

08-04-2005



103054458

or Sheet

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Attorney Docket No.: 3660P014C

To the Director of the United States Patent and Trademark Office. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Softface, Inc.**(a California Corporation)****2121 N. California Boulevard, Suite 570
Walnut Creek, CA 94596**

Additional name(s) of conveying party(ies) attached?

☒ No ☐ Yes

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

Name: **Softface, Inc.****(a California Corporation that is a subsidiary of
Ariba, Inc.)**

Internal Address:

3. Nature of Conveyance

☐ Assignment☒ Merger☐ Security Agreement☐ Change of Name☐ Other:Street Address: **807 11th Avenue****Building 3, 2nd Floor**City: **Sunnyvale** State/Province: **California** Zip: **94089**Country: **USA**Execution Date(s): **04.16.2004**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): **10/794,335**

B. Patent No.(s):

Additional numbers attached? ☐ Yes ☒ No

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

Lester J. Vincent, Reg. No. 31,460Name: **Blakely, Sokoloff, Taylor & Zafman LLP**

Internal Address:

Street Address: **12400 Wilshire Boulevard, 7th Floor****Los Angeles, California 90025**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:

02-2666

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

DO NOT USE THIS SPACE

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.***Lester J. Vincent, Reg. No. 31,460**

Name of Person Signing

Signature

July 29, 2005

Date

Total number of pages including cover sheet, attachments, and documents: **16**

Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services

Director of the United States Patent and Trademark Office

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08/03/2005 6TON11 00000060 10794335

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Based on Form PTO-1595 as modified by BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP on 05/09/03

PATENT
REEL: 016826 FRAME: 0143



SECRETARY OF STATE

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

That the attached transcript of 14 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

APR 16 2004



Kevin Shelley

Secretary of State

APR 15 2004

AGREEMENT OF MERGER

KEVIN SHELLEY
Secretary of State

AGREEMENT OF MERGER (this "Agreement"), dated as of April 15, 2004, by and among Ariba, Inc., a corporation duly organized and existing under the laws of the State of Delaware ("Parent"), Crystal Merger Corp., a corporation duly organized and existing under the laws of the State of California and a wholly owned subsidiary of Parent ("Merger Sub"), and Softface, Inc., a corporation duly organized and existing under the laws of the State of California (the "Company").

WITNESSETH:

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company deem it advisable and in the best interests of their respective corporations and in the best interests of the shareholders of Parent, Merger Sub and the Company that Merger Sub be merged with and into the Company in accordance with this Agreement (the "Merger");

WHEREAS, to effectuate the Merger, Parent, Merger Sub and the Company have entered into that certain Agreement and Plan of Merger and Reorganization, dated as of March 31, 2004, by and among Parent, Merger Sub, the Company and, solely with respect to Sections 2.07(d), 2.09, 6.11, 8.03, 9.04 and 10.01(c) thereof, Jonathan Berek, as Shareholders' Representative (the "Agreement and Plan of Merger");

WHEREAS, the Agreement and Plan of Merger and this Agreement are intended to be construed together in order to effectuate their purposes; and

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company, and pursuant to the California Corporations Code, the shareholders of the Company and Merger Sub, have duly approved and adopted this Agreement, the Agreement and Plan of Merger, and the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual benefits to be derived from this Agreement, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I**THE MERGER**

1.1 Merger; Effective Time of the Merger. Subject to the terms and conditions of this Agreement and pursuant to the California Corporations Code, Merger Sub will be merged with and into the Company, with the Company to be the surviving corporation (the Company after the Merger is sometimes referred to herein as the "Surviving Corporation"). The Merger will be effective (the "Effective Time") on the date upon which this Agreement and all required officers' certificates and other appropriate documents are accepted for filing by the Secretary of State of the State of California pursuant to Section 1103 of the California Corporations Code.

