

05-09-2007



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FORM PTO-1595
1-31-92U.S. DEPARTMENT OF COMMERCE
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2007 MAY -7 PM 3:08

5-7-07

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

FINANCE SECTION

1. Name of conveying party(ies):

WholeSecurity, Inc.

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

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

Name: Symantec CorporationStreet Address: 350 Ellis StreetCity Mountain View State CA ZIP 94043Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of Conveyance:

- ☐ Assignment
☒ Merger
☐ Security Agreement
☐ Change of Name
☐ Other _____

Execution Date: September 18, 2005

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)

10/231,557

B. Patent No.(s)

Additional numbers attached? ☒ No

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

Name: B. Noël KivlinInternal Address: Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.Street Address: P.O. Box 398City Austin State TX ZIP 78767-03986. Total number of applications and patents involved: 17. Total fee (37 CFR 3.41):\$ 40.00

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

8. Deposit account number: 501505/6002-00600

(Attach a duplicate copy of this page if paying by deposit account)

05/08/2007 DBYRNE 00000227 301505 10231557

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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. Noël KivlinName of Person Signing
Reg. No. 33,929

Signature

Date

5-4-07

Total number of pages: 11

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

PATENT
REEL: 019282 FRAME: 0481

AGREEMENT AND PLAN OF MERGER

AMONG

SYMANTEC CORPORATION,

EDISON ACQUISITION CORP.,

WHOLE SECURITY, INC.

AND

RAY ROTHROCK, AS REPRESENTATIVE

SEPTEMBER 18, 2005

12290/00232/DOCS/1551841.6

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of September 18, 2005 (the "Agreement Date") by and among Symantec Corporation, a Delaware corporation ("Acquiror"), Edison Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Acquiror ("Merger Sub"), Whole Security, Inc. a Delaware corporation (the "Company"), and Ray Rothrock, as the representative of the Effective Time Holders (the "Representative").

RECITALS

A. The parties intend that, subject to the terms and conditions hereinafter set forth, Merger Sub shall merge with and into the Company (the "Merger"), with the Company to be the surviving corporation of the Merger (the "Surviving Corporation"), on the terms and subject to the conditions of this Agreement and pursuant to the Certificate of Merger substantially in the form attached hereto as Exhibit A (the "Certificate of Merger") and the applicable provisions of the laws of the State of Delaware.

B. The Boards of Directors of Acquiror, Merger Sub and the Company have determined that the Merger is in the best interests of their respective companies and stockholders and have approved and declared advisable this Agreement and the Merger.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. Concurrently with the execution and delivery of this Agreement, the Company will deliver to Acquiror the Company IP Deliverables in form and manner mutually acceptable to the Company and Acquiror pursuant to the License Agreement.

F. Acquiror, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and conditions contained herein, the parties hereby agree as follows:

[REDACTED]

2.3 Effects of the Merger. At and upon the Effective Time:

(a) the separate existence of Merger Sub shall cease and Merger Sub shall be merged with and into the Company, and the Company shall be the surviving corporation of the Merger pursuant to the terms of this Agreement and the Certificate of Merger;

(b) the Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety to read as set forth in the Certificate of Merger, until thereafter amended as provided by Delaware Law;

[REDACTED]

[REDACTED]

3.14 Intellectual Property.

(a) The Company (i) owns or (ii) has the valid right or license to use, and, to the extent that it does any of the following, to develop, make, have made, offer for sale, sell, import, copy, modify, create derivative works of, distribute, license, and/or dispose of all Intellectual Property used in the conduct of the Company Business (such Intellectual Property being hereinafter collectively referred to as the "Company IP Rights"). Such Company IP Rights are sufficient for such conduct of the Company Business. As used in this Agreement, "Company-Owned IP Rights" means Company IP Rights that are or are purportedly owned or exclusively licensed to the Company; and "Company-Licensed IP Rights" means Company IP Rights that are not Company-Owned IP Rights.

(b) Neither the execution, delivery and performance of this Agreement or the Company Ancillary Agreements nor the consummation of the Merger and the other transactions contemplated by this Agreement and/or by the Company Ancillary Agreements shall, in accordance with their terms: (i) cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Company IP Right; or (ii) materially impair the right of the Company or the Surviving Corporation to use, develop, make, have made, offer for sale, sell, import, copy, modify, create derivative works of, distribute, license, and/or dispose of any Company IP Right or portion thereof. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(f) Schedule 3.14(f) of the Company Disclosure Letter contains a true and complete list of (i) all worldwide registrations made by or on behalf of the Company of any patents, copyrights, mask works, trademarks, service marks, Internet domain names or Internet or World Wide Web URLs or addresses with any Governmental Authority or quasi-governmental authority, including Internet domain name registries, and (ii) all applications, registrations, filings and other formal written governmental actions made or taken pursuant to Applicable Law by the Company, perfect or protect its interest in the Company-Owned IP Rights, including all patent applications, copyright applications, mask work applications and applications for registration of trademarks and service marks, and where applicable the jurisdiction in which each of the items of the Company-Owned IP Rights has been applied for, filed, issued or registered (collectively, the "Company Registered IP Rights"). Schedule 3.14(f) of the Company Disclosure Letter sets forth a list of all actions that are required to be taken by the Company within 120 days of the Agreement Date with respect to any of the Company Registered Intellectual Property in order to avoid prejudice to, impairment or abandonment of such Company Registered Intellectual Property.

(g) The Company owns all right, title and interest in and to all Company-Owned IP Rights free and clear of all Encumbrances.

(h) Other than pursuant to the Company's end user customer license agreements which do not materially deviate from the Company's standard form, Schedule 3.14(h) of the Company Disclosure Letter contains a true and complete list of all material Contracts as to which the Company is a party and pursuant to which any person is authorized to use any Company IP Rights. None of the Contracts listed in Schedule 3.14(h) of the Company Disclosure Letter grants any third party exclusive rights to or under any Company-Owned IP Rights or grants to any third party the right to sublicense any of such Company Owned IP Rights. The Company has not transferred ownership of any Intellectual Property that is or was owned by the Company to any third party, or knowingly permitted the Company's rights in such Intellectual Property to lapse or enter the public domain (other than through the expiration of registered Intellectual Property at the end of its statutory term).

[REDACTED]

4.2 Power, Authorization and Validity.

(a) Power and Authority. Acquiror has all requisite corporate power and authority to enter into, execute, deliver and perform its obligations under this Agreement and the Acquiror Ancillary Agreements and to consummate the Merger. The execution, delivery and performance by Acquiror of this Agreement, each of the Acquiror Ancillary Agreements and all other agreements, transactions and actions contemplated hereby or thereby have been duly and validly approved and authorized by all necessary corporate action on the part of Acquiror. Merger Sub has all requisite corporate power and authority to enter into, execute, deliver and perform its obligations under this Agreement and the Merger Sub Ancillary Agreement and to consummate the Merger. The execution, delivery and performance by Merger Sub of this Agreement, the Merger Sub Ancillary Agreement and all other agreements, transactions and actions contemplated hereby or thereby have been duly and validly approved and authorized by all necessary corporate action on the part of Merger Sub.

(b) No Consents. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority, or any other Person, governmental or otherwise, is necessary or required to be made or obtained by Acquiror or Merger Sub to enable Acquiror and Merger Sub to lawfully execute and deliver, enter into, and perform their respective obligations under this Agreement, each of the Acquiror Ancillary Agreements and the Merger Sub Ancillary Agreement or to consummate the Merger, except for: (i) the filing by Acquiror of such reports and information with the SEC under the Exchange Act, and the rules and regulations promulgated by the SEC thereunder, as may be required in connection with this Agreement, the Merger and the other transactions contemplated by this Agreement and (ii) such other consents, approvals, orders, authorizations, registrations, declarations and filings, if any, that if not made or obtained by Acquiror or Merger Sub would not be material to Acquiror's or Merger Sub's ability to consummate the Merger or to perform their respective obligations under this Agreement, the Acquiror Ancillary Agreements and the Merger Sub Ancillary Agreement.

(c) Enforceability. This Agreement has been duly executed and delivered by Acquiror and Merger Sub. This Agreement and each of the Acquiror Ancillary Agreements are, or when executed by Acquiror shall be, valid and binding obligations of Acquiror, enforceable against Acquiror in accordance with their respective terms, subject to the effect of (i) applicable

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SYMANTEC CORPORATION

WHOLE SECURITY, INC.

By: 

By: _____

John W. Thompson

J. Peter Selda

Chairman and Chief Executive Officer

Chief Executive Officer and President

EDISON ACQUISITION CORP.

REPRESENTATIVE

By: 

By: _____

Gregory E. Myers

Ray Rothrock

Chief Executive Officer and President

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SYMANTEC CORPORATION

WHOLE SECURITY, INC.

By: _____

By: J. Peter Selda

John W. Thompson

J. Peter Selda

Chairman and Chief Executive Officer

Chief Executive Officer and President

EDISON ACQUISITION CORP.

REPRESENTATIVE

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Gregory E. Myers

Ray Rothrock

Chief Executive Officer and President

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By: _____

By: _____

John W. Thompson

J. Peter Selda

Chairman and Chief Executive Officer

Chief Executive Officer and President

EDISON ACQUISITION CORP.

REPRESENTATIVE

By: _____

By: Ray A Rothrock

Gregory E. Myers

Ray Rothrock

Chief Executive Officer and President

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]