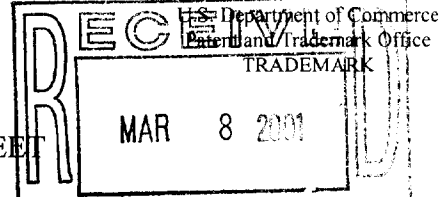


03-26-2001



3.9.01

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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

Name   
Formerly

Execution Date  
Month Day Year  
  
2339440

- 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/AKA/TA   
Composed of   
Address (line 1)   
Address (line 2)   
Address (line 3)     
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership
- Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an 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.)

FOR OFFICE USE ONLY

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

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

415-875-2300

Name

David Weiskopf, Esq.

Address (line 1)

c/o Fenwick & West LLP

Address (line 2)

Two Palo Alto Square

Address (line 3)

Palo Alto, California 94306

Address (line 4)

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

# 10

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).

Trade Application Number(s)

Registration Number(s)


2,339,440		
1,841,729		

Number of Properties

Enter the total number of properties involved.

# 2

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 65.00

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:

# 50-0261

Authorization to charge additional fees:

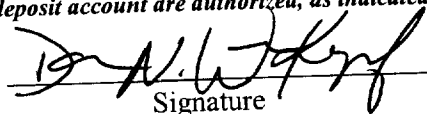
Yes  No

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.

David Weiskopf, Esq.

Name of Person Signing

  
Signature

3/5/2001  
Date Signed

D507570

1417398 OUT

FILED

in the office of the Secretary of State of the State of California

*11/15/95*

**AGREEMENT AND PLAN OF MERGER**

DEC 15 1995

*Bill Jones*

THIS AGREEMENT AND PLAN OF MERGER (hereinafter called the "Merger Agreement") is made as of June 15, 1995, by and between MYSOFTWARE, INC., a California corporation ("MySoftware California"), and MYSOFTWARE MERGER COMPANY, a Delaware corporation ("MySoftware Delaware"). MySoftware California and MySoftware Delaware are sometimes referred to as the "Constituent Corporations."

The authorized capital stock of MySoftware California consists of twenty five million (25,000,000) shares of Common Stock, no par value, and five million (5,000,000) shares of Preferred Stock, no par value. The authorized capital stock of MySoftware Delaware, upon effectuation of the transactions set forth in this Merger Agreement, will consist of twenty million (20,000,000) shares of Common Stock, par value one-tenth of one cent (\$0.001), and two million (2,000,000) shares of Preferred Stock, par value one tenth of one cent (\$0.001).

The directors of the Constituent Corporations deem it advisable and to the advantage of the Constituent Corporations that MySoftware California merge into MySoftware Delaware upon the terms and conditions herein provided.

NOW, THEREFORE, the parties do hereby adopt the plan of reorganization encompassed by this Merger Agreement and do hereby agree that MySoftware California shall merge into MySoftware Delaware on the following terms, conditions and other provisions:

**I. TERMS AND CONDITIONS.**

1.1 Merger. MySoftware California shall be merged with and into MySoftware Delaware (the "Merger"), and MySoftware Delaware shall be the surviving corporation (the "Surviving Corporation") effective upon the date when this Merger Agreement is filed with the Secretary of State of Delaware (the "Effective Date").

1.2 Name Change. On the Effective Date, the name of MySoftware Delaware shall be "MySoftware Company."

1.3 Succession. On the Effective Date, MySoftware Delaware shall continue its corporate existence under the laws of the State of Delaware, and the separate existence and corporate organization of MySoftware California, except insofar as it may be continued by operation of law, shall be terminated and cease.

1.4 Transfer of Assets and Liabilities. On the Effective Date, the rights, privileges, powers and franchises, both of a public as well as of a private nature, of each of the Constituent Corporations shall be vested in and possessed by the Surviving Corporation, subject to all of the disabilities, duties and restrictions of or upon each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and

all property, real, personal and mixed, of each of the Constituent Corporations, and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter the property of the Surviving Corporation as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger, provided, however, that the liabilities of the Constituent Corporations and of their shareholders, directors and officers shall not be affected and all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place except as they may be modified with the consent of such creditors and all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

**1.5 Common Stock of MySoftware California and MySoftware Delaware.** On the Effective Date, by virtue of the Merger and without any further action on the part of the Constituent Corporations or their shareholders, each share of Common Stock of MySoftware California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of the Common Stock of MySoftware Delaware and each share of Common Stock of MySoftware Delaware issued and outstanding immediately prior thereto shall be cancelled and returned to the status of authorized but unissued shares.

