APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CELLSPIN SOFT, INC.,
Plaintiff-Appellant,

v.

FITBIT, INC., MOOV, INC., DBA MOOV FITNESS, INC., NIKE, INC., FOSSIL GROUP, INC., MISFIT, INC., GARMIN INTERNATIONAL, INC., GARMIN USA, INC., CANON U.S.A., INC., GOPRO, INC., PANASONIC CORPORATION OF NORTH AMERICA, JK IMAGING LTD.,
Defendants-Appellees.

2018-1817, 2018-1819, 2018-1820, 2018-1821, 2018-1822, 2018-1823, 2018-1824, 2018-1825, 2018-1826

Appeals from the United States District Court for the Northern District of California in Nos. 4:17-cv-05928-YGR, 4:17-cv-05929-YGR, 4:17-cv-05931-YGR, 4:17-cv-05933-YGR, 4:17-cv-05934-YGR, 4:17-cv-05938-YGR, 4:17-cv-05939-YGR, 4:17-cv-05941-YGR, 4:17-cv-06881-YGR, Judge Yvonne Gonzalez Rogers.

CELLSPIN SOFT, INC.,
Plaintiff-Appellant,

v.

FITBIT, INC., MOOV, INC., DBA MOOV FITNESS, INC., NIKE, INC., FOSSIL GROUP, INC., MISFIT, INC., CANON U.S.A., INC., GOPRO, INC.,
Defendants-Appellees.

2018-2178, 2018-2179, 2018-2180, 2018-2181, 2018-2183, 2018-2184

Appeals from the United States District Court for the Northern District of California in Nos. 4:17-cv-05928-YGR, 4:17-cv-05929-YGR, 4:17-cv-05931-YGR, 4:17-cv-05933-YGR, 4:17-cv-05938-YGR, 4:17-cv-05939-YGR, Judge Yvonne Gonzalez Rogers.

Decided: June 25, 2019

JOHN J. EDMONDS, Edmonds & Schlather, PLLC, Houston, TX, argued for plaintiff-appellant.

STANLEY JOSEPH PANIKOWSKI, III, DLA Piper LLP (US), San Diego, CA, argued for all defendants-appellees in 2018-1817. Defendant-appellee Nike, Inc. in 2018-1817 and 2018-2178 also represented by RICHARD T. MULLOY; AMY WALTERS, East Palo Alto, CA.

RICARDO BONILLA, Fish & Richardson PC, Dallas, TX, argued for all defendants-appellees in 2018-2178. Defendants-appellees Fossil Group, Inc.,

Misfit, Inc. in 2018-1817 and 2018-2178 also represented by DAVID BRANDON CONRAD, THERESA DAWSON, NEIL J. MCNABNAY; DALIA BETH KOTHARI, Redwood City, CA.

DAVID SHANE BRUN, Venable, LLP, San Francisco, CA, for defendants-appellees Fitbit, Inc., Moov, Inc. Also represented by INDRA NEEL CHATTERJEE, Redwood City, CA; LESLIE A. LEE, Washington, DC.

RACHAEL D. LAMKIN, Lamkin IP Defense, San Francisco, CA, for defendants-appellees Garmin International, Inc., Garmin USA, Inc. in 2018-1817.

RYAN SETH GOLDSTEIN, Quinn Emanuel Urquhart & Sullivan, LLP, Los Angeles, CA, for defendant-appellee Canon U.S.A., Inc. Also represented by JEFFREY JAKHONG UNG; JARED WESTON NEWTON, Washington, DC.

KARINEH KHACHATOURIAN, Rimon, P.C., Palo Alto, CA, for defendant-appellee GoPro, Inc. Also represented by NIKOLAUS A. WOLOSZCZUK. Defendant-appellee GoPro, Inc. in 2018-1817 also represented by DANIEL T. MCCLOSKEY, Duane Morris LLP, Palo Alto, CA.

T. VANN PEARCE, JR., Orrick, Herrington & Sutcliffe LLP, Washington, DC, for defendant-appellee Panasonic Corporation of North America in 2018-1817. Also represented by MELANIE L. BOSTWICK, STEN JENSEN; JASON KANG YU, Menlo Park, CA.

IRFAN A. LATEEF, Knobbe, Martens, Olson & Bear, LLP, Irvine, CA, for defendant-appellee JK Imaging Ltd. in 2018-1817. Also represented by DANIEL C. KIANG.

Before LOURIE, O'MALLEY, and TARANTO, *Circuit Judges*.

O'MALLEY, *Circuit Judge*.

Cellspin Soft, Inc. ("Cellspin") sued Fitbit, Inc. ("Fitbit"), Moov, Inc. ("Moov"), Nike, Inc. ("Nike"), Fossil Group, Inc. and Misfit, Inc. ("Fossil"), Garmin International, Inc. and Garmin U.S.A., Inc. ("Garmin"), Canon U.S.A., Inc. ("Canon"), GoPro, Inc. ("GoPro"), Panasonic Corporation of America ("Panasonic"), and JK Imaging LTD ("JKI") (collectively "Appellees") for infringing various claims of four different patents. Appellees moved to dismiss, arguing that the patents are ineligible for patent protection under 35 U.S.C. § 101. The district court granted these motions and subsequently awarded attorney fees to Fitbit, Moov, Nike, Fossil, Canon, and GoPro under 35 U.S.C. § 285. *See Cellspin Soft, Inc. v. Fitbit, Inc.*, 316 F. Supp. 3d 1138, 1143 (N.D. Cal. 2018) ("*101 Order*"); *Cellspin Soft, Inc. v. Fitbit, Inc.*, No. 4:17-cv-5928-YGR, 2018 WL 3328164 (N.D. Cal. July 6, 2018) ("*Attorney Fees Order*"). Because we conclude that the district court misapplied our precedent in granting Appellees' motions to dismiss, we vacate its grant of the motions to dismiss, vacate its award of attorney fees, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

A. The Asserted Patents

All four asserted patents—U.S. Pat. No. 8,738,794 ("the '794 patent"), U.S. Pat. No. 8,892,752 ("the '752 patent"), U.S. Pat. No. 9,258,698 ("the '698 patent"), and U.S. Pat. No. 9,749,847 ("the '847 patent")—share the same specification and generally relate to connecting a data capture device, *e.g.*, a digital camera, to a mobile device so that a user can automatically publish content from the data capture device to a website. Each patent is described in more detail below.

1. The '794 Patent

According to the '794 patent, which issued May 2014, prior art devices could digitally capture images, video, or other types of content. To upload that content on the Internet, however, users had to transfer their content onto a personal computer using a memory stick or cable.

The '794 patent teaches a way to transfer and upload data "automatically or with minimal user intervention" using a "data capture device" and a "mobile device." '794 patent, col. 1, ll. 64 – col. 2, ll. 1. These two devices communicate via short-range wireless communication protocols such as Bluetooth. *Id.* at col. 2, ll. 18–22. In particular, a "client application" on the mobile device detects and receives content from the data capture device over the wireless connection. The mobile device then "publish[es] the data and multimedia content on one or more websites automatically or with minimal user intervention." *Id.* at col. 5, ll. 55–59.

Cellspin asserts claims 1–4, 7, 9, 16–18, and 20–21 of the '794 patent. On appeal, Cellspin does not agree that any of its claims are representative of the '794 patent or the asserted patents as a whole. Even so, Cellspin offers separate arguments only as to independent claims 1 and 16. The remaining claims depend from these two independent claims.

Claim 1 recites:

> 1. A method for acquiring and transferring data from a Bluetooth enabled data capture device to one or more web services via a Bluetooth enabled mobile device, the method comprising:
>
> providing a software module on the Bluetooth enabled data capture device;
>
> providing a software module on the Bluetooth enabled mobile device;
>
> *establishing a paired connection* between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device;
>
> acquiring new data in the Bluetooth enabled data capture device, wherein new data is data acquired after the paired connection is established;
>
> detecting and signaling the new data for transfer to the Bluetooth enabled mobile device, wherein detecting and signaling the new data for transfer comprises:
>
> determining the existence of new data for transfer, by the software module on

the Bluetooth enabled data capture device; and

sending a data signal to the Blue-tooth enabled mobile device, corresponding to existence of new data, by the software module on the Bluetooth enabled data capture device automatically, over the established paired Bluetooth connection, wherein the software module on the Bluetooth enabled mobile device listens for the data signal sent from the Bluetooth enabled data capture device, wherein if permitted by the software module on the Bluetooth enabled data capture device, the data signal sent to the Bluetooth enabled mobile device comprises a data signal and one or more portions of the new data;

transferring the new data from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device automatically over the paired Bluetooth connection by the software module on the Bluetooth enabled data capture device;

receiving, at the Bluetooth enabled mobile device, the new data from the Bluetooth enabled data capture device;

applying, using the software module on the Bluetooth enabled mobile device, a user identifier to the new data for each

> destination web service, wherein each user identifier uniquely identifies a particular user of the web service;
>
> *transferring the new data received by the Bluetooth enabled mobile device along with a user identifier to the one or more web services*, using the software module on the Blue-tooth enabled mobile device;
>
> receiving, at the one or more web services, the new data and user identifier from the Bluetooth enabled mobile device, wherein the one or more web services receive the transferred new data corresponding to a user identifier; and
>
> making available, at the one or more web services, the new data received from the Bluetooth enabled mobile device for public or private consumption over the internet, wherein one or more portions of the new data correspond to a particular user identifier.

'794 patent, col. 11, ll. 48 – col. 12, ll. 38 (emphases added).

As relevant here, claim 1 requires establishing a paired connection between the data capture device and the mobile device *before* data is transmitted between the two. The claim also describes a "push" mode for sending files in which a "data signal" is sent from the data capture device to the mobile device to initiate a data transfer. *Id.* at col. 12, ll. 1–2.

Claim 16 is essentially the same as claim 1, but instead of reciting a "push" mode it describes a "pull" mode in which the mobile device "poll[s] the Bluetooth enabled data capture device" to ask whether the data capture device has files to upload. *Id.* at col. 14, ll. 30–35; *see also id.* at col. 4, ll. 30–34 ("In the pull mode, the client application 203 [on the mobile device] periodically polls the digital data capture device 201 to determine the creation of a new file in the digital capture device 201.").

2. The '752 Patent

The '752 patent, which issued November 2014, shares its specification with the '794 patent. Cellspin asserts claims 1, 2, 4–5, and 12–14 of the '752 patent, but only offers separate arguments as to eligibility with respect to claim 1.

Claim 1 of the '752 patent includes limitations that are substantially similar to the limitations of claim 1 of the '794 patent, but the patents differ in two important respects. First, the '752 patent requires the mobile device and data capture device to establish a connection using a "cryptographic encryption key." '752 patent, col. 11, ll. 54– 56. This allows each device to "authenticate the identity" of the other so the data capture device can "trust[]" that its data is being securely transmitted to the right mobile device. *Id.* at col. 3, ll. 61–63. Second, the '752 patent requires the mobile device to transmit data from the mobile device to an "internet service" according to the hypertext transfer protocol ("HTTP"). *Id.* at col. 12, ll. 16–36.

3. The ’698 Patent

The ’698 patent, which issued February 2016, also shares its specification with the ’752 patent and the ’794 patent. Cellspin asserts claims 1, 3–5, 7–8, 10–13, 15–20 of the ’698 patent, but it only offers separate arguments as to claim 5.

Unlike the ’794 and the ’752 patents, claim 5 of the ’698 patent does not claim a generic data capture device nor does it mention Bluetooth. Instead, the claim recites a “digital camera” that communicates with a cellular phone using “short-range wireless” signals. *Id.* The ’698 patent acknowledges, however, that Bluetooth is an example of a short-range wireless communication protocol. *Id.* at col. 3, ll. 55–59 (“[Bluetooth] provides a method of connecting and exchanging information between devices, for example, mobile phones, laptops, personal computers (PCs), printers, digital cameras, etc. over a secure and globally unlicensed short-range wireless frequency.”). Otherwise, claim 5 includes limitations that are substantially similar to the limitations of claim 1 of the ’752 patent.

