

This Opinion is Not a
Precedent of the TTAB

Mailed: June 3, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re ACT Education Corp.
—

Serial No. 98020747
Serial No. 98020760
Serial No. 98020772
Serial No. 98020795¹
—

Andrew J. Morgan of McKee, Voorhees & Sease, P.L.C.,
for ACT Education Corp.

Robert Struck, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

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Before Greenbaum, Goodman and Larkin,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

¹ These appeals involve common questions of law and fact and the records and briefs are highly similar where not identical. Accordingly, we decide these appeals in this single opinion. *See In re Binion*, 2009 TTAB LEXIS 701, at *3 (TTAB 2009) (deciding appeal in a single opinion where the record involved common issues of law and fact and the records were essentially identical). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2024). Unless otherwise noted, where the record and arguments overlap, we refer to the record and briefs in application Serial No. 98020747 for the BRONZE CERTIFIED WORKKEYS NCRC ACT and design applied-for mark.

ACT Education Corp. (“Applicant”) seeks registration on the Principal Register of four co-pending word and design designations (shown below) as proposed marks all for the following International Class 35 services:

Evaluation of specific fields of employment for others to identify specific skills and specific content and level of knowledge required for probable success in such specific fields of employment, vocational assessments services in the field of job placement and job-related skills, namely, testing, analysis, and evaluation of the knowledge, skills, and abilities of others for career placement purposes.

All four applications include a disclaimer of CERTIFIED, were filed on May 31, 2023 under Section 1(a) of the Trademark Act, 15 U.S.C. Section 1051 (a), and allege a date of first use and first use anywhere of July 26, 2022.



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² Serial No. 98020747. The description of the proposed mark is as follows: “The mark consists of a bronze-colored circular badge with a ribbon across the middle, with the words ‘BRONZE CERTIFIED’ in bronze above the ribbon, the words ‘WORKKEYS NCRC’ in bronze in the ribbon, and the word ACT appearing in red and blue below the ribbon. The color white appears in the background.” The application includes a color statement: “The color(s) bronze, red, blue and white is/are claimed as a feature of the mark.”

³ Serial No. 98020795. The description of the proposed mark is as follows: “The mark consists of a silver-colored circular badge with a ribbon across the middle, with the words ‘SILVER CERTIFIED’ in silver above the ribbon, the words ‘WORKKEYS NCRC’ in silver in the ribbon, and the word ACT appearing in red and blue below the ribbon. The color white appears in the background.” The application includes a color statement: “The color(s) silver, red, blue and white is/are claimed as a feature of the mark.”



The Examining Attorney has refused registration under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53 and 1127, on the ground that these designations fail to function as marks. In particular, the Examining Attorney asserts that the designations are not operating as source identifiers for Applicant’s services but rather as a credential or certification that indicates completion of Applicant’s courses.

When the refusal was made final, Applicant appealed and filed two requests for reconsideration in each co-pending application. After the Examining Attorney denied the requests for reconsideration, the appeals were resumed.⁶ We affirm the refusals to register.

⁴ Serial No. 98020760. The description of the proposed mark is as follows: “The mark consists of a gold-colored circular badge with a ribbon across the middle, with the words ‘GOLD CERTIFIED’ in gold above the ribbon, the words ‘WORKKEYS NCRC’ in gold in the ribbon, and the word ACT appearing in red and blue below the ribbon. The color white appears in the background.” The application includes a color statement: “The color(s) gold, red, blue and white is/are claimed as a feature of the mark.”

⁵ Serial No. 98020772. The description of the proposed mark is as follows: “The mark consists of a platinum-colored circular badge with a ribbon across the middle, with the words ‘PLATINUM CERTIFIED’ in platinum above the ribbon, the words ‘WORKKEYS NCRC’ in platinum in the ribbon, and the word ACT appearing in red and blue below the ribbon. The color white appears in the background.” The application includes a color statement: “The color(s) platinum, red, blue and white is/are claimed as a feature of the mark.”

⁶ Page references to the application record are to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal are to the Board’s TTABVUE docket system. Applicant’s brief is at 6 TTABVUE and the reply brief is at 8 TTABVUE. The Examining Attorney’s brief is at 9 TTABVUE.

