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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK K. CORNWALL

Appeal 2018-003287
Application 13/747,295
Technology Center 2800

Before JAMES C. HOUSEL, GEORGE C. BEST, and JANE E. INGLESE,
Administrative Patent Judges.

INGLESE, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant¹ requests our review under 35 U.S.C. § 134(a) of the Examiner's decision to finally reject claims 1–3, 6–8, 11–16, 21–24, and 26–29.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellant is the Applicant, Itron, Inc., which, according to the Appeal Brief, is the real party in interest. Appeal Brief filed October 20, 2017 (“App. Br.”), 2.

² Final Office Action entered May 18, 2017 (“Final Act.”).

STATEMENT OF THE CASE

Claim 1 illustrates the appealed subject matter and is set forth below:

1. A method comprising:

under control of one or more processors configured with executable instructions:

measuring, by a gas metering device, a total gas flow rate associated with a location at a point in time;

obtaining gas consumption ranges for a plurality of gas consuming loads associated with the location, the plurality of gas consuming loads including a first gas consuming load that consumes gas at a rate that falls within a first gas consumption range of the gas consumption ranges;

identifying a combination of the gas consumption ranges that is approximately equal to the total gas flow measurement;

based at least in part on the combination of the gas consumption ranges, determining a subset of gas consuming loads of the plurality of gas consuming loads that is active at the point in time;

associating the subset of gas consuming loads with one or more gas consuming appliances associated with the plurality of gas consuming loads based at least in part on the gas consumption ranges;

identifying a change in gas consumption for the first gas consuming load from a first period of time to a second period of time;

determining, based at least in part on the change in the gas consumption for the first gas consuming load, that the first gas consuming load is consuming gas at a rate that falls within a second gas consumption range of the gas consumption ranges;

adjusting the gas consumption range of the first gas consuming load from the first gas consumption range to the second gas consumption range;

identifying a first gas consuming appliance of the gas consuming appliances associated with the first gas consuming load; and

based at least in part on the change in gas consumption:

determining that the first gas consuming appliance has become defective and requires servicing; and

outputting an alert to a consumer associated with the location about the change in gas consumption for the first gas consuming appliance, the alert comprising:

an indication that the gas consumption range of the first gas consuming appliance has been adjusted from the first gas consumption range to the second gas consumption range; and

an indication that the first gas consuming appliance has become defective and requires servicing.

App. Br. 39–40 (Claims Appendix).

The Examiner sets forth the following rejections in the Final Office Action, and maintains the rejections in the Examiner’s Answer entered December 19, 2017 (“Ans.”):

I. Claims 1–3, 6–8, 11–16, 21–24, and 26–29 under 35 U.S.C. § 101 as directed to non-statutory subject matter; and

II. Claims 1–3, 6–8, and 29 under 35 U.S.C. § 112(a) for failing to comply with the written description requirement.

DISCUSSION

Upon consideration of the evidence relied upon in this appeal and each of Appellant’s timely contentions,³ we affirm the Examiner’s rejection

³ We do not consider any new argument Appellant raises in the Reply Brief that Appellant could have raised in the Appeal Brief. 37 C.F.R.

of claims 1–3, 6–8, 11–16, 21–24, and 26–29 under 35 U.S.C. § 101 for the reasons set forth in the Final Action, the Answer, and below, and reverse the Examiner’s rejection of claims 1–3, 6–8, and 29 under 35 U.S.C. § 112(a) for the reasons set forth below.

We review appealed rejections for reversible error based on the arguments and evidence Appellant identifies for each issue Appellant raises. 37 C.F.R. § 41.37(c)(1)(iv); *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (cited with approval in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (explaining that even if the Examiner had failed to make a prima facie case, “it has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections”)).

Rejection I

Appellant argues claims 1–3, 6–8, 11–16, 21–24, and 26–29 as a group on the basis of claim 1, to which we accordingly limit our discussion. App. Br. 13–32; 37 C.F.R. § 41.37(c)(1)(iv).

