

05-03-2002



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

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

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

1. Name of conveying party(ies):

Benchmark Tape Systems Corporation

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: March 22, 2002

2. Name and address of receiving party(ies)

Name: Benchmark Storage Innovations, Inc.

Internal Address:

Address:

Street Address: 3122 Sterling Circle

City: Boulder State: CO Zip: 80301

- 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

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

A. Trademark Application No.(s) 76/150,962

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: James K. Lewis

Internal Address: Patton Boggs LLP

P.O. Box 270930

Street Address:

City: Louisville State: CO Zip: 80027-5015

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:

50-1848

DO NOT USE THIS SPACE

9. Signature.

James K. Lewis

Name of Person Signing

Signature

4.12.02

Date

14

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

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Benchmark Tape Systems Corporation <i>n/k/a</i> Benchmark Storage Innovations, Inc.
Mark:	BENCHMARK STORAGE INNOVATIONS
Application No.:	76/150,962
Filing Date:	October 20, 2000
Attorney Docket No.:	13211.902

CHANGE IN APPLICANT NAME

Pursuant to TMEP §503.01, the above-identified Applicant, by the undersigned, hereby declares that the corporate name of Applicant has changed from: **BENCHMARK TAPE SYSTEMS CORPORATION** to Applicant's current corporate name: **BENCHMARK STORAGE INNOVATIONS, INC.**

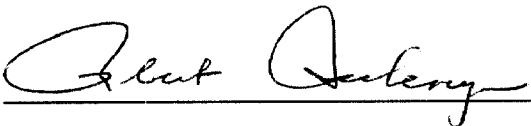
DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true; and that that he/she is properly authorized to execute this application on behalf of the applicant.

Respectfully submitted:

Benchmark Storage Innovations, Inc.:

Date: 3/22/02

Signature: 

Printed Name: Robert Beckemeyer

Printed Title: CFO

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "BENCHMARK TAPE SYSTEMS CORPORATION", FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "BENCHMARK STORAGE INNOVATIONS, INC.", THE SIXTEENTH DAY OF OCTOBER, A.D. 2000, AT 12:30 O'CLOCK P.M.



Edward J. Freel, Secretary of State

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AUTHENTICATION: 0787860

001568392

DATE: 11-13-00

TRADEMARK

REEL: 002497 FRAME: 0437

Delaware

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BENCHMARK TAPE SYSTEMS CORPORATION**

Benchmark Tape Systems Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, Does hereby certify:

1. The name of the corporation, as amended, is Benchmark Storage Innovations, Inc. The corporation was originally incorporated under the name Benchmark Tape Systems Corporation and the date of filing its original Certificate of Incorporation with the Secretary of State was April 20, 1998.

2. This Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the corporations Board of Directors and stockholders.

3. The Certificate of Incorporation of the corporation is hereby amended and restated to read as follows:

I

The name of the corporation is Benchmark Storage Innovations, Inc.

II

The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, and the name of the registered agent of the corporation in the State of Delaware at such address is the Corporation Trust Company.

III

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

IV

A. Classes of Stock.

The corporation is authorized to issue two classes of stock to be designated, respectively, as "Common Stock" and "Preferred Stock". The total number of shares of capital stock which the corporation shall have authority to issue shall be seventy million (70,000,00) shares, of which

forty million (40,000,000) shares shall be Common Stock, \$0.001 par value, and thirty million (30,000,00) shares shall be Preferred Stock, \$0.001 par value.

B. Series of Preferred Stock.

The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series. The Board of Directors is further authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and, within the limits and restrictions stated in any resolution of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any such series subsequent to the issuance of shares in the series. In case the number of shares of Preferred Stock of any series shall be so decreased, the shares of Preferred Stock constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of Preferred Stock of the series.

C. Designation of Preferred Stock.

Two million, six hundred sixty-six thousand, six hundred sixty-seven (2,666,667) shares of Preferred Stock shall be designated "Series A1 Preferred", eight million (8,000,000) shares of Preferred Stock shall be designated "Series A2 Preferred", three million, thirty-two thousand (3,032,000) shares of Preferred Stock shall be designated "Series B Preferred" and eleven million (11,000,000) shares of Preferred Stock shall be designated "Series C Preferred". Except as otherwise expressly provided herein, the rights, preferences and privileges of Series A1 Preferred, Series A2 Preferred, Series B Preferred and Series C Preferred shall be identical. Series A1 Preferred and Series A2 Preferred are referred to collectively herein as the "Series A Preferred" and Series A Preferred, Series B Preferred and Series C Preferred are referred to collectively herein as the "Series Preferred".

D. Preferences.

The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. **Dividends.** Holders of the then outstanding Series Preferred shall be entitled to receive in any fiscal year, when and as declared by the Board, out of any funds legally available therefor, noncumulative dividends in cash at the annual rate of 6% of the original purchase price of Series Preferred before any dividend is paid on the Common Stock. Such dividend may be payable quarterly or otherwise as the Board may from time to time determine. Dividends on the Series Preferred shall not be cumulative and no rights shall accrue to the holders of Series Preferred in the event that the corporation shall fail to declare or pay dividends in the aforesaid amounts or in any amount in any previous fiscal year of the corporation, whether or not the earnings of the corporation in that previous fiscal year were sufficient to pay such dividends in whole or in part. After dividends on the Series Preferred in the aforesaid amounts have been paid

or declared and set apart in any one fiscal year of the corporation. if the Board shall elect to declare additional dividends out of funds legally available therefore in that fiscal year, such additional dividends shall be declared ratably on the Common Stock and the Series Preferred on an as-converted basis.

2. **Voting Rights.** Except as otherwise provided herein or as required by law, holders of Series Preferred shall be entitled to receive notice of and vote (as a single class with holders of Common Stock) on matters submitted to a vote of shareholders of the corporation and may act by written consent as if the Series Preferred were converted into shares of Common Stock pursuant to Section 4 hereof immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

3. **Liquidation Preference.**

a. **Original Purchase Price.** Except as set forth in Section 3.d., in the event of the liquidation, dissolution, or winding up of the corporation, either voluntary or involuntary, the holders of Series Preferred shall be entitled to receive out of the assets of the corporation prior and in preference to any distribution of the assets of the corporation to the holders of Common Stock by reason of their ownership thereof, the amount of the Original Purchase Price for each share of Series Preferred then held by them (as appropriately adjusted for any stock dividends, splits, combinations, reclassifications, recapitalizations and the like with respect to such shares), plus all declared and unpaid dividends with respect thereto. The "Original Purchase Price" for the Series A Preferred is \$.50 per share. The "Original Purchase Price" for the Series B Preferred is \$2.50 per share. The "Original Purchase Price" for the Series C Preferred is \$4.00 per share. If the assets thus distributed among the holders of the Series Preferred are insufficient to permit the payment to such holders of the full preferential amount, then the remaining assets of the corporation legally available for distribution shall be distributed ratably among the holders of the Series Preferred based on the amount of the Original Purchase Price for each share of Series Preferred then held by them, plus all declared and unpaid dividends with respect thereto.

b. **Common Stock and Preferred Stock Ratably.** After payment has been made to the holders of the Series Preferred of the full amounts to which they shall be entitled as aforesaid, any remaining assets shall be distributed ratably to the holders of the corporation's Common Stock and Series Preferred on an as-converted basis.

c. **Mergers and Acquisitions.** A merger of the corporation with or into any other company or companies in cases where the shareholders of the corporation do not continue to hold at least 50% of the voting stock of the successor entity, or sale of all or substantially all of the assets of the corporation and adoption of a plan of liquidation or any transaction or series of related transactions in which in excess of fifty percent (50%) of the corporation's voting power is transferred shall be treated as a liquidation, dissolution or winding up for purposes of this Section 3.

d. **Series A2 Preference - License Agreement.** The initial holder of Series A1 Preferred and the corporation are parties to a certain Technology Agreement dated May 14, 1998,

(the "Technology Agreement") which provides in Section 6.1(b), that the initial Series A1 Preferred holder shall be granted a license to certain intellectual property of the corporation (the "License") with the rights to use the License being subject to the occurrence of certain events or circumstances. In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, in which the initial Series A1 Preferred holder is or has been granted, and has all of the rights under bankruptcy and other laws and pursuant to the Technology Agreement necessary to receive and use, the License, the License shall be deemed to have a value of \$1,333,333 so that the initial Series A1 Preferred holder shall not participate in any other distributions, whether with respect to Series A1 Preferred, Series B Preferred or Series C Preferred, until such time as the distributions to which the initial Series A1 Preferred holder is entitled pursuant to Subsections a. and b. above, including both distributions with respect to Series A1 Preferred, Series B Preferred and Series C Preferred is greater than \$1,333,333. Any remaining assets of the corporation shall then be distributed in accordance with Subsections a. through c. of this Section 3.

4. **Conversion.** The holders of the Series Preferred shall have conversion rights as follows (the "Conversion Rights"):

a. **Right to Convert.**

(i) **Optional Conversion.** Each share of Series Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the corporation or any transfer agent for the Series Preferred, into Common Stock. The number of shares of Common Stock into which each share of Series A Preferred may be converted shall be equal to \$.50 divided by the Conversion Price (as hereafter defined) for the Series A Preferred, such conversion ratio being hereinafter referred to as the "Conversion Rate". The Conversion Price for the Series A Preferred initially shall be \$.50 subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series B Preferred may be converted shall be equal to \$2.50 divided by the Conversion Price (as hereafter defined) for the Series B Preferred, such conversion ratio being hereinafter referred to as the "Conversion Rate". The Conversion Price for the Series B Preferred initially shall be \$2.50 subject to adjustment as provided herein. The number of shares of Common Stock into which each share of Series C Preferred may be converted shall be equal to \$4.00 divided by the Conversion Price (as hereafter defined) for the Series C Preferred, such conversion ratio being hereinafter referred to as the "Conversion Rate". The Conversion Price for the Series C Preferred initially shall be \$4.00 subject to adjustment as provided herein. Upon any decrease or increase of the Conversion Price or the Conversion Rate for the Series Preferred as described in this Section 4, the Conversion Rate or Conversion Price, as the case may be, for the Series Preferred shall be increased or decreased appropriately.

(ii) **Automatic Conversion.** Each share of Series Preferred shall be automatically converted into shares of Common Stock at the then effective Conversion Rate immediately upon the closing of the sale to the public of Common Stock in the corporation incident to a registration statement under the Securities Act of 1933, as amended, for a firmly underwritten public offering (other than a registration on Form S-8 or a successor form to Form

S-8, or registration related solely to employee shares) which results in aggregate cash proceeds (prior to underwriters' commissions and expenses) to the corporation and selling shareholders of at least \$10,000,000, and which has a public offering price not less than \$8.00 per share (as appropriately adjusted for any stock dividends, splits, combinations, reclassifications, recapitalizations and the like).

(iii) Fractional Shares and Accrued Dividends Upon Conversion. No fractional shares of Common Stock shall be issued upon conversion of Series Preferred and any fractional share which otherwise would result from conversion by a holder of all of his shares of Series Preferred (taken together as a group) shall be redeemed by payment in an amount equal to such fraction of the then effective Conversion Price as promptly as funds legally are available therefor. Upon conversion of Series Preferred, the corporation shall pay to the holders of Series Preferred all declared and unpaid dividends on the Series Preferred.

b. Mechanics of Conversion.

(i) Optional Conversion. Before any holder of Series Preferred shall be entitled to convert the same into shares of Common Stock pursuant to Section 4.a.(i) hereof, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Series Preferred, and he shall give written notice to the corporation at such office that he elects to convert the same and shall state therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The corporation, as soon as practicable thereafter, shall issue and deliver at such office to such holder of Series Preferred or to his nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series Preferred to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) Automatic Conversion. Conversion of all the outstanding shares of Series Preferred into shares of Common Stock pursuant to Section 4.a.(ii) hereof shall be deemed to have been made automatically and immediately prior to the closing of a firmly underwritten public offering as described in Section 4.a.(ii). Upon such automatic conversion, the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on the automatic conversion date whether or not such holder or holders shall have surrendered certificates for his or their shares of Series Preferred to the corporation. Upon the automatic conversion date, the certificate representing all the shares of Series Preferred shall be deemed void; as soon as practical after the surrender by any holder of his Series Preferred certificates, accompanied by a statement from the holder as to the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued, the corporation shall then issue and deliver, at the office of the corporation, to such holder or his nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid.

c. Adjustment for Combinations or Consolidations of Common Stock. In the event the corporation at any time or from time to time after the effective date of the initial sale of Series Preferred (hereinafter referred to as the "Original Issue Date") effects a subdivision or combination of its outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Series Preferred, then the existing Conversion Rate for the Series Preferred shall be decreased or increased proportionately.

