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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

1 v.

2 **PANASONIC CORPORATION OF NORTH AMERICA**

3 Defendant.

Case No. 17-cv-05941-YGR

Dkt. No. 34, 67

4 v.

5 **JK IMAGING, LTD.**

6 Defendant.

Case No. 17-cv-06881-YGR

Dkt. No. 43, 70

7
8 Plaintiff Cellspin Soft, Inc. (“Cellspin”) brings fourteen patent infringement actions¹ alleging that
9 each defendant infringed one or more of Cellspin’s patents, namely U.S. Patent Nos. 8,738,794 (the “‘794
10 Patent”); 8,892,752 (the “‘752 Patent”); 9,749,847 (the “‘847 Patent”); and 9,258,698 (the “‘698 Patent”)
11 (collectively the “Asserted Patents”).² Cellspin asserts claims 1–4, 7, 9, 16–18 and 20–21 from the ‘794
12 Patent; claims 1, 2, 4, 5, and 12–14 from the ‘752 Patent; claims 1-3 from the ‘847 Patent; and claims 1,
13 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,
14 Dkt. No. 1, Complaint for Infringement of U.S. Patents (“Complaint”).)³

15 Defendants Fitbit, Moov, Nike, Fossil, Cannon, GoPro, Panasonic, and JK (the “Omnibus
16 Defendants”) have filed an omnibus motion to dismiss plaintiff’s claims pursuant to Fed. R. Civ. Pro.
17 12(b)(6) on the ground that the asserted patents are not patent eligible under 35 U.S.C. § 101. (Dkt. No. 31,
18

19 ¹ Nine actions are noted within the omnibus caption. Further, plaintiff’s patent infringement action
20 against Eastman Kodak Company was dismissed without prejudice on December 3, 2017. (*Cellspin Soft v.*
21 *Eastman Kodak Company*, 17-cv-5940-YGR, Dkt. Nos. 14, 15.) Plaintiff’s action against TomTom, Inc.
22 and TomTom North America was dismissed without prejudice on January 25, 2018. (*Cellspin Soft v.*
23 *TomTom, Inc., et al.*, 17-cv-5937-YGR, Dkt. Nos. 46, 47.) The following defendants remain: Fitbit, Inc.
24 (“Fitbit”); Moov, Inc. (“Moov”); Adidas America, Inc. (“Adidas”); Nike, Inc. (“Nike”); Under Armor, Inc.
25 (“Under Armor”); Fossil Group, Inc. and Misfit, Inc. (collectively “Fossil”); Garmin International, Inc.
26 (“Garmin”); Cannon U.S.A., Inc. (“Cannon”); GoPro, Inc. (“GoPro”); Panasonic Corporation of America
27 (“Panasonic”); Nikon Americas, Inc. and Nikon, Inc. (collectively “Nikon”); and JK imaging LTD (“JK”).
28 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.

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

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

8 **I. PATENTS AT ISSUE**

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

14 **A. The ‘794 Patent**

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

21
22 Typically, the user would capture an image using a digital camera or a video camera, store
23 the image on a memory device of the digital camera, and transfer the image to a computing
24 device such as a personal computer (PC). In order to transfer the image to the PC, the user
25 would transfer the image off-line to the PC, use a cable such as a universal serial bus (USB)
26 or a memory stick and plug the cable into the PC. The user would then manually upload the
27 image onto a website which takes time and may be inconvenient for the user.

28 (‘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

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

3
4 *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
5 device, the method comprising:

6 *providing a software module* on the Bluetooth enabled data capture device;

7 *providing a software module* on the Bluetooth enabled mobile device;

8 *establishing a paired connection* between the Bluetooth enabled data capture
9 device and the Bluetooth enabled mobile device;

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

12 *detecting and signaling the new data* for transfer to the Bluetooth enabled
13 mobile device, wherein detecting and signaling the new data for transfer
comprises:

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

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

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

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

26 *applying, using the software module on the Bluetooth enabled mobile device,*
27 *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;
28

1 *transferring the new data* received by the Bluetooth enabled mobile device
2 along with a user identifier to the one or more web services, using the software
3 module on the Bluetooth enabled mobile device;

4 *receiving*, at the one or more web services, *the new data* and user identifier
5 from the Bluetooth enabled mobile device, wherein the one or more web
6 services receive the transferred new data corresponding to a user identifier;
7 and

8 *making available*, at the one or more web services, *the new data* received from
9 the Bluetooth enabled mobile device for public or private consumption over
10 the internet, wherein one or more portions of the new data correspond to a
11 particular user identifier.

