

## Request for Reconsideration after Final Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	85792870
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 102
<b>MARK SECTION</b>	
<b>MARK</b>	<a href="http://tmng-al.uspto.gov/resting2/api/img/85792870/large">http://tmng-al.uspto.gov/resting2/api/img/85792870/large</a>
<b>LITERAL ELEMENT</b>	QUARRIER
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font style, size
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_7334117136-20150813172142164138_.MERELY_DESCRIPTIVE_REQUEST_FOR_RECONSIDI</a>
<b>CONVERTED PDF FILE(S) (4 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0003.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0004.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0005.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_7334117136-20150813172142164138_.EXHIBIT1.pdf</a>
<b>CONVERTED PDF FILE(S) (3 pages)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0006.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0007.JPG</a>

	<a href="\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0008.JPG">\\TICRS\EXPORT16\IMAGEOUT16\857\928\85792870\xml12\RFR0008.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Request for Reconsideration and Exhibit to support arguments;
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/James A. Sheridan 43114/
<b>SIGNATORY'S NAME</b>	James A. Sheridan
<b>SIGNATORY'S POSITION</b>	Attorney of Record, Colorado bar member
<b>SIGNATORY'S PHONE NUMBER</b>	303-953-9083
<b>DATE SIGNED</b>	08/13/2015
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	NO
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Thu Aug 13 17:58:20 EDT 2015
<b>TEAS STAMP</b>	USPTO/RFR-73.34.117.136-2 0150813175820228275-85792 870-540c49f89cea53318b22e b5d262d5a9133e1ec6e2921b5 996d92eb6910f636ed-N/A-N/ A-20150813172142164138

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85792870** QUARRIER(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/85792870/large>) has been amended as follows:

### EVIDENCE

Evidence in the nature of Request for Reconsideration and Exhibit to support arguments; has been

attached.

**Original PDF file:**

[evi\\_7334117136-](#)

[20150813172142164138\\_.MERELY\\_DESCRIPTIVE\\_REQUEST\\_FOR\\_RECONSIDERATION.pdf](#)

**Converted PDF file(s)** ( 4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

**Original PDF file:**

[evi\\_7334117136-20150813172142164138\\_.EXHIBIT1.pdf](#)

**Converted PDF file(s)** ( 3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /James A. Sheridan 43114/ Date: 08/13/2015

Signatory's Name: James A. Sheridan

Signatory's Position: Attorney of Record, Colorado bar member

Signatory's Phone Number: 303-953-9083

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85792870

Internet Transmission Date: Thu Aug 13 17:58:20 EDT 2015

TEAS Stamp: USPTO/RFR-73.34.117.136-2015081317582022

8275-85792870-540c49f89cea53318b22eb5d26

2d5a9133e1ec6e2921b5996d92eb6910f636ed-N

/A-N/A-20150813172142164138

## REQUEST FOR RECONSIDERATION

The applicant respectfully requests reconsideration of the instant application with respect to the continued and maintained refusal to register pursuant to Trademark Act Section 2(e)(1) as the examining attorney has refused registration on the Principal Register because the proposed mark is merely descriptive of computer aided manufacturing (CAM) software for production planning and inventory management for the aggregate industry, namely, CAM software for production scheduling and equipment optimization. As discussed below, we believe that not only did the U.S. Patent and Trademark Office fail to meet its burden of showing by clear evidence that applicant's mark is primarily merely descriptive (see *In re Pennzoil Products Co.*, 20 U.S.P.Q.2d 1753, 1758 (TTAB 1991)), but that applicant's mark is in fact not primarily merely descriptive. "There is a thin line between a suggestive and a merely descriptive designation, and where reasonable men may differ, it is the Board's practice to resolve the doubt in applicant's favor and publish the mark for opposition." *In re Intelligent Medical Systems Inc.*, 5 U.S.P.Q.2d 1674, 16765 (TTAB 1987); *In re Aid Laboratories, Inc.*, 221 U.S.P.Q. 1215, 1216 (TTAB 1983); *In re Gourmet Bakers, Inc.*, 173 U.S.P.Q. 565, 565 (TTAB 1972).

The applicant asserts the mark QUARRIER is susceptible to multiple connotations, or requires imagination, cogitation, or gathering of further information in order for the relevant public to perceive any significance of the term as it relates to a significant aspect of applicant's product or services. (T.M.E.P. §1209.01(a).) As the relevant consumer perception of the mark relies on the consumer's imagination, the mark is suggestive rather than descriptive. *In re Atavio Inc.*, 25 U.S.P.Q. 2d 1361, 1362 (TTAB 1992) ("One which is only suggestive requires some imagination, thought or perception to determine its meaning in relation to the goods."); *In re WSI Corp.*, 1 U.S.P.Q. 2d 1570, 1572 (TTAB 1986) ("Where such imagination or forethought is required to reach a conclusion as to the nature of a key characteristic of goods or services, a mark must be determined to be suggestive and not descriptive.").

As illustrated in previous evidence, as well as the newly submitted evidence (see EXHIBIT1), the term QUARRIER relates to “a man who works in a quarry” and the term QUARRIER used as a noun is very rare. The term QUARRIER is a noun denoting people (rather than software) and relates to a breaker, ledgeman, a cutter, and a stone cutter.

The applicant asserts that the examining attorney bears the burden of establishing that a mark is merely descriptive. In *re* Pennzoil Prods. Co., 20 U.S.P.Q. 2d 1753, 1758 (TTAB 1991) (“In short, the evidence relied upon by the Examining Attorney is sufficient to meet the burden of proof upon the Patent and Trademark Office to establish that the term ‘MULTI-VIS,’ as applied to multiple viscosity motor oil, is generic and incapable of registration.”). When the issue of whether a mark is merely descriptive or suggestive is not clear, the question is to be resolved in favor of the applicant. In *re* Gourmet Bakers, Inc., 173 U.S.P.Q. 565, 565 (TTAB 1972) (noting that where “no easy applicable objective test” exists to determine whether a mark is merely descriptive or merely suggestive, the frequent manner of disposition is resolution in favor of the applicant on the theory that any person believed damaged by the registration would have the opportunity to oppose registration and present evidence usually not present in the *ex parte* application); In *re* Aid Labs., Inc., 221 U.S.P.Q. 1215, 1216 (TTAB 1983) (in deciding whether PEST PRUF for animal shampoo with insecticide is suggestive or merely descriptive, doubt is resolved in favor of applicant in holding the term merely suggestive of a possible end result of the use of applicant’s goods).

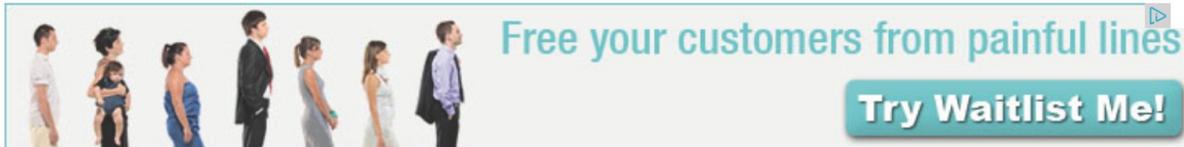
In support of the refusal the examining attorney has submitted the following: Dictionary definitions of the terms “quarrier” and “quarryman” indicating that a “quarrier” is a person who works in or manages a quarry. The examining attorney further indicates that the software performs a function that a person who works in a quarry would perform. Applicant respectfully traverses the rejection for the following reasons.

The examining attorney maintains that the proposed mark is primarily merely descriptive of computer aided manufacturing (CAM) software for production planning and inventory management for the aggregate industry, namely, CAM software for production scheduling and equipment optimization. However, the mark is susceptible to multiple connotations, or requires imagination, cogitation or gathering of further information in order for the relevant public to perceive any significance of the term as it relates to a significant aspect of applicant's product or services in that the term QUARRIER relates to both (1) quarryman, a man who works in a quarry, and (2) quarrier, quarriers, one that quarries. Furthermore, quarries relates to quarry and quarry relates to prey, the aim of an attack, a pit or stone pit, and extracting something such as stones from or as if from a quarry (see EXHIBIT C as submitted in the previous response.) *In re Disc Jockeys Inc.*, 23 U.S.P.Q.2d 1715, 1716 (TTAB 1992), *citing In re Uniroyal, Inc.*, 215 U.S.P.Q. 716 (TTAB 1982). Accordingly the mark is suggestive, not descriptive, and the refusal should be withdrawn. *In re Atavio Inc.*, 25 U.S.P.Q.2d 1361, 1362 (TTAB 1992) ("One which is only suggestive requires some imagination, thought or perception to determine its meaning in relation to the goods."); *In re WSI Corporation*, 1 U.S.P.Q.2d 1570, 1572 (TTAB 1986) ("Where such imagination or forethought is required to reach a conclusion as to the nature of a key characteristic of goods or services, a mark must be determined to be suggestive and not descriptive."); *The Institut National Des Appellations D'Origine v. Vintners International Co. Inc.*, 22 U.S.P.Q. 1190 (Fed. Cir. 1992).

The examining attorney has cited dictionary definitions of QUARRIER to show the mark is descriptive. A dictionary definition is never conclusive on the issue of descriptiveness since it gives undue value to the perceptions of the lexicographer. Applicant in turn points to the definitions in which do not support the claim that the mark is primarily merely descriptive. Where such a conflict exists, the examining attorney should allow the application to be published for opposition. *In re Sundown Technology Inc.*, 1 U.S.P.Q.2d 1927, 1928 (TTAB 1986); *In re Men's International*

Professional Tennis Council, 1 U.S.P.Q.2d 1917, 1918 (TTAB 1986); In re Jim Crockett Promotions Inc., 5 U.S.P.Q.2d 1455, 1456, n.5.

Accordingly, the applicant requests that the examining attorney withdraw this refusal.



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## QUARRIER

### Dictionary entry overview: What does quarrier mean?

- QUARRIER (noun)**  
 The noun **QUARRIER** has 1 sense:
  - a man who works in a quarry

*Familiarity information: **QUARRIER** used as a noun is very rare.*

### Dictionary entry details

- QUARRIER (noun)**

#### Sense 1

[quarrier](#) [BACK TO TOP]

#### Meaning:

A man who works in a quarry

#### Classified under:

Nouns denoting people

#### Synonyms:

quarrier; quarryman

#### Hypernyms ("quarrier" is a kind of...):

worker (a person who works at a specific occupation)

#### Hyponyms (each of the following is a kind of "quarrier"):

breaker; ledgeman (a quarry worker who splits off blocks of stone)

cutter; stonecutter (someone who cuts or carves stone)

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 "Do not judge your neighbor until you walk two moons in his moccasins." (Native American proverb, Cheyenne)  
 "Whatever the eye sees, the heart won't forget." (Armenian proverb)  
 "Have faith and God will provide." (Corsican proverb)

**QUARRIER:** related words searches

- » What does cutter mean?
- » Definition of stonecutter
- » Meaning of worker
- » breaker: pronunciation in phonetic transcription
- » Definition of ledgeman



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