

11-18-2002

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Docket No.:

41905-00890

Tab settings



To the Honorable Commissioner of Patents

102283231

attached original documents or copy thereof.

1. Name of conveying party(ies):

Fischer Imaging Corporation

11-13-02

- Individual(s)
- General Partnership
- Corporation-State Minnesota
- Other

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

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

Execution Date: July 2, 1991

2. Name and address of receiving party(ies):

Name: Fischer Imaging Corporation

Internal Address:

Street Address: 12300 North Grant Street

City: Denver State: CO ZIP: 80241

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

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,215,543

Additional numbers  Yes  No

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

Name: Thomas R. Marsh, Esq.

Internal Address:

MARSH FISCHMANN & BREYFOGLE LLP

Street Address: 3151 South Vaughn Way, Suite 411

City: Aurora State: CO ZIP: 80014

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

01

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-1419

DO NOT USE THIS SPACE

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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.

Thomas R. Marsh, Esq.

Name of Person Signing

*Thomas R. Marsh*

Signature

November 4, 2002

Date

Total number of pages including cover sheet, attachments, and

11

TRADEMARK

REEL: 2618 FRAME: 0636

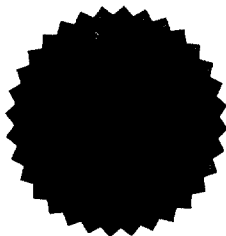
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"FISCHER IMAGING CORPORATION", A MINNESOTA CORPORATION,  
WITH AND INTO "FISCHER IMAGING CORPORATION" UNDER THE NAME OF "FISCHER IMAGING CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF JULY, A.D. 1991, AT 2:30 O'CLOCK P.M.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

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020673336

AUTHENTICATION: 2066743

DATE: 10-31-02

**TRADEMARK**  
**REEL: 2618 FRAME: 0637**

**CERTIFICATE OF OWNERSHIP  
AND MERGER  
OF  
FISCHER IMAGING CORPORATION  
(a Minnesota corporation),  
INTO  
FISCHER IMAGING CORPORATION  
(a Delaware corporation)**

Fischer Imaging Corporation, a Minnesota corporation (the "Company"), DOES HEREBY CERTIFY as follows in accordance with Section 253 of the Delaware General Corporation Law:

**FIRST:** The Company owns 100% of the issued and outstanding capital stock of Fischer Imaging Corporation, a Delaware corporation ("NEWCO").

**SECOND:** That, on June 26, 1991, the Board of Directors of the Company adopted the following resolutions by unanimous written consent:

RESOLVED, that the form, terms and provisions of the proposed Agreement and Plan of Merger (the "Merger Agreement") attached hereto as Exhibit E, between the Company and NEWCO, which provides for the merger of the Company into NEWCO, with NEWCO as the survivor corporation (the "Merger") in which all of the capital stock of the Company (except shares held by stockholders who have properly exercised their dissenters' rights under the MBCA) will be converted into shares of capital stock of NEWCO, without any further action by the holder thereof, at the effective time of the Merger, in the following manner: (i) each share of the Company's Common Stock outstanding immediately prior to the effective time of the Merger will be converted into .641 fully paid and nonassessable share of NEWCO Common Stock (ii) each share of Series A Cumulative Preferred Stock, outstanding immediately prior to the effective time of the Merger will be converted into one fully paid and nonassessable share of NEWCO Series A Cumulative Preferred Stock of NEWCO, and (iii) each share of the Company's Series B Convertible Preferred Stock ("Series B Stock") outstanding immediately prior to the effective time of the Merger will be converted into .641 fully paid and nonassessable share of Series B Convertible Preferred Stock of NEWCO, he and hereby are in all respects approved; that the Chairman of the Board, the President or any Vice President of the Company be and each hereby is authorized to execute and deliver on behalf of the Company the Merger Agreement, with such changes therein as the officers executing the

same shall approve, his execution thereof to be conclusive evidence of his approval and of the approval of this Board of such changes; and that the Secretary or any Assistant Secretary of the Company be and each hereby is authorized to attest to the execution of, and to affix the corporate seal of the Company to, the Merger Agreement;

FURTHER RESOLVED, that, subject to the stockholders' approval of the Merger Agreement, the Chairman of the Board, the President or any Vice President of the Company be and each hereby is authorized to execute and deliver on behalf of the Company any amendments to the Merger Agreement which he may deem necessary or appropriate in order to carry out the purposes of the Merger Agreement, such execution to be conclusive evidence of the approval of the Board; and that the Secretary or any Assistant Secretary of the Company be and each hereby is authorize to attest to the execution of, and to affix the corporate seal of the Company to, any such amendment;