In *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347 (2014), the Court identified a two-step framework for determining whether claimed subject matter is judicially excepted from patent eligibility under § 101. In the first step, “[w]e must . . . determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355. The second step involves “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

§ 41.37(c)(1)(iv); 37 C.F.R. § 41.41(b)(2) (arguments raised for the first time in the Reply Brief that could have been raised in the Appeal Brief will not be considered by the Board unless good cause is shown).

upon the [ineligible concept] itself,” and is more than “well-understood, routine, conventional activit[y].” *Alice*, 134 S. Ct. at 2355, 2359 (first alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

The Examiner applies *Alice*’s two-step framework in rejecting claim 1 under 35 U.S.C. § 101. Ans. 3–8. In the first step, the Examiner determines that the following steps recited in claim 1 are directed to an abstract idea:

identifying a combination of the gas consumption ranges that is approximately equal to the total gas flow measurement;

based at least in part on the combination of the gas consumption ranges, determining a subset of gas consuming loads of the plurality of gas consuming loads that is active at the point in time;

associating the subset of gas consuming loads with one or more gas consuming appliances associated with the plurality of gas consuming loads based at least in part on the gas consumption ranges;

identifying a change in gas consumption for the first gas consuming load from a first period of time to a second period of time;

determining, based at least in part on the change in the gas consumption for the first gas consuming load, that the first gas consuming load is consuming gas at a rate that falls within a second gas consumption range of the gas consumption ranges;

adjusting the gas consumption range of the first gas consuming load from the first gas consumption range to the second gas consumption range;

identifying a first gas consuming appliance of the gas consuming appliances associated with the first gas consuming load; and

based at least in part on the change in gas consumption:

determining that the first gas consuming appliance has become defective and requires servicing.

Final Act. 4; Ans. 4–5.

The Examiner determines that these steps are directed to the abstract idea of a mathematical/logical algorithm—a deterministic sequence of mathematical and logical steps carried out on a set of input data that results in output data. Ans. 3–6. Specifically, the Examiner determines that these steps recited in claim 1 identify a gas consumption associated with an individual gas consuming appliance that has become defective, which the Examiner determines constitutes an abstract idea because it is analogous to other concepts that have been identified by the Federal Circuit as abstract, such as collecting information, analyzing it, and displaying certain results of the collection and analysis, *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016), comparing information regarding a sample or test subject to a control or target data, *In re BRCA1- & BRCA2-Based Hereditary Cancer Test Patent Litig.*, 774 F.3d 755 (Fed. Cir. 2014); *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013), data recognition and storage, *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014), organizing information through mathematical correlations, *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014), a formula for computing an alarm limit, *Parker v. Flook*, 437 U.S. 584 (1978), and an algorithm for calculating parameters indicating an abnormal condition, *In re Grams*, 888 F.2d 835 (Fed Cir. 1989). Final Act. 4–5; Ans. 3–6.

With respect to the second step of the *Alice* framework, the Examiner determines that claim 1 recites additional elements beyond the abstract idea—a gas metering device, a processor, an implied device for outputting

an alarm, and a step of obtaining gas consumption ranges—that when viewed as a whole, do not provide meaningful limitations that transform the abstract idea into a patent eligible application of the abstract idea, such that claim 1 amounts to significantly more than a claim to the abstract idea itself. Final Act. 5; Ans. 6.

Specifically, the Examiner determines that the gas metering device recited in claim 1 is used for mere data gathering to execute the abstract idea, is broadly recited, is directed to insignificant pre-solution activity that does not add a meaningful limitation to the claimed method, does not limit the abstract idea to a particular application of the abstract idea, and would have been routinely used by those of ordinary skill in the art to apply the abstract idea. Final Act. 5; Ans. 7. The Examiner determines that claim 1’s step of obtaining data about gas consumption ranges is also not “significantly more” because it is recited at a high level of generality, and “must be taken by others in order to apply the abstract idea.” Ans. 8. The Examiner determines that claim 1’s processor constitutes generic computer equipment that performs generic computer functions constituting well-understood, routine, and conventional activities, previously known in the industry, to carry out the mathematical/logical steps of the algorithm. Final Act. 5–6; Ans. 7. The Examiner determines that the device implied by claim 1 for outputting an alert about a change in gas consumption constitutes insignificant post-solution activity, and determines that the corresponding outputting function is recited at a high level of generality. Final Act. 6; Ans. 7–8 (citing *Elec. Power Grp.*, 830 F.3d at 1354–56 (“merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an

