

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PACIFIC FITNESS CORPORATION

Appeal No. 97-1021
Application 90/003,686¹

ON BRIEF

Before FRANKFORT, STAAB and CRAWFORD, Administrative Patent
Judges.

¹ Request filed January 11, 1995, Control No. 90/003,686,
by Pacific Fitness Corporation for the Reexamination of Patent
No. 5,330,405, issued July 19, 1994, based on application
Serial No. 08/142,620, filed October 25, 1993.

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Reexamination Control No. 90/003,686

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 20 through 24, 41, 66, 89 through 91, 108, 129, 131 and 132 in a Reexamination proceeding identified by Control No. 90/003,626 for U.S. Patent No. 5,330,405, issued on July 19, 1994. The original patent included claims 1 through 130. The appellant has added claims 131 and 132 in this Reexamination proceeding. The patentability of claims 28 and 94 has been confirmed by the examiner. Claims 1 through 19, 25 through 27, 29 through 40, 42 through 65, 67 through 88, 92, 93, 95 through 107, 109 through 128 and 130 have been canceled. In appellant's brief (Paper No. 13, page 3), it is indicated that appellant "appeals the rejection of claims 20-24, 41, 66, 89-91, 108 and 129." Given that there is no mention of claims 131 and 132, and no discussion or argument in appellant's brief concerning the examiner's rejections of these claims, we con-

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clude that claims 131 and 132 are not before us in this appeal. Accordingly, only claims 20 through 24, 41, 66, 89 through 91, 108 and 129 remain for our consideration.²

Appellant's invention relates to a multi-station exercise machine wherein a selectable ratio of the weight of a subframe (22) and the body weight of a user thereon is communicated to the user as exercise resistance. A copy of the claims on appeal and the claims from which they depend appears in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejections of the appealed claims are:

Tuttle 1877	197,750	Dec. 4,
Richey ('390) 1986	4,632,390	Dec. 30,

² While the examiner has not expressly indicated that the new grounds of rejection applied against claims 20-24, 66, 89-91 and 129 in the examiner's answer (Paper No. 15) are intended to replace the rejections against these claims as stated in the final rejection (Paper No. 11), it is clear to us from a review of the file wrapper that this was the examiner's intent.

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Rasmussen et al. (Rasmussen) 1989	4,809,972	Mar. 7,
Richey ('958) 1990	4,949,958	Aug. 21,
Webber 1993	5,236,406	Aug. 17,
Zaitsev et al. (Zaitsev) ³ (Russian)	1,674,874	Sept. 7, 1991

Claims 20 through 22, 66 and 89 through 91 stand rejected under 35 U.S.C. § 103 as being unpatentable over Webber in view of Zaitsev and Richey ('390). In the examiner's view, it would have been obvious to one of ordinary skill in the art at

the time of appellant's invention to arrive at appellant's claimed multi-station exercise machine by replacing the disclosed movable weight stack or mass (80) of Webber with the linkage and load bearing means of Zaitsev to make use of the user's own body weight as the load, since

³ A copy of a translation of this Russian language document prepared by the U.S. Patent and Trademark Office is attached to this decision.

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A) based upon the teaching of Richey ('390), 1) the artisan would recognize the two as equivalent loads for use as contemplated by Webber and 2) such a modification would eliminate the encumbrance and expense of Webber's weight stack; B) inasmuch as both Webber and Zaitsev et al. are drawn to analogous weight-loaded press exercise machines, the artisan would recognize the two as equivalent weight loads; and C) inasmuch as both Webber and Richey ('390) are drawn to analogous multi-station, cable-ready exercise machines, the artisan would recognize the two as equivalent loads.

The proposed modification could be made simply by placing Webber's apparatus on the subframe of Zaitsev et al. in the place of the seat 3 and press arm 7 station and connecting the second end 76 of the first cable 72 to the levers 12, 13 of Zaitsev et al. to allow the weight of the user and subframe to provide resistance to operation of the press arm, leg extension arm and lat bar (answer, pages 10-11).

