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

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-Appellants,

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

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OPENING BRIEF OF PLAINTIFF-APPELLANT

June 19, 2018

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CERTIFICATE OF INTEREST

Pursuant to Federal Rule of Appellate Procedure 26.1 and Federal Circuit Rule 47.4, the undersigned counsel for Plaintiff-Appellant hereby certifies that:

1. The full names of every party or amicus represented by me is:

Cellspin Soft, Inc.

2. The names of the real parties in interest (if the party named in the caption is not the real party in interest) represented by me is:

None.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.

4. The names of all law firms and the partners or associates that appeared for any of the parties represented by me in the District Court or are expected to appear in this court are:

COLLINS, EDMONDS & SCHLATHER, PLLC
John J. Edmonds
Shea N. Palavan
Brandon G. Moore

5. The title and number of any cases know to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:

Cellspin Soft, Inc. v. adidas America, Inc., C.A. 4:17-cv-05930-YGR
Cellspin Soft, Inc. v. Under Armour, Inc., C.A. 4:17-cv-05932-YGR

Cellspin Soft, Inc. v. Nikon Americas, Inc. and Nikon, Inc., C.A. 4:17-cv-05936-YGR

Dated: June 19, 2018

/s/ John J. Edmonds
John J. Edmonds

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STATEMENT OF RELATED CASES

Pursuant to Federal Circuit Rule 47.5(a), Plaintiff-Appellant, Cellspin Soft, Inc. ("Cellspin"), hereby states that no other appeal from the civil actions in the United States District Court for the Northern District of California ("District Court") that are the subject of the present appeal was previously before this Court, or any other court.

Pursuant to Federal Circuit Rule 47.5(b), Cellspin further states that there are other cases known to the undersigned counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal. The following cases are presently pending in the District Court below; are related to those cases in the pending appeal; and will be directly affected by this Court's decision in the pending appeals:

Cellspin Soft, Inc. v. adidas America, Inc., C.A. 4:17-cv-05930-YGR

Cellspin Soft, Inc. v. Under Armour, Inc., C.A. 4:17-cv-05932-YGR

Cellspin Soft, Inc. v. Nikon Americas, Inc. and Nikon, Inc., C.A. 4:17-cv-05936-YGR.

I. STATEMENT OF JURISDICTION

Cellspin brings these consolidated Appeals from theDistrict Court, including in accordance with 28 U.S.C. § 1295(a)(1). *See* Fed.R.App.P. 4(a)(4)(B)(i). Each of the consolidated, pending actions arose under the United States Patent Laws and jurisdiction, including in accordance with, and pursuant to, 28 U.S.C. §§1331,1338(a) and 1400(b).

Cellspin takes each of these appeals from the final judgments[1] entered in the respective cases below, based upon the District Court's erroneous grant of the Motions to Dismiss Cellspin's Amended Complaints.[2]

These orders are final because final judgment was entered on April 10, 2018. *See* fn. 1. Cellspin timely filed Notices of Appeal[3] within thirty (30) days of entry of final judgment in accordance with 28 U.S.C. §2107, Fed.R.App.P. 4(a), and Fed.Cir.R. 4.

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[1] Judgment in for Defendant-Appellee Fitbit (Appx0001-0003); Judgment for Defendant-Appellee Moov (Appx0004-0006); Judgment Defendant-Appellee, Nike (Appx0007-0008); Judgment for Defendants-Appellees, Fossil and Misfit ("Fossil") (Appx0009-0010); Judgment for Defendants-Appellees, Garmin (Appx0011-0015); Judgment for Defendant-Appellee, Canon (Appx0016-0018); Judgment for Defendant-Appellee, GoPro (Appx0019-0019); Judgment for Defendant-Appellee, Panasonic (Appx0020-0021); Judgment for Defendant-Appellee, JK Imaging ("JKI") (Appx0022-0023).

[2] *See, e.g.,* Order filed in lead *Fitbit* case, in Case No. 18-1817 (Appx0024-0042), which is the same Order filed in the other cases.

[3] Notices of Appeal – Appx2528-2529; Appx3063-3064; Appx3129-3130; Appx3667-3668; Appx3901-3902; Appx3949-3950; Appx4006-4007; Appx4078-079; and Appx4127-4128.

II. STATEMENT OF THE ISSUES

1. Whether the District Court erred granting Defendants-Appellees' motions in finding the Asserted Claims invalid pursuant to § 101.

2. Whether the District Court erred in failing to construe facts, including those well-pled in the Amended Complaints, in the light most favorable to Cellspin.

3. Whether the District erred in holding the Asserted Claims to be directed to abstract ideas.

4. Whether the District Court erred in finding insufficient meaningful limitations or inventive concepts for transforming any alleged claimed abstract ideas into patent-eligible subject matter.

5. Whether the District Court erred in failing to meaningfully or adequately analyze the patentability of any claims other than claim 1 of the '794 patent and/or in failing to heed meaningful limitations in other Asserted Claims.

III. STATEMENT OF THE CASE AND FACTS

A. Preliminary Statement

Cellspin is a former leader in mobile blogging software at the inception of the smartphone era. Across these nine, appealed actions, Cellspin asserted claims 1-4, 7, 9, 16-18, and 20-21 from U.S. Patent 8,738,794 ("'794 patent"); claims 1, 2,4,5, and 12-14 from U.S. Patent 8,892,752 ("'752 patent"); claims 1-3 from U.S. Patent 9,749,847 ("'847 patent"); and claims 1,3-5,7-8,10-13, and 15-20 from U.S. Patent 9,258,698 ("'698 patent") (collectively the "Asserted Claims" or "Claims"). *See* Appx0280-0293; Appx0294-0307; Appx0324-0337; and Appx0308-0323. Cellspin asserted the '794, '752, and '847 patents in the *Fitbit*, *Moov*, *Nike*, and *Fossil* cases; the '698 patent in the *Canon*, *GoPro*, *Panasonic*, and *JKI* cases; and all four Patents-in-Suit in the *Garmin* case.

Defendants-Appellees, Fitbit, Moov, Nike, Fossil, Cannon, GoPro, Panasonic, and JKI filed an Omnibus Motion pursuant to Rule 12(b)(6) to dismiss Cellspin's Complaint, contending the claims of the Patents-in-Suit were patent-ineligible. Appx0387-0421 ("Omnibus 101 Motion").[4] Garmin contemporaneously filed its follow-on 12(c) motion the same day. Appx3669-3699 ("Garmin 101 Motion").[5] On April 13, 2018, the District Court granted each of Defendants-

[4] For simplicity, unless otherwise noted, references herein to docket entries will be to the lead, related *Fitbit* case for identical filings made in each related case.

[5] For ease of reference, the Omnibus 101 Motion and Garmin's 101 Motion are collectively referenced herein as the "Motions to Dismiss."

Appellees' Motions to Dismiss under §101. *See* fn. 2. As a result of these erroneous rulings, the District Court entered final judgments in favor of Defendants-Appellees. *See* fn. 1.

B. The Sate of the Art at the Time of the Invention and Some Problems Solved by the Asserted Claims

The Patents-in-Suit are continuations of U.S. Application 12/333,303, filed December 11, 2008, and each further claims priority to U.S. Provisional Application 61/017,202, filed December 28, 2007. At the time of the claimed inventions, publishing captured data from an *Internet-incapable* data capture device to a web-service was cumbersome and inefficient. Appx2288, ¶9. At the time of the priority date of the Patents-in-Suit (December 2007), the same year the world's first prominent mobile "smartphone" was released, and six months before the world's first prominent mobile "app store" (*see* https://en.wikipedia.org/wiki/History_of_iPhone and https://en.wikipedia.org/wiki/App_Store_(iOS)), it was a cumbersome and time consuming process to use an *Internet-incapable* data capture device to acquire data, send that data to an Internet-connected mobile device, and use the mobile device to upload that wirelessly-received data to a website, especially for data such as pictures or video. *Id.*, ¶10.

At the time of the invention, data capture devices *without direct Internet*

connections posed a number of specific challenges associated with publishing data to a web-service from an *Internet-incapable* capture device using a mobile device. Appx2325-2326; Appx2466-2469. The process to transfer new data from an *Internet-incapable* data capture device to a web-service was cumbersome and time consuming for the user. Appx2288, ¶10; Appx2325-2326; Appx2466-2469. Further, transfers between these data capture devices and mobile devices were not secure. Appx2325-2326; Appx2466-2469. The technology embodied in the claimed inventions solved these, and other, problems. Appx2325-2326; Appx2466-2469. The claimed inventions comprise superior ways to achieve the ends of uploading data to the Internet via a mobile device. Appx2325-2326; Appx2466-2469.

As noted in the common, shared patent specification, the common, and practical, ways to transfer data from an *Internet-incapable* data capture device were to physically plug the device into, or transfer a memory card to, a computer, upload the data from the capture device or memory card to the computer, and further upload the data from the computer to a web-service. *Id.,* ¶11; *see, e.g.*, '794/1:37-54 (Appx0286-0286).[6] In the case of using a 2007 mobile device, the software on both the *Internet-incapable* data capture device and mobile device that established a paired connection and potentially transferred data was extremely under-developed,

[6] For simplicity, and because the related patents-in-suit share a common specification, unless otherwise noted, all references herein are to the '794 patent specification.

and was not the intended or foreseeable use of the mobile device. Appx2289, ¶11. Further, hypertext tranfer protocol ("HTTP") transfers of *data received over the paired wireless* connection to web-services were non-existent. *Id.* Mobile devices, such as mobile phones, of that time exclusively used SMS, MMS, or email-based communication methods (such as POP3 or IMAP) to transfer data acquired by the mobile device. *Id.* It was not until 2009 or later when leading tech companies, such as Facebook and Google, started releasing HTTP APIs for developers to utilize HTTP for mobile devices. *Id.* Even in 2009, when Facebook and Google HTTP APIs were released, those APIs were only used for data acquired by the mobile device, and *not* for the *data that was received wirelessly over the secure paired* connection from a physically separate *Internet-incapable* data capture device. *Id.* Applying HTTP to data in transit and on an intermediary mobile device was not developed until the inventions of the Claims, nor was applying user information at a transit device (*e.g.*, mobile device) to data received over a paired wireless connection. *Id.*

Including as of the priority date of the Patents-in-Suit, there have been many, albeit greatly inferior, means outside of the claimed inventions for achieving the ends of acquiring and transferring data for publication, including on the Internet. *Id.*, ¶12. For example, as noted in the specification,

> 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…

Id.; *see* '794/1:38-47 (Appx0286).

Another inferior method was to have the *Internet-incapable* capture device simply forward data to a mobile device as captured. Appx2290 at ¶12. This example is inferior, including 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. *Id.* Such constant and inefficient broadcasting would quickly drain the battery of the capture device. *See id.* And also, without a secure paired connection, the data exchange between the devices would not be secure. *Id.*

Another inferior method for posting data from an *Internet-incapable* capture device onto the Internet is having mobile wireless Internet, for example cellular, capability built into the capture devices. *Id.* But here, including as noted in the specification and Claims, "[t]he digital data capture device is physically separated from the BT enabled mobile device." *Id.*; *see, e.g.*, '794/2:2-3 (Appx0286). This example is inferior, including because it makes the combined apparatus bulky and expensive in terms of hardware, and expensive in terms of requiring a user to purchase cellular service for the data capture device. Appx2290, ¶12.

Prior art methods for posting data from an Internet-incapable data capture device onto the Internet were inferior. *Id.*, ¶13. Back at the time of invention, data

capture devices, such as cameras, had only rudimentary, if any, wireless capabilities, as exemplified by U.S. Patent Application No. 2003/0,157,960 to Kennedy ("Kennedy"; *see* Appx0493-0500) and other, ancillary prior art addressed during prosecution of certain Patents-in-Suit and related patents. Appx2290, ¶13. Kennedy is the most relevant state of the art at the time of the invention, and it was a primary §103 reference cited by the Patent Examiner during prosecution of related patent application nos. 12/333,303; 13/740,214; 13/922,219; 13/922,227 (issuing as the '794 patent); 14/109,972; 14/172,913; 14/295,352 (issuing as the '752 patent); 14/295,353; 14/503,401; and 14/533,104 (issuing as the '698 patent).[7] *See* Appx0280 at (56). Kennedy is lacking much of the benefits and inventiveness of the the Claims. Kennedy does not disclose, *inter alia*, acquiring "new media" after establishing a short-range (*e.g.*, Bluetooth) paired wireless connection. *See, e.g.*, Appx0493-0500; Appx0752-755; Appx0885-890; Appx0990-1003; and Appx1048-1051. In Kennedy, the images are acquired first, then stored in the digital capture device memory. *See ids*. When the accumulated data size of all the captured pictures taken by the camera reaches a *memory threshold* set by the user, the camera connects

[7] The '794 patent issued from application no. 13/922,227, a continuation of application nos. ***13/740,214 and 12/333,303***. Appx0280. The '752 patent issued from application no. 14/295,352, a continuation of application nos. ***14/172,913, 13/740,214, and 12/333,303***. Appx0294. The '698 patent issued from application no. 14/533,104, a continuation of application nos. 14/295,352, ***14/172,913, 13/740,214, and 12/333,303***. Appx0308. The '847 patent issued from application no. 14/576,202, a continuation of application nos. 14/503,401, ***14/172,913, 13/740,214, and 12/333,303***. Appx0324-Appx0325.

with the mobile device, sends the already-aquired data in its memory, and then disconnects from the mobile device. *See id*. Thus, Kennedy follows the following sequence to transfer data: (a) camera detects memory as full or nearly full, (b) initiates a connection to the cellular phone, (c) transfers data, and (d) *disconnects*. *See id*.

During prosecution of the '227 and '913 applications, the Patentee distinguished the non-paired connection of Kennedy and its "conventional wisdom," including as noted in III.H.

C. What the Asserted Claims are directed to.

The Claims are directed to, and recite,[8] specific, non-abstract technological improvements in *Internet-incapable* data capture devices and mobile networking functionality and capabilities, and, also, specific, non-abstract technological improvements in the methods, systems, and mobile networks comprising such devices.

Independent asserted '794 claim 1 and its dependent claims cover the following:

> 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;

[8] For simplicity and ease of reading, references herein to claims being "directed to" something include said claims "recite" that something.

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;

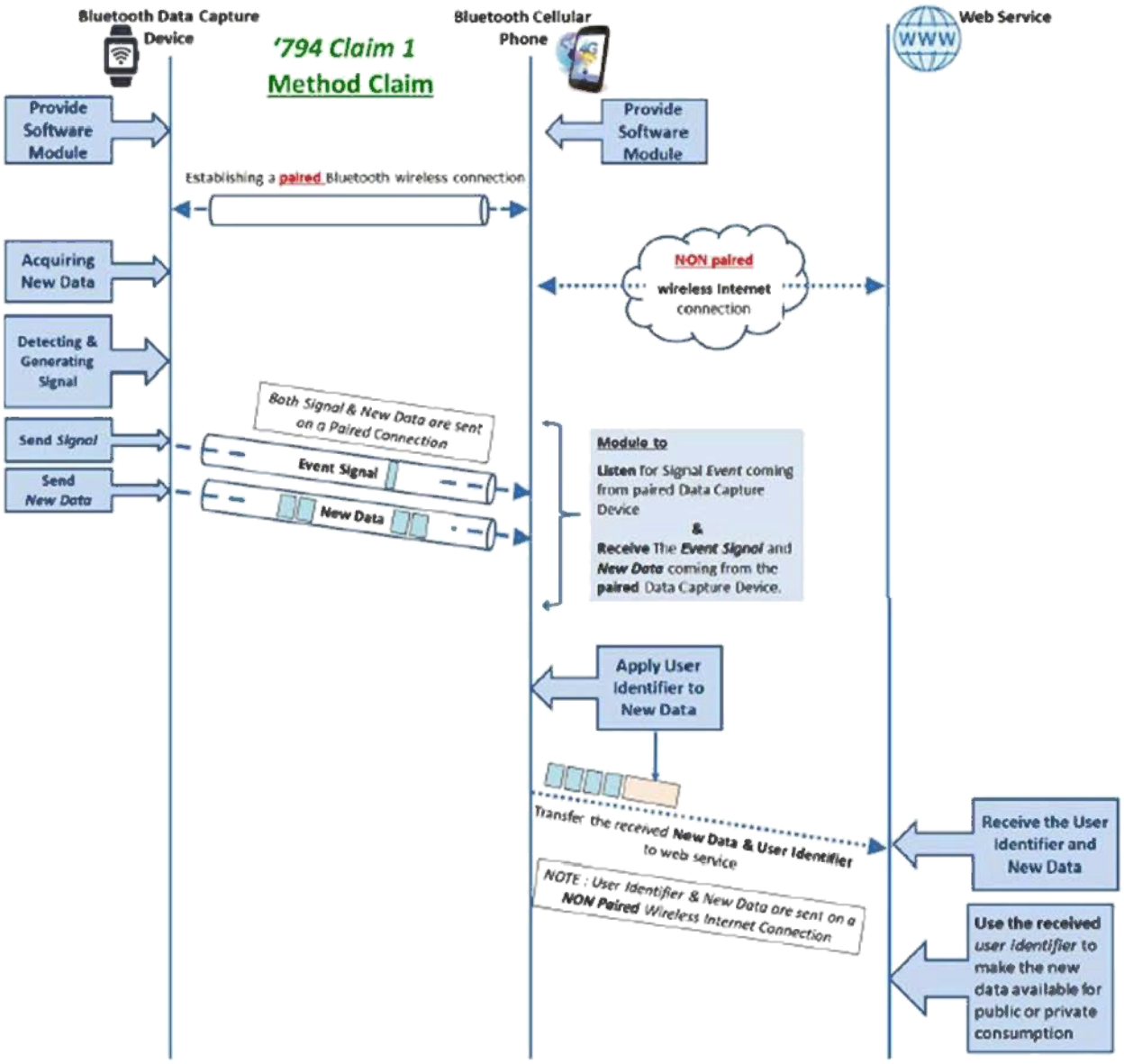
receiving, at the one or more web services, the new data and user identifier from the Bluetooth enabled mobile device, wherein the one or more web services receive the transferred new data

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.

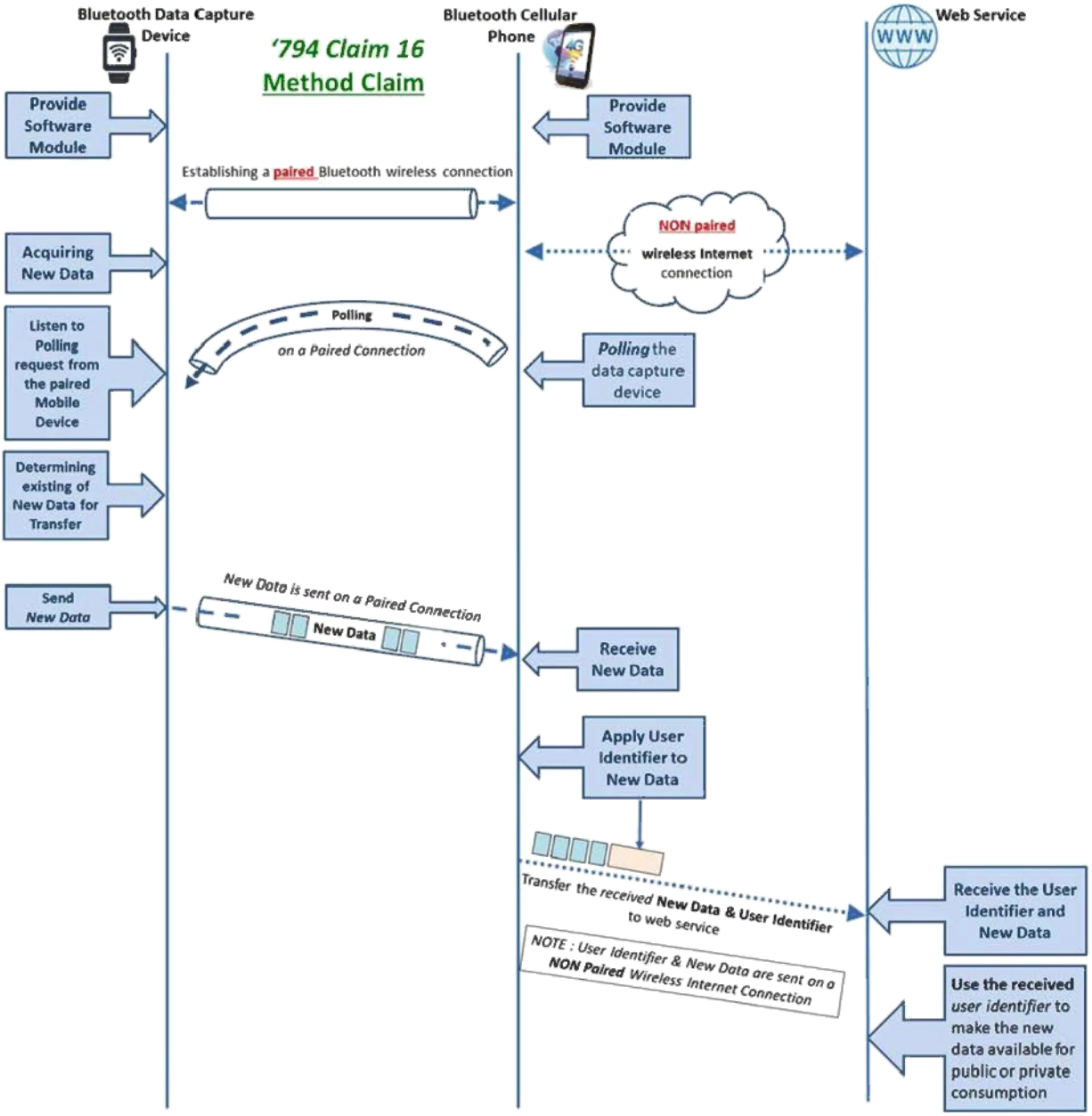
(emphais added).

A diagram showing the inventive way in which the '794 claim 1 method is performed is as follows:



'794 claim 1 is thus directed to, *inter alia*, a non-abstract, improved method of hardware, software, mobile network architecture, and mobile networked communications comprising transferring newly captured data from an *Internet-incapable* data capture device to an Internet server via a separate, intermediary Internet-capable mobile device *by pushing event notifications* within an *already-paired* Bluetooth connection between the data capture device and mobile device.

A diagram showing the inventive way in which the '794 claim 16 method is performed is as follows:



'794 claim 16 is directed to a somewhat similar, but still distinct, non-abstract, improved method, except, instead of *pushing event notifications* within an already-paired Bluetooth connection, it comprises "*polling* the Bluetooth enabled data capture device using the software module on the Bluetooth enabled mobile device *over the established paired Bluetooth connection*, wherein the Bluetooth enabled

data capture device *listens for the polling request sent from* the Bluetooth enabled *mobile device*; and determining the existence of new data for transfer, by the software module on the Bluetooth enabled data capture device." '794/Claim 16 (Appx0292).

Independent asserted '752 claim 1 and its dependent claims cover the following:

> A method for transferring data from a Bluetooth enabled data capture device to a remote internet server via a Bluetooth enabled mobile device comprising:
> performing at the Bluetooth enabled data capture device:
> establishing a *secure paired* Bluetooth connection between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device, wherein the *secure paired Bluetooth connection uses a cryptographic encryption key*;
> acquiring new data in the Bluetooth enabled data capture device, wherein new data is data acquired after the secure paired Bluetooth 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:
> receiving a message from the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection, to *enable event notifications*, corresponding to new data for transfer, on the Bluetooth enabled data capture device;
> enabling event notification on Bluetooth enabled data capture device, corresponding to new data for transfer;
> determining existence of the new data for transfer; and
> sending an *event notification* to the Bluetooth enabled mobile device, corresponding to existence of new data for transfer, *over the established secure paired Bluetooth connection*, wherein the Bluetooth enabled mobile device is configured to *listen for the event notification* sent from the Bluetooth enabled data capture device;
> *encrypting, using the cryptographic encryption key*, the new data

acquired in the Bluetooth enabled data capture device; and

transferring the encrypted data from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection,

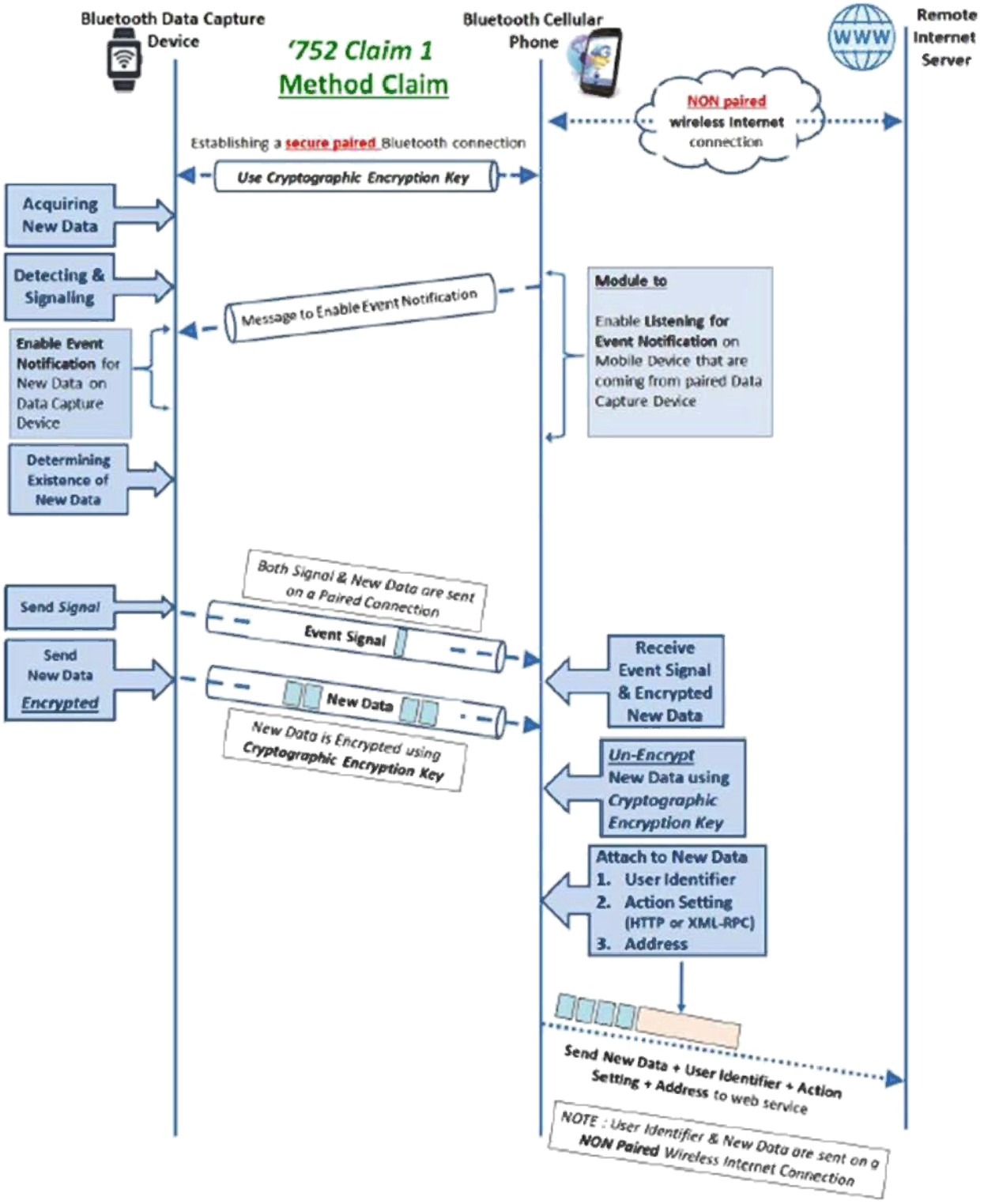
wherein the Bluetooth enabled mobile device has access to the internet, wherein the Bluetooth enabled mobile device is configured to receive the encrypted data and obtain the new data from the encrypted data using the cryptographic encryption key,

wherein the Bluetooth enabled *mobile device* is configured to *attach a user identifier, an action setting and a destination web address* of a remote internet server to the obtained new data, wherein the user identifier uniquely identifies a particular user of internet service provided by the remote internet server, wherein *action setting* comprises one of a remote procedure call (RPC) method and *hypertext transfer protocol (HTTP) method*, and

wherein the Bluetooth enabled mobile device is configured to *send the obtained new data with the attached user identifier, an action setting and a destination web address* to a remote internet server.

(emphasis added).

A diagram showing the inventive way the '752 claim 1 method is performed is as follows:



'752 claim 1 is thus directed to, *inter alia*, a non-abstract, improved method of hardware, software, network architecture, and networked communications

comprising transferring newly captured data from an *Internet-incapable* data capture device to an Internet server via a separate, intermediary Internet-capable mobile device *by pushing event notifications* within an *already-paired* and *encrypted* Bluetooth connection between the data capture device and mobile device using a *cryptographic encryption key*.

Independent asserted '847 claim 1 and its dependent claims cover the following:

A system comprising:
a Bluetooth enabled data capture device, comprising:
a first memory device;
a first processor coupled to the first memory device;
a first Bluetooth communication device configured to establish a *paired Bluetooth wireless connection* between the Bluetooth enabled data capture device and a Bluetooth enabled cellular phone, wherein the Bluetooth enabled data capture device is *configured to cryptographically authenticate identity of the Bluetooth enabled cellular phone* when the first Bluetooth communication device establishes the paired Bluetooth wireless connection;
a data capture circuitry;
said first processor configured to acquire new-data using the data capture circuitry after the paired Bluetooth wireless connection between the Bluetooth enabled data capture device and the Bluetooth enabled cellular phone is established;
said first processor configured to store the acquired new-data in the first memory device; and said first processor configured to *send an event notification and the acquired new-data to the cryptographically authenticated Bluetooth enabled cellular phone over the established paired Bluetooth wireless connection*, wherein the event notification corresponds to the acquired new-data and comprises sending a signal to the cryptographically authenticated Bluetooth enabled cellular phone;
a *mobile application* in the Bluetooth enabled cellular phone comprising executable instructions that, when executed by a second processor

inside the Bluetooth enabled cellular phone controls the second processor to: detect and receive the acquired new-data, comprising:

listen for the event notification, sent from the Bluetooth enabled data capture device, over the established paired Bluetooth wireless connection, wherein the event notification corresponds to the acquired new-data; and

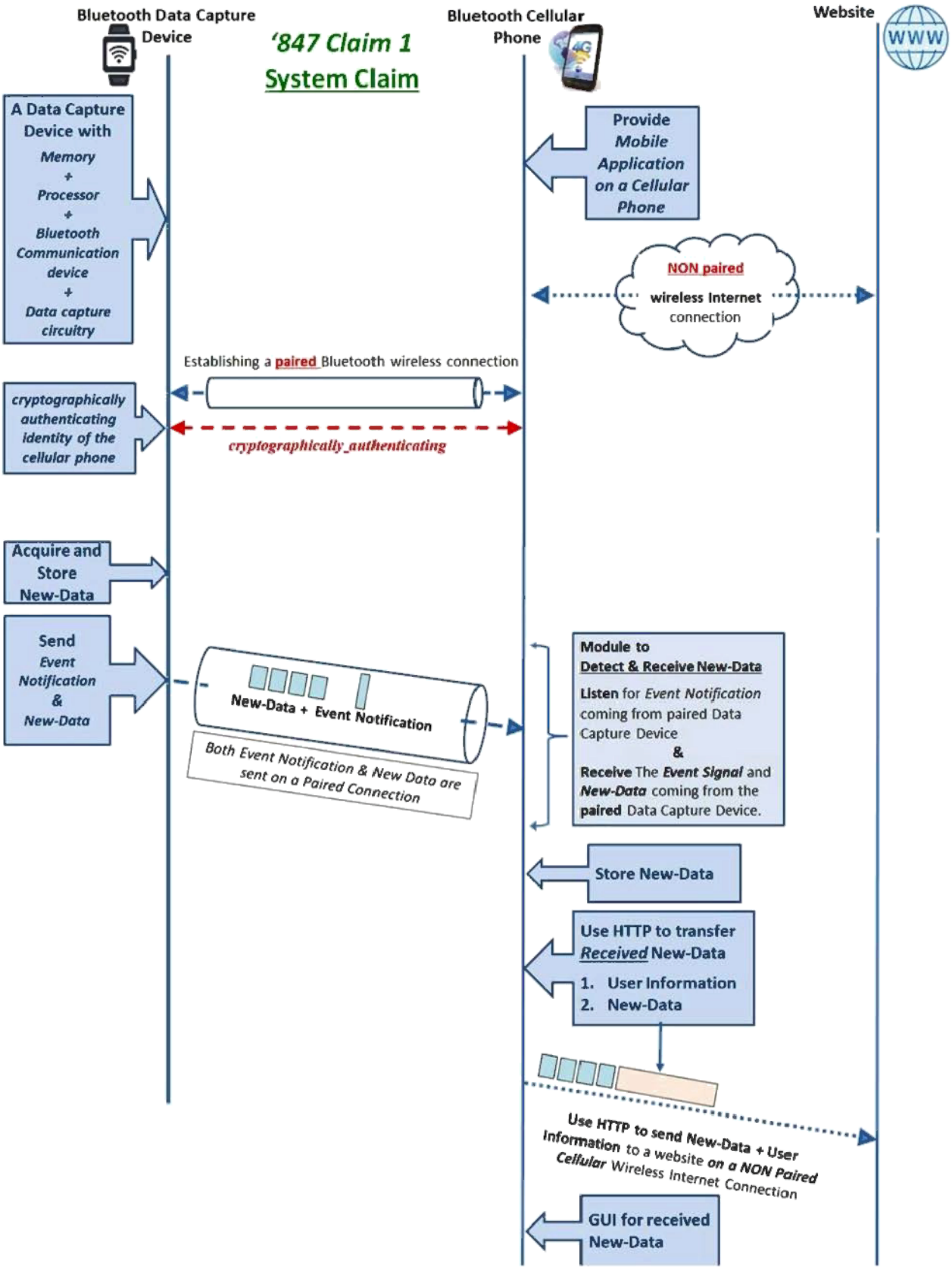
receive the event notification and the acquired new-data, from the Bluetooth enabled data capture device, *over the established paired Bluetooth wireless connection*, wherein receiving the event notification comprises receiving the signal sent by the Bluetooth enabled data capture device corresponding to the acquired new-data; store the new-data received over the established paired Bluetooth wireless connection, in a second memory device of the Bluetooth enabled cellular phone before transfer to a website; and

use HTTP to transfer the new-data received over the established paired Bluetooth wireless connection, *along with user information stored in the second memory device of the cryptographically authenticated Bluetooth enabled cellular phone*, to the website, over the cellular data network

wherein the mobile application further comprises executable instructions to control the processor to provide a graphical user interface (GUI) for the new-data.

(emphasis added).

A diagram showing the inventive way in which the '847 claim 1 system is configured and functions is as follows:


Bluetooth Data Capture Device
'847 Claim 1
System Claim
Bluetooth Cellular Phone
Website
A Data Capture Device with
Memory
+
Processor
+
Bluetooth Communication device
+
Data capture circuitry
Provide Mobile Application on a Cellular Phone
NON paired
wireless Internet connection
Establishing a paired Bluetooth wireless connection
cryptographically authenticating identity of the cellular phone
cryptographically authenticating
Acquire and Store New-Data
Send Event Notification & New-Data
New-Data + Event Notification
Both Event Notification & New Data are sent on a Paired Connection
Module to Detect & Receive New-Data
Listen for Event Notification coming from paired Data Capture Device
&
Receive The Event Signal and New-Data coming from the paired Data Capture Device.
Store New-Data
Use HTTP to transfer Received New-Data
1. User Information
2. New-Data
Use HTTP to send New-Data + User Information to a website on a NON Paired Cellular Wireless Internet Connection
GUI for received New-Data

'847 claim 1 is thus directed to, *inter alia*, a non-abstract, improved computer system and network architecture comprising an encrypted, paired Bluetooth connection between an *Internet-incapable* data capture device and a separate Internet-capable (*i.e.*, HTTP) mobile device wherein *event notifications* are pushed within an *already-paired* and *encrypted* Bluetooth connection between the data capture device and *cryptographically encrypted* mobile device.

Independent asserted '698 claim 5 and its dependent Claims cover the following:

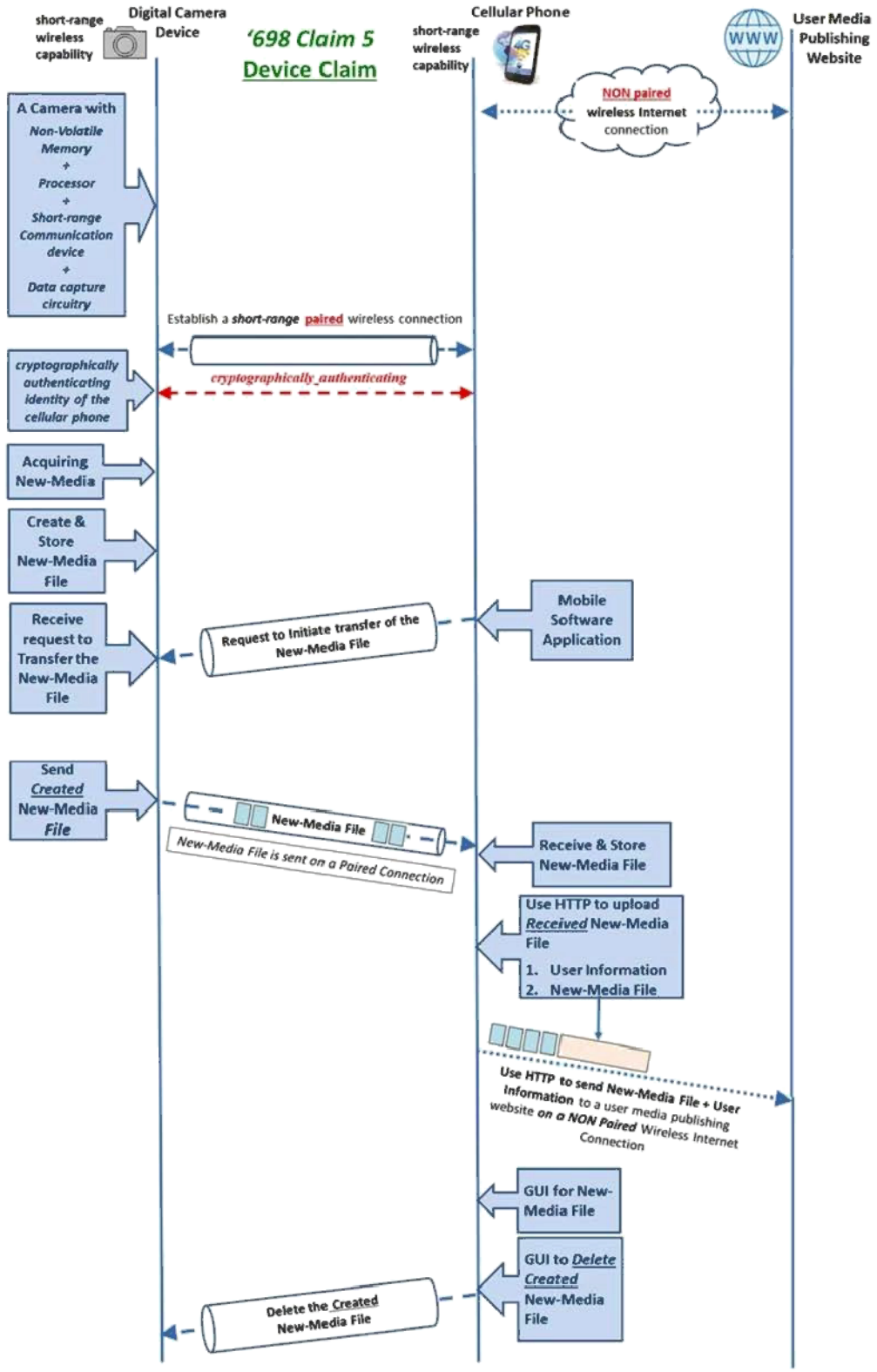
> A short-range wireless[9] enabled digital camera device, comprising:
> a first non-volatile memory device;
> a first processor coupled to said first non-volatile memory device;
> a short-range wireless communication device configured to control the first processor to establish a short-range paired wireless connection between the short-range wireless enabled digital camera device and a short-range wireless enabled cellular phone,
> wherein establishing the *short-range paired wireless connection* comprises, the digital *camera device cryptographically authenticating identity of the cellular phone*;
> a data capture circuitry;
> said first processor configured to acquire new-media in the digital camera device using the data capture circuitry,
> wherein the new-media is acquired after establishing the short-range paired wireless connection between the digital camera device and the cellular phone; said first processor configured to create a new media file using the acquired new-media;
> said first processor configured to store the created new-media file in the

[9] Unlike the Claims of the other Patents-in-Suit, which specifically comprise Bluetooth pairing, the '698 Claims comprise *encrypted short-range wireless* pairing. Bluetooth pairing is a type of short-range wireless pairing. *See* '794/3:49-53 (Appx0287). The improvements, benefits, and unconventional attributes noted herein relative to Bluetooth pairing are at least equally applicable to the encrypted short-range wireless pairing of the '698 Claims.

first non-volatile memory device;
said first processor configured to *receive a data transfer request initiated by a mobile software application on the cellular phone, over the established short-range paired wireless connection*,
wherein the data transfer request is for the new-media file, and
wherein the new-media file was created in the digital camera device before receiving the data transfer request; and
said first processor configured to transfer the new-media file to the cellular phone, over the established short-range paired wireless connection,
wherein the cellular phone comprises a mobile software application that when executed by a processor of the cellular phone is configured to
control the processor of the cellular phone to receive the new-media file,
store the received new-media file in a non-volatile memory device of the cellular phone,
use HTTP to upload the received new-media file along with user information to a user media publishing website, and
provide a graphical user interface (GUI),
wherein the graphical user interface (GUI) is for the received new-media file and the graphical user interface *(GUI) is configured to receive input to delete the created new media file*.

