

05-18-2000



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Form PTO-1595

U.S. Department of Commerce

Docket No. 17684-0014 (16523-0114)

**RECORDATION FORM COVER SHEET
PATENTS ONLY**

To the Hon. Commissioner of Patents & Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

WACOS, INC.

Additional name of conveying party attached? ☐ Yes ☒ No

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

Name: UTSTARCOM

Internal Address: _____

Street Address: 1275 Harbor Bay Parkway, Suite 100City: Alameda State: CA ZIP: 94502Additional name(s) and address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☒ Merger
- ☐ Security Agreement ☐ Change of Name
- ☐ Other: _____

Execution Date: _____

4. Application number(s) or patent numbers:

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

A. Patent Application No.(s)

09/429,552

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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

Name: Justin F. BoyceOPPENHEIMER WOLFF & DONNELLY LLPInternal Address: Suite 200Street Address: 3373 Hillview AvenueCity: Palo Alto State: California ZIP: 94304-12046. Total number of applications and patents involved: 17. Total fee (37 CFR 3.41) \$40.00☒ Enclosed☒ Any discrepancy or overpayment is authorized to be charged to deposit account

8. Deposit Account number:

02-3964

(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 information is true and correct and any attached copy is a true copy of the original document.

JUSTIN F. BOYCE

Name of Person Signing

Signature

April 20, 2000

Date

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

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PATENT
REEL: 010787 FRAME: 0907

AGREEMENT AND PLAN OF MERGER

BY AND BETWEEN

UTSTARCOM, INC.,

AND

WACOS, INC.

Dated as of December 13, 1999

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the "Agreement") is made and entered into as of December 13, 1999 by and between UTStarcom, Inc., a Delaware corporation ("Buyer") and WACOS, Inc., a Delaware corporation ("Company").

RECITALS

A. This Agreement contemplates a tax-free merger of the Company with and into Buyer in a reorganization pursuant to Section 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Merger").

B. The Boards of Directors of each of Buyer and Company believe it is in the best interests of each company and their respective stockholders that the Merger be consummated and, in furtherance thereof, have approved the Merger.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. On and subject to the terms and conditions of this Agreement, the Company will merge with and into the Buyer (the "Merger") at the Effective Time (as defined in Section 1.4(a) below). The Buyer shall be the corporation surviving the Merger.

1.2 The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, in Palo Alto, California, commencing at 10:00 a.m. local time on the second business day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective parties will take at the Closing itself) or such other date and time as the parties may mutually determine (the "Closing Date").

1.3 Actions at the Closing. At the Closing: (i) the Company will deliver to the Buyer the various certificates, instruments, and documents as required by Section 5.3 below; (ii) the Buyer will deliver to the Company the various certificates, instruments, and documents as required by Section 5.2 below; (iii) the Buyer and the Company will file an agreement of merger with the Secretary of State of the State of California and the Secretary of State of the State of Delaware; and (iv) the Buyer will deliver to the stockholders of the Company (the "Stockholders") in the manner provided in

Section 1.5 below, the certificates evidencing the Buyer Shares (as defined below) to be issued in the Merger.

1.4 Effect of Merger

(a) General. The Merger shall become effective at the time (the "Effective Time") the Buyer and the Company file the agreement of merger with the Secretary of State of the State of California and the Secretary of State of the State of Delaware. The Merger shall have the effect set forth in the Delaware General Corporation Law and the applicable laws of the State of California. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company shall vest in Buyer, and all debts, liabilities and duties of the Company shall become the debts, liabilities and duties of Buyer. The Buyer may, at any time after the Effective Time, take any action (including executing and delivering any document) in the name and on behalf of the Company in order to carry out and effectuate the transactions contemplated by this Agreement.

(b) Certificate of Incorporation. The Certificate of Incorporation of the Buyer in effect at and as of the Effective Time will remain the Certificate of Incorporation of the Buyer without any modification or amendment resulting from the Merger.

(c) Bylaws. The Bylaws of the Buyer in effect at and as of the Effective Time will remain the Bylaws of the Buyer without any modification or amendment resulting from the Merger.

(d) Directors and Officers. The directors and officers of the Buyer in office at and as of the Effective Time will remain the directors and officers of the Buyer (retaining their respective positions and terms of office).

(e) Conversion of Company Shares. At and as of the Effective Time:

(i) Each outstanding share of Common Stock of the Company ("Company Common Stocks") shall be cancelled and extinguished and be converted automatically into the right to receive 0.4498070 shares of Series G Preferred Stock, \$0.0025 per value, of Buyer ("Buyer Shares") (the ratio of 0.4498070 Buyer Shares to one (1) Company Common Stock is referred to herein as the "Common Stock Conversion Ratio").

(ii) Each outstanding share of Series B Preferred Stock of the Company ("Company Series B Shares") shall be cancelled and extinguished and be converted automatically into the right to receive 0.9335977 Buyer Shares (the ratio of 0.9335977 Buyer Shares to one (1) Company Series B Share is referred to herein as the "Series B Conversion Ratio")

The Common Stock Conversion Ratio and the Series B Conversion Ratio shall be subject to equitable adjustment in the event of any stock split, stock dividend, reverse stock split, or other change in the capital stock of the Buyer prior to the Effective Time. The number of Buyer Shares

loss statement for the twelve-month period then ended (collectively, the "Company Financials"). The Company Financials are true and correct in all material respects and are consistent throughout the periods indicated and consistent with each other. The Company Financials present fairly the financial condition and operating results of the Company as of the dates and during the periods indicated therein, subject to normal year-end adjustments, which will not be material in amount or significance in the aggregate.

