

One Entrepreneur's Story: Snapizzi Gets Caught in the Section 101 Snare



By **Paul Morinville**
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“On the patent’s government-issued cover, it stated that Snapizzi would have the ‘*right to exclude others from making, using, offering for sale, or selling*’ the invention. This meant the patent would protect their company from infringers and give them enough time to carve a toehold in the market. Randy trusted the U.S. government, and this made the burden of huge risk much more tolerable.”



Randy dela Fuente was an entrepreneur and a photographer for 25 years. His company did high volume photographs for large events—things like high school graduations and other events with hundreds of participants.

Managing thousands of photographs for hundreds of people can be a complicated affair. The object is to sell pictures, but to sell them, the subject of the picture must be able to find the picture. If the process is too difficult, customers get frustrated and sales are lost.

A Neat Idea

Randy needed to find a solution that would improve his customers' experience and thereby increase sales. But the market for digital photographs was still relatively new and there were no solutions. Randy even tried to build his own, with limited success.

Finally, in 2010 Randy found Snapizzi, which had developed a powerful solution for managing high volume photography. Snapizzi was founded in 2009 and filed their first patent application in 2010. It was a hot product in the photography space. A competitor, called PhotoLynx, featured Snapizzi in a blog post saying that Snapizzi is "[a really neat idea](#)". Randy became one of Snapizzi's first customers.

Startups crash for a myriad of reasons. By 2011, Snapizzi ran into trouble and was going out of business. Randy knew why Snapizzi's solution was unique and what

value it provided to customers. He was, after all, a customer. He also knew that Snapizzi's unique value was protected by pending patents. So, Randy bought the company.

At first, he continued using Snapizzi for his own business. But by the end of 2012, Randy figured out how to redeploy Snapizzi in a different business model, one that photographers would find easier to consume. Randy started investing in his new vision of a redeployed Snapizzi.

Betting on Patents

In 2015, Randy launched Snapizzi with its shiny new business model. It worked. Snapizzi was attracting customers and growing. Like most startups, Snapizzi was operating at a loss, so Randy poured in profits from his photography business.

After four years of hard work and hefty financial risk, Snapizzi was finally profitable. Randy closed his photography business and turned his focus completely to Snapizzi. These were exciting times. Randy had bet it all, risking hundreds of thousands of dollars. But finally, he could relax. The business Randy had envisioned was becoming a reality and he was living his American dream.

Randy had bet big, putting his career, savings, and company at risk. Later, Randy brought in a business partner, Chris Scoones, who cleaned out his savings and mortgaged his house. But they believed in the patent. On the patent's government-issued cover, it stated that Snapizzi would have the "*right to exclude others from making, using, offering for sale, or selling*" the invention. This meant that [U.S. Patent No. 8,794,506](#) would protect their company from infringers and give them enough time to carve a toehold in the market.

That patent cover also said that the patent was "*granted under law*", which meant that it was a legally granted and presumed valid property right. In America, we are a nation of laws. Randy trusted the U.S. government, and this made the burden of huge risk much more tolerable.

The U.S. Patent System: An Invitation to Infringe

Snapizzi had two major competitors: PhotoLynx and ImageQuix. PhotoLynx is the company that blogged about Snapizzi's solution, saying it is "a really neat idea", so they were aware of the customer value that the Snapizzi solution provided as early as 2009 and, as a competitor in the market, they knew about Snapizzi's patents. ImageQuix also knew of Snapizzi's product and patents.

All three companies are in an industry built on intellectual property protection; photographs are copyrighted. Yet, PhotoLynx and ImageQuix infringed the Snapizzi patents.

In 2018, Randy sent invitations to PhotoLynx and ImageQuix to license Snapizzi patents. PhotoLynx admitted infringement and took a license.

But not ImageQuix. ImageQuix responded to Randy's invitation within seven days and included vague assertions that they had invented it first. Shortly thereafter, ImageQuix was acquired by Alpine SG, a well-funded SaaS acquisition company. Once acquired, ImageQuix sought a declaratory judgment claiming that Snapizzi's patent is ineligible subject matter under 35 U.S.C. § 101 because the claims are directed to an "abstract idea" under *Alice v. CLS Bank*.

In December 2019, [a district court held that the claims are all ineligible](#) for patenting because they are "abstract ideas".

There can be no question that Snapizzi technology was unique and useful. A PhotoLynx' blog confirmed that and further provided a link to Snapizzi and recommended that their customers take a look. ImageQuix assertions that they had done it first proved unsubstantiated, which ironically shows there was nothing in the market before Snapizzi. Randy's photography business was one of Snapizzi's earliest customers, and when Snapizzi ran into trouble, Randy and Chris bought Snapizzi and invested hundreds of thousands of dollars to regear it for a new business model. The industry turned on Snapizzi's invention; it is now a standard

industry practice. All of this shows that the Snapizzi patents are unique and useful and would pass the threshold of Sections 102 (novelty) and 103 (non-obviousness).

None of those things is abstract. They are tangible results of actual trust placed in the U.S. government to uphold a patent granted by the U.S. government.

The Abstraction Distraction

The very definition of an abstract idea, as defined by the courts, is an abstract idea. As such, it is not possible to overcome an abstract idea argument with concrete analysis. Therefore, any determination that an invention is an abstract idea can only be arbitrary and, as such, capricious. It makes fools of attorneys and judges, paupers of inventors and investors, and technological kings of other nations, like China, because nobody can invest in something that can so easily be taken away.

Randy has appealed to the Federal Circuit. Oral arguments are January 6, 2021.