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Patent and Trademark Office

Docket No. 109763-24

101987650

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

1. Name of conveying party(ies): Bolder Battery, Inc. Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		2. Name and address of receiving party: Name: <u>Bolder Technologies Corporation</u> Internal Address: <u>4403 Table Mountain Drive</u> City: <u>Golden</u> State: <u>CO</u> Zip: <u>80403</u> Street Address: <u>4403 Table Mountain Drive</u> City: <u>Golden</u> State: <u>CO</u> Zip: <u>80403</u> Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Date: <u>February 24, 1994</u>			
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): <u>PCT/US92/07653</u> <u>PCT/US93/08690</u> <u>PCT/US94/06745</u> B. Patent No(s): <u>5,047,300</u> <u>5,045,086</u> <u>5,198,313</u> <u>5,368,961</u> Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Troy M. Schmelzer, Esq.</u> Address: Procopio, Cory, Hargreaves & Savitch LLP 530 B Street, Suite 2100 San Diego, CA 92101-4469		6. Total number of applications and patents involved: <u>7</u> 7. Total fee (37 CFR 3.41): \$ 280.00 <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Charge this Deposit Account if any additional fee is required 8. Deposit Account Number:	

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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.

Troy M. Schmelzer, Esq. Reg. 36,667 Date: 1/28/02

Total number of pages including cover sheet: 19

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State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "BOLDER BATTERY, INC.", CHANGING ITS NAME FROM "BOLDER BATTERY, INC." TO "BOLDER TECHNOLOGIES CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 1994, AT 10 O'CLOCK A.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1465002

DATE: 11-27-01

PATENT
REEL: 012569 FRAME: 0753

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
BOLDER BATTERY, INC.**

The undersigned, William E. Younkes and Donald H. Parsons, Jr., hereby certify that:

1. They are the duly elected and acting President and Secretary, respectively, of Bolder Battery, Inc.

2. The corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 19, 1993.

3. This Amended and Restated Certificate of Incorporation restates, integrates and amends the Certificate of Incorporation and has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

4. The text of the Certificate of Incorporation of this corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the corporation shall be Bolder Technologies Corporation.

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

THIRD: The nature of the business and the purposes for which it is organized are to engage in any business and in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware and to possess and employ all powers and privileges now or hereafter granted or available under the laws of the State of Delaware to such corporations.

FOURTH: The aggregate number of shares which the corporation shall have the authority to issue is 15,718,360 shares, par value \$.001 a share, which shall be divided into two classes and designated as follows:

Designation of Class	Number of Shares
Common Stock ("Common")	11,000,000
Preferred Stock ("Preferred")	4,718,360

857,356 shares of the Preferred shall be designated and known as Series A Preferred (or "Series A"), and 3,861,004 shares of the Preferred shall be designated and known as Series B Preferred (or "Series B").

The preferences, limitations and relative rights of the Common and the Preferred are set forth below.

Section 1. General Definitions. For purposes of this Article FOURTH the following definitions shall apply:

(a) **'Junior Stock'** shall mean all Common and any other capital stock of this corporation other than the Preferred ("Preferred").

(b) **'Subsidiary'** shall mean any corporation at least 50% of whose outstanding voting shares shall at the time be owned by this corporation or by one or more of such subsidiaries.

Section 2. Dividends.