ancillary part of such collection and analysis . . . the claims are clearly focused on the combination of those abstract-idea processes. The advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions. They are therefore directed to an abstract idea . . . essentially result-focused, functional character of claim language has been a frequent feature of claims held ineligible under § 101”.)

The Examiner concludes that the abstract idea of claim 1 amounts to a “fundamental building block of human ingenuity” that could be the basis for a variety of different practical applications, and a patent for claim 1 would therefore monopolize the abstract idea itself, rather than particular practical applications of the abstract idea, thus weighing against claim 1’s eligibility for patenting. Ans. 8.

Appellant argues that similar to the claims in *Diamond v. Diehr*, 450 U.S. 175 (1981), claim 1 does not attempt to claim an algorithm, but instead improves upon a technological problem in a conventional industry practice. App. Br. 18. Appellant contends that traditional gas meters can only provide total gas consumption associated with a particular location, and cannot provide an indication of gas consumption associated with multiple individual appliances at the location. App. Br. 18–19. Appellant asserts that, in contrast, claim 1 recites techniques that enable a gas meter to determine gas consumption for multiple individual gas consuming appliances at a particular location, permitting gas consumption for individual appliances to be tracked over time, which allows determination of whether an appliance has become defective and requires servicing. App. Br. 18–21.

Claim 1 recites steps directed to:

- (1) identifying a combination of gas consumption ranges for a plurality of gas consuming loads associated with a location that is approximately equal to the total gas flow rate associated with the location at a point in time measured by a gas metering device,
- (2) determining a subset of gas consuming loads of the plurality of gas consuming loads that is active at the point in time based at least in part on the combination of gas consumption ranges,
- (3) associating the subset of gas consuming loads with one or more gas consuming appliances associated with the plurality of gas consuming loads based at least in part on the gas consumption ranges,
- (4) identifying a change in gas consumption for a first gas consuming load from a first period of time to a second period of time,
- (5) determining, based at least in part on the change in the gas consumption for the first gas consuming load, that the first gas consuming load is consuming gas at a rate that falls within a second gas consumption range of the gas consumption ranges,
- (6) adjusting the gas consumption range of the first gas consuming load from the first gas consumption range to the second gas consumption range,
- (7) identifying a first gas consuming appliance of the gas consuming appliances associated with the first gas consuming load, and
- (8) determining that the first gas consuming appliance has become defective and requires servicing based at least in part on the change in gas consumption.

These steps, taken individually, are directed to the abstract idea of manipulating or analyzing data or information (the total gas flow rate associated with a location at a point in time measured by a gas metering device and gas consumption ranges for gas consuming loads associated with the location) to generate additional data or information (a combination of gas consumption ranges for a plurality of gas consuming loads that is

approximately equal to the total gas flow rate measured by the gas metering device, a subset of gas consuming loads that is active when the total gas flow is measured, gas consuming appliances associated with the active gas consuming loads, and a change in gas consumption for a first gas consuming appliance from a first period of time to a second period of time indicating that the gas consuming appliance has become defective and needs service).

Merely combining these abstract steps as recited in claim 1 fails to render the combination any less abstract. *See Digitech*, 758 F.3d at 1351 (“Without additional limitations, a process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible.”); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093 (Fed. Cir. 2016) (abstract ideas include collecting information and analyzing that information “by steps people go through in their minds, or by mathematical algorithms”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (“[W]e continue to ‘treat[] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.’” (second alteration in original) (citation omitted)); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340–41 (Fed. Cir. 2017) (organizing, displaying, and manipulating data is an abstract idea).

