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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CONFIDENT TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

v.

AXS GROUP LLC, a Delaware
corporation; and AEG FACILITIES, LLC,
a Delaware corporation,

Defendants.

Case No.: 17-cv-02181-H-MDD

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS**

[Doc. No. 14.]

On December 22, 2017, Defendants AXS Group LLC and AEG Facilities, LLC filed a motion to dismiss Plaintiff Confident Technologies, Inc.'s complaint. (Doc. No. 14.) On January 8, 2018, Plaintiff filed an opposition to Defendants' motion to dismiss. (Doc. No. 15.) On January 12, 2018, Defendants filed their reply. (Doc. No. 18.)

The Court held a hearing on the matter on January 22, 2018. Trevor Q. Coddington, Donny K. Samporna, and Cody R. LeJeune appeared for Plaintiff. Brian W. LaCorte appeared for Defendants. For the reasons below, the Court denies Defendants' motion to dismiss.

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1 **Background**

2 On October 25, 2017, Plaintiff Confident filed a complaint for patent infringement
3 against Defendants AXS and AEG, alleging infringement of U.S. Patent No. 8,621,578.
4 (Doc. No. 1.) Specifically, Plaintiff alleges that Defendants’ use of ReCAPTCHA
5 verification technology in connection with AXS’ websites, mobile apps, and ticket
6 purchasing services infringes and/or induces infringement of the ’578 Patent. (Id. ¶¶ 9-10,
7 12.)

8 The ’578 patent is entitled “Methods and Systems for Protecting Website Forms
9 From Automated Access” and “is directed to a method and system of telling apart a human
10 from a computer” through a “graphical image verification system.” U.S. Patent No.
11 8,621,578, at (54), 1:7-8 (filed Dec. 31, 2013). The specification of the ’578 patent
12 describes the claimed invention and the state of the prior art at the time of the invention as
13 follows:

14 The present invention provides a system and method to tell apart a
15 human from a computer using a test generally known as a Completely
16 Automated Public test to Tell Computers and Humans Apart (hereinafter
17 “CAPTCHA”). Websites, and in particular web-based forms, are often the
18 target of malicious programs designed to register for service on a large scale,
19 consume large amounts of resources or bias results in on-line polls or voting.
20 In response to these malicious programs CAPTCHA-based test have been
21 developed in an attempt to discern between a human’s attempt to access a
22 website and automated access to a website.

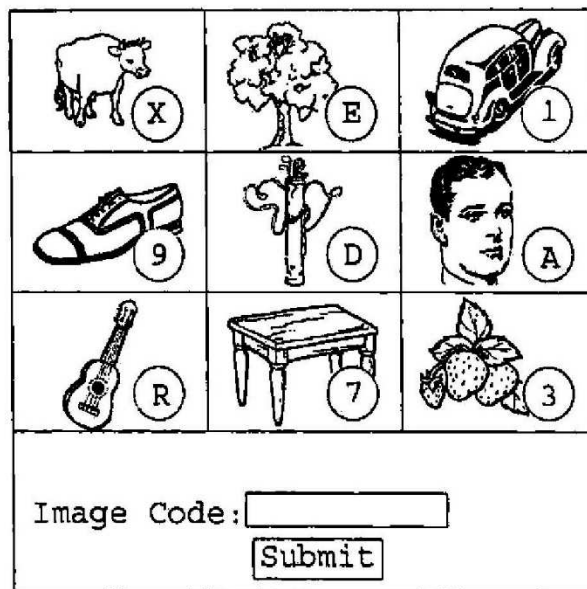
23 CAPTCHA tests attempt to require a user to correctly answer a question
24 which only a human could provide a correct answer. Most current CAPTCHA
25 tests are text based and require the user to interpret and input a distorted piece
26 of test presented to the user. However, user friendliness is lacking and
27 automated attacks are not eliminated by current [CAPTCHA] tests. Thus,
28 there remains a need for improved systems and methods to tell apart a human
from a computer when allowing access to a website.

26 ...

27 ...

1 The present invention provides a method and system for an improved
2 CAPTCHA test which requires users to select randomly generated images
3 from a dynamic graphical arrangement of images. The images the user must
4 select are based on selected categories selected by the verification service
5 provider.

