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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

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 they claim ineligible 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 those tools through the grant of a patent might tend to

1 impede innovation more than it would tend to promote it, thereby thwarting the primary object of  
2 the patent laws.” Id. (internal brackets and quotation marks omitted).

3 However, “an invention is not rendered ineligible for patent simply because it involves an  
4 abstract concept.” Id. After all, “[a]t some level, ‘all inventions . . . embody, use, reflect, rest  
5 upon, or apply laws of nature, natural phenomena, or abstract ideas.’” Id. (quoting Mayo  
6 Collaborative Servs. v. Prometheus Labs., Inc., 566 U.S. 66, 71 (2012)). Therefore, courts must  
7 distinguish between patents that claim abstract ideas, on the one hand, and patents “that claim  
8 patent-eligible applications of those concepts,” on the other hand. Id. at 2355.

9 To do so, courts engage in a two-step analysis. First, the court must determine whether the  
10 claims at issue are “directed to an abstract idea.” Id. at 2356-57. If so, the court must “consider  
11 the elements of each claim both individually and as an ordered combination” to determine  
12 “whether it contains an inventive concept sufficient to transform the claimed abstract idea into a  
13 patent-eligible application.” Id. at 2355, 2357 (internal quotation marks omitted) (quoting Mayo,  
14 566 U.S. at 72-73, 78-79). In doing so, the court is essentially asking “whether the claims [] do  
15 more than simply instruct the practitioner to implement the abstract idea . . .” Id. at 2359. When  
16 engaging in this invalidity analysis, courts consider the claims in light of the specification.  
17 Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288, 1299 (Fed. Cir. 2016) (citing cases).

18 A district court may find a patent invalid under Section 101 at the pleading stage.  
19 See buySAFE, Inc. v. Google Inc., No 2013–1575, 2014 WL 4337771 (Fed. Cir. Sept. 3, 2014);  
20 Open Text S.A. v. Alfresco Software Ltd, No. 13-CV-04843-JD, 2014 WL 4684429, at \*3 (N.D.  
21 Cal. Sept. 19, 2014) (citing cases).

22 **B. ‘876 Patent**

23 The ‘876 patent generally relates to a method for routing a call to a customer service  
24 representative at a call center based on information about the caller and the available  
25 representatives. ECF No. 126-3, Ex. 2. Claim 1 is representative and provides:

26 A method for routing an incoming call to a customer service  
27 representative comprising the steps of:  
28 identifying the caller of the incoming call;

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retrieving a profile on the caller;  
comparing the caller profile with stored customer service representative profiles to determine which customer service representatives are more qualified to handle the incoming call;  
ranking the customer service representatives that can best meet the caller’s needs;  
routing the incoming call to a selected highest ranked customer service representative; and  
automatically updating, at the completion of the call, the caller profile and the selected customer service representative profile with information regarding the success of the call.

ECF No. 126-3, Ex. 2 at 8.<sup>1</sup>

Dependent claims 2 and 7 recite the additional step of “routing the incoming call to the next highest ranked customer service representative if the previously selected customer service representative is unavailable.” Id.

Dependent claims 5 and 10 recite the additional step of “conducting a post-call survey, during the updating step, of at least one of said caller and said customer service representative in order to determine the success of the call.” Id.

The ‘876 patent is directed to the abstract idea of routing a call to a customer service agent based on information about the caller. As a general matter, courts have invalidated claims that are “fundamentally directed to the abstract idea of connecting customers to call centers.” Pragmatus Telecom, LLC v. Genesys Telecommunications Labs., Inc., 114 F. Supp. 3d 192, 200 (D. Del. 2015) (“At its essence, the claim is directed to the abstract idea of communication between a customer and a business using a call center, automated and obfuscated along the way using certain

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<sup>1</sup> Claim 6 is identical in all respects except for one: It recites the additional step of “prompting the caller with a list of questions.” See id. Therefore, the Court analyzes Claims 1 and 6 simultaneously. See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n, 776 F.3d 1343, 1348 (Fed. Cir. 2014) (explaining that a district court does not need to address each claim if a single claim is “representative” and “all the claims are substantially similar and linked to the same abstract idea”)(internal quotations omitted). Although 24/7 argues that “LivePerson’s analysis of ‘representative’ claims is inappropriate,” 24/7 implicitly acknowledges that Claims 1 and 6 are substantially similar by collectively referring to those claims throughout their opposition. ECF No. 134 at 10-14 (“Claims 1 and 6 are directed to (1) call routing based on caller and CSR profile information, and (2) the use of automatically updated profile information to evaluate and improve call routing.”).

1 computer, telephonic and network services.”). Although the ‘876 patent arguably differs in that it  
 2 contemplates a method for routing a call to the customer service representative that is most likely  
 3 to meet the particular caller’s needs, that method is itself directed to an abstract idea: tailoring  
 4 information to improve customer experience. See Intellectual Ventures I LLC v. Capital One  
 5 Bank (USA), 792 F.3d 1363, 1369 (Fed. Cir. 2015) (holding that claim “relate[d] to customizing  
 6 information based on [ ] information known about the user” was directed to an abstract idea  
 7 because “information tailoring is ‘a fundamental . . . practice long prevalent in our system”)  
 8 (quoting Alice, 134 S. Ct. at 2356); Open Text S.A. v. Alfresco Software Ltd, No. 13-CV-04843-  
 9 JD, 2014 WL 4684429, at \*4 (N.D. Cal. Sept. 19, 2014) (holding that claims were directed to  
 10 abstract idea where they “describe[d] the most basic and widely-understood principle of  
 11 marketing: identify potential or current customers and engage with them to improve their customer  
 12 experience”).

13 Notably, another court in this district recently held that a similar patent—which claimed a  
 14 method for monitoring and adjusting routing options for sending a delivery receipt message—was  
 15 “directed to selecting the best message routing option based on separately-transmitted feedback.”  
 16 Twilio, Inc. v. Telesign Corp., No. 16-CV-06925-LHK, 2017 WL 1374759, at \*2, \*15 (N.D. Cal.  
 17 Apr. 17, 2017). The court concluded that, because “[s]electing the best option based on  
 18 separately-received feedback is a fundamental activity that has long been performed by humans,”  
 19 the patent was directed to an abstract idea. Id. at \*15. The same is true here.

20 24/7 contends that “the claims of the ‘876 patent are directed to improving call routing by  
 21 [1] comparing customer and CSR profiles and [2] automatically updating the profiles based on the  
 22 success of the call to improve further customer routing.” ECF No. 134 at 11-12. Accordingly,  
 23 24/7 argues that the claims are directed to a technological advancement to an existing  
 24 technological process. Id.

25 As a preliminary matter, arguments regarding improvements go to whether the claims  
 26 contain an inventive concept, and are therefore better suited to the second step of the Alice  
 27 inquiry. See Pragmatus, 114 F. Supp. 3d at 200 (citing Ultramercial, Inc. v. Hulu, LLC, 772 F.3d  
 28 709, 715 (Fed. Cir. 2014)).

1 In any event, these arguments fail because the claims are not “directed to a specific  
2 improvement” or “to a specific implementation of a solution to a problem.” Enfish, LLC v.  
3 Microsoft Corp., 822 F.3d 1327, 1338, 1339 (Fed. Cir. 2016) (emphases added). As the Federal  
4 Circuit recently explained, the relevant inquiry is “whether the claims in the patent focus on a  
5 *specific means or method*, or are instead directed to *a result or effect that itself is the abstract idea*  
6 and merely invokes generic process and machinery.” Clarilogic, Inc. v. FormFree Holdings Corp.,  
7 No. 2016-1781, 2017 WL 992528, at \*2 (Fed. Cir. Mar. 15, 2017) (emphases added).