The holders of the Preferred Stock shall be entitled to receive, out of any funds legally available therefor, dividends on each outstanding share of Preferred Stock payable in preference and priority to any payment of any dividend on Junior Stock, when and as declared by the Board of Directors at the rate of \$.04945 per share, per annum for the Series A and at the rate of \$.08 per share per annum for the Series B. The corporation shall not be obligated to pay any dividend unless and until declared by the Board of Directors. If dividends are not declared on the Preferred at the aforesaid rates in any year, then the right to receive such dividend shall not accumulate. In the event dividends are declared and paid in an amount less than all current dividends on the Preferred, the total amount declared and paid shall be allocated between the Series A and Series B, so that the per share dividend to be declared and paid on each series of Preferred is the same percentage of the dividend preference for the current fiscal year for a share of such series. No dividends shall be declared or paid on the Junior Stock until dividends on the Preferred Stock have been declared and paid or set aside for payment at the rates set forth above for the current year. In the event the Board of Directors shall have declared and paid or set aside dividends on the Preferred Stock at the rates specified in this Section 2 in any fiscal year and shall elect to declare additional dividends in such fiscal year out of funds legally available therefore such additional dividends shall be declared and paid on the Preferred Stock and Common Stock on an as convened basis with each remaining dividend declared on each share of Preferred Stock to equal the dividend payable in respect of the number of shares of Common Stock (including fractions of a share) into which such share of Preferred Stock is convertible on the date the dividend is declared. The right to receive the dividend preference for the current fiscal year shall terminate and be extinguished on a share of Preferred Stock upon conversion of that share into Common Stock.

Section 3. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, then the holders of the Preferred shall be entitled

to receive, prior and in preference to any distribution of any assets or property of the corporation to the holders of Junior Stock by reason of their ownership thereof, the amount of \$.618 per share for each share of Series A Preferred then held by them and the amount of \$1.00 per share for each share of Series B Preferred then held by them, plus in the case of each series of the Preferred an amount equal to any declared and unpaid dividends for such series. If upon occurrence of such event the assets and property thus distributed among the holders of the Preferred shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and property of the corporation legally available for distribution shall be distributed among the holders of the Preferred to the extent available; provided that the per share distribution with respect to each series of Preferred will be the same percentage of the maximum per share liquidation preference for such series. After payment has been made to the holders of the Preferred of the full preferential amount to which they shall be entitled as aforesaid, the holders of Common and the holders of Preferred on an as-converted basis shall be entitled to receive all remaining assets of the corporation available for distribution.

(b) For purposes of this Section 3, a liquidation, dissolution, or winding up of the corporation shall be deemed to be occasioned by, and to include, the corporation's sale of all or substantially all its assets or the merger or consolidation of the corporation into or with any other corporation if the holders of the outstanding shares of the corporation prior to such merger or consolidation do not retain a majority of the voting power of the surviving corporation. For such purposes, the exchange of securities of the surviving corporation for securities of the corporation shall be deemed to constitute the distribution of assets or property of the corporation upon liquidation, dissolution or winding up.

(c) The fair value of the assets or property to be distributed or exchanged in such event shall be determined by the Board of Directors of the corporation, in good faith; provided that any securities to be delivered to the holders of the Preferred or Common under Section 3(a) above shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the 30-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the closing;

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the corporation and the holders of not less than a majority of the then outstanding shares of each series of Preferred;

(4) If fair market value cannot be determined pursuant to clause (iii) as set forth above, the corporation and the holders of Preferred with the consent of holders of not less than a majority of the then outstanding shares of each series of Preferred shall each appoint one (1) independent third party and such persons shall in turn select a third person, which group of three persons shall then determine the fair market value thereof.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as set forth above in clauses (i) or (ii) to reflect the appropriate fair market value thereof, as mutually determined by the corporation and the holders of a majority of the then outstanding shares of each series of Preferred, or if applicable, shall be in accordance with clauses (iii) or (iv), giving appropriate weight to such restriction.

(d) In the event the requirements of Section 3 are not complied with in connection with a transaction described in Section 3(b), the corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of Section 3 have been complied with, or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred shall revert to and be the same as such rights, references and privileges existing immediately prior to the date the corporation first gave the holders of Preferred notice of the transaction.

Section 4. Redemption.

4.1 Holders' Option to Require Redemption.

(a) From and after January 1, 1998, the holders of at least 66-2/3 % of the then outstanding shares of Preferred may request in writing the redemption of all outstanding shares of Preferred and the corporation shall redeem such shares upon receipt of such request except as provided below.

(b) If funds are not legally available to consummate a redemption under subparagraph (a), the corporation shall redeem the maximum number of shares for which funds are legally available and will continue to do so each calendar quarter thereafter until the total number of shares of Preferred that it has redeemed is equal to the total number of shares that it would have redeemed at such time as if it had redeemed in accordance with the provisions of subparagraph (a).

4.2 Redemption Price and Procedures. The redemption price for the Preferred shall be \$.618 per share for the Series A and \$1.00 per share for the Series B, plus

in the case of each series of Preferred an amount equal to all declared but unpaid dividends for such series. Redemption of less than all of the then outstanding shares of Preferred shall be pro rata among the holders and series of Preferred (as to the number of shares held on the date of redemption) so that each holder has redeemed the same percentage of the total shares of each series of Preferred held by it.

The corporation shall give notice by certified mail, postage prepaid, return receipt requested, to the holders of record of the Preferred being redeemed of any redemption, such notice to be addressed to each holder at the address shown in the corporation's records, which notice shall specify the date of redemption, the number of shares of each series held by the holder to be redeemed and the date on which conversion rights terminate. Such notice shall be given no more than sixty (60) but no less than thirty (30) days prior to the date fixed for redemption. On or after the date of redemption as specified in such notice, each holder shall surrender his certificate(s) (or comply with applicable lost certificate provisions) for the number of shares of each series to be redeemed as stated in the notice (except that such number of shares shall be reduced by the number of shares which have been converted pursuant to Section 5 hereof between the date of notice and the date on which conversion rights terminate) to this corporation at the place specified in such notice. If less than all of the shares represented by such certificate are redeemed, a new certificate shall forthwith be issued for the unredeemed shares. Provided such notice is duly given, and provided that on the redemption date specified there shall be a source of funds legally available for such redemption and funds necessary for the redemption shall have been deposited in a bank or trust company ten business days prior to the redemption date as hereinafter provided, then all rights with respect to such shares shall, after the specified redemption date, terminate, whether or not said certificates have been surrendered, excepting only in the latter instance the right of the holder to receive the redemption price therefor, without interest, upon such surrender (or compliance with lost certificate provisions).

On or prior to the close of business on the tenth business day preceding the date of redemption, the corporation shall deposit the redemption price of all shares of Preferred designated for redemption in said notice and not yet converted with a bank or trust company having aggregate capital and surplus in excess of \$25,000,000 as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet converted with irrevocable instructions and authority to the bank or trust company to pay, on or promptly after the redemption date, the redemption price to the respective holders upon surrender of their stock certificates. Contemporaneously, the corporation shall furnish such holders evidence of such deposit and instructions. Any moneys deposited by the corporation pursuant hereto for the redemption of shares thereafter converted into shares of Common pursuant to Section 5 hereof no later than the last business day preceding the date of redemption, shall be returned to the corporation forthwith upon such conversion. The balance of any moneys deposited by the corporation pursuant hereto remaining unclaimed at the expiration of one (1) year following the date of redemption shall thereafter be returned to the corporation upon its request expressed in a resolution of its Board of Directors. The holders of the Preferred shall have the right to specifically enforce the corporation's obligations under this Section 4.

Section 5. Conversion. The holders of the Preferred shall have conversion rights as follows ("Conversion Rights"):

(a) **Right to Convert.** Each share of Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for the Preferred, into such number of fully paid and nonassessable shares of Common as is determined in the case of the Series A by dividing \$.618 by the Conversion Price for the Series A (determined as hereinafter provided) in effect at the time of conversion, and in the case of the Series B by dividing \$1.00 by the Conversion Price for the Series B (determined as hereinafter provided) in effect at the time of conversion. The price ("Conversion Price") at which shares of Common shall be deliverable upon conversion of the Preferred shall initially be \$.618 per share for the Series A and \$1.00 per share for the Series B. Each initial Conversion Price shall be subject to adjustment as hereinafter provided. In the event of a notice of redemption of any share of Preferred pursuant to Section 4 hereof, the Conversion Rights shall terminate as to the number of shares designated for redemption at the close of business on the last business day preceding the date of redemption, unless default is made in the deposit or payment of the redemption price, in which case the notice of redemption shall be deemed to have been revoked, subject to the right of the corporation to give a new notice of redemption.

