

04-13-2001

D \$

FORM PTO-1594  
(Rev. 6-93)

4.501

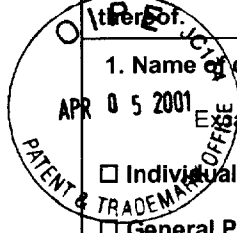


101662800

EET

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

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



1. Name of conveying party(ies):

Excalibur Technologies, Corporation

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

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

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other \_\_\_\_\_

Execution Date: December 21, 2000

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

Name: Convera Technologies, Inc.

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

Street Address: 1921 Gallows Road, Suite 200

City: Vienna State: VA ZIP 22182

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

If assignee is not domiciled in the United States, a domestic representative designation is attached:  
 Yes  No

(Designation must be a separate document from Assignment).  
Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

75/258485; 75/602,446

B. Trademark Registration No.(s) 1832649; 1833731; 1859537; 2171262; 2350704

Additional numbers attached? Yes  No

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

Name: Cooley Godward LLP

Internal Address: Peter J. Willsey

Street Address: One Freedom Square, Reston Town Center, 11951 Freedom Drive

City: Reston State: VA ZIP 20190-5601

6. Total number of applications and registration involved: 7

7. Total fee (37 CFR 3.41):.....  
\$ \$190.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(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.

04/12/2001 LMUeller 00000301 75258485

Peter J. Willsey  
Name of Person Signing

April 5, 2001  
Date

01 FC:481  
02 FC:482

40.00  
150.00 OP

Total number of pages including cover sheet, attachments, and document:  10

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



**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**EXCALIBUR TECHNOLOGIES CORPORATION**

\* \* \* \*

1. The present name of the Corporation (hereinafter referred to as the "Corporation") is Excalibur Technologies Corporation under which the Corporation was originally incorporated; and the date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was September 26, 1989.

2. The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety as hereinafter set forth in the Amended and Restated Certificate of Incorporation hereinafter provided for.

3. The Amended and Restated Certificate of Incorporation hereinafter provided for has been duly adopted by the directors in accordance with the provisions of Section 242, 141 and 245 of the General Corporation Law of the State of Delaware (the "Corporation Law").

4. The Amended and Restated Certificate of Incorporation has been approved by the stockholders of the Corporation in accordance with Section 228 of the Corporation Law, and written notice of such approval has been given to all stockholders in accordance with Section 228 of the Corporation Law.

5. The Certificate of Incorporation of the Corporation, as amended and restated herein, shall at the effective time of this Amended and Restated Certificate of Incorporation, read as follows

**FIRST:** The name of the Corporation is Convera Technologies, Inc.

**SECOND:** The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent at such address is The Corporation Trust Company.

**THIRD:** The nature of the business or purpose to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

**FOURTH:** The Corporation will have authority to issue Ten Thousand (10,000) shares of common stock, \$.01 par value per share (the "Common Stock").

**FIFTH:** The name and mailing address of the incorporator is as follows:

Cindy L. Krikawa  
Holtzmann, Wise & Shepard  
745 Fifth Avenue  
New York, New York 10151

SIXTH: The stockholders will have no preemptive rights to acquire unissued or treasury shares or securities convertible into such shares, or carrying a right to subscribe to or acquire shares.

SEVENTH: The presence at a meeting of stockholders of at least a majority of the shares entitled to vote at that meeting will constitute a quorum for the transaction of business at that meeting.

EIGHTH: To the fullest extent permitted by Delaware statutory or decisional law, as amended or interpreted, no director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. This ARTICLE EIGHTH does not affect the availability of equitable remedies for breach of fiduciary duties. The Corporation shall indemnify, in the manner and to the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. Any repeal or modification of the provisions of this ARTICLE EIGHTH by the stockholders of the Corporation shall not adversely affect any right or protection of any director existing at the time of such repeal or modification.

NINTH: The number of directors that shall constitute the whole Board shall be as specified in the Bylaws of the Corporation, as the same may be amended from time to time, but in no event shall such number be less than six (6) nor greater than twelve (12). The Board shall for a period of five (5) years from December 21, 2000 include at least two (2) directors that are not affiliated with Holder.

TENTH: 1. For purposes of this Certificate, "Holder" or "Holders" shall mean (a) Intel Corporation. ("Intel") for so long as Intel holds at least five percent (5%) of the outstanding shares of Class A Common Stock of the Corporation's parent, Convera Corporation ("Convera Corporation Class A Common Stock") (taking into account any securities held by Intel that are convertible into shares of Convera Corporation Class A Common Stock at the time of any determination into), (b) NBA Media Ventures, LLC ("NBA"), for so long as NBA holds at least five percent (5%) of the outstanding shares of Convera Corporation Class A Common Stock, (c) all successors to a Holder by way of merger, consolidation or sale of all or substantially all of such Holder's assets and all (d) existing or future corporations, partnerships, joint ventures, associations and other entities (each a "Subsidiary Entity") in which such person

or entity beneficially owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting stock, but excluding Convera Corporation, the Corporation or any Subsidiary Entity in which Convera Corporation or the Corporation beneficially owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting stock.

