

02-05-2002

Docket No.: 14113.15

FORM PTO-1595 (Modified)
(Rev. 03-01)
OMB No. 0651-0027 (exp. 5/31/2002)
P08A/REV03



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U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

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

1. Name of conveying party(ies):

Vinca Corporation

22 2002

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

Name: Sundance Acquisition Corporation

Address: 2350 West El Camino Real

Additional names(s) of conveying party(ies)

☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☒ Merger☐ Security Agreement☐ Change of Name☐ Other

City: Mountain View

State/Prov.: CA

Country: USA

ZIP: 94040

Execution Date: July 30, 1999

Additional name(s) & address(es)

☐ Yes ☒ No

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

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

Patent Application No.

Filing date

B. Patent No.(s)

09/255,486

02/23/99

Additional numbers

☐ Yes ☒ No

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

Name: R. Burns Israelsen

Registration No. 42,685

Address: Workman, Nydegger & Seeley

1000 Eagle Gate Tower

60 East South Temple

City: Salt Lake City

State/Prov.: Utah

Country: USA

ZIP: 84111

6. Total number of applications and patents involved:

1

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

☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account☐ Authorized to be charged to deposit account

8. Deposit account number:

23.3178

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

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.

R. Burns Israelsen

Name of Person Signing

Signature

January 22, 2002

Date

9

Total number of pages including cover sheet, attachments, and

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

PATENT

REEL: 012528 FRAME: 0789

02/05/2002 LME/LLER 09255486 40.00 0P
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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:

"VINCA CORPORATION", A UTAH CORPORATION,
WITH AND INTO "SUNDANCE ACQUISITION CORP." UNDER THE NAME OF "SUNDANCE ACQUISITION CORP.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF JULY, A.D. 1999, AT 3 O'CLOCK P.M.

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



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

Edward J. Freel, Secretary of State

3045754 8100M

991316294

AUTHENTICATION: 9896623

DATE: 07-30-99

PATENT
REEL: 012528 FRAME: 0790

**CERTIFICATE OF MERGER
OF
VINCA CORPORATION
INTO
SUNDANCE ACQUISITION CORP.

PURSUANT TO SECTION 252 OF THE GENERAL
CORPORATION LAW OF THE STATE OF DELAWARE
AND
SECTION 16-10A-1105 OF
THE UTAH REVISED BUSINESS CORPORATIONS ACT**

Sundance Acquisition Corp., a Delaware corporation ("Sundance"), and Vinca Corporation, a Utah Corporation ("Vinca"), do hereby certify as follows:

FIRST: That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

Name	State of Incorporation
Sundance Acquisition Corp.	Delaware
Vinca Corporation	Utah

SECOND: That an Agreement and Plan of Reorganization (the "Merger Agreement") dated June 7, 1999, by and among Legato Systems, Inc. ("Legato"), Sundance, Vinca, The Canopy Group, Inc. (as Stockholders' Representative), and certain stockholders of Vinca, setting forth the terms and conditions of the merger of Vinca with and into Sundance, has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of the General Corporation Law of the State of Delaware (the "Delaware Law") and the Utah Revised Business Corporations Act (the "Utah Law").

THIRD: That upon the acceptance of this Certificate of Merger by the Secretary of State of the State of Delaware and the Utah Department of Commerce, Division of Corporations and Commercial Code (the "Effective Time"), Vinca shall be merged with and into Sundance, the separate corporate existence of Vinca shall cease and Sundance shall continue as the surviving corporation (as the surviving corporation, the "Surviving Corporation").

FOURTH: That, at the Effective Time, the effect of the Merger shall be as provided in the Merger Agreement and the applicable provisions of the Utah Law and the Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all

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the property, rights, privileges, powers and franchises of Vinca and Sundance shall vest in the Surviving Corporation, and all debts, liabilities and duties of Vinca and Sundance shall become the debts, liabilities and duties of the Surviving Corporation.

FIFTH: That, at the Effective Time, the Certificate of Incorporation of Sundance, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended as provided by Delaware Law and such Certificate of Incorporation. The Bylaws of Sundance, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended.

SIXTH: That, at the Effective Time, the directors of Sundance immediately prior to the Effective Time shall be the directors of the Surviving Corporation, to hold office until such time as such directors resign, are removed or their respective successors are duly elected or appointed and qualified. The officers of Sundance immediately prior to the Effective Time shall be the officers of the Surviving Corporation, to hold office until such time as such officers resign, are removed or their respective successors are duly elected or appointed and qualified.

