

02-20-2002

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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

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To the Honorable Commissioner of

101987054

the attached original documents or copy thereof.

1. Name of conveying party(ies):

Control Commerce, Inc.

8-16-01

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

Name: MindArrow Systems, Inc.

Internal Address:

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

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other \_\_\_\_\_

Street Address: 101 Enterprise #340

City: Aliso Viejo State: CA ZIP: 92656

Execution Date: May 18, 2001

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

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

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

A. Patent Application No.(s)

B. Patent No.(s)

6247047

Additional numbers attached?  Yes  No

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

Name: Robert D. Fish

Internal Address: FISH & ASSOCIATES, LLP

Street Address: 1440 N. Harbor Blvd., Suite 706

City: Fullerton State: CA ZIP: 92835

6. Total number of applications and patents involved: 1

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

- Enclosed 40 E
- Authorized to be charged to deposit account

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

Robert D. Fish

Name of Person Signing

Signature

15 Nov 2001

Date

Total number of pages including cover sheet, attachments, and document: 3

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

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

1. Name of conveying party(ies):

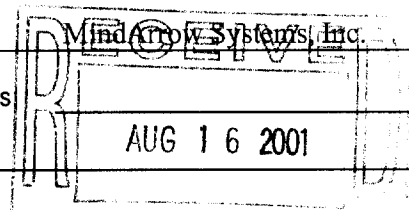
Control Commerce, Inc.

8-1001

Address of receiving party(ies):

Name: Mind Arrow Systems, Inc.

Internal Address:



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

Street Address: 101 Enterprise #340

City: Aliso Viejo State: CA ZIP: 92656

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

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other

Execution Date: June 18, 2001

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)

B. Patent No.(s)

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Robert D. Fish  
Name of Person Signing

*Robert D. Fish*  
Signature

8/13/01  
Date

Total number of pages including cover sheet, attachments, and document: 3

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Washington, D.C. 20231

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**AGREEMENT AND PLAN OF MERGER**

Dated as of May 18, 2001

Among

**MINDARROW SYSTEMS, INC.,**

**MA ACQUISITION CORP.,**

**CONTROL COMMERCE, INC.**

And

**SHAREHOLDERS LISTED ON EXHIBIT A**

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## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (this “**Agreement**”) is dated as of May 18, 2001, by and among MindArrow Systems, Inc., a Delaware corporation (“**Parent**”), MA Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Parent (“**Merger Sub**”), Control Commerce, Inc., a Delaware corporation (the “**Company**”), and the shareholders of the Company listed on Exhibit A attached hereto (each individually a “**Shareholder**” and collectively the “**Shareholders**”) who agree to be bound by the terms and conditions of this Agreement as evidenced by the execution of the Representative Agreement (as defined in Section 7.6) on or after the date hereof. In addition, Eric A. McAfee (“**McAfee**”) and Thomas J. Blakeley (“**Blakeley**”) are parties to this Agreement solely for purposes of Sections 9.4, 9.8, 11.11 and Article 12.

### BACKGROUND

A. The Shareholders own an aggregate of 3,941,217 shares of Common Stock, par value \$.01, of the Company (“**Company Common Stock**”) and 55,000 shares of Series A Preferred Stock, par value \$.01, of the Company (“**Series A Preferred Stock**”; the Company Common Stock and the Series A Preferred Stock are collectively referred to herein as “**Company Capital Stock**”) and such shares of Company Capital Stock constitute 100% of the issued and outstanding shares of the capital stock of the Company.

B. The respective Boards of Directors of Parent, Merger Sub and the Company have approved the merger of Merger Sub with and into the Company (the “**Merger**”) in a reverse triangular merger with the Company as the surviving corporation, upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Delaware General Corporation Law (the “**DGCL**”).

C. Parent, Merger Sub, the Company and the Shareholders desire to make representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

D. For accounting purposes, the parties hereto intend that the Merger be accounted for under the purchase method of accounting.

E. For federal income tax purposes, the parties hereto intend that the Merger qualify as a tax-free reorganization within the meaning of Section 368(a)(1)(A) and (a)(2)(E) of the Internal Revenue Code of 1986, as amended (the “**Code**”), whereby the Representative (as defined in Section 7.6) will receive and hold for the benefit of the Shareholders the merger consideration set forth on Exhibit B (the “**Merger Consideration**”) in exchange for their shares of Company Capital Stock.

F. The parties hereto expect that the Merger will further certain of their business objectives. In doing so, following the Merger, the parties hereto currently intend to carry on at least one significant historic business enterprise of the Company, or to use at least a significant portion of the Company’s historic business assets in a business, in each case, within the meaning of Treasury Reg. §1.368-1(d).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized or other duly authorized representatives, all as of the date first written above.

**PARENT:**

MindArrow Systems, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MERGER SUB:**

MA Acquisition Corp.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE COMPANY:**

Control Commerce, Inc.,  
a Delaware corporation

By: James R. Chard  
Name: JAMES R. CHARD  
Title: PRESIDENT AND CEO

Standby with respect to Sections 9.4, 9.8, 11.11 and 12.1:

Bill A. McAfee

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized or other duly authorized representatives, all as of the date first written above.

PARENT:

MindArrow Systems, Inc.,  
a Delaware corporation

By: Robert Webb  
Name: ROBERT WEBB  
Title: CEO

MERGER SUB:

MA Acquisition Corp.,  
a Delaware corporation

By: Robert Webb  
Name: ROBERT WEBB  
Title: PRESIDENT

THE COMPANY:

Control Commerce, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Solely with respect to Sections 9.4, 9.8, 11.11 and 12.1:

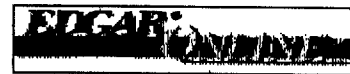
Eric A. McAfee

Eric A. McAfee

Solely with respect to Sections 9.4, 9.8, 11.11 and 12.2:

Thomas J. Blakeley  
Thomas J. Blakeley

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June 18, 2001

# MINDARROW SYSTEMS INC (ARRW)

## form 8-K

### Item 5. OTHER EVENTS

On June 18, 2001, MindArrow Systems, Inc. (the "Company") announced that it had completed its acquisition of Control Commerce, Inc. ("Control Commerce"), a privately-held Delaware corporation. Under the terms of the merger agreement, a wholly-owned subsidiary of the Company was merged with and into Control Commerce, with Control Commerce surviving the merger and becoming a wholly-owned subsidiary of the Company.

In the merger, the shareholders of Control Commerce received in exchange for all of their issued and outstanding capital stock of Control Commerce an aggregate of (i) 60,000 shares of the Company's Series C preferred stock, (ii) 800,000 shares of the Company's common stock and (iii) warrants to purchase 12,000 shares of the Company's common stock at a price of \$12.50 per share (collectively, the "Merger Consideration"). In addition, in the event the Company closes a round of financing on or before December 15, 2001 involving the issuance of shares of a series of the Company's preferred stock with a liquidation preference senior to that of the Company's Series C preferred stock (or a liquidation preference equal to the Series C preferred stock if fifty percent or more of the new series is sold to existing holders of the Company's Series B or Series C preferred stock), the merger agreement permits the Control Commerce shareholders to exchange the Merger Consideration for consideration consisting of a combination of shares of the new series of stock and the Company's common stock.

Exhibit No. Description - -

99.1 Text of press release of MindArrow Systems, Inc. issued June 18, 2001.

<http://biz.yahoo.com/e/010618/arrw.html>

8/8/01

RECORDED: 08/16/2001

PATENT  
REEL: 012569 FRAME: 0930