

04-03-2002



Form PT 1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102042099

Tab settings

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

1. Name of conveying party(ies):

Optisystems Solutions Ltd. 3B Netanyahu Street OR Yehuda, Israel

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other Israel Corporation

3-13-02

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

2. Name and address of receiving party(ies)

Name: BMC Software, Inc. Internal Address:

Street Address: 2101 City West Boulevard City: Houston State: TX Zip: 77042

- 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

OFFICE OF PATENT & TRADEMARKS FINANCE SECTION 02 MAR 13 AM 10:27

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: May 22, 2000

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,963,579

Additional number(s) attached Yes No

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

Name: Donna Mirman Broome

Internal Address:

GOTTLIEB, RACKMAN & REISMAN

Street Address: 270 Madison Avenue

City: New York State: NY Zip: 10016

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:

07-1730

(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.

Donna Mirman Broome Name of Person Signing

Signature

March 6, 2002 Date

Total number of pages including cover sheet, attachments, and document: 6

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

04/03/2002 TBIAZ1 00000035 1963579

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TRADEMARK REEL: 002474 FRAME: 0125

AGREEMENT OF MERGER

AGREEMENT OF MERGER ("Agreement"), dated as of May 22, 2000, by and among BMC Software, Inc., a Delaware corporation ("BMC"), Hansen Acquisitions Ltd., an Israeli corporation and a wholly owned subsidiary of BMC ("Merger Sub"), and OptiSystems Solutions, Ltd., an Israeli corporation ("OptiSystems").

WITNESSETH:

WHEREAS, BMC, Merger Sub and OptiSystems intend to effect a merger of Merger Sub into OptiSystems (the "Merger") in accordance with this Agreement and the Israeli Companies Law-5759-1999 (the "Companies Law") pursuant to which Merger Sub will cease to exist, and OptiSystems will become a wholly owned subsidiary of BMC;

WHEREAS, the respective boards of directors of BMC, Merger Sub and OptiSystems deem the Merger desirable and in the best interests of their respective corporations and their respective stockholders, and have proposed, declared advisable, and approved the Merger pursuant to this Agreement, which has been duly approved by resolutions of the respective boards of directors of BMC, Merger Sub and OptiSystems;

WHEREAS, in order to induce BMC to enter into this Agreement and to consummate the Merger, concurrently with the execution and delivery of this Agreement: Noah Perlman and Gerry Frankel (collectively, the "Stock Option Shareholders") have entered into Stock Option Agreements (the "Stock Option Agreements") with BMC; and

WHEREAS, in order to induce BMC to enter into this Agreement and to consummate the Merger, concurrently with the execution and delivery of this Agreement: Noah Perlman and Gerry Frankel (collectively, the "Significant OptiSystems Shareholders") are delivering certain undertakings to BMC (the "OptiSystems Shareholder Undertakings").

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and in order to set forth the terms and conditions of the Merger, the mode of carrying the same into effect, the manner and basis of converting the rights of the current holders of the presently outstanding ordinary shares, par value NIS 0.05 per share (the "OptiSystems Shares"), of OptiSystems into the right to receive the Merger Consideration (as defined herein), and such other details and provisions as are deemed necessary or proper, the parties hereto agree as follows:

generally accepted accounting principles, which affect generally entities such as BMC and OptiSystems; (v) any effect resulting from compliance by BMC or OptiSystems with the terms of this Agreement; and (vi) any loss of revenues or sales and support personnel during the period from the date hereof to the Effective Time attributable to the announcement or pendency of the Merger; provided that in order to rely on the exception contained in this clause (vi) OptiSystems shall be required to prove with clear and convincing evidence that the loss of such revenues or sales and support personnel is directly attributable to the announcement or pendency of the Merger.

1.5. *Conversion of Securities upon Merger* The manner and basis of converting the issued and outstanding shares of the capital stock of OptiSystems into the Merger Consideration shall be as hereinafter set forth in this Section 1.5.

1.5.1. *Conversion of OptiSystems Shares.* At the Effective Time, by virtue of the Merger and without any further action on the part of BMC, Merger Sub, OptiSystems or any shareholder of OptiSystems or Merger Sub:

(a) any OptiSystems Shares then held by OptiSystems or any wholly owned subsidiary of OptiSystems (or held in OptiSystems' treasury) shall remain outstanding, and no consideration shall be delivered in exchange therefor;

(b) any OptiSystems Shares then held by BMC, Merger Sub or any other wholly owned subsidiary of BMC shall remain outstanding, and no consideration shall be delivered in exchange therefor;

(c) each other holder of OptiSystems Shares then issued and outstanding, shall automatically be deemed to have transferred such OptiSystems Shares to BMC in return for the right to receive \$10.00 in cash, without interest thereon (the "Per Share Merger Consideration") for each such OptiSystems Share, upon surrender, in accordance with Section 1.5.2 hereof, of certificates theretofore evidencing OptiSystems Shares. The aggregate amount of cash to be paid in the Merger is hereinafter referred to as the "Merger Consideration;"

(d) each OptiSystems Share that has been converted into the right to receive the Per Share Merger Consideration shall be registered in the name of BMC; and

(e) all shares of Merger Sub shall be converted into shares of OptiSystems and shall be registered in the name of BMC.

1.5.2. *Exchange of Certificates Representing OptiSystems Shares.* In accordance with the provisions of this Agreement, immediately prior to the Effective Time, BMC shall pay an amount equal to the Per Share Merger Consideration multiplied by the number of OptiSystems Shares outstanding as of the Effective Time, and the amount required to be paid to the holders of OptiSystems Warrants, by wire transfer of immediately available funds to

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

BMC SOFTWARE, INC.

By: M. Brinkley Morse
Name: M. Brinkley Morse
Title: Senior Vice President

HANSEN ACQUISITIONS LTD.

By: M. Brinkley Morse
Name: M. Brinkley Morse
Title:

OPTISYSTEMS SOLUTIONS, LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

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

BMC SOFTWARE, INC.

By: _____
Name:
Title:

HANSEN ACQUISITIONS LTD.

By: _____
Name:
Title:

OPTISYSTEMS SOLUTIONS, LTD.

By: Noah Pech
Name: NOAH PECH
Title: CTO

By: Gerry Frankel
Name: GERRY FRANKEL
Title: CEO