Page 1 1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 4 LIVEPERSON, INC., 5 Petitioner, Case No. IPR2017-00610 б Patent 9,077,804 B2 vs. 7 24/7 CUSTOMER, INC., 8 Patent Owner. 9 10 11 12 13 14 VIDEOTAPED DEPOSITION OF ARTHUR T. BRODY, Ph.D. 15 San Francisco, California 16 Wednesday, December 6, 2017 17 18 19 20 21 22 23 24 **REPORTED BY:** CYNTHIA MANNING, CSR No. 7645, CLR, CCRR 25 JOB NO. 134515

TSG Reporting 877-702-9580

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	Page 2		Page 3
1		1	A P P E A R A N C E S:
2		2	
3	December 6, 2017	3	KIRKLAND & ELLIS
4	9:03 a.m.	4	Attorneys for Petitioner
5		5	555 California Street
6		6	San Francisco, CA 94104
/		1 7	BY: NIGEL RAY, ESQ.
0 0	Deposition of ARTHUR I. BRODY, Ph.D., held	8	BRANDON BROWN, ESQ.
10	at Kirkland & Ellis LLP, 555 California Street, San	10	KEVIN BENDIX, ESQ.
11	Certified Shorthand Reporter No. 7645, Certified	11	
12	LiveNote Reporter, California Certified Realtime	12	
13	Reporter	13	
14	Reporter.	14	O'MELVENY & MYERS
15		15	Attorneys for Patent Owner
16		16	Two Embarcadero Center
17		17	San Francisco, CA 94111
18		18	BY: BILL TRAC, ESQ.
19		19	
20		20	
21		21	Also present:
22		22	Marcus Majers, Videographer
23		23	
24		24	
25			
	Page 4		Page 5
1	SAN FRANCISCO. CALIFORNIA:	1	MR. TRAC: Bill Trac from the law firm of
2	WEDNESDAY, DECEMBER 6, 2017; 9:03 A.M.	2	O'Melveny & Myers on behalf of Patent Owner, 24/7.
3		3	THE VIDEOGRAPHER: Will the court reporter
4		4	please swear in the witness.
5	THE VIDEOGRAPHER: Good morning.	5	
6	This is the start of tape labeled Number 1	6	ARTHUR T. BRODY, Ph.D.,
7	of the videotaped deposition of Dr. Arthur T. Brody	7	having first been duly sworn, testified as
8	in the matter of LivePerson, Inc. versus 24/7	8	follows:
9	Customer, Inc., in the United States Patent and	10	
11	Pagend Case IPP2017 00610	11	EXAMINATION DV MD, DA V.
12	Board. Case IPR2017-00010.	12	DI MR. RAT:
13	California Street San Francisco California on	13	A Good morning
14	December 6th, 2017, at approximately 9.03 a m	14	O. Could you please state your name for the
15	My name is Marcus Maiers. from TSG	15	record?
16	Reporting, Inc., and I am the legal video	16	A. Arthur T. Brody.
17	specialist.	17	Q. All right. Have you had your deposition
18	Court reporter is Cynthia Manning, in	18	taken before?
19	association with TSG Reporting.	19	A. Yes.
20	Will all counsel present please introduce	20	Q. And you've been deposed in the capacity as
21	themselves.	21	an expert witness before?
22	MR. RAY: This is Nigel Ray from the law	22	A. Yes, I have.
23	firm Kirkland & Ellis. I'm representing the	23	Q. And about how many times have you been
24	Petitioner, LivePerson, Inc. Along with me is	24	deposed before?
20	co-counsel, Kevin Bendix.	45	A. On, probably around 25 or 30 times.

2 (Pages 2 to 5)

