

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

ImageQuix, LLC, ) Civil Action No. 6:18-3119-KFM  
Plaintiff, )  
vs. ) **O R D E R**  
Snapizzi, Inc. and Snapizzi International )  
Licensing Operations, LLC, )  
Defendants. )

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This matter is before the court on the plaintiff's motion to dismiss the counterclaim alleged against it by defendant Snapizzi International Licensing Operations, LLC ("Snapizzi Licensing") (doc. 14). The case was referred to this court for disposition by order of the Honorable Timothy M. Cain, United States District Judge, filed May 13, 2019, upon consent of the parties (docs. 24, 25).

**BACKGROUND**

The plaintiff states in its complaint that it is a South Carolina limited liability company that has designed, developed, and distributed software for digital imaging featuring digital image gallery organization, line image viewing, image distribution and sales, order tracking, image storage, and image order fulfillment for high volume photographers (doc. 1, compl. ¶ 3). Defendant Snapizzi, Inc. ("Snapizzi") is a Washington state corporation and is the owner of software for high volume photographers to manage workflow (*id.* ¶¶ 23, 33; doc. 10, answer ¶¶ 23, 33). The effective filing date of the patent at issue here, U.S. Patent No. 8,794,506 ("the '506 Patent"), is February 23, 2009 (doc. 1, compl. ¶ 21; doc. 10, answer ¶ 21). Defendant Snapizzi acquired the '506 Patent on August 3, 2018; defendant Snapizzi Licensing then acquired the '506 Patent on September 20, 2018 (doc. 1, compl. ¶¶ 34-35; doc. 10, answer ¶¶ 34-35).

Between September 7, 2018, and November 9, 2018, the plaintiff received three letters from Snapizzi, stating that it appeared the plaintiff's "Blueprint workflow tool systems . . . benefit from the invention described in the . . . '506 Patent" and offering the plaintiff "an opportunity to license the . . . '506 Patent" (doc. 1, compl. ¶¶ 39-56 & ex. B, C, D). The plaintiff alleges that it was "under a reasonable apprehension" that the defendants would instigate a patent infringement suit, and, therefore, the plaintiff filed this action on November 11, 2018, seeking a declaratory judgment of invalidity and non-infringement of the '506 Patent (*id.* ¶¶ 1, 65).

On February 19, 2019, the defendants filed an answer (doc. 10) in which defendant Snapizzi Licensing alleged a counterclaim against the plaintiff for infringement of the '506 Patent under 35 U.S.C. § 271 (doc. 10, answer at 13-15). Snapizzi Licensing alleges that the plaintiff's "Blueprint" software . . . includes the 'Smart Tag' feature that, among other things, provides automatic computer recognition of a coded component, such as a QR code, in a digital photo image" and infringes "at least Claim 9 of the '506 Patent," because "the 'Freestyle' version of the 'Smart Tag' feature performs each and every one of the method steps specified in Claim 9 of the '506 Patent" (*id.* at 14 & ex. 1).

On March 8, 2019, the plaintiff filed a motion to dismiss the counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6) (doc. 14), and the defendants filed a response in opposition on March 29, 2019 (doc. 18). The plaintiff filed a reply on April 5, 2019 (doc. 23).

#### **APPLICABLE LAW AND ANALYSIS**

"The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint." *Williams v. Preiss-Wal Pat III, LLC*, 17 F. Supp. 3d 528, 531 (D.S.C. 2014) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999)). Rule 8(a) sets forth a liberal pleading standard, which requires only a "short and plain statement of the claim showing the pleader is entitled to relief,' in order to 'give the defendant fair notice of

what . . . the claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). When ruling on a Rule 12(b)(6) motion to dismiss, "a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The court must also "draw all reasonable inferences in favor of the plaintiff." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). "[T]he facts alleged 'must be enough to raise a right to relief above the speculative level' and must provide 'enough facts to state a claim to relief that is plausible on its face.'" *Robinson v. American Honda Motor Co., Inc.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555, 570). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "In deciding whether a complaint will survive a motion to dismiss, a court evaluates the complaint in its entirety, as well as documents attached or incorporated into the complaint." *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011).