6 Id. at 2:39-3:16. Figure 1 of the '578 patent provides an illustration of an example of a
7 dynamic graphical arrangement of images as utilized by the claimed invention. Figure 1
8 is displayed below:



19

20 **FIG. 1**

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23 Independent claim 1 of the '578 patent claims:

24 A method for generating a completely automated test to tell computers and
25 humans apart comprising:

26 generating a matrix of non-overlapping randomly selected images in response
27 to an access request of a user, the dynamic graphical arrangement comprising
28 one randomly selected image from a selected image category chosen for an
image recognition task and at least one image not from the selected image
category, wherein each image is associated with a unique randomly generated

1 access code, wherein the image recognition task comprises an instruction to
2 select one image corresponding to the selected image category from the matrix
3 of non-overlapping randomly selected images;

4 presenting the dynamic graphical arrangement of randomly selected images
5 to the user and communicating the image recognition task to the user;

6 receiving an input from the user access device at a server system, the input
7 comprising the unique randomly generated access code associated with the
8 one image from the selected category;

9 the server system comparing the input from the user access device to an
10 authenticating reference code to confirm the user is a human and not a
11 computer; and

12 wherein the matrix comprises at least one image known to belong to the
13 selected image category, at least one image known to not belong to the
14 selected image category and at least one image suspected to belong to the
15 selected image category and wherein the user is still granted access to the
16 website when the input from the user access device comprises selection of the
17 at least one image known to belong to the selected image category and
18 selection or omission of the at least one image suspected to belong to the
19 selected image category.

20 Id. at 9:2-35.

21 By the present motion, Defendants move pursuant to Federal Rule of Civil Procedure
22 12(b)(6) to dismiss all of the claims in Plaintiff's complaint on the grounds that the patent-
23 in-suit, the '578 patent, is invalid as a matter of law. (Doc. No. 14-1.) Specifically,
24 Defendants argue that the '578 patent fails to claim patent-eligible subject matter and,
25 therefore, is invalid under 35 U.S.C. § 101. (Id.)

26 Discussion

27 **I. Legal Standards for a Rule 12(b)(6) Motion to Dismiss**

28 In patent cases, a motion to dismiss pursuant to Federal Rule of Civil Procedure
12(b)(6) is governed by the applicable law of the regional circuit. K-Tech
Telecommunications, Inc. v. Time Warner Cable, Inc., 714 F.3d 1277, 1282 (Fed. Cir.
2013). A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal

1 sufficiency of the pleadings and allows a court to dismiss a complaint if the plaintiff has
2 failed to state a claim upon which relief can be granted. See Conservation Force v. Salazar,
3 646 F.3d 1240, 1241 (9th Cir. 2011). Federal Rule of Civil Procedure 8(a)(2) requires that
4 a pleading stating a claim for relief containing “a short and plain statement of the claim
5 showing that the pleader is entitled to relief.” The function of this pleading requirement is
6 to “give the defendant fair notice of what the . . . claim is and the grounds upon which it
7 rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

8 A complaint will survive a Rule 12(b)(6) motion to dismiss if it contains “enough
9 facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly,
10 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable
12 for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “A pleading
13 that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of
14 action will not do.’” Id. (quoting Twombly, 550 U.S. at 555). “Nor does a complaint
15 suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Id.
16 (quoting Twombly, 550 U.S. at 557). Accordingly, dismissal for failure to state a claim is
17 proper where the claim “lacks a cognizable legal theory or sufficient facts to support a
18 cognizable legal theory.” Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104
19 (9th Cir. 2008).

20 In reviewing a Rule 12(b)(6) motion to dismiss, a district court must accept as true
21 all facts alleged in the complaint, and draw all reasonable inferences in favor of the
22 plaintiff. See Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d
23 938, 945 (9th Cir. 2014). But, a court need not accept “legal conclusions” as true. Ashcroft
24 v. Iqbal, 556 U.S. 662, 678 (2009). Further, it is improper for a court to assume the plaintiff
25 “can prove facts which it has not alleged or that the defendants have violated the . . . laws
26 in ways that have not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State
27 Council of Carpenters, 459 U.S. 519, 526 (1983).

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II. Legal Standards for Patent Eligibility under § 101

Section 101 of the Patent Act defines patent-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has “‘long held that this provision contains an important implicit exception[:] Laws of nature, natural phenomena, and abstract ideas are not patentable.’” Ass’n for Molecular Pathology v. Myriad Genetics, Inc., 133 S. Ct. 2107, 2116 (2013). “The concern underlying these judicial exclusions is that ‘patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity.’” Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc., 827 F.3d 1042, 1047 (Fed. Cir. 2016).

