

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS J. MARKHAM

Appeal No. 2001-2178
Application No. 09/039,466

ON BRIEF

Before McQUADE, NASE and BAHR, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Douglas J. Markham appeals from the final rejection of claims 1 through 6, all of the claims pending in the application.

THE INVENTION

The invention relates to "an exercising device which is . . . readily portable and connectable with a door when it is

Appeal No. 2001-2178
Application No. 09/039,466

used" (specification, page 1). Representative claim 1 reads
as follows:

1. In combination with a door of a building structure, said door being mounted within an opening and being movable between an open position permitting passage through said opening to a closed position preventing passage through said opening, a jamb surrounding said door, said door having an interior surface and an exterior surface, a doorknob mounted on said exterior surface, an exercising device comprising:

a loop strap slipped over said doorknob;

an elastic cord connected to said loop strap by a slip knot attachment, said loop strap being extended from said exterior surface to directly adjacent but spaced from said interior surface by being conducted between said door and said jamb, said elastic cord terminating in a first end and a second end, said slip knot attachment being tightenable onto said elastic cord which permits said first end and said second end to each be stretchable independent of each other;

a first handle assembly attached by first connection means to said first end; and

a second handle assembly attached by second connection means to said second end, whereby said first handle and said second handle are to be grasped by a human with a force to be applied in a direction away from said door causing stretching of said elastic cord with said door in said closed position and said loop strap being secured to said door and said doorknob.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Appeal No. 2001-2178
Application No. 09/039,466

Burke	4,948,117	Aug. 14, 1990
Froelich, Sr. et al.	5,709,630	Jan. 20, 1998

(Froelich)

Hermanson	8,203,510	Apr. 5, 1983
Dutch Patent Document ¹		

THE REJECTIONS

Claims 1 through 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hermanson in view of Froelich.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hermanson in view of Froelich and Burke.

Attention is directed to the appellant's brief (Paper No. 8) and to the examiner's answer (Paper No. 9) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.²

¹ An English language translation of this reference, prepared on behalf of the United States Patent and Trademark Office, is appended hereto.

² Although the examiner's answer does not restate the final rejection of claims 2 through 4, the record as a whole shows that the omission was inadvertent.

DISCUSSION

Hermanson discloses an exercise device composed of an expanding unit 1 made of elastic rubber tubing, loops 7 attached to the free ends of the expanding unit, handgrips 10 detachably mounted on the loops 7, a protective sleeve 2 applied about the center of the expanding unit 1 and a fastening device 4 coupled to the sleeve for affixing the expanding unit 1 to a support such as a stationary hook or the crack of a window or door. The fastening device 4 includes an anchoring loop 3 surrounding the sleeve 2, a woven tape 6' secured to the anchoring loop, two blocking elements 5 and 5' disposed within the woven tape 6' and a hang-up ring or loop 6 formed at the free end of the tape 6'. Figures 7, 7' and 8 illustrate the manner in which the fastening device 4 is used to attach the exercise device to a door or window.

Implicit in the examiner's explanation of the rejection of claim 1 (see pages 3 and 4 in the answer) is the concession that Hermanson does not respond to the limitations in the claim requiring (1) the elastic cord to be connected to the loop strap by "a slip knot attachment . . . tightenable onto said elastic cord which permits said first end and said second

Appeal No. 2001-2178
Application No. 09/039,466

end [of the cord] to each be stretchable independent of each other" and (2) the loop strap to be "slipped over" a doorknob. Hermanson's elastic cord (expanding unit 1) is connected to its loop strap (tape 6' and loop 6) via anchoring loop 3 which is not disclosed as embodying a slip knot attachment, and the loop strap (tape 6' and loop 6) is not disclosed as being slipped over a door knob.

Froelich, applied in combination with Hermanson to support the rejection of claim 1, discloses an adjustable rotating resistance exerciser 10 which can be employed in a variety of exercise devices. The device 240 shown in Figure 11 includes exercisers 10 disposed on the respective ends of a flexible member 242. Froelich teaches that this device can be fastened to a stationary member such as a floor by an elastic band 244 which appears to be secured to the flexible member 242 via a slip knot. In concluding that the subject matter recited in claim 1 would have been obvious within the meaning of § 103(a), the examiner states that

[i]n view of [Froelich] and in view of what is obvious to one of ordinary skill in the art . . . it is well [known] and would have been obvious to one of ordinary skill in the art to manufacture the

Appeal No. 2001-2178
Application No. 09/039,466

loop/knot of Hermanson as a slip knot. Slip knots are well [known] connection means.

As to the applicant[']s claims of a door the examiner notes that Hermanson discloses a door, as to the device of Hermanson [including] a door knob the examiner notes that most doors have door knobs, and as to the applicant claiming a loop attached to the door knob the examiner notes that the loop of Hermanson is capable of being attached to a door knob [answer, pages 3 and 4].

The slip knot attachment recited in claim 1 is described in the underlying specification (see pages 5 and 6) as having particular significance within the context of the claimed exercising device in that when tightened it causes the two legs or ends of the elastic cord to function independently of one another and when loosened it allows the two legs or ends to function in concert with one another. Slip knots certainly were well known expedients at the time of the appellant's invention as evidenced by Froelich. There is nothing in this conventional knowledge, however, or in Froelich, which would have suggested any reason, let alone the particular benefits contemplated by the appellant, for modifying Hermanson's anchoring loop 3 to include a slip knot attachment. The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested

Appeal No. 2001-2178
Application No. 09/039,466

the desirability of the modification. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Furthermore, although the examiner's observation that Hermanson's loop strap (tape 6' and loop 6) is inherently capable of being slipped over a door knob is manifestly reasonable, it is neither dispositive of, nor particularly relevant to, the issue of whether it would have been obvious to do so as required by claim 1. In short, the combined teachings of Hermanson and Froelich do not provide the factual basis necessary to conclude that it would have been obvious to modify the manner in which Hermanson's exercise device is attached to a door (see Figures 7, 7' and 8) so as to meet the requirement in claim 1 that the loop strap be slipped over a knob on the exterior surface of the door. Hence, the collective disclosures of Hermanson and Froelich do not warrant a conclusion that the differences between the subject matter recited in claim 1 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. Therefore, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 1, and dependent claims 2

Appeal No. 2001-2178
Application No. 09/039,466

through 4, as being unpatentable over Hermanson in view of Froelich.

As Burke's disclosure of a device for tethering a swimmer does not cure the foregoing shortcomings of the Hermanson-Froelich combination with respect to the subject matter recited in independent claim 1, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 5 and 6 as being unpatentable over Hermanson in view of Froelich and Burke.

SUMMARY

The decision of the examiner to reject claims 1 through 6 is reversed.

REVERSED

Appeal No. 2001-2178
Application No. 09/039,466

JOHN P. McQUADE)	
Administrative Patent Judge)	
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Appeal No. 2001-2178
Application No. 09/039,466

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REVERSED

November 19, 2002

MAIL COPY OF TRANSLATION WITH
DECISION