**1.6 Stock Certificates.** On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of the Common Stock of MySoftware California shall be deemed for all purposes to evidence ownership of and to represent the shares of MySoftware Delaware into which the shares of MySoftware California represented by such certificates have been converted as herein provided and shall be so registered on the books and records of the Surviving Corporation or its transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the shares of MySoftware Delaware evidenced by such outstanding certificate as above provided.

**1.7 Options.** On the Effective Date, the Surviving Corporation will assume and continue MySoftware California's 1995 Equity Incentive Plan and 1995 Non-Employee Directors' Plan (collectively, the "Plans") and the outstanding and unexercised portions of all options to purchase Common Stock of MySoftware California, including without limitation all options outstanding under the Plans and any other outstanding options, shall be converted into options of MySoftware Delaware, such that an option for one (1) share of MySoftware California shall be converted into an option for one (1) share of MySoftware Delaware, with no change in the exercise price of the MySoftware Delaware option. No other changes in the terms

and conditions of such options will occur. Effective on the Effective Date, MySoftware Delaware hereby assumes the outstanding and unexercised portions of such options and the obligations of MySoftware California with respect thereto.

**1.8 Employee Benefit Plans.** On the Effective Date, the Surviving Corporation shall assume all obligations of MySoftware California under any and all employee benefit plans in effect as of such date. On the Effective Date, the Surviving Corporation shall adopt and continue in effect all such employee benefit plans upon the same terms and conditions as were in effect immediately prior to the Merger and shall reserve that number of shares of MySoftware Delaware Common Stock with respect to each such employee benefit plan as is proportional to the number of shares of MySoftware California Common Stock (if any) so reserved on the Effective Date.

## **II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS.**

**2.1 Certificate of Incorporation and Bylaws.** The Certificate of Incorporation and Bylaws of MySoftware Delaware in effect on the Effective Date shall continue to be the Certificate of Incorporation and Bylaws of the Surviving Corporation, except that Article I of the Certificate of Incorporation and Bylaws of the Surviving Corporation shall, effective upon the filing of this Merger Agreement with the Secretary of State of the State of Delaware, be amended to read in its entirety as follows: "The name of this corporation is MySoftware Company"

**2.2 Directors.** The directors of MySoftware California immediately preceding the Effective Date shall become the directors of the Surviving Corporation on and after the Effective Date to serve until the expiration of their terms and until their successors are elected and qualified.

**2.3 Officers.** The officers of MySoftware California immediately preceding the Effective Date shall become the officers of the Surviving Corporation on and after the Effective Date to serve at the pleasure of its Board of Directors.

## **III. MISCELLANEOUS.**

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

**3.2 Amendment.** At any time before or after approval by the shareholders of MySoftware California, this Merger Agreement may be amended in any manner (except that, after the approval of the Merger Agreement by the shareholders of MySoftware California, the principal terms may not be amended without the further approval of the shareholders of MySoftware California) as may be determined in the judgment of the respective Board of Directors of MySoftware Delaware and MySoftware California to be necessary, desirable, or expedient in order to clarify the intention of the parties hereto or to effect or facilitate the purpose and intent of this Merger Agreement.

**3.3 Conditions to Merger.** The obligations of the Constituent Corporations to effect the transactions contemplated hereby is subject to satisfaction of the following conditions (any or all of which may be waived by either of the Constituent Corporations in its sole discretion to the extent permitted by law):

(a) the Merger shall have been approved by the shareholders of MySoftware California in accordance with applicable provisions of the General Corporation Law of the State of California; and

(b) MySoftware California, as sole stockholder of MySoftware Delaware, shall have approved the Merger in accordance with the General Corporation Law of the State of Delaware; and

(c) any and all consents, permits, authorizations, approvals, and orders deemed in the sole discretion of MySoftware California to be material to consummation of the Merger shall have been obtained.

**3.4 Abandonment or Deferral.** At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either MySoftware California or MySoftware Delaware or both, notwithstanding the approval of this Merger Agreement by the shareholders of MySoftware California or MySoftware Delaware, or the consummation of the Merger may be deferred for a reasonable period of time if, in the opinion of the Boards of Directors of MySoftware California and MySoftware Delaware, such action would be in the best interest of such corporations. In the event of termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no liability on the part of either Constituent Corporation or its Board of Directors or shareholders with respect thereto, except that MySoftware California shall pay all expenses incurred in connection with the Merger or in respect of this Merger Agreement or relating thereto.

**3.5 Counterparts.** In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of MySoftware California and MySoftware Delaware, is hereby executed on behalf of each said corporation and attested by their respective officers thereunto duly authorized.