(b) **Mechanics of Conversion.**

(i) Before any holder of Preferred shall be entitled to convert the same into full shares of Common, he shall surrender the certificate or certificates therefor (or comply with applicable lost certificate provisions), duly endorsed, at the office of the corporation or of any transfer agent for the Preferred, and shall give written notice to the corporation at such office that he elects to convert the same. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred a certificate or certificates for the number of shares of Common to which he shall be entitled as aforesaid and, if less than all the shares of the Preferred represented by such certificate are converted, a certificate representing the shares of Preferred not converted. In the event of any conversion at the election of a holder of Preferred, such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred to be converted, and the person or persons entitled to receive the shares of Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common on such date.

(ii) If any holder of Preferred elects to convert in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common issuable upon such conversion of the Preferred shall not be deemed to have converted such Preferred until

immediately prior to the closing of such sale of securities. Alternatively, any holder of Preferred may sell to the underwriters of the offering upon the undertaking of the underwriters to convert the Preferred prior to the closing of the sale. The corporation will cause the Common issuable upon such conversion to be issued within such time as will permit the underwriters to make and complete the distribution contemplated by the underwriting.

(c) **Adjustments to Conversion Price for Diluting Issues.**

(i) **Special Definitions.** For purposes of this Section 5(c), the following definitions shall apply:

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire (through the exercise of one or more rights, options or warrants) either Common or Convertible Securities.

(2) "Original Issue Date" shall mean the date on which the first share of Series A Preferred or B Preferred was first issued.

(3) "Convertible Securities" shall mean any securities convertible into or exchangeable for (through one or more conversions or exchanges) Common or Options, including any evidences of indebtedness, any capital stock of this corporation (other than the Preferred authorized herein) or other securities convertible into or exchangeable for Common.

(4) "Additional Shares of Common" shall mean all shares of Common issued (or, pursuant to Section 5(c)(iii), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common issued in connection with a stock dividend, subdivision or combination referred to in Section 5(c)(iv) or issued or issuable at any time:

(A) upon conversion of shares of Preferred;

(B) in an aggregate amount of up to 1,375,000 shares (which number shall be proportionately adjusted in the case of recapitulations, stock splits, stock dividends or combinations of shares) of Common and Options therefor (including shares of Common issuable upon exercise of Options which are outstanding on the Original Issue Date) to employees, directors or consultants to the corporation issued pursuant to a stock option or purchase plan approved by the Board of Directors (and shareholders if required under the Internal Revenue Code) and administered by the Board of Directors or a Compensation Committee appointed by it, provided that any shares of Common issuable upon exercise of Options that have been issued under this clause (B) but have expired without exercise shall be treated as never having been issued for purposes of this clause (B);

(C) as a dividend or distribution on the Preferred.

(ii) **No Adjustment of Conversion Price.** Except in the case of a combination of outstanding shares of Common (for which each Conversion Price shall be adjusted pursuant to Section 5(c)(iv)(1)), no adjustment in any Conversion Price shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share for an Additional Share of Common issued or deemed to be issued by the corporation is less than such Conversion Price in effect on the date of, and immediately prior to such issue.

