

This Opinion is Not a
Precedent of the TTAB

Mailed: December 15, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

In re Human Data Labs, Inc.

Serial No. 88526515

Human Data Labs, Inc., pro se.

Janice L. McMorrow, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Wolfson, Adlin and English, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Human Data Labs, Inc. seeks a Principal Register registration for the proposed mark HUMAN DATA MARKETPLACE (“DATA MARKETPLACE” disclaimed), in standard characters, for “Online retail services featuring data assets in the field of real-time and non real-time data, namely, providing an online marketplace and platform for acquiring, buying, selling, trading, licensing, leasing, advertising, rating, standardizing, certifying, researching, distributing or brokering data assets,” in International Class 35.¹ The Examining Attorney refused registration

¹ Application Serial No. 88526515, filed July 21, 2019, originally under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based on use of the mark in commerce, and later amended to change the filing basis to an intent to use the mark in commerce under Section 1(b) of the Act, 15 U.S.C. § 1051(b).

on two grounds: (1) the proposed mark is merely descriptive of the identified services under Section 2(e)(1) of the Act; and (2) Applicant's identification of services is indefinite. After the refusal became final, Applicant appealed, filed a request for reconsideration that was denied and requested and was granted a remand to further amend its identification of services and have its previously-adopted disclaimer of "DATA MARKETPLACE" entered in the application. The appeal is now fully briefed.

I. Applicant's "Plagiarism" Accusations, One of Which is Construed as an Evidentiary Objection

Applicant "requests all references, pages and evidence for 'IGVIA [sic]' ... be removed from consideration." 13 TTABVUE 3.² This "request" is phrased in the manner of an evidentiary objection to a website printout included with the initial Office Action. October 9, 2019 Office Action TSDR 13-14 (printout from "iqvia.com," not "igvia.com").³ In reality, however, Applicant is not objecting to this printout, which the Examining Attorney properly introduced into the record by including its URL and the date the "iqvia.com" website was accessed (which was the same date as the Office Action issued). *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 710.01(b).

² Citations to the appeal record are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

³ Citations to the application file are to the USPTO's Trademark Status & Document Retrieval ("TSDR") online database, by page number, in the downloadable .pdf format.

Applicant's true "objection" is not related to the "iqvia.com" printout attached to the October 9, 2019 Office Action, but instead concerns how that printout was characterized in the Office Action itself. Specifically, as Applicant points out, the Office Action itself provides URLs from some of the evidence attached to and introduced with the Office Action, but the URL provided in the Office Action for the "iqvia.com" website is inaccurate – it does not match the URL from the "iqvia.com" evidence that was actually introduced with and attached to the Office Action.⁴ Rather, as Applicant explains it, the Examining Attorney "plagiarized the complete argument from **another** examining attorney from a **different** trademark case," specifically Applicant's related application Serial No. 87928993 for the similar mark THE MARKETPLACE FOR HUMAN DATA for related services. April 9, 2020 Office Action response TSDR 33-34. However, evidence from the file of Applicant's related application Serial No. 87928993 (which was handled by a different examining attorney) was not included in the October 9, 2019 Office Action in this case.

What Applicant finds "most concerning" about this is that the Examining Attorney allegedly copied the other examining attorney's "**entire** argument and **conclusions**, which are based on a **different identification of services for a different mark.**" *Id.* According to Applicant, the Examining Attorney included "unique phrases from the other trademark case," rendering the Examining Attorney's decision in this one "biased." *Id.* at 36.

⁴ In the Office Action, the Examining Attorney includes the URL <http://www.iqvia.com/about-us/human-data-science>, but attaches pages from the URL <http://www.iqvia.com/insights/human-data-science>.

Throughout prosecution and on appeal Applicant has vociferously accused the Examining Attorney of “plagiarism” and “bias,” but has spent significantly less time and effort on making substantive arguments against the refusal of registration. Applicant may not appreciate that decisions, analyses and evidence from one application or registration may be relevant and useful in examining another application for a similar mark for related services. In any event, this appeal concerns the substantive refusal to register Applicant’s involved mark, and that is what we focus on here.