FURTHER RESOLVED, that, subject to the stockholders' approval of the Merger Agreement, pursuant to applicable law and the terms and provisions of the Merger Agreement, the officers of the Company be and each hereby is authorized to cause a Certificate of Merger to be filed and recorded pursuant to the Delaware General Corporation Law, Articles of Merger to be filed and recorded pursuant to the MBCA, and to cause such other papers to be filed and such fees to be paid as may be necessary or appropriate in the State of Delaware and the State of Minnesota and any other jurisdiction, and to do and cause to be done any and all acts and things which they may deem necessary or appropriate in order for the Merger to become effective;

FURTHER RESOLVED, that, subject to the stockholders' approval of the Merger Agreement, the officers of the Company be and each hereby is authorized and empowered in the name and on behalf of the Company to take such action as may appear necessary or desirable to cause the Company to perform its obligations under the Merger Agreement and to consummate the transactions provided for in the Merger Agreement; and

FURTHER RESOLVED, that, having concluded the merger is in the best interests of the Company and its stockholders pursuant to the provisions of Chapter 302A of the MBCA the Board hereby directs that the Merger Agreement be submitted to the stockholders of the Company for their consideration and approval.

THIRD: The aforesaid merger and Agreement and Plan of Merger have been adopted and approved and Articles of Merger have been adopted, executed, verified and filed in accordance with the laws of the State of Minnesota.

FOURTH: The Certificate of Incorporation of NEWCO shall be the Certificate of Incorporation of the surviving corporation.

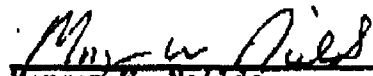
FIFTH: The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation. The address of said principal place of business is 12300 North Grant Street, Denver, Colorado 80241.

SIXTH: A copy of the Agreement and Plan of Merger will be furnished on request and without cost to any stockholder of any constituent corporation.

FISCHER IMAGING CORPORATION,  
a Minnesota corporation

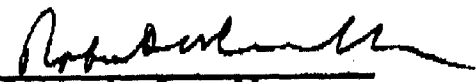
Dated: July 2, 1991

By

  
Morgan W. Neida  
President and Chief Executive  
Officer

ATTEST:

By

  
Roberto A. Cascella  
Secretary

### AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is between Fischer Imaging Corporation, a Minnesota corporation ("Fischer Minnesota"), and Fischer Imaging Corporation, a newly formed Delaware corporation ("Fischer Delaware"). Fischer Minnesota and Fischer Delaware are sometimes hereafter together referred to as the "Constituent Corporations."

WHEREAS, Fischer Minnesota is a corporation duly organized and existing under the laws of the State of Minnesota, having an authorized capital stock of 10,000,000 shares of common stock, \$.01 par value ("Fischer Minnesota Common Stock"), of which 4,165,000 were outstanding as of June 14, 1991, and 5,000,000 shares of preferred stock, \$.01 par value ("Preferred Stock");

WHEREAS, of the Preferred Stock, 65,000 shares have been designated as Series A Cumulative Preferred Stock, \$.01 par value ("Fischer Minnesota Series A Stock"), all of which are issued and outstanding, and 1,389,150 shares have been designated as Series B Convertible Preferred Stock, \$.01 par value ("Fischer Minnesota Series B Stock"), all of which are outstanding;

WHEREAS, Fischer Delaware is a corporation duly organized and existing under the laws of the State of Delaware, having an authorized capital stock of 25,000,000 shares of Common Stock, \$.01 par value (the "Fischer Delaware Common Stock"), of which 100 shares are issued and outstanding and owned by Fischer Minnesota, and 5,000,000 shares of Preferred Stock, \$.01 par value (the "Fischer Delaware Preferred Stock"), of which 65,000 shares have been designated Series A Cumulative Preferred Stock (the "Fischer Delaware Series A Stock"), none of which are issued and outstanding, and 890,481 shares have been designated Series B Convertible Preferred Stock (the "Fischer Delaware Series B Stock"), none of which are issued and outstanding;

WHEREAS, the Board of Directors of Fischer Minnesota has determined that it is advisable and in the best interests of such corporation that Fischer Minnesota merge with and into Fischer Delaware as authorized by the statutes of the states of Minnesota and Delaware and upon the terms and subject to the conditions of this Agreement; and

