

03-05-2003



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RECORD & TRAC

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PARTMENT OF COMMERCE Patent and Trademark Office

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

<p>1. Name of conveying party(ies): New York Life Insurance Company <b>2.28.03</b></p> <p><input type="checkbox"/> Individual(s)                      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership              <input type="checkbox"/> Limited Partnership  <input checked="" type="checkbox"/> Corporation-State New York  <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies) Name: <u>Gyration, Inc.</u> Internal Address: _____ Street Address: <u>12930 Saratoga Avenue, Building C</u> City: <u>Saratoga</u> State: <u>California</u> Zip: <u>95070</u></p> <p><input type="checkbox"/> Individual(s) citizenship _____  <input type="checkbox"/> Association _____  <input type="checkbox"/> General Partnership _____  <input type="checkbox"/> Limited Partnership _____  <input checked="" type="checkbox"/> Corporation-State <u>California</u>  <input type="checkbox"/> Other _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Designations must be a separate document from assignment) Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance: <input type="checkbox"/> Assignment                              <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement                  <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other <u>Release of Security Interest</u></p> <p>Execution Date: <u>January 5, 2000</u></p>	
<p>4. Application number(s) or registration number(s): A. Trademark Application No.(s)  B. Trademark Registration No.(s) <u>1,794,145</u> <u>1,842,813</u></p> <p>Additional number(s) attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Linda G. Henry, Esq.</u> Internal Address: _____ _____ _____ Street Address: <u>Fenwick &amp; West LLP</u> <u>Silicon Valley Center, 801 California Street</u> City: <u>Mountain View</u> State: <u>CA</u> Zip: <u>94041-2008</u></p>	<p>6. Total number of applications and registrations involved: ..... <span style="border: 1px solid black; padding: 2px;">2</span></p> <p>7. Total fee (37 CFR 3.41) <span style="float: right;"><u>\$65.00</u></span> <input checked="" type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account, if necessary.</p> <p>8. Deposit account number: <u>500261</u></p>
<b>DO NOT USE THIS SPACE</b>	
<p>9. Signature.  <u>Linda G. Henry, Esq.</u>                      <u>Linda G. Henry</u>                      <u>Feb. 28, 2003</u> Name of Person Signing                      Signature                      Date</p> <p>Total number of pages including cover sheet, attachments, and document: <span style="border: 1px solid black; padding: 2px;">5</span></p>	

RECORDS SECTION

03/04/2003 ECDPER 0000092 1794145

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

01 FC:6521  
02 FC:4322

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# PREFERRED STOCK PURCHASE AND RECAPITALIZATION AGREEMENT

This PREFERRED STOCK PURCHASE AND RECAPITALIZATION AGREEMENT (this "*Agreement*") is made and entered into as of January 5, 2000, by and among Gyration, Inc., a California corporation (the "*Company*"), the Investors (each an "*Investor*," collectively, the "*Investors*") listed on the Schedule of Investors attached hereto as Exhibit A and certain holders (the "*Noteholders*") of convertible notes (the "*Convertible Notes*") of the Company listed on the Schedule of Outstanding Convertible Notes attached hereto as Exhibit C.

## W I T N E S S E T H:

WHEREAS, the Company desires to sell to the Investors, and the Investors desire to purchase from the Company, shares of the Company's New Series A Preferred Stock (the "*New Series A Stock*") on the terms and conditions set forth in this Agreement; and

WHEREAS, the Noteholders desire to convert their Convertible Notes into shares of New Series A Stock on the terms and conditions set forth in this Agreement; and

WHEREAS, New York Life Insurance Company ("*New York Life*") additionally desires to exchange and cancel all the warrants it holds to acquire stock of the Company (the "*New York Life Warrants*") into newly issued shares of common stock of the Company on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

### 1. THE TRANSACTION.

1.1 Recapitalization. As of the First Closing (as hereinafter defined) the Company has filed the Amended and Restated Articles of Incorporation of the Company (the "*Restated Articles*") in substantially the form as attached hereto as Exhibit B, which shall (i) convert and split each outstanding share of Common Stock into 0.243146 shares of Common Stock and (ii) convert each outstanding share of Series A Preferred Stock, Series B Preferred Stock and Series D Preferred Stock into 0.243146, 0.257910 and 0.321525 shares of Common Stock, respectively (collectively, the "*Recapitalization*"). Prior to or effective on the First Closing each option and warrant to acquire shares of the Company's stock shall be appropriately adjusted to give effect to the Recapitalization.

