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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/791,004	02/14/2020	Thomas Boyajian	067286-0410	2631
22428	7590	10/25/2021		
FOLEY & LARDNER LLP 3000 K STREET N.W. SUITE 600 WASHINGTON, DC 20007-5109			EXAMINER MARLEN, TAMMIE K	
			ART UNIT	PAPER NUMBER
			3792	
			NOTIFICATION DATE	DELIVERY MODE
			10/25/2021	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@foley.com

Office Action Summary

Application No.

16/791,004

Applicant(s)

Boyajian et al.

Examiner

TAMMIE K MARLEN

Art Unit

3792

AIA (FITF) Status

Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2020.
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) ☒ Claim(s) 1-20 is/are pending in the application.
5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-20 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 27 April 2020 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) ☐ All b) ☐ Some** c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
Paper No(s)/Mail Date Attached.
- 3) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 4) ☐ Other: ____.

DETAILED ACTION

Notice of Pre-AIA or AIA Status

1. The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Information Disclosure Statement

2. Applicant should note that the large number of references in the attached IDS have been considered by the examiner in the same manner as other documents in Office search files are considered by the examiner while conducting a search of the prior art in a proper field of search. **See MPEP 609.05(b).** Applicant is requested to point out any particular references in the IDS which they believe may be of particular relevance to the instant claimed invention in response to this office action.

Drawings

3. The Applicant is reminded to carefully review the drawing figures and the accompanying specification to ensure that all reference numerals present in the drawing figures are defined within the specification.

Specification

4. The disclosure is objected to because of the following informalities: the first paragraph of the specification should be updated to indicate the present status of all applications referred to therein.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of 35 U.S.C. 112(b):

(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor (or for applications subject to pre-AIA 35 U.S.C. 112, the applicant), regards as the invention.

7. Claim 1 recites the limitation "nested hinges configured to reduce optical dead space" in lines 2-3. The metes and bounds of the claim are unclear as it is not known what the optical dead space is compared to in order to know that it has been "reduced".

8. Claim 6 recites the limitation "nested hinges configured to reduce optical dead space" in line 3. The metes and bounds of the claim are unclear as it is not known what the optical dead space is compared to in order to know that it has been "reduced".

9. Claim 8 recites the limitation "output of the illumination over an active emitting area is within 60% of maximum over all operation distances" in lines 1-2. The metes and bounds of the claim are unclear, as it is unknown what is meant by "output of the illumination", what the maximum is of, and to what "operation distances" refers.

10. Claim 9 recites the limitation "output of the illumination over an active emitting area is within 70% of maximum over a distance of two and four inches" in lines 1-2. The metes and bounds of the claim are unclear, as it is unknown what is meant by "output of the illumination", what the maximum is of, and to what "a distance of two and four inches" refers. Is the distance intended to be between two and four inches or intended to be a distance of two inches and a distance of four inches?

11. Claim 10 recites the limitation "output of the illumination over an active emitting area is within 80% of maximum over a distance of two and four inches" in lines 1-2. The metes and bounds of the claim are unclear, as it is unknown what is meant by "output of the illumination", what the maximum is of, and to what "a distance of two and four inches" refers. Is the distance intended to be between two and four inches or intended to be a distance of two inches and a distance of four inches?

12. Claim 18 recites the limitation "light sources of the illuminator" in lines 1-2. It is unclear if this is referring to the light sources recited in claim 6 or different light sources.

13. Claim 19 recites the limitation "a nested hinge" in line 2. It is unclear if this is one of the nested hinges recited in claim 6 or a different nested hinge.

Claim Rejections - 35 USC § 102

14. In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a)(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention.

16. Claims 1, 2, 6, 7, 13, 18, and 19 are rejected under 35 U.S.C. 102(a)(1) as being anticipated by Tobin (U.S. 2007/0283655, cited by Applicant). Regarding claim 1, Tobin discloses a system for photodynamically diagnosing or treating a patient, comprising: an illuminator 100 comprising at least five panels 101/102/103/107/108 connected by nested hinges 104/105 configured to reduce optical dead space (see Figures 2, 2A, 3B, 4, 5B, 6B, and 9, where the hinges are considered "nested" because they are formed of components fitted one inside the other, and the reduction of optical dead space is relative to if a larger gap was present between panels), light sources 910-912 disposed on a surface of the illuminator (see Figure 9), the illuminator being configured to uniformly illuminate a treatment surface of the patient via the light sources (see paragraph [0040], line 9), one of the at least five panels positioned as a center panel 101 configured to face the treatment surface, and two or more of the at least five panels being configured to be angled relative to the center panel (see Figures 3B, 4, 5B, 6B, 7B, 8B, and 9).

