

02-17-2006

2/15/06



To the Honorable Commissioner of Patents and Trademark

103179183

py thereof.

1. Name of conveying party(ies):

Tolerant Systems, Inc.

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

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

Name: Tolerant Software, Inc.

Street Address: 350 Ellis Street

City Mountain View State CA ZIP 94043

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

3. Nature of Conveyance:

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

Execution Date: June 6, 1989

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

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

A. Patent Application No.(s)

B. Patent No.(s)

**4,819,159**

Additional numbers attached?  Yes  No

OFFICE OF PUBLIC RECORDS  
2006 FEB 15 PM 4: 22  
FINANCE SECTION

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

Name: B. Noel Kivlin

Internal Address: Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.

Street Address: P.O. Box 398

City Austin State TX ZIP 78767-0398

6. Total number of applications and patents involved: 1

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

- Fee Authorization Form Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 501505/5760-03900  
(Attach a 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.*

B. Noel Kivlin

Name of Person Signing  
Reg. No. 33,929

  
Signature

2-13-06

Date

Total number of pages: 10

OMB No. 0651-011 (exp.4/94)

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FILED BH  
In the office of the Secretary of State  
of the State of California

JUN 9 1989

CERTIFICATE OF AMENDMENT AND RESTATEMENT  
OF ARTICLES OF INCORPORATION OF  
TOLERANT SYSTEMS, INC.

*March Fong Eu*  
MARCH FONG EU, Secretary of State

RONALD HALEY and CHRISTOPHER DIER certify that:

1. They are the president and secretary, respectively, of TOLERANT SYSTEMS, INC., a California corporation.
2. The articles of incorporation of the corporation, as amended to the date of the filing of this certificate, including amendments set forth herein but not separately filed (and with the omissions required by Section 910 of the California Corporations Code) are restated in their entirety as attached hereto and made a part hereof by this reference.
3. The amendment and restatement set forth herein have been duly approved by board of directors.
4. The amendment and restatement set forth herein have been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the Corporations Code. The total number of outstanding shares of the corporation is 3,017,362 shares of common stock, 2,000,000 shares of Series A Preferred Stock, 2,250,000 shares of Series B Preferred Stock, 3,811,911 shares of Series C Preferred Stock, 917,192 shares of Series CC Preferred Stock and 15,603,402 shares of Series D Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50% of each class and more than 50% of the Series A, B and C voting as a single class and more than 50% of the Series A, B, C and CC voting as a single class.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: June 6, 1989

*Ronald Haley*  
\_\_\_\_\_  
Ronald Haley  
President

*Christopher Dier*  
\_\_\_\_\_  
Christopher Dier  
Secretary

9492D/33

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
TOLERANT SOFTWARE, INC.

I.

The name of the corporation is Tolerant Software, Inc.

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.

III.

The Corporation is authorized to issue two classes of shares designated "Common Stock" and "Preferred Stock," respectively. The number of shares of Common Stock authorized to be issued is 20,000,000, and the number of shares of Preferred Stock authorized to be issued is 10,000,000. The Preferred Stock may be issued from time to time in one or more series.

IV.

Of the authorized shares of Preferred Stock, 6,782,952 shares are designated as Series A Preferred Stock. The shares of Preferred Stock shall have the rights, preferences, privileges and restrictions set forth in this Article IV.

The Board of Directors is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon additional series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them. Subject to compliance with applicable protective voting rights which have been or may be granted to Preferred Stock or series thereof in Certificates of Determination or the corporation's Articles of Incorporation ("Protective Provisions"), but notwithstanding any other rights of any series of Preferred Stock, the rights, privileges, preferences and restrictions of any such additional series may be subordinate to, pari passu with (including,

without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote or written consent), or senior to any of those of any present or future class or Series of Preferred or Common Stock. Subject to compliance with applicable Protective Provisions, the Board of Directors is also authorized to increase or decrease the number of shares of any series (other than Series A Preferred Stock), prior or subsequent to the issue 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.

Upon the effectiveness of these Amended and Restated Articles of Incorporation (these "Articles"), each outstanding share of the former Series A Preferred Stock is converted into 0.0412 shares of the Series A Preferred Stock, each outstanding share of the former Series B Preferred Stock is converted into 0.1649 shares of the Series A Preferred Stock, each outstanding share of the former Series C Preferred Stock is converted into 0.1649 shares of the Series A Preferred Stock, each outstanding share of the former Series CC Preferred Stock is converted into 0.1942 shares of the Series A Preferred Stock and each outstanding share of the former Series D Preferred Stock is converted into 0.3302 shares of the Series A Preferred Stock and every fifty shares of Common Stock held by a shareholder shall be converted into or reconstituted as one Common Share. If any conversion or split pursuant to the ratios set forth above would result in the issuance of a fractional share, such fraction shall be rounded down to the nearest whole share and nothing shall be paid for such fractional share. Each share of Series A Preferred Stock issued upon such conversion shall be fully paid and nonassessable and shall be initially convertible into one share of Common Stock.