SEVENTH: That, by virtue of the Merger and without any action on the part of Legato, Sundance, Vinca, or the holders of any of Vinca's securities:

(a) Conversion of Vinca Capital Stock.

- (i) The total amount of consideration to be issued in exchange for the acquisition by Legato of all outstanding capital stock of Vinca ("Outstanding Vinca Stock") and to be reserved for issuance upon exercise of options to purchase capital stock of Vinca to be assumed by Legato pursuant to Sections 1.6 and 5.13 of the Merger Agreement ("Vinca Options") shall be equal to ninety-four million dollars (\$94,000,000.00) (the "Total Consideration").
- (ii) The amount of Total Consideration allocable to the Outstanding Vinca Stock (the "Vinca Stock Consideration") shall equal the product of the Total Consideration multiplied by a fraction, the numerator of which is the number of shares of Outstanding Vinca Stock and the denominator of which is the sum of the number of shares of Outstanding Vinca Stock plus the number of shares of capital stock of Vinca ("Vinca Capital Stock") issuable pursuant to the exercise of Vinca Options. The amount of Total Consideration allocable to the Vinca Options (the "Vinca Option Consideration") shall equal the product of the Total Consideration multiplied by a fraction, the numerator of which is the number of shares of Vinca Capital Stock issuable pursuant to the exercise of Vinca Options and the denominator of which is the sum of the number of shares of Outstanding Vinca Stock plus the number of shares of Vinca Capital Stock issuable pursuant to the exercise of Vinca Options.

- (iii) The Vinca Stock Consideration shall be comprised of (a) eighteen million eight hundred thousand dollars (\$18,800,000) (the "Cash Consideration") and (b) a number of shares of Legato Common Stock (the "Stock Consideration") obtained by dividing i) the amount by which the Vinca Stock Consideration exceeds the Cash Consideration by ii) the average of the closing sales price (the "Average Closing Price") for a share of common stock, \$.0001 par value, of Legato ("Legato Common Stock"), as quoted on the Nasdaq National Market for the fifteen (15) trading days immediately preceding and ending on the trading day that is five (5) trading days prior to the Effective Time.
- (iv) At the Effective Time, each share of voting common stock, \$.0005 par value, of Vinca ("Vinca Voting Common Stock") and each share of non-voting common stock, \$.0005 par value, of Vinca ("Vinca Non-Voting Common Stock") issued and outstanding immediately prior to the Effective Time (other than shares to be cancelled as described in Article VII(b) hereof and Dissenting Shares (as hereinafter defined) will be canceled and extinguished and be converted automatically into the right to receive (i) an amount of cash equal to the Cash Consideration divided by the number of shares of Outstanding Vinca Stock and (ii) a number of shares of Legato Common Stock equal to the Stock Consideration divided by the number of shares of Outstanding Vinca Stock.
- (v) No other adjustment shall be made in the number of shares of Legato Common Stock or the amount of cash issued in the Merger as a result of (x) any increase or decrease in the market price of Legato Common Stock prior to the Effective Time not otherwise required in order to compute the Average Closing Price, or (y) any cash proceeds received by Vinca from the date hereof to the Effective Time to the exercise of currently outstanding Vinca Options.

(b) Cancellation of Vinca Capital Stock Owned by Legato or Vinca. At the Effective Time, all shares of Vinca Capital Stock that are owned by Vinca as treasury stock, each share of Vinca Capital Stock owned by Legato or any direct or indirect wholly owned subsidiary of Legato or Vinca immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

(c) Vinca Stock Option Plans. At the Effective Time, the Stock Option Plan, Vinca Corporation, 1993 and The Vinca Corporation 1997 Stock Option Plan (collectively, the "Vinca Stock Option Plans") and all options to purchase Vinca Voting Common Stock and Vinca Non-Voting Common Stock then outstanding under the Vinca Stock Option Plans shall be assumed by Legato and all repurchase rights of Vinca with respect to such options shall be assigned to the Legato in accordance with Section 5.13 of the Merger Agreement.

(d) Capital Stock of Sundance. At the Effective Time, each share of Common Stock, \$0.001 par value, of Sundance issued and outstanding immediately prior to the Effective Time shall continue to evidence ownership of one share of capital stock of the Surviving Corporation.

