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CERTIFICATE OF DETERMINATION

OF

SERIES A PREFERRED SHARES

OF

APERIO TECHNOLOGIES, INC.,

a California corporation

**FILED**  
in the Office of the Secretary of State  
of the State of California

OCT 10 2001

*Bill Jones*  
BILL JONES, Secretary of State

Dirk Soenksen and Kathleen Soenksen certify:

A. They are the President and Secretary, respectively, of Aperio Technologies, Inc., a California corporation.

B. The authorized number of the Corporation's capital shares is 100,000,000, of which 60,000,000 is common shares ("Common Shares") and 40,000,000 is preferred shares. The number of preferred shares constituting Series A Preferred Shares (the series affected by this Certificate of Determination and the resolution set forth below) is 8,250,000. No Series A Preferred Shares have been issued.

C. Pursuant to authority granted by the Corporation's Articles of Incorporation, the following resolution has been duly adopted and approved by the Corporation's Board of Directors.

Resolution of the Board of Directors

WHEREAS, the Articles of Incorporation of this Corporation provide for a class of Preferred Shares, issuable from time to time in one or more series; and

WHEREAS, the Board of Directors of this Corporation is authorized to determine or alter the rights, preferences, privileges, and restrictions granted to or imposed on any wholly unissued series of Preferred Shares, to fix the number of shares constituting such series, and to determine the designation of that series, or any of them; and

WHEREAS, this Corporation has not issued any Preferred Shares and the Board of Directors of this Corporation desires, pursuant to its authority, to determine and fix the rights, preferences, privileges and restrictions relating to the initial series of Preferred Shares, the number of shares constituting such series and the designation of such series.

THEREFORE, BE IT RESOLVED, as follows:

1. Name of Series of Preferred Shares. The Board of Directors of this Corporation hereby authorizes the original issue of a series of Preferred Shares which shall be designated and

known as Series A Preferred Shares, with the rights, preferences, privileges and restrictions set forth herein.

2. Number of Series A Preferred Shares Authorized. The number of Series A Preferred Shares shall be Eight Million Two Hundred Fifty Thousand (8,250,000).

3. No Assessments. The Series A Preferred Shares shall be non-assessable.

4. Dividends. In each fiscal year of the Corporation, the holders of Series A Preferred Shares ("Holders") shall be entitled to receive before any cash dividends shall be paid or set aside for the Common Shares in such year, when and as cash dividends are declared and paid upon or set aside for the Common Shares in such fiscal year, by the Board of Directors of the Corporation, out of funds legally available for that purpose, dividends payable in cash in an amount per share for such fiscal year at least equal to the per share amount, if any, of any cash dividend declared and to be paid or set aside for the Common Shares during such fiscal year, multiplied by the number of shares of Common Shares into which each Series A Preferred Share is then convertible. All dividends declared upon the Series A Preferred Shares shall be declared pro rata per share.

5. Liquidation Preference.

(a) Initial Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the Holders shall be entitled to receive, whether from capital, surplus, or earnings, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock or any other shares ranking in liquidation junior to the Series A Preferred Shares, an amount per share equal to Forty Cents (\$0.40) in United States Dollars (subject to adjustment for any share dividend, share split, subdivision or combination of shares), plus the aggregate of any declared and unpaid dividends thereon. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of Series A Preferred Shares shall be insufficient to permit payment to the holders of Series A Preferred Shares of the full preferential amount to which they shall be entitled, then the assets and funds of the Corporation available for distribution shall be divided ratably among the Holders in proportion to the respective amounts which would be payable upon such distribution in respect of the Series A Preferred Shares held by each of them if the preferential amount were paid in full.

(b) No Subsequent Participation Upon Liquidation. Upon the completion of the distribution required by Section 5(a) above, the holders of the Series A Preferred Shares shall be entitled to no further participation in the distribution of assets of the Corporation and the remaining assets of the Corporation shall be distributed among the holders of Common Shares and any other classes or series of preferred shares of the Corporation in accordance with their respective terms.

