

FORM PTO-1595

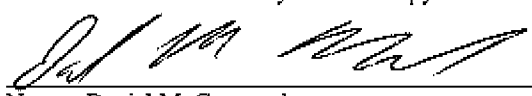
Docket No. 50672/DMC/V165

RECORDATION FORM COVER SHEET  
PATENTS ONLY

Mail Stop Assignment - Recordation Services  
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Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof:

<b>1. Name of conveying party(ies):</b> <b>Fusion Micromedia Corporation</b>  Additional name(s) of conveying party(ies) attached: NO	<b>2. Name and address of receiving party(ies):</b> Name: <b>Vitesse Semiconductor Corporation</b>  Street Address: 741 Calle Plano, Camarillo, California 93012   Additional name(s) & address(es) attached? NO				
<b>3. Name of conveyance:</b>  <input checked="" type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Merger  Execution Date: July 24, 1998; August 20, 2001;	Additional name(s) & address(es) attached? NO				
<b>4. Application number(s) or patent number(s):</b>  If this document is being filed together with a new application, the execution date of the application is:  <table border="0" style="width:100%"> <tr> <td style="width:50%"><b>A. Patent Application No.(s)</b></td> <td style="width:50%"><b>B. Patent No.(s)</b></td> </tr> <tr> <td></td> <td>6,088,753</td> </tr> </table> Additional numbers attached? NO		<b>A. Patent Application No.(s)</b>	<b>B. Patent No.(s)</b>		6,088,753
<b>A. Patent Application No.(s)</b>	<b>B. Patent No.(s)</b>				
	6,088,753				
<b>5. Please return the recorded document and address all correspondence to:</b>  <b>CHRISTIE, PARKER &amp; HALE, LLP</b> P.O. Box 7068 Pasadena, CA 91109-7068 Attention: Daniel M. Cavanagh	<b>6. Total number of applications and patents involved</b> <span style="border: 1px solid black; padding: 2px;">1</span>  <b>7. <input checked="" type="checkbox"/> Total fee to be charged to Deposit Account No. 03-1728 (37 CFR 3.41):</b> <span style="float:right">\$ 40.00</span>  <b>8. <input checked="" type="checkbox"/> Any deficiency or overpayment of fees should be charged or credited to Deposit Account No. 03-1728, except for payment of issue fees required under 37 CFR § 1.18. Please show our docket number with any credit or charge to our Deposit Account.</b>				
<b>10. <input checked="" type="checkbox"/> Explanatory letter is enclosed.</b>					
<b>9. Statement and signature.</b> 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.  Date: August 1, 2003  By  Name: Daniel M. Cavanagh 626/795-9900   Total number of pages including cover sheet, attachments, and document: <span style="border: 1px solid black; padding: 2px;">23</span>					

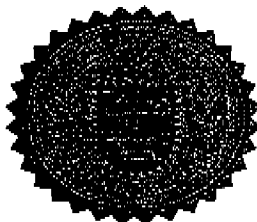
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# Delaware

PAGE 1

*The First State*

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 "FUSION MICROMEDIA CORPORATION", CHANGING ITS NAME FROM "FUSION MICROMEDIA CORPORATION" TO "SITERA INCORPORATED", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JULY, A.D. 1998, AT 10 O'CLOCK A.M.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

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030491473

AUTHENTICATION: 2551363

PATENT  
DATE: 07-28-03  
REEL: 013845 FRAME: 0285

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 10:00 AM 07/24/1998  
981288897 - 2680619

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
FUSION MICROMEDIA CORPORATION**

Steven P. Flannery hereby certifies that:

1. He is the duly elected and acting President of Fusion MicroMedia Corporation (the "Corporation").

2. The name of the Corporation is Fusion MicroMedia Corporation. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on November 6, 1996. A Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 25, 1997.

3. This Restated Certificate of Incorporation amends and restates the provisions of the Restated Certificate of Incorporation of the Corporation and has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

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

**ARTICLE I  
NAME**

The name of this Corporation is SiTera Incorporated.

**ARTICLE II  
PERIOD OF DURATION**

The Corporation shall have perpetual existence.

**ARTICLE III  
PURPOSE**

The purpose for which the Corporation is organized is to engage in the transaction of all lawful business for which corporations may be organized pursuant to the Delaware General Corporation Law.

**ARTICLE IV****REGISTERED OFFICE AND REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is:

1013 Centre Road  
Wilmington, New Castle County, Delaware 19805-1297

The name of the Corporation's registered agent at such address is Corporation Service Company.