Claims 23 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Webber in view of Zaitsev and Richey ('390) as applied above, and further in view of Rasmussen.

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Rasmussen is relied upon by the examiner to add an abdominal crunch station to the exercise device resulting from the combination of Webber, Zaitsev and Richey ('390).

Claim 129 stands rejected under 35 U.S.C. § 103 as being unpatentable over Webber in view of Zaitsev and Richey ('390) as applied above, and further in view of Tuttle. Tuttle is relied upon for adding a four-bar linkage to the exercise device resulting from the combination of Webber, Zaitsev and Richey ('390). According to the examiner,

[i]nasmuch as both Webber in view of Zaitsev et al. and Richey ('390) and Tuttle are both drawn to analogous bodyweight-loaded exercise machines, it would have been obvious to the artisan to modify the machine of Webber in view of Zaitsev et al. and Richey ('390) by replacing the telescopic linkage with the four bar linkage of Tuttle since Tuttle shows such to be an equivalent construction for movably coupling the subframe to the frame in an analogous bodyweight-loaded exercise machine. The proposed modification could be made simply by placing Webber's apparatus on the subframe of Tuttle and connecting the second end 76 of the first cable 72 of Webber to the upper pivot arm C of Tuttle at K (answer, page 15).

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Claims 41 and 108 stand rejected under 35 U.S.C. §
103 as being unpatentable over Richey ('958) in view of
Tuttle. In

the examiner's view, it would have been obvious to one of
ordinary skill in the art, in view of the teachings in Tuttle,
to modify the exercise device of Richey ('958)

by replacing the disclosed direct pivot
connection with Tuttle's four-bar linkage
since Tuttle states that such a
construction is superior to a tilting
platform such as Richey's since the
platform is kept level and, consequently,
the user's position on the platform does
not affect the resistance (col. 1, ¶6, and
col. 2, lines 6-17).

As to claim 108, inasmuch as Tuttle
couples the operable member to the upper
pivot arm, it would have been obvious to
the artisan to further modify Richey to
arrive at the claimed invention by coupling
the operable member to one of the pivot
arms as taught by Tuttle, e.g. by coupling
the pulleys 110, 112 (of Richey) to the
upper pivot arm C at K (Tuttle), since
Tuttle shows such construction to be
equivalent to Richey's lever 94 and
carriage 42 arrangement (answer, pages
7-8).

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Rather than reiterate the examiner's full explanation of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 15, mailed November 14, 1996) and to the supplemental examiner's answer (Paper No. 17, mailed June 16, 1997) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 13, filed July 25, 1996) and reply brief (Paper No. 16, filed January 21, 1997) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and by the examiner. As a consequence of this review, we have made the determinations which follow.

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Turning first to the examiner's rejections of the appealed claims wherein the basic combination of references applied is Webber, Zaitsev and Richey ('390), after reviewing the collective teachings of these references, we must agree with appellant that there is no teaching, suggestion or incentive therein for the extensive and seemingly indiscriminate reconstruction of the Webber exercise device as proposed by the examiner. We further observe that what appellant has characterized as the examiner's grafting together of the machines of the applied references by reliance on "Rube Goldberg engineering," is

in our view a combination based almost totally on impermissible hindsight derived from appellant's own teachings and not from the prior art references themselves as the teachings thereof would have been fairly understood by one of ordinary skill in the art. Like appellant, we observe that a combination of elements is not obvious merely because each of the elements is individually known in the art and may be found in an analogous device. Lacking any teachings in the prior

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art itself which would appear to have fairly suggested the claimed subject matter as a whole to a person of ordinary skill in the art, or any viable line of reasoning as to why such artisan would have otherwise found the claimed subject matter to have been obvious in light of the teachings of the applied references, we must refuse to sustain the examiner's rejection of claims 20 through 22, 66 and 89 through 91 under 35 U.S.C. § 103 based on Webber, Zaitsev and Richey ('390).

