

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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):

SurfWatch Software, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: November 29, 2000

2. Name and address of receiving party(ies)

Name: SurfControl, Inc.

Internal Address: _____

Street Address: 100 Enterprise Way

City: Scotts Valley State: CA Zip: 95066

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State California
- 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) _____

B. Trademark Registration No.(s) 2,024,687

2,184,549 2,213,272 2,059,911

Additional number(s) attached Yes No

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

Name: BACON & THOMAS, PLLC

Internal Address: _____

Street Address: 625 Slaters Lane, Fourth Floor

City: Alexandria State: VA Zip: 22314

6. Total number of applications and registrations involved: _____

4

7. Total fee (37 CFR 3.41).....\$ 115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:


02-0200

DO NOT USE THIS SPACE

9. Signature.

Thomas J. Moore

Name of Person Signing



Signature

August 22, 2002

Date

Total number of pages including cover sheet, attachments, and document: **7**

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

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is entered into as of November 29, 2000, by and between SurfWatch Software, Inc., a California corporation ("SurfWatch"), and SurfControl, Inc., a California corporation ("SurfControl").

WITNESSETH:

WHEREAS, SurfControl is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, SurfWatch is a corporation duly organized and existing under the laws of the State of California;

WHEREAS, on the date of this Merger Agreement, SurfControl has authority to issue 15,000,000 shares of Common Stock (the "SurfControl Common Stock"), of which 1,000 shares are issued and outstanding;

WHEREAS, on the date of this Merger Agreement, SurfWatch has authority to issue 2,500,000 shares of Common Stock (the "SurfWatch Common Stock"), of which 1,020,875 shares are issued and outstanding;

WHEREAS, the respective Boards of Directors for SurfControl and SurfWatch have determined that it is advisable and to the advantage of said two corporations and their shareholders that SurfWatch merge with and into SurfControl upon the terms and conditions herein provided; and

WHEREAS, the respective Boards of Directors of SurfControl and SurfWatch, the shareholders of SurfWatch, and the sole stockholder of SurfControl have adopted and approved this Merger Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, SurfWatch and SurfControl hereby agree to merge as follows:

1. **Merger.** SurfWatch shall be merged with and into SurfControl, and SurfControl shall survive the merger ("Merger"), effective upon the date when this Merger Agreement is made effective in accordance with applicable law (the "Effective Date").

2. **Governing Documents.** The Articles of Incorporation of SurfControl shall continue to be the Articles of Incorporation of SurfControl as the surviving Corporation.

The Bylaws of SurfControl, in effect on the Effective Date, shall continue to be the Bylaws of SurfControl as the surviving Corporation without change or amendment until further amended in accordance with the provisions thereof and applicable laws.

3. **Directors and Officers.** The directors and officers of SurfControl shall remain as the directors and officers of SurfControl the surviving corporation upon the Effective Date.

4. **Succession.** On the Effective Date, SurfControl shall succeed to SurfWatch in the manner of and as more fully set forth in Section 1100 et seq. of the California General Corporation Laws.

5. **Further Assurances.** From time to time, as and when required by SurfControl or by its successors and assigns, there shall be executed and delivered on behalf of SurfWatch such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest, perfect or confirm, of record or otherwise, in SurfControl the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of SurfWatch, and otherwise to carry out the purposes of this Merger Agreement and the officers and directors of SurfControl are fully authorized in the name and on behalf of SurfWatch or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

6. **Stock of SurfWatch.**

a. **Common Stock.** Upon the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof, each share of SurfWatch Common Stock outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of SurfControl Common Stock.

b. **Fractional Shares.** No fractional shares which a SurfControl stockholder would otherwise be entitled to receive by reason of the exchange of SurfWatch stock for SurfControl stock shall be issued. In lieu of any fractional shares to which a holder would otherwise be entitled, SurfControl shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on the Effective Date as determined by the Board of Directors of SurfControl.

7. **Stock Certificates.** On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of SurfWatch stock shall be deemed for all purposes to evidence ownership of and to represent the shares of SurfControl stock into which the shares of SurfWatch stock represented by such certificates have been converted as herein provided. The registered owner on the books and records of SurfControl or its transfer agent of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to SurfControl or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of SurfControl stock evidenced by such outstanding certificate as above provided.

