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17/018,099	09/11/2020	Jason Wersland	76840-5090	2849
24574	7590	11/16/2021	EXAMINER	
JEFFER, MANGELS, BUTLER & MITCHELL, LLP			STUART, COLIN W	
1900 AVENUE OF THE STARS, 7TH FLOOR			ART UNIT	PAPER NUMBER
LOS ANGELES, CA 90067			3785	
			NOTIFICATION DATE	DELIVERY MODE
			11/16/2021	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):

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Office Action Summary

Application No.

17/018,099

Applicant(s)

Wersland et al.

Examiner

COLIN W STUART

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3785

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 9/15/21.

☐ 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) 1-5,8-14,16-17 and 20 is/are pending in the application.

5a) Of the above claim(s) ____ is/are withdrawn from consideration.

6) ☒ Claim(s) 3-4 is/are allowed.

7) ☒ Claim(s) 1-2,8-14,16-17 and 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 7/9/21 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)

3) ☐ Interview Summary (PTO-413)

Paper No(s)/Mail Date ____.

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)

4) ☐ Other: ____.

Paper No(s)/Mail Date ____.

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.

This office action is in response to the amendment filed 9/15/21. As directed by the amendment: claims 1, 5, and 16 have been amended, claim 20 has been added, and no claims have been cancelled. As such, claims 1-5, 8-14, 16-17, and 20 are pending in the instant application.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/15/21 has been entered.

Claim Objections

3. Claim 20 is objected to because of the following informalities: the claim does not end with a period punctuation mark. See MPEP 608.01(m). Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-2 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe (2017/0304145) in view of Marton et al. (10,314,762), Goldstein (2018/0008512), and DeBenedictis et al. (2015/0216719).

Regarding claim 1, Pepe shows a percussive therapy device (see Fig. 1 and abstract for example) which includes a housing (see Fig. 2, housing defined by elements 11 including 20, see para. 0024); an electrical source (see para. 0026 “rechargeable battery”), a motor positioned in the housing (see para. 0026 “motor unit 20 houses a motor (not shown)”), a switch for activating the motor (see Fig. 1-2, switch 26, see para. 0027), a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor (see Fig. 3-4, push rod assembly 18, see para. 0023 and 0025-0026), an attachment connected at a distal end of the push rod assembly, wherein the attachment is configured to be percussively applied to at least a first muscle, wherein percussive application of the attachment to the first muscle causes the temperature of the first muscle to rise from a starting temperature (see Fig. 1-4, attachment 30, para. 0029 disclosing the massage attachment 30 providing warming action to the body including muscles of the body to raise the temperature from a starting temperature due to percussion application) and a temperature sensor (see Fig. 1, temperature sensor 31, see para. 0029). Pepe discloses percussive application of the attachment to a muscle naturally causes the temperature of the first muscle to rise from a starting temperature (see para. 0029, application of percussion using the hot massage head would also provide natural warming of the muscle due to the same percussive application as claimed). Pepe is silent as to including a routine controller that is configured to initiate a protocol configured to provide user instructions to apply the attachment to the first muscle until the temperature sensor senses that the first muscle has reached a predetermined temperature resulting from the percussion application of the attachment and once reached providing user instructions to apply the attachment to a second muscle. However, Marton teaches a similar percussive massage device which includes a routine controller (see Marton col. 7 ln. 63, controller 160 which includes motor controller 1050, see col. 23 ln. 4-37 which initiates a protocol for actuation of the device at certain speeds and thus is a routine controller as actuated of the device at certain speeds is considered a routine, see also Fig. 35-36 and col. 37 ln. 38 through col. 39 ln. 19 which

discloses use of the device paired with a smart phone), Goldstein teaches a similar massage/therapy device which includes providing user instructions to a user on how to use the device and a multi-step routine/protocol to apply the device to different locations on a user's body (see Goldstein para. 0079 which discloses providing a kit including instructions for using the device in the form of a smart phone, tablet, etc., para. 0100-0101 disclosing providing instructions for applying the device to various locations of the body of the user for various times and intensities for example), and DeBenedictis teaches a thermal massage/therapy device which includes a controller for providing temperature readings to reach a target temperature on the user's body part (see DeBenedictis para. 0109 for example). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the Pepe device to include a routine controller which is configured to initiate a protocol to provide user instructions to apply the device to the muscle until it reaches a target temperature and instructions to apply the attachment to a second muscle, as taught by Marton, Goldstein, and DeBenedictis, in order to provide the user of the Pepe device proper instructions to use the device as intended and to provide smart capabilities via connection with a user's smart phone.

