

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

SECURE CAM, LLC,

Plaintiff,

v.

REVO AMERICA CORPORATION,

Defendant.

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Civil Action No. 3:18-cv-1157-M

ORDER

Before the Court is Defendant’s Motion to Dismiss. (ECF No. 15). Plaintiff filed suit against Defendant alleging infringement of U.S. Patent No. 8,531,555 (“the ’555 Patent”); U.S. Patent No. 8350,928 (“the ’928 Patent”); U.S. Patent No. 8,836,819 (“the ’819 Patent”); and U.S. Patent No. 9,363,408 (“the ’408 Patent”). (ECF No. 1).

Defendant moves to dismiss the Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), based on Defendant’s contention that the asserted claims of the patents-in-suit 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 in this case should not be decided until claim construction has occurred.

IT IS ORDERED that Defendant's Motion to Dismiss (ECF No. 15) is **DENIED** without prejudice to Defendant asserting that the patents are directed to patent-ineligible subject matter after claim construction has occurred.

SO ORDERED.

November 29, 2018.



BARBARA M. G. LYNN
CHIEF JUDGE