(emphasis added).

A diagram showing the inventive way in which the '698 claim 5 method is performed is as follows:



'698 claim 5 is thus directed to, *inter alia*, an *Internet-incapable* digital camera device capable of forming a *paired* short-range wireless connection with a

separate Internet-capable (*i.e.*, HTTP) cellular phone. This *Internet-incapable* digital camera is capable of acquiring new media, wherein the acquired new media is transferred to the *cryptographically authenticated* cellular phone in response to a *request initiated by the software application on the cellular phone* over an *already-paired* short-range wireless connection between the digital camera device and cellular phone. Further, independent asserted '698 claim 1 is directed to, *inter alia*, a non-abstract, improved method of network architecture and communications implemented by the device of '698 claim 5.

D. Embodiments Described in the Specification Which are Covered by the Asserted Claims

The Patents-in-Suit specification describes embodiments comprising digital data capture device 201, *e.g.*, a digital camera, and a physically separate mobile device 202, *e.g.*, a Bluetooth enabled cellular phone, with client application 203 installed thereon. *See* '794/3:28-40 (Appx0287). A Bluetooth communication device 201a on capture device 201 is paired 103 (*see id.,* 3:54-4:20) with mobile device 202 to establish a connection between said devices. *See id.,* 3:55-57.

In polling mode (*e.g.*, '794, claim 16), client application 203 periodically polls digital data capture device 201, over the established, paired Bluetooth connection, to determine the creation of a new file in digital data capture device 201. *Id.,* 4:31-34. Digital data capture device 201 then automatically transfers 106 the captured

data, multimedia content, and associated files to client application 203 on mobile device 202 using one, or a combination of, file transfer protocols. *Id.,* 4:34-38.

In push mode (*e.g.*, claim 1 of the '752, '794, and '847 patents), over the established, paired Bluetooth connection, Bluetooth communication device 201a sends a signal to client application 203 on mobile device 202 on creation of a new file. *Id.,* 4:57-59. An event listener in client application 203 on mobile device 202 listens for the signal from digital data capture device 201. *Id.,* 4:62-5:1. Bluetooth communication device 201a automatically transfers captured data, multimedia content, and associated files to client application 203 on mobile device 202. *Id.,* 4:59-62.

In request/response mode (*e.g.*, '698, claim 5), client application 203 on the cellular phone (*i.e.*, mobile device 202) detects the captured image on the digital camera (*i.e.*, digital data capture device 201), and, over the established, paired Bluetooth connection, initiates transfer of the captured image and associated files. *Id.,* Abstract, 2:35-37, 6:36-40, & 8:37-40. Digital data capture device 201 responds by transferring the captured image and associated files to client application 203 on mobile device 202. *Id.,* 8:40-42.

User information and translation to HTTP are applied in transit and on mobile device 202. *See id.*, '794/8:52-55 & 9:61-10:9. The captured data is then transferred via HTTP from client application 203 of mobile device 202 to publishing service

401 via network 402, including as illustrated in FIG. 4. *Id.*, 5:9-11 & 8:43-50.

A Bluetooth device that wants to communicate only with a trusted device can cryptographically authenticate the identity of another Bluetooth device. *Id.*, 3:59-61.

The program will use various security, encryption, and compression techniques to enhance the overall user experience. *Id.,* 9:54-56.

E. Technological Improvements, Inventive Concepts, and Concrete Applications of Inventive Concepts Contained in the Asserted Claims

The Claims comprise non-abstract technological improvements, inventive concepts, and concrete applications of inventive concepts comprising:

- Publishing to an internet server *newly captured data* from an Internet-incapable data capture device via an intermediate internet capable mobile device, where the newly captured data was captured *after pairing was established* between the two devices. Appx2291-2292; Appx2325; *see* Claims;

- Using a cryptographic encryption key in pairing. *See* '752 Claims;

- Cryptographically authenticating identity of the cellular phone. *See* '752, '847, and '698 Claims;

- A data capture device providing event notifications for the newly captured data to a mobile device over an established paired wireless connection. Appx2325; Appx2466-2469; *see* '794, '752, and '847 Claims;

- A mobile device polling the capture device for newly captured data over an established paired wireless connection. Appx2325-2326; Appx2466-2469; *see* '794 Claims;

- A capture device providing newly captured data responsive to a request from the application on the mobile device over an established paired wireless connection. Appx2325-2326; Appx2466-2469; *see* '698 Claims;

- An Internet-incapable capture device transferring newly captured data to the internet capable mobile device over an established paired wireless connection. Appx2325-2326; Appx2466-2469; *see* all Claims;

- Applying an Internet protocol (*e.g.*, HTTP) to data, including to newly captured data from a data capture device, on an intermediary mobile device while in transit, Appx2325-2326; Appx2466-2469; *see* all Claims. As noted during prosecution of the '698 patent, at the time of the invention, computers attached a HTTP header and user ID to the data generated by the computer, *i.e.*, native data. *See* Appx1785-1786. Existing wireless routers did not apply website user information or apply HTTP to the data sent over the wireless network from the computer to the home wireless router. *Id.* However, the claimed invention provided technological improvements, including because the claimed mobile device is configured to send a HTTP request comprising the website user information and the non-native data, such that the mobile device is acting as more than just a router. *Id.*;

- Utilizing, including for transfer to an internet server, user information stored on an intermediary mobile device in conjunction with new data from the user's wirelessly paired data capture device. Appx2325-2326; Appx2466-2469; *see* '752 and '847 Claims;

- Utilizing, including for transfer to an internet server, website information stored on an intermediary mobile device in conjunction with new data from the user's wirelessly paired data capture device. Appx2325-2326; Appx2466-2469; *see* '752 Claims.

F. Benefits that Result, and Flow, from Technological Improvements, Inventive Concepts, and Concrete Applications of Inventive Concepts Contained in the Asserted Claims

Multiple meaningful benefits result, *i.e.*, flow, from the technological improvements, inventive concepts, and concrete applications of inventive concepts of the Claims, as explained below.

1. First, the inventions of the Claims result in power and battery savings for data capture devices comprising:
   a. The data capture device does *NOT* require cellular equipment, such as a transceiver or antenna, as uploading to websites is done by the mobile device, data capture device. Appx2328; Appx2466-2469; Since cellular transmissions use a lot of battery power, eliminating such equipment from the capture device saves battery resources. *Id.*; *see* Asserted Claims;
   b. A significant amount of processing workload in the Claims is offloaded to the mobile device running a software application, comprising:
      i. Active listening for event notification signals for new data from the data capture device is performed on the mobile device. Appx2466-2469; *see* Asserted Claims;
      ii. Polling is initiated by the mobile device. Appx2324-2329; Appx2466-2469; *see* Asserted Claims;
      iii. Requests for new data are initiated by the mobile device. Appx2324-2329; Appx2466-2469; *see* Asserted Claims;
      iv. Adding user identifiers to the new data is done by the mobile device. Appx2466-2469; *see* Asserted Claims;
      v. Adding website information to the new data is done by the mobile device. Appx2466-2469; *see* Asserted Claims;

vi. Converting data to cellular data format is done on the mobile device. Appx2466-2469; *see* Asserted Claims;

vii. Applying and using HTTP is done on the mobile device. Appx2329; Appx2466-2469; *see* Asserted Claims; and

viii. Using the GUI on the mobile device. Appx2328; Appx2466-2469; *see* Asserted Claims.

Since the battery and processing power required to perform the above functions on the data capture device are eliminated, less power, battery, and processing is required on and by the capture device. Appx2328; Appx2466-2469.

c. The one-to-one, secure Bluetooth pairing of the data capture device and mobile phone, and the using of event notification, polling, and/or request-response techniques increases, *inter alia*, the life and longevity of batteries of capture devices, including because, with the Claims, the capture device does not have to continually broadcast data to all nearby Bluetooth devices, or, can determine if the desired mobile device is either out of range or incapable of receiving Bluetooth data, for example because it is turned off. Appx2328; Appx2466-246;

2. Second, the Claims result in cost savings, because their inventions:

a. Eliminate the need for data capture devices to have a cellular equipment to

upload data directly since the Claims leverage the existing mobile/cellular connection of the user's mobile device. Appx2328; Appx2466-246; *see* Asserted Claims;

b. Eliminate the need to pay for *extra* monthly cellular lines/fees to the wireless operator to upload data from capture devices directly. Appx2328; Appx2466-246; *see* Asserted Claims;

c. Minimize the need for processing capacity and memory on the capture device because data is stored and converted for HTTP transmission, and user information and website details are stored and processed, on the mobile device, *not* the data capture device. Appx2328; Appx2466-246; *see* Asserted Claims; and

d. Eliminate the need for *removable* memory housing in the *Internet-incapable* data capture device, including because the data is transferred between the data capture device and Internet-capable mobile device securely over a paired, short-range (*e.g.*, Bluetooth) wireless connection. Appx2328; Appx2466-246; *see* Asserted Claims.

3. Third, the combination of all the derived benefits mentioned above make the *Internet-incapable* data capture device smaller, less complex, more focused on data capture, more efficient, and/or less expensive to purchase, operate, and use. Appx2328; Appx2466-246; *see* Asserted Claims.

4. Fourth, the claimed inventions allow posting Internet content captured while an *Internet-incapable* data capture device, such as a camera, is capturing data, including when it may be impractical, undesirable, or impossible to physically plug the data capture device into another device, such as a computer, with Internet capabilities, including in "real time" situations, including situations that could jeopardize the expensive and vulnerable components of the Internet capable device. Appx2328; Appx2466-246; *see* '794/1:37-38 (Appx0286); Asserted Claims.
5. Fifth, including through the use of event notifications, polling, and/or request-response over a paired connection, the inventions of the Claims allow for automatically detecting capture of data, transferring the data to the mobile device, and "publishing the data and multimedia content on one or more websites automatically or with minimal user intervention." Appx2328; Appx2466-246; *see* '794/1:48-54 (Appx0286); Asserted Claims.

G. The Asserted Claims Solve Problems Necessarily Rooted in Mobile Computer Technology and Specifically Arising in the Realms of Mobile Networks and Internet-Incapable Data Capture Devices

Including as noted in III.B, C, E, & F, the Claims solve problems with pre-existing mobile computer technology and mobile network technology. Like the claims found patent-eligible in *DDR Holdings*, the Claims do not merely recite the

performance of some practice known from the pre-wireless or pre-Internet world along with the requirement to perform it wirelessly, with a computer, or using the Internet. Instead, the Claims are necessarily rooted in computer, *i.e.*, camera, portable monitoring device, and networking technology, in order to overcome problems specifically arising in the realm of capture devices and computer networks, namely overcoming the shortcomings of the prior art noted in III.B above, including the problems with publishing captured data from an *Internet-incapable* data capture device to the Internet. *See DDR Holdings v. Hotels.com*, 773 F.3d 1245, 1257 (Fed.Cir. 2014). Solutions to such problems comprise the innovative solutions in III.C & E, which have technological benefits comprising those in III.F.

H. The Combinations of the Asserted Claims Have Substantial Unconventional Aspects

The specification suggests use of conventional data capture or mobile devices, but the applications running on, and methods and functions of, those devices are not stated to be conventional, nor are they conventional. Appx2332-2334.[10]

Conventional solutions are represented by background art in the specification and Kennedy (*see* III.B), including that:

> …Conventional wisdom was to not have a constant BT connection between devices. On the contrary, conventional wisdom was to initiate

[10] It should be noted that fn. 5 of the District Court's Opinion is erroneous. Appx0029, fn. 5. Cellspin never made such a concession. *See* Transcript at Appx2395-2447. The District Court appears to have mistook assertions by counsel speaking for Defendants-Appellees as one by Cellspin. *See* Appx2419; Appx2428.

> the connection when required, use the connection and then terminate the connection to conserve battery charge on the devices…. However, applicant in his initial disclosure in 2007 took the opposing view…

Appx1051-1051; Appx1173-1173; Appx2332-2334.

Unconventional aspects of the combinations embodied in the Claims comprise the following:

- Having paired Bluetooth connections between devices as a pre-requisite before data is acquired by the data capture device, and maintaining the Bluetooth paired connection on a continuous basis, including when event notifications, polling, and requests/responses for newly acquried data are occurring. Appx2332-2334;
- Publishing newly captured data involving the ordered combination of elements, including the timing of *pairing* the two devices and using *cryptographic* techniques. Appx2332-2334;
- The mobile device detecting new data via event notifications, polling, and/or requests/responses on the data capture device, where conventional wisdom involved affirmative steps taken by the capture device (*e.g.*, pushing newly captured data) or in connection with the capture device (*e.g.*, using portable storage media or direct, physical (*e.g.*, cable) connection). Appx2332-2334;
- Using an Internet protocol (*e.g.*, HTTP) *in transit* at the mobile device and adding website related user information at the intermediary transit mobile

device, where conventional wisdom involved generating Internet-formatted data *at* the data capture device. Appx2289-2291; Appx2332-2334;

- For cameras in 2007, conventional wisdom was to incorporate better cameras inside mobile device, but it was not conventional wisdom for camera devices to, *inter alia*, *cryptographically authenticate* physically separate Internet-connected cellular phones. Appx2288-2290; Appx2332-2334; and/or
- For cameras in 2007, conventional wisdom was to incorporate the GUI inside the camera, but it was NOT conventional wisdom for cellular phones to provide a GUI for the photos/videos captured on physically separate camera devices. Appx2288-2290; Appx2332-2334.

I. The Proceedings in the District Court Below

After Cellspin filed suit against Defendants-Appellees, these cases were related and assigned to the District Court, with the *Fitbit* case being the lowest numbered and, thus, lead related case. Shortly thereafter, Defendants-Appellees filed their Motions to Dismiss.

Cellspin then filed a Response in each case in opposition to the Motions to Dismiss. *See* Appx449-2058; Appx3700-3714.

Cellspin also filed Notices of Supplemental Authority concerning recent decisions in *Aatrix Software v. Green Shades Software*, 882 F.3d 1121 (Fed.Cir. 2018) and *Berkheimer v. HP*, 881 F.3d 1360 (Fed.Cir. 2018), which concern

questions of fact in § 101 proceedings. Appx2141-2185.

Responsive to this new authority provided by *Aatrix* and *Berkheimer*, Cellspin filed Amended Complaints in each related case, making identical factual assertions in each, relative to §101 issues. *See*, respectively, Appx2286-2305; Appx2912-2930; Appx3095-3114; Appx3542-3561; Appx3820-3844; Appx3927-3948; Appx3991-4005; Appx4038-4052; Appx4103-4118.[11]

Thereafter, a hearing was held on the Motions to Dismiss. *See* Transcript at Appx2395-2447; Appx2314-2339.[12]

Defendants-Appellees then filed a Supplemental Brief in support of their Motions to Dismiss. Appx2348-2368.

Cellspin then filed further Notices of Supplemental Authority concerning the recent decision in *Vaporstream v. Snap*, 2018 WL 1116530 (C.D.Cal. Feb. 27,

[11] Defendants-Appellees criticize the timing of Cellspin's Amended Complaints. However, said amendments were justified by *Aatrix* and *Berkheimer,* and were permissible under the District Court's Scheduling Order (Appx2258-2265). The District Court considered (although it failed to properly do so) Cellspin's Amended Complaints in rendering its erroneous §101 decision.

[12] The District Court's criticisms that Cellspin did not sufficiently support its positions are erroneous. Fundamentally, the District Court simply failed to take heed of Cellspin's submissions. Further, at the hearing, the District Court cut short multiple of Cellspin's arguments. In many instances, Cellspin properly referred to the matters clearly and succinctly set forth on the presentation being displayed to the District Court. *See, e.g.*, Appx2413-2417; Appx2422; Appx2431; Appx2442; *see also* Appx2445. The District Court made clear it was reading what was being displayed and referred to. *See, e.g.*, Appx2424; Appx2442. In any event, the District Court's criticisms of Cellspin are simply at odds with the totality of Cellspin's facts, submissions, and arguments, including those noted herein.

2018), relating to the need to conduct a proper ordered combination analysis. Appx2141-2185.

Further, Cellspin filed a Response to Defendants-Appellees' Supplemental Brief. Appx2461-2479.

Finally, as noted in III.A, the District Court issued its ruling granting the Motions to Dismiss, and, shortly thereafter, the District Court entered judgments, and Cellspin filed the instant appeals. *See* fns. 1-3.

IV. SUMMARY OF THE ARGUMENT

The District Court's ruling the Asserted Claims are invalid under §101 is erroneous and should be reversed. The Claims are not directed to any abstract ideas, and the District Court erred in so holding. Without limitation, the Claims are directed to concrete applications of improved mobile technology and are necessarily rooted in such technology. Even if arguably directed to any alleged abstract ideas, at a minimum, the Claims comprise inventive concepts providing the "something more" to make them patent eligible.

The District Court erred in misconstruing statements in the specification (*see* '794/9:37–48 & 10:10–13 (Appx0290)) that certain components of the claimed inventions were pervasive, existing, or widespread into a statement or admission by the Patentee the claimed combinations utilized only pervasive, existing, widespread, well-understood, generic, conventional, routine, standard, existing (or the like)

(hereinafter, collectively "well-understood, routine, or conventional") technology, processes, or components. Appx0035-0037. Further, the District Court also erred in concluding the Claims lack inventive concepts, apparently due largely to its erroneous conclusion the Claims consist of conventional components.

The District Court further erred in failing, on motions to dismiss (1) to view facts, including well-pled facts in Cellspin's Amended Complaints, in the light most favorable to Cellspin; and (2) to draw all reasonable inferences in the Cellspin's favor, including plausible and well-pled inferences regarding inventive elements and benefits flowing therefrom.

Alternatively, and, at a minimum, the District Court erred in granting the Motions to Dismiss in view of legitimate factual disputes, including over whether the claim elements are well-understood, routine, or conventional, and whether they comprise sufficient inventive concepts.

The District Court also erred in making an overbroad and oversimplified finding of what the Claims are directed to, which erroneously disregarded and/or discounted meaningful limitations present. Such error lead to the District Court's erroneous conclusion the Claims are directed to abstract ideas.

The District Court further erred in failing to provide any meaningful or factually supported analysis of any Asserted Claim except claim 1 of the '794 patent. In doing so, the District Court erroneously disregarded and/or discounted

meaningful, inventive, and non-generic limitations in the '698, '752, and '847 patents, including combinations comprising a data capture device transferring or sending data to a mobile device over a previously-established paired wireless connection through a request/response and/or polling regime, using a cryptographic encryption key in pairing, cryptographically authenticating the mobile device identity, and translating captured data into HTTP format in transit.

Further, the District Court erred in failing to even consider preemption. The Claims are not overly preemptive, especially relative to the overbroad and erroneous abstract idea erroneously identified by the District Court.

The many errors of the District Court, alone, and/or in combination, resulted in granting the Motions to Dismiss based on erroneous rulings of invalidity under §101, and such rulings, and granting of the motions, should be reversed.

V. ARGUMENT

A. Legal Principles, Including Standards of Review

Patent eligibility under §101 "is ultimately an issue of law this Court reviews *de novo*." *Berkheimer*, 881 F.3d at 1365. This Court reviews grants of motions to dismiss under the law of the regional circuit. *Aatrix*, 882 F.3d at 1124. Under Ninth Circuit law, courts must also construe the alleged facts in the light most favorable to the plaintiff, which includes accepting well-pleaded facts as true and drawing all reasonable inferences in the plaintiff's favor (hereinafter, collectively, the "light

most favorable"). *See Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Grants of motions to dismiss are reviewed *de novo*. *See, e.g., Barrett v. Belleque*, 544 F.3d 1060, 1061 (9th Cir. 2008).

The Omnibus 101 Motion was brought under Rule 12(b)(6). The Garmin 101 Motion was brought under Rule 12(c). In the Ninth Circuit, analysis under Rule 12(c) and Rule 12(b)(6) is substantially identical "because, under both rules, a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy." *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (internal quotations omitted); *see Mendiondo v. Centinela Hosp. Med. Ctr*, 521 F.3d 1097, 1104 (9th Cir. 2008); *Hal Roach Studios v. Richard Feiner and Co.*, 896 F.2d 1542, 1550 (9th Cir. 1990).

Under either rule, while a complaint need not contain detailed factual allegations to survive, "it must plead enough facts to state a claim to relief that is plausible on its face." *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th Cir. 2009). A claim is "facially plausible" when it "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 (2009). A court may only conclude a patent fails to claim patent-eligible subject matter "when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law." *Aatrix*, 882 F.3d at 1125. Further, in so determining, a court must accept "all factual allegations in the

complaint as true and construe them in light most favorable to the non-moving party." *Retail Prop. Trust v. Uni*, 768 F.3d 938, 945 (9th Cir. 2014); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004). For ease of reference, Rule 12(b) and 12(c) motions are collectively referred to as "motions to dismiss."

Although §101 patent-eligibility is decided as a matter of law, this legal conclusion may contain underlying factual issues. *See Accenture Global Servs., GmbH v. Guidewire Software*, 728 F.3d 1336, 1340-41 (Fed.Cir. 2013). Whether the claim elements or claimed combinations are well-understood, routine, or conventional is a question of fact. *Aatrix*, 882 F.3d at 1128; *Berkheimer*, 881 F.3d at .1365. Early dismissal is premature where, as here, at a minimum, the factual record lacks certainty. *See BASCOM Glob. Internet Servs. v. AT&T Mobility,* 827 F.3d 1341, 1348 (Fed.Cir. 2016).

Because issued patents are presumed to be valid, one asserting an invalidity defense pursuant to §101 bears the burden of proving invalidity by clear and convincing evidence. *Cave Consulting Group v. Truven Health Analytics*, 2016 WL 283478, *2 (N.D. Cal. Jan. 25, 2016).

Other legal principles applicable to the District Court's erroneous §101 analysis are noted below, as applicable.

B. The District Court erred in accepting unsubstantiated allegations from

Defendants-Appellees and failing to view the factual allegations made by Cellspin, including in Cellspin's Amended Complaints, in the light most favorable to Cellspin.

Although "patent eligibility is ultimately a question of law," it may require an analysis of "underlying factual questions." *See Berkheimer*, 881 F.3d 1360. "Whether a particular technology is well-understood, routine, and conventional goes beyond what was simply known in the prior art." *Id.* "The mere fact that something is disclosed in a piece of prior art, for example, does not mean it was well-understood, routine, and conventional." *Id.* "Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination." *Id.*

In *Aatrix*, this Court reversed a Rule 12 dismissal because the district court refused to permit the patent owner to file an amended complaint which included factual allegations supporting the patent's eligibility. *See Aatrix*, 882 F.3d 1121. Specifically, the proposed amended complaint described problems in the prior art and presented specific allegations the claims had benefits, including improved efficiency. *Id.* The district court abused its discretion because the proposed allegations were sufficient to contradict the court's conclusion the claims did not recite an inventive concept. *Id.* Had the specification contained the same things alleged in the amended complaint, there would have been no need for amendment.

Significant relevant and material factual allegations in Cellspin's Amended Complaints, which are noted herein, were improperly disregarded and/or discounted by the District Court. Without limitation, III.B-H note where the foregoing appear in the intrinsic evidence, including the specification and prosecution history, and Cellspin's Amended Complaints; namely, III.B notes the state of the art and some problems solved by the Claims; III.C notes what the Claims are directed to; III.E notes technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims; III.F, notes multiple benefits flowing from technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims; and III.H notes how the combinations of the Claims are unconventional. Including as cited above, pertinent facts are cited in Cellspin's Amended Complaints and its other submissions to the District Court. Further, these facts, including benefits from the claimed inventions, are embodied in, and flow from, the inventions disclosed in the shared patent specification, and as claimed.

The District Court erred, including in failing to view the factual allegations in Cellspin's Amended Complaints in the light most favorable to Cellspin, including in failing to accept the benefits and improvements noted by Cellspin which flow from, and are embodied in, the inventions covered by the Claims. The District Court's erroneous ruling relied upon unsworn, unsubstantiated allegations made by

Defendants-Appellees, and improperly disregarded and/or discounted Cellspin's contrary, and in many cases, uncontroverted, factual allegations, including factual allegations in Cellspin's Amended Complaints and factual allegations based upon, and flowing from, the inventions disclosed in the common specification and claimed by the Claims. *See, e.g., Berkheimer*, 881 F.3d at 1360; *Aatrix*, 882 F.3d at 1126.

These errors in violation of *Berkheimer* and *Aatrix* include the District Court's error in holding the claims merely utilize well-understood, routine, or conventional environments, components, processes, or technology; and its failure to find meaningful limitations that should have provided a sufficient showing of "something more" than any alleged abstract idea.

C. The District Court erred in misconstruing statements in the specification that certain components of the claimed inventions were pervasive, existing, widespread (or the like) into a statement or admission by the patentee the claimed combinations utilized utilized well-understood, routine, or conventional environments, components, processes, or technology and erroneously holding same.

Including for the factual reasons noted in III.B-H, the District Court erred in holding the Claims utilize merely well-understood, routine, or conventional environments, components, processes, or technology. On this issue, and the other factual issues underpinning its erroneous decision, the District Court either

erroneously accepted unsubstantiated attorney argument from Defendants-Appellees,[13] or misunderstood and read too much into the references in the specification referring to certain conventional components.

The District Court erred in misconstruing statements in the specification, including citing from '794/9:37–48 & 10:10–13 (Appx0290). Appx0035-Appx0037. The notion the claimed inventions could be implemented with combinations *comprising* existing cellular phones, PDAs, and Bluetooth misses the point no such combinations had ever been implemented or envisioned to be implemented, and no such combinations could be implemented without an application, *e.g.*, client application 203, running on the Internet-capable mobile device, or without the claimed ordered combinations. It also misses the point that courts "cannot simply ask whether the claims *involve* a patent-ineligible concept." *Enfish, LLC v. Microsoft,* 822 F.3d 1327, 1335 (Fed.Cir. 2016) (emphasis added). Rather, courts must, but the District Court failed to, consider the claims "as a whole" in view of the specific language of the claims. *Id.*

The District Court's holding also misses the point of the many benefits flowing from (III.F); specific technological and functional improvements from (III.E); and unconventional aspects of (III.H), the claimed combinations of the

[13] Movants (here, Defendants-Appellees) have the burden of proving, using "record evidence," not just "attorney's argument." *See McRO v. Bandai*, 837 F.3d 1299, 1315 (Fed.Cir. 2016).

Claims, as a whole. It further misses the point that, even if not all aspects of the claim elements or claimed combinations are utilized, well-understood, routine, or conventional, and that, even combinations of conventional components can be patentable, where, as here, *as a whole*, they are not abstract. *See, e.g., Rapid Litig. Mgmt. v. CellzDirect*, 827 F.3d 1042, 1051 (Fed.Cir. 2016) (process reciting combination of individually well-known steps was "far from routine and conventional"); *BASCOM,* 827 F.3d at 1350 (inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces).

While the specification suggests use of conventional capture or mobile devices, the applications on those devices, and *the steps performed on those devices, are not stated to be conventional, nor are they conventional*. Further, the District Court's observation Bluetooth was "well known" misses the point that, while Bluetooth communication, on its own, was known, it was not well-known, in fact it was *not* known, to transfer data from *Internet-incapable* capture devices to Internet-capable mobile devices over an *already-paired* Bluetooth connection, including *using cryptographic techniques*, and further including via request/response, polling, and/or event notification. Further, alleged combinations of conventional components can be patentable where, as here, they are not, as a whole, abstract, or if the combination, as a whole, provides meaningful limitations. *See CellzDirect*, 827 F.3d at 1051; *BASCOM*, 827 F.3d at 1350. This error contributed to and/or caused the

District Court's erroneous ruling the Claims were merely well-understood, routine, or conventional.

Likewise, the District Court erred in holding the Claims utilize well-understood, routine, and conventional computer components to achieve automation, and/or an improvement in the efficiency or speed, of a previously-manual process. While the Claims do provide for a more efficient process, as stated multiple times in the specification, the record contains no reasonably analogous previously-manual process that was improved, including in terms of speed or efficiency. Without limitation, including as shown in III.B-H, prior art processes did not involve request/response, polling, or event notification over an existing paired connection, including with use of a cryptographic encryption key or cryptographically authenticating a mobile device identity; nor did they involve applying HTTP in transit on a mobile device.

Further, the District Court did not hold, because it would have been erroneous to hold, the inventions of the Claims could be performed without electronic components or performed with mental steps or on pen and paper.

D. The District Court erred in oversimplifying and overgeneralizing what the Asserted Claims are directed to.

In determining what claims are directed to, courts must, but the District Court failed to, determine the proper gist of a claim, including its character, as a whole.

Enfish, 822 F.3d at 1335. Describing the claims at too high a level of abstraction, which the District Court erred in doing, and "untethered from the language of the claims all but ensures that the exceptions to §101 swallow the rule." *Id.,* 1337. Therefore, at *Alice* step one, courts must analyze the character of the invention, as a whole, in view of the specific language of the claims.

The District Court erred in finding the Claims directed to the abstract idea of merely acquiring, transferring, and publishing data on the Internet. Appx0034. The District Court's overly simplistic characterization of the Claims is too broad and does not account for their core features. What the Claims are actually directed to is noted in III.B, and elsewhere, herein. Without limitation, the claimed methods and apparatuses for sending or transferring data from an *Internet-incapable* capture device to an Internet-capable mobile device over a previously-established paired wireless connection, namely through a request/response, polling, and/or event notification regime, useing a cryptographic encryption key, cryptographically authenticating a mobile device identity, and translating captured data into HTTP format in transit, go far beyond the alleged abstract idea mis-identified by the District Court.

The District Court's erroneous distillation of the alleged abstract idea oversimplified and overgeneralized the Claims, failed to view or consider each Claim, as a whole, and failed to include multiple meaningful, non-abstract, concrete,

and inventive claim limitations that, if properly considered, would have led to a conclusion of non-abstractness for the Claims, as a whole.

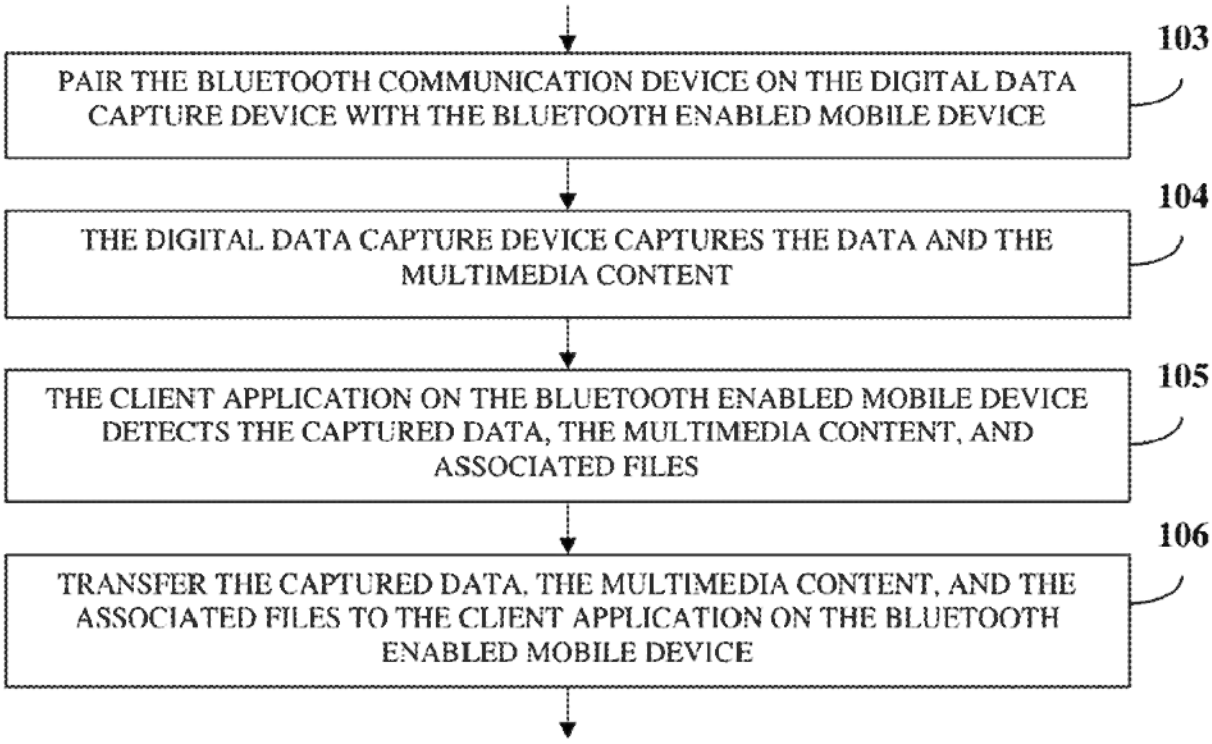
E. The District Court erred in failing to provide any meaningful or factually supported analysis of any Asserted Claim except '794 Claim 1.

Not only did the District Court err by failing to conduct a proper ordered combination analysis, it further erred by failing to provide any meaningful analysis of any claim except claim 1 of the '794 patent. The District Court's reasoning for the Claims of the '752, '847, and '698 patents being patent-ineligible is almost non-existent and appears to be almost entirely based upon its erroneous conclusion the Claims in all four patents were directed to a "substantially similar" alleged abstract idea, without articulating precisely what that abstract idea would be for the '752, '847, and '698 patents. In failing to meaningfully analyze the other Asserted Claims, the District Court, *inter alia*, missed non-generic, meaningful, and inventive claim limitations, including, without limitation, a data capture device transferring or sending data to mobile device over a previously-established paired wireless connection through a request/response and/or polling regime, using a cryptographic encryption key in pairing, and cryptographically authenticating a mobile device identity; and further methods and apparatuses for translating captured data into HTTP format in transit.

F. The District Court erred in holding the Patents-in-Suit fail to provide any

technical details for the tangible components and predominantly describe the system and methods in purely functional terms.

The District Court erred in holding the Patents-in-Suit fail to provide any technical details for the tangible components and predominantly describe the system and methods in purely functional terms. For example, the District Court's statement the "order or timing of the Bluetooth wireless pairing" does "not appear in the specification" is flawed. Appx0039. This is expressly set forth in Figure 1 of the shared specification, which comprises the following:



'794/Fig. 1, 103-106, and associated text, 3:28-4:44 (Appx0281 & Appx0287). Further, it is mentioned throughout the specification (*see, e.g.,* '794/3:54-4:38 & 6:17-46). Further, multiple technical details for tangible components which are not

described in purely functional terms include the details for the preferred embodiments found throughout the specification, including as noted in III.D.

G. The District Court erred in holding the Asserted Claims have components that behave exactly as expected according to their ordinary use.

The District Court erred in its holding, including because it had no basis for concluding that the "ordinary use" of such components in the prior art involved such an "expected" use. Appx0038. There is no record evidence justifying this erroneous conclusion. Rather, as noted in III.B-H, the intrinsic evidence, including the specification, claims, and prosecution history, and Cellspin's Amended Complaints, set forth the state of the art and problems solved by the Claims (III.B); what the Claims are directed to (III.C); technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims (III.E); multiple benefits flowing from technological improvements, inventive concepts, and concrete applications of inventive concepts of the Claims (III.F); and how the claimed combinations are unconventional (III.H).

H. The District Court erred in improperly disregarding and/or discounting the benefits flowing from, and technical improvements, including improvements in mobile network and mobile device functionality, embodied in, the Asserted Claims, including those noted by Cellspin, including when required to view the facts in the light most favorable to Cellspin.

The District Court's complaint the benefits and technological improvements cited by Cellspin appear nowhere in the claims or specification is erroneous. This Court's precedents do not, and should not, require benefits or technical improvements resulting or flowing from, or embodied in, a claimed invention not count for §101 purposes merely because they are not specifically referenced or called out in the claims or specification, or set forth *verbatim*, as benefits or technological improvements. Moreover, specific benefits and technical improvements, including the places where benefits reasonably and plausibly flow from such improvements, are noted in III.B-H, including citations to relevant intrinsic evidence, including the specification and prosecution history, and Cellspin's Amended Complaints; namely, III.B notes the state of the art and some problems solved by the Claims; III.C notes what the Claims are directed to; III.E notes technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims; III.F notes multiple benefits flowing from technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims; and III.H notes how the claimed combinations are unconventional.

Benefits, improvements, inventive concepts, and the like need only be "evident in the claims" – that is, embodied by the claims. *See, e.g., Recognicorp v. Nintendo*, 855 F.3d 1322, 1327 (Fed.Cir. 2017). There is not, and should not be, any requirement that something be specifically called out, noted in a patent, or stated

verbatim, as being a benefit, improvement, inventive concept, and the like. Thus, there is no just legal or logical reason benefits or technical improvements flowing from, and evident from, the claimed inventions, the specification, the prosecution history, and/or well-pled facts should be discounted, especially at the stage of a motion to dismiss and under a clear and convincing standard. This is especially true where the District Court was required to construe the facts the in light most favorable to Cellspin, and, also, where the District Court did *not* find, nor could it have reasonably found, the facts pled in Cellspin's Amended Complaints were not plausible.

