

11-16-1998



100878136

MRD 11/17/98 *Resub* REC  
 To the Honorable commissioner of Patents  
 Please record the attached original document.

## 1. Name of conveying party(ies):

Adaptec, Inc.

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

## 3. Nature of conveyance:

\_\_\_\_\_ Assignment  
 \_\_\_\_\_ Merger  
 \_\_\_\_\_ Security Agreement  
 \_\_\_\_\_ Change of Name  
☒ Certificate of Incorporation

Execution Date: November 19, 1997

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

Name: Adaptec, Inc.

Street Address:

691 South Milpitas Boulevard

City: Milpitas

State: CA Zip: 95035

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

## 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)

08/829,044; 08/964,356; 08/963,899  
 08/964,304; 08/963,902; 08/963,905  
 08/963,754

## B. Patent No. (s)

Additional numbers attached? \_\_\_\_\_ Yes ☒ No

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

Name: Charles J. Barbas, Esq.  
 CESARI AND MCKENNA, LLP

Street Address:  
 30 Rowes Wharf  
 City: Boston State: MA Zip: 02110

6. Total number of applications and  
patents involved:..... 1

## 7. Total fee (37 CFR 3.41) ..... \$280.00

\_\_\_\_\_ Enclosed

\_\_\_\_\_ Authorized to be charged to deposit  
 account

8. Deposit account no. 03-1237 (Attach duplicate  
copy of this page if paying by deposit account)

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I declare.

I declare and believe, the foregoing information is true and correct and any attached copy is a true  
 document.

*[Signature]*  
 32,959

Signature

11/17/98

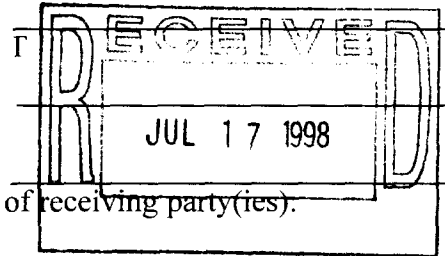
Date

Total number of pages comprising cover sheet:

**PATENT**  
**REEL: 9574 FRAME: 0600**

REC

07-23-1998



To the Honorable commissioner of Patent  
Please record the attached original document

1. Name of conveying party(ies):

Adaptec, Inc.

MRU  
7/17/98

100771417

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

Name

Street Address:

City:

State:

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

3. Nature of conveyance:

\$280.00 Assignment  
\_\_\_\_\_ Merger  
\_\_\_\_\_ Security Agreement  
\_\_\_\_\_ Change of Name  
X Other

Additional name(s) & address(es)  
attached? \_\_\_\_\_ Yes \_\_\_\_\_ No

Execution Date: November 19, 1997

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08/829,044; 08/964,356; 08/963,899;  
08/964,304; 08/963,902; 08/963,905;  
08/963,754

B. Patent No. (s)

Additional numbers attached? \_\_\_\_\_ Yes ☒ No5. Name and address of party to whom  
correspondence concerning document should be  
mailed:

Name: Charles J. Barbas, Esq.  
CESARI AND MCKENNA, LLP  
Street Address:  
30 Rowes Wharf  
City: Boston State: MA Zip: 02110

6. Total number of applications and  
patents involved: ..... 7

7. Total fee (37 CFR 3.41) ..... \$280.00

☒ Enclosed☐ Authorized to be charged to deposit  
account8. Deposit account no. 03-1237 (Attach duplicate  
copy of this page if paying by deposit account)

07/22/1998 DNGUYEN 00000012 08829044

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280.00 DP

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.

  
Charles J. Barbas,

32,959

Signature

7/14/98  
Date

Total number of pages comprising cover sheet:

PATENT  
REEL: 9574 FRAME: 0601

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 INCORPORATION OF "ADAPTEC, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF NOVEMBER, A.D. 1997, AT 10 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



A handwritten signature in cursive script, reading "Edward J. Freel".

---

Edward J. Freel, Secretary of State

2821928 8100

971394348

AUTHENTICATION: 8767651

DATE: 11-20-97

PATENT  
REEL: 9574 FRAME: 0602

**CERTIFICATE OF INCORPORATION****OF****ADAPTEC, INC.****ARTICLE ONE**

The name of the Corporation is Adaptec, Inc. (the "Corporation").

**ARTICLE TWO**

The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, zip code 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE THREE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**ARTICLE FOUR**

Part 1. Authorized Capital Stock. This Corporation is authorized to issue two classes of shares of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 401,000,000 shares consisting of:

(i) 400,000,000 shares of Common Stock, \$.001 per share par value; and

(ii) 1,000,000 shares of Preferred Stock, \$.001 per share par value of which Two-Hundred Fifty Thousand (250,000) shares have been designated Series A Participating Preferred Stock.

Part 2. Undesignated Preferred Stock. The Board of Directors is hereby authorized, subject to limitations prescribed by the Corporation Law, to provide for the issuance of the shares of undesignated Preferred Stock in one or more series, and by filing a certificate pursuant to the Corporation Law, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series of undesignated Preferred Stock shall include, but not be limited to, determination of the following:

(i) the number of shares constituting that series and the distinctive designation of that series;

(ii) the dividend rate on the shares of that series, whether dividends shall be cumulative, and if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

(iii) whether that series shall have voting rights in addition to the voting rights provided by law, and if so, the terms of such voting rights;

(iv) whether that series shall have conversion privileges, and if so, the terms and conditions of such privileges, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

(v) whether or not the shares of that series shall be redeemable, and if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption rates;

(vi) whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and if so, the terms in the amount of such sinking funds;

(vii) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

(viii) any other relative rights, preferences and limitations of that series.

Unless otherwise provided in the certificate establishing the designation, powers, preferences, and rights of shares of Undesignated Preferred Stock, the number of shares of any series of Undesignated Preferred Stock may be increased (but not above the total number of authorized shares of Undesignated Preferred Stock) or decreased (but not below the number of shares thereof then outstanding) by a certificate pursuant to the Corporation Law. In case the number of shares of any series of Undesignated Preferred Stock shall be decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series of Undesignated Preferred Stock.

**Part 3. Series A Participating Preferred Stock.** The Series A Participating Preferred Stock shall have the following designations, powers, preferences and relative and other special rights and qualifications, limitations and restrictions:

(i) **Proportional Adjustment.** In the event the Corporation shall at any time after the issuance of any share or shares of Series A Participating Preferred Stock (a) declare any dividend on Common Stock of the Corporation ("Common Stock") payable in shares of Common Stock, (b) subdivide the outstanding Common Stock or (c) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Corporation shall simultaneously effect a

proportional adjustment to the number of outstanding shares of Series A Participating Preferred Stock.

(ii) Dividends and Distributions.

(a) Subject to the prior and superior right of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Participating Preferred Stock with respect to dividends, the holders of shares of Series A Participating Preferred Stock shall be entitled to receive when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Participating Preferred Stock.

(b) The Corporation shall declare a dividend or distribution on the Series A Participating Preferred Stock as provided in paragraph (a) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock).

(c) Dividends shall begin to accrue on outstanding shares of Series A Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

(iii) Voting Rights. The holders of shares of Series A Participating Preferred Stock shall have the following voting rights:

(a) Each share of Series A Participating Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation.

(b) Except as otherwise provided herein or by law, the holders of shares of Series A Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) Except as required by law, holders of Series A Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(iv) Certain Restrictions.

(a) The Corporation shall not declare any dividend on, make any distribution on, or redeem or purchase or otherwise acquire for consideration any shares of Common Stock after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock unless concurrently therewith it shall declare a dividend on the Series A Participating Preferred Stock as required by Section (ii) hereof.

(b) Whenever quarterly dividends or other dividends or distributions payable on the Series A Participating Preferred Stock as provided in Section (ii) are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

1. declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock;

2. declare or pay dividends on, make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with Series A Participating Preferred Stock, except dividends paid ratably on the Series A Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

3. redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Participating Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Participating Preferred Stock;

4. purchase or otherwise acquire for consideration any shares of Series A Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(c) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (a) of this Section (iv), purchase or otherwise acquire such shares at such time and in such manner.

(v) Reacquired Shares. Any shares of Series A Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

(vi) Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Participating Preferred Stock shall be entitled to receive an aggregate amount per share equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock plus an amount equal to any accrued and unpaid dividends on such shares of Series A Participating Preferred Stock.

(vii) Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged.

(viii) No Redemption. The shares of Series A Participating Preferred Stock shall not be redeemable.

(ix) Ranking. The Series A Participating Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

(x) Amendment. The Certificate of Incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preference or special rights of the Series A Participating Preferred Stock so as to affect them adversely without the



affirmative vote of the holders of a majority of the outstanding shares of Series A Participating Preferred Stock, voting separately as a class.

(xi) Fractional Shares. Series A Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Participating Preferred Stock.

#### ARTICLE FIVE

The name and mailing address of the incorporator are as follows:

Wady H. Milner  
Wilson Sonsini Goodrich & Rosati, Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 94304

#### ARTICLE SIX

The Corporation is to have perpetual existence.

#### ARTICLE SEVEN

The election of directors need not be by written ballot except to the extent provided in the Bylaws.

#### ARTICLE EIGHT

The number of directors which constitute the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation.

#### ARTICLE NINE

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation, but the stockholders may make additional Bylaws and may alter or repeal any Bylaw whether adopted by them or otherwise.

#### ARTICLE TEN

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,

(iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit, and to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as the same exists or may hereafter be amended. If the Delaware General Corporation Law is amended after the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

#### ARTICLE ELEVEN

Except as otherwise provided herein, at the election of directors of the Corporation, each holder of Common Stock shall be entitled to one vote for each share held. No stockholder will be permitted to cumulate votes at any election of directors.

#### ARTICLE TWELVE

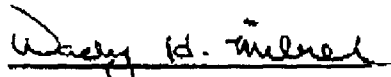
Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the laws of the State of Delaware) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

#### ARTICLE THIRTEEN

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation.

The undersigned incorporator hereby acknowledges that the foregoing Certificate of Incorporation is her act and deed and that the facts stated herein are true.

Dated: November 19, 1997

  
Wady H. Milner  
Incorporator