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10 CELLSPIN SOFT INC.

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

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Case No. 4:17-cv-05933-YGR  <b>AMENDED COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NOS. 8,738,794, 8,892,752, AND 9,749,847<sup>1</sup></b>  <b>JURY TRIAL DEMANDED</b>  Original Complaint Filed: October 16, 2017 Judge: Honorable Yvonne G. Rogers
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**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendants’ 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 “Automatic Multimedia Upload for Publishing Data and Multimedia Content” (the “847

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<sup>1</sup> 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 patent”) (collectively, the “Patents-in-Suit”).

2 **THE PARTIES**

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

5 3. Upon information and belief, Defendant, Fossil Group, Inc. (“Fossil Group”), is a  
6 corporation organized and existing under the laws of the State of Delaware, with its principal  
7 place of business at 901 S Central Expressway, Richardson, Texas 75080. Fossil has already  
8 been served with process and is being served with this Amended Complaint via ECF.

9 4. Upon information and belief, Defendant, Misfit Inc. (“Misfit”), is a corporation  
10 organized and existing under the laws of the State of Delaware, with its principal place of  
11 business at 839 Mitten Road, Suite 100, Burlingame, California 94010. Misfit has already been  
12 served with process and is being served with this Amended Complaint via ECF.

13 5. Defendants Fossil Group and Misfit are collectively referred to herein as “Fossil.”

14 **JURISDICTION AND VENUE**

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

18 7. Plaintiff is the assignee of the Patents-in-Suit with all right, title and interest to bring the  
19 claims herein comprising those for past and present infringement, including to recover  
20 damages therefor.

21 8. The Court has personal jurisdiction over Fossil, including because Fossil has minimum  
22 contacts within the State of California; Fossil has purposefully availed itself of the privileges  
23 of conducting business in the State of California; Fossil regularly conducts business within the  
24 State of California; and Plaintiff’s cause of action arises directly from Fossil’s business  
25 contacts and other activities in the State of California, including at least by virtue of Fossil’s  
26 infringing methods and products, which are at least practiced, made, used, offered for sale, and  
27 sold in the State of California. Fossil is subject to this Court’s specific and general personal  
28 jurisdiction, pursuant to due process and the California Long Arm Statute, due at least to its

1 continuous and systematic business contacts in California, including related to operations  
2 conducted from the Burlingame, California headquarters for Defendant Misfit and the  
3 infringements alleged herein. Further, on information and belief, Fossil is subject to the  
4 Court's specific jurisdiction, including because Fossil has committed patent infringement in  
5 the State of California, including as detailed herein. In addition, Fossil induces infringement  
6 of the Patents-in-Suit by customers and/or infringing users located in California. Further, on  
7 information and belief, Fossil regularly conducts and/or solicits business, engages in other  
8 persistent courses of conduct, and/or derives substantial revenue from goods and services  
9 provided to persons and/or entities in California.

10 9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), including  
11 because Fossil has at least one regular and established place of business, including Fossil  
12 Stores, Fossil Outlet Stores, and/or the San Francisco, California headquarters of Defendant  
13 Misfit, in this District and in California, and at least some of its infringement of the patent-in-  
14 suit occurs in this District and in California.

### 15 THE PATENTS-IN-SUIT

16 10. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

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

22 12. At the time of the patented inventions, publishing captured data from a data capture  
23 device to a web service was cumbersome and inefficient.

24 13. At the time of the priority date of the Patents-in-Suit (December 2007), the same year  
25 the world's first prominent mobile "smartphone" was released, and 6 months before the  
26 world's first prominent mobile "app store" (*see* History of the iPhone on Wikipedia at  
27 [https://en.wikipedia.org/wiki/History\\_of\\_iPhone](https://en.wikipedia.org/wiki/History_of_iPhone) & App Store (iOS) on Wikipedia at  
28 [https://en.wikipedia.org/wiki/App\\_Store\\_\(iOS\)](https://en.wikipedia.org/wiki/App_Store_(iOS))), it was a cumbersome and time consuming

1 process to use a data capture device to acquire data, send that data to a mobile device with an  
2 internet connection, and the mobile device to upload that wirelessly received data to a website,  
3 especially for large data such as pictures or video data.