17. Regarding claim 2, Tobin discloses that the illuminator is configured to uniformly illuminate the treatment surface when the treatment surface is at a distance of two to four inches from the illuminator (see paragraph [0040], line 9).

18. Regarding claim 6, Tobin discloses a method of photodynamically diagnosing or treating a patient, comprising: positioning an illuminator 10 proximate to the patient (see Figures 3B, 4, 5A/B, 6A/B, 7B, 8B, and 9) the illuminator comprising at least five panels 101/102/103/107/108 connected by nested hinges 104/105 configured to reduce optical dead space (see Figures 2, 2A, 3B, 4, 5B, 6B, and 9, where the hinges are considered “nested” because they are formed of components fitted one inside the other, and the reduction of optical dead space is relative to if a larger gap was present between panels); and uniformly illuminating a treatment surface of the patient with the illuminator (see Figures 3B, 4, 5A/B, 6A/B, 7B, 8B, and 9, and paragraphs [0003], [0004], and [0040]).

19. Regarding claim 7, Tobin discloses that the nested hinges are mounted to inner side surfaces of adjacent panels (see Figure 2).

20. Regarding claim 13, Tobin discloses that at least one panel includes tabs, spacers 106, outwardly extending from a top side and a bottom side (spaces 106 are on both sides of center panel 101, which can be called the top side and the bottom side), the tabs being configured to receive an adjacent panel therein (spacers 106 are connected to side panels via hinges 104 and are thus considered to be “configured to receive an adjacent panel therein”).

21. Regarding claim 18, Tobin discloses changing intensities of light sources of the illuminator with a controller in accordance with information received from at least one sensor relating to a curvature of the treatment surface (see paragraph [0039], lines 18-25).

22. Regarding claim 19, Tobin discloses that at least one panel includes a recess configured to receive a flange of a nested hinge (the recess is considered the hole in the panel that accepts adjustment screws 204 and 205, which are considered the “flange” of the nested hinge).

23. Claims 1, 2, 5-7, and 18 are rejected under 35 U.S.C. 102(a)(1) as being anticipated by Larsen (U.S. 2005/0075703, cited by Applicant). Regarding claim 1, Larsen discloses a system for photodynamically diagnosing or treating a patient, comprising: an illuminator comprising at least five panels 13 connected by nested hinges (called 10 in the disclosure of Larsen and indicated as 20 in Figure 1 of Larsen, see paragraphs [0027], lines 5-8 and [0072], lines 1-3) configured to reduce optical dead space (see Figure 1, where the hinges are considered “nested” because they are not visible between the panels and the panels are flush against each other where the hinges are indicated, and the reduction of optical dead space is relative to if a larger gap was present between panels), light sources 17/18 disposed on a surface of the illuminator (see Figures 2A-D), the illuminator being configured to uniformly illuminate a treatment surface of the patient via the light sources (see paragraph [0072], which describes that operation of the device as “without leaving any unradiated gaps”), one of the at least five panels positioned as a center panel configured to face the treatment surface, and two or more of the at least five panels being configured to be angled relative to the center panel (see Figure 1).

24. Regarding claim 2, Larsen discloses that the illuminator is adjusted such that there are no unradiated gaps (see paragraph [0072]) and, thus, it is respectfully submitted that the illuminator is configured to uniformly illuminate the treatment surface when the treatment surface is at a distance of two to four inches from the illuminator.

25. Regarding claim 5, Larsen discloses that a plurality of the light sources are configured to emit light having a wavelength in a range of 400 nm to 700 nm (see paragraph [0071]).

