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FORM PTO-1595
(Rev. 6-93)
OMD No. 0651-0011 (exp. 4/94)

Re



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

100715483

To the Honorable Commissioner of Patents and

Documents or copy thereof.

1. Name of conveying party(ies):

Phase Metrics

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

Name: Phase Metrics, Inc.

Internal Address:

Additional name(s) of conveying party(ies) attached?

☒ No ☐ Yes

3. Nature of Conveyance:

☐ Assignment

☒ Merger

☐ Security Agreement

☐ Change of Name

☐ Other

Street Address: 10260 Sorrento Valley Road

City: San Diego State: CA ZIP: 92121

Execution Date: 11/30/97,

Additional name(s) & address(es) attached? ☒ No ☐ Yes

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

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

08/609,853

B. Patent No.(s)

5,668,470

Additional numbers attached?

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

Name: Blakely, Sokoloff, Taylor & Zafman

Internal Address:

Street Address: 12400 Wilshire Boulevard, 7th Floor

City: Los Angeles State: CA ZIP: 90025

6. Total number of applications and patents involved: 1

7. Total Fee (37 CFR 3.41).....\$ 40.00

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit Account Number:

02-2666

(Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing is true and correct and any attached copy is a true copy of the original document.

Ben J. Yorks, Reg. No. 33,609

Name of Person Signing

Ben Yorks

Signature

May 6, 1998

Date

Total number of pages including cover sheet, attachments, and document: 9

Mail documents to be recorded with required cover sheet information to:

Assistant Commissioner of Patents, Box Assignments

Washington, D.C. 20231

Attorney Docket No. 002366.P015C
(5/27/97)

PATENT
REEL: 9168 FRAME: 0470

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:

"PHASE METRICS, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "PHASE METRICS, INC." UNDER THE NAME OF "PHASE METRICS, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF DECEMBER, A.D. 1997, AT 5 O'CLOCK P.M.

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




Edward J. Freel, Secretary of State

2753441 8100M

971412179

AUTHENTICATION: 8788509

PATENT
DATE: 12-03-97
REEL: 9168 FRAME: 0471

**AGREEMENT AND PLAN OF MERGER
OF PHASE METRICS, INC.,
A DELAWARE CORPORATION,
AND
PHASE METRICS, INC.,
A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of November 30, 1997, (the "Agreement") is entered into by and between Phase Metrics, Inc., a Delaware corporation ("PM-Delaware"), and Phase Metrics, Inc., a California corporation ("PM-California"). PM-Delaware and PM-California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. PM-Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has authorized capital stock of 70,605,364 shares, 70,000,000 of which are designated "Common Stock", par value \$.0001 per share, and 605,364 of which are designated "Preferred Stock", par value \$.0001 per share. As of November 15, 1997, 1,000 shares of Common Stock were issued and outstanding, all of which are held by PM-California. No shares of Preferred Stock are outstanding.

B. PM-California is a corporation duly organized and existing under the laws of the State of California and has authorized capital stock of 40,605,364 shares, 40,000,000 of which are designated "Common Stock," no par value, and 605,364 of which are designated, "Preferred Stock," no par value. As of November 15, 1997, 5,648,497 shares of Common Stock were issued and outstanding. As of November 15, 1997, 605,364 shares of Preferred Stock were issued and outstanding, of which 412,500 shares are Series A Convertible Preferred Stock and 192,864 shares are Series B Convertible Participating Preferred Stock.

C. The Board of Directors of PM-California has determined that, for the purpose of effecting the reincorporation of PM-California in the State of Delaware, it is advisable and in the best interests of PM-California that PM-California merge with and into PM-Delaware upon the terms and conditions herein provided, with PM-Delaware as the surviving corporation.

D. The respective Boards of Directors of PM-Delaware and PM-California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective sole stockholder and shareholders and be accepted by the undersigned officers.

E. PM-Delaware is a wholly-owned subsidiary of PM-California.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, PM-Delaware and PM-California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

1. MERGER

1.1 Merge. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, PM-California shall be merged with and into PM-Delaware (the "Merge"), the separate existence of PM-California shall cease and PM-Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be "Phase Metrics, Inc."

1.2 Filing and Effectiveness. The Merger shall become effective when the following actions shall have been completed:

(a) This Agreement and the Merger shall have been adopted and approved by the shareholders of PM-California in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof; and

(c) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law and California General Corporation Law shall have been filed with the Secretary of State of the State of Delaware.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of PM-California shall cease and PM-Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and PM-California's Board of Directors, (iii) shall succeed, without other transfer or action on the part of any other party, to all of the assets, rights, powers and property of PM-California in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of PM-Delaware as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer or other action on the part of any other party, to all of the debts, liabilities and obligations of PM-California in the same manner as if PM-Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

B. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of PM-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of PM-Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of PM-California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III. MANNER OF CONVERSION OF STOCK

3.1 PM-California Common Stock: Upon the Effective Date of the Merger, each share of PM-California Common Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, par value \$.0001 per share, of the Surviving Corporation.

3.2 PM-California Preferred Stock: Upon the Effective Date of the Merger, each share of PM-California Preferred Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Preferred Stock, par value \$.0001 per share, of the Surviving Corporation.

