

10-11-2000



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger
Effective Date
Month Day Year

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AK/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an

Corporation Association

Other

Citizenship/State of Incorporation/Organization

assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

10/06/2000 MTHAI1 00000290 501402 75796675

FOR OFFICE USE ONLY

01 FC 481 40.00 CH
02 FC 482 25.00 CH

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK
REEL: 002152 FRAME: 0725

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="75/796675"/>	<input type="text" value="75/796971"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

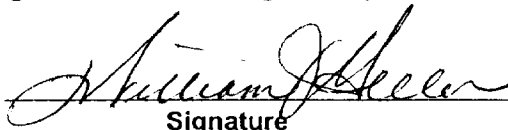
No

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. Charges to deposit account are authorized, as indicated herein.

William J. Heller

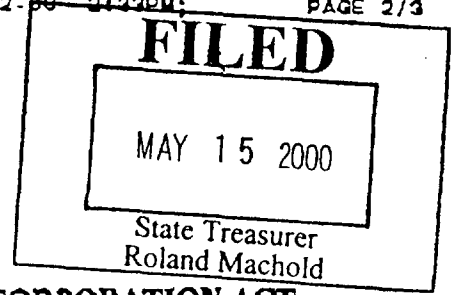
Name of Person Signing



Signature

8/9/00

Date Signed



**CERTIFICATE OF MERGER
PURSUANT TO
SECTION 14A:10-4.1 OF THE NEW JERSEY BUSINESS CORPORATION ACT
AND
SECTION 252 OF THE DELAWARE GENERAL CORPORATION LAW
OF
ULTRACOM INTERNET TECHNOLOGIES, INC.
WITH AND INTO
EXARIO NETWORKS, INC.**

1. Ultracom Internet Technologies, Inc., a corporation organized and existing under the laws of the State of New Jersey, shall merge (the "Merger") with and into Exario Networks, Inc., a corporation organized and existing under the laws of the State of Delaware, with the surviving corporation being Exario Networks, Inc., a corporation organized under the laws of the State of Delaware.
2. On the effective date of the Merger, each share of the common stock of Ultracom Internet Technologies, Inc. outstanding as of that date shall be exchanged for one (1) share of the common stock of Exario Networks, Inc. Upon the effective date of the Merger, Ultracom Internet Technologies, Inc. shall be merged with and into Exario Networks, Inc. The Certificate of Incorporation of Exario Networks, Inc. shall be the Certificate of Incorporation of the surviving corporation; no changes to the Certificate of Incorporation of Exario Networks, Inc. shall be effected as a result of the Merger.
3. The plan of Merger set forth in Section 2 hereof was approved by the unanimous written consent of the sole stockholder of Exario Networks, Inc. on May 11, 2000, representing all 100 shares outstanding on that date. Such stockholder constituted all of the stockholders of Exario Networks, Inc. entitled to vote on the Merger.
4. The plan of Merger set forth in Section 2 hereof was approved by the unanimous written consent of the shareholders of Ultracom Internet Technologies, Inc. on May 10, 2000, representing all 17,047,434 shares outstanding on that date. Such shareholders constituted all of the shareholders of Ultracom Internet Technologies, Inc. entitled to vote on the Merger.
5. Upon filing of a copy of this Certificate of Merger with the Secretary of State of the State of Delaware, the provisions of Delaware law applicable to the Merger will have been complied with.
6. An Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of applicable law. The Agreement of Merger is on file at the office of Exario Networks, Inc., 600 Parsippany Road, Parsippany, New Jersey 07054. A copy of such Agreement of Merger will

be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

- 7. The authorized capital stock of Ultracom Internet Technologies, Inc. consists of 55 million shares of which 50 million are shares of common stock, without par value, and 5 million are shares of preferred stock, without par value.
- 8. Exario Networks, Inc., the surviving corporation to the Merger, hereby agrees that, if it is to transact business in the State of New Jersey, it shall comply with the provisions of the New Jersey Business Corporation Act with respect to foreign corporations, and whether or not it is to transact business in New Jersey, it agrees that:

(a) It may be served with process in the State of New Jersey in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of New Jersey or any foreign corporation, previously amenable to suit in New Jersey, which is a party to the Merger, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of New Jersey against the surviving corporation;

(b) The Secretary of State of the State of New Jersey shall be and hereby is irrevocably appointed as the agent of the surviving corporation to accept service of process in any such proceeding, and the post office address to which the service of process in any such proceeding shall be mailed is 600 Parsippany Road, Parsippany, New Jersey 07054.


(c) The surviving corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of New Jersey which is a party to the Merger the amount, if any, to which they shall be entitled under the provisions of the New Jersey Business Corporation Act with respect to the rights of dissenting shareholders.