WHEREAS, the Board of Directors of Fischer Minnesota has, by resolutions duly adopted, approved this Agreement and the Board of Directors of Fischer Minnesota has directed that this Agreement be submitted to a vote of the stockholders of Fischer Minnesota.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Fischer Minnesota and Fischer Delaware hereby agree as follows:

1. Merger. Upon the terms and subject to the conditions set forth in this Agreement, Fischer Minnesota shall be merged with and into Fischer Delaware (the "Merger"), and Fischer Delaware shall be the surviving corporation (sometimes hereafter referred to as the "Surviving Corporation"). The name of the Surviving Corporation shall be Fischer Imaging Corporation. The Merger shall become effective (the "Effective Time") upon the time and date of filing of Articles of Merger with the Minnesota Secretary of State and a Certificate of Ownership and Merger with the Delaware Secretary of State (whichever occurs later).

2. Governing Documents. The Certificate of Incorporation of Fischer Delaware, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation without change or amendment until thereafter amended in accordance with applicable law, and the Bylaws of Fischer Delaware, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation without change or amendment until thereafter amended in accordance with applicable law.

3. Succession; Officers and Directors. At the Effective Time, the separate corporate existence of Fischer Minnesota shall cease, and Fischer Delaware as the Surviving Corporation shall possess all the rights, privileges, powers and franchises of a public and private nature and be subject to all the restrictions, disabilities and duties of Fischer Minnesota; and all and singular, the rights, privileges, powers and franchises of Fischer Minnesota, and all property, real, personal and mixed, and all debts due to Fischer Minnesota on whatever account, as well as for share subscriptions as all other things in action or belonging to Fischer Minnesota shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of Fischer Minnesota, and the title to any real estate vested by deed or otherwise in Fischer Minnesota shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of Fischer Minnesota shall be preserved unimpaired, and all debts, liabilities and duties of Fischer Minnesota shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by the Surviving Corporation. All corporate acts, plans, policies, agreements, arrangements, approvals and authorizations of Fischer Minnesota, its stockholders, Board of Directors and committees thereof, officers and agents which were valid and effective

immediately prior to the Effective Time shall be taken for all purposes as the acts, plans, policies, agreements, arrangements, approvals and authorizations of Fischer Delaware and shall be as effective and binding thereon as the same were with respect to Fischer Minnesota.

The employees and agents of Fischer Minnesota shall become the employees and agents of Fischer Delaware to serve in accordance with the Bylaws of the Surviving Corporation, and shall continue to be employed by Fischer Delaware on the same terms as they were employed by Fischer Minnesota except for such changes in their powers, rights or benefits as are reflected in the Certificate of Incorporation or Bylaws of Fischer Delaware, and subject always to the right of the Board of Directors of Fischer Delaware to modify the terms of their employment.

The Board of Directors, and the members thereof, and the officers, respectively, of Fischer Delaware immediately prior to the Effective Time of the Merger shall be and constitute the Board of Directors, and the members thereof, and the officers, respectively, of the Surviving Corporation until their respective successors shall have been duly elected and qualified or appointed in accordance with the Certificate of Incorporation and Bylaws of Fischer Delaware.

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

5. Conversion of Securities in the Merger. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:

(a) Each share of Fischer Minnesota Common Stock outstanding immediately prior to the Effective Time (excluding shares held by stockholders who have properly exercised their dissenters' rights under the Minnesota Business Corporation Act) shall be changed and converted into and shall be 0.641 of a fully paid and nonassessable share of Fischer Delaware Common Stock.



(b) Each share of Fischer Minnesota Series A Stock outstanding immediately prior to the Effective Time (excluding shares held by stockholders who have properly exercised their dissenters' rights under the Minnesota Business Corporation Act) shall be changed and converted into and shall be one fully paid and nonassessable share of Fischer Delaware Series A Stock.

(c) Each share of Fischer Minnesota Series B Stock outstanding immediately prior to the Effective Time (excluding shares held by stockholders who have properly exercised their dissenters' rights under the Minnesota Business Corporation Act) shall be changed and converted into and shall be 0.641 of a fully paid and nonassessable share of Fischer Delaware Series B Stock.

(d) The shares of Fischer Delaware Common Stock presently issued in the name of Fischer Minnesota shall be cancelled and retired and shall resume the status of authorized and unissued Fischer Delaware Common Stock and no Fischer Delaware Common Stock or other securities of Fischer Delaware shall be issued in respect thereof.

