

Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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Complaint on Electronic Postmark®  
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Docket No. C2004-2

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE  
(USPS/DS-T1-1-10)  
(June 8, 2006)

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Digistamp witness Rick Borgers hereby files his responses to the following interrogatories of United States Postal Service: USPS/DS-T1-1-10, filed on May 25, 2006. The interrogatories are stated verbatim and are followed by the responses.

Respectfully submitted,

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Rick Borgers  
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DigiStamp, Inc.  
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RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-1.** On unnumbered line 3 on page 1 of your testimony, you state that in 1998 you decided that you wanted to be on the cutting edge of creating new technology.

- a. At that time were you aware of any other companies or entities that were offering digital time stamp or other similar services? Please explain fully, and identify any such companies or entities.
- b. Were you aware of any patents for these types of digital time stamp or other similar services? Please explain fully.

**RESPONSE:**

a. Yes. A list of companies that were in my records at about that time period:

1. Surety Technologies
2. FirstUse
3. MediaRegistry
4. Entropia Internet Notary Service
5. I.T. Consultancy Limited
6. U.S. Postal Service – My notes of that time state that I thought this service required documents to be sent outside the user's computer and that it may include delivery guarantees. I also thought that a legal suit had been brought saying that the USPS cannot compete with private industry and should not be allowed to offer this service.
7. Document Delivery Services - e.g. Pitney Bowes, United Parcel Service
8. Others - There were potential competitors from companies that deliver related products to the marketplace. Digital signature providers, VeriSign and GTE, were likely competitors. Public-Key Infrastructure (Entrust, CertCo)

Additionally, the engineering work being recorded in the public forums at the IETF<sup>1</sup> included volunteers that were associated with companies that might, in the future, offer a time stamp solution but were not offering digital time stamps at that time.

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<sup>1</sup> The engineering design work was done via an all-volunteer effort within the Internet Engineering Task Force (IETF). The IETF is an independent, international activity associated with the Internet Society.

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

By 1999, I was aware of the USPS Post E.C.S. development effort and the complaint before the commission in Docket C99-1<sup>2</sup>. I believed that the Post E.C.S. development effort included a time stamp function as part of a document delivery offering. Also, I had read the article provided in my original complaint as Exhibit B. at about the time it was published in May 1999. From that article:

“The Postal Service (www.usps.gov) took its biggest losses on its plans to offer online authentication and security from 1995 to 1997, it spent \$20.3 million to develop an “electronic postmark” service that would secure and authenticate e-mail. Development efforts ended in November 1997”

b. The IETF Internet Draft Time Stamp Protocols<sup>3</sup> dated June 4, 1998, which I was following closely at the time, listed these patents:

- # 4309569 Method of Providing Digital Signatures
- # 5001752 Public/Key Date-Time Notary Facility
- # 5022080 Electronic Notary
- # 5136643 Public/Key Date-Time Notary Facility
- # 5136646 Digital Document Time-Stamping with Catenate Certificate
- # 5136647 Method for Secure Time-Stamping of Digital Documents

In June 1998 I developed a patent application for a time stamp methodology. In my research for that patent I knew of additional patents that would potentially need to be cited.

- # 4868877 Public key/signature cryptosystem with enhanced digital signature certification
- # 4881264 Digital signature system and method based on a conventional encryption function

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<sup>2</sup> 10/98 UPS files complaint at Commission titled “Complaint of United Parcel Service on Post Electronic Courier Service”

<sup>3</sup> Internet Draft Time Stamp Protocols <draft-adams-time-stamp-02.txt> June 4, 1998 C. Adams(Entrust Technologies), P. Cain (BBN), D. Pinkas (Bull), R. Zuccherato(Entrust Technologies)

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

- # 4991210 Unpredictable blind signature systems
- # 5157726 Document copy authentication
- # 5189700 Devices to (1) supply authenticated time and (2) time stamp and authenticate digital documents
- # 5231668 Digital signature algorithm
- # 5373561 Method of extending the validity of a cryptographic certificate.
- # 5422953 Personal date/time notary device
- # 5434917 Unforgeable identification device, identification device reader and method of identification
- # 5444780 Client/server based secure timekeeping system
- # 5500897 Client/server based secure timekeeping system
- # 5619571 Method for securely storing electronic records
- # 5675649 Process for cryptographic key generation and safekeeping
- # 5745555 System and method using personal identification numbers and associated prompts for controlling unauthorized use of a security device and unauthorized access to a resource
- # 5748738 System and method for electronic transmission, storage and retrieval of authenticated documents
- # 5754659 Generation of cryptographic signatures using hash keys
- # 5781629 Digital document authentication system
- # 5781630 Method and device for accurately dating an electronic document
- # RE34954 Method for secure time-stamping of digital documents

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-2.** Are you aware of any patents filed by the Postal Service relating to digital time-stamp or electronic authentication services? Please explain fully.

**RESPONSE:**

I first became aware of USPS patents in May or June of 2004. Here is the list:

20040117684 Systems and methods for electronic postmarking including ancillary data

20040034780 Electronic postmarking without directly utilizing an electronic postmark server

20030177357 Apparatus and methods for the secure transfer of electronic data

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-3.** Did you apply for any patents for the “e-TimeStamp” service or product you mention on unnumbered line 2 of page 2 of your testimony? If so, were any patents awarded for this service or product? Whether or not the patent was awarded, please briefly describe any service or products for which you sought a patent.

**RESPONSE:**

In June 1998 I wrote a patent application with the assistance of an attorney that was submitted to the United States Patent and Trademark Office (USPTO). The patent was not awarded because I abandoned the application. The invention was a method of securing encryption keys for the purpose of time stamping data.

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-4.** Did you apply for any trademarks for the “e-TimeStamp” service or product you mention on unnumbered line 2 of page 2 of your testimony? If so, were any trademarks registered for this service or product? Whether or not the trademark was awarded, please briefly describe any service or products for which you sought a trademark.

**RESPONSE:**

In May 1996, the name “DigiStamp” was registered via an Assumed Name Certificate in Tarrant county Texas, which may qualify as a common law trademark.

In January 1998, I applied for a trademark of e-TimeStamp that was later awarded by the USPTO.

In February 1998, DigiStamp registered the Internet domain names of “digistamp.com,” “e-timestamp.com” and “etimestamp.com.” The use of these domain names may qualify as a common law trademark.

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-5.** On unnumbered line 7 of page 2 of your testimony, you state that: "In 2004, the USPS began offering the same service, calling it the 'USPS Electronic Postmark Service.'" Please answer the following questions concerning this statement:

- a. When did you first learn of the "USPS Electronic Postmark Service?"
- b. What information did you receive about the service, and what was the source of the information?
- c. Were you aware of any previous use of the term "USPS Electronic Postmark Service", or any similar name for a time and date stamp service offered by the Postal Service? Please explain fully.

**RESPONSE:**

- a. In my response to question USPS/DS-T1-1 above, I describe that in 1998 I knew that the Postal Service had considered developing time stamps for electronic communications during the 1995-1999 time frame.
- b. In the intervening years, from 2000 up to late 2003, I do not remember hearing much, if anything, about the USPS being a competitor except for the conclusion of Docket No. C99-1. In November 2003, the DigiStamp support staff received an email from a person that had visited our website and asked us to compare DigiStamp's service with that of the USPS EPM. This was the first time I realized that the USPS was planning a public offering for time stamps for early 2004 and that their time stamp solution was built using the IETF specification. At about that time, I also read trade magazine article(s) and a press release related to the "rollout of the United States Postal Service Electronic PostMark(R) (EPM) service".<sup>4</sup> At about that time I learned about the case of UNITED STATES POSTAL SERVICE v. FLAMINGO INDUSTRIES (USA) LTD. ET AL. Shortly thereafter I filed this complaint at the Commission.

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<sup>4</sup> SCHENECTADY, N.Y.--(BUSINESS WIRE)--Sept. 29, 2003

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

c. Yes, I was aware the term related to being part of the Post E.C.S technology and a program within the Postal Service (see my response in USPS/DS-T1-1). My understanding is that prior to 2004, the development efforts had not been completed and/or were not made available to the public.

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-6.** Do you have any knowledge of the following Postal Service products:

- a. NetPost.Certified
- b. PostECS

If so, please explain your understanding of those products, including the timeframe in which they were offered.

**RESPONSE:**

Yes, I am aware of both programs, more so of the Post E.C.S program. There is related information in my response USPS/DS-T1-1. My understanding is that these electronic document delivery services were never actually offered to the public. As of 2002 I believed the Postal Service had exited the electronic document delivery business given the results of Commission Docket No. C99-1.

