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15/881,602	01/26/2018	Ammar Al-Ali	MAS.780R1	9078

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EXAMINER
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FLANAGAN, BEVERLY MEINDL

ART UNIT	PAPER NUMBER
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3993

NOTIFICATION DATE	DELIVERY MODE
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06/27/2018

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.

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## DETAILED ACTION

### ***AIA - Reissue***

The present *reissue* application was filed on or after September 16, 2012 and therefore is being examined under the current AIA *reissue* provisions of 35 USC 251 and 37 CFR 1,172, 1,175 and 3.73.<sup>1</sup>

### ***Related Proceedings***

Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 9,775,570 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

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<sup>1</sup> It is noted that while the examination of the current reissue application falls under the pre-AIA first to invent provisions due to the filing date of US Patent No. 9,775,570; the application for reissue filing date is after September 16, 2012 and therefore is subject to the reissue rule changes enacted under the Leahy-Smith American Invents Act (AIA), see Federal Register, Vol. 77, No. 157, pg. 48820, August 16, 2012.

***Preliminary Amendment***

Applicant's preliminary amendment filed January 26, 2018 has been entered and made of record. Claims 1-4, 6, 8 and 10-16 are amended. Claims 5, 7, 9, 17 and 18 remain as originally patented. Claims 19-23 are newly presented.

***Claim Rejections - 35 USC § 112***

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.

Claims 1-7 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 pre-AIA the applicant regards as the invention.

Claim 1 recites the limitation "at least *first* oxygen saturation value" in lines 24 and 27. There is insufficient antecedent basis for this limitation in the claim. As claims 2-7 depend from claim 1 they are likewise rejected.

***Claim Rejections - 35 USC § 102/103***

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

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rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of pre-AIA 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 8-10 and 19-23 is/are rejected under pre-AIA 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under pre-AIA 35 U.S.C. 103(a) as obvious over Baker, Jr. (U.S. Patent Application Publication No. 2009/0247848).

***In regard to claims 8-10 and 19-23***, Baker, Jr. teaches a system for reducing nuisance alarms where the system is a pulse oximetry system 10 that includes a sensor 12 and a pulse oximetry monitor 14 where the sensor 12 includes an emitter 16 for emitting light into a patient's tissue and a detector 18 is provided in the sensor 12 for detecting light originating from the emitter 16 (see para. 0023 and Fig. 1). In one method, the receive data operation 602 includes receiving an electronic signal from a sensor and processing that signal to generate data (see para. 0049 and Fig. 6). The received data are analyzed in the generate estimate operation 604 and one or more statistical parameters describing the data are calculated in the calculated statistical

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