I. Preliminary Issue

In its reply brief, Applicant has objected to the Examining Attorney's separate argument in his brief that the submitted specimens do not show a direct association with the services. 9 TTABVUE 3. Applicant argues that this basis for refusal was not raised during examination. *Id.*

Because this issue was not raised as an additional refusal during examination, we limit our consideration to the arguments raised by the Examining Attorney that the designations fail to function as marks.⁷ *In re Peace Love World Live, LLC*, 2018 TTAB LEXIS 220, at *4 (TTAB 2018) (Board exercised discretion to limit its review of failure to function refusal to whether I LOVE YOU was merely ornamental, where new refusal raised on appeal).

II. Specimens, Record Evidence, and Applicant's and the Examining Attorney's Positions

May 31, 2023 Specimen

Applicant describes the original specimen as a "Brochure using mark and promoting services; webpage using mark and promoting services."

The initial specimen submitted by Applicant is reproduced in relevant part:

As part of an internal Board pilot program, the citation form in this opinion is in a form provided in the TBMP § 101.03(a). For decisions of the Board, this opinion employs citation to the Lexis database. This decision also cites only to the Federal Reporter.

⁷ Applicant's brief also addresses and construes the failure to function refusal as an ornamentation refusal, and urges the Board to construe the refusal as such. 9 TTABVUE 7. But the Examining Attorney did not issue a refusal on this basis, as confirmed in his brief. 8 TTABVUE 7. Therefore, we do not consider the failure to function as a mark refusal as one based on ornamentation and disregard the arguments made by Applicant on this basis.

Prepare Yourself for The Future

- Get college credit*
- Match your skills to in-demand careers
- Land that first career or apprenticeship gig

Learn It.

No matter what your next step—**more education, career placement, apprenticeship**—the ACT® WorkKeys® National Career Readiness Certificate® (NCRC®) sets you apart.

Earn It.



Complete three foundational assessments—Applied Math, Workplace Documents, Graphic Literacy—to earn a **Bronze, Silver, Gold, or Platinum** WorkKeys NCRC.

Share It.

Get your digital badge and show your achievement in your **social channels, on your digital resume, and with online recruiting sites** like ZipRecruiter, Indeed, and LinkedIn.




Learn More!
act.org/workkeys-ncrc

*American Council on Education (ACE) recommends that colleges award up to six semester hours of college credit to Silver, Gold, or Platinum achievements.

ACT WorkKeys NCRC



ACT Award College Credit FOR THE ACT® WorkKeys® National Career Readiness Certificate®

Students MUST possess the workplace skills employers need. Postsecondary institutions can award college credit to students who demonstrate the 21st-century skills needed for success, using a nationally recognized credential that measures foundational, work-ready skills.

→ **A Nationally Recognized Credential**

The ACT® WorkKeys® National Career Readiness Certificate® (NCRC®) is an evidence-based credential demonstrating the essential problem-solving and critical thinking skills needed for workplace success.

More than 5 million WorkKeys NCRCs have been awarded at four levels:





<https://www.act.org/content/act/en/workforce-solutions/act-workkeys/act-workkeys-job-profiling.html>

ACT Job Profiling ([/content/act/en/workforce-solutions/act-workkeys/act-workkeys-job-profiling.html](https://www.act.org/content/act/en/workforce-solutions/act-workkeys/act-workkeys-job-profiling.html))

Profile your most-needed job roles. Assess your talent pool.

[Enroll in WorkKeys \(<https://pages2.act.org/renew-workkeys.html>\)](https://pages2.act.org/renew-workkeys.html)

Digital Badges for NCRC

We're excited to announce that ACT has partnered with Credly to award Platinum, Gold, Silver, and Bronze WorkKeys NCRC earners with digital badges. This is an opt-in service, allowing achievements and badges to be easily socialized to online platforms.



<https://www.act.org/content/act/en/workforce-solutions.html>

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July 17, 2024 Substitute Specimen

Applicant described the substitute specimen as “advertising materials showing mark as used in commerce.” The substitute specimen is reproduced in relevant part:



Maximize career potential by preparing adult learners to successfully transition to postsecondary education, apprenticeship programs, and the workforce with ACT® WorkKeys® – a system of assessments, curriculum, certification, and skills profiling that measures and builds essential workplace skills.

