

ESTTA Tracking number: **ESTTA8992**

Filing date: **05/20/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Surety, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	12950 Worldgate Drive Suite 150 Herndon, VA 20170 UNITED STATES		

Attorney information	Stephanie A. Hale Sommer Barnard Ackerson Attorneys, PC One Indiana Square Suite 3500 Indianapolis, IN 46204 UNITED STATES shale@sbalawyers.com Phone:317-713-3500		
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Applicant Information

Application No	78208007	Publication date	04/20/2004
Opposition Filing Date	05/20/2004	Opposition Period Ends	05/20/2004
Applicant	FORUM SYSTEMS, INC.		

Goods/Services Affected by Opposition

Class 009. First Use: First Use In Commerce:

All goods and services in the class are opposed, namely: Computer software for validating public key information for use in the field of electronic and collaborative design and document validation and verification

Attachments	Enotary Opposition Pg1.tif (1 page) Enotary Opposition Pg2.tif (1 page) Enotary Opposition Pg3.tif (1 page) Enotary Opposition Pg4.tif (1 page) Exhibit A Page 1 ENOTARY.tif (1 page) Exhibit A Page 2 ENOTARY.tif (1 page) Exhibit B Page 1 ENOTARY.tif (1 page) Exhibit B Page 2 ENOTARY.tif (1 page)
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Signature	/sah/
Name	Stephanie A. Hale
Date	05/20/2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 78/208,007
Filed: January 28, 2003
For the mark: ENOTARY
Published in the Official Gazette on April 20, 2004

Surety, LLC,)
Opposer,)
v.) Opposition No.: _____
Forum Systems, Inc.,)
Applicant,) 45 West 10000 South,
Suite 415) Salt Lake City, Utah
84070)

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

NOTICE OF OPPOSITION

Surety, LLC, a limited liability company organized and existing under the laws of the State of Delaware, believes that it will be damaged by registration of the mark shown in Serial No. 78/208,007 in International Class 9 (computer software for validating public key information for use in the field of electronic and collaborative design and document validation and verification) and hereby opposes the same.

As grounds for opposition, it is alleged that:

(1) Opposer, Surety, LLC, is a limited liability company organized and existing under the laws of the State of Delaware. Opposer has a place of business at 12950 Worldgate Drive, Suite 150, Herndon, Virginia 20170.

(2) Opposer or its predecessors in interest have since 1994 used the mark DIGITAL NOTARY in connection with computer software for use in the field of

document verification, namely software to assist and effect the time-stamping of computer-generated files in digital format in International Class 9. Opposer is submitting herewith as part hereof and marked as Exhibit A, Registration No. 2,423,581 issued on January 23, 2001.

(3) Opposer or its predecessors in interest have since 1995 used the mark DIGITAL NOTARY in connection with document verification services, namely, time-stamping of computer-generated files for others in International Class 42. Opposer is submitting herewith as part hereof and marked as Exhibit B, Registration No. 2,178,724 issued August 4, 1998.

(4) Applicant seeks to register ENOTARY as a trademark for computer software for validating public key information for use in the field of electronic and collaborative design and document validation and verification in International Class 9 on an "intent-to-use" basis, as evidenced by the publication of said mark in the Official Gazette on page 249 of the April 20, 2004 issue.

(5) There is no issue of priority. Applicant's date of first use is subsequent to the dates of issuance of Opposer's Registrations 2,178,724 and 2,423,581, with dates of first use of April 1995, and 1994 respectively.

(6) Opposer has sold and continues to sell its goods and services listed in the aforesaid registrations under the aforesaid marks throughout the United States. Opposer has acquired substantial and valuable goodwill with respect to the marks covered by the aforesaid registrations.

(7) By virtue of Opposer's efforts, the expenditure of considerable sums for promotional activities and the excellence of Opposer's products and services, Opposer has gained for its above-identified marks a valuable reputation.

(8) The trademark proposed for registration by Applicant, namely, ENOTARY, is substantially similar to Opposer's mark DIGITAL NOTARY, and is applied to the identical goods as those sold by Opposer, are used in similar channels of commerce, are directed to similar customers, and so nearly resembles Opposer's marks as to be likely to be confused therewith and mistaken thereof. Applicant's mark is deceptively similar to Opposer's marks as to cause confusion and lead to deception as to the origin of Applicant's goods bearing Applicant's mark.

(9) If Applicant is permitted to use and register its mark for its goods, as specified in the application herein opposed, there will be substantial confusion in the marketplace resulting in damage and injury to Opposer. Persons familiar with Opposer's marks would be likely to buy Applicant's goods believing the products to be made and sold by Opposer. Any such confusion inevitably would result in a loss of sales to Opposer. Further, any defect, objection or fault found with Applicant's products marketed under its mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for its products and services merchandised under its DIGITAL NOTARY marks.

(10) If Applicant were granted the registration herein opposed, it would thereby obtain at least *a prima facie* exclusive right to use of its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that the application Serial No. 78/208,007 be rejected, and that the mark therein sought for the goods herein specified in International Class 9 be denied and refused.

Opposer hereby gives notice under Rule 2.122(d) of the Rules of Practice that after hearing and in any appeal on this opposition proceeding, it will rely on its registrations which are annexed hereto as exhibits to this Notice of Opposition as evidence in support of this Notice of Opposition.

The undersigned Opposer hereby consents and appoints Michelle Kaiser Bray and Stephanie A. Hale, each a member of the Bar of the State of Indiana, whose address is Sommer Barnard Ackerson Attorneys, PC, One Indiana Square, Suite 3500, Indianapolis, Indiana 46204, (317) 713-3500, as its duly authorized agents and attorneys in the matter of the opposition above-identified to prosecute said opposition, to transact all business in the Patent and Trademark Office and in the United States courts in connection with this opposition, to sign their names to all papers which may hereinafter be filed in connection therewith, and to receive all communications relating to the same.

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