

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIVEPERSON, INC.,
Petitioner,

v.

24/7 CUSTOMER, INC.,
Patent Owner.

Case IPR2017-00614
Patent 6,975,719 B1

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

BAER, *Administrative Patent Judge*.

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

LivePerson, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–3, 20, and 46 of U.S. Patent No. 6,975,719 B1 (Ex. 1001, “the ’719 patent”). Patent Owner 24/7 Customer, Inc. (“Patent Owner”) did not file a Preliminary Response.

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons set forth below, we conclude that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claims 1–3, 20, and 46. Therefore, we institute *inter partes* review of claims 1–3, 20, and 46.

I. BACKGROUND

A. RELATED PROCEEDINGS

Petitioner asserts the ’719 patent and patents related to it are involved in *24/7 Customer, Inc. v. LivePerson, Inc.*, 3:15-CV-05585-JST (N.D. Cal.) and *24/7 Customer, Inc. v. LivePerson, Inc.*, 3:15-CV-02897-JST (N.D. Cal.). See Pet. 2. 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
IPR2017-00612	U.S. Patent No. 7,751,552
IPR2017-00613	U.S. Patent No. 7,027,586
IPR2017-00615	U.S. Patent No. 7,245,715
IPR2017-00616	U.S. Patent No. 6,798,876

B. THE '719 PATENT

The '719 patent is directed to a phone system with an integrated chat client service. Ex. 1001, Abstract. The Specification describes a need for a “mechanism by which a called party can keep his/her side of the conversation private from others who may be present in the room.” *Id.* at 1:55–58. When a called party who is subscribed to an integrated chat client service receives a phone call, the system determines whether the caller has an accessible network-attached computer. *Id.* at 3:19–27. If they do, the system prompts the called party to determine whether to chat or talk with the calling party. *Id.* at 3:31–42. If the called party chooses to chat, the system sends a chat invitation to the calling party, and, if the calling party accepts, a chat session may be arranged. *Id.* at 3:46–56.

C. CHALLENGED CLAIMS

Petitioner challenges claims 1–3, 20, and 46. Independent claim 1 is reproduced below.

1. A phone system, comprising:
 - a first call processing system element operable to check a chat server for accessibility of a calling party chat client associated with a calling party; and
 - a second call processing system element operable to prompt a called party to select to talk or chat.

Ex. 1001, 8:41–47.

Independent claim 2 includes the same elements as claim 1 and adds the following:

wherein the first call processing system element includes a service control point operable to receive a query and to check a chat server for accessibility of a calling party chat client associated with a calling party, the chat server being coupled to the internet and the service control point; and wherein the

second call processing system element includes a service node coupled to the service control point and operable to prompt a called party to select either talk or chat.

Id. at 8:49–64.

Claim 3 depends from claim 2 and further requires the chat server to “send chat invitations to the calling party chat client and a called party chat client upon the called party selecting to chat with the calling party.” *Id.* at 8:64–67.

Independent claim 20 is a method claim that mirrors the limitations of claim 1. *See id.* at 9:66–10:4. Independent claim 46 is a computer readable medium claim that likewise mirrors the limitations of claim 1. *See id.* at 12:7–13.

D. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability. Pet. 4.

Reference(s)	Basis	Challenged Claims
Luehrig ¹	§ 102(e) ²	1–3, 20, and 46
Truetken ³ and Luehrig	§ 103(a)	1–3, 20, and 46

¹ U.S. Patent Publication No. 2003/0039339 A1, Pub. Feb. 27, 2003 (Ex. 1004, “Luehrig”).

² Although Petitioner characterizes this ground as one based on obviousness, in substance, Petitioner asserts Luehrig anticipates the challenged claims. *See* Pet. 16 (asserting that Luehrig “discloses, and at a minimum renders obvious, the alleged invention claimed by each of the Challenged Claims”); *id.* at 18–31 (not identifying any potential differences between claimed subject matter and Luehrig). We therefore treat Petitioner’s challenge as one based on anticipation, not obviousness.

³ U.S. Patent No. 6,493,324 B1, Dec. 10, 2002 (Ex. 1002, “Truetken”).

II. ANALYSIS

A. CLAIM CONSTRUCTION

Petitioner does not propose any claim constructions, and we conclude no express claim constructions are necessary for our determination of whether to institute *inter partes* review. See *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 PRIOR ART

1. Luehrig (Ex. 1004)

Luehrig was filed on March 12, 2002, before the earliest priority date of the '719 patent, and, on the present record, is prior art under 35 U.S.C. § 102(e). Pet. 5. Luehrig addresses a method for facilitating mediated communication. Ex. 1004, Abstract. In Luehrig, a subscriber may accept or defer an inbound communication. *Id.* ¶ 0059. In particular, in response to receiving a request for voice-based communication, an operation is performed that offers an option of sending the caller a text-messaging based response. *Id.* ¶ 0118. When the called party selects this chat option, the system provides a “follow-through action,” such as sending a predefined text message. *Id.* ¶ 0120. According to Luehrig, “[t]he text messaging follow-through action enables the subscriber to initiate a notification to the calling device that a text messaging response to the request for voice-based communication is to be used.” *Id.*

2. Truetken (Ex. 1002)

Truetken was filed on March 29, 1999, before the earliest priority date of the '719 patent, and, on the present record, is prior art under 35 U.S.C.

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