4 14. The most common and practical way to transfer large data was to physically plug a data  
5 capture device into, or transfer a memory card from a data capture device to, a computer,  
6 upload the data on the capture device or memory card to the computer, and further upload the  
7 data from the computer to a web service. *See, e.g.*, '794 at 1:37-54. In the case of using a 2007  
8 mobile phone, the software on both the data capture device and mobile phone that established  
9 a paired connection and potentially transferred large data was extremely under developed and  
10 not the intended or foreseeable use of the mobile phone. Further, HTTP transfers of data  
11 received over the paired wireless connection to web services was non-existent. Mobile phones  
12 of that time exclusively used SMS,<sup>2</sup> MMS,<sup>3</sup> or email-based communication methods (such as  
13 POP3 or IMAP<sup>4</sup> to transfer data that was acquired by the mobile phone. It was not until 2009  
14 or later when the leading tech companies, such as Facebook and Google, started releasing  
15 HTTP APIs for developers to utilize a HTTP transfer protocol for mobile devices. *See*  
16 <https://developers.facebook.com/docs/graph-api/changelog/archive>; [http://mashable.com/](http://mashable.com/2009/05/19/twitter-share-images/#K9kEHwxammq0)  
17 [2009/05/19/twitter-share-images/#K9kEHwxammq0](http://mashable.com/2009/05/19/twitter-share-images/#K9kEHwxammq0). Even in 2009 when Facebook and  
18 Google HTTP APIs were released, the released HTTP APIs were only used for data that was  
19 acquired by the mobile phone, and not for the data that was received wirelessly over the secure  
20 paired connection from a physically separate data capture device. Applying HTTP to a data in  
21 transit and on intermediary mobile device was not developed until the inventions of the  
22 Patents-in-Suit.

23 15. Including as of the priority date of the Patents-in-Suit, there have been many, albeit  
24 vastly inferior, means outside of the claimed invention for achieving the ends of acquiring and

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

<sup>3</sup> Multimedia Messaging Service (MMS) is a standard way to send messages that include multimedia content  
to and from a mobile phone over a cellular network. *See*  
[https://en.wikipedia.org/wiki/Multimedia\\_Messaging\\_Service](https://en.wikipedia.org/wiki/Multimedia_Messaging_Service).

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

1 transferring data for publication, including on the Internet. For example, as noted in the  
2 specification,

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

10 *See, e.g.*, ‘794/1:38-47. Another inferior method would be to have the capture device simply  
11 forward data to a mobile device as captured. This example is inferior including because,  
12 without a paired connection, there is no assurance that the mobile device is capable (*e.g.*, on  
13 and sufficiently near) of receiving the data. Such constant and inefficient broadcasting would  
14 quickly drain the battery of the capture device. Another inferior method for posting data from  
15 a capture device onto the Internet is to have a capture device with built in mobile wireless  
16 Internet, for example cellular, capability. As noted in the specification, “[t]he digital data  
17 capture device is physically separated from the BT enabled mobile device.” *See, e.g.*, ‘794/2:2-  
18 3. This example is inferior including because, especially at the time of the patent priority date  
19 in 2007 but also today, it makes the combined apparatus bulky, expensive in terms of hardware,  
20 and expensive in terms of requiring a user to purchase an extra and/or separate cellular service  
21 for the data capture device.

22 16. Prior art methods for posting data from a data capture device onto the Internet were  
23 inferior. Back at the time of invention, capture devices such as cameras had only rudimentary  
24 wireless capabilities as exemplified by the U.S. Patent Application No. 2003/015,796 to  
25 Kennedy (“Kennedy”) and ancillary prior art addressed extensively during prosecution of  
26 certain Patents-in-Suit and related patents. As noted by the inventors during prosecution of the  
27 ‘794 patent, in every day scenarios, the computer attaches a hypertext transfer protocol  
28 (HTTP)\_header and user ID to the data generated by the computer (“native data”), and the  
existing home wireless routers did not apply website user information or apply HTTP to the  
data sent over the wireless network from the computer to the home wireless router. However,  
the claimed invention improves and builds on this, including because the claimed mobile

1 device is configured to send a HTTP request comprising the website user information and the  
2 non-native data, such that the mobile device is acting as more than just a normal home wireless  
3 router. According to the inventors, the wireless pairing established is therefore very important  
4 for the transfer of non-native data that is acquired by a physically separate device and then  
5 transferred to the mobile device over the trusted paired wireless connection.

