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9 Attorneys for Plaintiff,
10 CELLSPIN SOFT INC.

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 OAKLAND DIVISION

14 Case No. 4:17-cv-05931

15 CELLSPIN SOFT, INC.,

16 Plaintiff,

17 v.

18 NIKE, INC.,

19 Defendant.

20 **AMENDED COMPLAINT FOR
21 INFRINGEMENT OF U.S. PATENT
22 NOS. 8,738,794, 8,892,752, AND
23 9,749,847¹**

24 **DEMAND FOR JURY TRIAL**

25 Original Complaint Filed: October 16, 2017
26 Judge: Honorable Yvonne G. Rogers

27 **NATURE OF THE ACTION**

28 1. This is a patent infringement action to stop Defendant's infringement of United States Patent Nos. 8,738,794 entitled "Automatic Multimedia Upload for Publishing Data and Multimedia Content" (the "'794 patent"), 8,892,752 entitled "Automatic Multimedia Upload for Publishing Data and Multimedia Content" (the "'752 patent"), and 9,749,847 entitled

29 ¹ Cellspin files this Amended Complaint pursuant to the Court's very recent February 27th Order approving the parties' stipulation that pleadings in this case may be "amended, without the need for leave of Court, up to, and including June 5, 2018," and pursuant to very recent decisions from the Court of Appeals for the Federal Circuit -- *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. Cellspin is mindful of the fact that § 101 motions (briefed prior to these recent decisions from the Court of Appeals for the Federal Circuit) are currently pending and set for hearing. Cellspin hereby stipulates and agrees that Defendants need not re-file their § 101 motions and that the filing of this Amended Complaint does not render moot such pending motions, and Cellspin is fully prepared to have all relevant matters heard at the Court's upcoming hearing § 101 motions.

1 “Automatic Multimedia Upload for Publishing Data and Multimedia Content” (the “‘847
2 patent”) (collectively, the “patents-in-suit”).

3 **THE PARTIES**

4 2. Plaintiff, Cellspin Soft, Inc. (“Cellspin”), is a California corporation with an office and
5 place business at 1410 Mercy Street, Mountain View, California 94041.

6 3. Upon information and belief, Defendant, Nike, Inc. (“Nike”), is a corporation organized
7 and existing under the laws of the State of Oregon, with its principal place of business at One
8 Bowerman Drive, Beaverton, Oregon 97005-6453. Nike has already been served with process
9 and is being served with this Amended Complaint via ECF.

10 **JURISDICTION AND VENUE**

11 4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq.,
12 including 35 U.S.C. §§ 271, 281, 283, and 284. This Court has subject matter jurisdiction over
13 this case for patent infringement, including pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14 5. Plaintiff is the assignee of the Patents-in-Suit with all right, title and interest to bring the
15 claims herein comprising those for past and present infringement, including to recover
16 damages therefor.

17 6. The Court has personal jurisdiction over Nike, including because Nike has minimum
18 contacts within the State of California; Nike has purposefully availed itself of the privileges of
19 conducting business in the State of California; Nike regularly conducts business within the
20 State of California; and Plaintiff’s cause of action arises directly from Nike’s business contacts
21 and other activities in the State of California, including at least by virtue of Nike’s infringing
22 methods and products, which are at least practiced, made, used, offered for sale, and sold in
23 the State of California. Nike is subject to this Court’s specific and general personal jurisdiction,
24 pursuant to due process and the California Long Arm Statute, due at least to its continuous and
25 systematic business contacts in California. Further, on information and belief, Nike is subject
26 to the Court’s specific jurisdiction, including because Nike has committed patent infringement
27 in the State of California, including as detailed herein. In addition, Nike induces infringement
28 of the patents-in-suit by customers and/or infringing users located in California. Further, on

1 information and belief, Nike regularly conducts and/or solicits business, engages in other
2 persistent courses of conduct, and/or derives substantial revenue from goods and services
3 provided to persons and/or entities in California.

4 7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), including
5 because Nike has at least one regular and established place of business, including Nike Stores
6 and/or Nike Outlet Stores, in this District and in California, and at least some of its
7 infringement of the patent-in-suit occurs in this District and in California.

8 THE PATENTS-IN-SUIT

9 8. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

10 9. The claims of the Patents-in-Suit, including the asserted claims, when viewed as a
11 whole, including as an ordered combination, are not merely the recitation of well-understood,
12 routine, or conventional technologies or components. The claimed inventions were not well-
13 known, routine, or conventional at the time of the invention, over ten years ago, and represent
14 specific improvements over the prior art and prior existing systems and methods.

15 10. At the time of the patented inventions, publishing captured data from a data capture
16 device to a web service was cumbersome and inefficient.

