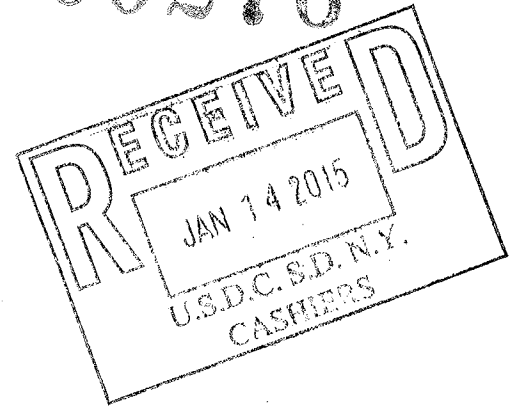


15 CV 00276

Robert L. Rimberg, Esq. (RR2453)  
Joel S. Schneck, Esq. (JS7019)  
GOLDBERG & RIMBERG PLLC  
Attorneys for Plaintiffs  
115 Broadway, Suite 302  
New York, New York 10006  
(212) 697-3250  
jss@grlawpllc.com



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>ATOMI INC.</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No.</b>
	)	
<b>v.</b>	)	
	)	
<b>CABEAU, INC.</b>	)	
	)	
<b>Defendant.</b>	)	

---

**COMPLAINT**

---

Plaintiff Atomi, Inc. (“Atomi”), by and through its attorneys, alleges as follows:

**I. INTRODUCTION**

1. Plaintiff Atomi, Inc. (“Atomi”) seeks a declaratory judgment that U.S. Design Patent No. D619,402 (“the ‘402 Patent”) is not infringed and that neither Atomi nor its products have infringed, induced others to infringe, or contributed to the infringement by others of the ‘402 Patent. This relief is necessary because Defendant Cabeau, Inc. (“Cabeau”) has contacted Atomi and on the basis of asserted infringement of the ‘402 Patent, demanded that Atomi cease and desist from the manufacture, sale, offer for sale and/or import of Atomi’s travel pillows. In addition, Cabeau has contacted

a third party that purchases Atomi's travel pillows and interfered with Atomi's business relationship with the third party on the basis of the third party's sale of Atomi's travel pillows that are alleged to infringe the '402 Patent. The third party, in turn, has notified Atomi of Cabeau's claims and has asked Atomi to defend or/or indemnify them against those claims, as well as stated that the third party will not purchase additional travel pillows from Atomi until this issue is resolved. Cabeau's claims and references to Atomi's products have placed a cloud over Atomi and its products, have injured Atomi's business relationships, and have created a concrete and immediate justiciable controversy between Atomi and Cabeau.

## **II. PARTIES**

2. Atomi is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 10 West 33<sup>rd</sup> Street, Suite 520, New York, NY 10001.

3. On information and belief, Cabeau, Inc. is a California company organized and existing under the laws of the State of California, and has its principal place of business at 5850 Vanowen Ave., Suite 100, Woodland Hills, CA 91367.

## **III. JURISDICTION AND VENUE**

4. For Count 1, this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 2201, 1331, 1338(a), 1338(b), because this action arises under the patent laws and related anticompetitive activity, and seeks relief under Federal Declaration Judgment Act.

5. For Count 2, this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 2201, 1331, 1338(b) because this action arises as a claim of unfair competition joined with a substantial and related claim under the patent laws.

6. For Count 3, this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 based upon diversity of citizenship, and pursuant to this Court's supplemental jurisdiction, 28 U.S.C. § 1367.

7. For Count 4, this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 based upon diversity of citizenship, and pursuant to this Court's supplemental jurisdiction, 28 U.S.C. § 1367.

8. The proper venue for this action is this judicial district, pursuant to 18 U.S.C. § 1965(a) and 18 U.S.C. § 1391, in that Defendant transacts substantial business in the Southern District of New York. Venue is also proper in this judicial district pursuant to 18 U.S.C. § 1965(b) because, to the extent any Defendant may reside outside of this district, the ends of justice require such Defendant or Defendants to be brought before this Court.

### **FACTS**

9. Cabeau purports to be the current owner of the '402 Patent, entitled "Travel Pillow." The '402 Patent issued on July 13, 2010. A copy of the '402 Patent is attached hereto as Exhibit A.

10. On information and belief, Cabeau sells a travel pillow under the EVOLUTION PILLOW trademark ("Cabeau pillow"). The Cabeau pillow has a U-shape with a back and arms portions under the EVOLUTION PILLOW trademark. The back of the Cabeau pillow is flat on the outside and rounded on the inside. The arms have a

stepped rise defined by a lower plateau and a distinct upper section with a clear boundary between the lower plateau and upper section. The Cabeau pillow has a cinch in the form of two strings attached to the ends of the arms and which are couplable by a connector that releases the strings. The Cabeau pillow is sold with trade dress identifying the travel pillow as the EVOLUTION PILLOW. A photograph of a Cabeau pillow is seen in Exhibit B attached hereto.

11. On information and belief, the Cabeau pillow is marketed and sold in association with notice of patent marking of the '402 Patent. A copy of point-of-sale marketing materials identifying the '402 Patent in association with the Cabeau pillow is seen in Exhibit C.

12. Atomi sells and intends to continue selling a travel pillow ("pillow in issue") having a U-shape with a back and arm portions. The back is flat on the outside and rounded on the inside. The arms have a rounded upper surface that smoothly rises to a top surface. The pillow includes a pouch flush against an outer side wall of one of the arms of the pillow. The pillow has a cinch in the form of two strings attached to the ends of the arms and which are couplable by a connector that releases the strings. A photograph of a pillow in issue is seen in Exhibit D. The pillow in issue is sold with trade dress identifying the travel pillow as ULTIMATE PILLOW MEMORY FOAM TRAVEL PILLOW and sold under the trademark ATOMI™. A photograph of the pillow in issue as sold in trade dress is seen in Exhibit E.

13. On or around December 19, 2014, counsel for Cabeau, Inc. ("Cabeau") sent a demand letter to plaintiff Atomi, Inc. ("Atomi") regarding the travel pillows in issue, claiming patent infringement of U.S. Design Pat. No. D619402 ("the '402 Patent).

14. On or around December 29, 2014, counsel for Atomi wrote a letter delivered via email to counsel for Cabeau explaining why there was no infringement of the '402 Patent.

15. On or around December 29, 2014, counsel for Atomi wrote a letter delivered via email to counsel for Cabeau explaining that the design of the Cabeau pillow does not read on the claimed design of the '402 Patent and is thus mismarked with the '402 Patent.

16. On information and belief, after notice of mismarking, Cabeau continues to sell the Cabeau pillow mismarked with the '402 Patent.

17. The Marmaxx Group of companies (T.J. Maxx and Marshalls stores) is a customer of Atomi and purchases travel accessories from Atomi.

18. The Marmaxx Group purchases Atomi's pillow in issue for resale at its stores.

19. On information and belief, on or around January 9, 2015, Cabeau contacted Kathryn Caeser, the travel accessories buyer for Marmaxx stores, and threatened that Marmaxx stores must immediately discontinue sale of the Atomi pillow in issue.

20. On information and belief, as a direct result of such contact, The Marmaxx Group has decided to not re-order additional stock of the pillow in issue for resale at its Marmaxx stores to the financial harm of Atomi.

21. Cabeau's claims and allegations have placed a cloud over Atomi and its products, have injured and are injuring Atomi's business and business relationships, and

have created a concrete and immediate justiciable controversy between Atomi and Cabeau.

**COUNT 1**  
**DECLARATORY JUDGMENT THAT ATOMI'S SALE OF THE PILLOW IN**  
**ISSUE DOES NOT INFRINGE THE '402 PATENT**

22. Atomi incorporates by reference the allegations set forth in Paragraphs 1 through 21 as if fully restated here.

23. Neither Atomi nor its products have infringed, induced others to infringe or contributed to the infringement by others of the '402 Patent.

24. Atomi seeks and is entitled to a declaratory judgment that neither it nor its products infringe nor have infringed under 35 USC § 271 (or any subsection thereof) any claim of the '402 patent.

**COUNT 2**  
**DECLARATORY JUDGMENT THAT CABEAU IS LIABLE**  
**FOR FALSE ADVERTISING OF ITS PILLOW**

25. Atomi incorporates by reference the allegations set forth in Paragraphs 1 through 24 as if fully restated here.

26. Atomi seeks and is entitled to a declaratory judgment that Cabeau is liable under 15 USC § 1125(a) (Lanham Act §43(a)(1)(B)), because Cabeau's sales of the Cabeau pillow in association with the '402 Patent are a bad faith, false statement used in advertising and likely to mislead consumers under the unfair competition laws.