“The Supreme Court has devised a two-stage framework to determine whether a claim falls outside the scope of section 101.” Affinity Labs of Texas, LLC v. DIRECTV, LLC, 838 F.3d 1253, 1257 (Fed. Cir. 2016); see Alice Corp. Pty. v. CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014). “The prescribed approach requires a court to determine (1) whether the claim is directed to a patent-ineligible concept, i.e., a law of nature, a natural phenomenon, or an abstract idea, and if so, (2) whether the elements of the claim, considered both individually and as an ordered combination, add enough to transform the nature of the claim’ into a patent-eligible application.” Affinity Labs, 838 F.3d at 1257 (internal quotation marks omitted) (citing Alice, 134 S. Ct. at 2355). “In the context of claims that are challenged as containing only abstract ideas, those two stages are typically referred to as the ‘abstract idea’ step and the ‘inventive concept’ step.” Id.

“The ‘abstract idea’ step of the inquiry” requires courts “to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” Id. at 1257. “The ‘inventive concept’ step requires [courts] to look with more specificity at what the claim elements add, in order to determine ‘whether they identify an “inventive concept” in the application of the ineligible subject matter’ to which the claim is directed. Id. at 1258. “This inventive concept must do more than simply recite ‘well-understood, routine, conventional activity.’” FairWarning IP,

1 LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1093 (Fed. Cir. 2016). “The accused infringer
2 bears the burden of proof on both steps.” InsideSales.com, Inc. v. SalesLoft, Inc., No.
3 2:16CV859DAK, 2017 WL 2559932, at *2 (D. Utah June 13, 2017); see Microsoft Corp.
4 v. i4i Ltd. P’ship, 564 U.S. 91, 95 (2011).

5 The Federal Circuit has expressly recognized that “it is possible and proper to
6 determine patent eligibility under 35 U.S.C. § 101 on a Rule 12(b)(6) motion.” Genetic
7 Techs. Ltd. v. Merial L.L.C., 818 F.3d 1369, 1373 (Fed. Cir. 2016); see also Bascom Glob.
8 Internet Servs., Inc. v. AT&T Mobility LLC, 827 F.3d 1341, 1347 (Fed. Cir. 2016)
9 (“Courts may . . . dispose of patent-infringement claims under § 101 whenever procedurally
10 appropriate.”). Further, the Federal Circuit has explained that where there is “no claim
11 construction dispute relevant to the eligibility issue,” evaluation of a patent claim’s subject
12 matter eligibility under § 101 can proceed before claim construction. Genetic Techs., 818
13 F.3d at 1373; see Cleveland Clinic Found. v. True Health Diagnostics LLC, 859 F.3d 1352,
14 1360 (Fed. Cir. 2017) (“[W]e have repeatedly affirmed § 101 rejections at the motion to
15 dismiss stage, before claim construction or significant discovery has commenced.”); see
16 also Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.), 687 F.3d 1266, 1273
17 (Fed. Cir. 2012) (“[C]laim construction is not an inviolable prerequisite to a validity
18 determination under § 101.”).

19 **III. Analysis**

20 The Court begins its analysis with step one of the Alice inquiry. Defendants argue
21 that under step one, the ’578 patent is directed to an abstract idea because the claimed
22 invention is specifically directed to the abstract idea of an image-recognition test. (Doc.
23 No. 14-1 at 1-2, 8-13; Doc. No. 18 at 2.) In response, Plaintiff argues that the Court should
24 reject Defendants’ characterization of the claimed invention as merely being an image-
25 recognition test. (Doc. No. 15 at 1.) Plaintiff argues that the claimed invention is not
26 directed to an abstract idea because the invention is directed to improving an existing
27 technological process, specifically how an online server distinguishes human users from
28 computer users in order to address the problem of automated computers (“bots”) accessing

1 websites. (Id.)

2 “The step one inquiry focuses on determining ‘whether the claim at issue is ‘directed
3 to’ a judicial exception, such as an abstract idea.’” Apple, Inc. v. Ameranth, Inc., 842 F.3d
4 1229, 1241 (Fed. Cir. 2016). The Federal Circuit has explained that “[w]hile the two steps
5 of the Alice framework are related, the ‘Supreme Court’s formulation makes clear that the
6 first-stage filter is a meaningful one, sometimes ending the § 101 inquiry.’” Thales
7 Visionix Inc. v. United States, 850 F.3d 1343, 1347 (Fed. Cir. 2017).

