

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ELECTRO SCIENTIFIC INDUSTRIES, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:18-cv-1355-M
	§	
FOSSIL GROUP, INC. and MISFIT, INC.,	§	
	§	
Defendants.	§	
	§	

ORDER

Before the Court is the Motion to Dismiss (ECF No. 13), filed by Defendants Fossil Group, Inc. and MisFit, Inc. Plaintiff Electro Scientific Industries, Inc. filed suit against Defendants, alleging infringement of U.S. Patent No. 8,394,301 (the “301 patent”) and U.S. Patent No. 9,568,167 (the “167 patent”). Defendants move to dismiss the Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), based on Defendants’ contention that the asserted claims of the ’301 and ’167 patents are not directed to patent-eligible subject matter under 35 U.S. § 101.

“Whether a claim recites patent eligible subject matter is a question of law which may contain disputes over underlying facts.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). The Federal Circuit has cautioned that dismissal for lack of patentable subject matter at the pleading stage should be “the exception, not the rule.” *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1339 (Fed. Cir. 2013) (explaining that dismissal under Rule 12(b)(6) for lack of patentable subject matter is warranted when “the *only* plausible reading of the patent must be that there is clear and convincing evidence of ineligibility.”), *vacated on other grounds by WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014).

After reviewing the pleadings and the arguments of the parties, the Court concludes that the issue of patent eligibility should not be decided until claim construction has occurred.

IT IS ORDERED that the Motion to Dismiss (ECF No. 13) is DENIED without prejudice to Defendants asserting the arguments contained therein.

IT IS FURTHER ORDERED that Plaintiff's Request for Judicial Notice (ECF No. 20) is DENIED AS MOOT.

SO ORDERED.

November 20, 2018.


BARBARA M. G. LYNN
CHIEF JUDGE