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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 12/847,420, 07/30/2010, Arinee CHEEWAKRIENGKRAI, D10-099-02323-PR-US, 3885
Row 2: 79340, 7590, 12/19/2017, MANNAVA & KANG, P.C., 3201 Jermantown Road, SUITE 525, FAIRFAX, VA 22030, EXAMINER: GARCIA-GUERRA, DARLENE, ART UNIT: 3683, PAPER NUMBER, NOTIFICATION DATE: 12/19/2017, DELIVERY MODE: ELECTRONIC

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ARINEE CHEEWAKRIENGKRAI,  
ENGKUN WAHJUDI JUGANDA,  
and KEMANG PRATAMA BUDIARSO

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Appeal 2016-004412  
Application 12/847,420<sup>1</sup>  
Technology Center 3600

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Before HUBERT C. LORIN, NINA L. MEDLOCK, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Arinee Cheewakriengkrai et al. (“Appellants”) seek our review under 35 U.S.C. § 134 from the final rejection of claims 1, 3–6, 8–11, 13–21, and 23–27.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

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<sup>1</sup> The Appellants identify Accenture Global Services Limited as the real party in interest (App. Br. 3).

<sup>2</sup> Claims 2, 7, 12, and 22 are canceled. *See* Amendment filed May 11, 2015, and entered by the Examiner in the Advisory Action mailed June 19, 2015.

## THE INVENTION

The invention relates to generating “conversion facility production data” and calculating “a cost of processing a commodity processed at the conversion facility” (Spec. para. 13).

Claim 11 is illustrative, and is reproduced below with bracketed matter and some paragraphing added:

11. A method for monitoring and evaluating a conversion facility, the method comprising:

[1] storing measured values for quantitative variables describing quantitative aspects of the conversion facility, wherein the quantitative variables are received from a plurality of sources associated with conversion processes performed at the conversion facility;

[2] storing values for cost variables describing cost aspects of the conversion facility, wherein the cost variables are received from the plurality of sources associated with the conversion processes performed at the conversion facility;

[3] receiving a syncing frame including a time period in a current month, and the time period is less than thirty days;

[4] determining, from the stored measured values for the quantitative variables, a first set of values that are within the syncing frame,

[4a] wherein the first set of values comprise direct costs that are directly attributable to a specific commodity of a plurality of commodities processed at the conversion facility,

[4b] wherein one of the conversion processes performed at the conversion facility includes a nonreactive material transfer through a processing subunit, wherein the quantitative variables include variables directed to an input mass, an output mass;[,] and an accumulation mass, for calculating changes in mass balances for the nonreactive material transfer through the processing subunit, and wherein the

accumulation mass measures an amount of material that remains and accumulates as a result of the nonreactive material transfer process;

[5] determining, from the stored values for the cost variables, a second set of values that are within the syncing [sic] frame, wherein the second set of values includes an apportionment of indirect costs including overhead costs amongst the plurality of commodities processed at the conversion facility, wherein the indirect costs are unattributable to a specific commodity of the plurality of commodities processed by the conversion facility;

[6] calculating, by a processor, a cost of processing a commodity of the commodities processed at the conversion facility for the syncing frame using the first and second set of values;

[7] calculating a control amount based on the first and second set of values; and

[8] varying an actuator at the conversion facility according to the control amount.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Natarajan	US 4,887,207	Dec. 12, 1989
Plumer et al. ("Plumer")	US 2005/0065863 A1	Mar. 24, 2005
Dadebo et al. ("Dadebo")	US 6,993,403 B1	Jan. 31, 2006
Srinivasan et al. ("Srinivasan")	US 2007/0088446 A1	Apr. 19, 2007
Kreamer et al. ("Kreamer")	US 2008/0313596 A1	Dec. 18, 2008

The following rejections are before us for review:

1. Claims 1, 3–6, 8–11, 13–21, and 23–27 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

2. Claims 1, 3, 6, 8–11, 13, 16, 18–21, 23, and 25–27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Plumer, Natarajan, Kreamer, and Srinivasan.
3. Claims 4, 5, 14, 15, 17, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Plumer, Natarajan, Kreamer, Srinivasan, and Dadebo.