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

18 Additionally, the ‘794 Patent contains two other independent claims, namely claims 6 and 16.⁴
19 Asserted independent claim 16 of the ‘794 Patent is directed to transferring content from an “Internet
20 incapable data capture device to an Internet server via separate Internet capable mobile device *by polling the*
21 *Bluetooth enabled data capture device for newly captured data* within an already paired and Bluetooth
22 connection between the data capture device and the mobile device.” (Dkt No. 38, Opposition at 20-21
23 (citing ‘794 Patent at 14:14-64) (emphasis supplied).) Claim 16 has five dependent claims and adds further
24 limitations such as when the “Bluetooth capability is provided internally in the Bluetooth enabled data
25 capture device[;]” “Bluetooth capability is provided to the Bluetooth enabled data capture device by an
26 external Bluetooth module[;]” and “the new data transferred from the Bluetooth enabled mobile device to
27 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.

1 **B. The ‘752 Patent**

2 Independent Claim 1 of the ‘752 Patent is directed to *method* of transferring data from an internet
3 incapable data capture device to an internet server via an intermediary internet capable mobile device *by*
4 *pushing event notifications within an already paired and encrypted Bluetooth connection.* (See ‘752 patent
5 at 11:48-59.) Unlike the ‘794 Patent, the ‘752 Patent recites the use of a “secured” Bluetooth connection
6 with a data encryption step.⁵ (*Id.* at 11:51-59, 12:13-16).

7 **C. The ‘847 Patent**

8 Independent asserted Claim 1 of the ‘847 Patent is directed to a *method and system* of utilizing an
9 *encrypted, paired Bluetooth connection* to transfer data between an internet incapable data capture device
10 and a separate internet capable mobile device. Unlike the ‘794 Patent, the ‘847 Patent recites the transfer of
11 data *by pushing event notifications* within an already paired and encrypted Bluetooth connection. (See ‘847
12 Patent at 12:13-68.) Claim 1 of the ‘847 Patent recites the use of generic computer hardware and software,
13 namely a “Bluetooth enabled cellular phone,” “first processor,” and “mobile application.” (*Id.* at 12:12-
14 13:3).

15 **D. The ‘698 Patent**

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

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

25 //

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

1 **II. LEGAL FRAMEWORK**

2 **A. Patent Eligibility Under § 101**

3 The scope of subject matter eligible for patent protection is defined in Section 101 of the Patent Act:
4 “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
5 matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions
6 and requirements of this title.” 35 U.S.C. § 101. The Supreme Court has “long held that this provision
7 contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not
8 patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular*
9 *Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). In applying this exception, courts “must
10 distinguish between patents that claim the building blocks of human ingenuity and those that integrate the
11 building blocks into something more.” *Alice*, 134 S. Ct. at 2354 (internal quotations and alterations
12 omitted); see also *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S. Ct. 1289, 1301 (2012).

13 “The Supreme Court, setting up a two-stage framework, has held that a claim falls outside § 101
14 where (1) it is ‘directed to’ a patent-ineligible concept, *i.e.*, a law of nature, natural phenomenon, or abstract
15 idea, and (2), if so, the particular elements of the claim, considered both individually and ‘as an ordered
16 combination, do not add enough to transform the nature of the claim into a patent-eligible application.’”
17 *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (quoting *Alice* 134 S.Ct. at
18 2355). “The Supreme Court’s formulation makes clear that the first-stage filter is a meaningful one,
19 sometimes ending the § 101 inquiry.” *Id.* (citing *Alice*, 134 S.Ct. at 2355.) “At the same time, the two
20 stages are plainly related” in that they “involve overlapping scrutiny of the content of the claims . . . [and]
21 there can be close questions about when the inquiry should proceed from the first stage to the second.” *Id.*
22 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016)). The burden of establishing
23 invalidity rests on the movant. See *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S. Ct. 2238, 2245 (2011) (citing
24 35 U.S.C.A. § 282).

