



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/831,265	07/31/2007	John M. Cassidy	TRQ004USPT02	4127
23403	7590	02/21/2013	EXAMINER	
SHERRILL J. LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205			THANH, LOAN H	
			ART UNIT	PAPER NUMBER
			3764	
			NOTIFICATION DATE	DELIVERY MODE
			02/21/2013	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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

michaels@sherrilllaw.com  
izag@sherrilllaw.com  
docketing@sherrilllaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* JOHN M. CASSIDY, MICHAEL G. NOVAK, and  
NATHAN R. LUGER

---

Appeal 2011-000054  
Application 11/831,265  
Technology Center 3700

---

Before BRIAN J. McNAMARA, MICHAEL J. FITZPATRICK, and  
SCOTT E. KAMHOLZ, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

John M. Cassidy et al. (Appellants) appeal under 35 U.S.C. § 134(a) from a decision finally rejecting claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b)(1).

We reverse.

### *The Claimed Subject Matter*

According to Appellants, the claimed invention relates to freestanding exercise apparatuses. Spec. 2, ¶ 6. Claims 1 and 13 are illustrative of the claimed subject matter. They are reproduced below with emphasis being added.

1. A freestanding exercise apparatus, comprising:
  - (a) a frame defining a sagittal plane dividing the frame into a left half and a right half with anterior and posterior ends;
  - (b) a right door pivotally attached to the right half of the frame proximate the anterior end of the frame for pivoting about a right pivot axis;
  - (c) a left door pivotally attached to the left half of the frame proximate the anterior end of the frame for pivoting about a left pivot axis; and
  - (d) an exercise resistance source connected to the frame;
  - (e) wherein the frame, right pivot axis, and left pivot axis are configured and arranged such that *the angle formed* at the intersection of a first plane defined by the right pivot axis and the posterior end of the right half of the frame and a second plane defined by a left pivot axis and the posterior end of the left half of the frame *is less than 90°*.

13. A freestanding exercise apparatus, comprising:
  - (a) a frame;
  - (b) an exercise resistance source connected to the frame;
  - (c) a right door pivotably attached to the frame;
  - (d) a left door pivotably attached to the frame;
  - (e) a *first exercise unit attached to the right door* wherein the unit (i) reciprocates along a path relative to the right door, (ii) is configured and arranged to pivot with the right door relative to the frame, and (iii) is operably connected to the exercise resistance source wherein the source provides resistance to the reciprocating exercise unit; and
  - (f) a *second exercise unit attached to the left door* wherein the unit (i) reciprocates along a path relative to the left door, (ii) is configured and arranged to pivot with the left door relative to the frame, and (iii) is operably connected to the exercise resistance source wherein the source provides resistance to the reciprocating exercise unit.

#### *Evidence*

The Examiner relies upon the following prior art references:

Gordon	US 4,898,381	Feb. 6, 1990
Rexach	US 2002/0091043 A1	Jul. 11, 2002

#### *Rejections*

The Examiner makes the following rejections:

- I. Claims 1-7, 9, 10, and 12-18 are rejected under 35 U.S.C. § 102(b) as anticipated by Rexach.
- II. Claims 8 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rexach and Gordon.
- III. Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Rexach alone.

OPINION

*Claims 1-12*

Independent claim 1 requires, in relevant part that “the frame, right pivot axis, and left pivot axis are configured and arranged such that the angle formed at the intersection of a first plane defined by the right pivot axis and the posterior end of the right half of the frame and a second plane defined by a left pivot axis and the posterior end of the left half of the frame is less than 90°.” The Examiner found this limitation disclosed by Rexach in Figure 6.

Ans. 5. Figure 6 is reproduced below.

