



102373827

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

1. Name of conveying party(ies): 2-7-03  
 Talarian Corporation  
 333 Distel Circle  
 Los Altos, California 94022  
 Individual(s)  Association  
 General Partnership  Limited Partnership  
 Corporation - Delaware  
 Other \_\_\_\_\_

2. Name and address of receiving party(ies):  
 Name: Panther Acquisition Corporation  
 Internal Address: \_\_\_\_\_  
 Street Address: 2711 Centerville Road, Suite 400  
 City: Wilmington State: DE ZIP: 19808  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation Delaware  
 Other \_\_\_\_\_

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

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 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)

Execution Date: January 4, 2002

Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

B. Trademark Registration Nos.

2117052; 2233537; 2442654; 2524805; 2546613

Additional numbers attached?  Yes  No

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

Name: Lori M. Stockton

Internal Address: BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Street Address: 12400 Wilshire Boulevard, 7<sup>th</sup> Floor

City: Los Angeles State: CA ZIP: 90025

6. Total number of applications and patents involved: 5

7. Total fee (37 CFR 3.41).....\$ 140.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:

02-2666

(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.

Lori M. Stockton  
Name of Person Signing

Signature

February 3, 2003  
Date

Total number of pages comprising cover sheet: 7

02/25/2003 LMUELLER 00000199 2117052

01 FC:8521 40.00 DP  
02 FC:8522 100.00 DP

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on 2/4/03.

Candace Baker 2/4/03  
Date

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of January 4, 2002 (this "Agreement"), among TIBCO Software Inc., a Delaware corporation ("TIBCO"), Panther Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of TIBCO ("Merger Sub"), and Talarian Corporation, a Delaware corporation ("Talarian").

### RECITALS

A. The Board of Directors of Talarian (i) has determined that the Merger (as defined in Section 1.1) is advisable and fair to, and in the best interests of, Talarian and its stockholders, (ii) has approved and declared advisable this Agreement, the Merger and the other transactions contemplated by this Agreement and (iii) has determined to recommend that the stockholders of Talarian adopt this Agreement.

B. The Board of Directors of TIBCO (i) has determined that the Merger is advisable and fair to, and in the best interests of, TIBCO and its stockholders and (ii) has approved this Agreement, the Merger and the other transactions contemplated by this Agreement.

C. Contemporaneously with the execution and delivery of this Agreement, and as a condition and inducement to TIBCO's willingness to enter into this Agreement, certain stockholders of Talarian are entering into a Voting Agreement with TIBCO in substantially the form attached hereto as Exhibit A (the "Talarian Voting Agreement").

D. TIBCO, Merger Sub and Talarian desire to make certain representations, warranties, covenants and agreements in connection with the Merger and to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants, agreements, representations and warranties set forth herein, the parties agree as follows:

### ARTICLE I THE MERGER

#### 1.1 The Merger.

(a) At the Effective Time and subject to and upon the terms and conditions of this Agreement, including the terms of subsection (b) below, and the applicable provisions of the Delaware General Corporation Law (the "DGCL"), Talarian shall be merged with and into Merger Sub (the "Forward Merger"), the separate corporate existence of Talarian shall cease and Merger Sub shall continue as the surviving corporation. Subject to subsections (b) and (c) below, Merger Sub as the surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

(b) In lieu of Talarian being merged with and into Merger Sub, if all of the conditions set forth in Article VI (excluding conditions that, by their terms, cannot be satisfied

(c) The Forward Merger or the Reverse Merger, as the case may be, is referred to herein as the "Merger." In the event that the Reverse Merger is consummated, and Talarian elects to have TIBCO consummate the Second-Step Forward Merger, then, as appropriate, "Merger" shall refer to the Reverse Merger and the Second-Step Forward Merger, collectively or seriatim, as appropriate.

