

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77790467
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION (no change)	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
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ORIGINAL PDF FILE	evi_6810524128-165736795_.Exhibit_C.pdf

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DESCRIPTION OF EVIDENCE FILE	Written response amending the description of goods and services, responding to the 2(e) rejection and arguing 2(f) in the alternative, including attachments of Exhibits A, B and C. Also, submitting 2(f) declaration.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/01/2002
FIRST USE IN COMMERCE DATE	At least as early as 12/01/2002
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	041
TRACKED TEXT DESCRIPTION	
Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training; preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training	
FINAL DESCRIPTION	
Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/01/2002
FIRST USE IN COMMERCE DATE	At least as early as 12/01/2002
ADDITIONAL STATEMENTS SECTION	

SECTION 2(f)	The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Kent M. Walker/
SIGNATORY'S NAME	Kent M. Walker
SIGNATORY'S POSITION	Attorney of record, California bar member
DATE SIGNED	04/29/2010
RESPONSE SIGNATURE	/Kent M. Walker/
SIGNATORY'S NAME	Kent M. Walker
SIGNATORY'S POSITION	Attorney of record, California bar member
DATE SIGNED	04/29/2010
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Apr 29 17:21:01 EDT 2010
TEAS STAMP	USPTO/ROA-XX.XXX.XXX.XX-2 0100429172101263319-77790 467-460decf04c7b3640f632a 79da5908b8a4-N/A-N/A-2010 0429165736795338

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77790467** has been amended as follows:

EVIDENCE

Evidence in the nature of Written response amending the description of goods and services, responding to the 2(e) rejection and arguing 2(f) in the alternative, including attachments of Exhibits A, B and C. Also, submitting 2(f) declaration. has been attached.

Original PDF file:

[evi_6810524128-165736795_..OA_Resp_5_4_10.pdf](#)

Converted PDF file(s) (11 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

Original PDF file:

[evi_6810524128-165736795_..Exhibit_A.pdf](#)

Converted PDF file(s) (8 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

Original PDF file:

[evi_6810524128-165736795 . Exhibit B.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_6810524128-165736795 . Exhibit C.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

Original PDF file:

[evi_6810524128-165736795 . Declaration 2F.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 041 for Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/01/2002 and first used in commerce at least as early as 12/01/2002, and is now in use in such commerce.

Proposed:

Tracked Text Description: Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; ~~preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training;~~ [preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training](#)

Class 041 for Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/01/2002 and first used in commerce at least as early as 12/01/2002, and is now in use in such commerce.

ADDITIONAL STATEMENTS

Section 2(f), based on Use

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

SIGNATURE(S)**Declaration Signature**

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 244. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Kent M. Walker/ Date: 04/29/2010

Signatory's Name: Kent M. Walker

Signatory's Position: Attorney of record, California bar member

Response Signature

Signature: /Kent M. Walker/ Date: 04/29/2010

Signatory's Name: Kent M. Walker

Signatory's Position: Attorney of record, California bar member

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 applicant'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 applicant in this matter: (1) the applicant 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 applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant'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.

Serial Number: 77790467

Internet Transmission Date: Thu Apr 29 17:21:01 EDT 2010

TEAS Stamp: USPTO/ROA-XX.XXX.XXX.XX-2010042917210126

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Stuart C. Segall)
)
International Class:	41)
)
Serial No.:	77/790467)
)
Mark:	HYPER-REALISTIC)
)
Attorney Docket:	11407.5)

CORRESPONDENT E-MAIL ADDRESS: email@nydegger.com

RESPONSE TO OFFICE ACTION

In response to the Office Action dated November 4, 2009, Applicant Stuart C. Segall ("Applicant") responds as follows and requests allowance of the application for registration.

1) Amendment to Description of Goods – Examiner's Suggestions Have Been Adopted

The examining attorney has found the current description of services indefinite as to the phrase "preparation of" and must be amended to further clarify that the preparation is provided for others as a service and not merely incidental and/or ancillary to other services that Applicant provides.

The current description is as follows:

"Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation of operational specific urban combat training scenarios; and preparation of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training."

The examiner suggests the following amended description (insertions underlined):

“Training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training.”

Applicant adopts this suggested amendment without prejudice with one additional amendment, as shown below:

“training services in the field of urban warfare; providing urban-simulated facilities for educational training, namely military training; preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services; and preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training.”

Accordingly, Applicant respectfully submits that the objection to the description of services as being indefinite has been adequately addressed and the description is sufficiently definite.

2) Refusal to Register / Rejection under 2(e)(1) - Applicant’s Mark is at most Suggestive but not Merely Descriptive.

The examining attorney has also refused registration on the grounds that the proposed mark merely describes the specified services. Applicant respectfully traverses the refusal as follows:

Applicant respectfully responds that HYPER-REALISTIC (the “Mark”) is instead as most suggestive of Applicant’s services. Since doubts on the issues of descriptiveness are to be resolved in favor of the applicant, *In Re Bed-Check Corporation*, 226 U.S.P.Q. 946, 948 (T.T.A.B. 1985), Applicant requests that the refusal be reconsidered and withdrawn based on the following arguments.

The refusal is based on these points. First, it is stated that the Mark merely describes as a whole a feature and/or characteristic of the claimed services, namely that they provide a heightened or “hyper” realistic” [sic] training and/or training environments. Second, Applicant’s specimen of record is cited as referring to these features of its services. Third, dictionary definitions of the terms “hyper” and “realistic” are attached to the office action. The office action states that the use of the prefix “hyper” with the term “realistic” provides an overall meaning of the proposed mark that merely describes these features and/or characteristics of Applicant’s training services.

What should be considered is whether, in the context of the services at issue, the overall impression of the entire Mark HYPER-REALISTIC is suggestive, even though isolated parts may be considered descriptive when viewed separately. See *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 545-46 (1020); *California Cooler, Inc. v. Loretto Winery, Ltd.*, 227 U.S.P.Q. 808, 810 (9th Cir. 1985).

HYPER-REALISTIC taken as a whole, evokes a different impression than the term HYPER and the word REALISTIC. HYPER-REALISTIC is not a regular word or phrase. Rather, it is irregular term created by hybridizing HYPER and REALISTIC. HYPER-REALISTIC is a combination of an arbitrary word or prefix (HYPER) and an adjective (REALISTIC), with no verb or term of action, and no particularized meaning as a whole. It is not a well defined word or term by dictionary standards, thus it has no settled descriptive meaning. It could suggest numerous things, such things as relating to fantasy, magic, psychology, psychiatry, art, logic, biology, mathematics or law and dozens of related services.

In *West & Company v. Arica Institute, Inc.*, 557 F.2d 338, 342, 195 U.S.P.Q. 446, 470 (wd Cir. 1977), the Court found that the mark PSYCHOCALISTHENICS was not descriptive because it “suggests a number of things but ... does not describe any one thing in particular. It could indicate a system of purely mental exercises..., a system of physical exercises ... which are designed to create specific, mental, emotional and physical results, or even a traditional exercise program merely designed to improve mental fitness and alertness.” Like PSYCHOCALISTHENICS, HYPER-REALISTIC taken as a whole suggests a number of things but does not describe any one thing in particular. It could suggest special training services or environments, but it could suggest many other types of services, but not merely describe any of them.