25 Thus, in considering whether claims are patent-ineligible, the court must first determine whether the
26 claims are directed to a patent-ineligible concept, such as an abstract idea (the “Stage-One Inquiry”). See
27 *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980). “A principle, in the abstract, is a fundamental truth . . .
28 [which] cannot be patented.” *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (internal citations and quotations

1 omitted). “Phenomena of nature, though just discovered, mental processes, and abstract intellectual
2 concepts are not patentable, as they are the basic tools of scientific and technological work.” *Id.* To
3 determine whether patent claims are directed to an abstract idea, the Court must “distill[] the gist of the
4 claim[s].”⁶ *Open Text S.A.*, 2015 WL 269036 (N.D. Cal. 2015), at *2 (citing *Bilski v. Kappos*, 561 U.S. 593,
5 611-12 (2010)). A “claim directed to an abstract idea does not move into section 101 eligibility territory by
6 ‘merely requir[ing] generic computer implementation.’” *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354
7 (Fed. Cir. 2014) (alteration in original) (citing *Alice*, 134 S.Ct. at 2355).

8 If claims are directed to an abstract idea, the court must then consider whether the claims contain a
9 sufficient “inventive concept” such that “the patent in practice amounts to significantly more than a patent
10 upon the [ineligible concept] itself” (the “Stage-Two Inquiry”). *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*,
11 132 S. Ct. at 1294); *see also DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014)
12 (“Distinguishing between claims that recite a patent-eligible invention and claims that add too little to a
13 patent-ineligible abstract concept can be difficult, as the line separating the two is not always clear.”). “For
14 the role of a computer in a computer-implemented invention to be deemed meaningful in the context of this
15 analysis, it must involve more than performance of well-understood, routine, [and] conventional activities
16 previously known to the industry.” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat.*
17 *Ass’n*, 776 F.3d 1343, 1347-48 (Fed. Cir. 2014) (alteration in original) (internal quotations and citations
18 omitted). Further, claims must be “directed to a ‘specific means or method’ for improving technology” and
19 not “simply directed to an abstract end-result.” *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322,
20 1326 (Fed. Cir. 2017). For example, “when a claim directed to an abstract idea ‘contains no restriction on
21 how the result is accomplished . . . [and] [t]he mechanism . . . is not described, although this is stated to be
22 the essential invention’ then the claim is not patent-eligible. *Intellectual Ventures I LLC v. Symantec Corp.*,
23 838 F.3d 1307, 1316 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d
24 1343, 1348 (Fed. Cir. 2015)).

25
26 ⁶ On the other hand, courts must be careful not to oversimplify claims because “[a]t some level, all
27 inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract
28 ideas.” *Alice*, 134 S. Ct. at 2354; *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299
(Fed. Cir. 2016).

1 **B. Motion to Dismiss**

2 Pursuant to Rule 12(b)(6), a complaint may be dismissed for failure to state a claim upon which
3 relief may be granted. Dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is
4 proper if there is a “lack of a cognizable legal theory or the absence of sufficient facts alleged under a
5 cognizable legal theory.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (citing
6 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988)). The complaint must plead “enough
7 facts to state a claim [for] relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
8 (2007). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to
9 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556
10 U.S. 662, 678 (2009). If the facts alleged do not support a reasonable inference of liability, stronger than a
11 mere possibility, the claim must be dismissed. *Id.* at 678–79. Mere “conclusory allegations of law and
12 unwarranted inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179,
13 1183 (9th Cir. 2004).