The District Court thus erred in improperly disregarding and/or discounting the benefits from, and technical improvements of, the Claims, including as cited by Cellspin. At a minimum, the District Court erred in failing to view those facts in the light most favorable to Cellspin, including in failing to accept such benefits or technical improvements result and/or flow from, or are embodied in, the combinations of the Claims, including without contrary record evidence beyond the District Court's unjustified reading of the specification as noted above.

I. The District Court erred in holding the Asserted Claims do not sufficiently describe how to achieve the noted results of the Asserted Claims in a non-abstract way.

Including as noted in III.B-H, the District Court erred in holding the Claims

do not sufficiently describe how to achieve the results of the Claims in a non-abstract way, and that they do not recite a specific structure of computer components used to carry out any improvement in computer functionality. There is nothing abstract about the claimed inventions of the Claims (quoted verbatim at III.C) or how they are described to achieve their results, including those benefits and improvements noted herein. For example, various Claims have concrete, non-abstract aspects, such as short-range wireless, including Bluetooth, capable *Internet-incapable* data capture devices; mobile devices comprising short-range wireless, including Bluetooth, and Internet, including HTTP, capabilities; Internet servers, requests and responses, listening to event notifications, polling for data, mobile software initiated requests and responses for data; and paired short-range wireless, including Bluetooth connections, between the data capture device and the mobile device, using a cryptographic encryption key, and cryptographically authenticating identity of the cellular phone. *See* III.B-H. Further, the specification, including as noted in III.B, provides additional details of the implementation of embodiments of the claimed inventions.

J. The District Court erred in holding computers are invoked merely as a tool for an alleged abstract idea.

Including in view of the above, the District Court's conclusion computers are invoked merely as a tool for an alleged abstract idea is simply an unsupported,

vacuous, circular, and erroneous holding. The District Court started with an erroneously simplistic, overbroad notion of an alleged abstract idea embodied by the Claims; erroneously disregarded and/or discounted meaningful and inventive claim limitations, including failing to view the Claims as an ordered combination; and improperly disregarded and/or discounted the inventive, meaningful, and unconventional aspects of the Claims, including when properly considered as a whole. Further, as noted in III.F-G, the Claims solve problems necessarily rooted in mobile computer technology and specifically arising in the realms of mobile networks, mobile devices, and *Internet-incapable* data capture devices.

K. The District Court failed to conduct a proper ordered combination analysis.

The District Court's holdings that the Claims are directed to the abstract idea of merely acquiring, transferring, and publishing data on the Internet, and "focus on the combination of abstract-idea processes" are unsupported and erroneous. Appx0034-0035. In reaching these erroneous conclusions, the District Court failed to conduct a proper ordered combination analysis as required by *Alice* and *Mayo*, and their many progeny. *See, e.g., Alice Corp. v. CLS Bank,* 134 S. Ct. 2347, 2354 (2014); *Mayo v. Prometheus,* 566 U.S. 66, 71-72 (2012); *Vaporstream*, 2018 WL 1116530. The breaking apart, and subsequent analysis, of the Claims into individual elements, in an attempt to show each individual element, by itself, was well-understood, routine, and conventional at the time of the invention, fails to conduct a

proper ordered combination analysis. *See ids.*

The District Court's failure to properly analyze the Claims as an ordered combination flowed, as a whole, from its erroneous conclusions all the Claims were directed to merely the abstract idea of acquiring, transferring, and publishing data on the Internet; everything claimed was well-understood, routine, or conventional; and disregarding and/or discounting of meaningful, inventive, and unconventional claim limitations. The District Court's improper analysis further failed to appreciate the Claims comprise, *inter alia*, methods and apparatuses for sending or transferring data from an *Internet-incapable* data capture device to an *Internet-capable* mobile device over a previously-established paired wireless connection, namely through a request/response, polling, and/or event notification regime; using a cryptographic encryption key in pairing; cryptographically authenticating a mobile device identity; translating captured data into HTTP format in transit; and applying user information at the transit device. *See* III.B, E, & G.

L. The Asserted Claims are not directed to abstract ideas.

Including with the fact viewed in the light most favorable, and inferences properly favoring Cellspin under a clear and convincing evidence standard, the Claims are not directed to abstract ideas, nor do they unduly raise abstractness concerns. Under *Alice* step one, "claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *Internet*

Patents v. Active Network, 790 F.3d 1343, 1346 (Fed.Cir. 2015); *see McRO*, 837 F.3d at 1313 ("a court must look to the claims as an ordered combination, without ignoring the requirements of the individual steps"). Without limitation, the focus of the Claims is on "specific improvements" to methods and systems for publishing data from *Internet-incapable* capture devices via Internet-capable mobile devices to web-services, not "on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335-36. Further, including for the reasons stated in VI.B-K, the District Court erred in finding the Claims directed to abstract ideas in *Alice* step one, and further erred in finding the Claims directed to an oversimplified, overgeneralized abstract idea of merely acquiring, transferring, and publishing data and multimedia content on one or more websites. What the relevant, independent Claims are actually directed to is set forth at III.C. Without limitation, the District Court erred in disregarding and/or discounting, including by failing to view the facts in the light most favorable to Cellspin, the state of the art and problems solved by the Claims (III.B); technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims (III.E); benefits flowing from technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims (III.F); and how the combinations within the Claims are unconventional (III.H). Without limitation, the District Court's erroneous opinion improperly

disregards and/or discounts that the Claims provide inventive ways to transfer new-data between already-paired devices (event notification, polling, mobile device initiated requests/responses); use a cryptographic encryption key in pairing; cryptographically authenticate a mobile device identity; and apply a user identifier, HTTP, and web site information, and using the GUI, on an intermediate transit mobile device.

Including when properly viewed, as a whole, the Claims do not recite any alleged abstract idea, nor do they recite any idea similar to those previously found by courts, especially this Court, to be abstract. *See DDR Holdings,* 773 F.3d at 1258-59 (claim did not recite an idea similar to those previously found by the courts to be abstract). Rather, the Claims are directed to non-abstract elements (*see* III.C), they are necessarily rooted in mobile computer and mobile networking technology (*see* III.G), and they are directed to technological improvements, inventive concepts, and concrete applications of inventive concepts (*see* III.E).

In *Enfish*, this Court criticized the district court for oversimplifying the claims as covering simply "the concept of organizing information using tabular formats." *Enfish*, 822 F.3d at 1337. The Court cautioned that "describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to §101 swallow the rule." *Id.*

Just as the district court in *Enfish* inappropriately oversimplified and

overgeneralized those claims, the District Court, here, erroneously oversimplified and overgeneralized the Claims as merely acquiring, transferring, and publishing data and multimedia content on websites. *See id.* To the contrary, the Claims are not simply directed to any form of acquiring, transferring, and publishing data, in the abstract, but, rather, describe, *inter alia*, "specific improvements" to inventive systems and methods that comprise specific ways of transferring and publishing new-data on the Internet, including via specific types of devices, in a specific order, with specific requirements, and more. *See Enfish*, 822 F.3d at 1337. In other words, as in *Enfish*, the Claims represent a "specific implementation of a solution in the art." *Id.,* 1339.

Further, at *Alice* step one, the analysis looks to whether the claims "focus on a specific means or method[,...] or are instead directed to a result or effect that itself is the abstract idea[.]" *McRO*, 837 F.3d at 1314. Put differently, the claims are examined to determine whether they "do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem." *Affinity Labs of Tex. v. Amazon.com*, 838 F.3d 1266, 1269 (Fed.Cir. 2016). Here, it would be absurd to conclude, or even contend, the Claims cover all, or even unduly too many, means for accomplishing the abstract idea erroneously identified by the District Court, *i.e.*, acquiring, transferring, and publishing data on the Internet. *See* III.B. Where, as here, the

claimed invention is described narrowly enough, and focuses on solving a specific problem existing only in the specific technical world of the Patents-in-Suit, it supports a conclusion the Claims, and Patents-in-Suit, are not directed to any abstract idea, much less the erroneous abstract idea found by the District Court. *McRO*, 837 F.3d at 1314.

M. Even if the Asserted Claims were unduly directed to abstract ideas, which they are not, they have inventive concepts sufficiently providing "something more" over such alleged abstract ideas such that they are patentable under §101.

While abstract ideas, natural phenomena, and laws of nature, alone, are not patent-eligible, claims integrating these exceptions into an inventive concept are transformed into patent-eligible inventions. *Alice*, 134 S.Ct. 2347 at 2354; *Mayo,* 566 U.S. at 71-72. Only if the step-one analysis determines the claims are directed to an abstract idea, the analysis proceeds to step two, which is directed to the remaining claim elements (*e.g.*, "[w]hat else is there in the claims before us?"), and considers the elements of each claim, both individually and as an ordered combination, to determine whether these additional elements transform the nature of the claim into a patent-eligible invention. *Alice*, 134 S.Ct. at 2355; *Mayo*, 566 U.S. at 79. This inquiry has been described as a search for other or "additional" elements, or a combination of such elements, occasionally referred to as an "inventive

concept," to ensure the patent, in practice, amounts to significantly more than a patent upon the natural law or abstract idea itself. *Alice*, 134 S.Ct. at 2355; *Mayo*, 566 U.S. at 72-73 & 77; *Ariosa v. Sequenom*, 788 F.3d 1371, 1377 (Fed.Cir. 2015). Consideration of the elements in combination is particularly important, because, even if an additional element, alone, does not amount to significantly more, it can still amount to significantly more when considered in combination with the other elements of the claim. *See, e.g., Rapid Litig. Mgmt.*, 827 F.3d at 1051; *BASCOM G*, 827 F.3d at 1350. Further, the inventive architecture of the Claims, alone, or in combination, is significantly more than any alleged abstract idea. *See Amdocs (Israel) v. Openet Telecom*, 841 F. 3d 1288, 1300 (Fed. Cir. 2016).

Including under a clear and convincing evidence standard, and when properly viewed in the light most favorable to Cellspin, and for the reasons stated in VI.B-M, the District Court erred in finding insufficient meaningful limitations in the additional elements to the alleged abstract idea to render the Claims patent-eligible. Without limitation, the District Court erred in disregarding and/or discounting, including by failing to view the facts in the light most favorable to Cellspin, the state of the art and some problems solved by the Claims (III.B); technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims (III.E); benefits flowing from these technological improvements, inventive concepts, and concrete applications of inventive concepts

(III.F); and how elements and combinations within the Claims are unconventional (III.H). Without limitation, the Claims, including when viewed as ordered combinations, provide "significantly more" than merely acquiring, transferring, and publishing data and multimedia content on websites, including the individual and *ordered* combinations of (*see* III.B) technological improvements, comprising transferring new data from *Internet-incapable* capture devices to Internet-capable mobile devices over an already-paired Bluetooth connection, including via request/response, polling, and/or event notification, using a cryptographic encryption key in pairing, cryptographically authenticating a mobile device identity; and applying a user identifier, HTTP, and web site information, and using the GUI, on an intermediate transit mobile device.

The District Court's statement that, with regard to the timing of the Bluetooth wireless paring, there is nothing "inventive" about "shifting the timing of the data collection process" (Appx0040) misses the point that timing, *in this particular context*, was meaningfully inventive and unconventional. Without limitation, the initial *pairing* results in a secure one-to-one connection between the two devices. Without pairing first, the Bluetooth, or short-range, broadcast of data transfer would be less efficient and consume more resources since its intended recipient might not be in range or otherwise able to receive the data, and, further, the broadcast transfer would be insecure. Including when properly considering the ordered steps, it was

inventive to transfer new data from *Internet-incapable* data capture devices to *Internet-capable* mobile devices over an already-paired Bluetooth connection, including via request/response, polling, and/or event notification, use a cryptographic encryption key in pairing, and cryptographically authenticate a mobile device identity. *See* III.F.

Limitations courts have found to qualify as "significantly more" with a judicial exception, including when recited in a claim, include: (1) improvements to the functioning of a computer (*see, e.g., DDR Holdings*, 773 F.3d at 1258-59); (2) improvements to any other technology or technical field (*see, e.g., Diamond v. Diehr*, 450 U.S. 175 (1981)); (3) adding a specific limitation other than what is well-understood, routine, or conventional activity in the field, or adding unconventional steps confining the claim to a particular useful application, *e.g.*, a non-conventional and non-generic arrangement of various computer components for filtering Internet content (*see, e.g., BASCOM*, 827 F.3d at 1350-51; *Amdocs*, 841 F.3d at 1300–01); and (4) other meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment (*see, e.g., Classen Immunotherapies v. Biogen*, 659 F.3d 1057, 1066-68 (Fed.Cir. 2011)).

The Claims address technological issues unique to capture devices, mobile devices, and networking and have significantly more than any alleged abstract idea, including because they comprise improvements in data capture and mobile devices,

systems, and methods, as well as improvements in data transfer and mobile networking systems and methods. *See* III.E, F, & H. Further, including as noted above, the Claims have multiple specific limitations other than what is well-understood, routine, or conventional, including publishing data to a web-service from an *Internet-incapable* data capture device; transferring new data from *Internet-incapable* data capture devices to Internet-capable mobile devices over an *already-paired* Bluetooth connection, including via request/response, polling, and/or event notification; minimizing user involvement and leveraging capabilities resident in accompanying mobile devices for said transfer; using a cryptographic encryption key in pairing; and cryptographically authenticating a mobile device identity. Further, the combinations of the Claims are unconventional (*see* III.H), including that, for example, it was unconventional to leave open a paired connection for data capture devices. Further, the meaningful limitations noted above go far beyond generally linking the use of the judicial exception to any particular environment.

As explained in *Bascom*, an inventive concept "may arise in one or more of the individual claim limitations or in the ordered combination of the limitations." *BASCOM,* 827 F.3d at 1350. Here, the Claims evidence an inventive concept under both. Furthermore, the "ordered combination" of claim elements cover "significantly more" than the alleged abstract idea of merely acquiring, transferring, and publishing data to the Internet. As in *Bascom*, the Claims, including as a whole, represent a

"non-conventional and non-generic arrangement" of communications between a data capture device and a Bluetooth-enabled mobile device that is a "technical improvement" to the communications between such devices and to web services. *Id.* The claims are directed to a "specific, discrete implementation" of publishing data to a web-service from an *Internet-incapable* data capture device using an intermediary Bluetooth-enabled, Internet-capable mobile device in specific, inventive ways. *Id.,* 1351.

The Claims cover an inventive concept (*see* III.B, E-F, & H), including because they improve an existing technological process. *See DDR Holdings*, 773 F.3d at 1265. Further, the claimed inventions are necessarily rooted in mobile computer technology and portable data capture device technology, and comprise improvements over prior technologies in order to overcome the problems and shortcomings, including those noted in III.B, specifically arising in the realm of mobile computing and mobile computer networks. *See id.,* 1257. Cellspin's claimed solutions amount to an inventive concept for resolving the particular problems and inefficiencies with publishing data from an *Internet-incapable* data capture device to the Internet described. *See id.,* 1259 ("the claimed solution amounts to an inventive concept for resolving this particular Internet-centric problem").

The District Court's reliance upon *TLI*, which it deemed "instructive," and other inapposite cases was further erroneous. *See, e.g., In re TLI Commc'ns Patent*

Litig., 823 F.3d 607, 613 (Fed.Cir. 2016). In *TLI*, the invention involved assigning "classification data," such as timestamps or dates, to digital images; and having the server take the classification data into consideration when storing the digital images, and the claims were found "directed to the abstract idea of classifying and storing digital images in an organized manner." *Id*. Unlike the Claims, those in *TLI* involved generic components and lacked inventiveness. *Id.,* 612. Despite the superficial partial similarity of capturing digital images and transferring them to Internet servers, the claimed invention in *TLI* is non-analogous to the Claims. Without limitation, the Claims are directed to the methods and systems noted in III.C, not to classifying images for storage. Furthermore, unlike the claims in *TLI,* the Claims comprise utilizing a physically separate data capture device and mobile device comprising a paired short-range wireless connection. Including for the reasons noted in III.B, E-F, & H, the Claims are far different from the claims in *TLI*, and, thus *TLI*is not meaningfully "instructive."

Further, while the District Court correctly noted that, in *TLI*, the problem facing the inventor was "*not* how to combine a camera with a cellular phone [or] how to transmit images via a cellular network" (*TLI*, 823 F.2d at 612), it erred in failing to appreciate the Claims are, in part, directed to solving both such problems. The Claims solved the first problem, including by establishing a secure paired short-range wireless connection between the data capture device and mobile device, and

by sending new data using the already-paired connection between a physically separate *Internet-incapable* data capture device and Internet-connected mobile device with event notification, polling, or request/response. The Claims solved the second problem, including by offloading tasks to the intermediate transit mobile device, such as applying a user identifier, HTTP, and web site information, and using the GUI, on the mobile device and NOT on the capture device.

Including in view of the specific improvements noted above, and further in III.F, the District Court erred in holding the Claims 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* Appx0035), and in otherwise finding there to be insufficient inventive concept to confer eligibility.

N. The District Court erred in failing to even consider preemption, and, furthermore, the Asserted Claims are not overly preemptive.

The concern underlying the exceptions to §101 is "preemption." *See McRO*, 837 F.3d at 1315. While the risk of preemption underlies both steps, it is a key concern under *Alice* step two. *Alice*, 134 S.Ct. at 2354. Here, the District Court erred in failing to even consider the issue of preemption. Furthermore, none of the Claims are overly preemptive or pose undue risk of preempting any abstract idea, much less the overbroad, oversimplified alleged abstract idea held by the District Court of merely acquiring, transferring, and publishing data on the Internet. There are a great

many ways for one to go about such tasks that do raise preemption concerns. The Claims are not directed to claims on the "basic tools of scientific and technological work" described in *Alice*. 134 S.Ct. at 2354.

The lack of preemption by the Claims is evident from the claim limitations (*see* III.C); the state of the art (which includes alternatives to the Claims) and problems solved by the Claims (*see* III.B); and from technological improvements, inventive concepts, and concrete applications of inventive concepts contained in the Claims (*see* III.E). As with, for example, *McRO* and *Amdocs*, the limitations set forth in the Claims alleviate any preemption concerns or prohibitions. *See McRO*, 836 F.3d at 1325; *Amdocs*, 841 F.3d at 1301.

VI. CONCLUSION AND PRAYER FOR RELIEF

The District Court's erroneous ruling the Asserted Claims are patent ineligible under §101, as well as its granting of the Motions to Dismiss and its judgments based thereon, should be reversed, and these matters should be remanded for further proceedings.

Dated: June 19, 2018

Respectfully submitted,

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Counsel for Plaintiff-Appellant,
CELLSPIN SOFT, INC.

VII. CERTIFICATE OF SERVICE

I, **John J. Edmonds**, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

On June 19, 2018, a copy of the foregoing Opening Brief of Plaintiff-Appellant was filed electronically with the Clerk of the Court using the CM/ECF System, which will serve via electronic mail notice of such filing to all counsel registered as CM/ECF users.

Upon acceptance by the Court of the electronically filed document, six paper copies will be filed with the Court via courier within the time provided by the Court's rules.

Dated: June 19, 2018

/s/ *John J. Edmonds*
John J. Edmonds

COLLINS, EDMONDS & SCHLATHER, PLLC

VIII. CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPE-FACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 28.1(e)(2)(A), because it contains 13,587 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Federal Circuit Rule 32(b).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word, in 14 Point Times New Roman.

Dated: June 19, 2018

/s/ *John J. Edmonds*
John J. Edmonds

COLLINS, EDMONDS & SCHLATHER, PLLC

ADDENDUM

1. Final Judgment of invalidty under 35 U.S.C. § 101 in *Fitbit* case, dated April 10, 2018 (Appx0001-0003)

2. Final Judgment of invalidty under 35 U.S.C. § 101 in *Moov* case, dated April 10, 2018 (Appx0004-0006)

3. Final Judgment in *Nike* case, dated April 10, 2018 (Appx0007-0008)

4. Final Judgment Invalidating Asserted Patent Claims in *Fossil* case, dated April 10, 2018 (Appx0009-0010)

5. Final Judgment Pursuant to Order Re: Omnibus Motion to Dismiss & Garmin's Motion for Judgment on the Pleadings in *Garmin* case, dated April 10, 2018 (Appx0011-0015)

6. Final Judgment Invalidating Asserted Patent Claims in *Canon* case, dated April 10, 2018 (Appx0016-0018)

7. Final Judgment Pursuant to Order Re: Omnibus Motion to Dismiss in *GoPro* case, dated April 10, 2018 (Appx0019)

8. Final Judgment in *Panasonic* case, dated April 10, 2018 (Appx0020-0021)

9. Final Judgment in *JKI* case, dated April 10, 2018 (Appx0022-0023)

10. Order Re: Omnibus Motion to Dismiss; Motion for Judgment on the Pleadings dated April 3, 2018, granting Omnibus 101 Motion and Garmin 101 Motion in *Fitbit* case (identical to Orders in the *Moov, Nike, Fossil, Garmin* and *Canon* cases (Appx0024-0042)

11. U.S. Patent No. 8,738,794, issued on May 27, 2014 (Appx0280-0293)

12. U.S. Patent No. 8,892,752, issued on November 18, 2014 (Appx0294-0307)

13. U.S. Patent No. 9,258,698, issued on February 9, 2106 (Appx0308-0323)

14. U.S. Patent No. 9,749,847, issued on August 29, 2017 (Appx0324-0337)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
GRANTED
Judge Yvonne Gonzalez Rogers
4/10/18

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

Case No. 4:17-cv-05928-YGR

~~[PROPOSED]~~ JUDGMENT

Judge: Hon. Yvonne Gonzalez Rogers

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 79) granting Defendant Fitbit, Inc.'s ("Fitbit") Motion to Dismiss (Dkt. No. 31) finding all asserted claims of U.S. Patent Nos. 8,738,794 (the "'794 Patent"), 8,892,752 (the "'752 Patent"), and 9,749,847 (the "'847 Patent") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 79), 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, and claims 1-3 from the '847 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '794, '752, and '847 Patents represent all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant Fitbit and against Plaintiff Cellspin Soft, Inc.

Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

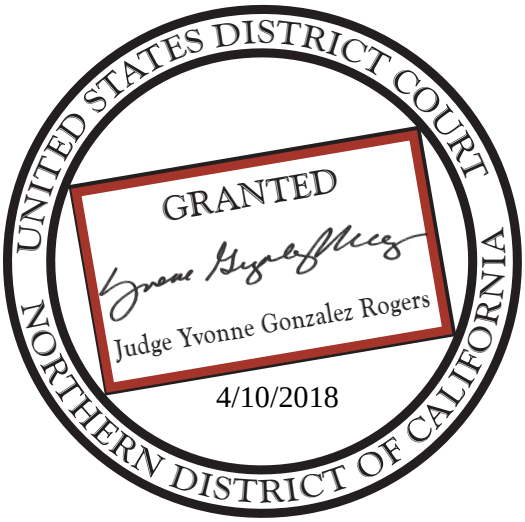
I hereby certify that I electronically filed the foregoing document including all of its attachments with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **April 9, 2018**. I further certify that service will be accomplished by the CM/ECF system and paper copies shall be served by first class mail, postage prepaid on all counsel who are not served through CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **April 9, 2018**.

/s/Shane Brun
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Attorneys for Defendant
MOOV INC. D/B/A
MOOV FITNESS INC.



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

MOOV INC. D/B/A MOOV FITNESS INC.,

Defendant.

Case No. 4:17-cv-05929-YGR

[~~PROPOSED~~] JUDGMENT

Judge: Hon. Yvonne Gonzalez Rogers

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 67) granting Defendant Moov, Inc. d/b/a Moov Fitness Inc.'s ("Moov") Motion to Dismiss (Dkt. No. 29) finding all asserted claims of U.S. Patent Nos. 8,738,794 (the "'794 Patent"), 8,892,752 (the "'752 Patent"), and 9,749,847 (the "'847 Patent") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 67), 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, and claims 1-3 from the '847 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '794, '752, and '847 Patents represent all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant Moov and against Plaintiff Cellspin Soft, Inc.

Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document including all of its attachments with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **April 10, 2018**. I further certify that service will be accomplished by the CM/ECF system and paper copies shall be served by first class mail, postage prepaid on all counsel who are not served through CM/ECF system.

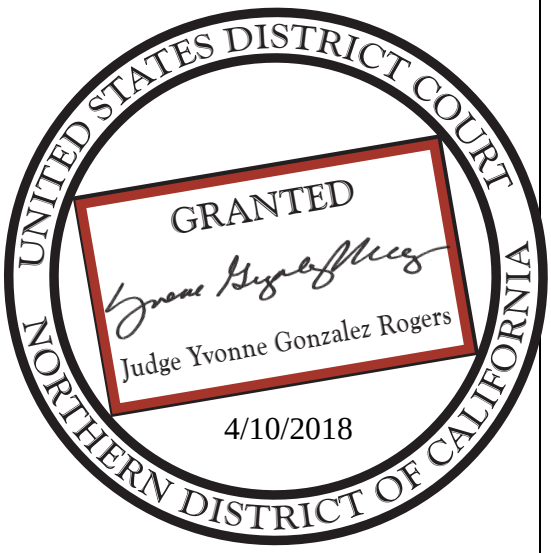
I certify under penalty of perjury that the foregoing is true and correct. Executed on **April 10, 2018**.

/s/ Shane Brun
SHANE BRUN

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Attorneys for Defendant
NIKE, INC.



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA,

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

NIKE, INC.,

Defendant.

CASE NO. 17-cv-05931-YGR

[~~PROPOSED~~] JUDGMENT

Dept.: Courtroom 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

Pursuant to the Court's Order (Dkt. No. 67) granting Defendants' Omnibus Motion to Dismiss finding the asserted claims of U.S. Patent Nos. 8,738,794 ("the '794 patent"); 8,892,752 ("the '752 patent"); and 9,749,847 ("the 847 patent") (collectively, "the Asserted Patents") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101, it is HEREBY ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 67), claims 1-4, 7 and 9 of the '794 patent; claims 1, 2, 4, 5, 12, 13, and 14 of the '752 patent; and claims 1-3 of the '847 patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the Asserted Patents represent all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant NIKE, Inc. and against Plaintiff Cellspin Soft., Inc.

Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
United States District Court Judge

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Attorneys for Defendants
FOSSIL GROUP, INC. AND MISFIT INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

FOSSIL GROUP, INC. and MISFIT INC.,

Defendant.

CASE NO. 17-cv-05933-YGR

[~~PROPOSED~~ ORDER OF] JUDGMENT INVALIDATING ASSERTED PATENT CLAIMS

Judge: Hon. Yvonne Gonzalez Rogers

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 85) granting Defendants Fossil Group, Inc. and Misfit Inc.'s (collectively, "Fossil") Motion to Dismiss (Dkt. No. 52) finding all asserted claims of U.S. Patent Nos. 8,738,794 (the "'794 Patent"), 8,892,752 (the "'752 Patent"), and 9,749,847 (the "'847 Patent") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 85), 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, and claims 1-3 from the '847 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '794, '752, and '847 Patents represent all pending claims at issue in this case.

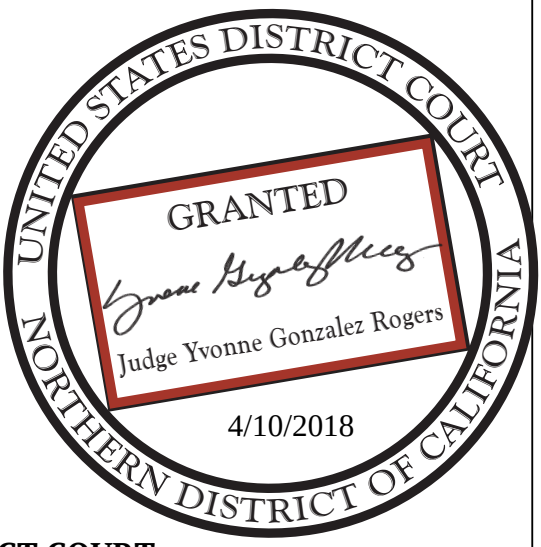
WHEREFORE JUDGMENT is entered in this case in favor of Defendant Fossil and against Plaintiff Cellspin Soft, Inc.

Dated: April 10. 2018, 2018

YVONNE GONZALEZ ROGERS
United States District Court Judge

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Attorney for Defendants Garmin International, Inc., Garmin USA, Inc.



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA,

OAKLAND DIVISION

CELLSPIN SOFT, INC., Plaintiff, v. **GARMIN INTERNATIONAL, INC., GARMIN USA, INC.** Defendants.	CASE NO. 4:17-cv-05934-YGR ~~**PROPOSED FORM OF**~~ **JUDGMENT PURSUANT TO ORDER RE: OMNIBUS MOTION TO DISMISS & GARMIN'S MOTION FOR JUDGMENT ON THE PLEADINGS** Hon. Yvonne Gonzalez Rogers

Pursuant to the Court's Order on April 3, 2018 (Dkt. No. 65) directing Defendants to file a proposed form of judgment based on the Court's Order finding the asserted claims of 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") invalid under 35 U.S.C. § 101, Defendants Garmin International, Inc. and Garmin USA, Inc. ("Garmin") respectfully submit the following proposed judgment, attached as Exhibit A, the

form of which has been mostly approved by Plaintiff Cellspin Soft, Inc. It should be noted that Plaintiff Cellspin Soft, Inc. objected to a single sentence of the content of Garmin's proposed order: "rendering Garmin the prevailing party in the above-captioned action". Cellspin stated that it "does not dispute that Garmin will be the prevailing party" but says that the language is extraneous. Garmin disagrees and believes the statement is simply accurate. Other than that single sentence, the Parties agree on the form and content of the attached proposed order.

Respectfully submitted,

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Attorney for Defendants

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA,

OAKLAND DIVISION

CELLSPIN SOFT, INC., Plaintiff, v. **GARMIN INTERNATIONAL, INC., GARMIN USA, INC.** Defendants.	CASE NO. 4:17-cv-05934-YGR **~~PROPOSED FORM OF~~ JUDGMENT PURSUANT TO ORDER RE: OMNIBUS MOTION TO DISMISS & GARMIN'S MOTION FOR JUDGMENT ON THE PLEADINGS** Hon. Yvonne Gonzalez Rogers

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 65) granting Garmin International, Inc. and Garmin, USA, Inc's ("Garmin's") Motion to Dismiss and Motion For Judgment On the Pleadings (Dkt. Nos. 27, 52) finding all asserted claims of 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") directed to patent-ineligible

subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 65), 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 are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '794, '752, '847 and '698 Patents represent all pending claims at issue in this case.

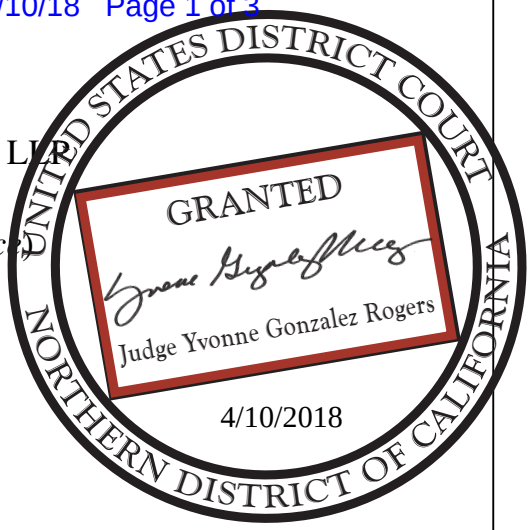
WHEREFORE JUDGMENT is entered in this case in favor of Defendant Garmin and against Plaintiff Cellspin Soft, Inc., rendering Garmin the prevailing party in the above-captioned action.

Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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Attorney for Defendant Canon U.S.A., Inc.



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

CANON U.S.A., INC.,

Defendant.

CASE NO. 3:17-CV-05938-YGR

~~[PROPOSED ORDER OF]~~ JUDGMENT INVALIDATING ASSERTED PATENT CLAIMS

Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 73) granting Defendant Canon U.S.A., Inc.'s ("Canon") Motion to Dismiss (Dkt. No. 43) finding all asserted claims of U.S. Patent No. 9,258,698 (the " '698 Patent") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 73), claims 1, 3-5, 7-8, 10-13, and 15-20 of the '698 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '698 Patent represent all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant Canon and against Plaintiff Cellspin Soft, Inc.

Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document including all of its attachments with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **April 9, 2018**. I further certify that service will be accomplished by the CM/ECF system and paper copies shall be served by first class mail, postage prepaid on all counsel who are not served through CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on **April 9, 2018**.

/s/ Jeffrey Ung

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.

Plaintiff,

v.

GOPRO, INC.,

Defendant.

Case No. 17-cv-05939-YGR

~~[PROPOSED]~~ JUDGMENT PURSUANT TO ORDER RE: OMNIBUS MOTION TO DISMISS

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 70) granting Defendant GoPro, Inc.'s ("GoPro") Motion to Dismiss (Dkt. No. 31) finding all asserted claims of 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") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 70), 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, 4, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, and 20 from the '698 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '698 Patent represent all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant GoPro and against Plaintiff Cellspin Soft, Inc., rendering GoPro the prevailing party in the above-captioned action.

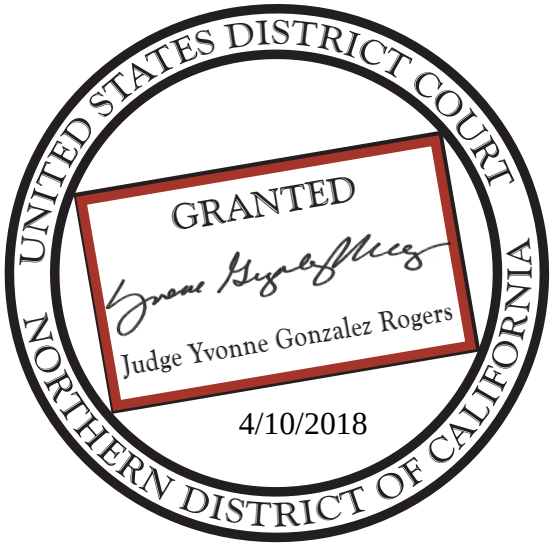
Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

PANASONIC CORPORATION OF NORTH AMERICA,

Defendant.

Case No. 4:17-cv-05941

~~[PROPOSED]~~ JUDGMENT

Judge: Hon. Yvonne Gonzalez Rogers

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 71) granting Defendant Panasonic Corporation of North America's ("Panasonic") Motion to Dismiss (Dkt. No. 34) finding all asserted claims of U.S. Patent No. 9,258,698 (the " '698 Patent") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101—IT IS HEREBY ADJUDGED AND ORDERED that:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 71), claims 1, 3-5, 7-8, 10-13, and 15-20 of the '698 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '698 Patent represent all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant Panasonic and against Plaintiff Cellspin Soft, Inc.

Dated: April 10, 2018

YVONNE GONZALEZ ROGERS
United States District Court Judge

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC.,

Plaintiff,

v.

JK IMAGING LTD.,

Defendant.

Civil Action No. 4:17-cv-06881 (YGR)

[~~PROPOSED ORDER OF~~] JUDGMENT

Judge: Hon. Yvonne Gonzalez Rogers
Courtroom: 1, 4th Floor

This action having come before the Court, and pursuant to the Court's Order (Dkt. No. 74) granting the Omnibus Defendants' Motion to Dismiss (Dkt. Nos. 24, 43) finding all asserted claims of U.S. Patent No. 9,258,698 ("the '698 Patent") directed to patent-ineligible subject matter and therefore invalid pursuant to 35 U.S.C. § 101 – IT IS HEREBY ADJUDGED AND ORDERED THAT:

For the reasons set forth in the Court's Order on April 3, 2018 (Dkt. No. 74), claims 1, 3–5, 7–8, 10–13, and 15–20 of the '698 Patent are invalid pursuant to 35 U.S.C. § 101.

The foregoing claims of the '698 Patent represent all asserted claims of the '698 Patent, and therefore all pending claims at issue in this case.

WHEREFORE JUDGMENT is entered in this case in favor of Defendant JK Imaging Ltd. and against Plaintiff Cellspin Soft, Inc.

Dated: ~~April 10~~, 2018

YVONNE GONZALEZ ROGERS
United States District Court Judge

27995984

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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*.

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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*.

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

CELLSPIN SOFT, INC. Plaintiff, v. **FITBIT, INC.** Defendant.	**ORDER RE: OMNIBUS MOTION TO DISMISS; MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 17-cv-05928-YGR Dkt. No. 31, 75
v. **MOOV, INC.** Defendant.	Case No. 17-cv-05929-YGR Dkt. No. 29, 63
v. **NIKE, INC.,** Defendant.	Case No. 17-cv-05931-YGR Dkt. No. 23, 63
v. **FOSSIL GROUP, INC. ET AL** Defendant.	Case No. 17-cv-05933-YGR Dkt. No. 41, 81
v. **GARMIN INTERNATIONAL INC. ET AL** Defendant.	Case No. 17-cv-05934-YGR Dkt. No. 27, 61
v. **CANNON U.S.A., INC.** Defendant	Case No. 17-cv-05938-YGR Dkt. No. 43, 69
v. **GOPRO, INC.** Defendant.	Case No. 17-cv-05939-YGR Dkt. No. 31, 66

v. **PANASONIC CORPORATION OF NORTH AMERICA** Defendant.	Case No. 17-cv-05941-YGR Dkt. No. 34, 67
v. **JK IMAGING, LTD.** Defendant.	Case No. 17-cv-06881-YGR Dkt. No. 43, 70

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

[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.

[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.

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, 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 Bluetooth™ 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 Bluetooth™ (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.)

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

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 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 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.)

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

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*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (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.*, 132 S. Ct. 1289, 1301 (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*, 131 S. Ct. 2238, 2245 (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 (1980). "A principle, in the abstract, is a fundamental truth . . . [which] cannot be patented." *Gottschalk v. Benson*, 409 U.S. 63, 67 (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*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593, 611-12 (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 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)).

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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).

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 (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 (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. 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 614912 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); *see Parker v. Flook*, 437 U.S. 584 (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 one of their basic functions" may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

[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.

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 Glob; 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*, 784 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 at1262.

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 1455-56.

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

[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 (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.").

> (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; (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

[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.

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]

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

[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 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).

(*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]

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

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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.*

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.)

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 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.

Dated: April 3, 2018

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

US008738794B2

(12) **United States Patent**
Singh et al.

(10) **Patent No.: US 8,738,794 B2**
(45) **Date of Patent: *May 27, 2014**

(54) **AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT**

(71) Applicant: **CellSpinSoft Inc.**, San Jose, CA (US)

(72) Inventors: **Gurvinder Singh**, Santa Clara, CA (US); **Marcos Klein**, Mountain View, CA (US); **Vince Laviano**, Alviso, CA (US)

(73) Assignee: **CellSpinSoft Inc.**, San Jose, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **13/922,227**

(22) Filed: **Jun. 19, 2013**

(65) **Prior Publication Data**

US 2013/0290553 A1 Oct. 31, 2013

Related U.S. Application Data

(63) Continuation of application No. 13/740,214, filed on Jan. 13, 2013, which is a continuation of application No. 12/333,303, filed on Dec. 11, 2008, now Pat. No. 8,392,591.