8 The Federal Circuit has cautioned that the step one inquiry does not “simply ask
9 whether the claims involve a patent-ineligible concept, because essentially every routinely
10 patent-eligible claim involving physical products and actions involves a law of nature
11 and/or natural phenomenon—after all, they take place in the physical world.” Enfish, LLC
12 v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016); see also In re TLI Commc’ns
13 LLC Patent Litig., 823 F.3d 607, 611 (Fed. Cir. 2016) (“[I]n determining whether the
14 claims are directed to an abstract idea, we must be careful to avoid oversimplifying the
15 claims because ‘[a]t some level, ‘all inventions . . . embody, use, reflect, rest upon, or apply
16 laws of nature, natural phenomena, or abstract ideas.’”). “Rather, the ‘directed to’ inquiry
17 applies a stage-one filter to claims, considered in light of the specification, based on
18 whether ‘their character as a whole is directed to excluded subject matter.’” Enfish, 822
19 F.3d at 1335.

20 In so doing, a court should “determine whether the claims ‘focus on a specific means
21 or method that improves the relevant technology’ or are ‘directed to a result or effect that
22 itself is the abstract idea and merely invoke generic processes and machinery.’” Apple,
23 842 F.3d at 1241; see Affinity Labs of Texas, LLC v. Amazon.com Inc., 838 F.3d 1266,
24 1270 (Fed. Cir. 2016) (“In addressing the first step of the section 101 inquiry, as applied to
25 a computer-implemented invention, it is often helpful to ask whether the claims are directed
26 to ‘an improvement in the functioning of a computer,’ or merely ‘adding conventional
27 computer components to well-known business practices.’”); see also Enfish, 822 F.3d at
28 1335 (“The Supreme Court has suggested that claims ‘purport[ing] to improve the

1 functioning of the computer itself,’ or ‘improv[ing] an existing technological process’
2 might not succumb to the abstract idea exception.”). The Federal Circuit has “held claims
3 ineligible as directed to an abstract idea when they merely collect electronic information,
4 display information, or embody mental processes that could be performed by humans.”
5 Thales Visionix, 850 F.3d at 1346-47.

6 The Court agrees with Plaintiff that the invention claimed in the ’578 patent is not
7 directed to an abstract idea. The invention claimed in the ’578 patent does not merely
8 collect electronic information, display information, or embody a mental processes that
9 could be performed by humans. Rather, the invention is directed to improving an existing
10 technological process, specifically the process of how an online server is able to discern
11 between a human’s attempt to access a website and an automated computer’s attempt to
12 access a website – the CAPTCHA test. See ’578 Patent at 2:39-49. The ’578 patent
13 explains that the prior art CAPTCHA tests – which presented a user with distorted text and
14 required the user to interpret and input that distorted text – lacked user friendliness and
15 were still susceptible to automated attacks from bots. See id. at 2:50-56.

16 The invention claimed in the ’578 patent attempts to improve on the technological
17 process of the CAPTCHA test by utilizing “a matrix of non-overlapping randomly selected
18 images” where “each image is associated with a unique randomly generated access code.”
19 Id. at 9:4-11. This matrix of images is then presented to the user along with an “image
20 recognition task compris[ing] an instruction to select one image corresponding to [a]
21 selected image category.” Id. at 9:16-18. A “server” then receives the access code
22 associated with the image selected by the user from the “user access device,” and the server
23 then compares that access code “to an authenticating reference code to confirm the user is
24 a human and not a computer.” Id. at 9:19-25. Accordingly, a review of the ’578 patent’s
25 claim language and its claimed advancement over the prior art shows that the claimed
26 invention focuses on utilizing a specific means, here a matrix of non-overlapping randomly
27 selected images that is presented to the user along with an image recognition task, to
28 improve an existing technological process, here the CAPTCHA test, in effort to solve a

1 problem necessarily rooted in computer technology, automated attacks from bots.¹ See
2 Affinity Labs, 838 F.3d at 1257 (explaining that under step one of the Alice inquiry, a court
3 should focus on the claimed advancement over the prior art). Accordingly, the '578 patent
4 is not directed to an abstract idea. See Enfish, 822 F.3d at 1339 (“[T]he claims are directed
5 to a specific implementation of a solution to a problem in the software arts. Accordingly,
6 we find the claims at issue are not directed to an abstract idea.”); DDR Holdings, LLC v.
7 Hotels.com, L.P., 773 F.3d 1245, 1257 (Fed. Cir. 2014) (finding claims not directed to an
8 abstract idea where “the claimed solution is necessarily rooted in computer technology in
9 order to overcome a problem specifically arising in the realm of computer networks”);
10 Trading Techs., 675 F. App’x at 1004–05 (“Precedent has recognized that specific
11 technologic modifications to solve a problem or improve the functioning of a known
12 system generally produce patent-eligible subject matter.”).

