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**Request
for
Continued Examination (RCE)
Transmittal**

Address to:
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P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	17244239
Filing Date	2021-04-29
First Named Inventor	Jason Wersland
Art Unit	3785
Examiner Name	Stuart, Colin W
Attorney Docket Number	76840-5138

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- ii. ☐ Affidavit(s)/ Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____
2. **Miscellaneous**
- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other _____
3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
- a. ☒ The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. 10-0440.
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other _____
- b. ☐ Check in the amount of \$ _____ enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)
- d. ☐ Payment by EFS-Web

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature	/Brennan C. Swain/	Date	2022-04-26
Name (Print/Type)	Brennan C. Swain	Registration No.	43,175

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being EFS-Web transmitted to the United States Patent and Trademark Office (USPTO), deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the USPTO on the date shown below.

Signature	/Susan Papp/	Date	2022-04-26
Name (Print/Type)	Susan Papp	Date	2022-04-26

This collection of information is required by 37 CFR 1.114. 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 1.11 and 1.14. This collection is estimated to take 12 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, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Instruction Sheet for RCEs

(not to be submitted to the USPTO)

NOTES:

An RCE is not a new application, and filing an RCE will not result in an application being accorded a new filing date.

Filing Qualifications:

The application must be a utility or plant application filed on or after June 8, 1995. The application cannot be a provisional application, a utility or plant application filed before June 8, 1995, a design application, or a patent under reexamination. See 37 CFR 1.114(e).

Filing Requirements:

Prosecution in the application must be closed. Prosecution is closed if the application is under appeal, or the last Office action is a final action, a notice of allowance, or an action that otherwise closes prosecution in the application (e.g., an Office action under *Ex parte Quayle*). See 37 CFR 1.114(b).

A submission and a fee are required at the time the RCE is filed. If reply to an Office action under 35 U.S.C. 132 is outstanding (e.g., the application is under final rejection), the submission must meet the reply requirements of 37 CFR 1.111. If there is no outstanding Office action, the submission can be an information disclosure statement, an amendment, new arguments, or new evidence. See 37 CFR 1.114(c). The submission may be a previously filed amendment (e.g., an amendment after final rejection).

WARNINGS:

Request for Suspension of Action:

All RCE filing requirements must be met before suspension of action is granted. A request for a suspension of action under 37 CFR 1.103(c) does not satisfy the submission requirement and does not permit the filing of the required submission to be suspended.

Improper RCE will NOT toll Any Time Period:

Before Appeal - If the RCE is improper (e.g., prosecution in the application is not closed or the submission or fee has not been filed) and the application is not under appeal, the time period set forth in the last Office action will continue to run and the application will be abandoned after the statutory time period has expired if a reply to the Office action is not timely filed. No additional time will be given to correct the improper RCE.

Under Appeal - If the RCE is improper (e.g., the submission or the fee has not been filed) and the application is under appeal, the improper RCE is effective to withdraw the appeal. Withdrawal of the appeal results in the allowance or abandonment of the application depending on the status of the claims. If there are no allowed claims, the application is abandoned. If there is at least one allowed claim, the application will be passed to issue on the allowed claim(s). See MPEP 1215.01.

See MPEP 706.07(h) for further information on the RCE practice.

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.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	)	Art Unit: 3785
Jason Wersland	)	Examiner: Stuart, Colin
Serial No.: 17/244,239	)	Customer No.: 24,574
Filed: April 29, 2021	)	Docket No.: 76840-5138
For: PERCUSSIVE THERAPY DEVICE	)	Confirmation No.: 7369
WITH ORIENTATION, POSITION,	)	
AND FORCE SENSING AND	)	
ACCESSORY THEREFOR	)	

AMENDMENT

Please amend the above-identified application, without prejudice, as follows:

Amendments to the Claims begin on page 2 of this paper.

Remarks/Arguments begin on page 9 of this paper.