### ANALYSIS

*The rejection of claims 1, 3–6, 8–11, 13–21, and 23–27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.*

The Appellants argued these claims as a group. *See* Reply Br. 4–16. We select claim 11 as the representative claim for this group, and the remaining claims 1, 3–6, 8–10, 13–21, and 23–27 stand or fall with claim 11. 37 C.F.R. § 41.37(c)(1)(iv).

*Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In that regard, the Examiner determined that the claims are directed to “the abstract idea of evaluating and monitoring the production of a conversion facility.” (Final Act. 8; *see also* Ans. 3, 44). According to the Examiner, the claims are “directed to certain methods of organizing human activities, which is an example identified by the Courts as an abstract idea.” (Ans. 44). The Examiner also found that “the claims include limitations that

describe concepts relating to managing transaction[s] between people and concepts relating to managing human mental activity” and “the claims are essentially directed to organizing information through mathematical correlations.” (*Id.* at 45).

The Appellants contend that the Examiner erred in that claims 1, 3–6, 8–11, 13–21, and 23–27 are not directed to an abstract idea. (App. Br. 10–18). According to the Appellants, “claim 11 is specifically directed towards a nonreactive material transfer conversion process at a conversion facility and varying an actuator at the conversion facility according to accumulation mass measures determined for the nonreactive material transfer conversion process.” We find that the Examiner’s characterization is more accurate than the Appellants’ characterization.

The “directed to” inquiry applies a stage-one filter to the claims which, when considered in light of the Specification, is based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (inquiring into “the focus of the claimed advance over the prior art.”).

“In determining the eligibility of respondents’ claimed process for patent protection under § 101, their claims must be considered as a whole.” *Diamond v. Diehr*, 450 U.S. 175, 188 (1981). The question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*,

*Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

According to *Enfish*, the question is “whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335–1336. The court found in that case that the “plain focus of the claims” was on “an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Id.* at 1336.

Here claim 11 sets forth “[a] method for monitoring and evaluating a conversion facility,” the method comprising eight steps including: (a) storing a first information, (b) storing a second information, (c) receiving a third information, (d) determining a fourth information based on other information, (e) determining a fifth information based on other information, (f) calculating a sixth information, (g) calculating a seventh information, and (h) varying an actuator according to the seventh information. Claim 11, as a whole, is plainly focused on monitoring and evaluating a conversion facility. Claim 11 is not focused on an improvement to a “conversion facility,” “processor,” or “actuator.” *Cf. In re TLI Communications LLC Patent Litigation*, 823 F.3d 607, 613 (Fed. Cir. 2016) (The claims’ focus “was not on an improved telephone unit or an improved server.”). Nor do we see that claim 11 is focused on an improvement to the claimed “data storage device,” “processor,” or “actuator control module.”

In addition, “[t]he ‘abstract idea’ step of the inquiry calls upon us 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.”

*Affinity Labs of Texas, LLC v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *see also Enfish*, 822 F.3d at 1335, quoted in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016).

In that regard, the Background section of the Specification discusses the problem as being that “management of a conversion facility cannot respond well and make adjustments during any current month or at mid-month, even when significant external circumstances might necessitate adjustments to operations and production at the conversion facility.” (Spec. para. 12). According to the Specification, the inventors solved the problem via “a conversion facility production (CFP) system 100,” (*id.* para. 45) that “performs monitoring, evaluation and synchronization for data related to product costing and inventory valuations at the conversion facility” including “monitoring, evaluation and synchronization for mass balances at the conversion facility 101” (*id.* para. 69). According to the Specification, “mass balancing data input can improve reporting regarding the accuracy of the current month information, such as the cost of goods manufactured calculation by incorporating mass balance data into the work-in-process inventory valuations used in the cost of goods manufactured calculation.” (*Id.* para. 70). In light of the Specification’s description of the problem and solution, we find that the invention’s advance over the prior art is in improving the monitoring and evaluation of data describing operations in a conversion facility.



