

This Opinion is Not a
Precedent of the TTAB

Mailed: May 11, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Golden Software, Inc.

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Serial No. 85792870

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James A. Sheridan of Sheridan Law LLC for Golden Software, Inc..

Mary E. Crawford, Trademark Examining Attorney, Law Office 102, Mitchell Front,
Managing Attorney.

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Before Taylor, Wellington and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Golden Software, Inc. (“Applicant”) seeks a Principal Register registration for the proposed mark QUARRIER, in standard characters, for “computer aided manufacturing (CAM) software for production planning and inventory management for the aggregate industry, namely, CAM software for production scheduling and equipment optimization.”¹ The Examining Attorney refused registration on the ground that Applicant’s proposed mark is merely descriptive of the identified goods under Section 2(e)(1) of the Act. After the refusal became final, Applicant appealed

¹ Application Serial No. 85792870, filed December 3, 2012 under Section 1(b) of the Trademark Act, based on an intent to use the proposed mark in commerce.

and filed a motion for reconsideration which was denied. Applicant and the Examining Attorney filed briefs.

A mark is deemed to be merely descriptive, within the meaning of Section 2(e)(1), if it immediately conveys knowledge of a quality, feature, function, characteristic or purpose of the goods for which it is used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (quoting *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009)); *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods. *In re Chamber of Commerce of the United States of America*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with the goods, and the possible significance that the mark would have to the average purchaser of the goods because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).²

For the most part, Applicant and the Examining Attorney agree on the meaning of the proposed mark QUARRIER and on the nature of the “aggregate industry” to

² Applicant’s reliance on the descriptiveness “tests” set forth in *No Nonsense Fashions, Inc. v. Consolidated Food Corp.*, 226 USPQ 502 (TTAB 1985) is misplaced. See *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009).

which Applicant's computer aided manufacturing ("CAM") software is directed. The evidence of record includes the following:

- Dictionary definitions³ indicate that "quarry" is a noun meaning: "pit-surface excavation for extracting stone or slate;"⁴ "a place where stone is dug out of the ground;"⁵ and "a place, typically a large, deep pit, from which stone or other materials are or have been extracted;"⁶ and that "quarry" is also a verb meaning: "extract (something such as stones) from or as if from a quarry;"⁷ and "extract (stone or other materials) from a quarry."⁸
- Dictionary definitions indicate that "quarrier" means: "one that quarries;"⁹ "a worker in a stone quarry;"¹⁰ and "a man who works in a quarry."¹¹
- CAM "is an application technology that uses computer software and machinery to facilitate and automate manufacturing processes."¹²
- "Aggregate" is "a broad category of coarse particulate material used in construction, including sand, gravel, crushed stone, slag, recycled concrete and geosynthetic aggregates."¹³

³ We have not considered definitions from British English dictionaries.

⁴ Office Action response of August 28, 2013 (<http://www.wordplays.com/definition/quarry>).

⁵ Office Action of October 7, 2014 (<http://www.macmillandictionary.com/dictionary/american/quarry>).

⁶ Office Action of October 7, 2014 (http://www.oxforddictionaries.com/us/definition/american_english/quarry).

⁷ Office Action response of August 28, 2013 (<http://www.wordplays.com/definition/quarry>).

⁸ Office Action of October 7, 2014 (http://www.oxforddictionaries.com/us/definition/american_english/quarry).

⁹ Office Action response of August 28, 2013 (<http://www.wordplays.com/definition/quarrier>).

¹⁰ Office Action of October 7, 2014 (<http://www.merriam-webster.com/dictionary/quarrier>).

¹¹ Office Action of October 7, 2014 (<http://www.vocabulary.com/dictionary/quarrier>).

¹² Office Action response of April 7, 2015 (printout from Techopedia).

¹³ Office Action of April 29, 2015 (printout from "wikipedia.org").

- Aggregate mining “... involves removing non-renewable resources like limestone, sand, and gravel, from deep within the earth,” and may take place in quarries. Mined material is often removed and processed by heavy equipment after it is mined.¹⁴

This evidence establishes that QUARRIER is merely descriptive of Applicant’s CAM software for the aggregate industry. Applicant concedes that at least one definition of a “quarrier” is “a worker in a stone quarry.” Applicant’s Appeal Brief at 7. The record also reveals that participants in the “aggregate industry” (to which Applicant’s goods are targeted) often extract aggregates from quarries using heavy equipment, and in doing so are effectively “quarriers.” According to Applicant’s identification of goods, its CAM software assists those in the aggregate industry, including those who work in quarries, or quarriers, with “equipment optimization.” Thus, someone familiar with Applicant’s goods – aggregate industry CAM software for equipment optimization – would immediately understand that the software may assist those who mine aggregates from quarries, i.e. “quarriers.”

As the Examining Attorney points out, terms which describe the intended user or purchaser of a product or service are often found to be merely descriptive. *In re Planalytics Inc.*, 70 USPQ2d 1453 (TTAB 2004) (GASBUYER merely descriptive of providing on-line risk management services in the field of pricing and purchasing decisions for natural gas); *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER merely descriptive of a trade journal

¹⁴ Office Action of April 29, 2015 (printouts from “onondaganation.org,” “cemexusa.com” and “cat.com”).

for systems users); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031, 1032 (TTAB 1984) (MOUNTAIN CAMPER found merely descriptive of retail and mail order services in the field of outdoor equipment and apparel, stating “we embrace the holding that a mark is merely descriptive if it describes the type of individuals to whom an appreciable number or all of a party’s goods or services are directed ... That not every item sold by applicant is so directed does not render the mark registrable.”); *In re Hunter Publishing Co.*, 204 USPQ 957, 962 (TTAB 1979) (finding JOBBER AND WAREHOUSE EXECUTIVE merely descriptive of a trade magazine, stating “it has been consistently held that a mark which describes the intended users of a particular product is merely descriptive of such goods”).¹⁵ Here, because Applicant’s CAM software is specifically targeted to the “aggregate industry,” which often seeks to extract material from quarries (and thus performs the same function as a “quarrier”), and the industry uses “equipment” which would benefit from “optimization,” the proposed mark QUARRIER is merely descriptive.

While Applicant is correct that “[i]t is not instantaneously evident from the definition of ‘quarrier’ that the applicant’s goods” are CAM software, Applicant’s Appeal Brief at 7, that is not the test. “Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them.” *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). Here, someone who knows that Applicant offers CAM software for the aggregate industry

¹⁵ Terms which describe where goods are used may also be found to be descriptive or generic. See *In re Central Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998) (ATTIC generic for automatic sprinklers for fire protection which may be used in attics).

would understand that QUARRIER conveys information about the product's intended users/purchasers, and the environment in which the product is intended to be used.¹⁶

Applicant is correct that we must resolve doubt in its favor. However, here we have no doubt. When CAM software for production planning and inventory management for the aggregate industry is known to be the goods, QUARRIER will be immediately recognized as describing the intended users and purchasers of the goods, as well as where the goods are intended to be used. *See In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). And given the close relationship between the aggregate industry and quarries, Applicant's competitors have or may have a need to also use the term "quarrier" or variations thereof. *In re Abcor Development*, 200 USPQ at 217 ("The major reasons for not protecting [merely descriptive] marks are ... to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.").

¹⁶ Applicant's argument that its mark should be registered because QUARRY is registered for "software for automated processing of data and workflow management" is not well-taken. "Neither the Trademark Examining Attorney nor the Board is bound to approve for registration an applicant's mark based solely upon the registration of other assertedly similar marks for other goods or services having unique evidentiary records." *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); *see also, In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("The Board must decide each case on its own merits ... Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court."). In any event, unlike Applicant's mark, the cited QUARRY mark is not registered for goods specifically targeted to the aggregate industry.

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Decision: The refusal to register Applicant's proposed mark on the ground that it merely descriptive is affirmed.