(e) Each warrant or option with respect to a share of Fischer Minnesota Common Stock outstanding immediately prior to the Effective Time shall represent the right to purchase 0.641 of a share of Fischer Delaware Common Stock on the terms in effect immediately prior to the Effective Time, but with a proportionate increase in the exercise price per share, and Fischer Delaware agrees that it shall assume, as of the Effective Time, the obligations of Fischer Minnesota under any such outstanding options or warrants. Fischer Delaware further agrees that it shall assume, as of the Effective Time, the obligations of Fischer Minnesota under its Stock Option Plan and Directors' Stock Option Plan, which shall have been approved by Fischer Minnesota's shareholders prior to the Effective Time, and that there shall be reserved for issuance 300,000 and 50,000 shares of Fischer Delaware Common Stock under the Stock Option Plan and the Directors' Stock Option Plan, respectively.

(f) No fractional shares of Fischer Delaware Common Stock or Fischer Delaware Series B Stock shall be issued as a result of the Merger. In lieu thereof, NEWCO shall pay the fair market value thereof to the holders who would otherwise be entitled to such fractional shares, as determined in good faith by its board of directors.

6. Condition to the Merger. The obligations of the parties to effect the Merger are subject to the condition that, at or prior to the Effective Time, this Agreement shall have been approved and adopted by the holders of a majority of the Fischer Minnesota Common Stock and Preferred Stock (voting together as a single class), by the holders of a majority of the Fischer Minnesota Series A Stock (voting as a separate series) and by the holders of sixty-six and two-thirds percent (66-2/3%) of the Fischer Minnesota Series B Stock (voting as a separate series).

7. Stock Certificates. At and after the Effective Time, all the outstanding certificates which immediately prior to the Effective Time represented shares of Fischer Minnesota Common Stock or Preferred Stock shall be deemed for all purposes to evidence ownership of, and to represent, Fischer Delaware Common Stock or Fischer Delaware Preferred Stock into which the shares formerly represented by such certificates have been converted as herein provided. The registered owner on the books and records of Fischer Minnesota 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 Fischer Delaware or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividends and other distributions on the Fischer Delaware Common Stock or Fischer Delaware Preferred Stock evidenced by such outstanding certificate as above provided.

8. Amendment. Subject to applicable law, this Agreement may be amended, modified or supplemented by written agreement of the parties at any time prior to the Effective Time with respect to any of the terms contained in this Agreement.

9. Abandonment. At any time prior to the Effective Time, this Agreement may be terminated and the Merger may be abandoned by the Board of Directors of Fischer Minnesota, notwithstanding approval of this Agreement by the stockholders of Fischer Minnesota, if circumstances arise which, in the opinion of the Board of Directors of Fischer Minnesota, make the Merger inadvisable.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and the same agreement.

11. Agreement for Service of Process; Dissenting Stockholders. The Surviving Corporation, from and after the Effective Time, agrees that it may be sued and served with process in the State of Minnesota in any proceeding for the enforcement of any obligation of a constituent corporation and in any proceeding for the enforcement of the rights of a dissenting stockholder of Fischer Minnesota against the Surviving Corporation. The Surviving Corporation irrevocably appoints the Secretary of State of the State of Minnesota as its agent to accept service of process in any such proceeding, with process to

be forwarded to the Surviving Corporation at c/o United States Corporation Company, Soo Line Building, 507 Marquette Avenue, Minneapolis, Minnesota 55402. The Surviving Corporation will promptly pay to the dissenting stockholders of Fischer Minnesota the amounts, if any, to which they shall be entitled under the Minnesota Business Corporation Act with respect to the rights of dissenting stockholders, provided such dissenters act in strict compliance with the provisions of such Act governing rights of dissenting stockholders in the case of a merger.

12. Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of Delaware except to the extent the laws of the State of Minnesota shall be applicable thereto.

IN WITNESS WHEREOF, Fischer Minnesota and Fischer Delaware have caused this Agreement and Plan of Merger to be signed by their duly authorized officers as of the 26th day of June, 1991.

FISCHER IMAGING CORPORATION,  
a Minnesota corporation

Attest:

[Signature] Secretary By [Signature] Title: Chairman / CEO

FISCHER IMAGING CORPORATION,  
a Delaware corporation

Attest:

[Signature] Secretary By [Signature] Title: Chairman / CEO