

09-06-2000



Revised Form PTO-1595
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)

U.S. Department of Commerce
Patent and Trademark Office

101449482
PATENTS ONLY

8-7-00

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

<p>1. Name of conveying party(ies): NITRES, INC.</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies): Name: <u>CREE LIGHTING COMPANY</u></p> <p>Internal Address: _____</p> <p>Street Address: <u>107 South La Patera Lane</u></p> <p>City: <u>Goleta</u> State: <u>CA</u> Zip: <u>93117</u></p> <p>Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>									
<p>3. Nature of conveyance:</p> <table border="0"> <tr> <td>Assignment</td> <td></td> <td>Merger</td> </tr> <tr> <td>Security Agreement</td> <td>X</td> <td>Change of Name (see section 1.3 of attached agreement)</td> </tr> <tr> <td>Other</td> <td colspan="2">_____</td> </tr> </table> <p>Execution Date: <u>May 1, 2000</u></p>		Assignment		Merger	Security Agreement	X	Change of Name (see section 1.3 of attached agreement)	Other	_____	
Assignment		Merger								
Security Agreement	X	Change of Name (see section 1.3 of attached agreement)								
Other	_____									

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: _____

<p>A. Patent Application No.(s) <u>09/328,555</u></p>	<p>B. Patent No.(s) _____</p>
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Additional numbers attached? Yes No

<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Jaye G. Heybl</u></p> <p>Internal Address: <u>Koppel & Jacobs</u></p> <p>Street Address: <u>555 St. Charles Drive, Suite 107</u></p> <p>City: <u>Thousand Oaks</u> State: <u>CA</u> Zip: <u>91360</u></p>	<p>6. Total number of applications and patents involved: <input type="text" value="1"/></p> <p>7. Total fee (37 CFR 3.41) \$ <u>40.00</u></p> <p><input checked="" type="checkbox"/> Enclosed</p> <p><input type="checkbox"/> Authorized to be charged to deposit account.</p> <p>8. Deposit account number: <u>11-1580</u></p> <p><input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional filing fees which may be required or credit any overpayment to Deposit Account No. 11-1580</p>
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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

JAYE G. HEYBL
Name of Person Signing

[Signature]
Signature

8/02/00
Date

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

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

PATENT
REEL: 011033 FRAME: 0732

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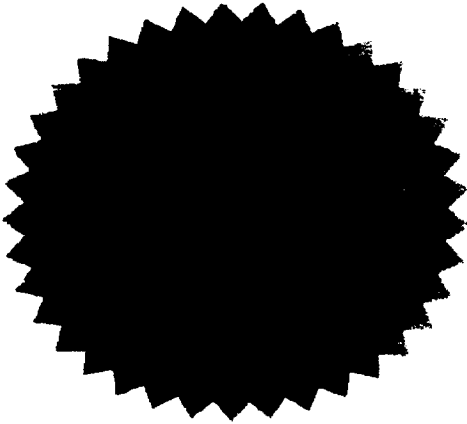


SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 17 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of



Bill Jones
 Secretary of State

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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAY - 1 2000

AGREEMENT OF MERGER

BILL JONES, Secretary of State

THIS AGREEMENT OF MERGER (the "Agreement of Merger") is made and dated as of May 1, 2000 by and among Cree, Inc., a corporation incorporated under the laws of the State of North Carolina (the "Purchaser"), Crystal Acquisition, Inc., a corporation incorporated under the laws of the State of North Carolina and wholly-owned subsidiary of the Purchaser ("Merger Sub"), and Nitres, Inc., a corporation incorporated under the laws of the State of California (the "Company").

WHEREAS, the Purchaser, Merger Sub, the Company, and certain of the shareholders of the Company (the "Principal Shareholders") have entered into an agreement dated as of April 10, 2000 (the "Agreement"), which provides for, among other things, the filing of this Agreement of Merger in connection with the merger of Merger Sub with and into the Company, with the Company as the surviving corporation (the "Merger") and the other transactions therein and herein contemplated;

WHEREAS, consistent with and pursuant to the Agreement, the Purchaser, Merger Sub and the Company desire to effect the Merger upon the terms set forth herein;

WHEREAS, the boards of directors of the Purchaser, Merger Sub and the Company and the shareholders of Merger Sub and the Company (acting on the recommendation of their respective boards of directors) have duly approved the Agreement, this Agreement of Merger, and the consummation of the Merger upon the terms set forth therein and herein; and

WHEREAS, the parties hereto intend that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended;

NOW, THEREFORE, the parties hereto do hereby approve and adopt this Agreement of Merger for the purpose of setting forth the terms and conditions of the Merger and the means of carrying the same into effect.