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

22 18. Among other things, the inventors of the Patents-in-Suit wanted to post onto the Internet  
23 content captured while a capture device, such a camera, was capturing data, for example  
24 photographs, in “real time” situations, for example, when the capture device was in remote  
25 areas, adverse conditions or on the move. As noted in the specification, “[a] user may need to  
26 capture and publish data and multimedia content on the Internet in real time.” *See, e.g.,*  
27 ‘794/1:37-38. As further noted in the specification, “there is a need for a method and system  
28 to utilize a digital data capture device in conjunction with a mobile device for automatically



1 detecting capture of data and multimedia content, transferring the captured data and  
2 multimedia content to the mobile device, and publishing the data and multimedia content on  
3 one or more websites automatically or with minimal user intervention.” *See, e.g.*, ‘794/1:48-  
4 54. But existing technology offered only unacceptably inferior solutions of posting to the  
5 Internet content captured from a capture device in “real time” situations.

6 19. The claims of the Patents-in-Suit are directed to specific improvements in computer and  
7 networking functionality and capabilities. Among other things, the claimed inventions  
8 improve functionality of data capture devices and methods, systems and networks comprising  
9 those devices. Including as noted in the Patents-in-Suit, the claimed technologies comprise  
10 innovative systems and processes which use less power than those existing at the time, and  
11 allow for multiple efficiencies resulting in a better user experience and reduced costs. The  
12 Patents-in-Suit thus provided concrete applications that improved computer and networking  
13 technology, including for publishing directly to a web service from a data capture device.

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

1 internet connection, is charged with polling the data capture device for new data to transfer.

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

- 4 a. Improving and increasing efficiencies of the claimed inventions, including over  
5 inferior alternative means for achieving the same or similar ends of uploading  
6 content, including by reducing or eliminating the cumbersome steps of previous  
7 methods of data transfer to the Internet and providing the ability to upload or  
8 transfer the captured data at a time subsequent to the capture of the data where a  
9 connection to the Internet may not be available to the data capture device. *See*,  
10 *e.g.*, ‘794/1:37-54 & 4:55-5:3.
- 11 b. Leveraging the capabilities of mobile devices, including their Internet connection  
12 capabilities (through use of custom hardware and/or software), including by  
13 shifting the transfer of data from the data capture device to the mobile device, to  
14 greatly enhance the functionality of Internet incapable data capture devices,  
15 including because the mobile device, with its larger storage, may then store the  
16 captured data for upload or transfer to the web service via the Internet at a later  
17 time. *See, e.g.*, ‘794/2:26-34, 5:18-56, 6:2-46, 9:37-60, & 10:10-61.
- 18 c. Uploading captured data from data capture devices to the Internet while avoiding  
19 the cost, memory usage, complexity, hardware (*e.g.*, cellular antenna), physical  
20 size, and battery consumption of an Internet accessible mobile device, including  
21 without the data capture device being capable of wireless Internet connections or  
22 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.
- 23 d. Minimizing power usage by the data capture device, including to minimize the  
24 need to change batteries or recharge the device. *See, e.g.*, ‘794 at 4:66-5:1.
- 25 e. Using event notification, polling and request/return communication protocols  
26 over an already paired connection to have the benefits from an efficient or  
27 automated upload system while conserving resources such as batteries by  
28 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.

23 22. The claimed inventions also provide computer and network efficiency at least because  
24 they allow data capture devices to have the useful and improved claimed sharing functionality  
25 without the need to include expensive and battery consuming electronics, cellular antenna,  
26 paying for separate cellular service, and extra software and data processing required on the  
27 data capture device. The inventors did more than simply apply current technology to an  
28 existing problem. Their invention, as embodied in the asserted claims, was a significant



1 advancement in mobile data capture and sharing technology. The inventions covered by the  
2 asserted claims comprise utilization of the mobile Internet to create a novel architecture  
3 enabling data captured by non-Internet enabled capture devices to quickly, easily and  
4 automatically be uploaded to the Internet, and more specifically to what is referred to today as  
5 “the cloud” and “social media.” Additionally, the claimed inventions also improve pairing  
6 identification, different ways to transfer of new-data between paired devices (event  
7 notification, polling, mobile initiated request response), and use of HTTP and adding user  
8 information to the wirelessly received new-data on the intermediary mobile device, when the  
9 new-data is in transit to the website.