2. In anticipation that:

(a) each Holder will remain, for some period of time, a stockholder of Convera Corporation;

(b) the Corporation and each Holder may engage in the same or similar activities or lines of business and may have an interest in the same or similar areas of corporate opportunities;

(c) there will or may be benefits to be derived by the Corporation through its continued or potential contractual, corporate and business relations with the Holders (including without limitation service of officers of the Holders as directors of the Corporation); and

(d) there will be benefits in providing guidelines for directors and officers of the Holders and of the Corporation with respect to the allocation of corporate opportunities and other matters; the provisions of this Article TENTH are set forth to regulate, define and guide the conduct of certain affairs of the Corporation as they may involve each Holder and its officers and directors, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith.

3. Except as each Holder may otherwise agree in writing, each Holder shall have the right to, and shall have no duty not to, (a) engage in the same or similar business activities or lines of business as the Corporation, (b) compete against the Corporation, (c) do business with any potential or actual competitor, customer or supplier of the Corporation, and (d) employ or otherwise engage any officer or employee of the Corporation. Neither a Holder nor any officer, director or employee thereof (except as provided in paragraph 4 of this Article TENTH) shall be liable to the Corporation or its stockholders, regardless of the impact any such activities may have on the Corporation, for breach of any fiduciary duty by reason of any such activities of such Holder or of the participation therein of such person and the Corporation shall have no interest or expectancy that such Holder will not engage in any of the foregoing activities, any such interest or expectancy being hereby renounced by the Corporation. In the event that a Holder acquires knowledge of a potential transaction or matter that may be a corporate opportunity or otherwise of interest to such Holder and the Corporation, such Holder shall have no duty to communicate or present such corporate opportunity to the Corporation, the Corporation shall have no interest or expectancy in any such transaction or matter, any such interest or expectancy being hereby renounced by the Corporation, and, without limiting the generality of the foregoing, shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder of the Corporation by reason of the fact that such Holder pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another person, or does not present such corporate opportunity to the Corporation. Without limiting the generality of the foregoing, a Holder shall have no such duty and shall not be so liable even if a director or officer of the Corporation (including, without limitation, any such director or officer who is also a director,

officer or employee of such Holder) becomes aware of such transaction or matter in his or her capacity as a director or officer of the Corporation and such director or officer discloses such transaction or matter to directors, officers, employees or other representatives of such Holder, so long as such Holder also learns, discovers, acquires or develops such transaction or matters independently or otherwise in a manner that was not based on such director's or officer's awareness of such transaction or matter. The provisions of this paragraph 3 of Article TENTH shall apply and not be affected by any other provision of this Certificate of Incorporation including, without limitation, paragraph 4 or 5 of Article TENTH.

4. In the event that a director or officer of the Corporation who is also a director, officer or employee of a Holder acquires knowledge of a potential transaction or matter that may be a corporate opportunity or otherwise of interest to the Corporation and such Holder, such director or officer of the Corporation (a) shall have fully satisfied and fulfilled the fiduciary duties of such director or officer to the Corporation and its stockholders with respect to such corporate opportunity, (b) shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty with respect to such corporate opportunity by reason of his or her not communicating information regarding such corporate opportunity to the Corporation, and/or such Holder's pursuing or acquiring such corporate opportunity for itself or directing such corporate opportunity to another person, (c) shall be deemed to have acted in good faith and in a manner such person reasonably believes to be in and not opposed to the best interests of the Corporation, and (d) shall be deemed not to have breached his or her duty of loyalty to the Corporation or its stockholders and not to have derived an improper benefit therefrom, if such corporate opportunity belongs to such Holder in accordance with the following policy:

(i) a corporate opportunity offered or disclosed to any person who is a director but not an officer of the Corporation and who is also an officer or employee (whether or not a director) of a Holder shall belong to such Holder, unless such opportunity is expressly offered to such person primarily in his or her capacity as a director of the Corporation, in which case such opportunity shall belong to the Corporation;

(ii) a corporate opportunity offered or disclosed to any person who is an officer (whether or not a director) of the Corporation and who is also a director but not an officer or employee of a Holder shall belong to the Corporation, unless such opportunity is expressly offered to such person primarily in his or her capacity as a director of such Holder, in which case such opportunity shall belong to such Holder; and

(iii) a corporate opportunity offered or disclosed to any other person who is either an officer of both the Corporation and a Holder, or a director of both the Corporation and a Holder, shall belong to such Holder or to the Corporation, as the case may be, if such opportunity is expressly offered to such person primarily in his or her capacity as an officer or director of such Holder or of the Corporation, respectively; otherwise, such opportunity shall belong to such Holder.