Claim 1’s step of measuring a total gas flow rate associated with a location at a point in time is directed to mere data gathering, as is the step of obtaining gas consumption ranges for a plurality of gas consuming loads associated with the location. In addition, performing the steps recited in claim 1 under the control of one or more processors configured with

executable instructions is well-understood, routine, and conventional activity in the art, and outputting an alert notifying of a change in gas consumption constitutes insignificant post-solution activity recited at too general a level.

Accordingly, claim 1 is directed to data gathering recited at a high level of generality, carrying out computations on the gathered data using a conventional computer to generate new data or information—corresponding to a mathematical algorithm—and displaying an alert based on the generated data, which constitutes insignificant post-solution activity recited at a high level of generality. Claim 1’s features, considered individually and as an ordered combination, therefore, do not constitute an inventive concept that transforms the abstract idea into a patent-eligible application of the abstract idea. *See, e.g., Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014) (holding the claims insufficient to supply an inventive concept because they did not “do significantly more than simply describe [the] abstract method,” but rather are simply “conventional steps, specified at a high level of generality” (quoting *Alice*, 134 S. Ct. at 2357)).

Although claim 1 is directed to a specific process, it is nonetheless directed to manipulating or analyzing data or information to generate additional data or information (discussed above), and therefore constitutes a procedure for solving mathematical problems—referred to by the courts as an “algorithm”—corresponding to an abstract idea. *Gottschalk v. Benson*, 409 U.S. 63, 65 (1972) (A procedure for solving a given type of mathematical problem is known as an “algorithm.”). Accordingly, unlike the situation in *Diamond*, a patent to claim 1 would pre-empt the use of the algorithm itself, rather than a patent-eligible application of the algorithm, and claim 1 is therefore ineligible for patenting. *Flook*, 437 U.S. at 595 (“if

a claim is directed essentially to a method of calculating, using a mathematical formula, even if the solution is for a specific purpose, the claimed method is nonstatutory.” (internal quote marks omitted)).

Although Appellant argues that claim 1’s method improves upon existing technology by enabling a gas meter to determine gas consumption for multiple individual gas consuming appliances, and by allowing identification of changes in gas consumption for an appliance over time to determine if the appliance has become defective and requires servicing, Appellant does not direct us to any factual evidence supporting this conclusory assertion, such as evidence of record comparing Appellant’s method to the existing technology. App. Br. 13–32. Unsupported attorney arguments cannot take the place of evidence necessary to resolve a disputed question of fact. *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965) (“Argument in the brief does not take the place of evidence in the record.”).

Appellant argues that, like the claims in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), claim 1 is not directed to an abstract idea where computers are invoked as a tool, but instead is directed to a specific improvement in computer capabilities: “improvements in capabilities of gas metering computing devices and systems to measure gas flows for multiple individual gas consuming devices at a location.” App. Br. 23–24. Appellant contends that claim 1 recites improvements to the functioning of traditional gas meters by enabling a gas meter to determine individual gas loads operating internal to a site, which allows identification of changes in gas consumption for an individual appliance over time, permitting determination of whether an appliance has become defective and requires servicing. App. Br. 24–25.

The inquiry under *Enfish* is whether claim 1 is directed to a method that improves the relevant computing technology, or is instead directed to a result or effect that is itself an abstract idea, and merely invokes generic processes and machinery. *Enfish*, 822 F.3d at 1335–36 (the first step of *Alice* considers whether the “focus of the claims is on the 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.”). As the Examiner explains, “the computer in the present claims is merely acting as a tool to carry out the recited algorithm.” Ans. 14–15.

Although Appellant asserts that claim 1’s method is directed to improvements in capabilities of gas metering computing devices and systems to measure gas flows for multiple individual gas consuming devices at a location (App. Br. 23–24), Appellant does not direct us to any factual evidence supporting this assertion, such as evidence of record comparing Appellant’s method to existing technology. Appellant’s argument, therefore, is not persuasive. *Schulze*, 346 F.2d at 602 (“Argument in the brief does not take the place of evidence in the record.”); *Jung*, 637 F.3d at 1365.