8. **Options and Warrants.** Upon the Effective Date, each outstanding option, warrant or other right to purchase shares of SurfWatch stock shall be converted into and become an option, warrant, or right to purchase the number of shares of SurfControl stock, at a price per share equal to the exercise price of the option, warrant or right to purchase SurfWatch stock, and upon the same terms and subject to the same conditions as set forth in any option plans or other agreements entered into by SurfWatch pertaining to such options, warrants, or rights. A number of shares of SurfControl stock shall be reserved for purposes of such options, warrants, and rights equal to the number of shares of SurfControl stock so reserved as of the Effective Date. As of the

Effective Date, SurfControl shall assume all obligations of SurfWatch under agreements pertaining to such options, warrants, and rights, including any option plans, and the outstanding options, warrants, or other rights, or portions thereof, granted pursuant thereto.

9. Other Employee Benefit Plans. As of the Effective Date, SurfControl hereby assumes all obligations of SurfWatch under any and all employee benefit plans in effect as of said date or with respect to which employee rights or accrued benefits are outstanding as of said date.

10. Covenants of SurfControl. SurfControl covenants and agrees that it will, on or before the Effective Date:

a. File any and all documents with the California Franchise Tax Board necessary to the assumption by SurfControl of all of the franchise tax liabilities of SurfWatch.

11. Amendment. At any time before or after approval and adoption by the stockholders of SurfWatch, this Merger Agreement may be amended in any manner as may be determined in the judgment of the respective Boards of Directors of SurfControl and SurfWatch to be necessary, desirable or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purposes and intent of this Merger Agreement.


12. Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either SurfWatch or SurfControl or both, notwithstanding approval of this Merger Agreement by the sole stockholder of SurfControl and the shareholders of SurfWatch.

13. Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by resolution of the Board of Directors of SurfWatch and SurfControl, is hereby executed on behalf of each of said two corporations by their respective officers thereunto duly authorized.

SURFCONTROL, INC., a California corporation

By: 
Kevin Blakeman, President and CEO

By: 
Matthew Horsley, Secretary

SURFWATCH SOFTWARE, INC., a California corporation

By: 
Kevin Blakeman, President and CEO

By: 
Matthew Horsley, Secretary

CERTIFICATE OF APPROVAL OF
AGREEMENT AND PLAN OF MERGER OF
SURFCONTROL, INC.
(a California corporation)

Kevin Blakeman and Matthew Horsley certify that:

1. They are the duly elected and acting President and Secretary, respectively, of SurfControl, Inc., a California corporation (the "Corporation").
2. This Certificate is attached to the Agreement and Plan of Merger dated as of November 29, 2000, providing for the merger of SurfWatch, a California corporation with and into the Corporation.
3. The Agreement and Plan of Merger in the form attached hereto (the "Merger Agreement") was approved by the Board of Directors of the Corporation at a meeting duly noticed and held on August 29, 2000.
4. The total number of outstanding shares of the Corporation entitled to vote on the merger was 1,000 shares of Common Stock.
5. The principal terms of the Merger Agreement were approved by an affirmative vote which exceeded the vote required, such vote being a majority of the total number of outstanding shares of Common Stock, voting together as a single class.

The undersigned, Kevin Blakeman and Matthew Horsley, President and Secretary, respectively, of SurfWatch Software, a California corporation, declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of their own knowledge.

Dated: November 29, 2000.



Kevin Blakeman, President



Matthew Horsley, Secretary

**CERTIFICATE OF APPROVAL OF
 AGREEMENT AND PLAN OF MERGER OF
 SURFWATCH SOFTWARE, INC.
 (a California corporation)**

Kevin Blakeman and Matthew Horsley certify that:

1. They are the duly elected and acting President and Secretary, respectively, of SurfWatch Software, Inc., a California corporation (the "Corporation").
2. This Certificate is attached to the Agreement and Plan of Merger dated as of November 29, 2000, providing for the merger of the Corporation with and into SurfControl, a California corporation.
3. The Agreement and Plan of Merger in the form attached hereto (the "Merger Agreement") was approved by the Board of Directors of the Corporation at a meeting duly noticed and held on August 29, 2000.
4. The total number of outstanding shares of the Corporation entitled to vote on the merger was 1,020,875 shares of Common Stock.
5. The principal terms of the Merger Agreement were approved by an affirmative vote which exceeded the vote required, such vote being a majority of the total number of outstanding shares of Common Stock, voting together as a single class.

The undersigned, Kevin Blakeman and Matthew Horsley, President and Secretary, respectively, of SurfWatch Software, a California corporation, declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of their own knowledge.

Dated: November 29, 2000.



 Kevin Blakeman, President



 Matthew Horsley, Secretary

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