17 11. At the time of the priority date of the Patents-in-Suit (December 2007), the same year
18 the world's first prominent mobile "smartphone" was released, and 6 months before the
19 world's first prominent mobile "app store" (*see* History of the iPhone on Wikipedia at
20 https://en.wikipedia.org/wiki/History_of_iPhone & App Store (iOS) on Wikipedia at
21 [https://en.wikipedia.org/wiki/App_Store_\(iOS\)](https://en.wikipedia.org/wiki/App_Store_(iOS))), it was a cumbersome and time consuming
22 process to use a data capture device to acquire data, send that data to a mobile device with an
23 internet connection, and the mobile device to upload that wirelessly received data to a website,
24 especially for large data such as pictures or video data.

25 12. The most common and practical way to transfer large data was to physically plug a data
26 capture device into, or transfer a memory card from a data capture device to, a computer,
27 upload the data on the capture device or memory card to the computer, and further upload the
28 data from the computer to a web service. *See, e.g.*, '794 at 1:37-54. In the case of using a 2007

1 mobile phone, the software on both the data capture device and mobile phone that established
2 a paired connection and potentially transferred large data was extremely under developed and
3 not the intended or foreseeable use of the mobile phone. Further, HTTP transfers of data
4 received over the paired wireless connection to web services was non-existent. Mobile phones
5 of that time exclusively used SMS,² MMS,³ or email-based communication methods (such as
6 POP3 or IMAP⁴ to transfer data that was acquired by the mobile phone. It was not until 2009
7 or later when the leading tech companies, such as Facebook and Google, started releasing
8 HTTP APIs for developers to utilize a HTTP transfer protocol for mobile devices. *See*
9 <https://developers.facebook.com/docs/graph-api/changelog/archive>; [http://mashable.com/](http://mashable.com/2009/05/19/twitter-share-images/#K9kEHwxammq0)
10 [2009/05/19/twitter-share-images/#K9kEHwxammq0](http://mashable.com/2009/05/19/twitter-share-images/#K9kEHwxammq0). Even in 2009 when Facebook and
11 Google HTTP APIs were released, the released HTTP APIs were only used for data that was
12 acquired by the mobile phone, and not for the data that was received wirelessly over the secure
13 paired connection from a physically separate data capture device. Applying HTTP to a data in
14 transit and on intermediary mobile device was not developed until the inventions of the
15 Patents-in-Suit.

16 13. Including as of the priority date of the Patents-in-Suit, there have been many, albeit
17 vastly inferior, means outside of the claimed invention for achieving the ends of acquiring and
18 transferring data for publication, including on the Internet. For example, as noted in the
19 specification,

20 Typically, the user would capture an image using a digital camera or a video
21 camera, store the image on a memory device of the digital camera, and transfer
22 the image to a computing device such as a personal computer (PC). In order to
23 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.

24 *See, e.g.*, '794/1:38-47. Another inferior method would be to have the capture device simply

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26 ² Short Message Service (SMS) is a text messaging service component of most telephone, World Wide Web,
and mobile device systems. It uses standardized communication protocols to enable mobile devices to
exchange short text messages. *See* <https://en.wikipedia.org/wiki/SMS>.

27 ³ Multimedia Messaging Service (MMS) is a standard way to send messages that include multimedia content
28 to and from a mobile phone over a cellular network. *See*
https://en.wikipedia.org/wiki/Multimedia_Messaging_Service.

⁴ *See* <https://en.wikipedia.org/wiki/Email#Types>.

1 forward data to a mobile device as captured. This example is inferior including because,
2 without a paired connection, there is no assurance that the mobile device is capable (*e.g.*, on
3 and sufficiently near) of receiving the data. Such constant and inefficient broadcasting would
4 quickly drain the battery of the capture device. Another inferior method for posting data from
5 a capture device onto the Internet is to have a capture device with built in mobile wireless
6 Internet, for example cellular, capability. As noted in the specification, “[t]he digital data
7 capture device is physically separated from the BT enabled mobile device.” *See, e.g.*, ‘794/2:2-
8 3. This example is inferior including because, especially at the time of the patent priority date
9 in 2007 but also today, it makes the combined apparatus bulky, expensive in terms of hardware,
10 and expensive in terms of requiring a user to purchase an extra and/or separate cellular service
11 for the data capture device.

12 14. Prior art methods for posting data from a data capture device onto the Internet were
13 inferior. Back at the time of invention, capture devices such as cameras had only rudimentary
14 wireless capabilities as exemplified by the U.S. Patent Application No. 2003/015,796 to
15 Kennedy (“Kennedy”) and ancillary prior art addressed extensively during prosecution of
16 certain Patents-in-Suit and related patents. As noted by the inventors during prosecution of the
17 ‘794 patent, in every day scenarios, the computer attaches a hypertext transfer protocol
18 (HTTP)_header and user ID to the data generated by the computer (“native data”), and the
19 existing home wireless routers did not apply website user information or apply HTTP to the
20 data sent over the wireless network from the computer to the home wireless router. However,
21 the claimed invention improves and builds on this, including because the claimed mobile
22 device is configured to send a HTTP request comprising the website user information and the
23 non-native data, such that the mobile device is acting as more than just a normal home wireless
24 router. According to the inventors, the wireless pairing established is therefore very important
25 for the transfer of non-native data that is acquired by a physically separate device and then
26 transferred to the mobile device over the trusted paired wireless connection.