13 Further, the Court rejects Defendants’ characterization of the invention as merely
14 being an image-recognition test. In making this characterization, Defendants oversimplify
15 the claimed invention and fail to view it in its proper context. See TLI Commc’ns, 823
16 F.3d at 611 (explaining that courts must be careful to “to avoid oversimplifying the
17 claims”). The claimed invention is not simply directed to an image-recognition test in the
18 abstract. Rather, the claimed invention is directed to a specific type of image recognition
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21 ¹ Defendants argue that the Court’s § 101 analysis should not focus on the technology-based
22 problem of Internet “bots” because this concept is not in the claim language itself. (Doc. No. 18 at 2.)
23 The Court disagrees. The Federal Circuit has explained that in analyzing patent-eligibility under § 101,
24 a reviewing court should apply the Alice step one filter to the claims as “considered in light of the
25 specification,” in particular what the specification describes as the claimed invention’s innovation over
26 the prior art. Enfish, 822 F.3d at 1335; see Affinity Labs, 838 F.3d at 1257; Intellectual Ventures I LLC
27 v. Erie Indem. Co., 850 F.3d 1315, 1325 (Fed. Cir. 2017). Thus, in performing step one of the Alice
28 inquiry, it is entirely proper for the Court to consider what the '578 patent’s specification describes as
the problem addressed by the claimed invention and the claimed invention’s purported advancements
over the prior art. See, e.g., Trading Techs. Int’l, Inc. v. CQG, Inc., 675 F. App’x 1001, 1004 (Fed. Cir.
2017) (affirming a district court’s patent eligibility analysis under Alice step one where the district court
analyzed the specific problems the claimed invention sought to address). Further, the Court notes that
even if it could only consider the language in the claims, the claim language itself expressly states that
the purpose of the claimed method is “to tell computers and humans apart.” ’578 Patent at 9:2-3.

1 test that is purportedly useful in assisting an online server with the task of determining
2 whether a user attempting to access a website is a human or a computer/bot. When viewed
3 in this proper context, the claimed invention represents a specific solution to a problem that
4 exists in the computer world and, thus, is not an abstract idea. See Enfish, 822 F.3d at
5 1339; DDR, 773 F.3d at 1257.

6 Indeed, the Court agrees with Plaintiff that the claimed invention is directed to
7 solving a problem that currently exists only within the technical world. (Doc. No. 15 at 2.)
8 The need to distinguish humans from computers is an issue specific to computer
9 networking fields. Defendants have failed to identify any comparable situation within the
10 analog world.² That the claimed invention focuses on solving a specific problem that exists
11 only in the technical world supports the Court’s conclusion that the ’578 patent is not
12 directed to an abstract idea.³ See DDR, 773 F.3d at 1257 (“[T]hese claims stand apart
13 because they do not merely recite the performance of some business practice known from
14 the pre-Internet world along with the requirement to perform it on the Internet.”); Trading
15 Techs., 675 F. App’x at 1004 (affirming district court’s conclusion at Alice step one that
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17 ² The Court does not find persuasive Defendants’ argument that visual verification tests that utilize
18 a user’s photo ID at polling stations for political elections represents a real world example of the
19 problem addressed by the claimed invention. (Doc. No. 18 at 3.) Unlike the test utilized by the claimed
20 invention, in the polling station scenario, the test is being used to determine the user’s identity not
21 whether the user is a human or a computer.

22 Similarly, the Court rejects Defendants’ argument presented at the hearing that a visual
23 verification test presented in a children’s magazine represents a real world example of the claimed
24 invention. The context and purpose of the visual verification test is different from what is claimed in the
25 ’578 patent. In Defendants’ example, the test is being administered for the simple purpose of
26 determining whether the user, the child, is able to correctly solve the test. In the ’578 patent, the
27 randomized test is being administered in order to determine whether the user is a human or a computer.

