

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. CRUMBLY, ROBERT J. WEINSCHENK,
and JASON W. MELVIN, *Administrative Patent Judges*.

CRUMBLY, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318 and 37 C.F.R. § 42.73

I. INTRODUCTION

In this *inter partes* review trial, instituted pursuant to 35 U.S.C. § 314, Petitioner LivePerson, Inc. challenges the patentability of claims 1–3, 5, 8–9, and 16 of U.S. Patent No. 9,077,804 B2 (Ex. 1001, “the ’804 patent”), owned by 24/7 Customer, Inc.

We have jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision, issued pursuant to 35 U.S.C. § 318(a), addresses issues and arguments raised during trial. For the reasons discussed below, we determine that LivePerson has proven, by a preponderance of the evidence, that claims 1–3, 5, 8–9, and 16 of the ’804 patent are unpatentable.

A. Procedural History

On January 6, 2017, LivePerson requested an *inter partes* review of claims 1–10 of the ’804 patent. Paper 1, “Pet.” 24/7 Customer filed a Patent Owner Preliminary Response. Paper 7, “Prelim. Resp.” In a Decision on Institution of *Inter Partes* Review (Paper 9, “Dec. on Inst.”), we instituted trial as to claims 1–3, 5, 8–9, and 16 on the following grounds of unpatentability:

1. Whether claims 1–3, 5, 8–9, and 16 are unpatentable under 35 U.S.C. § 103(a),¹ as having been obvious over the combined disclosures of Busey² and Yoshida;³ and
2. Whether claim 9 is unpatentable under 35 U.S.C. § 103(a), as having been obvious over the combined disclosures of Busey, Yoshida, and Lewis-Hawkins.⁴

Dec. on Inst. 20.

Following institution, 24/7 Customer filed a Patent Owner Response (Paper 21, “PO Resp.”), and LivePerson filed a Reply (Paper 28, “Pet. Reply”).

LivePerson supported its Petition with the Declaration of Stuart J. Lipoff. Ex. 1003. 24/7 Customer took cross-examination of Mr. Lipoff via deposition, and filed the transcript in the record. Ex. 2011. With its Reply, LivePerson submitted a second Declaration by Mr. Lipoff. Ex. 1017.

With its Patent Owner Preliminary Response, 24/7 Customer submitted the Declaration of Arthur T. Brody, Ph.D. (Ex. 2001), and submitted a second Declaration by Dr. Brody with its Patent Owner

¹ The relevant sections of the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, took effect on March 16, 2013. Because the application to which the ’876 patent claims priority was filed before that date, our citations to Title 35 are to its pre-AIA version.

² U.S. Patent Application Pub. No. 2006/0188086 A1 to Busey et al., published Aug. 24, 2006 (Ex. 1007).

³ U.S. Patent 7,330,873 B2 to Yoshida et al., issued Feb. 12, 2008 (Ex. 1008).

⁴ U.S. Patent Application Pub. No. 2010/0100490 A1 to Lewis-Hawkins, published Apr. 22, 2010 (Ex. 1013).

Response (Ex. 2010). LivePerson took cross-examination testimony of Dr. Brody via deposition, and submitted the transcript. Ex. 1018.

24/7 Customer filed a Motion to Exclude certain evidence submitted by LivePerson with its Reply (Paper 38, Attachment A,⁵ “Mot.”), to which LivePerson filed an Opposition (Paper 33, “Mot. Opp.”) and 24/7 Customer filed a Reply (Paper 34, “Mot. Reply”).

An oral hearing was held on April 10, 2018, and a transcript of the oral hearing is available in the record. Paper 40 (“Tr.”).

On May 3, 2018, we expanded the scope of this proceeding to include review of all challenged claims and all grounds presented in the Petition. Paper 41; *see* United States Patent and Trademark Office, *Guidance on the impact of SAS on AIA trial proceedings*, PATENT TRIAL AND APPEAL BOARD TRIALS (April 26, 2018), <https://go.usa.gov/xQ93y>. This added three challenges to claim 11 of the ’804 patent to the trial, on the following grounds:

1. Whether claim 11 is unpatentable under 35 U.S.C. § 103 as having been obvious over the combined disclosures of Busey and Yoshida;
2. Whether claim 11 is unpatentable under 35 U.S.C. § 103 as having been obvious over the combined disclosures of Busey, Yoshida, and Light;⁶ and

⁵ 24/7 Customer served, but inadvertently did not file, its Motion to Exclude at the appropriate time. We alerted the parties to this fact during the oral hearing, and LivePerson indicated that it would not oppose 24/7 Customer’s late submission of the Motion. Tr. 52. We granted a Motion to Excuse Late Action and accepted the late filing of the Motion to Exclude. Paper 39.

⁶ U.S. Patent Application Pub. No. 2008/0052377 A1 to Light, published

3. Whether claim 11 is unpatentable under 35 U.S.C. § 103 as having been obvious over the combined disclosures of Busey, Yoshida, Light, and Bogart.⁷

The parties subsequently filed a Stipulation to Withdraw Claim 11 of the '804 Patent from Petition, withdrawing all grounds relating to claim 11 from the trial. Paper 44. This Final Written Decision, therefore, does not address the patentability of claim 11.

B. The '804 Patent

The '804 patent, titled “Interaction Management,” issued July 7, 2015, from U.S. Patent Application No. 14/251,527 (“the '527 application”), filed on April 11, 2014. Ex. 1001, (54), (45), (21), (22). The '527 application was a continuation of application No. 13/626,770, which issued as U.S. Patent No. 8,737,599, and claims priority to provisional application No. 61/563,434, filed November 23, 2011. *Id.* at (60), (63).

The '804 patent is directed to an apparatus and method for managing online customer/customer service agent interactions, and optimizing them “from an agent’s perspective across multiple channels, such as chat, voice, etc.” *Id.* at 2:24–26. The customer and agent interact via an “interaction engine,” which may use chat, voice, or a combination of chat and voice, and may permit a supervisor to monitor the interaction. *Id.* at 2:30–35. The agent may use the interaction engine to send the customer a link to an application via the interaction engine, or the link may be pushed to the

Feb. 28, 2008 (Ex. 1009).

⁷ U.S. Patent 6,163,607 to Bogart et al., issued Dec. 19, 2000 (Ex. 1014).

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