MYSOFTWARE, INC.  
A California corporation

By David P. Mans  
David P. Mans  
Chief Executive Officer

ATTEST:

Michael H. Thoma  
Michael H. Thoma  
Secretary

MYSOFTWARE MERGER COMPANY.  
A Delaware corporation

By David P. Mans  
David P. Mans  
Chief Executive Officer

ATTEST:

Michael H. Thoma  
Michael H. Thoma  
Secretary

MYSOFTWARE, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

The undersigned, David P. Mans and Michael H. Thoma, do hereby certify that:

1. They are the Chief Executive Officer and Secretary, respectively, of MySoftware, Inc., a California corporation (the "Corporation").
2. The Agreement and Plan of Merger attached to this Certificate providing for the merger of the Corporation, with and into MySoftware Merger Company, a Delaware Corporation, was duly approved by the Board of Directors and by the shareholders of the Corporation.
3. The Corporation has two authorized class of shares, designated Common Stock and Preferred Stock. The total number of outstanding shares of Common Stock is Three Million Two Hundred Eighteen Thousand Five Hundred Thirty (3,218,530). All outstanding shares of stock were entitled to vote on the merger. No shares of Preferred Stock are outstanding.
4. The terms of the Agreement and Plan of Merger were approved by the Corporation by the vote of the number of shares of Common Stock of the Corporation which equaled or exceeded the vote required. The percentage vote required for such approval was more than fifty percent (50%).

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 15th day of June 1995.



David P. Mans  
Chief Executive Officer



Michael H. Thoma  
Secretary



Each of the undersigned declares under penalty of perjury that he has read the foregoing Certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed at Palo Alto, California on ~~June~~ 15, 1995.

David P. Mans  
David P. Mans  
Chief Executive Officer

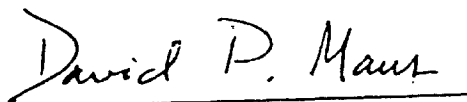
Michael H. Thoma  
Michael H. Thoma  
Secretary

**MYSOFTWARE MERGER COMPANY**  
**OFFICERS' CERTIFICATE OF APPROVAL OF MERGER**

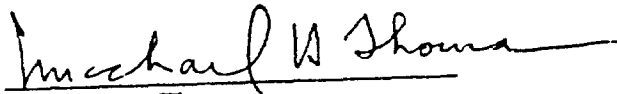
The undersigned, David P. Mans and Michael H. Thoma, do hereby certify that:

1. They are the Chief Executive Officer and Secretary, respectively, of MySoftware Merger Company, a Delaware corporation (the "Corporation").
2. The Agreement and Plan of Merger attached to this Certificate providing for the merger of MySoftware, Inc., a California corporation, with and into the Corporation, was duly approved by the Board of Directors and by the Sole Stockholder of the Corporation.
3. The Corporation has two authorized class of shares, designated Common Stock and Preferred Stock. The total number of outstanding shares of Common Stock is One Hundred (100). No shares of Preferred Stock are outstanding. All outstanding shares of stock were entitled to vote on the merger.
4. The terms of the Agreement and Plan of Merger were approved by the Corporation by the vote of the number of shares of Common Stock of the Corporation which equaled or exceeded the vote required. The percentage vote required for such approval was more than fifty percent (50%).

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 15th day of June, 1995.



David P. Mans  
Chief Executive Officer



Michael H. Thoma  
Secretary

Each of the undersigned declares under penalty of perjury that he has read the foregoing Certificate and knows the contents thereof and that the same is true of his own knowledge.

Executed at Palo Alto, California on June 15, 1995.

David P. Maus

David P. Maus  
Chief Executive Officer

Michael H. Thoma

Michael H. Thoma  
Secretary



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
P.O. BOX 942857  
SACRAMENTO, CA 94257-0541

# TAX CLEARANCE CERTIFICATE

December 15, 1995

EXPIRATION DATE: March 15, 1996

COOLEY ET AL  
C KIM MILLER  
5 PALO ALTO SQ  
3000 EL CAMINO REAL  
PALO ALTO CA 94306

ISSUED TO: MYSOFTWARE, INC.  
Corporate Number 1417398 MI4\*\*

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid, assumed, or are secured by other means.

If a final return has not been filed, one should be filed within two months and 15 days after the close of the month in which the dissolution or withdrawal takes place. If the corporation was inactive, a statement to that effect should be attached to the tax forms. All returns remain subject to audit until the expiration of the normal statutory period. Failure to file required returns may result in additional assessments.

A copy of this Tax Clearance Certificate has been sent to the Office of the the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA. 95814, or by telephone, (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By H. Hermansen  
Special Audit Unit  
Corporation Audit Section  
Telephone (916) 845-4124

COPY

TRADEMARK