Also, the office action concludes that the Mark “merely describes as a whole a feature and/or characteristic of the claimed services, namely that they provide a heightened or ‘hyper’ realistic’ [sic] training and/or training environments.” However, HYPER-REALISTIC, taken as a whole, is not merely descriptive of the claimed services, including specifically:

“training services in the field of urban warfare;”

“providing urban-simulated facilities for educational training, namely military training;”

“preparation for others of operational specific urban combat training scenarios provided in connection with urban warfare training services;” or

“preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training.”

Rather, the suggestive meanings of the Mark invoke exaggerated and intangible ideas. So, no actual service could literally be merely described as HYPER-REALISTIC, particularly training services or environments. At most, the Mark could only be suggestive of the services.

Further, the specimen of record is cited as referring to the features of its services. However, the specimen of record does not use HYPER-REALISTIC to describe the services. The Mark is used as a service mark in the specimen of record, e.g., HYPER-REALISTIC training. This is a proper use of trademark, e.g., mark followed by product or service, such as APPLE computer. The word REALISTIC is used in a few sentences in the specimen of record, but separate from the term HYPER in the specimen of record (e.g., “Special effects artists create realistic weapons effects and explosions...,” Special effects wound makeup artists create dozens of extremely realistic wounds and simulations...”). These uses of the word REALISTIC in the specimen of record are akin to using “calisthenics” by itself in marketing materials for PSYCHOCALISTHENICS in *West & Company*. PSYCHOCALISTHENICS and HYPER-REALISTIC are not established words, they suggest multiple meanings, and they are not merely descriptive.

Dictionary definitions of the terms “hyper” and “realistic” attached to the office action do not establish that HYPER-REALISTIC is a defined term or that the Mark as a whole is merely descriptive of the claimed services. Again, there is no well established

dictionary definition of HYPER-REALISTIC. The office action cites definitions of “hyper” and “realistic” separately. The cited dictionary definitions of the prefix HYPER confirm that the term has multiple definitions. None of the definitions merely describe or even refer to the claimed services. The services are not “over, above, beyond,” “excessive, excessively,” “existing in more than three dimensions,” or “linked or arranged nonsequentially.”¹ Moreover, the two dictionary definitions of the word REALISTIC cited in the office action², taken by themselves or in combination with the prefix HYPER, do not merely describe or even refer to the services no matter how combined (see the table below):

HYPER	REALISTIC	CLAIMED SERVICES
1. over, above, beyond	1. tending to or expressing an awareness of things as they really are	1. training services in the field of urban warfare
2. excessive, excessively	2. of or relating to the representation of objects, actions, or social conditions as they really are	2. providing urban-simulated facilities for educational training, namely military training
3. existing in more than three dimensions		3. preparation for others of operational specific urban combat training scenarios

¹ Additional meanings for “HYPER” include, *inter alia*, 1. when used adverbially and substantively as a prefix, “over, above, beyond” that which is joined to the term as the second adjective or substantive element – as in the case of *hypersensitive*, *hyperaccurate*, *hyperacidity*, and *hyperconformist*; 2. In mathematics, especially in adjectives applied to mathematical functions, related to or resembling those denoted by the simple adjectives, but involving some extension or complication, as in the case of *hyper-complex*, *hyper-elliptical*, and *hyper-geometrical*; 3 In chemistry, to denote the highest in a series of oxygen compounds, in the case of *hyperchloric*, *hyperoxide*; 4. and especially in computing, where the prefix *hyper-* connotes an association with electronic texts or media, and a structuring of texts or information in a highly interconnected, non-linear manner, as in the case of *hyperlink* and *hypertext*; or with the computer, computer-mediated or Internet-related social and cultural phenomena, as in the case of *hyper-world* or *hyperlearning*. See, Ex. A hereto (dictionary definitions from OED Second Ed. 1989).

² REALISTIC has additional meanings, including *inter alia* “characterized by faithfulness of representation,” “that which conceives or imagines (a thing) as real,” or “concerned with, and characterized by, having a practical view of life” it does not merely describe Applicant’s services. See, Ex. B hereto (dictionary definitions from OED Second Ed. 1989).

		provided in connection with urban warfare training services
4. linked or arranged nonsequentially		4. preparation for others of special effects including weapons special effects, namely rocket-propelled grenades, mines, improvised explosive devices, lighting, smoke, noise, explosions, and combat wounds, for use in military training

There is no combination of these various definitions that taken together as a whole (e.g., beyond or excessively real) merely describe Applicant's claimed services (e.g., training services, providing urban-simulated facilities, preparation for others of training scenarios and special effects). Rather, the combinations only suggest the services. Since the office action does not cite a requisite threshold of evidence that the Mark is merely descriptive of the claimed services, Applicant submits that the initial burden to show descriptiveness has not been met. See *In re Bel Paese Sales Co.*, 1 U.S.P.Q.2d 1233, 1236 (T.T.A.B. 1986).

Moreover, a mark is considered suggestive if it "requires imagination, thought and perception to reach a conclusion as to the nature of the goods." See *Stix Products, Inc. v. United Merchants & Mfs, Inc.*, 160 U.S.P.Q. 777, 785 (S.D.N.Y. 1968). The connection between the mark and the Applicant's services must be instantaneous for the mark to be considered merely descriptive. See *Investacorp, Inc. v. Arabian Investment Banking Corp.*, 19 U.S.P.Q.2d 1056 (11th Cir. 1991).

HYPER-REALISTIC is suggestive because it does not immediately bring to mind any specific type of service, expression, awareness, representation or object, but rather a broad range of service, expressions, awareness, representations or objects that might take place or exist. See *In re Hutchinson Technology, Inc.*, 7 U.S.P.Q.2d 1490 (Fed. Cir. 1988) (TECHNOLOGY was not merely descriptive when used as part of a composite mark for computer components). In *Hutchinson*, the court felt that "technology" was a very broad general term that included many categories of goods and was too vague to convey an immediate idea of the nature of any particular goods. See *Id.* at 1493.

Likewise, REALISTIC is too general a term to be considered merely descriptive. The generality of REALISTIC contributes to the overall suggestiveness of the Mark.

Similarly, as noted above, the term HYPER has variable meanings, such as “over, above, beyond,” “excessive, excessively,” “existing in more than three dimensions,” or “linked or arranged nonsequentially.” All of those meanings are arbitrary to the claimed services, and the multiple meanings confirm that HYPER is a broad term with many applications and does not more than potentially suggest the services. See *In re Hutchinson, supra*.

Perhaps most importantly, the Mark HYPER-REALISTIC, taken as a whole, is not a well defined term, and it could be given multiple meanings. Therefore, it does not and cannot in any literal sense merely describe Applicant’s services. Also, as shown in the table above, any combination of the meanings of HYPER and REALISTIC suggests something that is, by example, beyond REALISTIC, excessively REALISTIC, REALISTIC in more than three dimensions or arranged nonsequentially REALISTIC. None of these meanings merely describe the claimed services.