5. Except as otherwise provided in paragraph 3 of Article TENTH, any corporate opportunity that belongs to a Holder or to the Corporation pursuant to the foregoing policy shall not be pursued by the other, or directed by the other to another person, unless and until such Holder or the Corporation, as the case may be, determines not to pursue the opportunity. The

foregoing prohibition shall cease if the party to whom the corporate opportunity belongs does not within a reasonable period of time begin to pursue, or thereafter continue to pursue, such opportunity diligently and in good faith.

6. For purposes of this Article TENTH, "corporate opportunities" shall consist of business opportunities which (a) the Corporation is financially able to undertake, (b) are, from their nature, in the line or lines of the Corporation's business as described in the Corporation's periodic reports filed with the Securities and Exchange Commission and are of practical advantage to it, and (c) are ones in which the Corporation has an interest or reasonable expectancy. "Corporate opportunities" shall not include any transaction or matter in which the Corporation or a Holder is permitted to participate pursuant to any agreement between the Corporation and such Holder that has been approved by a majority of the directors of the Corporation who are disinterested ("Disinterested Directors"), it being acknowledged that the rights of the Corporation under any such agreement shall be deemed to be contractual rights and shall not be corporate opportunities of the Corporation for any purpose; *provided, however*, that no presumption or implication as to corporate opportunities relating to any transaction not explicitly covered by such an agreement shall arise from the existence or absence of any such agreement.

7. Any person purchasing or otherwise acquiring any interest in any shares of stock or other securities (including without limitation stock options) of the Corporation shall be deemed to have notice of and consented to the provisions of this Article TENTH.

8. Nothing in this Article TENTH is intended to, and shall not be construed to, expand any party's fiduciary duties under applicable law.

9. If any contract, agreement, arrangement or transaction between the Corporation and a Holder involves a corporate opportunity and is approved in accordance with the procedures set forth in Article TENTH hereof, such Holder and its officers and directors (including without limitation, any such person who is also a director or officer of the Corporation) shall also, for the purposes of this Article TENTH and the other provisions of this Certificate, be deemed to have fully satisfied and fulfilled any fiduciary duties they may have to the Corporation and its stockholders. Any such contract, agreement, arrangement or transaction involving a corporate opportunity not so approved shall not by reason thereof result in any such breach of any fiduciary duty, but shall be governed by the other provisions of this Article TENTH, this Certificate, the bylaws, the Delaware General Corporation Law and other applicable law.

10. For purposes of this Article TENTH, a director of the Corporation who is Chairman of the Board of Directors of the Corporation shall not be deemed to be an officer of the Corporation by reason of holding such position (regardless of whether such position is deemed an office of the Corporation under the bylaws of the Corporation), unless such person is a full-time employee of the Corporation.

ELEVENTH: 1. In anticipation that:

(a) each Holder will remain, for some period of time, a stockholder of Convera Corporation and have continued contractual, corporate and business relations with Convera Corporation and the Corporation;

(b) the Corporation and each Holder may enter into contracts or otherwise transact business with each other and the Corporation may derive benefits therefrom; and

(c) the Corporation may from time to time enter into contractual, corporate or business relations with one or more of its directors, or one or more corporations, partnerships, associations or other organizations in which one or more of its directors have a financial interest (collectively, "Related Entities");

the provisions of this Article ELEVENTH are set forth to regulate and guide certain contractual relations and other business relations of the Corporation as they may involve each Holder, Related Entities and their respective officers and directors, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith.

2. The provisions of this Article ELEVENTH are in addition to, and not in limitation of, the provisions of the Delaware General Corporation Law and the other provisions of this Certificate. Any contract or business relation which does not comply with procedures set forth in this Article ELEVENTH shall not by reason thereof be deemed void or voidable or result in any breach of any fiduciary duty to, or duty of loyalty to, or failure to act in good faith or in the best interests of, the Corporation, or the derivation of any improper personal benefit, but shall be governed by the remaining provisions of this Certificate, the Bylaws, the Delaware General Corporation Law and other applicable law.