Thus, to the extent Applicant intended to object to the “iqvia.com” evidence attached to the October 9, 2019 Office Action, the objection is overruled. The evidence was properly introduced with its URL and access date (which is the same date the initial Office Action issued). Applicant should rest assured, however, that we have not considered any statements or arguments by the Examining Attorney that are not supported by the evidence properly introduced in this case, and thus we have not considered any evidence from Applicant’s application Serial No. 87928993, unless it was also properly introduced in this case.⁵ In other words, we have not accessed the URL from the office action in Applicant’s application Serial No. 87928993, nor have we considered the associated website, and we have not accessed any URLs included in office actions in this case. Nor have we considered any findings or statements by

⁵ As Applicant itself points out, “[p]roviding only a website address or hyperlink to Internet materials is insufficient to make such materials of record,” April 9, 2020 Office Action response TSDR 37 (citing cases), and therefore the Board does not access URLs or click on hyperlinks; rather, the Board only reviews Internet evidence properly submitted into the record.

the examining attorney in Applicant's application Serial No. 87928993. We have only considered evidence properly introduced into the record in this case.

II. Descriptiveness Refusal

As indicated, Applicant has disclaimed "DATA MARKETPLACE" apart from the proposed mark as a whole. Thus, Applicant has conceded that DATA MARKETPLACE is merely descriptive. *In re Carlson*, 91 USPQ2d 1198, 1200 (TTAB 2009); *Bass Pro Trademarks LLC v. Sportsman's Warehouse, Inc.*, 89 USPQ2d 1844, 1851 (TTAB 2008). *See also Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1762 (TTAB 2013), *aff'd mem.*, 565 Fed. Appx. 900 (Fed. Cir. 2014). The question is whether prefacing "DATA MARKETPLACE" with HUMAN renders the proposed mark HUMAN DATA MARKETPLACE as a whole inherently distinctive.

A. Evidence and Arguments

The Examining Attorney relies on the following dictionary definitions of the proposed mark's constituent terms, as well as the disclaimed phrase "DATA MARKETPLACE":

HUMAN—n. 1. A member of the primate genus *Homo*, especially a member of the species *Homo sapiens*, distinguished from the other apes by a large brain and the capacity for speech. 2. A person: the extraordinary humans who explored Antarctica.

adj. 1. Of, relating to, or characteristic of humans: the course of human events; the human race. 2. Having or showing those positive aspects of nature and character regarded as distinguishing humans from other animals: an act of human kindness. 3. Subject to or indicative of the weaknesses, imperfections, and fragility associated with humans: a mistake that shows he's only human; human

frailty. 4. Having the form of a human. 5. Made up of humans: formed a human bridge across the ice.⁶

DATA—1. Facts that can be analyzed or used in an effort to gain knowledge or make decisions; information. 2. Statistics or other information represented in a form suitable for processing by computer. 3. Plural of datum.⁷

MARKETPLACE—1. An open area or square in a town where a public market or sale is set up. 2. The world of business and commerce. 3. A situation or place in which values, opinions, and ideas are put forward for debate or recognition: a marketplace for new ideas; the literary marketplace.⁸

DATA MARKETPLACE—“a specific venue created for the buying and selling of data ... [a]s it became clear that these data assets could be bought and sold, data marketplaces emerged”⁹

October 9, 2019 Office Action TSDR 7-12, 28.