d. Adjustment for Dividends, Distributions and Common Stock Equivalents. In the event the corporation at any time or from time to time after the Original Issue Date makes or issues, or fixes a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights (hereinafter referred to as "Common Stock Equivalents") convertible into or entitling the holder thereof to receive additional shares of Common Stock without payment of any consideration by such holder for such Common Stock Equivalents or the additional shares of Common Stock, for the purpose of protecting the preferred shareholders from any dilution in connection therewith, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed to be issued and outstanding as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date. In each such event the then existing Conversion Rate for the Series Preferred shall be increased as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date, by multiplying the Conversion Rate for the Series Preferred by a fraction

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents; and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; provided, however, if such record date has been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefore, the Conversion Rate for the Series Preferred shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Rate for the Series Preferred shall be adjusted pursuant to this Section 4.d. as of the time of actual payment of such dividends or distribution.

e. Sale of Shares Below Conversion Price.

(i) Dilutive Sale. If at any time after the Original Issue Date the corporation issues or sells any shares of its Common Stock, other than shares of Common Stock issued to employees, officers, directors or independent contractors of the corporation and expressly

approved, either specifically or as part of a plan, by the Board of Directors (the "Employee Shares"), for a consideration per share less than the Conversion Price in effect immediately prior to such issue or sale (a "Dilutive Sale"), then and in each such case, the Conversion Price for the Series Preferred shall be adjusted, subsequent to each issuance, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price otherwise applicable except by reason of any adjustment pursuant to this Section 4.e. by a fraction (1) the numerator of which shall be the number of shares of Common Stock outstanding on the Original Issue Date plus the number of shares of Common Stock which the aggregate consideration received by the corporation for the total number of shares of Common Stock (but excluding the Employee Shares) issued since such Original Issue Date would purchase at such Conversion Price in effect prior to adjustment pursuant to this Section 4.e., and (2) the denominator of which shall be the number of shares of Common Stock outstanding immediately after the Common Stock proposed to be issued or sold is issued or sold (but excluding the Employee Shares); provided, however, that such fraction shall in no event be greater than one (1). For purposes of this Section 4.e. only, the shares of Common Stock issuable upon conversion of the Series Preferred shall be deemed to be outstanding.

(ii) Computation of Consideration. For the purpose of making any adjustment in the Conversion Price for the Series Preferred as provided above, the consideration received by the corporation for any issue or sale of Common Stock shall be computed:

(x) to the extent it consists of cash, as the amount of cash received by the corporation before deduction of any offering expenses payable by the corporation and any underwriting or similar commissions, compensation, or concessions paid or allowed by the corporation in connection with such issue or sale;

(y) to the extent it consists of property other than cash, at the fair market value of that property as determined in good faith by the corporation's Board of Directors; and

(z) if Common Stock is issued or sold together with other stock or securities or other assets of the corporation for a consideration which covers both, as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Common Stock.

(iii) Convertible Securities and Options. If the corporation (1) grants any rights or options (other than Employee Shares) to subscribe for, purchase, or otherwise acquire shares of Common Stock or securities convertible into shares of Common Stock, or (2) issues or sells any security convertible into shares of Common Stock, then, in each case, the price per share of Common Stock issuable on the exercise of the rights or options or the conversion of the securities shall be determined by dividing the total amount, if any, received or receivable by the corporation as consideration for the granting of the rights or options or the issue or sale of the convertible securities, plus the minimum aggregate amount of additional consideration payable to the corporation on exercise or conversion of the securities, by the maximum number of shares of Common Stock issuable on the exercise or conversion. Such granting or issue or sale shall be deemed an issuance for cash of Common Stock for the purposes of this Section 4.e. of the

maximum number of shares of Common Stock issuable on exercise or conversion at the price per share determined under this subsection, and the Conversion Price shall be adjusted as above provided to reflect (on the basis of that determination) the deemed issuance. No further adjustment of the Conversion Price for the Series Preferred shall be made as a result of the actual issuance of shares of Common Stock on the exercise of such rights or options or the conversion of any such convertible securities.