(60) Provisional application No. 61/017,202, filed on Dec. 28, 2007.

(51) **Int. Cl.**
H04L 29/06 (2006.01)

(52) **U.S. Cl.**
USPC **709/230**

(58) **Field of Classification Search**
USPC 709/230
See application file for complete search history.

(56) **References Cited**

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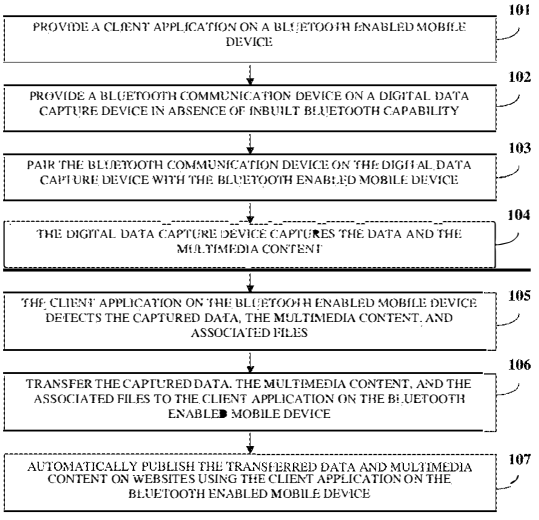
* cited by examiner

Primary Examiner — Sulaiman Nooristany
(74) *Attorney, Agent, or Firm* — Ash Tankha; Lipton, Weinberger & Husick

(57) **ABSTRACT**

Disclosed herein is a method and system for utilizing a digital data capture device in conjunction with a Bluetooth (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. A client application is provided on the BT enabled mobile device. In the absence of inbuilt BT capability, a BT communication device is provided on the digital data capture device. The BT communication device is paired with the BT enabled mobile device to establish a connection. The client application detects capture of data and multimedia content on the digital data capture device and initiates transfer of the captured data, multimedia content, and associated files. The digital data capture device transfers the captured data, multimedia content, and the associated files to the client application. The client application automatically publishes the transferred data and multimedia content on one or more websites.

21 Claims, 5 Drawing Sheets



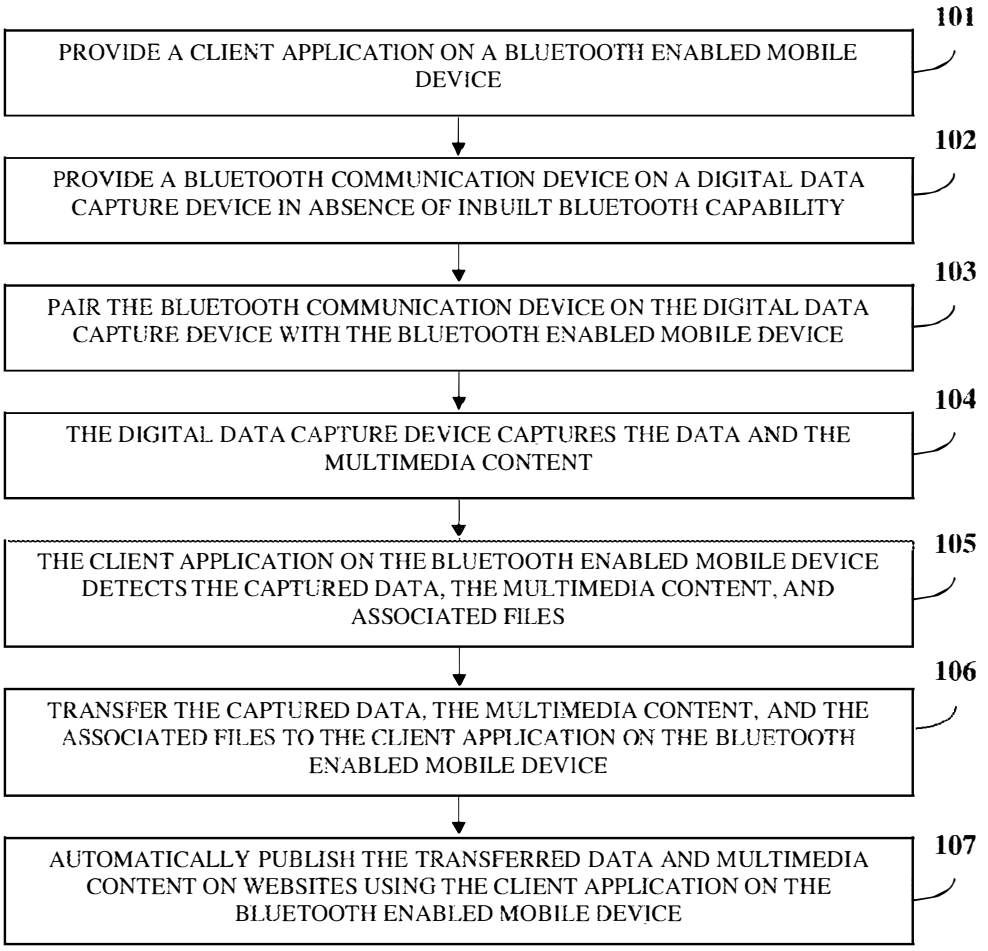

101
PROVIDE A CLIENT APPLICATION ON A BLUETOOTH ENABLED MOBILE DEVICE
102
PROVIDE A BLUETOOTH COMMUNICATION DEVICE ON A DIGITAL DATA CAPTURE DEVICE IN ABSENCE OF INBUILT BLUETOOTH CAPABILITY
103
PAIR THE BLUETOOTH COMMUNICATION DEVICE ON THE DIGITAL DATA CAPTURE DEVICE WITH THE BLUETOOTH ENABLED MOBILE DEVICE
104
THE DIGITAL DATA CAPTURE DEVICE CAPTURES THE DATA AND THE MULTIMEDIA CONTENT
105
THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE DETECTS THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND ASSOCIATED FILES
106
TRANSFER THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND THE ASSOCIATED FILES TO THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE
107
AUTOMATICALLY PUBLISH THE TRANSFERRED DATA AND MULTIMEDIA CONTENT ON WEBSITES USING THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE

FIG. 1

Case: 18-1817 Document: 57 Page: 275 Filed: 06/19/2018

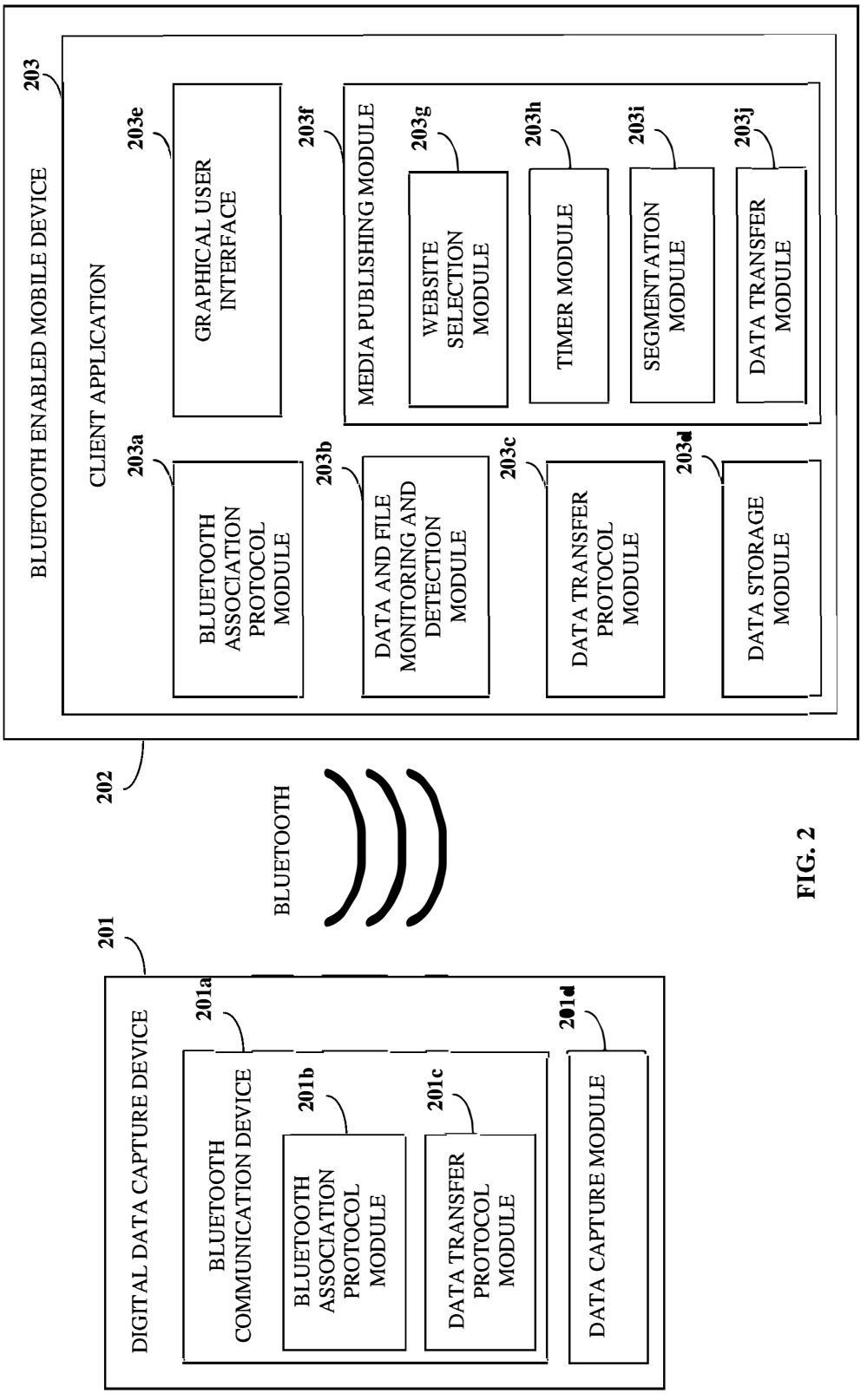


FIG. 2

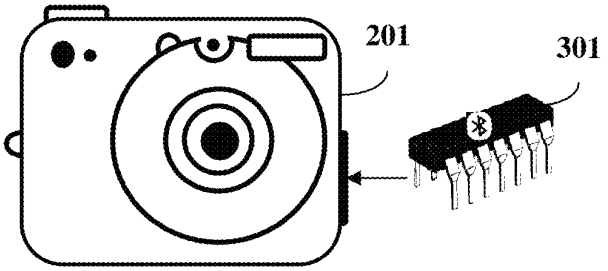


FIG. 3A

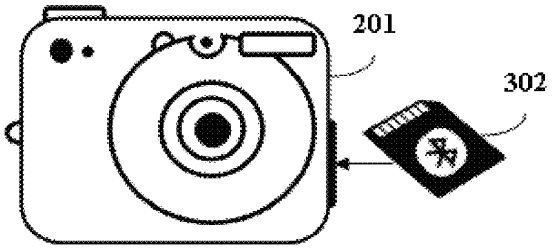


FIG. 3B

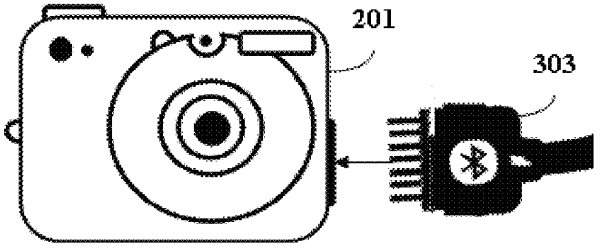


FIG. 3C

Case: 18-1817 Document: 57 Page: 277 Filed: 06/19/2018

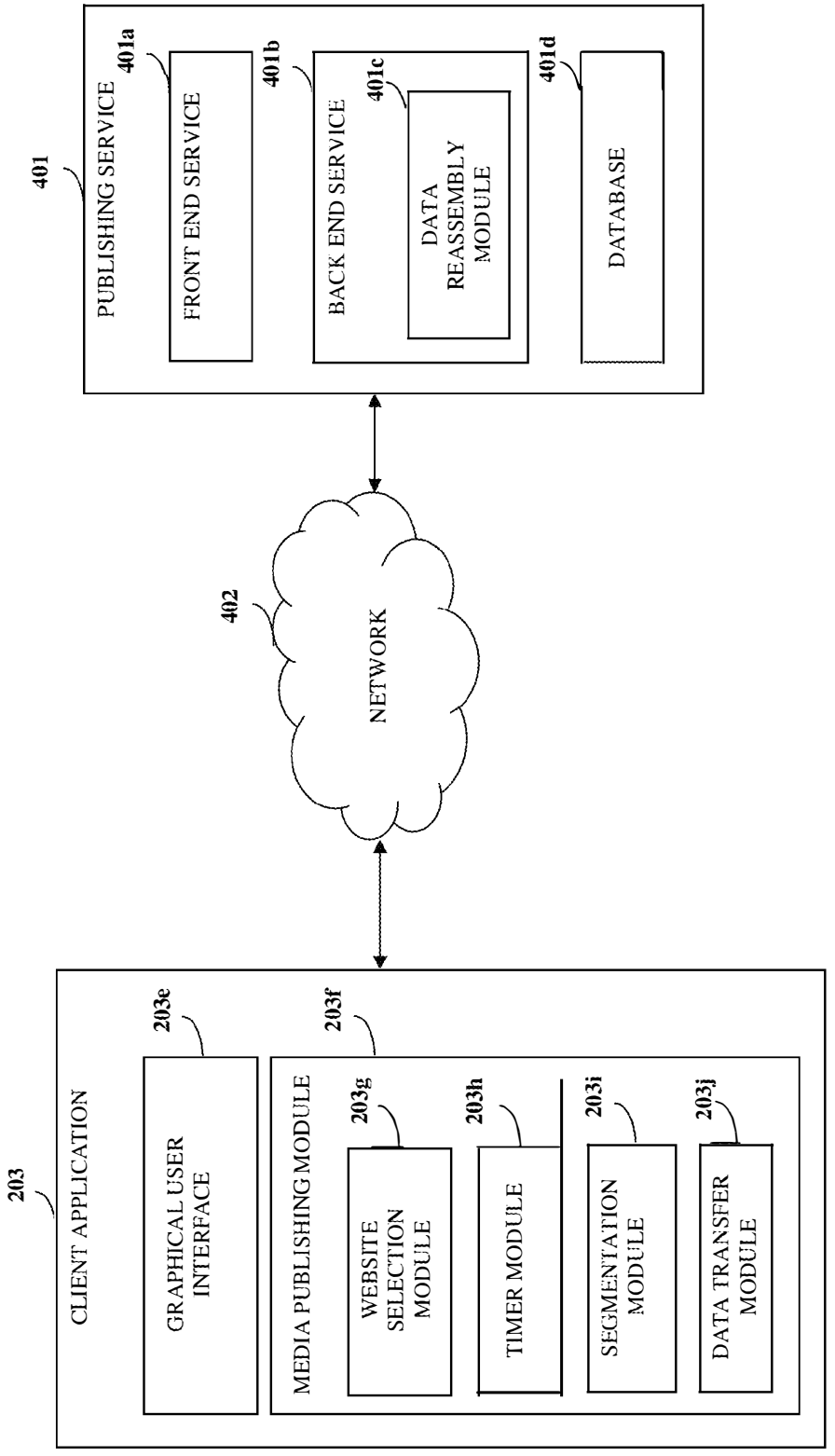


FIG. 4

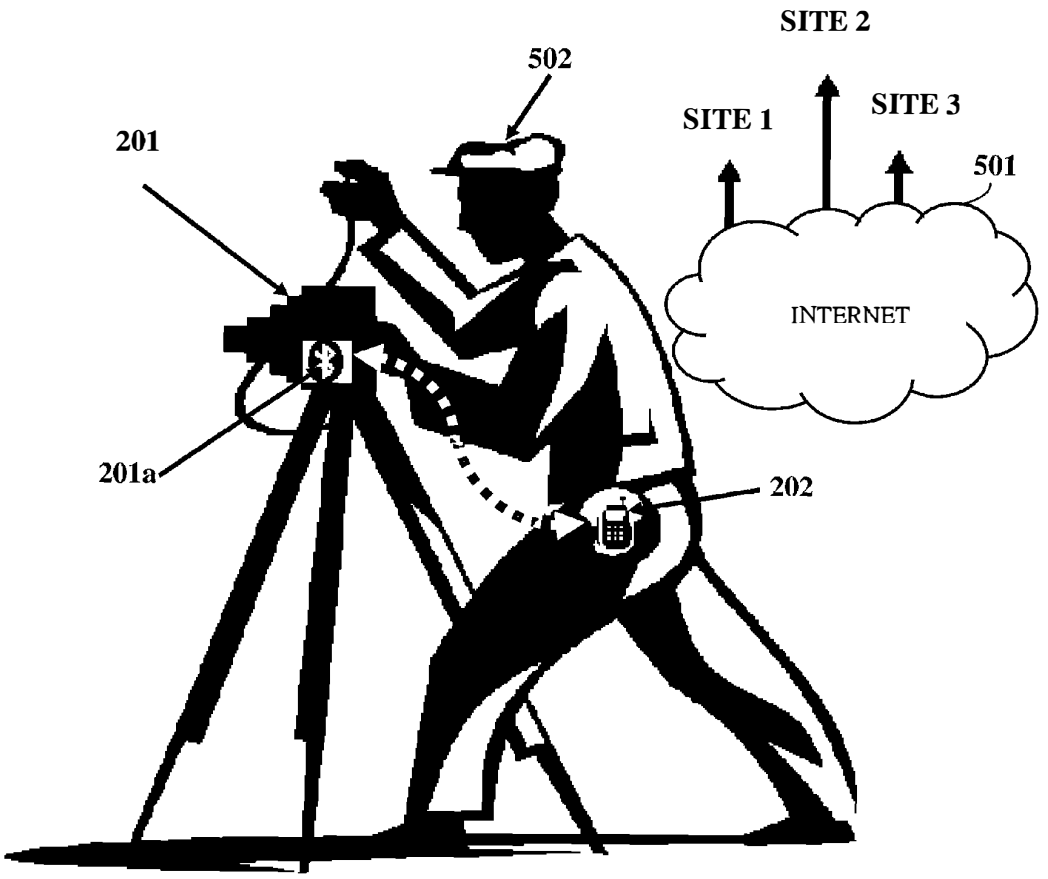


FIG. 5

AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT

CROSS REFERENCE TO RELATED APPLICATIONS

1. This application is a continuation application of non-provisional patent application Ser. No. 13/740,214, titled "Automatic Multimedia Upload For Publishing Multimedia Content", filed on Jan. 13, 2013 in the United States Patent and Trademark Office which is a continuation application of non-provisional patent application Ser. No. 12/333,303, now U.S. Pat. No. 8,392,591, titled "Automatic Multimedia Upload For Publishing Multimedia Content", filed on Dec. 11, 2008 in the United States Patent and Trademark Office which claims the benefit of U.S. provisional patent application No. 61/017,202, titled "Automatic Multimedia Upload For Publishing Multimedia Content", filed on Dec. 28, 2007 in the United States Patent and Trademark Office. Non-provisional patent application Ser. Nos. 12/333,303 and 13/740,214, and provisional patent application No. 61/017,202 are incorporated herein in their entirety.

2. The following patent is incorporated herein in its entirety: Non-provisional U.S. patent application Ser. No. 11/901,802, titled "Online Publishing Of Multimedia Content", filed on Sep. 19, 2007 in the United States Patent and Trademark Office.

BACKGROUND

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 and multimedia content on one or more websites simultaneously.

A user may need to capture and publish data and multimedia content on the internet in real time. 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.

Therefore, there is a need for a method and system to utilize a digital data capture device in conjunction with a mobile device for automatically detecting capture of data and multimedia content, transferring the captured data and multimedia content to the mobile device, and publishing the data and multimedia content on one or more websites automatically or with minimal user intervention.

SUMMARY OF THE INVENTION

This summary is provided to introduce a selection of concepts in a simplified form that are further described in the detailed description of the invention. This summary is not intended to identify key or essential inventive concepts of the claimed subject matter, nor is it intended for determining the scope of the claimed subject matter.

The method and system disclosed herein addresses the above stated need for utilizing a digital data capture device in conjunction with a Bluetooth™ (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital data capture device is physically separated from the BT enabled mobile device.

In the method and system disclosed herein, a client application is provided on a BT enabled mobile device. In the absence of in-built BT capability in the digital data capture device, a BT communication device is provided on the digital data capture device. The BT communication device may, for example, be an in-built BT capability chip, a BT memory card, or an external BT device. The BT communication device on the digital data capture device is paired with the BT enabled mobile device to establish a connection between the digital data capture device and the BT enabled mobile device.

A user may capture data and multimedia content using the digital data capture device. The digital data capture device may, for example, be a digital camera, a video camera, or other digital modular camera systems. The client application on the BT enabled mobile device detects the captured data, multimedia content, and files associated with the captured data and the multimedia content on the digital data capture device by communicating over a wireless BT protocol. The captured data, multimedia content, and the associated files are automatically transferred to the client application on the BT enabled mobile device from the digital data capture device.

The detection and transfer of the captured data, the multimedia content, and the associated files may be initiated by the client application of the BT enabled mobile device. The detection and transfer of the captured data, the multimedia content, and the associated files to the BT enabled mobile device may be initiated by the digital data capture device when the client application is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device.

The user may configure a timer setting and select the websites for publishing using the client application on the BT enabled mobile device. The client application selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the Bluetooth enabled mobile device. The client application also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The client application on the BT enabled mobile device automatically publishes the transferred data and multimedia content on one or more websites using the settings configured by the user. The method and system disclosed herein thereby enables the user to capture data and multimedia content, for example, audio, video, text, and images, automatically upload the captured data and multimedia content onto a BT enabled mobile device, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The user may therefore publish data and the multimedia content on immediate capture of the data and the multimedia content on the digital data capture device.

The method and system disclosed herein is described with reference to a BT communication protocol. The method and system disclosed herein may be realized with wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks.

BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing summary, as well as the following detailed description of the invention, is better understood when read in conjunction with the appended drawings. For the purpose of illustrating the invention, exemplary constructions of the

invention are shown in the drawings. However, the invention is not limited to the specific methods and instrumentalities disclosed herein.

FIG. **1** illustrates a method of utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIG. **2** illustrates a system for utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIGS. **3**A-**3**C exemplarily illustrate the Bluetooth communication device options used on the digital data capture device for establishing a Bluetooth connection with the client application on the Bluetooth enabled mobile device.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application on a mobile device on one or more websites simultaneously.

FIG. **5** exemplarily illustrates a user utilizing a digital camera in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

DETAILED DESCRIPTION OF THE INVENTION

FIG. **1** illustrates a method of utilizing a digital data capture device **201** in conjunction with a Bluetooth™ enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The term "Bluetooth enabled mobile device" is herein referred to as "mobile device". The digital data capture device **201** is physically separated from the mobile device **202** as illustrated in FIG. **2**. The digital data capture device **201** may, for example, be a digital camera, a video camera, digital modular camera systems, or other digital data capturing systems.

In the method disclosed herein, a client application **203** is provided **101** on the mobile device **202**. In the absence of inbuilt Bluetooth (BT) capability in the digital data capture device **201**, a BT communication device **201***a* is provided **102** on the digital data capture device **201**. The BT communication device **201***a* may, for example, be an inbuilt BT capability chip **301**, a BT memory card **302**, or an external BT device **303** as illustrated in FIGS. **3**A-**3**C respectively. The external BT device **303** may, for example, be attached to a universal serial bus (USB), a firewire interface, or a power port of the digital data capture device **201**. BT 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 radio frequency.

The BT communication device **201***a* on the digital data capture device **201** is paired **103** with the mobile device **202** to establish a connection between the digital data capture device **201** and the mobile device **202**. BT pairing involves establishing a connection between two BT devices that mutually agree to communicate with each other. A BT device that wants to communicate only with a trusted device can cryptographically authenticate the identity of another BT device. BT pairing occurs when the BT communication device **201***a* agrees to communicate with the mobile device **202** in order to establish a connection. In order to initiate the pairing process between the BT communication device **201***a* and the mobile device **202**, a common password known as a passkey is exchanged between the BT communication device **201***a* and the mobile device **202**. A passkey is a code shared by the BT communication device **201***a* and the mobile device **202**.

A user sets a discoverable mode for the mobile device **202**. When set to the discoverable mode, the mobile device **202** will allow the BT communication device **201***a* on the digital data capture device **201** to detect the mobile device's **202** presence and attempt to establish a connection. In order to initiate the pairing process, the BT communication device **201***a* will send the BT communication device name of a predefined number of characters, for example, up to 255 characters, and the BT address to the mobile device **202**. The BT communication device **201***a* then prompts the user of the mobile device **202** to enter the passkey code in order to accept the pairing with the BT communication device **201***a* on the digital data capture device **201**. On entering the passkey by the user of the mobile device **202**, the entered passkey is matched with the passkey of the BT communication device **201***a*. If a match is found, a trusted pair is automatically established.

The user captures **104** data and multimedia content using the digital data capture device **201**. The data and multimedia content may, for example, comprise image files, audio files, video files, text files, or any combination thereof. The client application **203** on the mobile device **202** detects **105** the captured data, the multimedia content, and files associated with the captured data and the multimedia content. The client application **203** then initiates the transfer of the captured data, the multimedia content, and the associated files in a pull mode of operation. In the pull mode, the client application **203** periodically polls the digital data capture device **201** to determine the creation of a new file in the digital data capture device **201**. The digital data capture device **201** then automatically transfers **106** the captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202** using one or a combination of file transfer protocols. The file transfer protocols may, for example, be one or a combination of BT profile protocols such as the object exchange (OBEX) protocol, the generic object exchange profile (GOEP) protocol, etc. The file transfer protocols may, for example, also be the media transfer protocol (MTP), the picture transfer protocol (PTP), and the PictBridge protocol implemented using a USB.

The picture transfer protocol (PTP) allows the transfer of images from digital cameras to computers and other peripheral devices without the need of additional device drivers. The media transfer protocol is a custom extension to the PTP and allows the protocol to be used for devices other than digital cameras, for example digital audio players and other portable media devices, for example portable video players. The PictBridge protocol allows images to be printed directly from digital cameras to a printer, without having to connect the camera to a computer.

The transfer of the data, the multimedia content, and the associated files may also take place in a push mode of operation. In the push mode, the BT communication device **201***a* sends a signal to the client application **203** on creation of a new file. By implementation of a handshake protocol, the BT communication device **201***a* automatically transfers captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202**. For some external digital data capture devices, the client application **203** may not be able to detect the creation of a new file. In such cases, the digital data capture device **201** signals the client application **203** in the event a new file is created. A file event listener in the client application **203** listens for the signal from

the digital data capture device **201**. The user may then initiate the transfer by a press of a button or a key on the digital data capture device **201**.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments. The data segments are tagged with segment identifiers using the client application **203**. The tagged data segments are transferred from the client application **203** of the mobile device **202** to a publishing service **401** via a network **402** as illustrated in FIG. **4**.

When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the digital data capture device **201** initiates detection and transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The user may also set preferences on the mobile device **202**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The user may configure a timer setting and the websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content. The user may set the timer setting to, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting. The client application **203** on the mobile device **202** selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the mobile device **202**. The client application **203** also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention.

The client application **203** on the mobile device **202** then automatically publishes **107** the transferred data and multimedia content on one or more websites. If the user configures the timer setting to "no-wait-automatic", the data and the multimedia content are automatically published on one or more websites based on the user preferences configured on the mobile device **202** without waiting for a certain period of time. If the user configures the timer setting to "wait-X-minutes-automatic", the client application **203** will wait for "X" minutes for the user to change or cancel publishing. If there is no user action for "X" minutes, the client application **203** will automatically publish the data and multimedia content to one or more websites based on the user preferences. Further, if the user configures the timer setting to "wait-X-minutes-user-input-cancel", the client application **203** will wait for "X" minutes for an input from the user. If there is no input from the user, the client application **203** cancels the publishing of the data and multimedia content. The publishing of the data and multimedia content on one or more websites simultaneously is explained in the detailed description of FIG. **4**.

The user may therefore capture data, for example, audio, video, text, and images, automatically upload the captured data onto the mobile device **202**, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The method disclosed herein thereby enables the user to publish data and the multimedia content on immediate click of an image or recording of a video on the digital data capture device **201** without having to manually upload the data onto a computing device and then publish the data on the websites.

FIG. **2** illustrates a system for utilizing a digital data capture device **201** in conjunction with a BT enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The system disclosed herein comprises a digital data capture device **201** and a client application **203** provided on the BT enabled mobile device **202**. The digital data capture device **201** and the mobile device **202** are physically separated from each other. The digital data capture device **201** comprises a BT communication device **201***a* and a data capture module **201***d*.

The BT communication device options used on the digital data capture device **201** for establishing a BT connection with the client application **203** on the BT enabled mobile device **202** are exemplarily illustrated in FIGS. **3**A-**3**C. The BT communication device **201***a* may, for example, be an in-built BT capability chip **301** as illustrated in FIG. **3**A, a BT memory card **302** as illustrated in FIG. **3**B, or an external BT device **303** as illustrated in FIG. **3**C.

The BT communication device **201***a* comprises a BT association protocol module **201***b* and a data transfer protocol module **201***c*. The client application **203** on the mobile device **202** comprises a BT association protocol module **203***a*, a data and file monitoring and detection module **203***b*, a data transfer protocol module **203***c*, a data storage module **203***d*, a graphical user interface (GUI) **203***e*, and a media publishing module **203***f*. The BT association protocol module **201***b* of the digital data capture device **201** and the BT association protocol module **203***a* of the client application **203** enable the pairing between the BT communication device **201***a* and the mobile device **202**. The pairing of the BT communication device **201***a* and the mobile device **202** is explained in the detailed description of FIG. **1**. The data capture module **201***d* captures the data and the multimedia content on the digital data capture device **201**.

The data and file monitoring and detection module **203***b* of the client application **203** monitors and detects the capture of the data, the multimedia content, and the files associated with the captured data and the multimedia content. On detection, the data transfer protocol module **203***c* of the client application **203** initiates the transfer and download of the captured data, the multimedia content, and the associated files from the digital data capture device **201**. When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the data transfer protocol module **201***c* of the digital data capture device **201** initiates the transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The data transfer protocol module **201***c* of the digital data capture device **201** transfers the captured data, the multimedia content, and the associated files to the client application **203**. The data storage module **203***d* stores the captured data, the multimedia content, and the associated files on the mobile device **202**. The user may also set preferences on the mobile device **202** using the GUI **203***e* of the client application **203**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The GUI **203***e* enables the user to configure a timer setting and websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content using the GUI **203***e*. The user may set a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting as explained in the detailed description of FIG. **1**.

The media publishing module **203***f* automatically publishes the transferred data and the multimedia content on one or more of the websites. The media publishing module **203***f*

comprises a website selection module **203***g*, a timer module **203***h*, a segmentation module **203***i*, and a data transfer module **203***j*. The website selection module **203***g* selects the websites for publishing the data and the multimedia content based on settings and user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer setting may be set for automatic publishing of the multimedia content or a time based wait mode where user interaction is required. The timer module **203***h* sets the timer based on a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting configured by the user. The timer module **203***h* ensures that if the user does not wish to publish the transferred data and multimedia content, the user has time to decide whether to publish or not. The user may also configure the client application **203** to automatically delete the data, the multimedia content, and the associated files after the data and the multimedia content have been posted and published on one or more websites based on user preferences.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments using the segmentation module **203***i*. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via a network **402** for publishing on the websites automatically.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application **203** on a mobile device **202** on one or more websites simultaneously. The system disclosed herein comprises a client application **203** and a publishing service **401** connected via a network **402**. The client application **203** comprises a media publishing module **203***f* as explained in the detailed description of FIG. **2**. The media publishing module **203***f* comprises the website selection module **203***g*, the timer module **203***h*, the segmentation module **203***i*, and the data transfer module **203***j*. The website selection module **203***g* selects the websites based on user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer module **203***h* ensures that the publishing service **401** obtains the data, the multimedia content, and the associated files to publish on the selected websites based on the time set by the user.

In the case of limited memory and processing capabilities of the mobile device **202**, the segmentation module **203***i* of the client application **203** partitions the multimedia content of large files into multiple data segments. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The segment identifiers may, for example, be one or more of transaction identifiers, sequence numbers, and timestamps. The segment identifiers are used later by a back end service **401***b* of the publishing service **401** to reassemble the data segments in a predetermined sequence to create a multimedia object. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via the network **402**. The network **402** may, for example, be a wireless network, a cellular network, or the internet **501**.

The publishing service **401** comprises a front end service **401***a*, a back end service **401***b*, and a database **401***d*. The transferred data and multimedia content is stored in the database **401***d* of the publishing service **401**. A protocol is provided for synchronizing user publishing information between the client application **203** and the publishing service **401**. The user publishing information may, for example, comprise user preferences of the websites and the timer setting. The data transfer module **203***j* may transfer the data and the multimedia content as a single multimedia file, multiple data segments in the case of large files, or electronic mail attachments to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* comprises a data reassembly module **401***c*. If the back end service **401***b* receives the multimedia content in the form of multiple data segments, the data reassembly module **401***c* reassembles the data segments in a predetermined sequence using the segment identifiers. The back end service **401***b* then creates a multimedia object from the transferred data and multimedia content. The multimedia object is transferred from the back end service **401***b* to the front end service **401***a* and then published on the websites selected by the user.

FIG. **5** exemplarily illustrates a user **502** utilizing a digital camera in conjunction with a Bluetooth enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital camera is physically separated from the mobile device **202** as illustrated in FIG. **5**. The digital camera comprises a BT communication device **201***a* such as an in-built BT capability chip **301**, a BT memory card **302**, or an external BT device **303** or dongle externally attached to the digital camera as illustrated in FIGS. **3**A-**3**C. The external BT dongle may be attached to a USB, a firewire interface, or a power port of the digital camera. The BT communication device **201***a* on the digital camera is paired with the mobile device **202** to establish a connection. The user **502** may capture an image using the digital camera. The client application **203** on the mobile device **202** detects the captured image and initiates the transfer of the captured image and the associated files. The digital camera automatically transfers the captured image and the associated files to the client application **203** on the mobile device **202**.

The client application **203** automatically publishes the transferred image on one or more websites via the internet **501**. The user **502** may set preferences in the mobile device **202**. The user preferences, for example, comprise the websites selected for publishing the transferred image. The user **502** may select websites, for example, Flickr™, Picasa™, YouTube™, eBay®, etc. and store the preferences on the mobile device **202**. The user **502** may also set the timer setting for publishing the transferred image on the selected websites. After the captured image is transferred to the mobile device **202**, the client application **203** publishes the capture image on the selected websites based on the default timer and website settings configured by the user **502** on the mobile device **202**.

Consider an example where a user **502** records a video using a BT enabled video camera. The video camera immediately establishes a connection with the user's **502** BT enabled mobile device **202**. On detection of the recorded video by the client application **203** on the mobile device **202**, the video camera automatically transfers the recorded video to the user's **502** mobile device **202**. In the case of limited memory and processing capabilities of the mobile device **202**, the recorded video may be streamed as data segments from the mobile device **202** to the publishing service **401**. The client application **203** individually tags the data segments with segment identifiers and transfers the tagged data seg-

ments from the mobile device **202** to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* of the publishing service **401** reassembles the data segments in a predetermined sequence using the segment identifiers to create the multimedia object. The multimedia object is an aggregation of the reassembled data segments. The multimedia object is then transferred from the back end service **401***b* to the front end service **401***a* and automatically published by the front end service **401***a* on one or more websites selected by the user **502**.

Consider another example where a user **502** may record videos or capture images at different points in time and automatically uploads and publishes the videos and images on one or more websites. Consider an investigative reporter, Jane, working for a prominent newspaper in New York City. Each day, she moves around the city chasing leads, interviewing people, videotaping her stories, taking pictures, and tracking down her next big story. When she is working on a story with an associate writer, she may need to upload her videos and pictures and send it immediately to the associate writer. The method and system disclosed herein enables Jane to automatically upload pictures and videos taken using her digital camera or video camera onto a mobile device **202** and publish the pictures, videos, etc. from her mobile device **202** to the internet **501** with one click or touch of a button.

On one click or touch of a button, the pictures and videos are published and immediately made available on Jane's private blog that may be accessed by the newspaper editor and her associates in the news office. When she is collaborating with an associate on a story, they may see each other's progress in real time. Since sharing information with the associate over electronic mails (emails) may be inconvenient, Jane records her progress on the story in the voice format and publishes. The associate may access the information from Jane's blog site, thereby saving considerable time.

Exemplarily, the method and system disclosed herein may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system. The method and system disclosed herein is realized with, but not limited to Bluetooth communication protocol. Wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks may be employed to accomplish the tasks of the method and system disclosed herein. The mobile device **202** may, for example, be a ubiquitous mobile phone. The use of personal digital assistants (PDAs) without telephony support is also fairly widespread. The client application **203** may be deployed on mobile devices with limited or no telephony support. These mobile devices may support Java of Sun Microsystems Inc., more specifically Java 2 Micro Edition (J2ME™), Windows Mobile .Net Compact Framework of Microsoft, Inc., Symbian™, Linux framework. The client application **203** may, for example, be implemented on the J2ME platform. These environments provide functionalities in the libraries to create the GUI **203***e* and perform all the required functions of the method and system disclosed herein. Other advantages of these frameworks are portability across mobile devices that run on different operating systems.

The client application **203** may be rendered independent of the operating system of the mobile device **202**. One of the transport mechanisms to achieve the connectivity between the publishing service **401** and the client application **203** is the wireless internet. While most PDAs have an inbuilt wireless network card for the internet connectivity, the mobile phones may transfer data to the publishing service **401** over the telephony network at near broadband speeds. Some of the mobile phones equipped with both wireless network and telephony data capabilities may use either of the two to communicate with the publishing service **401**. The transport protocol that is used between the client application **203** and the publishing service **401** may be hypertext transfer protocol (HTTP) or extensible markup language-remote procedure calls (XML-RPC). The back end service **401***b* may, for example, be developed in Java.

It will be readily apparent that the various methods and algorithms described herein may be implemented in a computer readable medium appropriately programmed for general purpose computers and computing devices. Typically a processor, for e.g., one or more microprocessors will receive instructions from a memory or like device, and execute those instructions, thereby performing one or more processes defined by those instructions. Further, programs that implement such methods and algorithms may be stored and transmitted using a variety of media, for e.g., computer readable media in a number of manners. In one embodiment, hardwired circuitry or custom hardware may be used in place of, or in combination with, software instructions for implementation of the processes of various embodiments. Thus, embodiments are not limited to any specific combination of hardware and software. A "processor" means any one or more microprocessors, Central Processing Unit (CPU) devices, computing devices, microcontrollers, digital signal processors or like devices. The term "computer-readable medium" refers to any medium that participates in providing data, for example instructions that may be read by a computer, a processor or a like device. Such a medium may take many forms, including but not limited to, non-volatile media, volatile media, and transmission media. Non-volatile media include, for example, optical or magnetic disks and other persistent memory volatile media include Dynamic Random Access Memory (DRAM), which typically constitutes the main memory. Transmission media include coaxial cables, copper wire and fiber optics, including the wires that comprise a system bus coupled to the processor. Common forms of computer-readable media include, for example, a floppy disk, a flexible disk, hard disk, magnetic tape, any other magnetic medium, a Compact Disc-Read Only Memory (CD-ROM), Digital Versatile Disc (DVD), any other optical medium, punch cards, paper tape, any other physical medium with patterns of holes, a Random Access Memory (RAM), a Programmable Read Only Memory (PROM), an Erasable Programmable Read Only Memory (EPROM), an Electrically Erasable Programmable Read Only Memory (EEPROM), a flash memory, any other memory chip or cartridge, a carrier wave as described hereinafter, or any other medium from which a computer can read. In general, the computer-readable programs may be implemented in any programming language. Some examples of languages that can be used include C, C++, C#, or JAVA. The program will use various security, encryption and compression techniques to enhance the overall user experience. The software programs may be stored on or in one or more mediums as an object code. A computer program product comprising computer executable instructions embodied in a computer-readable medium comprises computer parsable codes for the implementation of the processes of various embodiments.

