

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Examiner: REAMS, Christopher

Applicant: Ironclad Encryption Corporation



Attorney Docket: ICE-TM-1W

Commissioner for Trademarks

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Signature

/Len Walker/

Printed Name

PRIORITY ACTION

Dear Examiner Reams,

In response to the Office Action mailed September 10, 2018, 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 regarding this response.

LISTING OF SPECIMEN(S)

1. Specimen 1: Marketing Materials
2. Specimen 2: Webpage – www.ironcladencryption.com/products

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 9.

The specimens provided, especially as related to Class 9, are in keeping with the requirements of the class as provided below.

Applicant is providing Specimen 1 in conjunction with Specimen 2 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.

The Applicant submits that the substitute specimen identifies the following goods:

1. Dynamic Encryption technology
2. Perpetual Authentication technology
3. Key-based encryption technologies (Encryption key management systems)
4. Specific products: ICEMicro, ICE Box, BlackICE

The substitute specimen(s) provide the mark 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.

SPECIMEN REQUIRED IN INTERNATIONAL CLASS(ES) 38, 42, 45

In response to the refusal of registration, Applicant hereby submits the specimen in International Class(es) 38, 42, 45.

The specimens provided, especially as related to Classes 38, 42, and 45, are in keeping with the requirements of the class as provided below.

Applicant is providing advertising or promotional material, Specimen1, that shows a direct association between the mark and the services for which registration is sought. The requirements of §TMEP 1301.04(f)(ii), as provided below, have been satisfied:

- (1) The specimen must contain an explicit reference to the services; and
- (2) the mark being used on the specimen to identify the service and its source.

As provided in *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting *In re Johnson Controls, Inc.*, 33 USPQ2d 1318, 1320 (TTAB1994), the exact nature of the services does not need to be specified in the specimen, there must be something which creates in the mind of the purchaser an association between the mark and the service.

The Applicant submits that the substitute specimen identifies the following services:

1. Securitization of digital assets and communications,
2. Encryption installation,
3. Encryption enhancement,
4. Data security

RESPONSE TO INFORMTION REQUEST

Applicant hereby submits responses to the following questions and requests for documentation to satisfy the request for information:

- (1) How are applicant's goods sold? Specify the retail, wholesale, or other sales environment in which the goods are sold.

- a. Retail/Wholesale – www.ironcladencryption.com Customer is directed to contact the company at sales@ironcladencryption.com.

- b. Other - OEM, Software Developer, and Service Provider Licensing OEMs, software developers, and service providers can drive new revenue streams and create competitive advantages using Ironclad technologies. For example, a network infrastructure vendor could charge a premium price for its switches and routers by enhancing their level of security. An Internet Service Provider (ISP) could offer its customers a premium security service. The customer is directed to contact the company at partnerships@ironcladencryption.com. (Ex.: Black Pearl Technologies, www.blackpearltechnology.com, Technogent, www.technogent.com)
- (2) Please provide copies of invoices, bills of sale, or other documentation of sales of the goods.
- (3) Was the specimen created for submission with this application?
- a. No. The specimen is marketing material previously in use.
- (4) Does the specimen show applicant's product as it is currently being sold?
- a. No. The currently available goods are software that currently do not require a "package" and are installed by the applicant or customer.
- (5) How do applicant's goods appear in the actual sales environment? If sold in stores, provide photos showing the goods for sale in the stores. If sold online, identify the websites and provide copies of the webpages showing the goods for sale. And if sold in another type of sales environment, provide photos and/or documentation showing the goods for sale in that environment.
- a. The webpage www.ironcladencryption.com/products is provided as Specimen 2, showing the goods for sale and the means of purchase.
- (6) If the information in (5) about how the goods appear in the actual sales environment is not available to the applicant, then please describe how the applicant's goods are transported for sale and provide photos and other

documentation showing how applicant's mark appears on the goods and/or
packaging when the goods are being transported for sale.

- a. Shipping is also not currently required.

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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