The plaintiff argues that the '506 Patent is ineligible subject matter under 35 U.S.C. § 101 (doc. 14-1 at 4-12). Patent eligibility under § 101 is a question of law that may involve underlying questions of fact. *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1342 (Fed. Cir. 2018). The Federal Circuit has "repeatedly recognized that in many cases it is possible and proper to determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion." *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1373 (Fed. Cir. 2016). However, "[t]his is true only when there are no factual allegations that, if taken as true, prevent resolving the eligibility question as a matter of law." *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018). "If there are claim construction disputes at the Rule 12(b)(6) stage, . . . the court must proceed by adopting the non-moving party's constructions, . . . or the court must resolve the disputes to whatever

extent is needed to conduct the § 101 analysis, which may well be less than a full, formal claim construction.” *Id.* (internal citations omitted). Like other legal questions based on underlying facts, the question of patent eligibility may be, and frequently has been, resolved on a Rule 12(b)(6) or (c) motion where the undisputed facts, considered under the standards required by that Rule, require a holding of ineligibility under the substantive standards of law. See, e.g., *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1341 (Fed. Cir. 2017) (affirming judgment on the pleadings under Rule 12(c) as patents ineligible under § 101); *RecogniCorp, LLC v. Nintendo Co. Ltd.*, 855 F.3d 1322, 1328 (Fed. Cir. 2017) (same); *FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016) (affirming dismissal under Rule 12(b)(6) as patent claimed patent-ineligible subject matter under § 101 and was invalid); *Genetic Techs.*, 818 F.3d at 1380 (same).

Pursuant to § 101, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. The Supreme Court has long recognized three categories of subject matter that are ineligible for patents – laws of nature, natural phenomena, and abstract ideas. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). In *Alice*, the Supreme Court reaffirmed the framework laid out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 10 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217. A two-step test determines whether a claim is directed to eligible subject matter. *Id.* First, the court must determine whether the claims are drawn to a patent-ineligible concept, i.e., a law of nature, a natural phenomenon, or an abstract idea. *Id.* If the answer is “no,” “the claims satisfy §

101 and we need not proceed to the second step.” *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1361 (Fed. Cir. 2018) (citing *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017)). If the answer is “yes,” the court must look to “the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application,” which requires “a search for an ‘inventive concept’—i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217-18 (quoting *Mayo*, 566 U.S. at 72).

The ‘506 Patent includes three independent claims: claims 1, 9, and 17. These independent claims recite as follows:

**1.** A method to improve automation of a photography process, comprising:  
taking at least a first photograph of a coded component  
using a handheldable camera, the coded component  
comprising a machine-readable element; and  
taking one or more second photographs relating to a job  
of a client using the handheldable camera,  
wherein the one or more second photographs do not contain  
the coded component,  
wherein the at least a first photograph is operable to mark at  
least one of a beginning and an end of the one or  
more second photographs;  
sending the taken photographs, including the at least a first  
photograph and the one or more second photographs,  
to a data processing system, wherein the data  
processing system is configured to process the taken  
photographs to identify the at least a first photograph,  
and associating the one or more second photographs  
with the machinereadable element of the at least a first  
photograph.

**9.** A method to improve automation of a photography process, comprising:  
receiving a plurality of photographs belonging to different  
jobs, the plurality of photographs including first  
photographs having embedded coded components  
and second photographs not having embedded coded

components,  
wherein one or more first photographs are operable to mark at least one of a beginning and an end of one or more second photographs that belong to a job of the different jobs,  
wherein each coded component comprises a machine-readable element configured for identifying a job, and  
wherein the plurality of photographs are taken using a same handheldable camera;  
processing the plurality of photographs to identify the one or more first photographs; and  
sorting the plurality of photographs to the corresponding jobs by associating the one or more second photographs with the coded components of the one or more first photographs.

**17.** A data processing system to improve automation of a photography process, comprising:  
means for receiving a plurality of photographs belongs to different jobs, the plurality of photographs including first photographs having an embedded coded component and second photographs not having embedded coded components,  
wherein one or more first photographs are operable to mark at least one of a beginning and an end of one or more second photographs that belong to a job of the different jobs,  
wherein each coded component comprises a machine-readable element configured to identify a job, and  
wherein the plurality of photographs are taken using a same handheldable camera;  
means for processing the plurality of photographs to identify the one or more first photographs;  
means for sorting the plurality of photographs to the corresponding jobs by associating the one or more second photographs with the co components of the one or more first photographs.

(Doc. 1-1, U.S. Patent No. 8,794,506 col. 19-20).