**COUNT 3**

**DECLARATORY JUDGMENT THAT CABEAU IS LIABLE  
FOR COMMERCIAL DISPARAGEMENT OF ATOMI'S PILLOW**

27. Atomi incorporates by reference the allegations set forth in Paragraphs 1 through 26 as if fully restated here.

28. Cabeau has made public assertions that were false and have damaged the business of Atomi.

29. As a result of Cabeau's commercial disparagement, Atomi has lost business from the Marmaxx Group.

**COUNT 4**

**INTERFERENCE WITH CONTRACT AND BUSINESS RELATIONS**

30. Atomi incorporates by reference the allegations set forth in Paragraphs 1 through 29 as if fully restated here.

31. Cabeau interfered with Atomi's contract and caused injury to its business relationships through its improper conduct.

32. As a result of Defendant's illegal conduct, Cabeau has lost such beneficial business relationships it had.

33. Defendant was aware that the conduct was improper and would cause injury to Atomi.

34. As a result of Defendant's tortuous interference, Atomi has been injured in an amount to be determined, but believed to be at least \$100,000.00.

**VI. PRAYER FOR RELIEF**

**AS TO COUNT I**

35. That the Court declare that Atomi's sale of the pillow in issue does not infringe the '402 Patent.

**AS TO COUNT II**

36. That the Court declare that Cabeau has made bad faith, false statements used in advertising and likely to mislead consumers.

37. That the Court enjoin Cabeau from making such false statements in advertising and likely to mislead consumers.

38. That the Court grant monetary damages to compensate Atomi for the false statement in advertising and likely to mislead consumers.

**AS TO COUNT III**

39. That the Court declare that Cabeau has commercially disparaged Atomi.

40. That the Court enjoin Cabeau from commercial disparagement of Atomi.

41. That the Court grant monetary damages to compensate Atomi for the commercial disparagement.

**AS AND TO COUNT IV**

42. That the Court determine that Cabeau has interfered with Atomi's business and contract opportunities.

43. That the Court grant monetary damages to compensate Atomi for the interferences with business and contract opportunities.




**GENERAL**

44. That the Court grant reasonable attorneys' fees incurred in connection with this action.

45. That the Court grant Atomi further relief that the Court deems just and proper.

Dated: New York, New York  
January 13, 2015

  
/s/ Joel S. Schneck  
Robert L. Rimberg (RR2453)  
Joel S. Schneck (JS7019)  
115 Broadway, Suite 302  
New York, New York 10006  
(212) 697-3250

# EXHIBIT “A”



US00D619402S

(12) **United States Design Patent**  
**Sternlight et al.**

(10) **Patent No.:** US D619,402 S  
 (45) **Date of Patent:** \*\* Jul. 13, 2010

(54) **TRAVEL PILLOW**

(57) **CLAIM**

(76) Inventors: **David Bret Sternlight**, 22339 Hart St.,  
 Canoga Park, CA (US) 91303; **Kyna  
 Rose Sternlight**, 22339 Hart St., Canoga  
 Park, CA (US) 91303

What is claimed is the ornamental design for a travel pillow,  
 as shown and described.

(\*\*) Term: **14 Years**

**DESCRIPTION**

(21) Appl. No.: **29/353,886**

FIG. 1 is a perspective view of a first embodiment of a travel  
 pillow, showing the new design;

(22) Filed: **Jan. 15, 2010**

FIG. 2 is a front elevational view thereof;

(51) **LOC (9) Cl.** ..... **06-09**

FIG. 3 is a rear elevational view thereof;

(52) **U.S. Cl.** ..... **D6/601**

FIG. 4 is a left-side elevational view thereof;

(58) **Field of Classification Search** ..... D6/595-601,  
 D6/604, 605; 5/630, 633, 636-638, 640,  
 5/644, 652-654, 655.3, 655.6, 655.9, 656,  
 5/657, 657.5; D21/803, 804

FIG. 5 is a right-side elevational view thereof;

FIG. 6 is a top plan view thereof;

See application file for complete search history.

FIG. 7 is a bottom plan view thereof;

(56) **References Cited**

FIG. 8 is a perspective view of a second embodiment thereof;

**U.S. PATENT DOCUMENTS**

FIG. 9 is a front elevational view thereof;

1,468,072 A *	9/1923	Ogle	5/654
6,230,348 B1 *	5/2001	Patrikakis	5/636
D445,624 S *	7/2001	Futagami	D6/604
D481,247 S *	10/2003	Roberts et al.	D6/604
D582,713 S *	12/2008	Baldwin	D6/601

FIG. 10 is a rear elevational view thereof;

FIG. 11 is a left-side elevational view thereof;

FIG. 12 is a right-side elevational view thereof;

FIG. 13 is a top plan view thereof; and,

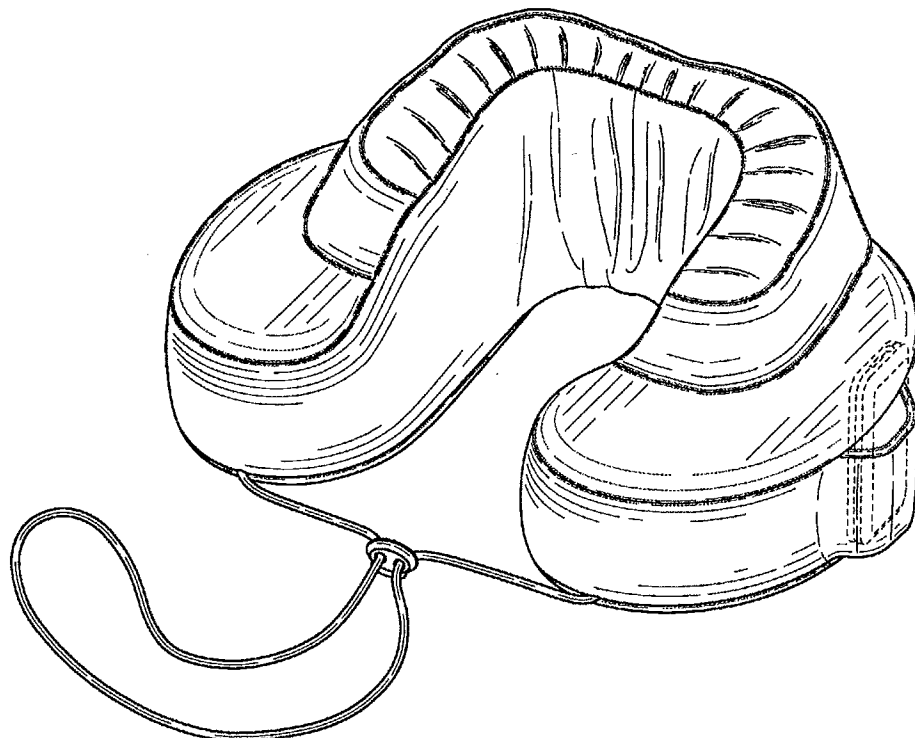
FIG. 14 is a bottom plan view thereof.

\* cited by examiner

The broken lines showing an electronic device in FIG. 1 are  
 included for the purpose of illustrating the invention in use,  
 and form no part of the claimed design.

*Primary Examiner*—Janice E Seeger  
 (74) *Attorney, Agent, or Firm*—QuickPatents, Inc.; Kevin  
 Prince