6. Pre-Emptive Rights.

(a) Grant of Certain Pre-Emptive Rights. Each Holder shall have the option, but not the obligation, to purchase any future offerings of Common Shares, or any options.

warrants, or other securities exchangeable for or convertible into Common Shares or evidencing any right to subscribe for, purchase, or otherwise acquire Common Shares or securities exchangeable for or convertible into Common Shares, which the Corporation may issue for cash, evidence of indebtedness payable at sight, upon presentation or upon demand, or having a due date of less than one year at the time of receipt by the Corporation. The portion of the securities each Holder shall have the initial right to purchase in any issuance subject to this paragraph shall be in the same ratio of the total number of securities to be issued as the number of Common Shares into which the Series A Preferred Shares shall be convertible and held of record by that Holder bears to the total number of all Common Shares outstanding and the number of Common Shares into which all of the Series A Preferred Shares outstanding would be convertible immediately prior to such issuance.

(b) Excluded Securities. Notwithstanding the foregoing, and without first offering the same to the Holders, the Corporation may issue Common Shares or securities exchangeable for or convertible into Common Shares as follows:

- (i) in exchange for capital stock or indebtedness of the Corporation;
- (ii) to fulfill or comply with any obligation of the Corporation to issue Common Shares pursuant to any present or future stock option plan, stock purchase, bonus, savings investment, or other employee benefit plan for the benefit of the employees, directors or consultants to the Corporation or subsidiaries of the Corporation; or
- (iii) upon conversion of any convertible securities, the issuance of which was approved by the Holders of a majority of the outstanding Series A Preferred Shares.

(c) Pre-Emptive Rights Procedures. After giving written notice of any proposed issuance of securities to the Holders at their address or record on the books of the Corporation and affording the Holders the opportunity to purchase the securities being offered subject to this paragraph during a period of not less than ten (10) days after the date of giving such written notice, the Corporation may thereafter sell any of those securities that are not purchased by Holders without further offering them to Holders.

7. Conversion. The holders of Series A Preferred Shares shall have conversion rights as follows (the "Conversion Rights"):

(a) Conversion Events

(i) Election of Series A Preferred Shareholders. Each Series A Preferred Share shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation into such number of fully paid and nonassessable Common Shares as is determined by dividing \$0.40 by the Conversion Price in effect at the time for such share. The initial Conversion Price per share shall be \$0.40; provided, however, the Conversion Price shall be subject to adjustment as set forth in subsection 7(c) below.

(ii) Automatic Conversion Events. Each Series A Preferred Share shall automatically be converted into Common Shares, based on the Conversion Price in effect for such Series A Preferred Shares, upon the first to occur:

(A) Written demand to the Corporation by a majority of the then outstanding Series A Preferred Shares; or

(B) The consummation of the Corporation's sale of its Common Stock in a bona fide, firm commitment underwriting pursuant to a filed and effective registration statement under the Securities Act of 1933, as amended; or

(C) The consummation of a merger of this Corporation into another business entity, provided this Corporation is not the surviving entity following such merger; or

(D) The sale of substantially all of the outstanding shares of the Corporation to a single purchaser or to any group acting in concert in connection with a single transaction if such transaction is approved by the holders of a majority of the then outstanding Common Shares.

(b) Conversion Procedures. Before any Holder shall be entitled to convert Series A Preferred Shares into Common Shares, the Holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Shares, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such Holder, or to the nominee or nominees of such Holder, a certificate or certificates for the number of Common Shares to which such Holder shall be entitled as aforesaid such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Series A Preferred Shares to be converted, and the person or persons entitled to receive the Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Shares as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any Holder tendering Series A Preferred Shares for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Shares issuable upon such conversion of the Series A Preferred Shares shall not be deemed to have converted such Series A Preferred Shares until immediately prior to the closing of such sale of securities.

(c) Adjustments to Conversion Price.

(i) Adjustments for Dividends, Splits, Subdivisions, Combinations, or Consolidation of Common Shares. In the event the outstanding Common Shares of the Corporation shall be increased by stock dividend payable in Common Shares, stock split, subdivision, or other similar transaction occurring after the filing of this Certificate of

Determination, the Conversion Price then in effect shall, concurrently with the effectiveness of that event, be decreased in proportion to the percentage increase in the outstanding number of Common Shares. In the event the outstanding Common Shares shall be decreased by reverse stock split, combination, consolidation, or other similar transaction occurring after the filing of this Certificate of Determination, into a lesser number of Common Shares, the Conversion Price then in effect shall, concurrently with the effectiveness of that event, be increased in proportion to the percentage decrease in the outstanding number of Common Shares.

