

03-12-2002

FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027



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RECORDS

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

Submission Type

- New
- 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
- Merger
Effective Date
Month Day Year
12/19/97
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Name WHITELIGHT SYSTEMS, INC.

Execution Date
Month Day Year
12/19/97

Formerly _____

- Individual General Partnership Limited Partnership Corporation Association

Other _____

Citizenship/State of Incorporation/Organization CALIFORNIA

Receiving Party

Mark if additional names of receiving parties attached

Name WHITELIGHT SYSTEMS, INC.

DBA/AKA/TA _____

Composed of _____

Address (line 1) 2191 EAST BAYSHORE ROAD

Address (line 2) _____

Address (line 3) PALO ALTO

CALIFORNIA

94303

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership

Corporation Association

Other _____

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.)

Citizenship/State of Incorporation/Organization DELAWARE

FOR OFFICE USE ONLY

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40.00 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

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Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

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

#

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)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1,951,721"/>	<input type="text"/>	<input type="text"/>
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Number of Properties Enter the total number of properties involved.

#

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41):

\$

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: #

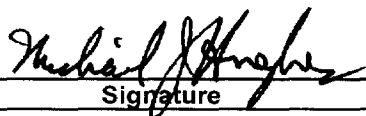
Authorization to charge additional fees: Yes No

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.

MICHAEL J. HUGHES

Name of Person Signing


Signature

4 February 2002
Date Signed

State of Delaware

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, WHICH MERGES:

"WHITELIGHT SYSTEMS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "WHITELIGHT SYSTEMS, INC." UNDER THE NAME OF "WHITELIGHT SYSTEMS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE SEVENTEENTH DAY OF DECEMBER, A.D. 1997, AT 4:30 O'CLOCK P.M.

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



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

Edward J. Freel, Secretary of State

2826625 8100M

AUTHENTICATION: 8824450

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DATE: 12-19-97

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**AGREEMENT AND PLAN OF MERGER
OF WHITELIGHT SYSTEMS, INC.
A DELAWARE CORPORATION
AND
A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of December 15, 1997, (the "Agreement") is between WhiteLight Systems, Inc., a Delaware corporation ("WhiteLight-Delaware") and WhiteLight Systems, Inc., a California corporation ("WhiteLight-California"). WhiteLight-Delaware and WhiteLight-California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. WhiteLight-Delaware is a corporation duly organized and existing under the laws of the State of Delaware with 67,000,000 shares of authorized Common Stock, \$.001 par value and 19,626,667 shares of authorized Preferred Stock, \$.001 par value. Of such authorized shares of Common Stock, 50,000,000 shares are designated Class A Common Stock and 17,000,000 shares are designated Class B Common Stock. Of such authorized shares of Preferred Stock, 12,960,000 shares are designated Series A Preferred Stock and 6,666,667 shares are designated Series B Preferred Stock. As of the date of this Agreement of Merger, 1,000 shares of Class A Common Stock were issued and outstanding, all of which were held by WhiteLight-California. No other shares were outstanding.

B. WhiteLight-California is a corporation duly organized and existing under the laws of the State of California with 67,000,000 shares of authorized Common Stock, \$.001 par value and 19,626,667 shares of authorized Preferred Stock, \$.001 par value. Of such authorized shares of Common Stock, 50,000,000 shares are designated Class A Common Stock and 17,000,000 shares are designated Class B Common Stock. Of such authorized shares of Preferred Stock, 12,960,000 shares are designated Series A Preferred Stock and 6,666,667 shares are designated Series B Preferred Stock. As of the date of this Agreement of Merger, 2,215,753 shares of Class A Common Stock and 8,960,000 shares of Series A Preferred Stock were issued and outstanding. No other shares were outstanding.

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

D. The respective Boards of Directors of WhiteLight-Delaware and WhiteLight-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, WhiteLight-Delaware and WhiteLight-California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I. MERGER

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

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

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

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

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 WhiteLight-California shall cease and WhiteLight-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 WhiteLight-California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of WhiteLight-California in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of WhiteLight-Delaware 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 WhiteLight-California in the same manner as if WhiteLight-Delaware

had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California Corporations Code.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of WhiteLight-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 WhiteLight-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 WhiteLight-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.

III. MANNER OF CONVERSION OF STOCK

3.1 WhiteLight-California Common Shares. Upon the Effective Date of the Merger, each share of WhiteLight-California Common Stock, \$.001 par value, 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. No fractional share interests of Surviving Corporation Common Stock shall be issued. In lieu thereof, any fractional share interests to which a holder would otherwise be entitled shall be aggregated.

3.2 WhiteLight-California Preferred Shares.

(a) Upon the Effective Date of the Merger, each share of Series A Preferred of WhiteLight-California, \$.001 par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of WhiteLight-California Common Stock as set forth in the WhiteLight-California Articles of Incorporation, as amended, 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 or exchanged for one fully paid and nonassessable share of Series A Preferred of the Surviving Corporation, \$.001 par value, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which share of Series A Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, \$.001 par value, as such share of WhiteLight-California Series A

Preferred Stock was so convertible into immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

3.3 WhiteLight-California Options, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of WhiteLight-California under, and continue, the option plans (including without limitation the 1997 Incentive Stock Plan) and all other employee benefit plans of WhiteLight-California. Each outstanding and unexercised option, other right to purchase, or security convertible into, WhiteLight-California Common Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each one share of WhiteLight-California Common Stock issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such WhiteLight-California Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to WhiteLight-California Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 3.1 and 3.2, respectively, hereof.

