

01-08-2003

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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):

TIER CORPORATION

11-19-02

- Individual(s)
- General Partnership
- Corporation-State CALIFORNIA
- Other
- 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: Amended and Restated Articles of Incorporation (2/10/97)

2. Name and address of receiving party(ies)

Name: TIER TECHNOLOGIES, INC.

Internal

Address:

Street Address: 1350 Treat Blvd., Suite 250

City: Walnut Creek State: CA Zip: 94596

- 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) 1,988,474

Additional number(s) attached  Yes  No

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

Name: MARCY J. BERGMAN, ESQ.

Internal Address: COOPER, WHITE & COOPER LLP

Street Address: 201 California Street

Suite 1700

City: San Francisco State: CA Zip: 94111

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:

501410

FINANCE SECTION

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DO NOT USE THIS SPACE

9. Signature.

KEITH SOMMERBERG

Name of Person Signing

Signature

Date

11/14/02

Total number of pages including cover sheet, attachments, and document: 15

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

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TRADEMARK  
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ASSIGNMENT OF SERVICE MARK

WHEREAS, Tier Corporation ("Assignor") a corporation organized under the laws of the State of California, with a principal business address of 1350 Treat Blvd., Suite 250, Walnut Creek, California 94596, has adopted, owns and is using the service mark TIER CORPORATION (the "Mark") which is the subject of United States Trademark Registration No. 1,988,474, in connection with computer consultation services, and;

WHEREAS, Tier Technologies, Inc. ("Assignee"), a company organized under the laws of the State of California with a principal business address of 1350 Treat Blvd., Suite 250, Walnut Creek, California 94596 desires to acquire that portion of the goodwill of the business of Assignor associated with the Mark, including Trademark Registration No. 1,988,474, and is to become the successor in interest to that portion of business of the Assignor to which the Mark pertains pursuant to Section 10 of the Lanham Act, 15 U.S.C. 1060.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor Tier Corporation hereby sells, transfers and assigns to Assignee Tier Technologies, Inc. all right, title and interest in and to the Mark together with the good will of that portion of the business to which the Mark applies, and the registered Trademark Registration No. 1,988,474.

The record of this assignment shall be entered in the records of the United States Patent and Trademark Office.

TIER TECHNOLOGIES, INC.

By: *Keith S. Comsberg*

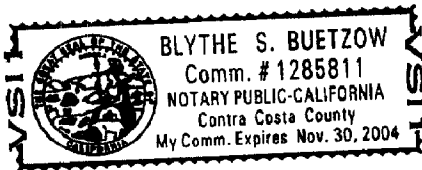
Name: KEITH S. COMSBERG

Title: Assistant General Counsel  
Tier Technologies, Inc

Dated: Nov. 14, 2002

SUBSCRIBED and SWORN to before me this 14<sup>th</sup> of November, 2002.

*Blythe S. Buetzow*  
NOTARY PUBLIC



COPY

# State of California

A487804

## SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this

FEB 18 1997



*Bill Jones*

Secretary of State

A487804

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
TIER CORPORATION

ENDORSED  
FILED  
In the office of the Secretary of State  
of the State of California

FEB 11 1997

*Bill Jones*  
BILL JONES, Secretary of State

William G. Barton and Bradley H. Nickels do hereby certify that:

**First:** They are the duly elected and acting President and Secretary, respectively, of TIER CORPORATION, a California corporation (the "Corporation").

**Second:** The Articles of Incorporation are amended and restated to read as follows:

**Article I**

The name of the Corporation is TIER TECHNOLOGIES, INC.

**Article II**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

**Article III**

**A. Authorized Capitalization.** The Corporation is authorized to issue three classes of shares designated "Class A Common Stock," "Class B Common Stock" and "Preferred Stock," respectively. The total number of shares of all classes of stock that the Corporation shall have authority to issue is twenty million (20,000,000) shares. The number of shares of Class A Common Stock that the Corporation is authorized to issue is two million, four hundred thousand (2,400,000) shares. The number of shares of Class B Common Stock that the Corporation is authorized to issue is twelve million, six hundred thousand (12,600,000) shares. The number of shares of Preferred Stock that the Corporation is authorized to issue is five million (5,000,000) shares.

**B. Preferred Stock.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized to determine and alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any such series of Preferred Stock, and the designation of any such series of Preferred Stock. The Board of Directors may increase or

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TRADEMARK

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decrease (but not below the number of shares of such series then outstanding) the number of any series subsequent to the issuance of shares of that series.

**C. Class A Common Stock.** The shares of Class A Common Stock and shares of Class B Common Stock shall be identical in all respects and shall have equal rights and privileges, except as set forth in this paragraph C of this Article III. Upon dissolution of the Corporation, the Class A Common Stock and Class B Common Stock are entitled to share ratably in the assets thereof that may be available for distribution after satisfaction of creditors and the payment of any liquidation preference of any outstanding shares of Preferred Stock.

**1. Dividends.**

(a) Subject to the rights of any outstanding shares of Preferred Stock, such dividends or distributions as may be determined from time to time may be declared and paid or made upon the Class A Common Stock out of any source at the time lawfully available for the payment of dividends, provided that (subject to paragraphs (b) and (c) below of this paragraph C.1.) identical dividends or distributions are declared and paid concurrently on the Class B Common Stock. If dividends or distributions are declared and paid upon the Class B Common Stock (subject to subparagraphs (b) and (c) below of this paragraph C.1.), an identical dividend shall be declared and paid concurrently on the Class A Common Stock.

(b) No dividend may be declared and paid in Class A Common stock unless the dividend is payable only to holders of Class A Common Stock and a dividend payable to Class B Common Stock is declared and paid concurrently in respect of outstanding shares of Class B Common Stock in the same number of shares of Class B Common Stock per outstanding share.

