18-1817, -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 - Appellees.

On Appeal from the United States District Court for the Northern District of California in 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, and 4:17-cv-06881, Hon. Yvonne Gonzalez Rogers

DEFENDANTS-APPELLEES' RESPONSE BRIEF

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FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. **v.** Fitbit, Inc.

Case No. 18-1817

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

Fossil Group, Inc. and Misfit Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Fossil Group, Inc.	Fossil Group, Inc.	None
Misfit Inc.	N/A	Fossil Group, Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Fish & Richardson P.C.; Neil J. McNabnay; David Conrad; Ricardo Bonilla; Theresa Dawson; and Dalia Kothari

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

See Rider A

5/1/2018
Date

/s/ David Conrad
Signature of counsel

Please Note: All questions must be answered

David Conrad
Printed name of counsel

cc: Opposing Counsel

Reset Fields

RIDER A

5. The title and number of any case known 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. See Fed. Cir. R. 47.4(a)(5) and 47.5(b).

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA –OAKLAND DIVISION

Cellspin Soft, Inc. v Fitbit, Inc. Case Number 17-cv-5928-YGR

Cellspin Soft, Inc. v Moov, Inc. Case Number 17-cv-5929-YGR

Cellspin Soft, Inc. v Nike, Inc. Case Number 17-cv-5931-YGR

Cellspin Soft, Inc. v Fossil Group Case Number 17-cv-5933-YGR

Cellspin Soft, Inc. v Garmin International. Inc. Case Number 17-cv-5934-YGR

Cellspin Soft, Inc. v Canon U.S.A., Inc. Case Number 17-cv-5938-YGR

Cellspin Soft, Inc. v GoPro, Inc. Case Number 17-cv-5939

Cellspin Soft, Inc. v Panasonic Corp. of North Am. Case Number 17-cv-5941-YGR

Cellspin Soft, Inc. v JK Imaging Ltd. Case Number 17-cv-6881-YGR

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. v Fitbit, Inc. Case Number 18-1817 [LEAD]

Cellspin Soft, Inc. v Moov, Inc. Case Number 18-1819

Cellspin Soft, Inc. v Nike, Inc. Case Number 18-1820

Cellspin Soft, Inc. v Fossil Group Case Number 18-1821

Cellspin Soft, Inc. v Garmin International. Inc. Case Number 18-1822

Cellspin Soft, Inc. v Canon U.S.A., Inc. Case Number 18-1823

Cellspin Soft, Inc. v GoPro, Inc. Case Number 18-1824

Cellspin Soft, Inc. v Panasonic Corp. of North Am. Case Number 18-1825

Cellspin Soft, Inc. v JK Imaging Ltd. Case Number 18-1826

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft Inc. **v.** Fitbit Inc.

Case No. 18-1817

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

Fitbit Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Fitbit Inc.	Fitbit Inc.	none

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Goodwin Procter LLP: Rachel Walsh and Anjali Moorthy

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

Cellspin Soft Inc. v. Fitbit Inc., Northern District of California, Case No. 4:17-cv-05928-YGR

4/27/2018
Date

/s/ Shane Brun
Signature of counsel

Please Note: All questions must be answered

Shane Brun
Printed name of counsel

cc: Counsel of Record

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FORM 9. Certificate of Interest

Form 9
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. v. GoPro, Inc.

Case No. 18-1824

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ■ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

GoPro, Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
GoPro, Inc.	None.	None.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Duane Morris LLP: Karineh Khachatourian and Daniel T. McCloskey

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

Cellspin Soft, Inc. v. Fitbit, Inc., Case No. 18-1817 (lead); Cellspin Soft, Inc. v. Moov, Inc., Case No. 18-1819; Cellspin Soft, Inc. v. Nike, Inc., Case No. 18-1820; Cellspin Soft, Inc. v. Fossil Group, Inc., Case No. 18-1821; Cellspin Soft, Inc. v. Garmin International, Inc., Case No. 18-1822; Cellspin Soft, Inc. v. Canon U.S.A., Inc., Case No. 18-1823; Cellspin Soft, Inc. v. GoPro, Inc., Case No. 18-1824; Cellspin Soft, Inc. v. Panasonic Corp. of North America, Case No. 18-1825; Cellspin Soft, Inc. v. JK Imaging Ltd., Case No. 18-1826

4/27/2018
Date

/s/ Karineh Khachatourian
Signature of counsel

Please Note: All questions must be answered

Karineh Khachatourian
Printed name of counsel

cc: Counsel of Record

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FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. **v.** JK Imaging LTD.

Case No. 18-1826

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

JK Imaging LTD.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
JK Imaging LTD.	None	None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Irfan A. Lateef - Knobbe, Martens, Olson & Bear LLP
Daniel C. Kiang - Knobbe, Martens, Olson & Bear LLP

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

Cellspin Soft, Inc. v. Fitbit, Inc., Case No. 18-1817 (lead); Cellspin Soft, Inc. v. Moov, Inc., Case No. 18-1819; Cellspin Soft, Inc. v. Nike, Inc., Case No. 18-1820; Cellspin Soft, Inc. v. Fossil Group, Inc., Case No. 18-1821; Cellspin Soft, Inc. v. Garmin International, Inc., Case No. 18-1822; Cellspin Soft, Inc. v. Canon U.S.A., Inc., Case No. 18-1823; Cellspin Soft, Inc. v. GoPro, Inc., Case No. 18-1824; Cellspin Soft, Inc. v. Panasonic Corp. of North America, Case No. 18-1825; Cellspin Soft, Inc. v. JK Imaging Ltd., Case No. 18-1826

4/27/2018
Date

/s/ Irfan A. Lateef
Signature of counsel

Please Note: All questions must be answered

Irfan A. Lateef
Printed name of counsel

cc: Counsel of Record

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FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. v. Fitbit, Inc.

Case No. 18-1817(lead), -1820

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

NIKE, Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
NIKE, Inc.	None	None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:
DLA Piper LLP (US): Edward H. Sikorski

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).
The only such cases of which counsel is aware are the cases that are already part of these consolidated appeals: 18-1817 and 18-1819 through 18-1826.

April 27, 2018
Date

/s/ Stanley J. Panikowski
Signature of counsel

Please Note: All questions must be answered

Stanley J. Panikowski
Printed name of counsel

cc: Counsel of record

Reset Fields

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. **v.** Fitbit, Inc.

Case No. 18-1817, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

Panasonic Corporation of North America

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Panasonic Corporation of North America	n/a	Panasonic Corporation

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

None.

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

The order and judgment at issue in this appeal relate to the following cases in the Northern District of California: 4:17-cv-05928-YGR; 4:17-cv-05929-YGR; 4:17-cv-05930-YGR; 4:17-cv-05931-YGR; 4:17-cv-05932-YGR; 4:17-cv-05933-YGR; 4:17-cv-05934-YGR; 4:17-cv-05936-YGR; 4:17-cv-05937-YGR; 4:17-cv-05938-YGR; 4:17-cv-05939-YGR; 4:17-cv-05940-YGR; 4:17-cv-05941-YGR; 4:17-cv-06881-YGR.
This case is related to the following consolidated appeals: 18-1817 (lead); 18-1819; 18-1820; 18-1821; 18-1822; 18-1823; 18-1824; 18-1825; 18-1826.

4/27/2018
Date

/s/ T. Vann Pearce, Jr.
Signature of counsel

Please Note: All questions must be answered

T. Vann Pearce, Jr.
Printed name of counsel

cc: Counsel of Record

Reset Fields

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft Inc. **v.** Moov, Inc., dba Moov Fitness, Inc.

Case No. 18-1819

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ■ (appellee) ☐ (amicus) ☐ (name of party)

Moov, Inc., dba Moov Fitness, Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Moov, Inc., dba Moov Fitness, Inc.	Moov, Inc., dba Moov Fitness, Inc.	none

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Goodwin Procter LLP: Rachel M. Walsh

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

Cellspin Soft Inc. v. Moov, Inc., dba Moov Fitness, Inc., Northern District of California, Case No. 4:17-cv-05929-YGR

4/27/2018
Date

/s/ Shane Brun
Signature of counsel

Please Note: All questions must be answered

Shane Brun
Printed name of counsel

cc: Counsel of Record

Reset Fields

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. **v.** Canon U.S.A., Inc.