Where databases are described such as the database **401***d*, it will be understood by one of ordinary skill in the art that (i) alternative database structures to those described may be readily employed, and (ii) other memory structures besides databases may be readily employed. Any illustrations or descriptions of any sample databases presented herein are

illustrative arrangements for stored representations of information. Any number of other arrangements may be employed besides those suggested by, e.g., tables illustrated in drawings or elsewhere. Similarly, any illustrated entries of the databases represent exemplary information only; one of ordinary skill in the art will understand that the number and content of the entries can be different from those described herein. Further, despite any depiction of the databases as tables, other formats including relational databases, object-based models and/or distributed databases could be used to store and manipulate the data types described herein. Likewise, object methods or behaviors of a database can be used to implement various processes, such as the described herein. In addition, the databases may, in a known manner, be stored locally or remotely from a device that accesses data in such a database.

The present invention can be configured to work in a network environment including a computer that is in communication, via a communications network, with one or more devices. The computer may communicate with the devices directly or indirectly, via a wired or wireless medium such as the Internet, Local Area Network (LAN), Wide Area Network (WAN) or Ethernet, Token Ring, or via any appropriate communications means or combination of communications means. Each of the devices may comprise computers, such as those based on the Intel® processors, AMD® processors, Sun® processors, IBM® processors etc., that are adapted to communicate with the computer. Any number and type of machines may be in communication with the computer.

The foregoing examples have been provided merely for the purpose of explanation and are in no way to be construed as limiting of the present method and system disclosed herein. While the invention has been described with reference to various embodiments, it is understood that the words, which have been used herein, are words of description and illustration, rather than words of limitation. Further, although the invention has been described herein with reference to particular means, materials and embodiments, the invention is not intended to be limited to the particulars disclosed herein; rather, the invention extends to all functionally equivalent structures, methods and uses, such as are within the scope of the appended claims. Those skilled in the art, having the benefit of the teachings of this specification, may effect numerous modifications thereto and changes may be made without departing from the scope and spirit of the invention in its aspects.

We claim:

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 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.

2. The method of claim **1**, wherein the user identifier comprises one or more elements from user information, and wherein the one or more elements of the user information comprise user-name, user-password, user-device-information, user settings, or user preferences.

3. The method of claim **1**, wherein the data signal and the new data are transferred from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device simultaneously as part of a data object.

4. The method of claim **1**, wherein Bluetooth capability is provided internally in the Bluetooth enabled data capture device.

5. The method of claim **1**, wherein Bluetooth capability is provided to the Bluetooth enabled data capture device by an external Bluetooth module.

6. 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;

applying, using the software module on the Bluetooth enabled data capture 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 acquired in the Bluetooth enabled data capture device along with a user identifier to the Bluetooth enabled mobile device automatically, over the paired Bluetooth connection, using the software module on the Bluetooth enabled data capture device;

receiving, at the Bluetooth enabled mobile device, the new data and a user identifier from the Bluetooth enabled data capture device;

transferring the new data and user identifier received by the Bluetooth enabled mobile device 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.

7. The method of claim **1**, wherein the new data received by the Bluetooth enabled mobile device comprises one or more of audio data, video data, image data, text data, or digital data.

8. The method of claim **6**, wherein the user identifier comprises one or more elements from user information, and wherein the one or more elements of the user information comprise user-name, user-password, user-device-information, user settings, or user preferences.

9. The method of claim **1**, wherein the new data transferred from the Bluetooth enabled mobile device to one or more web services is data associated with new data.

10. The method of claim **6**, wherein Bluetooth capability is provided internally in the Bluetooth enabled data capture device.

11. The method of claim **6**, wherein Bluetooth capability is provided to the Bluetooth enabled data capture device by an external Bluetooth module.

12. The method of claim **6**, wherein the newly captured data comprises one or more of audio data, video data, image data, text data, or digital data.

13. The method of claim **6**, wherein the new data acquired in the Bluetooth enabled data capture device is data associated with newly captured data.

14. The method of claim **6**, wherein the data signal and the new data are transferred from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device simultaneously as part of a data object.

15. The method of claim **6**, wherein if permitted by the network configuration settings, the data signal sent to the Bluetooth enabled mobile device comprises a data signal and one or more portions of the new data.

16. 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 the new data for transfer to the Bluetooth enabled mobile device, wherein detecting the new data for transfer comprises:

polling the Bluetooth enabled data capture device using the software module on the Bluetooth enabled mobile device over the established paired Bluetooth connection, wherein the Bluetooth enabled data capture device listens for the polling request sent from the Bluetooth enabled mobile device; and

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

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.

17. The method of claim **16**, wherein the user identifier comprises one or more elements from user information, and wherein the one or more elements of the user information

comprise user-name, user-password, user-device-information, user settings, or user preferences.

18. The method of claim **16**, wherein Bluetooth capability is provided internally in the Bluetooth enabled data capture device.

19. The method of claim **16**, wherein Bluetooth capability is provided to the Bluetooth enabled data capture device by an external Bluetooth module.

20. The method of claim **16**, wherein the newly captured data comprises one or more of audio data, video data, image data, text data, or digital data.

21. The method of claim **16**, wherein the new data transferred from the Bluetooth enabled mobile device to one or more web services is data associated with new data.

* * * * *

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(12) **United States Patent**
Singh et al.

(10) **Patent No.: US 8,892,752 B2**
(45) **Date of Patent: *Nov. 18, 2014**

(54) **AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT**

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(72) Inventors: **Gurvinder Singh**, Santa Clara, CA (US); **Marcos Klein**, Mountain View, CA (US); **Vince Laviano**, Alviso, CA (US)

(73) Assignee: **CellSpinSoft Inc.**, San Jose, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **14/295,352**

(22) Filed: **Jun. 4, 2014**

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Related U.S. Application Data

(63) Continuation of application No. 14/172,913, filed on Feb. 5, 2014, which is a continuation of application No. 13/740,214, filed on Jan. 13, 2013, now Pat. No. 8,700,790, which is a continuation of application No. 12/333,303, filed on Dec. 11, 2008, now Pat. No. 8,392,591.

(60) Provisional application No. 61/017,202, filed on Dec. 28, 2007.

(51) **Int. Cl.**
G06F 15/16 (2006.01)

(52) **U.S. Cl.**
USPC **709/228**

(58) **Field of Classification Search**
CPC H04W 72/00
See application file for complete search history.

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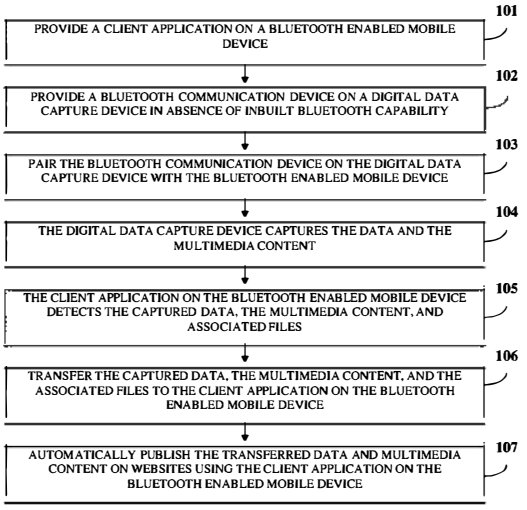
* cited by examiner

Primary Examiner — Sulaiman Nooristany
(74) *Attorney, Agent, or Firm* — Ash Tankha; Lipton, Weinberger & Husick

(57) **ABSTRACT**

Disclosed herein is a method and system for utilizing a digital data capture device in conjunction with a Bluetooth (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. A client application is provided on the BT enabled mobile device. In the absence of inbuilt BT capability, a BT communication device is provided on the digital data capture device. The BT communication device is paired with the BT enabled mobile device to establish a connection. The client application detects capture of data and multimedia content on the digital data capture device and initiates transfer of the captured data, multimedia content, and associated files. The digital data capture device transfers the captured data, multimedia content, and the associated files to the client application. The client application automatically publishes the transferred data and multimedia content on one or more websites.

18 Claims, 5 Drawing Sheets



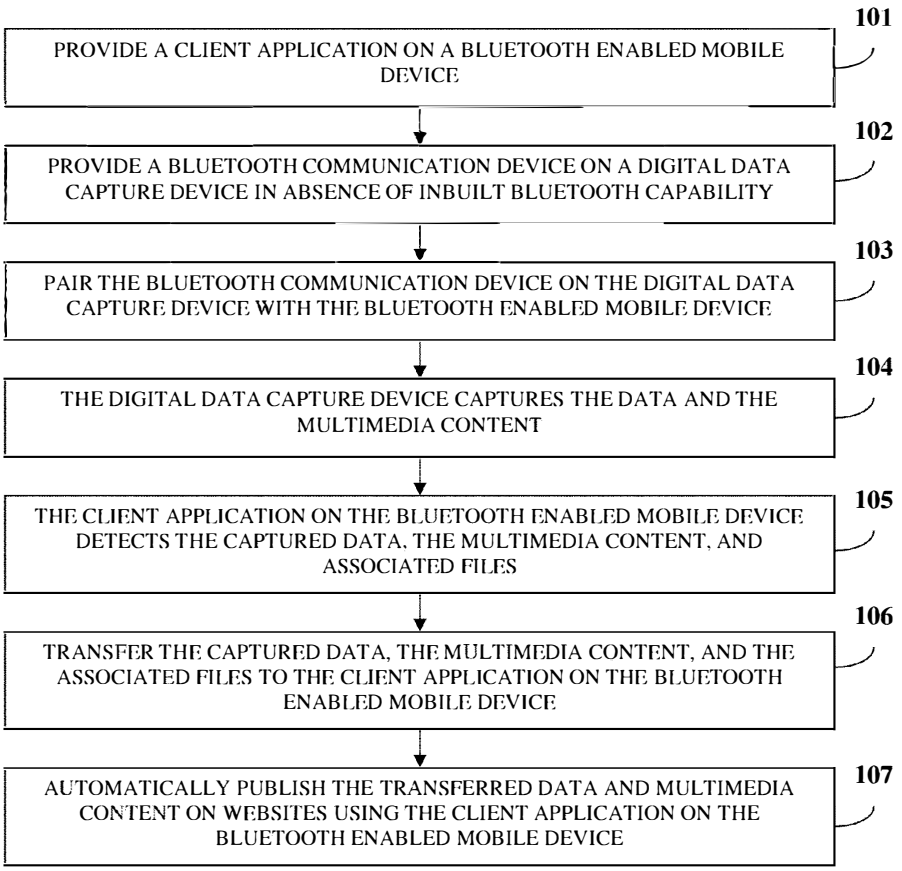

101
PROVIDE A CLIENT APPLICATION ON A BLUETOOTH ENABLED MOBILE DEVICE
102
PROVIDE A BLUETOOTH COMMUNICATION DEVICE ON A DIGITAL DATA CAPTURE DEVICE IN ABSENCE OF INBUILT BLUETOOTH CAPABILITY
103
PAIR THE BLUETOOTH COMMUNICATION DEVICE ON THE DIGITAL DATA CAPTURE DEVICE WITH THE BLUETOOTH ENABLED MOBILE DEVICE
104
THE DIGITAL DATA CAPTURE DEVICE CAPTURES THE DATA AND THE MULTIMEDIA CONTENT
105
THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE DETECTS THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND ASSOCIATED FILES
106
TRANSFER THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND THE ASSOCIATED FILES TO THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE
107
AUTOMATICALLY PUBLISH THE TRANSFERRED DATA AND MULTIMEDIA CONTENT ON WEBSITES USING THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE

FIG. 1

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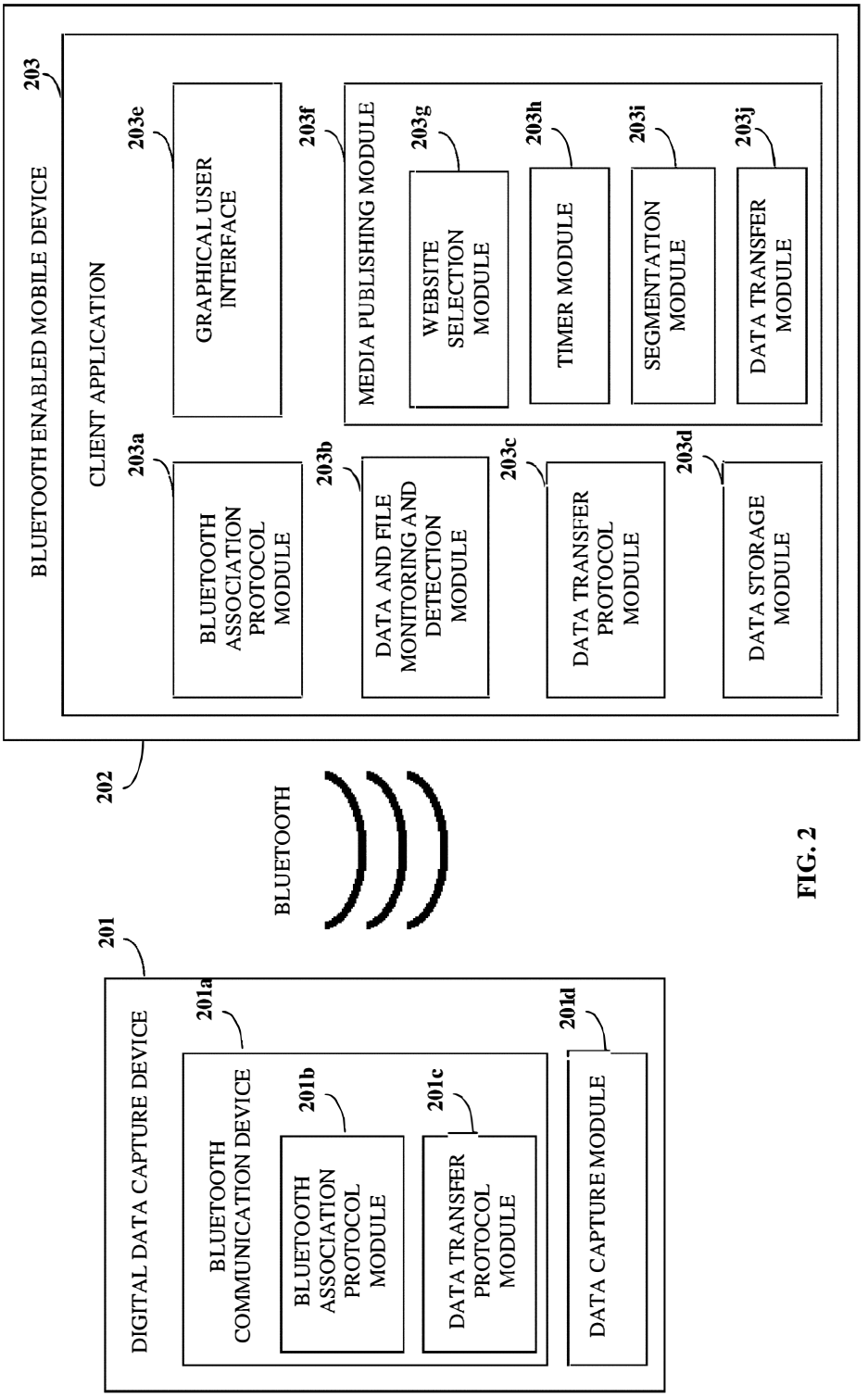


FIG. 2

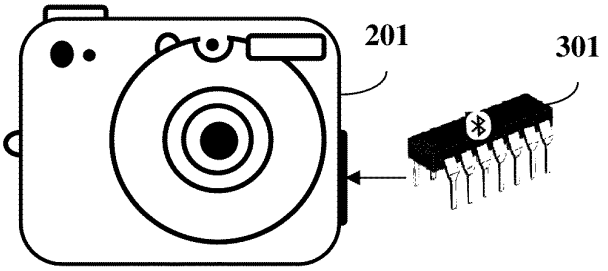


FIG. 3A

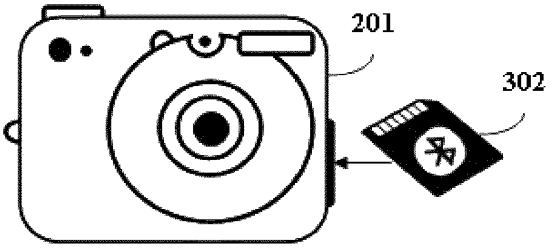


FIG. 3B

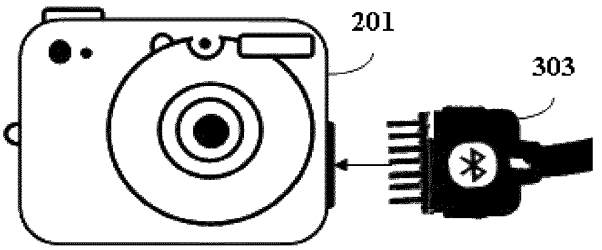


FIG. 3C

Case: 18-1817 Document: 57 Page: 291 Filed: 06/19/2018

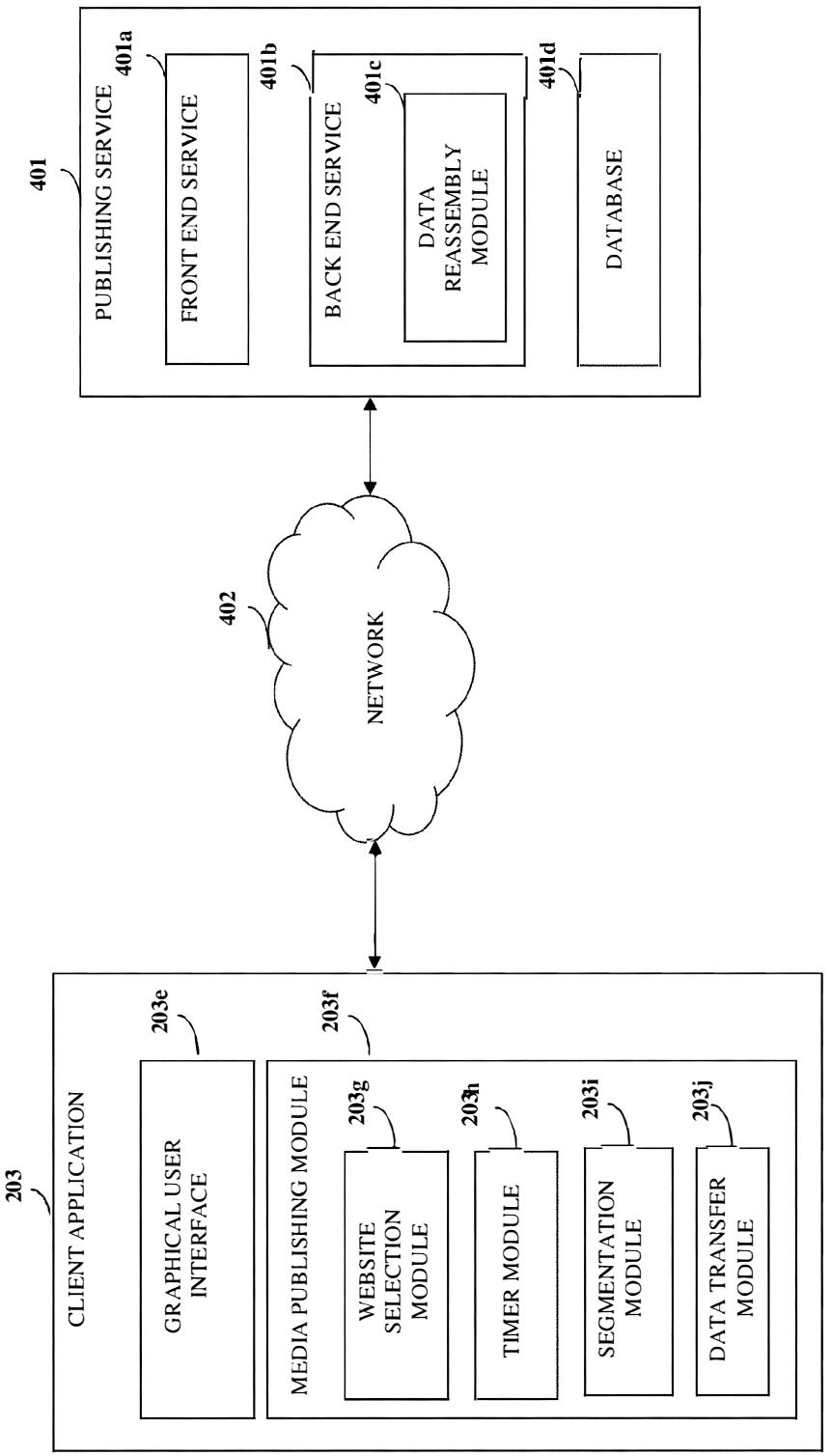


FIG. 4

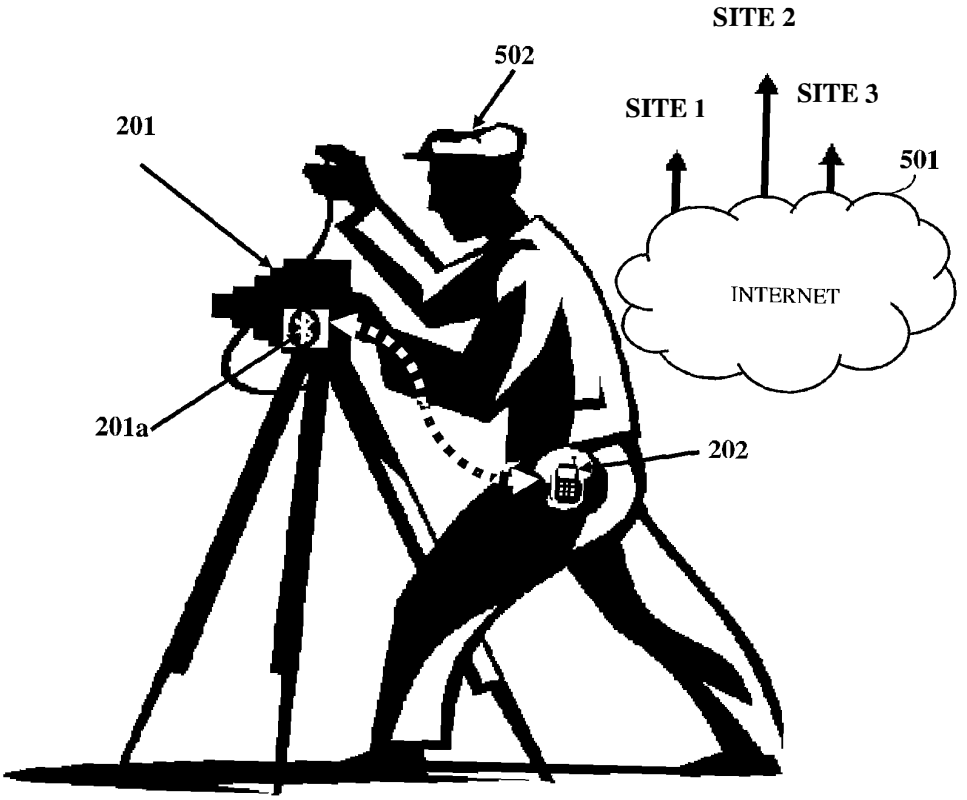


FIG. 5

AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT

CROSS REFERENCE TO RELATED APPLICATIONS

1. This application is a continuation application of non-provisional patent application Ser. No. 14/172,913, titled "Automatic multimedia upload for publishing multimedia content", filed on Feb. 5, 2014 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 13/740,214, titled "Automatic multimedia upload for publishing multimedia content", filed on Jan. 13, 2013 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 12/333,303, now U.S. Pat. No. 8,392,591, titled "Automatic multimedia upload for publishing multimedia content", filed on Dec. 11, 2008 in the United States Patent and Trademark Office, which claims the benefit of U.S. provisional patent application No. 61/017,202, titled "Automatic multimedia upload for publishing multimedia content", filed on Dec. 28, 2007 in the United States Patent and Trademark Office. The specifications of the above referenced applications are incorporated herein by reference in their entirety.
2. The following patent application is incorporated herein in its entirety: U.S. Non-provisional patent application Ser. No. 11/901,802, titled "Online Publishing Of Multimedia Content", filed on Sep. 19, 2007 in the United States Patent and Trademark Office.

BACKGROUND

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 and multimedia content on one or more websites simultaneously.

A user may need to capture and publish data and multimedia content on the internet in real time. 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.

Therefore, there is a need for a method and system to utilize a digital data capture device in conjunction with a mobile device for automatically detecting capture of data and multimedia content, transferring the captured data and multimedia content to the mobile device, and publishing the data and multimedia content on one or more websites automatically or with minimal user intervention.

SUMMARY OF THE INVENTION

This summary is provided to introduce a selection of concepts in a simplified form that are further described in the detailed description of the invention. This summary is not intended to identify key or essential inventive concepts of the claimed subject matter, nor is it intended for determining the scope of the claimed subject matter.

The method and system disclosed herein addresses the above stated need for utilizing a digital data capture device in conjunction with a Bluetooth™ (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital data capture device is physically separated from the BT enabled mobile device.

In the method and system disclosed herein, a client application is provided on a BT enabled mobile device. In the absence of in-built BT capability in the digital data capture device, a BT communication device is provided on the digital data capture device. The BT communication device may, for example, be an in-built BT capability chip, a BT memory card, or an external BT device. The BT communication device on the digital data capture device is paired with the BT enabled mobile device to establish a connection between the digital data capture device and the BT enabled mobile device.

A user may capture data and multimedia content using the digital data capture device. The digital data capture device may, for example, be a digital camera, a video camera, or other digital modular camera systems. The client application on the BT enabled mobile device detects the captured data, multimedia content, and files associated with the captured data and the multimedia content on the digital data capture device by communicating over a wireless BT protocol. The captured data, multimedia content, and the associated files are automatically transferred to the client application on the BT enabled mobile device from the digital data capture device.

The detection and transfer of the captured data, the multimedia content, and the associated files may be initiated by the client application of the BT enabled mobile device. The detection and transfer of the captured data, the multimedia content, and the associated files to the BT enabled mobile device may be initiated by the digital data capture device when the client application is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device.

The user may configure a timer setting and select the websites for publishing using the client application on the BT enabled mobile device. The client application selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the Bluetooth enabled mobile device. The client application also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The client application on the BT enabled mobile device automatically publishes the transferred data and multimedia content on one or more websites using the settings configured by the user. The method and system disclosed herein thereby enables the user to capture data and multimedia content, for example, audio, video, text, and images, automatically upload the captured data and multimedia content onto a BT enabled mobile device, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The user may therefore publish data and the multimedia content on immediate capture of the data and the multimedia content on the digital data capture device.

The method and system disclosed herein is described with reference to a BT communication protocol. The method and system disclosed herein may be realized with wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks.

BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing summary, as well as the following detailed description of the invention, is better understood when read in

conjunction with the appended drawings. For the purpose of illustrating the invention, exemplary constructions of the invention are shown in the drawings. However, the invention is not limited to the specific methods and instrumentalities disclosed herein.

FIG. **1** illustrates a method of utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIG. **2** illustrates a system for utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIGS. **3**A-**3**C exemplarily illustrate the Bluetooth communication device options used on the digital data capture device for establishing a Bluetooth connection with the client application on the Bluetooth enabled mobile device.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application on a mobile device on one or more websites simultaneously.

FIG. **5** exemplarily illustrates a user utilizing a digital camera in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

DETAILED DESCRIPTION OF THE INVENTION

FIG. **1** illustrates a method of utilizing a digital data capture device **201** in conjunction with a Bluetooth™ enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The term "Bluetooth enabled mobile device" is herein referred to as "mobile device". The digital data capture device **201** is physically separated from the mobile device **202** as illustrated in FIG. **2**. The digital data capture device **201** may, for example, be a digital camera, a video camera, digital modular camera systems, or other digital data capturing systems.

In the method disclosed herein, a client application **203** is provided **101** on the mobile device **202**. In the absence of inbuilt Bluetooth (BT) capability in the digital data capture device **201**, a BT communication device **201***a* is provided **102** on the digital data capture device **201**. The BT communication device **201***a* may, for example, be an inbuilt BT capability chip **301**, a BT memory card **302**, or an external BT device **303** as illustrated in FIGS. **3**A-**3**C respectively. The external BT device **303** may, for example, be attached to a universal serial bus (USB), a firewire interface, or a power port of the digital data capture device **201**. BT 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 radio frequency.

The BT communication device **201***a* on the digital data capture device **201** is paired **103** with the mobile device **202** to establish a connection between the digital data capture device **201** and the mobile device **202**. BT pairing involves establishing a connection between two BT devices that mutually agree to communicate with each other. A BT device that wants to communicate only with a trusted device can cryptographically authenticate the identity of another BT device. BT pairing occurs when the BT communication device **201***a* agrees to communicate with the mobile device **202** in order to establish a connection. In order to initiate the pairing process between the BT communication device **201***a* and the mobile device **202**, a common password known as a passkey is exchanged between the BT communication device **201***a* and the mobile device **202**. A passkey is a code shared by the BT communication device **201***a* and the mobile device **202**.

A user sets a discoverable mode for the mobile device **202**. When set to the discoverable mode, the mobile device **202** will allow the BT communication device **201***a* on the digital data capture device **201** to detect the mobile device's **202** presence and attempt to establish a connection. In order to initiate the pairing process, the BT communication device **201***a* will send the BT communication device name of a predefined number of characters, for example, up to 255 characters, and the BT address to the mobile device **202**. The BT communication device **201***a* then prompts the user of the mobile device **202** to enter the passkey code in order to accept the pairing with the BT communication device **201***a* on the digital data capture device **201**. On entering the passkey by the user of the mobile device **202**, the entered passkey is matched with the passkey of the BT communication device **201***a*. If a match is found, a trusted pair is automatically established.

The user captures **104** data and multimedia content using the digital data capture device **201**. The data and multimedia content may, for example, comprise image files, audio files, video files, text files, or any combination thereof. The client application **203** on the mobile device **202** detects **105** the captured data, the multimedia content, and files associated with the captured data and the multimedia content. The client application **203** then initiates the transfer of the captured data, the multimedia content, and the associated files in a pull mode of operation. In the pull mode, the client application **203** periodically polls the digital data capture device **201** to determine the creation of a new file in the digital data capture device **201**. The digital data capture device **201** then automatically transfers **106** the captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202** using one or a combination of file transfer protocols. The file transfer protocols may, for example, be one or a combination of BT profile protocols such as the object exchange (OBEX) protocol, the generic object exchange profile (GOEP) protocol, etc. The file transfer protocols may, for example, also be the media transfer protocol (MTP), the picture transfer protocol (PTP), and the PictBridge protocol implemented using a USB.

The picture transfer protocol (PTP) allows the transfer of images from digital cameras to computers and other peripheral devices without the need of additional device drivers. The media transfer protocol is a custom extension to the PTP and allows the protocol to be used for devices other than digital cameras, for example digital audio players and other portable media devices, for example portable video players. The PictBridge protocol allows images to be printed directly from digital cameras to a printer, without having to connect the camera to a computer.

The transfer of the data, the multimedia content, and the associated files may also take place in a push mode of operation. In the push mode, the BT communication device **201***a* sends a signal to the client application **203** on creation of a new file. By implementation of a handshake protocol, the BT communication device **201***a* automatically transfers captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202**. For some external digital data capture devices, the client application **203** may not be able to detect the creation of a new file. In such cases, the digital data capture device **201** signals the client application **203** in the event a new file is created. A file event listener in the client application **203** listens forthe signal from

the digital data capture device **201**. The user may then initiate the transfer by a press of a button or a key on the digital data capture device **201**.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments. The data segments are tagged with segment identifiers using the client application **203**. The tagged data segments are transferred from the client application **203** of the mobile device **202** to a publishing service **401** via a network **402** as illustrated in FIG. **4**.

When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the digital data capture device **201** initiates detection and transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The user may also set preferences on the mobile device **202**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The user may configure a timer setting and the websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content. The user may set the timer setting to, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting. The client application **203** on the mobile device **202** selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the mobile device **202**. The client application **203** also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention.

The client application **203** on the mobile device **202** then automatically publishes **107** the transferred data and multimedia content on one or more websites. If the user configures the timer setting to "no-wait-automatic", the data and the multimedia content are automatically published on one or more websites based on the user preferences configured on the mobile device **202** without waiting for a certain period of time. If the user configures the timer setting to "wait-X-minutes-automatic", the client application **203** will wait for "X" minutes for the user to change or cancel publishing. If there is no user action for "X" minutes, the client application **203** will automatically publish the data and multimedia content to one or more websites based on the user preferences. Further, if the user configures the timer setting to "wait-X-minutes-user-input-cancel", the client application **203** will wait for "X" minutes for an input from the user. If there is no input from the user, the client application **203** cancels the publishing of the data and multimedia content. The publishing of the data and multimedia content on one or more websites simultaneously is explained in the detailed description of FIG. **4**.

The user may therefore capture data, for example, audio, video, text, and images, automatically upload the captured data onto the mobile device **202**, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The method disclosed herein thereby enables the user to publish data and the multimedia content on immediate click of an image or recording of a video on the digital data capture device **201** without having to manually upload the data onto a computing device and then publish the data on the websites.

FIG. **2** illustrates a system for utilizing a digital data capture device **201** in conjunction with a BT enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The system disclosed herein comprises a digital data capture device **201** and a client application **203** provided on the BT enabled mobile device **202**. The digital data capture device **201** and the mobile device **202** are physically separated from each other. The digital data capture device **201** comprises a BT communication device **201***a* and a data capture module **201***d*.

The BT communication device options used on the digital data capture device **201** for establishing a BT connection with the client application **203** on the BT enabled mobile device **202** are exemplarily illustrated in FIGS. **3**A-**3**C. The BT communication device **201***a* may, for example, be an in-built BT capability chip **301** as illustrated in FIG. **3**A, a BT memory card **302** as illustrated in FIG. **3**B, or an external BT device **303** as illustrated in FIG. **3**C.

The BT communication device **201***a* comprises a BT association protocol module **201***b* and a data transfer protocol module **201***c*. The client application **203** on the mobile device **202** comprises a BT association protocol module **203***a*, a data and file monitoring and detection module **203***b*, a data transfer protocol module **203***c*, a data storage module **203***d*, a graphical user interface (GUI) **203***e*, and a media publishing module **203***f*. The BT association protocol module **201***b* of the digital data capture device **201** and the BT association protocol module **203***a* of the client application **203** enable the pairing between the BT communication device **201***a* and the mobile device **202**. The pairing of the BT communication device **201***a* and the mobile device **202** is explained in the detailed description of FIG. **1**. The data capture module **201***d* captures the data and the multimedia content on the digital data capture device **201**.

The data and file monitoring and detection module **203***b* of the client application **203** monitors and detects the capture of the data, the multimedia content, and the files associated with the captured data and the multimedia content. On detection, the data transfer protocol module **203***c* of the client application **203** initiates the transfer and download of the captured data, the multimedia content, and the associated files from the digital data capture device **201**. When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the data transfer protocol module **201***c* of the digital data capture device **201** initiates the transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The data transfer protocol module **201***c* of the digital data capture device **201** transfers the captured data, the multimedia content, and the associated files to the client application **203**. The data storage module **203***d* stores the captured data, the multimedia content, and the associated files on the mobile device **202**. The user may also set preferences on the mobile device **202** using the GUI **203***e* of the client application **203**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The GUI **203***e* enables the user to configure a timer setting and websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content using the GUI **203***e*. The user may set a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting as explained in the detailed description of FIG. **1**.

The media publishing module **203***f* automatically publishes the transferred data and the multimedia content on one or more of the websites. The media publishing module **203***f*

comprises a website selection module **203***g*, a timer module **203***h*, a segmentation module **203***i*, and a data transfer module **203***j*. The website selection module **203***g* selects the websites for publishing the data and the multimedia content based on settings and user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer setting may be set for automatic publishing of the multimedia content or a time based wait mode where user interaction is required. The timer module **203***h* sets the timer based on a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting configured by the user. The timer module **203***h* ensures that if the user does not wish to publish the transferred data and multimedia content, the user has time to decide whether to publish or not. The user may also configure the client application **203** to automatically delete the data, the multimedia content, and the associated files after the data and the multimedia content have been posted and published on one or more websites based on user preferences.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments using the segmentation module **203***i*. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via a network **402** for publishing on the websites automatically.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application **203** on a mobile device **202** on one or more websites simultaneously. The system disclosed herein comprises a client application **203** and a publishing service **401** connected via a network **402**. The client application **203** comprises a media publishing module **203***f* as explained in the detailed description of FIG. **2**. The media publishing module **203***f* comprises the website selection module **203***g*, the timer module **203***h*, the segmentation module **203***i*, and the data transfer module **203***j*. The website selection module **203***g* selects the websites based on user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer module **203***h* ensures that the publishing service **401** obtains the data, the multimedia content, and the associated files to publish on the selected websites based on the time set by the user.

In the case of limited memory and processing capabilities of the mobile device **202**, the segmentation module **203***i* of the client application **203** partitions the multimedia content of large files into multiple data segments. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The segment identifiers may, for example, be one or more of transaction identifiers, sequence numbers, and timestamps. The segment identifiers are used later by a back end service **401***b* of the publishing service **401** to reassemble the data segments in a predetermined sequence to create a multimedia object. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via the network **402**. The network **402** may, for example, be a wireless network, a cellular network, or the internet **501**.

The publishing service **401** comprises a front end service **401***a*, a back end service **401***b*, and a database **401***d*. The transferred data and multimedia content is stored in the database **401***d* of the publishing service **401**. A protocol is provided for synchronizing user publishing information between the client application **203** and the publishing service **401**. The user publishing information may, for example, comprise user preferences of the websites and the timer setting. The data transfer module **203***j* may transfer the data and the multimedia content as a single multimedia file, multiple data segments in the case of large files, or electronic mail attachments to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* comprises a data reassembly module **401***c*. If the back end service **401***b* receives the multimedia content in the form of multiple data segments, the data reassembly module **401***c* reassembles the data segments in a predetermined sequence using the segment identifiers. The back end service **401***b* then creates a multimedia object from the transferred data and multimedia content. The multimedia object is transferred from the back end service **401***b* to the front end service **401***a* and then published on the websites selected by the user.

