

KAY RICHARD A
Form SC 13D/A
June 03, 2002

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE 13D/A
Under the Securities Exchange Act of 1934**

Amendment No. 1

Legato Systems, Inc.

(Name of Issuer)

Common Stock

(Title of Class of Securities)

524651 10 6

(CUSIP Number)

**Richard A. Kay
OTG Software, Inc.
2600, Tower Oaks Blvd.
Rockville, MD 20854**

with a copy to:

**Michael A. Schlesinger, Esq.
Latham & Watkins
555 Eleventh Street, NW Suite 1000
Washington, D.C. 20004
(202) 637-2200**

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

May 31, 2002

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(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(f), check the following box. "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7(b) for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

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1. NAME OF REPORTING PERSON RICHARD A. KAY

SS. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)
(b)

3. SEC USE ONLY

4. SOURCE OF FUNDS

SC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(D) OR 2(E)

6. CITIZENSHIP OR PLACE OF ORGANIZATION

UNITED STATES

7. SOLE VOTING POWER

7,906,522

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY

8. SHARED VOTING POWER

10,314

EACH
REPORTING
PERSON
WITH

9. SOLE DISPOSITIVE POWER

7,906,522

10. SHARED DISPOSITIVE POWER

10,314

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

7,916,836 (See Item 5(a))

12. CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.9%

14. TYPE OF REPORTING PERSON

IN

CUSIP NO. 524651 10 6

Item 1. Security and Issuer.

This Amendment No. 1 to Schedule 13D (the "Amendment") amends and restates the Schedule 13D filed on May 24, 2002 by Richard A. Kay with respect to 7,916,836 shares of common stock, \$0.0001 par value per share (the "Common Stock"), of Legato Systems, Inc. (the "Issuer" or "Company"), a Delaware corporation whose principal business address is 3210 Porter Drive, Palo Alto, CA 94304.

Item 2. Identity and Background.

Richard A. Kay (the "Reporting Person"), an individual citizen of the United States of America, has been appointed as a director of the Company and serves as the chief executive officer of OTG Software, Inc. ("OTG"), a Delaware corporation and a wholly-owned subsidiary of the Company. The principal business address of the Reporting Person is c/o OTG Software, Inc., 2600 Tower Oaks Boulevard, Rockville, MD 29852.

During the last five years, the Reporting Person has not been (i) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) a party to any civil proceeding of a judicial or administrative body of competent jurisdiction that, as a result of such proceeding, rendered the Reporting Person subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws, or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration.

This Schedule 13D relates to (i) 5,204,189 shares of Common Stock held by the Reporting Person, (ii) options held by the Reporting Person to purchase 171,900 shares of Common Stock at an effective exercise price of \$5.4542 per share, of which (A) 50% of such options became exercisable upon consummation of the Merger Agreement (as defined below), (B) 25% of the unvested options will become exercisable on May 31, 2002 and (C) the remaining unvested options will become exercisable in 12 equal quarterly installments over the three-year period thereafter, subject to the Company's continued employment of the Reporting Person, (iii) 133,708 shares of Common Stock held by Rebecca J. Kay, the spouse of the Reporting Person, (iv) 142,517 shares of Common Stock held by the Brandon Kay November 1999 Grantor Retained Annuity Trust, a trust organized under the laws of the State of Maryland and of which the Reporting Person is the trustee, (v) 194,950 shares of Common Stock held by the Brandon Kay June 1999 Grantor Retained Annuity Trust, a trust organized under the laws of the State of Maryland and of which the Reporting Person is the trustee, (vi) 886,800 shares of Common Stock held by the Richard A. Kay Charitable Remainder Unitrust, a trust organized under the laws of the State of Maryland and of which the Reporting Person is the trustee, (vii) 48,774 shares of Common Stock held by Richard and Rebecca Kay Foundation, a foundation organized under the laws of the State of Maryland and of which the Reporting Person is the sole director and president, (viii) 362,056 shares of Common Stock held by the Bradley Evan Kay November 1999 Grantor Retained Annuity Trust, a trust organized under the laws of the State of Maryland and of which the Reporting Person is the trustee, (ix) 362,056 shares of Common Stock held by the Amanda Jean Kay November 1999 Grantor Retained Annuity Trust, a trust organized under the laws of the State of Maryland and of which the Reporting Person is the trustee, (x) 10,314 shares of Common Stock held by the Kay Children's 2001 Education Trust, a trust organized under the laws of the State of Maryland and of which the Reporting Person is one of two trustees, and (xi) 399,572 shares of Common Stock owned by the Reporting

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Person's minor child (collectively, the Related Entities). The Related Entities hold a total of 7,916,836 shares of Common Stock, which represents 6.9% of the Company's outstanding shares, based upon 114,923,071 total shares of Common Stock issued and outstanding as of May 22, 2002.