4. The ’847 Patent

The ’847 patent, which issued August 2017, shares its specification with the other three asserted patents. Cellspin asserts claims 1–3 of the ’847 patent, but it only offers separate arguments as to claim 1.

Claim 1 of the ’847 patent includes limitations that are substantially similar to the limitations of claim 1 of the ’752 patent. For example, claim 1 of the ’847 patent recites “a Bluetooth enabled data capture

device" that can establish a connection with a mobile device after "cryptographically authenticat[ing] [the] identity of the Bluetooth enabled cellular phone" and before transmitting data. '847 patent, col. 12, ll. 14–25. Claim 1 also requires the mobile device to include "a mobile application" that "listen[s] for the event notification, sent from the Bluetooth enabled data capture device . . . wherein the event notification corresponds to the acquired new-data." *Id.* at col. 12, ll. 42– 51. Claim 1 further recites that the mobile application "use[s] HTTP to transfer the new-data . . . to the website, over the cellular data network." *Id.* at col. 12, ll. 62–67.

B. Procedural History

1. Pretrial Disputes

Cellspin filed more than a dozen cases alleging infringement of the asserted patents. *101 Order*, 316 F. Supp. 3d at 1143. As relevant here, Cellspin asserted the '794, '752, and '847 patents against Appellees Fitbit, Moov, Nike, and Fossil. In another set of cases, Cellspin asserted the '698 patent against Appellees Canon, GoPro, Panasonic, and JKI. Cellspin also asserted all four patents against Garmin.[11]

On January 16, 2018, Appellees, except for Garmin, filed an omnibus motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that the asserted patents are ineligible for patent protection

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[1] Several other defendants dropped out of the case before the district court reached a decision on the merits. *101 Order*, 316 F. Supp. 3d at 1143 n.1.

under 35 U.S.C. § 101. Garmin separately filed a similar motion to dismiss under Rule 12(c).

On February 16, 2018, Cellspin filed a notice of supplemental authority citing *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121 (Fed. Cir. 2018), and *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). J.A. 2143. Cellspin then amended its complaints on March 2, 2018, just a few days before the district court's scheduled hearing on Appellees' motions to dismiss. *Attorney Fees Order*, 2018 WL 3328164, at *2. Even so, the amendments were within the time permitted by the district court's scheduling order. J.A. 2261 (permitting pleadings to be amended "without the need for leave of Court, up to, and including, June 5, 2018").

After the March 6, 2018 hearing on Appellees' motions, the district court ordered Appellees to file supplemental briefing addressing Cellspin's amended complaints. *101 Order*, 316 F. Supp. 3d at 1154 n.12. In response, Appellees argued that Cellspin's amended complaints "d[id] not change the legal conclusion that Cellspin's patents are invalid under Section 101." J.A. 2355.

2. The District Court's 101 Order

The district court granted Appellees' motions based on the two-step framework for analyzing patent eligibility articulated in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), and *Alice Corp. v. CLS Bank International*, 573 U.S.

208 (2014). *101 Order*, 316 F. Supp. 3d at 1146–48, 1150.[2]

As to step one, the district court concluded that the asserted claims of the '794 patent are directed to the abstract idea of "acquiring, transferring, and publishing data and multimedia content on one or more websites." *Id.* at 1150. Analogizing to *In re TLI Communications LLC Patent Litigation*, 823 F.3d 607 (Fed. Cir. 2016), the district court explained that the asserted claims use "generic computer hardware and software components" to automate the conventional, manual process of transferring data from one device to another. *Id.* at 1150–52. It therefore concluded that "Cellspin fail[ed] to show that the data acquisition, transfer, and publication described in the '794 Patent represents something more than a simple automation of [a] conventional (manual) process," *i.e.*, an abstract idea. *Id.* at 1151.

As to step two, the district court found that the asserted claims of the '794 patent do not recite an "inventive concept." *Id.* at 1152. In particular, the district court concluded that the various claim elements, *e.g.*, the data capture device and Bluetooth enabled mobile device, represent generic computer components performing "as expected according to their ordinary use." *Id.* (quoting *TLI*, 823 F.3d at 615). In a footnote, the district court acknowledged Cellspin's argument that there was a factual dispute about whether the "combination" of these elements was "well-understood, routine and conventional." *Id.*

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[2] The district court entered individual but essentially identical orders in each related case. We will refer to a single order throughout.

at 1154–55 n.12 (citing *Berkheimer*, 881 F.3d 1360). But the district court concluded that it "need not reach the issue" for two reasons. *Id.* First, the district court distinguished *Berkheimer* because it arose "at the summary judgment stage, not in the context of a motion to dismiss." *Id.* Second, the district court faulted Cellspin for not "identify[ing] any portion of the ['794 patent's] specification" that described the inventive concepts Cellspin alleged in its amended complaints. *Id.*

The district court also concluded that the remaining asserted claims from the other asserted patents were all directed to a "substantially similar abstract idea" as the '794 patent. *Id.* at 1155. And, while the court recognized various differences between the asserted claims across the different patents, it explained that none of these differences evidenced an inventive concept. *Id.* The district court therefore concluded that none of the asserted claims, from any of the asserted patents, were patent eligible. *Id.*

3. The District Court's Attorney Fees Order

After the district court granted the motions to dismiss, Appellees Fitbit, Moov, Nike, Fossil, Canon, and GoPro moved for attorney fees under 35 U.S.C. § 285. *Attorney Fees Order*, 2018 WL 3328164, at *1. The district court subsequently awarded attorney fees.

In finding that the case was "exceptional" under § 285, the district court found that Cellspin's claims were "manifestly directed to an abstract idea." *Id.* at *3 (quoting *Inventor Holdings, LLC v. Bed Bath &*

Beyond, Inc., 876 F.3d 1372, 1377-78 (Fed. Cir. 2017)). Although the district court's fees order did not discuss the second step of *Alice*, the court concluded that Cellspin's claims were "exceptionally meritless." *Id.* The district court also found that Cellspin litigated its claims "aggressively." *Id.* In doing so, the district court noted that Cellspin "did not agree to stay discovery pending resolution of [the § 101 motions] until after the hearing on [the motions]." *Id.* The court also faulted Cellspin for amending its complaint "only three days prior to the hearing on [the motions to dismiss]." *Id.* Acknowledging that "this conduct may not amount to bad faith litigation," the district court still viewed it as "contribut[ing] to the totality of the circumstances weighing in favor of a fee award." *Id.*

The district court also criticized Cellspin for a "refusal to analyze its patents critically" before filing suit. *Id.* at *4. According to the district court, Cellspin "could have litigated a test case but instead chose to file and pursue aggressively fourteen lawsuits simultaneously." *Id.* While Cellspin argued that it did not need to file a test case because its patents were presumptively valid, the district court concluded that Cellspin's patents "are not presumed eligible under Section 101." *Id.* at *3–4 (citing *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 721 (Fed. Cir. 2014) (Mayer, J., concurring)).

The district court ultimately awarded fees for the entire case because "the exceptionally meritless nature of this case extend[ed] well beyond the [motions to dismiss] and applie[d] to Cellspin's decision to bring these actions in the first place." *Id.* at *5. Even so, the district court found that the fee

requests by Nike, Fossil, and Canon were "excessive." *Id.* It therefore capped their fee awarded at $180,000, $100,000, and $100,000 respectively. *Id.*

Cellspin timely appealed the district court's dismissal and attorney fees orders. We have jurisdiction with respect to both under 28 U.S.C. § 1295(a)(1).

II. DISCUSSION

Cellspin argues that its asserted claims are patent eligible and so we should reverse the district court's dismissal and attorney fees awards. We address each argument below.

A. Patent Eligibility

We review the grant of a motion to dismiss under applicable regional circuit law. *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015). As relevant here, the Ninth Circuit reviews the grant of a motion to dismiss de novo. *See Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (noting that the analysis under Rule 12(b)(6) and Rule 12(c) is "substantially identical"). This means we "determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy." *Id.* (internal quotation marks omitted).

Under § 101, patents may be granted for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. According to the Supreme Court, this statutory text includes an important but implicit exception for laws of nature,

natural phenomena, and abstract ideas. *See Alice*, 573 U.S. at 216. Claims for these categories of inventions are not patent eligible. *Id.*

To distinguish between eligible and ineligible patent claims, the Supreme Court has fashioned a two-step test. *Id.* at 217–18 (citing *Mayo*, 566 U.S. at 72–73, 77–79). At step one of the *Alice/Mayo* framework, we ask whether the claim at issue is "directed to . . . [a] patent-ineligible concept[]," such as an abstract idea. *Id.* at 217. If so, we proceed to step two, which the Supreme Court has described as "a search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* at 217–18 (quoting *Mayo*, 566 U.S. at 73). We have held that deciding whether claims recite an "inventive concept," or something more than "well-understood, routine, conventional activities previously known to the industry," *id.* at 225 (internal brackets omitted), may turn on underlying "question[s] of fact," *Aatrix*, 882 F.3d at 1128.

Applying this two-step framework, we agree with the district court that the asserted claims are directed to an abstract idea. *101 Order*, 316 F. 316 F. Supp. 3d at 1150. The district court erred with respect to the inventive concept inquiry, however, by ignoring allegations that, when properly accepted as true, preclude the grant of a motion to dismiss.

1. Step One

Alice did not establish any "precise contours" for defining whether claims are directed to "abstract ideas" or something else. 573 U.S. at 221 ("[W]e need not labor to delimit the precise contours of the 'abstract ideas' category in this case."). But we have declined to read *Alice* "broadly [to] hold that all improvements in computer-related technology are inherently abstract and, therefore, must be considered at step two." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). In fact, we have explained that claims directed to "an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity," are patent eligible. *Id.* at 1336; *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (explaining that the claims in *Enfish* were eligible "because [they] focused not on asserted advances in uses to which existing computer capabilities could be put, but on a specific improvement . . . in how computers could carry out one of their basic functions").

According to Cellspin, the asserted claims are directed to improving Internet-incapable data capture devices and mobile networks. We disagree. The asserted claims are drawn to the idea of capturing and transmitting data from one device to another. *See, e.g.*, '794 patent, col. 1, ll. 32–36 ("This invention, in general, relates to distribution of multimedia content. More particularly, this invention relates to pairing a digital data capture device in conjunction with a mobile device for automatically publishing data . . . on one or more websites simultaneously."). As the district court

recognized, we have consistently held that similar claims reciting the collection, transfer, and publishing of data are directed to an abstract idea. *See, e.g.*, *Elec. Power*, 830 F.3d at 1353 (acknowledging that claims reciting "collecting information, analyzing it, and displaying certain results" fall into "a familiar class of claims 'directed to' a patent-ineligible concept"); *TLI*, 823 F.3d at 610–12 (concluding that claims reciting "recording . . . transmitting . . . and storing" digital images were directed to an abstract idea). These cases compel the conclusion that the asserted claims are directed to an abstract idea as well.

Cellspin argues that these cases are distinguishable because its claims recite "technological improvements." Appellant's Br. at 25. For example, Cellspin argues that its claims improve data capture devices by allowing even "Internet-incapable capture device[s]" to "transfer[] newly captured data to the internet" via an "internet capable mobile device." *Id.* at 26, 54–58. But the patents' shared specification acknowledges that users could already transfer data from a data capture device—even an Internet-incapable device—to a website. '794 patent, col. 1, ll. 42–45 (describing how users can "transfer the image off-line to [a] PC, us[ing] a cable such as a universal serial bus (USB)"). What the patents offered was a way to automate this process. *Id.* at col. 1, ll. 48–54 ("[T]here is a need for a method and system to utilize a digital data capture device . . . with a mobile device for automatically detecting capture of data . . . , transferring the captured data . . . to the mobile device, and publishing the data . . . on one or more

websites automatically . . . ."). But the need to perform tasks automatically is not a unique technical problem. *OIP Techs.*, 788 F.3d at 1363.

Cellspin also faults the district court for adopting an "overly simplistic characterization" of the claims that ignores important limitations. Appellant's Br. at 46. We are not persuaded. While some of the limitations noted by Cellspin—*e.g.*, using HTTP—may evidence an inventive concept, as explained below, none of them change the fact that the claims as a whole, across all four patents, are directed to an abstract idea.

2. Step Two

Having concluded that the claims are directed to an abstract idea, we next consider whether the claimed elements—"individually and as an ordered combination"—recite an inventive concept. *Alice*, 573 U.S. at 217 (internal quotation marks omitted). An inventive concept reflects something more than the application of an abstract idea using "well-understood, routine, and conventional activities previously known to the industry." *Aatrix*, 882 F.3d at 1128 (internal quotation marks and brackets omitted). It must be "'*enough*' to transform an abstract idea into a patent-eligible invention." *Alice*, 573 U.S. at 226 (quoting *Mayo*, 566 U.S. at 77). But "[i]f a claim's only 'inventive concept' is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea." *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290–91 (Fed. Cir. 2018).

Cellspin's allegations identify several ways in which its application of capturing, transferring, and publishing data was unconventional. For example, Cellspin's amended complaints noted that prior art devices included "a capture device with built in mobile wireless Internet." J.A. 2290.[3] But these devices were "inferior," Cellspin alleged, "because, especially at the time of the patent priority date . . . the combined apparatus [was] bulky, expensive in terms of hardware, and expensive in terms of requiring a user to purchase an extra and/or separate cellular service for the data capture device." *Id.* Against this backdrop, Cellspin alleged that it was unconventional to separate the steps of capturing and publishing data so that each step would be performed by a different device linked via a wireless, paired connection. J.A. 2292–2293. This two-step, two-device structure is discussed throughout the shared specification. *See, e.g.*, '794 patent, col. 2, ll. 2–54; J.A. 2290 (citing '794 patent, col. 2, ll. 2–3). Cellspin also alleged that this structure provided various benefits over prior art systems. For example, it means the device capturing data only needs to serve one core function—capturing data—and does not need to incorporate other hardware and software components that might be needed to store data or publish it onto the Internet. J.A. 2290. Instead, the data capture device can "[l]everag[e]" the hardware and software on a user's mobile device. J.A. 2292–2293. According to

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[3] Cellspin filed separate amended complaints with respect to each Appellee. In relevant part, however, the amended complaints are essentially identical. We will therefore refer to a single amended complaint throughout.

Cellspin, this allows data capture devices to be smaller and cheaper to build. J.A. 2293 (discussing how reducing the complexity of hardware allows for smaller size, etc.). It also makes using data capture devices simpler, *e.g.*, one mobile device with one data plan controls several data capture devices. J.A. 2293–2294. And uploading data via a separate device, wirelessly paired to the data capture device, allows users to access and upload data even if the capture device is physically inaccessible to the user. J.A. 2291.

Cellspin also alleged that its specific ordered combination of elements was inventive. For example, Cellspin alleged that "inferior" prior art data capture devices "forward[ed] data to a mobile device as captured." J.A. 2290. By contrast, the claimed inventions require establishing a paired connection between the mobile device and the data capture device *before* data is transmitted. '794 patent, col. 11, ll. 60–61. According to Cellspin, this ensures that data is only transmitted if the mobile device is capable of receiving it. J.A. 2290 ("[H]av[ing] the capture device simply forward data to a mobile device as captured . . . is inferior because, without a paired connection, there is no assurance that the mobile device is capable (*e.g.*, on and sufficiently near) of receiving the data."). Cellspin also pointed to its use of HTTP, by an "intermediary device" and while the data is "in transit," as being inventive. J.A. 2293–2294. Indeed, it specifically alleged that "HTTP transfers of data received over [a] paired wireless connection to web services [were] non-existent" prior to its inventions. J.A. 2289; *see also* '794 patent, col. 10, ll. 4–9 (discussing the use of HTTP); '752 patent,

col. 12, ll. 16–36 (reciting the use of HTTP); '698 patent, col. 13, ll. 8–22 (same); '847 patent, col. 12, ll. 62–67 (same).

The district court discounted these allegations in granting Appellees' motions to dismiss because Cellspin "fail[ed] to cite to support in the [shared specification]" for its allegations. *101 Order*, 316 F. Supp. 3d at 1154. In particular, the district court required Cellspin to cite instances where the patents treat this application of HTTP as inventive or contemplate benefits like smaller, streamlined data capture devices. *Id.* at 1153 ("The other proffered benefits which relate to . . . [the] order or timing of the Bluetooth wireless pairing; and elimination of the need for bulky hardware and costly cell phone services; do not appear in the patent's specification." (internal footnote omitted)). In *Aatrix*, however, we repeatedly cited allegations in the *complaint* to conclude that the disputed claims were potentially inventive. *See, e.g.*, 882 F.3d at 1128 ("There are concrete allegations in the second amended complaint that individual elements and the claimed combination are not well-understood, routine, or conventional activity."). While we do not read *Aatrix* to say that any allegation about inventiveness, wholly divorced from the claims or the specification, defeats a motion to dismiss, plausible and specific factual allegations that aspects of the claims are inventive are sufficient. *Id.* As long as what makes the claims inventive is recited by the claims, the specification need not expressly list all the reasons why this claimed structure is unconventional. In this case, Cellspin made specific, plausible factual allegations about why aspects of its claimed

inventions were not conventional, *e.g.*, its two-step, two-device structure requiring a connection *before* data is transmitted. The district court erred by not accepting those allegations as true.

The district court also decided that it need not credit Cellspin's allegations because the case Cellspin relied on for that proposition, *Berkheimer*, could be distinguished because it arose in the context of a motion for summary judgment. *101 Order*, 316 F. Supp. 3d 1138, 1154–55 n.12 ("*Berkheimer* addressed a defendant's burden at the summary judgment stage, not in the context of a motion to dismiss."). That conclusion is impossible to reconcile with *Aatrix*, where we expressly stated that "patentees who adequately allege their claims contain inventive concepts survive a § 101 eligibility analysis under Rule 12(b)(6)." *Aatrix*, 882 F.3d at 1126–27. The district court thus further erred by ignoring the principle, implicit in *Berkheimer* and explicit in *Aatrix*, that factual disputes about whether an aspect of the claims is inventive may preclude dismissal at the pleadings stage under § 101.

Accepting the allegations stated above as true, we cannot conclude that the asserted claims lack an inventive concept. [4] *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC* is particularly instructive on this point. 827 F.3d 1341, 1350 (Fed. Cir. 2016) ("[A]n inventive concept can be found in the non-conventional and non-generic arrangement

[4] Given the similarities between the asserted claims, our eligibility analysis applies equally to all claims asserted across all four patents.

of known, conventional pieces."). In *BASCOM*, we explained that the placement of a filtering tool "at a specific location," and configured in a particular way, evidenced an inventive concept because the "limited record" before us did not demonstrate that the "specific method of filtering" claimed "ha[d] been conventional or generic." *Id.* On the limited record here, and at this stage in the case, we reach the same result with respect to the elements recited by the asserted claims. As noted above, Cellspin specifically alleged that using HTTP at a specific location, here at the intermediary mobile device, was inventive. J.A. 2289, 2293–2294. It further alleged that establishing a paired connection *before* transmitting data was inventive. J.A. 2290. We have no basis, at the pleadings stage, to say that these claimed techniques, among others, were well-known or conventional as a matter of law.

Appellees distinguish *BASCOM* by arguing that the asserted claims simply "replace a USB or similar cable with Bluetooth." Appellees' Br. at 33. But even assuming that Bluetooth was conventional at the time of these inventions, implementing a well-known technique with particular devices in a specific combination, like the two-device structure here, can be inventive. *Cf. Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1580 (Fed. Cir. 1983) ("Most, if not all, inventions are combinations and mostly of old elements."); *see also BASCOM*, 827 F.3d at 1350. As noted above, Cellspin specifically alleged that its implementation of Bluetooth, using a two-step, two-device structure, was inventive. J.A. 2290–2294. The same is true for the claimed combination of steps—sharing data only after a certain step is performed,

using HTTP at another particular step, etc. *Id.* Cellspin did more than simply label these techniques as inventive. It pointed to evidence suggesting that these techniques had not been implemented in a similar way. *See, e.g.*, J.A. 2289 ("It was not until 2009 or later when the leading tech companies, such as Facebook and Google, started releasing HTTP APIs for developers to utilize a HTTP transfer protocol for mobile devices."). This sufficiently alleges that Cellspin has claimed significantly more than the idea of capturing, transferring, or publishing data.

Appellees argue that the limitations relied on by Cellspin "amount to nothing more than minor variations in the technological environment in which the abstract ideas are implemented." Appellees' Br. at 37–38. We disagree. In *Electric Power*, we explained that merely applying an abstract idea to a "particular technological environment," there "power-grid monitoring," was not enough to transform the underlying idea into something patent eligible. 830 F.3d at 1354–55. But claims that use an environment—a computer, a mobile phone, etc.—to do significantly more than simply carry out an abstract idea are patent eligible. *Id.* at 1355 (noting that the limitations there did not "differentiate" the claims from the underlying mental process). Cellspin's asserted claims do precisely that, at least based on the allegations we must accept as true at this stage. In particular, they recite a specific, plausibly inventive way of arranging devices and using protocols rather than the general idea of capturing, transferring, and publishing data.

Accordingly, the district court erred by granting the motions to dismiss.

B. Attorney Fees

The district court's error in granting the motions to dismiss necessitates vacatur of its attorney fees award. *See, e.g.*, *Mankes v. Vivid Seats Ltd.*, 822 F.3d 1302, 1312 (Fed. Cir. 2016) ("Because we vacate and remand judgment on the pleadings and no other relief runs in Vivid Seats' favor, Vivid Seats is no longer the 'prevailing party' under § 285."). In the interest of judicial economy, however, we also address certain errors in the district court's attorney fees analysis that could remain issues on remand. *See TEK Glob., S.R.L. v. Sealant Sys. Int'l, Inc.*, 920 F.3d 777, 780 (Fed. Cir. 2019).

According to the district court, Cellspin should have filed a "test case" before asserting its patents here. *Attorney Fees Order*, 2018 WL 3328164, at *4. But patents granted by the Patent and Trademark Office are presumptively valid. *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 100 (2011) (citing 35 U.S.C. § 282). This presumption reflects the fact that the Patent and Trademark Office has already examined whether the patent satisfies "the prerequisites for issuance of a patent," including § 101. *Id.* at 95–96. While an alleged infringer "may attempt to prove that the patent never should have issued in the first place," *i.e.*, challenge its validity, the alleged infringer must prove that the patent does not satisfy these prerequisites before the patent loses its presumption of validity. *Id.* at 96–97. To the extent the district court departed from this principle by concluding that issued patents are presumed *valid* but not presumed *patent eligible*, it was wrong to do so. *See Berkheimer*, 881 F.3d at 1368 ("Any fact, such as [whether a claim element or combination is well-

understood or routine], that is pertinent to the invalidity conclusion must be proven by clear and convincing evidence."); *see also Microsoft*, 564 U.S. at 100.

The district court also faulted Cellspin for amending its complaint just a few days before the scheduled hearing on Appellees' motions to dismiss. *Attorney Fees Order*, 2018 WL 3328164, at *3. But Cellspin's amendment was timely based on a scheduling order entered by the district court just three days before Cellspin's amendment. J.A. 2264. In fact, the order allowed the parties to amend their pleadings through June 5, 2018 "without the need for leave of Court." *Id.* Cellspin's decision to amend was also justified in light of *Berkheimer* and *Aatrix*, decided just a few weeks earlier. *Cf. Aatrix*, 882 F.3d at 1128 ("Aatrix is entitled to file its proposed second amended complaint . . . ."). The district court's finding that the timing of Cellspin's amendment contributed to making the case exceptional is therefore clearly erroneous.