FIG. **5** exemplarily illustrates a user **502** utilizing a digital camera in conjunction with a Bluetooth enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital camera is physically separated from the mobile device **202** as illustrated in FIG. **5**. The digital camera comprises a BT communication device **201***a* such as an in-built BT capability chip **301**, a BT memory card **302**, or an external BT device **303** or dongle externally attached to the digital camera as illustrated in FIGS. **3**A-**3**C. The external BT dongle may be attached to a USB, a firewire interface, or a power port of the digital camera. The BT communication device **201***a* on the digital camera is paired with the mobile device **202** to establish a connection. The user **502** may capture an image using the digital camera. The client application **203** on the mobile device **202** detects the captured image and initiates the transfer of the captured image and the associated files. The digital camera automatically transfers the captured image and the associated files to the client application **203** on the mobile device **202**.

The client application **203** automatically publishes the transferred image on one or more websites via the internet **501**. The user **502** may set preferences in the mobile device **202**. The user preferences, for example, comprise the websites selected for publishing the transferred image. The user **502** may select websites, for example, Flickr™, Picasa™, YouTube™, eBay®, etc. and store the preferences on the mobile device **202**. The user **502** may also set the timer setting for publishing the transferred image on the selected websites. After the captured image is transferred to the mobile device **202**, the client application **203** publishes the capture image on the selected websites based on the default timer and website settings configured by the user **502** on the mobile device **202**.

Consider an example where a user **502** records a video using a BT enabled video camera. The video camera immediately establishes a connection with the user's **502** BT enabled mobile device **202**. On detection of the recorded video by the client application **203** on the mobile device **202**, the video camera automatically transfers the recorded video to the user's **502** mobile device **202**. In the case of limited memory and processing capabilities of the mobile device **202**, the recorded video may be streamed as data segments from the mobile device **202** to the publishing service **401**. The client application **203** individually tags the data segments with segment identifiers and transfers the tagged data seg-

ments from the mobile device **202** to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* of the publishing service **401** reassembles the data segments in a predetermined sequence using the segment identifiers to create the multimedia object. The multimedia object is an aggregation of the reassembled data segments. The multimedia object is then transferred from the back end service **401***b* to the front end service **401***a* and automatically published by the front end service **401***a* on one or more websites selected by the user **502**.

Consider another example where a user **502** may record videos or capture images at different points in time and automatically uploads and publishes the videos and images on one or more websites. Consider an investigative reporter, Jane, working for a prominent newspaper in New York City. Each day, she moves around the city chasing leads, interviewing people, videotaping her stories, taking pictures, and tracking down her next big story. When she is working on a story with an associate writer, she may need to upload her videos and pictures and send it immediately to the associate writer. The method and system disclosed herein enables Jane to automatically upload pictures and videos taken using her digital camera or video camera onto a mobile device **202** and publish the pictures, videos, etc. from her mobile device **202** to the internet **501** with one click or touch of a button.

On one click or touch of a button, the pictures and videos are published and immediately made available on Jane's private blog that may be accessed by the newspaper editor and her associates in the news office. When she is collaborating with an associate on a story, they may see each other's progress in real time. Since sharing information with the associate over electronic mails (emails) may be inconvenient, Jane records her progress on the story in the voice format and publishes. The associate may access the information from Jane's blog site, thereby saving considerable time.

Exemplarily, the method and system disclosed herein may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system. The method and system disclosed herein is realized with, but not limited to Bluetooth communication protocol. Wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks may be employed to accomplish the tasks of the method and system disclosed herein. The mobile device **202** may, for example, be a ubiquitous mobile phone. The use of personal digital assistants (PDAs) without telephony support is also fairly widespread. The client application **203** may be deployed on mobile devices with limited or no telephony support. These mobile devices may support Java of Sun Microsystems Inc., more specifically Java 2 Micro Edition (J2ME™), Windows Mobile .Net Compact Framework of Microsoft, Inc., Symbian™, Linux framework. The client application **203** may, for example, be implemented on the J2ME platform. These environments provide functionalities in the libraries to create the GUI **203***e* and perform all the required functions of the method and system disclosed herein. Other advantages of these frameworks are portability across mobile devices that run on different operating systems.

The client application **203** may be rendered independent of the operating system of the mobile device **202**. One of the transport mechanisms to achieve the connectivity between the publishing service **401** and the client application **203** is the wireless internet. While most PDAs have an inbuilt wireless network card for the internet connectivity, the mobile phones may transfer data to the publishing service **401** over the telephony network at near broadband speeds. Some of the mobile phones equipped with both wireless network and telephony data capabilities may use either of the two to communicate with the publishing service **401**. The transport protocol that is used between the client application **203** and the publishing service **401** may be hypertext transfer protocol (HTTP) or extensible markup language-remote procedure calls (XML-RPC). The back end service **401***b* may, for example, be developed in Java.

It will be readily apparent that the various methods and algorithms described herein may be implemented in a computer readable medium appropriately programmed for general purpose computers and computing devices. Typically a processor, for e.g., one or more microprocessors will receive instructions from a memory or like device, and execute those instructions, thereby performing one or more processes defined by those instructions. Further, programs that implement such methods and algorithms may be stored and transmitted using a variety of media, for e.g., computer readable media in a number of manners. In one embodiment, hardwired circuitry or custom hardware may be used in place of, or in combination with, software instructions for implementation of the processes of various embodiments. Thus, embodiments are not limited to any specific combination of hardware and software. A "processor" means any one or more microprocessors, Central Processing Unit (CPU) devices, computing devices, microcontrollers, digital signal processors or like devices. The term "computer-readable medium" refers to any medium that participates in providing data, for example instructions that may be read by a computer, a processor or a like device. Such a medium may take many forms, including but not limited to, non-volatile media, volatile media, and transmission media. Non-volatile media include, for example, optical or magnetic disks and other persistent memory volatile media include Dynamic Random Access Memory (DRAM), which typically constitutes the main memory. Transmission media include coaxial cables, copper wire and fiber optics, including the wires that comprise a system bus coupled to the processor. Common forms of computer-readable media include, for example, a floppy disk, a flexible disk, hard disk, magnetic tape, any other magnetic medium, a Compact Disc-Read Only Memory (CD-ROM), Digital Versatile Disc (DVD), any other optical medium, punch cards, paper tape, any other physical medium with patterns of holes, a Random Access Memory (RAM), a Programmable Read Only Memory (PROM), an Erasable Programmable Read Only Memory (EPROM), an Electrically Erasable Programmable Read Only Memory (EEPROM), a flash memory, any other memory chip or cartridge, a carrier wave as described hereinafter, or any other medium from which a computer can read. In general, the computer-readable programs may be implemented in any programming language. Some examples of languages that can be used include C, C++, C#, or JAVA. The program will use various security, encryption and compression techniques to enhance the overall user experience. The software programs may be stored on or in one or more mediums as an object code. A computer program product comprising computer executable instructions embodied in a computer-readable medium comprises computer parsable codes for the implementation of the processes of various embodiments.

Where databases are described such as the database **401***d*, it will be understood by one of ordinary skill in the art that (i) alternative database structures to those described may be readily employed, and (ii) other memory structures besides databases may be readily employed. Any illustrations or descriptions of any sample databases presented herein are

illustrative arrangements for stored representations of information. Any number of other arrangements may be employed besides those suggested by, e.g., tables illustrated in drawings or elsewhere. Similarly, any illustrated entries of the databases represent exemplary information only; one of ordinary skill in the art will understand that the number and content of the entries can be different from those described herein. Further, despite any depiction of the databases as tables, other formats including relational databases, object-based models and/or distributed databases could be used to store and manipulate the data types described herein. Likewise, object methods or behaviors of a database can be used to implement various processes, such as the described herein. In addition, the databases may, in a known manner, be stored locally or remotely from a device that accesses data in such a database.

The present invention can be configured to work in a network environment including a computer that is in communication, via a communications network, with one or more devices. The computer may communicate with the devices directly or indirectly, via a wired or wireless medium such as the Internet, Local Area Network (LAN), Wide Area Network (WAN) or Ethernet, Token Ring, or via any appropriate communications means or combination of communications means. Each of the devices may comprise computers, such as those based on the Intel® processors, AMD® processors, Sun® processors, IBM® processors etc., that are adapted to communicate with the computer. Any number and type of machines may be in communication with the computer.

The foregoing examples have been provided merely for the purpose of explanation and are in no way to be construed as limiting of the present method and system disclosed herein. While the invention has been described with reference to various embodiments, it is understood that the words, which have been used herein, are words of description and illustration, rather than words of limitation. Further, although the invention has been described herein with reference to particular means, materials and embodiments, the invention is not intended to be limited to the particulars disclosed herein; rather, the invention extends to all functionally equivalent structures, methods and uses, such as are within the scope of the appended claims. Those skilled in the art, having the benefit of the teachings of this specification, may effect numerous modifications thereto and changes may be made without departing from the scope and spirit of the invention in its aspects.

We claim:

1. A method for transferring data from a Bluetooth enabled data capture device to a remote internet server via a Bluetooth enabled mobile device comprising:

performing at the Bluetooth enabled data capture device:

establishing a secure paired Bluetooth connection between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device, wherein the secure paired Bluetooth connection uses a cryptographic encryption key;

acquiring new data in the Bluetooth enabled data capture device, wherein new data is data acquired after the secure paired Bluetooth 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:

receiving a message from the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection, to enable event notifications, corresponding to new data for transfer, on the Bluetooth enabled data capture device;

enabling event notification on Bluetooth enabled data capture device, corresponding to new data for transfer;

determining existence of the new data for transfer; and

sending an event notification to the Bluetooth enabled mobile device, corresponding to existence of new data for transfer, over the established secure paired Bluetooth connection, wherein the Bluetooth enabled mobile device is configured to listen for the event notification sent from the Bluetooth enabled data capture device;

encrypting, using the cryptographic encryption key, the new data acquired in the Bluetooth enabled data capture device; and

transferring the encrypted data from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection, wherein the Bluetooth enabled mobile device has access to the internet, wherein the Bluetooth enabled mobile device is configured to receive the encrypted data and obtain the new data from the encrypted data using the cryptographic encryption key, wherein the Bluetooth enabled mobile device is configured to attach a user identifier, an action setting and a destination web address of a remote internet server to the obtained new data, wherein the user identifier uniquely identifies a particular user of internet service provided by the remote internet server, wherein action setting comprises one of a remote procedure call (RPC) method and hypertext transfer protocol (HTTP) method, and wherein the Bluetooth enabled mobile device is configured to send the obtained new data with the attached user identifier, an action setting and a destination web address to a remote internet server.

2. The method of claim **1**, wherein Bluetooth capability is provided internally in the Bluetooth enabled data capture device.

3. The method of claim **1**, wherein Bluetooth capability is provided to the Bluetooth enabled data capture device by an external Bluetooth module.

4. The method of claim **1**, wherein the new data for transfer comprises one or more of audio data, video data, image data, text data, or digital data.

5. The method of claim **1**, wherein event notification corresponds to creation of new data for transfer or change in status of new data for transfer.

6. A method for transferring data from a Bluetooth enabled data capture device to a remote internet server via a Bluetooth enabled mobile device comprising:

performing at the Bluetooth enabled data capture device:

establishing a secure paired Bluetooth connection between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device, wherein the secure paired Bluetooth connection uses a cryptographic encryption key;

acquiring new data in the Bluetooth enabled data capture device, wherein new data is data acquired after the secure paired Bluetooth connection is established;

creating a new data object, wherein the new data object comprises new data, data associated with new data and a time-stamp;

detecting the new data for transfer, to the Bluetooth enabled mobile device, wherein detecting the new data for transfer comprises:

receiving a request for new data object, at the Bluetooth enabled data capture device, from the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection;

receiving a request to register for event notifications, from the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection, corresponding to change in new data;

determining existence of the new data for transfer; and

sending an event notification to the Bluetooth enabled mobile device, corresponding to existence of new data for transfer, over the established secure paired Bluetooth connection, wherein the Bluetooth enabled mobile device is configured to listen for the event notification sent from the Bluetooth enabled data capture device;

encrypting, using the cryptographic encryption key, the new data object created in the Bluetooth enabled data capture device; and

transferring the encrypted data object from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device, over the established secure paired Bluetooth connection, wherein the Bluetooth enabled mobile device has access to the internet, wherein the Bluetooth enabled mobile device is configured to receive the encrypted data object and obtain the new data from the encrypted data object using the cryptographic encryption key, wherein the Bluetooth enabled mobile device is configured to attach a user identifier, an action setting and a destination web address of a remote internet server to the obtained new data, wherein the user identifier uniquely identifies a particular user of internet service provided by the remote internet server, wherein action setting comprises one of a remote procedure call (RPC) method and hypertext transfer protocol (HTTP) method, and wherein the Bluetooth enabled mobile device is configured to send the new data with the attached user identifier, action setting, and a destination web address to a remote internet server.

7. The method of claim **6**, wherein Bluetooth capability is provided internally in the Bluetooth enabled data capture device.

8. The method of claim **6**, wherein Bluetooth capability is provided to the Bluetooth enabled data capture device by an external Bluetooth module.

9. The method of claim **6**, wherein the new data for transfer comprises one or more of audio data, video data, image data, text data, or digital data.

10. The method of claim **6**, wherein event notification corresponds to creation of new data for transfer or change in status of new data for transfer.

11. The method of claim **6**, wherein the time-stamp is either absolute time or relative time.

12. A method for transferring data to a remote internet server by a Bluetooth enabled mobile device comprising:

performing at the Bluetooth enabled mobile device:

establishing a secure paired connection between the Bluetooth enabled mobile device and a Bluetooth enabled data capture device, wherein the secure paired Bluetooth connection uses a cryptographic encryption key;

detecting new data acquired by the Bluetooth enabled data capture device for transfer, wherein detecting the new data comprises:

sending a message to the Bluetooth enabled data capture device, over the established secure paired Bluetooth connection, to enable event notifications on the Bluetooth enabled data capture device, corresponding to new data, wherein the new data is data acquired by Bluetooth enabled data capture device after establishing the Bluetooth secure pairing connection between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device;

enabling event notification listening on the Bluetooth enabled mobile device, to listen for event notifications sent from the Bluetooth enabled data capture device, over the established secure paired Bluetooth connection; and

receiving, from the Bluetooth enabled data capture device, an event notification corresponding to existence of new data for transfer, over the established secure paired Bluetooth connection;

receiving by the Bluetooth enabled mobile device, encrypted data corresponding to the new data over the established secure paired Bluetooth connection;

obtaining new data from the received encrypted data using the cryptographic encryption key;

attaching a user identifier, an action setting and a destination web address to the obtained new data, wherein the user identifier uniquely identifies a particular user of internet service provided by the remote internet server, and wherein action setting comprises one of a remote procedure call (RPC) method and hypertext transfer protocol (HTTP) method; and

transferring the obtained new data along with the user identifier, the action setting and the destination web address to a remote internet server.

13. The method of claim **12**, wherein the new data for transfer comprises one or more of audio data, video data, image data, text data, or digital data.

14. The method of claim **12**, wherein event notification corresponds to creation of new data for transfer or change in status of new data for transfer.

15. A method for transferring data to a remote internet server by a Bluetooth enabled mobile device comprising:

performing at the Bluetooth enabled mobile device:

establishing a secure paired connection between the Bluetooth enabled mobile device and a Bluetooth enabled data capture device, wherein the secure paired Bluetooth connection uses a cryptographic encryption key;

detecting new data acquired by the Bluetooth enabled data capture device for transfer, wherein detecting the new data comprises:

sending a message to the Bluetooth enabled data capture device, over the established secure paired Bluetooth connection, to enable event notifications on the Bluetooth enabled data capture device, corresponding to new data, wherein the new data is data acquired by Bluetooth enabled data capture device after establishing the Bluetooth secure pairing connection between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device;

enabling event notification listening on Bluetooth enabled mobile device, to listen for event notifications sent from the Bluetooth enabled data capture device, over the established secure paired Bluetooth connection;

receiving, from the Bluetooth enabled data capture device, an event notification corresponding to existence of new data for transfer, over the established secure paired Bluetooth connection; and

sending a request to the Bluetooth enabled data capture device, to get new data object for transfer, wherein new data object comprises new data, data associated with new data and a time-stamp;

receiving, by the Bluetooth enabled mobile device, encrypted data object corresponding to the new data object over the established Bluetooth secure paired wireless connection;

obtaining new data from the received encrypted data object using cryptographic encryption key;

attaching a user identifier, an action setting and a destination web address to the obtained new data, wherein the user identifier uniquely identifies a particular user of internet service provided by the remote internet server, and wherein action setting comprises one of a remote procedure call (RPC) method and hypertext transfer protocol (HTTP) method; and

transferring the obtained new data along with the user identifier, the action setting and the destination web address to a remote internet server.

16. The method of claim **15**, wherein the new data for transfer comprises one or more of audio data, video data, image data, text data, or digital data.

17. The method of claim **15**, wherein event notification corresponds to creation of new data for transfer or change in status of new data for transfer.

18. The method of claim **15**, wherein the time-stamp is either absolute time or relative time.

* * * * *

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(54) **AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT**

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(58) **Field of Classification Search**

None

See application file for complete search history.

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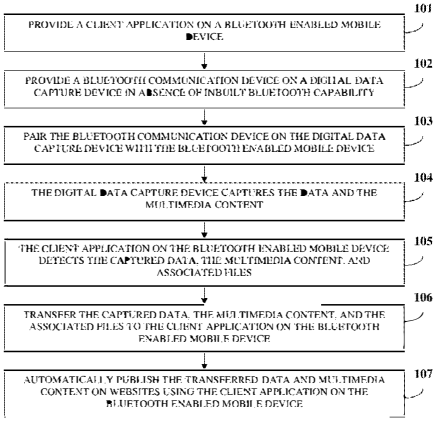
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(57) **ABSTRACT**

Disclosed herein is a method and system for utilizing a digital data capture device in conjunction with a Bluetooth (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. A client application is provided on the BT enabled mobile device. In the absence of inbuilt BT capability, a BT communication device is provided on the digital data capture device. The BT communication device is paired with the BT enabled mobile device to establish a connection. The client application detects capture of data and multimedia content on the digital data capture device and initiates transfer of the captured data, multimedia content, and associated files. The digital data capture device transfers the captured data, multimedia content, and the associated files to the client application. The client application automatically publishes the transferred data and multimedia content on one or more websites.

22 Claims, 5 Drawing Sheets



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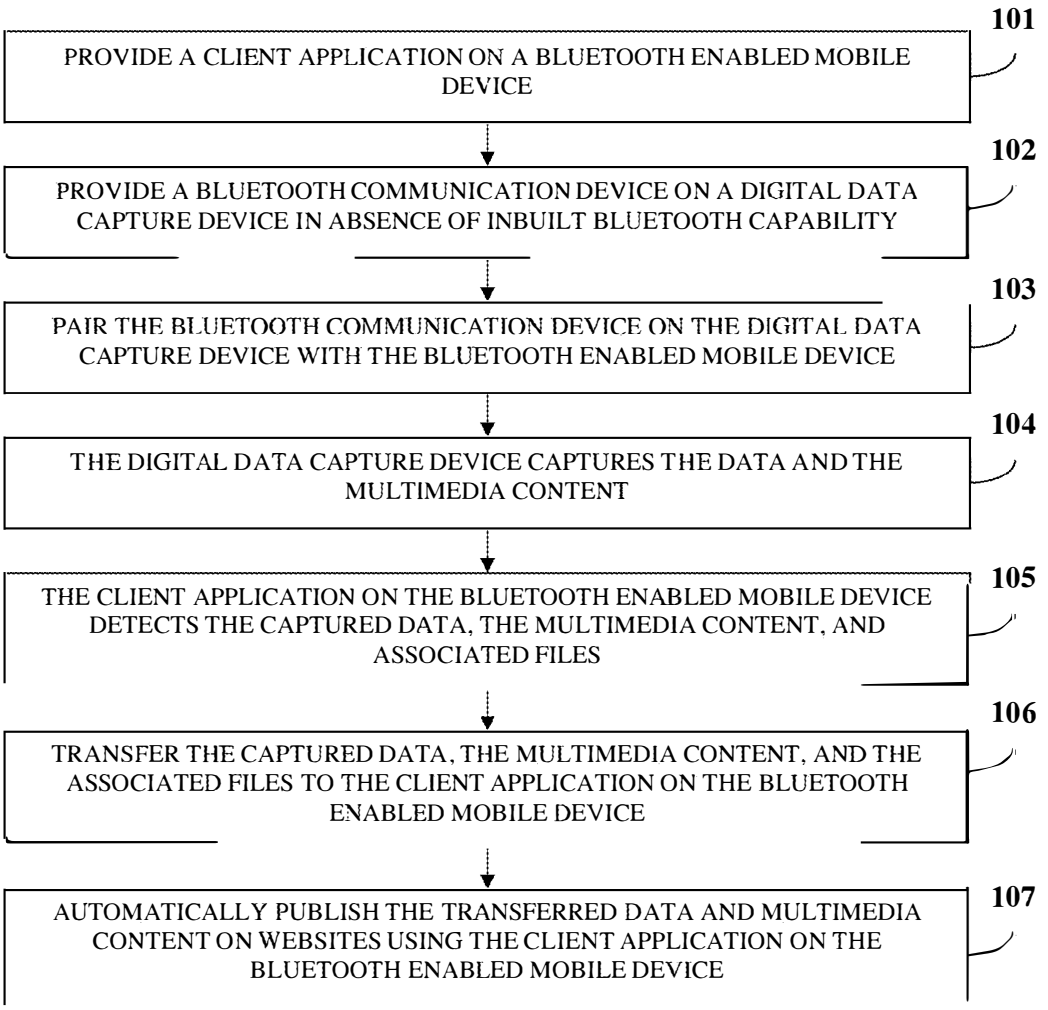

101
PROVIDE A CLIENT APPLICATION ON A BLUETOOTH ENABLED MOBILE DEVICE
102
PROVIDE A BLUETOOTH COMMUNICATION DEVICE ON A DIGITAL DATA CAPTURE DEVICE IN ABSENCE OF INBUILT BLUETOOTH CAPABILITY
103
PAIR THE BLUETOOTH COMMUNICATION DEVICE ON THE DIGITAL DATA CAPTURE DEVICE WITH THE BLUETOOTH ENABLED MOBILE DEVICE
104
THE DIGITAL DATA CAPTURE DEVICE CAPTURES THE DATA AND THE MULTIMEDIA CONTENT
105
THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE DETECTS THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND ASSOCIATED FILES
106
TRANSFER THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND THE ASSOCIATED FILES TO THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE
107
AUTOMATICALLY PUBLISH THE TRANSFERRED DATA AND MULTIMEDIA CONTENT ON WEBSITES USING THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE

FIG. 1

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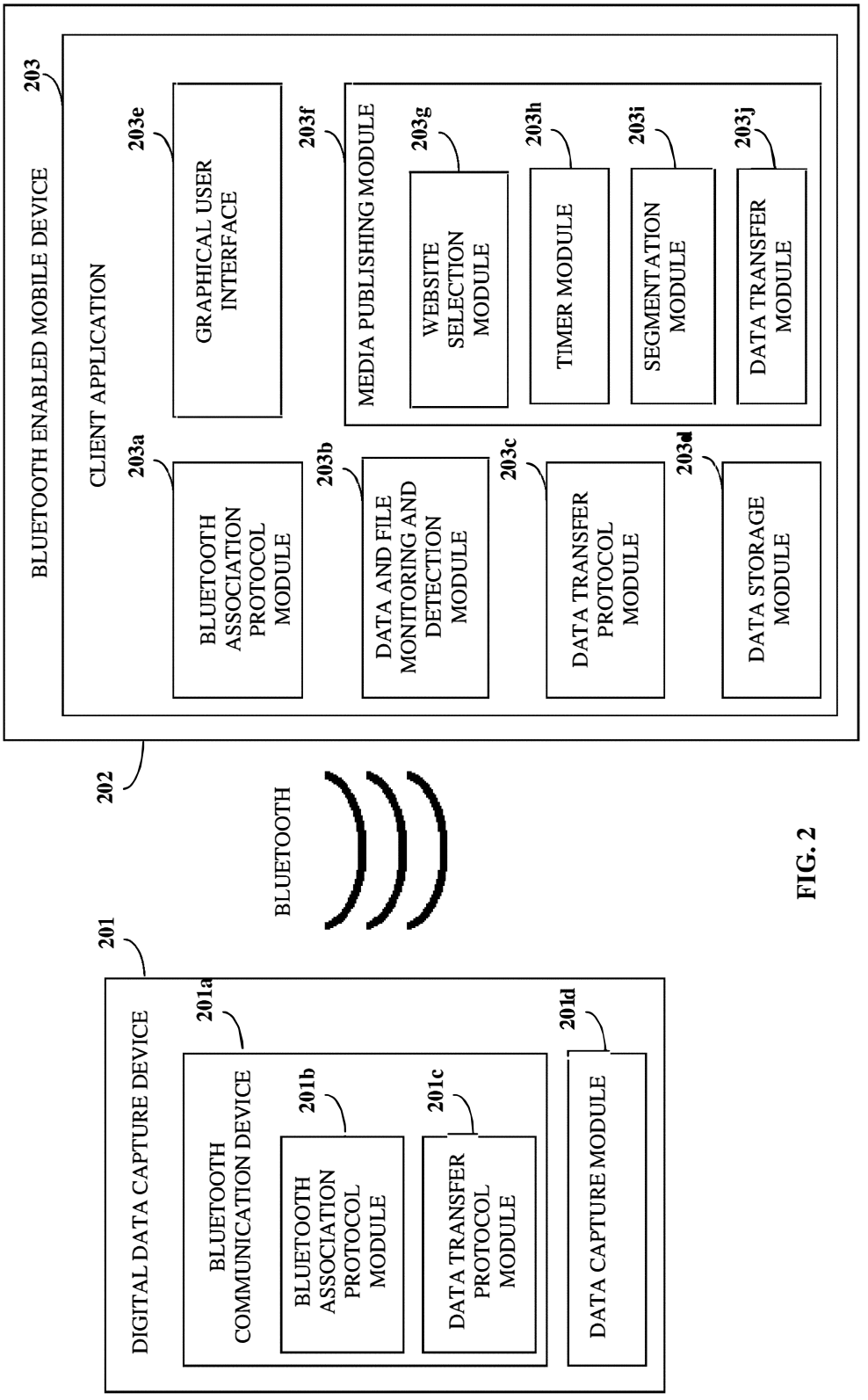


FIG. 2

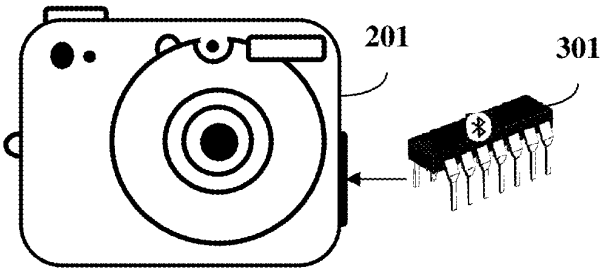


FIG. 3A

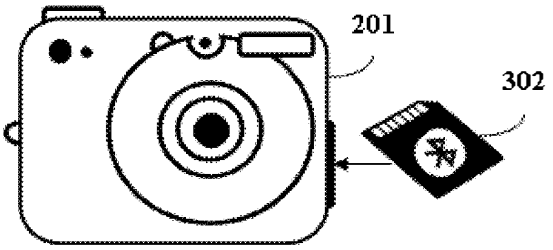


FIG. 3B

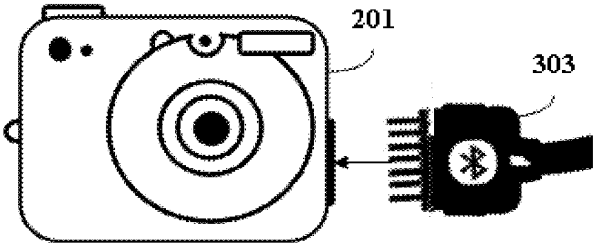


FIG. 3C

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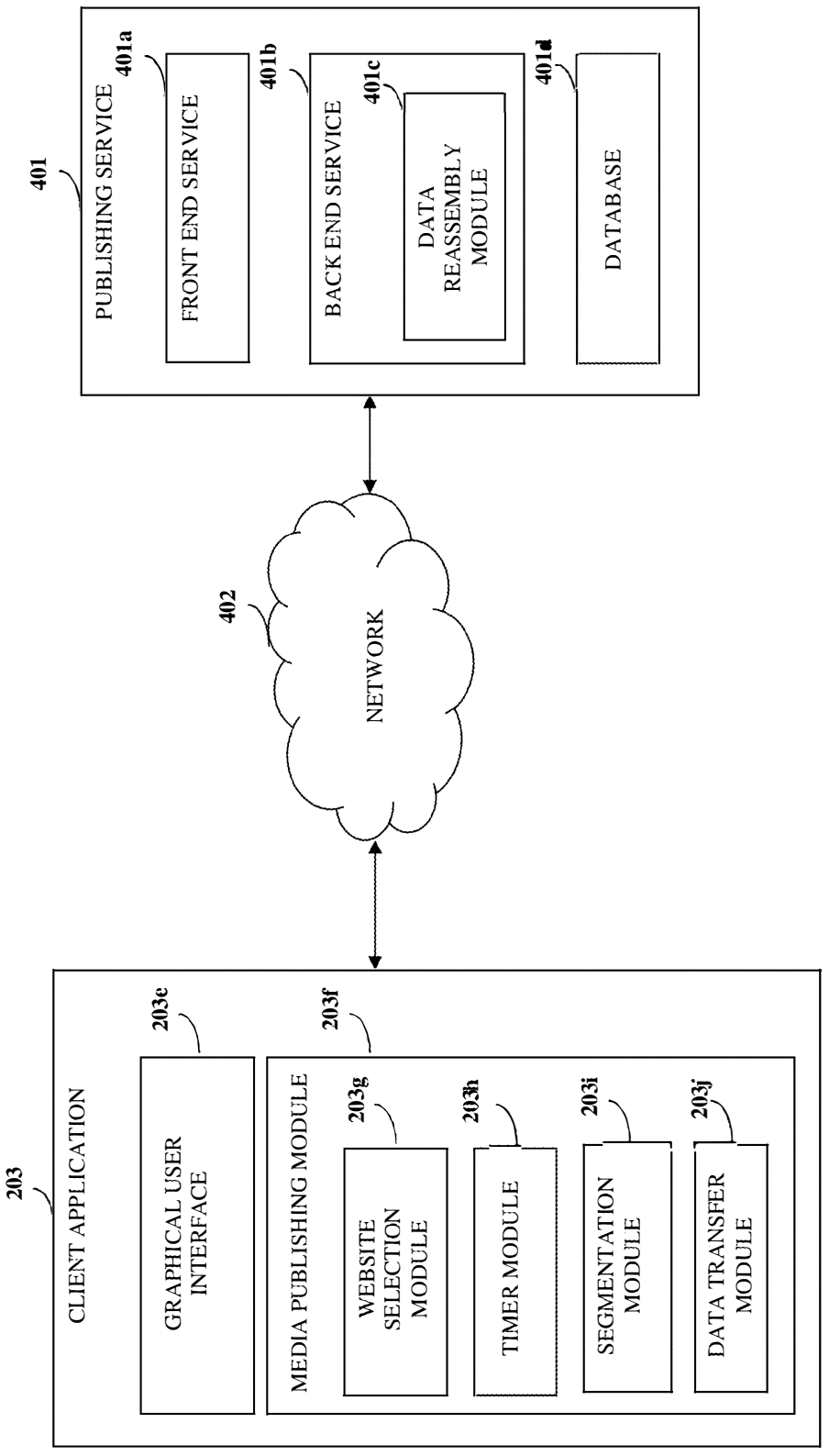


FIG. 4

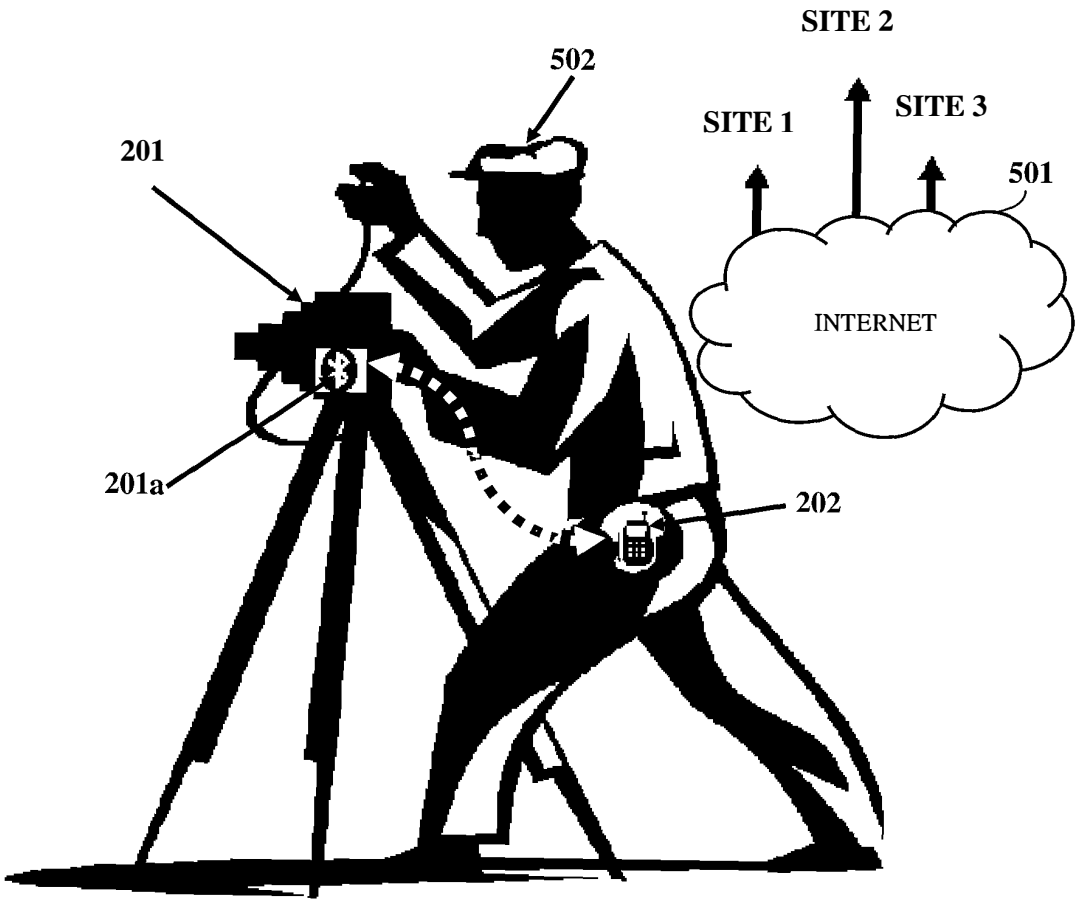


FIG. 5

AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT

CROSS REFERENCE TO RELATED APPLICATIONS

1. This application is a continuation application of non-provisional patent application Ser. No. 14/295,352, titled "Automatic multimedia upload for publishing multimedia content", filed Jun. 4, 2014 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 14/172,913, titled "Automatic multimedia upload for publishing multimedia content", filed on Feb. 5, 2014 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 13/740,214, now U.S. Pat. No. 8,700,790, titled "Automatic multimedia upload for publishing multimedia content", filed on Jan. 13, 2013 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 12/333,303, now U.S. Pat. No. 8,392,591, titled "Automatic multimedia upload for publishing multimedia content", filed on Dec. 11, 2008 in the United States Patent and Trademark Office, which claims the benefit of U.S. provisional patent application No. 61/017,202, titled "Automatic multimedia upload for publishing multimedia content", filed on Dec. 28, 2007 in the United States Patent and Trademark Office. The specifications of the above referenced applications are incorporated herein by reference in their entirety.
2. The following patent application is incorporated herein in its entirety: U.S. Non-provisional patent application Ser. No. 11/901,802, titled "Online Publishing Of Multimedia Content", filed on Sep. 19, 2007 in the United States Patent and Trademark Office.

BACKGROUND

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 and multimedia content on one or more websites simultaneously.

A user may need to capture and publish data and multimedia content on the internet in real time. 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.

Therefore, there is a need for a method and system to utilize a digital data capture device in conjunction with a mobile device for automatically detecting capture of data and multimedia content, transferring the captured data and multimedia content to the mobile device, and publishing the data and multimedia content on one or more websites automatically or with minimal user intervention.

SUMMARY OF THE INVENTION

This summary is provided to introduce a selection of concepts in a simplified form that are further described in the detailed description of the invention. This summary is not intended to identify key or essential inventive concepts of the claimed subject matter, nor is it intended for determining the scope of the claimed subject matter.

The method and system disclosed herein addresses the above stated need for utilizing a digital data capture device in conjunction with a Bluetooth™ (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital data capture device is physically separated from the BT enabled mobile device.

In the method and system disclosed herein, a client application is provided on a BT enabled mobile device. In the absence of in-built BT capability in the digital data capture device, a BT communication device is provided on the digital data capture device. The BT communication device may, for example, be an in-built BT capability chip, a BT memory card, or an external BT device. The BT communication device on the digital data capture device is paired with the BT enabled mobile device to establish a connection between the digital data capture device and the BT enabled mobile device.

A user may capture data and multimedia content using the digital data capture device. The digital data capture device may, for example, be a digital camera, a video camera, or other digital modular camera systems. The client application on the BT enabled mobile device detects the captured data, multimedia content, and files associated with the captured data and the multimedia content on the digital data capture device by communicating over a wireless BT protocol. The captured data, multimedia content, and the associated files are automatically transferred to the client application on the BT enabled mobile device from the digital data capture device.

The detection and transfer of the captured data, the multimedia content, and the associated files may be initiated by the client application of the BT enabled mobile device. The detection and transfer of the captured data, the multimedia content, and the associated files to the BT enabled mobile device may be initiated by the digital data capture device when the client application is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device.

The user may configure a timer setting and select the websites for publishing using the client application on the BT enabled mobile device. The client application selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the Bluetooth enabled mobile device. The client application also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The client application on the BT enabled mobile device automatically publishes the transferred data and multimedia content on one or more websites using the settings configured by the user. The method and system disclosed herein thereby enables the user to capture data and multimedia content, for example, audio, video, text, and images, automatically upload the captured data and multimedia content onto a BT enabled mobile device, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The user may therefore publish data and the multimedia content on immediate capture of the data and the multimedia content on the digital data capture device.

The method and system disclosed herein is described with reference to a BT communication protocol. The method and system disclosed herein may be realized with wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks.

BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing summary, as well as the following detailed description of the invention, is better understood when read in conjunction with the appended drawings. For the purpose of illustrating the invention, exemplary constructions of the invention are shown in the drawings. However, the invention is not limited to the specific methods and instrumentalities disclosed herein.

FIG. **1** illustrates a method of utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIG. **2** illustrates a system for utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIGS. **3**A-**3**C exemplarily illustrate the Bluetooth communication device options used on the digital data capture device for establishing a Bluetooth connection with the client application on the Bluetooth enabled mobile device.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application on a mobile device on one or more websites simultaneously.

FIG. **5** exemplarily illustrates a user utilizing a digital camera in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

DETAILED DESCRIPTION OF THE INVENTION

FIG. **1** illustrates a method of utilizing a digital data capture device **201** in conjunction with a Bluetooth™ enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The term "Bluetooth enabled mobile device" is herein referred to as "mobile device". The digital data capture device **201** is physically separated from the mobile device **202** as illustrated in FIG. **2**. The digital data capture device **201** may, for example, be a digital camera, a video camera, digital modular camera systems, or other digital data capturing systems.