27 15. Including at the time of the invention, data capture devices posed a number of specific
28 challenges associated with publishing data to a web service from a capture device using a

1 mobile device. The process to transfer new data from a data capture device to a web service
2 was cumbersome and time consuming for the user. Further, data capture devices typically
3 house small batteries, so users would be obligated to constantly charge batteries. The
4 technology embodied in the Patents-in-Suit solved these, and other, problems. The claimed
5 inventions comprise superior ways to achieve the ends of uploading data to the Internet via a
6 mobile device. The claimed processes of the asserted claims seamlessly transfer data from a
7 data capture device to a web service with little to no user intervention using a mobile device
8 with a wireless internet connection as the center piece doing most of the heavy lifting. Making
9 changes to the data in transit, at the mobile device, and not at the data capture device where
10 the data originated from, results in a much-improved user experience making the process much
11 easier on the user and improving data capture device battery life. The method of receiving the
12 data at the mobile device, attaching user identifying information and HTTP methods to the
13 data relieves the data capture device or web service of performing those steps which results in
14 a seamless and improved user experience over the previous methods.

15 16. Among other things, the inventors of the Patents-in-Suit wanted to post onto the Internet
16 content captured while a capture device, such a camera, was capturing data, for example
17 photographs, in “real time” situations, for example, when the capture device was in remote
18 areas, adverse conditions or on the move. As noted in the specification, “[a] user may need to
19 capture and publish data and multimedia content on the Internet in real time.” *See, e.g.,*
20 ‘794/1:37-38. As further noted in the specification, “there is a need for a method and system
21 to utilize a digital data capture device in conjunction with a mobile device for automatically
22 detecting capture of data and multimedia content, transferring the captured data and
23 multimedia content to the mobile device, and publishing the data and multimedia content on
24 one or more websites automatically or with minimal user intervention.” *See, e.g.,* ‘794/1:48-
25 54. But existing technology offered only unacceptably inferior solutions of posting to the
26 Internet content captured from a capture device in “real time” situations.

27 17. The claims of the Patents-in-Suit are directed to specific improvements in computer and
28 networking functionality and capabilities. Among other things, the claimed inventions

1 improve functionality of data capture devices and methods, systems and networks comprising
2 those devices. Including as noted in the Patents-in-Suit, the claimed technologies comprise
3 innovative systems and processes which use less power than those existing at the time, and
4 allow for multiple efficiencies resulting in a better user experience and reduced costs. The
5 Patents-in-Suit thus provided concrete applications that improved computer and networking
6 technology, including for publishing directly to a web service from a data capture device.

7 18. Additionally, the inventions of the asserted claims of the Patents-in-Suit comprise
8 improvements in improving battery life on the data capture device, including that they reduce
9 the processing done by the device and thus reduce battery consumption. Particularly applicable
10 to wireless data capture devices small in size, such as petite fitness tracking devices, battery
11 life plays a major role in the user experience. The Patents-in-Suit allow for a data capture
12 device to be in a low power state to conserve battery life, and send an event notification to the
13 mobile device to initiate a higher power consumption state during a brief communication
14 period, and then revert back to the lower power consumption state. This saves a tremendous
15 amount of power, including because the application on the mobile device, or the Bluetooth
16 client, is charged with the majority of listening, rather than the data capture device, or the
17 Bluetooth server, which results in much better battery life for the data capture device, including
18 since there is “[a] file event listener *in the client application* 203 [which] listens for the signal
19 from the digital data capture device 201. ‘794 at 4:66-5:1 (emphasis added). Similarly, the
20 Patents-in-Suit allow for a data capture device to be in a low power state to conserve battery
21 life because in certain claimed embodiment the application on the mobile device with the
22 internet connection, is charged with polling the data capture device for new data to transfer.

23 19. In sum, including as noted above, the claimed technologies of the Patents-in-Suit
24 improved, *inter alia*, prior computer and networking technology, including in connection with:

- 25 a. Improving and increasing efficiencies of the claimed inventions, including over
26 inferior alternative means for achieving the same or similar ends of uploading
27 content, including by reducing or eliminating the cumbersome steps of previous
28 methods of data transfer to the Internet and providing the ability to upload or
transfer the captured data at a time subsequent to the capture of the data where a
connection to the Internet may not be available to the data capture device. *See*,
e.g., ‘794/1:37-54 & 4:55-5:3.