III. CONCLUSION

The district court erred by not accepting Cellspin's well-pleaded allegations as true with respect to whether its patents capture, transfer, and publish data in a way that is plausibly inventive. And, accepting those allegations as true, we cannot say that the asserted claims are ineligible under § 101 as a matter of law. The district court erred in holding otherwise. We therefore vacate the district court's dismissal and vacate its subsequent award of attorney fees. We remand this case for further proceedings consistent with this opinion.

VACATED AND REMANDED

COSTS

No costs.

APPENDIX B

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

CELLSPIN SOFT, INC.,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

MOOV, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

NIKE, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

FOSSIL GROUP, INC. ET AL.,

Defendants.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

CANON U.S.A., INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

GOPRO, INC.,

Defendant.

Case No.: 4:17-CV-5928-YGR, Case No.: 4:17-CV-5929-YGR, Case No.: 4:17-CV-5931-YGR, Case No.: 4:17-CV-5933-YGR, Case No.: 4:17-CV-5938-YGR, Case No.: 4:17-CV-5939-YGR

Signed 07/06/2018

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ORDER GRANTING IN PART MOTIONS FOR ATTORNEY'S FEES

RE: Dkt. No. 85
RE: Dkt. No. 73
RE: Dkt. No. 92
RE: Dkt. No. 79
RE: Dkt. No. 76

Yvonne Gonzalez Rogers, United States District Judge

On April 3, 2018, the Court granted an omnibus motion to dismiss filed by defendants Fitbit, Inc. ("Fitbit"); Moov, Inc. ("Moov"); Nike, Inc. ("Nike"); Fossil Group, Inc. and Misfit, Inc. (collectively, "Fossil"); Garmin International, Inc. ("Garmin"); Cannon U.S.A., Inc. ("Cannon"); GoPro, Inc. ("GoPro"); Panasonic Corporation of America ("Panasonic"); and JK imagining LTD ("JK") (collectively, "Omnibus Defendants") on the grounds that the patents asserted by plaintiff Cellspin Soft, Inc. ("Cellspin") are not patent eligible under 35 U.S.C. Section 101. (Dkt. No. 79 ("MTD Order").)[1] Thereafter, defendants Fitbit, Moov, Nike, Fossil, Canon, and GoPro (collectively, "Moving Defendants") filed six separate motions for attorney's fees pursuant to 35 U.S.C. Section 285 on the grounds that Cellspin's actions for patent infringement are "exceptional" under the same. (*see e.g.*, Dkt. No. 85 ("Motion").)[2] Moving Defendants seek fees totaling $881,051.56. Cellspin opposes the motions. (Dkt. No. 91 ("Opp.").)

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[1] Unless stated otherwise, all citations to docket entries refer to *Cellspin Soft Inc. v. Fitbit, Inc.*, 17-cv-05928-YGR.

[2] *See also* Case No. 17-cv-3829, Dkt. No. 73 ("Moov Motion"); Case No. 17-cv-5931, Dkt. No. 73 ("Nike Motion"); Case No. 17-cv-5933, Dkt. No. 92 ("Fossil Motion"); Case No. 17-cv-5938, Dkt. No. 79 ("Canon Motion"); Case No. 17-cv-5939, Dkt. No. 76 ("GoPro Motion"); (collectively, "Fees Motions"). The Court notes that the Fees Motions are nearly identical in substance and form.

Having carefully reviewed the pleadings, the papers submitted, oral arguments at the hearing held on June 12, 2018, and the underlying record, and for the reasons set forth more fully below, the Court **GRANTS IN PART** the Moving Defendants' motions for attorney's fees.[3]

I. LITIGATION HISTORY

Cellspin brought fourteen patent infringement actions alleging that each defendant infringed one or more of Cellspin's patents, namely U.S. Patent Nos. 8,738,794; 8,892,752; 9,749,847; and 9,258,698 (collectively, "Asserted Patents").[4] (*See, e.g.*, Dkt. No. 1 ("Compl.").) On December 5, 2017, the Court granted Cellspin's motion to relate the fourteen actions. (Dkt. No. 18.)

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[3] The Court notes that defendant Fossil did not submit a declaration regarding any meet and confer with Cellspin's counsel, as required by Civil Local Rule 54-4. (*See* Case No. 17-cv-5933 Dkt. No. 92-2.) The Court cautions that Fossil's failure to comply with the Local Rules constitutes a basis for denial of its motion and advises counsel to observe all Civil Local Rules, as well as this Court's Standing Order in Civil Cases, in the future.

[4] Cellspin's patent infringement action against Eastman Kodak Company was dismissed without prejudice on December 3, 2017. (*Cellspin Soft v. Eastman Kodak Company*, 17-cv-5940-YGR, Dkt. Nos. 14, 15.) Plaintiff's action against TomTom, Inc. and TomTom North America was dismissed without prejudice on January 25, 2018. (*Cellspin Soft v. TomTom, Inc., et al.*, 17-cv-5937-YGR, Dkt. Nos. 46, 47.) The following defendants remain: Adidas America, Inc.; Under Armor, Inc.; and Nikon Americas, Inc. and Nikon, Inc. All three remaining defendants have filed answers and the cases are stayed pending appeals of the other cases referenced here.

In their January 16, 2018 motion to dismiss, Omnibus Defendants alleged that Cellspin's claims of infringement were invalid because the Asserted Patents were not patent-eligible under Section 101. (Dkt. No. 31, ("MTD").) Specifically, Omnibus Defendants argued that Cellspin's claims were (i) directed to the abstract concept of acquiring data using a "data capture device," transferring data over a connection to a mobile device, and publishing the data to a website and (ii) recite only generic computer technology to carry out the abstract idea, technology which the specification describes as "pervasive [and] flexible," such as a "ubiquitous mobile phone," "fairly widespread" personal digital assistants, and "general purpose computers and computing devices." (*Id.* at 11.)

Cellspin filed an opposition to the Omnibus Defendants' motion on January 30, 2018, arguing that the claims of the Asserted Patents are not abstract under step one of the test articulated by the Supreme Court in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) because the claims described "specific improvements comprising, acquiring, transferring, and publishing new-data on the Internet," including, a purported improvement in battery consumption, an elimination of the need for "bulky" hardware, and a purported improvement in the order or timing of the Bluetooth or wireless pairing. (Dkt. No. 38 at 8, 10, 15.) On February 16, 2018, Cellspin filed a notice of supplemental authority arguing that the Federal Circuit's recent decisions in *Aatrix Software, Inv. v. Green Shades Software Inc.*, 882 F.3d 1121 (Fed. Cir. 2018) and *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir.

2018) applied to the instant case because "factual disputes exist" regarding whether "the claimed features are well-understood, routine, and conventional." (Dkt. No. 48 at 3.)

On March 2, 2018, Cellspin filed an amended complaint incorporating a new section titled "The Patents-in-Suit," which contained the arguments regarding improvements that plaintiff had asserted in its opposition. (Dkt. No. 58 at 3-9.) Four days later, on March 6, 2018, the Court held a hearing on the Omnibus Defendants' motion to dismiss. (Dkt. No. 68.) Following the hearing, and at the direction of the Court, the Omnibus Defendants filed a supplemental brief in support of their motion to dismiss addressing the additional information asserted by Cellspin in its amended complaint. (Dkt. No. 64.) Cellspin then filed a response to the Omnibus Defendants' supplemental brief without first seeking leave from the Court. (Dkt. No. 73.)

On April 3, 3018, the Court granted the Omnibus Defendants' motions to dismiss. (MTD Order.) In its *Alice* step-one analysis, the Court rejected Cellspin's argument that the Asserted Patents describe specific improvements in acquiring, transferring, and publishing data on the Internet, stating that "plaintiff fails to identify these alleged specific improvements or otherwise explain how these improvements result in enhanced 'computer capabilities' rather than a process that qualifies as an abstract idea for which computers are invoked merely as a tool." (*Id.* at 12 (internal quotation marks omitted).) In its *Alice* step-two analysis, the Court found that "the asserted claims merely provide a generic environment in which to carry out the

abstract ideas of acquiring, transferring, and publishing data," and thus "fail to supply an inventive concept sufficient to transform the underlying abstract idea into patentable subject matter." (*Id.* at 15.) Following its order on the Omnibus Defendants' motion to dismiss, the Court entered judgment for the Omnibus Defendants. (*See e.g.*, Dkt. No. 81).

II. DISCUSSION

A. Finding of an Exceptional Case

Section 285 of the Patent Act provides that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. An " 'exceptional' case is simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness v. Icon Health & Fitness*, 134 S. Ct. 1749, 1756 (2014). "Section 285 demands a simple discretionary inquiry; it imposes no specific evidentiary burden, much less a high one." *Id.* at 1758. Where a moving party can show exceptionality by a preponderance of the evidence, the court may award attorney's fees. *Id.*

"There is no precise rule or formula for making these determinations." *Id.* at 1756. A court may exercise discretion to determine whether a case is "exceptional," taking into account the totality of the circumstances, including such factors as evidence of bad faith litigation, objectively unreasonable positions, or improper conduct. *See id.* at 1756-57.

"[A] case presenting either subjective bad faith or exceptionally meritless claims may sufficiently set itself apart from mine-run cases to warrant a fee award." *Id.* at 1757. *See also Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1377-78 (Fed. Cir. 2017) (concluding "that the district court acted within the scope of its discretion in finding this case to be exceptional based on the weakness of [plaintiff's] § 101 arguments and the need to deter similarly weak arguments in the future"). However, when determining whether a case is exceptional under Section 285, the court must examine the "substantive strength" of the party's position, "not the *correctness* or eventual success of [that] position." *SFA Sys., LLC v. Newegg, Inc.*, 793 F.3d 1344, 1348 (Fed. Cir. 2015) (emphasis supplied). The question is whether every grant of a Section 101 motion to dismiss warrants an award of attorney's fees.

As in *Inventor Holdings*, the claims at issue here are "manifestly directed to an abstract idea" and "the only components disclosed in the specification for implementing the asserted method claims are unambiguously ... conventional." *See* 876 F.3d at 1378. As the Court noted in its order granting the Omnibus Defendants' motion to dismiss, the Asserted Patents are directed at the abstract idea of a method of acquiring, transferring, and publishing data and/or multimedia content. (MTD Order at 11 (citing *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).) Although Cellspin pointed to purported "specific improvements" in computer functionality, the Asserted Patents "fail[ ] to provide any technical details for the tangible components" and "instead

predominantly describe[ ] the system and methods in purely functional terms" using conventional computer components and existing technology. (*Id.* at 13 (citing *In re TLI Comm'ns LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016)).)

Additionally, and unlike the claims brought in *Inventor Holdings*, Cellspin filed its complaint in the face of significant post-*Alice* precedent. *See Inventor Holdings*, 876 F.3d at 1379. Here, Cellspin chose to file more than a dozen lawsuits asserting four ineligible patents and, in so filing, ignored substantial precedent dismissing analogous data manipulation patent claims. *See, e.g.*, *In re TLI*, 823 F.3d at 613 (finding that a device used for recording a digital image, transferring the digital image from the recording device to a storage device, and administering the digital image in the storage device claims no more than the abstract idea of classifying and storing digital images in an organized manner and is thus patent-ineligible).[5]

Cellspin hinges its opposition on a lack-of-bad-faith defense. (Opp. at 6.) However, a court may find a case exceptional and award fees in the event of

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[5] *See also Two-Way Media Ltd. v. Comcast Cable Comm'cns, LLC*, 874 F.3d 1329, 1337-39 (Fed. Cir. 2017); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093-95 (Fed. Cir. 2016); *Secured Mail Solutions LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 907-08 (Fed. Cir. 2017); *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017); *West View Research, LLC v. Audi AG*, 685 Fed.Appx. 923, 926 (Fed. Cir. 2017); *EasyWeb Innovations, LLC v. Twitter, Inc.*, 689 Fed.Appx. 969, 971 (Fed. Cir. 2017); *Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass'n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014).

