

05-21-2002



COMMERCE

Patent and Trademark Office

To the Honorable Commissioner of Patents

102097967

Transmit the original documents or copy hereof.

1. Name of conveying party(ies):

Data Critical Corporation
19820 North Creek Parkway, Suite 100
Bothell, WA 98011

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

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

2. Name and address of receiving party:

Name General Electric Company
Internal Address: 3135 Easton Turnpike
Street Address:
City: Fairfield State: CT Zip: 06431
☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State: New York
☐ 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) & addresses attached?

☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☒ Merger
☐ Security Agreement ☐ Change of Name ☐ Other

Execution Date: July 19, 2001

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

A. Trademark Application No.(s)

Trademark Registration No.(s).

SEE SCHEDULE A, ATTACHED

Additional Numbers attached? ☒ Yes ☐ No

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

Name: John J. Devenny

Internal Address: General Electric Company
Street Address: 3135 Easton Turnpike
City: Fairfield State: CT Zip: 06431

6. Total number of applications and
and registrations involved:.....8

7. Total fee (37 CFR 3.41) \$ 215

☐ Enclosed

☒ Authorized to be charged to deposit account (Authorized to
charge any additional fees)

8. Deposit account number:

070875

(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.

Name of Person Signing John J. Devenny
number of pages comprising cover sheet: 2

Signature [Signature] Date: May 2, 2002

Total

SCHEDULE A

Marks to be assigned from Data Critical Corporation to General Electric Company

Application No (s)

Registration No (s)

- 1. 76/080380**
- 2. 75/397990**
- 3. 75/630845**
- 4. 75/398336**
- 5. 75/398335**
- 6. 75/397988**

- 1. 2455798**
- 2. 2420489**

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AGREEMENT AND PLAN OF MERGER

AMONG

GENERAL ELECTRIC COMPANY,

ETHER MERGER CORP.

AND

DATA CRITICAL CORPORATION

DATED AS OF JULY 19, 2001

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of July 19, 2001 (this "Agreement"), among General Electric Company, a New York corporation ("Parent"), Ether Merger Corp., a Delaware corporation and an indirect, wholly-owned subsidiary of Parent ("Sub"), and Data Critical Corporation, a Delaware corporation (the "Company") (Sub and the Company being hereinafter collectively referred to as the "Constituent Corporations").

WITNESSETH:

WHEREAS, the respective Boards of Directors of Sub and the Company have approved and declared advisable this Agreement and the transactions contemplated hereby, including the merger of Sub and the Company (the "Merger"), upon the terms and subject to the conditions set forth herein; and the respective Boards of Directors of Sub and the Company have directed that this Agreement be submitted to their respective stockholders for adoption; and

WHEREAS, in order to induce Parent and Sub to enter into this Agreement, concurrently herewith (i) Parent and the Company are entering into the Stock Option Agreement dated as of the date hereof (the "Stock Option Agreement") in the form of the attached Exhibit A; and (ii) Parent and certain of the stockholders of the Company are each entering into a Stockholder Agreement dated as of the date hereof (each, a "Stockholder Agreement") in the form of the attached Exhibit B; and

NOW, THEREFORE, in consideration of the premises, representations, warranties and agreements herein contained, the parties agree as follows:

ARTICLE I THE MERGER

Section 1.1. The Merger. Upon the terms and subject to the conditions hereof, and in accordance with the General Corporation Law of the State of Delaware, as amended (the "DGCL"), Sub shall be merged with and into the Company at the Effective Time (as hereinafter defined). Following the Merger, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Sub in accordance with the DGCL. Notwithstanding anything to the contrary herein, at the election of Parent, any Subsidiary (as hereinafter defined) of Parent may be substituted for Sub as a constituent corporation in the Merger. In such event, the parties agree to execute an appropriate amendment to this Agreement, in form and substance reasonably satisfactory to Parent and the Company, in order to reflect such substitution.

Section 1.2. Effective Time. The Merger shall become effective when a Certificate of Merger (which shall be in form and substance reasonably satisfactory to the parties hereto) (the "Certificate of Merger"), executed in accordance with the relevant provisions of the DGCL, is filed with the Secretary of State of the State of Delaware; provided, however, that, upon mutual consent of the Constituent Corporations, the Certificate of Merger may provide for

a later date of effectiveness of the Merger not more than 30 days after the date the Certificate of Merger is filed. When used in this Agreement, the term "Effective Time" shall mean the date and time at which the Certificate of Merger is accepted for recording or such later time established by the Certificate of Merger. The filing of the Certificate of Merger shall be made on the date of the Closing (as hereinafter defined).

Section 1.3. Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in Sections 259 through 261 of the DGCL.

Section 1.4. Charter and Bylaws; Directors and Officers.