ARTICLE I
THE MERGER

1.1 Merger. Merger Sub shall be merged with and into the Company pursuant to Article 11 of the North Carolina Business Corporation Act, as amended (the "NCBCA"), and Sections 1101 and 1103 of the California Corporations Code, as amended (the "California Code").

1.2 Effective Time. The parties will file articles of merger with the Secretary of State of the State of North Carolina in accordance with the provisions of Article 11 of the NCBCA and will file this Agreement of Merger with the Secretary of State of the State of California in accordance with the provisions of Sections 1101 and 1103 of the California Code. The parties will file this Agreement of Merger on May 1, 2000 (the "Filing Date"). The Merger shall become

effective at 8:00 a.m. eastern time on the Filing Date. The time and date when the Merger shall become effective is herein referred to as the "Effective Time."

1.3 Effect of the Merger. At the Effective Time, Merger Sub shall be merged with and into the Company in accordance with this Agreement of Merger; the separate existence of Merger Sub shall cease; the Company shall be the surviving corporation (sometimes referred to herein as the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of California, and shall thereupon and thereafter possess all of the rights, privileges, powers and franchises and be subject to all of the restrictions, disabilities, liabilities, and duties of each of the Company and Merger Sub; all of the property, real, personal and mixed, and every other asset of each of Merger Sub and the Company shall vest in the Surviving Corporation without further act or deed; and all other effects of the Merger specified in the NBCA and the California Code shall result therefrom. As of the Effective Time, the name of the Surviving Corporation shall be "Cree Lighting Company".

ARTICLE II ARTICLES OF INCORPORATION, BYLAWS, DIRECTORS AND OFFICERS

2.1 Articles of Incorporation and Bylaws. The Articles of Incorporation and Bylaws of the Surviving Corporation shall be identical to the Articles of Incorporation and Bylaws of the Company in effect immediately prior to the Effective Time, until thereafter amended as provided by applicable law, except that the name of the Company shall be changed to, and the name of the Surviving Corporation shall be, "Cree Lighting Company", and Article I of the Articles of Incorporation of the Company shall be amended in its entirety to read as follows: "The name of the corporation is "Cree Lighting Company."

2.2 Officers.

The officers of the Surviving Corporation shall be as listed below, each holding office until his or her respective death, resignation, retirement, removal or disqualification, or until his or her respective successor has been duly elected or appointed and qualified as provided in the Bylaws of the Surviving Corporation or by applicable law:

Chairman of the Board	F. Neal Hunter
President and Chief Executive Officer	Fred A. Blum
Vice President	Charles M. Swoboda
Treasurer	Cynthia B. Merrell
Secretary	Adam H. Broome

ARTICLE III CONVERSION AND ISSUANCE OF SHARES

3.1 Conversion of Shares

(a) At the Effective Time, by virtue of the Merger and without any action on the part of the holders of shares of common stock, \$.001 par value per share, or preferred stock, \$.001 par value per share, of the Company ("Company Common Stock" and "Company Preferred Stock", respectively, and collectively, the "Company Stock") and subject to the withholding into escrow described in Section 3.2(d) below:

(i) Each issued and outstanding share of Company Common Stock (other than treasury shares and Dissenting Shares (as defined below)) shall be converted into the right to receive 0.84186 shares (the "Exchange Ratio") of Common Stock of the Purchaser ("Purchaser Common Stock") such that each holder of such shares of Company Common Stock shall be entitled to receive the number of shares of Purchaser Common Stock determined by multiplying (A) the number of shares of Company Common Stock held by such holder by (B) the Exchange Ratio (less any fractional share, which shall be eliminated);

(ii) Each issued and outstanding share of Company Preferred Stock (other than treasury shares and Dissenting Shares) shall be converted into the right to receive 0.85460 shares of Purchaser Common Stock (less any fractional share, which shall be eliminated).

