

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIVEPERSON, INC.

Petitioner

v.

24/7 CUSTOMER, INC.

Patent Owner

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Case IPR2017-00612

Patent 7,751,552

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Panel: To Be Determined

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**JOINT AMENDED MANDATORY NOTICES 37 C.F.R. § 42.8**

Pursuant to 37 C.F.R. § 42.8(a)(3) and (b)(2), Patent Owner and Petitioner jointly provide the following update regarding related matters to this IPR:

**Related Matters:** Patent Owner [24]7 and its subsidiary 24/7 Customer International Holdings sued Petitioner LivePerson, Inc. in *24/7 Customer, Inc. and 24/7 Customer International Holdings, Ltd. v. LivePerson, Inc.*, 3:15-CV-05585-JST (N.D. Cal.) (the “05585 Litigation”), in which plaintiffs asserted the ’552 Patent. On May 26, 2017, the Court held claims 1, 6, 7, 9, 10, 15, 18, and 19 of the ’552 Patent invalid under 35 U.S.C. § 101. A copy of the Court’s decision is

submitted herewith as Appendix A. The litigation remains ongoing, and Patent Owner retains the right to appeal the Court's decision following entry of final judgment. It is Petitioner's position that this order does not impact in any fashion whether an *inter partes* review proceeding should be instituted.

Respectfully submitted,

Date: June 16, 2017

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# APPENDIX A

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

24/7 CUSTOMER, INC., ET AL.,  
Plaintiffs,  
v.  
LIVEPERSON, INC.,  
Defendant.

Case No.15-cv-02897-JST

**ORDER REGARDING MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Re: ECF No. 126

United States District Court  
Northern District of California

Before the Court is Defendant LivePerson, Inc.’s (“LivePerson”) motion for judgment on the pleadings under Rule 12(c). The Court will grant the motion in part and deny it in part.

**I. BACKGROUND**

On March 6, 2014, LivePerson filed suit against 24/7 Customer, Inc. (“24/7”) in the Southern District of New York, asserting claims of trade secret misappropriation, unfair competition, and copyright infringement, among others. LivePerson, Inc. v. 24/7 Customer, Inc., No. 14-cv-01559-RWS (S.D.N.Y). 24/7 subsequently filed two lawsuits for patent infringement in this Court. See Case No. 15-cv-02897, ECF No. 1; Case No. 15-cv-05585, ECF No. 1. The Court consolidated the two cases in this district for pre-trial purposes. ECF No. 57. The case that originated in the Southern District of New York has since been transferred to this Court and deemed related to the two other actions. ECF Nos. 130, 133. The Court held Markman proceedings and issued its claim construction order on December 7, 2016. ECF No. 109. Pursuant to that order, one patent was invalidated for indefiniteness, leaving ten remaining patents. Id. at 4-6.

LivePerson moves for judgment on the pleadings for the Second Amended Complaint in Case No. 15-cv-02897 and the First Amended Complaint in Case No. 15-cv-05585 on the ground

that the patents asserted by Plaintiffs are invalid because their claims include subject matter. ECF

1 No. 126 at 7.

2 **II. LEGAL STANDARD**

3 “After the pleadings are closed—but early enough not to delay trial—a party may move for  
4 judgment on the pleadings.” Fed. R. Civ. P. 12(c). The analysis for Rule 12(c) motions for  
5 judgment on the pleadings is “substantially identical to [the] analysis under Rule 12(b)(6)....”  
6 Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir. 2012) (quotations omitted). To evaluate a  
7 Rule 12(b)(6) motion to dismiss, the court accepts the material facts alleged in the complaint,  
8 together with reasonable inferences to be drawn from those facts, as true. Navarro v. Block, 250  
9 F.3d 729, 732 (9th Cir. 2001). A plaintiff must allege facts that are enough to raise her right to  
10 relief “above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). A  
11 “judgment on the pleadings is properly granted when, taking all the allegations in the non-moving  
12 party’s pleadings as true, the moving party is entitled to judgment as a matter of law.” Fajardo v.  
13 Cty. of Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999). “Finally, although Rule 12(c) does not  
14 mention leave to amend, courts have discretion both to grant a Rule 12(c) motion with leave to  
15 amend, and to simply grant dismissal of the action instead of entry of judgment.” Lonberg v. City  
16 of Riverside, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004) (citations omitted).

17 **III. DISCUSSION**

18 **A. Patent-Eligible Subject Matter under Section 101**

19 “Section 101 of the Patent Act defines the subject matter eligible for patent protection. It  
20 provides: ‘Whoever invents or discovers any new and useful process, machine, manufacture, or  
21 composition of matter, or any new and useful improvement thereof, may obtain a patent therefor,  
22 subject to the conditions and requirements of this title.’” Alice Corp. Pty. V. CLS Bank Int’l, 134  
23 S. Ct. 2347, 2354 (2014) (quoting 35 U.S.C. § 101).

24 Implied in this provision is the well-established principle that “abstract ideas are not  
25 patentable.” Id. (quoting Association for Molecular Pathology v. Myriad Genetics, Inc., 133 S. Ct.  
26 2107, 2116 (2013)). The rationale behind the exclusion of abstract ideas from patentable subject  
27 matter is “one of pre-emption.” Id. Because “abstract ideas are the basic tools of scientific and  
28 technological work,” “monopolization of these tools through the grant of a patent might tend to

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