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

17 24. The asserted claims, including as a whole and where applicable in ordered combination,  
18 comprise, *inter alia*, a non-conventional and non-generic arrangement of communications  
19 between a data capture device and a Bluetooth enabled mobile device that is a technical  
20 improvement to the communications between the devices and web services, including those  
21 improvements noted above.

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

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

1 26.Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

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

4 28.Claims of the ‘794 Patent comprise, in general, methods comprising acquiring new data  
5 in a data capture device after establishing a paired connection with a mobile device;  
6 determining the existence of new data by the capture device; transferring the new data from  
7 the capture device to the mobile device automatically over the paired connection; applying a  
8 user identifier uniquely identifying a particular user to the new data; transferring the new data  
9 along with the user identifier to a web service; and making available, at the web service, the  
10 new data received from the mobile device over the internet, wherein the new data corresponds  
11 to the user identifier.

12 29.Fossil has infringed, and is now infringing, the ‘794 patent, including at least claims 1,  
13 2, 3, 4, 7, and 9, in this judicial district, the State of California, and elsewhere, in violation of  
14 35 U.S.C. § 271 through actions comprising the practicing, without authority from Plaintiff,  
15 methods for acquiring and transferring data from Fossil Bluetooth enabled data capture devices  
16 to Fossil web services via Bluetooth enabled mobile devices. On information and belief, Fossil  
17 at least practices the claimed methods via its fitness tracking devices, including smart watches,  
18 wearables, fitness bands, and other data capture devices, designed to monitor a user’s  
19 biological and/or fitness information and metrics, *e.g.*, heart rate and physical activity such as  
20 walking and/or running, as specified herein, comprising Bluetooth functionality, with such  
21 products comprising the Misfit Vapor, Misfit Command, Misfit Phase, Misfit Shine 2, Misfit  
22 Ray, Speedo Shine, Misfit Flare, Swarovski Activity Crystal, Misfit Shine, Misfit Flash, Misfit  
23 Flash Cyclist Edition, and Misfit Shine 2 Swimmer's Edition, including when used in  
24 conjunction with mobile applications comprising the Fossil Q iOS Mobile Application and  
25 Fossil Q Android Mobile Application (including iOS and Android versions thereof), including  
26 when used in conjunction with web services comprising [www.fossil.com](http://www.fossil.com).

27 30.Without limitation, the accused methods, comprising Fossil devices and software which  
28 practice said methods, support Bluetooth protocols, including Bluetooth 4.0, which enables

1 connection between such devices and other Bluetooth-enabled mobile devices, such as a cell  
2 phone, tablet, laptop, or other mobile device, and which permits the user to acquire and transfer  
3 data from Fossil devices to the Fossil web services via a Bluetooth enabled mobile device. The  
4 accused Fossil methods comprise acquiring and determining the existence of new tracking  
5 data, such as heart rate, steps, etc., in the Fossil device after establishing a paired connection  
6 with the mobile device, and transferring the new data from the Fossil device to the mobile  
7 device automatically over the paired connection. The accused Fossil methods further comprise  
8 the applications receiving the new data from the Fossil device and transferring the new data,  
9 along with the account information identifying the user, and tied to the new data, to the Fossil  
10 web service, such that the Fossil web service receives, and makes available, the new data  
11 received over the Internet. Upon information and belief, at least through Fossil's hardware,  
12 software, and efforts to test, demonstrate, and otherwise use Fossil devices, Fossil has  
13 practiced the accused Fossil methods via at least the use of Fossil devices, comprising at least  
14 the foregoing steps.

15 31. Additionally, or in the alternative, Fossil has infringed, and now infringing, the '794  
16 Patent in this judicial district, the State of California, and elsewhere, jointly with end users  
17 and/or customers (collectively, "users"), wherein all of the foregoing steps are performed by  
18 Fossil and/or users. Without limitation, Fossil provides software modules for Fossil Bluetooth  
19 enabled capture devices and applications comprising software modules, and Fossil further  
20 receives new data at its web services and makes said new data available via its web services.  
21 Further, without limitation, user mobile devices perform at least the remaining steps in the  
22 claimed methods under the direction or control of Fossil, including Fossil software and  
23 hardware, including because user mobile devices perform said steps in order to receive the  
24 benefits of Fossil's web services and/or application, and/or because Fossil conditions use of  
25 its web services and/or applications upon performance of the remaining method steps.