The U.S. Department of Education's Office of Career, Technical, and Adult Education (OCTAE) approves the ACT® WorkKeys® Applied Math and Workplace Documents Assessments for use in the National Reporting System (NRS) for measuring educational functioning level gains in adult education, making them eligible for use under the Workforce Innovation and Opportunity Act (WIOA) for adult basic education programs.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy.

<p>WORKKEYS APPLIED MATH</p>	<p>WORKKEYS WORKPLACE DOCUMENTS</p>
<p>Measures critical thinking, mathematical reasoning, and problem-solving techniques for situations that actually occur in today's workplace.</p>	<p>Measures skills that individuals use when they read real workplace documents and use that information to make job-related decisions and solve problems.</p>

WIOA FUNDING BENEFITS YOUR LEARNERS

Leverage WIOA program funds to use WorkKeys Applied Math and Workplace Documents Assessments to report federally required measurable skill gains, alongside providing your adult learners with benefits of:

- Applying real-world use to classroom coursework.
- Verifying their skills meet the needs of employers using a skills-based career navigation tool aligned with occupational profile benchmarks.
- Being prepared to successfully transition to postsecondary education and training, including the opportunity to earn college credit at many institutions.

Building confidence by offering a stackable certification program. WorkKeys Applied Math and Workplace Documents are two of the three assessments required to earn the ACT® WorkKeys® National Career Readiness Certificate™ (NCRC®). Learners can add the WorkKeys Graphic Literacy Assessment and earn their WorkKeys NCRC—an evidence-based credential awarded at four different levels that demonstrates the essential problem-solving and critical thinking skills needed for workplace success.

WorkKeys Graphic Literacy measures skills that individuals use when they read and comprehend graphical materials to solve work-related problems.



95%

In an independent survey conducted by Indeed, 95% of job seekers recommended earning the WorkKeys NCRC.

Applicant explained in the July 17, 2024 Request for Reconsideration at TSDR 3 that:

while the applied-for mark may be displayed by others, such usage is consistent with the nature of Applicant's [identified] services ... In particular, Applicant's services continue beyond and long after the testing and analysis portions of its services have been completed. The display of the applied-for mark is a continuing representation that the party displaying same has been evaluated and maintain[s] accreditation through Applicant's on-going services until such time as the party is no longer accredited and Applicant's services thus terminate.

In the September 16, 2024 Request for Reconsideration at TSDR 3, Applicant further explained, in reference to the substitute specimen, that "the credential to be earned is the 'Act® WorkKeys® National Career Readiness Certificate® (NCRC ®)' and not the Applied-for mark(s) which [are] merely used to identify the services as genuine and originating from Applicant."

Applicant also provided the file histories of each involved co-pending application listed above to explain the four different levels that could be earned in connection with the evaluation and vocational assessments services (Sep. 16, 2024 Request for Reconsideration at TSDR 5-610); the registration certificates for other marks owned by Applicant incorporated into the co-pending designations applied for as marks: ACT and design (Registration No. 7052519), two ACT standard character marks (Reg. Nos. 2888069 and 4517656),⁸ ACT WORKKEYS NCRC and design mark (Reg. No. 6014613), NCRC (Reg. No. 4339450) and WORKKEYS (Reg. No. 5617931) (*Id.* at

⁸ A couple of the registration certificates show the owner as ACT INC., with the provided TSDR printout not showing the current owner.

TSDR 611-644; July 17, 2024 Request for Reconsideration at TSDR 12-20); evidence of a third-party registration (Reg. No. 4537040, May 13, 2024 Response to Office



Action at TSDR 5-10) for the mark and its specimen of use. Applicant stated that the purpose of the third-party submission is to show that the Office has accepted similar specimens for services and that others in the industry advertise in a similar manner.⁹ *Id.* at 4.

In connection with the disclaimer requirement, the Examining Attorney provided a dictionary definition for “certified” defined as “to guarantee as meeting a standard” or “to issue a license or certificate to.” AMERICAN HERITAGE DICTIONARY, February 14, 2024 Office Action at TSDR 2.