1. Definitions. For purposes of this Article IV, the following definitions shall apply:

(a) "Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock is the filing date of these Amended and Restated Articles of Incorporation for the Series A Preferred Stock.

(b) "Original Issue Price" shall mean \$0.4678447 per share for the Series A Preferred Stock.

(c) "Liquidation Preference" shall mean \$0.4678447 per share for the Series A Preferred Stock.

(e) "Initial Conversion Price" shall mean \$0.4678447 per share for the Series A Preferred Stock.

(f) "Dividend Rate" shall mean \$0.023 per share per annum for the Series A Preferred Stock.

(g) "Preferred Stock" shall mean the Series A Preferred Stock.

(h) "Company" shall mean the Corporation.

2. Liquidation Rights.

(a) Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Company, the holders of the Preferred Stock shall be entitled to receive, out of the assets of the Company, the Liquidation Preference (which shall be proportionately (i) increased in the event of a Preferred Stock combination and (ii) decreased in the event of a Preferred Stock split) specified for each share of Preferred Stock then held by them before any payment shall be made or any assets distributed to the holders of Common Stock.

(b) Priority. If upon the liquidation, dissolution or winding up of the Company, the assets to be distributed among the holders of the Preferred Stock is insufficient to permit the payment to such holders of the full Liquidation Preference for their shares, then the entire assets of the Company legally available for distribution shall be distributed pro rata among the holders of the Preferred Stock in proportion to the numbers of shares of Preferred Stock held by them multiplied by the Liquidation Preference for such shares of Preferred Stock.

(c) Remaining Assets. After the payment of the full preferential amounts specified herein, the remaining assets of the Company shall be distributed ratably to the holders of the Common Stock then outstanding.

(d) Reorganization. A consolidation or merger of the Company with or into any other corporation or corporations at a Company valuation of less than \$3,000,000, where the holders of the Company's securities hold less than a majority of the outstanding securities of the surviving corporation, or a sale of substantially all of the assets of the Company for less than \$3,000,000 shall be deemed to be a liquidation, dissolution or winding up of the Company within the meaning of this Section 2.

(e) Consent to Certain Transactions. Each holder of outstanding shares of Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to distributions made by the Company in connection with the repurchase of shares of Common Stock issued to or held by employees, officers, directors, consultants, or independent contractors of the Company pursuant

to agreements providing for the right of repurchase by the Company.

3. Conversion.

(a) Optional Conversion. The shares of Preferred Stock shall be convertible at the option of the holders thereof at any time after the date of issuance of such shares into fully paid and nonassessable shares of Common Stock of the Company at the Conversion Rate (defined below) then in effect for such shares of Preferred Stock.

(b) Automatic Conversion. All shares of Preferred stock shall automatically be converted into shares of Common Stock at the Conversion Rate then in effect upon the earliest of (i) June 30, 1990; (ii) the sale by the Company of at least \$1,000,000 of Preferred Stock at a pre-money valuation of at least \$5,000,000; or (iii) the effectiveness of a registration statement under the Securities Act of 1933, as amended, for an underwritten public offering covering the offer and sale of the Company's Common Stock. Upon such automatic conversion, the outstanding shares of Preferred Stock shall be converted into Common Stock without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent.

(c) Conversion Rate and Conversion Price. "Conversion Rate" shall mean the number of shares of Common Stock of the Company issuable upon conversion of the Preferred Stock and shall be determined by dividing the Original Issue Price for such stock by the Conversion Price from time to time in effect. "Conversion Price" shall initially be the Initial Conversion Price specified for the Preferred Stock, but shall be subject to adjustment from time to time as set forth in this Section 3.

(d) Stock Splits and Combinations. If the Company at any time after the Original Issue Date of the Preferred Stock effects a split or combination of its outstanding Common Stock without a proportionate and corresponding split or combination of its outstanding Preferred Stock, then the Conversion Price shall be proportionately decreased (in the case of a stock split) or proportionately increased (in the case of a stock combination).