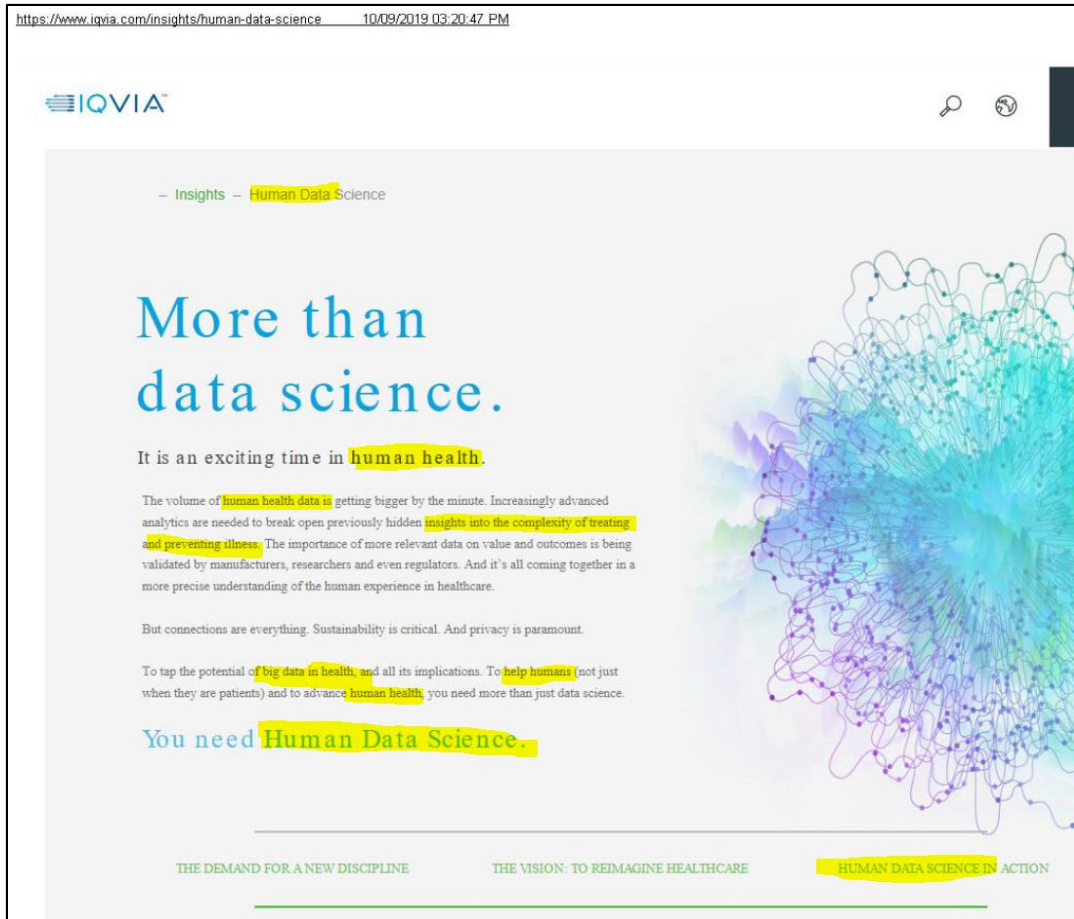
She also relies on the “iqvia.com” evidence she collected on the same day she issued the initial Office Action. It shows that one type of data is “human data”:

⁶ <https://www.ahdictionary.com/word/search.html?q=human>.

⁷ <https://www.ahdictionary.com/word/search.html?q=data>.

⁸ <https://www.ahdictionary.com/word/search.html?q=marketplace>.

⁹ <https://www.techopedia.com/definitions/30322/data-marketplace>. Google searches of “data marketplace” not only corroborate this definition, but also reveal that a number of third-parties use the phrase “data marketplace” to refer to stores, venues or platforms where data is sold. October 9, 2019 Office Action TSDR 53-55; April 23, 2020 Office Action TSDR 4-6. While Applicant is correct that generally a list of excerpts from Internet search results has little probative value, here the excerpts provided and the context of how “data marketplace” is used in them reveals that “data marketplace” is commonly used by third parties and that the meaning of this phrase is consistent with the definitions the Examining Attorney relies upon. Thus, this evidence is probative, even without the full websites summarized in the search results. *Cf. In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833-34 (Fed. Cir. 2007) (finding Google search result summaries of “lesser” and “little” probative value where there was “very little context of the use of ASPIRINA on the webpages linked to the search report”).

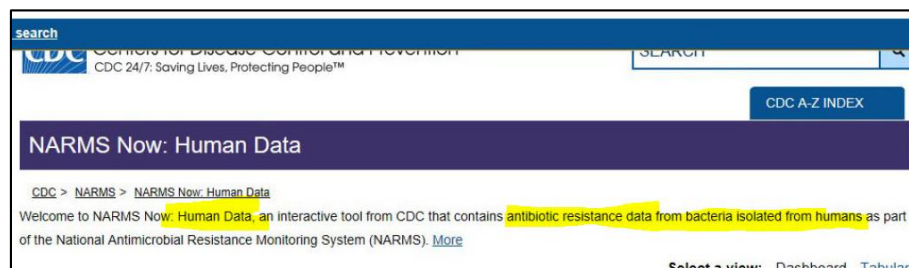


October 9, 2019 Office Action TSDR 13 (highlighting added). The website indicates that “human data,” and more specifically “human health data,” is becoming increasingly prevalent and important in healthcare, a field that benefits from “human data science.”

