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JEFFER, MANGELS, BUTLER & MITCHELL, LLP			STUART, COLIN W	
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LOS ANGELES, CA 90067			3785	
			NOTIFICATION DATE	DELIVERY MODE
			03/10/2021	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):

patentdocket@jmbm.com

Office Action Summary	Application No. 17/018,099	Applicant(s) Wersland et al.	
	Examiner COLIN W STUART	Art Unit 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 9/11/20.
☐ 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 18 February 2021; 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5a) Of the above claim(s) 19-20 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-18 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 9/11/20 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 2/18/21.
- 4) ☐ Other: _____.

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.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1 and 3-18, drawn to a percussive massage device, classified in A61H: 23/006.

II. Claims 19-20, drawn to a method of using a massage device via connection to a remote electronic device, classified in A61H: 2201/501.

The inventions are independent or distinct, each from the other because:

3. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus, i.e. percussive device, as claimed can be used to practice another materially different process such as use as a hammering tool for hammering textured surfaces into leather and/or metal or other materials or used as a small jackhammer type of process.

4. Restriction for examination purposes as indicated is proper because all the inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and/or examination burden if restriction were not required because one or more of the following reasons apply:

The inventions have separate status in the art as they require different search strings and/or areas.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103 or pre-AIA 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with Brennan Swain 43,175 on 2/18/21 a provisional election was made without traverse to prosecute the invention of I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be corrected in compliance with 37 CFR 1.48(a) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. A request to correct inventorship under 37 CFR 1.48(a) must be accompanied by an application data sheet in

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accordance with 37 CFR 1.76 that identifies each inventor by his or her legal name and by the processing fee required under 37 CFR 1.17(i).

Information Disclosure Statement

7. Note: the crossed-through references in the attached IDS forms are not being considered as there appears to be a mismatch between the document number and name of patentee or applicant.

Drawings

8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 423 and 630. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

9. 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.

10. Claims 4-6 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.

Regarding claim 4, the claim is dependent on claim 3; however, claim 3 appears to be missing and therefore the metes and bounds of this claim cannot be ascertained. Claim 2 appears to set forth elements which are referred to in claim 4 and for the purposes of expedited examination, claim 2 will be examined as if dependent on claim 2.

Regarding claim 6, the language "infrared beam can be emitted" (line 3) and "thermometer module can be displayed" (line 5) is indefinite as it is not known if Applicant is positively intending the infrared beam to be emitted through the opening or the temperature reading to be displayed. Examiner suggests amending to read --infrared beam is configured to be emitted--and --thermometer module is configured to be displayed--.

Claim 12 recites the limitation "the heart rate sensor" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 5 and 12 are rejected based on dependency on a rejected claim.

Claim Rejections - 35 USC § 102

11. 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.

12. 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.

(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.

13. Claim(s) 1 is/are rejected under 35 U.S.C. 102(a)(1) and (a)(2) as being anticipated by Pepe (2017/0304145).

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), and 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).

Claim Rejections - 35 USC § 103

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 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.

16. 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.

17. Claim 1 is/are rejected under 35 U.S.C. 103 as being unpatentable over Rix (7,927,259) in view of Haas (2005/0126018).

Regarding claim 1, Rix shows a percussive therapy device (see Fig. 1-5 and abstract for example) which includes a housing 14 (see Fig. 1), a motor positioned in the housing (see Fig. 1 and col. 2 ln. 23-27, col. 4 ln. 54-58, motor 72), a switch for activating the motor (see Fig. 1 and col. 3 ln. 65-67, switch 22), and a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor (see Fig. 1, push rod assembly 18, see col. 2 ln. 23-27 and col. 4 ln. 54-58 for example). Rix teaches that the device is an electrical saw converted to be a massager (see col. 1 ln. 30-36 and col. 3 ln. 63) and as such one would expect that the device would have an electrical source; however, Rix is silent as to explicitly including this feature. Haas teaches a similar device (note that the device of Rix is a reciprocating saw converted to be a massager as discussed above) which includes an electrical source (see Haas para. 0021). 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 Rix device to

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explicitly include an electrical source, as taught by Haas, in order to provide the required elements to power the device, i.e. electrical source.

18. Claim 2 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Marton et al. (10,314,762).

Regarding claim 2, the Pepe device teaches a motor (see 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 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 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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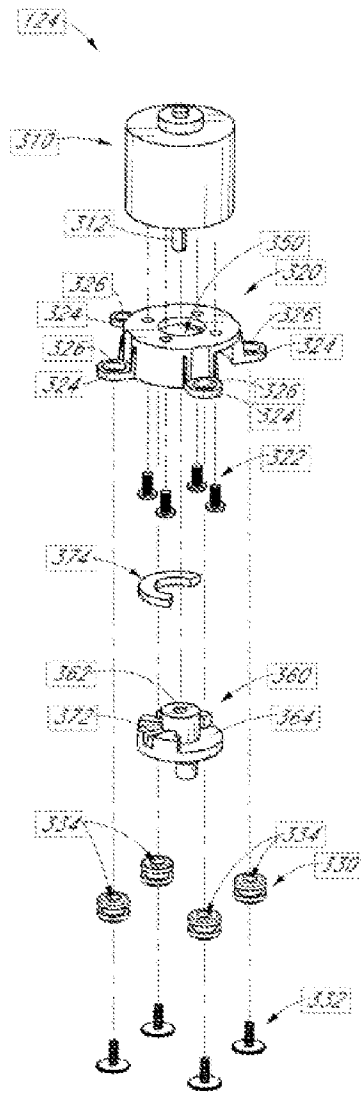