(a) At the Effective Time, the Second Amended and Restated Certificate of Incorporation of the Company (the "Company Charter") shall be amended in its entirety to read as set forth in Exhibit C attached hereto and shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law. The By-laws of Sub in effect at the Effective Time will be adopted by, and will be the By-laws of, the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The directors of Sub at the Effective Time shall be the directors of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. The officers of the Company at the Effective Time shall be the officers of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

Section 1.5. Conversion of Securities. As of the Effective Time, by virtue of the Merger and without any action on the part of Sub, the Company or the holders of any securities of the Constituent Corporations:

(a) Each issued and outstanding share of common stock, par value \$.01 per share, of Sub shall be converted into one validly issued, fully paid and nonassessable share of Common Stock, par value \$.01 per share, of the Surviving Corporation.

(b) All shares of Common Stock, par value \$.001 per share, of the Company ("Company Common Stock"; such shares being hereinafter referred to as the "Shares") that are held in the treasury of the Company or by any wholly-owned Subsidiary of the Company and any Shares owned by Parent or by any wholly-owned Subsidiary of Parent shall be cancelled and no capital stock of Parent or other consideration shall be delivered in exchange therefor.

(c) Each Share issued and outstanding immediately prior to the Effective Time (other than Shares to be canceled in accordance with Section 1.5(b) and other than Dissenting Shares (as defined in Section 1.5(d)) shall be converted into the right to receive from the Surviving Corporation in cash, without interest, \$3.75 (the "Merger Consideration"). All such Shares, when so converted, shall no longer be outstanding and shall automatically be canceled and retired and each holder of a certificate representing any such Shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration.

(d) Notwithstanding anything in this Agreement to the contrary, if required by the DGCL (but only to the extent required thereby) Shares that are issued and outstanding immediately prior to the Effective Time and that are held by a holder (a "Dissenting Stockholder") who properly exercises appraisal rights thereto in accordance with Section 262 of the DGCL ("Dissenting Shares") shall not be converted as described in Section 1.5(c), but shall be converted into the right to receive payment of the appraised value of such Shares in accordance with the provisions of such Section 262, until such holder fails to perfect or effectively withdraws or loses such holder's right to appraisal and payment under the DGCL. If, after the Effective Time, any Dissenting Stockholder fails to perfect or effectively withdraws or loses such right, the Shares of such Dissenting Stockholder shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the Merger Consideration, without any interest thereon. The Company shall give Parent (i) prompt notice of any demands received by the Company for appraisal of Shares and (ii) the opportunity to participate in and direct all negotiations and proceedings with respect to any such demands. The Company shall not, without the prior written consent of Parent, make any payment with respect to, or settle, offer to settle or otherwise negotiate, any such demands.

Section 1.6. Exchange of Certificates.

(a) **Paying Agent.** Prior to the Effective Time, Parent shall designate a bank or trust company (or such other person or persons as shall be reasonably acceptable to Parent and the Company) to act as paying agent in the Merger (the "Paying Agent"), and at the Effective Time, Parent shall make available, or cause the Surviving Corporation to make available, to the Paying Agent cash in the amount necessary for the payment of the Merger Consideration upon surrender of certificates representing Shares as part of the Merger pursuant to Section 1.5. Any and all interest earned on funds made available to the Paying Agent pursuant to this Agreement shall be paid over to Parent.

(b) **Exchange Procedure.** As soon as reasonably practicable after the Effective Time, the Paying Agent shall mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented Shares (the "Certificates"), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Paying Agent and shall be in a form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Paying Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Paying Agent, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration, and the Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, payment may be made to a person other than the person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment shall pay any transfer or other taxes required by reason of the payment to a person other than the registered holder of such Certificate or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not applicable. Until surrendered as contemplated by this Section 1.6, each Certificate (other than

Certificates representing Dissenting Shares) shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration. No interest will be paid or will accrue on the cash payable upon the surrender of any Certificate. Parent or the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as Parent or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Code (as hereinafter defined) or under any provisions of state, local or foreign tax law. To the extent that amounts are so withheld by Parent or the Paying Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction or withholding was made by Parent or the Paying Agent.

(c) No Further Ownership Rights in Shares. All cash paid upon the surrender of Certificates in accordance with the terms of this Article I shall be deemed to have been paid in full satisfaction of all rights pertaining to the Shares theretofore represented by such Certificates. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Paying Agent for any reason, they shall be canceled and exchanged as provided in this Article I, except as provided in Section 1.6(e).

(d) Termination of Payment Fund. Any portion of the funds made available to the Paying Agent to pay the Merger Consideration which remains undistributed to the holders of Shares for six months after the Effective Time shall be delivered to Parent, upon demand, and any holders of Shares who have not theretofore complied with this Article I and the instructions set forth in the letter of transmittal mailed to such holders after the Effective Time shall thereafter look only to Parent for payment of the Merger Consideration to which they are entitled.