The Examining Attorney argues that “applicant’s mark, as used on the specimens, identifies a credential or certification used by others to indicate completion of applicant’s courses and evaluations and is not a source identifier for applicant’s services.” 8 TTABVUE 4, 5. The Examining Attorney points to statements in the original specimen referencing the opt-in for a digital badge and “four badge levels” in support. 8 TTABVUE 4. As to the substitute specimen, the Examining Attorney

⁹ Applicant did not discuss this third-party application in its appeal brief. “It is axiomatic that the ‘Board must assess each mark on its own facts and record,’... and that ‘the prior decisions and actions of other trademark examining attorneys in registering other marks are not binding upon the USPTO or the Board.’” *In re Korn Ferry*, 2024 TTAB LEXIS 224, at *13 (TTAB 2024) (internal citation and citation omitted). See *In re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001). Additionally, we are not privy to the record of the third-party registration file, and moreover, the determination of registrability of that particular third-party mark by the trademark examining attorney cannot control the merits in the cases now before us. Therefore, we do not find this third-party registration evidence probative.

argues that each applied-for mark appears “again with the other three levels of its credential immediately below a description that states, ‘Building confidence by offering a stackable certification program.’”¹⁰ 8 TTABVUE 5.

The Examining Attorney argues

In this case, it has been clearly established that the applicant’s mark solely identifies a credential or badge used by those who complete its certification programs. The purpose of the credential is to allow applicant’s clients to display evidence of completion of applicant’s program across various platforms. 8 TTABVUE 6.

Applicant “disagrees with the characterization that the applied-for Mark is the credential that may be earned” stating that “this reasoning, even if true, does not prevent the Mark from also serving as an identifier of source.” 6 TTABVUE 7. Applicant analogizes this situation to cases where a mark can identify both a process, method, or system, and a service, referencing TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1301.04(g)(ii). *Id.* at 10. Applicant argues that the Examining Attorney presumes that consumers “would view the Mark as the credential itself and summarily concludes that they could not also view it as identifying the source of Applicant’s [evaluation and vocational assessments] services” when the applied-for

¹⁰ The Examining Attorney also notes that the applied-for marks are used together (“applicant’s mark appears with three other similar designs indicating that there are four badge levels – bronze, silver, gold and platinum”). 8 TTABVUE 4. As indicated, Applicant submitted the file histories of the other co-pending applications on reconsideration in each application to show the four levels as they relate to the services, not the credential earned. September 16, 2024 Requests for Reconsideration at TSDR 3. However, the fact that the co-pending marks are used in conjunction with each other is immaterial to whether a particular mark functions as a mark on its own since each proposed mark has been sought to be separately registered. For each involved application, our analysis must be based solely on the applied-for mark that has been depicted in the application drawing.

mark could be both the source of a credential and an identifier of source for the evaluation and vocational assessments service. 6 TTABVUE 11. Applicant points out that the applied-for mark is displayed in close proximity to the described services, acting as an indicator of source. *Id.* Applicant also argues that the presence of Applicant's three other registered marks (i.e., WORKKEYS, NCRC and ACT) shown within the applied-for marks indicates the source-indicating significance of the applied-for word and design marks for Applicant's evaluation and vocational assessments services. 6 TTABVUE 12-13; 9 TTABVUE 6.

III. Applicable Law and Analysis

As the Trademark Act makes clear, the USPTO "is statutorily constrained to register matter on the Principal Register only if it functions as a mark." *In re Keep A Breast Found.*, 2017 TTAB LEXIS 259, at *13-14 (TTAB 2017). Section 45 of the Trademark Act defines "trademark" and "service mark" as "any word, name, symbol, or device, or any combination thereof ... used by a person ... to identify and distinguish" goods or services, respectively, "and to indicate the source" of the goods or services, "even if that source is unknown." 15 U.S.C. § 1127.

"The key question is whether the asserted mark would be perceived as a source indicator for Applicant's services." *In re TracFone Wireless, Inc.*, 2019 TTAB LEXIS 152, at *3 (TTAB 2019); *see also In re Aerospace Optics, Inc.*, 2006 TTAB LEXIS 126, at *4 (TTAB 2006) ("[T]he critical inquiry is whether the asserted mark would be perceived as a source indicator.").