Case No. 18-01823

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ☐ (respondent) ☒ (appellee) ☐ (amicus) ☐ (name of party)

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Canon U.S.A., Inc.	None	Canon, Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Jared Newton, Jeffrey Ung - Quinn Emanuel Urquhart & Sullivan, LLP

FORM 9. Certificate of Interest

Form 9
Rev. 10/17

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

Cellspin Soft, Inc. v. Fitbit, Inc. [18-1817]; Moov, Inc. [18-1819]; Nike, Inc. [18-1820]; Fossil Group, Inc. [18-1821]; Garmin Int'l, Inc. [18-1822]; Canon U.S.A., Inc. [18-1823]; GoPro, Inc. [18-1824]; Panasonic Corp. of North Am. [18-1825]; and JK Imaging Ltd. [18-1826]

4/18/2018
Date

/s/ Ryan Goldstein
Signature of counsel

Please Note: All questions must be answered

Ryan Goldstein
Printed name of counsel

cc: _____

Reset Fields

FORM 9. Certificate of Interest

Form 9
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Cellspin Soft, Inc. v. FitBit, Inc.

Case No. 18-1817 (lead)

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☐ (appellant) ■ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Garmin International, Inc. & Garmin (USA), Inc.	Garmin International, Inc. & Garmin (USA), Inc.	Garmin LTD.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

NONE.

FORM 9. Certificate of Interest **Form 9 Rev. 10/17**

5. The title and number of any case known 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

Cellspin Soft, Inc. v. Garmin, 4:17-cv-05934-YGR
United States District Court for the Northern District of California

7/18/2018
Date

Rachael D. Lamkin
Signature of counsel

Please Note: All questions must be answered

Rachael D. Lamkin
Printed name of counsel

cc: _____

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Table of Contents

Page

I. STATEMENT OF RELATED CASES....1
II. STATEMENT OF THE ISSUE....1
III. INTRODUCTION....2
IV. STATEMENT OF THE CASE....3
A. The Asserted Patents....3
1. The Common Specification....3
2. The Asserted Claims....7
B. The District Court Proceedings....11
V. SUMMARY OF ARGUMENT....17
VI. ARGUMENT....19
A. The District Court Correctly Ruled That All Asserted Claims Are Unpatentable Under 35 U.S.C. § 101....19
1. The Claims Fail *Alice* Step One Because They Are Directed To An Abstract Idea....20
2. The Claims Fail *Alice* Step Two Because They Recite No Inventive Concept That Could Render Them Patentable....28
3. The District Court Correctly Considered All Asserted Claims And Properly Focused Its Analysis On A Representative Claim....36
B. The District Court Correctly Ruled That No Factual Disputes Preclude Dismissal At The Pleading Stage....44
VII. CONCLUSION....51

Table of Authorities

Page

CASES

Aatrix Software, Inc. v. Green Shades Software, Inc.,
882 F.3d 1121 (Fed. Cir. 2018) 46

Affinity Labs of Tex., LLC v. DIRECTV, LLC,
838 F.3d 1253 (Fed. Cir. 2016) 15, 28

Alice Corp. Pty. v. CLS Bank Int'l,
134 S. Ct. 2347 (2015).....passim

Apple, Inc. v. Ameranth, Inc.,
842 F.3d 1229 (Fed. Cir. 2016) 38

Ariosa Diagnostics, Inc. v. Sequenom, Inc.,
788 F.3d 1371 (Fed. Cir. 2015) 32

Ashcroft v. Iqbal,
556 U.S. 662 (2009).....45

Automated Tracking Solutions, LLC v. The Coca-Cola Co.,
2018 WL 935455 (Fed. Cir. Feb. 16, 2018) 11

BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC,
827 F.3d 1341 (Fed. Cir. 2016) 33

Berkheimer v. HP Inc.,
881 F.3d 1360 (Fed. Cir. 2018) 16, 48

Berkheimer v. HP Inc.,
890 F.3d 1369 (Fed. Cir. 2018) 50

BSG Tech LLC v. Buyseasons, Inc.,
No. 2017-1980, --- F.3d ---, 2018 WL 3862646
(Fed. Cir. Aug. 15, 2018).....34

buySAFE, Inc. v. Google, Inc.,
765 F.3d 1350 (Fed. Cir. 2014) 19, 38

Table of Authorities (continued)

Page

Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.,
776 F.3d 1343 (Fed. Cir. 2014) 20, 37, 50

DDR Holdings, LLC v. Hotels.com, LP,
773 F.3d 1245 (Fed. Cir. 2014) 33, 34

EasyWeb Innovations, LLC v. Twitter, Inc.,
689 F. App'x 969 (Fed. Cir. 2017) 20

Electric Power Group, LLC v. Alstom S.A.,
830 F.3d 1350 (Fed. Cir. 2016) .....passim

Enfish, LLC v. Microsoft Corp.,
822 F.3d 1327 (Fed. Cir. 2016) 14, 27

Fresenius USA, Inc. v. Baxter Int'l, Inc.,
582 F.3d 1288 (Fed. Cir. 2009) 35

In re Gilead Scis. Sec. Litig.,
536 F.3d 1049 (9th Cir. 2008) 27, 45

In re TLI Commc'ns LLC Patent Litig.,
823 F.3d 607 (Fed. Cir. 2016) .....passim

Intellectual Ventures I LLC v. Capital One Bank (USA),
792 F.3d 1363 (Fed. Cir. 2015) .....passim

Intellectual Ventures I LLC v. Capital One Financial Corp.,
850 F.3d 1332 (Fed. Cir. 2017) 13, 20

Intellectual Ventures I LLC v. Symantec Corp.,
838 F.3d 1307 (Fed. Cir. 2016) 15, 25, 30, 33

Internet Patents Corp. v. Active Network, Inc.,
790 F.3d 1343 (Fed. Cir. 2015) .....passim

McRO, Inc. v. Bandai Namco Games Am. Inc.,
837 F.3d 1299 (Fed. Cir. 2016) 14, 27

Table of Authorities (continued)

Page

OIP Techs., Inc. v. Amazon.com, Inc.,
788 F.3d 1359 (Fed. Cir. 2015) 16, 26, 32, 50

Sage Prods., Inc. v. Devon Inds., Inc.,
126 F.3d 1420 (Fed. Cir. 1997) 36

STATUTES

35 U.S.C. § 101 .....passim

OTHER AUTHORITIES

Fed. R. Civ. P. 12(b)(6).....11, 49, 50

Fed. R. Civ. P. 12(c).....11

I. STATEMENT OF RELATED CASES

No other appeal in or from these cases has previously been before this Court or any other appellate court. Counsel is aware of the following cases that will directly affect or be directly affected by this Court's decision in the pending consolidated appeals:

Cellspin Soft, Inc. v. Fitbit, Inc., et al., Fed. Cir. Appeal Nos. 18-2178, -2179, -2180, -2181, -2183, and -2184: The Court has designated this set of consolidated appeals from the district court's exceptional case finding and fee order in the same proceedings as a companion case to the present set of consolidated appeals from the underlying merits judgments.

Cellspin Soft, Inc. v. adidas America, Inc., 4:17-cv-05930-YGR; *Cellspin Soft, Inc. v. Under Armour, Inc.*, 4:17-cv-05932-YGR; and *Cellspin Soft, Inc. v. Nikon Americas, Inc. and Nikon, Inc.*, 4:17-cv-05936-YGR: These cases pending in the United States District Court for the Northern District of California involve the same plaintiff and same patents as the cases on appeal.

II. STATEMENT OF THE ISSUE

Whether the district court correctly ruled that the asserted patent claims are not patent-eligible under 35 U.S.C. § 101.

III. INTRODUCTION

Cellspin's asserted patents are directed to the abstract idea of acquiring, transferring, and publishing data. The patents recite only generic, conventional computer devices for implementing this abstract idea "automatically or with minimal user intervention." Appx287 at 3:20-24. Their shared specification states that the claimed methods and systems "may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system." Appx290 at 9:37-40. These pervasive technologies include the use of a "ubiquitous mobile phone" to acquire data, Bluetooth connectivity to connect and transfer data between devices, and generic applications to publish the data to one or more websites. *See, e.g.*, Appx290 at 9:37 to 10:61. The patents claim nothing more than the conventional use of generic computer technology, behaving in its expected manner, to automate the abstract idea of acquiring, transferring, and publishing data. Accordingly, there is no inventive concept.

All of this is evident from Cellspin's complaints and the patents' claims and specification. There are no plausible factual allegations that, even if true, would alter the conclusion that the asserted claims are not patentable under 35 U.S.C. § 101. The district court therefore correctly granted the defendants' motion to dismiss Cellspin's complaints against them. The judgment should be affirmed.