**1 Claim, 11 Drawing Sheets**

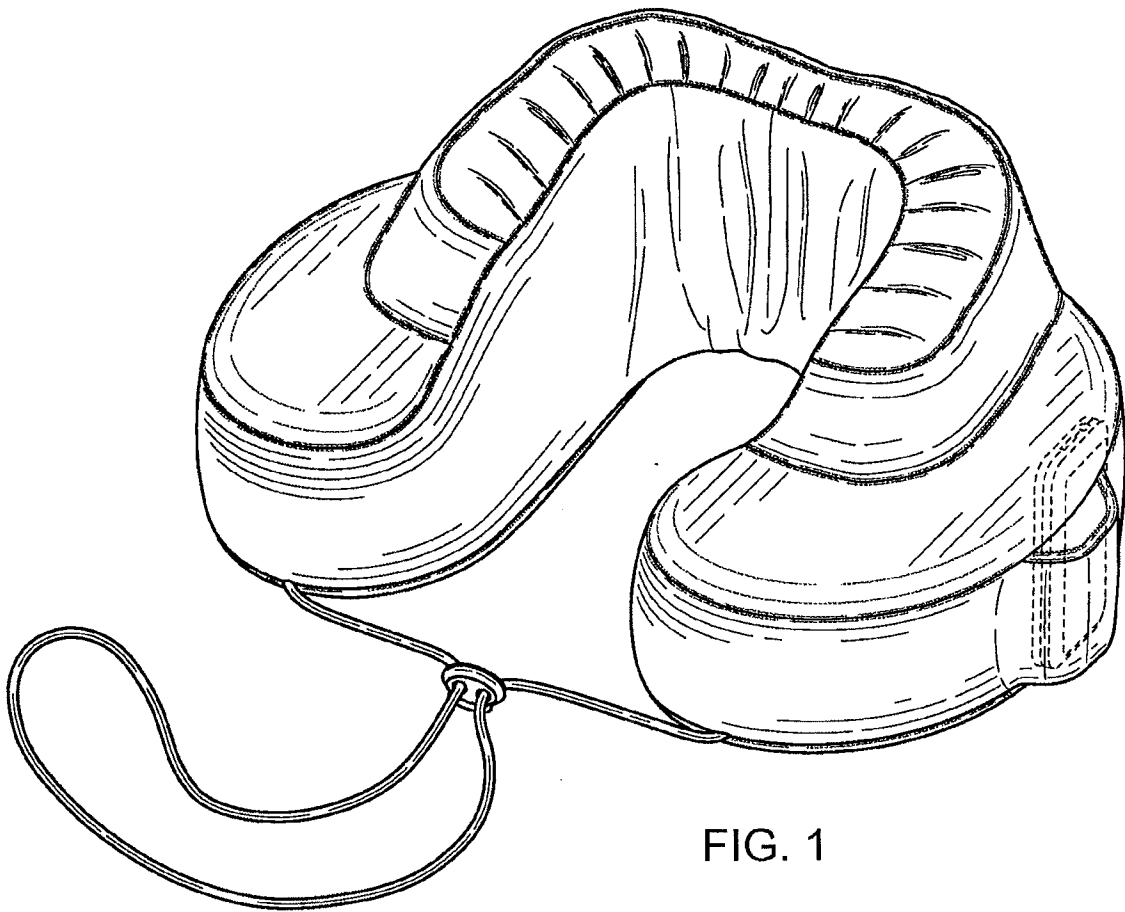


**U.S. Patent**

**Jul. 13, 2010**

**Sheet 1 of 11**

**US D619,402 S**



**FIG. 1**

U.S. Patent

Jul. 13, 2010

Sheet 2 of 11

US D619,402 S

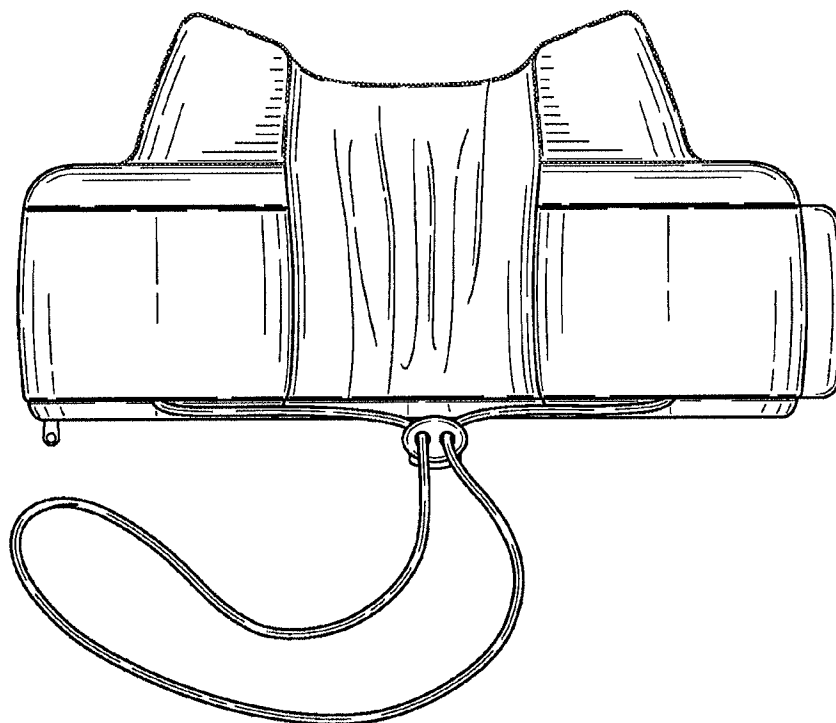


FIG. 2

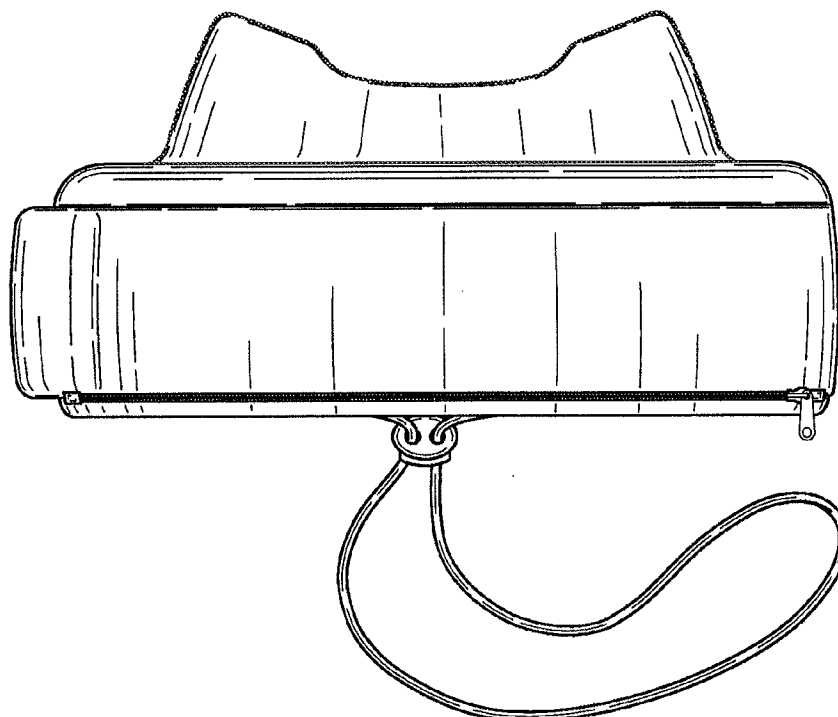


FIG. 3

U.S. Patent

Jul. 13, 2010

Sheet 3 of 11

US D619,402 S

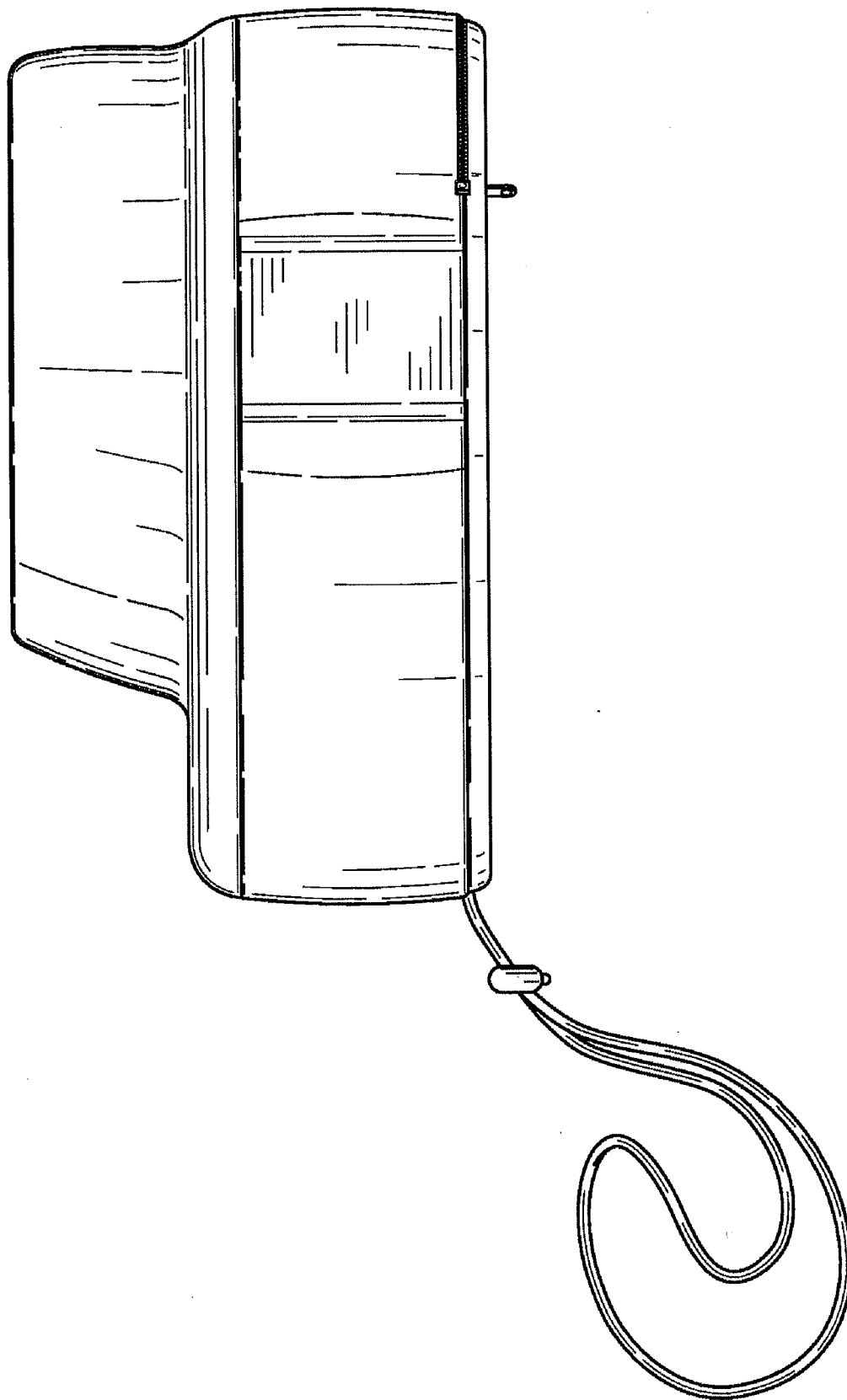


FIG. 4

U.S. Patent

Jul. 13, 2010

Sheet 4 of 11

US D619,402 S

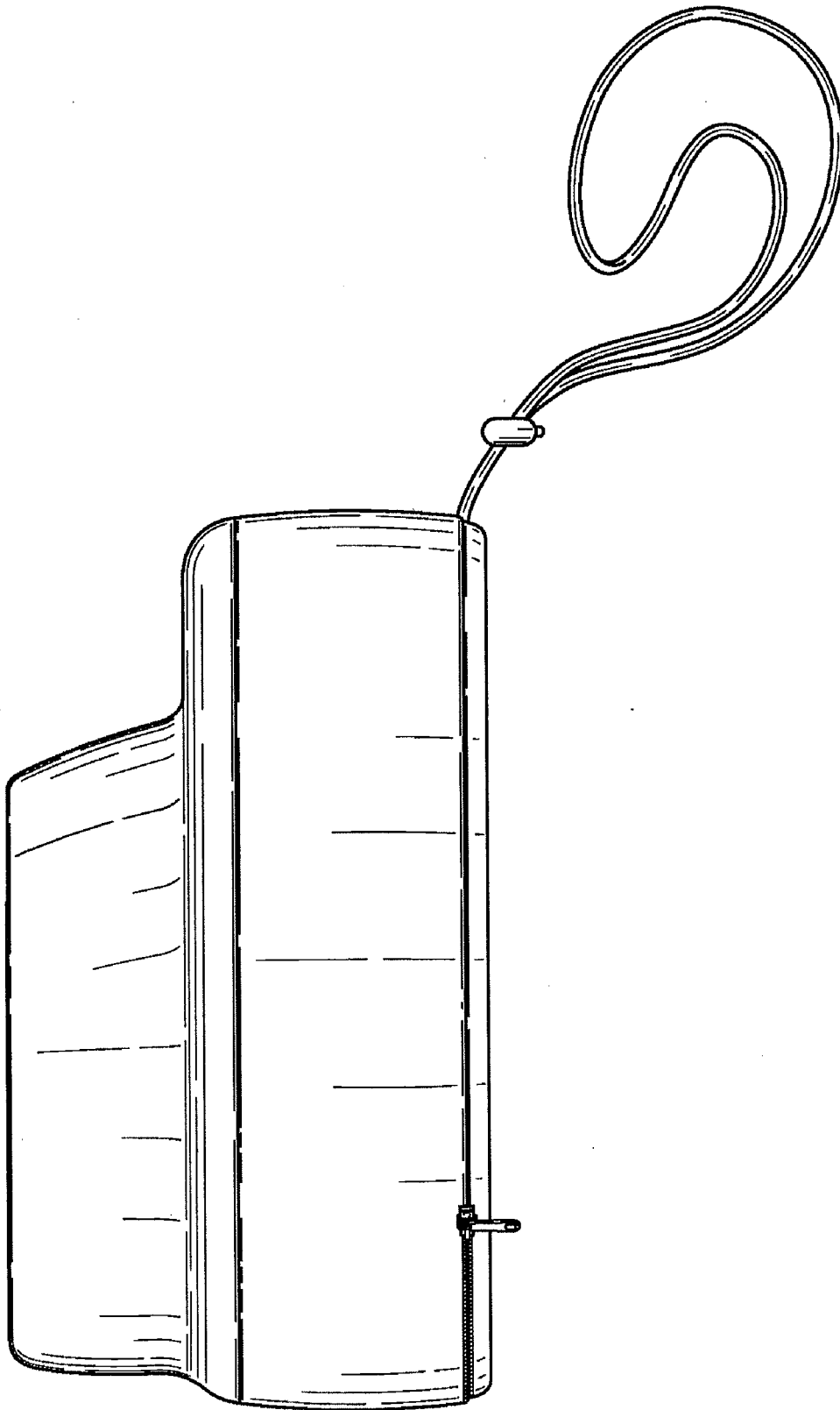


FIG. 5

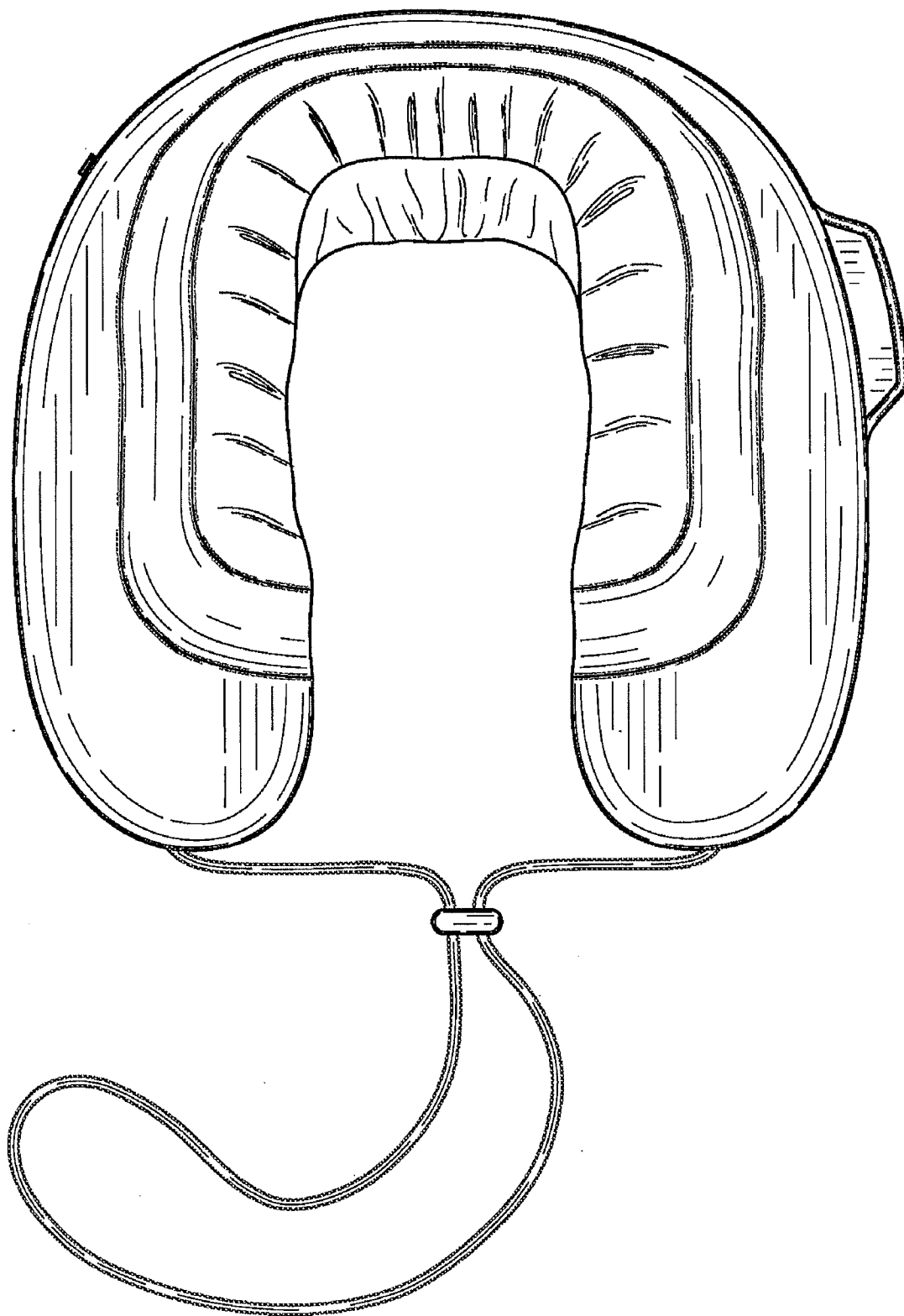


FIG. 6



U.S. Patent

Jul. 13, 2010

Sheet 6 of 11

US D619,402 S

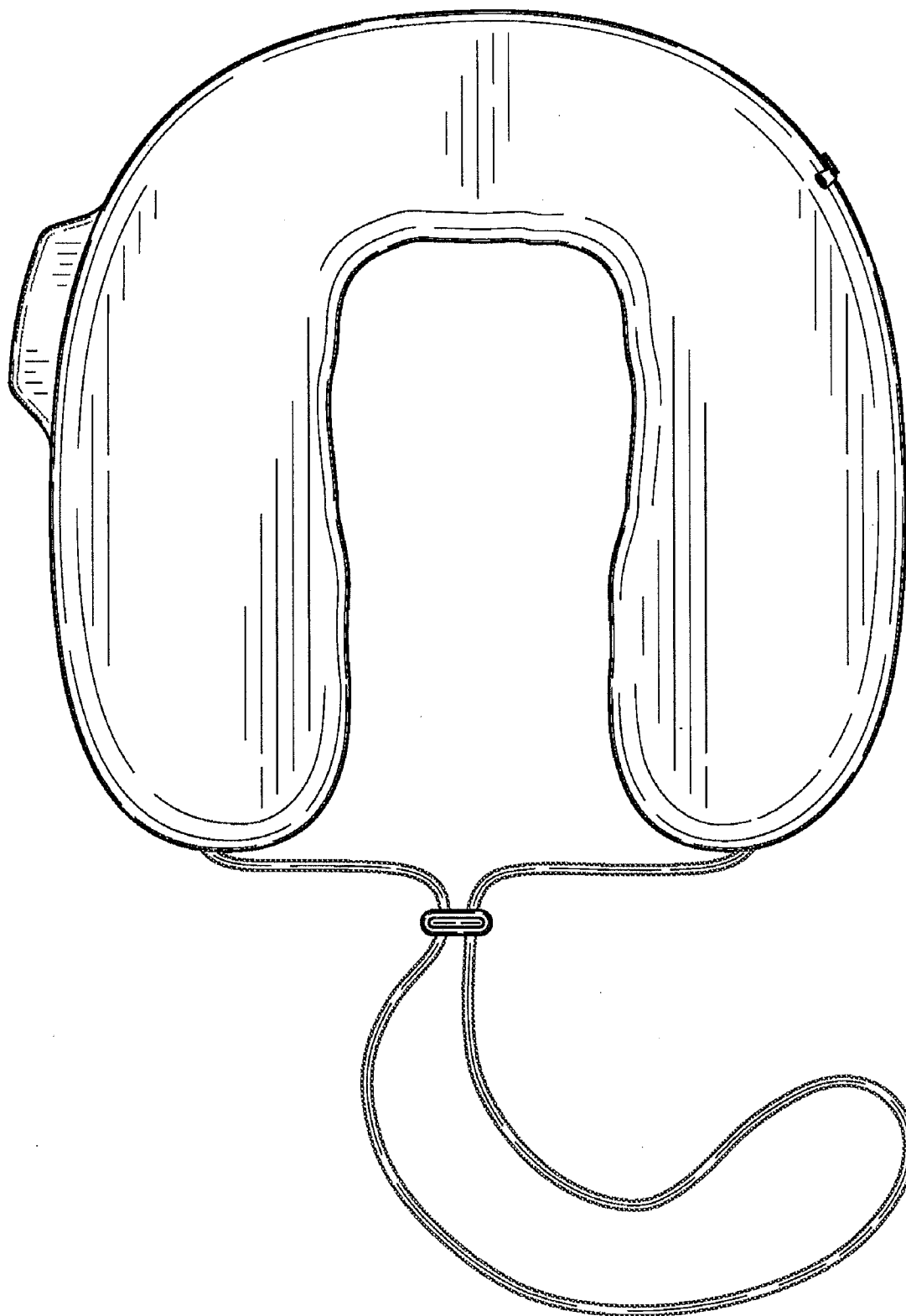


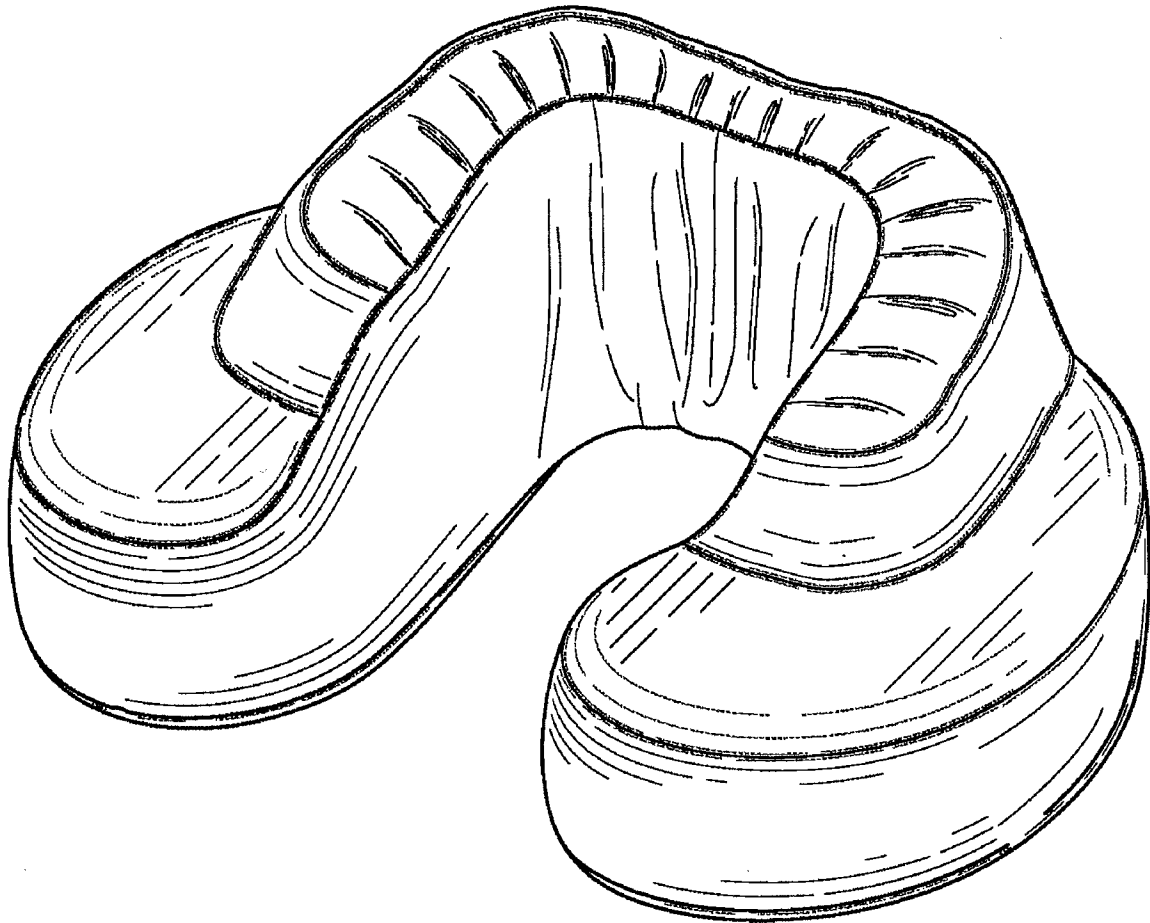
FIG. 7