(ii) Adjustments for Other Distributions. In the event the Corporation at any time, or from time to time, makes or fixes a record date for the determination of holders of Common Shares entitled to receive any distribution payable in securities of the Corporation other than Common Shares and other than as otherwise adjusted in this Article, provision shall be made so that the Holders shall receive upon conversion thereof, in addition to the number of Common Shares receivable thereupon, the amount of securities of the Corporation that they would have received had their Series A Preferred Shares been converted into Common Shares on the date of that event and had they thereafter, during the period from the date of that event to and including the date of conversion, retained those securities receivable by them during that period, subject to all other adjustments called for during that period under this Article with respect to the rights of the Holders.

(iii) Adjustments for Reclassification, Exchange and Substitution. If the Common Shares issuable upon conversion of the Series A Preferred Shares shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price then in effect for the Series A Preferred Shares shall, concurrently with the effectiveness of the reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Shares shall be convertible into, in lieu of the number of Common Shares that the Holders would otherwise have been entitled to receive, a number of shares of that other class or classes of stock equivalent to the number of Common Shares that would have been subject to receipt by the holders upon conversion of their Series A Preferred Shares immediately before that change.

(iv) Adjustments for Issuance of Certain Securities.

(A) The Conversion Price shall be subject to adjustment (calculated to the nearest cent) from time to time if the Corporation shall issue any "Additional Shares" (as defined below). The Conversion Price shall (except as otherwise provided in this subparagraph 7(c)(iv)) be adjusted, concurrently with such issue, to equal the following:

(I) the number of Common Shares outstanding immediately prior to such issuance of Additional Shares plus the number of Common Shares into which all other classes or series of securities of the Corporation are convertible and which are outstanding immediately prior to such issuance of Additional Shares shall be multiplied by the Conversion Price in effect immediately prior to such issuance, and the resulting product shall be added to the aggregate consideration, if any, received by the Corporation upon such issuance of Additional Shares; and

(II) the sum so obtained shall be divided by the number of Common Shares outstanding immediately after such issuance of Additional Shares plus the number of Common Shares into which all other classes or series of securities of the Corporation are convertible and which are outstanding immediately after such issuance of Additional Shares.

(B) No adjustment of the Conversion Price shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into accounting any subsequent adjustment.

(C) No adjustment to the Conversion Price shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(D) Adjustments to the Conversion Price pursuant to this subparagraph 7(c)(iv) shall cease in connection with (i) any offering of securities in which less than eighty percent (80%) of the outstanding Series A Preferred Shares fail to exercise their preemptive rights under Paragraph 6 above and (ii) all offerings of securities by the Corporation thereafter.

(E) "Additional Shares" shall mean any Common Shares or any securities exchangeable for or convertible into Common Shares, except issuance of options or other rights pursuant to any present or future stock option plan, stock purchase, bonus, savings investment, or other employee benefit plan for the benefit of the employees, directors or consultants to the Corporation or subsidiaries of the Corporation.

(d) No Impairment. The Corporation will not, by amendment of its Articles of Incorporation or any Certificate of Determination, nor through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or 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 hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 7 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Series A Preferred Shares against impairment.

(e) No Fractional Shares: Certificate as to Adjustment.

(i) No fractional shares of Common Shares shall be issued upon conversion of the Series A Preferred Shares. The Company shall, in lieu of issuing any fractional share, pay the holder entitled to such fraction a sum in cash equal to such fraction multiplied by the then effective fair value of a share of Common Shares (as determined by the Company's board of directors, acting in good faith, whose determination shall be conclusive and binding).

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 7, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and cause its chief financial officer to verify such computation and prepare and furnish to each holder of Series A

Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Shares, furnish or cause to be furnished to such holder of Series A Preferred Shares a certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price in effect at the time, and (C) the number of shares of Common Shares and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A Preferred Shares.

(f) Notices of Record Date. In the event of 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 (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(g) Issue Taxes. The Corporation shall pay any and all issue and other taxes (other than income taxes) that may be payable in respect of any issue or delivery of Common Shares on conversion of Series A Preferred Shares: provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(h) 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 Shares solely for the purpose of effecting the conversion of the shares of the Series A Preferred Shares such number of its shares of Common Shares as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Shares; and if at any time the number of authorized but unissued shares of Common Shares shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Shares, in addition to such other remedies as shall be available to the holder, 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 Shares to such number of shares as shall be sufficient for such purposes.