(iii) **Deemed Issue of Additional Shares of Common.**

(1) **Options and Convertible Securities.** In the event the corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date; provided that if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the minimum amount of consideration payable to the corporation, or change the maximum number of shares of Common issuable, upon the exercise, conversion, or exchange thereof other than changes which may occur as a result of antidilution provisions (for which each Conversion Price shall be readjusted based on the provisions of this Section when each such change is effective), the consideration per share (determined pursuant to Section 5(c)(v) hereof) for Common issuable pursuant to such Options or Convertible Securities shall be the minimum consideration per share that could at any time result, taking into consideration all subsequent changes in the minimum amount of consideration payable to the corporation and/or in the maximum number of shares of Common issuable upon the exercise, conversion, or exchange; and provided further that Additional Shares of Common shall not be deemed to have been issued with respect to a series of Preferred unless the consideration per share of such Additional Shares of Common would be less than the Conversion Price for such series in effect on the date of and immediately prior to such issue or such record date.

(A) no further adjustment in any Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, each Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon,

shall, upon such exercise or expiration, as the case may be, be recomputed (provided that recomputation shall not affect any Preferred converted or tendered for conversion prior to such exercise or expiration) as if:

(I) in the case of Convertible Securities or Options for Common, the only Additional Shares of Common issued were shares of Common, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options that were actually exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange, and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options that were exercised, plus the consideration deemed to have been received by the corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(C) no readjustment pursuant to clause (B) above shall have the effect of increasing any Conversion Price to an amount which exceeds such Conversion Price on the original adjustment date immediately prior to the original adjustment. If Additional Shares of Common were issued between the original adjustment date and the readjustment date (other than Common issued upon exercise of the Options or conversion of the Convertible Securities that are the subject of the readjustment) each Conversion Price on the readjustment date shall be recomputed (but only if a lower Conversion Price results therefrom) by treating the readjusted Conversion Price as the Conversion Price in effect on the original adjustment date and adjusting such Conversion Price for all issuances of Additional Shares of Common (other than Common issued upon exercise of the Options or conversion of the Convertible Securities that are the subject of the readjustment) occurring between the original adjustment date and the readjustment date.

(iv) **Adjustment of Conversion Price.**

(1) **For Stock Dividends, Subdivisions and Combinations.**

In the event the corporation at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common payable in Common, or effect a subdivision or combination of the outstanding shares of Common (by reclassification or otherwise than by payment of a dividend in Common), then and in any such event, each Conversion Price shall be proportionally decreased in the case of a stock dividend or subdivision and proportionately

increased in the case of a combination of shares, effective in the case of such dividend, immediately after the close of business on the record date for the determination of holders of Common entitled to receive such dividend, or in the case of a subdivision or combination, at the close of business immediately prior to the date upon which such corporate action becomes effective.

(2) **Upon Issuance of Additional Shares of Common.** In event this corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to Section 5(c)(iii)) without consideration or for a consideration per share less than any Conversion Price in effect on the date of and immediately prior to such issue, then and in each such event, each such Conversion Price shall be reduced concurrently with such issue of shares to a price determined as follows: (a) the number of shares of Common Stock outstanding immediately prior to the issuance that results in the adjustments, (b) shall be multiplied by such Conversion Price in effect prior to such issuance, (c) to the result of (b) shall be added the actual consideration received for the Additional Shares of Common Stock, (d) the resulting total shall be divided by the sum of (i) the number of shares of Common Stock outstanding immediately prior to the issuance that results in adjustment and (ii) the number of Additional Shares of Common Stock resulting in the adjustment; (e) if the quotient thus obtained is less than such Conversion Price theretofore in effect, such quotient shall be such adjusted Conversion Price until further adjusted as provided herein; provided that, for the purposes of clauses (a) and (d)(i) above, all shares of Common Stock issuable upon conversion of the outstanding shares of Preferred Stock shall be treated as outstanding, but the only shares of Common Stock issuable upon exercise, conversion or exchange of outstanding Options or Convertible Securities that shall be treated as outstanding are those issuable upon exercise or conversion of Convertible Securities without any consideration other than the surrender of the Convertible Security.

(v) **Determination of Consideration.** For purposes of this Section 5(c), the consideration received by the corporation for the issue of any Additional Shares of Common shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors of this corporation; and

(C) in the event Additional Shares of Common are issued together with other shares of securities or other assets of the corporation for consideration which

covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors of this corporation.