In the method disclosed herein, a client application **203** is provided **101** on the mobile device **202**. In the absence of inbuilt Bluetooth (BT) capability in the digital data capture device **201**, a BT communication device **201***a* is provided **102** on the digital data capture device **201**. The BT communication device **201***a* may, for example, be an inbuilt BT capability chip **301**, a BT memory card **302**, or an external BT device **303** as illustrated in FIGS. **3**A-**3**C respectively. The external BT device **303** may, for example, be attached to a universal serial bus (USB), a firewire interface, or a power port of the digital data capture device **201**. BT 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 radio frequency.

The BT communication device **201***a* on the digital data capture device **201** is paired **103** with the mobile device **202** to establish a connection between the digital data capture device **201** and the mobile device **202**. BT pairing involves establishing a connection between two BT devices that mutually agree to communicate with each other. A BT device that wants to communicate only with a trusted device can cryptographically authenticate the identity of another BT device.

BT pairing occurs when the BT communication device **201***a* agrees to communicate with the mobile device **202** in order to establish a connection. In order to initiate the pairing process between the BT communication device **201***a* and the mobile device **202**, a common password known as a passkey is exchanged between the BT communication device **201***a* and the mobile device **202**. A passkey is a code shared by the BT communication device **201***a* and the mobile device **202**.

A user sets a discoverable mode for the mobile device **202**. When set to the discoverable mode, the mobile device **202** will allow the BT communication device **201***a* on the digital data capture device **201** to detect the mobile device's **202** presence and attempt to establish a connection. In order to initiate the pairing process, the BT communication device **201***a* will send the BT communication device name of a predefined number of characters, for example, up to 255 characters, and the BT address to the mobile device **202**. The BT communication device **201***a* then prompts the user of the mobile device **202** to enter the passkey code in order to accept the pairing with the BT communication device **201***a* on the digital data capture device **201**. On entering the passkey by the user of the mobile device **202**, the entered passkey is matched with the passkey of the BT communication device **201***a*. If a match is found, a trusted pair is automatically established.

The user captures **104** data and multimedia content using the digital data capture device **201**. The data and multimedia content may, for example, comprise image files, audio files, video files, text files, or any combination thereof. The client application **203** on the mobile device **202** detects **105** the captured data, the multimedia content, and files associated with the captured data and the multimedia content. The client application **203** then initiates the transfer of the captured data, the multimedia content, and the associated files in a pull mode of operation. In the pull mode, the client application **203** periodically polls the digital data capture device **201** to determine the creation of a new file in the digital data capture device **201**. The digital data capture device **201** then automatically transfers **106** the captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202** using one or a combination of file transfer protocols. The file transfer protocols may, for example, be one or a combination of BT profile protocols such as the object exchange (OBEX) protocol, the generic object exchange profile (GOEP) protocol, etc. The file transfer protocols may, for example, also be the media transfer protocol (MTP), the picture transfer protocol (PTP), and the PictBridge protocol implemented using a USB.

The picture transfer protocol (PTP) allows the transfer of images from digital cameras to computers and other peripheral devices without the need of additional device drivers. The media transfer protocol is a custom extension to the PTP and allows the protocol to be used for devices other than digital cameras, for example digital audio players and other portable media devices, for example portable video players. The PictBridge protocol allows images to be printed directly from digital cameras to a printer, without having to connect the camera to a computer.

The transfer of the data, the multimedia content, and the associated files may also take place in a push mode of operation. In the push mode, the BT communication device **201***a* sends a signal to the client application **203** on creation of a new file. By implementation of a handshake protocol, the BT communication device **201***a* automatically transfers captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202**. For some external digital data capture devices, the client application

203 may not be able to detect the creation of a new file. In such cases, the digital data capture device **201** signals the client application **203** in the event a new file is created. A file event listener in the client application **203** listens forthe signal from the digital data capture device **201**. The user may then initiate the transfer by a press of a button or a key on the digital data capture device **201**.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments. The data segments are tagged with segment identifiers using the client application **203**. The tagged data segments are transferred from the client application **203** of the mobile device **202** to a publishing service **401** via a network **402** as illustrated in FIG. **4**.

When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the digital data capture device **201** initiates detection and transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The user may also set preferences on the mobile device **202**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The user may configure a timer setting and the websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content. The user may set the timer setting to, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting. The client application **203** on the mobile device **202** selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the mobile device **202**. The client application **203** also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention.

The client application **203** on the mobile device **202** then automatically publishes **107** the transferred data and multimedia content on one or more websites. If the user configures the timer setting to "no-wait-automatic", the data and the multimedia content are automatically published on one or more websites based on the user preferences configured on the mobile device **202** without waiting for a certain period of time. If the user configures the timer setting to "wait-X-minutes-automatic", the client application **203** will wait for "X" minutes for the user to change or cancel publishing. If there is no user action for "X" minutes, the client application **203** will automatically publish the data and multimedia content to one or more websites based on the user preferences. Further, if the user configures the timer setting to "wait-X-minutes-user-input-cancel", the client application **203** will wait for "X" minutes for an input from the user. If there is no input from the user, the client application **203** cancels the publishing of the data and multimedia content. The publishing of the data and multimedia content on one or more websites simultaneously is explained in the detailed description of FIG. **4**.

The user may therefore capture data, for example, audio, video, text, and images, automatically upload the captured data onto the mobile device **202**, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The method disclosed herein thereby enables the user to publish data and the multimedia content on immediate click of an image or recording of a video on the digital data capture device **201** without having to manually upload the data onto a computing device and then publish the data on the websites.

FIG. **2** illustrates a system for utilizing a digital data capture device **201** in conjunction with a BT enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The system disclosed herein comprises a digital data capture device **201** and a client application **203** provided on the BT enabled mobile device **202**. The digital data capture device **201** and the mobile device **202** are physically separated from each other. The digital data capture device **201** comprises a BT communication device **201***a* and a data capture module **201***d*.

The BT communication device options used on the digital data capture device **201** for establishing a BT connection with the client application **203** on the BT enabled mobile device **202** are exemplarily illustrated in FIGS. **3**A-**3**C. The BT communication device **201***a* may, for example, be an in-built BT capability chip **301** as illustrated in FIG. **3**A, a BT memory card **302** as illustrated in FIG. **3**B, or an external BT device **303** as illustrated in FIG. **3**C.

The BT communication device **201***a* comprises a BT association protocol module **201***b* and a data transfer protocol module **201***c*. The client application **203** on the mobile device **202** comprises a BT association protocol module **203***a*, a data and file monitoring and detection module **203***b*, a data transfer protocol module **203***c*, a data storage module **203***d*, a graphical user interface (GUI) **203***e*, and a media publishing module **203***f*. The BT association protocol module **201***b* of the digital data capture device **201** and the BT association protocol module **203***a* of the client application **203** enable the pairing between the BT communication device **201***a* and the mobile device **202**. The pairing of the BT communication device **201***a* and the mobile device **202** is explained in the detailed description of FIG. **1**. The data capture module **201***d* captures the data and the multimedia content on the digital data capture device **201**.

The data and file monitoring and detection module **203***b* of the client application **203** monitors and detects the capture of the data, the multimedia content, and the files associated with the captured data and the multimedia content. On detection, the data transfer protocol module **203***c* of the client application **203** initiates the transfer and download of the captured data, the multimedia content, and the associated files from the digital data capture device **201**. When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the data transfer protocol module **201***c* of the digital data capture device **201** initiates the transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The data transfer protocol module **201***c* of the digital data capture device **201** transfers the captured data, the multimedia content, and the associated files to the client application **203**. The data storage module **203***d* stores the captured data, the multimedia content, and the associated files on the mobile device **202**. The user may also set preferences on the mobile device **202** using the GUI **203***e* of the client application **203**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The GUI **203***e* enables the user to configure a timer setting and websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content using the GUI **203***e*. The user may set a timer setting, for example, a "no-wait-automatic" setting, a

"wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting as explained in the detailed description of FIG. **1**.

The media publishing module **203***f* automatically publishes the transferred data and the multimedia content on one or more of the websites. The media publishing module **203***f* comprises a website selection module **203***g*, a timer module **203***h*, a segmentation module **203***i*, and a data transfer module **203***j*. The website selection module **203***g* selects the websites for publishing the data and the multimedia content based on settings and user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer setting may be set for automatic publishing of the multimedia content or a time based wait mode where user interaction is required. The timer module **203***h* sets the timer based on a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting configured by the user. The timer module **203***h* ensures that if the user does not wish to publish the transferred data and multimedia content, the user has time to decide whether to publish or not. The user may also configure the client application **203** to automatically delete the data, the multimedia content, and the associated files after the data and the multimedia content have been posted and published on one or more websites based on user preferences.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments using the segmentation module **203***i*. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via a network **402** for publishing on the websites automatically.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application **203** on a mobile device **202** on one or more websites simultaneously. The system disclosed herein comprises a client application **203** and a publishing service **401** connected via a network **402**. The client application **203** comprises a media publishing module **203***f* as explained in the detailed description of FIG. **2**. The media publishing module **203***f* comprises the website selection module **203***g*, the timer module **203***h*, the segmentation module **203***i*, and the data transfer module **203***j*. The website selection module **203***g* selects the websites based on user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer module **203***h* ensures that the publishing service **401** obtains the data, the multimedia content, and the associated files to publish on the selected websites based on the time set by the user.

In the case of limited memory and processing capabilities of the mobile device **202**, the segmentation module **203***i* of the client application **203** partitions the multimedia content of large files into multiple data segments. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The segment identifiers may, for example, be one or more of transaction identifiers, sequence numbers, and timestamps. The segment identifiers are used later by a back end service **401***b* of the publishing service **401** to reassemble the data segments in a predetermined sequence to create a multimedia object. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via the network **402**. The network **402** may, for example, be a wireless network, a cellular network, or the internet **501**.

The publishing service **401** comprises a front end service **401***a*, a back end service **401***b*, and a database **401***d*. The transferred data and multimedia content is stored in the database **401***d* of the publishing service **401**. A protocol is provided for synchronizing user publishing information between the client application **203** and the publishing service **401**. The user publishing information may, for example, comprise user preferences of the websites and the timer setting. The data transfer module **203***j* may transfer the data and the multimedia content as a single multimedia file, multiple data segments in the case of large files, or electronic mail attachments to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* comprises a data reassembly module **401***c*. If the back end service **401***b* receives the multimedia content in the form of multiple data segments, the data reassembly module **401***c* reassembles the data segments in a predetermined sequence using the segment identifiers. The back end service **401***b* then creates a multimedia object from the transferred data and multimedia content. The multimedia object is transferred from the back end service **401***b* to the front end service **401***a* and then published on the websites selected by the user.

FIG. **5** exemplarily illustrates a user **502** utilizing a digital camera in conjunction with a Bluetooth enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital camera is physically separated from the mobile device **202** as illustrated in FIG. **5**. The digital camera comprises a BT communication device **201***a* such as an in-built BT capability chip **301**, a BT memory card **302**, or an external BT device **303** or dongle externally attached to the digital camera as illustrated in FIGS. **3**A-**3**C. The external BT dongle may be attached to a USB, a firewire interface, or a power port of the digital camera. The BT communication device **201***a* on the digital camera is paired with the mobile device **202** to establish a connection. The user **502** may capture an image using the digital camera. The client application **203** on the mobile device **202** detects the captured image and initiates the transfer of the captured image and the associated files. The digital camera automatically transfers the captured image and the associated files to the client application **203** on the mobile device **202**.

The client application **203** automatically publishes the transferred image on one or more websites via the internet **501**. The user **502** may set preferences in the mobile device **202**. The user preferences, for example, comprise the websites selected for publishing the transferred image. The user **502** may select websites, for example, Flickr™, Picasa™, YouTube™, eBay®, etc. and store the preferences on the mobile device **202**. The user **502** may also set the timer setting for publishing the transferred image on the selected websites. After the captured image is transferred to the mobile device **202**, the client application **203** publishes the capture image on the selected websites based on the default timer and website settings configured by the user **502** on the mobile device **202**.

Consider an example where a user **502** records a video using a BT enabled video camera. The video camera immediately establishes a connection with the user's **502** BT enabled mobile device **202**. On detection of the recorded video by the client application **203** on the mobile device **202**, the video camera automatically transfers the recorded video to the user's **502** mobile device **202**. In the case of limited

memory and processing capabilities of the mobile device **202**, the recorded video may be streamed as data segments from the mobile device **202** to the publishing service **401**. The client application **203** individually tags the data segments with segment identifiers and transfers the tagged data segments from the mobile device **202** to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* of the publishing service **401** reassembles the data segments in a predetermined sequence using the segment identifiers to create the multimedia object. The multimedia object is an aggregation of the reassembled data segments. The multimedia object is then transferred from the back end service **401***b* to the front end service **401***a* and automatically published by the front end service **401***a* on one or more websites selected by the user **502**.

Consider another example where a user **502** may record videos or capture images at different points in time and automatically uploads and publishes the videos and images on one or more websites. Consider an investigative reporter, Jane, working for a prominent newspaper in New York City. Each day, she moves around the city chasing leads, interviewing people, videotaping her stories, taking pictures, and tracking down her next big story. When she is working on a story with an associate writer, she may need to upload her videos and pictures and send it immediately to the associate writer. The method and system disclosed herein enables Jane to automatically upload pictures and videos taken using her digital camera or video camera onto a mobile device **202** and publish the pictures, videos, etc. from her mobile device **202** to the internet **501** with one click or touch of a button.

On one click or touch of a button, the pictures and videos are published and immediately made available on Jane's private blog that may be accessed by the newspaper editor and her associates in the news office. When she is collaborating with an associate on a story, they may see each other's progress in real time. Since sharing information with the associate over electronic mails (emails) may be inconvenient, Jane records her progress on the story in the voice format and publishes. The associate may access the information from Jane's blog site, thereby saving considerable time.

Exemplarily, the method and system disclosed herein may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system. The method and system disclosed herein is realized with, but not limited to Bluetooth communication protocol. Wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks may be employed to accomplish the tasks of the method and system disclosed herein. The mobile device **202** may, for example, be a ubiquitous mobile phone. The use of personal digital assistants (PDAs) without telephony support is also fairly widespread. The client application **203** may be deployed on mobile devices with limited or no telephony support. These mobile devices may support Java of Sun Microsystems Inc., more specifically Java 2 Micro Edition (J2ME™), Windows Mobile .Net Compact Framework of Microsoft, Inc., Symbian™, Linux framework. The client application **203** may, for example, be implemented on the J2ME platform. These environments provide functionalities in the libraries to create the GUI **203***e* and perform all the required functions of the method and system disclosed herein. Other advantages of these frameworks are portability across mobile devices that run on different operating systems.

The client application **203** may be rendered independent of the operating system of the mobile device **202**. One of the transport mechanisms to achieve the connectivity between the publishing service **401** and the client application **203** is the wireless internet. While most PDAs have an inbuilt wireless network card for the internet connectivity, the mobile phones may transfer data to the publishing service **401** over the telephony network at near broadband speeds. Some of the mobile phones equipped with both wireless network and telephony data capabilities may use either of the two to communicate with the publishing service **401**. The transport protocol that is used between the client application **203** and the publishing service **401** may be hypertext transfer protocol (HTTP) or extensible markup language-remote procedure calls (XML-RPC). The back end service **401***b* may, for example, be developed in Java.

It will be readily apparent that the various methods and algorithms described herein may be implemented in a computer readable medium appropriately programmed for general purpose computers and computing devices. Typically a processor, for e.g., one or more microprocessors will receive instructions from a memory or like device, and execute those instructions, thereby performing one or more processes defined by those instructions. Further, programs that implement such methods and algorithms may be stored and transmitted using a variety of media, for e.g., computer readable media in a number of manners. In one embodiment, hardwired circuitry or custom hardware may be used in place of, or in combination with, software instructions for implementation of the processes of various embodiments. Thus, embodiments are not limited to any specific combination of hardware and software. A "processor" means any one or more microprocessors, Central Processing Unit (CPU) devices, computing devices, microcontrollers, digital signal processors or like devices. The term "computer-readable medium" refers to any medium that participates in providing data, for example instructions that may be read by a computer, a processor or a like device. Such a medium may take many forms, including but not limited to, non-volatile media, volatile media, and transmission media. Non-volatile media include, for example, optical or magnetic disks and other persistent memory volatile media include Dynamic Random Access Memory (DRAM), which typically constitutes the main memory. Transmission media include coaxial cables, copper wire and fiber optics, including the wires that comprise a system bus coupled to the processor. Common forms of computer-readable media include, for example, a floppy disk, a flexible disk, hard disk, magnetic tape, any other magnetic medium, a Compact Disc-Read Only Memory (CD-ROM), Digital Versatile Disc (DVD), any other optical medium, punch cards, paper tape, any other physical medium with patterns of holes, a Random Access Memory (RAM), a Programmable Read Only Memory (PROM), an Erasable Programmable Read Only Memory (EPROM), an Electrically Erasable Programmable Read Only Memory (EEPROM), a flash memory, any other memory chip or cartridge, a carrier wave as described hereinafter, or any other medium from which a computer can read. In general, the computer-readable programs may be implemented in any programming language. Some examples of languages that can be used include C, C++, C#, or JAVA. The program will use various security, encryption and compression techniques to enhance the overall user experience. The software programs may be stored on or in one or more mediums as an object code. A computer program product comprising computer executable instructions embodied in a computer-readable medium comprises computer parsable codes for the implementation of the processes of various embodiments.

Where databases are described such as the database **401***d*, it will be understood by one of ordinary skill in the art that (i) alternative database structures to those described may be readily employed, and (ii) other memory structures besides databases may be readily employed. Any illustrations or descriptions of any sample databases presented herein are illustrative arrangements for stored representations of information. Any number of other arrangements may be employed besides those suggested by, e.g., tables illustrated in drawings or elsewhere. Similarly, any illustrated entries of the databases represent exemplary information only; one of ordinary skill in the art will understand that the number and content of the entries can be different from those described herein. Further, despite any depiction of the databases as tables, other formats including relational databases, object-based models and/or distributed databases could be used to store and manipulate the data types described herein. Likewise, object methods or behaviors of a database can be used to implement various processes, such as the described herein. In addition, the databases may, in a known manner, be stored locally or remotely from a device that accesses data in such a database.

The present invention can be configured to work in a network environment including a computer that is in communication, via a communications network, with one or more devices. The computer may communicate with the devices directly or indirectly, via a wired or wireless medium such as the Internet, Local Area Network (LAN), Wide Area Network (WAN) or Ethernet, Token Ring, or via any appropriate communications means or combination of communications means. Each of the devices may comprise computers, such as those based on the Intel® processors, AMD® processors, Sun® processors, IBM® processors etc., that are adapted to communicate with the computer. Any number and type of machines may be in communication with the computer.

The foregoing examples have been provided merely for the purpose of explanation and are in no way to be construed as limiting of the present method and system disclosed herein. While the invention has been described with reference to various embodiments, it is understood that the words, which have been used herein, are words of description and illustration, rather than words of limitation. Further, although the invention has been described herein with reference to particular means, materials and embodiments, the invention is not intended to be limited to the particulars disclosed herein; rather, the invention extends to all functionally equivalent structures, methods and uses, such as are within the scope of the appended claims. Those skilled in the art, having the benefit of the teachings of this specification, may effect numerous modifications thereto and changes may be made without departing from the scope and spirit of the invention in its aspects.

We claim:

1. A machine-implemented method of media transfer, comprising:

for a digital camera device having a short-range wireless capability to connect with a cellular phone, wherein the cellular phone has access to the internet, performing in the digital camera device:

establishing a short-range paired wireless connection between the digital camera device and the cellular phone, wherein establishing the short-range paired wireless connection comprises, the digital camera device cryptographically authenticating identity of the cellular phone;

acquiring new-media, wherein the new-media is acquired after establishing the short-range paired wireless connection between the digital camera device and the cellular phone;

creating a new-media file using the acquired new-media;

storing the created new-media file in a first non-volatile memory of the digital camera device;

receiving a data transfer request initiated by a mobile software application on the cellular phone, over the established short-range paired wireless connection, wherein the data transfer request is for the new-media file, and wherein the new-media file was created in the digital camera device before receiving the data transfer request; and

transferring the new-media file to the cellular phone, over the established short-range paired wireless connection, wherein the cellular phone is configured to receive the new-media file, wherein the cellular phone is configured to store the received new-media file in a non-volatile memory device of the cellular phone, wherein the cellular phone is configured to use HTTP to upload the received new-media file along with user information to a user media publishing website, and wherein the cellular phone is configured to provide a graphical user interface (GUI) in the cellular phone, wherein the graphical user interface (GUI) is for the received new-media file and to delete the created new media file.

2. The machine implemented method of claim **1**, further comprising, performing in the digital camera device:

creating an associated file, wherein the associated file comprises data associated with the new-media;

storing the associated file in the first non-volatile memory of the digital camera device; and

transferring the associated file to the cellular phone, over the established short-range paired wireless connection, wherein the cellular phone is configured to receive the associated file and store the received associated file in the non-volatile memory device of the cellular phone.

3. The machine-implemented method of claim **1**, wherein the user information corresponds to user related information used by the user media publishing website to publish the new-media file.

4. The machine implemented method of claim **1**, wherein the new-media comprises one or more of video data and image data.

5. A short-range wireless enabled digital camera device, comprising:

a first non-volatile memory device;

a first processor coupled to said first non-volatile memory device;

a short-range wireless communication device configured to control the first processor to establish a short-range paired wireless connection between the short-range wireless enabled digital camera device and a short-range wireless enabled cellular phone, wherein establishing the short-range paired wireless connection comprises, the digital camera device cryptographically authenticating identity of the cellular phone;

a data capture circuitry;

said first processor configured to acquire new-media in the digital camera device using the data capture circuitry, wherein the new-media is acquired after establishing the short-range paired wireless connection between the digital camera device and the cellular phone;

said first processor configured to create a new media file using the acquired new-media;

said first processor configured to store the created new-media file in the first non-volatile memory device;

said first processor configured to receive a data transfer request initiated by a mobile software application on the cellular phone, over the established short-range paired wireless connection, wherein the data transfer request is for the new-media file, and wherein the new-media file was created in the digital camera device before receiving the data transfer request; and

said first processor configured to transfer the new-media file to the cellular phone, over the established short-range paired wireless connection, wherein the cellular phone comprises a mobile software application that when executed by a processor of the cellular phone is configured to control the processor of the cellular phone to receive the new-media file, store the received new-media file in a non-volatile memory device of the cellular phone, use HTTP to upload the received new-media file along with user information to a user media publishing website, and provide a graphical user interface (GUI), wherein the graphical user interface (GUI) is for the received new-media file and the graphical user interface (GUI) is configured to receive input to delete the created new media file.

6. The short-range wireless enabled digital camera device of claim **5**, wherein the first processor is further configured to:

create an associated file, wherein the associated file comprises data associated with the new-media;

store the associated file in the first non-volatile memory of the digital camera device; and

transfer the associated file to the cellular phone, over the established short-range paired wireless connection, wherein the mobile software application on the cellular phone that when executed by the processor of the cellular phone is further configured to control the processor of the cellular phone to receive the associated file, store the received associated file in the non-volatile memory device of the cellular phone, and provide a graphical user interface (GUI) for the received associated file.

7. The short-range wireless enabled digital camera device of claim **5**, wherein the new-media comprises one or more of video data and image data.

8. A system for transferring media, the system comprising:

a digital camera device, comprising:

a first non-volatile memory device;

a first processor coupled to the first memory device;

a short-range wireless communication device configured to establish a short-range paired wireless connection with an internet connected cellular phone, wherein establishing the short-range paired wireless connection comprises, the digital camera device cryptographically authenticating identity of the cellular phone;

a data capture circuitry;

said first processor configured to acquire new-media in the digital camera device using the data capture circuitry, wherein the new-media is acquired after establishing the short-range paired wireless connection with the cellular phone, and wherein the new-media comprises one or more of video data and image data;

said first processor configured to create a new-media file using the acquired new- media;

said first processor configured to store the created new-media file in the first non-volatile memory device;

said first processor configured to receive a data transfer request initiated by a software application on the cellular phone, over the established short-range paired wireless connection, wherein the data transfer request is for the new-media file, and wherein the new-media file was created in the digital camera device before receiving the data transfer request; and

said first processor configured to transfer the new-media file to the cellular phone, over the established short-range paired wireless connection;

said software application for the cellular phone, wherein the software application is embodied as executable program instructions that when executed by a processor of the cellular phone, is configured to control the processor of the cellular phone to:

send the data transfer request to the digital camera device, over the established short-range paired wireless connection, wherein the data transfer request corresponds to transfer of the new-media file;

receive the new-media file from the digital camera device, over the established short-range paired wireless connection;

store the received new-media file in a non-volatile memory device of the cellular phone;

provide a graphical user interface (GUI) for the received new-media file and to delete the created new-media file based on input received through the graphical user interface (GUI); and

use HTTP to upload the received new-media file along with user information to a user media publishing website.

9. The system of claim **8**, wherein the first processor is further configured to:

create an associated file, wherein the associated file comprises data associated with the new-media;

store the associated file in the first non-volatile memory of the digital camera device; and

transfer the associated file to the cellular phone, over the established short-range paired wireless connection, wherein the software application on the cellular phone that when executed by the processor of the cellular phone is further configured to control the processor of the cellular phone to receive the associated file, store the received associated file in the non-volatile memory device of the cellular phone, and provide a graphical user interface (GUI) for the received associated file.

10. The system of claim **8**, wherein the new-media comprises one or more of video data and image data.

11. The system of claim **8**, wherein internet access capability of the cellular phone is via a cellular data network.

12. The system of claim **8**, wherein the software application is one of:

stored on a non-transitory computer-readable medium and is installable in the nonvolatile memory device of the cellular phone; and

downloadable on to the non-volatile memory device of the cellular phone from a remote server.

13. A non-transitory computer-readable medium containing machine executable instructions that, when executed by a processor on a digital camera device with short-range wireless capability, cause the processor to perform a method comprising:

acquiring new-media, wherein the new-media is acquired after establishing a short-range paired wireless connection between the digital camera device and a cellular phone, wherein establishing the short-range paired wireless connection comprises, the digital camera device cryptographically authenticating identity of the cellular phone;

creating a new-media file using the acquired new-media;

storing the created new-media file in a first non-volatile memory of the digital camera device;

receiving a data transfer request initiated by a software application on the cellular phone, over the established short-range paired wireless connection, wherein the data transfer request is for the new-media file, and wherein the new-media file was created in the digital camera device before receiving the data transfer request; and

transferring the new-media file to the cellular phone, over the established short-range paired wireless connection, wherein the cellular phone is configured to receive the new-media file, wherein the cellular phone is configured to store the received new-media file in a non-volatile memory device of the cellular phone, wherein the cellular phone is configured to provide a graphical user interface (GUI) in the cellular phone, wherein the graphical user interface (GUI) is for the received new-media file and to delete the created new media file, and wherein the cellular phone is configured to use HTTP to upload the received new media file along with user information to a user media publishing website.

14. The non-transitory computer-readable medium of claim **13**, further comprising executable instructions that when executed by the processor of the digital camera device, cause the processor to perform:

creating an associated file, wherein the associated file comprises data associated with the new-media;

storing the associated file in the first non-volatile memory of the digital camera device; and

transferring the associated file to the cellular phone, over the established short-range paired wireless connection, wherein the cellular phone is configured to receive the associated file, and store the received associated file in the non-volatile memory device of the cellular phone.

15. The non-transitory computer-readable medium of claim **13**, wherein the user information corresponds to user related information used by the user media publishing website to publish the new-media file.

16. The non-transitory computer-readable medium of claim **13**, wherein the new-media comprises one or more of video data and image data.

17. The short-range wireless enabled digital camera device of claim **5**, wherein the short- range paired wireless connection is one of a Bluetooth paired wireless connection, a Wi-Fi paired wireless connection, and other personal area wireless networking technologies that use pairing.

18. The non-transitory computer readable medium of claim **13**, wherein the short-range paired wireless connection is one of a Bluetooth paired wireless connection, a Wi-Fi paired wireless connection, and other personal area wireless networking technologies that use pairing.

19. The short-range wireless enabled digital camera device of claim **5**, wherein the short- range paired wireless connection is one of a Bluetooth paired wireless connection, a Wi-Fi paired wireless connection, and other personal area wireless networking technologies that use pairing.

20. The system of claim **8**, wherein the short-range paired wireless connection is one of a Bluetooth paired wireless connection, a Wi-Fi paired wireless connection, and other personal area wireless networking technologies that use pairing.

21. The short-range wireless enabled digital camera device of claim **6**, wherein the mobile software application that when executed by the processor of the cellular phone is further configured to control the processor of the cellular phone to receive input through the graphical user interface (GUI) to delete the created associated file.

22. The system of claim **9**, wherein the software application that when executed by the processor of the cellular phone is further configured to control the processor of the cellular phone to delete the created associated file based on input received through the graphical user interface (GUI).

* * * * *

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 9,258,698 B2
APPLICATION NO. : 14/533104
DATED : February 9, 2016
INVENTOR(S) : Gurvinder Singh et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In the Claims

Claim 1, Col. 12, Lines 25-26, cancel the text: "received new-media file and to delete the created new media file.", and insert the following text:
--received new-media file and to delete the created new-media file.--.

Claim 5, Col. 12, Lines 64-65, cancel the text: "said first processor configured to create a new media file using the acquired new-media;", and insert the following text:
--said first processor configured to create a new-media file using the acquired new-media;--.

Claim 5, Col. 13, Line 22, cancel the text: "created new media file.", and insert the following text:
--created new-media file.--.

Claim 13, Col. 15, Lines 17-21, cancel the text: "graphical user interface (GUI) is for the received new-media file and to delete the created new media file, and wherein the cellular phone is configured to use HTTP to upload the received new media file along with user information to a user media publishing website.", and insert the following text:
--graphical user interface (GUI) is for the received new-media file and to delete the created new-media file, and wherein the cellular phone is configured to use HTTP to upload the received new-media file along with user information to a user media publishing website.--.

Signed and Sealed this
Third Day of May, 2016

Michelle K. Lee

Michelle K. Lee
Director of the United States Patent and Trademark Office

US009749847B2

(12) **United States Patent**
Singh et al.

(10) **Patent No.: US 9,749,847 B2**
(45) **Date of Patent: Aug. 29, 2017**

(54) **AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT**

(71) Applicant: **CellSpinSoft Inc.**, San Jose, CA (US)

(72) Inventors: **Gurvinder Singh**, Santa Clara, CA (US); **Marcos Klein**, Mountain View, CA (US); **Vince Laviano**, Alviso, CA (US)

(73) Assignee: **CELLSPINSOFT INC.**, San Jose, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **14/576,202**

(22) Filed: **Dec. 19, 2014**

(65) **Prior Publication Data**

US 2015/0104015 A1 Apr. 16, 2015

Related U.S. Application Data

(63) Continuation of application No. 14/503,401, filed on Oct. 1, 2014, now abandoned, which is a continuation

(Continued)

(51) **Int. Cl.**
H04W 8/24 (2009.01)
G06F 17/30 (2006.01)

(Continued)

(52) **U.S. Cl.**
CPC ***H04W 8/24*** (2013.01); ***G06F 3/0482*** (2013.01); ***G06F 17/3089*** (2013.01); ***H04B 7/26*** (2013.01); ***H04L 7/0008*** (2013.01); ***H04L 29/06176*** (2013.01); ***H04L 49/552*** (2013.01); ***H04L 65/403*** (2013.01); ***H04L 67/02*** (2013.01);

(Continued)

(58) **Field of Classification Search**
None
See application file for complete search history.

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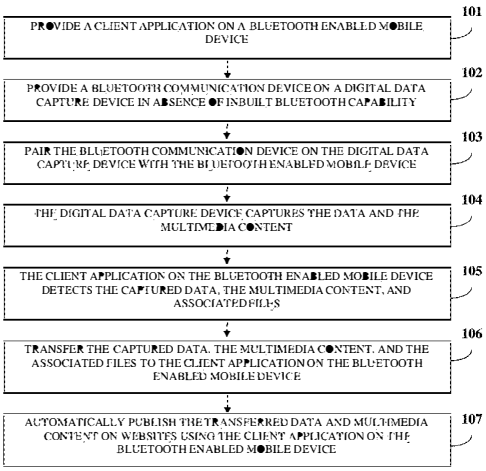
(Continued)

Primary Examiner — Sulaiman Nooristany
(74) *Attorney, Agent, or Firm* — Ash Tankha; Lipton, Weinberger & Husick

(57) **ABSTRACT**

Disclosed herein is a method and system for utilizing a digital data capture device in conjunction with a Bluetooth (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. A client application is provided on the BT enabled mobile device. In the absence of inbuilt BT capability, a BT communication device is provided on the digital data capture device. The BT communication device is paired with the BT enabled mobile device to establish a connection. The client application detects capture of data and multimedia content on the digital data capture device and initiates transfer of the captured data, multimedia content, and associated files. The digital data capture device transfers the captured data, multimedia content, and the associated files to the client application. The client application automatically publishes the transferred data and multimedia content on one or more websites.

3 Claims, 5 Drawing Sheets



Related U.S. Application Data

of application No. 14/273,546, filed on May 9, 2014, now Pat. No. 8,862,757, which is a continuation of application No. 14/172,913, filed on Feb. 5, 2014, now Pat. No. 8,798,539, which is a continuation of application No. 13/740,214, filed on Jan. 13, 2013, now Pat. No. 8,700,790, which is a continuation of application No. 12/333,303, filed on Dec. 11, 2008, now Pat. No. 8,392,591.

(60) Provisional application No. 61/017,202, filed on Dec. 28, 2007.