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- b. Leveraging the capabilities of mobile devices, including their Internet connection capabilities (through use of custom hardware and/or software), including by shifting the transfer of data from the data capture device to the mobile device, to greatly enhance the functionality of Internet incapable data capture devices, including because the mobile device, with its larger storage, may then store the captured data for upload or transfer to the web service via the Internet at a later time. *See, e.g.*, ‘794/2:26-34, 5:18-56, 6:2-46, 9:37-60, & 10:10-61.
 - c. Uploading captured data from data capture devices to the Internet while avoiding the cost, memory usage, complexity, hardware (*e.g.*, cellular antenna), physical size, and battery consumption of an Internet accessible mobile device, including without the data capture device being capable of wireless Internet connections or being capable of communicating in Internet accessible protocols such as HTTP. *See, e.g.*, ‘794/2:46-54, 5:4-11, 5:55-6:8, 7:29-33, 7:62-67, 8:23-9:26.
 - d. Minimizing power usage by the data capture device, including to minimize the need to change batteries or recharge the device. *See, e.g.*, ‘794 at 4:66-5:1.
 - e. Using event notification, polling and request/return communication protocols over an already paired connection to have the benefits from an efficient or automated upload system while conserving resources such as batteries by avoiding the data capture device broadcasting captured data when an intermediate mobile device is unavailable (*e.g.*, off or out of Bluetooth range) or incapable of receiving captured data for uploading to the Internet. *See, e.g.*, ‘794/4:55-5:3 & 5:12-17.
 - f. Applying HTTP in transit and on an intermediary device. *See, e.g.*, ‘794/9:61-10:9.

16 20. The claimed inventions also provide computer and network efficiency at least because

17 they allow data capture devices to have the useful and improved claimed sharing functionality

18 without the need to include expensive and battery consuming electronics, cellular antenna,

19 paying for separate cellular service, and extra software and data processing required on the

20 data capture device. The inventors did more than simply apply current technology to an

21 existing problem. Their invention, as embodied in the asserted claims, was a significant

22 advancement in mobile data capture and sharing technology. The inventions covered by the

23 asserted claims comprise utilization of the mobile Internet to create a novel architecture

24 enabling data captured by non-Internet enabled capture devices to quickly, easily and

25 automatically be uploaded to the Internet, and more specifically to what is referred to today as

26 “the cloud” and “social media.” Additionally, the claimed inventions also improve pairing

27 identification, different ways to transfer of new-data between paired devices (event

28 notification, polling, mobile initiated request response), and use of HTTP and adding user

1 information to the wirelessly received new-data on the intermediary mobile device, when the
2 new-data is in transit to the website.

3 21. These noted improvements over the prior art represent meaningful limitations and/or
4 inventive concepts based upon the state of the art over a decade ago. Further, including in view
5 of these specific improvements, the inventions of the asserted claims, when such claims are
6 viewed as a whole and in ordered combination, are not routine, well-understood, conventional,
7 generic, existing, commonly used, well known, previously known, typical, and the like over a
8 decade ago, including because, until inventions of the asserted claims of the Patents-in-Suit,
9 the claimed inventions were not existing or even considered in the field.

10 22. The asserted claims, including as a whole and where applicable in ordered combination,
11 comprise, *inter alia*, a non-conventional and non-generic arrangement of communications
12 between a data capture device and a Bluetooth enabled mobile device that is a technical
13 improvement to the communications between the devices and web services, including those
14 improvements noted above.

15 23. The claimed inventions are necessarily rooted in computer technology, *i.e.*, portable
16 monitoring device technology, and comprise improvement over prior technologies in order to
17 overcome the problems, including those noted above, specifically arising in the realm of
18 computer networks. The claimed solutions amount to an inventive concept for resolving the
19 particular problems and inefficiencies noted above, including in connection publishing data
20 from a data capture device to the Internet described.

21 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,738,794**

22 24. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

23 25. United States Patent No. 8,738,794 Patent was duly and legally issued by the USPTO
24 on May 27, 2014 after full and fair examination. *See* Exhibit A.

25 26. Claims of the '794 Patent comprise, in general, methods comprising acquiring new data
26 in a data capture device after establishing a paired connection with a mobile device;
27 determining the existence of new data by the capture device; transferring the new data from
28 the capture device to the mobile device automatically over the paired connection; receiving, at

1 the mobile device, the new data from the data capture device; applying a user identifier
2 uniquely identifying a particular user to the new data; transferring the new data along with the
3 user identifier to a web service; receiving at the web service the new data and user identifier;
4 and making available, at the web service, the new data received from the mobile device over
5 the internet, wherein the new data corresponds to a particular user identifier.