(2) **Options and Convertible Securities.** For the purpose of computing the initial adjustment of each Conversion Price pursuant to Section 5(c)(iii)(1) (but not for the readjustment pursuant to subsection (B) of that Section), the consideration per share received by the corporation for Additional Shares of Common deemed to have been issued pursuant to Section 5(c)(iii)(1) shall be determined by dividing

(x) the total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Common issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) **Adjustments for Other Dividends and Distributions.** In the event the corporation at any time or from time to time makes, or fixes a record date for the determination of holders of Common entitled to receive a dividend or other distribution payable in securities of the corporation other than shares of Common, then and in each such event provision shall be made so that each holder of Preferred shall receive upon conversion thereof, in addition to the number of shares of Common receivable thereupon, the amount of securities of the corporation which he would have received had his Preferred been converted into Common on the record date of such event and had he thereafter, during the period from the record date of such event to and including the date of conversion, retained such securities receivable by him as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Preferred.

(d) **No Impairment.** The corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred against impairment.

(e) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 5, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms

hereof and furnish to each holder of Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) each Conversion Price at the time in effect, and (iii) the number of shares of Common and the amount, if any, of other property which at the time would be received upon the conversion of each series of the Preferred.

(f) **Reservation of Stock Issuable Upon Conversion.** The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common, solely for the purpose of effecting the conversion of the Preferred, such number of its shares of Common as shall from time to time be sufficient to effect a conversion of all outstanding shares of Preferred, and if at any time the number of authorized but unissued shares of Common shall not be sufficient to effect the conversion of all then outstanding shares of Preferred, the corporation shall promptly seek such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common to such number of shares as shall be sufficient for such purpose.

(g) **Payment of Taxes.** The corporation shall pay all issue taxes and other governmental charges (other than income or other taxes imposed upon profits realized by the recipient) that may be imposed in respect of the issue or delivery of shares of Common or other securities or property upon conversion of shares of Preferred; provided, however, that the corporation shall not be obligated to pay any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common or other securities in any name other than that in which the shares of Preferred were registered.

(h) **No Reissue.** Any shares of Preferred that are converted by the holder or redeemed by the corporation shall not be reissued and the certificates representing such shares shall be appropriately canceled on the books of the corporation.

(i) **Reclassification: Recapitalizations.** In the event of any reclassification of the Common or recapitalization involving Common (other than a change in par value or as a result of a stock dividend, subdivision, or combination of shares or any event described in Section 3(c)), each holder of Preferred shall thereafter be entitled to receive and provisions shall be made therefor in an agreement relating to the reclassification or recapitalization, upon conversion of Preferred, the kind and number of shares of Common or other securities or property (including cash) of the corporation, to which such holder of Preferred would have been entitled if he had held the number of shares of Common of the corporation into which the Preferred held by him was convertible immediately prior to such reclassification or recapitalization; and in any such case appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Preferred, to the end that the provisions set forth herein (including the specific changes and other adjustments to each Conversion Price), shall thereafter be applicable, as nearly as

reasonably may be, in relation to any shares, other securities or property thereafter receivable upon conversion of the Preferred.

(j) **Notices of Record Date.** In the event that this corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Common, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its Common outstanding involving a change in the Common; or

(iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up;

then, in connection with each event, this corporation shall send to the holders of Preferred:

(1) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (iii) and (iv) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common shall be entitled to exchange their Common for securities or other property deliverable upon the occurrence of such event or such earlier date, if any, on which a record shall be taken of the holders of Common who shall be entitled to exchange their Common).

(k) **Manner of Notice.** Any notice required by this Section 5 shall be deemed given if given by certified mail, postage prepaid, return receipt requested, addressed to the holders of Preferred at the address for each such holder as shown on the books of this corporation.