HYPER-REALISTIC is an imaginary term. It pertains to imaginary subject matter. Nothing is HYPER-REALISTIC. REALISTIC connotes realism, faithful representation, or a sensible or practical idea of what can be achieved or expected. At most, HYPER-REALISTIC suggests something beyond realism in the abstract. It does not merely describe Applicant’s services, which are not real or reality but simulations of multiple representational circumstances in a training and educational capacity. At most, the Mark suggests such a high degree of fidelity in the replication of battlefield conditions in a training environment that participants so willingly suspend disbelief that they become totally immersed and eventually stress inoculated. However, this impression of HYPER-REALISTIC requires imagination, thought and perception to reach a conclusion as to the nature of these services.

HYPER together with the word REALISTIC is incongruous and would require a reasoning process to determine the services provided by the mark. Consumers would not immediately associate HYPER characteristics (whether they think of that term as applying to *hyperactivity* or *hypersensitivity* or *hypertext transfer protocol (http://)*) with representational or simulation services. Moreover, HYPER-REALISTIC is only

suggestive of something beyond real and realistic, and therefore would require a mature reasoning process to determine the services provided by the mark. It would not merely describe the services. Consumers would not immediately associate HYPER or HYPER-REALISTIC characteristics with realistic representation or realism, much less services in Applicant's field.

Applicant's situation is similar to that in *Airco, Inc. v. Air Products and Chemicals, Inc.*, 196 U.S.P.Q. 832 (T.T.A.B. 1977). In *Airco*, the mark "AIR-CARE" was challenged as being merely descriptive of the Applicant's program for maintaining hospital and medical anesthesia and inhalation therapy equipment and hospital piping systems. The Board explained that AIR-CARE was not merely descriptive by stating, "[t]he literal meaning of the mark, namely, 'care of the air' may, through an exercise of mental gymnastics and extrapolation suggest or hint at the nature of Applicant's services, but it does not, in any clear or precise way, serve merely to describe Applicant's preventative maintenance services...." *Id.* at 835.

As in *Airco*, HYPER-REALISTIC requires the consumer to think carefully to derive meanings, such as "beyond realistic" or "hyper expression of things as they really are," and those meanings are imaginative and require mature thought in that they suggest concepts and exaggerated ideas and things that do not exist. See also, *In re Tennis In the Round, Inc.*, 199 U.S.P.Q. 496, 498 (T.T.A.B. 1978 (TENNIS IN THE ROUND for a round tennis stadium was suggestive even though its name gave some clue as to function); *In re TBG, Inc.*, 229 U.S.P.Q. 759, 760 (T.T.A.B. 1986 (SHOWROOM ONLINE was suggestive, not descriptive, of the applicant's services of leasing databases and video disks related to viewing interior furnishings.)).

Applicant also notes that other marks for services or goods using the terms "HYPER" and "REALISTIC" have been accepted on the Principal Register by the U.S. Patent and Trademark Office (E.g., HYPER REAL (Reg. # 2576173); HYPERREALITY (Reg. # 74350459); HYPERCOLOR (Reg. # 77038420); REALISTIC GOLF (Reg. # 2692237); AIREALISTIC (Reg. #76623778); and ULTRA-REALISTIC (Reg. #75629561)). Since these were admitted on the Principal register (for services such as model reproduction, aerial entertainment performances, clothing, and cosmetics), HYPER-REALISTIC should equally be allowed on the Principal Register for Applicant's services.

The Trademark Trial and Appeal Board states that although “there is often a thin line separately merely descriptive from suggestive terms... where there is doubt in the matter, the doubt should be resolved in applicant’s behalf and the mark should be published for opposition.” *In Re Bed-Check*, 226 U.S.P.Q. at 948 (holding SENSORMAT not merely descriptive of a pressure-sensitive pad placed under hospital patients for monitoring their movement in bed).

Based on the foregoing arguments, Applicant respectfully submits that the Mark is suggestive and not descriptive and requests the examining attorney to allow the mark to be published for opposition.

3) In the Alternative, Applicant’s Mark has Acquired Distinctiveness of Secondary Meaning and is Therefore Registerable Under Section 2(f).

Although Applicant submits that the Mark should be registerable as suggestive, in the event that the refusal to register on the grounds of descriptiveness is not withdrawn, Applicant respectfully requests that the refusal to register be reconsidered and withdrawn in view of acquired distinctiveness pursuant to section 2(f) of the Trademark Act.

Applicant submits that as a result of continuous use since at least 2002 and widespread marketing efforts and successes, Applicant’s Mark has come to be readily associated in the relevant industry and consumers therein with Applicant and its claimed services. Accordingly, HYPER-REALISTIC should proceed to registration on the Principal Register pursuant to Section 2(f), 15 U.S.C. 1052(f).

“An evidentiary showing of secondary meaning adequate to show that a mark has acquired distinctiveness indicating the origin of the goods, includes evidence of the trademark owner’s method of using the mark, supplemented by evidence of the effectiveness of such use to cause the purchasing public to identify the mark with the source of the product.” *In re Owens-Corning Fiberglas Corp.*, 227 U.S.P.Q. 417, 422 (Fed. Cir. 1985). Under this standard, the following information is sufficient to show that Applicant’s use of the Mark has caused the purchasing public to identify the Mark with the Applicant.

Applicant refers to the specimen of record and supporting declaration showing extensive use of the Mark as discussed above. Applicant has made widespread use and promotion of the mark for the claimed services since at least 2002, including through the use of such marketing materials as reflected by the specimen of record. Applicant also refers to the supporting declaration ("Affidavit Under Section 2(f) of the Lanham Act") submitted concurrently herewith.

As a result of its efforts, Applicant has a substantial and wide variety of clientele, including leaders in the military training market, private security companies and importantly the United States military itself. Applicant has provided its claimed services in connection with the mark since 2002 to hundreds individuals and groups throughout the United States. Applicant's use of the mark, combined with marketing and promotion of the mark over seven plus years has caused consumers to recognize the mark and associate it with Applicant and its services.

A significant source of publicity for Applicant's services offered under the Mark comes from Applicant's company's website at www.strategic-operations.com. The comprehensive website displays the Mark prominently and receives numerous hits. Attached as Exhibit C are excerpts from Applicant's website showing use of the Mark, including marketing materials, articles, lists of clients and other materials. Applicant advertises its services in a wide variety of print and electronic media, as well as through trade shows and press releases and other media, advertising and promotional outlets. Applicant regularly participates in industry trade shows, which are attended by hundreds of industry professionals every year. Applicant's presence at these trade shows has been prominent, and Applicant promotes its services under the Mark at these trade shows and conferences. Applicant has also received industry recognition for its services rendered under the Mark. Applicant has expended substantial resources in the successful promotion and sales of services under the Mark. As a result of its use, promotion and industry recognition of the Applicant and the Mark in association with Applicant and its services, Applicant respectfully submits that HYPER-REALISTIC has gained secondary meaning and distinctiveness in the marketplace. See, Exhibit C.

4) Conclusion.

For the reasons set forth above, Applicant respectfully submits that the application is in condition for allowance and a notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at 619-688-1300 for any reason that would advance the instant application to issue.

Dated this 29th day of April 2010.

