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NOTICE OF ALLOWANCE AND FEE(S) DUE

22242 7590 11/02/2020
FITCHEVEN TABIN & FLANNERY, LLP
120 SOUTH LASALLE STREET
SUITE 2100
CHICAGO, IL 60603-3406

EXAMINER

YANG, ANDREW

ART UNIT

PAPER NUMBER

3775

DATE MAILED: 11/02/2020

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/164,899	10/19/2018	Matthew P. Gephart	21271-143881-US	2611

TITLE OF INVENTION: BONE COMPRESSION DEVICE AND METHOD

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	\$1200	\$0.00	\$0.00	\$1200	02/02/2021

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as SMALL or MICRO, verify whether entitlement to that entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) DUE shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE(S) TRANSMITTAL, complete section number 5 titled "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 1/2 the amount of undiscounted fees, and micro entity fees are 1/2 the amount of small entity fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1980. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), by mail or fax, or via EFS-Web.

By mail, send to: Mail Stop ISSUE FEE
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450

By fax, send to: (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

22242 7590 11/02/2020
FITCH EVEN TABIN & FLANNERY, LLP
 120 SOUTH LASALLE STREET
 SUITE 2100
 CHICAGO, IL 60603-3406

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being transmitted to the USPTO via EFS-Web or by facsimile to (571) 273-2885, on the date below.

	(Typed or printed name)
	(Signature)
	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/164,899	10/19/2018	Matthew P. Gephart	21271-143881-US	2611

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nonprovisional	UNDISCOUNTED	\$1200	\$0.00	\$0.00	\$1200	02/02/2021

EXAMINER	ART UNIT	CLASS-SUBCLASS
YANG, ANDREW	3775	606-281000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-09 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,

1 _____

(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

2 _____

3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document must have been previously recorded, or filed for recordation, as set forth in 37 CFR 3.11 and 37 CFR 3.81(a). Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. Fees submitted: ☐ Issue Fee ☐ Publication Fee (if required) ☐ Advance Order - # of Copies _____

4b. Method of Payment: (Please first reapply any previously paid fee shown above)

☐ Electronic Payment via EFS-Web ☐ Enclosed check ☐ Non-electronic payment by credit card (Attach form PTO-2038)

☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment to Deposit Account No. _____

5. **Change in Entity Status** (from status indicated above)

☐ Applicant certifying micro entity status. See 37 CFR 1.29

☐ Applicant asserting small entity status. See 37 CFR 1.27

☐ Applicant changing to regular undiscounted fee status.

NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.

NOTE: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.

NOTE: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____



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22242	7590	11/02/2020	EXAMINER	
FITCH EVEN TABIN & FLANNERY, LLP 120 SOUTH LASALLE STREET SUITE 2100 CHICAGO, IL 60603-3406			YANG, ANDREW	
			ART UNIT	PAPER NUMBER
			3775	

DATE MAILED: 11/02/2020

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Notice of Allowability	Application No. 16/164,899	Applicant(s) Gephart, Matthew P.	
	Examiner ANDREW YANG	Art Unit 3775	AIA (FITF) Status Yes

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

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's amendment filed 22 September 2020.
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.

2. ☐ 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.

3. ☒ The allowed claim(s) is/are 1-19. As a result of the allowed claim(s), 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.

4. ☐ 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)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)	5. ☐ Examiner's Amendment/Comment
2. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date ____.	6. ☐ Examiner's Statement of Reasons for Allowance
3. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material ____.	7. ☐ Other ____.
4. ☐ Interview Summary (PTO-413), Paper No./Mail Date. ____.	

/ANDREW YANG/ Primary Examiner, Art Unit 3775	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.:	16/164,899	)	<i>Confirmation No. 2611</i>
		)	
Inventor:	Matthew P. Gephart	)	
		)	
Filed:	October 19, 2018	)	<u>CERTIFICATE OF EFS-WEB</u>
		)	<u>TRANSMISSION</u>
		)	
Title:	BONE COMPRESSION DEVICE AND METHOD	)	I hereby certify that this
		)	correspondence was transmitted via the
		)	United States Patent and Trademark
Art Unit:	3775	)	Office (USPTO) electronic filing system
		)	(EFS-Web) to the USPTO on September
Examiner:	Andrew Yang	)	22, 2020.
		)	
Attorney Docket:	21271-143881-US	)	<u>/Jonathan H. Urbanek/</u>
		)	Jonathan H. Urbanek
		)	Registration No. 60,686
Customer No.:	22242	)	Attorney for Applicant(s)
		)	
		)	
		)	

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

AMENDMENT

Commissioner:

In response to the Non-Final Office Action mailed June 22, 2020, the Applicant submits the following:

Amendments to the Claims are reflected in the listing of claims beginning of page 2 of this paper.

Remarks begin on page 10 of this paper.

AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, and listing, of claims in the application:

Listing of Claims:

1. (Currently Amended) A method of preloading a bone compression device for subsequent application of the bone compression device to bones, the bone compression device including an elongated resilient member having an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the elongated resilient member further having a loaded configuration wherein the elongated resilient member has the other of the bent or the straight shape, the method comprising:

moving bone anchor receiving portions of the bone compression device relative to each other from a first configuration of the bone anchor receiving portions to a second configuration of the bone anchor receiving portions, the moving of the bone anchor receiving portions causing the elongated resilient member to shift from the unloaded configuration to the loaded configuration; and

after moving the bone anchor receiving portions to the second configuration thereof, ~~applying~~ connecting at least one restraint to a body which is connected to one of the bone anchor receiving portions, the body being separate and distinct from the at least one restraint and the one bone anchor receiving portion, to inhibit the bone anchor receiving portions from moving from the second configuration back toward the first configuration thereof which keeps the elongated resilient member from shifting from the loaded configuration back toward the unloaded configuration.

2. (Original) The method of claim 1, wherein moving the bone anchor receiving portions relative to each other includes increasing a distance between the bone anchor receiving portions.

3. (Currently Amended) ~~[[The]]~~ A method of claim 1, preloading a bone compression device for subsequent application of the bone compression device to bones, the bone compression device including an elongated resilient member having an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the elongated resilient member further having a loaded configuration wherein the elongated resilient member has the other of the bent or the straight shape, the method comprising:

moving bone anchor receiving portions of the bone compression device relative to each other from a first configuration of the bone anchor receiving portions to a second configuration of the bone anchor receiving portions, the moving of the bone anchor receiving portions causing the elongated resilient member to shift from the unloaded configuration to the loaded configuration; and

after moving the bone anchor receiving portions to the second configuration thereof, applying at least one restraint to inhibit the bone anchor receiving portions from moving from the second configuration back toward the first configuration thereof which keeps the elongated resilient member from shifting from the loaded configuration back toward the unloaded configuration;

wherein moving the bone anchor receiving portions relative to each other includes reconfiguring first and second portions of the elongated resilient member between a first configuration wherein the first and second portions extend transversely to each other and a second configuration wherein the first and second portions are coaxial with each other.

4. (Original) The method of claim 1, further comprising engaging a tool with one of the bone anchor receiving portions; and

moving the bone anchor receiving portions relative to each other includes using the tool to move the one bone anchor receiving portion relative to the other bone anchor receiving portion.

5. (Original) The method of claim 1, further comprising engaging tools with the bone anchor receiving portions; and

moving the bone anchor receiving portions relative to each other includes using the tools to move the bone anchor receiving portions relative to each other.

6. (Currently Amended) ~~[[The]]~~ A method of claim 1, further comprising preloading a bone compression device for subsequent application of the bone compression device to bones, the bone compression device including an elongated resilient member having an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the elongated resilient member further having a loaded configuration wherein the elongated resilient member has the other of the bent or the straight shape, the method comprising:

moving bone anchor receiving portions of the bone compression device relative to each other from a first configuration of the bone anchor receiving portions to a second configuration of the bone anchor receiving portions, the moving of the bone anchor receiving portions causing the elongated resilient member to shift from the unloaded configuration to the loaded configuration;

after moving the bone anchor receiving portions to the second configuration thereof, applying at least one restraint to inhibit the bone anchor receiving portions from moving from the second configuration back toward the first configuration thereof which keeps the elongated resilient member from shifting from the loaded configuration back toward the unloaded configuration;

engaging a first tool with one of the bone anchor receiving portions and engaging a second tool with the other of the bone anchor receiving portions; and

moving the bone anchor receiving portions relative to each other includes using the tools to move the bone anchor receiving portions relative to each other.

7. (Currently Amended) ~~[[The]]~~ A method of claim 1, further comprising preloading a bone compression device for subsequent application of the bone compression device to bones, the bone compression device including an elongated resilient member having an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the elongated resilient member further having a loaded configuration

wherein the elongated resilient member has the other of the bent or the straight shape, the method comprising:

moving bone anchor receiving portions of the bone compression device relative to each other from a first configuration of the bone anchor receiving portions to a second configuration of the bone anchor receiving portions, the moving of the bone anchor receiving portions causing the elongated resilient member to shift from the unloaded configuration to the loaded configuration; and

after moving the bone anchor receiving portions to the second configuration thereof, applying at least one restraint to inhibit the bone anchor receiving portions from moving from the second configuration back toward the first configuration thereof which keeps the elongated resilient member from shifting from the loaded configuration back toward the unloaded configuration;

providing a tool having a distal end portion configured to be connected to the bone compression device, the tool having a cannula sized to permit a bone screw to be advanced therethrough and into an opening of one of the bone anchor receiving portions.

8. (Currently Amended) A method of applying a bone compression device to bones, the bone compression device including bone anchor receiving portions and an elongated resilient member, the bone anchor receiving portions having a first configuration which places the elongated resilient member in an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the bone anchor receiving portions having a second configuration which places the elongated resilient member in a loaded configuration wherein the elongated resilient member has the other of the bent or straight shape, the method comprising:

positioning the bone ~~plate~~ compression device against the bones with the bone anchor receiving portions in the second configuration and the elongated resilient member in the loaded configuration;

permitting at least one restraint to hold the bone anchor receiving portions in the second configuration, the holding of the bone anchor receiving portions in the second configuration maintaining the elongated resilient member in the loaded configuration;

driving shanks of bone screws through openings of the bone anchor receiving portions of the bone ~~plate~~ compression device and into engagement with the bones; and ~~removing~~ disconnecting the at least one restraint from a body connected to one of the bone anchor receiving portions, the body being separate and distinct from the at least one restraint and the one bone anchor receiving portion, to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration and urge the bone anchor receiving portions of the bone ~~plate~~ compression device from the second configuration back toward the first configuration.

9. (Original) The method of claim 8, wherein removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration includes decreasing a distance between the bone anchor receiving portions.

10. (Original) The method of claim 8, wherein removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration includes changing an angle between two straight portions of the elongated resilient member.

11. (Currently Amended) [[The]] A method of ~~claim 8~~, applying a bone compression device to bones, the bone compression device including bone anchor receiving portions and an elongated resilient member, the bone anchor receiving portions having a first configuration which places the elongated resilient member in an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the bone anchor receiving portions having a second configuration which places the elongated resilient member in a loaded configuration wherein the elongated resilient member has the other of the bent or straight shape, the method comprising:
positioning the bone compression device against the bones with the bone anchor receiving portions in the second configuration and the elongated resilient member in the loaded configuration;

permitting at least one restraint to hold the bone anchor receiving portions in the second configuration, the holding of the bone anchor receiving portions in the second configuration maintaining the elongated resilient member in the loaded configuration;

driving shanks of bone screws through openings of the bone anchor receiving portions of the bone compression device and into engagement with the bones; and

removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration and urge the bone anchor receiving portions of the bone compression device from the second configuration back toward the first configuration;

wherein driving shanks of bones screws through openings of the bone anchor receiving portions includes advancing one of the bone screws through a cannula of a tool connected to the bone compression device.

12. (Original) The method of claim 8, wherein the bone anchor receiving portions each have a through opening for receiving a bone screw and a central axis of the through opening, the bone compression device including a longitudinal axis intersecting the central axes of the through openings when the bone anchor receiving portions are in the first configuration and the second configuration.

13. (Original) The method of claim 8 wherein permitting the at least one restraint to hold the bone anchor receiving portions in the second configuration includes permitting the at least one restraint to extend intermediate the bone anchor receiving portions and removing the at least one restraint includes removing the at least one restraint from being intermediate the bone anchor receiving portions.

14. (New) The method of claim 8 further comprising seating heads of the bone screws against unthreaded surfaces of the bone anchor receiving portions.

15. (New) A method of applying a bone compression device to bones, the bone compression device including bone anchor receiving portions and an elongated resilient

member, the bone anchor receiving portions having a first configuration which places the elongated resilient member in an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape, the bone anchor receiving portions having a second configuration which places the elongated resilient member in a loaded configuration wherein the elongated resilient member has the other of the bent or straight shape, wherein at least one restraint holds the bone anchor receiving portions in the second configuration which maintains the elongated resilient member in the loaded configuration, the method comprising:

- positioning the bone compression device against the bones with the bone anchor receiving portions in the second configuration and the elongated resilient member in the loaded configuration;

- driving shanks of bone screws through openings of the bone anchor receiving portions of the bone compression device and into engagement with the bones; and

- removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration and urge the bone anchor receiving portions of the bone compression device from the second configuration back toward the first configuration;

- wherein the elongated resilient member has first and second portions extending transversely to each other with the elongated resilient member in one of the loaded configuration and the unloaded configuration; and

- wherein the first and second portions of the elongated resilient member are coaxial with each other with the elongated resilient member in the other of the loaded configuration and the unloaded configuration.

16. (New) The method of claim 15, wherein removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration includes decreasing a distance between the bone anchor receiving portions.

17. (New) The method of claim 15, wherein removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration includes changing an angle between the first and second portions of the elongated resilient member.

18. (New) The method of claim 15, wherein the bone anchor receiving portions each have a through opening for receiving a bone screw and a central axis of the through opening, the bone compression device including a longitudinal axis intersecting the central axes of the through openings when the bone anchor receiving portions are in the first configuration and the second configuration.

19. (New) The method of claim 15 wherein permitting the at least one restraint to hold the bone anchor receiving portions in the second configuration includes permitting the at least one restraint to extend intermediate the bone anchor receiving portions and removing the at least one restraint includes removing the at least one restraint from being intermediate the bone anchor receiving portions.

REMARKS

I. INTRODUCTION

Claims 1-13 are pending. Claims 14-19 are added herein.

II. ALLOWABLE SUBJECT MATTER

The Examiner is thanked for the indication of allowable subject matter in claims 3, 6, 7, and 11. Claims 3, 6, 7, and 11 are amended into independent form. Accordingly, it is respectfully submitted that claims 3, 6, 7, and 11 are in condition for allowance.

New claim 15 contains language similar to allowable claim 3. Accordingly, it is respectfully submitted that claim 15, and claims 16-19 which depend therefrom, are in condition for allowance.

III. REJECTIONS UNDER 35 U.S.C. 102

Claims 1, 2, 4, 5, 8-10, 12, and 13 are rejected under 35 U.S.C. 102(a)(2) as being anticipated by US Patent No. 9,408,647 to Cheney ("Cheney").

The rejections, as they may apply to the claims presented herein, are respectfully traversed.

Claim 1 is directed to a method of preloading a bone compression device and includes moving bone anchor receiving portions of the bone compression device relative to each other from a first configuration of the bone anchor receiving portions to a second configuration. The moving of the bone anchor receiving portions causes an elongate resilient member of the bone compression device to shift from an unloaded configuration to a loaded configuration.

Claim 1, as amended, recites after moving the bone anchor receiving portions to the second configuration thereof, connecting at least one restraint to a body which is connected to one of the bone anchor receiving portions. The body is separate and distinct from the at least one restraint and the one bone anchor receiving portion. An example of such an operation is provided in FIG. 14 of the subject application (reproduced below), wherein the

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ring-shaped portions apart (see Cheney, FIG. 11). There is no intervening separate and distinct body between the retention spacer 56 and the ring-shaped portions of the plate 10 of Cheney. Accordingly, it is respectfully submitted that claim 1, and the claims dependent therefrom, are allowable over Cheney.

Claim 8 is directed to a method of applying a bone compression device to bones, the bone compression device including bone anchor receiving portions and an elongated resilient member, and includes positioning the bone compression device against the bones with the bone anchor receiving portions in a second configuration and the elongated resilient member in a loaded configuration. The method includes permitting at least one restraint to hold the bone anchor receiving portions in a second configuration and driving shanks of bone screws through openings of the bone anchor receiving portions of the bone compression device and into engagement with the bones. Claim 8, as amended, recites disconnecting the at least one restraint from a body connected to one of the bone anchor receiving portions, the body being separate and distinct from the at least one restraint and the bone anchor receiving portion. The disconnecting permits the elongated resilient member to shift from the loaded configuration toward an unloaded configuration and urges the bone anchor receiving portions from the second configuration back toward a first configuration. Cheney does not disclose disconnecting at least one restraint from a body connected to a bone anchor receiving portion, the body being separate and distinct from the at least one restraint and the bone anchor receiving portion, as recited by amended claim 8.

The Action asserts that the ring-shaped portions of the plate 10 of Cheney correspond to the bone anchor receiving portions of claim 8. The Action further asserts that Cheney's disclosure of removing the retention spacer 56 from the central area 15 of the plate 10 discloses disconnecting at least one restraint as called for by claim 8. However, removing the retention spacer 56 from the central area 15 of plate 10 does not include disconnecting the retention spacer 56 from a body that is separate and distinct from the retention spacer 56 and the ring portions of the plate 10. Instead, removing the retention spacer 56 from the central area 15 involves disengaging the retention spacer 56 from direct engagement with the ring-shaped portions of the plate 10. There is no intervening separate and distinct body between the retention spacer 56 and the ring-shaped portions of the plate 10 of Cheney.