IV. STATEMENT OF THE CASE

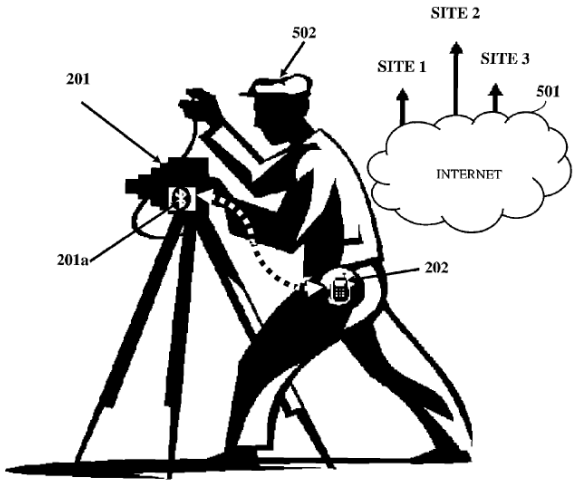
A. The Asserted Patents

This appeal involves four related patents assigned to and asserted by Cellspin. These patents relate to the concept of capturing data, transferring it to a mobile device, and then publishing it on-line. The patents are all about using conventional wireless technologies to automate the transfer and publication of the data instead of performing these tasks manually.

The asserted patents share a common specification and claim priority to the same application. Appx26. For ease of reference, this brief's citations to the patents' common specification are to the '794 patent (the earliest application among the asserted patents).

1. The Common Specification

The specification states, "[T]his invention relates to pairing a digital capture device in conjunction with a mobile device for automatically publishing data and multi-media content on one or more websites simultaneously." *See* Appx286 at 1:33-36. Figure 5 (below) shows "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." Appx287 at 3:20-24; Appx285 (Figure 5).



The specification also describes the purported need for the methods and systems claimed by the patents. Appx286 at 1:32-54. According to the specification, in order to publish data to the internet, a typical user would capture data using a digital device, store the data in memory located on the digital device, and then transfer the data to a computer by employing an off-line method such as using a USB or memory stick plugged into a computer. Appx286 at 1:39-45. The user would then "manually upload the [data] onto a website," which takes time and is "inconvenient" for the user. Appx286 at 1:45-47. The specification states that there was a need for a method and system for transferring and publishing the data captured by the digital device "automatically or with minimal user intervention." Appx286 at 1:53-54.

The specification asserts that the purported invention meets this need: "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." Appx286 at 1:64 to 2:1. In other words, the purported advance of the asserted patents is simply automating the process of uploading data to one or more websites. Appx286 at 1:32-54. The common title of the patents underscores this point: "Automatic Multimedia Upload for Publishing Data and Multimedia Content." Appx280.

The specification gives an example of how the purported invention could be used. In this example, an investigative reporter (Jane) in New York City spends each day "mov[ing] around the city chasing leads, interviewing people, videotaping her stories, taking pictures, and tracking down her next big story." Appx290 at 9:15-19. While working on her story, she may "need to upload her videos and pictures and send it immediately to the associate writer." Appx290 at 9:19-21. The claimed methods and systems supposedly "enable[] 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." Appx290 at 9:21-26. Thus, when she is collaborating with an associate, "they may see each other's progress in real time." Appx290 at 9:30-32. Because "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." Appx290 at 9:30-36.

The specification acknowledges that automatically transferring data between a data capture device and a mobile device is nothing new. Appx280-291. For example, the specification admits that Bluetooth was already 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." Appx287 at 3:49-52. The specification further describes the conventional manner in which Bluetooth operates, such as the establishment of a paired connection and the availability of push and pull modes of communication. Appx287-288 at 3:54 to 5:3. The specification does not disclose any unconventional ways of using or modifying these functionalities. Appx286-291.

The specification also teaches that the purported invention is implemented merely with "pervasive" and "ubiquitous" devices and components. For example, the specification states, "[T]he 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," such as "a ubiquitous mobile phone." Appx290 at 9:37-60. The specification also broadly states that the claimed methods "may be implemented in a computer readable medium

appropriately programmed for general purpose computers and computing devices." Appx290 at 10:10-13. And the specification calls simply for the routine use of known transmission protocols, network technologies, and web servers to facilitate the transmission of data among the devices. *See, e.g.*, Appx287 at 3:39 to 4:54; Appx288 at 5:65 to 6:32; Appx289 at 7:62 to 8:55; Appx290 at 9:51 to 10:9; Appx291 at 11:16-28. The patents do not describe any unconventional hardware or software modifications to these generic components and known techniques, and thus do not disclose any improvements to computer technology itself. Appx280-337.

Consequently, the specification admits that its investigative reporter Jane already had at her disposal all the tools and technology needed to accomplish the stated purpose of the invention. The patents simply command use of those tools to automate the transfer and publication of the data rather than manual performance of those steps.

2. The Asserted Claims

Cellspin asserted the following patent claims across the nine related cases in these consolidated appeals:

- '794 patent, claims 1-4, 7, 9, 16-18, 20-21 (U.S. Pat. No. 8,738,794)
- '752 patent, claims 1, 2, 4-5, 12-14 (U.S. Pat. No. 8,892,752)
- '698 patent, claims 1, 3-5, 7-8, 10-13, 15-20 (U.S. Pat. No. 9,258,698)

- ’847 patent, claims 1-3 (U.S. Pat. No. 9,749,847)

Appx25. While not every claim was asserted against every defendant, this is the total set of claims at issue on appeal.

Each asserted claim is directed to the abstract idea of acquiring, transferring, and publishing data. Appx280-337. Each claim recites the use of conventional, generic computer devices to implement that idea. Appx280-337. The claims relate to (1) a “Bluetooth enabled data capture device” or “digital camera device” having software, that (2) transmits data to a “Bluetooth enabled mobile device” or “cellular phone” also having software, which (3) then transmits the captured data to one or more websites for publication. *See, e.g.*, Appx291 at 11:48 to 12:39 (’794 patent, claim 1); Appx305 at 11:48 to 12:37 (’752 patent, claim 1); Appx336-337 at 12:12 to 13:3 (’847 patent, claim 1); Appx320 at 11:54 to 12:26 (’698 patent, claim 1).

Claim 1 of the ’794 patent is representative of the asserted claims:

> 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.

Appx291 at 11:48 to 12:39 (emphasis added).

The asserted claims across all four patents boil down to the acquisition (*e.g.*, "acquiring", "detecting," "determining") and transfer (*e.g.*, "sending", "receiving", "transferring") of data by generic devices, and publishing that data to one or more websites. Appx280-337. Despite some nominal differences among them, the claims are all directed to substantially similar methods and systems for acquiring, transferring, and publishing data. Appx280-337.

For example, the asserted independent claims of the '752 patent recite a similar method using a "secure" Bluetooth connection with an encryption step and some other minor differences from claim 1 of the '794 patent. Appx305 at 11:48-12:37. Likewise, the asserted system claims of the '847 patent perform substantially the same data acquisition and transfer steps as in the other patents, but add the use of a generic "Bluetooth enabled cellular phone," "first processor," and "mobile application." Appx336-337 at 12:12 to 13:3. The asserted claims of the '698 patent are directed to the same data acquisition, transfer, and publishing concepts, but include some minor differences, such as claiming a "digital camera

device" instead of the "data capture device" in the other patents, along with a more general "wireless connection" instead of Bluetooth. Appx320 at 11:54-12:26. The dependent claims of the asserted patents add other insignificant details such as specifying the location of the Bluetooth functionality and the type of data collected. Appx280-337.

B. The District Court Proceedings

Cellspin sued, and Defendants filed an omnibus motion to dismiss Cellspin's complaints. Appx25. Defendants argued that Cellspin's asserted claims are invalid as a matter of law under 35 U.S.C. § 101. Appx25. All but one defendant moved under Federal Rule of Civil Procedure 12(b)(6); Garmin filed essentially the same motion under Federal Rule of Civil Procedure 12(c). Appx25-26. The parties agree that the legal standards governing the Rule 12(b)(6) and Rule 12(c) motions are the same, so this brief will refer collectively to the "motion to dismiss." And like Cellspin's opening brief, this brief cites primarily to the papers filed in the lead *Fitbit* case for ease of reference.

After the motion to dismiss had been fully briefed, and two court days before the district court hearing, Cellspin filed an amended complaint against each defendant. Appx201. Cellspin stated that it was filing the amended complaints "pursuant to very recent decisions from [this Court] -- *see, e.g.*, *Automated Tracking Solutions, LLC v. The Coca-Cola Co.*, 2018 WL 935455 (Fed. Cir. Feb.

16, 2018) – concerning the significance of pled facts in connection with the evaluation of motions brought under 35 U.S.C. § 101." Appx2286. The amended complaints purported to add more detail about the alleged benefits of the claimed invention to the original, barebones complaints that Cellspin had filed. Appx2286-2305. Cellspin nonetheless volunteered that Defendants need not refile the motion to dismiss and the hearing could go forward based on that motion and the amended complaints. Appx2286.

The amended complaints were addressed at the hearing. Appx202. The district court also invited Defendants to file a supplemental brief further addressing what effect, if any, the amendments had on the analysis of the § 101 issue at the pleading stage. Appx202-203. Cellspin then filed an additional brief on the issue, in violation of the local rules, which the court nonetheless accepted after the fact. Appx41; *see also* Appx202-203.