26. Regarding claim 6, Larsen discloses a method of photodynamically diagnosing or treating a patient, comprising: positioning an illuminator 10 proximate to the patient (see Figure 1), at least five panels 13 connected by nested hinges (called 10 in the disclosure of Larsen and indicated as 20 in Figure 1 of Larsen, see paragraphs [0027], lines 5-8 and [0072], lines 1-3) configured to reduce optical dead space (see Figure 1, where the hinges are considered “nested” because they are not visible between the panels and the panels are flush against each other where the hinges

are indicated, and the reduction of optical dead space is relative to if a larger gap was present between panels); and uniformly illuminating a treatment surface of the patient with the illuminator see paragraph [0072], which describes that operation of the device as “without leaving any unirradiated gaps”).

27. Regarding claim 7, Larsen discloses that the nested hinges are mounted to inner side surfaces of adjacent panels (see paragraph [0072], lines 1-4).

28. Regarding claim 18, Tobin discloses changing intensities of light sources of the illuminator with a controller in accordance with information received from at least one sensor 32 relating to a curvature of the treatment surface (see paragraphs [0030] and [0079]).

Claim Rejections - 35 USC § 103

29. In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

30. The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

31. The factual inquiries for establishing a background for determining obviousness under 35 U.S.C. 103 are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

32. This application currently names joint inventors. In considering patentability of the claims the examiner presumes that the subject matter of the various claims was commonly owned as of the effective filing date of the claimed invention(s) absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and effective filing dates of each claim that was not commonly owned as of the effective filing date of the later invention in order for the examiner to consider the applicability of 35 U.S.C. 102(b)(2)(C) for any potential 35 U.S.C. 102(a)(2) prior art against the later invention.

33. Claims 3-5 are rejected under 35 U.S.C. 103 as being unpatentable over Tobin (U.S. 2007/0283655, cited above) in view of Harth et al. (U.S. 2003/0216795). Tobin discloses the invention substantially as claimed, but fails to disclose that that the illuminator is configured to output red light at an intensity of about 30 J/cm² to about 150 J/cm², the illuminator is configured to output light at an irradiance density of 10 mW/cm² to 30 mW/cm², or a plurality of the light sources are configured to emit light having a wavelength in a range of 400 nm to 700 nm. Harth teaches a method and apparatus for providing photodynamic therapy to a patient to treat acne (see Abstract) that includes applying light using an illuminator configured to output red light at an intensity of 20 J/cm², which is considered to be "about" 30 J/cm² (paragraph [0185], lines 5-6) and output light at an irradiance density of 10 mW/cm² to 30 mW/cm² (see paragraph [0123], lines 10-12), and a plurality of the light sources are configured to emit light having a wavelength in a range of 400 nm to 700 nm (see Abstract and paragraph [0020], lines 5-6). It would have been obvious to one having ordinary skill before effective filing date of the claimed invention to modify the invention of Tobin such that the illuminator is configured to output red light at an intensity of about 30 J/cm² to about 150 J/cm², the illuminator is configured to output light at an irradiance density of 10 mW/cm² to 30 mW/cm², and a plurality of the light sources are configured to emit light having a wavelength in a range of 400 nm to 700 nm, as taught by Harth, as it has been held

that combining prior art elements according to known methods to yield predictable results requires only routine skill in the art. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007).

34. Claims 11, 12, and 14-17 are rejected under 35 U.S.C. 103 as being unpatentable over Tobin (U.S. 2007/0283655, cited above) in view of Tapper et al. (U.S. 2013/0066404). Tobin discloses the invention substantially as claimed, but fails to disclose determining the size or shape of the treatment surface of the patient using a sensor, adjusting an overall light dose with a controller based on the determined size or shape of the treatment device, or adjusting positioning of panels with at least one actuator based on the determined size or shape of the treatment device. Tapper teaches a system and method of delivering light therapy to a patient that includes an adjustable platform that is adaptable to the user's receptive surfaces (see paragraphs [0009] and [0010]). Furthermore, Tapper teaches that because users come in a variety of shapes and sizes, devices should be size or area adjustable so that the therapy can be efficiently applied and/or selectively intensified to desired treatment areas (see paragraphs [0006]). It would have been obvious to one having ordinary skill in the art before the effective filing date of the claimed invention to modify the invention of Tobin to include determining the size or shape of the treatment surface of the patient using a sensor, adjusting an overall light dose with a controller based on the determined size or shape of the treatment device, and adjusting positioning of panels with at least one actuator based on the determined size or shape of the treatment device, so that the therapy can be efficiently applied and/or selectively intensified to desired treatment areas.