1.2 Effects of the Merger. At the Effective Time, the Merger will have all of the effects provided by applicable law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time: (a) the separate existence of Merger Sub will cease and Merger Sub will be merged with and into the Company, and the Company will become the Surviving Corporation pursuant to the terms of this Agreement; (b) the Third Amended and Restated Articles of Incorporation of the Company will be amended and restated as set forth on Exhibit A attached hereto; and (c) the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of the Company and Merger Sub shall become debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

1.3 Name. From and after the Effective Time, the name of the Surviving Corporation will be Softface, Inc.

ARTICLE II

EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE COMPANY AND MERGER SUB

2.1 Effect on Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of any holder of shares of capital stock of the Company or Merger Sub:

(a) Conversion of Capital Stock of Merger Sub. Each share of Common Stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time will be converted into and exchanged for 1 (one) duly authorized, validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

(b) Company Common Stock. Each share of Company Common Stock, no par value (the "Company Common Stock"), issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. Each share of Company Common Stock held in the treasury of the Company and each share of Company Common Stock held by Parent or any direct or indirect subsidiary of Parent or the Company immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(c) Company Preferred Stock. Each share of Series A Preferred Stock, no par value, of the Company (the "Company Series A Preferred Stock"), issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. Each share of Series B Preferred Stock, no par value, of the Company (the "Company Series B Preferred Stock"), issued and outstanding immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. Each share of Series C Preferred Stock, no par value, of the Company (the "Company Series C Preferred Stock"), collectively with the Company Series A Preferred Stock

and the Company Series B Preferred Stock, the "Company Preferred Stock"), issued and outstanding immediately prior to the Effective Time will be converted into the right to receive such amount of cash equal to the quotient (calculated to five decimal places) obtained by dividing (x) the Aggregate Merger Consideration (as defined below) by (y) the Fully Diluted Series C Preferred Stock Amount (as defined below). Each share of Company Preferred Stock held in the treasury of the Company and each share of Company Preferred Stock held by Parent or any direct or indirect subsidiary of Parent or the Company immediately prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto. As used in this Agreement, the following terms have the following meanings:

(i) "Aggregate Merger Consideration" means \$6,840,000 less (x) the Company Merger Expenses and (y) the Withheld Amount.

(ii) "Cash Payment Reductions" means any payments by the Company or obligations of the Company to make payments to employees of the Company or otherwise, pursuant to existing contractual obligations that are triggered either solely as a result of the Merger or by a combination of the Merger and the occurrence of another event or events (which event or events are expressly set forth in the agreement in question). Payments made pursuant to the Company's Amended and Restated Employee Retention Plan shall not constitute Cash Payment Reductions or otherwise reduce the Aggregate Merger Consideration.

(iii) "Company Merger Expenses" means the sum of (x) Cash Payment Reductions and (y) Expense Reductions.

(iv) "Expense Reductions" means all third-party expenses incurred by the Company in connection with the Merger (including expenses incurred on behalf of the Company in connection with the Merger subsequent to the Effective Time).

(v) "Fully Diluted Series C Preferred Stock Amount" means that number of shares of Company Series C Preferred Stock equal to the sum of (x) the number of shares of Company Series C Preferred Stock issued and outstanding immediately prior to the Effective Time and (y) the number of shares of Company Series C Preferred Stock issuable upon exercise, conversion and/or exchange of all securities issued and outstanding immediately prior to the Effective Time that are exercisable, convertible and/or exchangeable for shares of Company Series C Preferred Stock, whether or not then exercisable, convertible and/or exchangeable and whether or not vested or contingent.

(vi) "Withheld Amount" means the amount of any losses for which Parent and/or its affiliates is entitled to indemnification under Article IX of the Agreement and Plan of Merger.

(d) Conversion of Company Options. At the Effective Time, all outstanding options to purchase shares of Company Common Stock which are not exercised prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(e) Conversion of Company Warrants. At the Effective Time, all outstanding warrants to purchase shares of Company Common Stock or Company Preferred Stock which are not exercised prior to the Effective Time will be cancelled and extinguished without any conversion thereof and no payment or distribution will be made with respect thereto.

(f) Dissenters' Rights. If, as of the Effective Time, holders of the issued and outstanding shares of Company Common Stock and Company Preferred Stock are entitled to dissenters' rights pursuant to Chapter 13 of the California Corporations Code and have not lost such dissenters' rights in connection with the Merger (the "Dissenting Shares"), then such Dissenting Shares will not be treated in accordance with Section 2.1(b) and 2.1(c), above. All Dissenting Shares held by shareholders who have failed to perfect or who have lost or effectively withdrawn their rights to dissent shall thereupon be treated in accordance with Section 2.1(b) and 2.1(c), above.

2.2 No Further Rights in Company Common Stock and Company Preferred Stock. The treatment of Company Common Stock and Company Preferred Stock in accordance with Section 2.1(b)-(e), above, will be deemed to be in full satisfaction of all rights pertaining to such shares of Company Common Stock and Company Preferred Stock.