We must assess whether Applicant's designations:



function as marks based on whether the relevant public, i.e. purchasers or potential purchasers of the identified services for “testing, analysis, and evaluation of the knowledge, skills, and abilities of others for career placement purposes,” would perceive the designations as identifying the source or origin of such services. *In re Texas With Love, LLC*, 2020 TTAB LEXIS 466, at *5 (TTAB 2020); *In re Volvo Cars of N. Am., Inc.*, 1998 TTAB LEXIS 20, at *13 (TTAB 1998) (“A critical element in determining whether a term or phrase is a trademark is the impression the term or phrase makes on the relevant public.”). *See also In re JobDiva, Inc.*, 843 F.3d 936, 941 (Fed. Cir. 2016) (a key consideration is the perception of the user); *Lens.com, Inc. v. 1-800 Contacts, Inc.*, 686 F.3d 1376, 1381-82 (Fed. Cir. 2012).

“The Board looks to Applicant’s specimens and other evidence of record showing how the designation is actually used in the marketplace to determine how the designation would be perceived by the relevant public.”¹¹ *In re Vox Populi Registry Ltd.*, 25 F.4th 1348, 1351 (Fed. Cir. 2022) (cleaned up; citations omitted). For the failure-to-function analysis, we consider all the evidence of record, including an applicant’s specimens, as well as other evidence.” *In re Team Jesus LLC*, 2020 TTAB

¹¹ As indicated, *supra*, the third-party registration evidence has no impact on our analysis. And although the designations are displayed together in the initial and substitute specimens, we analyze each designation separately in considering whether it functions as a mark.

LEXIS 503, at *7-8 (TTAB 2020). *See also In re Sones*, 590 F.3d 1282, 1289 (Fed. Cir. 2009) (“The PTO must consider the evidence as a whole to determine if Sones’ specimen sufficiently associates his mark with his charity bracelets so as to ‘identify and distinguish the goods.’”); *In re Cardio Grp., LLC*, 2019 TTAB LEXIS 153, at *6 (TTAB 2019) (“in assessing the specimens, consideration must be given not only to the information provided by the specimen itself, but also to any explanations offered by Applicant clarifying the nature, content, or context of use of the specimen that are consistent with what the specimen itself shows”).

Because there are no limitations to the channels of trade or classes of consumers in the involved identifications of services, the relevant consuming public for the services of “testing, analysis, and evaluation of the knowledge, skills, and abilities of others for career placement purposes” includes ordinary members of the general public. *See Univ. of Ky. v. 40-0, LLC*, 2021 TTAB LEXIS 68, at *32-33 (TTAB 2021).

We now look to the specimens of record, which show how each designation is used in the marketplace, to determine what the perception of each designation is to consumers or potential consumers. In the present case, the specimens of record comprise promotional brochures, webpages and advertising material.

The original specimen includes the following excerpted statements:



➔ **A Nationally Recognized Credential**

The **ACT® WorkKeys® National Career Readiness Certificate®** (NCRC®) is an evidence-based credential demonstrating the essential problem-solving and critical thinking skills needed for workplace success.

More than 5 million WorkKeys NCRCs have been awarded at four levels:



Digital Badges for NCRC

We're excited to announce that ACT has partnered with Credly to award Platinum, Gold, Silver, and Bronze WorkKeys NCRC earners with digital badges. This is an opt-in service, allowing achievements and badges to be easily socialized to online platforms.



The substitute specimen includes the following excerpted statement:



Building confidence by offering a stackable certification program, WorkKeys Applied Math and Workplace Documents are two of the three assessments required to earn the ACT® WorkKeys® National Career Readiness Certificate® (NCRC®). Learners can add the WorkKeys Graphic Literacy Assessment and earn their WorkKeys NCRC—an evidence-based credential awarded at four different levels that demonstrates the essential problem-solving and critical thinking skills needed for workplace success.

WorkKeys Graphic Literacy measures skills that individuals use when they read and comprehend graphical materials to solve work-related problems.



95%

In an independent survey conducted by Indeed, 95% of job seekers recommended earning the WorkKeys NCRC.