Respectfully submitted,

/s/

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Attachments:

Exhibit A - dictionary definitions from Oxford English Dictionary (OED) Second Ed. 1989

Exhibit B – “ “

Exhibit C – excerpts from www.strategic-operations.com

Affidavit Under Section 2(f) of the Lanham Act

HYPER- (*prefix*)

OED Second Ed. 1989

repr. Gr. ὑπερ- (*ὑπέρ* prep. and adv., ‘over, beyond, over much, above measure’); in Gr. combined adverbially with verbs, in the local sense ‘over, above, beyond’, as ὑπερβιάωμαι to step over, overstep, cross, ὑπερβιάλλειν to throw over or beyond; and hence in the adjectives and substantives thence derived, as ὑπερβατός going across, transposed (cf. [HYPERBATON](#)), ὑπερβολή a throwing over or beyond, overshooting, excess, extravagance, [HYPERBOLE](#), ὑπερβολικός [HYPERBOLIC](#). Also with adjectives formed on substantive stems, implying that the thing or quality is present over or beyond the ordinary degree, as ὑπέρθυμος over-daring, high-spirited, ὑπέρβιος of overwhelming might; and later with ordinary adjectives with the sense ‘exceedingly’, as ὑπέροχος immensely great, ὑπέροκαλος exceedingly beautiful. In this sense also sometimes with verbs, as ὑπεραγαπάω to love exceedingly, ὑπερεχθαίρω to hate exceedingly. Also combined prepositionally with ns., forming adjs. with the sense of lying or going beyond, surpassing, as ὑπερβόρεος that is beyond the north wind, [HYPERBOREAN](#), ὑπερόριος lying over the frontier, ὑπερουράνιος that is above the heavens, ὑπέρθεος more than divine, ὑπέρομετρος going beyond measure (or metre); whence also with ns. from adjs., as ὑπερθύριον the lintel of a door, ὑπερομετρία a passing all measure.

Comparatively few of these have come down or been adopted in English, *hyperbole*, *hyperborean*, with their derivatives, being the chief; but from the 17th century *hyper-* has been extensively used, more or less on Greek analogies, in the formation of new compounds, and has even become a kind of living element, freely prefixed to adjectives and substantives, as in groups 1 and 4 below.

I. Formations in which, as in [HYPERBOREAN](#), the prefix has the prepositional force of ‘over, beyond, or above’ (what is denoted by the second element).

1. General formations: **a.** adjectives, as *hyper-angelical*, *-archæological*, *-archiepiscopal*, *-barbarous*, *-constitutional*, *-creaturely*, *-diabolical*, *-equatorial*, *-magical*, *-magnetic*, *-miraculous*, *-pathetic*, *-prophetic*, *-stoic*, see also *hyperethical*, *hyperrational*, etc., below. **b.** Rarely in substantives (except abstracts from the adjs.) and verbs; e.g. *hyper-analysis*, *hypergoddess*, *hyperdeify*: see below.

...

2. Mus. **a.** In the names of the musical modes *hyperæolian*, *-dorian*, *-ionian*, *-lydian*, *-mixolydian*, *-phrygian*, denoting either (a) the acute modes in ancient Greek music, which began at a definite interval above the ordinary *Æolian*, *Dorian*, etc., or (b) the ‘authentic’ modes in mediaeval music (the same as *Æolian*, *Dorian*, etc.) as contrasted with the ‘plagal’ modes *hypoæolian*, *-dorian*, etc. **b.** Also formerly in names of intervals measured upwards, as *hyperdiapason*, *hyperdiapente*, *hyperdiatessaron*, *hyperditone* (see [DIAPASON](#), etc.). (Cf. [HYPO-](#) 3.)

...

3. a. In various terms of modern Mathematics, as *hyperconic*, *hypercycle*, etc. (see below); esp. in adjectives applied to functions, etc., related to or resembling those denoted by the simple adjectives, but involving some extension or complication, as *hyper-complex*, *-elliptic*, *-geometric (-ical)*, *-jacobian*, *-spherical*. See also [HYPERDETERMINANT](#).

...

b. In substantives in which *hyper-* has the sense 'the analogue in a space of four or more dimensions of (what is denoted by the second element) in ordinary three-dimensional space'; as *hypercube*, *-cylinder*, *-plane*, *-sphere*, *-surface*.

...

II. Formations in which, as in [HYPERCRITICAL](#), [HYPERCRITIC](#), the prefix has the adverbial sense of 'over much, to excess, exceedingly'.

4. General formations, comprising adjectives (with their adverbs), substantives, and (a few) verbs; often corresponding to one another in meaning.

a. adjectives (with corresponding adverbs): as *hyperaccurate*, *-acid*, *-active*, *-acute*, *-archaic*, *-brutal*, *-carnal*, *-civilized*, *-classical*, *-colloquial*, *-composite*, *-confident*, *-conscientious*, *-educated*, *-elegant*, *-excitable*, *-excursive*, *-fastidious*, *-grammatical*, *-hilarious*, *-idealistic*, *-latinistic*, *-logical*, *-lustrous*, *-metaphorical*, *-metaphysical*, *-modest*, *-moral*, *-mystical*, *-neurotic*, *-obtrusive*, *-orthodox*, *-pure*, *-ridiculous*, *-saintly*, *-sceptical*, *-sentimental*, *-speculative*, *-superlative*, *-torrid*, *-tragical*, *-transcendent*, *-tropical*, *-wrought*, etc. **b.** substantives, as *hyperacidity*, *-activity*, *-acuteness*, *-archaism*, *-characterization*, *-civilization*, *-climax*, *-conformist*, *-conscientiousness*, *-conservatism*, *-determination*, *-dialectic*, *-dialectism*, *-division*, *-exaltation*, *-excitability*, *-federalist*, *-hypocrisy*, *-orthodoxy*, *-panegyric*, *-paroxysm*, *-pietist*, *-plagiarism*, *-ritualism*, *-scrupulosity*, *-sensibility*, *-subtlety*, *-vitalization*, etc. **c.** verbs, as *hypercharacterize*, *-emphasize*, *-realize*, *-vitalize*.

...

5. Specific and technical terms, esp. of Pathology and Physiology, as *hyperacuity*, *hyperalbuminosis*, etc.: see below. Also [HYPERÆMIA](#), etc.

III. 6. Formations in which *hyper-* qualifies the second element adverbially or attributively, signifying that this is itself the higher in position of two or more, or the highest in serial order or degree; as in [HYPERAPOPHYSIS](#), [HYPERCORACOID](#), *hyperhypostasis*.

7. In Chemistry, *hyper-* denotes the highest in a series of oxygen compounds (cf. [HYPO-](#) 5), e.g. *hyperchloric*, *hyperiodic*, *hyperoxide*; but this is now more commonly expressed by [PER-](#).

...