"*either* subjective bad faith *or* exceptionally meritless claims...." *Octane Fitness*, 134 S. Ct. at 1757 (emphasis supplied). Moreover, Cellspin litigated its exceptionally meritless claims aggressively. Plaintiff did not agree to stay discovery pending resolution of Omnibus Defendants' Section 101 motion until after the hearing on that motion. (*See* Dkt. No. 67.) Cellspin filed an amended complaint only three days prior to the hearing on the Omnibus Defendants' then-pending Section 101 motion to dismiss. (Dkt. No. 58.) While this conduct may not amount to bad faith litigation, it does contribute to the totality of the circumstances weighing in favor of a fee award. *See Octane Fitness*, 134 S. Ct. at 1756-57.

Cellspin also argues that in filing the instant lawsuits, it reasonably relied on the presumption of validity following the issuances of the Asserted Patents, especially the two most recent patents. (Opp. at 7.) Although issued patents are presumed valid, they are not presumed eligible under Section 101. *See Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 721 (Fed. Cir. 2014) (Mayer, J., concurring) (noting that although the Supreme Court has reviewed several Section 101 cases recently, it has "never mentioned—much less applied—any presumption of eligibility. The reasonable inference, therefore, is that while a presumption of validity attaches in many context, no equivalent presumption of eligibility applies in the section 101 calculus") (citation omitted); *see also OpenTV, Inc. v. Apple, Inc.*, 2015 WL 1535328, at *3 (N.D. Cal. Apr. 6, 2015).

Further, plaintiff argues that it should not be forced to adjudicate the validity of its own patent and

can rely on the courts to serve in that role. (Opp. at 5-6.) Cellspin cannot hide behind its own refusal to analyze its patents critically. Lawyers routinely evaluate the viability of contracts and strength of claims and thereupon counsel clients to act responsibly. To do otherwise unnecessarily burdens to the courts and inflicts significant costs to the opposing parties. Given the patents at issue here, Cellspin could have litigated a test case but instead chose to file and pursue aggressively fourteen lawsuits simultaneously. It could have waited to issue overarching discovery requests but did not.[6] (*See* Dkt. No. 65 at 4 (noting that on January 25, 2018, Cellspin served initial sets of requests for production and interrogatories on defendants).)

Accordingly, the Court finds that the instant matter qualifies as an exceptional case within the meaning of Section 285.

B. Award of Fees

Having found that this is an exceptional case within the meaning of Section 285, the Court must now consider whether the requested fees are

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[6] During the hearing on June, 12, 2018, Cellspin suggested that in declining defendants' January 22, 2018 request to stay discovery until after the Court had ruled on Omnibus Defendants' then-pending motion to dismiss (Dkt. No. 34), the Court sanctioned Cellspin's discovery requests. It did not. The Court merely allowed the parties to proceed in accordance with the Local Rules given the representations that the defendants intended to lodge objections. (*See* Dkt. No. 44 at 5.) Parties should not assume that busy district courts have pre-decided issues before briefing and oral argument are complete. (*See id.* (filed February 2, 2018).)

reasonable. *See Forest Labs., Inc. v. Abbott Labs.*, 339 F.3d 1324, 1327-28 (Fed. Cir. 2003). Moving Defendants seek fees in the following amounts: Fitbit—$60,057.94 (Fitbit Motion at 15.); Moov—$47,430.00 (Moov Motion at 15.); Nike—$202,614.92 (Nike Motion at 13); Fossil—$293,423.00 (Fossil Motion at 16); Canon—$213,721.50 (Canon Motion at 16); GoPro—$63,804.20 (Dkt. No. 85 ¶ 5).[7] Three of the Moving Defendants also seek additional fees incurred through the conclusion of the instant motion. (*See e.g.*, Fitbit Motion at 15.)[8]

An attorney's fee award under Section 285 must bear some relation to the extent of the conduct responsible for the court's finding of exceptionality. *See Cartner v. Almo Grp., Inc.*, 561 Fed.Appx. 958, 963 (Fed. Cir. 2014). Cellspin argues in its Opposition that to the extent that the Court determines an award of attorney's fees is appropriate, that award should "extend no further tha[n] the fees incurred in connection with briefing and arguing Defendants' Omnibus § 101 Motion." (Opp. at 18.) However, as described in detail above,

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[7] Cellspin indicates in its Opposition that the Moving Defendants also seek costs. (Opp. at 19.) However, the Court notes that the Moving Defendant's motions and supporting declarations do not include a request for costs and mention costs only in the context of a section heading, i.e. "Total Costs and Fees to Date." (*See e.g.*, Fitbit Motion; *see also* (Dkt. No. 85-2 ("Fitbit Decl.") ¶ 16.))

[8] Specifically, Fitbit, Moov, and Canon seek additional fees as follows: Fitbit—$5,545.00 (Fitbit Decl. ¶ 17); Moov—$6,530.00 (Case No. 17-cv-3829, Dkt. No. 73-2 ¶ 15); Canon—not yet determined as time records were not yet prepared at the time of filing (Case No. 17-cv-5938, Dkt. No. 79-1 ¶ 4).

the exceptionally meritless nature of this case extends well beyond the Omnibus Defendants Section 101 motion to dismiss and applies to Cellspin's decision to bring these actions in the first place. Nonetheless, the Court finds that the amounts requested by defendants Nike, Fossil, and Canon excessive.

Based upon its review of the parties' records, and with the exception of Nike who played the lead role in drafting Omnibus Defendants' motion to dismiss and reply and also argued the motion before the Court (Hearing on June 12, 2018), an award of Section 285 attorney's fees shall not exceed $100,000.

Accordingly, the Court **GRANTS IN PART** Moving Defendants' motions for attorney's fees under Section 285 as follows:

1. for defendant Fitbit, the Court grants the requested amount of $65,602.94;

2. for defendant Moov, the Court grants the requested amount of $53,960;

3. for defendant Nike, the Court grants a fee award of $180,000;[9]

4. for defendant Fossil, the Court grants a fee award of $100,000;[10]

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[9] Although the Court finds the fee of $202,614.92 requested by Nike to be excessive, the Court also finds persuasive Nike's argument during the June 12, 2018 hearing on the instant motion ("Hearing") that their counsel took the lead role in briefing and arguing the Omnibus Defendants' motion to dismiss. Therefore, the Court caps Nike's fee request at $180,000.

5. for defendant Cannon, the Court grants a fee award of $100,000;[11]

6. for defendant GoPro, the Court grants the requested amount of $63,804.20.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** Moving Defendants' motions for attorney's fees in the amounts articulated above.

This Order Terminates Docket Number 85.[12]

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[10] The Court finds the fee of $293,423.00 requested by Fossil, which is the highest amount requested by any the Moving Defendants, to be excessive. During the Hearing, counsel for Fossil represented that the fee amount Fossil requests is a result of the fact that Fossil worked on and filed a motion to dismiss on its own prior to the omnibus filing. However, according the billing records submitted to the Court for *in camera* review, (*see* Dkt. No. 100), legal work done prior to the Court's December 22, 2017 order directing an omnibus submission for the Moving Defendants' motions to dismiss accounts for less than one-third of Fossil's requested fees. The Court finds this explanation insufficient and therefore caps Fossil's fee request at $100,000.

[11] The Court finds the fee of $213,721.50 requested by Canon to be excessive. During the Hearing, counsel for Canon pointed to their work on multiple versions of their motion to dismiss, as well as responding to discovery requests and conducting a preliminary invalidity analysis, including a review Japanese prior art, as the reason for the requested fee amount. However, this analysis was preemptive and therefore not necessary at this stage of the litigation. The Court finds this explanation insufficient and therefore caps Canon's fee request at $100,000.

[12] This Order also terminates: 4:17-CV-5929-YGR, Dkt. No. 73; 4:17-CV-5931-YGR, Dkt. No. 73; 4:17-CV-5933-YGR, Dkt.

IT IS SO ORDERED.

No. 92; 4:17-CV-5938-YGR, Dkt. No. 79; 4:17-CV-5939-YGR, Dkt. No. 76.

APPENDIX C

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA,
OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

MOOV, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

NIKE, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

FOSSIL GROUP, INC. ET AL.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

GARMIN INTERNATIONAL INC. ET AL.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

CANNON U.S.A., INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

GOPRO, INC.,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

PANASONIC CORPORATION OF NORTH AMERICA,

Defendant.

CELLSPIN SOFT, INC.,

Plaintiff,

v.

JK IMAGING, LTD.,

Defendant.

Case No. 17-cv-05928-YGR, Case No. 17-cv-05929-YGR, Case No. 17-cv-05931-YGR, Case No. 17-cv-05933-YGR, Case No. 17-cv-05934-YGR, Case No. 17-cv-05938-YGR, Case No. 17-cv-05939-YGR, Case No. 17-cv-05941-YGR, Case No. 17-cv-06881-YGR

Signed April 3, 2018

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ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS

Yvonne Gonzalez Rogers, United States District Court Judge

Plaintiff Cellspin Soft, Inc. ("Cellspin") brings fourteen patent infringement actions[1] alleging that each defendant infringed one or more of Cellspin's

[1] Nine actions are noted within the omnibus caption. Further, plaintiff's patent infringement action against Eastman Kodak Company was dismissed without prejudice on December 3, 2017. (*Cellspin Soft v. Eastman Kodak Company*, 17-cv-5940-YGR, Dkt. Nos. 14, 15.) Plaintiff's action against TomTom, Inc. and TomTom North America was dismissed without prejudice on January 25, 2018. (*Cellspin Soft v. TomTom, Inc., et al.*, 17-cv-5937-YGR, Dkt. Nos. 46, 47.) The following defendants remain: Fitbit, Inc. ("Fitbit"); Moov, Inc. ("Moov"); Adidas America, Inc. ("Adidas"); Nike, Inc. ("Nike"); Under Armor, Inc. ("Under Armor"); Fossil Group, Inc. and Misfit, Inc. (collectively "Fossil"); Garmin International, Inc. ("Garmin"); Cannon U.S.A., Inc. ("Cannon"); GoPro, Inc. ("GoPro"); Panasonic Corporation of America ("Panasonic"); Nikon Americas, Inc. and Nikon, Inc. (collectively "Nikon"); and JK imagining LTD ("JK"). Adidas, Under Armor, and Nikon have filed answers.

patents, namely U.S. Patent Nos. 8,738,794 (the " '794 Patent"); 8,892,752 (the " '752 Patent"); 9,749,847 (the " '847 Patent"); and 9,258,698 (the " '698 Patent") (collectively the "Asserted Patents").[2] Cellspin asserts claims 1–4, 7, 9, 16–18 and 20–21 from the '794 Patent; claims 1, 2, 4, 5, and 12–14 from the '752 Patent; claims 1-3 from the '847 Patent; and claims 1, 3–5, 7-8, 10– 13, 15–20 from the '698 Patent. (*See, e.g., Cellspin Soft Inc. v. Fitbit, Inc.*, 17-cv-05928-YGR, Dkt. No. 1, Complaint for Infringement of U.S. Patents ("Complaint").)[3]

Defendants Fitbit, Moov, Nike, Fossil, Cannon, GoPro, Panasonic, and JK (the "Omnibus Defendants") have filed an omnibus motion to dismiss plaintiff's claims pursuant to Fed. R. Civ. Pro. 12(b)(6) on the ground that the asserted patents are not patent eligible under 35 U.S.C. § 101. (Dkt. No. 31, Motion to Dismiss Cellspin Soft, Inc.'s Complaints ("Omnibus MTD").) Also before the Court is defendant Garmin's motion for judgment on the pleadings pursuant to Rule 12(c) on the same ground. (*See Cellspin Soft Inc. v. Garmin International, Inc.*, 17-cv-5934-YGR, Dkt. No. 27.)