IQVIA is not the only user of the term “human data.” A “gcn.com” article entitled “Making Sense of Human Data” states that “the Department of Veterans Affairs is turning to software that can help extract meaning from ‘**human data.**’” *Id.* at 20 (emphasis added). The article explains that because “[h]uman data is often non-numerical, or unstructured ... most big data analysis software can’t handle it.” However, the article reports that QSR International’s NVivo software “enables the

researchers to formulate recommendations for individual or population improvements” and to “derive insight from the data.” *Id.* at 20-21. Users of the software for this purpose include the Department of Veterans Affairs, “the Centers for Disease Control and Prevention and major health providers such as teaching and general hospitals and interstate health providers.” *Id.* at 21.

In fact, the Centers for Disease Control and Prevention also uses the term “human data,” to describe the National Antimicrobial Resistance Monitoring System (NARMS), its “interactive tool” that “contains antibiotic resistance data from bacteria isolated from humans,” as shown below:



Id. at 25 (highlighting added).

The Techopedia definition of “data marketplace” indicates that “some common types of data marketplaces involve selling information about ... personal data.” *Id.* at 29. The “whatis.techtarget.com” definition similarly states that a “data marketplace or data market is an online store where people can buy data,” including “personal information.” *Id.* at 34. And the “hackermoon.com” article “Data Marketplaces: The Holy Grail of Our Information Age” indicates that a data marketplace is a “platform which enables convenient buying and selling of a resource – in this case, data,” which could include “personal data.” *Id.* at 42.

The Examining Attorney introduced a press release from “businesswire.com” about Hu-manity.co’s use of IBM’s Blockchain Platform for its “global consent ledger to help enable individuals to claim property rights to their personal data.” The press release states

Against a backdrop of growing concern around the misuse of personal information, **human data** – which includes healthcare records, geospatial location and media usage metrics – continues to grow exponentially. The **human data marketplace** is worth an estimated \$150-200 billion annually, but organizations do not have a global and scalable way to buy, use or sell this valuable information.

Id. at 57 (emphasis added). An article about Hu-manity.co in “outsourcing-pharma.com” opens as follows: “Hu-manity.co is taking on the **human data marketplace** with its mission to establish a 31st Human Right: Legal ownership of **human data** as property – a shift that could help improve clinical research and increase transparency, to begin.” *Id.* at 61 (emphasis added).

Finally, the Examining Attorney relies on a “forbes.com” article entitled “Welcome to the Human Data Economy” written by a Forbes Council member who signed the involved application as Applicant’s President. The article explains that “[o]ver 700 million people use wearable technology like smartwatches, fitness bands and medical devices,” and thereby “create extremely valuable data from their daily lives,” but are “giving away their personal data for free.” September 10, 2021 Office Action TSDR 21-22. The article poses the question “what if [device manufacturers] paid consumers instead?,” and points out that “[a] new data class is emerging – human health data,” which is becoming “a capital asset in high demand.” *Id.* at 22. The article describes a

new “**Human Data Economy**, where consumers will soon be able to monetize their health information and take control over how, where and when their data is used.”

Id.

Based on this evidence, the Examining Attorney argues that the “proposed mark is using [its constituent] words in their common meaning.” 12 TTABVUE 3. More specifically, Applicant seeks registration of the proposed mark for online retail services that involve “selling, trading, or licensing” data assets, and Applicant’s identification of services is thus broad enough to encompass a “marketplace” for “human data.” *Id.* at 4.

For its part, Applicant reintroduced some of the Examining Attorney’s evidence in order to support its argument that the evidence is not probative. April 9, 2020 Office Action response. It also introduced new evidence of its own, much of which relates to Applicant’s arguments that the Examining Attorney “plagiarized” or is “biased,” but does not directly relate to the question at hand, whether HUMAN DATA MARKETPLACE is descriptive of the identified services. *Id.* In addition, Applicant introduced third-party registrations which, it claims, support a finding that the proposed mark is not merely descriptive.¹⁰ *Id.* at 482-891.

