UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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LIVE NATION ENTERTAINMENT, INC.,
Petitioner,

v.

COMPLETE ENTERTAINMENT RESOURCES B.V.,
Patent Owner.
_____

Case PGR2017-00038
Patent 9,466,035
_____

Before MICHAEL J. FITZPATRICK, BARBARA A. PARVIS, and
JASON W. MELVIN, *Administrative Patent Judges.*

FITZPATRICK, *Administrative Patent Judge.*

DECISION
Denying Institution of Post-Grant Review
35 U.S.C. § 325(d)

I. INTRODUCTION

Live Nation Entertainment, Inc. ("Petitioner") filed a Petition to institute a post-grant review of all claims, *viz.* claims 1–19, of U.S. Patent No. 9,466,035 ("the '035 patent"). Paper 1 ("Pet."). Songkick.com B.V. filed a Preliminary Response. Paper 6 ("Prelim. Resp."). Songkick.com B.V. subsequently changed its name to Complete Entertainment Resources B.V. ("Patent Owner"). Paper 7, 2.

The Petition is denied under 35 U.S.C. § 325(d).

A. The '035 Patent

The '035 patent, issued October 11, 2016, from U.S. Application serial no. 14/595,797 ("the '797 application"), which was filed January 13, 2015. Ex. 1001, at [45], [21], and [22]. The '035 patent does not claim the benefit of any earlier-filed application, and is, thus, eligible for post-grant review.[1]

The '035 patent is titled "Systems and Methods For Leveraging Social Queuing To Facilitate Event Ticket Distribution." *Id*. at [54]. The '035 patent points out that "ticket resellers utilize automated software for purchasing tickets," and aspires "to provide event ticket systems and methods that reduce the unfair advantage in ticket purchases enjoyed by automated ticket purchasing software and associated [application programming interfaces]." Ex. 1001, 1:16–17, 1:50–53.

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[1] The post-grant review process is available only to patents subject to the first-inventor-to-file provisions of the Leahy–Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (2011) ("AIA"). AIA § 6(f)(2)(A). And, more specifically, the first-inventor-to-file provisions apply only to patents (such as the '035 patent) issuing from applications that have an effective filing date on or after March 16, 2013. *Id*. at § 3(n)(1).

The claimed invention relates to "prioritizing potential event ticket purchasers" and using "purchaser behavior" to do so. *Id*. at 1:8–11. Generally, the '035 patent concerns identifying different classes of ticket purchasers based on social media account history and other data. For example, a performing "entity may choose to award ticket purchasing priority to certain entity-loyal participants based on identifiable indications of loyalty associated with the social media IDs or other activity identifying information or websites of such entity-loyal participants." *Id*. at 2:63–3:1. The '035 Patent terms this "social queuing" and further explains that it "may also include limiting access, or denying access to certain participants based on account history corresponding to social media IDs or other suitable indicia." *Id*. at 3:5–8. The activity identifying information may be "obtained from websites and/or apps such as Songkick™, iTunes™, Amazon™, YouTube™, or other such applications that track and/or monitor user affinity to select performers." *Id*. at 3:10–13.

The '035 patent performs this social queuing by performing an algorithm that computes an index value for each user/login, with the index value being based, at least, in part on account history retrieved from social media. *Id*. at 6:21–22. Such social media history may include a "time-stamped indication of affinity for an entity [e.g., a rock band] associated with the event [for which the ticket is being sold]" or "tagging of a photograph of" the entity. *Id*. at 6:44–56. The index value may also be based on "other historical information such as, for example, historical ticket purchases for performances that the user attended." *Id*. at 6:32–34. "Historical purchase(s) of merchandise, such as t-shirts, mugs, or other

performer associated paraphernalia, may also indicate an affinity for the pre-determined entity." *Id*. at 7:28–30.

In addition to discriminating between users/logins based on their affinity (or not) for a performing entity, the '035 patent also discriminates between users/logins based on whether they are likely to be human versus computer purchasers. *See, e.g.*, *id*. at 7:35–38 ("The method may further include querying the account history to determine whether the account history includes one or more parameters that indicate whether the social media ID is related to an automated entity or a human entity.").

