

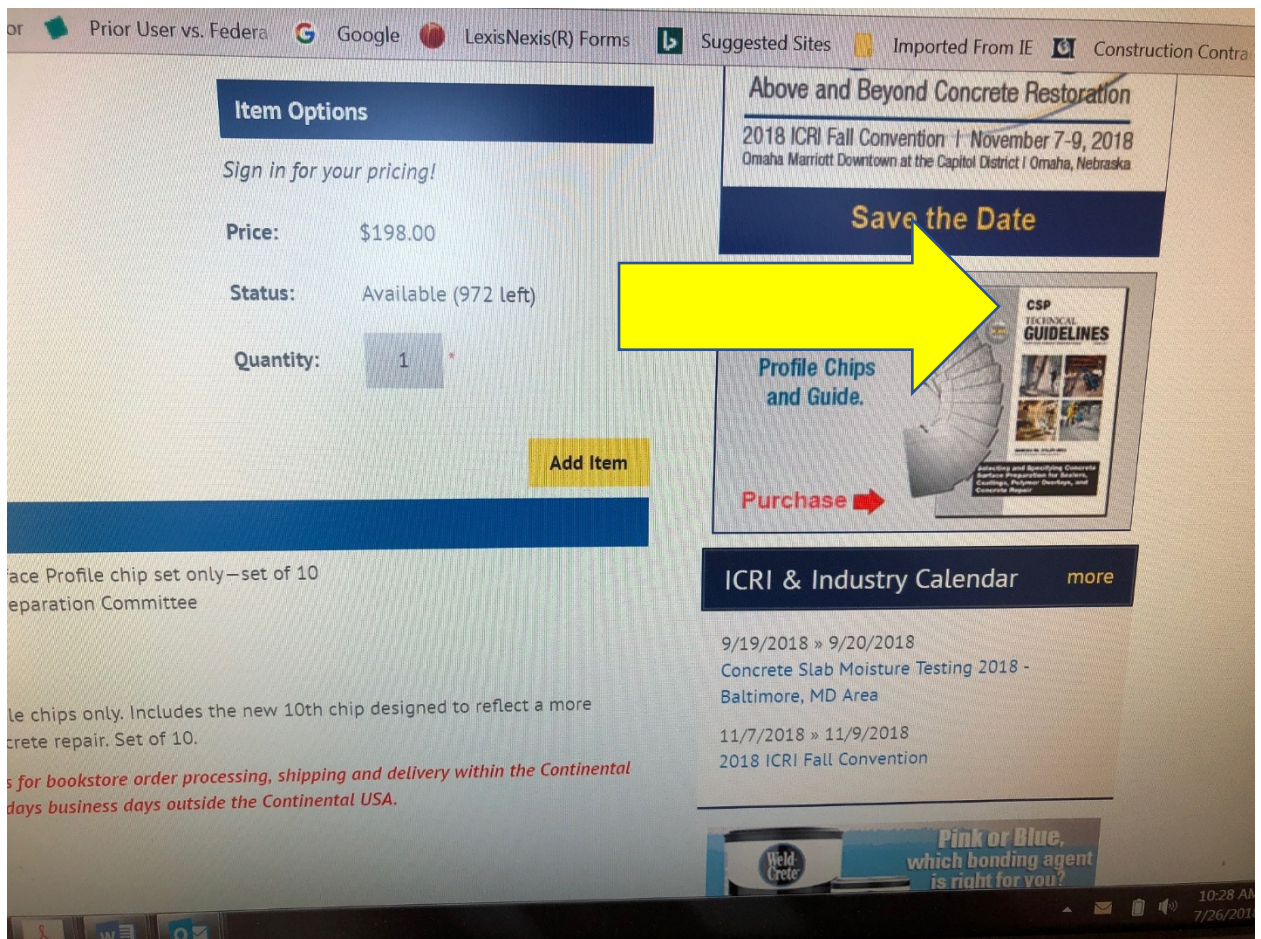
**APPLICANT'S RESPONSE TO OFFICE ACTION  
FOR  
U.S. APPLICATION SERIAL NO. 87579320  
CSP**

In response to the Office Action for U.S. Application Serial No. 87579320, the Applicant respectfully replies as follows:

**FAILURE TO FUNCTION AS A TRADEMARK OR SERVICE MARK – CLASS 016**

The Examining Attorney has refused registration on the ground that the Mark does not function as a trademark or service mark under 15 U.S.C §§1051, 1052, and 1127 based on the specimen submitted with the application.

Applicant respectfully requests that the refusal be withdrawn because Applicant is submitting a substitute specimen (the "016 Submitted Specimen").and supporting affidavit/declaration.