Regarding claim 2, the modified Pepe device teaches a motor (see Pepe para. 0026), but is silent as to the motor being a brushless motor with a rotatable motor shaft, wherein the percussive therapy device further comprises a motor mount positioned in the housing, wherein the motor mount includes a mounting wall having a shaft opening defined therein, wherein the motor is mounted to the mounting wall and the motor shaft extends through the shaft opening, wherein first and second mounting flanges extend from and extend perpendicular to the mounting wall, and wherein the first and second mounting flanges are secured to opposite sides of the housing. However, Marton teaches a similar device which includes a brushless motor with a rotatable motor shaft (see Marton Fig. 3, motor 310, see col. 9 ln. 60), wherein the percussive therapy device further comprises a motor mount positioned in the housing (see Fig. 3 and 11A-B, motor mount 320, col. 10 ln. 1-21), wherein the motor mount includes a mounting wall

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having a shaft opening defined therein, wherein the motor is mounted to the mounting wall and the motor shaft extends through the shaft opening (see Fig. 11A-B, mounting wall being the upper wall of 320 which motor 310 directly attaches to, shaft opening 350 through which the motor shaft 312 extends), wherein first and second mounting flanges extend from and extend perpendicular to the mounting wall, and wherein the first and second mounting flanges are secured to opposite sides of the housing (see annotated Fig. 11B below). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device's motor to explicitly be a brushless motor and to mount to the housing via the motor mount, as taught by Marton, in order to provide improved efficiency of the motor and thus the device and to provide required structural elements to secure the motor in the housing.

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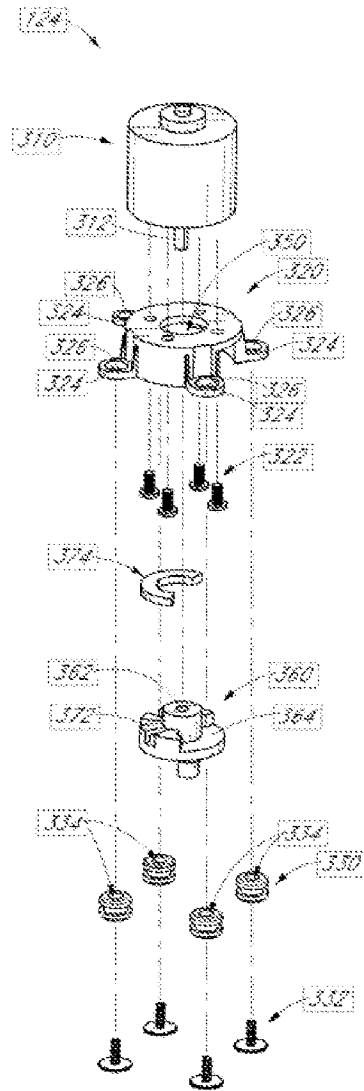


FIG. 11A

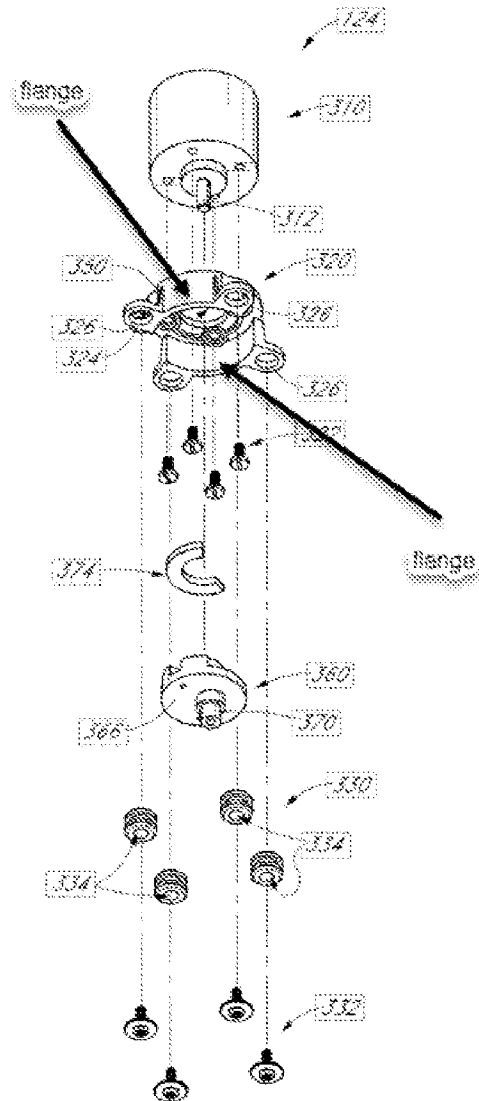


FIG. 11B

6. Claim 5 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, and DeBenedictis as applied to claim 1 above, and further in view of Pepe (2020/0261306), hereinafter referred to as Pepe '306, and Bohm et al. (2012/0078071).