Appellant argues that like the situation in *Enfish* where the Specification supported the assertion that the claimed subject matter was not an abstract idea, Appellant’s Specification emphasizes the benefits of the claimed invention over the prior art with respect to conserving computing resources, illustrating that claim 1 is directed to an improvement in computer capabilities relative to the prior art, and not merely an abstract idea. App. Br. 25–26. Appellant contends that the Specification explains that existing gas meters fail to associate gas consumption with individual gas consuming appliances, but claim 1’s method allows gas consumption to be associated

with individual appliances so that consumers can track total consumption and operating costs of individual appliances. App. Br. 26–27 (citing Spec. ¶¶ 1–4, 13–17).

However, as the Examiner correctly explains (Ans. 15), although the portions of the Specification cited by Appellant discuss benefits of Appellant’s invention over the prior art, these paragraphs of the Specification do not describe benefits “**with respect to conserving computing resources,**” as Appellant asserts. Contrary to Appellant’s arguments, although the Specification does indicate that existing gas meters fail to associate gas consumption with individual gas consuming appliances, and indicates that Appellant’s invention allows gas consumption to be associated with individual appliances so that consumers can track total consumption and operating costs of individual appliances, the Specification does not support the assertion that claim 1 is directed to an improvement in computer capabilities relative to the prior art (unlike the situation in *Enfish*). Rather, the Specification describes “an enhanced gas meter [that] measures gas flow rates, categorizes the measured gas flow rates, associates the categorized gas flow rates with gas consuming loads and/or appliances and outputs a result to include gas consumption data with the gas consuming loads” (Spec. ¶ 14), which is not directed to an improvement in computer technology *per se*, but rather is directed to an algorithm for analyzing input data (measured gas flow rates) to generate additional information (gas consumption data associated with gas consuming loads and/or appliances).

Appellant argues that even if claim 1 were directed to an abstract idea, the features of claim 1, when viewed as an ordered combination, amount to significantly more than the alleged abstract idea because the claimed

features include an “inventive concept” as defined in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F. 3d 1341, 1350 (Fed. Cir. 2016): “a ‘particular arrangement of elements [which are] a technical improvement over [the] prior art.’” App. Br. 27–29. Appellant argues that similar to the claims in *Bascom*, claim 1’s features provide the benefits of prior art solutions (measurement of total gas usage rate at an endpoint location), and avoid the drawbacks of prior art solutions (the inability of a gas meter at an endpoint location to measure gas usage rates of individual gas-consuming devices at the location). App. Br. 29–31.

However, as discussed above, although claim 1’s method may provide benefits relative to the prior art, and may avoid the drawbacks of prior art solutions, the claimed method is nonetheless directed to an abstract idea, and claim 1’s features, considered individually and as an ordered combination, do not constitute an inventive concept that transforms the abstract idea into a patent-eligible application of the abstract idea.

In *Bascom*, the Federal Circuit held that the claims at issue did not preempt use of the abstract idea of filtering content on the Internet, or on generic computer components performing conventional activities, but rather carved out a specific location for the filtering system (a remote ISP server), and required the filtering system to give users the ability to customize filtering for their individual network accounts. *Bascom*, 827 F. 3d at 1352. In contrast, claim 1’s method would preempt use of the abstract idea of analyzing or manipulating the total gas flow rate associated with a location at a point in time to determine the gas consumption associated with individual appliances at the location, because the method of claim 1 does not add meaningful limitations that amount to more than generally linking use of

the abstract idea to a particular technological environment. Accordingly, claim 1's features, when viewed individually and as an ordered combination, do not amount to significantly more than the abstract idea itself.

Appellant argues that unlike the claims in *Electric Power Group*, “the claims in this application include inventive methods and/or processes that generate new data, and are not merely selection and manipulation of information to provide a humanly comprehensible amount of information useful for users.” Reply Br. 2–5. Appellant contends that “the claims at issue in this application enable a gas metering device to determine gas consumption for multiple individual gas consuming appliances using only a total gas flow rate for a location that includes the multiple individual gas consuming appliances,” and Appellant asserts that the Examiner “has provided no evidence of this sort of data being generated using a single gas metering device prior to Appellant’s application.” Reply Br. 5–6.