Pursuant to that certain Agreement and Plan of Merger by and among the Company, OTG, and Orion Acquisition Sub Corp. (Orion), dated as of February 20, 2002 (the Merger Agreement), the shares of common stock of OTG held by the Related Entities were exchanged for common stock of the Company effective as of May 14, 2002. Under the terms of the Merger Agreement, each share of common stock of OTG was converted into 0.6876 shares of Common Stock of the Company and a cash payment of \$2.50. With respect to the OTG common stock held by the Related Entities other than the persons identified in clauses (iii), (x) and (xi) of the foregoing paragraph (the Subject Holders), the total merger consideration payable in respect of the shares of the Subject Holders (other than such shares of the Reporting Person) was allocated among the Subject Holders such that the cash portion of the merger consideration was distributed solely to the Reporting Person, and an offsetting number of shares of Common Stock was distributed on a pro rata basis to each of the Subject Holders. The foregoing summary is qualified in its entirety by reference to the Merger Agreement included as Annex A-1 to the Registration Statement on Form S-4 of the Company, filed as of March 15, 2002, and incorporated herein by reference.

The Reporting Person acquired beneficial ownership of the shares of Common Stock described in this Schedule 13D in exchange for a total of 11,263,722 shares of OTG common stock beneficially held by the Reporting Person prior to the consummation of the Merger Agreement. The Reporting Person's options to purchase shares of Common Stock of the Company were assumed by the Company on May 14, 2002 pursuant to the Merger Agreement and were converted from an option to purchase 250,000 shares of OTG common stock at an exercise price of \$6.25 per share.

Item 4. Purpose of Transaction

On May 14, 2002, the Company acquired OTG pursuant to the Merger Agreement described in Item 3 above. Under the Merger Agreement, OTG was merged with and into Orion, a wholly-owned subsidiary of the Company. In connection with the Merger Agreement, the Subject Holders and the Company entered into a certain Voting Agreement, dated as of February 20, 2002 (the Voting Agreement), pursuant to which the Subject Holders agreed to vote their shares in favor of the merger and to irrevocably appoint the Company or its nominee as their proxy. In addition, the Subject Holders agreed to refrain from disposing of beneficial ownership of any of their shares during the term of the Voting Agreement, which expired upon the consummation of the Merger Agreement. The foregoing summary is qualified in its entirety by reference to the copy of the Voting Agreement filed as Exhibit 2 to Schedule 13D of the Company, filed as of March 1, 2002, and incorporated herein by reference.

The Common Stock held directly or indirectly by the Reporting Person is being held for investment purposes. The Reporting Person has established a Sales Plan (defined below) under Rule 10b5-1 covering 3,000,000 of his shares of Common Stock for the purpose of disposing of a portion of his holdings in an orderly manner and achieving greater liquidity. See Item 6. In addition, the Reporting Person expects to evaluate on an ongoing basis the Company's financial condition, business

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operations and prospects, the status of any business combination involving the Company, if any, the market price of the Common Stock, conditions in the securities market generally, general economic and industry conditions, and other factors that may arise. The Reporting Person has no other current specific plan or intention in connection with the Common Stock.

The Reporting Person has no plans or proposals which relate to or would result in any of the actions or transactions described in paragraphs (b) through (j) of the instructions to Item 4 of Schedule 13D.

Item 5. Interest and Securities of the Issuer.

(a) The Reporting Person is deemed to beneficially own, directly or indirectly, 7,916,836 shares of Common Stock, representing 6.9% of the total issued and outstanding Common Stock, based upon 114,923,071 total shares of Common Stock issued and outstanding as of May 22, 2002. See Item 3.

(b) The Reporting Person has the power to vote, direct the vote, dispose or direct the disposition of 7,906,522 of the shares of Common Stock covered by this Schedule 13D and shares with one other trustee the power to vote, direct the vote, dispose or direct the disposition of 10,314 shares of Common Stock covered by this Schedule 13D. See Item 3.

(c) The transactions described in Item 4 above are the only transactions effected during the last 60 days by the Reporting Person.

(d) Not Applicable.

(e) Not Applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

The Reporting Person has entered into a Sales Plan, dated as of May 31, 2002 (the Sales Plan), with Goldman, Sachs & Co., pursuant to Rule 10b5-1. Under the Sales Plan, the Reporting Person is obligated to sell up to 3,000,000 shares of Common Stock, which represents 37.9% of the shares of Common Stock reported on this Schedule 13D, unless the Sales Plan is terminated pursuant to its terms. The Sales Plan provides for the sale on each trading day commencing June 17, 2002 through and including June 13, 2003 of the number of shares of Common Stock to be sold pursuant to limit orders as specified in the Sales Plan. The foregoing summary is qualified in its entirety by reference to the copy of the Sales Plan attached hereto as Exhibit 10.1.

Except as described above, the Reporting Person does not have any contracts, arrangements, understandings or relationships with any person with respect to any securities of the Company.

Item 7. Materials to be Filed as Exhibits.

- Exhibit 10.1: Sales Plan, dated as of May 31, 2002, by and between Richard A. Kay and Goldman, Sachs & Co. (filed herewith)
- Exhibit 99.1: Merger Agreement (filed as Annex A-1 to the Company's Registration Statement on Form S-4 filed on March 15, 2002, File No. 333-84420, and incorporated by reference herein)
- Exhibit 99.2: Voting Agreement (filed as Exhibit 2 to the Company's Schedule 13D filed on March 1, 2002, File No. 005-61115, and incorporated by reference herein)

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SIGNATURES

After reasonable inquiry and to the best of our knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct.

Dated: June 3, 2002

/s/ Richard A. Kay

Richard A. Kay