2.3 Supplementary Action. If, at any time after the Effective Time, any further assignments or assurances in law or any other things are necessary or desirable to vest or to perfect or confirm of record in the Surviving Corporation the title to any property or rights of either the Company or Merger Sub or otherwise to carry out the provisions of this Agreement, the officers and directors of the Surviving Corporation are hereby authorized and empowered, in the name of and on behalf of the Company and Merger Sub, to execute and deliver any and all things necessary or proper to vest or to perfect or confirm title to such property or rights in the Surviving Corporation, and otherwise to carry out the purposes and provisions of this Agreement.

ARTICLE III

TERMINATION

3.1 Termination. This Agreement may be terminated and the proposed Merger abandoned at any time prior to the Effective Time, whether before or after approval and adoption of the Merger and the Agreement and Plan of Merger by the respective shareholders of the Company and Merger Sub, by either party hereto upon (a) termination of the Agreement and Plan of Merger or (b) by the mutual consent of the Boards of Directors of the Company and Merger Sub.

ARTICLE IV

APPROVAL OF THE MERGER

4.1 The respective Boards of Directors of Parent, Merger Sub and the Company have duly approved and adopted this Agreement, the Agreement and Plan of Merger,

and the Merger. The holders of a majority of the shares of Company Common Stock and Company Preferred Stock, each voting as a separate class, have duly approved and adopted this Agreement, the Agreement and Plan of Merger, and the Merger. The holder of all the outstanding capital stock of Merger Sub has duly approved and adopted this Agreement, the Agreement and Plan of Merger, and the Merger.

ARTICLE V

MISCELLANEOUS

5.1. Entire Agreement; Amendments. This Agreement, the Agreement and Plan of Merger, and the schedules, exhibits and agreements referred to herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

5.2. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto without the prior written consent of the other parties hereto. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors, personal representatives and permitted assigns.

5.3. Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request for the purpose of carrying out or evidencing the transactions contemplated by this Agreement.

5.4. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed wholly within the State of California.

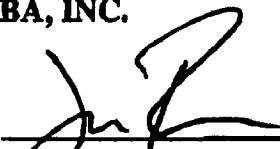
5.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original as regards any party whose signature appears thereon, and all of which together will constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

ARIBA, INC.

By: _____


James Frankola
Executive Vice President and Chief
Financial Officer

By: _____


David Middler
Secretary

CRYSTAL MERGER CORP.

By: _____


James Frankola
President

By: _____


David Middler
Secretary

SOFTFACE, INC.

By: _____

Olivier Sermet
President

By: _____

Alexander Saldanha
Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

ARIBA, INC.

By: _____
James Frankola
Executive Vice President and Chief
Financial Officer


By: _____
David Middler
Secretary

CRYSTAL MERGER CORP.

By: _____
James Frankola
President

By: _____
David Middler
Secretary

SOFTFACE, INC.

By: _____

Olivier Sermet
President

By: _____

Alexander Saldanha
Secretary

Exhibit A

Fourth Amended and Restated Articles of Incorporation

GDSVF&HS48113.3

E-1

PATENT
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FOURTH AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
SOFTFACE, INC.

The undersigned, James Frankola and David Middler, hereby certify that:

1. They are the duly appointed and acting President and Secretary, respectively, of this corporation.

2. The Third Amended and Restated Articles of Incorporation of this corporation shall be amended and restated to read in full as follows:

ONE: The name of this corporation is Softface, Inc.

TWO: 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.

THREE: This corporation is authorized to issue one (1) class of stock to be designated "Common Stock." The total number of shares which this corporation is authorized to issue is One Thousand (1,000) shares, par value \$0.001 per share.

FOUR: Section 1. The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. This corporation is authorized to indemnify the directors and officers of this corporation to the fullest extent permissible under California law (as defined in Section 317(g) of the California Corporations Code or elsewhere).

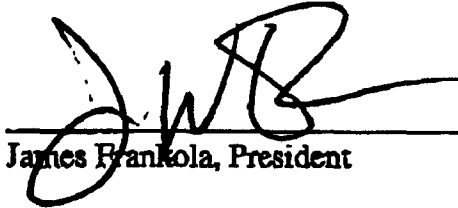
3. The foregoing Fourth Amended and Restated Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing Fourth Amended and Restated Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the Corporation entitled to vote with respect to the foregoing amendment and restatement was 1,000 shares of Common Stock. The number of shares voting in favor of the foregoing amendment and restatement equaled or exceed the vote required, such required vote being a majority of the outstanding shares of Common Stock, voting as a separate class.