26 32. Fossil has had notice of its infringement of the '794 patent pursuant to notifications from  
27 Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017, noting Fossil  
28 infringes at least exemplary claim 1 of the '794 patent. Fossil was put on further notice of its

1 infringement of the '794 patent via Plaintiff's Original Complaint filed on October 16, 2017  
2 (Doc. 1).

3 33. Fossil has continued its infringing activities noted above in an infringing manner post-  
4 notice of the '794 patent and post-notice of its infringement of the '794 patent, including at  
5 least exemplary claim 1. Fossil's infringement of the asserted claims of the '794 patent is clear,  
6 unmistakable, and inexcusable, and, on information and belief, Fossil has been aware of such  
7 infringement post-notice. Such infringement is necessarily willful and deliberate. Plaintiff  
8 believes and contends that Fossil's intentional continuance of its clear, unmistakable, and  
9 inexcusable infringement of the '794 patent post-notice is willful, wanton, malicious, bad-  
10 faith, deliberate, and/or consciously wrongful.

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

15 35. Each of Fossil's aforesaid activities have been without authority and/or license from  
16 Plaintiff.

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

18 36. Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

19 37. U.S. Patent No. 8,892,752 was duly and legally issued by the USPTO on November 18,  
20 2014 after full and fair examination. *See* Exhibit B.

21 38. Claims of the '752 Patent comprise, generally, methods comprising establishing a  
22 secure paired Bluetooth connection between a Bluetooth enabled data capture device and a  
23 Bluetooth enabled mobile device using an encryption key; acquiring new data in the capture  
24 device; receiving a message from the mobile device over the paired connection to enable event  
25 notification corresponding to new data on the capture device; determining existence of the new  
26 data for transfer; sending an event notification to the mobile device, corresponding to existence  
27 of the new data, over the paired connection, wherein the mobile device is configured to listen  
28 for the event notification; and transferring the encrypted data from the data capture device to

1 the mobile device, over the paired connection, wherein the mobile device sends the obtained  
2 new data with an attached user identifier, a hypertext transfer protocol method, and a  
3 destination web address to a remote internet server.

4 39. Fossil has infringed, and is now infringing, the '752 patent, including at least claims 1,  
5 2, 4, 5, 12, 13, and 14, in this judicial district, the State of California, and elsewhere, in  
6 violation of 35 U.S.C. § 271 through actions comprising the practicing, without authority from  
7 Plaintiff, methods for transferring data from Fossil Bluetooth enabled data capture device to  
8 remote Fossil internet servers via Bluetooth enabled mobile devices. On information and  
9 belief, Fossil practices, and/or induces others to practice, the claimed methods via its fitness  
10 tracking devices, including smart watches, wearables, fitness bands, and other data capture  
11 devices, designed to monitor a user's biological and/or fitness information and metrics, *e.g.*,  
12 heart rate and physical activity such as walking and/or running, as specified herein, comprising  
13 Bluetooth functionality, with such products comprising the Misfit Vapor, Misfit Command,  
14 Misfit Phase, Misfit Shine 2, Misfit Ray, Speedo Shine, Misfit Flare, Swarovski Activity  
15 Crystal, Misfit Shine, Misfit Flash, Misfit Flash Cyclist Edition, and Misfit Shine 2 Swimmer's  
16 Edition, including when used in conjunction with mobile applications comprising the Fossil Q  
17 iOS Mobile Application and Fossil Q Android Mobile Application (including iOS and Android  
18 versions thereof), including when used in conjunction with web services comprising  
19 [www.fossil.com](http://www.fossil.com).