TSG Reporting 877-702-9580

	Page 6		Page 7
1	Q. Have you ever been deposed in the capacity	1	companies?
2	not of being an expert?	2	A. Yes, I was.
3	A. Yes.	3	Q. Were you working for the company that was
4	Q. And about how many times have you been	4	being sued or the company that was suing the other
5	deposed in that capacity?	5	company?
6	A. Oh, that would be once.	6	A. At that point, I was working for neither.
7	Q. Now, is there any reason that you can think	7	Q. What facts did you know about that case?
8	of that you wouldn't be able to provide accurate	8	A. I was a vice president of marketing and
9	testimony today?	9	sales at the time they were alleging trade secrets
10	A. No, there is not.	10	were stolen.
11	Q. Are you on any medication that might impact	11	Q. Okay. And what was that company?
12	your ability to provide truthful testimony?	12	A. That was TechniCom Systems, Inc.
13	A. No, I am not.	13	Q. All right. Just to make things easy, I'm
14	Q. And if I ask you a question that you don't	14	going to mark an exhibit. This is an exhibit that's
15	understand, will you please ask me to clarify it?	15	already that's already been marked as 24/7 Customer
16	A. I certainly will.	16	Exhibit 2010 in the IPR2017-000610.
17	Q. So referring back to the one time you were	17	(Exhibit 2010, previously marked for
18	deposed not in an expert capacity, could you	18	identification, was referenced herein)
19	describe that time?	19	BY MR. RAY:
20	A. Yes. I was a fact witness.	20	Q. And, Dr. Brody, do you recognize Exhibit
21	Q. And what was that case about?	21	2017 oh, sorry, 2010. Sorry.
22	A. The case was about a company sued another	22	A. (Witness reviewing document.)
23	company about taking, I guess it would be, trade	23	It is my declaration I submitted in this
24	secrets.	24	IPR with some additional highlighting that I didn't
25	Q. And you were working for one of the	25	provide.
	Page 8		Page 9
1	Q. I'm sorry?	1	A. Yes, I did.
2	A. Such as paragraph 37.	2	Q. And as part of that, you filled out an
3	Q. Okay. We'll reprint fresh copies. I	3	application for the Ph.D. program at Stony Brook?
4	anologize		
5	apologize.	4	A. Yes, I did.
	MR. TRAC: Do you wish to take these back?	4 5	A. Yes, I did.Q. And your Ph.D., was that was there a
6	MR. TRAC: Do you wish to take these back? MR. RAY: That might be easier, yeah.	4 5 6	A. Yes, I did.Q. And your Ph.D., was that was there a specialty that you focused on?
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 MR. TRAC: Do you wish to take these back? MR. RAY: That might be easier, yeah. BY MR. RAY: Q. We can probably proceed while we're getting those printed. I'd like to talk a little bit about your educational background. So in 1973 you graduated from City College of New York with a bachelor's degree in physics; is that right? A. That is correct. Q. And later you received a Ph.D. in physics from Stony Brook University? A. Yes. Q. And that was in 1978? A. Yes, it was. Q. Did you so straight through from undergraduate to your Ph.D. studies? A. Yes, I did. Q. So while you were at City College, you 	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 A. Yes, I did. Q. And your Ph.D., was that was there a specialty that you focused on? A. Yes. Q. What was that specialty? A. It was high energy partial physics. I was an experimentalist. Q. What does it mean to be an experimentalist? A. So in physics you have theorists who provide theory and experimentalists who try to prove or disprove theories, and you do that through to run experiments. Q. Now, your high energy particle physics, is there any real-world application to your research? A. Oh, absolutely. Q. What is some of the application of your research? A. Well, do you want the more technical side of it or the more engineering side of it? Q. Whichever one is at a higher level. A. Well, the higher level would be, as you

3 (Pages 6 to 9)

