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.

_____

Case IPR2017-00612
Patent 7,751,552 B2

_____

Before CHRISTOPHER L. CRUMBLEY, ROBERT J. WEINSCHENK,
and GARTH D. BAER, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I.   INTRODUCTION

LivePerson, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1, 2, 4, 6, 7, 9–11, and 15–21 of U.S. Patent No. 7,751,552 B2 (Ex. 1001, "the '552 patent"). 24/7 Customer, Inc. ("Patent Owner") filed a Preliminary Response (Paper 7, "Prelim. Resp.") to the Petition. An *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a).

For the reasons set forth below, Petitioner does not demonstrate a reasonable likelihood of prevailing in showing the unpatentability of claims 1, 2, 4, 6, 7, 9–11, and 15–21 of the '552 patent. Accordingly, the Petition is denied, and no trial is instituted.

A.   *Related Proceedings*

The parties indicate that the '552 patent is asserted in *24/7 Customer, Inc. v. LivePerson, Inc.*, No. 3:15-cv-05585 (N.D. Cal.), which was consolidated with *24/7 Customer, Inc. v. LivePerson, Inc.*, No. 3:15-cv-02897 (N.D. Cal.). Pet. 2–3; Paper 5, 2. The parties also indicate that the following petitions for *inter partes* review are related to this case:

Case No.	Involved U.S. Patent No.
IPR2017-00609	U.S. Patent No. 6,970,553
IPR2017-00610	U.S. Patent No. 9,077,084
IPR2017-00613	U.S. Patent No. 7,027,586
IPR2017-00614	U.S. Patent No. 6,975,719
IPR2017-00615	U.S. Patent No. 7,245,715
IPR2017-00616	U.S. Patent No. 6,798,876

Pet. 2–3; Paper 5, 2.

B.   *The '552 Patent*

The '552 patent relates to routing communications from customers to agents of a service center. Ex. 1001, col. 1, ll. 27–28. The '552 patent explains that a customer may contact a service center using a variety of different communication modalities, such as a conventional telephone, an email message, or an instant message. *Id.* at col. 1, ll. 30–39, col. 3, ll. 1–7. In order to match a customer with an agent, a model is created for a customer based on information about that customer, such as the customer's history of communications with the service center. *Id.* at col. 8, ll. 18–24. In addition, multiple models are created for each agent of the service center. *Id.* at col. 8, l. 66–col. 9, l. 4. Each model for an agent reflects that agent's ability to receive and process requests using a different type of communication modality. *Id.* When a customer submits a request to the service center, one model is selected for each agent according to the type of communication modality used by the customer. *Id.* at col. 9, ll. 8–11. The customer model then is compared to the selected agent models in order to match the customer with the agent that is best suited to handle the customer's request. *Id.* at col. 9, ll. 16–47.

C.   *Illustrative Claim*

Claims 1, 9, and 15 are independent. Claim 1 is reproduced below.

> 1.   A method for routing communications to an agent, comprising:
>
> > selecting one of a plurality of agent models for each of a plurality of agents, based upon an identified modality of an incoming communication from a requester;
> >
> > determining an agent corresponding to one of the selected agent models best matched to information associated with

> the requester corresponding to the incoming communication; and
>
> establishing a communication connection between the requester and the best matched agent.

Ex. 1001, col. 13, ll. 36–46.

D. *Evidence of Record*

Petitioner submits the following references and declaration (Pet. 4–5):

Reference or Declaration	Exhibit No.
Declaration of Stuart J. Lipoff ("Lipoff Declaration")	Ex. 1005
Bushey et al., U.S. Patent No. 6,389,400 B1 (issued May 14, 2002) ("Bushey")	Ex. 1007
Mears et al., U.S. Patent No. 7,092,509 B1 (issued Aug. 15, 2006) ("Mears")	Ex. 1008
McCord et al., U.S. Patent No. 7,792,773 B2 (issued Sept. 7, 2010) ("McCord")	Ex. 1009
Baker et al., U.S. Patent No. 8,416,943 B2 (issued Apr. 9, 2013) ("Baker")	Ex. 1014

Patent Owner submits the Declaration of Arthur T. Brody, Ph.D. (Ex. 2001, "Brody Declaration").

E. *Asserted Grounds of Unpatentability*

Petitioner asserts that the challenged claims are unpatentable on the following grounds (Pet. 4–5):

Claims	Basis	Reference(s)
1, 2, 4, 6, 7, 9–11, and 15–21	35 U.S.C. § 103(a)	McCord
1, 2, 4, 6, 7, 9, 10, and 15–21	35 U.S.C. § 103(a)	Mears and Bushey
1, 2, 4, 6, 7, 9–11, and 15–21	35 U.S.C. § 103(a)	McCord and Baker
1, 2, 4, 6, 7, 9, 10, and 15–21	35 U.S.C. § 103(a)	Mears, Bushey, and Baker

II. ANALYSIS

A. *Claim Construction*

The claims of an unexpired patent are interpreted using the broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–45 (2016). Neither party proposes construing any claim terms at this stage of the proceeding. On this record and for purposes of this decision, we determine that no claim terms require express construction to resolve the parties' disputes regarding the asserted grounds of unpatentability in this case. *See infra* Section II.B; *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.").

B. *Asserted Grounds of Unpatentability*

1. *Obviousness of Claims 1, 2, 4, 6, 7, 9–11, and 15–21 over McCord*

Petitioner argues that claims 1, 2, 4, 6, 7, 9–11, and 15–21 would have been obvious over McCord. Pet. 4. We have reviewed the parties' assertions and supporting evidence. For the reasons discussed below, Petitioner does not demonstrate a reasonable likelihood of prevailing in showing that claims 1, 2, 4, 6, 7, 9–11, and 15–21 would have been obvious over McCord.

a. *Claims 1, 9, and 15*

Claim 1 recites "selecting one of a plurality of *agent models* for each of a plurality of agents, based upon an identified modality of an incoming communication from a requester." Ex. 1001, col. 13, ll. 38–40 (emphasis added). Claims 9 and 15 include a similar limitation. *Id.* at col. 13, l. 64–

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