After the supplemental briefs were filed, the district court issued an order granting the motion to dismiss in each case. Appx24-42. The court ruled that all asserted patent claims were invalid as a matter of law under 35 U.S.C. § 101. Appx24-42.

The district court focused first on the '794 patent, then addressed the minor variations presented by the '752, '698, and '847 patents. Appx24-42. The district

court ultimately concluded that the same analysis applied to all asserted claims of all four patents. Appx24-42.

At *Alice* step one, the district court ruled 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." Appx34 (citing, *inter alia*, *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016), and *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017)). The district court recognized that this Court's decision in *TLI* is particularly instructive. Appx35 (discussing *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. 2016)). Applying *TLI*, the district court ruled: "The '794 Patent is 'not directed to a specific improvement in 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." Appx35 (citing Appx290 at 9:37-48 and 10:10-13).

The district court also rejected Cellspin's attempt to recast the claims as reciting specific improvements in computer technology. The court explained that Cellspin "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.'" Appx35 (quoting *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016)).

The district court then distinguished in detail *Enfish* and *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1305 (Fed. Cir. 2016), the two cases on which Cellspin had principally relied. Appx36-37. The court pointed out that, unlike the patentee in *Enfish*, "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." Appx36. The court further noted that "unlike *Enfish*, the '794 Patent does not recite a 'specific . . . structure' of computer components used to carry out the purported improvement in computer functionality." Appx36 (citing *Enfish*, 822 F.3d at 1337). As to *McRO*, the district court observed that "[h]ere, 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." Appx37 (citing Appx286 at 1:38-47 and Appx290 at 9:37-60).

At *Alice* step two, the district court recognized that the asserted claims "'merely provide a generic environment in which to carry out' the abstract ideas of

acquiring, transferring, and publishing data." Appx38 (quoting *TLI*, 823 F.3d at 611). The court ruled that "[t]he claim elements thus fail to supply an inventive concept sufficient to transform the underlying abstract idea into patentable subject matter." Appx38; *see also* Appx38 ("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.") (quoting *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258-59 (Fed. Cir. 2016)). The district court noted that "[h]ere, 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.'" Appx38 (quoting *TLI*, 823 F.3d at 615) (alteration in original). And, the court explained, "[a] patent 'does not become nonabstract' merely because the claims are set in a 'technological environment' consisting of conventional components and utilize standard technology." Appx38 (quoting *Intellectual Ventures I LLC v. Symantec Corp*., 838 F.3d 1307, 1319 (Fed. Cir. 2016)).

The district court then addressed Cellspin's asserted "'benefits from the inventiveness of the claimed technology.'" Appx38-40. The court noted that only one purported benefit appeared in the patents' specification—automating the

previously manual process of uploading data—and as to this one 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." Appx39 (citing, *inter alia*, *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015)). For the other purported benefits, the district court observed that "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." Appx40.

The court further ruled that Cellspin's amended complaint did not fill this gap because "most of plaintiff's allegations regarding technological improvements fail to cite to support in the '794 Patent" and "where [Cellspin] does cite to the patent these citations do not appear to support [Cellspin's] arguments." Appx40. In this vein, the district court distinguished this Court's decision in *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), because "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." Appx41 at n.12 (quoting *Berkheimer*) (alterations in original).

The district court accordingly granted the motion to dismiss and entered judgment in favor of defendants. Appx1-42. Cellspin appealed.

V. SUMMARY OF ARGUMENT

The judgment should be affirmed because the district court correctly ruled that all asserted claims are unpatentable as a matter of law under § 101. The asserted claims do not satisfy either step of the *Alice* test for patentability, and Cellspin fails to raise any legal or factual issue that could alter that conclusion.

The asserted claims fail *Alice* step one because the claims are directed to the abstract idea of acquiring, transferring, and publishing data. The claims do not recite any improvements to computer technology but instead merely automate an otherwise manual process using known, conventional computer components and techniques. As a result, the asserted claims fall well within this Court's precedents holding that similar claims directed to the collection, transfer, and/or publication of data fail the first step of the *Alice* test.

The asserted claims fail *Alice* step two because the claims recite no inventive concept that could render patentable their implementation of the abstract idea. The claims instead recite only generic, conventional computer technology to implement the abstract idea: a data capture device like a digital camera, a mobile phone, a paired Bluetooth connection, and generic computer processing. The patents admit that all of these technologies were well-understood, routine, or conventional at the

time of the invention. Moreover, the patents disclose the use of these technologies in a conventional way, where the systems behave in their expected manner without any improvement to the computer technology itself. The only purportedly inventive concept disclosed by the patents is the automation of previously manual steps. This Court and the Supreme Court have repeatedly held that this is not enough to render the claims patentable. By instructing an artisan simply to use "pervasive," "ubiquitous," "fairly widespread," and "general purpose" computing devices to implement the claimed abstract idea, the specification confirms there is nothing inventive here.

The central premise of Cellspin's opening appeal brief is incorrect. Cellspin repeatedly argues that the use of a paired Bluetooth connection to transfer data from an Internet-incapable device to an Internet-capable device somehow renders the claims patentable. But under this Court's precedent, the idea of acquiring, transferring, and publishing data remains abstract regardless of the particular technological environment in which it is implemented. Further, the specification itself establishes that a paired Bluetooth connection is conventional technology that behaves as expected according to its ordinary use in the context of the purported invention. Under this Court's precedent, this is not an inventive concept that can save the claims from unpatentability.

Moreover, Cellspin points to no factual allegations in its amended complaint or otherwise that prevented the district court from deciding these issues at the pleading stage. Nothing in the patents supports Cellspin's conclusory allegations that it has disclosed some sort of improvement to computer technology itself. In fact, the patents affirmatively show the opposite: Cellspin merely claims the ordinary use of conventional computer technology to automate an otherwise manual process. Such claims are the epitome of unpatentability under this Court's precedent. The judgments therefore should be affirmed in their entirety.

VI. ARGUMENT

A. The District Court Correctly Ruled That All Asserted Claims Are Unpatentable Under 35 U.S.C. § 101.

A claim is unpatentable if it (1) is directed to a patent-ineligible concept (like an abstract idea) and (2) fails to add enough to transform the claim into a patent-eligible application of the concept. *See Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2015). A "claim directed to an abstract idea does not move into § 101 eligibility territory by 'merely requir[ing] generic computer implementation.'" *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014) (quoting *Alice*, 134 S. Ct. at 2355) (alteration in original). Rather, to be patentable, a claim directed to an abstract idea must contain a sufficient "inventive concept" such that "the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself." *Alice*, 134 S. Ct. at 2355 (citation and

internal quotation marks omitted). "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, N.A.*, 776 F.3d 1343, 1347-48 (Fed. Cir. 2014) (citation and internal quotation marks omitted) (alteration in original).

Here, the district court correctly ruled that, as a matter of law, all asserted claims fail both steps of the *Alice* test and are therefore unpatentable.

1. The Claims Fail *Alice* Step One Because They Are Directed To An Abstract Idea.

The district court correctly ruled that the claims were directed to the abstract idea of "acquiring, transferring, and publishing data and multimedia content on one or more websites." Appx34. The claims recite a method for "acquiring" data, "transferring" the data, and "making available" the data on a web service. Appx280-337. The claims are thus precisely the type of data manipulation claims that this Court has routinely held unpatentable. *See, e.g.*, *Electric Power Group LLC v. Alston S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016) (claims directed to "gathering and analyzing information of a specific content, then displaying the results" were abstract); *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d at 1341 (patent claim "directed to . . . collecting, displaying, and manipulating data" was abstract); *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.").

As the district court correctly recognized, this Court's decision in *TLI* is especially analogous. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. 2016) (cited at Appx33-36 and Appx39-40). In *TLI*, the claims were directed to a method of recording digital images with a smartphone camera, storing the data on the smartphone, and then sending the images to a server for further processing. *Id.* at 609-10. This Court explained that "the problem facing the inventor was not how to combine a camera with a cellular telephone, [or] how to transmit images via a cellular network, . . . [n]or was the problem related to the structure of the server that stores the . . . digital images." *Id.* at 612. The claims in fact were "not directed to a specific improvement to computer functionality" at all. *Id.* The claims instead were "directed to the use of conventional or generic technology in a nascent but well-known environment, without any claim that the invention reflects an inventive solution to any problem by combining the two." *Id.* This Court thus held that claims were directed to an abstract idea and ultimately unpatentable. *Id.* at 613-15.