14 **C. Judgment on the Pleadings**

15 The standard applied to a Rule 12(c) motion for judgment on the pleadings is “substantially
16 identical” to the standard applied to a motion to dismiss under Rule 12(b)(6). *Chavez v. United States*, 683
17 F.3d 1102, 1108 (9th Cir. 2012). “[U]nder both rules, ‘a court must determine whether the facts alleged in
18 the complaint, taken as true, entitle the plaintiff to a legal remedy.’” *Id.* (quoting *Brooks v. Dunlop Mfg. Inc.*,
19 2011 WL 6140912, at *3 (N.D. Cal. 2011)). “If the complaint fails to articulate a legally sufficient claim,
20 the complaint should be dismissed or judgment granted on the pleadings.” *Brooks*, 2011 WL 614912 at *3.
21 Judgment on the pleadings is appropriate “when there is no issue of material fact in dispute, and the moving
22 party is entitled to judgment as a matter of law.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009)
23 (citing *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 979 (9th Cir. 1999)).

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

1 **III. DISCUSSION**

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

3 **1. Legal Standard**

4 At the Stage-One Inquiry, the Court must determine whether the asserted claims are directed to an
5 abstract idea. Courts deem claims directed to “analyzing information by steps people go through in their
6 minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea
7 category.” *Electric Power*, 830 F.3d at 1353 (citing *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607,
8 613 (Fed. Cir. 2016)); *see also Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351
9 (Fed. Cir. 2014); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278
10 (Fed. Cir. 2012). The use of “existing computers as tools in aid of processes focused on ‘abstract ideas’” is
11 not sufficient to remove a claim from the abstract-idea category. *Id.* (citing *Enfish*, 822 F.3d at 1335–36;
12 *Alice*, 134 S. Ct. at 2358–59). For example, the Supreme Court in *Alice* found that claims directed to
13 “facilitate the exchange of financial [information] between two parties by using a computer system as a
14 third-party intermediary” were abstract. *Alice*, 134 S. Ct. at 2352. The *Alice* Court further held that “the
15 prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [an
16 abstract idea] to a particular technological environment.” *Id.* at 2358 (quoting *Bilski*, 561 U.S. at 610–11);
17 *see Parker v. Flook*, 437 U.S. 584 (1978).⁷ Similarly, in *Electric Power*, the Federal Circuit “treated
18 collecting information, including when limited to particular content (which does not change its character as
19 information), as within the realm of abstract ideas.” *Electric Power*, 830 F.3d at 1353. The *Electric Power*
20 Court further “recognized that merely presenting the results of abstract processes of collecting and analyzing
21 information, without more . . . is abstract as an ancillary part of such collection and analysis.” *Id.* at 1354.

22 By contrast, claims which “focus[] not on asserted advances in uses to which existing computer
23 capabilities could be put, but on a specific improvement . . . in how computers could carry out one of their
24 basic functions” may fall outside the abstract-idea category. *Electric Power*, 830 F.3d at 1354 (citing

25
26 ⁷ Plaintiffs’ attempt to distinguish *Electric Power* and *TLI* on the ground that the patents at issue in
27 those cases did not involve the use of Bluetooth technology or a paired connection does not persuade. The
28 mere fact that the technology at issue here is different than the technology at issue in *Electric Power* and *TLI*
does not necessarily render those prior cases inapposite.

1 *Enfish*, 822 F.3d at 1335–36 (the question is “whether the focus of the claims is on the specific asserted
2 improvement in computer capabilities” or on computers which “are invoked merely as a tool”)); *see also*
3 *Alice*, 134 S.Ct. at 2358–59. However, the “mere automation of manual processes using generic computers
4 does not constitute a patentable improvement in computer technology.” *Credit Acceptance Corp. v.*
5 *Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (citing *TLI*, 823 F.3d at 612; *OIP Techs., Inc. v.*
6 *Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015)). Similarly, making a “process more efficient” in
7 itself does not “render an abstract idea less abstract.” *Secured Mail Solutions LLC v. Universal Wilde, Inc.*,
8 873 F.3d 905, 910 (Fed. Cir. 2017).