8 The claims of the ‘876 patent are directed to the latter and propose only a general, abstract  
9 solution to problems in the prior art. According to the specification, the prior art allowed  
10 customers to decide where to route their call, which “is often not adequate in identifying the  
11 customer’s need and matching that need with the customer service representative most likely to  
12 satisfy that need.” ECF No. 126-3 at 6, 1:44-46. To be sure, the claims of the ‘876 patent propose  
13 a general solution to this problem: route the customer’s call for them by comparing the customer’s  
14 needs to the representative’s skills to ensure a better match. But, as explained above, this general  
15 solution amounts to nothing more than an abstract idea related to basic customer service. See  
16 Twilio, 2017 WL 1374759 at \*19 (invalidating message routing patent that “specifie[d] at a high  
17 level of generality to carry out the abstract idea of selecting the best message routing option based  
18 on separately-transmitted feedback”).\_And “there is a critical difference between patenting a  
19 particular concrete solution to a problem and attempting to patent the abstract idea of a solution to  
20 the problem in general.” Elec. Power Grp., LLC v. Alstom S.A., 830 F.3d 1350, 1356 (Fed. Cir.  
21 2016) (internal quotation marks omitted). Here, the claims do not provide for any specific  
22 implementation of this abstract idea—e.g., they do not specify the structure or content of the  
23 profiles, the technology that should be used to perform the comparison, or even how the profile  
24 information should be analyzed to achieve the proposed solution. Clarilogic, 2017 WL 992528 at  
25 \*2 (“[A] method for collection, analysis, and generation of information reports, where the claims  
26 are not limited to how the collected information is analyzed or reformed, is the height of  
27 abstraction.”). Rather, they simply recite a generalized solution in broad, functional language—  
28 namely, “retrieving,” “comparing,” and “ranking” information about the customer and

1 representative. See Electric Power, 830 F.3d at 1353-54 (“collecting,” “gathering,” “analyzing,”  
2 and “presenting” information are “within the realm of abstract ideas”); Content Extraction, 776  
3 F.3d at 1347 (affirming that “the claims of the asserted patents are drawn to the abstract idea of 1)  
4 collecting data, 2) recognizing certain data within the collected set, and 3) storing that recognized  
5 data in memory”). In other words, the claims “recite the *what* of the invention, but none of  
6 the *how* that is necessary to turn the abstract idea into a patent-eligible application.” TDE  
7 Petroleum Data Sols., Inc., v. AKM Enter., Inc., 657 F. App’x 991, 993 (Fed. Cir. 2016), cert.  
8 denied, No. 16-890, 2017 WL 176474 (U.S. Mar. 6, 2017) (emphases in original). The Court  
9 therefore proceeds to step two.

10 None of the claim elements, when viewed individually or as an ordered combination,  
11 provide any inventive concept. The steps of Claim 1 recite six functions: identifying the caller,  
12 retrieving a profile on the caller, comparing the caller profile with stored customer service  
13 representative profiles, ranking customer service representatives, routing the call, and  
14 automatically updating the profiles at the end of the call. ECF No. 126-3 at 8. The first five steps  
15 represent “well-understood, routine, conventional activity” that was performed in the prior art.  
16 Ulramercial, 772 F.3d at 715. Indeed, the specification admits that call centers retrieved  
17 information about customer preferences and routed calls to customer service representatives  
18 accordingly in the prior art. Id. at 1:16-1:60. The final step—updating customer profiles—refers  
19 to basic data storage. Concept Extraction, 776 F.3d at 1347 (“The concept of data collection,  
20 recognition, and storage is undisputedly well-known.”); Twilio, 2017 WL 1374759 at \*19  
21 (“transmitting,” “receiving,” “updating,” and “selecting” were all “routine, generic computer  
22 functions”). Dependent claims 5 and 10, which refer to “conducting a post-call survey, during the  
23 updating step,” also fail to supply an inventive concept. ECF No. 126-3 at 8. See Open Text,  
24 2014 WL 4684429 at \*4 (“asking a customer about his or her experience” is an abstract idea).  
25 Even when viewed collectively, the claim elements simply recite the abstract idea of routing a call  
26 to the best matched customer service agent, and therefore fail to supply an inventive concept.  
27 Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC, 827 F.3d 1341, 1349 (Fed. Cir. 2016)  
28 (“An inventive concept that transforms the abstract idea into a patent-eligible invention must be

1 significantly more than the abstract idea itself . . .”).

2 Therefore, the Court grants the motion for judgment on the pleadings as to the invalidity of  
3 the ‘876 patent.

4 **C. ‘586 and ‘552 Patents**

5 The ‘586 and ‘552 patents generally relate to a method for routing a call to a customer  
6 service representative at a call center based on the caller’s “modality”—i.e., the “communication  
7 mode used by the customer to communicate.” ECF No. 126-6 at 10, 11; ECF No. 126-9 at 2, 12.

8 Independent claim 1 of the ‘586 patent is representative and provides:

9 A method for intelligently routing customer communications to an  
10 agent, comprising:

- 11 receiving a customer’s request to initiate communications;
- 12 identifying a modality of the requested communications;
- 13 obtaining a profile of the customer;
- 14 selecting one of a plurality of agent models for each of a  
15 plurality of agents to determine a best match, and  
16 establishing a communications connection between the  
17 customer and the best matched agent.

16 ECF No. 126-6 at 16.<sup>2</sup>

17 Independent claim 8 of the ‘586 patent provides:

18 An apparatus for intelligently routing customer communications to  
19 an agent in a telecommunications environment, comprising:

- 20 at least one processor that receives a customer’s request to  
21 initiate communications, identifies a modality of the  
22 requested communications, obtains a profile of the  
23 customer, selects one of a plurality of agent models for  
24 each of a plurality of agents, based upon the identified  
25 modality, compares the profile with the selected model for  
26 each of the plurality of agents to determine a best match,  
27 and establishes a communications connection between the  
28 customer and the best matched agent.

26 ECF No. 126-6 at 16.<sup>3</sup>

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<sup>2</sup> Independent claim 1 of the ‘552 patent is substantially similar and both parties discuss these two patents simultaneously. See ECF No. 126-9 at 17; ECF No. 126 at 16-19; ECF No. 134 at 14-17.

1 Independent claim 15 of the ‘586 patent provides:

2 A computer readable medium that stores a program for  
3 intelligently routing customer communications to an agent,  
4 comprising:

5 a request receiving code segment that receives a customer’s  
6 request to initiate communications;

7 a modality identifying code segment that identifies a modality  
8 of the requested communications;

9 a profile obtaining code segment that obtains a profile of the  
10 customer;

11 an agent model selecting code segment that selects one of a  
12 plurality of agent models for each of a plurality of agents,  
13 based upon the identified modality;

14 a comparison code segment that compares the profile with the  
15 selected model for each of the plurality of agents to  
16 determine a best match, and establishing a communications  
17 connection between the customer and the best matched  
18 agent.

19 ECF No. 126-6 at 17.<sup>4</sup>

20 Each of the three independent claims in the ‘586 patent and the ‘552 patent are directed to  
21 an abstract idea: routing a call to “the best matched agent” who can communicate with the  
22 customer using the customer’s preferred mode of communication. Again, connecting a customer  
23 to a representative who can “engage with them to improve their customer experience” falls within  
24 the realm of abstract ideas. Open Text, 2014 WL 4684429 at \*4; Pragmatus, 114 F. Supp. 3d at  
25 200; Intellectual Ventures, 792 F.3d at 1369.