**ARTICLE V  
CAPITAL**

This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Corporation is authorized to issue is eighty-two million three hundred fifty thousand (82,350,000) shares, fifty-five million (55,000,000) shares of which shall be Common Stock (the "Common Stock") and twenty-seven million three hundred fifty thousand (27,350,000) shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of One-Tenth of One Cent (\$.001) per share and the Common Stock shall have a par value of One-Tenth of One Cent (\$.001) per share.

Except as provided herein, the number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares of Common Stock or Preferred Stock then outstanding or reserved for issuance) by the affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote (voting together on an as-if-converted basis and not as separate classes).

The Preferred Stock may be issued from time to time in one or more series. Except as provided herein, the Board of Directors is hereby authorized, within the limitations and restrictions stated in this Restated Certificate, to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

**COMMON STOCK**

**A. Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall

be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

**B. Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 3 of Article V, Preferred.

**C. Redemption.** The Common Stock is not redeemable.

**D. Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

#### PREFERRED STOCK

One million eight hundred thousand (1,800,000) shares of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred") and twenty-five million five hundred fifty thousand (25,550,000) shares of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "Series B Preferred"). The Series A Preferred and Series B Preferred are hereinafter collectively referred to as the "Series Preferred." The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

##### 1. Dividend Rights.

(a) Each holder of Series Preferred shall be entitled to receive in preference to any dividends payable on any other shares of capital stock ("Junior Stock"), when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the respective Series A and Series B Original Issue Price (as hereinafter defined) per annum on each outstanding share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative. The Series A and the Series B Original Issue Prices shall be \$.9731 and \$.40, respectively.

(b) So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock, nor shall any shares of any Common Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends declared or required to be declared under Section 1(a) above on the Series Preferred shall have been paid or declared and set apart. In the event dividends are paid on any shares of Common

Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount equal per share (on an as-converted basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for any other Junior Stock or (iii) any repurchase of any outstanding securities of the Corporation that is approved by the Corporation's Board of Directors.

## 2. Voting Rights.

(a) **Generally.** Except as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock of the Corporation and not as a separate class, at any annual or special meeting of stockholders of the Corporation, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent. Without the affirmative vote of 75% of the outstanding shares of Series A Preferred, voting as a separate series, the Corporation shall not increase or decrease the number of designated shares of Series A Preferred Stock.

(b) **Series B Preferred Class Vote Requirement.** So long as at least one million (1,000,000) shares (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) of Series B Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the affirmative vote or written consent of the holders of at least fifty-one percent (51%) of the outstanding Series B Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, or repeal of any provision of the Restated Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation), that affects the voting powers, preferences, or other special rights or privileges, qualifications, limitations, or restrictions of the Series B Preferred;

(ii) Any increase or decrease (other than by redemption or conversion) in the authorized number of shares of Common Stock or Preferred Stock;

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Corporation ranking on a parity with or senior to the Series B Preferred in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iv) Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares

upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(v) Any merger, consolidation, recapitalization, liquidation or sale of all or substantially all the assets of the Corporation;

(vi) Any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock; or

(vii) Any increase or decrease in the authorized number of members of the Corporation's Board of Directors without the consent of the members of the Board of Directors representing the Series B Preferred.

(c) **Election of Board of Directors.** For so long as the authorized size of the Corporation's Board of Directors is five (5) or more, (i) the holders of Series B Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; (ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and (iii) the holders of Common Stock and Series Preferred, voting together as a class, shall be entitled to elect all remaining members of the Board of Directors.

### 3. Liquidation Rights.

(a) Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series Preferred shall be entitled to be paid out of the assets of the Corporation an amount per share of Series Preferred equal to the sum of (i) the Liquidation Preference of such Series (as hereinafter defined) and (ii) all declared but unpaid dividends on such shares of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The "Liquidation Preference" shall be an amount equal to: (i) \$.9723 per share in the case of Series A Preferred and (ii) \$.40 per share in the case of Series B Preferred. If, upon any liquidation, dissolution, or winding up, the assets of the Corporation shall be insufficient to make payment in full to all holders of Series Preferred in accordance with this Section 3(a), then such assets shall be distributed among the holders of the Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Series Preferred as set forth in Sections 3(a) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed, on a pro rata basis, to the holders of Common Stock and the Series B Preferred (on an as-if converted to Common Stock basis) until the holders of the

Series B Preferred have received an additional \$.40 per share (as adjusted for any stock dividends, combinations, splits, recapitalization and the like with respect to such shares) after payment of the Series B Liquidation Preference pursuant to Section 3(a) above.