Given the plain focus of claim 11, as a whole, is on data gathering activities<sup>3</sup> in support of monitoring and evaluating a conversion facility and the Specification's description of the problem and that the solution is improving the monitoring and evaluation of data describing operations in a conversion facility, claim 11 is properly characterized as being "directed to" monitoring and evaluating a conversion facility. Monitoring and evaluating are methods of organizing human activities and as such abstract ideas. Accordingly, we agree with the Examiner that claim 11 is directed to an abstract idea. *Cf. Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d at 1354 (claims directed to a "process of gathering and analyzing information of a specified content," i.e., data describing operations in a power grid, and then displaying the results were directed to an abstract idea).

The Appellants argue that the Examiner did not properly analyze the claims (App. Br. 13–16). According to the Appellants, "the Examiner has failed to satisfy their burden in satisfying the requirements of providing a reasoned rationale that identifies the judicial exception recited in the claim and why it is considered an exception" (*id.* at 15).

The Appellants' argument is unpersuasive because the Examiner did indeed identify the judicial exception and articulated the abstract idea found in the claims. See page 8 of the Final Action where the Examiner stated that the claims are directed to "the abstract idea of evaluating and monitoring the production of a conversion facility" (quoting the preamble of claim 11). *Cf.*

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<sup>3</sup> *Cf. Elec. Power Grp., LLC*, 830 F.3d at 1353 (When "the focus of the asserted claims" is "on collecting information, analyzing it, and displaying certain results of the collection and analysis," the claims are directed to an abstract idea.)

*Two-Way Media Ltd. v. Comcast Cable Commc 'ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017) (“we see no error here in the district court citing to the preamble in its review of whether the claims are directed to an abstract idea”). The Examiner addressed the claim elements. *See also* pages 44–45 of the Answer and the Advisory Action mailed June 19, 2015. We are satisfied that the Examiner’s reasoning was sufficiently clear and specific to provide applicant sufficient notice of the reasons for ineligibility. *See* May 2016 USPTO Memorandum (“*Formulating a Subject Matter Eligibility Rejection and Evaluating the Applicant's Response to a Subject Matter Eligibility Rejection*”), page 2 (“the rejection . . . must provide an explanation . . . which [is] sufficiently clear and specific to provide applicant sufficient notice of the reasons for ineligibility.”)

The Appellants argue that “the Examiner has failed to provide any evidence that ‘evaluating and monitoring the production of a conversion facility’ is fundamental and long prevalent” (App. Br. 14), “and no facts or evidence were provided to support a finding of an abstract idea” (*id.* at 16).

There is no requirement that the Examiner must provide evidence in support of a determination that the invention is directed to an abstract idea. *See* para. IV “July 2015 Update: Subject Matter Eligibility” to *2014 Interim Guidance on Subject Matter Eligibility* (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014):

The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.

Nevertheless, evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. It is not necessary in this case. A factual dispute has not been raised. For instance, the Appellants have not submitted rebuttal evidence tending to show that the claims are *not* directed to an abstract idea.

Step two of the *Alice* framework is “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*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)).

In that regard, the Examiner found that:

The claim requires no more than a general purpose computer to perform generic computer functions that are well-understood in the art of production monitoring systems. After considering all claim elements, both individually and in combination, it has been determined that the claim does not amount to significantly more than the abstract idea itself or more than a mere instruction to apply the abstract idea. While the claim recites hardware and software elements, such as a processor to calculate [“]a cost of processing a commodity of the commodities processed at the conversion facility” these limitations are not sufficient to qualify as being “significantly more” than the abstract idea.

(Final Act. 8). The Examiner further found that:

While paragraph 0052 of the instant application mentions that an actuator may be associated with a sensor and may be controlled based on values measured by the associated sensor, the claim itself does not go into that level of detail. Patent-eligible subject matter is based on the claim language, not the language of the disclosure. Furthermore, it is noted that varying an actuator is not effecting a transformation of a

particular article to a different thing; there is not a discernible change in the actuator itself. The additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: an instruction to calculate a control amount.

(Ans. 4).

The Appellants contend that the pending claims are similar to the claims held eligible in *Diamond v. Diehr*, 450 U.S. 175 (1981). See App. Br. 19–22.

We disagree.

*Diehr* involved a process for curing synthetic rubber. *Diehr*, 450 U.S. at 177. The claimed steps in *Diehr* included “installing rubber in a press, closing the mold, constantly determining the temperature of the mold, constantly recalculating the appropriate cure time through the use of the formula and a digital computer, and automatically opening the press at the proper time.” *Id.* at 187. The invention in *Diehr* improved the rubber curing process by significantly lessening the possibility of “overcuring” or “undercuring” the rubber. *Id.* We do not see that situation here.