26 The Twilio court held that a similar patent was directed to the abstract idea of “enabling  
27 multi-modal communication by looking up and selecting one or more external communication  
28 provider(s) associated with a communication destination.” Twilio, 2017 WL 1374759 at \*21-22.  
The court concluded that this was “fundamental human activity,” citing the following example for  
support:

[W]hen a user creates an account with a business . . . , he will often

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<sup>3</sup> Independent claim 9 of the ‘552 patent is substantially similar. See ECF No. 126-9 at 17.

<sup>4</sup> Independent claim 15 of the ‘552 patent is substantially similar. See ECF No. 126-9 at 17.

1 indicate the ways in which the business is allowed to contact him  
2 (e.g., text, email, phone calls, physical mailings, etc.). Then, when  
3 the business wishes to contact the user about a new promotion or  
4 service, it will look up which forms of communication to which the  
user has agreed, and choose to send the promotional information in  
one or several of those ways.

5 Id. That is precisely the sort of basic human activity that the ‘586 and ‘552 patents are directed to.

6 24/7 responds by pointing to three purported improvements over the prior art: “(1) a  
7 **plurality** of agent models for **each** of a plurality of agents; (2) the selection of an agent model for  
8 each agent based on a **modality** of the communication; and then (3) a comparison of a customer  
9 profile with the selected model for each of the plurality of agents.” ECF No. 134 at 14 (emphasis  
10 in original). Based on these improvements, 24/7 argues that “the claims of the ‘586 and ‘552  
11 Patents are directed to a specific arrangement of steps that identify **how** to route a customer call  
12 more effectively . . .” Id. (emphasis in original). The argument is not persuasive.

13 The independent claims are “directed to a result or effect”—namely, modality-based  
14 routing—but they lack any “specific means or method” for how to achieve that goal. Clarilogic,  
15 2017 WL 992528 at \*2. The specifications of the ‘586 patent and the ‘552 patent describe the  
16 problem in the prior art as follows:

17 A multi-modal service center, that can receive and process requests  
18 from clients or customers using multiple communications  
19 modalities, needs to recognize the differences in an agent’s  
20 capability to receive and process requests for different modalities.  
21 Accordingly, there is a need for a multi-modal service center to  
22 incorporate into the modeling the differences in the modalities with  
which the service center can be contacted. Furthermore, there is a  
need to incorporate into the modeling the difference in the  
modalities with which a single agent can be contacted.

23 ECF No. 126-6 at 10, 1:55-65; ECF No. 126-9 at 11, 1:58-67. But, rather than “patenting a  
24 particular concrete solution to [this] problem,” the claims “attempt[] to patent the abstract idea of a  
25 solution to the problem in general.” Electric Power, 830 F.3d at 1356. The independent claims  
26 broadly speak to identifying the customer’s mode of communication, obtaining unspecified  
27 information about the customer, and routing the customer to “the best matched agent.” However,  
28 *any* potential solution to the problem identified in the prior art—i.e., the need to consider mode of

1 communication when routing a customer communication to an agent—would involve identifying  
 2 the caller’s mode of communication and routing the call to an agent who uses the same form of  
 3 communication as the customer. Critically, the claims do not explain *how* to “identify[] a  
 4 modality of the requested communications” or *how* to “determine a best match.” ECF No. 126-6  
 5 at 16. Again, the claims “recite the *what* of the invention, but none of the *how* that is necessary to  
 6 turn the abstract idea into a patent-eligible application.” TDE Petroleum Data, 657 F. App’x at  
 7 993 (emphases in original).

8 Turning to step 2 of the Alice inquiry, the Court concludes that independent claim 1 of the  
 9 ‘586 patent and independent claim 1 of the ‘552 patent lack any inventive concept that would  
 10 transform the abstract idea into a patent-eligible application. Most of the individual elements—  
 11 receiving a customer communication, obtaining a customer profile, comparing the customer  
 12 profile to agent profiles, and connecting the customer to the “best matched agent”—describe  
 13 “well-understood, routine, conventional activity” that was performed in the prior art.  
 14 Ultramercial, 772 F.3d at 715. Indeed, both the ‘586 and ‘552 patents admit that multi-modal call  
 15 centers, agent models, customer models, and the comparison of agent models and customer  
 16 models “to determine a best-matched agent” were all known in the prior art. See ECF No. 126-9  
 17 at 11, 1:30-62, 9:5-15; ECF No. 126-6 at 10, 1:26-65, 9:28-32. The patents further acknowledge  
 18 that “[a] conventional service center may process telephone requests by routing the client or  
 19 customer to a best-matched agent” and that “models have conventionally been used to route calls  
 20 for clients or customers using conventional telephones to contact an agent using a conventional  
 21 telephone or telephone headset at the service center.” Id. Given the existence of both multi-modal  
 22 call centers and agent models in the prior art, the claims’ description of multiple agent models for  
 23 each agent does not supply an inventive concept, either. The only remaining element is the  
 24 identification of the customer’s mode of communication but, as explained above, that step is  
 25 described in generic terms that merely recite the abstract idea itself without any specific method of  
 26 implementation. Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC, 827 F.3d 1341, 1349  
 27 (Fed. Cir. 2016) (“An inventive concept that transforms the abstract idea into a patent-eligible  
 28 invention must be significantly more than the abstract idea itself . . .”).

1 Lacking an inventive concept in each of the three alleged improvements, 24/7 next argues  
2 that “[t]he inventive concept is the ordered combination of the claim elements that allow for  
3 greater customization.” ECF No. 134 at 15-16. To support this argument, 24/7 relies on the  
4 Federal Circuit’s decision in Bascom. See id.

5 Even when viewed collectively, however, the claim steps “simply instruct the practitioner  
6 to implement the abstract idea”—i.e., modality-based routing—“with routine conventional  
7 activity.” Ultramercial, 772 F.3d at 715. As discussed at length above, the claims do not provide  
8 any specific method of implementation or otherwise explain *how* to achieve purported  
9 improvements, but rather just recite the abstract idea of modality-based routing itself. As a result,  
10 they fail to supply an inventive concept and raise significant preemption concerns. Indeed, 24/7  
11 effectively concedes that the claims cover all modality-based routing—i.e., any situation in which  
12 a service center routes an incoming customer communication to an agent based on the agent’s  
13 ability to communicate using the customer’s mode of communication. See ECF No. 134 at 16.  
14 The only exception to preemption that 24/7 can identify is modality-based routing that “does not  
15 involve the use of a plurality of agent models for each of a plurality of agents,” and this limitation  
16 is extremely narrow given the existence of both multi-modal call centers and agent models in the  
17 prior art. Id.

18 These general, result-driven claims stand in stark contrast to the claims at issue in Bascom,  
19 which “recite[d] a specific, discrete implementation of the abstract idea of filtering content.”  
20 Bascom, 827 F.3d at 1350-51. To accomplish the alleged improvement of “individually  
21 customizable filtering,” the claims at issue in Boscom instructed the practitioner to physically  
22 install the filtering system at the Internet Service Providers’ (“ISP”) server. Id. at 1344-45. For  
23 example, one of the claims described, in part, “a remote ISP server coupled to said client computer  
24 and said Internet computer network, said ISP server associating each said network account to at  
25 least one filtering scheme and at least one set of filtering elements, said ISP server further  
26 receiving said network access requests from said client computer and executing said associated  
27 filtering scheme utilizing said associated set of logical filtering elements.” Id. at 1345. This was a  
28 deviation from the prior art, which had installed the filtering system on local computers, local

1 servers, and remote servers. Id. The court therefore concluded that “[t]he inventive concept  
2 described and claimed . . . is the installation of a filtering tool at a specific location, remote from  
3 the end-users, with customizable filtering features specific to each end user.” Id. at 1350. By  
4 describing a specific method for how to achieve the alleged inventive concept—the “how” of the  
5 invention—the claims at issue in Bascom avoided the invalidity issues faced by 24/7.