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AMENDMENT dated September 22, 2020

Accordingly, it is respectfully submitted that claim 8, and the claims dependent therefrom, are allowable the applied references.

IV. CONCLUSION

Based on the foregoing, reconsideration and allowance of the pending claims, and reconsideration and allowance of the added claims, are respectfully requested.

The Examiner is invited to contact the undersigned should an interview expedite prosecution of the application.

The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,

Fitch, Even, Tabin & Flannery, LLP

Date: September 22, 2020

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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.

DETAILED ACTION

Notice of Pre-AIA or AIA Status

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

Claim Rejections - 35 USC § 102

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)(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

Claim(s) 1, 2, 4, 5, 8-10, 12 and 13 is/are rejected under 35 U.S.C. 102(a)(2) as being anticipated by Cheney (U.S. Patent No. 9408647).

Cheney discloses a method of preloading a bone compression device for subsequent application of the bone compression device to bones, the bone compression device (10) including an elongated resilient member having an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape (Figure 2), the elongated resilient member further having a loaded configuration wherein the elongated resilient member has the other of the bent or the straight shape (Figure 1, arms 13 and 14 are straight with a sharp angle), the method comprising: moving bone anchor receiving portions (11, 12) of the bone compression device relative to each other from a first configuration (Figure 2) of the bone anchor receiving portions

to a second configuration of the bone anchor receiving portions (Figure 1), the moving of the bone anchor receiving portions causing the elongated resilient member to shift from the unloaded configuration to the loaded configuration; and after moving the bone anchor receiving portions to the second configuration thereof, applying at least one restraint (56) to inhibit the bone anchor receiving portions from moving from the second configuration back toward the first configuration thereof which keeps the elongated resilient member from shifting from the loaded configuration back toward the unloaded configuration.

Moving the bone anchor receiving portions relative to each other includes increasing a distance between the bone anchor receiving portions (Figure 2 to Figure 1).

Regarding claims 4 and 5 it can be construed from (column 3, lines 54-64) that tools (i.e pliers) can be used to engage the bone anchor portions to move the bone receiving portions.

Cheney discloses a method of applying a bone compression device to bones, the bone compression device (10) including bone anchor receiving portions (11, 12) and an elongated resilient member (13, 14), the bone anchor receiving portions having a first configuration which places the elongated resilient member in an unloaded configuration wherein the elongated resilient member has either a bent or a straight shape (Figure 2), the bone anchor receiving portions having a second configuration (Figure 1) which places the elongated resilient member in a loaded configuration wherein the elongated resilient member has the other of the bent or straight shape (Figure 1, arms 13 and 14 are straight with a sharp angle), the method comprising: positioning the bone plate

against the bones with the bone anchor receiving portions in the second configuration and the elongated resilient member in the loaded configuration (Figure 12); permitting at least one restraint (56) to hold the bone anchor receiving portions in the second configuration, the holding of the bone anchor receiving portions in the second configuration maintaining the elongated resilient member in the loaded configuration; driving shanks of bone screws through openings of the bone anchor receiving portions of the bone plate and into engagement with the bones (Figure 14, 15); and removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration and urge the bone anchor receiving portions of the bone plate from the second configuration back toward the first configuration (Figure 17).

Driving shanks of bone screws through openings of the bone anchor receiving portions includes advancing one of the bone screws through a cannula (54, 55) of a tool connected to the bone compression device

Removing the at least one restraint to permit the elongated resilient member to shift from the loaded configuration toward the unloaded configuration includes decreasing a distance between the bone anchor receiving portions (Figure 1, 2, and 15-17).

The bone anchor receiving portions each have a through opening for receiving a bone screw and a central axis of the through opening, the bone compression device including a longitudinal axis intersecting the central axes of the through openings when the bone anchor receiving portions are in the first configuration and the second configuration (Figure 1, 2).

Permitting the at least one restraint (56) to hold the bone anchor receiving portions in the second configuration includes permitting the at least one restraint to extend intermediate the bone anchor receiving portions (Figure 11) and removing the at least one restraint includes removing the at least one restraint from being intermediate the bone anchor receiving portions (Figure 17).

Allowable Subject Matter

Claims 3, 6, 7, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW YANG whose telephone number is (571)272-3472. The examiner can normally be reached on 9:00 - 9:00 M-F.

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, Kevin Truong can be reached on 571-272-4705. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <https://ppair-my.uspto.gov/pair/PrivatePair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW YANG/
Primary Examiner, Art Unit 3775