- 9. The Merger is to become effective upon the filing of this Certificate with both the Secretary of State of the State of Delaware and the Treasurer of the State of New Jersey.

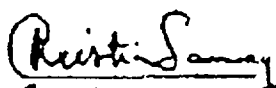
Attest:


Secretary

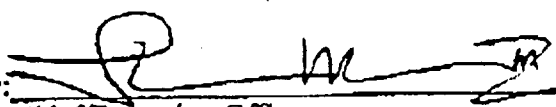
ULTRACOM INTERNET TECHNOLOGIES, INC.

By: 
Chief Executive Officer

Attest:


Secretary

EXARIO NETWORKS, INC.

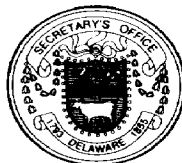
By: 
Chief Executive Officer

State of Delaware
Office of the Secretary of State

PAGE 15

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "EXARIO NETWORKS, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF MARCH, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



3194993 8100

001133365

A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

AUTHENTICATION: 0319668

DATE: 03-16-00

TRADEMARK
REEL: 002152 FRAME: 0729

Certificate of Incorporation

EXARIO NETWORKS, INC.

1. The name of this corporation is Exario Networks, Inc.
2. The registered office of the corporation in the State of Delaware is located at 1013 Centre Road, Wilmington, New Castle County, DE 19805. The name of the registered agent of the corporation at such address is Corporation Service Company.
3. The purpose of the corporation is to engage in any design, invention, export, leasing, licensing, manufacturing, mercantile, selling, management, service or other business or any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and to have as additional purposes all powers granted to corporations by the laws of said State, provided that no such purpose shall include any activity inconsistent with the General Corporation Law of said State.
4. The total number of shares of stock which the corporation shall have the authority to issue is as follows:
 - A. **COMMON STOCK**

The Corporation shall be authorized to issue One Hundred Million (100,000,000) shares of common stock, par value \$0.0005 per share.
 - B. **PREFERRED STOCK**

The Corporation shall be authorized to issue Twenty Five Million (25,000,000) shares of preferred stock, par value \$0.001 per share. The shares of Preferred Stock may be issued from time to time in one or more classes or series. As contemplated, and to the extent permitted, by Section 151(a) of the DGCL and to the extent not inconsistent with the other provisions of this Article III, the Board of Directors is authorized to fix and determine by resolution or resolutions providing for the issue of any such class or series of preferred stock the number of shares included in such class or series, and the designation and relative rights, preferences, qualifications, restrictions, and limitations as between and among the different classes or series. The Board of Directors is also expressly authorized to increase or decrease (but not below the number of shares of such class or series then outstanding) the number of shares of any class or series other than the Preferred Stock subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such class or series.
5. Subject to the limitations and exceptions, if any, contained therein, by-laws may be adopted, amended or repealed by the Board of Directors.

6. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after the date of filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only and shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification. A director shall be fully protected in relying, in good faith, upon the books of account or other records of the corporation or statements prepared by any of its officers or by independent public accountants or by an appraiser selected with reasonable care by the Board of Directors as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's capital stock might properly be purchased or redeemed.

7. (a) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the corporation to the fullest extent legally permissible under the Delaware General Corporation Law, as the same may be amended from time to time, against all expenses, liabilities and losses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding.

(b) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the previous subsection (a), or in defense of any claim, issue or matter therein, he shall be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith without the necessity of any action being taken by the corporation other than the determination, in good faith, that such defense has been successful. In all other cases wherein indemnification is provided for herein, unless ordered by a court, indemnification shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct specified herein. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion or (3) by the holders of a majority of the shares of the capital stock of the corporation entitled to vote thereon.

(c) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or, upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. Entry of a judgment by consent as part of a settlement shall not be deemed a final adjudication of liability for negligence or misconduct in the performance of duty, nor of any other issue or matter.

(d) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of such director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation. Expenses (including attorneys' fees) incurred by other employees or agents of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(e) No director shall be personally liable to the corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law: (1) for breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) pursuant to Section 174 of the Delaware General Corporation Law, or (4) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this subsection (e) shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

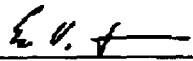
(f) The indemnification and advancement of expenses provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

8. The books of the corporation may (subject to any statutory requirements) be kept outside the State of Delaware in any such place as may be designated by the Board of Directors or in the by-laws of the corporation.

9. The name and mailing address of the incorporator is: Eric O. Costello, c/o McCarter & English, Four Gateway Center, 100 Mulberry Street, Newark, New Jersey 07101.

10. This Certificate of Incorporation shall become effective upon filing.

I, the undersigned incorporator, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do hereby make this Certificate of Incorporation the 15th day of March, 2000, and certify that it is my act and deed and that the facts herein are true.



Eric O. Costello, Incorporator