6 The remaining independent claims<sup>5</sup> fare no better because they merely recite the same  
7 abstract idea as applied to an “apparatus” with “at least one processor” (i.e., a generic computer)  
8 and a “computer readable medium that stores a program” (i.e., a software program). ECF No.  
9 126-9 at 17; ECF No. 126-6 at 16, 17. However, “implementing an abstract concept on a  
10 computer, without meaningful limitations to that concept, does not transform a patent-ineligible  
11 claim into a patent-eligible one.” Accenture Glob. Servs., GmbH v. Guidewire Software, Inc., 728  
12 F.3d 1336, 1345 (Fed. Cir. 2013) (citing Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada  
13 (U.S.), 687 F.3d 1266, 1280 (Fed. Cir. 2012)). The same principle applies to claims that “only  
14 contain generalized software components arranged to implement an abstract concept on a  
15 computer.” Id. at 1345. Citing earlier cases, the Supreme Court reaffirmed in Alice that “[s]tating  
16 an abstract idea ‘while adding the words ‘apply it’’ is not enough for patent eligibility.” Alice,  
17 134 S. Ct. at 2357-58 (quoting Mayo, 132 S. Ct. at 1294). “Nor is limiting the use of an abstract  
18 idea “‘to a particular technological environment.’” Id. (quoting In re Bilski, 545 F.3d 943, 957  
19 (Fed. Cir. 2008)). Accordingly, “[s]tating an abstract idea while adding the words ‘apply it with a  
20 computer’ simply combines those two steps, with the same deficient result.” Id. Moreover,  
21 “wholly generic computer implementation is not generally the sort of ‘additional feature[.]’ that  
22 provides any ‘practical assurance that the process is more than a drafting effort designed to  
23 monopolize the [abstract idea] itself.’” Id. Therefore, the remaining independent claims similarly  
24 lack an inventive concept that would transform the abstract idea into a patent-eligible application.

25 24/7 completely fails to address LivePerson’s assertion that the dependent claims are also  
26 invalid, and therefore the Court does not address the issue at length. See ECF No. 126 at 18; ECF

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27  
28 <sup>5</sup> The Court refers to independent claims 8 and 15 of the ‘586 patent, and independent claims 9  
and 15 of the ‘552 patent.

1 No. 134 at 14-17; Linder v. Golden Gate Bridge, Highway & Transportation Dist., No. 4:14-CV-  
2 03861 SC, 2015 WL 4623710, at \*3 (N.D. Cal. Aug. 3, 2015) (citing Stichting Pensioenfonds  
3 ABP v. Countrywide Fin. Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) (“[I]n most  
4 circumstances, failure to respond in an opposition brief to an argument put forward in an opening  
5 brief constitutes waiver or abandonment in regard to the uncontested issue.”)). In any event, the  
6 dependent claims are invalid for the same reasons because they are “substantially similar and  
7 linked to the same abstract idea.” Content Extraction, 776 F.3d at 1348 (finding 242 claims  
8 invalid based on analysis of just one independent claim, where the dependent claims “recite[d]  
9 little more than the same abstract idea”).

10 The Court grants Defendant’s motion for judgment on the pleadings as to the invalidity of  
11 the ‘586 and ‘552 patents.

12 **D. ‘757 Patent<sup>6</sup>**

13 The ‘757 patent generally relates to a method to provide automated scripting for customer  
14 service representatives. ECF No. 126-7 at 10.

15 Claim 1 provides:

16 A method comprising:

17 obtaining information identifying a first party in conjunction  
18 with a communication between a first party and a first party  
service representative (CSR);

19 obtaining content related to the identified first party;

20 generating a script based, at least in part, on the obtained  
21 content; and

22 displaying the generated script to the CSR while the  
communication is still in progress.

23 Id. at 14. Dependent claim 2 comprises the method of claim 1 and “concurrently displaying  
24 content from at least two different databases and the generated script using a consolidated  
25 interface.” Id. Dependent claim 3 comprises the method of claim 1, “wherein displaying the  
26

27 \_\_\_\_\_  
28 <sup>6</sup> The Court grants 24/7’s objections to new evidence and arguments raised in LivePerson’s reply.  
ECF No. 136. Accordingly, the Court strikes Exhibit 12 to LivePerson’s reply and all related  
arguments.

1 generated script further comprises: displaying links to content stored in at least one of a plurality  
2 of different databases.” Id. Dependent claim 5 comprises the method of claim 1, “wherein  
3 generating the script further comprises: maintaining a macro glossary defining associations  
4 between identifiers and replacement text.” Id.

5 Independent claim 7 provides:

6 An information handling system comprising:

7 at least one processor;

8 memory operably coupled to said at least one processor; and

9 a program of instructions capable of being stored in said  
10 memory and executed by said processor, said program of  
instructions configured to execute a method comprising:

11 obtaining information identifying a first party during a  
12 communication between a first party and a first party  
service representative (CSR);

13 obtaining content related to the identified first party;

14 generating a script based, at least in part, on the obtained  
content; and

15 displaying the generated script to the CSR while the  
16 communication is still in progress.

17 Id.

18 Independent claim 13 provides:

19 A computer readable medium tangibly embodying a program of  
20 executable instructions, the program of executable instructions  
comprising:

21 a live interface module to retrieve information pertaining to a  
22 first party in conjunction with a communication between  
the first party and a customer service representative (CSR);

23 a page generator to generate pages based on the retrieved  
24 information and display the pages to the CSR, wherein the  
25 pages include a script suitable for being read to the first  
party by the CSR.

26 Id.

27 In KomBea Corp. v. Noguera L.C., a district court addressed the validity of similar patents  
28 that “generally pertain[ed] to a telemarketing system that allows an agent to use prerecorded

1 scripts, live voice, and interjections during a telemarketing call to tailor the call to potential  
2 customers . . .” 73 F. Supp. 3d 1348, 1349 (D. Utah 2014), aff’d, 656 F. App’x 1022 (Fed. Cir.  
3 2016). In particular, one of the patents at issue “relate[d] to a method of using personal  
4 information gathered in the call to select scripts that relate to the potential customer.” Id. The  
5 court held that “the concepts contemplated by the patents-in-suit are directed toward basic sales  
6 techniques executed with the aid of a computer to create efficiencies.” Id. at 1352. The court  
7 went on to explain that “[a]llowing a telemarketing sales agent to choose between scripts to make  
8 a sales call more effective is a basic, time-honored sales technique.” Id. The court further held  
9 that tailoring the script by referencing personal information about the customer obtained earlier in  
10 the call was similarly “directed to an abstract idea that is fundamental in sales—making a personal  
11 connection with a potential customer to make the call more effective.” Id. at 1353. Proceeding to  
12 step two in the Alice inquiry, the court concluded that the claims did not contain an inventive  
13 concept sufficient to transform this abstract idea into a patent eligible invention. Id. at 1356-57.  
14 The court reasoned that, although the use of prerecorded scripts and the incorporation of personal  
15 information “may be a more effective sales technique, it is ultimately a method organizing the  
16 behavior of a telemarketing sales agent.” Id. at 1357. Because the patents boiled down to “a set of  
17 instructions to implement fundamental sales techniques with the aid of a computer,” the court  
18 concluded that they were invalid. Id.

