

## FOUNDATION PATENTS, LLP

1701 N. CALIFORNIA BLVD.

WALNUT CREEK, CA 94596

(925) 478-5662

richard@foundationpatents.com

### "Specimen in Commerce"

A specimen is a sample of how you actually use your mark with the goods and/or services identified in your application in the commercial marketplace (e.g., on your product packaging or website). It is not the same as the drawing of the mark, which shows only the mark you want to register. So, a specimen is generally what consumers actually see when they are trying to purchase your goods or services.

A **specimen for goods** (products) usually shows the mark on the actual goods, on labels/tags affixed to the goods, on packaging, or in a product display for the goods (like a window display). Advertising materials are generally not acceptable as a specimen for goods, nor are materials used to carry out your daily business (e.g., invoices, packing slips, etc.).

The USPTO typically accepts the following specimens for goods:

- A time-stamped, contextual photograph of the product showing the mark directly on the product (e.g., the bottom of a coffee mug)
- Product labels and tags showing the mark being used in commerce (e.g., the label on a t-shirt)
- Product packaging showing the mark as sold in commerce (e.g., detergent soap packaging)
- Signage used in a product display at a store (e.g., a time-stamped photograph of the display)
- A webpage showing or describing the product near the mark and with purchasing information (e.g., a webpage showing a photograph of a computer laptop, the mark for the laptop appearing above the photograph, the price appearing below the photograph, and a shopping cart button/link appearing on the page)
- For downloadable software, copies of the instruction manual and screen printouts from (1) web pages showing the mark in connection with ordering or purchasing information or information sufficient to download the software, (2) the actual program

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that shows the mark in the title bar, or (3) launch screens that show the mark in an introductory message box that appears after opening the program

See TMEP §§904 et seq. and [1301.04](#) et seq. for more information about acceptable specimens for goods and services.

**"Specimen" Refusals**

The USPTO issues a specimen refusal for a variety of reasons, including the following.

- The specimen does not show the applied-for mark
- The specimen does not show use of the applied-for mark with any goods, services, or classes in the application, amendment to allege use, or statement of use
- The specimen is not actually in use in commerce in the marketplace (e.g., a printer's proof of an advertisement for services)
- The specimen does not show use in commerce by the applicant in the rendering or advertising of the services (e.g., a press release sent exclusively to news media for services)
- The specimen indicates that the goods have not yet been sold or transported in commerce (e.g., pre-sale orders for goods not yet available)
- The specimen is a digitally created or altered image of the goods
- The specimen is merely advertising for goods
- The specimen is merely material used to conduct business for goods (e.g., invoices, packing slips, billheads, business stationery, order forms, waybills, bills of lading, warranties)
- The specimen is merely a picture or rendering or copy of the drawing of the applied-for mark
- The specimen fails to make a direct association between the applied-for mark and an applicant's services

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- The specimen is a webpage that fails to include ordering information, pricing, and/or an association between the applied-for mark and an applicant's goods
- The specimen is a webpage for downloadable software that fails to create an association between the applied-for mark and an applicant's goods or fails to provide a means to download or purchase the software

See [TMPEP §§904, 904.03-904.04, 904.07, 1301.04\(a\)](#), and [1301.04\(g\)](#) for more information regarding specimen refusals.