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Form PTO-1595

(Rev. 10-02)



U.S. Department of Commerce
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

Vividence Corporation
999 Baker Way, Suite 500
San Mateo, CA 94404

2. Name and address of receiving party(ies)

Name: Keynote Systems, Inc. (Vivid Acquisition Corp.)

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: 777 Mariners Island Blvd.

City: San Mateo State: CA ZIP: 94404

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

Execution Date: September 15, 2004

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): 6,741,967

Additional numbers attached? Yes No

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

Name: Cindy S. Kaplan
RITTER, LANG & KAPLAN LLP
12930 Saratoga Avenue, Suite D1
Saratoga, California 95070
(408) 446-8690

6. Total number of applications and patents involved 1

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 50-1652

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

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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 of copy of the original document.

Cindy S. Kaplan

Name of Person Signing
Atty. Reg. No. 40,043

Signature

March 10, 2005

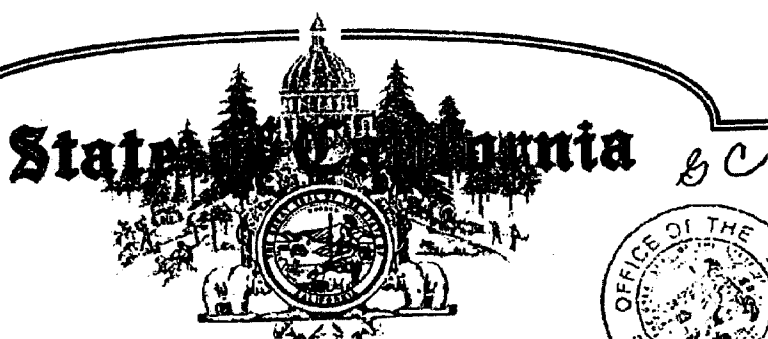
Date

Total number of pages including cover sheet, attachments, and documents: 12

Mail documents to be recorded with required cover to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

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SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 10 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 20 2004

Kevin Shelley
Secretary of State

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PATENT

**AGREEMENT OF MERGER
OF
VIVIDENCE CORPORATION
AND
VIVID ACQUISITION CORPORATION**

THIS AGREEMENT OF MERGER (the "*Agreement*") is made and entered into as of September 15, 2004, by and between Vividence Corporation, a California corporation (the "*Company*"), and Vivid Acquisition Corporation ("*Merger Sub*"), a California corporation and wholly owned subsidiary of Keynote Systems, Inc., a Delaware corporation ("*Parent*").

WITNESSETH

WHEREAS, the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California, with authorized capital stock consisting of 31,702,195 shares, 20,960,710 of which are designated "Common Stock," \$0.001 par value per share (the "*Company Common Stock*"), of which 5,709,341 shares are issued and outstanding, and 10,741,485 of which are designated "Preferred Stock," \$0.001 par value per share, consisting of (a) 772,501 shares of Series A Preferred Stock (the "*Series A Stock*"), of which 750,001 shares are issued and outstanding; (b) 3,312,758 shares of Series B Preferred Stock (the "*Series B Stock*"), of which 3,258,822 shares are issued and outstanding; (c) 1,787,226 shares of Series C Preferred Stock (the "*Series C Stock*"), of which 1,725,128 shares are issued and outstanding; (d) 2,869,000 shares of Series D Preferred Stock (the "*Series D Stock*"), of which 2,869,000 shares are issued and outstanding, and (e) 2,000,000 shares of Series E Preferred Stock (the "*Series E Stock*"), of which 555,998 shares are issued and outstanding.

WHEREAS, Merger Sub is a corporation duly organized and validly existing under the laws of the State of California, with authorized capital stock consisting of 1,000 shares of Common Stock, no par value per share (the "*Merger Sub Common Stock*"), of which 1,000 shares are issued and outstanding and owned by Parent;

WHEREAS, the Company, Parent, Merger Sub and Jan Reed as the Shareholders' Representative and Lease Representative have entered into an Agreement and Plan of Reorganization dated as of September 10, 2004, as amended on September 15, 2004 (the "*Plan*"), providing for certain representations, warranties, covenants, and agreements in connection with the transactions contemplated hereby;

WHEREAS, the respective Boards of Directors of the Company, Parent, and Merger Sub have determined that it is advisable and the best interests of their shareholders that the Merger Sub merge with and into the Company (the "*Merger*") with Company as the surviving corporation of the Merger upon the terms and conditions herein provided; and

WHEREAS, the Boards of Directors of the Company, Parent, and Merger Sub have approved this Agreement, and the shareholders of the Company and Merger Sub have approved the principal terms of the Merger.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties hereby agree as follows:

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PATENT
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1. **Merger.** The Merger Sub shall be merged with and into the Company on the terms and conditions hereinafter set forth. At the Effective Time (as defined below), the separate existence of the Merger Sub shall cease and the Company shall be the surviving entity (the "**Surviving Entity**"). The Merger shall be effective upon the filing of this Agreement and its accompanying certificates of approval attached hereto, with the Secretary of State of the State of California in the manner required by Section 1103 of the California Corporations Code (the "**Effective Time**").