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	Page 10		Page 11
1	universe, you learn different things. So directly	1	patent applications?
2	out of partial physics, as an example, came what	2	A Only sometimes not most of the time But
3	people are using now like quantum computing.	3	I would point out to the law firms the key
4	O Does any of your research relate to call	4	commercial features which I assume would be
5	center technology?	5	protected in the claim language
6	A No My research at that time did not	6	O So if the law firms were having trouble
7	relate to call center technology	7	filling out the patent applications would they come
8	Ω Do you have any patents?	8	to you to help them with that?
9	A No I do not	9	A It wouldn't so much be trouble as much as
10	A. Have you ever filed a patent application?	10	you know asking for a clarification. The law firms
11	A No but I've assisted others in doing that	11	pretty much knew what to do to file an application
12	Ω What was involved in assisting others in	12	Ω Okay Now prior to this case have you
13	filing patent applications?	13	had any experience with customer-relationship
14	A Well as an example at Columbia University	14	management systems?
15	I was a consulting technical licensing officer, and	15	A Vec
16	I was a consulting technical neersing officer, and I would review the research done by professors and	16	A. 105. 0 And when was the first time you had
17	areducto students and determine if there was	17	Q. And when was the first time you had
18	graduate students and determine if the patent	18	experience with customer-relationship management
19	commercial value, and then determine if a patent	19	$\frac{1081}{1081} \text{ to } 1082$
20	application should be pursued, and then monitor that	20	A. 1981 ± 1983 .
20	along with the law firms involved. And it was	20	Q. And what were you doing in that time?
21	typically in the areas of networking	22	A. I was working at Bell Laboratories and I
22	telecommunications, video technologies, and audio	22	was responsible for one of the systems used in one
23	technologies.	23	of the call centers within the Bell system.
24	Q. And as part of your review and research,	24	Q. What did your responsibilities include?
25	did you assist in the actual preparation of the	25	A. The first job I had was to improve the
	Page 12		Dage 13
			rage 15
1	speed of the protocols involved so that the people	1	system to respond, they were waiting for, like, the
1 2	speed of the protocols involved so that the people answering the phone calls could be more responsive	1 2	system to respond, they were waiting for, like, the network traffic?
1 2 3	speed of the protocols involved so that the people answering the phone calls could be more responsive to the customers.	1 2 3	system to respond, they were waiting for, like, the network traffic? A. Yeah, so I'll give you an example. Agents
1 2 3 4	speed of the protocols involved so that the people answering the phone calls could be more responsive to the customers. Q. What do you mean by "protocols" in this	1 2 3 4	system to respond, they were waiting for, like, the network traffic? A. Yeah, so I'll give you an example. Agents work, let's say, an eight-hour day. If they get
1 2 3 4 5	speed of the protocols involved so that the people answering the phone calls could be more responsive to the customers. Q. What do you mean by "protocols" in this context?	1 2 3 4 5	system to respond, they were waiting for, like, the network traffic? A. Yeah, so I'll give you an example. Agents work, let's say, an eight-hour day. If they get if they are answering trouble reports, and let's
1 2 3 4 5 6	speed of the protocols involved so that the people answering the phone calls could be more responsive to the customers.Q. What do you mean by "protocols" in this context?A. Well, when people typically think of a	1 2 3 4 5 6	system to respond, they were waiting for, like, the network traffic? A. Yeah, so I'll give you an example. Agents work, let's say, an eight-hour day. If they get if they are answering trouble reports, and let's say they can do five in a day, but you can improve
1 2 3 4 5 6 7	speed of the protocols involved so that the people answering the phone calls could be more responsive to the customers.Q. What do you mean by "protocols" in this context?A. Well, when people typically think of a protocol, you would think of something like Internet	1 2 3 4 5 6 7	system to respond, they were waiting for, like, the network traffic? A. Yeah, so I'll give you an example. Agents work, let's say, an eight-hour day. If they get if they are answering trouble reports, and let's say they can do five in a day, but you can improve the responsiveness by a certain percentage, they may
1 2 3 4 5 6 7 8	speed of the protocols involved so that the people answering the phone calls could be more responsive to the customers.Q. What do you mean by "protocols" in this context?A. Well, when people typically think of a protocol, you would think of something like Internet Protocol or Transmission Control Protocol, TCP.	1 2 3 4 5 6 7 8	system to respond, they were waiting for, like, the network traffic? A. Yeah, so I'll give you an example. Agents work, let's say, an eight-hour day. If they get if they are answering trouble reports, and let's say they can do five in a day, but you can improve the responsiveness by a certain percentage, they may be actually able to answer a sixth trouble because
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4 (Pages 10 to 13)

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1 responded to the questions? 1 that could probably be done together. So there was a change to the screen so that we could actually concretent messages and put them together. 2 A. Well, no, because in order to understand whether you're made an improvement, you have to have a present method of operation and you have to measured in what the agent was doing with the current system. 1 that could probably be done together. So that we could actually concretent messages and put them together. 3 measure how well that's doing with the current system. Q. And what type of system? 4 and we did simulations for how much time would be saved, and, therefore. If it took an agent if an agent was waiting out of the hom, rels say, 20 and the would actually see the crouble that the current system. 3 minutes and you could get them -or 30 minutes, and you could actually see the crouble that the current system. 3 4 O. Now, you described this as a "test system." Was this actually deployed? 4 News. For all center was called the SSC. Was this actually deployed? 5 More of the system? A. News. Rescue the system hat was useed by the agent was using the system? 4 A. Yee. Secone the system induce agent? A. No, at that point is worthicd, depending on what was seen, it would be landed of on arread adustrow of agent would act and you could act an system. 2		Page 14		Page 15
2 A. Well, no, because in order to understand 2 a change to the screem so that 'we could actually 3 whether you've made an improvement, you have to have to 0 And what type of system? 6 messare how well that's doing, and 1 had chosen to 0 And what type of system? 7 was measured in what the agent was doing with the current system. 0 And what type of system? 9 Then we made adjustments to the protocol 10 and we did simulations for how much time would be sured, and, therefore, if to took an agent - if an agent was waiing out of the hour, 1et's say, 20 10 and we did simulations for how much time would be sured, and, therefore, if to took an agent - if an agent was waiing out of the hour, 1et's say, 20 0 Now, you described this as a 'test system.'' 14 you could save 15 or 20 minutes of that, you know, the you could sure the agent tame - or 30 minutes of that, you know, the agent saw scalled the SARTS, which is SWitched 0 Now, you described this as a 'test system.'' 16 So the goal was to have the agent madle 7 Now, you described this as a 'test system.'' Now, you described this as a 'test system.'' 17 the agent was waiting the system? No. at hat proint (did to you'k; lipst did the simulations and made the recommendations for what the programmed. O. And dorb than improring the protocol, did you was the set syst	1	responded to the questions?	1	that could probably be done together. So there was
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5 (Pages 14 to 17)

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