**U.S. Patent**

**Jul. 13, 2010**

**Sheet 7 of 11**

**US D619,402 S**



**FIG. 8**

U.S. Patent

Jul. 13, 2010

Sheet 8 of 11

US D619,402 S

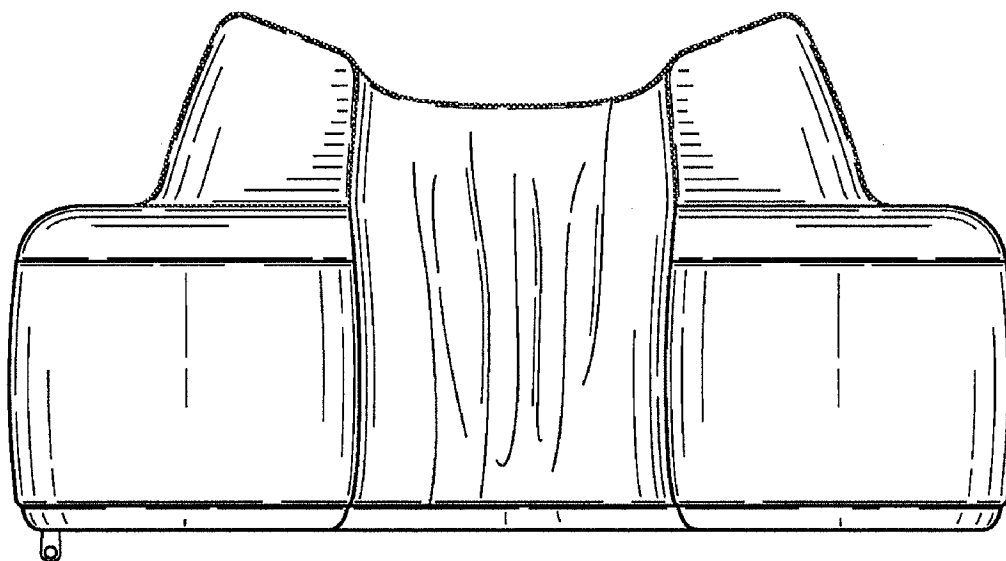


FIG. 9

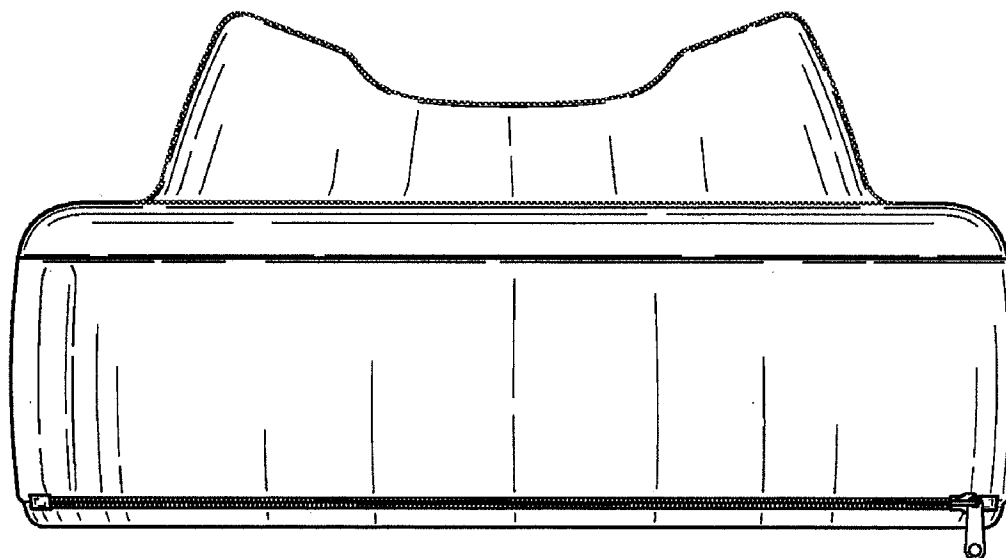


FIG. 10

U.S. Patent

Jul. 13, 2010

Sheet 9 of 11

US D619,402 S

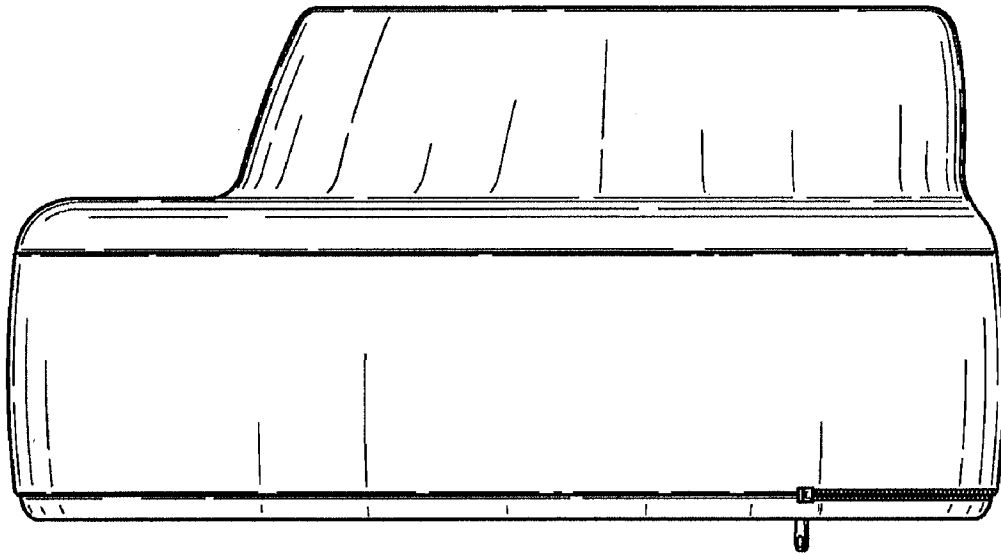


FIG. 11

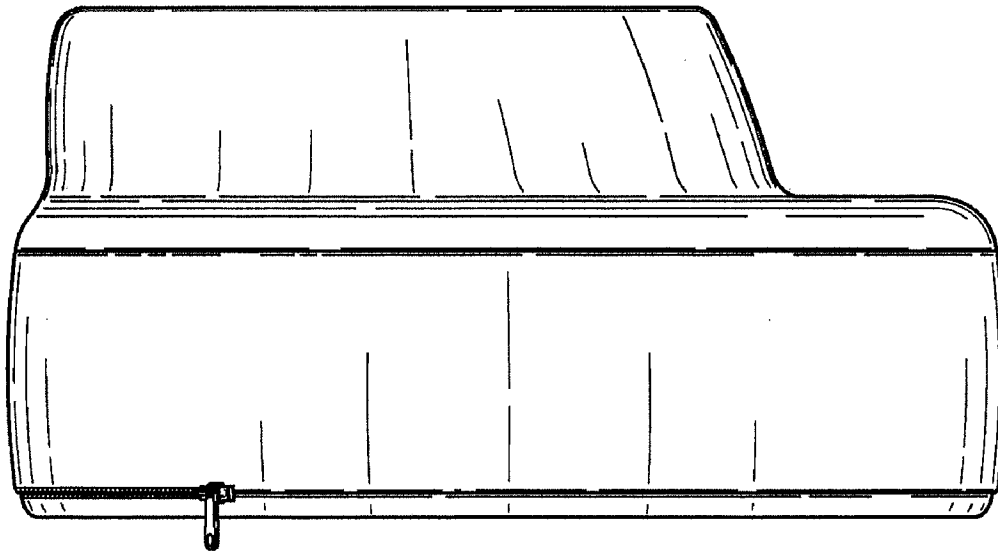


FIG. 12

U.S. Patent

Jul. 13, 2010

Sheet 10 of 11

US D619,402 S

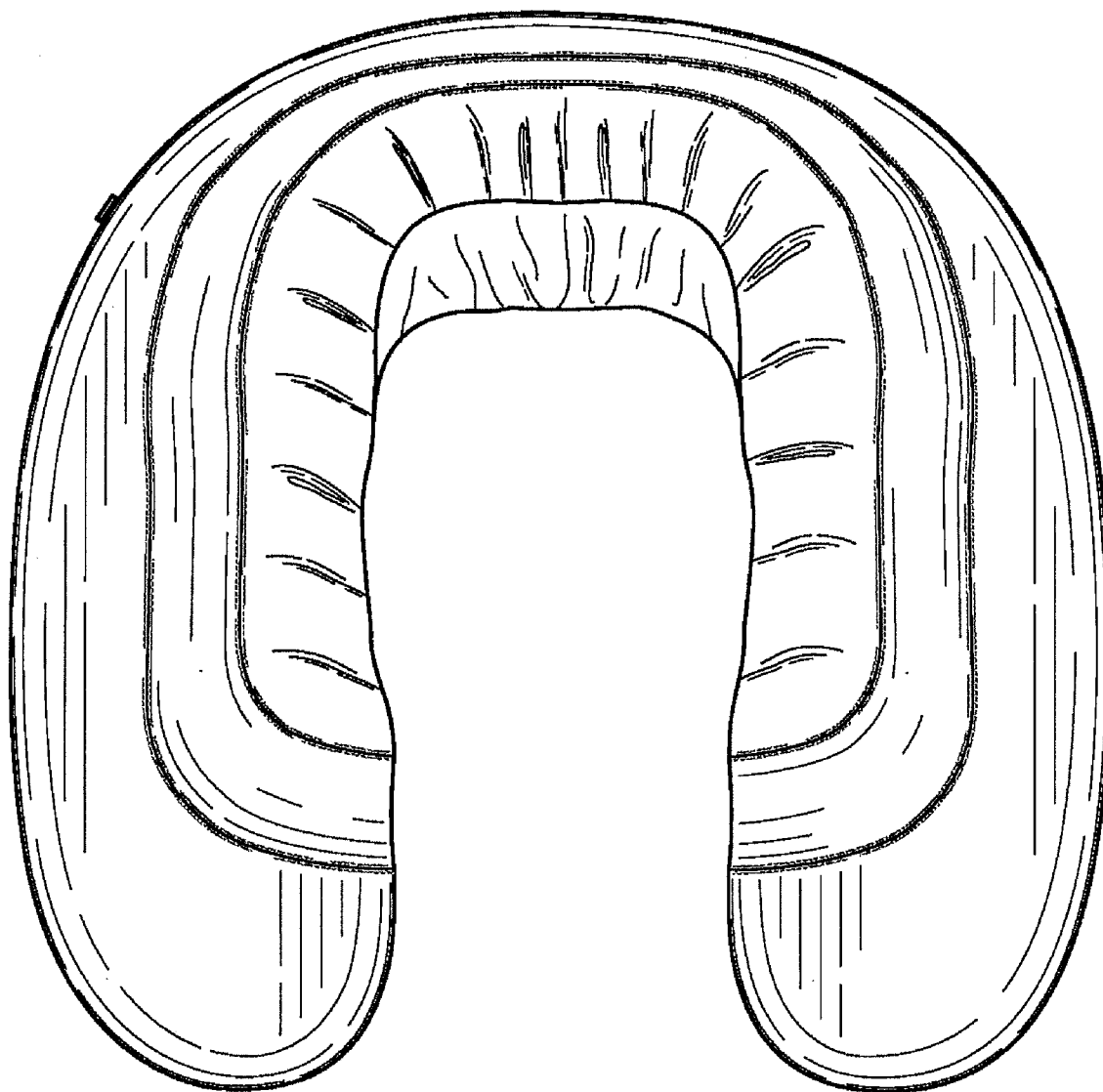


FIG. 13

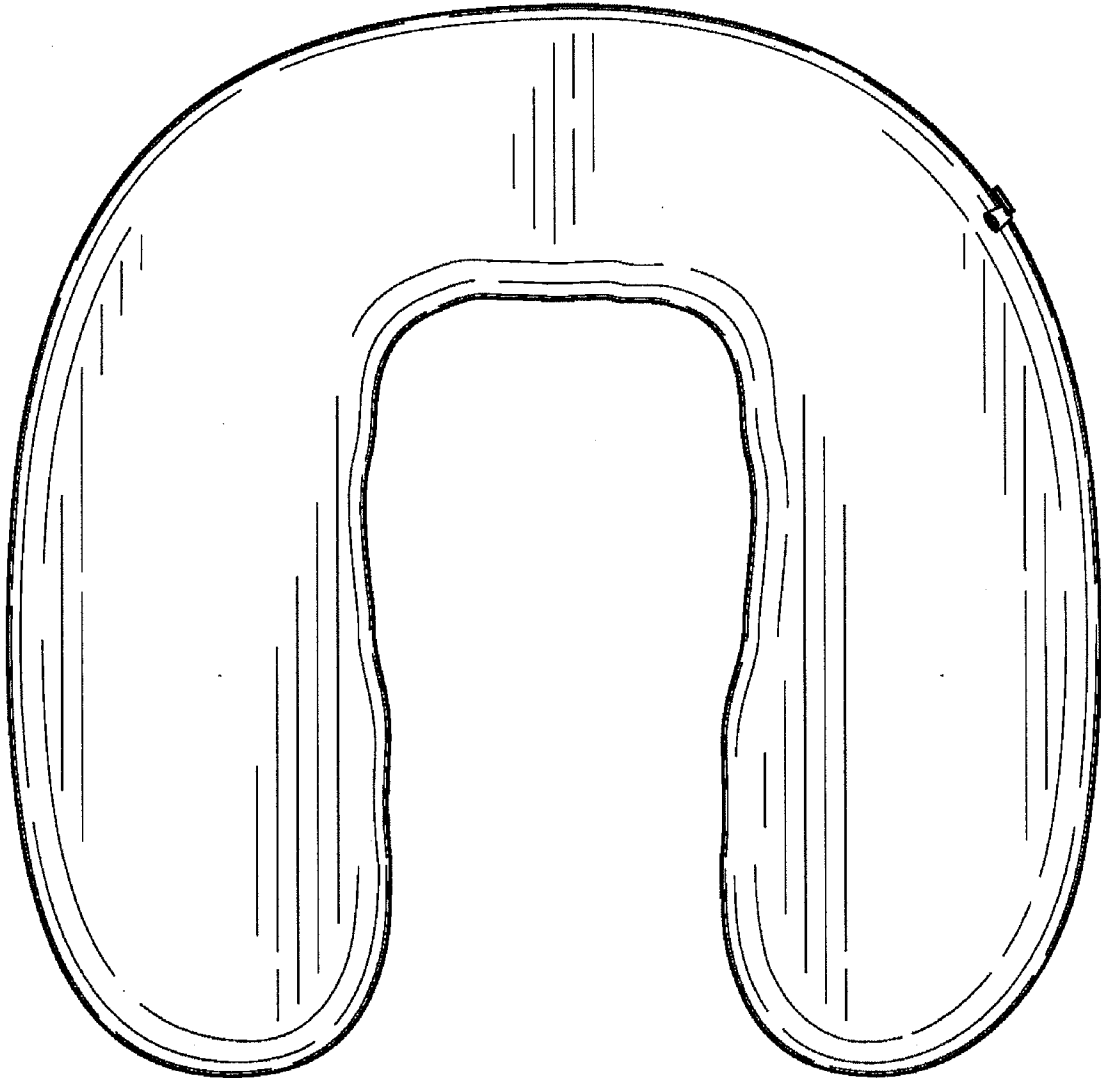


FIG. 14

# EXHIBIT “B”



by Cabeau

The  
That A

ABOUT

PRODUCTS

MEDIA

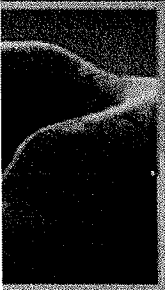
FAQ

CO



**NOW**  
**99**

- Responsive Memory Foam
- Raised Side Supports
- Media Pouch for Phone
- Washable Velour Cover
- Adjustable Sliding Toggles
- Compact Travel Bag



**SHIPPING**  
**\$60 or more!**



*Check  
It Out!*

Best Neck Pillow - Best Travel Pillow



**Evolution P**  
**The Travel Pillow T**



# EXHIBIT “C”

# Memory Foam Neck Pillow and Travel Pillow with Portable Bag - Cabeau Blue Evolution Pillow

by Cabeau

★★★★☆ 1,075 customer reviews

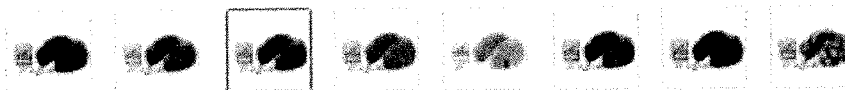
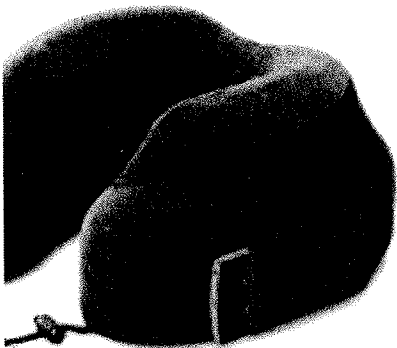
Price: \$39.99 & FREE Shipping. FREE Returns. Details

In Stock.

Sold by Cabeau and Fulfilled by Amazon.

Want It Wednesday, Jan. 14? Order within 2 hrs 9 mins and choose Two-Day Shipping at checkout. Details

Color: Blue



- COMPACT TRAVEL BAG that will compress the pillow down to 1/4 its size and can attach to your luggage/bag -- FREE MEMORY FOAM EARPLUGS are included