(iii) Each outstanding option to purchase shares of Company Common Stock (a "Stock Option") under the Company 1999 Stock Option/Stock Issuance Plan (the "Company Plan"), whether vested or unvested shall be assumed by Purchaser. Accordingly, each Stock Option shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable under such Stock Option immediately prior to the Effective Time (including without limitation any repurchase rights), the number of shares of Purchaser Common Stock determined by multiplying the number of shares of Company Common Stock that were purchasable immediately prior to the Effective Time upon the exercise of such Stock Option by the Exchange Ratio (less any fractional share, which shall be eliminated) at a price per share (rounded up to the nearest whole cent) equal to (A) the exercise price per share of Company Common Stock immediately prior to the Effective Time under such Stock Option divided by (B) the Exchange Ratio; provided, however, that in the case of any Stock Option to which Section 422 of the Code applies ("incentive stock options"), the option price, the number of shares purchasable pursuant to such option, and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code. As soon as practicable after the Effective Time, the Purchaser shall deliver to each holder of Stock Options a notice confirming the foregoing assumption and setting forth such holder's rights pursuant thereto, including the number of shares of Purchaser Common Stock purchasable under the assumed Stock Option and the corresponding exercise price thereunder;

(iv) Each share of Company Common Stock (a) acquired by a Shareholder on the exercise of Stock Options granted by the Company under the Company Plan or (b) otherwise issued by the Company to a Shareholder, which in each case is subject to repurchase rights (collectively, the "Repurchase Rights"), including without limitation Company Common Stock issued pursuant to the Company Plan or pursuant to certain Common Stock Issuance Agreements or certain Common Stock Purchase Agreements between the Company and certain Shareholders (collectively, the "Restricted Shares") shall be

converted into the right to receive shares of Purchaser Common Stock as described in Section 3.1(a)(i) above and the Repurchase Rights and any agreement or instrument evidencing the Repurchase Rights shall be deemed assigned by the Company to Purchaser and shall be deemed assumed by the Purchaser, thereby giving the Purchaser all the rights that the Company would have had under the terms of the Repurchase Rights including the right to repurchase the shares upon the happening of certain events. As soon as practicable after the Effective Time, the Purchaser shall deliver to each holder of Restricted Shares a notice confirming the foregoing assignment and assumption and setting forth such holder's rights pursuant thereto;

(v) Each outstanding warrant to purchase shares of Company Preferred Stock (a "Warrant") shall be deemed to constitute a warrant to acquire, on the same terms and conditions as were applicable under such Warrant immediately prior to the Effective Time, the number of shares of Purchaser Common Stock that would have been received by the holder thereof had the warrant been exercised to purchase Company Preferred Stock immediately prior to the Effective Time (less any fractional share, which shall be eliminated) at a price per share (rounded up to the nearest whole cent) equal to (A) the exercise price per share of Company Preferred Stock immediately prior to the Effective Time under such Warrant multiplied by a fraction the numerator of which shall be the number of shares of Company Preferred Stock for which the Warrant is exercisable and the denominator of which shall be the number of shares of Purchaser Common Stock for which the Warrant is exercisable after the Effective Time. As soon as practicable after the Effective Time, the Purchaser shall deliver to each holder of a Warrant a notice confirming the foregoing and setting forth such holder's rights pursuant thereto, including the number of shares of Purchaser Common Stock purchasable under the Warrant and the corresponding exercise price thereunder; and

(vi) Each share of Company Stock that is owned by the Company, if any, shall automatically be cancelled and retired and shall cease to exist, and no Purchaser Common Stock shall be delivered in exchange therefor.

(b) Capital Stock of Merger Sub. At the Effective Time, by virtue of the Merger and without any action on the part of the holder of shares of common stock, \$.01 par value per share, of Merger Sub ("Merger Sub Common Stock"), each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Date shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock, par value \$.001 per share of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall thereafter evidence ownership of such shares of capital stock of the Surviving Corporation.

3.2 Surrender of Certificates; Issuance of Stock

(a) Exchange Procedures. Purchaser hereby designates its transfer agent to act as the Exchange Agent hereunder (the "Exchange Agent"). Promptly after the Effective Time, Purchaser shall make available to the Exchange Agent for exchange in accordance with Section 3.1, through such reasonable procedures as the Purchaser and the Exchange Agent may adopt, certificates evidencing the shares of Purchaser Common Stock issuable pursuant to Sections 3.1(a)(i) and (ii) above in exchange for the shares of Company Stock outstanding

immediately prior to the Effective Time less the number of shares of Purchaser Common Stock to be deposited into the Escrow Fund (defined below) pursuant to Section 3.2(d) below. Upon surrender of a stock certificate representing shares of Company Stock (a "Certificate") for cancellation to the Exchange Agent in accordance with the Purchaser's and Exchange Agent's procedures, the holder of such Certificate shall be entitled to receive in exchange therefor (A) the Exchange Ratio, multiplied by (B) the number of shares represented by the surrendered Certificate. The Certificate so surrendered shall forthwith be cancelled. Until surrendered as contemplated by this Section 3.2(a), each Certificate shall be deemed from and after the Effective Time to represent only the right to receive upon such surrender the merger consideration described above for each share represented by the Certificate. In no event shall the holder of any such surrendered Certificate be entitled to receive interest on any merger consideration to be received in connection with the Merger. Neither the Exchange Agent nor the Purchaser shall be liable to a holder of Company Stock for any merger consideration paid to a public official pursuant to any applicable abandoned property, escheat or similar law. Any payments under this Section 3.2 shall be subject to applicable tax withholding requirements.