AMENDMENTS TO THE CLAIMS

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

What is claimed is:

1. (currently amended) A percussive therapy device comprising:

a housing,

an electrical source,

a motor positioned in the housing,

a switch for activating the motor,

a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor, wherein a massage attachment is removably received on a distal end of the push rod assembly, and

an attachment module operatively connected to and removable from the housing of the percussive therapy device at the same time as the massage attachment, wherein the attachment module includes ~~an attachment module wireless control unit and~~ at least one biometric sensor configured to obtain biometric data of ~~[[the]]~~ a user, ~~wherein after the biometric sensor obtains the biometric data of the user, the biometric data of the user is transmitted to the percussive therapy device.~~

2. (previously presented) The percussive therapy device of claim 1 wherein the attachment module includes at least one of an angular position sensor configured to obtain angular position data of the percussive therapy device and a linear position sensor configured to obtain linear position data of the percussive therapy device.

3. (previously presented) The percussive therapy device of claim 1 wherein the massage attachment includes a vibration actuator therein that is in electrical communication with the electrical source.

4. (previously presented) The percussive therapy device of claim 1 wherein the massage attachment includes an exfoliating actuator therein that is in electrical communication with the electrical source.

5. (previously presented) The percussive therapy device of claim 2 wherein a graphical representation of the percussive therapy device and showing the at least one of the angular position data and the linear position data is generated.

6. (original) The percussive therapy device of claim 1 wherein the percussive therapy device is configured to receive at least one protocol configured to provide at least one therapeutic effect.

7. (previously presented) The percussive therapy device of claim 1 wherein a portion of the housing surrounds at least a portion of the push rod assembly and includes a curved outer surface, wherein the attachment module includes an attachment module housing having a securement recess defined therein, wherein the securement recess includes a curved interior surface that is received on the curved outer surface of the portion of the housing surrounding the push rod assembly.

8. (previously presented) The percussive therapy device of claim 1 further comprising a percussive therapy device wireless control unit, wherein the percussive therapy device wireless control unit is configured to receive biometric data from the attachment module and transmit the biometric data to a mobile electronic device.

9. (currently amended) A method of providing at least one therapeutic effect to a user, the method comprising the steps of:

obtaining a percussive therapy device comprising a housing, an electrical source, a motor positioned in the housing, a switch for activating the motor, a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor,

placing a removable massage attachment on a distal end of the push rod assembly,

securing an attachment module to the housing of the percussive therapy device while the massage attachment is secured to the distal end of the push rod assembly, wherein the attachment module includes at least one biometric sensor configured to obtain biometric data of the user,

operating the percussive therapy device to reciprocate the massage attachment,

massaging a body part of the user using the massage attachment, and

obtaining biometric data from the body part using the at least one biometric sensor, ~~wherein the biometric data is wirelessly communicated to the percussive therapy device.~~

10. (previously presented) The method of claim 9 wherein the biometric data is displayed on a display on the percussive therapy device.

11. (currently amended) The method of claim 9 further comprising the steps of obtaining force magnitude data to determine a magnitude of force ~~an~~ the massage attachment of the percussive therapy device is exerting on the user, and recommending an adjustment to a force magnitude of the percussive therapy device in response to the force magnitude data.

12. (currently amended) The method of claim 9 further comprising the step of determining whether ~~an~~ the massage attachment of the percussive therapy device is in contact with the user.

13. (currently amended) A percussive therapy device comprising:

a housing,

an electrical source,

a motor positioned in the housing,

a switch for activating the motor,

a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor, wherein a portion of the housing surrounds at least a portion of the push rod assembly and includes a curved outer surface, wherein a massage attachment is removably received on a distal end of the push rod assembly,

a percussive therapy device wireless control unit,

an attachment module operatively connected to and removable from the housing of the percussive therapy device, wherein the attachment module includes an attachment module housing having a securement recess defined therein, wherein the securement recess includes a curved interior surface that is received on the curved outer surface of the portion of the housing surrounding the push rod assembly, wherein the attachment module includes an attachment module wireless control unit and at least one biometric sensor configured to obtain biometric data of ~~the~~ a user, wherein the percussive therapy device wireless control unit is configured to receive the biometric data from the attachment module wireless control unit ~~and transmit the biometric data to a mobile electronic device,~~

~~wherein the attachment module housing extends outwardly from the curved outer surface of the portion of the housing that surrounds the push rod assembly, wherein the biometric sensor is operatively associated with an opening in the housing such that the biometric sensor can obtain the biometric data of the user.~~

14. (currently amended) The percussive therapy device of claim 13 wherein the attachment module comprises at least one of ~~[[the]]~~ a gyroscope and ~~[[the]]~~ an accelerometer.

