

PATENT OWNER EXHIBIT 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CELLSPIN SOFT, INC.

Plaintiff,

v.

BYTEDANCE LTD., et al.,

Defendants.

Civil Action No. 2:23-cv-496-JRG-RSP

JURY TRIAL DEMANDED

**DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO
CELLSPIN SOFT, INC.'S COMPLAINT**

ByteDance Ltd., ByteDance Pte.Ltd., and TikTok Pte. Ltd. (together, “Defendants”) by and through their undersigned counsel, file this Answer, Affirmative Defenses, and Counterclaims to Cellspin Soft, Inc.’s (“Cellspin”) Complaint, state as set forth below.

Defendants admit that Figure 1 – Exhibit 22 purports to be from <https://usds.tiktok.com/usds-about/>. To the extent that there are any allegations concerning the excerpt in Figure 1, Defendants deny them.

NATURE OF THE CLAIMS

1. Defendants admit that Plaintiff has filed an action alleging infringement of U.S. Patent Nos. 11,659,381 (“’381 Patent”), 8,756,336 (“’336 Patent”), 8,862,757 (“’757 Patent”), 8,898,260 (“’260 Patent”), 9,900,766 (“’766 Patent”), 8,904,030 (“’030 Patent”), and 11,234,121 (“’121 Patent”) (collectively, the “Patents-in-Suit”). Defendants deny that they have committed any acts of patent infringement and further deny that Plaintiff is entitled to any relief.

2. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint and therefore deny those allegations.

THE PARTIES

3. Defendants admit that Cellspin Soft, Inc. is the Plaintiff in this litigation. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 3 of the Complaint and therefore deny those allegations.

4. Defendants admit ByteDance Ltd. is a corporation organized and existing under the laws of the Cayman Islands, with a principal place of business in Grand Pavilion, Hibiscus Way 802 West Bay Road, Grand Cayman KY1-1205. Defendants deny any remaining allegations in Paragraph 4 of the Complaint.

5. Defendants admit that ByteDance Pte. Ltd. is a Singapore Corporation with a principal place of business at 1, Raffles Quay, #26-10, Singapore, 048583, with a Unique Entity Number 201923456H. Defendants deny any remaining allegations in Paragraph 5 of the Complaint.

6. Defendants admit that TikTok Pte. Ltd. is a Singapore Corporation with a principal place of business at 1, Raffles Quay, #26-10, Singapore, 048583, with a Unique Entity Number 201719908M. Defendants deny any remaining allegations in Paragraph 6 of the Complaint.

7. Defendants admit that they are not registered with the Secretary of State in the State of Texas. Defendants deny any remaining allegations in Paragraph 7 of the Complaint.

8. Paragraph 8 does not require a response. To the extent a response is required, Defendants deny all allegations in Paragraph 8 of the Complaint.

JURISDICTION AND VENUE

9. Defendants admit that Plaintiff filed an action alleging patent infringement under Title 35 of the United States Code and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Defendants deny that they have committed any acts of patent infringement and further deny that they are liable to Plaintiff under the patent laws of the United States of America or any other laws. Defendants deny any remaining allegations in Paragraph 9 of the Complaint.

10. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint and therefore deny those allegations.

11. Defendants deny the allegations in Paragraph 11 of the Complaint.

12. Defendants deny that this Court has personal jurisdiction over Defendants. Defendants further deny that they have committed patent infringement or induced infringement of the Patents-in-Suit, deny that Plaintiff's allegations have any merit, and further deny that they are liable to Plaintiff under the patent laws of the United States of America or any other laws. Defendants deny any remaining allegations in Paragraph 12 of the Complaint.

13. Defendants admit that Figure 2 – Exhibit 21 purports to be from <https://apps.apple.com/lc/app/tiktok-make-your-day/id835599320>. To the extent that there are any allegations concerning the excerpt in Paragraph 13, Defendants deny them. Defendants deny any remaining allegations in Paragraph 13 of the Complaint.