Regarding claim 5, the modified Pepe device teaches an infrared thermometer module on the housing to emit an infrared beam to measure temperature of a body part of the user (see Pepe infrared thermometer module 31, Fig. 1, see para. 0009 and 0029 for example), but is silent as to further including a screen positioned on the housing and for displaying thereon the temperature reading of the body part and silent as to the infrared thermometer being positioned in the housing with a temperature opening through which the infrared beam is configured to be emitted. However, Pepe '306 teaches a similar device which includes a screen positioned on the housing and for displaying thereon the temperature reading of the body part (see Pepe '306 para. 0011 and 0031, Fig. 1, screen 40) and Bohm teaches an infrared thermometer module positioned within a housing and including a temperature opening through which the infrared beam passes (see Bohm para. 0260). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device to include a screen for displaying the temperature reading, as taught by Pepe '306, and provide the infrared temperature module within the housing and to including the temperature opening, as taught by Bohm, in order to provide the user the ability to visualize the temperature reading and to provide the required opening for the infrared beam to pass through to be able to measure the user's body temperature.

7. Claim 8 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, and DeBenedictis as applied to claim 1 above, and further in view of Avni (2009/0112134).

Regarding claim 8, the modified Pepe device is silent as to the device further including a heart rate monitor; however, Avni teaches a massage therapy device which includes a heart rate monitor (see

Avni para. 0013 which includes “introducing vibrations to a joint or a location in the body of a user” and including sensor for measuring heart rate among other parameters as listed towards the end of this paragraph). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device to include a heart rate monitor, as taught by Avni, in order to provide the user with information regarding their health and the ability to control therapy based on such a parameter (see Avni end of para. 0013).

8. Claims 9 and 11-12 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, DeBenedictis, and Avni as applied to claim 8 above, and further in view of Barragan Gomez (2020/0179210).

Regarding claim 9, the modified Pepe device is silent as to the location of the heart rate monitor being located on a first handle portion (note Pepe teaches handle portions as can be seen in Figs. 1-8 and para. 0024 for example); however, Barragan Gomez teaches a therapy device which includes heart rate sensor located on handle portions (see Barragan Gomez Fig. 8 heart rate sensors 61 and 62 located on handle portions 1 as shown, see also para. 0030). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device’s heart rate monitor to be located on handle portions of the Pepe device, as taught by Barragan Gomez, as this would have been an obvious location to provide the monitor as the handle portions are where the user would grasp the device and thus allow for the pulse/heart rate to be measured.

Regarding claim 11, the modified Pepe device’s heart rate monitor includes first and second pulsed contacts positioned on the first handle portion (see Barragan Gomez Fig. 8, first and second pulsed contacts 61 and 62 positioned on the first handle portion, this provided to the handle portions as shown in Pepe discussed above).

Regarding claim 12, the modified Pepe device is silent as to the first and second pulse contacts explicitly being positioned on top and bottom surfaces of a first handle portion; however, Pepe teaches a first handle portion with top and bottom surfaces (see Pepe Fig. 2, first handle portion 12 which includes top surface which can be seen in this figure, bottom surface located opposite and define the central opening 24). Thus it would have been obvious to one of ordinary skill in the art to modify the modified Pepe device's first and second pulse contacts to be located on the top and bottom surfaces of Pepe as discussed, as this would have been obvious to try these locations as a user would be grasping these surfaces and thus would allow for the pulse to be measured and heart rate to be determined.

9. Claim 10 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, DeBenedictis, Avni, and Barragan Gomez as applied to claim 9 above, and further in view of Bardha (2007/0129220).

Regarding claim 10, the modified Pepe device is silent as to the heart rate monitor explicitly being positioned on a top surface of the first handle portion and being configured to shine light onto a user's palm to monitor heart rate; however, the location of the monitor to be on the top surface of the handle portion would have been obvious to try as this is a location where the user's palm would contact and thus allow the pulse to be monitored and heart rate to be determined. Bardha teaches a similar heart rate monitor which measures heart rate via shining light onto the user's palm (see Bardha para. 0038 and 0041 for example). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device's heart rate monitor to function by shining light on the user's palm, as taught by Bardha, as this is a well-known type of heart rate monitor and would have been obvious substitution of one known element for another.

10. Claim 13 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, and DeBenedictis as applied to claim 1 above, and further in view of Pepe (2020/0268594), hereinafter referred to as Pepe '594.