35. Claims 3 and 4 are rejected under 35 U.S.C. 103 as being unpatentable over Larsen (U.S. 2005/0075703, cited above) in view of Harth et al. (U.S. 2003/0216795, cited above). Larsen discloses the invention substantially as claimed, but fails to disclose that that the illuminator is configured to output red light at an intensity of about 30 J/cm² to about 150 J/cm² or the illuminator is configured to output light at an irradiance density of 10 mW/cm² to 30 mW/cm². Harth teaches

a method and apparatus for providing photodynamic therapy to a patient to treat acne (see Abstract) that includes applying light using an illuminator configured to output red light at an intensity of 20 J/cm^2 , which is considered to be “about” 30 J/cm^2 (paragraph [0185], lines 5-6) and output light at an irradiance density of 10 mW/cm^2 to 30 mW/cm^2 (see paragraph [0123], lines 10-12). It would have been obvious to one having ordinary skill before effective filing date of the claimed invention to modify the invention of Larsen such that the illuminator is configured to output red light at an intensity of about 30 J/cm^2 to about 150 J/cm^2 and the illuminator is configured to output light at an irradiance density of 10 mW/cm^2 to 30 mW/cm^2 , as taught by Harth, as it has been held that combining prior art elements according to known methods to yield predictable results requires only routine skill in the art. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007).

36. Claims 11, 12, and 14-17 are rejected under 35 U.S.C. 103 as being unpatentable over Larsen (U.S. 2005/007570, cited above) in view of Tapper et al. (U.S. 2013/0066404, cited above). Larsen discloses the invention substantially as claimed, but fails to disclose determining the size or shape of the treatment surface of the patient using a sensor, adjusting an overall light dose with a controller based on the determined size or shape of the treatment device, or adjusting positioning of panels with at least one actuator based on the determined size or shape of the treatment device. Tapper teaches a system and method of delivering light therapy to a patient that includes an adjustable platform that is adaptable to the user's receptive surfaces (see paragraphs [0009] and [0010]). Furthermore, Tapper teaches that because users come in a variety of shapes and sizes, devices should be size or area adjustable so that the therapy can be efficiently applied and/or selectively intensified to desired treatment areas (see paragraphs [0006]). It would have been obvious to one having ordinary skill in the art before the effective filing date of the claimed invention to modify the invention of Larsen to include determining the size or shape of the treatment surface of the patient using a sensor, adjusting an overall light dose with

a controller based on the determined size or shape of the treatment device, and adjusting positioning of panels with at least one actuator based on the determined size or shape of the treatment device, so that the therapy can be efficiently applied and/or selectively intensified to desired treatment areas.

37. Claim 20 is rejected under 35 U.S.C. 103 as being unpatentable over Larsen (U.S. 2005/007570, cited above). Larsen discloses the invention substantially as claimed, but fails to disclose the illuminator comprises at least three first panels having first widths, at least two second panels having second widths, wherein each of the second widths of the at least two second panels is narrower than each of the first widths of the at least three first panels; and wherein the at least three first panels and the at least two second panels are connected in an alternative manner such that each of the at least two second panels has a first lateral side connected to a respective one of the at least three first panels and a second lateral side connected to another respective one of the at least three first panels. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Larsen such that the first, third, and fifth panels shown in Figure 1 have a first width larger than the widths of the second and fourth panels in Figure 1, since it has been held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device, and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984). Furthermore, it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In *re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMMIE K MARLEN whose telephone number is (571)272-1986. The examiner can normally be reached Monday through Friday from 8 am until 4 pm.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/TAMMIE K MARLEN/
Primary Examiner, Art Unit 3792

Notice of References Cited	Application/Control No. 16/791,004		Applicant(s)/Patent Under Reexamination Boyajian et al.	
	Examiner TAMMIE K MARLEN		Art Unit 3792	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-20130066404-A1	03-2013	Tapper; Jay	A61N5/0616	607/90
*	B	US-20030216795-A1	11-2003	Harth, Yoram	A61N5/062	607/88
	C					
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FOREIGN PATENT DOCUMENTS

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	N					
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.