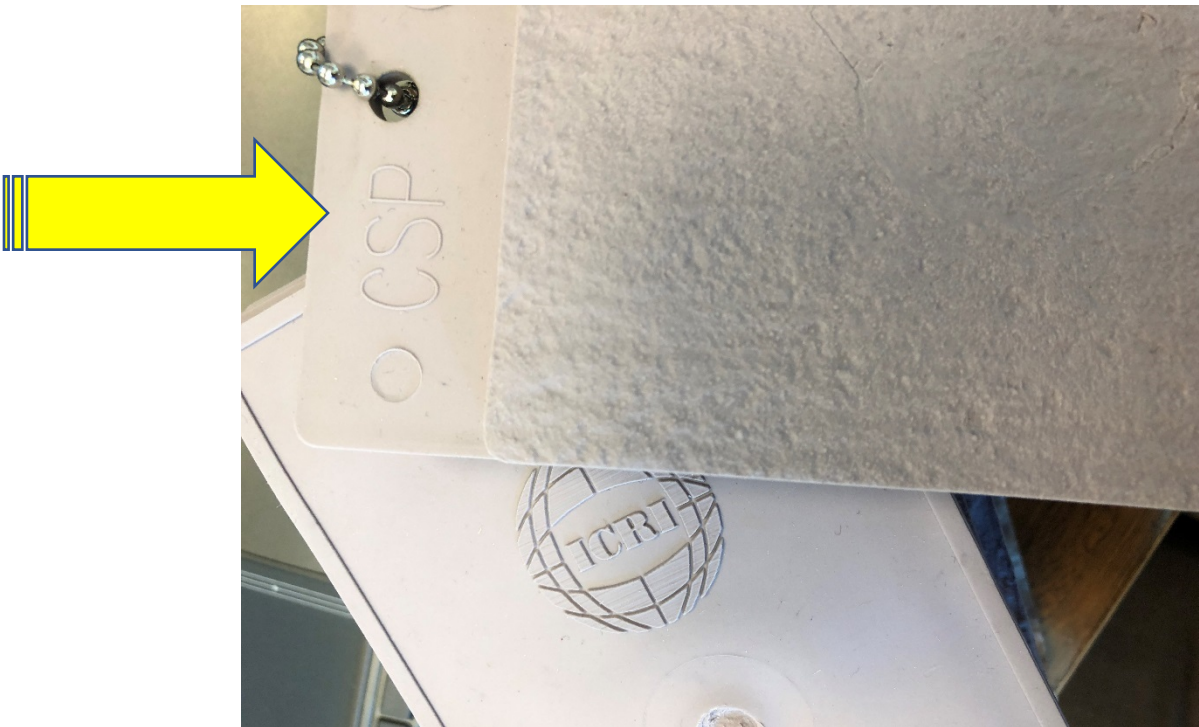
***Verified Statement***

Applicant verifies that the 016 Substitute Specimen was in use in commerce at least as early as the filing date of the application.

**FAILURE TO FUNCTION AS A TRADEMARK OR SERVICE MARK – CLASS 037**

The Examining Attorney has refused registration on the ground that the Mark does not function as a trademark or service mark under 15 U.S.C §§1051, 1052, and 1127 based on the specimen submitted with the application.

Applicant respectfully requests that the refusal be withdrawn because Applicant is submitting a substitute specimen (the “037 Submitted Specimen”).and supporting affidavit/declaration.



***Substitute Specimen for Class 037***

Applicant submits herewith a substitute specimen (the “Substitute Specimen”). The Substitute Specimen consists of a digital image that shows the Mark as used in commerce as a source identifier for providing concrete surface technical information as a service in International Class 037.

***Verified Statement***

Applicant verifies that the 037 Substitute Specimen was in use in commerce at least as early as the filing date of the application.

## **Conclusion**

Because, as described in greater detail above, Applicant has submitted substitute specimens and supporting affidavits, Applicant submits that the Mark is entitled to registration on the Principal Register.

Applicant respectfully requests that the Examining Attorney withdraw the refusal to register Applicant's Mark and approve the Application for publication. If a telephone call will assist in the prosecution of this Application, the Examining Attorney is invited to call 1-312-970-3460.

## **SPECIMEN DOES NOT SHOW USE OF THE MARK WITH ANY OF THE GOODS OR SERVICES in CLASSES 16 and 37**

Applicant respectfully repeats the arguments noted above, along with the above substitute specimens and verified statements in response to this objection.

- (1) Submit a different specimen (a verified “substitute” specimen) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods identified in the application or amendment to allege use. A “verified substitute specimen” is a specimen that is accompanied by the following statement made in a signed affidavit or supported by a declaration under 37 C.F.R. §2.20: ”The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application or prior to the filing of the amendment to allege use.” The substitute specimen cannot be accepted without this statement.
- (2) Amend the filing basis to intent to use under Section 1(b), for which no specimen is required. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen.

## **IDENTIFICATION OF THE GOODS AND SERVICES – CLARIFICATION REQUIRED**

### **International Class 016**

Applicant agrees to delete the term “providing” at the beginning of the identification.

**International Class 037**

Applicant agrees to delete the proposed wording “about the evaluation, preparation, installation, repair, and restoration of concrete”

**Suggested Identification**

Applicant agrees to the proposed substitute identification:

Class 016: **Printed** publications, namely, construction guidelines and specifications featuring benchmark profiles used to identify the degree of roughness considered to be suitable on concrete surfaces for the application of sealers, coatings, polymer overlay systems, and concrete repair materials

Class 037: Construction applications **information**, namely, **providing technical information about concrete featuring benchmark profiles used to identify the** degree of roughness considered to be suitable on concrete surfaces for the application of sealers, coatings, polymer overlay systems, **and** concrete repair materials

**CONCLUSION**

For the foregoing reasons, Applicant respectfully requests that the objections of the Trademark Examiner be withdrawn, and that the Application be approved for publication. Thank you.

Very truly yours,



Alec Miller  
**ROCK FUSCO & CONNELLY LLC**  
*Attorneys for the Applicant*  
321 N. Clark Street, Suite 2200  
Chicago, IL 60654