6 27. Nike has infringed, and is now infringing, the '794 patent, including at least claims 1,
7 2, 3, 4, 7, and 9, in this judicial district, the State of California, and elsewhere, in violation of
8 35 U.S.C. § 271 through actions comprising the practicing, without authority from Plaintiff,
9 methods for acquiring and transferring data from Nike Bluetooth enabled data capture devices
10 to Nike web services via Bluetooth enabled computing devices. On information and belief,
11 Nike practices, and/or induces others to practice, the claimed methods via its fitness tracking
12 devices, including smart watches, wearables, fitness bands, and other data capture devices,
13 designed to monitor a user's biological and/or fitness information and metrics, *e.g.*, heart rate
14 and physical activity such as walking and/or running, as specified herein, comprising
15 Bluetooth functionality, with such products comprising the Nike+ Fuelband, and Nike+
16 Fuelband SE, including Model Nos. WM0069-002, WM0110-003-Parent, and WM0105-008-
17 Parent, including when used in conjunction with Nike Mobile Applications (including Nike+,
18 Nike+ FuelBand, Nike+ Running Club, and Nike+ Training Club) comprising the Nike iOS
19 Mobile Application and Nike Android Mobile Application, and when used in conjunction with
20 Nike's web services comprising www.nike.com.

21 28. Without limitation, the accused methods comprising Nike devices which practice said
22 methods support Bluetooth protocols, including Bluetooth 4.0, which enables connection
23 between such devices and other Bluetooth-enabled devices, such as a cell phone, tablet, laptop,
24 or other computing device, and which permits the user to acquire and transfer data from Nike
25 devices to the Nike web services via a Bluetooth enabled computing device. The accused Nike
26 methods comprise acquiring and determining the existence of new tracking data, such as heart
27 rate, steps, etc., in the Nike device after establishing a paired connection with the user's
28 computing device, and transferring the new data from the Nike device to the user's computing

1 device automatically over the paired connection. The accused Nike methods further comprise
2 Nike applications on the user's computing device receiving the new data from the Nike device
3 and transferring the new data, along with the user's account information identifying the user,
4 and tied to the new data, to the Nike web service, such that the Nike web service receives, and
5 makes available, the new data received from the user's computing device over the Internet.
6 Upon information and belief, at least through Nike's efforts to test, demonstrate, and otherwise
7 use Nike devices, Nike has practiced the accused Nike methods via at least the use of Nike
8 devices, comprising at least establishing a Bluetooth paired connection to the Nike application,
9 capturing new data at the Nike device, *e.g.*, heart rate or step counting data, and sending a
10 notification along with the new data to the Nike application, wherein the Nike application
11 sends the new data, along with a user identifier, to the Nike web service.

12 29. Additionally, or in the alternative, Nike has infringed, and now infringing, the '794
13 Patent in this judicial district, the State of California, and elsewhere, including by jointly with
14 its end users and/or customers, by and through the use of the Nike devices, applications, and
15 web services noted above. Nike's infringement comprises joint performance of the claimed
16 methods by Nike and/or its customers and/or end users comprising acquiring and transferring
17 data from Nike Bluetooth enabled data capture devices to Nike web services via Bluetooth
18 enabled computing devices. Further, Nike conditions receipt of the benefits of the use of
19 Nike's web services and applications, including storing and viewing the user's data within
20 Nike's web service and applications, upon performance by its customers and/or end users of
21 one or more steps of the claimed methods. Nike further establishes at least the manner of the
22 performance of these steps by its customers and/or end users as defined in Nike devices and
23 applications, including that the customer and/or end user must create an account via the Nike
24 web service, link the Nike device to the account, and sync the Nike device to the user's
25 computing device and Nike application thereon, in order to receive the noted benefits.

26 30. Without limitation, Nike performs at least the steps comprising providing software
27 modules on the Nike devices and the user's computing device, receiving at the Nike web
28 services new data and the user's account information, and making available the new data for

1 consumption over the internet. Further, Nike conditions the receipt of the above noted benefits
2 upon its customers and/or end users performing at least the steps comprising establishing a
3 connection between the Nike devices and the user's computing device, acquiring new data
4 after the established connection, determining the existence of new data on the Nike device and
5 sending a data signal to the Nike applications, wherein the signal comprises a portion of the
6 new data, transferring the new data from the Nike device to the Nike applications, receiving
7 the new data at the Nike applications, applying the user's account information to the new data,
8 and transferring the new data, along with the user's account information, to the Nike web
9 services.

10 31. Nike has had notice of its infringement of the '794 patent pursuant to notifications from
11 Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017.

12 32. To the extent Nike continues, and has continued, its infringing activities noted above in
13 an infringing manner post-notice of the '794 patent, such infringement is necessarily willful
14 and deliberate. Plaintiff believes and contends that Nike's continuance of its clear and
15 inexcusable infringement of the '794 patent post notice is willful, wanton, malicious, bad-
16 faith, deliberate, and/or consciously wrongful.