Applicant argues based on this evidence that the examination of its involved mark “was neither ‘accurate’ nor ‘consistent’ since [the Examining Attorney’s] Refusal

¹⁰ In support of its arguments against the refusal based on the identification of services, Applicant introduced third-party registrations (with its April 9, 2020 Office Action response) and USPTO information about identifications of goods and services. March 10, 2022 Request for Reconsideration TSDR 43-93. Applicant also introduced general information about, and evidence intended to support its allegations of, “plagiarism” and “bias.” *Id.* at 94-263.

included unique phraseology *copied* from a completely different identification of services from a different case that cited non-relevant and non-applicable material, therefore making an ‘accurate’ and ‘consistent’ examination impossible.” 10 TTABVUE 16 (emphasis in original). With respect to the descriptiveness refusal’s substance, Applicant argues that the proposed mark is suggestive rather than merely descriptive because “HUMAN could refer to any number of ambiguous interpretations about the mark, **especially if HUMAN is used as a noun.**” *Id.* at 21. Specifically, according to Applicant, the proposed mark could be “interpreted” as:

(1) a “[c]onsumer ‘MARKETPLACE’ for *HUMANS* and their *ideas & interactions* instead of the automated, computerized systems that plague impersonal trading interfaces ...;” (2) a “*HUMAN curated* ‘DATA MARKETPLACE’ that focuses on *individual*, consumer preferences instead of generic, algorithmic searches ...;” (3) a “‘DATA MARKETPLACE’ created by *HUMAN* engineers, who are focused on ‘humanizing data’ with ‘humane design ... instead of an outsourced marketplace created with generic code;” or (4) “a collection of focus group feedback, online comments, handwritten letters, and phone calls.”

Id. at 21-22 (emphasis in original). Finally, Applicant argues that the Examining Attorney’s alleged “cut-and-paste” from an office action in Applicant’s related application Serial No. 87928993 is evidence that she engaged in a “*multi-stage* reasoning process.” *Id.* at 23.

B. Analysis

The record leaves no doubt that HUMAN DATA MARKETPLACE is merely descriptive because it “immediately conveys knowledge of a quality, feature, function, or characteristic” of Applicant’s online marketplace and platform featuring data assets. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217,

1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 82 USPQ2d at 1831); *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Specifically, the mark immediately conveys that Applicant's marketplace/platform features "human data," a type of "data asset" encompassed by Applicant's identification of services. *See In re Allen Elec. & Equip. Co.*, 458 F.2d 1404, 173 USPQ 689 (CCPA 1972) ("Since the goods are described merely as 'antennas' and that term is broad enough to encompass 'scanning antennas,' the mark SCANNER as applied to the goods is merely descriptive"); *Cf. In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (finding CHURRASCOS, a type of grilled meat, generic for restaurant services, because the term is "a key aspect of a class of restaurants" known as "churrasco restaurants").

Indeed, the record establishes that "human" data is increasingly recognized and discussed as a specific type of data. This is not surprising, because people, i.e. "humans," continuously generate data, such as health-related data (blood pressure, heart rate, body temperature, white blood cell count, etc.), geographic data ("geospatial" locations pinpointed or tracked via global positioning systems) or athletic data (vertical leap, speed, endurance, etc.). October 9, 2019 Office Action TSDR 13, 20-21, 25, 57. As Applicant's President explained it in the "forbes.com" article, "[o]ver 700 million people use wearable technology like smartwatches, fitness bands and medical devices," all of which generate human data. September 10, 2021 Office Action TSDR 21-22.

Thus, it is not surprising that third parties increasingly use the term “human data” to describe a type of “data asset.” October 9, 2019 Office Action TSDR 13, 20, 25, 61. Applicant’s President also uses the term “human data.” September 10, 2021 Office Action TSDR 21-22. Some third parties use the variation “personal data” in the same manner. *Id.* at 42, 57. Applicant’s President does as well. September 10, 2021 Office Action TSDR 21-22.