- MEMORY FOAM CORE for high quality comfort that responds to you
- WASHABLE VELOUR COVER helps to eliminate germs and has ADJUSTABLE FRONT TOGGLES to hold the pillow in place
- RAISED SIDE SUPPORTS offer 360° head and chin comfort and a FLAT BACK CUSHION that won't push your head forward
- MEDIA POUCH to hold your phone or mp3 player while you listen to music hands-free and lap-free

Image to zoom in

together

Price for all three: \$82.91

Add all three to Cart

Add all three to Wish List

Show availability and shipping details

Memory Foam Neck Pillow and Travel Pillow with Portable Bag - Cabeau Blue Evolution Pillow \$39.99

Travel Pillow - Winner of British Invention of the Year 2013 - consistently the #1 Best Selling ... \$29.95

Travel Pillow - Comfortable Sleep Mask & Ear Plug Set. Includes Carry Pouch for Eye Mask and ... \$12.97

Items This Item Also Bought

...and THIS ITEM ALSO BOUGHT



CABEAU "Midnight Magic" Adjustable Sleep Mask - Guaranteed 100% Blackout Shades  
★★★★☆ 30  
\$26.99 Prime

The Premier Class Travel Blanket.



Travelrest - 4-in-1 Premier Class Travel Blanket with pocket. Covers shoulders. Soft...  
★★★★☆ 90  
\$29.95 Prime



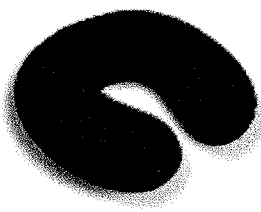
Travelrest - The Ultimate Inflatable Travel Pillow (#1 Best Selling on Amazon.de)...  
★★★★☆ 1,259  
\$26.95 Prime

The Ti

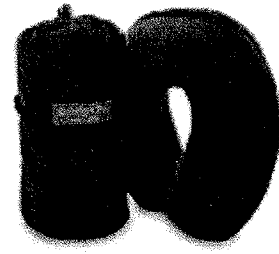


Tra  
Cla  
po  
Sol  
★  
\$2

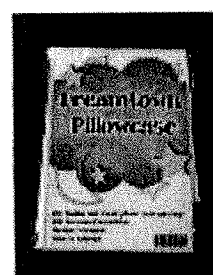
Related To This Item (What's this?)



