

PATENT ASSIGNMENT

Electronic Version v1.1

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	07/15/2004
CONVEYING PARTY DATA	
Name	Execution Date
Marimba, Inc.	07/15/2004
RECEIVING PARTY DATA	
Name:	BMC Software, Inc.
Street Address:	2101 CityWest Blvd.
City:	Houston
State/Country:	TEXAS
Postal Code:	77042
PROPERTY NUMBERS Total: 12	
Property Type	Number
Patent Number:	5919247
Patent Number:	6272536
Patent Number:	6430608
Patent Number:	6381631
Patent Number:	6738970
Patent Number:	6367075
Application Number:	09855042
Application Number:	10318908
Application Number:	10173278
Application Number:	10298860
Application Number:	10318891
Application Number:	10845977
CORRESPONDENCE DATA	

500028834

PATENT  
REEL: 015942 FRAME: 0420

CH \$480.00 5919247

Fax Number: (832)446-2458

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NAME OF SUBMITTER:

Coe F. Miles

Total Attachments: 5

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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 CERTIFICATE OF MERGER, WHICH MERGES:

"MALTA MERGER SUBSIDIARY, INC.", A DELAWARE CORPORATION, WITH AND INTO "MARIMBA, INC." UNDER THE NAME OF "MARIMBA, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIFTEENTH DAY OF JULY, A.D. 2004, AT 1:12 O'CLOCK P.M.

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



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*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3235366

DATE: 07-15-04

PATENT  
REEL: 015942 FRAME: 0422

**CERTIFICATE OF MERGER  
MERGING  
MALTA MERGER SUBSIDIARY, INC.  
WITH AND INTO  
MARIMBA, INC.**


(Pursuant to Section 251 of  
the General Corporation Law of the State of Delaware)

MARIMBA, INC. HEREBY CERTIFIES THAT:

1. The name and state of incorporation of each of the constituent corporations are:
  - (i) Malta Merger Subsidiary, Inc., a Delaware corporation ("Merger Subsidiary");  
and
  - (ii) Marimba, Inc., a Delaware corporation ("Marimba").
2. An Agreement and Plan of Merger (the "Merger Agreement") dated as of April 28, 2004 by and among BMC Software, Inc., a Delaware corporation and the sole stockholder of Merger Subsidiary, Merger Subsidiary and Marimba has been approved, adopted, certified, executed and acknowledged by Merger Subsidiary and Marimba, being each of the constituent corporations thereto, in accordance with the provisions of Section 251 of the General Corporation Law of the State of Delaware.
3. The name of the corporation surviving the merger is Marimba, Inc., a Delaware corporation (the "Surviving Corporation").
4. The Certificate of Incorporation of Marimba, as in effect immediately prior to the effective time of the merger, shall be amended and restated in its entirety as set forth in Exhibit A hereto (as so amended and restated, the "Amended and Restated Charter") and the Amended and Restated Charter shall continue as the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and applicable law. The Bylaws of Merger Subsidiary as in effect immediately prior to the effective time of the merger shall be the Bylaws of the Surviving Corporation.
5. An executed copy of the Merger Agreement is on file at the office of the Surviving Corporation at 440 Clyde Avenue, Mountain View, California 94043.
6. A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of Marimba or Merger Subsidiary.

IN WITNESS WHEREOF, Marimba has caused this Certificate of Merger to be signed  
by a duly authorized officer thereof, as of the 15th day of July, 2004.

MARIMBA, INC.

By:   
Name: Andrew Chuzyz  
Title: VP, Finance and CFO

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**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
MARIMBA, INC.**

1. The name of the corporation is: Marimba, Inc. (the "Corporation").
2. The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware, 19801. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of all classes of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of Common Stock and the par value of each of such shares is one cent (\$.01) per share.
5. The Corporation is to have perpetual existence.
6. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to exercise, in addition to the powers and authorities hereinbefore or by law conferred upon it, any such powers and authorities and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the laws of the State of Delaware and of this Amended and Restated Certificate of Incorporation and of the Bylaws of the Corporation.
7. The number of directors of the Corporation shall be as specified in, or determined in the manner provided in the Bylaws. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall provide.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the Bylaws of the Corporation.
8. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.
9. A director of the Corporation shall not 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 any improper personal benefit.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

10. A director shall be fully protected in relying in good faith upon the books of account or other records of the Corporation or statements prepared by any of its officers or by independent public accountants or by an appraiser selected with reasonable care by the Board of Directors of the Corporation as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the Corporation's capital stock might properly be purchased or redeemed.