Just as in *TLI*, Cellspin's asserted patents do not recite a specific improvement in technology. Rather, as shown above, the patents use only generic

computer and software components and known processes like Bluetooth and event notifications to automate the process of transmitting data from a data capture device to a website. *See* Statement of the Case, *supra*, at 3-10. The specification describes a manual process—using an off-line method to transfer data from a device to a computer and then upload it onto a website—and teaches that this process instead should be automated by using known technologies in a conventional way. Appx286 at 1:32-54; *see also* Appx290 at 9:37-40 (stating that the claimed methods and systems "may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system"). The specification identifies a litany of generic devices and existing technologies, describes the ordinary manner in which these technologies operate, and instructs an artisan simply to apply these technologies to the process of acquiring, transferring, and publishing data. *See, e.g.*, Appx287 at 3:39 to 4:54; Appx288 at 5:65 to 6:32; Appx289 at 7:62 to 8:55; Appx290 at 9:37 to 10:9; Appx291 at 11:16-28. According to the patents, the conventional use of these known technologies allows performance of a previously manual process "automatically or with minimal user intervention." Appx286 at 1:53-54. The claims thus boil down to the same abstract ideas of acquiring, transferring, and/or publishing data as the claims in *TLI* and other precedents relied on by the district court.

Likewise, in *Electric Power*, the claims were directed to a "method of detecting events on an interconnected electric power grid in real time over a wide area and automatically analyzing the events" by (1) "receiving a plurality of data streams," (2) "detecting and analyzing events in real-time from the plurality of data streams," and (3) "displaying the event analysis results." *Electric Power,* 830 F.3d at 1351-52. This Court concluded that the claims were "clearly focused on the combination of . . . abstract-idea processes" such as "collecting information" and "analyzing information," and then "presenting the results of abstract processes of collecting and analyzing information." *Id.* at 1353–54.

This Court's characterization of the claims held unpatentable in *Electric Power* also applies to the claims here. Cellspin's asserted claims focus on the abstract-idea processes of collecting data (using a conventional data capture device), transferring data (using conventional wireless technology), and publishing data (using generic computer tools). For example, the steps of claim 1 of the '794 patent consist of: (1) "providing a software module" on a "Bluetooth enabled data capture device" and a "Bluetooth enabled mobile device"; (2) "establishing a paired connection" between the devices; (3) "acquiring new data" in the data capture device; (4) "detecting and signaling the new data for transfer" to the mobile device by "determining the existence of new data for transfer" and "sending a data signal"; (5) "transferring the new data" to the mobile device; (6)

"receiving" the new data at the mobile device; (7) "applying . . . a user identifier to the new data"; (8) "transferring the new data" to one or more web services; (9) "receiving" the new data at the one of more web services; and (10) "making available" the new data at the one or more web services. Appx291 at 11:48 to 12:39. Cellspin's claims are thus "clearly focused on the combination of . . . abstract-idea processes" such as "collecting information" and "analyzing information," and then "presenting the results of abstract processes of collecting and analyzing information." *Id.* at 1354-55. Accordingly, the district court correctly ruled that the claims are directed to an abstract idea under *Alice* step one.

Cellspin attacks this conclusion by wrongly accusing the district court of "oversimplifying and overgeneralizing" the claims. Opening Brief at 45; *see also* Opening Brief at 36, 46, 55-57, 65. But the district court's analysis aligns perfectly with the abstract-idea analysis this Court undertook in *TLI*, *Electric Power*, and numerous other precedents that the district court cited. In fact, Cellspin itself characterized the patents below as relating to "specific and concrete approaches comprising, among other things, pairing, transferring, and publishing data to the Internet." Appx482. Likewise, on appeal, Cellspin characterizes the claimed inventions as designed "for achieving the ends of acquiring and transferring data for publication, including on the Internet." Opening Brief at 6.

Cellspin's revised characterization of the claims found elsewhere in its opening appeal brief fares no better under this Court's precedent. Cellspin there describes claim 1 of the '794 patent as directed to a method "comprising transferring newly captured data . . . by pushing event notifications within an already paired Bluetooth connection." Opening Brief at 12. Yet Cellspin does not contend that the applicants invented push notifications to a paired Bluetooth device or any improvements to this known technology. And even this revised characterization reflects the abstract ideas of capturing and transferring data, and merely tries to limit the concept to a particular conventional means of data transfer. Such claims are still directed to an abstract idea under *Alice*. *See, e.g.*, *Intellectual Ventures I LLC v. Symantec Corp*., 838 F.3d 1307, 1319 (Fed. Cir. 2016) (claims do not become non-abstract just by situating them in a particular conventional technological environment); *Electric Power*, 830 F.3d at 1353-54 ("The advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions."); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) ("[N]owhere does Intellectual Ventures assert that it invented an interactive interface that manages website content. . . . [T]he 'interactive interface' simply

describes a generic web server with attendant software, tasked with providing web pages to and communicating with the user's computer.").

The district court also correctly rejected Cellspin's argument that the claims were directed to a specific improvement in technology. The patents make clear the purported improvement: automating the process of publishing data to one or more websites, thereby making that process less time-consuming and requiring "minimal user intervention." Appx286 at 1:37-54. But an alleged improvement in efficiency or speed through performance of a known process with conventional computer technology is not enough to avoid abstractness. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) ("But relying on a computer to perform routine tasks more quickly or accurately is insufficient to render a patent claim eligible."). The Court therefore correctly ruled that Cellspin failed to show the claimed process was "something more than a simple automation of the conventional (manual) process," as *Alice* step one requires. Appx36.

As the district court also correctly explained (Appx38-41), Cellspin failed to identify any other specific technological improvements that were supported by the claims or the specification. For example, Cellspin's assertion that the inventions resulted in improved battery consumption and power savings is not found at all in the asserted patents. Cellspin's citation to the specification does not mention power usage or battery savings, nor does it support Cellspin's allegations of

improvements to these functions. *See* Appx287 at 4:66-5:1. Likewise, the supposed elimination of the need for bulky hardware and costly cell services does not appear in the specification. Lacking support in the patent, Cellspin simply makes unsubstantiated claims that the Court is not required to take as true. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (courts are not required to take as true any "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"). The patents alone confirm that the claims are directed to an abstract idea implemented only with conventional computer technology. *See TLI*, 823 F.3d 607, 614 (rejecting plaintiff's argument that the court had not engaged in fact-finding as to the "conventional" nature of the claims, explaining "we need to only look to the specification, which describes the telephone unit and server as either performing basic computer functions such as sending and receiving data, or performing functions 'known' in the art").

As a result, Cellspin's reliance on cases like *Enfish* and *McRO* is completely misplaced. *Enfish* involved a non-conventional database structure used to achieve an improvement in computer functionality. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). *McRO* involved a distinct computer process that did not merely automate a previously manual task. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1307, 1314 (Fed. Cir. 2016). Here, by contrast, the asserted claims are not directed to any improvement in computer functionality

or to a new computer process than transcends conventional techniques. Rather, the claims are directed to the abstract idea of acquiring, transferring, and publishing data and recite only conventional computer hardware and software to implement that abstract idea. This case thus falls squarely within the Court's precedents holding that such claims fail to achieve patentability under *Alice* step one.

2. The Claims Fail *Alice* Step Two Because They Recite No Inventive Concept That Could Render Them Patentable.

The district court also correctly ruled that the asserted claims did not supply an inventive concept sufficient to transform the underlying abstract idea into patentable subject matter. Appx38-42. As a result, the claims are unpatentable.

First, the district court correctly recognized that the claims "'merely provide a generic environment in which to carry out'" the abstract ideas of acquiring, transferring, and publishing data. Appx38 (quoting *TLI*, 823 F.3d at 611). Claims like these, which recite the use of "generic features" of hardware and software components that perform "routine functions" to implement the abstract idea, do not contain an inventive concept sufficient to pass *Alice* step two. *DIRECTV*, 838 F.3d at 1262. All of the recited components and technology in the claims were well-known in the art, and the specification does not describe them as new.

