting Stock and 25,500,000 shares of Series B Preferred Stock.
3. There were 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There were no shares of Preferred Stock outstanding.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of 100% of the outstanding shares of Common Stock of SS8 Networks Delaware.
5. The percentage vote required was greater than 50% of the votes entitled to be cast by holders of Common Stock.
6. Henry H. Wong and Jeffrey D. Saper further declare under penalty of perjury under the laws of the State of Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Palo Alto, California on March 27 2001.



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Henry H. Wong, Chief Executive Officer



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Jeffrey D. Saper, Secretary