IV. The more important words belonging to all these groups appear in their alphabetical order as main words; others of less importance or less frequent use, and mostly of recent introduction, follow here. (For many of these no statement of derivation is needed, as they are simply formed by prefixing *hyper-* to another word, the etymology of which will be found in its place: e.g. *hyperacuity*, f. *hyper-* + [ACUITY](#), q.v. In the following words *e* often replaces *æ*, ^æ, esp. in U.S. usage; the alternative spelling is not given for each word individually.)

hyperabduction, extreme abduction (sense 3); so **hyperabduct** *v. trans.*, -**abducted** *ppl. a.*; **hyperacuity**, excessive or morbid acuteness (of the bodily senses); || **hyperalbuminosis** *Path.*, excess of albumen in the blood; **hyperaldosteronism** *Med.*, any condition characterized by excessive secretion of aldosterone; aldosteronism; || **hyperalgesia** (-ældʒiːsɪə), || **hyperalgia** (-ældʒɪə) *Path.* [Gr. ὑπερᾰλγία to be pained exceedingly, ἄλγος pain], excessive sensitiveness to painful impressions; hence **hyperalgesic** (-ældʒiːsɪk) *a.*, pertaining to or affected with hyperalgesia; **hyperalgiec** (-ældʒɪk) *a. Path.*, of, pertaining to, or affected with hyperalgia (hyperalgesia); **hyperanalysis**: (see quot.); **hyperanarchy**, a condition beyond or worse than anarchy; **hyperaphic** (-æfɪk) *a. Path.* [Gr. ἄφ-ῆ touch], excessively sensitive to touch (Mayne, 1855); **hyperarchy** [Gr. ἄρχη, ἄρχα rule], excess of government; **hyperasthenia**, -**astheny** *Path.* [[ASTHENIA](#)]: see quot.; **hyperbilirubinæmia** *Physiol.* [Gr. ἄμα blood], an abnormally high concentration of bilirubin in the blood; **hyperbrachycephalic** (-brækɪsiːfælɪk) *a. Craniol.*, extremely brachycephalic; applied to a skull of which the cranial index is over 85; so **hyperbrachycephaly** (-brækɪsɪfɪəli), the condition of being hyperbrachycephalic; **hyperbranchial** *a. Zool.*, situated above the gills or branchiæ; **hypercalcæmia** (-kælˈsiːmiə) *Physiol.* [[CALC\(IUM\)](#) + Gr. ἄμα blood], an abnormally high concentration of calcium in the blood; so **hypercalcæmic** *a.*; **hypercalcuria** (-kælˈsjʊəriə), -**calciuria** (-kælsɪːjʊəriə) *Physiol.* [[-URIA](#)], an abnormally high concentration of calcium in the urine; **hypercapnia** *Physiol.* [Gr. καπνός smoke], an abnormally high concentration of carbon dioxide in the blood; so **hypercapnial** (*rare*), -**capnic** *adjs.*; || **hypercardia** *Path.* [Gr. καρδιά heart], hypertrophy of the heart (*Syd. Soc. Lex.* 1886); **hypercathexis** (pl. -**exes**) *Psychol.*, an excessive degree of cathexis; **hypercellularity** *Path.*, an excess of cells at a site in the body; so **hypercellular** *a.*, containing more than the normal number of cells; **hyperchloræmia** *Physiol.*, an abnormally high concentration of chlorides in the blood; **hyperchlorhydria** *Physiol.* [[CHLORHYDR\(IC\)](#) *a.*], an abnormally high concentration of hydrochloric acid in the gastric juice; so **hyperchlorhydric** *a.*; **hypercholesteræmia**, -**cholesterolæmia** *Physiol.* [Gr. ἄμα blood], an abnormally high concentration of cholesterol in the blood; so **hypercholesterolæmic** *a.*; **hyperchromatism** (-kɪˈtʊmɪz(ə)m), abnormally intense coloration; **hyperchromatopsy** (see quot., and *chromatopsy* s.v. [CHROMATO-](#)); **hypercoagulability** *Med.*, an excessive tendency (of the blood) to coagulate; so **hypercoagulable** *a.*; **hyperconic** *a. Geom.*, relating to the intersection of two conicoids or

surfaces of the second order; **hyper¹cosmic** *a.*, above the world, supramundane; **hypercycle** *Geom.* [a. F. *hypercycle*], name given by Laguerre to a class of curves comprising the hypocycloid with four cusps, the parabola, the anticaustics of the parabola, etc. (1882 *Comptes Rendus* XCIV. 778, etc.); **hyper¹dactyly** *Zool.* [Gr. ὑπερδάκτυλι-ος finger] = **POLYDACTYLY**; **hyper¹deify** *v. trans.*, to exalt above God; **hyper¹distributive** *a.*, distributive in relation to more than one variable (see **DISTRIBUTIVE** *a.* 6); *n.* a hyperdistributive function; **hyper¹dynamic** *a.*, excessively violent or excited, as the vital powers in certain morbid conditions (Mayne, 1855); **hyperemesis** (-¹εm¹s¹s) *Path.*, excessive vomiting; so **hyper¹emetic** (-i¹m¹εt¹k) *a.*, pertaining to or affected with hyperemesis (Mayne, 1855); **hyper¹emotional** *a.*, affected by or displaying an abnormal degree of emotion; hence **hyper¹emotio¹nal¹**, hyperemotional behaviour; **hyper¹ethical** *a.*, beyond the sphere of ethics; **hyper¹eutectic** *a.*, (of an alloy of iron) containing a higher proportion of carbon than the eutectic composition (i.e. more than about 4.3%); (in quot. 1902 = *hypereutectoid*, *eutectoid* itself not having been coined at that date); **hyper¹eutectoid** *a.* (of steel) containing a higher proportion of carbon than the eutectoid composition (i.e. more than about 0.8%); **hyper¹form** *Linguistics* [contraction of *hypercorrect form*], a hypercorrect spelling or pronunciation; **hyper¹fragment** *Nuclear Physics* [**HYPER(ON)**], a hypernucleus, esp. one produced by the breaking up of a heavier one (see quot. 1964); **hyper¹function** *Med.*, over-activity or over-production (in a gland or other part of the body); so **hyper¹functional** *a.*, **hyper¹functioning** *vbl. n.* and *ppl. a.*; **hyper¹gamma¹globuli¹næmia** *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of gamma globulins in the blood; hence **hyper¹gamma¹globuli¹næmic** *a.*; **hyper¹genesis** (-dʒɛn¹s¹s), excessive production or growth; so **hyper¹genetic** (-dʒɪn¹εt¹k) *a.*, pertaining to or characterized by hypergenesis (Mayne, 1855); **hyper¹geusia** (-¹gjuːz¹ɪə) *Med.* [Gr. ὑπεύσσις taste], excessive acuteness of the sense of taste; **hyper¹globuli¹næmia** *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of globulins in the blood; hence **hyper¹globuli¹næmic** *a.*; **hyper¹glycæmia** *Physiol.*, an abnormally high concentration of sugar in the blood; so **hyper¹glycæmic** *a.*; **hyper¹goddess**, a being of higher rank than a goddess, a supreme goddess; **hyper¹hidrosis**, **-idrosis** (erron. -*hydrosis*) *Path.*, excessive sweating; **hyper¹hypostasis**: see quot.; **hyper¹hyp¹sistous** *a.* [Gr. ὑψιστος highest], exalted above the highest; **hyper¹ideation**, excessive flow of ideas, extreme mental activity, or restlessness; **hyper¹immune** *a. Med.*, subjected to, resulting from, or produced by hyperimmunization; having a high concentration of antibody; **hyper¹immunization** *Med.*, the production of a high concentration of antibody in the serum of an animal, esp. by the repeated injection of the same antigen; so **hyper¹immunize** *v. trans.*, to produce such a condition in (an animal); **hyper¹immunized** *ppl. a.*; **hyper¹infection** *Med.*, continued infection with parasitic worms owing to their larvæ developing into adult worms without leaving the body; so **hyper¹infective** *a.*, causing or characterized by hyperinfection; **hyper¹inflation** (also hyphenated), an acute form of economic inflation; **hyper¹insuli¹næmia** *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of insulin in the blood; **hyper¹insulinism** *Med.*, a condition in which the body produces excessive insulin, usu. as a result of a tumour of the islets of Langerhans in the pancreas; the presence of an excessive amount of insulin in the body; **hyper¹irritability** *Med.*, increased irritability; abnormally high responsiveness to stimuli; so **hyper¹irritable** *a.*; **hyper¹kaliæmia** (-kæ¹liːm¹ɪə), **-kaliæmia** (-kæ¹liːm¹ɪə) *Physiol.* [mod.L. *kalium* potassium (see **KALI**) + Gr. αἷμα blood] = *hyperpotassæmia* below; hence