(51) **Int. Cl.**

H04L 29/06	(2006.01)
H04W 4/00	(2009.01)
H04L 29/08	(2006.01)
H04B 7/26	(2006.01)
H04L 7/00	(2006.01)
H04L 12/939	(2013.01)
H04W 76/02	(2009.01)
G06F 3/0482	(2013.01)
H04W 12/04	(2009.01)
H04W 84/18	(2009.01)
H04W 12/02	(2009.01)

(52) **U.S. Cl.**

CPC ***H04L 67/06*** (2013.01); ***H04L 67/10*** (2013.01); ***H04L 67/1095*** (2013.01); ***H04W 4/008*** (2013.01); ***H04W 76/02*** (2013.01); *H04L 63/0435* (2013.01); *H04L 63/0492* (2013.01); *H04L 63/083* (2013.01); *H04W 12/02* (2013.01); *H04W 12/04* (2013.01); *H04W 84/18* (2013.01)

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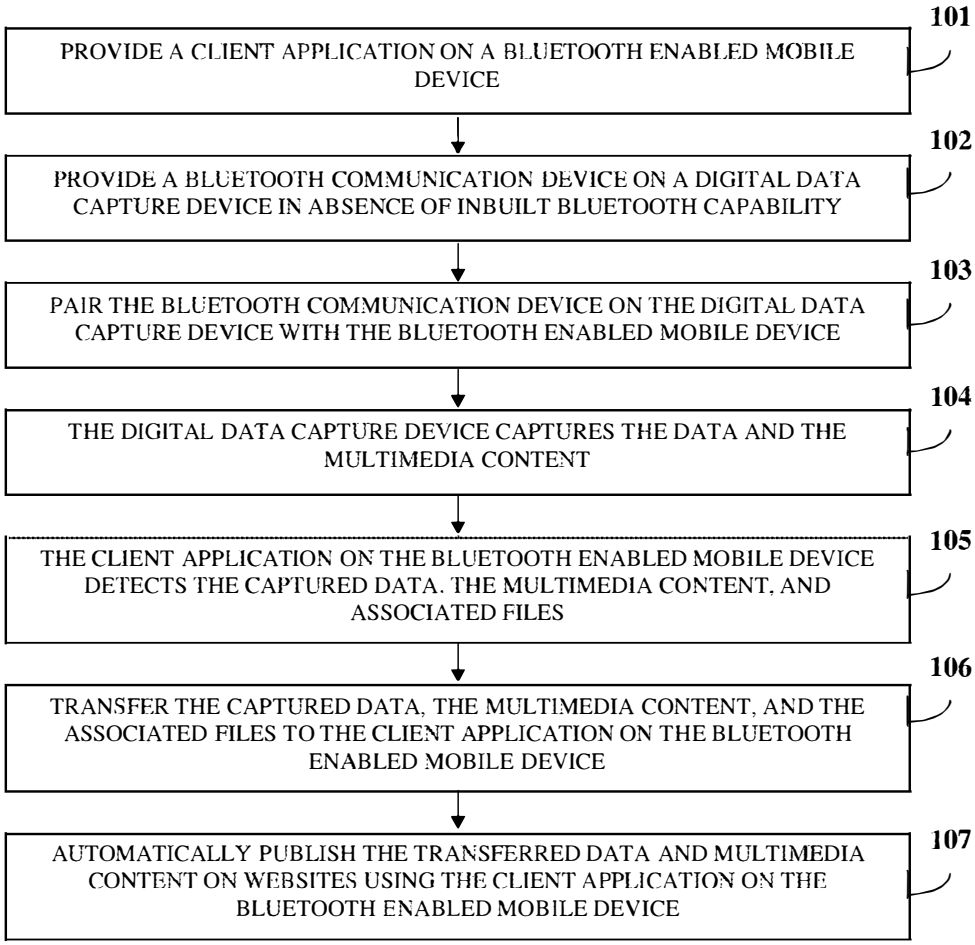

101
PROVIDE A CLIENT APPLICATION ON A BLUETOOTH ENABLED MOBILE DEVICE
102
PROVIDE A BLUETOOTH COMMUNICATION DEVICE ON A DIGITAL DATA CAPTURE DEVICE IN ABSENCE OF INBUILT BLUETOOTH CAPABILITY
103
PAIR THE BLUETOOTH COMMUNICATION DEVICE ON THE DIGITAL DATA CAPTURE DEVICE WITH THE BLUETOOTH ENABLED MOBILE DEVICE
104
THE DIGITAL DATA CAPTURE DEVICE CAPTURES THE DATA AND THE MULTIMEDIA CONTENT
105
THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE DETECTS THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND ASSOCIATED FILES
106
TRANSFER THE CAPTURED DATA, THE MULTIMEDIA CONTENT, AND THE ASSOCIATED FILES TO THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE
107
AUTOMATICALLY PUBLISH THE TRANSFERRED DATA AND MULTIMEDIA CONTENT ON WEBSITES USING THE CLIENT APPLICATION ON THE BLUETOOTH ENABLED MOBILE DEVICE

FIG. 1

Case: 18-1817 Document: 57 Page: 320 Filed: 06/19/2018

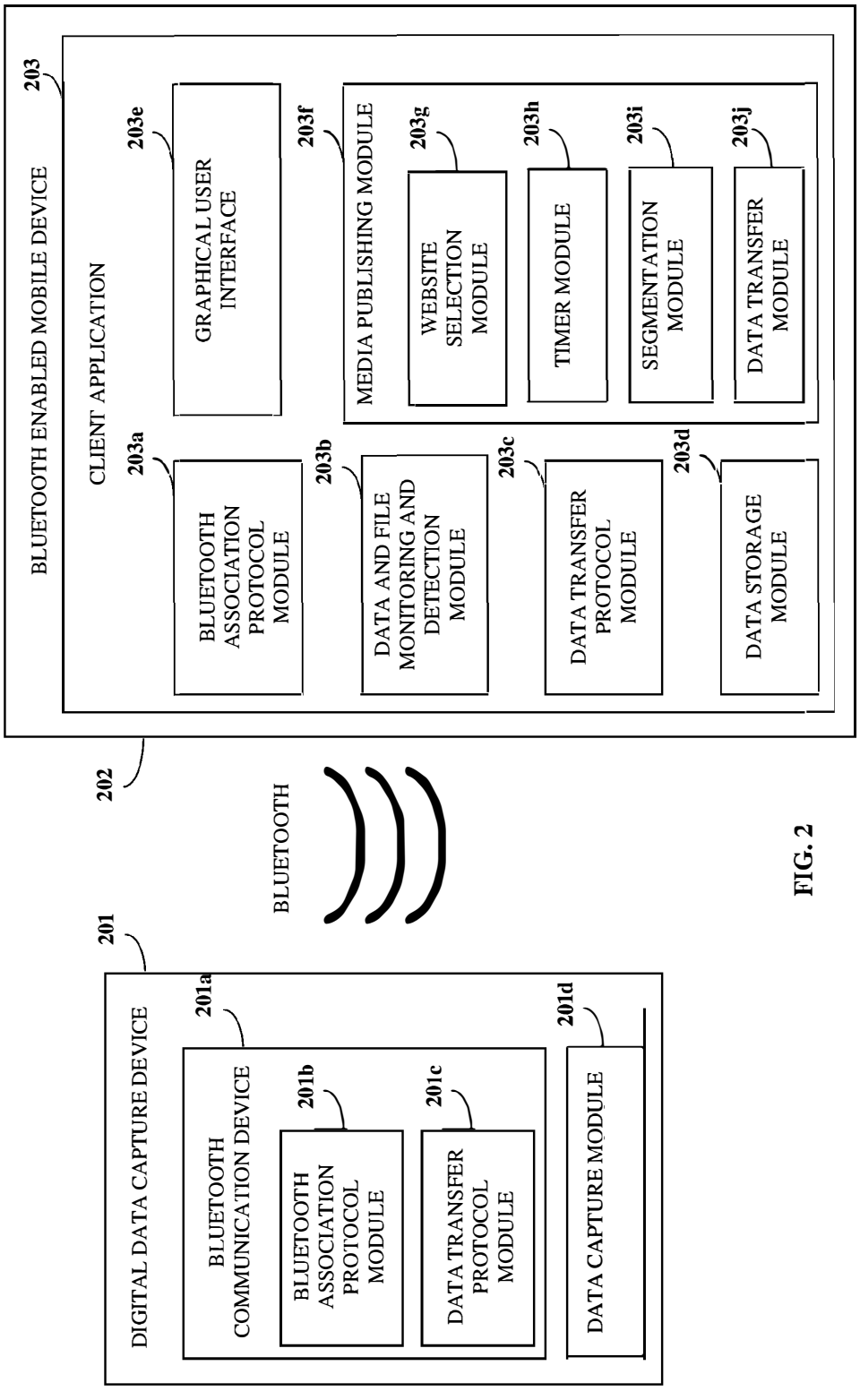


FIG. 2

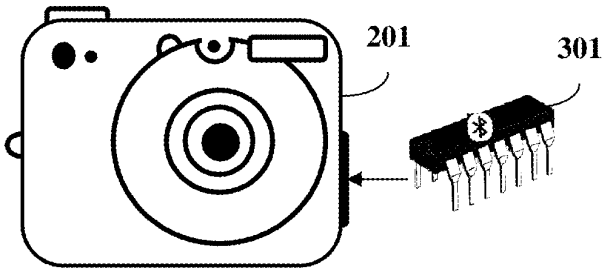


FIG. 3A

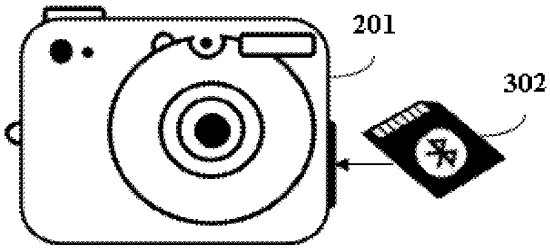


FIG. 3B

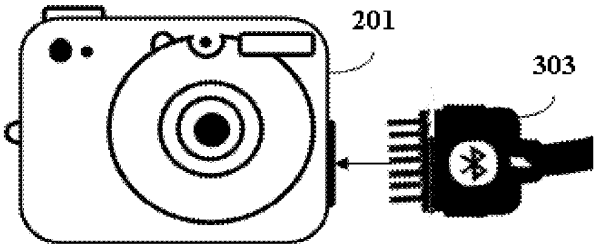


FIG. 3C

Case: 18-1817 Document: 57 Page: 322 Filed: 06/19/2018

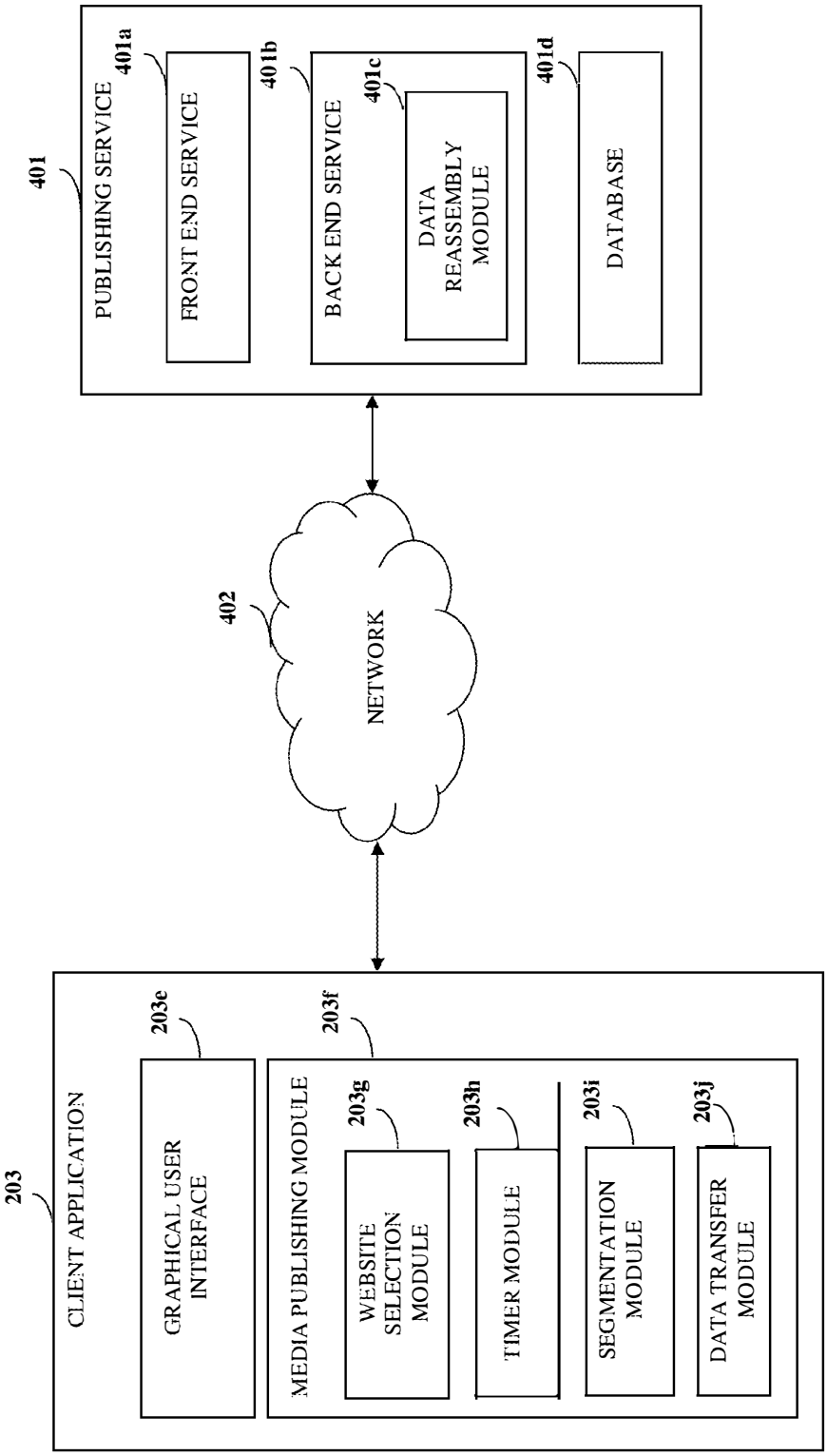


FIG. 4

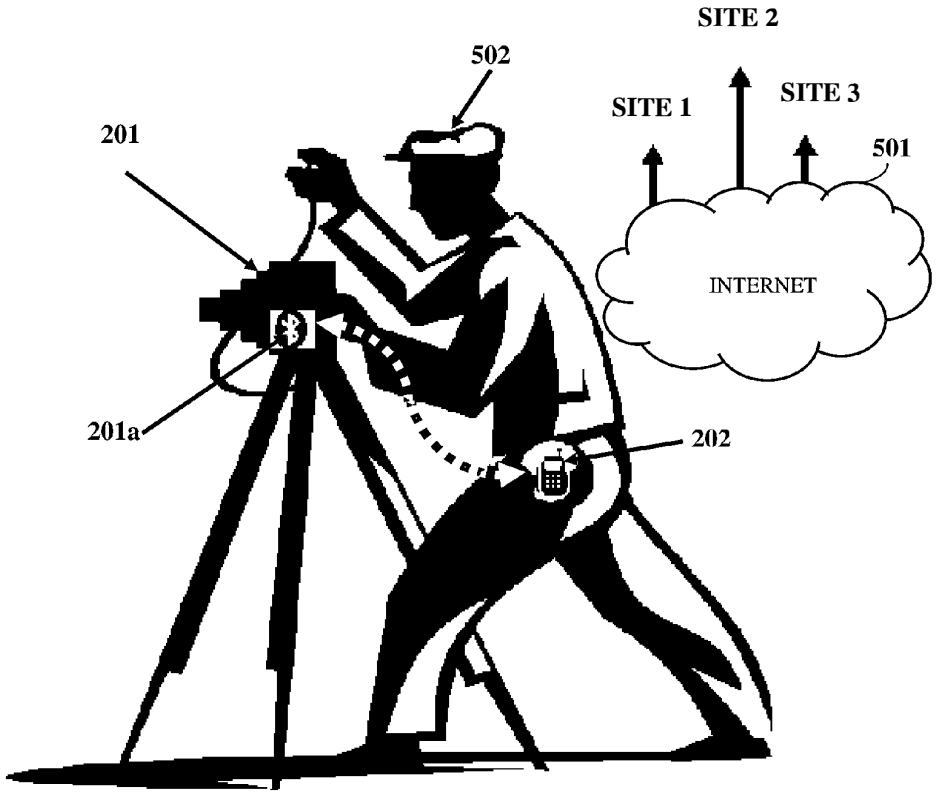


FIG. 5

AUTOMATIC MULTIMEDIA UPLOAD FOR PUBLISHING DATA AND MULTIMEDIA CONTENT

CROSS REFERENCE TO RELATED APPLICATIONS

1. This application is a continuation application of non-provisional patent application Ser. No. 14/503,401, titled "Automatic multimedia upload for publishing multimedia content", filed Oct. 1, 2014 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 14/273,546, now U.S. Pat. No. 8,862,757, titled "Automatic multimedia upload for publishing multimedia content", filed May 9, 2014 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 14/172,913, now U.S. Pat. No. 8,798,539, titled "Automatic multimedia upload for publishing multimedia content", filed on Feb. 5, 2014 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 13/740,214, now U.S. Pat. No. 8,700,790, titled "Automatic multimedia upload for publishing multimedia content", filed on Jan. 13, 2013 in the United States Patent and Trademark Office, which is a continuation application of non-provisional patent application Ser. No. 12/333,303, now U.S. Pat. No. 8,392,591, titled "Automatic multimedia upload for publishing multimedia content", filed on Dec. 11, 2008 in the United States Patent and Trademark Office, which claims the benefit of U.S. provisional patent application No. 61/017,202, titled "Automatic multimedia upload for publishing multimedia content", filed on Dec. 28, 2007 in the United States Patent and Trademark Office. The specifications of the above referenced applications are incorporated herein by reference in their entirety.

2. The following patent application is incorporated herein in its entirety: U.S. Non-provisional patent application Ser. No. 11/901,802, titled "Online Publishing Of Multimedia Content", filed on Sep. 19, 2007 in the United States Patent and Trademark Office.

BACKGROUND

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 and multimedia content on one or more websites simultaneously.

A user may need to capture and publish data and multimedia content on the internet in real time. 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.

Therefore, there is a need for a method and system to utilize a digital data capture device in conjunction with a mobile device for automatically detecting capture of data and multimedia content, transferring the captured data and multimedia content to the mobile device, and publishing the data and multimedia content on one or more websites automatically or with minimal user intervention.

SUMMARY OF THE INVENTION

This summary is provided to introduce a selection of concepts in a simplified form that are further described in the detailed description of the invention. This summary is not intended to identify key or essential inventive concepts of the claimed subject matter, nor is it intended for determining the scope of the claimed subject matter.

The method and system disclosed herein addresses the above stated need for utilizing a digital data capture device in conjunction with a Bluetooth™ (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital data capture device is physically separated from the BT enabled mobile device.

In the method and system disclosed herein, a client application is provided on a BT enabled mobile device. In the absence of in-built BT capability in the digital data capture device, a BT communication device is provided on the digital data capture device. The BT communication device may, for example, be an in-built BT capability chip, a BT memory card, or an external BT device. The BT communication device on the digital data capture device is paired with the BT enabled mobile device to establish a connection between the digital data capture device and the BT enabled mobile device.

A user may capture data and multimedia content using the digital data capture device. The digital data capture device may, for example, be a digital camera, a video camera, or other digital modular camera systems. The client application on the BT enabled mobile device detects the captured data, multimedia content, and files associated with the captured data and the multimedia content on the digital data capture device by communicating over a wireless BT protocol. The captured data, multimedia content, and the associated files are automatically transferred to the client application on the BT enabled mobile device from the digital data capture device.

The detection and transfer of the captured data, the multimedia content, and the associated files may be initiated by the client application of the BT enabled mobile device. The detection and transfer of the captured data, the multimedia content, and the associated files to the BT enabled mobile device may be initiated by the digital data capture device when the client application is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device.

The user may configure a timer setting and select the websites for publishing using the client application on the BT enabled mobile device. The client application selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the Bluetooth enabled mobile device. The client application also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The client application on the BT enabled mobile device automatically publishes the transferred data and multimedia content on one or more websites using the settings configured by the user. The method and system disclosed herein thereby enables the user to capture data and multimedia content, for example, audio, video, text, and images, automatically upload the captured data and multimedia content onto a BT enabled mobile device, and publish the data and multimedia content on one or websites automatically or with

minimal user intervention. The user may therefore publish data and the multimedia content on immediate capture of the data and the multimedia content on the digital data capture device.

The method and system disclosed herein is described with reference to a BT communication protocol. The method and system disclosed herein may be realized with wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks.

BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing summary, as well as the following detailed description of the invention, is better understood when read in conjunction with the appended drawings. For the purpose of illustrating the invention, exemplary constructions of the invention are shown in the drawings. However, the invention is not limited to the specific methods and instrumentalities disclosed herein.

FIG. **1** illustrates a method of utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIG. **2** illustrates a system for utilizing a digital data capture device in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

FIGS. **3**A-**3**C exemplarily illustrate the Bluetooth communication device options used on the digital data capture device for establishing a Bluetooth connection with the client application on the Bluetooth enabled mobile device.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application on a mobile device on one or more websites simultaneously.

FIG. **5** exemplarily illustrates a user utilizing a digital camera in conjunction with a Bluetooth enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.

DETAILED DESCRIPTION OF THE INVENTION

FIG. **1** illustrates a method of utilizing a digital data capture device **201** in conjunction with a Bluetooth™ enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The term "Bluetooth enabled mobile device" is herein referred to as "mobile device". The digital data capture device **201** is physically separated from the mobile device **202** as illustrated in FIG. **2**. The digital data capture device **201** may, for example, be a digital camera, a video camera, digital modular camera systems, or other digital data capturing systems.

In the method disclosed herein, a client application **203** is provided **101** on the mobile device **202**. In the absence of inbuilt Bluetooth (BT) capability in the digital data capture device **201**, a BT communication device **201***a* is provided **102** on the digital data capture device **201**. The BT communication device **201***a* may, for example, be an inbuilt BT capability chip **301**, a BT memory card **302**, or an external BT device **303** as illustrated in FIGS. **3**A-**3**C respectively. The external BT device **303** may, for example, be attached to a universal serial bus (USB), a firewire interface, or a power port of the digital data capture device **201**. BT 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 radio frequency.

The BT communication device **201***a* on the digital data capture device **201** is paired **103** with the mobile device **202** to establish a connection between the digital data capture device **201** and the mobile device **202**. BT pairing involves establishing a connection between two BT devices that mutually agree to communicate with each other. A BT device that wants to communicate only with a trusted device can cryptographically authenticate the identity of another BT device. BT pairing occurs when the BT communication device **201***a* agrees to communicate with the mobile device **202** in order to establish a connection. In order to initiate the pairing process between the BT communication device **201***a* and the mobile device **202**, a common password known as a passkey is exchanged between the BT communication device **201***a* and the mobile device **202**. A passkey is a code shared by the BT communication device **201***a* and the mobile device **202**.

A user sets a discoverable mode for the mobile device **202**. When set to the discoverable mode, the mobile device **202** will allow the BT communication device **201***a* on the digital data capture device **201** to detect the mobile device's **202** presence and attempt to establish a connection. In order to initiate the pairing process, the BT communication device **201***a* will send the BT communication device name of a predefined number of characters, for example, up to 255 characters, and the BT address to the mobile device **202**. The BT communication device **201***a* then prompts the user of the mobile device **202** to enter the passkey code in order to accept the pairing with the BT communication device **201***a* on the digital data capture device **201**. On entering the passkey by the user of the mobile device **202**, the entered passkey is matched with the passkey of the BT communication device **201***a*. If a match is found, a trusted pair is automatically established.

The user captures **104** data and multimedia content using the digital data capture device **201**. The data and multimedia content may, for example, comprise image files, audio files, video files, text files, or any combination thereof. The client application **203** on the mobile device **202** detects **105** the captured data, the multimedia content, and files associated with the captured data and the multimedia content. The client application **203** then initiates the transfer of the captured data, the multimedia content, and the associated files in a pull mode of operation. In the pull mode, the client application **203** periodically polls the digital data capture device **201** to determine the creation of a new file in the digital data capture device **201**. The digital data capture device **201** then automatically transfers **106** the captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202** using one or a combination of file transfer protocols. The file transfer protocols may, for example, be one or a combination of BT profile protocols such as the object exchange (OBEX) protocol, the generic object exchange profile (GOEP) protocol, etc. The file transfer protocols may, for example, also be the media transfer protocol (MTP), the picture transfer protocol (PTP), and the PictBridge protocol implemented using a USB.

The picture transfer protocol (PTP) allows the transfer of images from digital cameras to computers and other peripheral devices without the need of additional device drivers.

The media transfer protocol is a custom extension to the PTP and allows the protocol to be used for devices other than digital cameras, for example digital audio players and other portable media devices, for example portable video players. The PictBridge protocol allows images to be printed directly from digital cameras to a printer, without having to connect the camera to a computer.

The transfer of the data, the multimedia content, and the associated files may also take place in a push mode of operation. In the push mode, the BT communication device **201***a* sends a signal to the client application **203** on creation of a new file. By implementation of a handshake protocol, the BT communication device **201***a* automatically transfers captured data, the multimedia content, and the associated files to the client application **203** on the mobile device **202**. For some external digital data capture devices, the client application **203** may not be able to detect the creation of a new file. In such cases, the digital data capture device **201** signals the client application **203** in the event a new file is created. A file event listener in the client application **203** listens for the signal from the digital data capture device **201**. The user may then initiate the transfer by a press of a button or a key on the digital data capture device **201**.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments. The data segments are tagged with segment identifiers using the client application **203**. The tagged data segments are transferred from the client application **203** of the mobile device **202** to a publishing service **401** via a network **402** as illustrated in FIG. **4**.

When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the digital data capture device **201** initiates detection and transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The user may also set preferences on the mobile device **202**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The user may configure a timer setting and the websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content. The user may set the timer setting to, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting. The client application **203** on the mobile device **202** selects the websites for publishing the transferred data and the multimedia content based on user preferences configured on the mobile device **202**. The client application **203** also sets time for publishing the transferred data and the multimedia content automatically or with minimal user intervention.

The client application **203** on the mobile device **202** then automatically publishes **107** the transferred data and multimedia content on one or more websites. If the user configures the timer setting to "no-wait-automatic", the data and the multimedia content are automatically published on one or more websites based on the user preferences configured on the mobile device **202** without waiting for a certain period of time. If the user configures the timer setting to "wait-X-minutes-automatic", the client application **203** will wait for "X" minutes for the user to change or cancel publishing. If there is no user action for "X" minutes, the client application **203** will automatically publish the data and multimedia content to one or more websites based on the user preferences. Further, if the user configures the timer setting to "wait-X-minutes-user-input-cancel", the client application **203** will wait for "X" minutes for an input from the user. If there is no input from the user, the client application **203** cancels the publishing of the data and multimedia content. The publishing of the data and multimedia content on one or more websites simultaneously is explained in the detailed description of FIG. **4**.

The user may therefore capture data, for example, audio, video, text, and images, automatically upload the captured data onto the mobile device **202**, and publish the data and multimedia content on one or websites automatically or with minimal user intervention. The method disclosed herein thereby enables the user to publish data and the multimedia content on immediate click of an image or recording of a video on the digital data capture device **201** without having to manually upload the data onto a computing device and then publish the data on the websites.

FIG. **2** illustrates a system for utilizing a digital data capture device **201** in conjunction with a BT enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The system disclosed herein comprises a digital data capture device **201** and a client application **203** provided on the BT enabled mobile device **202**. The digital data capture device **201** and the mobile device **202** are physically separated from each other. The digital data capture device **201** comprises a BT communication device **201***a* and a data capture module **201***d*.

The BT communication device options used on the digital data capture device **201** for establishing a BT connection with the client application **203** on the BT enabled mobile device **202** are exemplarily illustrated in FIGS. **3**A-**3**C. The BT communication device **201***a* may, for example, be an in-built BT capability chip **301** as illustrated in FIG. **3**A, a BT memory card **302** as illustrated in FIG. **3**B, or an external BT device **303** as illustrated in FIG. **3**C.

The BT communication device **201***a* comprises a BT association protocol module **201***b* and a data transfer protocol module **201***c*. The client application **203** on the mobile device **202** comprises a BT association protocol module **203***a*, a data and file monitoring and detection module **203***b*, a data transfer protocol module **203***c*, a data storage module **203***d*, a graphical user interface (GUI) **203***e*, and a media publishing module **203***f*. The BT association protocol module **201***b* of the digital data capture device **201** and the BT association protocol module **203***a* of the client application **203** enable the pairing between the BT communication device **201***a* and the mobile device **202**. The pairing of the BT communication device **201***a* and the mobile device **202** is explained in the detailed description of FIG. **1**. The data capture module **201***d* captures the data and the multimedia content on the digital data capture device **201**.

The data and file monitoring and detection module **203***b* of the client application **203** monitors and detects the capture of the data, the multimedia content, and the files associated with the captured data and the multimedia content. On detection, the data transfer protocol module **203***c* of the client application **203** initiates the transfer and download of the captured data, the multimedia content, and the associated files from the digital data capture device **201**. When the client application **203** is unable to detect the captured data, the multimedia content, and the associated files from the digital data capture device **201**, the data transfer protocol module **201***c* of the digital data capture device **201** initiates

the transfer of the captured data, the multimedia content, and the associated files to the mobile device **202**.

The data transfer protocol module **201***c* of the digital data capture device **201** transfers the captured data, the multimedia content, and the associated files to the client application **203**. The data storage module **203***d* stores the captured data, the multimedia content, and the associated files on the mobile device **202**. The user may also set preferences on the mobile device **202** using the GUI **203***e* of the client application **203**. The user preferences may, for example, comprise the websites selected for publishing the data and the multimedia content. The GUI **203***e* enables the user to configure a timer setting and websites on the mobile device **202** for publishing the data and the multimedia content. The user may also set timer and action settings for publishing the data and the multimedia content using the GUI **203***e*. The user may set a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting as explained in the detailed description of FIG. **1**.

The media publishing module **203***f* automatically publishes the transferred data and the multimedia content on one or more of the websites. The media publishing module **203***f* comprises a website selection module **203***g*, a timer module **203***h*, a segmentation module **203***i*, and a data transfer module **203***j*. The website selection module **203***g* selects the websites for publishing the data and the multimedia content based on settings and user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer setting may be set for automatic publishing of the multimedia content or a time based wait mode where user interaction is required. The timer module **203***h* sets the timer based on a timer setting, for example, a "no-wait-automatic" setting, a "wait-X-minutes-automatic" setting, and a "wait-X-minutes-user-input-cancel" setting configured by the user. The timer module **203***h* ensures that if the user does not wish to publish the transferred data and multimedia content, the user has time to decide whether to publish or not. The user may also configure the client application **203** to automatically delete the data, the multimedia content, and the associated files after the data and the multimedia content have been posted and published on one or more websites based on user preferences.

In the case of a mobile device **202** with limited memory and processing capabilities, the client application **203** partitions the multimedia content of large files stored on the mobile device **202** into multiple data segments using the segmentation module **203***i*. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via a network **402** for publishing on the websites automatically.

FIG. **4** exemplarily illustrates a system for publishing data and the multimedia content using a client application **203** on a mobile device **202** on one or more websites simultaneously. The system disclosed herein comprises a client application **203** and a publishing service **401** connected via a network **402**. The client application **203** comprises a media publishing module **203***f* as explained in the detailed description of FIG. **2**. The media publishing module **203***f* comprises the website selection module **203***g*, the timer module **203***h*, the segmentation module **203***i*, and the data transfer module **203***j*. The website selection module **203***g* selects the websites based on user preferences configured by the user on the mobile device **202**. The timer module **203***h* sets the time for publishing the transferred data and the multimedia content automatically or with minimal user intervention. The timer module **203***h* ensures that the publishing service **401** obtains the data, the multimedia content, and the associated files to publish on the selected websites based on the time set by the user.

In the case of limited memory and processing capabilities of the mobile device **202**, the segmentation module **203***i* of the client application **203** partitions the multimedia content of large files into multiple data segments. The segmentation module **203***i* generates segment identifiers and tags the data segments with the segment identifiers. The segment identifiers may, for example, be one or more of transaction identifiers, sequence numbers, and timestamps. The segment identifiers are used later by a back end service **401***b* of the publishing service **401** to reassemble the data segments in a predetermined sequence to create a multimedia object. The data transfer module **203***j* transfers the data, the tagged data segments, and the multimedia content from the client application **203** to the publishing service **401** via the network **402**. The network **402** may, for example, be a wireless network, a cellular network, or the internet **501**.

The publishing service **401** comprises a front end service **401***a*, a back end service **401***b*, and a database **401***d*. The transferred data and multimedia content is stored in the database **401***d* of the publishing service **401**. A protocol is provided for synchronizing user publishing information between the client application **203** and the publishing service **401**. The user publishing information may, for example, comprise user preferences of the websites and the timer setting. The data transfer module **203***j* may transfer the data and the multimedia content as a single multimedia file, multiple data segments in the case of large files, or electronic mail attachments to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* comprises a data reassembly module **401***c*. If the back end service **401***b* receives the multimedia content in the form of multiple data segments, the data reassembly module **401***c* reassembles the data segments in a predetermined sequence using the segment identifiers. The back end service **401***b* then creates a multimedia object from the transferred data and multimedia content. The multimedia object is transferred from the back end service **401***b* to the front end service **401***a* and then published on the websites selected by the user.

FIG. **5** exemplarily illustrates a user **502** utilizing a digital camera in conjunction with a Bluetooth enabled mobile device **202** for publishing data and multimedia content on one or more websites automatically or with minimal user intervention. The digital camera is physically separated from the mobile device **202** as illustrated in FIG. **5**. The digital camera comprises a BT communication device **201***a* such as an in-built BT capability chip **301**, a BT memory card **302**, or an external BT device **303** or dongle externally attached to the digital camera as illustrated in FIGS. **3**A-**3**C. The external BT dongle may be attached to a USB, a firewire interface, or a power port of the digital camera. The BT communication device **201***a* on the digital camera is paired with the mobile device **202** to establish a connection. The user **502** may capture an image using the digital camera. The client application **203** on the mobile device **202** detects the captured image and initiates the transfer of the captured image and the associated files. The digital camera automatically transfers the captured image and the associated files to the client application **203** on the mobile device **202**.

The client application **203** automatically publishes the transferred image on one or more websites via the internet **501**. The user **502** may set preferences in the mobile device **202**. The user preferences, for example, comprise the websites selected for publishing the transferred image. The user **502** may select websites, for example, Flickr™, Picasa™, YouTube™, eBay®, etc. and store the preferences on the mobile device **202**. The user **502** may also set the timer setting for publishing the transferred image on the selected websites. After the captured image is transferred to the mobile device **202**, the client application **203** publishes the capture image on the selected websites based on the default timer and website settings configured by the user **502** on the mobile device **202**.

Consider an example where a user **502** records a video using a BT enabled video camera. The video camera immediately establishes a connection with the user's **502** BT enabled mobile device **202**. On detection of the recorded video by the client application **203** on the mobile device **202**, the video camera automatically transfers the recorded video to the user's **502** mobile device **202**. In the case of limited memory and processing capabilities of the mobile device **202**, the recorded video may be streamed as data segments from the mobile device **202** to the publishing service **401**. The client application **203** individually tags the data segments with segment identifiers and transfers the tagged data segments from the mobile device **202** to the back end service **401***b* of the publishing service **401** via the front end service **401***a*. The back end service **401***b* of the publishing service **401** reassembles the data segments in a predetermined sequence using the segment identifiers to create the multimedia object. The multimedia object is an aggregation of the reassembled data segments. The multimedia object is then transferred from the back end service **401***b* to the front end service **401***a* and automatically published by the front end service **401***a* on one or more websites selected by the user **502**.

Consider another example where a user **502** may record videos or capture images at different points in time and automatically uploads and publishes the videos and images on one or more websites. Consider an investigative reporter, Jane, working for a prominent newspaper in New York City. Each day, she moves around the city chasing leads, interviewing people, videotaping her stories, taking pictures, and tracking down her next big story. When she is working on a story with an associate writer, she may need to upload her videos and pictures and send it immediately to the associate writer. The method and system disclosed herein enables Jane to automatically upload pictures and videos taken using her digital camera or video camera onto a mobile device **202** and publish the pictures, videos, etc. from her mobile device **202** to the internet **501** with one click or touch of a button.

On one click or touch of a button, the pictures and videos are published and immediately made available on Jane's private blog that may be accessed by the newspaper editor and her associates in the news office. When she is collaborating with an associate on a story, they may see each other's progress in real time. Since sharing information with the associate over electronic mails (emails) may be inconvenient, Jane records her progress on the story in the voice format and publishes. The associate may access the information from Jane's blog site, thereby saving considerable time.

Exemplarily, the method and system disclosed herein may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system. The method and system disclosed herein is realized with, but not limited to Bluetooth communication protocol. Wireless protocols, for example, Zigbee® protocol, Wibree™ protocol, Ultra-Wide Band (UWB) protocol, and other wireless protocols for wireless personal area networks may be employed to accomplish the tasks of the method and system disclosed herein. The mobile device **202** may, for example, be a ubiquitous mobile phone. The use of personal digital assistants (PDAs) without telephony support is also fairly widespread. The client application **203** may be deployed on mobile devices with limited or no telephony support. These mobile devices may support Java of Sun Microsystems Inc., more specifically Java 2 Micro Edition (J2ME), Windows Mobile .Net Compact Framework of Microsoft, Inc., Symbian™, Linux framework. The client application **203** may, for example, be implemented on the J2ME platform. These environments provide functionalities in the libraries to create the GUI **203***e* and perform all the required functions of the method and system disclosed herein. Other advantages of these frameworks are portability across mobile devices that run on different operating systems.

The client application **203** may be rendered independent of the operating system of the mobile device **202**. One of the transport mechanisms to achieve the connectivity between the publishing service **401** and the client application **203** is the wireless internet. While most PDAs have an inbuilt wireless network card for the internet connectivity, the mobile phones may transfer data to the publishing service **401** over the telephony network at near broadband speeds. Some of the mobile phones equipped with both wireless network and telephony data capabilities may use either of the two to communicate with the publishing service **401**. The transport protocol that is used between the client application **203** and the publishing service **401** may be hypertext transfer protocol (HTTP) or extensible markup language-remote procedure calls (XML-RPC). The back end service **401***b* may, for example, be developed in Java.

It will be readily apparent that the various methods and algorithms described herein may be implemented in a computer readable medium appropriately programmed for general purpose computers and computing devices. Typically a processor, for e.g., one or more microprocessors will receive instructions from a memory or like device, and execute those instructions, thereby performing one or more processes defined by those instructions. Further, programs that implement such methods and algorithms may be stored and transmitted using a variety of media, for e.g., computer readable media in a number of manners. In one embodiment, hard-wired circuitry or custom hardware may be used in place of, or in combination with, software instructions for implementation of the processes of various embodiments. Thus, embodiments are not limited to any specific combination of hardware and software. A "processor" means any one or more microprocessors, Central Processing Unit (CPU) devices, computing devices, microcontrollers, digital signal processors or like devices. The term "computer-readable medium" refers to any medium that participates in providing data, for example instructions that may be read by a computer, a processor or a like device. Such a medium may take many forms, including but not limited to, non-volatile media, volatile media, and transmission media. Non-volatile media include, for example, optical or magnetic disks and other persistent memory volatile media include Dynamic Random Access Memory (DRAM), which typically constitutes the main memory. Transmission media include coaxial cables, copper wire and fiber optics, including the wires that comprise a system bus coupled to the processor. Common

forms of computer-readable media include, for example, a floppy disk, a flexible disk, hard disk, magnetic tape, any other magnetic medium, a Compact Disc-Read Only Memory (CD-ROM), Digital Versatile Disc (DVD), any other optical medium, punch cards, paper tape, any other physical medium with patterns of holes, a Random Access Memory (RAM), a Programmable Read Only Memory (PROM), an Erasable Programmable Read Only Memory (EPROM), an Electrically Erasable Programmable Read Only Memory (EEPROM), a flash memory, any other memory chip or cartridge, a carrier wave as described hereinafter, or any other medium from which a computer can read. In general, the computer-readable programs may be implemented in any programming language. Some examples of languages that can be used include C, C++, C#, or JAVA. The program will use various security, encryption and compression techniques to enhance the overall user experience. The software programs may be stored on or in one or more mediums as an object code. A computer program product comprising computer executable instructions embodied in a computer-readable medium comprises computer parsable codes for the implementation of the processes of various embodiments.

Where databases are described such as the database **401***d*, it will be understood by one of ordinary skill in the art that (i) alternative database structures to those described may be readily employed, and (ii) other memory structures besides databases may be readily employed. Any illustrations or descriptions of any sample databases presented herein are illustrative arrangements for stored representations of information. Any number of other arrangements may be employed besides those suggested by, e.g., tables illustrated in drawings or elsewhere. Similarly, any illustrated entries of the databases represent exemplary information only; one of ordinary skill in the art will understand that the number and content of the entries can be different from those described herein. Further, despite any depiction of the databases as tables, other formats including relational databases, object-based models and/or distributed databases could be used to store and manipulate the data types described herein. Likewise, object methods or behaviors of a database can be used to implement various processes, such as the described herein. In addition, the databases may, in a known manner, be stored locally or remotely from a device that accesses data in such a database.

The present invention can be configured to work in a network environment including a computer that is in communication, via a communications network, with one or more devices. The computer may communicate with the devices directly or indirectly, via a wired or wireless medium such as the Internet, Local Area Network (LAN), Wide Area Network (WAN) or Ethernet, Token Ring, or via any appropriate communications means or combination of communications means. Each of the devices may comprise computers, such as those based on the Intel® processors, AMD® processors, Sun® processors, IBM® processors etc., that are adapted to communicate with the computer. Any number and type of machines may be in communication with the computer.

The foregoing examples have been provided merely for the purpose of explanation and are in no way to be construed as limiting of the present method and system disclosed herein. While the invention has been described with reference to various embodiments, it is understood that the words, which have been used herein, are words of description and illustration, rather than words of limitation. Further, although the invention has been described herein with reference to particular means, materials and embodiments, the invention is not intended to be limited to the particulars disclosed herein; rather, the invention extends to all functionally equivalent structures, methods and uses, such as are within the scope of the appended claims. Those skilled in the art, having the benefit of the teachings of this specification, may effect numerous modifications thereto and changes may be made without departing from the scope and spirit of the invention in its aspects.

We claim:

1. A system comprising:

a Bluetooth enabled data capture device, comprising:

a first memory device;

a first processor coupled to the first memory device;

a first Bluetooth communication device configured to establish a paired Bluetooth wireless connection between the Bluetooth enabled data capture device and a Bluetooth enabled cellular phone, wherein the Bluetooth enabled data capture device is configured to cryptographically authenticate identity of the Bluetooth enabled cellular phone when the first Bluetooth communication device establishes the paired Bluetooth wireless connection;

a data capture circuitry;

said first processor configured to acquire new-data using the data capture circuitry after the paired Bluetooth wireless connection between the Bluetooth enabled data capture device and the Bluetooth enabled cellular phone is established;

said first processor configured to store the acquired new-data in the first memory device; and said first processor configured to send an event notification and the acquired new-data to the cryptographically authenticated Bluetooth enabled cellular phone over the established paired Bluetooth wireless connection, wherein the event notification corresponds to the acquired new-data and comprises sending a signal to the cryptographically authenticated Bluetooth enabled cellular phone;

a mobile application in the Bluetooth enabled cellular phone comprising executable instructions that, when executed by a second processor inside the Bluetooth enabled cellular phone controls the second processor to:

detect and receive the acquired new-data, comprising:

listen for the event notification, sent from the Bluetooth enabled data capture device, over the established paired Bluetooth wireless connection, wherein the event notification corresponds to the acquired new-data; and

receive the event notification and the acquired new-data, from the Bluetooth enabled data capture device, over the established paired Bluetooth wireless connection, wherein receiving the event notification comprises receiving the signal sent by the Bluetooth enabled data capture device corresponding to the acquired new-data;

store the new-data received over the established paired Bluetooth wireless connection, in a second memory device of the Bluetooth enabled cellular phone before transfer to a website; and

use HTTP to transfer the new-data received over the established paired Bluetooth wireless connection, along with user information stored in the second memory device of the cryptographically authenticated Bluetooth enabled cellular phone, to the website, over the cellular data network;

wherein the mobile application further comprises executable instructions to control the processor to provide a graphical user interface (GUI) for the new-data.

2. The system of claim **1**, wherein the user information corresponds to user related information used by the web service website to process the new-data.

3. The system of claim **1**, wherein the new-data comprises one or more of audio data, video data, image data, text data, digital data, and data associated with the new-data.

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