

IN THE PATENT AND TRADEMARK OFFICE

In re patent application of: WERSLAND, Jason, et. al. Serial No. 17/018,099 Filed: September 11, 2020 Title: PERCUSSIVE THERAPY DEVICE	Confirmation No. 2849 Group Art Unit: 3785 Examiner: Stuart, Colin W. Customer No. 24,574 Docket No. 76840-5090
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AMENDMENT

Applicant for the above-identified application respectfully petitions the Commissioner for a one-month extension of time, extending the date for response to July 10, 2021, for the Office Action dated March 10, 2021. Please charge our deposit account number 10-0440 in the appropriate amount. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0440.

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

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

Amendments to the Drawings begin on page 8 of this paper.

Remarks 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, ~~and~~

a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor,

an attachment connected to 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,

a temperature sensor, and

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 as a result of percussive application of the attachment, wherein the predetermined temperature is above the starting temperature, and wherein once the predetermined temperature has been reached, user instructions are provided to apply the attachment to a second muscle.

2. (original) The percussive therapy device of claim 1 wherein the motor is 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.

[[4]]3. (currently amended) ~~The percussive therapy device of claim 3~~ A percussive therapy device comprising:

a housing,

an electrical source,

a motor positioned in the housing, wherein the motor is a brushless motor with a rotatable motor shaft,

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, wherein a first boss member extends outwardly from the first mounting flange and a second boss member extends outwardly from the second mounting flange, wherein the housing includes a first housing portion and a second housing portion, wherein a first mounting member that defines a first opening is defined in the first housing portion, wherein a second mounting member that defines a second opening is defined in the second housing portion, wherein the first boss member extends through the first opening, wherein the second boss member extends through the second opening, wherein a first threaded fastener secures the first boss member to the first housing portion, and wherein a second threaded fastener secures the second boss member to the second housing portion

a switch for activating the motor, and

a push rod assembly operatively connected to the motor and configured to reciprocate in response to activation of the motor.

[[5]]4. (currently amended) The percussive massage device of claim [[4]]3 wherein a first cylindrical dampening member that includes a first annular groove defined in an outer surface thereof is received on the first boss member, wherein a ring portion of the first mounting member is received in the first annular groove, wherein a second cylindrical dampening member that includes a second annular groove defined in an outer surface thereof is received on the second boss member, and wherein a ring portion of the second mounting member is received in the second annular groove.

[[6]]5. (currently amended) The percussive therapy device of claim 1 further comprising a screen positioned on the housing and an infrared thermometer module positioned in the housing, wherein a temperature opening through which an infrared beam is configured to be emitted ~~can be~~ is defined in the housing, and wherein a temperature reading of a body part that is generated by the infrared thermometer module is configured to be displayed ~~can be~~ on the screen.

[[7]]6. (CANCELED and currently amended) The percussive therapy device of claim 1 further comprising an attachment connected to a distal end of the push rod assembly, a temperature sensor, and a routine controller that is 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.

[[8]]7. (CANCELED and currently amended) The percussive therapy device of claim [[7]]6 wherein once the predetermined temperature has been reached user instructions are provided to apply the attachment to a second body part.

[[9]]8. (currently amended) The percussive therapy device of claim 1 further comprising a heart rate monitor.

[[10]]9. (currently amended) The percussive therapy device of claim [[9]]8 wherein the heart rate monitor is positioned on a first handle portion.

[[11]]10. (currently amended) The percussive therapy device of claim [[10]]9 wherein the heart rate monitor is positioned on a top surface of the first handle portion and is configured to shine light onto a user's palm to monitor heart rate.

[[12]]11. (currently amended) The percussive therapy device of claim [[10]]9 wherein the heart rate monitor ~~sensor~~ includes first and second pulse contacts positioned on the first handle portion.

[[12]]12. (currently amended) The percussive therapy device of claim [[12]]11 wherein the first pulse contact is positioned on a top surface of the first handle portion and the second pulse contact is positioned on a bottom of the first handle portion.

[[14]]13. (currently amended) The percussive therapy device of claim 1 further comprising a male or female attachment member on a distal end of the push rod assembly, wherein the male or female attachment member includes a heating element therein.

[[15]]14. (currently amended) The percussive therapy device of claim 1 further comprising a male or female attachment member on a distal end of the push rod assembly, wherein the male or female attachment member includes a first set of electrical contacts.

[[16]]15. (CANCELED and currently amended) The percussive therapy device of claim 15 further comprising a massage member removably secured to the male or female attachment member, wherein the massage member includes a second set of electrical contacts that are electrically connected to a heating element in the massage member.

[[17]]16. (currently amended) The percussive therapy device of claim 15 wherein the attachment member is a male attachment member that includes first and second balls biased outwardly therefrom, wherein the first and second balls are the first set of electrical contacts.

[[18]]17. (currently amended) The percussive therapy device of claim 1 further 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.