19 The claims in the ‘757 patent are invalid for the same reasons.

20 First, they are similarly directed to the abstract idea of tailoring a script to a particular  
21 customer to make a customer service call more effective. This is a “fundamental economic  
22 practice long prevalent in our system of commerce.” Bilski, 561 U.S. at 611-12.

23 Second, the elements of the claims, when viewed individually and as an ordered  
24 combination, do not contain any inventive concept. The first few steps—identifying a customer  
25 and obtaining information about them—describe routine, conventional activity that was performed  
26 in the prior art. As the specification acknowledges, representatives already “retrieve[d] account  
27 data for the customer” in the prior art. ECF No. 126-7 at 10, 1:40-43. And this kind of  
28 generalized data collection is “well-understood, routine, conventional activity” that is not

1 sufficient to transform the abstract idea into a patent-eligible application. Ultramercial, 772 F.3d  
2 at 715-16; Concept Extraction, 776 F.3d at 1347 (“The concept of data collection, recognition, and  
3 storage is undisputedly well-known.”). The next claim element—“generating a script based, at  
4 least in part, on the obtained content”—is “not limited to how the collected information is  
5 analyzed or reformed,” and is therefore similarly abstract. ECF No. 126-7 at 14; Clarilogic, 2017  
6 WL 992528 at \*2 (“[A] method for collection, analysis, and generation of information reports,  
7 where the claims are not limited to how the collected information is analyzed or reformed, is the  
8 height of abstraction.”). Moreover, the specification admits that customer service representatives  
9 were previously provided with “contact strategy documents,” or a “CSR script,” in paper form “to  
10 be used for guidance when handling customer calls.” ECF No. 126-7 at 10, 1:28-37. As a result,  
11 the final claim element—“displaying the generated script to the CSR while the communication is  
12 still in progress”—also fails to supply an inventive concept. ECF No. 126-7 at 14. Even when  
13 viewed collectively, the claim elements “do not go beyond requiring the collection, analysis, and  
14 display of available information in a particular field, stating those functions in general terms,  
15 without limiting them to technical means for performing the functions that are arguably an  
16 advance over conventional computer and network technology.” Electric Power, 830 F.3d at 1351.  
17 And independent claims 7 and 13 simply apply the abstract idea in claim 1 using generic computer  
18 equipment. See, e.g., Content Extraction, 776 F.3d at 1348 (“There is no ‘inventive concept’ in  
19 CET’s use of a generic scanner and computer to perform well-understood, routine, and  
20 conventional activities commonly used in industry.”).

21 24/7 argues that KomBea is distinguishable because the ‘757 patent “improves the  
22 functionality of such scripts by integrating content from multiple sources, and automatically  
23 generating and displaying a script after filtering the available information to select the most  
24 relevant information.” ECF No. 134 at 18. In doing so, however, 24/7 effectively admits that the  
25 ‘757 patent simply automates a process that was already performed in the prior art. This is  
26 confirmed by the specification, which states that the purpose of the “dynamic page generating  
27 system,” or “DPGS,” is to “reduce the mental effort and demands for memorization required of the  
28 CSR.” ECF No. 126-7 at 10, 2:65-66. Indeed, the specification identifies the key problem in the

1 prior art as “overwhelmed CSRs,” who “navigate through the enterprise application screens in an  
2 inefficient manner” because they are required to exercise “significant mental effort” to  
3 “memoriz[e] [] considerable amounts of information.” Id. at 10, 1:53-62. However, this increase  
4 in efficiency through “automation of a process using a computer is [] insufficient to save the  
5 asserted claims from abstractness.” Papst Licensing GmbH & Co. KG v. Xilinx Inc., 193 F. Supp.  
6 3d 1069, 1090 (N.D. Cal. 2016).

7 The KomBea court rejected a similar efficiency argument, noting that “the fact that  
8 Defendant’s patents-in-suit are directed toward abstract ideas that are more efficiently executed  
9 with the use of a generic computer does not make the patents eligible for protection.” KomBea,  
10 73 F. Supp. 3d at 1357; see also, Bancorp, 687 F.3d at 1278 (“[T]he fact that the [abstract idea]  
11 could be performed more efficiently via a computer does not materially alter the patent eligibility  
12 of the claimed subject matter.”). The KomBea court ultimately concluded that “the patents-in-suit  
13 are not a new solution to a unique problem; they only employ a combination of sales techniques  
14 and basic telemarketing technology to create an efficient system.” KomBea, 73 F. Supp. 3d at  
15 1354. The same is true here.

16 Because the ‘757 patent simply automates a process that was already performed mentally  
17 by CSRs in the prior art, 24/7’s reliance on the Federal Circuit’s decision in McRO, Inc. v. Bandai  
18 Namco Games Am. Inc., 837 F.3d 1299 (Fed. Cir. 2016), is misplaced. ECF No. 134 at 18. In  
19 that case, the computer was “employed to perform *a distinct process* to automate a task previously  
20 performed by humans,” and the court distinguished cases in which “the claimed computer-  
21 automated process and the prior method were carried out in the same way.” Id. at 1314-15  
22 (emphasis added). The specification of the ‘757 patent admits that customer service  
23 representatives already performed the same process—i.e., they looked to multiple sources to tailor  
24 communications to the customer. ECF No. 126-7 at 10, 1:38-52 (describing how CSRs  
25 “interact[ed] with various screens from an enterprise system” to “retrieve account data for the  
26 customer, data about the company’s goods and services, etc.”). In other words, the ‘757 patent  
27 simply contemplates automation of the same process that was already performed by customer  
28 service representatives in the prior art. As explained above, that is not enough to confer patent-

1 eligibility.

2 The Federal Circuit’s decision in Amdocs is likewise inapposite. The claims at issue in  
3 Amdocs contained an inventive concept because they provided “an unconventional technological  
4 solution (enhancing data in a distributed fashion) to a technological problem . . .” Amdocs, 841  
5 F.3d at 1300. In that case, the “inventive concept”—correlating information from two sources “to  
6 enhance” an accounting record—was “dependent upon the invention’s distributed architecture.”  
7 Id. In turn, the “distributed architecture . . . minimize[d] the impact on network and system  
8 resources” and “reduc[ed] congestion in network bottlenecks, while still allowing data to be  
9 accessible from a central location.” Id. at 1291-92. “This distributed enhancement was a critical  
10 advancement over the prior art,” in which “all the network information flow[ed] to one location,  
11 making it very difficult to keep up with the massive record flows from the network devices and  
12 requiring huge databases.” Id. at 1300. In other words, the claims at issue “[did] not merely  
13 combine the components in a generic manner, but instead purposefully arrange[d] the components  
14 in a distributed architecture to achieve a technological solution to a technological problem specific  
15 to computer networks.” Id. at 1301. In contrast, the claims of the ‘757 patent are “not tied to any  
16 particularized structure, broadly preempt[] related technologies, and merely involve[] combining  
17 data in an ordinary manner without any inventive concept.” Id.

18 The dependent claims also lack any inventive concept. They describe generic computer  
19 elements and conventional activities—namely, “concurrently displaying content from at least two  
20 different databases,” “displaying links to content stored in at least one of a plurality of different  
21 databases,” and “maintaining a macro glossary . . .” ECF No. 126-7 at 14. These elements fail to  
22 transform the abstract idea into a patent-eligible application.