9 Ultimately, to be patentable claims must “sufficiently describe how to achieve [an improvement in
10 computer technology] in a non-abstract way.” *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874
11 F.3d 1329, 1337 (Fed. Cir. 2017) (finding limitations requiring “sending” and “directing” of information
12 “d[id] not sufficiently describe how to achieve these results in a non-abstract way”); *see also Affinity Labs of*
13 *Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258–59 (Fed. Cir. 2016) (holding that claims were directed to
14 an abstract idea where they claimed “the function of wirelessly communicating regional broadcast content to
15 an out-of-region recipient, not a particular way of performing that function”). For example, claims which
16 recite “generalized steps to be performed on a computer using conventional computer activity” are deemed
17 abstract. *See In re TLI*, 823 F.3d at 612 (citing *Enfish*, 822 F.3d at 1338).

18 2. **Analysis of the ‘794 Patent**

19 With regard to the ‘794 Patent, the Court finds that the asserted claims are directed to an abstract
20 idea, namely a method of acquiring, transferring, and publishing data and multimedia content on one or
21 more websites. *See Electric Power*, 830 F.3d at 1353; *Intellectual Ventures I LLC v. Capital One Financial*
22 *Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (claim “directed to . . . collecting, displaying, and manipulating
23 data” deemed abstract); *see also EasyWeb Innovations, LLC v. Twitter, Inc.*, 689 F. App’x 969, 971 (Fed.
24 Cir. 2017) (“As we have explained in a number of cases, claims involving data collection, analysis, and
25 publication are directed to an abstract idea.”); *W. View Research, LLC v. Audi AG*, 685 F. App’x 923, 926
26 (Fed. Cir. 2017) (“Collecting information, analyzing it, and displaying certain results of the collection and
27 analysis are a familiar class of claims ‘directed to’ a patent-ineligible concept.”). The Federal Circuit
28 “treat[s] collecting information, including when limited to particular content (which does not change its

1 character as information), as within the realm of abstract ideas.” *Electric Power*, 830 F.3d at 1353.
2 “[M]erely presenting the results of abstract processes of collecting and analyzing information, without more
3 (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and
4 analysis.” *Id.* at 1354. Here, the asserted claims “focus [] on the combination of . . . abstract-idea
5 processes[,]” namely “collecting information[,]” transferring information between devices via a Bluetooth or
6 other wireless connection, and “presenting the results” of this data collection and transfer process on one or
7 more websites. *Id.* at 1353–54.

8 *TLI* is instructive. There, plaintiff asserted claims which were directed to a method of utilizing a
9 smartphone to record and store digital images and then transfer those images to an online server for further
10 processing. *See TLI*, 823 F.3d at 609-10. The Federal Circuit highlighted that the problem facing the
11 inventor was “not how to combine a camera with a cellular telephone, how to transmit images via a cellular
12 network Nor was the problem related to the structure of the server that stores the . . . digital images.”
13 *Id.* at 612. In finding the claims directed to an abstract idea, the Court held that the claims were “not
14 directed to a specific improvement to computer functionality” but instead were “directed to the use of
15 conventional or generic technology in a nascent but well-known environment.” *Id.* As in *TLI*, the ‘794
16 Patent does do not recite a specific improvement with regard to “how to combine a camera with a cellular
17 telephone [or] how to transmit images via a cellular network.” *See id.* The ‘794 Patent is “not directed to a
18 specific improvement to computer functionality” but merely utilizes generic computer hardware and
19 software components, namely a “ubiquitous mobile phone,” paired Bluetooth connection, event
20 notifications, “fairly widespread” personal digital assistant, and “general purpose computers and computing
21 devices” to automate the process of transmitting multimedia content from a data capture device to one or
22 more websites. (*See* ‘794 Patent at 9:37–48, 10:10–13.)