14. Defendants deny the allegations in Paragraph 14 of the Complaint.

15. Defendants admit that “TikTok Shop is a completely personalized and fully integrated commerce solution, where sellers authentically connect with creators and communities

to drive meaningful shopping experiences.” TikTok Shop, <https://shop.tiktok.com/business/us>. (last visited February 26, 2024). “Powered by TikTok's unique discovery engine, TikTok Shop enables brands and creators to showcase and sell products directly on TikTok, through a suite of in-app shopping touchpoints.” *Id.* Defendants admit that Exhibit 15 and Figure 2 – Exhibit 20 purport to be from <https://newsroom.tiktok.com/en-us/introducing-tiktok-shop> and <https://www.linkedin.com/news/story/tiktok-getting-into-e-commerce-5371969/>, respectively. To the extent that there are any allegations concerning the exhibits and/or excerpts in Paragraph 15, Defendants deny them. Defendants deny any remaining allegations in Paragraph 15 of the Complaint.

16. Defendants admit that Figure 3 – Exhibit 15 purports to be from <https://newsroom.tiktok.com/en-us/introducing-tiktok-shop>. To the extent that there are any allegations concerning the excerpt in Paragraph 16, Defendants deny them. Defendants deny that they have committed patent infringement or induced infringement of the Patents-in-Suit, deny that Plaintiff’s allegations have any merit, and further deny that they are liable to Plaintiff under the patent laws of the United States of America or any other laws. Defendants deny any remaining allegations in Paragraph 16 of the Complaint.

17. Defendants admit that “Project Texas is an unprecedented initiative dedicated to making every American on TikTok feel safe, with confidence that their data is secure and the platform is free from outside influence. . .Project Texas puts the concepts of transparency and accountability into action by addressing national security concerns head-on with concrete, measurable solutions.” TikTok U.S. Data Security, *About Project Texas*, <https://usds.tiktok.com/usds-about/> (last visited February 26, 2024). Defendants further admit that Figure 3 – Exhibit 19 and Figure 4 – Exhibit 19 purport to be from

<https://time.com/6281946/tiktok-oracle-source-code/>. To the extent that there are any allegations concerning the excerpts in Paragraph 17, Defendants deny them. Defendants deny any remaining allegations in Paragraph 17 of the Complaint.

18. Defendants admit that “[a] s of June 2022, 100% of all U.S. user traffic is routed to the Oracle Cloud Infrastructure in the United States, and today all access to that environment is managed exclusively by TikTok U.S. Data Security.” TikTok U.S. Data Security, *Where does TikTok store U.S. user data?*, <https://usds.tiktok.com/where-does-tiktok-store-u-s-user-data/> (last visited February 26, 2024). Defendants further admit that Figure 5 - Exhibit 18 purports to be <https://www.zdnet.com/article/tiktok-ceo-updates-on-project-texas-says-us-user-data-will-be-in-oracles-hands-soon/>. To the extent that there are any allegations concerning the excerpt in Paragraph 18, Defendants deny them. Defendants deny any remaining allegations in Paragraph 18 of the Complaint.

19. Defendants deny that they have committed patent infringement or induced infringement of the Patents-in-Suit, deny that Plaintiff’s allegations have any merit, and further deny that they are liable to Plaintiff under the patent laws of the United States of America or any other laws. Defendants deny any remaining allegations in Paragraph 19 of the Complaint.

20. Defendants admit that Exhibit 17 purports to be from <https://www.reuters.com/technology/tiktok-tells-employees-return-office-three-days-week-2021-07-12/>. To the extent that there are any allegations concerning Exhibit 17 in Paragraph 20, Defendants deny them. Defendants deny the remaining allegations in Paragraph 20 of the Complaint.