(b) No Further Ownership Rights in Company Stock. All shares of Purchaser Common Stock issued upon the surrender for exchange of Certificates in accordance with the terms of the Agreement and this Agreement of Merger shall be deemed to have been issued at the Closing in full satisfaction of all rights pertaining to Company Stock represented thereby.

(c) Lost Company Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by the Purchaser or its transfer agent, the posting by such person of a bond or other indemnification, in such reasonable and customary amount as the Purchaser or its transfer agent may direct, as indemnity against any claim that may be made against the Purchaser, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the shares of Purchaser Common Stock deliverable in respect thereof pursuant to this Agreement of Merger.

(d) Issuances into Escrow. When making the issuances required by Section 3.1 above, and notwithstanding any provision therein to the contrary, the Purchaser shall withhold from the shareholders of the Company (the "Shareholders") (on a pro rata basis according to their respective entitlements thereto as provided in this Article III) and deliver to the Escrow Agent (as defined in the Escrow Agreement referred to in the Agreement) ten percent (10%) of the aggregate number of shares of Purchaser Common Stock issuable to the Shareholders pursuant to Sections 3.1(a)(i) and (ii) above (the "Escrow Fund"), to be held and distributed by the Escrow Agent pursuant to the terms of the Agreement and such Escrow Agreement. All such Purchaser Common Stock shall be issued in the name of the Escrow Agent, as nominee for the beneficial owners of such Purchaser Common Stock.

3.3 Dissenters' Rights. Any shares of Company Stock which immediately prior to the Effective Time are held by shareholders who have properly exercised and perfected, and have not withdrawn or otherwise forfeited, dissenters' or appraisal rights in accordance with California Code Section 1300 et seq. ("Dissenting Shares") shall not be converted into the right to receive shares of Purchaser Common Stock at the Effective Time as provided in Sections

3.1(a)(i) or (ii) above; rather, the holders of Dissenting Shares shall be entitled to receive consideration determined pursuant to California Code Section 1300 et seq.; provided, however, that if any such holder shall have failed to perfect or shall withdraw or lose such holder's dissenter's rights, such holder's shares of Company Stock thereupon shall be deemed to have been converted into the right to receive shares of Purchaser Common Stock as provided in Sections 3.1(a)(i) or (ii) above (subject to the withholding into escrow described in Section 3.2(d) above), and such shares shall no longer be Dissenting Shares. Company agrees that, except with the prior written consent of Purchaser, or as required under the California Code, the Company will not voluntarily make any payment with respect to, or settle or offer to settle, any purchase demand by a holder of Dissenting Shares. Each holder of Dissenting Shares who becomes entitled to payment for such shares pursuant to California Code Section 1300 et seq. shall receive payment therefor from the Surviving Corporation from funds provided by Purchaser (but only after the amount of the payment required therefor shall have been agreed upon or finally determined pursuant to the California Code).

ARTICLE IV

FURTHER ASSURANCES; TERMINATION AND AMENDMENT; COUNTERPARTS

4.1 Further Assurances. At the Closing and thereafter, each party hereto will execute such further documents and instruments and take such further actions as may reasonably be requested by one or more of the others to consummate the Merger, to vest the Surviving Corporation with full title to all assets, properties, rights, approvals, immunities and franchises of Merger Sub, and to effect the other purposes of the Agreement and this Agreement of Merger.

4.2 Termination. This Agreement of Merger shall terminate automatically if the Agreement shall be terminated pursuant to Section 9.1 thereof.

4.3 Amendment. This Agreement of Merger may not be amended except by a written agreement executed by each of the parties hereto upon approval by the requisite number of shareholders of the parties.

4.4 Counterparts. This Agreement of Merger may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused their respective corporate names to be hereunder subscribed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CREE, INC.

By: _____
Name: Charles M. Swoboda
President

By: _____
Name: Adam H. Broome
Secretary

NITRES, INC.

By: Fred A. Blum
Name: Fred A. Blum
President

By: Fred A. Blum
Name: Fred A. Blum
Secretary

CRYSTAL ACQUISITION, INC.

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Name: Charles M. Swoboda
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