17 33. On account of the foregoing, Plaintiff contends such activities by Nike qualify this as
18 an egregious case of misconduct beyond typical infringement, entitling Plaintiff to enhanced
19 damages. Including based on the foregoing, Plaintiff hereby respectfully requests an award of
20 enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

21 34. Each of Nike's aforesaid activities have been without authority and/or license from
22 Plaintiff.

23 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,892,752**

24 35. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

25 36. U.S. Patent No. 8,892,752 was duly and legally issued by the USPTO on November 18,
26 2014 after full and fair examination. *See* Exhibit B.

27 37. Claims of the '752 Patent comprise, generally, methods comprising establishing a
28 secure paired Bluetooth connection between a Bluetooth enabled data capture device and a

1 Bluetooth enabled mobile device using an encryption key; acquiring new data in the capture
2 device after the paired connection is established; receiving a message from the mobile device
3 over the paired connection to enable event notification, corresponding to new data on the
4 capture device; determining existence of the new data for transfer; sending an event
5 notification to the mobile device, corresponding to existence of new data for transfer, over the
6 paired connection, wherein the mobile device is configured to listen for the event notification;
7 and transferring the encrypted data from the data capture device to the mobile device, over the
8 paired connection, wherein the mobile device sends the obtained new data with an attached
9 user identifier, a remote procedure call or hypertext transfer protocol method, and a destination
10 web address to a remote internet server.

11 38. Nike has infringed, and is now infringing, the '752 patent, including at least claims 1,
12 2, 4, 5, 12, 13, and 14, in this judicial district, the State of California, and elsewhere, in
13 violation of 35 U.S.C. § 271 through actions comprising the practicing, without authority from
14 Plaintiff, methods for transferring data from Nike Bluetooth enabled data capture device to
15 remote Nike internet servers via Bluetooth enabled computing devices. On information and
16 belief, Nike practices, and/or induces others to practice, the claimed methods via its fitness
17 tracking devices, including smart watches, wearables, fitness bands, and other data capture
18 devices, designed to monitor a user's biological and/or fitness information and metrics, *e.g.*,
19 heart rate and physical activity such as walking and/or running, as specified herein, comprising
20 Bluetooth functionality, with such products comprising the Nike+ Fuelband, and Nike+
21 Fuelband SE, including Model Nos. WM0069-002, WM0110-003-Parent, and WM0105-008-
22 Parent, including when used in conjunction with Nike Mobile Applications (including Nike+,
23 Nike+ FuelBand, Nike+ Running Club, and Nike+ Training Club) comprising the Nike iOS
24 Mobile Application and Nike Android Mobile Application, and when used in conjunction with
25 Nike's web services comprising www.nike.com.

26 39. Without limitation, the accused methods comprising Nike devices which practice said
27 methods support Bluetooth protocols, including Bluetooth 4.0, which enables connection
28 between these devices and other Bluetooth-enabled devices, such as a cell phone, tablet,

1 laptop, or other computing device, which permits the user to establish a secure connection
2 between Nike devices and a user's computing device and acquire and transfer data from the
3 Nike devices to the Nike web services via the user's computing device. The accused Nike
4 methods comprise establishing a secure paired Bluetooth connection between the Nike device
5 and the user's computing device using a Bluetooth encryption key. Once paired, new data is
6 acquired on the Nike device, the Nike device receives a message from the user's computing
7 device over the paired connection to enable event notifications which correspond to new data
8 on the Nike device, the Nike device determines the existence of the new data for transfer, and
9 the Nike device sends an event notification to the user's computing device over the paired
10 connection, corresponding to existence of new data for transfer, wherein the user's computing
11 device is configured to listen for the event notification. The encrypted data is transferred from
12 the Nike device to the user's computing device over the paired connection, wherein the user's
13 computing device sends the obtained new data along with the user's account information, a
14 remote procedure call or hypertext transfer protocol operation, and a destination web address
15 to the Nike web server. Upon information and belief, at least through Nike's efforts to test,
16 demonstrate, and otherwise use Nike devices, Nike has practiced the accused Nike methods
17 via at least the use of Nike devices, comprising at least establishing a Bluetooth paired
18 connection to the Nike application, capturing new data at the Nike device, *e.g.*, heart rate or
19 step counting data, and sending a notification along with the new data to the Nike application,
20 wherein the Nike application sends the new data, along with a user's account information, to
21 the Nike web service.

22 40. Nike has had notice of its infringement of the '752 patent pursuant to notifications from
23 Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017.