(c) After the payment of the amounts set forth in Sections 3(a) and (b) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed ratably to the holders of Common Stock.

(d) The following events shall be considered a liquidation under Section 3(a) and 3(b):

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which in excess of fifty percent (50%) of the Corporation's voting power is transferred (an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

#### 4. Redemption Rights.

(a) **Redemptions.** At any one time after April 23, 2004, the holders of two-thirds of the then outstanding shares of Series B Preferred, voting together as a separate class, may require the Corporation, to the extent it may lawfully do so, to redeem the Series B Preferred in three (3) annual installments beginning on the later of (i) July 23, 2004 or (ii) the date ninety (90) days after the Corporation's receipt of notice of such redemption date and ending three (3) years from such first redemption date (each a "Redemption Date").

(b) **Redemption Payments.** The Corporation shall effect such redemptions on a pro rata basis on the applicable Redemption Date by paying in cash in exchange for the shares of Series B Preferred to be redeemed a sum equal to the Series B Liquidation Preference plus all declared but unpaid dividends. The number of shares of Series B Preferred that the Corporation shall be required to redeem on each Redemption Date shall be equal to the amount determined by dividing (i) the aggregate number of shares of Series B Preferred outstanding immediately prior to the Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). The total amount to be paid for the Series B Preferred is hereinafter referred to as the "Series B Redemption Price." If the funds of the Corporation legally available for redemption of Series B Preferred on any Redemption Date are insufficient to redeem the total number of shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of shares of Series B Preferred on a pro rata basis. At any time thereafter when additional funds of the Corporation are legally available for the redemption of Series B Preferred,



such funds shall immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

(c) **Notice of Redemption.** Except as otherwise provided herein, the Corporation shall mail written notice of each redemption of Series B Preferred to each record holder thereof not more than sixty (60), nor less than thirty (30), days prior to the Redemption Date setting forth (i) the Redemption Price for the shares to be redeemed and (ii) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. The holders of Series B Preferred to be redeemed shall in any event have the right to convert their shares into Common Stock at any time prior to the close of business on any Redemption Date. In case fewer than the total number of shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares shall be issued to the holder thereof without cost to such holder within five (5) business days after surrender of the certificate representing the redeemed shares.

5. **Conversion Rights.** The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock:

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 5, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the applicable "Conversion Rate" then in effect for each such series of Series Preferred (determined as provided in Section 5(b)) by the number of shares of Series Preferred being converted.

(b) **Conversion Rate.** The conversion rate in effect at any time for conversion of the Series A Preferred (the "Series A Conversion Rate") shall be the quotient obtained by dividing \$.4166 (the "Series A Anti-dilution Price") by the "Series A Conversion Price," calculated as provided in Section 5(c). The conversion rate in effect at any time for conversion of the Series B Preferred (the "Series B Conversion Rate") shall be the quotient obtained by dividing the Series B Original Issue Price by the "Series B Conversion Price," calculated as provided in Section 5(c).

(c) **Conversion Price.** The conversion price for the Series A Preferred shall initially be the Series A Anti-dilution Price (the "Series A Conversion Price"). Such initial Series A Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series A Conversion Price herein shall mean the Series A Conversion Price as so adjusted. The conversion price for the Series B Preferred shall initially be the Series B Original Issue Price (the "Series B Conversion Price"). Such initial Series B Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Series B Conversion Price shall mean the Series B Conversion Price as so adjusted. The Series A Conversion Price and the Series B Conversion Price shall collectively be referred to as the "Conversion Prices," and each a "Conversion Price."

**(d) Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 5 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series Preferred and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any accrued but unpaid dividends, whether or not declared, on the shares of Series Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

**(e) Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after May 9, 1997 (the "Series A Original Issue Date") effect a subdivision of the outstanding Common Stock, the Series Preferred Conversion Prices in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares, the Series Preferred Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

**(f) Adjustment for Common Stock Dividends and Distributions.**

**(i)** If the Corporation at any time or from time to time after the Series A Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series Preferred Conversion Prices then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the applicable Series Preferred Conversion Prices in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter such Series Preferred Conversion Price shall be adjusted pursuant to this Section 5(f)(i) to reflect the actual payment of such dividend or distribution.