Regarding claim 13, the modified Pepe device includes a male or female attachment member on the distal end of the push rod assembly (see Pepe para. 0028 and 0030 for example which discloses free extremity of the shaft 18 being received within an opening of the attachment 30), but is silent as to the male or female attachment member including a heating element therein (note Pepe discloses providing heat therapy as well, see para. 0029); however, Pepe '594 teaches a similar device which includes a male or female attachment member on distal end of the push rod assembly which includes a heating element therein (see Pepe '594 Fig. 8-11 and para. 0038-0039, heating element defined by 112 and 116). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device to include an active heating element located in the attachment/distal end of push rod assembly, as taught by Pepe '594, in order to provide a heating element for active heating control to provide to the user (as opposed to the heated gel of Pepe) as this would have been obvious substitution of one known element for another.

11. Claim 14 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, and DeBenedictis as applied to claim 1 above, and further in view of Pepe '594 and Giraud et al. (2015/0305969).

Regarding claim 14, the modified Pepe device includes a male or female attachment member on the distal end of the push rod assembly (see Pepe para. 0028 and 0030 for example which discloses free extremity of the shaft 18 being received within an opening of the attachment 30), but is silent as to the male or female attachment member including a heating element therein with a first set of electrical contacts (note Pepe discloses providing heat therapy as well, see para. 0029); however, Pepe '594

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teaches a similar device which includes a male or female attachment member on distal end of the push rod assembly which includes a heating element therein (see Pepe '594 Fig. 8-11 and para. 0038-0039, heating element defined by 112 and 116) and Giraud teaches a heating element located on/between a removable attachment and the handle portion of the device via a first set of electrical contacts (see Giraud Fig. 1, para. 0017 and 0109). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device to include an active heating element located in the attachment/distal end of push rod assembly, as taught by Pepe '594, and to include connection via a first set of electrical contacts, as taught by Giraud, in order to provide a heating element for active heating control to provide to the user (as opposed to the heated gel of Pepe) as this would have been obvious substitution of one known element for another.

12. Claim 16 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, DeBenedictis, Pepe '594, and Giraud as applied to claim 14 above, and further in view of Estes (2009/0326540).

Regarding claim 16, the modified Pepe device is silent as to the first set of electrical contacts explicitly being a first and second outwardly biased balls of the attachment member; however, Estes teaches a well-known male attachment member which includes first and second outwardly biased balls (see Estes Fig. 3-4 outwardly biased balls 140). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device's male attachment member to include outwardly biased balls, as taught by Estes, as this is a well-known mechanism for providing a detachable connection between two elements and would have been obvious substitution of one known mechanism for another.

13. Claim 17 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Marton, Goldstein, and DeBenedictis as applied to claim 1 above, and further in view of Dematio et al. (2014/0207032) and Konik et al. (2016/0346163).

Regarding claim 17, the modified Pepe device's includes a software application executable on a mobile device (see Marton Fig. 35-36 and col. 37 ln. 38 through col. 39 ln. 19), but is silent as to the mobile device that is configured to control the operation of the percussive therapy device, wherein the software application includes routines that are accessed based on scanning a scannable member with the mobile device. However, Dematio teaches a software application which provides for control of operation of a massage device (see Dematio para. 0080, 0085, and 0087 for example), and Konik teaches scanning a scannable member to obtain information for a massage therapy (see Konik para. 0032). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the modified Pepe device's mobile device to control the device and routines accessed via scanning a scannable member, as taught by Dematio and Konik, in order to provide smart capabilities via connection with a user's smart phone and actuation via the mobile phone as an additional means of actuating the device.

14. Claims 1 and 20 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe (2017/0304145) in view of Marton, Goldstein, and Einav et al. (2007/0282228).

Regarding claim 1, Pepe shows a percussive therapy device (see Fig. 1 and abstract for example) which includes a housing (see Fig. 2, housing defined by elements 11 including 20, see para. 0024); an electrical source (see para. 0026 "rechargeable battery"), a motor positioned in the housing (see para. 0026 "motor unit 20 houses a motor (not shown)"), a switch for activating the motor (see Fig. 1-2, switch 26, see para. 0027), a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor (see Fig. 3-4, push rod assembly 18, see para. 0023

