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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 REGARDING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Case No. 17-cv-05928-YGR

Dkt. Nos. 148, 151

v.

MOOV, INC.,

Defendant.

Case No. 17-cv-05929-YGR

Dkt. Nos. 130, 133

v.

NIKE, INC.,

Defendant.

Case No. 17-cv-05931-YGR

Dkt. Nos. 128, 131

v.

UNDER ARMOUR, INC.,

Defendant.

Case No. 17-cv-05932-YGR

Dkt. Nos. 110, 113

v.

FOSSIL GROUP, INC., ET AL.,

Defendants.

Case No. 17-cv-05933-YGR

Dkt. Nos. 193, 199

v.

GARMIN INTERNATIONAL, INC., ET AL.,

Defendants.

Case No. 17-cv-05934-YGR

Dkt. Nos. 130, 133, 134

v.

NIKON AMERICAS, INC., ET AL.,

Defendants.

Case No. 17-cv-05936-YGR

Dkt. Nos. 127, 130

1 Defendants have filed a motion for summary challenging the validity of the asserted patents under 35
 2 U.S.C. § 101. Plaintiff opposes by identifying 55 inventive concepts in the 21 asserted claims. The Court
 3 has reviewed the alleged inventive concepts and finds them insufficiently tied to the claims.¹ Accordingly,
 4 the parties are **ORDERED** to (1) submit a chart linking each alleged inventive concept to the asserted claims,
 5 in the format illustrated below, and (2) identify representative claims that the Court may evaluate.

Alleged Inventive Concept	Relevant Claims	Relevant Limitation or Combination of Limitations	Representative Claim
Capturing and publishing data using different devices	Claim 1 of the '794 Patent, etc.	"acquiring new data in the Bluetooth enabled data captured device" . . . "transferring the new data received by the Bluetooth enabled mobile device . . .to the one or more web services"	Claim 1 of the '794 Patent
The ordered combination of establishing a pair connection before sending data	Claim 1 of the '794 Patent, etc.	"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"	Claim 1 of the '794 Patent

20 A claim is representative if "the patentee does not present any meaningful argument for the
 21 distinctive significance of any claim limitation not found in the representative claim or if the parties agree to
 22 treat a claim is representative." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1365 (Fed. Cir. 2018). Thus, the
 23 parties shall endeavor to agree, and if they cannot agree, plaintiff shall identify a meaningful argument, with
 24

25
 26 ¹ Although the Court has previously found claim 1 of the '794 Patent representative of all asserted
 27 claims, that is plainly no longer the case. For example, the parties agree that use of HTTP is an alleged
 28 inventive concept, but claim 1 of the '794 Patent does not mention HTTP. A section 101 analysis divorced
 from the claims is improper. *See Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1293
 (Fed. Cir. 2020) ("[F]eatures that are not claimed are irrelevant as to step 1 or step 2.").


1 citation to its opposition brief, that a limitation that presents a distinctive significance to the section 101
2 analysis. Alternatively, the parties may identify representative claims for each alleged inventive concept
3 while noting that claims generally overlap in those concepts.

4 The chart should be kept as short as possible. Minor differences in claim language should not be
5 noted; language from the representative claim should be used instead. Failure to include an alleged
6 inventive concept in the chart shall be deemed waiver of arguments related to that concept. The parties shall
7 file the chart and any statement regarding representative claims by **December 22, 2020**.

8 The hearing scheduled for December 15, 2020 regarding defendants' motion for summary judgment,
9 plaintiff's motion to strike, and defendant Garmin's motion to amend invalidity contentions is **VACATED**.
10 The Court will reset the hearing date at a later date.

11
12 **IT IS SO ORDERED.**

13 Dated: December 10, 2020

14 
15 **YVONNE GONZALEZ ROGERS**
16 **UNITED STATES DISTRICT COURT JUDGE**