24 41. Additionally, or in the alternative, Nike has induced, and continues to induce,
25 infringement of the '752 Patent in this judicial district, the State of California, and elsewhere,
26 by intentionally inducing direct infringement of the '752 Patent, including by aiding or
27 abetting infringement by its end users and/or customers, by and through at least use of the Nike
28 products and applications noted above. Such aiding and abetting comprises providing

1 products, devices, software, web services, and/or instructions regarding the use and/or
2 operation of the Nike devices, applications, and web services in an infringing manner. Further,
3 the direct infringement of Nike's end users and/or customers that occurs in connection with
4 Nike's applications and/or web services occurs under the direction and control of Nike. Such
5 induced infringement has occurred since Nike became aware of the '752 Patent, at a minimum,
6 as noted above.

7 42. To the extent Nike continues, and has continued, its infringing activities noted above in
8 an infringing manner post-notice of the '752 patent, such infringement is necessarily willful
9 and deliberate. Plaintiff believes and contends that Nike's continuance of its clear and
10 inexcusable infringement of the '752 patent post notice is willful, wanton, malicious, bad-
11 faith, deliberate, and/or consciously wrongful.

12 43. On account of the foregoing, Plaintiff contends such activities by Nike qualify this as
13 an egregious case of misconduct beyond typical infringement, entitling Plaintiff to enhanced
14 damages. Including based on the foregoing, Plaintiff requests an award enhanced damages,
15 including treble damages, pursuant to 35 U.S.C. § 284.

16 44. Each of Nike's aforesaid activities have been without authority and/or license from
17 Plaintiff.

18 **COUNT III – INFRINGEMENT OF U.S. PATENT NO. 9,749,847**

19 45. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

20 46. U.S. Patent No. 9,749,847 was duly and legally issued by the USPTO on August 29,
21 2017 after full and fair examination. *See* Exhibit C.

22 47. Claims of the '847 Patent comprise, generally, systems comprising a capture device
23 comprising: a communication device configured to establish a secure paired connection with
24 a cellular phone, a processor configured to acquire new-data using a data capture circuitry after
25 the paired connection is established coupled to a memory device, wherein said processor is
26 configured to store the acquired new-data in the memory device and send an event notification
27 along with the acquired new-data to the authenticated cellular phone over the established
28 paired connection; and a mobile application comprising a graphical user interface (GUI) in the

1 cellular phone configured to listen for and receive the event notification, receive the acquired
2 new-data over the established paired connection, store the new-data in a memory device of the
3 cellular phone before transfer to a website, and use HTTP to transfer the new-data, along with
4 user information, to the website over a cellular data network.

5 48. Nike has infringed, and is now infringing, the '847 patent, including at least claims 1,
6 2, and 3, in this judicial district, the State of California, and elsewhere, in violation of 35 U.S.C.
7 § 271 through actions comprising the making, using, offering for sale, and/or selling, without
8 authority from Plaintiff, systems for transferring data from Nike Bluetooth enabled data
9 capture devices to Nike websites via Bluetooth enabled cellular phones. On information and
10 belief, Nike makes, uses, offers for sale, and/or sells, and/or induces others to use, the claimed
11 systems, including fitness tracking devices, including smart watches, wearables, fitness bands,
12 and other data capture devices, designed to monitor a user's biological and/or fitness
13 information and metrics, *e.g.*, heart rate and physical activity such as walking and/or running,
14 as specified herein, comprising Bluetooth functionality, with such products comprising the
15 Nike+ Fuelband, and Nike+ Fuelband SE, including Model Nos. WM0069-002, WM0110-
16 003-Parent, and WM0105-008-Parent, including when used in conjunction with Nike Mobile
17 Applications (including Nike+, Nike+ FuelBand, Nike+ Running Club, and Nike+ Training
18 Club) comprising the Nike iOS Mobile Application and Nike Android Mobile Application.

19 49. Without limitation, the accused Nike devices support Bluetooth protocols, including
20 Bluetooth 4.0, which enables connection between such devices and other Bluetooth-enabled
21 devices, such as a cellular phone, which permits the user to establish a secure connection
22 between the Nike devices and a user's computing device and acquire and transfer data from
23 the Nike devices to the Nike web services via the user's computing device. These Nike devices
24 comprise capture devices, comprising a communication device within the Nike devices
25 configured to establish a secure paired connection with a user's cellular phone, a processor
26 configured to acquire new-data on the Nike device, *e.g.*, heart rate or step tracking data, using
27 data capture circuitry within the Nike devices after the paired connection is established. The
28 processor within the Nike devices is coupled to a memory device within said devices, wherein