The plaintiff argues that, under the first step of the *Alice* analysis, the '506 Patent's claims are directed to an abstract idea. The undersigned agrees. The Federal Circuit has "applied the 'abstract idea' exception to encompass inventions pertaining to methods of organizing human activity." *In re TLI Commc'nns LLC Patent Litig.*, 823 F.3d 607,

613 (Fed. Cir. 2016) (citation omitted). Further, the Federal Circuit has specifically found that “classifying and storing digital images in an organized manner” is an abstract idea. *Id.* at 611. In *TLI Communications*, the representative claim was drawn to the “concept of classifying an image and storing the image based on its classification” using concrete, tangible components such as a telephone unit and a server. *Id.* The court found the physical components merely provided a generic environment for carrying out “the abstract idea of classifying and storing digital images in an organized manner.” *Id.* The specification, which emphasized the present invention related “to a method for recording, communicating and administering [a] digital image,” further underscored the court’s determination that claim 17 was directed to an abstract idea. *Id.* at 611-12.

Independent claims 1, 9, and 17 of the ‘506 Patent are automated methods and a system to capture, label, and categorize digital images (‘506 Patent col. 1, lines 42-44). The claims are directed to improving “automation of image storage for a photography business” (*id.* col. 1, lines 5-6). The concept behind the patent is to collect, mark, store, and organize photographs, either for a single job (claim 1) or multiple jobs (claim 9) (see *id.* col. 19-20). The claims are drawn to the basic concept of collecting, marking, storing, and organizing photographs, which, under *TLI Communications*, is an abstract idea for purposes of the first step of the *Alice* analysis.<sup>1</sup>

The defendants argue that the ‘506 Patent is not directed to an abstract idea because the claims require: (1) a coded component to identify a job; (2) a plurality of photographs, some with embedded coded components and some without; and (3) a data processing system, e.g., a server, to identify the photographs with the coded component, associate the coded photographs with non-coded photographs, and sort the photographs

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<sup>1</sup> Claims 1, 9, and 17 are representative, because “all the claims are substantially similar and linked to the same abstract idea,” *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014) (citation omitted), and thus the court need not analyze every claim of the ‘506 Patent.

(doc. 18 at 7). The defendants attempt to limit “coded component” to bar codes and argue “[h]ow many humans can read and decipher optical bar codes without the aid of an electronic device?” (*id.* at 1). The defendants further argue:

The claims require coded components to be embedded in photographs to allow the efficient server-based image association processes and systems that the patent discloses. The claims are rooted in computing technology and cannot be done in the human mind. Thus, [the plaintiff’s] attempt to characterize the claims as mere mental steps fails.

(Doc. 18 at 14-15).

The undersigned agrees with the plaintiff that the defendants’ limitation of the claims to “optical bar codes” does not accurately describe the claims in question (doc. 23 at 5-6). Claims 1, 9, and 17 all involve using a “coded component” to organize photographs (‘506 Patent col. 19-20). The ‘506 Patent’s specification provides that the “coded component comprises a unique graphic image that is machine readable and recognizable” (*id.* col. 8, lines 31-33). While the graphic image can be a bar code or bitmap pixel code, the graphic image can also be “a string of numbers or characters. The graphic image may also be a color code or arrangement of colors” (*id.* col. 8, lines 36-40). Figures 5A, 5B, and 5C of the ‘506 Patent are examples of coded component cards and feature a data matrix barcode (5A), a barcode (5B), and a sequence of numbers and letters (5C) (*id.* col. 2, lines 41-42 & fig. 5A, 5B, 5C). The coded component example in Figure 5C is “Z67AB95” (*id.* col. 8, lines 49-50 & fig. 5C). While a machine can recognize a string of numbers or characters such as “Z67AB95,” a human can as well. A human can recognize a string of numbers or characters or different colors, and mark, sort, and organize photographs based on such information. All three independent claims use a coded component, which may be human readable, to mark photographs, identify a photography job, and as a delimiter between photography jobs (*id.* col. 3, lines 11-16). As argued by the plaintiff, the claims in question are directed to the abstract idea of taking pictures with an identifying marker and

organizing the pictures according to the marker to mark the beginning or end of a photography job or jobs. In looking at the facts of the claims in the light most favorable to the defendants, the '506 Patent is directed to the abstract idea of collecting, marking, storing, and organizing data (the photographs), and using the coded component does not make the claims any less abstract for the step one analysis.