(e) No Liability. None of Parent, Sub, the Company or the Paying Agent shall be liable to any person in respect of any cash delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any Certificates shall not have been surrendered prior to seven years after the Effective Time (or immediately prior to such earlier date on which any payment pursuant to this Article I would otherwise escheat to or become the property of any Governmental Entity (as hereinafter defined), the cash payment in respect of such Certificate shall, to the extent permitted by applicable law, become the property of the Surviving Corporation, free and clear of all claims or interests of any person previously entitled thereto.

(f) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Paying Agent, the posting by such person of a bond, in such reasonable amount as Parent or the Paying Agent may direct as indemnity against any claim that may be made against them with respect to such Certificate, the Paying Agent will pay in exchange for such lost, stolen or destroyed Certificate the amount of cash to which the holders thereof are entitled pursuant to Section 1.5.

Section 1.7. Further Assurances. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of either of the Constituent Corporations, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Constituent Corporation, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation's right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Constituent Corporation and otherwise to carry out the purposes of this Agreement.

Section 1.8. Closing. The closing of the transactions contemplated by this Agreement (the "Closing") and all actions specified in this Agreement to occur at the Closing shall take place at the offices of Sidley Austin Brown & Wood, Bank One Plaza, Chicago, Illinois 60603, at 10:00 a.m., local time, no later than the second business day following the day on which the last of the conditions set forth in Article VI shall have been fulfilled or waived (if permissible) or at such other time and place as Parent and the Company shall agree.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Parent and Sub represent and warrant to the Company as follows:

Section 2.1. Organization, Standing and Power. Each of Parent and Sub is a corporation duly organized, validly existing and in good standing under the laws of its place of incorporation and has the requisite corporate power and authority to carry on its business as now being conducted.

Section 2.2. Authority. On or prior to the date of this Agreement, the Board of Directors of Sub has declared the Merger advisable and has approved this Agreement in accordance with the DGCL. Each of Parent and Sub has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, subject to the approval of this Agreement by the sole stockholder of Sub. Parent has all requisite corporate power and authority to enter into the Stock Option Agreement and to consummate the transactions contemplated thereby. The execution and delivery of this Agreement by Parent and Sub, the execution and delivery of the Stock Option Agreement by Parent and the consummation by Parent and Sub of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action (including all Board action) on the part of Parent and Sub, subject to the filing of the appropriate Certificate of Merger as required by the DGCL. This Agreement has been duly executed and delivered by Parent and Sub, the Stock Option Agreement has been duly executed and delivered by Parent, and (assuming the valid authorization, execution and delivery of this Agreement and the Stock Option Agreement by the Company, and the validity and binding effect hereof and thereof on the Company) this Agreement constitutes the valid and binding obligation of Parent and Sub enforceable against

Section 3.17. Intellectual Property. "Company Intellectual Property" means all trademarks, trademark registrations, trademark rights and renewals thereof, trade names, trade name rights, patents, patent rights, patent applications, industrial models, inventions, invention disclosures, designs, utility models, inventor rights, software, copyrights, copyright registrations and renewals thereof, servicemarks, servicemark registrations and renewals thereof, servicemark rights, trade secrets, applications for trademark and servicemark registrations, know-how, confidential information and other proprietary rights, and any data and information of any nature or form used or held for use in connection with the businesses of the Company and/or any of its Subsidiaries as currently conducted or as currently contemplated by the Company or any such subsidiary, together with all applications or continuations thereof currently pending or in process for any of the foregoing. Except as disclosed in the Company SEC Documents filed with the SEC prior to the date hereof (excluding the Risk Factor Disclosures), the Company and its Subsidiaries own, or possess adequate licenses or other valid rights to use (including the right to sublicense to customers, suppliers or others as needed), all of the Company Intellectual Property that is necessary for the conduct or contemplated conduct of the Company's or its Subsidiaries' businesses. Section 3.17 of the Company Letter lists each material license or other agreement pursuant to which the Company or any of its Subsidiaries has the right to use Company Intellectual Property utilized in connection with any product of, or service provided by, the Company and its Subsidiaries, the cancellation or expiration of which would have a Material Adverse Effect on the Company (the "Company Licenses"). There are no pending or, to the Knowledge of the Company, threatened interferences, re-examinations, oppositions or cancellation proceedings involving any patents or patent rights, trademarks or trademark rights, or applications therefor, of the Company or any of its Subsidiaries. There are no pending or, to the Knowledge of the Company, threatened claims or litigation contesting the validity, ownership or right to use, sell, license or dispose of the Company Intellectual Property. The Company and its Subsidiaries have entered into agreements with employees, consultants, officers and agents sufficient to maintain the confidentiality of the Company Intellectual Property. There is no breach or violation by the Company or by any of its Subsidiaries under, and, to the Knowledge of the Company, there is no breach or violation by any other party to, any Company License that is reasonably likely to give rise to any termination or any loss of rights thereunder. There has been no unauthorized disclosure or use of confidential information, trade secret rights, processes and formulas, research and development results and other know-how of the Company or any of its Subsidiaries, the value of which to the Company and its Subsidiaries is dependent upon the maintenance of the confidentiality thereof. The conduct of the business of the Company and its Subsidiaries as conducted in the past, as currently conducted, or as contemplated in connection with the introduction of planned new products or services, did not, does not, and, in the reasonable expectation of the Company, will not infringe upon or conflict with, in any way, any license, trademark, trademark right, trade name, trade name right, patent, patent right, industrial model, invention, service mark, service mark right, copyright, trade secret or any other intellectual property rights of any third party. Except as disclosed in the Company SEC Documents filed with the SEC prior to the date hereof (excluding the Risk Factor Disclosures) or as set forth in Section 3.17 of the Company Letter, there are no infringements of, or conflicts with, any Company Intellectual Property which, individually or in the aggregate, would have a Material Adverse Effect on the Company. Except as set forth in Section 3.17 of the Company Letter, neither the Company nor any of its Subsidiaries has licensed or otherwise permitted the use by any third party of any proprietary information or Company Intellectual