According to the Appellants, “[t]he technological process being improved is the conversion of commodities at a processing facility,” (App. Br. 20). The Appellants also argue that “controlling or adjusting of actuators in a conversion facility constitutes a discernible effect or change in the physical world” (*id.* at 22). But claim 11, as currently drafted, is not directed to a technological process for the controlling or adjusting of actuators in a conversion facility. See our analysis under *Alice* step 1. Rather, the conversion facility as claimed gives the claimed evaluating and monitoring scheme a particular context for its application. Cf. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011). “The

Court [*Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable.”

Also, claim 11 is not limited to any particular type of conversion facility, commodity, actuator, or a particular manner of processing commodities. According to the Appellants’ Specification, a commodity “can be any type of bulk good.” (Spec. para. 9). The claimed “conversion facility” can be “an oil refinery” (*id.* para. 6), “a chemical plant” (*id.* para. 7), or a facility “for manufacturing finished goods such as polymers, pharmaceuticals, foods, beverages, wood products and the like,” “for generating electric power,” or for “recycling waste” (*id.* para. 10). As non-limiting examples, “actuators may be mechanical actuators” such as a valve (*id.* para. 51). In contrast to the claims in *Diehr*, the subject matter as claimed does not apply the abstract idea of evaluating and monitoring to any specific article using any specific “structure or process which, when considered as a whole, is performing a function which the patent laws were designed to protect.” *Diehr*, 450 U.S. at 192.

The Appellants further argue that “the Application explains that the technical solution to a technical problem involves controlling actuators in the conversion facility to control a flow of material (see original paragraph 095, describing the technical effect of ‘controlling actuators in the conversion facility’ based on sensor data).” (App. Br. 22). Paragraph 95 of the Appellants’ Specification provides that “control of the processes using the syncing frame and the collected data may provide for increased production, increased operating and production efficiency, and increased

profits” and “decreases in waste for all types of resources utilized at an individual conversion facility.”

But, again, claim 11 is not so limited; it does not call for or necessarily lead to increasing production and operating and production efficiency. The technical details necessary to accomplish that objective are not reflected in claim 11. By this argument the Appellants would have us rely on “technological details set forth in the patent’s specification [which are] not set forth in the claims to find an inventive concept.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1322 (Fed. Cir. 2016). Since it would be improper for us to import limitations into the claim, this is not a persuasive argument for finding error in the rejection.

We also are not persuaded by the Appellants’ argument that certain “features are not believed to be taught or suggested by the prior art.” (App. Br. 23). An abstract idea does not transform into an inventive concept just because various features are not disclosed in or suggested by the prior art.

We also are not persuaded of error by the Appellants’ arguments regarding pre-emption. *See* App. Br. 23–25.

It is true that the Supreme Court has characterized pre-emption as a driving concern for patent eligibility. *See Alice*, 134 S. Ct. at 2354. But characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). However, “[w]hile

preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.* at 1379. *Cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir.) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”), cert. denied, 136 S. Ct. 701 (2015). “What matters is whether a claim threatens to subsume the full scope of a fundamental concept, and when those concerns arise, we must look for meaningful limitations that prevent the claim as a whole from covering the concept’s every practical application.” *CLS Bank Intern. v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1281 (Fed. Cir. 2013) (Lourie, J., concurring). Here, we find the claimed subject matter covers patent-ineligible subject matter. Accordingly, the pre-emption concern is necessarily addressed. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, [] preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics*, 788 F.3d at 1379.

We have fully considered the Appellants’ arguments. For the foregoing reasons, they are unpersuasive as to error in the rejection of claim 11, and claims 1, 3–6, 8–10, 13–21, and 23–27 which stand or fall with it.

The rejection is sustained.

*The rejection of claims 1, 3, 6, 8–11, 13, 16, 18–21, 23, and 25–27 under 35 U.S.C. § 103(a) as being unpatentable over Plumer, Natarajan, Kreamer, and Srinivasan.*

Independent claim 1 contains the limitation “calculating changes in mass balances for the nonreactive material transfer through the processing

subunit” (App. Br. 39, Claims Appendix). The same limitation is in the other independent claims - claims 11 and 21.