23 The claims of the ‘757 patent also broadly preempt any technology that automatically  
24 generates and displays customer service representative scripts based on information about the  
25 customer. Again, instead of articulating “a particular concrete solution” that would reduce a  
26 representative’s need to memorize information and reference various materials simultaneously,  
27 these claims “attempt[] to patent the abstract idea of a solution to the problem in general” by  
28 simply automating that process in highly generalized language. Electric Power, 830 F.3d at 1356.

1 The Court grants the motion for judgment on the pleadings as to the invalidity of the ‘757  
2 patent.

3 **E. ‘553 Patent**

4 According to 24/7, “[t]he claims of the ‘553, ‘719, and ‘715 patents recite the conversion  
5 of telephonic voice calls to chat communications.” ECF No. 134 at 20.<sup>7</sup>

6 Claim 1 of the ‘553 patent provides:

7 A method for converting a voice call attempt to an alternate  
8 medium for a real-time communication session, comprising:

9 receiving a telephone call request;

10 checking for accessibility of a called party chat client  
associated with a called party; and

11 prompting a calling party to choose whether or not to  
12 electronically chat with the called party in an electronic  
13 chat session when the called party chat client is accessible,  
14 wherein the electronic chat session is enabled between a  
calling party chat client and the called party chat client that  
are logged into respective electronic chat servers.

15 ECF No. 126-4 at 15. Dependent claim 2 recites the same method in claim 1, further comprising  
16 “sending an invitation to the called party, inviting initiation of a chat session with the calling party  
17 when the calling party chooses to chat.” Id. Dependent claim 3 comprises the same method in  
18 claim 1 with the additional step of “connecting a voice call when the calling party chooses not to  
19 chat.” Id. Independent claim 33 of the ‘552 patent performs the same steps on “[a] computer-  
20 readable medium having a program for converting a voice call attempt to an alternate medium for  
21 a real-time communication session.” Id. at 16. Dependent claims 34 and 35 recite the medium of  
22 claim 33, further comprising the steps of sending a chat invitation when the calling party chooses  
23 to chat and connecting a voice call when the calling party chooses not to chat, respectively. Id.

24 These claims are directed to the abstract idea of allowing a party to a phone call to select  
25 between voice call and electronic chat. 24/7 argues that this patent “improves communications by  
26

27 <sup>7</sup> Although LivePerson also moved to dismiss the ‘719 and ‘715 patents on the same ground, the  
28 parties have since agreed to dismiss both of those patents. Therefore, the Court does not address  
the validity of the ‘715 and ‘719 patents.

1 converting from one specified medium (telephone voice calls) to a second specified medium  
2 (electronic chats).” ECF No. 134 at 20. But the claims completely fail to provide for any  
3 “specific means or method” to achieve this conversion. Clarilogic, 2017 WL 992528 at \*2. For  
4 example, the claims do not explain how to check a chat server for accessibility of a calling party  
5 chat client, how to prompt a called party to select to talk or chat, or how to subsequently enable  
6 the electronic chat session. TDE Petroleum, 657 F. App’x at 993 (affirming the invalidity of  
7 claims that “recite the *what* of the invention, but none of the *how* that is necessary to turn the  
8 abstract idea into a patent-eligible application”) (emphases in original). Instead of claiming a  
9 specific way to convert voice calls to electronic chat, they attempt to claim the goal of conversion  
10 itself by describing generic computer equipment in broad, functional language—e.g., a “call  
11 processing system element operable to check a chat server for accessibility of a calling party chat  
12 client” and a “program performing the step[] of . . . prompting a called party to choose to either  
13 talk or electronically chat if the calling party chat client is accessible.” ECF No. 126-5 at 11, 13.  
14 Again, “there is a critical difference between patenting a particular concrete solution to a problem  
15 and attempting to patent the abstract idea of a solution to the problem in general.” Electric Power,  
16 830 F.3d at 1356 (internal quotation marks omitted). The former spurs innovation, whereas the  
17 latter thwarts it. See Alice, 134 S. Ct. at 2354. The Court therefore proceeds to step two of the  
18 Alice inquiry.

19 The individual claim elements—receiving a telephone call request, checking whether the  
20 parties are able to communicate over chat, prompting one of the parties to choose whether they  
21 prefer to talk or chat, and subsequently initiating a chat session—represent routine human activity.  
22 Indeed, the patents admit that chat clients and telephones were both available in the prior art. ECF  
23 No. 126-4 at 11, 12 (describing one embodiment as including “a standard plain-old telephone  
24 system” and noting “an abundance of chat clients presently available that may be used in  
25 conjunction with the present invention”). The dependent claims, which recite sending a chat  
26 invitation or “connecting a voice call when the calling party chooses not to chat,” similarly  
27 describe conventional human activity. Although the claims recite “[a] phone system,” a “call  
28 processing system,” “the internet,” and “a computer readable medium,” this kind of “wholly

1 generic computer implementation is not generally the sort of ‘additional feature[]’ that provides  
2 any ‘practical assurance that the process is more than a drafting effort designed to monopolize the  
3 [abstract idea] itself.’” Alice, 134 S. Ct. at 2357-58; Mortg. Grader, Inc. v. First Choice Loan  
4 Servs. Inc., 811 F.3d 1314, 1324 (Fed. Cir. 2016) (holding that there was no inventive concept  
5 where “the claims ‘add’ only generic computer components such as an ‘interface,’ ‘network,’ and  
6 ‘database’”). Moreover, “[b]ecause the system claim and method claim contain only ‘minor  
7 differences in terminology but require performance of the same basic process,’ they should rise or  
8 fall together.” Accenture, 728 F.3d at 1344 (quoting Mayo, 132 S. Ct. at 1291).

9 24/7 contends that, “even if a ‘telephone’ and a ‘chat client’ were known in the art,” the  
10 ordered combination is inventive because, “rather than checking for the called party’s ability to  
11 receive a telephone call, it checks for the accessibility of a completely different medium: chat.”  
12 ECF No. 134 at 21. Therefore, 24/7 argues, the claims “recite an inventive concept: converting a  
13 voice call to a chat session by checking for the availability of a communication medium different  
14 from that which was originally requested before prompting a selection between available  
15 communications mediums.” Id. 24/7 further argues that “[t]here is no evidence that this concept  
16 was routine or conventional at the time of filing.” Id.

17 Even if the concept of converting voice calls to chat was unconventional at the time of  
18 filing, “[a]n inventive concept . . . must be significantly more than the abstract idea itself.”  
19 Bascom, 827 F.3d at 1349. As explained above, the claims merely recite the abstract idea of  
20 converting voice calls to chat, and they provide no specific way to implement this abstract idea.  
21 The relevant question is “[w]hat else is there in the claims before us” besides the patent-ineligible  
22 abstract idea itself? Alice, 134 S. Ct. at 2355 (quoting Mayo, 132 S. Ct. at 1297). When the  
23 abstract ideas are stripped away and the remaining claim elements are analyzed, both individually  
24 and as an ordered combination, it is clear that the claims fail to supply an inventive concept  
25 sufficient to transform the abstract idea into a patent-eligible application.

26 Lastly, the Court notes that the claims raise significant preemption concerns because they  
27 presumably cover any situation in which (1) one party receives a telephone call, (2) a party to the  
28 call checks to see whether the other party can access a chat client, (3) a party decides whether to

1 communicate via call or chat, and (4) a chat or call is initiated accordingly.

2 The Court grants the motion for judgment on the pleadings as to the invalidity of the ‘553  
3 patent.

4 **F. ‘209 Patent**

5 The ‘209 patent generally relates to a communication network that allows users on  
6 different types of devices to collaborate. ECF No. 126-2 at 5.

