

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIVEPERSON, INC.,
Petitioner,

v.

24/7 CUSTOMER, INC.,
Patent Owner.

Case IPR2017-00610
Patent 9,077,804 B2

Before CHRISTOPHER L. CRUMBLEY, ROBERT J. WEINSCHENK,
and JASON W. MELVIN, *Administrative Patent Judges*.

CRUMBLEY, *Administrative Patent Judge*.

DECISION
Granting Motion to Excuse Late Action
37 C.F.R. § 42.5(c)(3)

As authorized during the April 10, 2018 oral hearing in this matter, Patent Owner 24/7 Customer, Inc. filed an Unopposed Motion for Leave to File its Motion to Exclude Evidence. Paper 38. The Motion included, as Attachment A, a Motion to Exclude that 24/7 Customer attempted to file with the Board on March 6, 2018. *Id.* According to 24/7 Customer, its

counsel believed the Motion to Exclude had been filed successfully with the Board, because counsel subsequently received an email from the Board's electronic filing system. *Id.* at 1. Counsel failed to notice the content of the email from the Board, which explained that "there were no documents submitted with this request." *Id.*

In its Motion, 24/7 Customer asks that we excuse its late action and permit it to file the Motion to Exclude out of time. *Id.* Under our Rules governing this proceeding, "late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice." 37 C.F.R. § 42.5(c)(3).

24/7 Customer asserts that it has good cause to file its Motion to Exclude out of time, and that consideration of the Motion on the merits would be in the interests of justice. Paper 38, 1. It alleges three facts in support: first, that the failure to file the Motion to Exclude was inadvertent (*id.* at 1); second, that Petitioner LivePerson was not prejudiced by the failure to file, because 24/7 Customer timely served the Motion to Exclude and was able to file an opposition (*id.* at 1–2); and third, that LivePerson does not oppose the Motion for Leave (*id.* at 2).

We disagree with 24/7 Customer that good cause exists for it to file its Motion to Exclude late. While we have no reason to doubt its explanation that the failure to file was inadvertent, counsel should have reviewed the correspondence received from the Board and realized that the submission to our e-filing system did not contain any documents. We conclude, however, that the interests of justice support considering the Motion to Exclude on the merits. In particular, we note that LivePerson does not oppose accepting the late filing, and was properly served with the Motion to Exclude and took the

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opportunity to respond. For these reasons, we *grant* the Motion for Leave, and authorize 24/7 Customer to file the Motion to Exclude contained in Attachment A as its own paper in the record of this proceeding.

In light of the foregoing, it is

ORDERED that Patent Owner's late action is excused, and the filing of the Motion to Exclude out of time is authorized.

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