

RESPONSE

This document is filed in response to the Examiner's non-final Office Action issued June 16, 2020.

Mark Differs on Drawing and Specimen

The Examining Attorney has refused registration alleging that the applied-for mark on the specimen disagrees with the mark on the drawing, stating that "the specimen displays the mark as "HEATED ACTIVEX FRONT BUCKET SEATS", "ACTIVE[X] CASHMERE COLOR SEAT", "EBONY ACTIVEX MATRL SEATS" and/or "ACTIVEX SEATING MATERIAL"; and the drawing shows the mark as " 'ACTIVEX' only'."

The applicant respectfully disagrees with the Examining Attorney's position. It is well-established that an "applicant has some latitude in selecting the mark it wants to register." TMEP § 807.12(d). This is especially true where the omitted elements are generic terms meant to convey to the consumer the type of goods that are offered under the applied-for mark. Use of a generic modifier together with the applied-for mark does not create a unitary mark such that applied-for mark has no significance apart from the generic modifier. *See In re Raychem Corp.*, 12 USPQ2d 1399, 1400 (TTAB 1989) (reversing the refusal to register TINEL-LOCK as mutilation of mark "TRO6AI-TINEL-LOCK-RING," noting that part or stock number does not usually function as a source identifier, and the "fact that hyphens connect both the part number and the generic term to the mark does not, under the circumstances presented in this case, create a unitary expression such that 'TINEL-LOCK' has no significance by itself as a trademark.")

In this case, the additional wordings cited by the Examining Attorney are the generic descriptors of the ACTIVEX upholstery for vehicles, i.e., "heated," "front bucket seats," "cashmere color seat," "ebony," "matrl seats" or "seating material." Those elements of the specimen are easily separable from ACTIVEX. The applied-for mark, ACTIVEX, presents a separate and distinct commercial impression apart from these generic modifiers shown in the specimen, and ACTIVEX is the only distinctive element of the phrases shown in the specimen. It cannot be said that the generic terminology shown on the specimen is "essential and integral subject matter." *See* TMEP § 807.12(d). This is supported by the fact that the Applicant uses various terms to describe its ACTIVEX upholstery products, i.e., "heated" and "front bucket seats".

Therefore, the applicant submits that the mark ACTIVEX functions as a trademark and is registrable for the goods – upholstery for vehicles.

CONCLUSION

The applicant does not wish to amend the mark in the drawing to conform to the cited marks on the specimen. The mark on the drawing is a substantially exact representation of the mark on the specimen.

The applicant submits it has responded to all outstanding issues raised in the Office Action. Should the Examining Attorney have any questions or require any additional information, the Examining Attorney is encouraged to contact the undersigned counsel.