Applicant has argued that the presence of Applicant’s three other registered marks shown within the co-pending designations imbue source-indicating significance to them. However, the question before us is not whether the individual previously registered marks incorporated into the designations function as service marks in connection with the recited services, but rather, whether the co-pending designations sought to be registered (as depicted in each drawing in the applications)

are being used as service marks. We note that “[t]he presumption of validity of 15 U.S.C. § 1057(b) does not carry over from registration of the older mark to a new application for registration of another mark that happens to be similar (or even nearly identical).” *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016). A new application must be examined “for compliance with each and every eligibility requirement” notwithstanding any prior similar or (or nearly identical) registered mark. *Id.*

Applicant has pointed out that the applied-for designations are in close proximity to the recited services in the submitted specimens.¹² However, this fact alone does not necessarily mean that the designations are functioning as an indicator of source for the recited services, especially if there is a lack of sufficient association. *See In re Osmotica Holdings Corp.*, 2010 TTAB LEXIS 222, at *6 (TTAB 2010) (“It is not enough that the mark and a reference to the services both appear in the same specimen.”).

The initial and substitute specimens both indicate that users that complete Applicant’s assessment (and evaluation) service can earn an evidence-based credential that can be achieved at one of four levels – bronze, silver, gold or platinum. The user completes three separate foundational assessments—applied math, workplace documents, graphic literacy—to earn this credential, the NCRC certificate.

¹² We take judicial notice of online dictionaries that are available in printed format or have regular fixed editions. *See In re Red Bull GmbH*, 2006 TTAB LEXIS 136, at *8-9 (TTAB 2006). “Assessment” is defined as “the process of testing students and making a judgement about their knowledge, ability or progress.” OXFORD LEARNER’S DICTIONARY (oxfordlearnersdictionaries.com/us accessed May 30, 2025).

This certification credential—with one of the four applied-for designations (bronze, silver, gold or platinum)—is displayed by the consumer. While it appears from the specimens of record that Applicant is, indeed, rendering the skill evaluation and assessment services that are recited in the application, as used on the specimen, the applied-for designations:



are not used to identify the recited evaluation and vocational assessments services and distinguish them from others. Rather, they are used to identify the credential the consumer can earn and display after completing Applicant’s NCRC assessments and being awarded one of the four measured skill levels.

Applicant argues that the specimens show dual use—i.e., use in connection with the services and use as a credential—analogizing to Board cases where a term can be used as, for example, the name of a process and also function as a service mark. And it is true that a specimen can reflect a dual use of a system or process and a service. In those cases, if a mark is used to identify both the system or process and the services are rendered by means of the system or process, the designation may be registrable as a service mark. See *In re Produits Chimiques Uginé Kuhlmann Societe Anonyme*, 1976 TTAB LEXIS 30, at *3-4 (TTAB 1976) (“If a designation is used to identify services or to identify both a process and services rendered under the process by the proprietor thereof, it constitutes a service mark within the meaning of the statute.”).

In the present appeals, the description and explanations in the specimens refer to the proposed marks as a “nationally recognized credential that measures foundational, work-ready skills” that can be earned at four levels, and stacking certifications. Even though the specimens reference Applicant’s skill assessment (and evaluation) services, the explanations that follow make clear that the applied-for marks are not in reference to the assessment services but rather are the credential that is earned and can be displayed or shown after taking the skill assessments. Therefore, the initial or substitute specimens do not show dual use of the designations as a reference to both Applicant’s evaluation and vocational assessments services as well as the credential or certification earned.

We find, as shown by the submitted specimens, that the co-pending designations do not function to identify and distinguish the source of Applicant’s recited evaluation and vocational assessments services. *Cf. In re Thacker*, 1986 TTAB LEXIS 176, at *3 (TTAB 1986) (SPORTING ARMS ORDNANCE TECHNICIAN is an honorary designation for those who have completed applicant’s master gunsmithing course and does not function as a mark for offering and conducting courses in the technical and commercial aspects of gunsmithing); *In re Mortg. Bankers Ass’n of Am.*, 1985 TTAB LEXIS 71, at *4-5 (TTAB 1985) (CERTIFIED MORTGAGE BANKER found to be a title or designation which one can use after one successfully completes the professional designation program rather than services of providing qualifying examinations, testing and grading in the real estate finance field).

IV. Conclusion

Considering each separate record in the co-pending applications as a whole, the



designations

as they

appear on the submitted specimens fail to function as service marks.

Decision:

The Section 1, 2, 3 and 45 refusals to register Applicant's proposed marks:



in Application Serial Nos. 98020772, 98020760, 98020795 and 98020747 are affirmed.