(g) **Adjustments for Other Dividends and Distributions.** If the Corporation at any time or from time to time after the Series A Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, in each such event provision shall be made so that the holders of the Series Preferred shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of other securities of the Corporation which they would have received had their Series Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them 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 Series Preferred or with respect to such other securities by their terms.

(h) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Series A Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(e) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(i) **Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Series A Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(e) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 5), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the applicable Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of such Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**(j) Sale of Shares Below Conversion Price.**

**(i)** If at any time or from time to time after the Series A Original Issue Date, the Corporation issues or sells, or is deemed by the express provisions of this subsection (j) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (j)(v) below), other than as a dividend or other distribution on any class of stock as provided in Section 5(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 5(e) above, for an Effective Price (as defined in subsection (j)(v) below) less than the then effective Series Preferred Conversion Price applicable for such series, then and in each such case the then existing Series Preferred Conversion Price applicable for such series shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series Preferred Conversion Price applicable for such series by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Series Preferred Conversion Price applicable for such Series, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock into which any then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

**(ii)** For the purpose of making any adjustment required under this Section 5(j), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection j(iv)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

**(iii)** For the purpose of the adjustment required under this Section 5(j), if the Corporation issues or sells any rights or options for the purchase of, or stock or other

securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") and if the Effective Price of such Additional Shares of Common Stock is less than the applicable Series Preferred Conversion Price for any such series, as applicable, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series Preferred Conversion Price, as applicable to such series, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series Preferred Conversion Price, as applicable to such series, as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price, as applicable to such series, which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 5(j), whether or not subsequently reacquired or retired by the Corporation other than (A) shares of Common Stock issued upon conversion of the Series Preferred; (B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Series B Original Issue Date to employees, officers or directors of, or consultants or advisors (as such) to the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors, (including any representative of the Series B Preferred then serving on the Board of Directors) ("Incentive Issuances"), except Incentive Issuances in excess of 200,000 shares in the aggregate issued to persons or entities that are beneficial holders of 5% or more of the Corporation's voting securities on the Series B Original Issue Date; (C) any securities of the Corporation issued in connection with any commercial leasing, loan or similar transaction that is approved by the Board of Directors (including any representative of the Series B Preferred then serving on the Board of Directors); (D) any securities of the Corporation issued for consideration other than cash, such as the acquisition of technology or other assets that is approved by the Board of Directors (including any representative of the Series B Preferred then serving on the Board of Directors); and (E) any securities of the Corporation issued for which an adjustment has been made pursuant to subsections 5(e), (f), (g), (h) or (i) above. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this Section 5(j), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 5(j), for such Additional Shares of Common Stock.

(k) **Certificate of Adjustment.** In each case of an adjustment or readjustment of a Series Preferred Conversion Price pursuant to this Section 5, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred that has been so adjusted or readjusted, at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (1) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (2) the Series Preferred Conversion Price, as applicable to such series, at the time in effect, (3) the number of Additional Shares of Common Stock issued or sold or deemed to have been issued or sold and (4) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred as applicable to such series.

(l) **Notices of Record Date.** Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition (as defined in Section 3(e)) or other capital reorganization of the Corporation, any reclassification or

recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in Section 3(e)), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail to each holder of Series Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (1) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (2) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (3) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

**(m) Automatic Conversion.**

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, as applicable to such series, at any time upon the affirmative vote of the holders of at least a majority of the outstanding shares of the Series Preferred, voting together as a class or immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which (i) the per share price to the public is at least \$2.00 per share (as adjusted for stock splits, recapitalizations and the like), and (ii) the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least \$15,000,000. Upon such automatic conversion, any declared but unpaid dividends, if any, shall be paid in accordance herewith.

(ii) Upon the occurrence of the event specified in subsection (m)(i) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and the Corporation shall promptly pay in cash or, at the option of the

Corporation, Common Stock (at the Common Stock's fair market value determined by the Board as of the date of such conversion), or, at the option of the Corporation, both, all accrued but unpaid dividends, whether or not declared, on the shares of Series Preferred being converted, to and including the date of such conversion.

**(n) Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of any Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series 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 any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board) on the date of conversion.

**(o) 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 Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

**(p) Notices.** Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

**(q) Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

**(r) No Dilution or Impairment.** The Corporation shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking 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 including the taking of all such action as may be necessary in order to protect such conversion rights of the holders of the Series Preferred against impairment.

**6. Reissuance of Series Preferred.** No share or shares of Series Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued.

## ARTICLE VI

### LIMITATION ON LIABILITY; INDEMNIFICATION

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that exculpation from liability is not permitted under the General Corporation Law of the State of Delaware as in effect at the time such liability is determined. No amendment or repeal of this Article VI shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

The Corporation shall indemnify its directors to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the Corporation shall not be required to indemnify any Director in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the Corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Corporation or (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Delaware General Corporation Law.

## ARTICLE VII

### MISCELLANEOUS

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

1. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

2. The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the then outstanding shares of voting stock of the Corporation; and, provided further, that no amendment or

supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

3. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

#### ARTICLE VIII


##### AMENDMENT OF ARTICLES

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this right.

\* \* \* \*

IN WITNESS WHEREOF, Fusion MicroMedia Corporation has caused this Restated Certificate of Incorporation to be signed by its President in Longmont, Colorado this 24<sup>th</sup> day of July, 1998.

FUSION MICROMEDIA CORPORATION

By:   
Steven P. Flannery, President

# Delaware

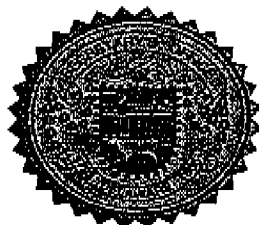
PAGE 1

*The First State*

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 CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"SITERA INCORPORATED", A DELAWARE CORPORATION,

WITH AND INTO "VITESSE SEMICONDUCTOR CORPORATION" UNDER THE NAME OF "VITESSE SEMICONDUCTOR CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTH DAY OF DECEMBER, A.D. 2001, AT 4:30 O'CLOCK P.M.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2680619 8100M

AUTHENTICATION: 2551362

030491473

PATENT  
DATE: 07-28-03  
REEL: 013845 FRAME: 0303

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 04:30 PM 12/05/2001  
010620033 - 2116556

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

SITERA INCORPORATED  
(a Delaware corporation)

WITH AND INTO

VITESSE SEMICONDUCTOR CORPORATION  
(a Delaware corporation)

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Pursuant to Section 253 of  
the Delaware General Corporation Law

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Vitesse Semiconductor Corporation, a corporation organized and existing under the laws of the State of Delaware (the "**Company**"), DOES HEREBY CERTIFY:

**FIRST:** That SiTera Incorporated ("**SiTera**") is a corporation of the State of Delaware and a wholly-owned subsidiary of the Company.

**SECOND:** That the Company, as the owner of 100% of the outstanding shares of stock of SiTera, does hereby merge SiTera with and into the Company.

**THIRD:** That the following is a copy of the resolutions duly adopted by the unanimous written consent of the Board of Directors of the Company on August 20, 2001:

**RESOLVED:** That SiTera be merged with and into the Company pursuant to Section 253 of the Delaware General Corporation Law (the "**DGCL**") as hereinafter provided (the "**SiTera Merger**"), so that the separate existence of SiTera shall cease at such time as the SiTera Merger shall become effective (the "**SiTera Effective Date**"), and thereupon SiTera and the Company will become a single corporation (the "**SiTera Surviving Corporation**"), which shall continue to exist under and be governed by, the laws of the State of Delaware;

**FURTHER RESOLVED:** That the officers of the Company be and they hereby are authorized and directed to make and execute a Certificate of Ownership and Merger (the "**SiTera Certificate of Ownership and Merger**") setting forth a copy of these resolutions to merge SiTera into the Company, and to cause the same to be filed and recorded as provided by law, and to do all acts and things whatsoever, within the State of Delaware, and in any other appropriate jurisdiction, necessary or proper to effect the SiTera Merger;

(MP) 21352/001/MINUTES/COM.SiTera.wpd

**FURTHER RESOLVED:** That the SiTera Merger shall be effective upon acceptance for filing of the SiTera Certificate of Ownership and Merger by the Secretary of State of the State of Delaware;

**FURTHER RESOLVED:** That the proper officers of the Company are hereby authorized and directed to take all actions which may be necessary or advisable to carry out and perform the purposes and accomplish the intent of the resolutions and any and all prior actions taken by the officers in connection herewith are hereby ratified and approved.

**FOURTH:** That the SiTera Merger does not require approval of the stockholder of SiTera, in accordance with Section 253 of the DGCL.

**FIFTH:** That this Certificate of Ownership and Merger shall become effective upon its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Company has caused this Certificate to be signed by Eugene F. Hovanec, its Vice President, this 20<sup>th</sup> day of August, 2001.

VITESSE SEMICONDUCTOR CORPORATION

By: /s/ Eugene F. Hovanec  
Eugene F. Hovanec  
Vice President