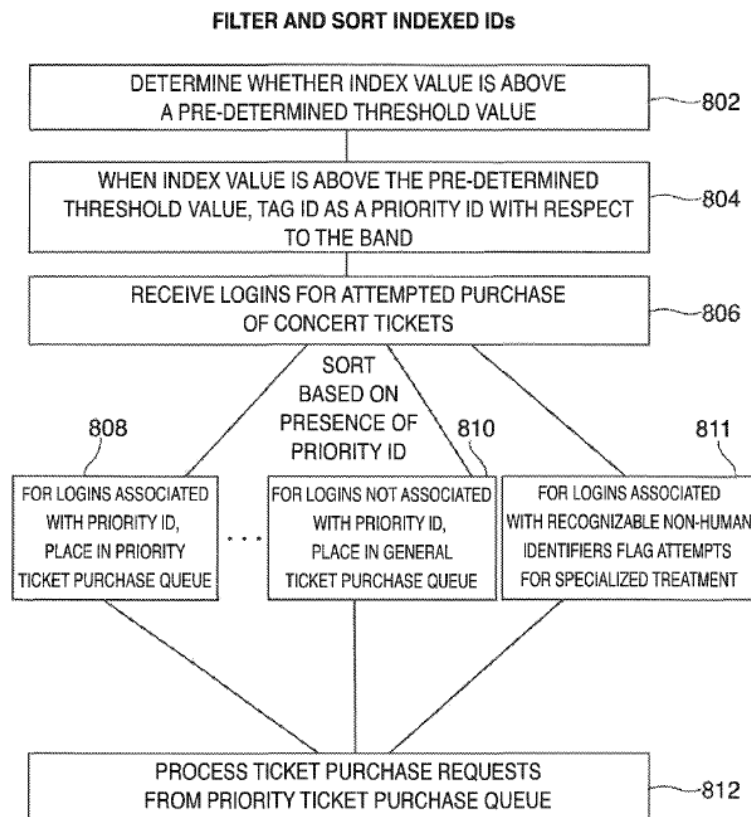Figure 8 of the '035 patent is reproduced below.

FILTER AND SORT INDEXED IDs

DETERMINE WHETHER INDEX VALUE IS ABOVE
A PRE-DETERMINED THRESHOLD VALUE — 802

WHEN INDEX VALUE IS ABOVE THE PRE-DETERMINED
THRESHOLD VALUE, TAG ID AS A PRIORITY ID WITH RESPECT
TO THE BAND — 804

RECEIVE LOGINS FOR ATTEMPTED PURCHASE
OF CONCERT TICKETS — 806

SORT
BASED ON
PRESENCE OF
PRIORITY ID

808   810   811

FOR LOGINS ASSOCIATED
WITH PRIORITY ID,
PLACE IN PRIORITY
TICKET PURCHASE QUEUE

. . .

FOR LOGINS NOT ASSOCIATED
WITH PRIORITY ID,
PLACE IN GENERAL
TICKET PURCHASE QUEUE

FOR LOGINS ASSOCIATED
WITH RECOGNIZABLE NON-HUMAN
IDENTIFIERS FLAG ATTEMPTS
FOR SPECIALIZED TREATMENT

PROCESS TICKET PURCHASE REQUESTS
FROM PRIORITY TICKET PURCHASE QUEUE — 812

FIG. 8

Figure 8, reproduced above, shows a flow diagram of filtering and sorting ticket purchasing opportunities based on the index value. *Id.* at 2:55–56. In the embodiment of Figure 8, logins/users are sorted into three groups: (1) logins of priority users, (2) logins of non-priority users, and (3) logins associated with non-human users (e.g., automated ticket purchasing bots belonging to scalpers). *Id.* at Fig. 8: refs. 808, 810, 811. If a user's login is assigned an index value above a first threshold, it is assigned a priority flag, enabling that user to purchase a ticket not available to all users until a later time, if at all. *Id.* at 6:25–30, 13:38–60 (excerpt refers to Figure 6 but applies equally to Figure 8 (*see id.* at 14:32–33)), Fig. 8: ref. 808. If a user's login is assigned an index value below the first threshold but above a second threshold, it is not given a priority flag, and that user may purchase tickets after the window for priority user tickets purchases passes. *Id.* at 13:60–14:9, Fig. 8: ref. 810. If a user's login is assigned a value below the second threshold, it is because that user appears to be non-human per the algorithm's calculation, and the ability of that login to purchase tickets is restricted or prohibited altogether. *Id.* at 14:44–46, Fig. 8: ref. 811.

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