

7-27-99 RECORD

07-30-1999



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To the Honorable Commissioner of Patents.

101104579

... attached original documents or copy thereof.

1. Name of conveying party (ies):

Software.com, Inc.

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



07-27-1999

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

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

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

Name: Software.Com, Inc.

Internal Address: _____

Street Address: 1209 Orange Street

City: Wilmington State: Delaware ZIP: 19801

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

If assignment 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) and addresses attached? Yes No

3. Nature of conveyance:

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

Execution Date: June 21, 1999

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

A. Trademark Application No.(s)

74/717,094
75/364,017
75/363,946

B. Trademark Registration No.(s)

2,252,250
2,141,773

Additional numbers attached? Yes No

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

Name: Andrew P. Bridges/Linda G. Alvarez

Internal Address: _____

Wilson Sonsini Goodrich & Rosati

Professional Corporation

Street Address: 650 Page Mill Road

City: Palo Alto State: California ZIP: 94304

6. Total number of applications and registrations involved: 5

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

Enclosed

Authorized to be charged to deposit account

If fee insufficient, please charge

8. Deposit account number:

23-2415 Attn.: 16543-900

(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.

07/29/1999 NTHA11 00000309 74717094

01 FC:481
02 FC:482

Linda G. Alvarez

Name of Person Sign[ing] _____

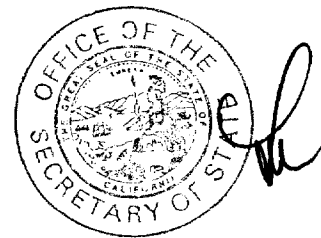
Signature

6/23/99

Date

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

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



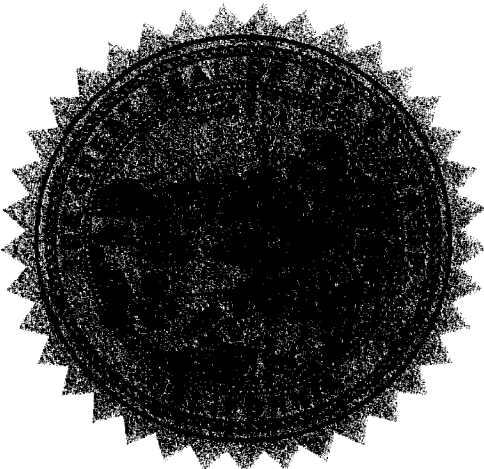
SECRETARY OF STATE

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

That the attached transcript of 10 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

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

JUN 21 1999



Bill Jones

Secretary of State

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

JUN 16 1999

BILL JONES, Secretary of State

AGREEMENT AND PLAN OF MERGER
OF SOFTWARE.COM, INC.
(a Delaware corporation),
AND
SOFTWARE.COM, INC.
(a California corporation)

THIS AGREEMENT AND PLAN OF MERGER dated as of June 16, 1999 (the "Agreement") is between Software.com, Inc., a Delaware corporation ("Software.com Delaware"), and Software.com, Inc., a California corporation ("Software.com California"). Software.com Delaware and Software.com California are sometimes referred to herein as the "Constituent Corporations".

RECITALS

A. Software.com Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 66,332,378 shares, 60,000,000 of which are designated "Common Stock" with a par value of \$0.001 per share and 6,332,378 of which are designated "Preferred Stock" with a par value of \$0.001 per share. The Preferred Stock is divided into four series, namely Series A Preferred Stock, consisting of 1,587,302 shares, Series B Preferred Stock, consisting of 1,789,279 shares, Series C Preferred Stock, consisting of 1,329,781 shares and Series D Preferred Stock, consisting of 1,626,016 shares. As of June 16, 1999, 1,000 shares of Common Stock were issued and outstanding, all of which are held by Software.com California, and no shares of Preferred Stock were outstanding.

B. Software.com California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 66,332,378 shares, 60,000,000 of which are designated "Common Stock", no par value per share, and 6,332,378 of which are designated "Preferred Stock." The Preferred Stock is divided into four series, namely Series A Preferred Stock, consisting of 1,587,302 shares, Series B Preferred Stock, consisting of 1,789,279 shares, Series C Preferred Stock, consisting of 1,329,781 shares and Series D Preferred Stock, consisting of 1,626,016 shares. As of June 16, 1999, 29,246,022 shares of Common Stock and 1,587,302 shares of Series A Preferred Stock, 1,789,279 shares of Series B Preferred Stock, 1,329,781 shares of Series C Preferred Stock, and 1,626,016 shares of Series D Preferred Stock were issued and outstanding. In addition, as of June 16, 1999, there were outstanding warrants to purchase an aggregate of 866,903 shares of Common Stock. As of June 16, 1999, there were outstanding options to purchase an aggregate of 8,112,098 shares of Common Stock pursuant to Software.com California's 1995 Stock Option Plan.

C. The Board of Directors of Software.com California has determined that, for the purpose of effecting the reincorporation of Software.com California in the State of Delaware, it is advisable and in the best interests of Software.com California and its shareholders that Software.com

California merge with and into Software.com Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors of Software.com Delaware and Software.com California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective shareholders and executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Software.com Delaware and Software.com California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. MERGER.

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California Corporations Code, Software.com California shall be merged with and into Software.com Delaware (the "Merger"), the separate existence of Software.com California shall cease and Software.com Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Software.com, Inc.

1.2 Filing and Effectiveness. The Merger shall become effective when the corporation has caused the appropriate merger documentation to be filed with the Secretary of State of the State of Delaware and the Secretary of State of the State of California.

The date when the Merger shall become effective, is herein called the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Software.com California shall cease and Software.com Delaware, as the Surviving corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and Software.com California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Software.com California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Software.com California in the same manner as if Software.com Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California Corporations Code.

2. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Amended and Restated Certificate of Incorporation. The Amended and Restated Certificate of Incorporation of Software.com Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Amended and Restated Certificate of

Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Software.com Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of Software.com California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Amended and Restated Certificate of Incorporation of the Surviving corporation or the Bylaws of the Surviving Corporation.

3. MANNER OF CONVERSION OF STOCK

3.1 Software.com California Common Stock. Upon the Effective Date of the Merger, each share of Software.com California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable shares of Common Stock, \$.001 par value, of the Surviving Corporation. No fractional shares of the Surviving Corporation's Common Stock shall be issued, but in lieu thereof each holder of shares of Software.com California's Common Stock who would otherwise be entitled to receive a fraction of a share of the Surviving Corporation's Common Stock (after aggregating all such shares of Surviving Corporation's Common Stock to which such holder is entitled) shall receive from the Surviving Corporation an amount of cash equal to the fair market value of a share of the Surviving Corporation's Common Stock (as determined in good faith by the Board of Directors of the surviving Corporation) multiplied by the fraction of the share of the Surviving Corporation's Common Stock to which such holder would otherwise be entitled.

3.2 Software.com California Preferred Stock. Upon the Effective Date of the Merger, each share of each series of Software.com California Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of the same series of Preferred Stock, \$.001 par value, of the Surviving Corporation.

3.3 Software.com California Options, Stock Purchase Rights and Convertible Securities. Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the stock option plans (including without limitation the 1995 Stock Plan, as amended, and the 1999 Employee Stock Purchase Plan) and all other employee benefit plans of Software.com California. Each outstanding and unexercised option, warrant or other right to purchase Software.com California Common Stock shall become an option, warrant or right to purchase the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for every one share of Software.com California Common Stock issuable pursuant to any such option, warrant

or stock purchase right, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Software.com California option, warrant or stock purchase right at the Effective Date of the Merger. Any fractional shares which result from the adjustment of options, warrants and other rights to purchase Software.com California's Common Stock shall be rounded up to the nearest whole share. Each outstanding and unexercised option, warrant or right to purchase Software.com California's Preferred Stock shall become an option, warrant or right to purchase the Surviving Corporation's Preferred Stock on the basis of one share of the same series of the Surviving Corporation's Preferred Stock for every one share of a series of Software.com California Preferred Stock issuable pursuant to any such option, warrant or stock purchase right, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Software.com California option, warrant or stock purchase right at the Effective Date of the Merger.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options, warrants or stock purchase rights equal to the number of shares of Software.com California Common Stock so reserved immediately prior to the Effective Date of the Merger. A number of shares of each series of the Surviving Corporation's Preferred Stock shall be reserved for issuance upon the exercise of options, warrants and stock purchase rights equal to the respective number of shares of each series of Software.com California Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

3.4 Software.com Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$.001 par value, of Software.com Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Software.com Delaware, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Software.com California Common Stock or Preferred Stock may, at such stockholders option, surrender the same for cancellation to Equiserve as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Software.com California Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of whole shares of the surviving Corporation's Common Stock or Preferred Stock into which such shares of Software.com California Common Stock or Preferred stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive

dividends and other distributions upon the shares of Common Stock and Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock and Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Software.com California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of the Surviving Corporation stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

4. GENERAL

4.1 Covenants of Software.com Delaware. Software.com Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code;

(b) File any and all documents with the appropriate tax authority of the State of California necessary for the assumption by Software.com Delaware of all of the corporate and/or franchise tax liabilities of Software.com California; and

(c) Take such other actions as may be required by the California Corporations Code.