For example, the claims of the '794 patent refer to "software modules" that are used to detect, receive, and transfer data from a "data capture device" and a "mobile device" to a "web service." Appx291 at 11:48 to 12:39. The claims of the

other asserted patents use similar terms. *See, e.g.*, Appx305 at 11:48 to 12:38 (claiming a "data capture device," a "mobile device, an "internet service," and adding a "cryptographic encryption key"); Appx336-337 at 12:12 to 13:3 (claiming a system comprising a "memory device," a "first processor," a "data capture circuitry," and a "mobile application"); Appx320 at 11:54-12:26 (claiming a "digital camera device," a "cellular phone," a "non-volatile memory," and a "media publishing website"). The specification confirms there are several known options for each of the generic devices referenced in the claims, and several known methods for using those devices to send and receive data, including via Bluetooth. *See, e.g.*, Appx286 at 2:16-18 (types of digital capture devices); Appx287 at 3:43-46 (examples of Bluetooth communication devices); Appx287 at 4:38-44 (a variety of ways the data can be transferred); Appx290 at 9:40-46 (alternatives to Bluetooth); Appx290 at 9:46-54 (mobile device can be a "ubiquitous mobile phone," a PDA, or a device with or without telephony support); Appx290 at 10:10-13 (methods and algorithms described in patent may be implemented in a computer readable medium programmed for "general purpose computers and computing devices"); Appx290 at 10:25-28 (processor means "any one or more microprocessors, Central Processing Unit (CPU) devices, computing devices, microcontrollers, digital signal processors or like devices"). The specification calls simply for the conventional use of "pervasive" technologies, such as Bluetooth and

other wireless protocols, "a ubiquitous mobile phone," and "fairly widespread" personal digital assistants. Appx290 at 9:37-49.

Bereft of any inventive concept, the specification merely discloses the use of these conventional devices in their ordinary and expected manner. The district court correctly ruled that the abstract idea claimed in the asserted patents "'does not become nonabstract'" merely because the claims are set in this "'technological environment'" consisting of conventional components and the use of standard technology. Appx38 (quoting *Intellectual Ventures I LLC v. Symantec Corp*., 838 F.3d at 1319, and also citing *Alice*, 134 S. Ct. at 2358).

Second, the district court properly considered the claims as an ordered combination and found that the claims, even in combination, failed to supply an inventive concept. Appx38-40. The court correctly observed that Cellspin had failed to identify where the purported "timing" benefit was discussed in the patents and could not explain how this benefit flowed from the asserted patents. Appx40. Cellspin still fails to point to anything in the patents themselves explaining how the timing of the Bluetooth connection is beneficial. Opening Brief at 60-61.

Moreover, the "timing" to which Cellspin refers to consists of nothing more than the conventional ways in which Bluetooth operates: pull mode or push mode. The patents note that in 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." Appx287 at 4:30-33. By contrast, when pushing data, a device sends data without awaiting a request. Appx287 at 4:55-62. The patents describe this alternative mode as well, where a Bluetooth-enabled "device 201a sends a signal to the client application 203 on creation of a new file." Appx287 at 4:57-59. The applicants did not suggest that they invented either mode of communication. And they even claimed embodiments for both alternatives, demonstrating an intent to monopolize all ways of communicating using the conventional Bluetooth protocol. For example, claim 1 of the '794 patent claims "push" communications by requiring that the capture device "determin[e] the existence of new data for transfer," but claim 16 of that patent claims "pull" communications by requiring that the mobile device "poll[]" the capture device. Appx291 at 11:65; Appx292 at 14:30. The district court thus correctly ruled there was nothing "inventive" about "shifting the timing of the data collection process" here. Appx40 at n.10 (citation and internal quotation marks omitted).

Third, the district court properly rejected Cellspin's conclusory assertions of other purportedly inventive concepts and "benefits" of the asserted claims, which overlap with the purported technical improvements posited by Cellspin under *Alice* step one. Appx38-40. The only such improvement that actually appears in the patent is the efficiency or speed in uploading content using the claimed method. Appx39. But a method that simply utilizes known and conventional computer

technology to achieve such an improvement is not a sufficient inventive concept. *See, e.g.*, *OIP Techs.*, 788 F.3d at 1363; *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d at 1367. The remaining purported benefits do not have any support in the patent. Nothing in the specification or claims discusses the elimination of the need for bulky hardware or expensive phone services or improved battery consumption and power savings. Appx280-337. The district court therefore correctly rejected these assertions. *See TLI*, 823 F.3d at 612. Moreover, Cellspin has not shown how any of these purported benefits could supply a sufficient inventive concept anyway. The patent teaches only the use of generic, conventional components according to their known, ordinary functions. This is not enough to save the claims from unpatentability under *Alice* step two.

Cellspin also cites no authority supporting its argument that courts are required to independently consider preemption. *See* Opening Brief at 65-66. The concern about preemption is the policy underlying the *Alice* analysis, and is not a separate inquiry under *Alice*. 134 S. Ct. at 2354. Cellspin also cites no authority for its suggestion that claims that are not fully preemptive are therefore patent-eligible. The opposite, in fact, is true: while preemption concerns are "the basis for the judicial exceptions to patentability . . . , the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). A patentee cannot secure eligibility

merely by circumscribing the otherwise conventional technological environment in which the claimed abstract idea is implemented. *See, e.g.*, *Intellectual Ventures I LLC v. Symantec Corp*., 838 F.3d at 1319; *TLI*, 823 F.3d at 611. Cellspin's conclusory argument that its claims are not fully preemptive therefore fails.

Cellspin's attempt to find shelter in *BASCOM* and *DDR Holdings* is also misplaced. In *BASCOM*, this Court held that "an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces." *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). The inventive concept in *BASCOM* was the installation of a filtering tool at a specific location that combined the benefits of prior filtering methods in a way that previously could not be achieved. *Id.* Here, by contrast, the asserted patents do not provide any benefits or overcome any deficiencies in previous methods of acquiring, transferring, and publishing data. All they do is replace a USB or similar cable with Bluetooth or other known wireless data transfer protocols to operate in a conventional way to automatically transfer and publish data to a website. *See* Appx286 at 1:38-47. Cellspin cannot point to any specific way in which the ordered combination of the claim elements is non-conventional and non-generic. Rather, all the claimed elements—the Bluetooth, the mobile devices, the computer processors, etc.—behave exactly according to their routine functions. *See* Appx280-291. That these routine

functions practice the ineligible abstract idea of automatically acquiring, transferring, and publishing data does not save the patents from ineligibility. *See BSG Tech LLC v. Buyseasons, Inc.*, No. 2017-1980, --- F.3d ---, 2018 WL 3862646, at *7 (Fed. Cir. Aug. 15, 2018) ("It has been clear since *Alice* that a claimed invention's use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention 'significantly more' than that ineligible concept.").

Also in contrast to this case, the claims in *DDR Holdings* recited a "specific way to automate the creation of a composite web page" that solved an Internet-centric problem. *DDR Holdings, LLC v. Hotels.com, LP*, 773 F.3d 1245, 1259 (Fed. Cir. 2014). The *DDR Holdings* claims did not "broadly and generically claim use of the Internet," but instead "specif[ied] how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink." *Id.* at 1258. But here, the asserted patents claim generic hardware and software, disclose the routine process of collecting, transferring, and publishing data, and do not aim to solve a problem rooted in technology. The patents themselves repeatedly acknowledge that the goal of the invention is to make the data transfer process more efficient by virtue of performing previously manual steps in the process with computers. *See, e.g.*, Appx280 (Abstract); Appx286 at

1:33-36 (Background); Appx286 at 1:64 to 2:3 (Summary of the Invention); Appx287 at 3:4-24 (Brief Description of the Drawings); Appx287 at 3:28-32 (Detailed Description of the Invention); Appx288 at 5:55-64 (same). This disclosure falls well short of a sufficient inventive concept. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d at 1370 ("[M]erely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.").

Finally, in a futile search for an inventive concept on appeal, Cellspin makes a number of assertions that were not even in its amended complaint. For example, Cellspin did not previously identify "cryptographically authenticating identity of the cellular phone" as an alleged technological improvement or inventive concept. Opening Brief at 25. Cellspin also did not allege below that battery power was allegedly saved by the mobile device through use of the "GUI on the mobile device." Opening Brief at 27-28. Cellspin also did not allege below that the combination of cellular phones, PDAs, and Bluetooth had never been implemented, nor that such combinations could not be implemented without an application. Opening Brief at 43. Cellspin's characterization of what the claims are directed to also differs from how it described the claims in the district court. Opening Brief at 9-23. Because Cellspin did not properly raise these assertions below, they are waived. *See Fresenius USA, Inc. v. Baxter Int'l, Inc.*, 582 F.3d

1288, 1296 (Fed. Cir. 2009); *Sage Prods., Inc. v. Devon Inds., Inc.*, 126 F.3d 1420, 1426 (Fed. Cir. 1997) ("With a few notable exceptions, such as some jurisdictional matters, appellate courts do not consider a party's new theories, lodged first on appeal.").

In any event, none of these new assertions alters the correctness of the district court's ruling. Cellspin does not dispute that the Bluetooth protocols for transferring information described in the patents were known at the time of the patents, as was their use with cellular phones and PDAs. Additionally, Cellspin's argument that the purported invention requires a specific application has no support in the claims, which recite only generic features such as "software modules," "data capture devices," and "Bluetooth enabled mobile devices." Appx280-337. As noted earlier, even Cellspin's new characterization of the claims confirms their abstractness. And Cellspin still has pointed to nothing other than the use of conventional computer components that operate in their expected manner. The asserted claims therefore remain unpatentable.