3. No contract, agreement, arrangement or transaction between the Corporation, on the one hand, and a Holder or a Related Entity or one or more of the directors or officers of the Corporation, on the other hand, or any amendment, modification or termination thereof, shall be void or voidable solely for the reason that a Holder or Related Entity or any one or more of the officers or directors of the Corporation are parties thereto, or solely because any such directors or officers are present at or participate in the meeting of the Board of Directors or committee thereof which authorizes such contract, agreement, arrangement, transaction, amendment, modification or termination (each, a "Transaction") or solely because his, her or their votes are counted for such purpose, and a Holder, any Related Entity and such directors and officers (a) shall have fully satisfied and fulfilled any fiduciary duties they may have to the Corporation and its stockholders with respect thereto, (b) shall not be liable to the Corporation or its stockholders for any breach of any fiduciary duty they may have by reason of their approving any such Transaction or the Corporation's entering into, performing or consummating any such Transaction, (c) shall be deemed to have acted in good faith and in a manner such persons reasonably believed to be in and not opposed to the best interests of the Corporation, to the extent such standard is applicable to such person's conduct, and (d) shall be deemed not to have breached any duties of loyalty to the Corporation or its stockholders, whether or not they have derived a personal benefit therefrom, if:

(i) the material facts as to the Transaction are disclosed or are known to the Board of Directors or the committee thereof that authorizes the Transaction and the Board of

Directors or such committee in good faith authorizes or approves the Transaction by the affirmative vote of a majority of the Disinterested Directors on the Board of Directors or such committee (even though the Disinterested Directors are less than a quorum);

(ii) the material facts as to the Transaction are disclosed or are known to the holders of the voting stock entitled to vote thereon, and the Transaction is specifically approved in good faith by vote of the holders of a majority of the then outstanding voting stock not owned by such Holder or such Related Entity, voting together as a single class;

(iii) such Transaction is effected pursuant to, and consistent with, terms and conditions specified in any arrangements, standards, protocols or guidelines (collectively, the "Guidelines") which are in good faith authorized or approved, after disclosure or knowledge of the material facts related thereto, by the affirmative vote of a majority of the Disinterested Directors on the Board of Directors or the applicable committee thereof (even though the Disinterested Directors are less than a quorum) or by vote of the holders of a majority of the then outstanding voting stock not owned by such Holder or such Related Entity, voting together as a single class (such authorization or approval of such Guidelines constituting or being deemed to constitute authorization or approval of such Transaction); or

(iv) such Transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders of the Corporation.

In addition, each Transaction authorized, approved or effected, and such Guidelines so authorized or approved, as described in (i), (ii), or (iii) above, shall be deemed to be entirely fair to the Corporation and its stockholders; *provided, however*, that if such authorization or approval is not obtained, or such Transaction is not so effected, no presumption shall arise that such Transaction or such Guidelines are not fair to the Corporation and its stockholders.

4. Directors of the Corporation who are also directors, officers or employees of a Holder or any Related Entity may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes or approves any such Transaction or any such Guidelines. Voting stock owned by a Holder and any Related Entities may be counted in determining the presence of a quorum at a meeting of stockholders that authorizes or approves any such Transaction or any such Guidelines.

5. A Holder shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty it may have by reason of the fact that such Holder takes any action or exercises any rights or gives or withholds any consent in connection with any Transaction between such Holder and the Corporation. No vote cast or other action taken by any person who is an officer, director or other representative of a Holder, which vote is cast or action is taken by such person in his capacity as a director of the Corporation, shall constitute an action of, or the exercise of a right by, or a consent of, such Holder for the purpose of any such Transaction.

6. Any person purchasing or otherwise acquiring any interest in any shares of stock or other securities (including without limitation stock options) of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article ELEVENTH.



7. Nothing in this Article ELEVENTH is intended to, nor shall anything in this Article ELEVENTH be construed to, expand any party's fiduciary duties under applicable law.

TWELFTH: The Board of Directors is expressly authorized to make, alter or repeal the Bylaws of the Corporation.


THIRTEENTH: Notwithstanding anything in this Certificate to the contrary, and in addition to any vote of the Board of Directors required by applicable law or this Certificate, the affirmative vote of the holders of more than eighty percent (80%) of the outstanding Common Stock shall be required to alter, amend or repeal, or adopt any provision inconsistent with, any provision of Articles TENTH or ELEVENTH. Neither the alteration, amendment or repeal of Articles TENTH or ELEVENTH nor the adoption of any provision inconsistent with Articles TENTH or ELEVENTH shall eliminate or reduce the effect of Articles TENTH or ELEVENTH in respect of any matter occurring, or any cause of action, suit or claim that, but for Articles TENTH or ELEVENTH, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

[Signature page follows.]



EXCALIBUR TECHNOLOGIES  
CORPORATION

By:

  
Patrick C. Condo, President and Chief  
Executive Officer

**[Signature Page to Excalibur Technologies Corporation Amended and  
Restated Certificate of Incorporation]**

286974 v03.NY (65F303).DOC  
12/13/00 12:32 PM (33594.1002)