28 ³ In addition, the fact that the claimed invention addresses a problem that is rooted in and only
exists in the computer world distinguishes the present case from the cases relied on by Defendants such
as FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089 (Fed. Cir. 2016), and Ultramercial, Inc. v.
Hulu, LLC, 772 F.3d 709 (Fed. Cir. 2014). For example in FairWarning, the Federal Circuit expressly
noted that the claims at issue were an attempt to simply computerize methods that had already existed in
the analog world for decades. See FairWarning, 839 F.3d at 1095 (“The claimed rules ask . . . the same
questions humans in analogous situations detecting fraud have asked for decades, if not centuries.”).

1 the patents at issue are not directed to an abstract idea where the “patents are directed to
2 improvements in existing graphical user interface devices that have no ‘pre-electronic
3 trading analog’”).

4 Defendants argue that the methods claimed in the ’578 patent can be performed by
5 a human using a pencil and paper. (Doc. No. 14-1 at 3, 8-9, 12; Doc. No. 18 at 2-3.) Cf.
6 Synopsys, Inc. v. Mentor Graphics Corp., 839 F.3d 1138, 1145 (Fed. Cir. 2016) (explaining
7 that a claim is directed to an abstract idea if the claim is directed to a process that could be
8 performed mentally or with pencil and paper). The Court disagrees. First, the claim
9 language requires that the dynamic graphical arrangement of images be “randomly
10 selected.” ’578 Patent at 9:4, 9:16-17. Defendants fail to adequately explain how a human
11 with a pencil and paper would be able to randomly select the images utilized in the dynamic
12 graphical arrangement of images.⁴ Second, Defendants’ argument fails to consider the
13 invention in its proper context. The invention is directed to a specific type of image-
14 recognition test in the context of an online server attempting to determine whether a user
15 attempting to access a website is a human or a computer/bot. Defendants fail to adequately
16 explain how a human with a pencil and paper could administer the claimed CAPTCHA test
17 to both human users and computer users in order to determine whether a certain user should
18 be granted access to a website.

19 Finally, Defendants argue that the ’578 patent is directed to an abstract idea because
20 the claim language is too vague and fails to provide any specific hardware or software
21 examples or sample code that provides a precise means for implementing the claimed
22 method. (Doc. No. 14-1 at 2, 4; Doc. No. 18 at 5.) But Defendants fail to provide the
23 Court with any authority holding that in order for a computer-based patent to be patent-
24 eligible under § 101, the claims must be so precise as to specifically provide sample code
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27 ⁴ Defendants argue that a human could randomize the process by utilizing “a coin, rolling dice, or
28 shuffling cards.” (Doc. No. 18 at 4.) But as Plaintiff correctly explained at the hearing, in that situation,
you would not have just a human with a pencil and paper; it would be a human with a pencil, paper, and
some additional device.

1 within the claim language. The Court also notes that Defendants’ arguments regarding the
2 specificity of the ’578 patent’s claim language are premature at this stage in the litigation
3 as the Court has not yet held claim construction proceedings in this case.


4 In sum, Defendants have failed to establish that the ’578 patent is directed to an
5 abstract idea under step one of the Alice inquiry. Accordingly, the Court does not need to
6 proceed to step two of the inquiry. Enfish, 822 F.3d at 1339; see McRO, 837 F.3d at 1312
7 (“If the claims are not directed to an abstract idea, the inquiry ends.”); Rapid Litig. Mgmt.
8 Ltd. v. CellzDirect, Inc., 827 F.3d 1042, 1047 (Fed. Cir. 2016) (“If the answer [to the step
9 one inquiry] is no, the inquiry is over: the claim falls within the ambit of § 101.”). At this
10 stage in the proceedings, Defendants have failed to establish that the ’578 patent is invalid
11 for failing to claim patent-eligible subject matter as required by 35 U.S.C. § 101.
12 Accordingly, the Court denies Defendants’ motion to dismiss.

13 **Conclusion**

14 For the reasons above, the Court denies Defendants’ Rule 12(b)(6) motion to
15 dismiss. Defendants must file their answer to the complaint within thirty (30) days from
16 the date this order is filed.

17 **IT IS SO ORDERED.**

18 DATED: January 23, 2018

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21 MARILYN L. HUFF, District Judge
22 UNITED STATES DISTRICT COURT
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