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

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

3 In *Enfish*, the asserted claims were directed to a self-referential table which had a specified and
4 nonconventional structure. *Id.* at 1338. The table “store[d] information related to each column in rows of
5 that same table, such that new columns can be added by creating new rows in the table,” as opposed to
6 conventional tables, which “require[d] a programmer to predefine a structure and subsequent [data] entry
7 [to] conform to that structure.” *Id.* at 1337–38. As applied here, *Enfish* is distinguishable on two grounds.
8 First, Cellspin fails to show that the data acquisition, transfer, and publication process described in the ‘794
9 Patent represents something more than a simple automation of the conventional (manual) process. As noted
10 above, “relying on a computer to perform routine tasks more quickly or accurately is insufficient to render a
11 patent claim eligible.” *OIP Techs.*, 788 F.3d at 1363 (Fed. Cir. 2015); *see also Phoenix Licensing, L.L.C. v.*
12 *Consumer Cellular, Inc.*, No. 6-CV-0152, 2017 WL 1065938, at *22–23 (E.D. Tex. 2017), *report and*
13 *recommendation adopted*, 2017 WL 1177988 (E.D. Tex. 2017) (“Problems such as ‘substantial amount of
14 human involvement,’” are “not the type of *true* technological problems solved by inventions held to be
15 patent-eligible by the Federal Circuit.”) (Emphasis in original.) By contrast, the claims in *Enfish* were
16 directed to the generation of tables with self-referential functionality which tables generated pursuant to the
17 conventional method lacked.

18 Second, unlike *Enfish*, the ‘794 Patent does not recite a “specific . . . structure” of computer
19 components used to carry out the purported improvement in computer functionality. *Enfish*, 822 F.3d at
20 1337. To fall outside the abstract idea exception based on improvements to a technological process, a claim
21 must “sufficiently describe how to achieve these results in a non-abstract way.” *Two-Way Media*, 874 F.3d
22 at 1337 (finding limitations requiring “sending” and “directing” of information “d[id] not sufficiently
23 describe how to achieve these results in a non-abstract way”). Here, the patent states that “the method and
24 system disclosed herein may be implemented in technologies that are pervasive [and] flexible” through
25 generic hardware and software. (‘794 Patent at 9:37-48, 10:10-13.) The asserted patent thus “fails to
26 provide any technical details for the tangible components” and “instead predominantly describe[] the system
27 and methods in purely functional terms” using conventional computer components and existing technology.
28 *See TLI*, 823 F.3d at 612. The mere utilization of Bluetooth or similar wireless technology is not sufficient,

1 as the patent acknowledges that Bluetooth was a well-known means to “connect[] and exchang[e]
2 information between devices, for example, mobile phones, laptops, personal computers (PCs), printers,
3 digital cameras, etc.” (’794 Patent at 3:49–53); *see also DIRECTV*, 838 F.3d at 1258 (finding that claims
4 directed to establishing a communication between two points was a “broad and familiar concept concerning
5 information distribution”).

6 With regard to *McRO*, the patents at issue concerned a method for automating the animation of lip
7 movement and facial expressions by replacing an animator’s subjective evaluation with automated rules.
8 *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1305 (Fed. Cir. 2016). The *McRO* Court
9 highlighted that the claims at issue recited “many exemplary rule sets that go beyond” merely identifying
10 “differences in mouth positions for similar phonemes based on context” which characterized the subjective
11 manual process. *Id.* at 1307. Further, the Court noted the lack of “evidence that the process previously used
12 by animators is the same as the process required by the claims [at issue].” *Id.* at 1314. Specifically, the
13 conventional process was driven by subjective human determinations “rather than specific, limited
14 mathematical rules.” *Id.* The Court thus found that the “computer is employed to perform a distinct process
15 to automate a task previously performed by humans.” *Id.* Here, by contrast, the asserted claims perform the
16 same process of acquiring, transferring, and publishing data that humans previously performed by using
17 existing wireless protocols and other well-known technology, albeit automatically using known computer
18 components. (*See* ’794 Patent at 1:38-47; 9:37-60.)