However, claim 1’s method is similar to the claims in *Electric Power Group*, which were directed to methods of receiving data, analyzing the data, and displaying the results. *Elec. Power Grp.*, 830 F. 3d at 1351–52. In *Electric Power Group*, the court explained that the claims were directed to an ineligible abstract idea because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *Id.* at 1354. In the present case, as in *Electric Power Group*, “[n]othing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information.” *Id.* at 1355. Furthermore, “the focus of

the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Id.* at 1354.

Moreover, even if the Examiner has not presented evidence establishing that a single gas metering device had been known before Appellant’s application to generate gas consumption data for multiple individual gas consuming appliances using only a total gas flow rate as Appellant asserts, “a claim for a new abstract idea is still an abstract idea.” *Synopsys*, 839 F. 3d at 1151.

Accordingly, Appellant’s arguments are unpersuasive of reversible error in the Examiner’s rejection of claim 1 under 35 U.S.C. § 101. We therefore sustain the Examiner’s rejection of claims 1–3, 6–8, 11–16, 21–24, and 26–29 under 35 U.S.C. § 101.

Rejection II

The Examiner finds that Appellant’s original disclosure does not describe “determining,” or “an indication,” that “the first gas consuming appliance has become defective and requires servicing,” as recited in claims 1 and 29. Final Act. 3. The Examiner finds that Appellant’s original disclosure also does not describe “an indication that a water heater has a calcium build-up in a tank of the water heater,” as recited in claim 29. *Id.* The Examiner finds that the “only relevant portion of the Specification with regards to servicing” indicates that “a customer may discover that a water heater is consuming more gas than was normal in the past, which may be attributable to a calcium build-up in the tank of the water heater” and “a consumer may discover that a gas furnace is consuming more gas than was normal in the past, which may indicate that the furnace needs servicing.” Final Act. 3 (citing Spec. ¶ 16).

To fulfill the written description requirement, the original disclosure does not have to describe claimed subject matter in *haec verba*. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563–64 (Fed. Cir. 1991); *In re Wertheim*, 541 F.2d 257, 262 (CCPA 1976) (“The function of the description requirement is to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter later claimed by him; how the specification accomplishes this is not material.”).

Appellant’s Specification explains that claim 1’s method allows a customer to monitor changes in gas consumption associated with individual gas-consuming appliances over time, and in so doing, “a consumer may discover that a gas furnace is consuming more gas than was normal in the past, which may indicate that the furnace needs servicing.” The Specification explains that a customer may also “discover that a water heater is consuming more gas than was normal in the past, which may be attributable to a calcium build-up in the tank of the water heater.”

The Examiner does not adequately explain why these disclosures in Appellant’s Specification would not reasonably convey to those skilled in the art that Appellant had possession at the time of filing of a method of determining that a gas consuming appliance has become defective and requires servicing based on a change in the appliance’s gas consumption, as recited in claims 1 and 29. Nor does the Examiner adequately explain why these disclosures in Appellant’s Specification would not reasonably convey to those skilled in the art that Appellant had possession at the time of filing of a method of determining that a water heater has a calcium build-up in the tank of the water heater, based on a change in the water heater’s gas consumption, as recited in claim 29. As Appellant points out, “a written

description of determining that ‘a gas furnace is consuming more gas than was normal in the past, which *may* indicate that the furnace needs servicing’ includes the determination that a gas consuming appliance does in fact *require* servicing.” App. Br. 33–34.

Thus, we reverse the Examiner’s rejection of claims 1–3, 6–8, and 29 under 35 U.S.C. § 112(a) for not complying with the written description requirement.

DECISION

We affirm the Examiner’s rejection of claims 1–3, 6–8, 11–16, 21–24, and 26–29 under 35 U.S.C. § 101, and reverse the Examiner’s rejection of claims 1–3, 6–8, and 29 under 35 U.S.C. § 112(a).

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