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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEPHEN MILTON and DUNCAN MCCALL

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Appeal 2017-005942  
Application 13/769,736<sup>1</sup>  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, AMEE A. SHAH, and  
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 15, 24, and 25. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> The Appellants identify PlaceIQ, Inc. as the real party in interest.  
Appeal Br. 2.

### ILLUSTRATIVE CLAIM

1. A computer-implemented method comprising:

obtaining a user location dataset indicative of a location visited by a user, the user location dataset being based at least in part on a location signal received from a mobile computing device associated with the user;

determining that the location visited corresponds to a geographic location of a place of interest;

determining, by a computer, a visit count corresponding to the location dataset, wherein determining the visit count corresponding to the location dataset comprises:

identifying a user profile of the user, the user profile including a characteristic of the user;

obtaining a ratio of members of a group having the characteristic that also employ a mobile device that can be detected while in the place of interest, wherein:

the ratio of members of the group having the characteristic is used to reduce an undercounting of members of the group having the characteristic who visit the place of interest and do not employ a mobile device that can be detected while in the place of interest, and

the ratio is a function of both an amount of members of the group having the characteristic and a portion of the amount of members of the group having the characteristic who employ a mobile device that can be detected while in the place of interest;

reducing the undercounting by increasing the visit count corresponding to the location dataset based on the ratio;

adjusting a visit count for the place of interest to include the visit count corresponding to the location dataset; and

storing the adjusted visit count for the place of interest in a visitation rate datastore.

## REJECTIONS

I. Claims 1, 15, 24, and 25 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

II. Claims 1, 15, 24, and 25 are rejected under 35 U.S.C. § 102(b) as anticipated by Kramer et al. (US 2011/0093340 A1, pub. Apr. 21, 2011) (hereinafter, “Kramer”).

## FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

## ANALYSIS

### *Subject-Matter Eligibility*

Issues of subject-matter eligibility are analyzed according to the framework delineated by the Supreme Court in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014) — first, determining whether the claim is directed to judicially excepted subject matter (such as a so-called “abstract idea”) and, if so, second, determining whether there are any “additional elements” recited in the claim that (either individually or as an “ordered combination”) amount to “significantly more” than the identified judicially excepted subject matter.

As to the first *Alice* step, the rejection maintains that the claims in the Appeal are directed to an ineligible abstract idea, characterized as “market segmentation,” which the Examiner regards as a fundamental economic practice. Final Action 21. Under the second *Alice* step, the Examiner determines that the claims lack any additional elements that would be sufficient to amount to significantly more than the identified abstract idea itself. *Id.* at 23–26.

Although disputing the rejection, the Appellants mistake the Examiner’s recounting of the claimed subject matter (*id.* at 20) for the Examiner’s identification of the abstract idea to which the claims are directed (*id.* at 21). *See* Appeal Br. 5. Accordingly, none of the Appellants’ arguments (*see id.* at 6–11), although intended to address the sufficiency of the first *Alice* step in the rejection, identifies any potential error in the Examiner’s identification of the identified abstract idea of market segmentation, to which the claims may be directed.

Nor do the Appellants expose any reversible error in the Examiner’s determination, under the second step of the *Alice* framework, that no claim element (or combination of elements) amounts to significantly more than the identified abstract idea. The Appellants contend that “the presently recited ordered combination of claim elements is clearly nonconventional and non-routine,” specifically:

the ordered combination of operations by which undercounting is reduced by 1) identifying a user profile of the user with a characteristic of the user, 2) obtaining a ratio of members of a group having the characteristic that also employ a mobile device that can be detected while in the place of interest, 3) and using the ratio to reduce an undercounting of members of the group having the characteristic who visit the place of interest.

Appeal Br. 12–13. Yet, this encapsulation of the claim language essentially applies the identified abstract idea to a particular technological context — i.e., that of analyzing the attributes of visitors (who have associated mobile devices) to a place of interest — and refers to data-gathering features of the claims, such as the use of “mobile device[s]” and the focus on a “place of interest.” However, the Appellants do not explain how these elements might be distinguished from the abstract idea in a way that results in anything that

could be regarded as “significantly more.” *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1364 (Fed. Cir. 2015) (“These processes are well-understood, routine, conventional data-gathering activities that do not make the claims patent eligible.”)

Accordingly, we are not persuaded of reversible error, such that we sustain the rejection of claims 1, 15, 24, and 25 under 35 U.S.C. § 101.

#### *Anticipation*

The Appellants argue that independent claim 1 was rejected erroneously, because Kramer fails to teach the claimed “ratio of members of a group having the characteristic that also employ a mobile device that can be detected while in the place of interest,” as recited below in the context of related claim language (emphasis added):

identifying a user profile of the user, the user profile including a characteristic of the user;

obtaining a ***ratio of members of a group having the characteristic that also employ a mobile device that can be detected while in the place of interest***, wherein:

the ratio of members of the group having the characteristic is used to reduce an undercounting of members of the group having the characteristic who visit the place of interest and do not employ a mobile device that can be detected while in the place of interest; and

the ratio is a function of both an amount of members of the group having the characteristic and a portion of the amount of members of the group having the characteristic who employ a mobile device that can be detected while in the place of interest.

The feature of claim 1, identified by the Appellants, relates to a technique for estimating the undercount of a group, based upon the fraction of the group that has “a mobile device that can be detected while in the place of interest.” Kramer involves determining ratios of observed groups, such as the fraction of certain nightclub attendees, for example, who are men or women. *See* Kramer ¶¶ 61–62. However, Kramer does not disclose a comparison, as recited in the claim, expressing the “ratio of members of a group” having a certain “characteristic,” who “*also* employ a mobile device that can be detected while in the place of interest” (emphasis added). Kramer employs an estimation technique — but it provides only a “characteristic”-neutral (or, as the Appellants say, “characteristic-agnostic”) ratio of members to total attendees. *See* Appeal Br. 15–16. *See also*, Reply Br. 6–7. Yet, Kramer’s technique is not refined (per claim 1), so as to account for members having *both* detectable mobile devices *and* a particular “characteristic.” *See* Appeal Br. 15–16 (citing Kramer ¶ 62).

Accordingly, we are persuaded of error in the rejection of independent claim 1 and, for similar reasons, independent claims 15, 24, and 25. Therefore, we do not sustain the rejection of claims 1, 15, 24, and 25 under 35 U.S.C. § 102.

#### DECISION

We AFFIRM the Examiner’s decision rejecting claims 1, 15, 24, and 25 under 35 U.S.C. § 101.

We REVERSE the Examiner’s decision rejecting claims 1, 15, 24, and 25 under 35 U.S.C. § 102(b).

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Application 13/769,736

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED