

The Examining Attorney requires that Applicant disclaim the letters XR on the grounds that XR is an abbreviation for “extended reality” and is therefore merely descriptive of Applicant’s goods. Applicant respectfully disagrees with the Examining Attorney’s disclaimer requirement, as most consumers will not understand the meaning of XR.

Unless the term XR clearly informs potential customers “only what the goods are, their function, their characteristics or their use,” the term is not merely descriptive. *In re Colonial Stores, Inc.*, 394 F.2d 549, 552 (CCPA 1968); see also *In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 525 n. 7 (CCPA 1980). As discussed below, XR as a whole cannot be deemed merely descriptive.

1. XR is not merely descriptive

A mark must be considered suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of the goods. *Stix Products, Inc. v. United Merchants & Mfrs., Inc.*, 295 F. Supp. 488, 160 U.S.P.Q. 777 (S.D.N.Y. 1968) (explaining that the test is whether the mark “is so close and direct that it is apparently descriptive and generally useful in approximately that form to all merchants marketing such goods, or is so remote and subtle that it is not needed by other merchants of similar goods”); McCarthy, J., McCarthy on Trademarks and Unfair Competition § 11.67 (4th Ed. 1997) (explaining that if one must exercise mature thought or follow a multi-stage reasoning process to determine characteristics of the goods or services, then the term is suggestive, not descriptive).

The Examiner argues that “XR” is merely descriptive of Applicant’s goods, because “XR is an abbreviation for “extended reality,” which is a term of art in the technology field. As previously explained, Applicant coined the abbreviation XR, to have a positive meaning such as “extra reality” or “extended reality” or “extraordinary reality.” Thus, the term “XR” as used by Applicant is not merely descriptive of the goods.

Furthermore, the evidence provided by the Examiner to show that XR is an acronym meaning “extended reality” does not support a finding that XR is merely descriptive. The Examining Attorney has not presented evidence regarding how many consumers will recognize the meaning of XR. Pursuant to TMEP 1209.03(h), “[a]s a general rule, an acronym or initialism cannot be considered descriptive unless the wording it stands for is merely descriptive of the goods or services, and the acronym or initialism is readily understood by relevant purchasers to be “substantially synonymous” with the merely descriptive wording it represents.” Therefore, evidence must be presented that the “acronym is readily understood to be substantially synonymous with the descriptive wording it represents.” *Id.*, *In re Harco Corp.*, 220 USPQ 1075 (TTAB 1984) (record insufficient to establish that CPL would be commonly understood as no more than an abbreviation of “computerized potential log”).

Here, there is no evidence that consumers will readily understand what XR means or that it is merely descriptive of applicant’s goods. Thus, mere observation of the term XR will not lead a potential purchaser to know automatically the features and functions of Applicant’s goods. See *In re Hutchinson Technology Incorporated*, 852 F.2d 552, 555 (Fed. Cir. 1988) (court found that a term that has multiple meanings does not convey the sort of immediate understanding or idea of the goods necessary to classify a mark as merely descriptive). Instead, prospective purchasers

must obtain further information to determine the features of Applicant's goods offered under Applicant's XR logo mark.

Moreover, the USPTO previously determined that the term XR can be suggestive. For example, the following marks are registered on the Principal Register without a disclaimer. *See, United Foods Inc. v. JR. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987) (Third-party registrations may show that a particular term has descriptive or suggestive significance as applied to certain goods or services.). Applicant notes that "XR" was not required to be disclaimed in the following registrations: SANAMI XR (No. 88546446), HORIZON XR (No. 88564014), Proto XR (No. 5757293). *See*, Exhibit 1.

Finally, any doubts regarding whether a term is merely descriptive are to be resolved in favor of the applicant. *See, e.g., In re Stroh Brewery Co.*, 34 U.S.P.Q.2d 1796, 1797 (TTAB 1994); *In re Conductive Sys., Inc.*, 220 U.S.P.Q. 84, 86 (TTAB 1983). Based on the above, Applicant respectfully requests that the Examining Attorney reconsider the requirement to disclaim "XR."

Exhibit 1



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SANAMI XR

Word Mark SANAMI XR

Translations The wording "SANAMI" has no meaning in a foreign language.

Goods and Services IC 009. US 021 023 026 036 038. G & S: Downloadable post-production software for creating spatial audio experiences for video games, watching movies, listening to music and for using virtual and augmented reality, for computers and mobile phones and other personal consumer electronics devices. FIRST USE: 20190701. FIRST USE IN COMMERCE: 20190701

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 88546446

Filing Date July 29, 2019

Current Basis 1A

Original Filing Basis 1A

Published for Opposition November 5, 2019

Owner (APPLICANT) HEAR360 LLC LIMITED LIABILITY COMPANY CALIFORNIA #516 11301 W Olympic Blvd. Los Angeles CALIFORNIA 90064

Attorney of Record Raj Abhyanker

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "XR" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead LIVE



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HORIZON XR

Word Mark	HORIZON XR
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Radios and radio equipment, namely, transmitters and receivers for two-way radios, and component parts therefor
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	88564014
Filing Date	August 2, 2019
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	December 24, 2019
Owner	(APPLICANT) Yaesu Musen Kabushiki Kaisha TA Yaesu Musen Co., Ltd. CORPORATION JAPAN 2-5-8, Higashi-Shinagawa Shinagawa-ku, Tokyo JAPAN 140-0002
Attorney of Record	Timothy H. Hiebert
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the stylized wording "HORIZON XR".
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Proto XR

Word Mark	PROTO XR
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Augmented reality software for playing computer games. FIRST USE: 20170917. FIRST USE IN COMMERCE: 20171229
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88150725
Filing Date	October 11, 2018
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 5, 2019
Registration Number	5757293
Registration Date	May 21, 2019
Owner	(REGISTRANT) PROTO XR LLC LIMITED LIABILITY COMPANY WASHINGTON 1037 NE 65th St #80491 Seattle WASHINGTON 98115
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "XR" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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