and 0025-0026), an attachment connected at a distal end of the push rod assembly, wherein the attachment is configured to be percussively applied to at least a first muscle, wherein percussive application of the attachment to the first muscle causes the temperature of the first muscle to rise from a starting temperature (see Fig. 1-4, attachment 30, para. 0029 disclosing the massage attachment 30 providing warming action to the body including muscles of the body to raise the temperature from a starting temperature due to percussion application) and a temperature sensor (see Fig. 1, temperature sensor 31, see para. 0029). Pepe discloses percussive application of the attachment to a muscle naturally causes the temperature of the first muscle to rise from a starting temperature (see para. 0029, application of percussion using the general massage head 30 at room temperature would also provide natural warming of the muscle due to the same percussive application as claimed). Pepe is silent as to including a routine controller that is configured to initiate a protocol configured to provide user instructions to apply the attachment to the first muscle until the temperature sensor senses that the first muscle has reached a predetermined temperature resulting from the percussion application of the attachment and once reached providing user instructions to apply the attachment to a second muscle. However, Marton teaches a similar percussive massage device which includes a routine controller (see Marton col. 7 ln. 63, controller 160 which includes motor controller 1050, see col. 23 ln. 4-37 which initiates a protocol for actuation of the device at certain speeds and thus is a routine controller as actuated of the device at certain speeds is considered a routine, see also Fig. 35-36 and col. 37 ln. 38 through col. 39 ln. 19 which discloses use of the device paired with a smart phone), Goldstein teaches a similar massage/therapy device which includes providing user instructions to a user on how to use the device and a multi-step routine/protocol to apply the device to different locations on a user's body (see Goldstein para. 0079 which discloses providing a kit including instructions for using the device in the form of a smart phone, tablet, etc., para. 0100-0101 disclosing providing instructions for applying the device to various locations of the body of the user for various times and intensities for example), and

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Einav teaches a rehab and training method/apparatus which includes muscle temperature sensors which measure muscle temperatures to ensure (as a safety feature) that the patient is sufficiently warmed up, i.e. has reached a predetermined temperature (see Einav para. 0402). Thus it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the Pepe device to include a routine controller which is configured to initiate a protocol to provide user instructions to apply the device to the muscle until it reaches a target temperature and instructions to apply the attachment to a second muscle, as taught by Marton, Goldstein, and Einav, in order to provide the user of the Pepe device proper instructions to use the device as intended and to provide smart capabilities via connection with a user's smart phone and to ensure patient's muscle have been properly warmed up (Einav para. 0402).

Regarding claim 20, the modified Pepe device's attachment does not include a heating element therein (see Pepe para. 0029 "general massage head 30 is a rigid unit at room temperature").

Allowable Subject Matter

15. Claims 3-4 are allowed.

Reasons for Allowance

16. When read in light of the limitations of the claimed percussive therapy device, the prior art does not disclose, either alone or suggest in combination, a device including a housing, electrical source, brushless motor positioned in the housing with a rotatable shaft, switch for activating the motor, and a pushrod assembly configured to reciprocate in response to activation of the motor, and a motor mount positioned in the housing including a mount wall having a shaft opening through which the motor shaft extends, first and second mounting flanges extending perpendicular from the mounting wall and secured to opposite sides of the housing, wherein a first boss extends outwardly from the first flange

and a second boss extends from the second flange, the housing including first and second housing portions, a first mounting member defining a first opening in the first housing portion and a second mounting member defining a second opening defined in the second housing portion, the first boss extending through the first opening and a second boss extending through the second opening, first and second threaded fasteners securing the first and second boss members to the first and second housing portions, respectively, as set forth in independent claim 3.

The prior art discussed in the 103 rejections above as well as art cited in the previous action do not disclose, either alone or suggest in combination the limitations as discussed above and set forth in independent claim 3.

Response to Arguments

17. Applicant's arguments filed 9/15/21 have been fully considered but they are not persuasive.

Applicant states under the Interview section of the response (see pg. 7 of the response) and on page 9, that during the interview on 9/14/21 the examiner indicated that the amendment regarding warming up “naturally” differentiated from or defines over the heated attachment of Pepe; however, the examiner made no such statement. As will be discussed further below, during the interview Examiner stated that that the proposed amendment of the muscle warming up naturally does not define over the heated massage attachment of Pepe as there will also be natural warming of the muscle due to the application of percussive forces by the massage attachment.

Applicant argues that Pepe, which includes a heating gel/element in the massage attachment provides artificial heating to the body part and adding the term ‘naturally’ to claim 1 defines over this interpretation and that the heated attachment of Pepe must be removed from consideration with the newly amended claim (see pg. 9-10 of the response). This is not well-taken as although the heating gel from the heated massage attachment will cause temperature increase of the first muscle due to heat

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transfer from the heated attachment to the muscle, there will also be natural warming/increase in temperature of the first muscle as this massage attachment is also providing percussion forces to the muscle.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN W STUART whose telephone number is (571)270-7490. The examiner can normally be reached M-F: 9-5.

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, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/COLIN W STUART/

Primary Examiner, Art Unit 3785