3.3 PM-California 1995 Stock Option Plan

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume all of the rights and obligations of PM-California under its 1995 Stock Option Issuance Plan, as amended (the "Plan"). Each outstanding and unexercised option to purchase PM-California Common Stock (an "Option") under the Plan shall become, subject to the provisions in paragraph 3.3(c) below, on the basis of one (1) share of the Surviving Corporation's Common Stock for each share of PM-California Common Stock issuable pursuant to any such Option, an option to purchase the Surviving Corporation's Common Stock on the same terms and conditions set forth in such option. As of November 15, 1997, options to purchase 2,258,400 shares of PM-California Common Stock were outstanding and unexercised.

(b) One (1) share of the Surviving Corporation's Common Stock shall be reserved for issuance under the Plans for each share of PM-California Common Stock so reserved immediately prior to the Effective Date of the Merger.

(c) Following the Effective Date of the Merger, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

3.4 PM-California Warrants

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume all rights and obligations of PM-California under the Warrants dated November 23, 1994 (the "Warrants"). Each Warrant shall become, subject to the provisions in paragraph 3.4(c) below, on the basis of one (1) share of the Surviving Corporation's Common Stock, for each share of PM-California Common Stock issuable upon the exercise of such Warrants, a warrant to purchase the Surviving Corporation's Common Stock on the same terms and conditions and at an exercise price as set forth in such Warrants. As of November 15, 1997, warrants to purchase 800,000 shares of PM-California Common Stock were outstanding and unexercised.

(b) One (1) share of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of the Warrants for each share of PM-California Common Stock so reserved immediately prior to the Effective Date of the Merger.

(c) Following the Effective Date of the Merger, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the holders of the Warrants pursuant to the assumption of the Warrants.

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3.5 PM-California Notes

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume all rights and obligations of PM-California under the Notes dated November 23, 1994 (the "Notes"). Each Note shall become, subject to the provisions in paragraph 3.5(c) below, on the basis of one (1) share of the Surviving Corporation's Common Stock for each share of PM-California Common Stock issuable upon the conversion of such Notes, a note to purchase the Surviving Corporation's Common Stock on the same terms and conditions and at an exercise price as set forth in such Notes. As of November 15, 1997, notes to purchase 5,142,720 shares of PM-California Common Stock were outstanding and unexercised.

(b) One (1) share of the Surviving Corporation's Common Stock shall be reserved for issuance upon the conversion of the Notes for each share of PM-California Common Stock so reserved immediately prior to the Effective Date of the Merger.

(c) Following the Effective Date of the Merger, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the holders of the Notes pursuant to the assumption of the Notes.

3.6 PM-Delaware Common Stock Upon the Effective Date of the Merger, each share of Common Stock, par value \$.0001 per share, of PM-Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by PM-Delaware, the holder of such shares or any other person, be cancelled and returned to the status of authorized but unissued shares.

3.7 Exchange of Certificates After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of PM-California Common Stock and Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Preferred Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of PM-California Common Stock and Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock and Preferred Stock, respectively, into which such shares of PM-California Common Stock and Preferred Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock and Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock and Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of PM-California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or such other additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of the Surviving Corporation's stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting

such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of the Surviving Corporation that such tax has been paid or is not payable.

IV. GENERAL

4.1 Covenants of PM-Delaware. PM-Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by PM-Delaware of all of the franchise tax liabilities of PM-California.

(c) Take such other actions as may be required by the California General Corporation Law to effect the Merger.

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

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either PM-California or of PM-Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of PM-California.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided, that an amendment made subsequent to the adoption of this Agreement by the shareholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 9 East Lookersman Street, Dover, Delaware 19901, the registered agent of the Surviving Corporation at such address is National Registered Agents, Inc.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 10260 Sorrento Valley Road, San Diego, California 92121 and copies thereof will be furnished to any shareholder or stockholder of either Constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California General Corporation Law.

4.8 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

4.9 Approval of PM-California as Sole Stockholder of PM-Delaware. By its execution and delivery of this Agreement, PM-California, as sole stockholder of PM-Delaware, consents to, approves and adopts this Agreement and approves the Merger. PM-California agrees to execute such further instruments as may be necessary or desirable to evidence its approval and adoption of this Agreement and the Merger as the sole stockholder of PM-Delaware.

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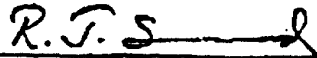
IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of Phase Metrics, Inc., a Delaware corporation, and Phase Metrics, Inc., a California corporation, is hereby executed on behalf of each of such corporations and attested by their respective officers thereunto duly authorized.

PHASE METRICS, INC.,
a Delaware corporation

By: 

John P. Schaefer, Chief Executive Officer

ATTEST:



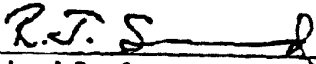
R. Joseph Saunders,
Chief Financial Officer and Assistant Secretary

PHASE METRICS, INC.,
a California corporation

By: 

John P. Schaefer, Chief Executive Officer

ATTEST:



R. Joseph Saunders,
Chief Financial Officer and Assistant Secretary

COPIES OF THIS AGREEMENT