7 Claim 1 provides:

8 A method of initiating a communication session over a network  
9 said method comprising the steps of:

- 10 (a) receiving an identity of a called party and an identity of a  
11 collaborative application from a calling part[y], wherein the  
12 calling party participates in the communication session at a  
13 first endpoint and the called party participates in the  
14 communication session at a second endpoint;  
15 (b) determining a first endpoint type and a second endpoint  
16 type;  
17 (c) selecting a first version of the collaborative application  
18 based on the first endpoint type and a second version of the  
19 collaborative application based on the second endpoint  
20 type, said first version differing from said second version;  
21 and  
22 (d) retrieving and making available the first version of the  
23 application to the calling party and the second version of  
24 the application to the called party.

19 Id. at 7. Dependent claim 2 recites “[t]he method of claim 1, wherein step (d) comprises the step  
20 of: executing the first version and the second version.” Id. Dependent claim 3 recites “[t]he  
21 method of claim 1, further comprising the step of: (e) storing collaborative activity of the called  
22 party and the calling party during the communication session.” Id. Dependent claim 9 recites  
23 “[t]he method of claim 1, wherein the network comprises a Public Switched Telephone Network  
24 and an Internet.” Id.

25 Independent claim 18 provides:

26 A method of collaborating on an application, said method  
27 comprising the steps of:

- 28 (a) receiving a request to establish a communication session

- 1 from a first user at a first endpoint, said request including  
an identity of a second user at a second endpoint;
- 2 (b) determining a first endpoint type and a second endpoint  
type;
- 3 (c) retrieving first version of the application based on the first  
4 endpoint type and a second version of the application based  
on second endpoint type, said first version differing from  
5 said second version;
- 6 (d) establishing the communication session between the first  
user and the second user, and
- 7 (e) executing the first version of the application so that it is  
8 available to the first user at the first endpoint and a second  
version of the application so that it is available to the  
9 second user at the second endpoint during the  
communication session.

10 Id. at 7-8.

11 These claims are directed to the abstract idea of providing an application to a user based on  
12 the type of device they are using so they can collaborate with another user who is using a different  
13 device on the same application. Like the other patents discussed above, however, the claims of the  
14 ‘209 patent do not provide any “specific means or method” for how to achieve this result.

15 Clarilogic, 2017 WL 992528 at \*2; TDE Petroleum, 657 F. App’x at 993 (affirming the invalidity  
16 of claims that “recite the *what* of the invention, but none of the *how* that is necessary to turn the  
17 abstract idea into a patent-eligible application”) (emphases in original). Because the claims are  
18 directed to the abstract idea of a collaborative application system, rather than a concrete means to  
19 implement that abstract idea, the Court proceeds to step two of the Alice inquiry.

20 24/7 argues that the claims are “directed to an inventive concept: a specific method for  
21 facilitating the use of collaborative applications by multiple remote parties.” ECF No. 134 at 24.  
22 24/7 further argues that “[t]he specification describes a technological solution that hosts different  
23 versions of collaborative applications on network servers and provides these applications to users  
24 by determining endpoint types in real time.” Id. 24/7 contends that this was an improvement over  
25 the prior art, which required “specialized hardware and software.” Id.

26 As explained above, the claims do not describe a specific method for achieving the goal of  
27 providing collaborative applications for users of different devices. See Affinity Labs of Texas,  
28 LLC v. DIRECTV, LLC, 838 F.3d 1253, 1258 (Fed. Cir. 2016) (holding that a patent was directed

1 to an abstract idea where it “claim[ed] the function of wirelessly communicating regional  
2 broadcast content to an out-of-region recipient, not a particular way of performing that function,”  
3 and noting that “[t]here is nothing in claim 1 that is directed to *how* to implement out-of-region  
4 broadcasting on a cellular telephone”) (emphasis in original). The specification similarly  
5 describes this abstract idea “at a high level of generality.” Id. at 1259. Therefore, “[e]ven if all  
6 the details contained in the specification were imported into the [] claims, the result would still not  
7 be a concrete implementation of the abstract idea.” Id. In any event, “the important inquiry for a  
8 § 101 analysis is to look to the claim,” and “the level of detail in the specification does not  
9 transform a claim reciting only an abstract concept into a patent-eligible system or method.”  
10 Accenture, 728 F.3d at 1345. Here, the elements of the ‘209 patent claims do not contain any  
11 concrete, technological limitations. In fact, the specification admits that the purpose of the alleged  
12 invention was to do away with the need for “specialized software and/or hardware.” ECF No.  
13 126-2 at 5, 1:19-35, 1:58-59.

14 As a result, these claims are distinguishable from the claims at issue in Bascom and  
15 Amdocs, which described specific architectural improvements to the prior art. See Bascom, 827  
16 F.3d at 1344-45 (instructing the practitioner to physically install the filtering system at the ISP  
17 server); Amdocs, 841 F.3d at 1301 (distinguishing claims that “merely combine the components in  
18 a generic manner” from claims that “purposefully arrange[] the components in a distributed  
19 architecture to achieve a technological solution to a technological problem specific to computer  
20 networks”).

21 Instead, these claims are more akin to one of the claims at issue in Open Text. Like 24/7,  
22 the plaintiff in that case “smuggle[d] in a reference to a ‘network server.’” 78 F. Supp. 3d at 1047.  
23 However, the court nonetheless concluded that, “[s]horn of its implementation-specific fleece, the  
24 claim is directed at providing a method for people to collaborate and share information without the  
25 need for specialized software or expertise.” Open Text, 78 F. Supp. 3d at 1047.

26 Nor do the claims contain any inventive concept sufficient to transform that abstract idea  
27 into a patent-eligible application. When viewed individually, each of the claim elements recite  
28 conventional activity, such as receiving a request to establish a communication session,

1 identifying a called party, determining what kind of device is being used, executing an unspecified  
2 application, and storing information. The addition of generic computer components, such as a  
3 “network,” an “application,” and the “Internet,” also fails to transform an abstract idea into a  
4 patent-eligible application. See Mortg. Grader, Inc. v. First Choice Loan Servs. Inc., 811 F.3d  
5 1314, 1324–25 (Fed. Cir. 2016) (finding no inventive concept where “the claims ‘add’ only  
6 generic computer components such as an ‘interface,’ ‘network,’ and ‘database’”). Collectively,  
7 the claim elements describe the abstract idea of providing a collaborative application for users of  
8 different devices, but the inventive concept “must be significantly more than the abstract idea  
9 itself.” Bascom, 827 F.3d at 1349.

10 Finally, by claiming the solution itself, rather than a concrete embodiment of a solution,  
11 the claims also raise significant preemption concerns. 24/7 argues that “claim 1 is limited to  
12 solutions that receive an identity of a called party and an identity of a collaborative application,  
13 determine the types of devices being used by the calling party and the called party, select two  
14 different versions of the collaborative application based on the types of devices, and retrieve and  
15 make available those versions of the application to the respective parties.” ECF No. 134 at 25.  
16 However, *any* potential solution to the problem identified—i.e., the need to “facilitate[]  
17 application collaboration between users across a network using diverse types of devices”—would  
18 necessarily implicate these generalized, result-focused steps. ECF No. 126-2 at 5, 1:33-35.

