

Notification of ex-officio provisional total refusal of protection (Article 5 of the Madrid Protocol, Rule 17(1) and (2) of the Regulations under the Protocol relating to the Madrid Agreement, and Article 33 EUTMR)

Alicante, 02/04/2020

International registration number: **1518695**
Name of the holder: **Hyperloop Technologies, Inc.**
Trade mark: **POD**

Protection of the abovementioned mark is provisionally refused for the European Union for part of the goods covered by the designation of the European Union.

I. Grounds

The sign you have applied for, 'POD' is ineligible for registration under Article 7(1)(b) and (c) and Article 7(2) EUTMR, because it describes one of the main characteristics of the goods for which protection is sought, and it is also devoid of any distinctive character.

Descriptiveness

The goods to which this objection applies are these:

12 Land vehicles, hover vehicles, magnetic levitation vehicles and aircraft; apparatus for locomotion by land, air or water, namely, magnetic levitation trains, magnetic levitation vehicles, magnetic levitation pods, vehicles that travel in a vacuum or partial vacuum within an enclosed tube, trains that travel in a vacuum or partial vacuum within an enclosed tube, pods that travel in a vacuum or partial vacuum within an enclosed tube, locomotives; freight trains; passenger trains; railway freight cars; railway passenger cars.

The assessment of descriptiveness is based on how the relevant consumer would perceive the sign in relation to the goods and/or services for which protection is sought. In the present case, the English speaking consumer would understand the sign as having the following meaning: **Automated driverless vehicle.**

Originally, a POD is: *an enclosed cabin suspended from a cable or a big wheel, for carrying passengers.*

www.collinsdictionary.com

Nowadays, the term POD refers to any form of transport within an automated

driverless vehicle.

See for example:

Pods on Demand

POD (Pods on Demand) are fully autonomous, electrically driven vehicles that seat up to four people in comfort. They have been used at Heathrow Terminal 5 since 2011 and have a reliability record of over 99% - far higher than any bus or rail system.

www.westfield.com
Accessed on 02/04/20

Futuristic 'driverless pods' transport passengers around a shopping centre near Bristol as part of a trial that could see the electric vehicles rolled out across the UK.

www.dailymail.co.uk
Accessed on 02/04/20

*The World's Most Popular Autonomous **Pods** & Minibuses*

www.levelfivesupplies.com
Accessed on 02/04/20

***Driverless, autonomous transport pods** begin UK public trials
The pods use sensors, radar and vision processing to navigate crowded areas and avoid collisions.*

www.news.sky.com
Accessed on 02/04/20

Therefore, the relevant consumers will perceive the sign 'POD' in plain standard characters and with no additional elements as describing any kind of automated driverless vehicle, and not as the manufacturing or commercial origin of these goods.

Lack of distinctiveness

Given that the sign has a clear descriptive meaning, it is also devoid of any distinctive character and therefore objectionable under Article 7(1)(b) EUTMR, as it is incapable of performing the essential function of a trade mark, which is to distinguish the goods and/or services of one undertaking from those of its competitors.

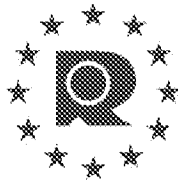
Consequently, taken as a whole, the sign for which protection is sought is descriptive and devoid of any distinctive character, and is not capable of distinguishing the goods to which an objection has been raised within the meaning of Article 7(1)(b) and (c) and Article 7(2) EUTMR, namely all the goods for which protection was sought:

12 *Land vehicles, hover vehicles, magnetic levitation vehicles and aircraft; apparatus for locomotion by land, air or water, namely, magnetic levitation trains, magnetic levitation vehicles, magnetic levitation pods, vehicles that travel in a vacuum or partial vacuum within an enclosed tube, trains that travel in a vacuum or partial vacuum within an enclosed tube, pods that travel in a vacuum or partial vacuum within an enclosed tube, locomotives; freight trains; passenger trains; railway freight cars; railway passenger cars.*

The holder of the international registration is obliged to be represented before the Office by a legal practitioner or professional representative that is entitled to represent third parties before the EUIPO (Articles 119(2) and 120(1) EUTMR). Protection of the international registration for the European Union will be refused in whole if a representative is not appointed within the time limit indicated under II.

II. Time Limit

The holder of the international registration is hereby given a time limit of two months to overcome the ground for refusing protection indicated and to comply with the requirements indicated above. Failure to do so will mean that after expiry of the time limit, the Office will render a decision in which it refuses the protection in whole or in part. Said decision may be appealed. The time limit of two months to reply to the present refusal will start on the day the present notification was issued by the Office (Article 193(2), (3) and (4) EUTMR). Any such reply of the holder of the international registration shall be addressed to the EUIPO only.



Mercedes SIERRA