2.6 Restrictions on Business Activities. Other than the restrictions contained in the agreements listed in the Disclosure Schedule, there is no agreement (noncompete or otherwise), commitment, judgment, injunction, order or decree to which the Company or any of the Stockholders are a party or otherwise binding upon the Company or any of the Stockholders which has or reasonably could be expected to have the effect of materially prohibiting or impairing any business practice of the Company, any acquisition of property (tangible or intangible) by the Company, the conduct of business by the Company or the operation of the business of the Company by Buyer following the Effective Time.

2.7 Title of Properties; Absence of Liens and Encumbrances; Condition of Equipment.

(a) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Liens (as defined in Section 2.8(vii)), except as reflected in the Company Financials or in the Disclosure Schedule and except for liens for Taxes not yet due and payable and such imperfections of title and encumbrances, if any, which are not material in character, amount or extent, and which do not materially detract from the value, or materially interfere with the present use, of the property subject thereto or affected thereby.

(b) Except as described in the Disclosure Schedule, the equipment (the "Equipment") owned or leased by the Company is, taken as a whole, (i) adequate for the conduct of the business of the Company as currently conducted and (ii) in good operating condition, regularly and properly maintained, subject to normal wear and tear.

2.8 Intellectual Property. The Company has sufficient title and ownership of patents, copyrights, trademarks, trade secrets, and all other proprietary rights needed to conduct its business as proposed to be conducted.

There are no pending infringement claims regarding any third party's patents, copyrights, trademarks, trade secrets or proprietary rights and processes against the Company nor, to the best of the Company's knowledge, is there any threat thereof or basis therefor. To the best of the Company's knowledge, the Company is not infringing upon or otherwise acting adversely to, and will not, by conducting its business as presently conducted, infringe upon or otherwise act adversely to, the right or claimed right of any other person with respect to any of the foregoing. The Company is not aware of any violation by a third party of any of its patents, copyrights, trademarks, trade

secrets or other proprietary rights. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of its proprietary information.

The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of the employee's best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company.

2.9 Interested Party Transactions. Except as set forth on **Schedule 2.9**, no officer, director or Stockholder of the Company (nor any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has an interest), has, directly or indirectly, (i) an interest in any entity which furnished or sold, or furnishes or sells, services or products that the Company furnishes or sells, or proposes to furnish or sell, or (ii) an interest in any entity that purchases from or sells or furnishes to, the Company, any goods or services or (iii) a beneficial interest in any contract or agreement set forth in **Schedule 2.9**; provided, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed an "interest in any entity" for purposes of this **Section 2.9**.

2.10 Governmental Authorization. **Schedule 2.10** accurately lists each material consent, license, permit, grant or other authorization issued to the Company by a Governmental Entity (i) pursuant to which the Company currently operates or holds any interest in any of its properties or (ii) which is required for the operation of its business or the holding of any such interest (herein collectively called "Company Authorizations"), which Company Authorizations are in full force and effect and constitute all Company Authorizations required to permit the Company to operate or conduct its business substantially as it is currently and has been conducted or hold any interest in its properties or assets.

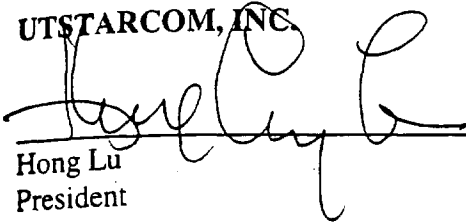
ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer represents and warrants to the Company and each of the Stockholders, subject to such exceptions as are specifically disclosed in the disclosure schedule attached hereto as **Exhibit B**, as follows:

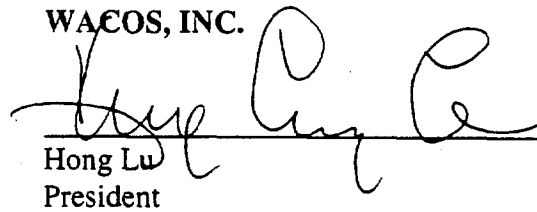
IN WITNESS WHEREOF, Buyer and the Company have caused this Agreement to be signed by their duly authorized respective officers, all as of the date first written above.

UTSTARCOM, INC.



Hong Lu
President

WACOS, INC.



Hong Lu
President

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 MERGER, WHICH MERGES:

"WACOS, INC.", A DELAWARE CORPORATION,
WITH AND INTO "UTSTARCOM, INC." UNDER THE NAME OF
"UTSTARCOM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER
THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS
OFFICE THE FOURTEENTH DAY OF DECEMBER, A.D. 1999, AT 2:30
O'CLOCK P.M.

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



Edward J. Freel
Edward J. Freel, Secretary of State

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991537088

AUTHENTICATION:

0139994

DATE:

12-14-99

PATENT

RECORDED: 04/25/2000

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