hyperkalaemic *a.*; **hyperkeratosis** *Path.*, (*a*) (see quot. 1848); now *rare* or *Obs.*; (*b*) excessive development of the horny layer of the skin; **hyperkinesia** *Path.* = *hyperkinesis* (s.v. **HYPER-** IV); **hyperkinesis** (-ka¹niːsɪs) [Gr. κίνησις movement], abnormal amount of muscular movement, spasmodic action; so **hyperkinetic** (-ka¹nɛtɪk) *a.*, pertaining to or affected with hyperkinesis; **hyperleucocytosis**, **-leukocytosis** *Path.* = **LEUCOCYTOSIS**; **hyperlipaemia** *Physiol.*, an abnormally high concentration of fats (or lipids) in the blood; any condition characterized by this; **hypermagnesaemia** *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of magnesium in the blood; **hypermania** *Psychiatry*, (*a*) sometimes used to mean a severe degree of mania with partial or complete disorientation, often accompanied by violent behaviour and forming a stage in manic-depressive illness; (*b*) used *erron.* for **HYPOMANIA** (quot. 1928: see also quot. 1956 for **HYPERMANIC**); hence **hypermanic** *a.*; **hypermaturation** *a.* *Ophthalm.*, applied to a cataract in its final stage (see quotes.); so **hypermaturity**; **hypermedication**, excessive use of medicines; **hypermetabolism** *Physiol.*, metabolism at a high rate; so **hypermetabolic** *a.*, of hypermetabolism; **hypermnnesia** [Gr. μνήσις remembrance], unusual power of memory; **hypermobility** *Med.*, abnormally great freedom of movement or flexibility in a joint; so **hypermobile** *a.*, characterized by or exhibiting hypermobility; **hypermorph** *Genetics* [Gr. μορφή form], any allele which is functionally more effective than the corresponding wild-type allele; so **hypermorphic** *a.*; **hypermotility** *Med.*, excessive movement, esp. of the stomach and intestines; **hypernatraemia** *Physiol.* [**NATR(IUM)** + Gr. αἷμα blood], an abnormally high concentration of sodium in the blood; hence **hypernatraemic** *a.*; **hypernatural** *a.*, beyond what is natural (in quot. as *n.*); **hypernephelist** [Gr. ὑπερνεφέε ἄλος above the clouds, νεφέλη cloud], one who goes above the clouds; **hypernephroma** *Path.* [**NEPHR(O-** + **-OMA)**], a malignant tumour of the cortical parenchyma of the kidney; orig. such tumours were believed to derive from misplaced tissue of the suprarenal gland (whence the name) and were described in other tissues besides that of the kidney; so **hypernephromatous** *a.*; **hypernomian** *a.* [Gr. ὑπερνομία transgressing the law, νόμος law], above or beyond the scope of law; **hypernote**, an additional or supplementary note; **hypernucleus** *Nuclear Physics* [**HYPER(ON)**], a nucleus in which a hyperon replaces one of the nucleons; a composite particle in which a hyperon is bound to one or more nucleons; hence **hypernuclear** *a.*; **hypernutrition**, excessive nutrition: = **HYPERTROPHY**; **hyperorganic** *a.*, beyond or independent of the organism; **hyperorthognathic** (-ɔːθɔːgnæθɪk) *a.* *Craniol.*, excessively orthognathic; applied to a skull in which the cranial index is over 91; so **hyperorthognathy** (-ɔːθɔːgnæθɪ), the condition of being hyperorthognathic; **hyperosmotic** *a.* *Physiol.* = **HYPERTONIC** *a.* 2; const. *to*; **hyperphagia** (-ˈfeɪdʒɪə) *Med.* [Gr. φαγία **-PHAGY**], an abnormally great desire for food; excessive eating; hence **hyperphagic** (-ˈfædʒɪk) *a.*, of or exhibiting hyperphagia; **hyperphalangia** (-ˈfælændʒɪə), **-phalangism** (-ˈfælændʒɪz(ə)m), **-phalangy** (-ˈfælændʒɪ) *Med.* and *Zool.* [L. *phalang-*: see **PHALANX**], the condition of having more digital phalanges than normal, esp. in cases where polydactyly is absent; **hyperpharyngeal** *a.* *Zool.*, situated above the pharynx; **hyperphasia** (-ˈfeɪzɪə) *Path.* [Gr. φάσις speaking; after *aphasia*], excessive talking occasioned by a want of control over the vocal organs, due to cerebral affection (*Syd. Soc. Lex.* 1886); hence **hyperphasic** (-ˈfæzɪk) *a.*, affected with hyperphasia; **hyperphenomenal** *a.*, superior to what is phenomenal, noumenal; **hyperphoria** *Ophthalm.*, latent strabismus in which there is a tendency for one eye to be directed above (or below) the line of sight of the other; so **hyperphoric** *a.*;