Having carefully reviewed the pleadings, the papers and exhibits submitted on these motions, the parties' arguments at the hearing held on March 6, 2018, and for the reasons set forth more fully below,

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[2] The '794, '752 and '847 Patents are asserted against Fitbit, Moov, Adidas, Nike, Under Armor, and Fossil; the '698 Patent against Canon, GoPro, Panasonic and JK; and all four against Garmin and Nikon.

[3] Unless stated otherwise all citations to docket entries refer to *Cellspin Soft Inc. v. Fitbit, Inc.*, 17-cv-05928-YGR.

the Court **GRANTS** the Omnibus Defendants' motion to dismiss Cellspin's complaints and **GRANTS** Garmin's motion for judgment on the pleadings.

I. PATENTS AT ISSUE

Each of the four Asserted Patents is titled "Automatic Multimedia Upload for Publishing Data and Multimedia Content" and recites the same specification. (*See, e.g., Cellspin Soft, Inc. v. Garmin International, Inc.*, 17-cv-5934-YGR, Dkt. No. 1, Exs. A–D at 1:1-3.) Accordingly, the Court shall first discuss the '794 Patent and then highlight variations presented by the '752, '847, and '698 Patents, respectively.

A. The '794 Patent

The specification for the '794 Patent describes a "method of utilizing a digital data capture device [such as a digital or video camera or wearable fitness tracker] in conjunction with a BluetoothTM enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention." (*Id.* at 3:28-32.) According to the patent, the conventional method for publishing data and multimedia content on a website was time-consuming required and manual user intervention:

> Typically, the user would capture an image using a digital camera or a video camera, store the image on a memory device of the digital camera, and transfer the image to a computing device such as a personal computer (PC). In order to transfer the image to the PC, the user

> would transfer the image off-line to the PC, use a cable such as a universal serial bus (USB) or a memory stick and plug the cable into the PC. The user would then manually upload the image onto a website which takes time and may be inconvenient for the user.

('794 Patent at 1:38-47.) The '794 Patent purports to solve this problem by "utilizing a digital data capture device in conjunction with a BluetoothTM (BT) enabled mobile device" to "automatically publish[ ] data and multi-media content on one or more websites simultaneously." (*Id.* at 1:33-36, 1:65-2:3.) Independent Claim 1 recites:

> *A method for acquiring and transferring data* from a Bluetooth enabled data capture device to one or more web services via a Bluetooth enabled mobile device, the method comprising:
>
> *providing a software module* on the Bluetooth enabled data capture device;
>
> *providing a software module* on the Bluetooth enabled mobile device;
>
> *establishing a paired connection* between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device;
>
> *acquiring new data* in the Bluetooth enabled data capture device, wherein new data is data acquired after the paired connection is established;
>
> *detecting and signaling the new data* for transfer to the Bluetooth enabled mobile

device, wherein detecting and signaling the new data for transfer comprises:

determining the existence of new data for transfer, by the software module on the Bluetooth enabled data capture device; and

sending a data signal to the Bluetooth enabled mobile device, corresponding to existence of new data, by the software module on the Bluetooth enabled data capture device automatically, over the established paired Bluetooth connection, wherein the software module on the Bluetooth enabled mobile device listens for the data signal sent from the Bluetooth enabled data capture device, wherein if permitted by the software module on the Bluetooth enabled data capture device, the data signal sent to the Bluetooth enabled mobile device comprises a data signal and one or more portions of the new data;

transferring the new data from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device automatically over the paired Bluetooth connection by the software module on the Bluetooth enabled data capture device;

receiving, at the Bluetooth enabled mobile device, *the new data* from the Bluetooth enabled data capture device;

applying, using the software module on the Bluetooth enabled mobile device, *a user identifier* to the new data for each destination

> web service, wherein each user identifier uniquely identifies a particular user of the web service;
>
> *transferring the new data* received by the Bluetooth enabled mobile device along with a user identifier to the one or more web services, using the software module on the Bluetooth enabled mobile device;
>
> *receiving,* at the one or more web services, *the new data* and user identifier from the Bluetooth enabled mobile device, wherein the one or more web services receive the transferred new data corresponding to a user identifier; and
>
> *making available*, at the one or more web services, *the new data* received from the Bluetooth enabled mobile device for public or private consumption over the internet, wherein one or more portions of the new data correspond to a particular user identifier.

(*Id.* at 11:48-12:39 (emphasis supplied).) Six asserted claims (2 through 5, 7, and 9) depend on independent claim 1 and add further limitations such as when the "data signal and the new data are transferred from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device simultaneously[;]" "Bluetooth capability is provided internally in the Bluetooth enabled data capture device[;]" and the "Bluetooth enabled mobile device comprises one or more of audio data, video data, image data, text data, or digital data." (*Id.* at 12:39-50 (Claim 2), 13:48-50 (Claim 7), 13:55-58 (Claim 9).)

Additionally, the '794 Patent contains two other independent claims, namely claims 6 and 16.[4] Asserted independent claim 16 of the '794 Patent is directed to transferring content from an "Internet incapable data capture device to an Internet server via separate Internet capable mobile device *by polling the Bluetooth enabled data capture device for newly captured data* within an already paired and Bluetooth connection between the data capture device and the mobile device." (Dkt No. 38, Opposition at 20-21 (citing '794 Patent at 14:14-64) (emphasis supplied).) Claim 16 has five dependent claims and adds further limitations such as when the "Bluetooth capability is provided internally in the Bluetooth enabled data capture device[;]" "Bluetooth capability is provided to the Bluetooth enabled data capture device by an external Bluetooth module[;]" and "the new data transferred from the Bluetooth enabled mobile device to one or more web services is data associated with new data." ('794 Patent at 14:65-15:14.)

B. The '752 Patent

Independent Claim 1 of the '752 Patent is directed to *method* of transferring data from an internet incapable data capture device to an internet server via an intermediary internet capable mobile device *by pushing event notifications within an already paired and encrypted Bluetooth connection*. (*See* '752 patent at 11:48-59.) Unlike the '794 Patent, the '752 Patent recites the use of a "secured" Bluetooth

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[4] Independent claim 6 is not asserted in the above-captioned matters.

connection with a data encryption step.[5] (*Id.* at 11:51-59, 12:13-16).

C. The '847 Patent

Independent asserted Claim 1 of the '847 Patent is directed to a *method and system* of utilizing an *encrypted, paired Bluetooth connection* to transfer data between an internet incapable data capture device and a separate internet capable mobile device. Unlike the '794 Patent, the '847 Patent recites the transfer of data by *pushing event notifications* within an already paired and encrypted Bluetooth connection. (*See* '847 Patent at 12:13-68.) Claim 1 of the '847 Patent recites the use of generic computer hardware and software, namely a "Bluetooth enabled cellular phone," "first processor," and "mobile application." (*Id.* at 12:12-13:3).

D. The '698 Patent

Independent asserted claim 5 of the '698 Patent is directed to *system* for using an *encrypted paired short-range wireless connection* between an internet incapable *digital camera device* and a separate internet capable mobile device wherein the acquired data is transferred to the cellular phone in response to a *request initiated by the software application on the cellular phone* over an already paired and encrypted short-range wireless connection. (*See* '698 Patent at 11:56-12:25.) Independent asserted claim 1 of the '698 patent is directed to a *method* of network

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[5] At the hearing held on March 6, 2018, plaintiff's counsel conceded that use of an encrypted Bluetooth connection to transfer data was conventional, well known, and not inventive.

architecture used to implement the system recited in claim 5.

Differences between the '698 Patent and the '794 Patent include the '698 Patent's utilization of a "digital camera device" instead of a "data capture device[;]" "cellular device" instead of a "mobile device[;]" and "short-range wireless connection" instead of "Bluetooth" connection. (*Id.,* at 12:56-67.)

II. LEGAL FRAMEWORK

A. Patent Eligibility Under § 101

The scope of subject matter eligible for patent protection is defined in Section 101 of the Patent Act: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The Supreme Court has "long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. v. CLS Bank Int'l*, —— U.S. ——, 134 S.Ct. 2347, 2354, 189 L.Ed.2d 296 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 133 S.Ct. 2107, 2116, 186 L.Ed.2d 124 (2013)). In applying this exception, courts "must distinguish between patents that claim the building blocks of human ingenuity and those that integrate the building blocks into something more." *Alice*, 134 S.Ct. at 2354 (internal quotations and alterations omitted); *see also Mayo Collaborative Servs. v.*

Prometheus Labs., Inc., 566 U.S. 66, 132 S.Ct. 1289, 1301, 182 L.Ed.2d 321 (2012).

"The Supreme Court, setting up a two-stage framework, has held that a claim falls outside § 101 where (1) it is 'directed to' a patent-ineligible concept, *i.e.*, a law of nature, natural phenomenon, or abstract idea, and (2), if so, the particular elements of the claim, considered both individually and 'as an ordered combination, do not add enough to transform the nature of the claim into a patent-eligible application.' " *Electric Power Group, LLC v. Alstom S.A.,* 830 F.3d 1350, 1353 (Fed. Cir. 2016) (quoting *Alice*, 134 S.Ct. at 2355). "The Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Id.* (citing *Alice*, 134 S.Ct. at 2355.) "At the same time, the two stages are plainly related" in that they "involve overlapping scrutiny of the content of the claims ... [and] there can be close questions about when the inquiry should proceed from the first stage to the second." *Id.* (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016)). The burden of establishing invalidity rests on the movant. *See Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 131 S.Ct. 2238, 2245, 180 L.Ed.2d 131 (2011) (citing 35 U.S.C.A. § 282).

Thus, in considering whether claims are patent-ineligible, the court must first determine whether the claims are directed to a patent-ineligible concept, such as an abstract idea (the "Stage-One Inquiry"). *See Diamond v. Chakrabarty*, 447 U.S. 303, 309, 100 S.Ct. 2204, 65 L.Ed.2d 144 (1980). "A principle, in the abstract, is a fundamental truth ... [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S.

63, 67, 93 S.Ct. 253, 34 L.Ed.2d 273 (1972) (internal citations and quotations omitted). "Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work." *Id.* To determine whether patent claims are directed to an abstract idea, the Court must "distill[ ] the gist of the claim[s]."[6] *Open Text S.A. v. Box, Inc.*, 78 F.Supp.3d 1043, 1046 (N.D. Cal. 2015)(citing *Bilski v. Kappos*, 561 U.S. 593, 611-12, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010)). A "claim directed to an abstract idea does not move into section 101 eligibility territory by 'merely requir[ing] generic computer implementation.' " *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014) (alteration in original) (citing *Alice*, 134 S.Ct. at 2355).

If claims are directed to an abstract idea, the court must then consider whether the claims contain a sufficient "inventive concept" such that "the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself" (the "Stage-Two Inquiry"). *Alice*, 134 S.Ct. at 2355 (quoting *Mayo*, 132 S.Ct. at 1294); *see also DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014) ("Distinguishing between claims that recite a patent-eligible invention and claims that add too little to a patent-ineligible

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[6] On the other hand, courts must be careful not to oversimplify claims because "[a]t some level, all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Alice*, 134 S.Ct. at 2354; *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299 (Fed. Cir. 2016).

abstract concept can be difficult, as the line separating the two is not always clear."). "For the role of a computer in a computer-implemented invention to be deemed meaningful in the context of this analysis, it must involve more than performance of well-understood, routine, [and] conventional activities previously known to the industry." *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347-48 (Fed. Cir. 2014) (alteration in original) (internal quotations and citations omitted). Further, claims must be "directed to a 'specific means or method' for improving technology" and not "simply directed to an abstract end-result." *RecogniCorp, LLC v. Nintendo Co., Ltd.,* 855 F.3d 1322, 1326 (Fed. Cir. 2017). For example, "when a claim directed to an abstract idea 'contains no restriction on how the result is accomplished ... [and] [t]he mechanism ... is not described, although this is stated to be the essential invention' " then the claim is not patent-eligible. *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1316 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015)).