Property on terms or in a manner which, individually or in the aggregate, would have a Material Adverse Effect on the Company.

Section 3.18. Opinion of Financial Advisor. The Company has received the oral opinion of U.S. Bancorp Piper Jaffray Inc. to the effect that, as of the date of such opinion, the Merger Consideration is fair to the Company's stockholders from a financial point of view, and such oral opinion shall be confirmed in writing and shall be delivered to Parent for informational purposes only promptly after the execution and delivery of this Agreement.

Section 3.19. State Takeover Statutes. The Board of Directors of the Company has, to the extent such statutes are applicable, taken all action (including appropriate approvals of the Board of Directors of the Company) necessary to render the provisions of Section 203 of the DGCL and Chapter 23B.19 of the Washington Business Corporation Act inapplicable to the Merger, this Agreement, the Stock Option Agreement, the Stockholder Agreements and the transactions contemplated hereby and thereby. To the Knowledge of the Company, no other state takeover statute or similar charter or bylaw provisions are applicable to the Merger, this Agreement, the Stock Option Agreement, the Stockholder Agreements and the transactions contemplated hereby and thereby.

Section 3.20. Required Vote of Company Stockholders. The affirmative vote of the holders of a majority of the outstanding Shares is required to adopt this Agreement. No other vote of the security holders of the Company is required by law, the Company Charter or the Amended and Restated By-laws of the Company or otherwise in order for the Company to consummate the Merger and the transactions contemplated hereby and in the Stock Option Agreement.

Section 3.21. Title to and Sufficiency of Assets.

(a) The Company and its Subsidiaries own good and marketable title to all of their assets constituting personal property which is material to their business (excluding, for purposes of this sentence, assets held under leases), free and clear of any and all mortgages, liens, encumbrances, charges, claims, restrictions, pledges, security interests or impositions (collectively, "Liens"), except as disclosed in the Company SEC Documents filed with the SEC prior to the date hereof (excluding the Risk Factor Disclosures) or Section 3.21 of the Company Letter. Such assets, together with all assets held by the Company and the Subsidiaries under leases, include all tangible and intangible personal property, contracts and rights necessary or required for the operation of the businesses of the Company and its Subsidiaries as currently conducted.

(b) The Company and its Subsidiaries do not own any real property.

(c) Section 3.21 of the Company letter sets forth a list of all real estate leases of the Company or any of its Subsidiaries (the "Real Estate Leases"). The Real Estate Leases are in full force and effect and no event has occurred which with the passage of time, the giving of notice, or both, would constitute a default or event of default by the Company or any of its Subsidiaries or, to the Knowledge of the Company, any other person who is a party signatory

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

GENERAL ELECTRIC COMPANYBy: 

Name: J. Keith Morgan

Title: V.P. General Counsel

GE medical Systems

ETHER MERGER CORP.

By: _____

Name: _____

Title: _____

DATA CRITICAL CORPORATION

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

GENERAL ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

ETHER MERGER CORP.

By: *[Signature]*
Name: *Peter L. J. King*
Title: *VP - General Counsel*

DATA CRITICAL CORPORATION

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, Parent, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

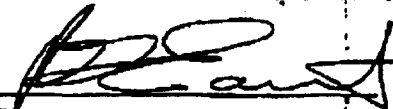
GENERAL ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

ETHER MERGER CORP.

By: _____
Name: _____
Title: _____

DATA CRITICAL CORPORATION

By:  _____
Name: _____
Title: _____