19 The Court therefore grants the motion for judgment on the pleadings as to the invalidity of  
20 the ‘209 patent.

21 **G. ‘804 and ‘599 Patents<sup>8</sup>**

22 The ‘804 and ‘599 patents generally relate to enhanced management of customer-agent  
23 interactions. ECF No. 126-11 at 10, 1:15-18 (“[T]he invention relates to enhancing the customer  
24 experience when the customer is using a multi-mode online or voice interaction solution.”); ECF  
25 No. 126-10 at 9, 1:14-17 (same).

26 Claim 1 of the ‘804 patent is representative and provides:

27 \_\_\_\_\_  
28 <sup>8</sup> Both parties discuss these two patents simultaneously. See ECF No. 126 at 27-31; ECF No. 134  
at 25-30.

1 Apparatus for management of online customer/agent interaction  
2 across multiple channels, comprising:

3 a processor implemented interaction engine that is configured  
4 for accessibility by at least one customer and at least one  
5 agent for interaction during a session between said at least  
6 one customer and said at least one agent via any of chat,  
7 voice, and a combination of chat and voice as the mode of  
8 interaction;

9 said interaction engine configured to send a link to said  
10 customer at said agent's request to allow said customer to  
11 access an application at a processor implemented  
12 application server on which said application is resident and  
13 to which said link is resolved for customer access to, and  
14 launching of, said application; and

15 said interaction engine configured to allow said agent to  
16 proactively monitor progress of the customer while the  
17 customer is using said application.

18 ECF No. 126-11 at 13.<sup>9</sup>

19 Contrary to LivePerson's contention, the claims are not directed to the abstract idea of  
20 "providing customer service by an agent 'online.'" ECF No. 126 at 28. Because "[v]irtually  
21 every invention could be described at a high level in a few words," courts addressing invalidity  
22 under Alice "must scrutinize reductive descriptions with great care." Verint Sys. Inc. v. Red Box  
23 Recorders Ltd., No. 14-CV-5403 (KBF), 2016 WL 7156768, at \*1 (S.D.N.Y. Dec. 7, 2016). Here,  
24 LivePerson's reductionist description of the invention obscures key claim limitations, which go  
25 beyond merely engaging with customers or "monitoring the status of a call." Cf. Open Text, 2014  
26 WL 4684429 at \*4; Telinit Techs., LLC v. Alteva, Inc., No. 2:14-CV-369, 2015 WL 5578604, at  
27 \*16 (E.D. Tex. Sept. 21, 2015). Although the claims *involve* the abstract idea of enhancing  
28 customer service in an online customer-agent interaction, they are ultimately directed to a specific  
means or method for achieving that goal: sending a link to a customer who, in turn, uses that link  
to launch an application, at which point the agent can monitor the customer's progress in real time  
while the customer is using the application. Thus, the claims pass muster under step one of the

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<sup>9</sup> Independent claim 16 of the '804 patent is substantially similar. See id. Claim 1 of the '599 patent is also similar, but contains some additional limitations, which are discussed at length below. See ECF No. 126-10 at 12-13.

1 Alice inquiry.

2           Moreover, even if the claims were directed to an abstract idea, they nonetheless contain an  
3 inventive concept sufficient to transform the abstract idea into a patent-eligible application. The  
4 elements of of the ‘804 and ‘599 patents, when viewed as an ordered combination, contemplate a  
5 specific method and apparatus that allows an agent to proactively monitor the customer’s activity  
6 as the customer navigates through an application. Nothing in the specification suggests that prior  
7 art technology was able to predict and address a customer’s potential issues in such a way. See  
8 ECF No. 126-10 at 9, 1:18-51. To the contrary, the specification suggests that this was a  
9 technological improvement over prior chat interaction technology, which often required the  
10 customer to “first try to solve the issue using a self service application or a social networking  
11 means and, if unsuccessful, then the customer can contact an agent using a suitable means . . .” Id.  
12 at 1:24-29. This created the following problem: “[W]hen an agent talks to a customer, either on  
13 the phone or using a chat solution, the agent is generally not aware of most of the steps taken by  
14 the customer to resolve issues the customer faces, prior to the current conversation. So, the agent  
15 may repeat instructions and solutions, which may have already been tried by the customer.” Id. at  
16 1:32-37. The ‘804 and ‘599 patents provide “an unconventional technological solution” to this  
17 problem by allowing the agent to simultaneously provide customer support and monitor the  
18 customer’s activity. Amdocs, 841 F.3d at 1300. Courts have upheld the validity of similar patents  
19 that “provid[e] an audit trail of significant on screen events” through synchronized monitoring of  
20 call center customer interactions. Verint Sys. Inc. v. Red Box Recorders Ltd., No. 14-CV-5403  
21 (KBF), 2016 WL 7156768, at \*10-\*11 (S.D.N.Y. Dec. 7, 2016) (internal quotation marks omitted)  
22 (noting that the claim at issue was “far more than just a generic method of monitoring”).

23           Additional claim limitations also supply inventive concepts. For example, claim 1 of the  
24 ‘599 patent contemplates “an alerting module configured for monitoring a journey of the customer  
25 through an application and raising alerts to the agent based on triggering points/events.” ECF No.  
26 126-10 at 13. The specification explains that these alerts are triggered by pre-defined events, such  
27 as customer inactivity for a specified amount of time and/or error messages as the customer  
28 navigates the application. Id. at 2:55-3:7. Again, nothing in the specification suggests that

1 monitoring customer activity or inactivity in this way is routine or conventional. To the contrary,  
2 the specification states that “[c]urrently, when customers of a company face any issues with  
3 respect to a service or product, the customers tend to contact customer service representatives . . .  
4 ” ECF No. 126-10 at 9, 1:19-21. This claim element improves upon the prior art by providing the  
5 agent with sufficient information—either through monitoring or an automatically-generated  
6 alert—such that the agent can proactively re-initiate a session when it appears that the user might  
7 require assistance. That claim also describes “an automation module configured for leveraging  
8 predictive technologies to pre-populate any of an interaction summary and disposition form.” Id.  
9 The specification explains one particular embodiment of such “predictive technologies” as  
10 employing “transcription, text mining models, and problem and response prediction models that  
11 identify the problem based on the first few dialogs or lines of typed text . . .” ECF No. 126-10 at  
12 11, 5:36-64. This element improves on the prior art by “mak[ing] data collection far more  
13 accurate and efficient . . .” Id. And, because this element provides “the added value of having a  
14 categorization system that grows and improves in its ability to do its job, based on the consistent  
15 incorporation of new information,” it also supplies an inventive concept. Yodlee, 2016 WL  
16 2982503 at \*28. In sum, the “overall ordered combination of all of the limitations [is]  
17 unconventional.” Amdocs, 841 F.3d at 1304. This is true even though “some of the components  
18 and functions may appear generic.” Id.

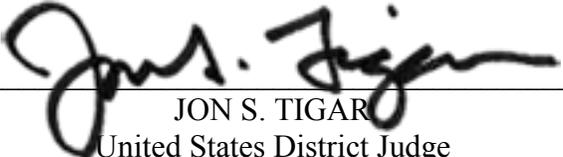
19 Therefore, the Court denies the motion for judgment on the pleadings as to the invalidity of  
20 the ‘804 and ‘599 patents.

21 **CONCLUSION**

22 The Court grants the motion for judgment on the pleadings as to the invalidity of the ‘876,  
23 ‘586, ‘552, ‘757, ‘553, and ‘209 patents. The Court denies the motion for judgment on the  
24 pleadings as to the invalidity of the ‘804 and ‘599 patents.

25 IT IS SO ORDERED.

26 Dated: May 25, 2017

27   
28 \_\_\_\_\_  
JON S. TIGAR  
United States District Judge