B. Motion to Dismiss

Pursuant to Rule 12(b)(6), a complaint may be dismissed for failure to state a claim upon which relief may be granted. Dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988)). The complaint must plead "enough

facts to state a claim [for] relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). If the facts alleged do not support a reasonable inference of liability, stronger than a mere possibility, the claim must be dismissed. *Id.* at 678–79, 129 S.Ct. 1937. Mere "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss." *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

C. Judgment on the Pleadings

The standard applied to a Rule 12(c) motion for judgment on the pleadings is "substantially identical" to the standard applied to a motion to dismiss under Rule 12(b)(6). *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012). "[U]nder both rules, 'a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.' " *Id.* (quoting *Brooks v. Dunlop Mfg. Inc.*, 2011 WL 6140912, at *3 (N.D. Cal. 2011)). "If the complaint fails to articulate a legally sufficient claim, the complaint should be dismissed or judgment granted on the pleadings." *Brooks*, 2011 WL 6140912 at *3. Judgment on the pleadings is appropriate "when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (citing *Heliotrope*

Gen., Inc. v. Ford Motor Co., 189 F.3d 971, 979 (9th Cir. 1999)).

If a motion for judgment on the pleadings is granted, a "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a). However, "[a]s with a Rule 12(b)(6) motion to dismiss, a court granting judgment on the pleadings pursuant to Rule 12(c) should grant leave to amend unless it is clear that amendment would be futile." *Kelly Moore Paint Co., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 2014 WL 2119996, at *3 (N.D. Cal. 2014).

III. DISCUSSION

A. Stage-One Inquiry: Claims Directed to an Abstract Idea?

1. Legal Standard

At the Stage-One Inquiry, the Court must determine whether the asserted claims are directed to an abstract idea. Courts deem claims directed to "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Electric Power*, 830 F.3d at 1353 (citing *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016)); *see also Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). The use of "existing computers as tools in aid of processes focused on 'abstract ideas' " is not sufficient to remove a claim from the abstract-idea category. *Id.*

(citing *Enfish*, 822 F.3d at 1335–36; *Alice*, 134 S.Ct. at 2358–59). For example, the Supreme Court in *Alice* found that claims directed to "facilitate the exchange of financial [information] between two parties by using a computer system as a third-party intermediary" were abstract. *Alice,* 134 S.Ct. at 2352. The *Alice* Court further held that "the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [an abstract idea] to a particular technological environment." *Id.* at 2358 (quoting *Bilski*, 561 U.S. at 610–11, 130 S.Ct. 3218); *see Parker v. Flook,* 437 U.S. 584, 98 S.Ct. 2522, 57 L.Ed.2d 451 (1978).[7] Similarly, in *Electric Power*, the Federal Circuit "treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas." *Electric Power*, 830 F.3d at 1353. The *Electric Power* Court further "recognized that merely presenting the results of abstract processes of collecting and analyzing information, without more ... is abstract as an ancillary part of such collection and analysis." *Id.* at 1354.

By contrast, claims which "focus[ ] not on asserted advances in uses to which existing computer capabilities could be put, but on a specific improvement ... in how computers could carry out

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[7] Plaintiffs' attempt to distinguish *Electric Power* and *TLI* on the ground that the patents at issue in those cases did not involve the use of Bluetooth technology or a paired connection does not persuade. The mere fact that the technology at issue here is different than the technology at issue in *Electric Power* and *TLI* does not necessarily render those prior cases inapposite.

one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing *Enfish*, 822 F.3d at 1335–36 (the question is "whether the focus of the claims is on the specific asserted improvement in computer capabilities" or on computers which "are invoked merely as a tool")); *see also Alice*, 134 S.Ct. at 2358–59. However, the "mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology." *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (citing *TLI*, 823 F.3d at 612; *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015)). Similarly, making a "process more efficient" in itself does not "render an abstract idea less abstract." *Secured Mail Solutions LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 910 (Fed. Cir. 2017).

Ultimately, to be patentable claims must "sufficiently describe how to achieve [an improvement in computer technology] in a non-abstract way." *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017) (finding limitations requiring "sending" and "directing" of information "d[id] not sufficiently describe how to achieve these results in a non-abstract way"); *see also Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258–59 (Fed. Cir. 2016) (holding that claims were directed to an abstract idea where they claimed "the function of wirelessly communicating regional broadcast content to an out-of-region recipient, not a particular way of performing that function"). For example, claims which recite "generalized steps to be performed on a

computer using conventional computer activity" are deemed abstract. *See In re TLI*, 823 F.3d at 612 (citing *Enfish*, 822 F.3d at 1338).

2. Analysis of the '794 Patent

With regard to the '794 Patent, the Court finds that the asserted claims are directed to an abstract idea, namely a method of acquiring, transferring, and publishing data and multimedia content on one or more websites. *See Electric Power*, 830 F.3d at 1353; *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (claim "directed to ... collecting, displaying, and manipulating data" deemed abstract); *see also EasyWeb Innovations, LLC v. Twitter, Inc.,* 689 F. App'x 969, 971 (Fed. Cir. 2017) ("As we have explained in a number of cases, claims involving data collection, analysis, and publication are directed to an abstract idea."); *W. View Research, LLC v. Audi AG*, 685 F. App'x 923, 926 (Fed. Cir. 2017) ("Collecting information, analyzing it, and displaying certain results of the collection and analysis are a familiar class of claims 'directed to' a patent-ineligible concept."). The Federal Circuit "treat[s] collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas." *Electric Power*, 830 F.3d at 1353. "[M]erely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis." *Id.* at 1354. Here, the asserted claims "focus [ ] on the combination of ... abstract-idea processes[,]" namely "collecting

information[,]" transferring information between devices via a Bluetooth or other wireless connection, and "presenting the results" of this data collection and transfer process on one or more websites. *Id.* at 1353–54.

TLI is instructive. There, plaintiff asserted claims which were directed to a method of utilizing a smartphone to record and store digital images and then transfer those images to an online server for further processing. *See TLI,* 823 F.3d at 609-10. The Federal Circuit highlighted that the problem facing the inventor was "not how to combine a camera with a cellular telephone, how to transmit images via a cellular network .... Nor was the problem related to the structure of the server that stores the ... digital images." *Id.* at 612. In finding the claims directed to an abstract idea, the Court held that the claims were "not directed to a specific improvement to computer functionality" but instead were "directed to the use of conventional or generic technology in a nascent but well-known environment." *Id.* As in *TLI*, the '794 Patent does do not recite a specific improvement with regard to "how to combine a camera with a cellular telephone [or] how to transmit images via a cellular network." *See id.* The '794 Patent is "not directed to a specific improvement to computer functionality" but merely utilizes generic computer hardware and software components, namely a "ubiquitous mobile phone," paired Bluetooth connection, event notifications, "fairly widespread" personal digital assistant, and "general purpose computers and computing devices" to automate the process of transmitting multimedia content from a

data capture device to one or more websites. (*See* '794 Patent at 9:37–48, 10:10–13.)

Plaintiff argues that defendants attempt to oversimplify the asserted claims as covering only the abstract idea of acquiring, transferring and publishing data. According to Cellspin, the '794 Patent describes "specific improvements" in acquiring, transferring, and publishing data on the internet. However, plaintiff fails to identify these alleged "specific improvements" or otherwise explain how these improvements result in enhanced "computer capabilities" rather than "a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish,* 822 F.3d at 1339.

Cellspin attempts to analogize to two Federal Circuit cases in arguing that the '794 Patent is direct to a specific improvement in computer capabilities, namely *Enfish* and *McRO*. The Court addresses each case.

In *Enfish*, the asserted claims were directed to a self-referential table which had a specified and nonconventional structure. *Id.* at 1338. The table "store[d] information related to each column in rows of that same table, such that new columns can be added by creating new rows in the table," as opposed to conventional tables, which "require[d] a programmer to predefine a structure and subsequent [data] entry [to] conform to that structure." *Id.* at 1337–38. As applied here, *Enfish* is distinguishable on two grounds. First, Cellspin fails to show that the data acquisition, transfer, and publication process described in the '794 Patent represents something

more than a simple automation of the conventional (manual) process. As noted above, "relying on a computer to perform routine tasks more quickly or accurately is insufficient to render a patent claim eligible." *OIP Techs.*, 788 F.3d at 1363 (Fed. Cir. 2015); *see also Phoenix Licensing, L.L.C. v. Consumer Cellular, Inc.*, No. 6-CV-0152, 2017 WL 1065938, at *22–23 (E.D. Tex. 2017), *report and recommendation adopted,* 2017 WL 1177988 (E.D. Tex. 2017) ("Problems such as 'substantial amount of human involvement,' " are "not the type of *true* technological problems solved by inventions held to be patent-eligible by the Federal Circuit.") (Emphasis in original.) By contrast, the claims in *Enfish* were directed to the generation of tables with self-referential functionality which tables generated pursuant to the conventional method lacked.

Second, unlike *Enfish*, the '794 Patent does not recite a "specific ... structure" of computer components used to carry out the purported improvement in computer functionality. *Enfish,* 822 F.3d at 1337. To fall outside the abstract idea exception based on improvements to a technological process, a claim must "sufficiently describe how to achieve these results in a non-abstract way." *Two-Way Media*, 874 F.3d at 1337 (finding limitations requiring "sending" and "directing" of information "d[id] not sufficiently describe how to achieve these results in a non-abstract way"). Here, the patent states that "the method and system disclosed herein may be implemented in technologies that are pervasive [and] flexible" through generic hardware and software. ('794 Patent at 9:37-48, 10:10-13.) The asserted patent thus "fails to provide any technical

details for the tangible components" and "instead predominantly describe[ ] the system and methods in purely functional terms" using conventional computer components and existing technology. *See TLI*, 823 F.3d at 612. The mere utilization of Bluetooth or similar wireless technology is not sufficient, as the patent acknowledges that Bluetooth was a well-known means to "connect[ ] and exchang[e] information between devices, for example, mobile phones, laptops, personal computers (PCs), printers, digital cameras, etc." ('794 Patent at 3:49–53); *see also DIRECTV*, 838 F.3d at 1258 (finding that claims directed to establishing a communication between two points was a "broad and familiar concept concerning information distribution").

With regard to *McRO*, the patents at issue concerned a method for automating the animation of lip movement and facial expressions by replacing an animator's subjective evaluation with automated rules. *McRO, Inc. v. Bandai Namco Games Am. Inc.,* 837 F.3d 1299, 1305 (Fed. Cir. 2016). The *McRO* Court highlighted that the claims at issue recited "many exemplary rule sets that go beyond" merely identifying "differences in mouth positions for similar phonemes based on context" which characterized the subjective manual process. *Id.* at 1307. Further, the Court noted the lack of "evidence that the process previously used by animators is the same as the process required by the claims [at issue]." *Id.* at 1314. Specifically, the conventional process was driven by subjective human determinations "rather than specific, limited mathematical rules." *Id.* The Court thus found that the "computer is employed to perform a distinct

process to automate a task previously performed by humans." *Id.* Here, by contrast, the asserted claims perform the same process of acquiring, transferring, and publishing data that humans previously performed by using existing wireless protocols and other well-known technology, albeit automatically using known computer components. (*See* '794 Patent at 1:38-47; 9:37-60.)

Accordingly, the Court finds that the claims asserted in the '794 Patent are directed to an abstract idea.