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-7.** On unnumbered line 22 of page 7 of your testimony, you claim that the Postal Service has “lobbied” State legislators. Please provide details of all such alleged lobbying, including a description of the activities that you consider to constitute lobbying.

**RESPONSE:**

The activities of “lobbying” and “sales” can be very similar activities, in my thinking. The distinction for which I apply to the word lobbying is when the selling is directed at legislators for the purpose of changing laws. In this context, it is the activities related to meeting with state legislators and staff to encourage a change to state laws. This is the subject of docket item “Motion to Notify the Postal Rate Commission of A Recent Example Where the Use of USPS EPM Replaces Traditional Mail Service”. There I note a unique aspect of these changes: “... excludes any service provider other than the Postal Service. This effectively extends, by law, the monopoly position of the Postal Service...”<sup>5</sup> I do not know any specific details about how the Postal Service participated in these lobbying efforts.

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<sup>5</sup> In an investors’ conference call by Authentidate on June 2, 2005, Suren Pai, the CEO of Authentidate, identified where legislation was passed or was in-progress: South Carolina, West Virginia, Maryland, Nebraska, Pennsylvania and New Jersey. Recording held at Authentidate web site as *Press Release 06-01-05 Authentidate To Hold Conference Call*.

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-8.** On unnumbered line 15 of page 8 of your testimony, you state that the USPS EPM is “almost always used in connection with a communication.” Are you aware of any applications for the USPS EPM which do not involve a communication? Please identify them.

**RESPONSE:**

Yes, I assume that the USPS EPM has customers that use the service for intellectual property protection.<sup>6</sup> I make this assumption due to DigiStamp’s experience in the same market space. As described in my testimony, the experience at DigiStamp has been that this usage is less than 10 percent of DigiStamp transactions.

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<sup>6</sup> Earlier in the proceeding, DigiStamp had described this usage of the USPS EPM “...time/date stamps are also analogous to current practices with hard copy mail – retaining the envelope with the document you received or enclosing a document in a First-Class envelope, mailing it to oneself, and leaving it sealed as proof that the document existed in a certain configuration on a particular date, as evidenced by the postmark.” DigiStamp Answer in Response To Motion of the United States Postal Service to Dismiss 5/2004

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-9.** On unnumbered line 15 of page 8 of your testimony, you state that the USPS EPM is “almost always used in connection with a communication.” What was the total volume of transactions using a Digistamp time date stamp? What was the percentage of those transactions that involved a “communication.” In your answer, please define the term “communication.”

**RESPONSE:**

I am defining the term “communication” as the process of exchanging information. The process entails the sender composing the information, transmission through some medium (electronic in this case) and then another party receives the information.

Objection filed for the question “What was the total volume of transactions using a Digistamp time date stamp?”

In response to the second question, as stated in my testimony, the percentage of transactions that involve communication is more than 90 percent at DigiStamp (unnumbered line 22 of page 8).

Two examples that apply my definition of “communication”: A customer buying health insurance on-line, fills-in a form on his/her Internet browser. The insurance provider receives that electronic form on the website and time stamps it to authenticate the communication. A similar example is creating receipts for fax communications in electronic workflows. Together, these examples account for more than 90 percent of the time stamp transactions at DigiStamp in the past year.

Your question begins with the quote “USPS EPM is ‘almost always used in connection with a communication.’” In April 2005, a press release was issued that announced a significant increase in sales of EPMs to Liberty Healthcare

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

Group Inc to verify doctor's orders sent via digital fax (this customer usage was given as an example in my testimony on page 10). Given a previous rate of EPM sales at about 1000-2000 per month,<sup>7</sup> then this new customer would represent more than 90% of EPM transactions.

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<sup>7</sup> Authentidate SEC 10Q filing

RESPONSES OF DIGISTAMP WITNESS RICK BORGERS TO  
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

**USPS/DS-T1-10.** On unnumbered line 10 of page 12 of your testimony, you state that the Postal Service was not a contributor to the work of the Internet Engineering Task Force (IETF) in the late 1990s. Are you aware of any efforts by the Postal Service to support the development of public policy for authentication of electronic communications during this period? If so, please identify such efforts, and any public documents to which the Postal Service contributed.

**RESPONSE:**

I am not aware of Postal Service efforts during the period when the work at the IETF to design a time-stamp standard evolved from a draft to a published international standard. My main source of information on this subject was by reading user postings on a public newsgroups service maintained by the IETF for the purpose of recording the design work.