(e) Adjustments to Exchange Ratio. The Exchange Ratio (as defined in the Merger Agreement) shall be adjusted to reflect fully the effect of any stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into Legato Common Stock or Vinca Capital Stock), reorganization, recapitalization or other like change with respect to Legato Common Stock or Vinca Capital Stock occurring after the date hereof and prior to the Effective Time.

(f) Fractional Shares. No fraction of a share of Legato Common Stock will be issued, but in lieu thereof each holder of shares of Vinca Capital Stock who would otherwise be entitled to a fraction of a share of Legato Common Stock (after aggregating all fractional shares of Legato Common Stock to be received by such holder) shall receive from Legato an amount of cash (rounded to the nearest whole cent) equal to the product of (i) such fraction, multiplied by (ii) the average last sale price of a share of Legato Common Stock during the thirty (30) day period ending three days prior to the Effective Time, as reported on the Nasdaq National Market.

(g) Dissenters' Rights. Subject to the terms and conditions of the Merger Agreement and Section 16-10a-1301 through Section 16-10a-1330 of the Utah Law, any shares of Vinca Capital Stock held by persons who have not voted such shares for approval of the Merger and with respect to which such persons shall become entitled to exercise dissenters' rights in accordance with Sections 16-10a-1301 through 1330 of the Utah Law ("Dissenting Shares") shall not be converted into Legato Common Stock, but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to Utah Law.

(h) No Further Ownership Rights in Vinca Capital Stock. All cash and shares of Legato Common Stock issued upon the surrender for exchange of shares of Vinca Capital Stock in accordance with the terms of the Merger Agreement (including any cash paid in lieu of fractional shares) shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Vinca Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Vinca Capital Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, certificates representing shares of Vinca Capital Stock are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in Article I of the Merger Agreement.

EIGHTH: That the executed Merger Agreement is on file at the principal place of business of the Surviving Corporation located at 3210 Porter Drive, Palo Alto, California.

NINTH: That a copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost to any stockholder of any constituent corporation.

TENTH: That the number of holders of shares of Vinca Voting Common Stock and Vinca Nonvoting Common Stock, their respective voting rights, and their votes with regard to the Merger Agreement and Merger are as follows:

(a) As of the applicable record date, there were 35,614,000 shares of Vinca Voting Common Stock outstanding and entitled to vote on the Merger separately as a class. Each share of Vinca Voting Common Stock was entitled to one vote. Of such shares, 35,614,000 were voted in favor of the Merger and 0 were voted against.

(b) As of the applicable record date, there were 200,474 shares of Vinca Nonvoting Common Stock outstanding and entitled to vote on the Merger separately as a class. Each share of Vinca Nonvoting Common Stock was entitled to one vote. Of such shares, 200,474 were voted in favor of the Merger and 0 were voted against.

ELEVENTH: That approval by the shareholders of Legato Common Stock was not required.


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IN WITNESS WHEREOF, each of Vinca and Sundance has caused this Certificate of Merger to be executed in its corporate name on the 30th day of July, 1999.

VINCA CORPORATION

By: _____
Name: _____
Title: _____

SUNDANCE ACQUISITION CORP.

By: 
Louis C. Cole
President and Chief Executive Officer

IN WITNESS WHEREOF, each of Vinca and Sundance has caused this Certificate of Merger to be executed in its corporate name on the 30 day of July, 1999.

VINCA CORPORATION

By: Alan Rudd
Alan Rudd
President and Chief Executive Officer

SUNDANCE ACQUISITION CORP.

By: _____
Louis C. Cole
President and Chief Executive Officer

CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.10)

Applicant(s): Richard S. Ohran

Docket No.

14113.15

Serial No.
09/255,486Filing Date
02/23/99Confirmation No.
8652Examiner
Reginald G.
BragdonGroup Art Unit
2185

Invention: METHOD AND SYSTEM FOR MIRRORING AND ARCHIVING MASS STORAGE

I hereby certify that the Transmittal letter (2 pages) (in triplicate); Assignment with Cover Sheet (3 pgs.); Certificate of Merger with Cover Sheet (9 pages); Form PTO 2038 in the amount of \$80.00 (1pg.); and postcard are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to: The Assistant Commissioner for Patents, Box: Assignments, Washington, DC 20231 on Jan. 22nd, 2002.

Dolly Burnett

*(Typed or Printed Name of Person Mailing
Correspondence)*

*(Signature of Person Mailing Correspondence)***EL 893 520 612 US**

("Express Mail" Mailing Label Number)

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