

05-02-2002



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U.S. Department of Commerce  
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TRADEMARK

FINANCIAL SECTION

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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

#### Submission Type

New **4-22-02**

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 **Harmonic Lightwaves, Inc.**

Formerly \_\_\_\_\_

Individual  General Partnership  Limited Partnership  Corporation  Association

Other \_\_\_\_\_

Citizenship/State of Incorporation/Organization **California**

Execution Date  
Month Day Year  
**08/30/1999**

#### Receiving Party

Mark if additional names of receiving parties attached

Name **Harmonic Lightwaves, Inc.**

DBA/AKATA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) **549 Baltic Way**

Address (line 2) \_\_\_\_\_

Address (line 3) **Sunnyvale CA 94089**

City State/Country Zip Code

Individual  General Partnership  Limited Partnership  Corporation  Association

Other \_\_\_\_\_

Citizenship/State of Incorporation/Organization **Delaware**

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

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

05/01/2002 LMIJELER 0000228 73/07/02  
46.00 OP  
50.00 OP

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REEL: 002497 FRAME: 0358

**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 **415 781 1989**

Name **Aldo J. Test, Esq.**

Address (line 1) **FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP**

Address (line 2) **4 Embarcadero Center**

Address (line 3) **Suite 3400**

Address (line 4) **San Francisco, CA 94111**

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. # **10**

**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"/>	<b>1,759,078</b>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>1,759,117</b>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>1,928,522</b>	<input type="text"/>	<input type="text"/>

**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.)

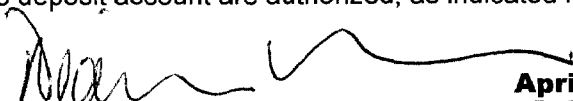
Deposit Account Number: # **06-1300 (G-57156/AJT/DJM)**

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.

**Diane J. Mason, Reg. No. 43,777**



**April 12, 2002**

Name of Person Signing

Signature

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: "HARMONIC LIGHTWAVES, INC.", A CALIFORNIA CORPORATION, WITH AND INTO "HARMONIC LIGHTWAVES, INC." UNDER THE NAME OF "HARMONIC LIGHTWAVES, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTH DAY OF MAY, A.D. 1995, AT 10 O'CLOCK A.M.

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



*Edward J. Freel*

Edward J. Freel, Secretary of State

2493974 8100M

950100184

AUTHENTICATION:

7496970

DATE:

05-05-95

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REEL: 002497 FRAME: 0360

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No. 8070 P. 4

**AGREEMENT AND PLAN OF MERGER  
OF HARMONIC LIGHTWAVES, INC.,  
A DELAWARE CORPORATION,  
AND  
HARMONIC LIGHTWAVES, INC.,  
A CALIFORNIA CORPORATION**

**THIS AGREEMENT AND PLAN OF MERGER dated as of May 4, 1995 (the "Agreement") is between Harmonic Lightwaves, Inc., a Delaware corporation ("Harmonic Delaware"), and Harmonic Lightwaves, Inc., a California corporation ("Harmonic California"). Harmonic Delaware and Harmonic California are sometimes referred to herein as the "Constituent Corporations."**

**RECITALS**

**A. Harmonic Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 79,035,352 shares, \$.001 par value, of which 35,000,000 shares are designated "Common Stock," and 44,035,352 shares are designated "Preferred Stock." The Preferred Stock of Harmonic Delaware is divided into twelve series, namely, Series A Preferred Stock consisting of 690,000 shares, Series A1 Preferred Stock, consisting of 690,000 shares, Series B Preferred Stock consisting of 5,000,000 shares, Series B1 Preferred Stock, consisting of 5,000,000 shares, Series C Preferred Stock, consisting of 3,591,960 shares, Series C1 Preferred Stock, consisting of 3,591,960 shares, Series D Preferred Stock, consisting of 7,200,000 shares, Series D1 Preferred Stock, consisting of 7,200,000 shares, Series E Preferred Stock, consisting of 4,035,716 shares, Series E1 Preferred Stock, consisting of 4,035,716 shares, Series F Preferred Stock, consisting of 1,500,000 shares and Series F1 Preferred Stock, consisting of 1,500,000 shares. As of May 4, 1995, 100 shares of Common Stock were issued and outstanding, all of which are held by Harmonic California, and no shares of Preferred Stock were issued and outstanding.**