21. Defendants deny the allegations in Paragraph 21 of the Complaint.

22. Defendants deny the allegations in Paragraph 22 of the Complaint.

23. Defendants admit that Figure 6 - Exhibit 13 purports to be from https://www.collincad.org/propertysearch?owner_name=Oracle&si...pe%5B%5D=P&prop_type%5B%5D=MH&active%5B%5D=1&year=2023&sort=G. To the extent that there are any allegations concerning the excerpt in Paragraph 23, Defendants deny them. Defendants are without sufficient knowledge or information to form a belief as to the truth of any remaining allegations in Paragraph 23 of the Complaint and therefore deny those allegations.

24. Defendants admit that Figure 7 - Exhibit 11 and Figure 12 purport to be from <https://dgtlinfra.com/tiktok-data-centers-cloud-locations/> and <https://www.buzzfeednews.com/article/emilybakerwhite/tiktok-tapes-us-user-data-china-bytedance-access>, respectively. To the extent that there are any allegations concerning the excerpts in Paragraph 24, Defendants deny them. Defendants deny any remaining allegations in Paragraph 24 of the Complaint.

25. Defendants deny the allegations in Paragraph 25 of the Complaint.

26. Defendants admit that Figure 9 - Exhibit 10 purports to be from <https://www.tiktok.com/legal/page/us/terms-of-service/en>. To the extent that there are any allegations concerning the images and excerpts in Paragraph 26, Defendants deny them. Defendants deny any remaining allegations in Paragraph 26 of the Complaint.

27. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint and therefore deny those allegations.

28. Defendants deny that venue is proper in this judicial district and deny the remaining allegations of Paragraph 28 of the Complaint.

PATENTS -IN-SUIT

29. To the extent Paragraph 29 of the Complaint implicates legal conclusions, no response is required. Defendants deny any remaining allegations in Paragraph 29 of the Complaint.

30. To the extent Paragraph 30 of the Complaint implicates legal conclusions, no response is required. Defendants deny any remaining allegations in Paragraph 30 of the Complaint.

31. To the extent Paragraph 31 of the Complaint implicates legal conclusions, no response is required. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint and therefore deny those allegations.

32. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint and therefore deny those allegations.

33. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint and therefore deny those allegations.

ACCUSED INSTRUMENTALITIES

34. Defendants deny the allegations in Paragraph 34 of the Complaint.

35. Defendants deny the allegations in Paragraph 35 of the Complaint.

36. Defendants deny the allegations in Paragraph 36 of the Complaint.

37. To the extent Paragraph 37 of the Complaint implicates legal conclusions, no response is required. Defendants deny any remaining allegations in Paragraph 37 of the Complaint.

38. Defendants deny the allegations in Paragraph 38 of the Complaint.

39. Defendants deny the allegations in Paragraph 39 of the Complaint.

Infringement Read No. 1 for Accused Instrumentalities for U.S. Patent No. 11,659,381

40. To the extent Paragraph 40 of the Complaint implicates legal conclusions, no response is required. Defendants deny any remaining allegations in Paragraph 40 of the Complaint.

Infringement Read No. 2 for Accused Instrumentalities for U.S. Patent Nos. 8,756,336; 8,862,757; 8,898,260

41. Defendants deny the allegations in Paragraph 41 of the Complaint.

42. To the extent Paragraph 42 of the Complaint implicates legal conclusions, no response is required. Defendants deny any remaining allegations in Paragraph 42 of the Complaint.

Infringement Read No. 3 for Accused Instrumentalities for U.S. Patent Nos. 9,900,766; 8,904,030; 11,234,121

43. Defendants deny that the webpage <https://www.tiktok.com/discover/bluetooth-remote-for-tik-tok?lang=en> currently contains the image cited as Figure 10 - Exhibit 8 as shown in Paragraph 43. To the extent that there are any other allegations concerning the image and/or Exhibit 8 in Paragraph 43, Defendants deny them. Defendants deny any remaining allegations in Paragraph 43 of the Complaint.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 11,659,381

44. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-43.

45. Defendants deny the allegations in Paragraph 45 of the Complaint.

46. Defendants deny the allegations in Paragraph 46 of the Complaint.

47. Defendants deny the allegations in Paragraph 47 of the Complaint.

48. Defendants deny the allegations in Paragraph 48 of the Complaint.

49. Defendants deny the allegations in Paragraph 49 of the Complaint.

50. Defendants deny the allegations in Paragraph 50 of the Complaint.

51. Defendants deny the allegations in Paragraph 51 of the Complaint.

52. Defendants deny the allegations in Paragraph 52 of the Complaint.

COUNT II - INFRINGEMENT OF U.S. PATENT NO. 8,756,336

53. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-52.

54. Defendants deny the allegations in Paragraph 54 of the Complaint.

55. Defendants deny the allegations in Paragraph 55 of the Complaint.

56. Defendants deny the allegations in Paragraph 56 of the Complaint.

57. Defendants deny the allegations in Paragraph 57 of the Complaint.

58. Defendants deny the allegations in Paragraph 58 of the Complaint.

59. Defendants deny the allegations in Paragraph 59 of the Complaint.

60. Defendants deny the allegations in Paragraph 60 of the Complaint.

61. Defendants deny the allegations in Paragraph 61 of the Complaint.

COUNT III - INFRINGEMENT OF U.S. PATENT NO.8,862,757

62. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-61.

63. Defendants deny the allegations in Paragraph 63 of the Complaint.

64. Defendants deny the allegations in Paragraph 64 of the Complaint.

65. Defendants deny the allegations in Paragraph 65 of the Complaint.

66. Defendants deny the allegations in Paragraph 66 of the Complaint.

67. Defendants deny the allegations in Paragraph 67 of the Complaint.

68. Defendants deny the allegations in Paragraph 68 of the Complaint.

69. Defendants deny the allegations in Paragraph 69 of the Complaint.

70. Defendants deny the allegations in Paragraph 70 of the Complaint.

COUNT IV - INFRINGEMENT OF U.S. PATENT NO.8,898,260

71. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-70.

72. Defendants deny the allegations in Paragraph 72 of the Complaint.

73. Defendants deny the allegations in Paragraph 73 of the Complaint.

74. Defendants deny the allegations in Paragraph 74 of the Complaint.

75. Defendants deny the allegations in Paragraph 75 of the Complaint.

76. Defendants deny the allegations in Paragraph 76 of the Complaint.

77. Defendants deny the allegations in Paragraph 77 of the Complaint.

78. Defendants deny the allegations in Paragraph 78 of the Complaint.

79. Defendants deny the allegations in Paragraph 79 of the Complaint.

COUNT V - INFRINGEMENT OF U.S. PATENT NO.9,900,766

80. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-79.

81. Defendants deny the allegations in Paragraph 81 of the Complaint.

82. Defendants deny the allegations in Paragraph 82 of the Complaint.

83. Defendants deny the allegations in Paragraph 83 of the Complaint.

84. Defendants deny the allegations in Paragraph 84 of the Complaint.

85. Defendants deny the allegations in Paragraph 85 of the Complaint.

86. Defendants deny the allegations in Paragraph 86 of the Complaint.

87. Defendants deny the allegations in Paragraph 87 of the Complaint.

88. Defendants deny the allegations in Paragraph 88 of the Complaint.

COUNT VI - INFRINGEMENT OF U.S. PATENT NO.8,904,030

89. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-88.

90. Defendants deny the allegations in Paragraph 90 of the Complaint.

91. Defendants deny the allegations in Paragraph 91 of the Complaint.

92. Defendants deny the allegations in Paragraph 92 of the Complaint.

93. Defendants deny the allegations in Paragraph 93 of the Complaint.

94. Defendants deny the allegations in Paragraph 94 of the Complaint.

95. Defendants deny the allegations in Paragraph 95 of the Complaint.

96. Defendants deny the allegations in Paragraph 96 of the Complaint.

97. Defendants deny the allegations in Paragraph 97 of the Complaint.

COUNT VII INFRINGEMENT OF U.S. PATENT NO.11,234,121

98. Defendants incorporate by reference each of its responses set forth in the above paragraphs 1-97.

99. Defendants deny the allegations in Paragraph 99 of the Complaint.

100. Defendants deny the allegations in Paragraph 100 of the Complaint.

101. Defendants deny the allegations in Paragraph 101 of the Complaint.¹

102. Defendants deny the allegations in Paragraph 102 of the Complaint.

103. Defendants deny the allegations in Paragraph 103 of the Complaint.

104. Defendants deny the allegations in Paragraph 104 of the Complaint.

105. Defendants deny the allegations in Paragraph 105 of the Complaint.

106. Defendants deny the allegations in Paragraph 106 of the Complaint.

PRAYER FOR RELIEF

107. Defendants deny that Plaintiff is entitled to any relief from Defendants and denies all allegations contained in Plaintiff's Prayer for Relief. To the extent that any allegations of the Complaint have not been previously specifically admitted or denied, Defendants deny them.

108. Defendants deny the allegations in Paragraph 108 of the Complaint.

109. Defendants deny that this is an exceptional case entitling Plaintiff to recover its attorneys' fees or costs pursuant to 35 U.S.C. § 285.

¹ Defendants further deny that Exhibit 7 currently contains the image shown as Figure 17 in Paragraph 101. Unless otherwise shown in Plaintiff's P.R. 3-2 Infringement Contentions, Defendants will understand Plaintiff's allegations to assert only Claim 7 of the '121 Patent as shown in Exhibit 7. To the extent there are any allegations concerning the image and/or Exhibit 7 in Paragraph 101, Defendants deny them.

DEMAND FOR JURY TRIAL

110. Plaintiff's jury trial request does not require a response from Defendants.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants' Affirmative Defenses are listed below. Defendants reserve the right to amend its Answer to add additional Affirmative Defenses, including allegations of inequitable conduct, consistent with the facts discovered in the case.

FIRST AFFIRMATIVE DEFENSE

1. Defendants do not and have not infringed, either literally or under the doctrine of equivalents, under any theory of infringement (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)), any valid, enforceable asserted claim of the Patents-in-Suit.

SECOND AFFIRMATIVE DEFENSE

2. Each asserted claim of the Patents-in-Suit is invalid for failure to comply with one or more of the requirements of United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff is estopped, based on statements, representations, admissions made during prosecution of the patent applications resulting in the asserted patents, and admissions related to the same patent family made by Cellspin in other litigation cases, from asserting any interpretation of any valid, enforceable claims of the Patents-in-Suit that would be broad enough to cover any accused product alleged to infringe the asserted patents, either literally or by application of the doctrine of equivalents.

FOURTH AFFIRMATIVE DEFENSE

4. To the extent that Plaintiff and alleged predecessors in interest to the Patents-in-Suit failed to properly mark any of their relevant products as required by 35 U.S.C. § 287, or otherwise give proper notice that Defendants' actions allegedly infringed the Patents-in-Suit, Defendants are not liable to Plaintiff for the acts alleged to have been performed before it received actual notice that it was allegedly infringing the Patents-in-Suit.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims for damages are statutorily limited or barred by 35 U.S.C. §§ 286 and 287. Plaintiff is further barred under 35 U.S.C. § 288 from recovering costs associated with its action.

SIXTH AFFIRMATIVE DEFENSE

6. The claims of the Patents-in-Suit are not entitled to a scope sufficient to encompass any product of, system employed by, or process practiced by Defendants.

SEVENTH AFFIRMATIVE DEFENSE

7. To the extent that Plaintiff asserts that Defendants infringe under a theory of joint infringement, Defendants are not liable to Plaintiff. Defendants do not provide or perform each element of any claim of the Patents-in-Suit, and any actions of third parties accused by Plaintiff are not attributable to Defendants.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiff is precluded from recovering its reasonable attorney's fees, costs, and/or increased damages under 35 U.S.C. §§ 284 or 285.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff is not entitled to injunctive relief as it has, at a minimum, no irreparable injury and an adequate remedy at law for the alleged infringement.

TENTH AFFIRMATIVE DEFENSE

10. Should Defendants be found to infringe any valid, enforceable claim of the Patents-in-Suit, such infringement was not willful.

ELEVENTH AFFIRMATIVE DEFENSE

11. To the extent that Plaintiff asserts that Defendants indirectly infringe, either by contributory infringement or inducement of infringement, Defendants are not liable to Plaintiff for the acts alleged to have been performed before Defendants knew that its actions would cause indirect infringement.

DEFENDANTS' COUNTERCLAIMS

For its counterclaims against Plaintiff Cellspin Soft, Inc. ("Cellspin" or "Plaintiff"), Counterclaim Plaintiffs ByteDance Ltd., ByteDance Pte. Ltd., and TikTok Pte. Ltd. (collectively, "Defendants") assert the below-listed counterclaims. Defendants reserve the right to amend their Answer to add additional counterclaims, consistent with the facts discovered in the case.

PARTIES

1. Counterclaim Plaintiff ByteDance Ltd. is a corporation organized and existing under the laws of the Cayman Islands, with a principal place of business in Grand Pavilion, Hibiscus Way 802 West Bay Road, Grand Cayman KY1-1205.

2. Counterclaim Plaintiff ByteDance Pte. Ltd. is a corporation organized and existing under the laws of Singapore with a principal place of business in 1, Raffles Quay, #26-10, Singapore, 048583, with a Unique Entity Number 201923456H.

3. Counterclaim Plaintiff TikTok Pte. Ltd. is a corporation organized and existing under the laws of Singapore with a principal place of business in 1, Raffles Quay, #26-10, Singapore, 048583, with a Unique Entity Number 201719908M.

4. On information and belief, Counterclaim Defendant Cellspin is a “Silicon Valley Start-up” organized and existing under the laws of California.

BACKGROUND

5. On information and belief, Cellspin’s headquarters is located in California with a principal place of business at 5001 Great America Pkwy PMB 122 Santa Clara, CA 95054.

6. On information and belief, Cellspin owns no property in Texas.

7. On information and belief, Cellspin leases no property in Texas.

8. On information and belief, Cellspin has no employees located in Texas.

9. On information and belief, Mr. Gurvinder Singh is the Chief Executive Officer and founder of Cellspin.

10. On information and belief, Mr. Singh is also the registered agent of Cellspin with the following address: 5001 Great America Pkwy PMB 122 Santa Clara, CA 95054.

11. On information and belief, Mr. Singh resides in California.

12. On information and belief, Mr. Singh owns no property in Texas.

13. On information and belief, Mr. Singh leases no property in Texas.

14. On information and belief, Mr. Singh does not have any employees who are located in Texas.

15. Mr. Singh is the lead inventor on all of Cellspin’s Patents-in-Suit.

16. In addition to Mr. Singh, Marcos Klein and Vince Laviano are also both listed as inventors on the face of each of the Patents-in-Suit.

17. On information and belief, Mr. Klein resides in California.
18. On information and belief, Mr. Laviano resides in California.
19. In October 2017, Cellspin filed several patent infringement suits against various operating entities in the Northern District of California, including, but not limited to, Canon U.S.A., GoPro, Inc., Fossil Group, Inc., Panasonic Corporation of North America, and Garmin International, Inc (collectively, the “NDCA Cellspin Cases”).²
20. In the NDCA Cellspin Cases, Cellspin asserted patents that were within the same patent family as the Patents-In-Suit.
21. For at least some of the NDCA Cellspin Cases, Cellspin asserted U.S. Patent No. 9,258,698 (the “’698 patent”).
22. On October 18, 2018, a petition for *inter partes* review (“IPR”) of the ’698 patent was filed by Canon U.S.A. Inc.
23. The Patent Trial and Appeal Board instituted the IPR on April 29, 2019 and issued a final written decision on April 28, 2020. The PTAB found that all claims of the ’698 patent were unpatentable and thus, invalid. The Federal Circuit summarily affirmed this decision.

² E.g., *Cellspin Soft, Inc. v. Canon U.S.A., Inc.*, Case No. 4:17-cv-05938 (N.D. Cal. 2017); *Cellspin Soft, Inc. v. GoPro, Inc.*, Case No. 4:17-cv-05939 (N.D. Cal. 2017); *Cellspin Soft, Inc. v. Fossil Group, Inc. et al*, Case No. 4:17-cv-05933 (N.D. Cal. 2017); *Cellspin Soft, Inc. v. Garmin International, Inc. et al*, Case No. 4:17-cv-05934 (N.D. Cal. 2017); *Cellspin Soft, Inc. v. Panasonic Corp. of N. America.*, Case No. 4:17-cv-05929 (N.D. Cal. 2017); *Cellspin Soft, Inc. v. Fitbit LLC*, Case No. 4:17-cv-05928 (N.D. Cal. 2017); *Cellspin Soft, Inc. v. Nike, Inc.*, Case No. 4:17-cv-05931 (N.D. Cal. 2017).

24. For the other asserted patents in the NDCA Cellspin cases, Judge Yvonne Gonzalez Rogers of the NDCA, and later, the Federal Circuit, found that the asserted patents' claims were directed to an abstract idea under step one of the *Alice* analysis.³

25. On June 7, 2022, for the NDCA Cellspin cases, Judge Yvonne Gonzalez Rodgers ultimately granted summary judgment in favor of six defendants, finding that each of the defendant's accused products did not infringe the asserted patents.⁴

JURISDICTION

26. Defendants incorporate paragraphs 1-25 above.

27. These counterclaims arise under the patent laws of the United States, Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 et seq., and 28 U.S.C. §§ 1331, 1338, 1367, and 2201–02.

28. Cellspin has consented to the personal jurisdiction of this court by at least commencing its action for patent infringement in this district, as set forth in its Complaint.

29. Based solely on Cellspin's filing of this action, venue is proper in this District, though not convenient, pursuant to at least 28 U.S.C. § 1391.

COUNT I – DECLARATION REGARDING NONINFRINGEMENT

30. Defendants incorporate paragraphs 1-29 above.

31. Based on Cellspin's filing of this action and at least Defendants' first affirmative defense, an actual controversy has arisen and now exists between the parties as to whether Defendants infringe U.S. Patent Nos. 11,659,381 ("381 Patent"), 8,756,336 ("336 Patent"),

³ See, e.g., *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1316 (Fed. Cir. 2019).

⁴ *Cellspin Soft, Inc. v. Fitbit, Inc.*, No. 4:17-CV-05928-YGR, 2022 U.S. Dist. LEXIS 129030, at *147-48 (N.D. Cal. June 7, 2022)

8,862,757 (“’757 Patent”), 8,898,260 (“’260 Patent”), 9,900,766 (“’766 Patent”), 8,904,030 (“’030 Patent”), and 11,234,121 (“’121 Patent”) (collectively, the “Patents-in-Suit”). The accused products do not infringe the Patents-in-Suit because they do not practice the claimed inventions. For example the Accused Products do not infringe at least Claim 1 of ’336 Patent because they do not practice the limitation of “transferring the data by the Bluetooth enabled mobile device to the one or more web services using a segmented data transfer protocol due in part to present data size and data transfer capabilities of the Bluetooth enabled mobile device”. As a further example, the Accused Products do not infringe at least Claim 1 of ’757 Patent because they do not practice the limitation of “segmenting said file into data segments at an application layer level, wherein said file is segmented in part due to size of said file and data transfer capabilities of said Bluetooth enabled mobile device.” As a further example, the Accused Products do not infringe at least Claim 1 of ’260 Patent because they do not practice the limitation of “applying a segment identifier to each of said data segments at the application layer level, wherein the segment identifier corresponds to the content range of said file data that is being transferred in a given data segment.” As a further example, the Accused Products do not infringe at least Claim 7 of ’381 Patent because they do not practice the limitation of “detect and receive new-data acquired in a Bluetooth enabled data capture device...” As a further example, the Accused Products do not infringe at least Claims 1 and 9 of ’766 Patent and Claim 7 of the ’121 Patent because they do not practice the limitation of “a short-range wireless communication device configured to establish a short-range paired wireless connection between the short-range wireless enabled data capture device and a short-range wireless enabled cellular phone...” As a further example, the Accused Products do not infringe at least Claim 12 of the ’030 Patent because they do not practice the limitation of “establishing a paired secure Bluetooth

connection between the Bluetooth enabled data capture device and the Bluetooth enabled mobile device...”

32. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Defendants request a declaration by the Court that Defendants have not infringed and do not infringe the Patents-in-Suit under any theory.

COUNT II – DECLARATION REGARDING INVALIDITY

33. Defendants incorporate paragraphs 1-32 above.

34. Based on Cellspin’s filing of this action and at least Defendants’ second affirmative defense, an actual controversy has arisen and now exists between the parties as to the validity of the claims of the Patents-in-Suit.

35. On information and belief, the claims of the Patents-in-Suit are invalid for failure to comply with one or more of the requirements of United States Code, Title 35, and the rules, regulations, and laws pertaining thereto.

36. The claims of the Patents-in-Suit are anticipated or rendered obvious by, *inter alia*, JP 2003-60953 (“Hiroishi”); JP 2005-303511 (“Takahashi”); and US 6,763,247 (“Hollstrom”).

37. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Defendants request a declaration by the Court that the claims of the Patents-in-Suit are invalid for failure to comply with one or more requirements of United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

PRAYER FOR RELIEF

WHEREFORE, Defendants ask this Court to enter judgment in Defendants' favor and against Cellspin by granting the following relief:

- a. a declaration that the asserted claims of the Patents-in-Suit are invalid;
- b. a declaration that Defendants do not infringe, under any theory, any valid claim of the Patents-in-Suit that may be enforceable;
- c. a declaration that Cellspin take nothing by its Complaint;
- d. judgment against Cellspin and in favor of Defendants;
- e. dismissal of the Complaint with prejudice;
- f. a finding that this case is an exceptional case under 35 U.S.C. § 285 and an award to Defendants its costs and attorneys' fees incurred in this action; and
- g. any further relief as the Court may deem just and proper.

JURY DEMAND

Defendants hereby demand trial by jury on all issues.

Dated: February 29, 2024

Respectfully submitted,

By: /s/ Ricardo J. Bonilla

Ricardo J. Bonilla
Texas Bar No. 24082704
rbonilla@fr.com
David B. Conrad
Texas Bar No. 24049042
conrad@fr.com
Noel F. Chakkalakal
Texas Bar No. 24053676
chakkalakal@fr.com
Adil A. Shaikh
Texas Bar No. 24117039
shaikh@fr.com

FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
(214) 747-5070 (Telephone)
(214) 747-2091 (Facsimile)

**COUNSEL FOR DEFENDANTS
BYTEDANCE LTD., BYTEDANCE PTE. LTD.,
AND TIKTOK PTE. LTD.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on February 29, 2024, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ Ricardo J. Bonilla
Ricardo J. Bonilla