(l) **Fractional Shares.** No fractional share shall be issued upon the conversion of any share or shares of Preferred. All shares of Common (including fractions thereof) issuable upon conversion of more than one share of Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance

of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common, the corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the corporation).

(m) **Automatic Conversion.** Each share of Preferred shall be automatically be converted into shares of Common at the then applicable Conversion Price in the event of the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common for the account of this corporation to the public at a price per share to the public (prior to the deduction of underwriting commissions and expenses) of not less than \$3.00 (subject to proportionate adjustment in the case of recapitalizations, stock splits, stock dividends or combinations of shares) and resulting in the receipt of aggregate gross sales proceeds of at least \$10,000,000. In the event of such offering, the person(s) entitled to receive the Common issuable upon such conversion of Preferred shall not be deemed to have converted such Preferred until immediately prior to the closing of such sale of securities, except that any such person may specify an earlier time for conversion in accordance with Section 5(b).

(n) **Election to Require Conversion.** The holders of at least 66-2/3% of the then outstanding shares of the Preferred may by written notice to the corporation elect to have all outstanding shares of the Preferred converted into Common Stock as of the date specified in the notice or as of the date of the notice if no date is specified. Upon the delivery of such notice signed by the requisite number of holders, all outstanding shares of the Preferred shall automatically be converted into shares of Common at the applicable Conversion Price in effect on the effective date of such conversion.

Section 6. Voting Rights

6.1 **Vote on All Matters.** Except as otherwise required by law, the holders of Preferred and the holders of Common shall be entitled to notice of any stockholders' meeting and to vote together as one class upon any matter submitted to the stockholders for a vote on the following basis:

(a) **Common Vote.** Each share of Common issued and outstanding shall have one vote.

(b) **Preferred Vote.** Each holder of Preferred shall have the number of votes equal to the number of shares of Common into which the Preferred held by him is then convertible, as adjusted from time to time under Section 5 hereof.

(c) **Quorum.** For matters to be voted on by the Preferred and Common together as one class, a quorum shall consist of a majority of the votes attributable to the Common and the Preferred as set forth in Paragraphs 6.1 (a) and (b).

6.2 Stockholder Agreements. No provision of this Section shall affect the enforceability of stockholder voting agreements pertaining to the election of directors or other matters.

Section 7. Covenants. In addition to any other rights provided by law or agreement, so long as any Preferred shall be outstanding, this corporation shall not, without first obtaining the affirmative vote or written consent of the holders of not less than 66-2/3 % of the outstanding shares of each series of the Preferred:

(a) amend or repeal any provision of, or add any provision to, this corporation's certificate of incorporation or bylaws if such action would alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any series of the Preferred, or increase or decrease the number of shares of any series of the Preferred authorized hereby;

(b) authorize or issue shares of any class of stock not authorized herein having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of any series of the Preferred, issue any shares of the Preferred, or authorize or issue shares of stock of any class or any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having option rights to purchase, any shares of the Preferred or of any other class or series of stock of this corporation having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of any series of the Preferred;

(c) reclassify any Junior Stock into shares having any preference or priority as to dividends or assets superior to or on a parity with any such preference or priority of any series of the Preferred;

(d) amend or repeal any provision of this Section 7. Notwithstanding the provisions of this Section 7, any performance required by the corporation under this corporation's Certificate of Incorporation may be waived with the affirmative vote or written consent of the holders of at least 66-2/3 % of the outstanding shares of Preferred.

Section 8. Residual Rights. All rights accruing to the outstanding shares of this corporation not expressly provided for to the contrary herein shall be vested in the Common.

FIFTH: The stockholders of the corporation shall not have cumulative voting rights in the election of directors.

SIXTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized and empowered, but subject to the limitations of this Certificate of Incorporation:

(A) to make, alter and repeal the Bylaws of the corporation, subject to the power of the stockholders of the corporation to alter or repeal any Bylaws made by the Board of Directors;

(B) subject to the laws of the State of Delaware and this Certificate of Incorporation, from time to time to sell, lease, or otherwise dispose of any part or parts of the properties of the corporation and to cease to conduct the business connected therewith or again to resume the same, as it may deem best; and

(C) in addition to the powers and authorities hereinabove and by the laws of the State of Delaware conferred upon the Board of Directors, to exercise all such powers and to do all such acts and things as may be exercised or done by the corporation; subject, nevertheless, to the provisions of such laws, the Certificate of Incorporation of the corporation, as from time to time amended, and by its Bylaws.

SEVENTH: No director of the Corporation shall 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 an improper personal benefit.

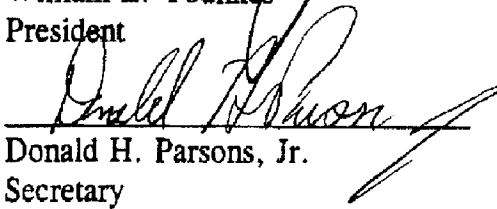
EIGHTH: Whenever a compromise or arrangement is proposed between the corporation and its creditors or any class of them and/or between the corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the corporation under the provisions of section 291 of Title 8 of the Delaware General Corporation Law or on the application of trustees in dissolution or of any receiver or receivers appointed for the corporation under the provisions of section 279 of Title 8 of the Delaware General Corporation Law order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the corporation, as the case may be, to be summoned in such manner as the court directors. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the corporation as a consequence of such compromise or arrangement, the compromise or arrangement and the reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the corporation, as the case may be, and also on the corporation.

* * *

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Certificate of Incorporation this 24th day of February, 1994.



William E. Younkes
President



Donald H. Parsons, Jr.
Secretary

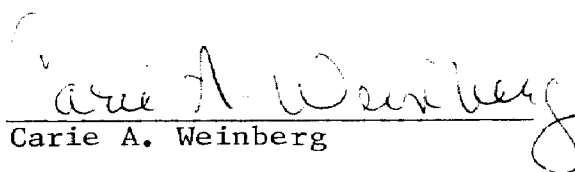
CERTIFICATE OF EXPRESS MAILING

Express Mail mailing label number **EL858893935US**

Date of Deposit: January 28, 2002

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the:

**Commissioner of Patent and Trademarks
Box Assignments
Washington, D.C., 20231**


Carie A. Weinberg

Troy M. Schmelzer
Direct Dial: (619) 515-3247
E-mail: tms@procopio.com

January 28, 2002

Via Express Mail EL858893935US

REPLY TO FILE
108117-11

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

<u>Re:</u>	<u>Patent Application No.</u>	<u>Patent Nos.</u>
	<i>PCT/US92/07653</i>	<i>5,047,300</i>
	<i>PCT/US93/08690</i>	<i>5,045,086</i>
	<i>PCT/US94/06745</i>	<i>5,198,313</i>
		<i>5,368,961</i>
	<u>Change of Name</u>	

Ladies and Gentlemen:

Enclosed please find a Change of Name document regarding the above-identified applications and patents.

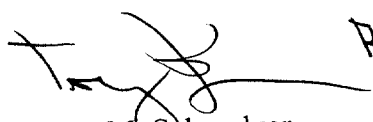
By virtue of an Amended and Restated Certificate of Incorporation filed February 25, 1994, Bolder Battery, Inc., a Delaware corporation changed its name to Bolder Technologies Corporation, a Delaware corporation. Please record the enclosed document in the United States Patent and Trademark Office and update your records.

So that we may have a timely record of this submittal, please date-stamp the enclosed self-addressed stamped postcard and deposit it in the U.S. mail.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Procopio, Cory, Hargreaves
& Savitch LLP


Troy M. Schmelzer

TMS/lac
Enclosure
cc: Mr. Donald Buckley (w/encl.)

108117.000011/323335.01

RECORDED: 01/28/2002

PATENT
REEL: 012569 FRAME: 0772