3. The District Court Correctly Considered All Asserted Claims And Properly Focused Its Analysis On A Representative Claim.

The district court considered all asserted patent claims, and also considered Cellspin's attempts to distinguish the different patents. Appx41-42. The court correctly ruled that all of the asserted patents were directed to a "substantially

similar abstract idea, namely a method for capturing, transferring, and publishing data and multimedia content." Appx41-42. Cellspin has not explained—either below or on appeal—how the claims of the four asserted patents differ in any way material to the abstract idea analysis. Cellspin also has not articulated how the minor differences among the asserted patents constituted inventive concepts sufficient to transform the abstract idea in any asserted patent into a patent-eligible application.

Moreover, it was entirely appropriate for the district court to focus its analysis on a representative claim. This Court has held that a court need not individually address all claims where "the claims of the asserted patents are substantially similar in that they recite little more than the same abstract idea" and one claim is representative. *Content Extraction*, 776 F.3d at 1348. That is precisely the situation here. The asserted patents share the same specification. Cellspin's characterizations of the independent claims in each patent confirms that there are no meaningful differences among the claims. Cellspin describes each patent as directed to a method of transferring data from an Internet-incapable device to an Internet-capable mobile device over a wireless connection (such as Bluetooth). Opening Brief at 9-23. The minor differences in the claims that Cellspin articulates—pushing or pulling data, event notification, the use of encryption—amount to nothing more than minor variations in the technological

environment in which the abstract ideas are implemented, and are thus insufficient to transform the claims into anything beyond the underlying abstract ideas. *See, e.g.*, *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015) ("The additional limitations of these dependent claims do not add an inventive concept, for they represent merely generic data collection steps or siting the ineligible concept in a particular technological environment."); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016) ("Appending these preexisting [handwriting and voice capture] technologies onto [the] independent claims does not make them patentable."); *buySAFE*, 765 F.3d at 1355 ("The dependent claims' narrowing to particular types of [contractual] relationships, themselves familiar, does not change the analysis."). Accordingly, the district court properly focused its analysis on claim 1 of the '794 patent and correctly extended this analysis to all the other asserted claims.

In all events, the specification confirms that the minor variations presented by the other asserted claims are merely conventional uses of known technologies. To begin with, the specification categorically states that the claimed methods and systems "may be implemented in technologies that are pervasive, flexible, and capable enough of accomplishing the desired tasks of the method and system." Appx290 at 9:37-40. Neither the asserted patents nor any factual allegation in Cellspin's amended complaint identifies a single claimed technology that falls

outside this description. Appx280-337; Appx2286-2305. The patents also do not identify any unconventional way of using these technologies that represents an advance in computer technology itself. Appx280-337. Despite its conclusory assertions, Cellspin's amended complaint also lacks any such factual allegations, much less factual allegations that are anchored in the patents themselves. Appx2286-2305.

Other portions of the specification further confirm the routine, conventional nature of the minor claim variations. For the '794 patent, the other asserted independent claim (claim 16) simply uses Bluetooth's pull mode, whereas claim 1 uses Bluetooth's push mode. *Compare* Appx292 at 14:12-64 (claim 16) *with* Appx291 at 11:48 to 12:38 (claim 1). As discussed above, the specification describes the push and pull modes as part of the routine operation of the Bluetooth protocol, without any disclosure of an unconventional use. Appx287-288 at 4:21 to 5:3. The asserted dependent claims of the '794 patent add limitations concerning the content of the user identifier (claims 2 and 17), the simultaneous transfer of the data signal and new data as part of the same data object (claim 3), internal Bluetooth capability for the data capture device (claims 4 and 18), and the types of data (*e.g.*, audio, video, image, text, digital) received or transferred by the mobile device (claims 7, 9, 20, and 21). Appx291 at 12:39-50; Appx292 at 13:48-50 and 13:56-58; Appx292-293 at 14:65 to 15:2; Appx293 at 15:3-5 and 15:9-14.

To the extent the specification discusses these minor details at all, it makes clear they are just particular instances of the generic technologies used in routine fashion to implement the abstract idea of acquiring, transferring, and publishing data. *See, e.g.*, Appx286 at 2:5-10 ("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."); Appx288 at 5:55-59 ("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 more websites automatically or with minimal user intervention."). These minor variations in the technological environment in which the abstract idea is automated do not supply an inventive concept sufficient to confer patent-eligibility. *See Internet Patents*, 790 F.3d at 1349.

The asserted independent claims of the '752 patent (claims 1 and 12) recite a substantially similar method using a "secure" Bluetooth connection with an encryption step, event notification, and other minor details about the content of the information being transferred and transmission protocols. Appx305 at 11:48-12:37; Appx306 at 13:57 to 14:35. Again, to the extent it mentions these details at all, the specification makes clear they are merely particular aspects of the generic

technology being deployed in a routine fashion. *See, e.g.*, Appx287 at 3:49-53 ("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."); Appx287 at 3:59-61 ("A BT device that wants to communicate only with a trusted device can cryptographically authenticate the identity of another BT device."); Appx290 at 10:54-56 ("The program will use various security, encryption and compression techniques to enhance the overall user experience."); Appx290 at 10:4-8 ("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 asserted dependent claims add routine limitations like internal Bluetooth capability for the data capture device (claim 2), the types of data (*e.g.*, audio, video, image, text, digital) for transfer (claims 4 and 13), and the content of the event notification (claims 5 and 14). Appx305 at 12:38-40 and 12:44-49; Appx306 at 14:36-41. The specification makes clear that these are just particular aspects of the conventional technology with which the abstract idea is automated. Appx286 at 2:5-10 (internal Bluetooth capability); Appx287-288 at 4:55 to 5:3 (describing event notification as part of Bluetooth's push mode of operation); Appx288 at

5:55-59 (types of data for transfer). The mere use of these conventional features is not enough for an inventive concept. *See Internet Patents*, 790 F.3d at 1349.

The asserted independent claim of the '847 patent (claim 1, a system claim) performs substantially the same data acquisition and transfer steps as in the other patents, but adds the use of a generic "Bluetooth enabled cellular phone," "first processor," and "mobile application," along with cryptography, HTTP, and a GUI. Appx336-337 at 12:12 to 13:3. Dependent claims 2 and 3 add limitations concerning the content of the user information and the type of data being transferred. Appx337 at 13:4-9. The specification once again confirms there is nothing unconventional about these technologies or their use in the asserted claims. *See, e.g.*, Appx287 at 3:49-53 ("BT provides a method of connecting and exchanging information between devices, for example, mobile phones . . . ."); Appx288 at 5:55-59 (types of data); Appx288 at 6:17-23 and 6:52-60 (discussing generic graphical user interface (GUI) as part of generic client application on mobile device); Appx290 at 9:46-47 ("The mobile device 202 may, for example, be a ubiquitous mobile phone."); Appx290 at 10:23-25 ("Thus, embodiments are not limited to any specific combination of hardware and software."); Appx290-291 at 9:37 to 11:28 (discussing generic technologies that may be used with claimed invention without disclosing any unconventional uses or improvements in the

technologies themselves). Accordingly, there is no inventive concept here either. *See Internet Patents*, 790 F.3d at 1349.

Finally, the asserted independent claims of the '698 patent are directed to the same data acquisition, transfer, and publishing concepts, but include some minor differences, such as claiming a "digital camera device" instead of the "data capture device" in the other patents, along with a more general "wireless connection" instead of Bluetooth. Appx320 at 11:54 to 12:26 (claim 1); Appx320-321 at 12:45 to 13:22 (claim 5); Appx321 at 13:41 to 14:28 (claim 8); Appx321-322 at 14:55 to 15:22 (claim 13). Merely claiming the conventional use of these pervasive devices and technologies at varying levels of generality does not confer an inventive concept on any of the claims. *See Internet Patents*, 790 F.3d at 1349. Asserted dependent claims 3-4, 7, 10, and 15-16 add a number of the same kinds of limitations discussed in the preceding paragraphs, such as the type of data being transferred and the content of the user information. Appx320-322 at 12:38 to 16:5. These limitations fail to supply an inventive concept for the same reasons discussed above. Dependent claim 11 includes Internet access via the cellular network, dependent claim 12 describes conventional ways of storing the generic software application, and dependent claims 17-20 list various known types of short-range paired wireless connections. Appx321 at 14:46-54; Appx322 at 16:6-24. The specification likewise confirms that these are routine uses of conventional

technology. *See, e.g.*, Appx286 at 2:56-60 (various known wireless protocols may be used); Appx288 at 6:17-24 and 6:50-52 (generic data storage module); Appx289 at 7:66-67 and 8:48-50 (Internet access). As such, they cannot supply an inventive concept either. *See Internet Patents*, 790 F.3d at 1349.