20 40. Without limitation, the accused methods comprising Fossil devices and software which  
21 practice said methods support Bluetooth protocols, including Bluetooth 4.0, which enables  
22 connection between these devices and other Bluetooth-enabled devices, such as a cell phone,  
23 laptop, tablet, or other mobile device, which permits the user to establish a secure connection  
24 between Fossil devices and a mobile device and acquire and transfer data from the Fossil  
25 devices to the Fossil web services via the mobile device. The accused Fossil methods comprise  
26 establishing a secure paired Bluetooth connection between the Fossil device and the mobile  
27 device using a Bluetooth encryption key. Once paired, new data is acquired on the Fossil  
28 device, the Fossil device receives a message from the mobile device over the paired connection

1 to enable event notifications which correspond to new data on the Fossil device, the Fossil  
2 device determines the existence of the new data for transfer, and the Fossil device sends an  
3 event notification to the mobile device over the paired connection, corresponding to existence  
4 of new data for transfer, wherein the mobile device is configured to listen for the event  
5 notification. The encrypted data is transferred from the Fossil device to the mobile device over  
6 the paired connection, wherein the mobile device sends the obtained new data along with the  
7 account information, a hypertext transfer protocol operation, and a destination web address to  
8 the Fossil web server. Upon information and belief, at least through Fossil's hardware,  
9 software, and efforts to test, demonstrate, and otherwise use Fossil devices, Fossil has  
10 practiced the accused Fossil methods via at least the use of Fossil devices, comprising at least  
11 the foregoing steps.

12 41. Fossil has had notice of its infringement of the '752 patent pursuant to notifications from  
13 Plaintiff comprising letters mailed on June 15, 2017 and August 31, 2017, noting Fossil  
14 infringes at least exemplary claim 1 of the '752 patent. Fossil was put on further notice of its  
15 infringement of the '752 patent via Plaintiff's Original Complaint filed on October 16, 2017  
16 (Doc. 1).

17 42. Additionally, or in the alternative, Fossil has induced, and continues to induce,  
18 infringement of the '752 Patent in this judicial district, the State of California, and elsewhere,  
19 by actively inducing direct infringement of the '752 Patent, including by knowingly and  
20 actively aiding or abetting infringement by users, by and through at least instructing and  
21 encouraging the use of the Fossil products and software noted above. Such aiding and abetting  
22 comprises providing devices, software, web servers, and/or instructions regarding the use  
23 and/or operation of the Fossil devices, applications, and web servers in an infringing manner.  
24 Further, the direct infringement of users that occurs in connection with the applications and/or  
25 web services occurs under the direction or control of Fossil, including Fossil software and  
26 hardware, including because user devices perform said steps in order to receive the benefits of  
27 Fossil's web services and/or mobile application, and/or because Fossil conditions use of its  
28 web services and/or mobile applications upon performance of the remaining method steps.



1 Such induced infringement has occurred since Fossil became aware of the '752 Patent, at a  
2 minimum, as noted above, and the knowledge and awareness that such actions by users  
3 comprise infringement of the '752.

4 43.Fossil has continued, its infringing activities noted above in an infringing manner post-  
5 notice of the '752 patent and post-notice of its infringement of the '752 patent, including at  
6 least exemplary claim 1. Fossil's infringement of the asserted claims of the '752 patent is clear,  
7 unmistakable, and inexcusable, and, on information and belief, Fossil has been aware of such  
8 infringement post-notice. Such infringement is necessarily willful and deliberate. Plaintiff  
9 believes and contends that Fossil's intentional continuance of its clear, unmistakable, and  
10 inexcusable infringement of the '752 patent post notice is willful, wanton, malicious, bad-  
11 faith, deliberate, and/or consciously wrongful.

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

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

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

20 46.Plaintiff refers to and incorporates herein the allegations in the above paragraphs.

21 47.U.S. Patent No. 9,749,847 was duly and legally issued by the USPTO on August 29,  
22 2017 after full and fair examination. *See* Exhibit C.

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

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

6 49. Fossil has infringed, and is now infringing, the '847 patent, including at least claims 1,  
7 2, and 3, in this judicial district, the State of California, and elsewhere, in violation of 35 U.S.C.  
8 § 271 through actions comprising the making, using, offering for sale, and/or selling, without  
9 authority from Plaintiff, systems for transferring data from Fossil Bluetooth enabled data  
10 capture devices to Fossil websites via Bluetooth enabled cellular phones. On information and  
11 belief, Fossil makes, uses, offers for sale, and/or sells, and/or induces others to use, the claimed  
12 systems, including fitness tracking devices, including smart watches, wearables, fitness bands,  
13 and other data capture devices, designed to monitor a user's biological and/or fitness  
14 information and metrics, *e.g.*, heart rate and physical activity such as walking and/or running,  
15 as specified herein, comprising Bluetooth functionality, with such products comprising the  
16 Misfit Vapor, Misfit Command, Misfit Phase, Misfit Shine 2, Misfit Ray, Speedo Shine, Misfit  
17 Flare, Swarovski Activity Crystal, Misfit Shine, Misfit Flash, Misfit Flash Cyclist Edition, and  
18 Misfit Shine 2 Swimmer's Edition, including when used in conjunction with mobile  
19 applications comprising the Fossil Q iOS Mobile Application and Fossil Q Android Mobile  
20 Application (including iOS and Android versions thereof).