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

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Software.com California or Software.com Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Software.com California or by the sole stockholder of Software.com Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the certificate of incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 525 Anacapa Street, Santa Barbara, California 93101 and copies thereof will be furnished to any shareholder of either Constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.

4.8 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

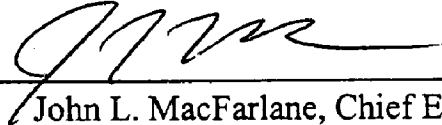
4.9 FIRPTA Notification. (a) on the Effective Date of the Merger, Software.com California shall deliver to Software.com Delaware, a properly executed statement (the "Statement") conforming to the requirements of Treasury Regulation Sections 1.897-2(h)(1)(i) and 1.1445-2(c)(3). Software.com Delaware shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of Software.com California immediately prior to the Merger.

(b) Software.com California shall deliver to the Internal Revenue service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).


4.10 Reorganization for Tax Purposes. This Agreement is intended to constitute a plan of reorganization adopted by the parties hereto within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder. The Merger is intended to constitute a reorganization within the meaning of Code Section 368(a)(1)(F).

IN WITNESS WHEREOF, this Agreement, having first been approved by resolutions of the Boards of Directors of Software.com Delaware and Software.com California, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

SOFTWARE.COM, INC.,
a Delaware corporation


By: 

John L. MacFarlane, Chief Executive
Officer




Craig A. Shelburne, Secretary

SOFTWARE.COM, INC.,
a California corporation

By: 

John L. MacFarlane, Chief Executive
Officer



Craig A. Shelburne, Secretary

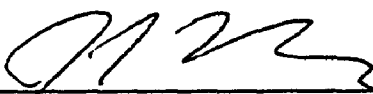
SOFTWARE.COM, INC.
(a Delaware corporation)

OFFICERS' CERTIFICATE


John L. MacFarlane and Craig A. Shelburne certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of Software.com, Inc., a corporation organized under the laws of the State of Delaware.
2. There are 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There are no shares of Preferred Stock outstanding.
3. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
4. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.
5. John L. MacFarlane and Craig A. Shelburne further declare under penalty of perjury under the laws of the State of Delaware that each has read the foregoing certificate and known the contents thereof and that the same is true of their own knowledge.

Executed in Santa Barbara, California on June 16, 1999.



John L. MacFarlane, Chief Executive Officer



Craig A. Shelburne, Secretary

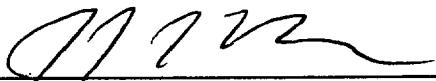
SOFTWARE.COM, INC.
(a California corporation)

OFFICERS' CERTIFICATE

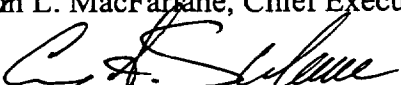
John L. MacFarlane and Craig A. Shelburne certify that:

1. They are the Chief Executive Officer and the Secretary, respectively, of Software.com, Inc. a corporation organized under the laws of the State of California.
2. There were 29,246,022 shares of Common Stock, and 1,587,302 shares of Series A Preferred Stock, 1,789,279 shares of Series B Preferred Stock, 1,329,781 shares of Series C Preferred Stock and 1,626,016 shares of Series D Preferred Stock outstanding as of June 16, 1999, the record date for the shareholders' written consent, which approved the Agreement and Plan of Merger attached hereto (the "Merger Agreement").
3. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
4. The percentage vote required was more than (i) 50% of the votes entitled to be cast by holders of outstanding shares of the Common Stock, voting as a single class, and (ii) 50% of the votes entitled to be cast by holders of outstanding shares of the Preferred Stock, voting as a single class.
5. John L. MacFarlane and Craig A. Shelburne further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Santa Barbara, California on, June 16, 1999.



John L. MacFarlane, Chief Executive Officer



Craig A. Shelburne, Secretary