Turning to the second step of the *Alice* analysis, the court must look to "the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application," which requires "a search for an 'inventive concept'—i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*, 573 U.S. at 217-18 (quoting *Mayo*, 566 U.S. at 72). The components must involve more than performance of "well-understood, routine, conventional activit[ies]" previously known to the industry." *Id.* at 225 (quoting *Mayo*, 566 U.S. at 73). The defendants argue that making this determination requires resolution of issues of material fact, and thus granting the motion to dismiss would be improper (doc. 18 at 18-19). The undersigned disagrees as courts do not have to engage in fact-finding to determine whether a claim is well-understood, routine, or conventional if the court can look to the claims and specification to make such determination, as the court can here. See *In re TLI Commc'n*s, 823 F.3d at 613-14.

As noted, the '506 Patent has three independent claims. Claim 1 recites a method of taking a photograph of a coded component using a handheld camera to mark the beginning and end of a photography job and sending the photographs to a data processing system that is "configured to process" the photographs ('506 Patent col. 19). Claim 9 recites a method for receiving photographs with coded components belonging to different jobs, processing the photographs, and sorting the photographs (*id.* col. 20). Claim 17 recites a data processing system, or server, for receiving multiple photographs with

coded components belonging to different jobs, processing the classification information, and organizing the photographs according to their classifications (*id.*).

The defendants argue that “[t]he claims factually require computational machine decoding and processing of coded components embedded in photographs as part of the disclosed systems and methods for automatic image association. The disclosure fundamentally describes a technological solution to a technological problem” (doc. 18 at 8). The undersigned agrees with the plaintiff, however, that the use of coded components and a server do not elevate the abstract idea of organizing photographs into an “inventive concept” as required by the second step of the *Alice* analysis. The claims do not purport to improve the computer itself; rather, the claims describe the automation of the human activities of taking photographs, marking photographs, and organizing photographs, either for a single job (claim 1) or multiple jobs (claim 9). Similarly, in *TLI Communications*, the representative claim required a telephone unit with a digital pick up device that could compress images, transmit image data, and classify data according to known methods. 823 F.3d at 614. The court found the telephone unit “simply provides the environment in which the abstract idea of classifying and storing digital images in an organized manner is carried out.” *Id.* The claim also required a server, which the court found did not add an inventive concept because receiving data, extracting classification information from the received data, and storing the digital images while taking into consideration the classification information are all “well understood, routine, [and] conventional activities previously known to the industry.” *Id.* (quoting *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347-48 (Fed. Cir. 2014)).

The plaintiff argues that simply relying on a computer to perform routine tasks quicker or more accurately is insufficient to render a claim patent-eligible. The undersigned agrees. In *OIP Technologies, Inc. v. Amazon.com, Inc.*, the patent at issue explained that, traditionally, merchandisers manually determined prices based on their knowledge of the

items, pricing experience, business policies, and estimating the shape of a demand curve for particular products. 788 F.3d 1359, 1360-61 (Fed. Cir. 2015). The patent stated that the manual approach was slow to react to changing market conditions, resulting in imperfect pricing models where the merchandiser was not charging optimal prices to maximize profit. *Id.* at 1361. The patent at issue taught a price-optimization method to “help vendors automatically reach better pricing decisions through automatic estimation and measurement of actual demand to select prices.” *Id.* The Federal Circuit found the concept of offer-based price optimization to be abstract. *Id.* at 1362. Further, the court found that the computer functions of sending electronic messages over a network of devices, storing test results in a machine-readable medium, and using a computerized system to automatically determine an estimated outcome and set a price are “computer functions [that] are ‘well-understood, routine, conventional activities’ previously known to the industry.” *Id.* at 1363 (quoting *Alice*, 573 U.S. at 225). The court explained that “the key distinguishing feature of the claims is the ability to automate or otherwise make more efficient traditional price-optimization methods, . . . [b]ut relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *Id.* (citations omitted).

With regard to Claim 1, there is no dispute that taking an image with a handheld camera existed before the patent was issued. The defendants admit that a photographer can use a handheld camera to capture an image of a subject holding a banner and capture similar images of a subject not holding a banner, and there is no dispute that a photographer can import photos to a computer (doc. 10, answer ¶¶ 10, 13). As previously discussed, the coded component in the ‘506 Patent can be numbers, letters, or colors (‘506 Patent col. 8, lines 36-41), and a human can certainly recognize numbers, letters, or colors on a card and associate that information to a particular photography job.

With regard to Claim 9, associating different cards having a coded component, which can be human readable, with different jobs and organizing the

photographs based on their different coded components are activities that can also be performed manually by humans. Further, the steps of identifying and marking the photographs and sorting the plurality of photographs to the corresponding jobs within the data processing system is not considered significantly more than an abstract idea since it is a conventional and routine function of a generic computer system. See *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d at 611. As the district court stated in *MacroPoint, LLC v. FourKites, Inc.*, “[C]orrelating’ information does not add an inventive concept.” C.A. No. 1:15-1002, 2015 WL 6870118, at \*5 (N.D. Ohio 2015), aff’d, 671 F. App’x 780 (Fed. Cir. 2016). “Correlation simply connotes the ascertaining of a relationship between two pieces of information . . . . Rather, the patents-in-suit simply instruct that a computer use preexisting technology to implement the correlation. This type of use of data, however, involves only the conventional use of a computer.” *Id.*

Moreover, the data processing system described in claim 17 does not transform the abstract idea of organizing photographs from multiple jobs into patent-eligible subject matter (‘506 Patent col. 20). The data processing system receives multiple digital images, extracts the classification information, and organizes the digital images according to their classifications; like the steps performed by the server in *TLI Communications*, these steps do not add an inventive concept to the ‘506 Patent. Simply “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Technologies*, 788 F.3d at 1363 (citations omitted). The specification of the ‘506 Patent describes the invention as “an automated system for image management which can permit a photographer to reduce the time spent on image management and storage” (‘506 Patent col. 3, lines 7-9). As in *OIP Technologies* and *TLI Communications*, the claims at issue automate or make more efficient traditional image management methods, a feature that is insufficient to render the claims patent-eligible. The claims are directed to the abstract idea of collecting, marking, storing, and organizing photographs,

and the elements of the claims lack an “inventive concept” sufficient to transform the claimed subject matter into a patent-eligible application of that idea. Accordingly, the claims are patent-ineligible under § 101.<sup>2</sup>

The defendants cite *Microsoft Corp. v. i4i LP*, 564 U.S. 91, 95 (2011) (holding that 35 U.S.C. § 282 requires an invalidity defense be proven by clear and convincing evidence) and *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed Cir. 2018) to contend that the plaintiff must prove patent ineligibility by clear and convincing evidence (doc. 18 at 4, 6, 18). However, as noted by the plaintiff, neither of these cases involved Rule 12(b)(6) motions, and the district courts have been divided on whether the clear and convincing burden of proof applies in the context of a Rule 12(b)(6) motion. See *Invue Sec. Prods., Inc. v. Mobile Tech, Inc.*, C.A. No. 3:15-610-MOC-DSC, 2016 WL 1465263, at \*2 (W.D.N.C. 2016) (applying clear and convincing standard on 12(b)(6) motion); *Modern Telecom Sys. LLC v. Earthlink Inc.*, C.A. No. SA CV 14-347-DOC, 2015 WL 1239992, at \*7 (C.D. Cal. 2015) (clear and convincing standard does not apply to motion to dismiss because no evidence outside the pleadings is considered). See also *Microsoft*, 564 U.S. at 114-15 (J. Breyer, concurring) (where ultimate question of patent validity turns on how law applies to facts as given and not upon factual disputes, the clear and convincing standard has no application). Regardless, even applying the clear and convincing standard to the plaintiff’s Rule 12(b)(6) motion, the undisputed facts, i.e., the claims and specification, show the ‘506 Patent is ineligible as a matter of law, thereby making the counterclaim for patent

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<sup>2</sup> Because the court grants the motion to dismiss on the basis of ineligibility under § 101, the plaintiff’s remaining argument for dismissal based on the untimely filing of the answer and counterclaim is moot (see doc. 14-1 at 12). Nonetheless, the undersigned notes that, while the defendants filed a motion for an extension of time until February 18, 2019, within which to file their answer (doc. 8), the order granting the motion extended the deadline until February 19, 2019 (doc. 9), and the defendants timely filed their answer on that date (doc. 10).

infringement implausible. See *Twombly*, 550 U.S. at 570 (to survive a 12(b)(6) motion, complaint must state a claim to relief that is plausible on its face).

**CONCLUSION**

Wherefore, based upon the foregoing, the plaintiff's motion to dismiss (doc. 14) defendant Snapizzi Licensing's counterclaim for infringement of the '506 Patent is granted.

IT IS SO ORDERED.

s/Kevin F. McDonald  
United States Magistrate Judge

December 4, 2019  
Greenville, South Carolina