[[19]]18. (CANCELED and currently amended) A method of using a percussive therapy device, the method comprising the steps of:

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

connecting the percussive massage device to a software application on a remote electronic device,

scanning a scannable member on an exercise device, wherein a routine associated with the scannable member is initiated in the software application and provides user instructions, and
massaging a first body part based on the user instructions.

[[20]]19. (CANCELED and currently amended) The method of claim [[19]]18 further comprising the step of using the exercise device, wherein the first body part is exercised during use of the exercise device.

AMENDMENT TO THE DRAWINGS

New corrected drawing sheets 52/64 to 55/64, which include FIGS. 50-53 are attached.
No new matter has been added.

REMARKS

In this amendment, claims 1 and 3-19 have been amended, claims 6-7, 15 and 18-19 have been canceled and no claims have been added. Accordingly, claims 1-5, 8-14, 16 and 17 remain pending in the present application. All claims after claim 2 were originally misnumbered. No claim 3 was originally included. Therefore, all of the claims originally numbered 4-20 have been renumbered as claims 3-19. The canceled claims were amended to fix the claim numbering prior to cancellation.

RESTRICTION/ELECTION

The Examiner has determined that restriction to one of the following inventions is required under 35 U.S.C. 121:

Invention I. Claims 1-18, drawn to a percussive massage device; and

Invention II. Claims 19-20, drawn to a method of using a massage device via connection to a remote electronic device.

In response, applicant confirms election of Invention I, Claims 1-18.

ALLOWABLE SUBJECT MATTER

Applicant thanks the Examiner for indicating that patentable subject matter is present in claims 4-5. Claim 4 (now claim 3) has been placed in independent form.

INTERVIEW

Applicant thanks the Examiner for extending the courtesy of an interview on July 8, 2021. During the interview proposed amendments to claim 1 and missing claim 3 were discussed.

Response to Office Action
Issued on March 10, 2021

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Atty. Docket No. 76840-5090
Customer No. 24574

DRAWINGS

The drawings have been objected to for including reference numerals 423 and 630 not mentioned in the description. With respect to 423, FIGS. 50-53 have been amended to remove "423."

It is respectfully submitted that 630 is mentioned in the description. See paragraph [0229] of the application as filed, which mentions "routine controller 630" a number of times.

REJECTIONS UNDER 35 U.S.C. § 112

Claims 4-6 and 12 were rejected for being indefinite. The claims have been amended to overcome the rejections.

REJECTIONS UNDER 35 U.S.C. §§ 102 AND 103

The Examiner has rejected claim 1 as being anticipated by Pepe (US 2017/0304145), claim 1 as being obviousness over Rix (US 7,927,259) in view of Haas (US 2005/0126018), claim 2 as being obviousness over Rix in view of Marton (US 10,314,762), claim 6 as being obviousness over Pepe '306 (US 2020/0261306) in view of Pepe, claims 7-8 as being obviousness over Pepe, Marton, Goldstein (2018/0008512) in view of DeBenedictis (US 2015/0216719), claim 9 as being obviousness over Pepe in view of Avni (2009/0112134), claims 10 and 12-13 as being obviousness over Pep and Avni in view of Gomez (US 2020/0179210), claim 11 as being obviousness over Pep, Avni and Gomez in view of Bardha (US 2007/0129220), claim 14 as being obviousness over Pepe in view of Pepe '594 (2020/0268594), claims 15-16 as being obviousness over Pep in view of Giraud (US 2015/0305969), claim 17 as being obviousness over Pepe, Pepe '594 and Giraud in view of Estes (US 2009/0326540), and claim 18 as being obviousness over Pepe in view of Marton, Dematio (2014/0207032) and Konik (US 2016/0346163).

Claim 1 has been amended recite "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... and 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 as a result of percussive application of the attachment." In the Office Action, the Examiner uses DeBenedictis to reject original claims 7 and 8. However, in DeBenedictis, a chiller unit is used to cool or heat the patient's skin. In the present invention, as is discussed in at least paragraph [0276], the percussive therapy device is used on the user's body part or muscle to warm the muscle up until it reaches a predetermined temperature. It is respectfully submitted that none of Pepe, Marton, Goldstein nor DeBenedictis alone or in combination teach, disclose or suggest the limitations of current claim 1. It is respectfully submitted that using an cooling or heating element to cool or heat the user's skin is completely different than using the percussive massage device to "be sure that a body part has been warmed up properly prior to exercise," as discussed in paragraph [0276]. Furthermore, a person of ordinary skill in the art, from a reading of DeBenedictis would not be motivated to modify the "Pepe, Marton, Goldstein, DeBenedictis device" to provide the claimed "warmup feature."

Withdrawal of the rejections is respectfully requested.

With respect to claim 17, although Estes teaches outwardly biased balls, there is no motivation in any of Pepe, Pepe '594, Giraud nor Estes for turning the biased balls taught in Giraud into electrical contacts.

Furthermore, with respect to all rejections not specifically discussed or addressed herein, Applicant hereby disagrees with all of the Examiner's reasoning and discussion and concedes nothing.

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,

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Dated: July 9, 2021

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