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

21 **B. Stage-Two Inquiry: Sufficient Inventive Concept?**

22 **1. Legal Standard**

23 Having determined that the claims at issue in the ’794 Patent are directed to an abstract idea, the
24 Stage-Two inquiry requires the Court to “determine whether the claim elements, when viewed individually
25 and as an ordered combination, contain an inventive concept sufficient to transform the claimed abstract idea
26 into a patent-eligible application.” *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364,
27 1373–74 (Fed. Cir. 2017); *see also BASCOM Glob; Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d
28 1341, 1350 (Fed. Cir. 2016) (stating that the “inventive concept may arise in one or more of the individual

1 claim limitations or in the ordered combination of the limitations”). “A claim contains an inventive concept
2 if it ‘include[s] additional features’ that are more than ‘well-understood, routine, conventional activities.’”
3 *Id.* (quoting *Alice*, 134 S. Ct. at 2357, 2359). The Federal Circuit has held that “in addressing the second
4 step of *Alice*, [] claiming the improved speed or efficiency inherent with applying the abstract idea on a
5 computer [does not] provide a sufficient inventive concept.” *Intellectual Ventures I LLC v. Capital One*
6 *Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015). “To save a patent at step two, an inventive concept must
7 be evident in the claims.” *Two-Way Media*, 784 F.3d at 1338 (citing *RecogniCorp*, 855 F.3d at 1327).

8 2. **Analysis of the ‘794 Patent**

9 Turning to the ‘794 Patent, the Court finds that the asserted claims “merely provide a generic
10 environment in which to carry out” the abstract ideas of acquiring, transferring, and publishing data. *TLI*,
11 823 F.3d at 611. The claim elements thus fail to supply an inventive concept sufficient to transform the
12 underlying abstract idea into patentable subject matter. As the Federal Circuit explained in *DIRECTV*,
13 claims which “recite the use of generic features of” hardware and software components “as well as routine
14 functions, such as transmitting and receiving signals to implement the underlying idea” do not contain a
15 sufficient inventive idea. *DIRECTV*, 838 F.3d at 1262.

16 Here, the “recited physical components[,]” namely a data capture device, paired Bluetooth
17 connection, and a Bluetooth enabled mobile device, “behave exactly as expected according to their ordinary
18 use.” *TLI*, 823 F.3d at 615. A patent “does not become nonabstract” merely because the claims are set in a
19 “technological environment” consisting of conventional components and utilize standard technology. *See*
20 *Symantec*, 838 F.3d at 1319; *see also Alice*, 134 S. Ct. at 2358. The Federal Circuit has “repeatedly held that
21 such invocations of computers and networks that are not even arguable inventive are insufficient to pass the
22 test of an inventive concept.”⁸ *Electric Power*, 830 F.3d at 1455-56.

23 Cellspin counters that the Asserted Patents present several “benefits from the inventiveness of the
24 claimed technology” including:

25
26 ⁸ Cellspin’s argument that the Asserted Patents are novel and non-obvious is not relevant to the
27 Section 101 analysis. *See Diamond v. Diehr*, 450 U.S. 175, 188-89 (1981) (“The ‘novelty’ of any element
28 or steps in a process, or even of the process itself, is of no relevance in determining whether the subject
matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

1
2 (1) the efficiencies of the claimed inventions, including over inferior alternative means
3 for achieving the same or similar ends of uploading content; (2) leveraging Internet
4 capabilities of mobile devices (through use of custom hardware and software) to greatly
5 enhance the functionality of Internet incapable data capture devices; (3) uploading
6 captured data from data capture devices to the Internet while avoiding the cost, memory
7 usage, complexity, hardware (e.g., cellular antenna), physical size, and battery
8 consumption of an Internet accessible mobile device, including without the data capture
9 device being capable of wireless Internet connections or being capable of communicating
10 in Internet accessible protocols such as HTTP; (4) minimizing power usage by the data
11 capture device, including to minimize the need to change batteries or recharge the device;
12 (5) using event notification, polling and request/return communication protocols over an
13 already paired connection to have the benefits from an efficient or automated upload
14 system while conserving resources such as batteries by avoiding the data capture device
15 broadcasting captured data when an intermediate mobile device is unavailable (*e.g.*, off
16 or out of Bluetooth range) or incapable of receiving captured data for uploading to the
17 Internet; and (6) applying HTTP in transit and on intermediary device.