(b) A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, stock purchase rights and convertible securities equal to the number of shares of WhiteLight-California Common Stock so reserved immediately prior to the Effective Date of the Merger.

(c) The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

3.4 WhiteLight-Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of WhiteLight-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by WhiteLight-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 WhiteLight-California Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (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 or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of WhiteLight-California Common Stock or

Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of WhiteLight-California Common Stock or Preferred Stock, as the case may be, 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 Common Stock or Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock or Preferred 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 WhiteLight-California so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation's 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 comply with applicable securities laws 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 the Surviving Corporation that such tax has been paid or is not payable.

IV. GENERAL

4.1 Covenants of WhiteLight-Delaware. WhiteLight-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 WhiteLight-Delaware of all of the franchise tax liabilities of WhiteLight-California.

(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 WhiteLight-Delaware or by its successors or assigns, there shall be executed and delivered on behalf of WhiteLight-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 WhiteLight-Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of WhiteLight-California and otherwise to carry out the purposes of this Agreement, and the officers and directors of WhiteLight-Delaware are fully authorized in the name and on behalf of WhiteLight-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 WhiteLight-California or of WhiteLight-Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of WhiteLight-California or by the sole stockholder of WhiteLight-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 Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the 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 adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, DE 19801 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 101 University Avenue, Palo Alto, California 94301, and copies thereof will be furnished to any 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 FIRPTA Notification. (a) On the Effective Date of the Merger, WhiteLight-California shall deliver to WhiteLight-Delaware, as agent for the shareholders of WhiteLight-

California, a properly executed statement (the "Statement") substantially in the form attached hereto as Exhibit A. WhiteLight-Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of WhiteLight-California immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of WhiteLight-California, (i) such shareholders shall be considered to have requested that the Statement be delivered to WhiteLight-Delaware as their agent and (ii) WhiteLight-Delaware shall be considered to have received a copy of the Statement at the request of the WhiteLight-California shareholders for purposes of satisfying WhiteLight-Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) WhiteLight-California shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

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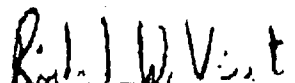
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IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of WhiteLight-Delaware and WhiteLight-California is hereby executed on behalf of each of such two corporations and attested by their respective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


WHITELIGHT SYSTEMS, INC.
a Delaware corporation

By: 
J. Dennis McGinn
President and Chief Executive Officer

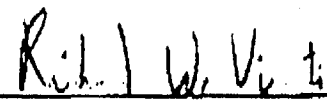
ATTEST:


Richard W. Vicenti
Secretary

WHITELIGHT SYSTEMS, INC.
a California corporation

By: 
J. Dennis McGinn
President and Chief Executive Officer

ATTEST:


Richard W. Vicenti
Secretary

WhiteLight Systems, Inc.
A Delaware corporation

OFFICERS' CERTIFICATE

J. Dennis McGinn and Richard W. Vicenti hereby certify that:

1. They are the President and Secretary, respectively, of WhiteLight Systems, Inc., a corporation organized under the laws of the State of Delaware.

2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively.

3. There are 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto. There are no shares of Preferred Stock outstanding.

4. The principal terms of the Agreement and Plan of Merger were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.

5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

We further declare under penalty of perjury under the laws of the States of Delaware and California that we have read the foregoing certificate and know the contents thereof and that the same is true and correct of our own knowledge.

Executed in Palo Alto, California on December 15, 1997.

/s/ J. Dennis McGinn
J. Dennis McGinn, President

/s/ Richard W. Vicenti
Richard W. Vicenti, Secretary

EXHIBIT A

December 15, 1997

TO THE SHAREHOLDERS OF WHITELIGHT SYSTEMS, INC.:

In connection with the reincorporation (the "Reincorporation") in Delaware of WhiteLight Systems, Inc., a California corporation (the "Company"), pursuant to the Agreement and Plan of Merger (the "Agreement") dated as of December 15, 1997 between the Company and WhiteLight Systems, Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("WhiteLight-Delaware"), your shares of Company stock will be replaced by shares of stock in WhiteLight-Delaware.

In order to establish that (i) you will not be subject to tax under Section 897 of the Internal Revenue Code of 1986, as amended (the "Code"), in consequence of the Reincorporation and (ii) WhiteLight-Delaware will not be required under Section 1445 of the Code to withhold taxes from the WhiteLight-Delaware stock that you will receive in connection therewith, the Company hereby represents to you that, as of the date of this letter, shares of Company stock do not constitute a "United States real property interest" within the meaning of Section 897(c) of the Code and the regulations issued thereunder.

A copy of this letter will be delivered to WhiteLight-Delaware pursuant to Section 4.8 of the Agreement.

Under penalties of perjury, the undersigned officer of the Company hereby declares that, to the best knowledge and belief of the undersigned, the facts set forth herein are true and correct.

Sincerely,

WhiteLight Systems, Inc.

/s/ J. Dennis McGinn
J. Dennis McGinn
President and Chief Executive Officer

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