

11-15-2002

EET

Docket No.:

LY

7688.9



102282214

Tab settings

To the Honorable Commissioner of Patents

the attached original documents or copy thereof.

1. Name of conveying party(ies):

M-Squared, Inc.

10-15-02

- Individual(s)
- General Partnership
- Corporation-State Utah
- Other
- Association
- Limited Partnership

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

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

Execution Date: March 5, 1999

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

Name: Earhugger, Inc. 5

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

Street Address: 405 North 880 West #C

City: Lindon State: UT ZIP: 84042

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Utah
- Other

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,029,986

Additional numbers  Yes  No

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

Name: Berne S. Broadbent

Internal Address: KIRTON & McCONKIE

Street Address: 1800 Eagle Gate Plaza

60 East South Temple

City: Salt Lake City State: UT ZIP: 84111

6. Total number of applications and registrations involved:.....

1

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

11/14/2002 DBYRNE 00000047 2029986

01 FC:0521

40.00 OP

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.

Berne S. Broadbent

Name of Person Signing

Signature

10/11/02

Date

Total number of pages including cover sheet, attachments, and

4

State of Utah  
Department of Commerce  
Division of Corporations and Commercial Code

I hereby certify that the foregoing has been filed and approved on the 19 day of March 1999 in the office of this Division and hereby issue this Certificate thereof.

Examiner BS Date 3/22/99



*[Signature]*  
LORENA R. RIFE  
DIRECTOR

OF  
EARHUGGER, INC.  
(Formerly M-Squared, Inc.)

RECEIVED

MAR 19 1999

Utah Div. of Corp. & Comm. Code

EarHugger, Inc., a Utah corporation formerly known as M-Squared, Inc. (hereinafter referred to as the "Corporation"), hereby submits for filing with the State of Utah the following Amended and Restated Articles of Incorporation, pursuant to provisions of the Utah Revised Business Corporation Act:

ARTICLE I  
NAME



The name of the Corporation is: EarHugger, Inc.

ARTICLE II  
DURATION

The Corporation's existence shall be perpetual unless and until otherwise dissolved pursuant to the laws of the State of Utah.

ARTICLE III  
PURPOSES AND POWERS

The Corporation is organized primarily to engage in the business of creating, developing, manufacturing and marketing various audio headphone devices, and related products and activities, and to engage in any and all other lawful acts and activities for which corporations may presently or hereafter be organized under the Utah Revised Business Corporation Act. The Corporation shall have all powers allowed by law, including but not limited to the powers described in the Utah Revised Business Corporation Act, as amended from time to time.

ARTICLE IV  
AUTHORIZED SHARES

The Corporation shall have authority to issue up to One Million (1,000,000) shares of common stock, with a par value of ten cents (\$0.10) per share, and shall not have authority to issue any other class of shares or series of shares within the class. Upon issuance, all such shares shall be deemed fully paid and non-assessable. All voting rights of the Corporation shall be exercised by the holders of its common stock, with each share of common stock being entitled to

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one vote on all matters presented to the shareholders of the Corporation. Each share of common stock shall have equal rights in the event of any liquidation, dissolution or distribution of the assets or profits of the Corporation.

#### ARTICLE V REGISTERED OFFICE AND AGENT

The street address of the registered office of the Corporation, as of the date of these Amended and Restated Articles of Incorporation, is 522 South University, Provo, Utah 84601, and the name of its registered agent at that office is Stephen R. Jaynes.

#### ARTICLE VI LIMITATION ON LIABILITY OF DIRECTORS

No director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for any action taken or any failure to take any action as a director, except liability for (a) the amount of a financial benefit received by a director to which he or she is not entitled, (b) an intentional infliction of harm on the Corporation or its shareholders, (c) a violation of Section 16-10a-842 of the Utah Revised Business Corporation Act, or (d) an intentional violation of criminal law. Any future amendment or repeal of this Article shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

#### ARTICLE VII INDEMNIFICATION OF DIRECTORS

The Corporation shall, to the fullest extent permitted by Utah law, as specified by the more detailed provisions of the Corporation's Bylaws, indemnify all of the Corporation's Directors against any and all third party claims against them arising from or related to acts or omissions by them within the scope of their duties to the Corporation. Any future amendment or repeal of this Article shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

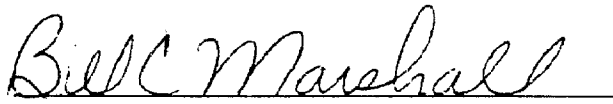
#### ARTICLE VIII AMENDMENTS TO ARTICLES

These Articles may be amended or restated at any time hereafter at any Annual or Special Meeting of the shareholders of the Corporation for which notice of such purpose to amend these Articles is set forth, but may be amended then only upon the vote of shareholders holding not less than sixty percent (60%) of all voting shares then issued and outstanding.

ARTICLE IX  
ADOPTION OF AMENDED AND RESTATED ARTICLES


These Amended and Restated Articles of Incorporation were adopted pursuant to a Unanimous Written Consent of Shareholders, effective on the 1<sup>st</sup> day of March, 1999. At the time these Amended and Restated Articles of Incorporation were adopted, 100,000 shares of the Corporation's common stock were issued and outstanding; all of such shares were entitled to vote on these Amended and Restated Articles; and all of such shares entitled to vote were represented by the Unanimous Written Consent of Shareholders and were voted in favor of these Amended and Restated Articles of Incorporation, which was sufficient for approval and adoption of the same. No group of the Corporation's shareholders was entitled to vote separately on these Amended and Restated Articles of Incorporation.

IN WITNESS WHEREOF, the undersigned officer hereby executes these Amended and Restated Articles of Incorporation on behalf of the Corporation on the 5<sup>th</sup> day of March, 1999, and affirms under penalties of perjury that the facts stated herein are true and correct.

  
Bill C. Marshall, President

ACKNOWLEDGMENT OF REGISTERED AGENT

The undersigned hereby acknowledges, as of the 5<sup>th</sup> day of March, 1999, that he has been named as registered agent of EarHugger, Inc., a Utah corporation, and hereby agrees to act as the registered agent of the Corporation.

  
Stephen R. Jaynes, Registered Agent

BERNE S. BROADBENT  
REGISTERED PATENT ATTORNEY  
E-MAIL: bbroadbent@kmclaw.com

**KIRTON &  
McCONKIE**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
1800 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84111-1004  
www.kmclaw.com

FAX (801) 321-4893  
TELEPHONE (801) 328-3600

October 11, 2002

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: Recordal of Name Change  
United States Trademark Registration for "EARHUGGER"  
Registration No. 2,029,986  
Our File No. 7688.9


Dear Sirs:

Enclosed for recording in the above-referenced trademark registration is a copy of Amended and Restated Articles of Incorporation reflecting the change in name from M-Squared, Inc. to Earhugger, Inc. Also enclosed is check no. 49132 to cover the recordation fee.

Should you have any questions, please feel free to contact me.

Very truly yours,

KIRTON & McCONKIE



Berne S. Broadbent

BSB/mlc

Enclosure

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RECORDED: 10/15/2002

TRADEMARK  
REEL: 2617 FRAME: 0571