1.2 Authorization Of New Series A Stock. Also as of the First Closing, the Company has authorized the sale and issuance of, pursuant to the terms and conditions of this Agreement, up to 10,000,000 shares of New Series A Stock, having the rights, preferences, privileges and restrictions set forth in the Restated Articles.

1.3 Sale of New Series A Stock. Subject to the terms and conditions hereof, at the First Closing the Company will issue to each Investor, and each Investor will severally and not jointly purchase from the Company, the total number of shares of New Series A Stock specified opposite such Investor's name on the Schedule of Investors attached hereto as Exhibit A, at a price of \$1.00 per share (the "*Purchase Price Per Share*"), by check, wire transfer or

cancellation of indebtedness, for the aggregate purchase price as set forth on the Schedule of Investors (the "**Purchase Price**"). The shares of New Series A Stock purchased and sold pursuant to this Agreement at the First Closing (as hereinafter defined) and any Additional Closings (as hereinafter defined) will be collectively hereinafter referred to as the "**Purchased Shares**."

1.4 Conversion of Outstanding Convertible Notes. So long as the First Closing occurs on or before December 31, 1999, each Noteholder agrees that at the First Closing, and subject to the terms and conditions set forth herein, each Noteholder will convert all outstanding Convertible Notes of the Company held by such Noteholder listed on Exhibit C hereto into New Series A Stock on the basis of one share of New Series A Stock for each one dollar of outstanding principal and interest through March 31, 1999, as set forth on Exhibit C. So long as the First Closing occurs on or before December 31, 1999, each Noteholder agrees that the amount of interest due such Noteholder for all Convertible Notes held by such Noteholder as shown on Exhibit C is correct, and so long as the First Closing occurs on or before December 31, 1999, each Noteholder waives any rights such Noteholder may have to any additional interest or any accrual of interest after March 31, 1999. Noteholders of certain of the Convertible Notes as designated on Exhibit C will also be issued additional shares of Common Stock upon the conversion of such Convertible Notes as set forth on Exhibit C (the "**Additional Shares**"). In connection with the conversion of such Convertible Notes, each Noteholder hereby releases, terminates and discharges all of its right, title and interest in, to or under any collateral (the "**Collateral**") in which such Noteholder has a security interest pursuant to any security agreement between such Noteholder and the Company. Any right, title and interest of such Noteholder in, to and under the Collateral shall hereby cease and become void. Further, each such Noteholder acknowledges and agrees that the Company and its successors and assigns may rely upon this release and consents to the recordation of a copy hereof in the United States Patent and Trademark Office and elsewhere as may be necessary or desirable to give full effect hereto.

1.5 Conversion of New York Life Warrants. New York Life agrees that at the First Closing, the New York Life Warrants will be automatically cancelled and exchanged for 1,800,000 shares of newly issued common stock of the Company ("**NYL Common Shares**"), valued at \$0.10 per share. Exhibit D hereto sets forth a summary of all of the New York Life Warrants.

1.6 Delivery. At the First Closing (as defined in Section 2 below), the Company will deliver to each Investor or Noteholder, as the case may be, a certificate or certificates, registered in the name of such Investor or Noteholder, representing the number of Shares of New Series A Stock and Additional Shares designated in the appropriate Exhibit hereto to be received by such Investor or Noteholder, against, in the case of an Investor, payment of the purchase price therefor by check payable to the Company or wire transfer pursuant to the Company's instructions, or by surrender of such Investor's outstanding secured demand promissory notes against the Company, or, in the case of a Noteholder, by surrender of such Noteholder's outstanding Convertible Notes. Also at the First Closing, the Company will deliver to New York Life a certificate registered in the name of New York Life representing the number of shares of NYL Common Shares to be received by New York Life against surrender of the New York Life Warrants.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**THE COMPANY:**

**HOLDERS:**

**Gyration, Inc.**

**Innotech Corporation**

By: \_\_\_\_\_  
THOMAS J. QUINN  
President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**New York Life Insurance Company**

By: *Philip A. Smith* 12/17/99  
Name: Philip A. Smith  
Title: Director

**Minoru Yoshida**

\_\_\_\_\_

**Hiroyoshi Usuda**

\_\_\_\_\_

**Takatoshi Kodaira**

\_\_\_\_\_

**Marcello Maranesi**

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[SIGNATURE PAGE TO PREFERRED STOCK PURCHASE AND RECAPITALIZATION AGREEMENT]

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