1.2 Effective Time; Closing. Subject to the provisions of this Agreement, the parties hereto, or in the case of the Second-Step Merger, TIBCO, shall cause each of the Forward Merger, Reverse Merger and Second-Step Merger, as appropriate, to be consummated by filing a certificate of merger, in such appropriate form as determined by the parties, with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL (the "Certificate of Merger") (the time of such filing of the Certificate of Merger for the Forward Merger or the Reverse Merger, as the case may be (or such later time as may be agreed in writing by Talarian and TIBCO and specified in such Certificate of Merger) being the "Effective Time") as soon as practicable on or after the Closing Date (as herein defined). The closing of the Merger (the "Closing") shall take place at the offices of Venture Law Group, 2775 Sand Hill Road, Menlo Park, California, at a time and date to be specified by the parties, which shall be no later than the second business day after the satisfaction or waiver of the conditions set forth in Article VI, or at such other time, date and location as the parties hereto agree in writing (the "Closing Date").

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time all of the property, rights, privileges, powers and franchises of Talarian and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Talarian and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation. Without limiting the generality of the foregoing, at the effective time of the Second-Step Forward Merger, all of the property, rights, privileges, powers and franchises of Talarian and the Second-Step Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Talarian and the Second-Step Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Certificate of Incorporation; Bylaws.

(a) At the Effective Time, the Certificate of Incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended as provided by law and such Certificate of Incorporation of the Surviving Corporation; provided, however, that Article I of the Certificate of Incorporation of the Surviving Corporation shall be amended at the Effective Time to read: "The name of the corporation is Talarian Corporation."

(b) At the Effective Time, the Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended in accordance with the provisions thereof or as provided by law.

1.5 Directors and Officers. The initial directors of the Surviving Corporation shall be the directors of Merger Sub immediately prior to the Effective Time, until their respective successors are duly elected or appointed and qualified. The initial corporate officers of the Surviving Corporation shall be the corporate officers of Merger Sub immediately prior to the Effective Time, until their respective successors are duly appointed.

1.6 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, Talarian or the holders of any of the following securities:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized respective officers as of the date first written above.

TIBCO SOFTWARE INC.

By: R. Mashruwala  
Rajesh U. Mashruwala  
Executive Vice President, Marketing & Engineering

PANTHER ACQUISITION CORP.

By: C. G. O'Meara  
Christopher G. O'Meara  
Chief Financial Officer and Treasurer

TALARIAN CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\* AGREEMENT AND PLAN OF MERGER \*\*\*\*

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Executive Vice President, Marketing &  
Engineering

PANTHER ACQUISITION CORP.

By: \_\_\_\_\_  
Christopher G. O'Meara  
Chief Financial Officer and Treasurer

TALARIAN CORPORATION

By: \_\_\_\_\_  
Name: PAUL A LARSON  
Title: President & CEO

\*\*\*\* AGREEMENT AND PLAN OF MERGER \*\*\*\*

# TRADEMARKS ONLY

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

1. Name of conveying party(ies):

Talarian Corporation  
333 Distel Circle  
Los Altos, California 94022

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation - Delaware  
 Other \_\_\_\_\_

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

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

Name: Panther Acquisition Corporation

Internal Address: \_\_\_\_\_

Street Address: 2711 Centerville Road, Suite 400

City: Wilmington State: DE ZIP: 19808

Individual(s) citizenship \_\_\_\_\_

Association \_\_\_\_\_

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Corporation Delaware

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Lori M. Stockton

Name of Person Signing



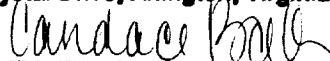
Signature

February 3, 2003

Date

Total number of pages comprising cover sheet: 7

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Candace Baker

2/4/03

Date

TRADEMARK

REEL: 002678 FRAME: 0403

**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**TIBCO SOFTWARE INC.**

**PANTHER ACQUISITION CORP.**

**AND**

**TALARIAN CORPORATION**

Dated as of January 4, 2002



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Rajesh U. Mashurwala  
Executive Vice President, Marketing &  
Engineering

PANTHER ACQUISITION CORP.

By: C. G. O'Meara  
Christopher G. O'Meara  
Chief Financial Officer and Treasurer

TALARIAN CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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By: \_\_\_\_\_  
Christopher G. O'Meara  
Chief Financial Officer and Treasurer

TALARIAN CORPORATION

By: \_\_\_\_\_  
Name: PAUL A LARSON  
Title: President + CEO

\*\*\*\* AGREEMENT AND PLAN OF MERGER \*\*\*\*

**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**TIBCO SOFTWARE INC.**

**PANTHER ACQUISITION CORP.**

**AND**

**TALARIAN CORPORATION**

Dated as of January 4, 2002