2. **Certain Definition.** For purposes of this Agreement, the following term shall have the meaning set forth below:

(a) "**Shareholder Consideration**" means an amount of cash payable by Parent in respect of the Company's capital stock, as set forth in Section 5 below, and equal to up to \$22,807,242.40, the precise amount of which Shareholder Consideration shall be determined subject to (i) the achievement by the Company of certain specified performance goals (as set forth in Exhibit C to the Plan) and (ii) the release of up to \$3,544,927.51 to be held in escrow pending expiration of certain indemnification obligations of the Company (as set forth in Article 8 of the Plan);

3. **Articles of Incorporation.** The Articles of Incorporation of the Surviving Entity shall be amended their entirety to read as set forth in Exhibit A hereto.

4. **Directors and Officers.** The directors and officers of the Surviving Entity as of the Effective Time shall be the persons who were the directors and officers of Merger Sub immediately prior to the Effective Time.

5. **Succession.** At the Effective Time, the Surviving Entity shall succeed, without other transfer, to all the rights and property of each of the Company and the Merger Sub and shall be subject to all of the debts and liabilities of each of the Company and the Merger Sub, in each case in the manner set forth in Section 1107 of the California Corporations Code.

6. **Merger Consideration, Conversion of Shares.** At the Effective Time, by virtue of the Merger and without any action by the holders thereof, with the exception of shares of Company capital stock with respect to which the holders thereof have complied with all requirements for perfecting shareholders' dissenting rights in accordance with the California General Corporation Law and who, as of the Effective Time, have not effectively withdrawn or lost such dissenters' rights:

(a) each share of Series A Stock issued and outstanding immediately prior to the Effective Time shall be cancelled and automatically converted into the right to receive an amount of cash equal to the quotient obtained by dividing (i) 0.67% of the Shareholder Consideration by (ii) the total number of shares of Series A Stock outstanding as of the Effective Time (each share of Series A Stock shall be treated equally with respect to any such payment);

(b) each share of Series B Stock issued and outstanding immediately prior to the Effective Time shall be cancelled and automatically converted into the right to receive an amount of cash equal to the quotient obtained by dividing (i) 6.85% of the Shareholder Consideration by (ii) the total number of shares of Series B Stock outstanding as of the Effective Time (each share of Series B Stock shall be treated equally with respect to any such payment);

(c) each share of Series C Stock issued and outstanding immediately prior to the Effective Time shall be cancelled and automatically converted into the right to receive an amount of cash equal to the quotient obtained by dividing (i) 16.77% of the Shareholder Consideration by (ii)

the total number of shares of Series C Stock outstanding as of the Effective Time (each share of Series C Stock shall be treated equally with respect to any such payment);

(d) each share of Series D Stock issued and outstanding immediately prior to the Effective Time shall be cancelled and automatically converted into the right to receive an amount of cash equal to the quotient obtained by dividing (i) 64.73% of the Shareholder Consideration by (ii) the total number of shares of Series D Stock outstanding as of the Effective Time (each share of Series D Stock shall be treated equally with respect to any such payment);

(e) each share of Series E Stock issued and outstanding immediately prior to the Effective Time shall be cancelled and automatically converted into the right to receive an amount of cash equal to the quotient obtained by dividing (i) 10.97% of the Shareholder Consideration by (ii) the total number of shares of Series E Stock outstanding as of the Effective Time (each share of Series E Stock shall be treated equally with respect to any such payment);

(f) each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be cancelled without consideration; and

(g) each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Entity.

7. Additional Provisions.

(a) Notwithstanding the approval of this Agreement by the shareholders of the Company and the sole shareholder of Merger Sub, this Agreement may be terminated at any time prior to the Effective Time of the Merger by mutual agreement of the Boards of Directors of the Company and Merger Sub.

(b) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.


(c) This Agreement may be amended by the parties hereto prior to the Effective Time before or after approval hereof by the shareholders of the Company and the sole shareholder of Merger Sub, but, after such approval, no amendments shall be made which by law require the further approval of such shareholders without obtaining such approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

(d) The parties hereto intend this Agreement and the Plan to be construed together in order to effectuate their purpose.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement of Merger as of the date first set forth above.

VIVIDENCE CORPORATION,
a California corporation

By: 
Peter Watkins
President and Secretary

VIVID ACQUISITION CORPORATION,
a California corporation

By: _____
Peter Maloney
President, Secretary and Chief Financial Officer

IN WITNESS WHEREOF, the parties have executed this Agreement of Merger as of the date first set forth above.

VIVIDENCE CORPORATION,
a California corporation

By: _____
Peter Watkins
President and Secretary

VIVID ACQUISITION CORPORATION,
a California corporation

By: _____

Peter Maloney
President, Secretary and Chief Financial Officer

Exhibit A

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
VIVIDENCE CORPORATION**

ARTICLE I

The name of the corporation is Vividence Corporation.