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

27 The other proffered benefits which relate to improved battery consumption and power savings; order
28 or timing of the Bluetooth wireless pairing; and elimination of the need for bulky hardware and costly cell
phone services;⁹ do not appear in the patent’s specification. In *TLI*, the Federal Circuit rejected plaintiff’s

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

1 proffer of technological improvements which did not appear in the asserted patent’s specification, holding
2 that the court “need [] only look to the specification, which describes the [components] as either performing
3 basic computer functions such as sending and receiving data, or performing functions ‘known’ in the art.”
4 *TLI*, 823 F.3d at 612; *see also Cellular Commc’ns Equip. LLC v. AT&T Inc.*, 2017 WL 2984074, at *4 n.1
5 (E.D. Tex. 2017) (rejecting argument that a feature was inventive where the specification did not “reflect
6 such an insight”). Cellspin argues that these benefits “flow from” the ‘794 Patent but fails to identify any
7 specific section of the patent from which these benefits flow or articulate how these purported benefits “flow
8 from” the patent.¹⁰

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

18 By implementation of a handshake protocol, the BT communication device []
19 automatically transfers captured data, the multimedia content, and the associated files to
20 the client application [] on the mobile device []. For some external digital data capture
21 devices, the client application [] may not be able to detect the creation of a new file. In
22 such cases, the digital data capture device [] signals the client application [] in the event a
23 new file is created. **A file event listener in the client application [] listens for the
signal from the digital data capture device []. The user may then initiate the transfer
by a press of a button or a key on the digital data capture device [].**

24
25 ¹⁰ In any event, the specification acknowledges that Bluetooth was used in the prior art to “connect[]
26 and exchang[e] information between devices, for example, mobile phones, laptops, personal computers
27 (PCs), printers, digital cameras, etc.” (‘794 Patent at 3:49-52.) With regard to the timing of the Bluetooth
28 wireless paring, “there is nothing ‘inventive’ about shifting the timing of the data collection process.” *In re:*
Bill of Lading Transmission & Processing Sys. Patent Litig., 2016 WL 4505767, at *3 (S.D. Ohio 2016).

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

8 **C. The ‘752, ‘847, and ‘698 Patents**

9 With regard to the ‘752, ‘847, and ‘698 Patents, the Court finds that each of the Asserted Patents is
10 directed to substantially similar abstract idea, namely a method for capturing, transferring and publishing
11 data and multimedia content. Specifically, each patent recites the use of a Bluetooth enabled data capture
12 device or digital camera device to transfer data to a Bluetooth enabled mobile device which in turn publishes
13 the data on one or more websites automatically or with minimal user intervention. (*See* ‘752 Patent at
14 11:48-12:38; ‘847 Patent at 12:13-13:3; ‘698 Patent at 11:54-12:28.) Where all of the asserted patent claims
15

16 ¹¹ The term “battery” does appear in any of the Asserted Patents.

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

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

1 are “substantially similar and linked to the same abstract idea[,]” the Court need not “expressly address each
2 asserted claim” in determining whether the claims are patent eligible under Section 101. *TS Patents LLC v.*
3 *Yahoo! Inc.*, 279 F. Supp. 3d 968, 988 (N.D. Cal. 2017); *see also Content Extraction*, 776 F.3d at 1348
4 (finding that the district court “correctly determined that addressing each claim of the asserted patents was
5 unnecessary” because “all the claims are ‘substantially similar and linked to the same abstract idea’”).
6 Here, all Asserted Patents are “substantially similar and linked to the same abstract idea” of acquiring,
7 transferring, and publishing data on the internet. *See id.*

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

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

17 **IV. CONCLUSION**

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

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

24 **IT IS SO ORDERED.**

25 Dated: April 3, 2018

26 

27 **YVONNE GONZALEZ ROGERS**
28 **UNITED STATES DISTRICT COURT JUDGE**