B. Stage-Two Inquiry: Sufficient Inventive Concept?

1. Legal Standard

Having determined that the claims at issue in the '794 Patent are directed to an abstract idea, the Stage-Two inquiry requires the Court to "determine whether the claim elements, when viewed individually and as an ordered combination, contain an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application." *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1373–74 (Fed. Cir. 2017); *see also BASCOM Global Internet Servs., Inc. v. AT & T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (stating that the "inventive concept may arise in one or more of the individual claim limitations or in the ordered combination of the limitations"). "A claim contains an inventive concept if it 'include[s] additional features' that are more than 'well-understood, routine, conventional activities.' " *Id.* (quoting *Alice*, 134 S.Ct. at 2357,

2359). The Federal Circuit has held that "in addressing the second step of *Alice*, [ ] claiming the improved speed or efficiency inherent with applying the abstract idea on a computer [does not] provide a sufficient inventive concept." *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015). "To save a patent at step two, an inventive concept must be evident in the claims." *Two-Way Media*, 874 F.3d at 1338 (citing *RecogniCorp,* 855 F.3d at 1327).

2. Analysis of the '794 Patent

Turning to the '794 Patent, the Court finds that the asserted claims "merely provide a generic environment in which to carry out" the abstract ideas of acquiring, transferring, and publishing data. *TLI*, 823 F.3d at 611. The claim elements thus fail to supply an inventive concept sufficient to transform the underlying abstract idea into patentable subject matter. As the Federal Circuit explained in *DIRECTV*, claims which "recite the use of generic features of" hardware and software components "as well as routine functions, such as transmitting and receiving signals to implement the underlying idea" do not contain a sufficient inventive idea. *DIRECTV*, 838 F.3d at 1262.

Here, the "recited physical components[,]"namely a data capture device, paired Bluetooth connection, and a Bluetooth enabled mobile device, "behave exactly as expected according to their ordinary use." *TLI*, 823 F.3d at 615. A patent "does not become nonabstract" merely because the claims are set in a "technological environment" consisting of conventional components and utilize standard

technology. *See Symantec*, 838 F.3d at 1319; *see also Alice*, 134 S.Ct. at 2358. The Federal Circuit has "repeatedly held that such invocations of computers and networks that are not even arguable inventive are insufficient to pass the test of an inventive concept."[8] *Electric Power*, 830 F.3d at 1355-56.

Cellspin counters that the Asserted Patents present several "benefits from the inventiveness of the claimed technology" including:

> (1) the efficiencies of the claimed inventions, including over inferior alternative means for achieving the same or similar ends of uploading content; (2) leveraging Internet capabilities of mobile devices (through use of custom hardware and software) to greatly enhance the functionality of Internet incapable data capture devices; (3) uploading captured data from data capture devices to the Internet while avoiding the cost, memory usage, complexity, hardware (e.g., cellular antenna), physical size, and battery consumption of an Internet accessible mobile device, including without the data capture device being capable of wireless Internet connections or being capable of communicating in Internet accessible protocols such as HTTP;

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[8] Cellspin's argument that the Asserted Patents are novel and non-obvious is not relevant to the Section 101 analysis. *See Diamond v. Diehr*, 450 U.S. 175, 188-89, 101 S.Ct. 1048, 67 L.Ed.2d 155 (1981) ("The 'novelty' of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.").

> (4) minimizing power usage by the data capture device, including to minimize the need to change batteries or recharge the device; (5) using event notification, polling and request/return communication protocols over an already paired connection to have the benefits from an efficient or automated upload system while conserving resources such as batteries by avoiding the data capture device broadcasting captured data when an intermediate mobile device is unavailable (*e.g.*, off or out of Bluetooth range) or incapable of receiving captured data for uploading to the Internet; and (6) applying HTTP in transit and on intermediary device.

(Opposition at 24.) Plaintiff does not persuade. As an initial matter, the Court notes that only the first purported benefit, namely efficiencies for achieving "the same or similar ends of uploading content" as the conventional method, appears in the specification of the '794 Patent. With regard to this purported benefit, a method which utilizes known and conventional computer components to achieve an improvement in the efficiency or speed of a previously-manual process does not constitute a sufficient inventive concept. *See OIP Techs.*, 788 F.3d at 1363; *see also Capital One Bank*, 792 F.3d at 1367; *MySpace, Inc. v. GraphOn Corp.*, 672 F.3d 1250, 1267 (Fed. Cir. 2012) ("While running a particular process on a computer undeniably improves efficiency and accuracy, cloaking an otherwise abstract idea in the guise of a computer-implemented claim is insufficient to bring it within section 101.").

The other proffered benefits which relate to improved battery consumption and power savings; order or timing of the Bluetooth wireless pairing; and elimination of the need for bulky hardware and costly cell phone services;[9] do not appear in the patent's specification. In *TLI*, the Federal Circuit rejected plaintiff's proffer of technological improvements which did not appear in the asserted patent's specification, holding that the court "need [ ] only look to the specification, which describes the [components] as either performing basic computer functions such as sending and receiving data, or performing functions 'known' in the art." *TLI*, 823 F.3d at 612; *see also Cellular Commc'ns Equip. LLC v. AT & T Inc.*, 2017 WL 2984074, at *4 n.1 (E.D. Tex. 2017) (rejecting argument that a feature was inventive where the specification did not "reflect such an insight"). Cellspin argues that these benefits "flow from" the '794 Patent but fails to identify any specific section of the patent from which these benefits flow or articulate how these purported benefits "flow from" the patent.[10]

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[9] Plaintiff relies on *DDR* in arguing that the '794 Patent is patent eligible because "claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, 773 F.3d at 1257. However, plaintiff ignores the language in *DDR* which specifically "caution[ed]" that "not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* 1258.

[10] In any event, the specification acknowledges that Bluetooth was used in the prior art to "connect[ ] and exchang[e] information between devices, for example, mobile phones, laptops, personal computers (PCs), printers, digital cameras, etc." ('794 Patent at 3:49-52.) With regard to the timing of the

Plaintiff's amended complaints do not change this conclusion. (Dkt. No. 58, Amended Complaint.) As an initial matter, the Court notes that most of plaintiff's allegations regarding technological improvements fail to cite to support in the '794 Patent. (*Id.* at ¶¶ 13, 15, 17, 18, 19.) Further, where plaintiff does cite to the patent these citations do not appear to support plaintiff's arguments. For example, the amended complaint alleges that the Asserted Patents "improved ... prior computer and networking technology" by "[m]inimizing power usage by the data capture device, including [minimizing] the need to charge batteries or recharge the device." (*Id.* at ¶ 19(d) (citing '794 Patent at 4:66-5:1).) However, the cited section of the '794 Patent does not reference power usage or battery savings, much less support plaintiff's allegation of improvements to the same:

> By implementation of a handshake protocol, the BT communication device [ ] automatically transfers captured data, the multimedia content, and the associated files to the client application [ ] on the mobile device [ ]. For some external digital data capture devices, the client application [ ] may not be able to detect the creation of a new file. In such cases, the digital data capture device [ ] signals the client application [ ] in the event a new file is created. **A file event listener in the client application [ ] listens for the signal from the digital data capture device [ ]. The**

Bluetooth wireless paring, "there is nothing 'inventive' about shifting the timing of the data collection process." *In re: Bill of Lading Transmission & Processing Sys. Patent Litig.,* 2016 WL 4505767, at *3 (S.D. Ohio 2016).

> **user may then initiate the transfer by a press of a button or a key on the digital data capture device** [ ].

(*Id.* at 4:55-5:1 (portions cited by plaintiff in bold).) Again, the alleged technological improvements appear nowhere in the claims or specification and plaintiff fails to explain how such benefits otherwise "flow from" the patent. Similarly, plaintiff's amended complaint alleges that the asserted claims "conserve[ ] resources such as batteries." (Amended Complaint ¶ 19(e) (citing '794 Patent at 4:55-5:3 and 5:12-17).) However, the cited sections do not discuss resource conversation or batteries.[11] (*See* '794 patent at 4:55-5:3 and 5:12-17.) In the same vein, the specification does not support Cellspin's allegations regarding improved cost benefits.[12]

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[11] The term "battery" does appear in any of the Asserted Patents.

[12] Plaintiff also relies on *Berkheimer* in arguing that this Court should deny defendants' motions because "the question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field .... must be proven by clear and convincing evidence." *Berkheimer v. HP, Inc.*, 881 F.3d 1360 (Fed. Cir. Feb. 2018). Here the Court need not reach the issue in the manner suggested given the analysis performed under the two-stage test. *Berkheimer* addressed a defendant's burden at the summary judgment stage, not in the context of a motion to dismiss. In any event, *Berkheimer* is distinguishable on that ground that the patent at issue there "describe[d] an inventive feature that store[d] parsed data in a purportedly unconventional manner" whereas here Cellspin fails to identify any portion of the specification which describes the purportedly inventive power usage, battery savings, resource conservation, or cost benefits. *Id.*

C. The '752, '847, and '698 Patents

With regard to the '752, '847, and '698 Patents, the Court finds that each of the Asserted Patents is directed to substantially similar abstract idea, namely a method for capturing, transferring and publishing data and multimedia content. Specifically, each patent recites the use of a Bluetooth enabled data capture device or digital camera device to transfer data to a Bluetooth enabled mobile device which in turn publishes the data on one or more websites automatically or with minimal user intervention. (*See* '752 Patent at 11:48-12:38; '847 Patent at 12:13-13:3; '698 Patent at 11:54-12:28.) Where all of the asserted patent claims are "substantially similar and linked to the same abstract idea[,]" the Court need not "expressly address each asserted claim" in determining whether the claims are patent eligible under Section 101. *TS Patents LLC v. Yahoo! Inc.,* 279 F.Supp.3d 968, 988 (N.D. Cal. 2017); *see also Content Extraction*, 776 F.3d at 1348 (finding that the district court "correctly determined that addressing each claim of the asserted patents was unnecessary" because "all the

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With respect to the Amended Complaint, the Court notes that the plaintiff did not file the same until two business days before the hearing on these motions. Accordingly, at oral argument having heard from plaintiff, the Court allowed defendants to respond in writing on the impact of plaintiff's filing. Thereafter, without requesting permission, plaintiff filed a response in violation of the procedures set forth in the Local Rules. The Court issued an Order to Show Cause ("OSC") regarding the same. In light of the Court's ruling herein, the Court **GRANTS** permission for the filing *nunc pro tunc,* **DISCHARGES** the OSC and cautions plaintiff to follow the rules of the Court or risk sanctions for failure to do so. (Dkt. Nos. 74, 75.)

claims are 'substantially similar and linked to the same abstract idea' "). Here, all Asserted Patents are "substantially similar and linked to the same abstract idea" of acquiring, transferring, and publishing data on the internet. *See id.*

Further, plaintiff fails to offer any argument or authority as to why the differences between the '794 Patent and the '752 (pushing event notifications within an already paired and encrypted Bluetooth connection); '847 (utilizing an encrypted, paired Bluetooth connection; pushing event notifications within an already paired and encrypted Bluetooth connection); and '698 Patents ("utilizing an encrypted paired short-range wireless connection between a mobile device and incapable digital camera device) represent an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application." *Smart Sys. Innovations*, 873 F.3d at 1373–74; *see also BASCOM*, 827 F.3d at 1350.

The Court thus finds the '794 Patent is representative of all Asserted Patents. Accordingly, the Court finds that the '752, '847, and '698 Patents are not patent eligible.

IV. CONCLUSION

Having carefully reviewed the pleadings, the papers and exhibits submitted on this motion, the parties' arguments at the hearing held on March 6, 2018, and for the reasons set forth above, the Court **GRANTS** the Omnibus Defendants' motion to dismiss and **GRANTS** Garmin's motion for judgment on the pleadings.

Defendants shall file a proposed order of judgment approved as to form within five (5) days for each of the captioned matters.

IT IS SO ORDERED.