hyperphosphatæmia *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of phosphates (or other phosphorus compounds) in the blood; so **hyperphosphatæmic** *a.*; **hyperpiesia** (-pa¹i²z¹), **-piesis** (-pa¹i²s¹s, -pa¹is¹s) *Med.* [Gr. πίεσις pressure], high blood pressure, hypertension, esp. when without evident cause (the two words were distinguished in meaning by Allbutt: see quotes.); hence **hyperpietic** *a.*; **hyperpigmentation** *Med.*, excessive pigmentation; so **hyperpigmented** *ppl. a.*, exhibiting hyperpigmentation; **hyperpituitarism** *Path.* [**PITUITAR(Y)** *a.* + **-ISM**], increased hormone secretion by the pituitary body; hence **hyperpituitary** *a.*, of, pertaining to, or affected with hyperpituitarism; **hyperploid** *a. Genetics* [**-PLOID**], having one or a few extra chromosomes (orig. also chromosome fragments) in addition to a haploid, diploid, triploid, etc., set; containing such cells; also as *n.*, a hyperploid cell or individual; so **hyperploidy**, the condition of being hyperploid; **hyperpnea** (ha¹p²ni², -pni²) *Physiol.* [Gr. πνοή breath, breathing], deep and rapid breathing; panting; so **hyperpneic** *a.*; **hyperpotassaemia** *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of potassium in the blood; so **hyperpotassæmic** *a.*; **hyperprosexia** *Psychol.* [Gr. προσέχειν to turn (one's attention) (ἔχειν to hold, possess mentally)], the concentration of attention on one stimulus to the exclusion of all others; **hyperproteinaemia** *Physiol.* [Gr. αἷμα blood], an abnormally high concentration of protein in the blood; **hyperpyretic** (-pa¹r¹et¹k) *a. Path.* [Gr. πυρετός fever], pertaining to or affected with **hyperpyrexia**, a high or excessive degree of fever; whence **hyperpyrexial**, **hyperpyrexia** *adjs.* = *hyperpyretic*; **hyper-rational** *a.*, above or beyond the scope of reason; **hyper-reactive** *a. Med.*, reacting unusually strongly to certain stimuli; of or pertaining to this tendency; so **hyperreactivity**; **hyper-realism** *Art* [a. F. *hyperréalisme*] = **PHOTOREALISM**; also *transf.*; hence **hyper-real** *a.*, **hyper-realist**; **hyper-resonance**, excessive resonance of a part of the body on percussion; so **hyper-resonant** *a.*; **hyper-rhythmical** *a.*, additional to the rhythm, hypermetrical; **hyper-saline** *a. Biol.*, (of naturally occurring water) more salty than typical sea water; hence **hypersalinity**, the condition of being hypersaline; **hypersarcoma**, **hypersarcosis** *Path.*, proud or fungous flesh; **hypersecretion**, excessive secretion; **hyper-sensual** *a.*, above or beyond the scope of the senses, super-sensuous; **hypersexuality**, a condition in which the sexual instinct is abnormally strong; **hypersomnia** *Med.* [L. *somnus* sleep], a condition characterized by abnormally long or frequent periods, or abnormal depth, of sleep; hence **hypersomnic** *a.*, of, exhibiting, or producing hypersomnia; **hyperspace** *Geom.*, space of more than three dimensions; also, any non-Euclidean space; (esp. in *Science Fiction*); **hyper-spatial** *a.*, of or in hyperspace; **hyperspermatism** *a.* [Gr. σπέρμα seed], characterized by excess of semen; **hypersplenism** (-spl¹en¹z¹m) *Path.* [**SPLEN-**], over-activity of the spleen; *spec.* a condition characterized by a general destruction of blood cells, often associated with enlargement of the spleen but in which direct involvement of the spleen is now considered doubtful; so **hypersplenic** *a.*; **hyper-static** *a. Engin.*, statically indeterminate, i.e. having more members or supports than the minimum required to render it stable (and therefore requiring more than considerations of equilibrium alone for the calculation of all the internal forces and moments); of or pertaining to such a structure; **hyperstereograph** *Photogr.*, a picture or pair of photographs taken by hyperstereoscopy; **hyperstereoscopy** *Photogr.*, stereoscopic photography in which the separation of the two viewpoints is greater than the distance between the eyes, resulting in a greater stereoscopic effect or exaggerated perspective; hence **hyperstereoscopic** *a.*; **hypersusceptible** *a. Med.* = **HYPERSENSITIVE**

a. 2; so **hypersusceptibility**; **hyper'telorism** *Med.* [Gr. ὑπὲρ at a distance + ὀρέξω to separate from: see **-ISM**], a condition in which the eyes are abnormally far apart, freq. found accompanying other congenital malformations of the face; **hyper'thermal**, *a.* [Gr. θερμός hot, **THERMAL**] characterized by excess of heat, of very high temperature; || **hypertrichosis** (-trɪkəʊsɪs) [Gr. τριχῶσις growth of hair, f. τριχ-, θρίξ hair], excessive growth of hair, locally or over the body generally; **hypertridi'mensional** *a. Geom.*, of or relating to more than three dimensions; **hyper'tropia** *Ophthalm.*, strabismus in which one eye is directed above the line of sight of the other; **hyper'typic**, **-ical** *a.*, surpassing what is typical; **hyperu'ranian** *a.* [Gr. ὑπερουράνιος], lying above the heavens, super-celestial; **hyperu'resis** [Gr. οὐρησις urination], excessive discharge of urine; **hyperuri'cæmia** (-jʊrɪ'si:mɪə) *Physiol.*, an abnormally high concentration of uric acid in the blood; = **LITHÆMIA**, **URICÆMIA**; hence **hyperuricæmic** *a.*; **hyper'vascular** *a.*, vascular to an abnormal degree; hence **hypervascularity**, hypervascular condition or quality; **hyperve'locity**, a speed that is (relatively) very high; usu. *attrib.*; **hypervitami'nosis** *Path.* [**-OSIS**], any condition caused by excessive intake of a vitamin, esp. over a prolonged period; **hypervo'læmia** *Physiol.* [**VOL(UME) n.** + Gr. αἷμα blood], an increased volume of circulating blood in the body; hence **hypervolæmic** *a.*

...

ADDITIONS SERIES 1993

hyper-, *prefix*

Add: [**IV.**] **hyper'diploid** *a. Genetics* [a. G. *hyperdiploide* (H. Winkler 1916, in *Zeitschr. f. Bot.* VIII. 422)], having one or a few extra chromosomes (orig. also chromosome fragments) in addition to the usual diploid set; containing such cells; also as *n.*, a hyperdiploid cell or individual.

...

also **hyper'diploidy**, the condition of being hyperdiploid.

DRAFT ADDITIONS SEPTEMBER 2001

hyper-, *prefix*

► *Computing.*

Forming words in which the prefix has the sense 'associated with electronic texts or media, or the structuring of texts in a highly interconnected, non-linear manner (esp. such that related elements are hyperlinked and may be accessed at will by the user)', as

hyperbook, hyper-drawing, hyper-fiction, hyper-film, hyper-movie, hyper-novel, hyper-poem, hyper-tale, hyper-zine, and many other similar formations (some infrequent, impermanent, or nonce).

See also separate entries for [HYPERCARD](#) *n.* 2, [HYPERLINK](#) *n.*, [HYPERMEDIA](#) *n.*, [HYPERTEXT](#) *n.*

Probably established in this sense by the use of [HYPERTEXT](#) *n.* and related terms by T. H. Nelson in the source cited in quot. 1965.

...

► In extended use: forming chiefly temporary or nonce-words relating (sometimes tangentially) to computers and the Internet, or to associated social and cultural phenomena; computer-mediated, existing in virtual reality; augmented, enhanced, or made possible by the use of virtual reality technology, as *hyperlearning, hyper-sexuality, hyper-world*, etc. Freq.: *spec.* forming words relating to the use of computer technology to generate sound, or to modify sound produced by traditional musical instruments (usually in response to motion as perceived by electronic sensors) as *hypergenerated, hyper-music, hyper-musician*.

...