(e) Stock Dividends and Distributions. If the Company at any time after the Original Issue Date of the Preferred Stock makes a dividend or other distribution (with the exception of a stock split covered by Section 3(d) above), without consideration, of additional shares of Common Stock, the Conversion Price then in effect shall be decreased as of the time of such distribution by multiplying the Conversion Price then 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 distribution and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately after such distribution. If the Company at any time after the Original Issue Date of the Preferred Stock makes a dividend or other distribution, without consideration, of securities of the Company other than shares of Common Stock, then provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common stock issuable upon conversion, the amount of securities of the Company that they would have received had their Preferred Stock been converted into Common Stock on the date of such distribution and had they thereafter retained such securities.

(f) Reclassification. In case of any reclassification of the capital stock of the Company, each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities to which a holder of the number of shares of Common Stock into which the Preferred Stock was convertible would have been entitled upon such reclassification, and appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions set forth herein with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth herein shall thereafter be applicable, as nearly as reasonably may be, in relation to any share of stock or other property thereafter deliverable upon conversion of the Preferred Stock.

(g) No Impairment. The Company will not, by amendment of its Articles of Incorporation (except as approved by the holders of the Preferred Stock as provided herein) or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance of sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section, but will at all times in good faith assist in the carrying out of all of the provisions of this Section 3 and in the taking of all such actions as may be necessary or appropriate in order to protect the conversion rights of holders of Preferred Stock against impairment.

(h) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Preferred Stock, the Company shall promptly compute such adjustment or readjustment in accordance with the terms of this Section 3 and shall prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any holder of Preferred

stock, furnish or cause to be furnished to such holder a like certificate.

(i) Notice of Record Dates. In the event of any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders of such securities who are entitled to receive a dividend or other distribution or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property of the Company, the Company shall mail to each holder of Preferred Stock a notice specifying the date on which such record was taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(j) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert such Preferred Stock into shares of Common Stock, such holder shall surrender the certificates for such shares, duly endorsed, at the office of the Company or of any transfer agent for the Preferred Stock and shall give written notice to the Company at such office that such holder elects to convert the same and shall state in the notice the name or names in which the certificates for shares of Common stock are to be issued. The Company shall then, as soon as is practicable, issue and deliver at such office to such holder of Preferred Stock, or to his nominee or nominee, a certificate or certificates for the number of shares of Common Stock to which he would be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the case of automatic conversion, the Company shall not be obligated to issue certificates of Common Stock unless certificates evidencing the converted shares of Preferred Stock are delivered either to the Company or its transfer agent.

(k) No Fractional Shares. No fractional shares shall be issued upon the conversion of any shares of Preferred Stock. All shares of Common Stock (including fractions issuable upon conversion of shares of Preferred Stock held by a single holder of such stock shall be aggregated for the purpose of determining whether the conversion would result in the issuance of a fractional share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction, a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Company).



(1) Reservation of Common Stock. The Company 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 Preferred Stock such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock. If at any time the number of authorized but unissued shares of Common stock shall not be sufficient to effect the conversion of the then outstanding shares of Preferred Stock, 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.

4. Dividends

(a) Right to Dividends. The holders of the then outstanding Preferred Stock shall be entitled to receive in cash, when, if and as declared by the Board, out of any funds legally available therefor, non-cumulative dividends at the Dividend Rate for such series, prior to the payment of any dividends (other than those payable solely in Common Stock) with respect to the Common Stock in any given fiscal year of the Company. Dividends on the Preferred Stock shall not be mandatory or cumulative and no rights shall accrue to the holders of the Preferred Stock in the event that the Company shall fail to declare or pay dividends on series of Preferred Stock at the Dividend Rate for such series in respect of that or any previous fiscal year, whether or not the earnings of the Company in that or any previous fiscal year were sufficient to pay such dividends in whole or in part.

(b) Priority. Unless full dividends on each series of Preferred Stock at the applicable Dividend Rate for such series of Preferred Stock for the then current fiscal year shall have been paid or declared and a sum sufficient for the payment thereof set apart, no dividend whatsoever (other than a dividend payable solely in Common Stock) shall be paid or declared, and no distribution shall be made, on any Common Stock.

5. Voting. The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted, shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except where a class vote is required by applicable law), and shall be entitled to notice of any shareholders' meeting in accordance with the By-Laws of the Company. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be ignored.

6. Notices. Any notice required by the provisions of this Article to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Company.

V.

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

VI.

The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code), through bylaw provisions, by agreement or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

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