IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

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

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

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

Defendants Fitbit, Moov, Nike, Fossil, Cannon, GoPro, Panasonic, and JK (the "Omnibus Defendants") have filed an omnibus motion to dismiss plaintiff's claims pursuant to Fed. R. Civ. Pro. 12(b)(6) on the ground that the asserted patents are not patent eligible under 35 U.S.C. § 101. (Dkt. No. 31,

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

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

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

Motion to Dismiss Cellspin Soft, Inc.'s Complaints ("Omnibus MTD").) Also before the Court is defendant Garmin's motion for judgment on the pleadings pursuant to Rule 12(c) on the same ground. (*See Cellspin Soft Inc. v. Garmin International, Inc.*, 17-cv-5934-YGR, Dkt. No. 27.)

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

I. PATENTS AT ISSUE

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

A. The '794 Patent

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

> Typically, the user would capture an image using a digital camera or a video camera, store the image on a memory device of the digital camera, and transfer the image to a computing device such as a personal computer (PC). In order to transfer the image to the PC, the user would transfer the image off-line to the PC, use a cable such as a universal serial bus (USB) or a memory stick and plug the cable into the PC. The user would then manually upload the image onto a website which takes time and may be inconvenient for the user.

('794 Patent at 1:38-47.) The '794 Patent purports to solve this problem by "utilizing a digital data capture device in conjunction with a Bluetooth™ (BT) enabled mobile device" to "automatically publish[] data and

multi-media content on one or more websites simultaneously." (*Id*. at 1:33-36, 1:65-2:3.) Independent Claim 1 recites:

> *A method for acquiring and transferring data* from a Bluetooth enabled data capture device to one or more web services via a Bluetooth enabled mobile device, the method comprising:
>
> *providing a software module* on the Bluetooth enabled data capture device;
>
> *providing a software module* on the Bluetooth enabled mobile device;
>
> *establishing a paired connection* between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device;
>
> *acquiring new data* in the Bluetooth enabled data capture device, wherein new data is data acquired after the paired connection is established;
>
> *detecting and signaling the new data* for transfer to the Bluetooth enabled mobile device, wherein detecting and signaling the new data for transfer comprises:
>
> > *determining the existence of new data* for transfer, by the software module on the Bluetooth enabled data capture device; and
> >
> > *sending a data signal to the Bluetooth enabled mobile device*, corresponding to existence of new data, by the software module on the Bluetooth enabled data capture device automatically, over the established paired Bluetooth connection, wherein the software module on the Bluetooth enabled mobile device listens for the data signal sent from the Bluetooth enabled data capture device, wherein if permitted by the software module on the Bluetooth enabled data capture device, the data signal sent to the Bluetooth enabled mobile device comprises a data signal and one or more portions of the new data;
>
> *transferring the new data* from the Bluetooth enabled data capture device to the Bluetooth enabled mobile device automatically over the paired Bluetooth connection by the software module on the Bluetooth enabled data capture device;
>
> *receiving*, at the Bluetooth enabled mobile device, *the new data* from the Bluetooth enabled data capture device;
>
> *applying*, using the software module on the Bluetooth enabled mobile device, *a user identifier* to the new data for each destination web service, wherein each user identifier uniquely identifies a particular user of the web service;

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

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

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

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

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