The examiner's addition of the references to Rasmussen and Tuttle in the rejections of claims 23, 24 and 129 under 35 U.S.C. § 103 only compounds the problem by further relying on impermissible hindsight to make such combinations, and does nothing to supply that which is lacking in the teachings and/or

suggestions of the basic combination of references as noted above. Accordingly, the rejections of claims 23, 24 and 129 under 35 U.S.C. § 103 will likewise not be sustained.

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We next review the examiner's rejection of claims 41 and 108 under 35 U.S.C. § 103 based on the teachings of Richey ('958) and Tuttle. As noted above, the examiner is of the opinion that it would have been obvious to one of ordinary skill in the art to replace the direct pivot arrangement (124) of Richey ('958) with Tuttle's four-bar linkage arrangement since Tuttle states that such a construction is superior to a tilting platform (like that of Richey ('958)), since the platform is kept level and, consequently, the user's position on the platform does not affect the resistance. While it is apparent from Tuttle that the linkage arrangement therein would provide the above-noted advantages over a platform (B) which is directly pivoted to standards (E) of a platform (A) in a health-lifter device similar to that of Tuttle, it is not at all apparent to us that the crucial concerns which led to the linkage arrangement in Tuttle are of any concern whatsoever in the somewhat different exercise device of Richey ('958). As can be seen in Figures 3 and 4, Figures 5 and 6, and Figures 7 and 8 of Richey ('958), there is relatively

little tilting of the bench means (30) when an exercise is performed.

Moreover, one of the objectives of the invention in Richey ('958) was to provide a simplified exercise device which was less complex, had fewer moving parts, and which would thus be less expensive to manufacture and more reliable. See particularly, column 3, lines 3-17, of Richey ('958). Thus, given the relative lack of significant tilting of the bench means (30) in Richey ('958) and the emphasis on simplicity in the construction of the exercise device therein, we see no reasonable basis to conclude that one of ordinary skill in the art would have been led to modify the device of Richey ('958) so as to substitute multiple moving linkages for the pivot arrangement (124) therein as is urged by the examiner. Notwithstanding that the device of Richey ('958) could have been so modified, the entire thrust of the disclosure in Richey ('958) is away from any such complex arrangement of moving linkages, and particularly so in the area where the bench (30) is joined to the frame (14) of the device. Since we therefore again believe that the examiner's

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combination of the applied prior art is based upon impermissible hindsight derived from appellant's own teachings and that it is contrary to the teachings of the applied references, we will not sustain the rejection of claims 41 and 108 under 35 U.S.C. § 103.

To summarize:

The examiner's rejection of claims 20 through 22, 66 and 89 through 91 under 35 U.S.C. § 103 based on Webber, Zaitsev and Richey ('390) has been reversed.

The examiner's further rejections of claims 23, 24 and 129 under 35 U.S.C. § 103 relying upon Webber, Zaitsev and Richey ('390) together with either Rasmussen or Tuttle have also been reversed.

The rejection of claims 41 and 108 under 35 U.S.C. § 103 based on Richey ('958) in view of Tuttle has been reversed.

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Further proceedings in this case may be taken in accordance with 35 U.S.C. §§ 141 to 145 and 306, 37 CFR §§ 1.301 to 1.304. Note also 37 CFR § 1.197(b). If the patent owner fails to continue prosecution, the reexamination proceeding will be terminated, and a certificate under 35 U.S.C. § 307 and 37 CFR § 1.570 will be issued canceling the patent claim(s), the rejection of which has been affirmed.

REVERSED

	CHARLES E. FRANKFORT)	
	Administrative Patent Judge)	
)	
)	
)	BOARD OF
PATENT)	
	LAWRENCE J. STAAB)	APPEALS AND
	Administrative Patent Judge)	
INTERFERENCES)	
)	
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	MURRIEL E. CRAWFORD)	
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