FIG. 11A

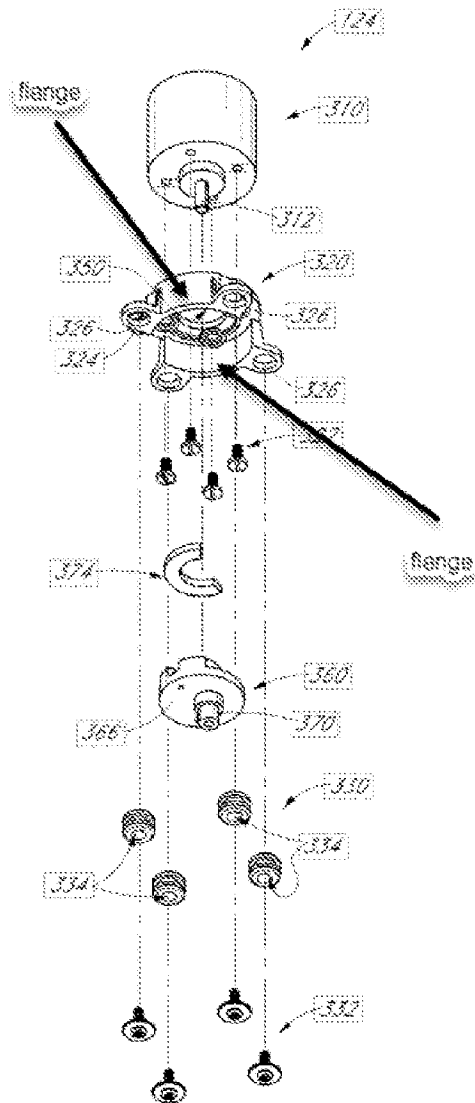


FIG. 11B

19. Claim 6 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Pepe (2020/0261306), hereinafter referred to as Pepe '306, and Bohm et al. (2012/0078071).

Regarding claim 6, the 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 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.

20. Claims 7-8 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Marton, Goldstein (2018/0008512), and DeBenedictis et al. (2015/0216719).

Regarding claim 7, the Pepe device includes an attachment connected to a distal end of the push rod assembly (see Fig. 1-2, attachment 30, see para. 0029), a temperature sensor (see Fig. 1, temperature sensor 31, see para. 0029), but is silent as to including a routine controller that is

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configured to initiate a protocol configured to provide user instructions to apply the attachment to a first body part until the temperature sensor senses that the first body part has reached a predetermined temperature. However, Marton teaches a 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 (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 body part until it reaches a target temperature, 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 8, the modified Pepe device is such that once the predetermined temperature has been reached user instructions are provided to apply the attachment to a second body part (see Goldstein para. 0101 which discloses providing instructions to move to various other body parts).

21. Claim 9 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Avni (2009/0112134).

Regarding claim 9, the 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 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).

22. Claims 10 and 12-13 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe and Avni as applied to claim 9 above, and further in view of Barragan Gomez (2020/0179210).

Regarding claim 10, 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 12, 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 13, 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.

23. Claim 11 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Avni, and Barragan Gomez as applied to claim 10 above, and further in view of Bardha (2007/0129220).

Regarding claim 11, 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.

24. Claim 14 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Pepe (2020/0268594), hereinafter referred to as Pepe '594.

Regarding claim 14, the 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 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.

25. Claims 15-16 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Pepe '594 and Giraud et al. (2015/0305969).

Regarding claim 15, the 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 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 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.

Regarding claim 16, the modified Pepe device includes a massage member removably secured to the male or female attachment member and includes a second set of electrical contacts connected to a heating element in the massage member (see Pepe '594 Fig. 8-11 which shows the massage member 100 and its connection relation to the push rod assembly via male/female connection which connect a heating element 112 to a power source in the housing; see Giraud para. 0017 and 0109 which disclose connection of heating element in a massage head via electrical contacts, thus providing first set of contacts on the distal end of the output and second set of contacts on the massage head to complete the circuit between power in the housing of the device and the massage element in the removable massage member).

26. Claim 17 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe, Pepe '594, and Giraud as applied to claim 15 above, and further in view of Estes (2009/0326540).

Regarding claim 17, 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.

27. Claim 18 is/are rejected under 35 U.S.C. 103 as being unpatentable over Pepe in view of Marton, Dematio et al. (2014/0207032), and Konik et al. (2016/0346163).

Regarding claim 18, the Pepe device is silent as to including a software application executable on a 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, Marton teaches a similar device which includes a software application executable on a mobile device that is configured to communicate with the percussive therapy device (see Marton Fig. 35-36 and col. 37 ln. 38 through col. 39 ln. 19 which discloses use of the device paired with a software application on a smart phone, see col. 23 ln. 4-37 regarding routines), 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 Pepe device to include a software application on a mobile device for control of the device and routines

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accessed via scanning a scannable member, as taught by Marton, Dematio, and Konik, in order to provide smart capabilities via connection with a user's smart phone.

Allowable Subject Matter

28. Claims 4-5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

29. Note per the 112b above, claims 4-5 were examined as if they were dependent on claim 2, and after examination it would not have been obvious to modify the prior art references noted above and those noted below in the pertinent art section to arrive at the invention as set forth in claims 4-5 without impermissible hindsight relying on Applicant's own disclosure as a blueprint. Although motor mounts are known in the art, such as the motor mount of Marton discussed above, the particulars set forth in claims 4-5 appear to be non-obvious.

Conclusion

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Danby et al. (2015/0005682), Griner (2017/0156974), Cilea et al. (2013/0261516), Stanbridge (2012/0253245), and Pivaroff (6,682,496) are all directed towards percussive massage devices.

31. 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 on 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>.

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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.

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.

/COLIN W STUART/

Primary Examiner, Art Unit 3785