(c) No dividend may be declared and paid in Class B Common Stock unless the dividend is payable only to holders of Class B Common Stock and a dividend payable to Class A Common Stock is declared and paid concurrently in respect of outstanding shares of Class A Common Stock in the same number of shares of Class A Common Stock per outstanding share.

**2. Stock Combinations and Subdivisions.** The Class A Common Stock shall not be combined or subdivided unless at the same time there is a proportionate combination or subdivision of the Class B Common Stock. If the Class B Common Stock is combined or subdivided, a proportionate combination or subdivision of the Class A Common Stock shall be made at the same time.

**3. Voting.** Except as otherwise required by applicable law related to class voting rights, the holders of Class A Common Stock shall vote together with the holders of Class B Common Stock as a single class, provided that the holders of Class A Common Stock shall have ten (10) votes per share and the holders of Class B Common Stock shall have one (1) vote per share.

#### 4. Conversion Upon Transfer or Termination of Employment.

(a) Each share of Class A Common Stock shall automatically be converted into one share of Class B Common Stock in the event that the beneficial or record ownership of such shares of Class A Common Stock shall be transferred (including, without limitation, by way of gift, settlement, will or intestacy) to any person or entity that is not (i) a shareholder (whether beneficially or of record) of the Corporation as of the date of filing with the California Secretary of State of these Amended and Restated Articles of Incorporation; or (ii) a trust under which any of the persons described in clause (i) is a beneficiary. A pledge of Class A Common Stock as security for an obligation of a holder of such stock shall not be considered a transfer for purposes of this paragraph C.4(a), unless and until beneficial ownership is transferred to the pledgeholder. The conversion into Class B Common Stock shall be deemed to have occurred (whether or not certificates representing such shares are surrendered) as of the close of business on the date of transfer, and the person or persons entitled to receive shares of Class B Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class B Common Stock on that date.

(b) Before any shares of Class B Common Stock shall be delivered upon conversion, the holder of shares of Class A Common Stock whose shares have been converted into Class B Common Stock shall deliver the certificate(s) representing such shares to the Corporation or its duly authorized agent (or if such certificates have been lost, stolen or destroyed, such holder shall execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such conversion), specifying the place where the Common Stock issued in conversion thereof shall be sent. The endorsement of the share certificate shall be in a form satisfactory to the Corporation or such agent, as the case may be.

(c) The Corporation shall, at all times, reserve and keep available out of the authorized and unissued shares of Class B Common Stock, solely for the purpose of effecting the conversion of the outstanding Class A Common Stock, such number of shares of Class B Common Stock as shall from time to time be sufficient to effect the conversion of all of the outstanding Class A Common Stock and if, at any time, the number of authorized and unissued shares of Class B Common Stock shall not be sufficient to effect conversion of the then outstanding Class A Common Stock, the Corporation shall take such corporate action as may be necessary to increase the number of authorized and unissued shares of Class B Common Stock to such number as shall be sufficient for such purposes.

(d) The Corporation shall pay any and all issuance and other taxes that may be payable in respect of any issuance or delivery of shares of Class B Common Stock on conversion of Class A Common Stock. The Corporation shall not, however, be required to pay any tax which may be payable with respect to the issuance of any Class B Common Stock in a name other than that in which the Class A Common Stock so converted was registered,

and no such issuance or delivery shall be made unless and until the person requesting such issuance has paid to the Corporation the amount of any such tax, or has established, to the satisfaction of the Corporation, that such tax has been paid.

(e) All shares of Class B Common Stock which may be issued upon conversion of the shares of Class A Common Stock will, upon issuance by the Corporation, be validly issued, fully paid and non-assessable and free from all taxes, liens and charges with respect to the issuance thereof.

(f) All certificates representing Class A Common Stock surrendered for conversion shall be appropriately canceled on the books of the Corporation, and the amount of authorized Class A Common Stock of the Corporation shall be reduced by such amount.

#### **D. Class B Common Stock.**

1. **Dividends and Distributions.** Subject to the provisions of paragraph C of this Article III, dividends and distributions may be declared and paid or made upon the Class B Common Stock as permitted by applicable law.

2. **Stock Combinations and Subdivisions.** Subject to the provisions of paragraph C of this Article III, the Class B Common Stock may be combined or subdivided in such manner as may be permitted by applicable law.

3. **Voting.** The Class B Common Stock shall have one (1) vote per share on all matters that may be submitted to a vote or consent of shareholders.

**E. Reclassification and Conversion.** Upon this amendment and restatement becoming effective, each outstanding share of Common Stock, shall, without any action on the part of the holders thereof, be automatically reclassified and converted so that each outstanding share of Common Stock shall be converted into and represent forty (40) shares of Class A Common Stock and sixty (60) shares of Class B Common Stock.

Article IV

**A. Liability for Monetary Damages.** The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

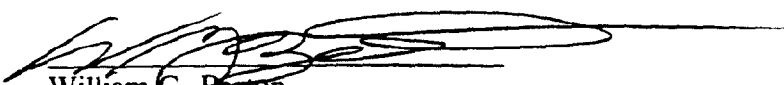
**B. Indemnification.** This Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions or through agreements with the agents, or through shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set for in Section 204 of the Corporations Code.


**Third:** The foregoing Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.

**Fourth:** The foregoing Amended and Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the Corporations Code. The total number of outstanding shares of the Corporation is 46,000 shares of Common Stock. The number of shares voting in favor of the Amended and Restated Articles of Incorporation equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the shares of Common Stock.

William G. Barton and Bradley H. Nickels further 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: 2/10, 1997, at Walnut Creek, California

  
William G. Barton  
President

  
Bradley H. Nickels  
Secretary