REALISTIC (*adjective*)
OED Second Ed. 1989

1. a. Characterized by faithfulness of representation, esp. in reference to art, film, and literature; representing things in a way that is accurate and true to life.
1829 H. C. ROBINSON *Diary* 13 Aug. (1967) 102 [Goethe] repeated the remark which is one of his fixed ideas that it is by..facts that even a poetical view of nature is to be..authenticated... It is this which had made Goethe a realistic poet, as opposed to the idealism of such poetry as Wordsworth's. 1856 R. W. EMERSON *Eng. Traits* xiv. 234 How realistic or materialistic in treatment of his subject, is Swift. 1862 J. SKELTON *Nugæ Crit.* x. 436 Carlyle's..speculative genius (for his genius is speculative, however realistic it may appear in certain aspects). 1879 L. STEPHEN *Hours in Libr.* 3rd Ser. ii. 72 His scenery is as realistic as a photograph. 1887 *Spectator* 26 Mar. 421/2 A woman in a realistic novel murders her child. 1943 *Ulster: Brit. Bridgehead* (H.M.S.O.) 6 (caption) This realistic picture shows British troops in training in Northern Ireland. 1971 *Hi-Fi Sound* Feb. 67/3 High fidelity stereo at its most successful is wide-ranging and realistic, analytical and rich in detail. 2000 L. T. JOHNSON in A. Hastings et al. *Oxf. Compan. Christian Thought* 147/1 Representations of the cross varied considerably, from crossed lines scratched on catacomb walls through realistic depictions of the tortured body to ornate and bejewelled celebrations of Christ Victor.

{dag}b. That conceives or imagines (a thing) as real. Obs. rare.
1858 J. MARTINEAU *Stud. Christianity* 171 That realistic mode of conception in which alone a true atoning doctrine can rest in peace.

2. Philos. Of or relating to realists (REALIST n. 1); of the nature of realism (REALISM n. 1, 2).
1843 J. S. MILL *Syst. Logic* I. I. viii. 197 The philosophers who overthrew Realism..retained long afterwards, in their own philosophy, numerous propositions which could only have a rational meaning as part of a Realistic system. 1874 J. FISKE *Outl. Cosmic Philos.* I. I. v. 122 The realistic tendency {em}the disposition to mistake words for things {em}is a vice inherent in all ordinary thinking. 1884 tr. H. Lotze *Metaphysic* 362 The Realistic view inclines to treat general principles of this kind..as designations of mere matters of fact, which might have occurred differently [etc.]. 1929 *Jrnl. Philos.* 26 233 In the newer realism as well as in the older materialism we are familiar with the idea of the non-creativity of mind in a realistic universe. 1961 A. EDEL *Sci. & Struct. Ethics* II. xiv. 32 The language of realistic Platoneseque ideal entities describing the object. 2005 *Bull. Symbolic Logic* 11 79 Some philosophers..have interpreted the structures..that mathematicians study in a realistic spirit, treating them as a range of extraordinary abstract objects.

3. Concerned with, or characterized by, a practical view of life; having or showing a sensible and practical idea of what can be achieved or expected.
1869 J. R. SEELEY *Lect. & Ess.* iii. 87 Could not be reconciled to life by any plain view of things, by any realistic calculations. 1891 J. N. KEYNES *Scope & Method Polit. Econ.* 124 Examples of economic problems requiring for their complete solution a realistic

treatment. 1928 Amer. Mercury Oct. 173/1 Other, more realistic worthies called attention to the lamentable fact that similar carnalities went on in practically every other town in the land. 1936 Sun (Baltimore) 26 Feb. 1/5 Mr. Eden, although doubting his wisdom, wished Chamberlain success in his 'realistic' search for lasting peace. 1956 Washington Post 22 July E7/5 Laqueur asks, 'Can the West Live with Nasserism?', and argues that failure...prevents the shaping of a realistic policy for the Middle East. 1963 Observer 3 Nov. 33/3 'Realistic' can vary from its theatre meaning of 'with damp washing' to its place at the top of the conjugation 'I am realistic, you have compromised, he has sold out'. 1974 J. D. MACDONALD Dreadful Lemon Sky (1975) xviii. 271 You are very realistic and diligent and all that. Maybe I have a grasshopper philosophy. 2005 R. TOPE Cotswold Killing x. 130 Her father had taught her to be confident and realistic. 'Very few people in the world are actively out to get you,' he'd said once.



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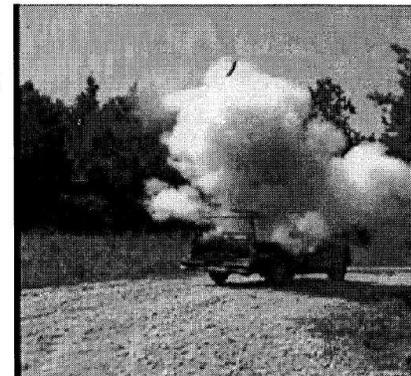
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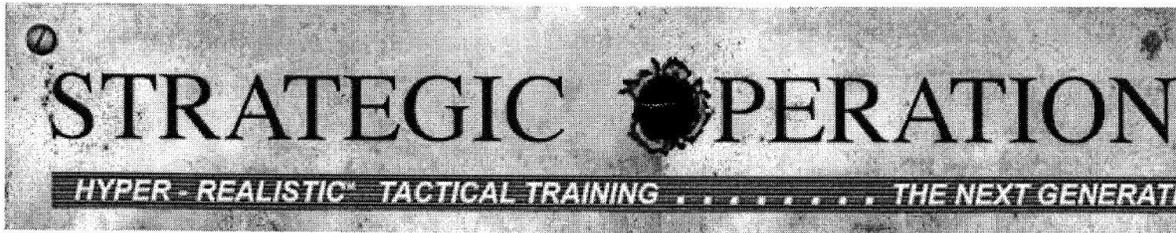
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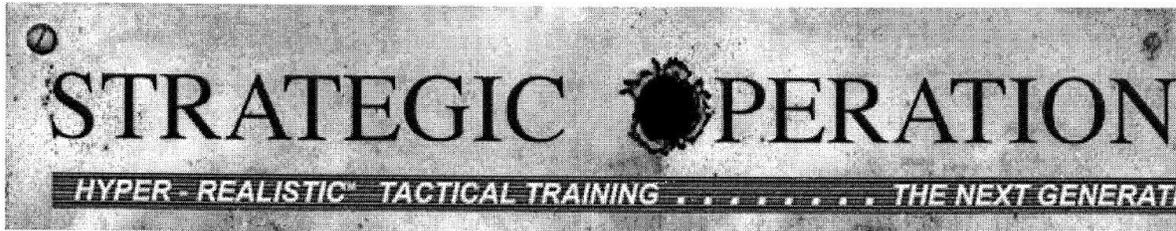
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Department of Justice
U.S. Marshals

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California Department of Youth Authority
Carlsbad Police Department
Chula Vista Police Department
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Inglewood Police Department
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Stuart C. Segall)
International Class: 41)
Serial No.: 77790467)
Mark: HYPER-REALISTIC)
Attorney Docket: 11407.5)

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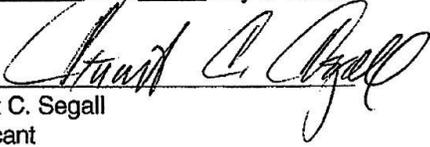
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I, Stuart C. Segall, declare that I am authorized to make this declaration on the behalf of applicant and owner of the above identified application having serial number 77790467. Applicant has made substantially exclusive and continuous use in interstate commerce of the mark for the services described in the application for at least the five years immediately before the date of this statement. Applicant believes the mark has become distinctive of the services in the application as a result of such use. The mark is still in such use in interstate commerce. There has been no final decision adverse to applicant's claim of ownership of the mark or to my right to use or register the same. There is no proceeding involving any of said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

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Signed at San Diego, California, this 27th of April, day of 2010.


Stuart C. Segall
Applicant

Docket: 11407.5