**B. Harmonic California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 79,035,352 shares, no par value, of which 35,000,000 shares are designated "Common Stock," and 44,035,352 shares are designated "Preferred Stock." The Preferred Stock of Harmonic Delaware is divided into twelve series, namely, Series A Preferred Stock consisting of 690,000 shares, Series A1 Preferred Stock, consisting of 690,000 shares, Series B Preferred Stock consisting of 5,000,000 shares, Series B1 Preferred Stock, consisting of 5,000,000 shares, Series C Preferred Stock, consisting of 3,591,960 shares, Series C1 Preferred Stock, consisting of 3,591,960 shares, Series D Preferred Stock, consisting of 7,200,000 shares, Series D1 Preferred Stock, consisting of 7,200,000 shares, Series E Preferred Stock, consisting of 4,035,716 shares, Series E1 Preferred Stock, consisting of 4,035,716 shares, Series F Preferred Stock, consisting of 1,500,000 shares and Series F1 Preferred Stock, consisting of 1,500,000 shares. As of May 4, 1995, 1,725,090 shares of Common Stock, 690,000 shares of Series A Preferred Stock, 5,000,000 shares of Series B Preferred Stock, 3,545,293 shares of Series C Preferred Stock, 7,010,652 shares of Series D Preferred Stock, 3,542,549 shares of Series E Preferred Stock, and 1,500,000 shares of Series F Preferred Stock were issued and outstanding, and no shares of Series A1, B1, C1, D1, E1, or F1 Preferred Stock were issued and outstanding.**

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

**D. The respective Boards of Directors of Harmonic Delaware and Harmonic California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective shareholders and executed by the undersigned officers.**

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants set forth herein, Harmonic Delaware and Harmonic 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, Harmonic California shall be merged with and into Harmonic Delaware (the "Merger"), the separate existence of Harmonic California shall cease and Harmonic Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and Harmonic Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Harmonic Lightwaves, 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 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 Certificate of Merger or an executed, acknowledged and certified counterpart of this Agreement 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 Certificate 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 Harmonic California shall cease and Harmonic 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 Harmonic California's Boards of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Harmonic 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 Harmonic California in the same manner as if Harmonic 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.

## II

**CHARTER DOCUMENTS, DIRECTORS AND OFFICERS**

2.1 *Certificate of Incorporation.* Upon the effectiveness of the Merger, the Certificate of Incorporation of Harmonic Delaware as in effect immediately prior to the Effective Date of the Merger shall be restated in the form attached hereto as Appendix A (the "Restated Certificate"), and the Restated Certificate 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 Harmonic 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 Harmonic Delaware immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their respective successors shall have been duly elected and qualified or until as otherwise provided by law, or the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## III

**MANNER OF CONVERSION OF STOCK**

3.1 *Harmonic California Common Stock.* Upon the Effective Date of the Merger, every three (3) shares of Harmonic California Common Stock, no 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 changed and converted into and exchanged for one fully paid and nonassessable share of Common Stock of the Surviving Corporation.

3.2 *Harmonic California Preferred Stock.* Upon the Effective Date of the Merger, every three (3) shares of Harmonic California Series A, B, C, D, E and F Preferred Stock, no 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 changed and converted into and exchanged for one fully paid and nonassessable share of Series A, B, C, D, E, and F Preferred Stock, respectively, of the Surviving Corporation.

3.3 *Harmonic California Options, Warrants, Stock Purchase Rights and Convertible Securities.* Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the stock option plans (including without limitation the 1988 Stock Option Plan and all other employee benefit plans of Harmonic California. Each outstanding and unexercised option, warrant or other right to purchase or security convertible into Harmonic California Common Stock or Preferred Stock shall become an option, warrant, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock for every three (3) shares of Harmonic California Common Stock or Preferred Stock, as the case may be, issuable pursuant to any such option, warrant, stock purchase right or convertible security, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Harmonic California option, warrants, stock purchase right or convertible security at the Effective Date of the Merger. There are no options, warrants, purchase rights for or securities convertible into Preferred Stock of Harmonic California.

A number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, shall be reserved for issuance upon the exercise of options, warrants, stock purchase rights or convertible securities equal to

the number of shares of Harmonic California Common Stock so reserved immediately prior to the Effective Date of the Merger, as adjusted for the one-for-three exchange of shares described above.

**3.4 Harmonic Delaware Common Stock.** Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of Harmonic Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Harmonic Delaware, the holder of such shares or any other person, be canceled 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 Harmonic California Common Stock may, at such stockholder's option, 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 into which such holders' shares of Harmonic California Common Stock or Preferred Stock, as the case may be, were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore representing shares of Harmonic California Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of Harmonic 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 shares of stock represented by 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 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 Harmonic 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 Harmonic 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 Harmonic Delaware or 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 Harmonic Delaware that such tax has been paid or is not payable.

#### IV

#### GENERAL

**4.1 Covenants of Harmonic Delaware.** Harmonic 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;

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WILSON SONSINI

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(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by Harmonic Delaware of all of the franchise tax liabilities of Harmonic 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 Harmonic Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Harmonic California such deeds and other instruments, and there shall be taken or caused to be taken by Harmonic Delaware and Harmonic California 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 Harmonic Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Harmonic California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Harmonic Delaware are fully authorized in the name and on behalf of Harmonic 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 filing of this Agreement with the Secretary of State of the State of Delaware, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Harmonic California or Harmonic Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Harmonic California or by the sole stockholder of Harmonic Delaware, or by both.