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

1 within the Fossil devices after the paired connection is established. The processor within the  
2 Fossil devices is coupled to a memory device within said devices, wherein said processor is  
3 configured to store the acquired new-data in the memory device and send an event notification,  
4 along with the acquired new-data, to the authenticated and paired cellular phone over the  
5 established paired connection. The application comprises a graphical user interface for  
6 operation on the cellular phone, and the application is configured to listen for and receive the  
7 event notification from the Fossil devices, receive the acquired new-data over the established  
8 paired connection from the Fossil devices, store the new-data in a memory device of the  
9 cellular phone before transfer to the Fossil websites, and use HTTP to transfer the new-data,  
10 along with the account information, to the Fossil websites over a cellular data network  
11 servicing the cellular phone. In addition, and in the alternative, to Fossil's making, offering for  
12 sale, and/or selling of the Fossil devices and applications, upon information and belief, at least  
13 through Fossil's hardware, software, and efforts to test, demonstrate, and otherwise use Fossil  
14 devices, Fossil has used the claimed systems via at least the use of the Fossil devices as noted  
15 above.

16 51. Fossil has had notice of its infringement of the '847 patent pursuant to notification from  
17 Plaintiff comprising a letter mailed on August 31, 2017, noting Fossil infringes at least  
18 exemplary claim 1 of the '847 patent. Fossil was put on further notice of its infringement of  
19 the '847 patent via Plaintiff's Original Complaint filed on October 16, 2017 (Doc. 1).

20 52. Additionally, or in the alternative, Fossil 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 knowingly and  
23 actively aiding or abetting infringement by users, by and through at least instructing and  
24 encouraging the use of the Fossil products and software noted above. Such aiding and abetting  
25 comprises providing devices, hardware, software, websites, and/or instructions, including  
26 providing the accused Fossil devices and applications to users who, in turn, use the claimed  
27 systems, including as noted above. Further, the direct infringement by users of the claimed  
28 systems provides the user with a direct benefit from the use of Fossil devices and applications.

1 Such induced infringement has occurred since Fossil became aware of the '847 Patent, at a  
2 minimum, as noted above, and the knowledge and awareness that such actions and use by users  
3 comprise infringement of the '847.

4 53.Fossil has continued, its infringing activities noted above in an infringing manner post-  
5 notice of the '847 patent and post-notice of its infringement of the '847 patent, including at  
6 least exemplary claim 1. Fossil has continued its infringing activities noted above in an  
7 infringing manner post-notice of the '847 patent. Fossil's infringement of the asserted claims  
8 of the '847 patent is clear, unmistakable, and inexcusable, and, on information and belief,  
9 Fossil has been aware of such infringement post-notice. Such infringement is necessarily  
10 willful and deliberate. Plaintiff believes and contends that Fossil's intentional continuance of  
11 its clear, unmistakable, and inexcusable infringement of the '847 patent post notice is willful,  
12 wanton, malicious, bad-faith, deliberate, and/or consciously wrongful.

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

17 55.Each of Fossil's aforesaid activities have been without authority and/or license from  
18 Plaintiff.

### 19 DAMAGES

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

25 57.Fossil's infringement of Plaintiff's rights under the Patents-in-Suit will continue to  
26 damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law,  
27 unless enjoined by this Court.

28 58.Plaintiff also requests that the Court make a finding that this is an exceptional case

1 entitling Plaintiff to recover their attorneys' fees and costs pursuant to 35 U.S.C. § 285.

2 **PRAYER FOR RELIEF**

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

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

1 Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

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

5  
6 Dated: March 2, 2018

**COLLINS EDMONDS &  
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7  
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