(iv) Readjustment for Repurchase, Expiration etc. Upon the redemption or repurchase of any such securities or the expiration or termination of the right to convert into, exchange for, or exercise with respect to, Common Stock, the Conversion Price shall be readjusted to such price as would have been obtained had the adjustment made upon their issuance been made upon the basis of the issuance of only the number of such securities as were actually converted into, exchanged for, or exercised with respect to Common Stock. If the purchase price or conversion or exchange rate provided for in any such security changes at any time, then, upon such change becoming effective, the Conversion Price then in effect shall be readjusted forthwith to such price as would have been obtained had the adjustment made upon the issuance of such securities been made upon the basis of (1) the issuance of only the number of shares of Common Stock theretofore actually delivered upon the conversion, exchange or exercise of such securities, and the total consideration received therefor, and (2) the granting or issuance, at the time of such change, of any such securities then still outstanding for the consideration, if any, received by the corporation therefor and to be received on the basis of such changed price or rate.

f. No Impairment. The corporation, whether by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue or sale of securities or any other voluntary action shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but at all times in good faith shall assist in the carrying out of all of such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series Preferred against impairment.

g. Certain Events. If any event occurs of the type contemplated by the provisions of this Section 4. but not expressly provided for by such provisions, then the corporation's board of directors shall make an appropriate adjustment in the Conversion Price of the Series Preferred so as to protect the rights of the holders, provided that no such adjustment shall increase the Conversion Price of the Series Preferred as otherwise determined pursuant to this Section 4 or decrease the number of shares of Common Stock issuable upon conversion of the Series Preferred.

h. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate for the Series Preferred pursuant to this Section 4, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation, upon the written request at any time of

any holder of Series Preferred, shall furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments or readjustments, (ii) the Conversion Rate for the Series Preferred at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series Preferred.

i. Notices of Record Date. In the event of any taking by the corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any Common Stock equivalents or any right to subscribe for, purchase or other wise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the corporation shall mail to each holder of Series Preferred at least thirty (30) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

j. Reservation of Stock Issuable Upon Conversion. The corporation at all times shall reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series Preferred such number of its shares of Common Stock as from time to time shall be sufficient to effect the conversion of all then outstanding shares of the Series Preferred; and if at any time the number of authorized but unissued shares of Common Stock is not sufficient to effect the conversion of all then outstanding shares of the Series Preferred, in addition to such other remedies as may be available to the holders of Series Preferred for such failure, the corporation shall take such corporation action as, in the opinion of its counsel, may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

k. Notices. Any notices required by the provisions of this Section 4 to be given to the holders of shares of Series Preferred shall be deemed given if deposited in the United States mail, postage prepaid and addressed to each holder of record at his address appearing on the books of the corporation.

5. Covenants. In addition to any other rights provided by law, so long as any Series Preferred is outstanding, the corporation without first obtaining the affirmative vote or written consent of the holders a majority of such outstanding shares of Series Preferred shall not:

(i) take any action which would adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series Preferred;

(ii) authorize or issue shares of any class or series of stock not expressly authorized herein having any preference or priority as to dividends, assets or other right superior to or on a parity with any such preference or priority of the Series Preferred, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of stock of this corporation

having any preference or priority as to dividends, assets, or other rights superior to or on a parity with any such preference or priority of the Series Preferred;

(iii) reclassify any class or series of any Common Stock into shares having any preference or priority as to dividends, assets or other right superior to or on a parity with any such preference or priority of the Series Preferred;

(iv) increase the number of shares of Common Stock or Series Preferred stock authorized hereby;

(v) amend the Certificate of Incorporation of the corporation;

provided that if any action consented to as provided above affects holders of shares of Series Preferred disproportionately in relation to their holdings of such Series Preferred, then all holders who are disproportionately and adversely affected by such consent or approval must consent to same.

V

For the management of the business and for the conduct of the affairs of the corporation, and in further definition and regulation of the powers of the corporation, of its directors and of its stockholders or any class thereof, as the case may be, and not in limitation of the powers conferred upon the corporation by statute, it is further provided that:

A. The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

B. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws.

C. The directors of the corporation need not be elected by written ballot unless the Bylaws so provide.

VI

A director of the Corporation shall not be personally liable to the corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the fullest extent permitted by the

Delaware General Corporation Law, as so amended. Any repeal or modification of this Article VII shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

VII

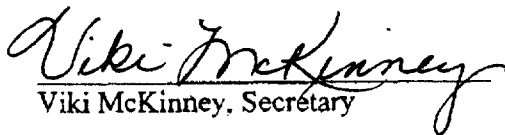
The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been subscribed this 13th day of October, 2000, by the undersigned officer of the corporation who affirms that the statements made herein are true and correct.

BENCHMARK TAPE SYSTEMS CORPORATION

By 
Robert Beckemeyer, Vice President

ATTEST:


Viki McKinney, Secretary