Applicant’s contention that the proposed mark is suggestive because it could be subject to multiple “ambiguous interpretations” is unpersuasive for at least three reasons. First, we need only find that one meaning of the term is merely descriptive, and here the record shows that HUMAN DATA MARKETPLACE is merely descriptive of a marketplace featuring human data. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984) (“It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.”). *See also*, *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (TTAB 2007); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Second, the other potential meanings Applicant proffers are also merely descriptive. In fact, whether the term refers to a “DATA MARKETPLACE” for humans, a “DATA MARKETPLACE” curated by humans and focused on human preferences, a “DATA MARKETPLACE” created by humans and featuring “humanized” data or a “DATA MARKETPLACE” featuring human-generated data, the proposed mark is merely descriptive. Third, “[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the

goods or services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). In other words, whether a mark is merely descriptive is determined not in the abstract, but in relation to the services for which registration is sought, the context in which it is being used on or in connection with the services, and the possible significance that the proposed mark would have to the average purchaser of the services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Here, someone who knows that Applicant offers an online marketplace/platform for data assets will understand that the marketplace/platform features human, or personal, “data assets.”

As the Examining Attorney points out, Applicant’s combination of the descriptive terms “HUMAN” and “DATA MARKETPLACE” does not make the composite term “HUMAN DATA MARKETPLACE” registrable. Not only is each term merely descriptive of Applicant’s services, but when combined, the resulting phrase HUMAN DATA MARKETPLACE does not evoke a new nondescriptive commercial impression. To the contrary, in Applicant’s proposed mark, each component retains its merely descriptive significance in relation to the services, as confirmed by third party use of the terms “human data” and “data marketplace.” The composite term HUMAN DATA MARKETPLACE is therefore merely descriptive. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could

include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services); *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs).¹¹

For all of these reasons, the proposed mark is merely descriptive of the identified services and the refusal on that basis is affirmed.¹²

¹¹ Because the record supports the refusal, Applicant's complaints about "plagiarism" and "bias" are not relevant to the question at hand, and any mistakes made during prosecution have not affected our analysis of the record.

¹² Applicant's reliance on third-party registrations is misplaced. As Applicant stressed throughout prosecution and on appeal, each case must be decided on its own facts. Moreover, we are not privy to relevant evidence concerning those third-party marks or the records in those cases, Applicant has not demonstrated how those registered terms are used or perceived, and neither the existence of these third-party registrations nor any of the evidence in their prosecution records (even if it were of record) compels a specific result in later, allegedly analogous cases. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1377 (Fed. Cir. 2018) ("these prior registrations do not compel registration of [Applicant's] proposed mar[k]") (citing *In re Cordua Rests., Inc.*, 118 USPQ2d at 1635 ("The [US]PTO is required to examine all trademark applications for compliance with each and every eligibility requirement, . . . even if the [US]PTO earlier mistakenly registered a similar or identical mark suffering the same defect.)); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) ("Even if all of the third-party registrations should have been refused registration under section 1052(a), such errors do not bind the USPTO to improperly register Applicant's marks."); *In re Cooper*, 254 F.2d 611, 117 USPQ 396, 401 (CCPA 1958) ("the decision of this case in accordance with sound law is not governed by possibly erroneous past decisions by the Patent Office"). As we recently stated in an analogous situation, to the extent that our decision here is inconsistent with the third-

III. Identification of Services Refusal

According to the Examining Attorney, Applicant’s “recitation of services is indefinite because the field of goods or products available at the applicant’s alleged retail store is not sufficiently definite to enable the USPTO to reach informed judgments concerning likelihood of confusion.” 12 TTABVUE 7. Specifically, the “possibilities for the type and field of data encompassed by the applicant’s identification are endless.” *Id.* at 8. Furthermore, Applicant’s “use of the phrase ‘online platform’ is unacceptable because it suggests the provision of an online software platform service in Class 42,” while Applicant seeks registration in Class 35 only. *Id.* at 7.

Applicant argues that “data assets” is sufficiently definite, and that specifying the types of data assets offered on its marketplace/platform is unnecessary. 10 TTABVUE 12-15. It also argues that because some identifications of Class 35 services in third-party registrations include the word “platform,” Applicant should be able to use the same term here in its identification of Class 35 services. *Id.* at 14.

