

Section 8 of the Act be accompanied by a specimen showing current use of the mark. While the Act does not actually contain a “per class” specimen requirement, Trademark Rule 2.162(e), 37 C.F.R. §2.162(e), does state that the affidavit or declaration must “be accompanied by a specimen or facsimile, for each class of goods or services, showing current use of the mark.”

Pursuant to Trademark Rule 2.162(e), a registrant who has submitted a “deficient” specimen for a class of goods or services may cure the deficiency after the sixth year has expired, if the registrant verifies that the substitute specimen or facsimile was in use in commerce prior to the expiration of the sixth year. However, an omission of the required specimen for a particular class is a substantive deficiency that cannot be cured after expiration of the statutory period for filing the Section 8 declaration.

In this case, the specimen submitted with the combined declaration was applicable only to the goods in Class 24 and does not apply to the goods in Class 21. Furthermore, the substitute specimen submitted with the petition cannot be accepted in as much as the Commissioner is without the authority to accept a specimen submitted after the expiration of the statutory period. *In re Mother Tucker’s Food Experience (Canada) Inc.*, 925 F.2d 845, 208 USPQ 410 (C.C.P.A. 1980). While the Commissioner regrets that Petitioner did not receive the Office Action dated July 17, 1996, it would be futile to forward the registration file to the Examiner to consider a response which cannot cure the substantive deficiency in the Section 8 declaration.

Accordingly, the petition is denied. The registration will remain canceled for the goods in Class 21. Should Petitioner wish to file a new application for registration of the mark in this class, the Office will upon request, expedite handling of the application. *See* TMEP §1102.03.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:JCL:DHM

Date:

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