IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: SCHIPKE - 1.1

In re Application of:	)	Art Unit: 337
Norbert SCHIPKE	)	Examiner: K. Asher
Serial No.: 07/290,106	)	Washington, D.C.
Filed: December 8, 1988	)	November 19, 1990
For: DEVICE FOR VIBRATION THERAPY	)	

AMENDMENT

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

In response to the August 17, 1990 Office Action in the above-identified case, please amend as follows:

IN THE CLAIMS:

Please amend claims 1 and 3 as follows:

1. (Twice Amended) A device for vibration therapy with a treatment couch constructed at least partly as a swing base, vibration-producing devices impinging on the swing base in such a manner that the swing base is made to perform three-dimensional vibrations, characterized in that a vertically-adjustable, by means of a spindle drive extendable leg support device (6) is disposed along the length of the treatment couch (1) outside the swing base (5).

3. (Amended) A device according to claim 1, characterized in that an eccentric weight (64) is driven in rotation by [the] a drive (8a) and [the pivot bearing of] the eccentric weight (64) is connected with the swing base (5) by a pivot bearing in such a manner that the axis of rotation (65') of the pivot bearing is disposed slanting at angle (α) to the plane of the swing base (5).

REMARKS

Applicant has carefully reviewed the Examiner's Office Action of August 17, 1990, and respectfully requests reconsideration based on the above amendments and the following comments.

Claim 3 and dependent claim 4 have been amended to provide a proper antecedent for "the drive" and "the pivot bearing".

The Examiner has rejected claim 1-5 under 35 U.S.C. 103 as being unobvious from Colston in view of Mack, Agatani, Lane et al, and Knapp. Applicant traverses this rejection for the following reasons.

First, while there is a general rule that it matters not how many references are strung together so long as they collectively make obvious the subject matter sought to be patented, there is another general rule that the greater the number of references strung together, the less likely it is that the invention was truly obvious. In the words of Circuit Judge Medina in Ling-Temco-Vought, Inc. v. Kollsman Instrument Corporation (2d Cir., 1967) 152 USPQ 446, 51:

> It is apparent that the more numerous the references ..., the less likely it becomes that a person having ordinary skill in the art would have arrived at the result reached by the patent in suit. ...[Citations omitted].

In Bela Seating Company, Inc. v. Poloron Products, Inc., 160 USPQ 646,61, the Court concluded that the stringing together of a plurality of patents in an "attempt to invalidate plaintiff's claims tends in and of itself to negate the position of defendant that the patent in suit is invalid".

Further, Applicant submits that it is only the teaching of the claimed invention that justifies the Examiner's combination of references and, absent the teaching of the application there would have been no incentive for the person skilled in the art to achieve the result claimed herein. Indeed, the combination of references in a number of respects destroys the devices combined for each of their intended purposes.

The Examiner states his position on page 4, starting with line 6, with regard to the alleged obviousness of claim 1, that it would have been obvious to provide the COLSTON device with leg support means to allow a more complete treatment or in order to increase the usability of the table with patients having varying problems. Further, he argues that with respect to the additional teachings of KNAPP and LANE it would have been obvious to make the height of the leg supporting member adjustable so as to provide a more comfortable fit for patients of varying heights.

It is respectfully submitted that this position indicates a basic misunderstanding of what the invention is intended to accomplish.

Contrary to the Examiner's observation, the length-adjustable leg support is not a matter of comfort at all. In fact, the adjustability is an unavoidable prerequisite to obtain the object of the invention. The leg support must just be extended such that a Perl's extension (as explained with the last response) is obtained, i.e. the legs must only rest on the support, but they must be lifted slightly in order to move the different vertebrae of the spinal column away from one another. Only in this way can there be obtained the most surprising and successful therapy with a device according to the invention with the subsequent oscillatory treatment. In order to make it even more clear that it is necessary to obtain a very definite extension, the spindle drive described in the specification has been inserted in claim 1.

Only if the legs are "stretched" to a little extent the object as explained on page 3, first paragraph, of the specification is achieved, i.e. only in this case is the therapeutic time necessary remarkably reduced.

None of the citations teaches the use of a leg support which can be extendable in fine steps in order to obtain an improvement of the oscillatory treatment.

COLSTON does not provide an extendable leg support at all.

KNAPP and LANE teach extendable leg supports, but they only are concerned with the problem of providing a bed or a chiropractic table, respectively, i.e. they do not at all consider the problem of an oscillatory treatment. As they are not concerned with this object; they do not make it obvious to combine their extendable leg supports with a device according to COLSTON.

As LANE does not at all consider the problem of slightly stretching the legs of the spinal column, respectively, someone skilled in the art would not have thought of a teaching for improving the oscillatory treatment of the COLSTON device with LANE, as the advantage of a spindle drive, namely the stepless movement and setting for the special purpose as according to the invention, can only be recognized if you have already made the invention to combine an oscillatory treatment with a pulse Perl's extension. However, this was not known nor obvious before the present invention.

Applicant submits that the invention as claimed discloses new and unobvious subject matter not otherwise disclosed in the prior art references. Accordingly, Applicant requests that the claims be allowed and the application issued as a patent.

Respectfully submitted,

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