1 said processor is configured to store the acquired new-data in the memory device and send an
2 event notification, along with the acquired new-data, to the user's authenticated and paired
3 cellular phone over the established paired connection. The Nike application comprises a
4 graphical user interface (GUI) for operation on the user's cellular phone, and the Nike
5 application is configured to listen for and receive the event notification from the Nike devices,
6 receive the acquired new-data over the established paired connection from the Nike devices,
7 store the new-data in a memory device of the user's cellular phone before transfer to the Nike
8 websites, and use HTTP to transfer the new-data, along with the user's account information,
9 to the Nike websites over a cellular data network, such as the user's cellular network. In
10 addition, and in the alternative, to Nike's making, offering for sale, and/or selling of the Nike
11 devices and applications, upon information and belief, at least through Nike's efforts to test,
12 demonstrate, and otherwise use Nike devices, Nike has used the claimed systems via at least
13 the use of the Nike devices, comprising at least establishing a Bluetooth paired connection to
14 the Nike application, capturing new data at the Nike device, *e.g.*, heart rate or step counting
15 data, and sending a notification, along with the new data, to the Nike application, wherein the
16 Nike application sends the new data, along with a user's account information, to the Nike
17 website.

18 50. Nike has had notice of its infringement of the '847 patent pursuant to notification from
19 Plaintiff comprising a letter mailed on August 31, 2017.

20 51. Additionally, or in the alternative, Nike has induced, and continues to induce,
21 infringement of the '847 Patent in this judicial district, the State of California, and elsewhere,
22 by intentionally inducing direct infringement of the '847 Patent, including by aiding or
23 abetting infringement by its end users and/or customers, by and through at least Nike's making,
24 offering for sale, and/or selling, without authority from Plaintiff, the Nike devices and
25 applications noted above. Such aiding and abetting comprises providing products, devices,
26 hardware, software, websites, and/or instructions, including providing the accused Nike
27 devices and applications to customers and/or end users who, in turn, use the claimed systems,
28 including as noted above. Such induced infringement has occurred since Nike became aware

1 of the '847 Patent, at a minimum, as noted above.

2 52. To the extent Nike continues, and has continued, its infringing activities noted above in
3 an infringing manner post-notice of the '847 patent, such infringement is necessarily willful
4 and deliberate. Plaintiff believes and contends that Nike's continuance of its clear and
5 inexcusable infringement of the '847 patent post notice is willful, wanton, malicious, bad-
6 faith, deliberate, and/or consciously wrongful.

7 53. On account of the foregoing, Plaintiff contends such activities by Nike qualify this as
8 an egregious case of misconduct beyond typical infringement, entitling Plaintiff to enhanced
9 damages. Including based on the foregoing, Plaintiff requests an award enhanced damages,
10 including treble damages, pursuant to 35 U.S.C. § 284.

11 54. Each of Nike's aforesaid activities have been without authority and/or license from
12 Plaintiff.

13 **DAMAGES**

14 55. By way of its infringing activities, Nike has caused, and continues to cause, Plaintiff to
15 suffer damages, and Plaintiff is entitled to recover from Nike the damages sustained by
16 Plaintiff as a result of Nike's wrongful acts in an amount subject to proof at trial, which, by
17 law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this
18 Court under 35 U.S.C. § 284.

19 56. Nike's infringement of Plaintiff's rights under the patents-in-suit will continue to
20 damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law,
21 unless enjoined by this Court.

22 57. Plaintiff also requests that the Court make a finding that this is an exceptional case
23 entitling Plaintiff to recover their attorneys' fees and costs pursuant to 35 U.S.C. § 285.

24 **JURY DEMAND**

25 58. Plaintiff hereby requests a trial by jury including pursuant to Rule 38 of the Federal
26 Rules of Civil Procedure on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby respectfully requests that this Court enter judgment in favor of Plaintiff and against Nike, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the patents-in-suit has been directly and/or indirectly infringed by Nike;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for Nike’s past infringement, together with pre-judgment and post-judgment interest, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A grant of preliminary and permanent injunction pursuant to 35 U.S.C. § 283, enjoining Nike and all persons, including its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation therewith, from making, using, offering to sell, or selling in the United States or importing into the United States any methods, systems, or computer readable media that directly or indirectly infringe any claim of the patents-in-suit, or any methods, systems, or computer readable media that are colorably different;
- D. That this Court declare that Nike’s infringement has been, and continues to be, willful, including that Nike acted to infringe the patents-in-suit despite an objectively high likelihood that its actions constituted infringement of a valid patent and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;
- E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys’ fees and costs in accordance with 35 U.S.C. § 285; and
- F. A judgment and order requiring Nike to pay Plaintiff their damages, costs, expenses, fees, and prejudgment and post-judgment interest for Nike’s infringement of the patents-in-suit as provided under 35 U.S.C. §§ 284 and/or 285; and
- G. Any and all further relief for which Plaintiff may show itself justly entitled that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby respectfully requests a trial by jury of any issues so triable by right.

Dated: March 2, 2018

**COLLINS EDMONDS
SCHLATHER & TOWER, PLLC**

By: /s/ John J. Edmonds

JOHN J. EDMONDS
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