4.4 *Amendments.* 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 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 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 *Agreements.* Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 3005 Bunker Hill Road, Santa Clara, California 95054 and copies thereof will be furnished to any shareholder 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.



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

HARMONIC LIGHTWAVES, INC.  
a Delaware corporation

By: Anthony J. Ley  
Anthony J. Ley,  
President and Chief  
Executive Officer

ATTEST:

Jeffrey D. Super  
Jeffrey D. Super,  
Secretary

HARMONIC LIGHTWAVES, INC.  
a California corporation

By: Anthony J. Ley  
Anthony J. Ley,  
President and Chief  
Executive Officer

ATTEST:

Jeffrey D. Super  
Jeffrey D. Super,  
Secretary

Sep 12 2001 8:53AM WILSON SONSINI 493 6811

No. 6070 P. 10

**Harmonic Lightwaves, INC.  
(California Corporation)**

**OFFICERS' CERTIFICATE**

Anthony J. Ley and Jeffrey D. Saper certify that:

1. They are the Presidents and the Secretary, respectively, of Harmonic Lightwaves, Inc., a corporation organized under the laws of the State of California.

2. The corporation has authorized capital of 79,035,352 shares, no par value, of which 35,000,000 shares are designated "Common Stock," and 44,035,352 shares are designated "Preferred Stock." The Preferred Stock of Harmonic Delaware is divided into twelve series, namely, Series A Preferred Stock consisting of 690,000 shares, Series A1 Preferred Stock, consisting of 690,000 shares, Series B Preferred Stock consisting of 5,000,000 shares, Series B1 Preferred Stock, consisting of 5,000,000 shares, Series C Preferred Stock, consisting of 3,591,960 shares, Series C1 Preferred Stock, consisting of 3,591,960 shares, Series D Preferred Stock, consisting of 7,200,000 shares, Series D1 Preferred Stock, consisting of 7,200,000 shares, Series E Preferred Stock, consisting of 4,035,716 shares, Series E1 Preferred Stock, consisting of 4,035,716 shares, Series F Preferred Stock, consisting of 1,500,000 shares and Series F1 Preferred Stock, consisting of 1,500,000 shares.

3. There were 1,725,090 shares of Common Stock, 690,000 shares of Series A Preferred Stock, 5,000,000 shares of Series B Preferred Stock, 3,545,293 shares of Series C Preferred Stock, 7,010,652 shares of Series D Preferred Stock, 3,542,549 shares of Series E Preferred Stock, and 1,500,000 shares of Series F Preferred Stock issued and outstanding as of the date of the shareholders' written consent May 4, 1995 approving the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). All shares of Common Stock and Preferred Stock outstanding were entitled to vote on the merger.

4. The principal terms of the Merger Agreement were 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 was (i) greater than 50% of the votes entitled to be cast by holders of Common Stock outstanding as of May 4, 1995, voting together as a separate class; and (ii) greater than 50% of the votes entitled to be cast by the holders of the Preferred Stock, voting together as a separate class.

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6. Anthony J. Ley and Jeffrey D. Saper further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Santa Clara, California on May 4, 1995.

  
\_\_\_\_\_  
Anthony J. Ley, President

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

**Harmonic Lightwaves, INC.  
(Surviving Corporation)**

**OFFICERS' CERTIFICATE**

Anthony J. Ley and Jeffrey D. Saper certify that:

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

2. The corporation has authorized capital of 79,035,352 shares, no par value, of which 35,000,000 shares are designated "Common Stock," and 44,035,352 shares are designated "Preferred Stock." The Preferred Stock of Harmonic Delaware is divided into twelve series, namely, Series A Preferred Stock consisting of 690,000 shares, Series A1 Preferred Stock, consisting of 690,000 shares, Series B Preferred Stock consisting of 5,000,000 shares, Series B1 Preferred Stock, consisting of 5,000,000 shares, Series C Preferred Stock, consisting of 3,591,960 shares, Series C1 Preferred Stock, consisting of 3,591,960 shares, Series D Preferred Stock, consisting of 7,200,000 shares, Series D1 Preferred Stock, consisting of 7,200,000 shares, Series E Preferred Stock, consisting of 4,035,716 shares, Series E1 Preferred Stock, consisting of 4,035,716 shares, Series F Preferred Stock, consisting of 1,500,000 shares and Series F1 Preferred Stock, consisting of 1,500,000 shares.

3. There were 100 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 Harmonic Delaware.

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

6. Anthony J. Ley 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 Santa Clara, California on May 4, 1995.

  
\_\_\_\_\_  
Anthony J. Ley, President

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