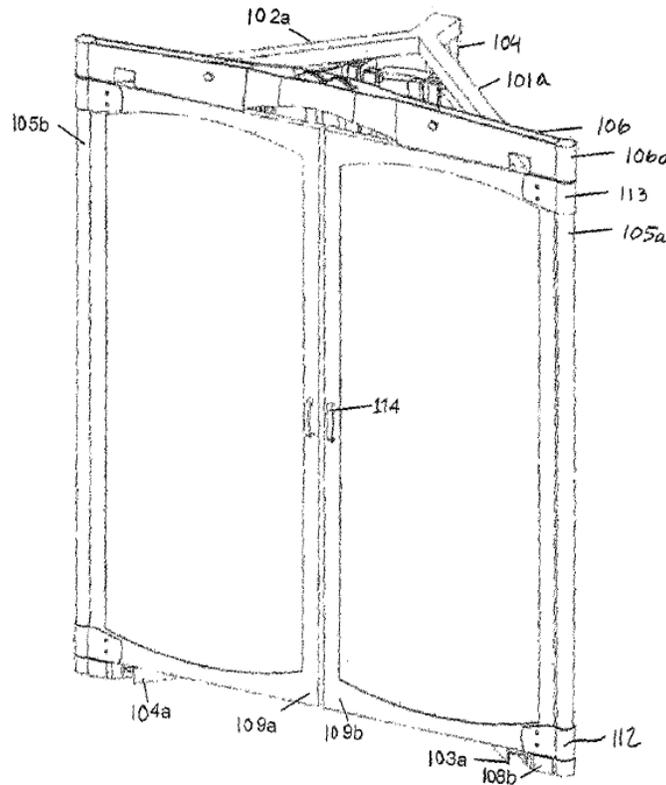


Figure 6 illustrates a perspective view of an exercise apparatus in a stowed configuration in which it has a horizontal cross-section that is generally triangularly shaped

Appellants argue that Rexach Figure 6 discloses an apparatus that “appear[s] to have a frame that forms a plan view angle of 90°” and further argues that Rexach does not disclose the limitation “such that the angle . . . is less than 90°” as required by claim 1. App. Br. 10.

The Examiner’s rejection appears to be erroneously premised on a construction of the first and second planes each being defined only by a pivot axis and not also by a posterior end. Ans. 8-9. In that regard, the Examiner concluded that the planes “essentially provid[e] nothing more than abstract points of reference” and that “an infinite number of planes may be selected for each pivot axis with an angle therebetween from between 0° to 360°.” Ans. 9.

We disagree that the definitions of the planes are so broad. The first plane is “defined by the right pivot axis and the posterior end of the right half of the frame.” The second plane is “defined by a left pivot axis and the posterior end of the left half of the frame.”

The Examiner also states that “the Rexach device is disclosed as being placed in a corner and would therefore have to be less than the 90° that normally defines a corner of a room in order to fit and be properly positioned therein.” Ans. 9. We disagree with this statement. We find, rather, that the Rexach device could be precisely 90° degrees and still be placed in a corner having a 90° angle. The Rexach device even could be greater than 90° and still be placed in a corner, albeit not as snugly.

From our own review of Rexach, we do not find sufficient evidence that it expressly discloses an angle formed at the intersection of the first and

second planes that is less than 90°, nor that such an angle is inherent to the Rexach device.

Accordingly, we cannot sustain the decision to reject claim 1 or the decision to reject claims 2-12, each of which ultimately depends from claim 1.

*Claims 13-19*

Independent claim 13 requires, in relevant part:

- (b) an exercise resistance source [e.g., a weight stack<sup>1</sup>] connected to the frame; . . .
- (e) a first exercise unit [e.g., a grip handle<sup>2</sup>] attached to the right door . . . ; and
- (f) a second exercise unit attached to the left door . . . .

The Examiner found these limitations disclosed by Rexach in Figures 7 and 11. Ans. 5, 10.

We agree that element (b) is shown in Figures 7 and 11. Specifically, the weight stacks are shown connected to the part of the frame that extends outward in a telescopic fashion after the doors have been opened, as described in paragraph 12 of Rexach.

We do not agree, however, that elements (e) and (f) are shown in Figures 7 or 11. Rather, Figures 7 and 11 show the doors, which are termed “cover panels **109a** and **109b**” (*see* Rexach 3, ¶ 46), separate and apart from

---

<sup>1</sup> Spec. 7, ¶ 24.

<sup>2</sup> An exercise unit “may be any piece of exercise attachment equipment such as a tricep strap, a grip handle, a tricep press down V bar, stirrup handle, chinning triangle, straight bar, double stirrup handle, curl bar, tricep rope, straight lat bar, head harness, single cable handle, lat pull down bar, ankle cuff, foot cuff, or shoulder cuff.” Spec. 8, ¶ 31.

any exercise units. *See also* Rexach, fig. 9. With respect to Figure 7, which is the Rexach apparatus in a bench press configuration (*see* Rexach 3, ¶ 25), the exercise unit is the straight bar, which is not attached to either door/cover panel. With respect to Figure 11, which is the Rexach apparatus in a treadmill configuration (*see* Rexach 3, ¶ 29), the exercise unit, if any, would be the moving belt, which is not attached to either door/cover panel.

Accordingly, we cannot sustain the decision to reject claim 13 or the decision to reject claims 14-19, each of which ultimately depends from claim 13.

#### DECISION

The Examiner's decision to reject claims 1-19 is reversed.

REVERSED

alw