The Appellants argue, *inter alia*, that none of the cited references discloses said limitation (App. Br. 30–35).

The Examiner finds this limitation disclosed in Natarajan in the abstract and at col. 3, lines 6–18, col. 4, lines 4–21, and col. 5, lines 7–10 (Ans. 24–25, 54–55).

Natarajan discloses, in part, that

[i]n response to the planner inputting values for demand values, the system automatically retrieves appropriate parameter values from a database and estimates the raw material and work-in-process inventory costs. The system also derives the inventory profile for manufacturing the product and provides a display in a graphical format. When new changes to the demand values are placed by the customer on command, the system recalculates the inventory values and gives the planner the impact statement based on the changes.

Col. 3, lines 8-18. In order to find that said disclosure meets the claim limitation “calculating changes in mass balances for the nonreactive material transfer through the processing subunit” (claim 1), it was necessary for the Examiner to construe “calculating changes in mass balances” to broadly include calculating a “change in materials/inventory as part of the manufacturing process” (Ans. 54). The Examiner cites paragraph 39 of the Appellants’ Specification as evidence that a change in mass balance includes any change in an inventory measure (*id.*).

The Appellants argue that the Examiner has construed the limitation unreasonably broadly (Reply Br. 21–25). We agree.

Paragraph 39 of the Specification discloses that “[q]uantitative variables associated with quantitative aspects” can include “inventory measure.” But there is no discussion in paragraph 39 of mass balances or



calculating a change in mass balances. As the Appellants point out (Reply Br. 23), mass balancing is discussed later in paragraphs 72 and 73 of the Specification. Paragraph 72 of the Specification discloses that “[m]ass balancing relies on the physical law principles relating to conservation of mass, which requires that what goes into a system must either come out of the system somewhere else, be consumed or generated by the system, or remain in the system and accumulate.”

The cited portions of Natarajan do not disclose calculating changes in mass balances as that claim phrase is reasonably broadly construed in light of the Specification. Natarajan discloses, at column 3, lines 15–18, “[w]hen new changes to the demand values are placed by the customer on command, the system recalculates the inventory values and gives the planner the impact statement based on the changes.” This disclosure provides no indication that the system calculates a change in mass for the inventory. Natarajan also discloses calculating a “break-down of total inventory costs into raw material cost, work-in-process cost and finished goods inventory cost.” (Natarajan, col. 4, lines 6–8). But here, too, there is no indication that the system calculates a change in mass for the raw materials, work-in-process, or finished goods.

For the foregoing reasons, the Examiner’s finding that Natarajan discloses the claim limitation “calculating changes in mass balances” is not supported by a preponderance of the evidence. Accordingly, the rejection of claim 1, and independent claims 11 and 21 which contain the same limitation and to which the Examiner makes a similar finding, as well as claims 3, 6, 8–10, 13, 16, 18–20, 23, and 25–27 that depend therefrom, is not sustained.

*The rejection of claims 4, 5, 14, 15, 17, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Plumer, Natarajan, Kreamer, Srinivasan, and Dadebo.*

Claims 4 and 5; claims 14, 15 and 17; and, claim 24 which depend from independent claims 1, 11, and 21, respectively, include the claim limitation “calculating changes in mass balances.” Said limitation is not disclosed in Natarajan as alleged. Accordingly, a prima face case of obviousness for the subject matter claimed in claims 4, 5, 14, 15, 17, and 24 has not been made out in the first instance by a preponderance of the evidence. For that reason, their rejection under §103 over Plumer, Natarajan, Kreamer, Srinivasan, and Dadebo is not sustained.

#### CONCLUSIONS

The Appellants have not shown that the Examiner erred in rejecting claims 1, 3–6, 8–11, 13–21, and 23–27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The Appellants have shown that the Examiner erred in rejecting claims 1, 3–6, 8–11, 13–21, and 23–27 under 35 U.S.C. § 103(a).

#### DECISION

The decision of the Examiner to reject claims 1, 3–6, 8–11, 13–21, and 23–27 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED