CELLSPIN SOFT, INC v. FITBIT, INC, Appeal Nos. 2018-1817 and 1819-26 (Fed. Cir. June 25, 2019) (Lourie, O'Malley, and Taranto). Appealed from N.D. Cal. (Judge Rogers).

Background:

Cellspin sued nine defendants for infringement of four patents owned by Cellspin. The four patents all related to connecting a data capture device (e.g., a digital camera) to a mobile device for a user to automatically publish captured content from the data capture device to a website. The patents describe an improvement over prior devices that required a USB or wired connection between the data capture device and the mobile device.

The defendants filed a motion to dismiss alleging that the claims of the patents are ineligible under 35 U.S.C. §101 because they were merely directed to acquiring, transferring, and publishing data and multimedia content on a website. The district court agreed and granted the motion to dismiss based on the two-step *Alice* analysis. First, the district court agreed that the claims were merely directed to the abstract idea of acquiring, transferring, and publishing data using generic computer hardware. Second, the district court found that the various claim elements were known and functioned according to their ordinary use. The district court also held that, unlike *Berkheimer*, it need not consider whether the combination of elements is inventive at this stage of the proceeding because *Berkheimer* only applies to a motion for summary judgment, not a motion to dismiss. Cellspin appealed.

Issue/Holding:

Did the district court err in granting the motion to dismiss and holding that the claims of the patents were ineligible under §101 at the pleadings stage? - Yes, reversed and remanded.

Discussion:

The Federal Circuit disagreed with the district court's analysis under step two of *Alice* and held that the allegations in the complaint, when taken as true, sufficiently supported that the claims are potentially patent eligible. When a motion to dismiss is filed at the pleadings stage, the allegations and facts of the compliant are read in the light most favorable to the plaintiff. The Federal Circuit held that Cellspin set forth "specific, plausible factual allegations about why aspects of its claimed inventions were not conventional." The Federal Circuit analogized the claims to the patent-eligible claims in *BASCOM* and found that the Cellspin's patents similarly recited an inventive concept in a non-generic and non-conventional arrangement of claimed elements. The Federal Circuit also stated that "Cellspin did more than simply label [the claimed] techniques as inventive […] [i]t pointed to evidence suggesting that these techniques had not been implemented in a similar way."

In addition, the Federal Circuit held that the district court's failure to apply the principles of *Berkheimer* at the motion to dismiss stage entirely contradicted the holding in *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121 (Fed. Cir. 2018). In *Aatrix*, the Federal Circuit stated "patentees who adequately allege their claims contain inventive concepts survive a § 101 eligibility analysis under Rule 12(b)(6)." Accordingly, the Federal Circuit held that the district court erred in granting the motion to dismiss at this stage.