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The undersigned declare under penalty of perjury under the laws of the State of California that they have read the foregoing Certificate and that the matters set forth in the foregoing Certificate are true and correct of their own knowledge.

Executed at Sunnyvale, California on March 31, 2004.



James Frankola, President

David Middler, Secretary

The undersigned declare under penalty of perjury under the laws of the State of California that they have read the foregoing Certificate and that the matters set forth in the foregoing Certificate are true and correct of their own knowledge.

Executed at Sunnyvale, California on March 31, 2004.

James Frankola, President



David Middler, Secretary

CERTIFICATE OF APPROVAL

OF

AGREEMENT OF MERGER

(SOFTFACE, INC.)

Olivier Sernet and Alexander Saldanha hereby certify that:

1. They are the President and the Secretary, respectively, of Softface, Inc., a California corporation (the "Company").
2. The Agreement of Merger by and among Ariba, Inc., a Delaware corporation ("Parent"), Crystal Merger Corp., a California corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and the Company in the form attached to this Certificate (the "Agreement of Merger"), was duly approved by the Board of Directors and by the shareholders of the Company. The Agreement of Merger provides for the statutory merger (the "Merger") of Merger Sub with and into the Company, with the Company to be the surviving corporation of the Merger.
3. The Company has authorized capital of 52,961,022 shares, 35,000,000 of which are designated Common Stock, no par value (the "Common Stock"), and 17,961,022 of which are designated Preferred Stock, no par value (the "Preferred Stock"), consisting of 1,358,450 shares of Series A Preferred Stock, 7,200,862 shares of Series B Preferred Stock and 9,401,710 shares of Series C Preferred Stock. The number of shares of Common Stock outstanding and entitled to vote upon the Merger was 6,025,275 shares. The number of shares of Series A Preferred Stock outstanding and entitled to vote upon the Merger was 1,358,450 shares. The number of shares of Series B Preferred Stock outstanding and entitled to vote upon the Merger was 5,414,184 shares. The number of shares of Series C Preferred Stock outstanding and entitled to vote upon the Merger was 8,979,888 shares.
4. The principal terms of the Agreement of Merger were approved by the shareholders of the Company by a vote that equaled or exceeded the vote required. The percentage vote required to approve the Agreement of Merger was the affirmative vote of the holders of a majority of the outstanding shares of the Common Stock and the Preferred Stock, voting as separate classes.

Each of 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: April 9, 2004



Olivier Sennet, President



Alexander Saldanha, Secretary

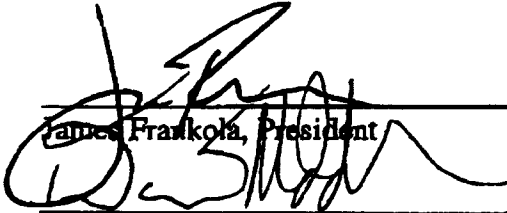
CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER
(CRYSTAL MERGER CORP.)

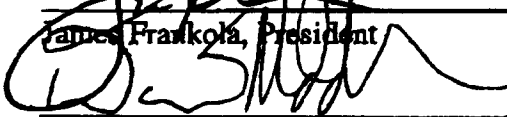
James Frankola and David Middler hereby certify that:

1. They are the President and the Secretary, respectively, of Crystal Merger Corp. ("Merger Sub"), a California corporation and wholly owned subsidiary of Ariba, Inc., a Delaware corporation ("Parent").
2. The Agreement of Merger by and among Parent, Merger Sub, and Softface, Inc., a California corporation (the "Company"), in the form attached to this Certificate (the "Agreement of Merger"), was duly approved by the Board of Directors and by the sole shareholder of Merger Sub. The Agreement of Merger provides for the statutory merger (the "Merger") of Merger Sub with and into the Company, with the Company to be the surviving corporation of the Merger.
3. Merger Sub has only one class of stock, which is Common Stock, par value \$0.001 per share (the "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 sole shareholder of Merger Sub by the vote of a number of shares of Common Stock that equaled or exceeded the vote required. The stockholder approval was by written consent of the holder of one hundred percent (100%) of the outstanding shares of Common Stock.
4. No vote of the stockholders of Parent was required under applicable law.

Each of 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: April 9, 2004



James Frankola, President


David Middler, Secretary



GDSVFAH548113.3

RECORDED: 08/01/2005

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