Turning first to whether “data assets” is sufficiently definite, we agree with the Examining Attorney. “An applicant must identify the goods and services specifically to provide public notice and to enable the USPTO to classify the goods and services properly and to reach informed judgments concerning likelihood of confusion under 15 U.S.C. § 1052(d).” *In re Fiat Group Mktg. & Corp. Commc’ns. S.p.A.*, 109 USPQ2d

party registrations, “it is the decision required under the statute on the record before us.” *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, *11 (TTAB 2020).

1593, 1597 (TTAB 2014); *In re Faucher Indus. Inc.*, 107 USPQ2d 1355, 1358-59 (TTAB 2013); Trademark Rule 2.32(a)(6) (application must include a “list of the **particular** goods or services on or in connection with which the applicant uses ... the mark”) (emphasis added). Thus, “[i]t is within the discretion of the PTO to require that one’s goods be identified with particularity.” *In re Omega SA*, 494 F.3d 1362, 83 USPQ2d 1541, 1544 (Fed. Cir. 2007) (quoting *In re Water Gremlin Co.*, 635 F.2d 841, 208 USPQ 89, 91 (CCPA 1980)). Here, “data assets” is hopelessly broad, because if “data” does not encompass all existing facts and information, it encompasses such a large subset thereof that Applicant’s identification does not provide sufficient public notice about the nature of the “data assets,” nor does it enable the USPTO to properly classify the services or assess likelihood of confusion. For example, a “DATA MARKETPLACE” offering pro football statistics will be perceived differently, and have different likelihood of confusion implications, than a “DATA MARKETPLACE” offering international trade statistics from the 16th century.

The problem is amply illustrated in *In re Omega SA*, 494 F.3d 1362, 83 USPQ2d 1541, 1544 (Fed. Cir. 2007). There, the applicant sought to register its mark for “jewelry, precious stones; watches, watch straps, watch bracelets and parts thereof; chronometers, chronographs, watches made of precious metals, watches partly or entirely set with precious stones” in International Class 14. The examining attorney required that “chronographs” be identified more specifically, because that term could refer to watches, which fall within Class 14, or to time recording instruments, which fall within Class 9. The Federal Circuit upheld the Board’s decision affirming the

examining attorney, agreeing that “the scope of the term ‘chronographs’ is ambiguous for registration purposes,” because it includes both watches and time recording devices. *Id.* This case is analogous, though it presents a much starker illustration of the problem than *In re Omega*, because “data assets” is obviously much broader than chronographs. *See also In re Air Prods. and Chems., Inc.*, 192 USPQ 84, 85 (TTAB 1976) (“catalysts” could “include a large number of catalysts which applicant does not manufacture. Under such circumstances, to allow applicant to register its mark for so broad an identification of goods would give it a scope of protection to which it is not entitled.”); *In re Societe Des Parfums Schiaparelli, S.A.*, 122 USPQ 349, 350 n.4 (TTAB 1959) (“Since the term ‘beauty products’ has no particular commercial meaning, it should be deleted and the identification of goods be made to read as follows: perfumery, cosmetics and dentifrices.”).

As for the term “online platform,” we again agree with the Examining Attorney. While the USPTO’s Acceptable Identification of Goods and Services Manual indicates that the term “marketplace” is generally an acceptable identification of services in Class 35, it indicates that the term “platform” is generally an acceptable identification of services in Class 42. Applicant has provided no reason why these general guidelines should not be followed here, nor has it further amended its identification to satisfy the Examining Attorney’s concerns. Its reliance on third-party registrations with allegedly similar identifications of services is misplaced. In general, “[t]he Board must decide each case on its own merits ... Even if some prior registrations had some characteristics similar to [an involved] application, the PTO’s allowance of such prior

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registrations does not bind the Board or this court.” *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Accordingly, the refusal based on the indefiniteness of the identification of services is also affirmed.

Decision: The refusal to register Applicant’s proposed mark on the grounds that it is merely descriptive under Section 2(e)(1) of the Trademark Act, and that Applicant failed to provide a sufficiently definite identification of services, is affirmed.