ARTICLE II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Unless applicable law otherwise provides, any amendment, repeal or modification of this Article III shall not adversely affect any right of any director under this Article III that existed at or prior to the time of such amendment, repeal or modification.

ARTICLE IV

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to the applicable limits on such excess indemnification set forth in Section 204 of the California Corporations Code. Unless applicable law otherwise provides, any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any contract or other right to indemnification of any agent of the corporation that existed at or prior to the time of such amendment, repeal or modification.

ARTICLE V

The corporation is authorized to issue only one class of shares of stock, which shall be designated "Common Stock" and which shall have no par value. The total number of shares of Common Stock the corporation is authorized to issue is one thousand (1,000) shares.

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**PATENT
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CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER
VIVIDENCE CORPORATION

Peter Watkins hereby certifies that:

1. He is the President and the Secretary, of Vividence Corporation, a California corporation (the "*Corporation*").

2. The Agreement of Merger between the Corporation and Vivid Acquisition Corporation, a California corporation ("*Sub*"), in the form attached (the "*Agreement of Merger*"), was duly approved by the Board of Directors and by the shareholders of the Corporation. The Agreement of Merger provides for the statutory merger (the "*Merger*") of Sub with and into the Corporation, with the Corporation to be the surviving corporation of the Merger.

3. The Corporation has authorized capital of 31,702,195 shares, 20,960,710 of which are designated "*Common Stock*," \$0.001 par value per share, of which 5,709,341 shares are issued and outstanding, and 10,741,485 of which are designated "*Preferred Stock*," \$0.001 par value per share, consisting of 772,501 shares of Series A Preferred Stock, 3,312,758 shares of Series B Preferred Stock, 1,787,226 shares of Series C Preferred Stock, 2,869,000 shares of Series D Preferred Stock, and 2,000,000 shares of Series E Preferred Stock. The number of shares of Common Stock outstanding and entitled to vote upon the Merger was 5,709,341 shares. The number of shares of Series A Preferred Stock outstanding and entitled to vote upon the Merger was 750,001. The number of shares of Series B Preferred Stock outstanding and entitled to vote upon the Merger was 3,258,822. The number of shares of Series C Preferred Stock outstanding and entitled to vote upon the Merger was 1,725,128. The number of shares of Series D Preferred Stock outstanding and entitled to vote upon the Merger was 2,869,000. The number of shares of Series E Preferred Stock outstanding and entitled to vote upon the Merger was 555,998.

4. The principal terms of the Agreement of Merger were approved by the Corporation by a vote of the shareholders that equaled or exceeded the vote required. The percentage vote required to approve the Agreement of Merger was the affirmative vote of a majority of the outstanding shares of Common Stock and a majority of the outstanding shares of Preferred Stock.

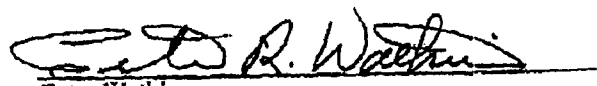
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5. The undersigned further declares under penalty of perjury under the laws of the State of California that the statements contained in the foregoing certificate are true and correct to his own knowledge.

Dated: Sept. 15, 2004



Peter Watkins
President and Secretary

SIGNATURE PAGE TO CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER
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CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER
VIVID ACQUISITION CORPORATION

Peter Maloney hereby certifies that:

1. He is the President, Secretary and Chief Financial Officer of Vivid Acquisition Corporation, a California corporation (the "*Sub*").

2. The Agreement of Merger between the Sub and Vividence Corporation, a California corporation (the "*Corporation*"), in the form attached (the "*Agreement of Merger*") was duly approved by the Board of Directors and by the sole shareholder of the Sub. The Agreement of Merger provides for the statutory merger (the "*Merger*") of the Sub with and into Corporation, with Corporation to be the surviving corporation of the Merger.

3. The Sub has only one class of stock, which is the Sub's Common Stock, no par value per share ("*Common Stock*"), and only the Common Stock was entitled to vote on the Agreement of Merger. The percentage vote required to approve the Agreement of Merger was the affirmative vote of a majority of the outstanding shares of Common Stock. The number of shares of Common Stock outstanding and entitled to vote on the Agreement of Merger was 1,000 shares. The principal terms of the Agreement of Merger were approved by the Sub by the vote of a number of shares of Common Stock that equaled or exceeded the vote required. The shareholder approval was by the holder of one hundred percent (100%) of the outstanding shares of the Sub's Common Stock.

4. No equity securities of Keynote Systems, Inc., a Delaware corporation that is the Sub's parent corporation, are to be issued in the Merger.


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5. The undersigned declares under penalty of perjury under the laws of the State of California that the statements set forth in this Certificate are true and correct to his own knowledge.

Dated: September 15 2004



Peter Maloney
President, Secretary and Chief Financial Officer

SIGNATURE PAGE TO CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

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RECORDED: 03/04/2005

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