

07-27-2001

FORM PTO-1594  
(Rev. 6-93)

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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks, Washington, D.C. 20231

101790952

attached original documents or copy

1. Name of conveying party(ies): Ditech Corporation

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

7-2301

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

3. Nature of conveyance:

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

Execution Date: April 19, 1999

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

Name: Ditech Communication Corporation  
 Street Address: 825 Middlefield Road  
 City: Palo Alto State: California ZIP: 94043

- 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)

75/440,523 and 75/440,516

B. Trademark Registration No.(s)

Additional numbers attached? No

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

Name: Gretchen R. Stroud, Esq.  
 Internal Address: Cooley Godward LLP  
 Street Address: Five Palo Alto Square  
 3000 El Camino Real  
 City: Palo Alto State: California ZIP 94306-2155

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:  
 please charge discrepancy or credit overpayment to 03-3118  
 (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.

Gretchen R. Stroud July 18, 2001  
 Gretchen R. Stroud Date

Total number of pages including cover letter, cover sheet, attachments, and document: Seven (includes check)

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

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01 FC:481 40.00 DP  
 02 FC:482 25.00 DP

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REEL: 002334 FRAME: 0550

State of Delaware  
Office of the Secretary of State

PAGE 1

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 AGREEMENT OF MERGER, WHICH MERGES:

"DITECH CORPORATION", A CALIFORNIA CORPORATION,

WITH AND INTO "DITECH MERGER CORPORATION" UNDER THE NAME OF "DITECH COMMUNICATION CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FIRST DAY OF APRIL, A.D. 1999, AT 9 O'CLOCK A.M.

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



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

Edward J. Freel, Secretary of State

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991156625

AUTHENTICATION: 9699214

DATE: 04-21-99

TRADEMARK  
REEL: 002334 FRAME: 0551

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (hereinafter called the "Merger Agreement") is made as of April 19, 1999, by and between DITECH CORPORATION, a California corporation ("Ditech California"), and DITECH MERGER CORPORATION, a Delaware corporation ("Ditech Delaware"). Ditech California and Ditech Delaware are sometimes referred to as the "Constituent Corporations."

The authorized capital stock of Ditech California consists of fifty million (50,000,000) shares of Common Stock, and thirty one million seventeen thousand nine hundred thirty nine (31,017,939) shares of Preferred Stock. The authorized capital stock of Ditech Delaware, upon effectuation of the transactions set forth in this Merger Agreement, will consist of fifty million (50,000,000) shares of Common Stock, \$.001 par value, and thirty one million seventeen thousand nine hundred thirty nine (31,017,939) shares of Preferred Stock, \$.001 par value.

The directors of the Constituent Corporations deem it advisable and to the advantage of the Constituent Corporations that Ditech California merge into Ditech 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 Ditech California shall merge into Ditech Delaware on the following terms, conditions and other provisions:

### 1. TERMS AND CONDITIONS.

1.1 **Merger.** Ditech California shall be merged with and into Ditech Delaware (the "Merger"), and Ditech Delaware shall be the surviving corporation (the "Surviving Corporation") effective upon the date that 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 Ditech Delaware shall be Ditech Communication Corporation.

1.3 **Succession.** On the Effective Date, Ditech Delaware shall continue its corporate existence under the laws of the State of Delaware, and the separate existence and corporate organization of Ditech 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 Ditech California and Ditech 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 Ditech California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of the Common Stock of Ditech Delaware and each share of Common Stock of Ditech Delaware issued and outstanding immediately prior thereto shall be cancelled and returned to the status of authorized but unissued shares.

**1.6 Preferred Stock of Ditech California and Ditech 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 Series A Preferred Stock of Ditech California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series A Preferred Stock of Ditech Delaware, each share of Series B Preferred Stock of Ditech California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series B Preferred Stock of Ditech Delaware, each share of Series C Preferred Stock of Ditech California issued and outstanding immediately prior thereto shall be converted into one (1) fully paid and nonassessable share of Series C Preferred Stock of Ditech Delaware.

**1.7 Stock Certificates.** On and after the Effective Date, all of the outstanding certificates which prior to that time represented shares of the Common Stock or of the Preferred Stock of Ditech California shall be deemed for all purposes to evidence ownership of and to represent the shares of Ditech Delaware into which the shares of Ditech 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 out-standing 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 Ditech Delaware evidenced by such outstanding certificate as above provided.

**1.8 Options.** On the Effective Date, the Surviving Corporation will assume and continue Ditech California's 1997 Stock Option Plan, 1998 Stock Option Plan and 1999 Non-Employee Directors' Stock Option Plan and the outstanding and unexercised portions of all options to purchase Common Stock of Ditech California, including without limitation all options

outstanding under such stock plans and any other outstanding options, shall be converted into options of Ditech Delaware, such that an option for one (1) share of Ditech California shall be converted into an option for one (1) share of Ditech Delaware, with no change in the exercise price of the Ditech Delaware option. No other changes in the terms and conditions of such options will occur. Effective on the Effective Date, Ditech Delaware hereby assumes the outstanding and unexercised portions of such options and the obligations of Ditech California with respect thereto.

**1.9 Employee Benefit Plans.** On the Effective Date, the Surviving Corporation shall assume all obligations of Ditech 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 Ditech Delaware Common Stock with respect to each such employee benefit plan as is proportional to the number of shares of Ditech California Common Stock (if any) so reserved on the Effective Date.

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

**2.1 Certificate of Incorporation and Bylaws.** The Certificate of Incorporation and Bylaws of Ditech 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 Ditech Communication Corporation."

**2.2 Directors.** The directors of Ditech 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 Ditech 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.

## **3. 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 Ditech 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 Ditech 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 Ditech 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 Ditech California, this Merger Agreement may be amended in any manner (except that, after the approval of the Merger Agreement by the shareholders of Ditech California, the principal terms may not be amended without the further approval of the shareholders of Ditech California) as may be determined in the judgment of the respective Board of Directors of Ditech Delaware and Ditech 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 Ditech California in accordance with applicable provisions of the General Corporation Law of the State of California; and

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

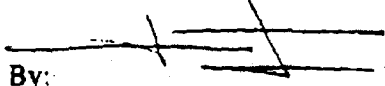
(c) any and all consents, permits, authorizations, approvals, and orders deemed in the sole discretion of Ditech California to be material to consummation of the Merger shall have been obtained.

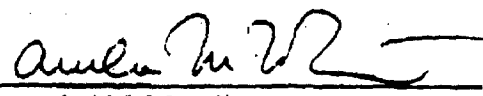
**3.4 Abandonment or Deferral.** At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned by the Board of Directors of either Ditech California or Ditech Delaware or both, notwithstanding the approval of this Merger Agreement by the shareholders of Ditech California or Ditech 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 Ditech California and Ditech 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 Ditech 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.

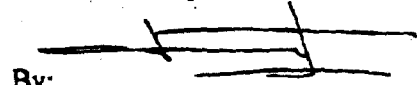
IN WITNESS WHEREOF, this Merger Agreement, having first been duly approved by the Board of Directors of Ditech California and Ditech Delaware, is hereby executed on behalf of each said corporation and attested by their respective officers thereunto duly authorized.


**DITECH CORPORATION,**  
a California corporation

  
By: \_\_\_\_\_  
Timothy Montgomery  
President and Chief Executive Officer

By:   
Andrei M. Manoliu  
Secretary

**DITECH MERGER CORPORATION,**  
a Delaware corporation

  
By: \_\_\_\_\_  
Timothy Montgomery  
President and Chief Executive Officer

By:   
Andrei M. Manoliu  
Secretary