

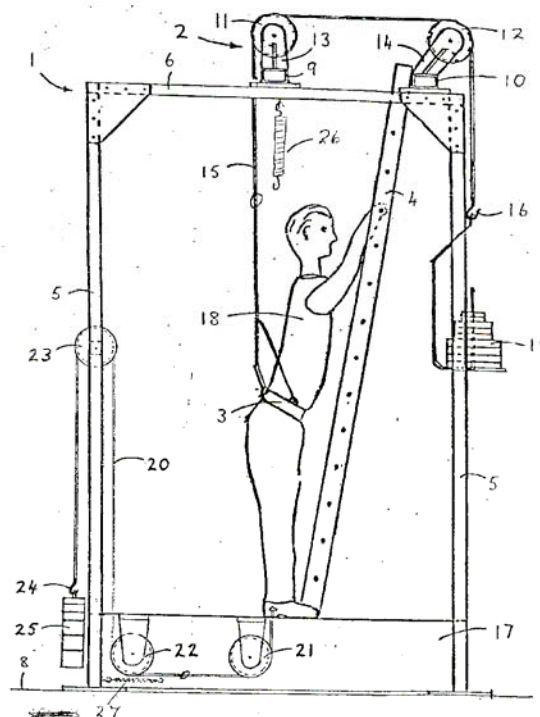
The invention

- 4 The single claim of the application merely states that the invention “relates to traction and exercise apparatus designed to relieve pain in all joints and prolapsed discs in the body”. The constructional detail given in the application is sparse, but the specification and accompanying photographs disclose a vertical metal framework having a crosspiece at the top from which a series of springs are suspended and a baseplate to which another series of springs are attached. The springs can be hooked at their free ends to a belt which in use surrounds the user’s torso; photograph 2 shows the use of separate belts for the top and bottom springs. A ladder is fixed to the frame at the top and bottom by standard methods so that the user can ascend or descend, or bend or twist in various ways, possibly with the assistance of a physiotherapist, to allow the springs to exert traction via the belt. The apparatus is said to be particularly useful for relieving lower back pain.

Arguments and analysis

Novelty and inventive step

- 5 The documents cited by the examiner are patent specifications GB 2170112 A (Foley), EP 0237996 A2 (Blesch), SU 660681 A (Chetvertoe) and WO 93/14733 A1 (Giovannetti), all published before the filing date of the present application. Of these the first, which is an earlier application from Mr Foley, is undoubtedly the closest. In Figure 3 of this application



a frame (which is stated in claim 1 to be of steel) has cross beams 9 and 10 for mounting pulleys 11 and 12 around which a cord 15 extends between weights 19 and a harness 3 supporting the lower part of a patient's trunk. A patient suffering from backache climbs up and down a ladder 4 on the frame against an upwardly biasing force exerted by the weights 19, and preferably also against a downwardly biasing force exerted on the person's footwear by weights 25. Also shown are springs 26 and 27 which (see page 2 lines 99-100) can be used alternatively to weights 19 and 25; it is further stated (at page 2 lines 82-85) that in an alternative embodiment the downward biasing means can be a pair of tension springs anchored below the platform 17 which supports the ladder 4.

6 The use of springs is disclosed more generally in claim 2 which reads

“A pain relieving exerciser whereby the patient can ascend and descend steps whilst being under traction from above and below by a varying number of springs attached to a belt. The belt will be positioned and tightened at waist level for sufferers of low back pain. The combination of the traction and the exercises should have the desired effect of easing the mis-placed joint or prolapsed disc back into position. The patient can also perform a knees bend, a side to side or a twisting exercise, again whilst being constantly under traction.”

whilst the description at page 2 lines 115-126 envisages that only a downwardly biasing force may be needed, and that the apparatus, whether using weights or springs, could be beneficial to all parts of the spine, including the neck, and to all joints in the body. The general principle stated at lines 127-130 is that the patient is constantly under traction, either from above or below the site of the pain.

7 The claim in Mr Foley's present application does not define any constructional features and so it is neither clear nor definitive of the matter for which protection is sought (as section 14(5) of the 1977 Act requires). However, nearly all the constructional features which I have identified in paragraph 4 are also to be found in the above passages in no.2170112. To that extent the invention is not new.

8 The only significant constructional differences that I can see between the present disclosure and no.2170112 are (i) the particular number of springs used in the photographs and (ii) the use of two separate belts, one for the top springs and one for the bottom springs, in photograph 2. However in my view it would be obvious for someone who was skilled in the art of constructing apparatus for remedial exercise to make such changes to the apparatus of no.2170112, depending on the particular location(s) at which traction needed to be applied. These changes are relatively minor workshop improvements which would be within the capacity of that skilled person - part of the common general knowledge of the art - and would not require any degree of invention on his or her part. They do not therefore involve an inventive step over no.2170112.

9 Further differences are (iii) the possible assistance of a physiotherapist to assist the patient and (iv) the modification of the belt to prevent slipping. However (iii) is nothing to do with the construction of the apparatus, and there is no indication of how (iv) is achieved. They cannot therefore be relied on to distinguish the invention from no.2170112.

10 I therefore find that the present invention, insofar as its scope can be determined, is not new and does not involve an inventive step. I reach this conclusion on the basis of no.2170112 alone. None of the other documents cited by the examiner appear to me to be of any greater relevance and indeed I do not think that that any of them either add to or detract from the above argument.

Amendment

11 The amendment submitted by Mr Foley with his letter of 19 March 2008 consists of a photograph and some brief supporting description of a "twist stepper" as a way of applying traction from below, but it was quite clearly not present in any way in the application as originally filed. Since under section 76(2) (mentioned above) nothing can be added which extends the original disclosure, I agree with the examiner that the amendment is not allowable. Since there is nothing new or inventive in the in the original disclosure, I therefore find that it is not possible to amend the application so as to obtain a valid patent.

Other matters

12 Mr Foley has raised some other matters in his submissions which are not for me to decide, but I will mention them briefly:

- i. He asks whether it would be possible to apply for a patent based on the springs and the stepper. It is not for me to advise what would be his prospects of obtaining a valid patent for this. However his chances will not have been helped by his above-mentioned disclosure of a stepper in correspondence which is open to public inspection, as this may invalidate any new application. This is unfortunate for Mr Foley, but he had previously been warned, in the examiner's first report on 23 November 2007, of the consequences of disclosing new matter in this way.
- ii. Mr Foley complains about infringement of his previous patent, no.2170122, but this appears to be based on nothing more than the similarities that he sees between his earlier invention and the specifications cited by the examiner against the present application. This does not necessarily prove that infringement has taken place, and in any case it would have been up to Mr Foley, not the Office, to take legal action to prevent infringement of his patent. However, such action is no longer possible since the patent on no.2170112 ceased on 24 January 2004.

- iii. Mr Foley believes that more assistance is needed for the innovator, but I note that the Office has referred him to its explanatory booklets which mention possible sources of further advice. In response to suggestions from the Office that his interests might be best served by employing a patent agent, Mr Foley says that he has not the time or money to do this. That is of course entirely a matter for him to decide.

Outcome

- 13 In view of my findings in paragraphs 10 and 11, I refuse the application under section 18(3) of the Act.

Appeal

- 14 If Mr Foley disagrees with anything in my decision, he has a right of appeal to the Patents Court. Under the Practice Direction to Part 52 of the Civil Procedure Rules, any such appeal must be lodged within 28 days of the date of the decision stated above.

R C KENNELL

Deputy Director acting for the Comptroller