(i) Notices. Any notice required by the provisions of this Section 7 to be given to the holders of Series A Preferred Shares shall be deemed given five (5) days after it is deposited in the United States mail, certified mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

## 8. Voting Rights.

(a) General Rule. Except as otherwise provided below, the holder of each issued and outstanding share of Series A Preferred Shares shall be entitled to the number of votes equal to the number of shares of Common Shares deliverable upon conversion of such Series A Preferred Shares as of the record date on any and all matters presented to the shareholders of the Corporation for their action or consideration. Except as provided below, or as to those matters

required by law to be submitted to a class vote, holders of Series A Preferred Shares and holders of Common Shares shall vote together as a single class. Except as provided below, with respect to such votes, the voting rights of each share of Series A Preferred Shares, as if converted to Common Shares, shall be equal to the voting rights of each share of Common Shares. Fractional votes shall not, however, be permitted, and any fractions resulting from the above formula shall be disregarded in computing voting rights. A holder of Series A Preferred Shares shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of the Corporation.

(b) Election of Directors. Commencing with the filing of this Certificate of Determination and continuing at each annual meeting of shareholders thereafter, except as provided in subparagraph 8(b)(ii) below, so long as Series A Preferred Shares remain outstanding, the Holders, voting as a class, shall be entitled to elect two (2) directors of the Corporation. Any director so elected shall hold office until the next annual meeting of shareholders and may not be removed from the board except by a vote of the Series A Preferred Shares, voting as a series. In the event any director elected under the provision of this section 8(b) is removed or resigns from the board of directors, a new director shall be elected by the holders of the Series A Preferred Shares voting as a series, to serve on the board of directors of the Corporation until the next annual meeting of the shareholders.

(ii) Notwithstanding the foregoing, the Holders shall elect only one (1) director commencing the earlier of such time as (A) the Corporation shall sell additional capital shares for aggregate cash proceeds in excess of Two Million Dollars (\$2,000,000), or (B) the Corporation completes development of the ScanScope product.

(c) Other Excluded Acts. To the maximum extent permitted by law, the right of the Holders to vote on any of the following actions of the Corporation is hereby eliminated:

(i) the sale of substantially all of the assets of the Corporation not in the ordinary course of business of the Corporation;

(ii) any reorganization of the Corporation in which the Corporation is not the surviving or acquiring entity.

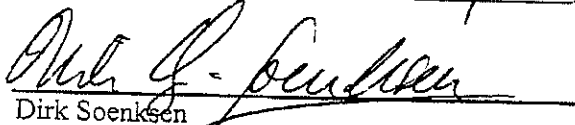
9. Protective Provisions. In addition to any other rights provided by law, so long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not take any action which adversely alters or changes any of the rights, preferences or privileges of the shares of Series A Preferred Shares so as to affect such shares adversely without first obtaining the approval (by vote or written consent, as provided by law) of a majority of the then outstanding Series A Preferred Shares.

10. Co-Sale. The Holders of the Series A Preferred Shares agree to participate in any sale of substantially all of the outstanding shares of the Corporation to a single purchaser or to any group acting in concert in connection with a single transaction provided that such transaction is approved by a majority vote of the holders of Common Shares and holders of Series A Preferred Shares (as if converted to Common Shares) voting together as a single class.



11. Status of Redeemed or Converted Stock. In the event any Series A Preferred Shares shall be redeemed or converted, the shares so converted or redeemed shall be cancelled and shall not be issuable by the Corporation, and this Certificate of Determination shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized number of Series A Preferred Shares.

In witness whereof, the undersigned have executed this Certificate on 10/1,  
2001.

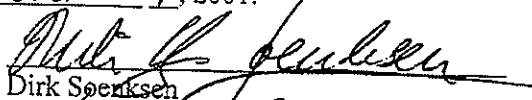
  
Dirk Soenksen

  
Kathleen Soenksen

VERIFICATION

The undersigned, Dirk Soenksen and Kathleen Soenksen, respectively the President and Secretary of Aperio Technologies, a California corporation, each declares under penalty of perjury that the matters set forth in the foregoing certificate are true of his own knowledge.

Executed at Carlsbad, California on October 1, 2001.

  
Dirk Soenksen

  
Kathleen Soenksen

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