15. (currently amended) The percussive therapy device of claim 14, wherein the attachment module includes at least one of an angular position sensor configured to obtain angular position data of the percussive therapy device and a linear position sensor configured to obtain linear position data of the percussive therapy device, wherein a recommendation is provided to adjust at least one of an angular position of the percussive therapy device[[,]] and a linear position of the percussive therapy device, and a force magnitude of the percussive therapy device in response to at least one of the angular position data[[,]] and the linear position data, and the force magnitude data.

16. (currently amended) The percussive therapy device of claim 15, wherein the recommendation is provided via ~~the at least one~~ a remote device.

17-22 canceled

23. (currently amended) The percussive therapy device of claim [[7]] 13 wherein the attachment module housing extends outwardly from the curved outer surface of the portion of the housing that surrounds the push rod assembly, wherein the at least one biometric sensor is operatively associated with an opening in the attachment module housing such that the at least one biometric sensor can obtain the biometric data of the user.

24. (currently amended) The percussive therapy device of claim 23 wherein the at least one biometric sensor is a thermal sensor, and wherein the biometric data is a temperature reading of a first body part of the user.

25. (currently amended) The percussive therapy device of claim 7 wherein the at least one biometric sensor is positioned radially outwardly of the curved outer surface of the portion of the housing that surrounds the push rod assembly.

26. (previously presented) The percussive therapy device of claim 1 wherein the housing includes first, second and third handle portions that cooperate to at least partially define a handle opening, wherein the first handle portion defines a first axis, the second handle portion defines a second axis and the third handle portion defines a third axis, wherein the first, second and third axes are co-planar, wherein the first handle portion is generally straight, wherein the second handle portion is generally straight, and wherein the third handle portion is generally straight, such that a user can grasp any of the first, second or third handle portions independently to use the percussive massage device.

27-28. canceled

29. (previously presented) The percussive therapy device of claim 26 wherein the massage attachment includes a heating or cooling actuator therein that is in electrical communication with the electrical source.

30. (new) The percussive therapy device of claim 1 wherein the attachment module includes an attachment module wireless control unit, wherein after the at least one biometric sensor obtains the biometric data of the user, the biometric data of the user is transmitted to the percussive therapy device.

31. (new) The method of claim 9 wherein the biometric data is wirelessly communicated to the percussive therapy device.

32. (new) A percussive therapy device comprising:

a housing,

an electrical source,

a motor positioned in the housing,

a switch for activating the motor,

a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor, wherein a massage attachment is removably received on a distal end of the push rod assembly at a first location, and

an attachment module operatively connected to and removable from the housing of the percussive therapy device at a second location, wherein the second location is different than the first location, and wherein the attachment module includes at least one sensor.

REMARKS

In this amendment, claims 1, 9, 11-16, and 23-25 have been amended, claims 30 and 32 have been added and claims 27-28 have been canceled. Accordingly, claims 1-16, 23-26 and 29-32 remain pending in the present application.

ALLOWABLE SUBJECT MATTER

Applicant thanks the Examiner for indicating that claims 7, 13-16 and 23-25 include patentable subject matter.

INTERVIEW

Applicant thanks the Examiner for extending the courtesy of an interview on April 25, 2022. During the interview, Applicant's representative and the Examiner discussed claim language to distinguish over the cited art.

CLAIM OBJECTIONS

Claims 11-12 were objected to for stating "an attachment". Amendment to "the massage attachment" has been made.

REJECTIONS UNDER 35 U.S.C. §112

The Examiner has rejected claims 27-28 for failing to comply with the written description requirement. Applicant disagrees with the Examiner. However, in order to speed up prosecution, claims 27 and 28 have been amended.