B. The District Court Correctly Ruled That No Factual Disputes Preclude Dismissal At The Pleading Stage.

As discussed above, the district court considered the allegations of Cellspin's amended complaint and correctly ruled they could not overcome the conclusion that the asserted claims are unpatentable as a matter of law. Appx40-41. Despite this, Cellspin accuses the district court of ignoring these allegations, failing to view the facts in the light most favorable to Cellspin, and failing to draw all reasonable inferences in Cellspin's favor. *See* Opening Brief at 40-41. But Cellspin does not identify any specific factual allegations that the district court disregarded or did not view in a light most favorable to Cellspin, instead referring generally to a laundry list of items including the state of the art, what the claims are directed to, and alleged technological improvements and inventive concepts. *See* Opening Brief at 40-41. Such generic allegations, without factual support, are insufficient to avoid a ruling of ineligibility at the pleading stage.

Cellspin's conclusory allegations that its patents are directed to specific improvements or inventive concepts are not grounded in the patents themselves. Without this factual support, these allegations are nothing more than legal

buzzwords used in an attempt to avoid invalidity under *Alice*. Cellspin's allegations of an inventive concept do not find support in the claims or the specification. Though a court must accept as true all *factual* allegations in a complaint, it is not "bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A court is not required to accept as true allegations such as Cellspin's, which are "merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Gilead*, 536 F.3d at 1055. Simply stating that the claims disclose inventive concepts or technological improvements is not the same as reciting sufficient factual allegations to support its claims. Indeed, Cellspin's allegations are nothing like the factual allegations that this Court has found sufficient to raise a factual dispute that prevents deciding patent-eligibility at the pleading stage.

For example, in *Aatrix Software*, there were "concrete allegations" that the invention was not conventional and that the invention was an "improvement to the functioning of the computer." *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128 (Fed. Cir. 2018). Specifically, the "specification describe[d] the structure" of the inventive "data file" in the patent claims, "including the 'forms index file' that 'provides the vendor application with information on the forms available to the program.'" *Id.* at 1129. Moreover, the defendant "conceded that nothing in the specification describe[d] this importation

of data as conventional." *Id.* In light of the description in the specification and the "data file" in the claims, along with plaintiff's allegations and a potential claim construction dispute regarding the term "data file," the Court found that there were issues of fact preventing dismissal. *Id.* at 1129-30.

Here, Cellspin did not and still does not point to any portion of the specification or the claims themselves that amounts to or supports "concrete allegations" that would raise a factual dispute regarding the conventional nature of Cellspin's purported invention. *See* Opening Brief at 39-42. In addition, Cellspin does not make any factual allegations supporting the notion that the asserted benefits of its supposed "ordered combination" constitute improvements in computer functionality itself, as opposed to the routine operation of the known technologies that the claims employ. *See* Appx2288-2294. Making a manual process more efficient by automating it in this way does not constitute a sufficient inventive concept—even if the applicants chose, as Cellspin appears to assert, a set of conventional technologies that automate the process more efficiently than another set of conventional technologies. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d at 1370 ("[M]erely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.").

For example, Cellspin's amended complaint repeatedly cites the following sentence in the specification as purportedly showing multiple improvements to computer technology: "A file event listener in the client application 203 listens for the signal from the digital capture device 201." Appx287-288 at 4:66-5:1 (cited at Appx2292-2293). Nothing in that sentence identifies or even plausibly implies any kind of improvement to computer functionality itself. Rather, it merely describes a routine aspect of Bluetooth's push mode of operation, Appx287-288 at 4:55 to 5:3, without any connection to the purported benefits that Cellspin tries to conjure in its amended complaint. Moreover, the sentence discloses only generic technologies without even suggesting that these technologies are being used or modified in any unconventional way. The same is true of all the other patent citations on which Cellspin relies in its amended complaint. Appx2292-2293. Despite having been given every opportunity to do so—in multiple pleadings, multiple briefs, and repeatedly at the district court hearing (*see, e.g.*, Appx2425-2427)—Cellspin cannot show how the patent anchors any inventive concept that passes muster under this Court's precedent. Nor does Cellspin identify anything that supports its conclusory assertion that the district court "relied upon unsworn, unsubstantiated allegations made by Defendants-Appellees." Opening Brief at 41-42. Rather, the patents themselves, coupled with the factual poverty of Cellspin's allegations, provide all the support that is needed for the district court's judgment. Appx34-42.

This Court's decision in *Berkheimer* also does not help Cellspin. There, the Court noted that the specification explicitly "describe[d] an inventive feature that store[d] parsed data in a purportedly unconventional manner." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018). The Court then examined whether the improvements described in the specification were included in the claims. *Id.* For those claims where the inventive feature in the specification was "captured in the claims," the Court found a "factual dispute regarding whether the invention describe[d] well-understood routine, and conventional activities." *Id*. But where the patent claims did not recite the purportedly inventive features described in the specification, those claims were invalid under § 101. *Id.* Because Cellspin's asserted patents do not disclose, much less claim, any feature that can be plausibly alleged to supply an inventive concept (*see* Sections VI.A.2 & VI.A.3, *supra*), dismissal at the pleading stage is appropriate here. *Compare Berkheimer*, 881 F.3d at 1370 ("We only decide that on this record summary judgment was improper, given the fact questions created by the specification's disclosure.").

In contrast to its stone silence on any purported improvements to computer technology itself, the specification consistently returns to its sole asserted advance: automating previously manual steps to save time for the user. In fact, the phrase "automatically or with minimal user intervention" appears over a dozen times throughout the specification for precisely this purpose. Appx280; Appx286-289.

For example, the detailed description of the invention begins by stating, "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." Appx287 at 3:28-32. The applicants later punctuated this disclosure of the method of the claimed invention by trumpeting solely this alleged benefit:

> 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 more 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.

Appx288 at 5:55-64 (emphasis added). But as discussed above, improving the speed or efficiency of a manual process by automating it with conventional technology does not supply an inventive concept sufficient to confer patentability. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d at 1370. The amended complaint thus cannot save the asserted claims from unpatentability.

Finally, this case falls squarely within this Court's precedents affirming dismissals on § 101 grounds at the pleading stage. For example, in *Internet Patents*, this Court affirmed a Rule 12(b)(6) dismissal where the specification described the claimed technologies as "conventional," "well-known," and

"common." 790 F.3d at 1348. Similarly, in *OIP Technologies*, this Court affirmed a grant of judgment on the pleadings where "the specification makes clear that [the claimed] 'programming' and the related computer hardware 'refers to any sequence of instructions designed for execution on a computer system.'" 788 F.3d at 1363; *see also Content Extraction*, 776 F.3d at 1347-48 (affirming a Rule 12(b)(6) dismissal where the patent owner admitted that the claimed technologies were well-known at the time its application was filed); *TLI*, 823 F.3d at 614 (affirming a Rule 12(b)(6) dismissal where the specification confirmed that the claimed technologies were "performing basic computer functions, such as sending and receiving data, or performing functions 'known' in the art"). Likewise here, the patents admit that the claimed technologies were "pervasive" and emphasize repeatedly that the purported invention can be implemented with any of these generic tools. *See, e.g.*, Appx290 at 9:37-40; Appx290-291 at 10:10 to 11:45; *see also Berkheimer v. HP Inc.*, 890 F.3d 1369, 1370-71 (Fed. Cir. 2018) (Moore, J., et al., concurring in denial of en banc rehearing) ("Relying on the specification alone [to determine that elements are routine and conventional] may be appropriate where, as in *Mayo*, the specification *admits* as much."). The patents disclose nothing more than the conventional use of these generic tools to automate previously manual steps in acquiring, transferring, and publishing data. This disclosure cannot support any plausible factual allegations of an inventive concept

sufficient to confer patent-eligibility. The district court therefore correctly dismissed the actions at the pleading stage.

VII. CONCLUSION

Cellspin's asserted patents are directed to the abstract idea of acquiring, transferring, and publishing data. The asserted claims recite no inventive concept that could save them from unpatentability. Nor did Cellspin make any plausible factual allegations that could alter this conclusion. The district court therefore correctly invalidated the asserted claims and dismissed Cellspin's complaints. Accordingly, the judgments should be affirmed.

Dated: August 29, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2018, I electronically filed the foregoing DEFENDANTS-APPELLEES' RESPONSE BRIEF with the Court's CM/ECF filing system, which constitutes service, pursuant to Fed. R. App. P. 25(c), Fed. Cir. R. 25(a), and the Court's Administrative Order Regarding Electronic Case Filing 6(A) (May 17, 2012).

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Circuit Rule 32(a). The brief contains 11,403 words, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b).

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).

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