

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 87509354

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Examiner: REAMS, Christopher

Applicant: Ironclad Encryption Corporation

Mark: IRONCLAD

Attorney Docket: ICE-TM-4W

Commissioner for Trademarks

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Signature

/Len Walker/
Printed Name

PRIORITY ACTION

Dear Examiner Reams,

In response to the Office Action mailed October 3, 2017, the following substitute specimen(s) and remarks are respectfully submitted in connection with the above-identified application.

A listing of **Substitute Specimen(s)** as provided begins on page 2 of this response.

Remarks begin on page 3 of this response.

SUBSTITUTE SPECIMEN(S)

The following is a complete listing of substitute specimen(s) as provided by the Applicant in regards to this response.

LISTING OF SPECIMEN(S)

1. Screen Shot - <https://ironcladencryption.com/media-relations/press-releases/ironclad-encryption-corporation-delivers-the-world-s-first-context-free-natively-secure-containers>

“IronClad Encryption Corporation Delivers the World's First Context-Free, Natively-Secure Containers”

1A. Screen Shot - <https://ironcladencryption.com/products>

“ICEMicro Context-Free, Natively-Secure Containers”

2. Screen Shot - <https://ironcladencryption.com/media-relations/ironclad-encryption-news/ironclad-encryption-corporation-deploys-blackice-network-security>

“IronClad Encryption Corporation Deploys BlackICE Network Security”

2A. Up-close screen shot of Specimen 2

REMARKS

Favorable reconsideration of this application, in light of the preceding specimen(s) and following remarks, is respectfully requested. No new matter is added.

SPECIMEN REQUIRED IN INTERNATIONAL CLASS 9

In response to the refusal of registration, Applicant hereby submits the specimen in International Class(es) 9.

Applicant is providing a Web page that displays a product constituting a "display associated with the goods" as the requirements of §TMEP 904.03(i), as provided below, have been satisfied:

- (1) contains a picture or textual description of the identified goods;
- (2) shows the mark in association with the goods; and
- (3) provides a means for ordering the identified goods.

Advertising materials may consist of the following: online advertising banners appearing on search engine result pages and in social media; advertising circulars and brochures; price lists; listings in trade directories; and business cards, *See* TMEP §904.04(b), and are generally not acceptable as specimens to show use in commerce for goods. *See In re Kohr Bros.*, 121 USPQ2d 1793, 1794 (TTAB 2017) (quoting *In re Quantum Foods, Inc.*, 94 USPQ2d 1375, 1379 (TTAB 2010)); TMEP §904.04(b), (c).

The Applicant submits that the substitute specimen is more than "mere advertising material" and thus the specimen shows the applied-for mark in use in commerce per Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Specimen 1:

A specimen is provided showing a web page which indicates that the applicant has provided encryption technology and network securing devices as ICEMicro, a ready-to-use container technology that natively secures data communications among any number of Docker containers, to customers. The website provides that the ICEMicro "Community Edition" images are available free now via [Github](#) and [Docker Hub](#).

As stated on the website, “ICEMicro technology is now available through Technologent. Under the terms of the non-exclusive partnership agreement, Technologent's resale license includes ICEMicro as well as the full portfolio of **IronClad** solutions.” Specimen 1A provides further evidence of the use and availability for purchase of current IronClad products.

Specimen 2:

Applicant submits a web page news release which indicates that the applicant has provided encryption technology and network securing devices, as BlackICE Barrier, in collaboration with another company, to customers in the energy-sector. As stated, “BlackICE Barrier is the first product in a family of BlackICE products that prevents hackers from breaching corporate networks and commandeering remote assets.” The release provides a section on BlackICE Barrier availability which states, “BlackICE Barrier is available now from **IronClad** and Black Pearl Engineering in two rack-mountable packages: DIN rail or network appliance. Contact either company for pricing information and customization options.” Specimen 2A has been included to show this statement.

The substitute specimen(s) was/were in use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.

In furtherance to this response the Applicant hereby submits a Petition to Revive Abandoned Application – Failure to Respond Timely to Office Action and associated fees at the time of filing of this response.

CONCLUSION

In view of the above remarks and specimen(s), the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance of registration. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application; the Examiner is respectfully requested to contact the undersigned, at the telephone number of the undersigned below.

Respectfully submitted,

Ironclad Encryption Corporation

BY:

/Len Walker/

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