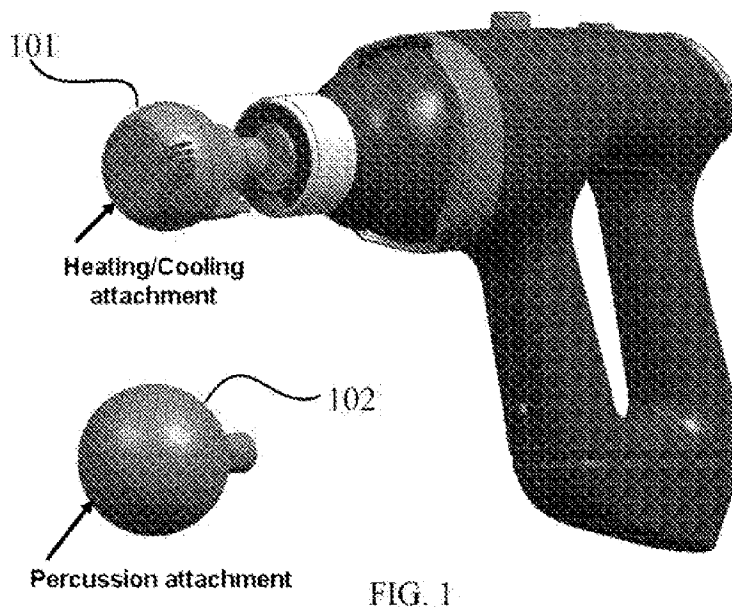
The Examiner has rejected claims 1-16 and 23-29 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Correction to the issues set forth in the Office Action has been made.

REJECTIONS UNDER 35 U.S.C. § 103

The Examiner has rejected claims 1, 6 and 9-10 as being unpatentable over Dai (2021/0128402) in view of Pepe (2017/0304145) and Loghmani (2018/0243158); claim 2 as being unpatentable over Dai, Pepe, Loghami and Colloca (2007/0150004); claim 5 as being

unpatentable over Dai, Pepe, Loghami, Colloca and Blain (2020/0294423); claim 3 as being unpatentable over Dai, Pepe, Loghami and Pepe '594 (2020/0268594); claim 4 as being unpatentable over Dai, Pepe, Loghami, Pepe '594 and Paspatis (2022/0007810); claims 8 and 12 as being unpatentable over Dai, Pepe, Loghami and Marton (10,314,762); claim 11 as being unpatentable over Dai, Pepe, Loghami, Marton and Goldstein (2018/0008512); claims 26 and 29 as being unpatentable over Dai, Pepe, Loghami and Hirose (JP 04-47440); and claims 27 and 28 as being unpatentable over Dai, Pepe, Loghami and Driscoll (2016/0030279). Please see the Office Action for the specific rejections.

Claim 1 has been amended to recite "an attachment module operatively connected to and removable from the housing of the percussive therapy device at the same time as the massage attachment." As discussed during the interview referenced above, this language differentiates over the Dai reference. Claim 9 includes similar language. Note that some of the language from claims 1 and 9 that were presented in the interview agenda has been moved to dependent claims 30 and 31 as it is believed that this language is not necessary to distinguish over Dai. Also, claim 32 has been added and also differentiates over Dai, as the Dai reference percussion attachment and heating/cooling attachment shown below are removable attached to the same location.



For the all the reasons stated above, applicant respectfully requests withdrawal of the 103 rejections.

REQUEST FOR TELEPHONE CONFERENCE

If after considering this Amendment, the Examiner believes that the claims are not allowable, Applicant requests that the Examiner please contact their authorized representative identified below by phone prior to issuing any further Office action for the purpose of hopefully resolving any such issue.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

It is believed that no additional fee is due for submitting this response. However, in the event a fee is required, the Commissioner is authorized to charge any amounts due or credit any overpayments in connection with this matter to Deposit Account No. 10-0440.

Respectfully submitted,

JEFFER MANGELS BUTLER & MITCHELL LLP

Dated: April 26, 2022

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