

RESPONSE TO OFFICE ACTION

The Examining Attorney has refused registration of the mark HYDROCLEAN based upon an assertion under Lanham Act Sections 1 and 45 that the specimen of use submitted by the Applicant with its Statement of Use does not show use of the applied-for mark in connection with the covered service. The Applicant respectfully disagrees with this assertion, for the reasons set forth below.

Specifically, the Examining Attorney states that the submitted specimen, an electronic brochure<sup>1</sup> marketing the Applicant's service offerings, shows use of the HYDROCLEAN mark only in connection with a feature of goods used in the maintenance process. This contention is inaccurate.

The Applicant has wide latitude in the manner by which it uses its mark in connection with the covered services. The mark must be shown "in a manner that would be perceived by potential purchasers as identifying the applicant's services and indicating their source." In re DSM Pharm., Inc., 87 U.S.P.Q.2d 1623, 1624 (T.T.A.B. 2008); see In re JobDiva, Inc., 843 F.3d 936, 941, 121 U.S.P.Q.2d 1122, 1126 (Fed. Cir. 2016) ("To determine whether a mark is used in connection with the services . . . a key consideration is the perception of the user."); In re Ancor Holdings, LLC, 79 U.S.P.Q.2d 1218, 1220 (T.T.A.B. 2006).

Further, when the identified services involve newer technology, the Examining Attorney should employ a practical approach in analyzing the submitted specimen. See In re Metriplex, Inc., 23 U.S.P.Q.2d 1315, 1316 (T.T.A.B. 1992) (finding the submitted specimens acceptable to show use of applicant's mark in connection with data transmission services because the specimens showed "the mark as it appears on a computer terminal in the course of applicant's rendering of the service" and noting that "purchasers and users of the service would recognize [applicant's mark], as it appears on the computer screen specimens, as a mark identifying the data transmission services which are accessed via the computer terminal"). Additionally, it may be helpful to consider how the Applicant and others in the industry typically advertise and render the identified services in the relevant marketplace, as well as the manner in which service marks are normally used in connection with those services. TMEP § 1301.04(f).

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<sup>1</sup> The Applicant notes that the electronic brochure previously submitted as a specimen of use is a distinct PDF document used by Applicant in its marketing efforts. As it does not constitute an internet webpage or screenshot of an internet webpage, the provisions of 37 C.F.R. §2.56(c) do not apply.

In the instant matter, the Applicant has employed an electronic PDF brochure to market highly specialized maintenance services under the HYDROCLEAN mark to semiconductor manufacturers looking for a provider of such maintenance services for their semiconductor fabs (fabrication plants). As shown in the rejected specimen, the HYDROCLEAN service is a service option offered by the Applicant as one of several services it offers to fab owners to rehabilitate the head components of a semiconductor fab.

In further support of its use of the HYDROCLEAN mark, the Applicant has submitted additional substitute specimens of use, which clearly show proper use of HYDROCLEAN as a service mark. See attached Exhibit A, which highlights use of the subject mark in connection with the additional specimens.

Applicant respectfully submits that, in light of the above, that the Examining Attorney rescind the prior specimen refusal, and pass the mark for registration on the Principal Register.