The Siesta Travel Pillow - Orthopedic Memory Foam - Advanced Neck Support fo...  
★★★★☆ (15)  
\$13.95 Prime



The New Comfort Pal Travel Neck Pillow - 50% Off Today -The Best Travel ...  
★★★★☆ (96)  
\$23.75 Prime



Toddler Pillowcase by Dreamtown Kids, 100% Premium Pima Cotton, Fits 14X...  
\$15.99 Prime



Trav  
Bliss  
Pillo  
★★  
\$15.

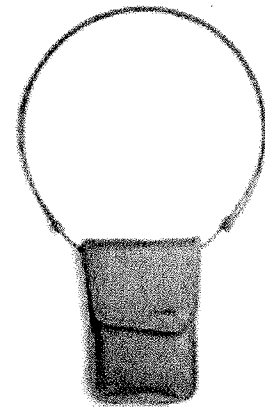
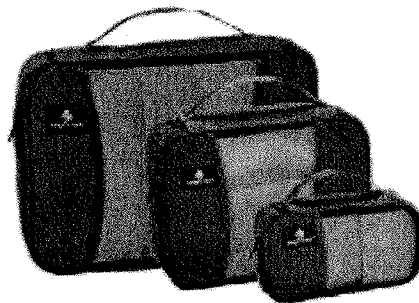
Product Promotions

...99 instead of \$39.99! Get the Amazon.com Rewards Visa card and you'll automati  
l. Apply now.

Pillow is the first travel pillow that actually works! (1) Made of high quality, responsive memory foam (2) Features a durable velour cover (3) Uses adjustable front toggles to hold the pillow in place (4) Has reinforced front support (5) Designed with a flat back so it won't push your head forward (6) Features a medium density foam core (7) Includes a set of free memory foam ear plugs (8) Comes with its own water repellent travel bag. Because of its portable compactibility, the Evolution Pillow can also be used for road trips, su... and travel in the car, bus, plane, or train. It only takes one time using it to understand why it's the best in the world. (U.S. Patent D619402. Multiple U.S. and Worldwide Patents Pending.)

**External Websites** (What's this?)

Sponsor



Eagle Creek Pack-It Specter Compression Cube Set  
 ★★★★★ (82)  
 \$38.00  
 + \$5.95 Est. shipping  
 [Moosejaw](#)  
 [Mountaineering](#)

Eagle Creek Pack-It Cube Set Earth Green, One Size  
 ★★★★★ (99)  
 \$26.50  
 + \$8.95 Est. shipping  
 [Dogfunk.com.](#)

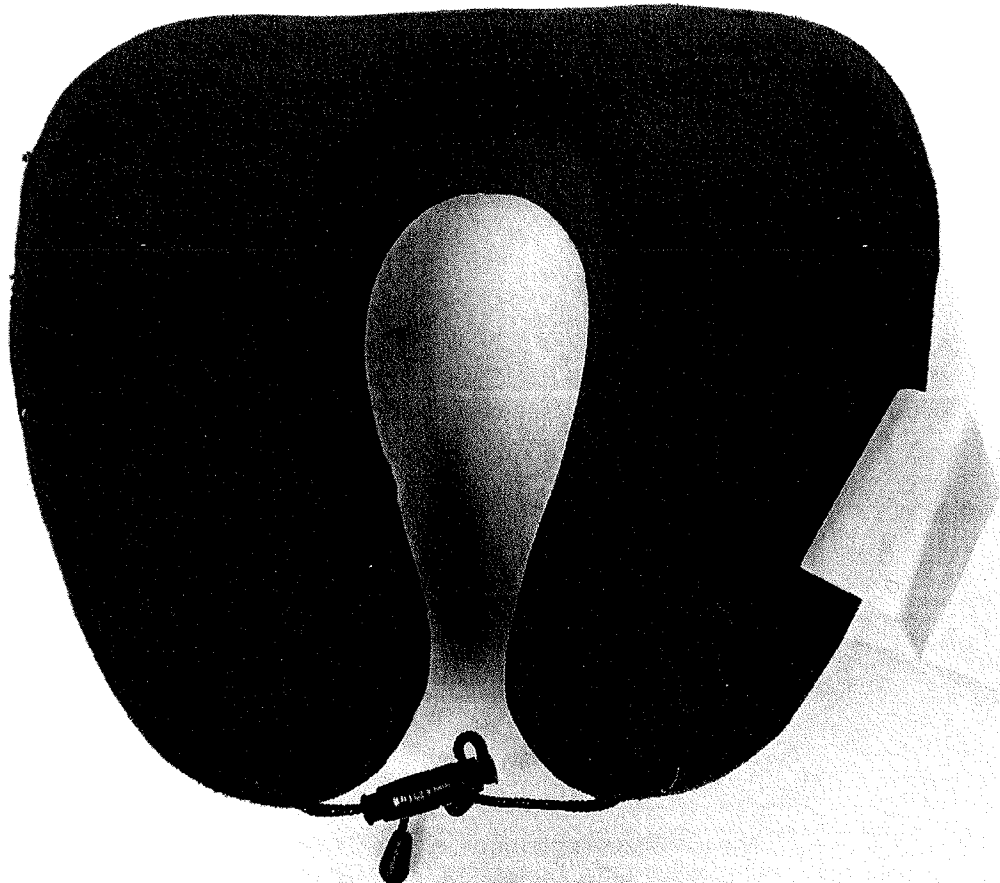
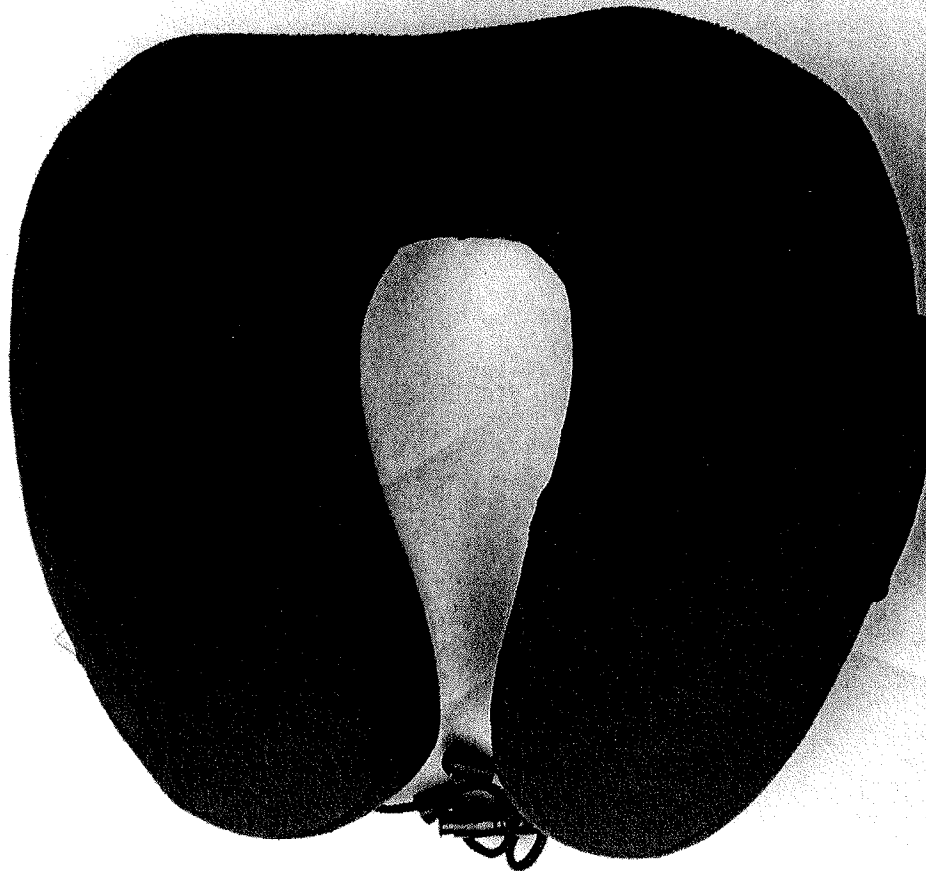
Pacsafe CoverSafe 75 Secret Neck Pouch Neutral Grey, One Size  
 ★★★★★ (104)  
 \$17.56  
 + \$8.95 Est. shipping  
 [Dogfunk.com.](#)

Eagle Creek Underwear  
 Rose Gold  
 ★★★★★  
 \$13.99  
 + \$8.95 Est. shipping  
 [Dogfunk.com.](#)

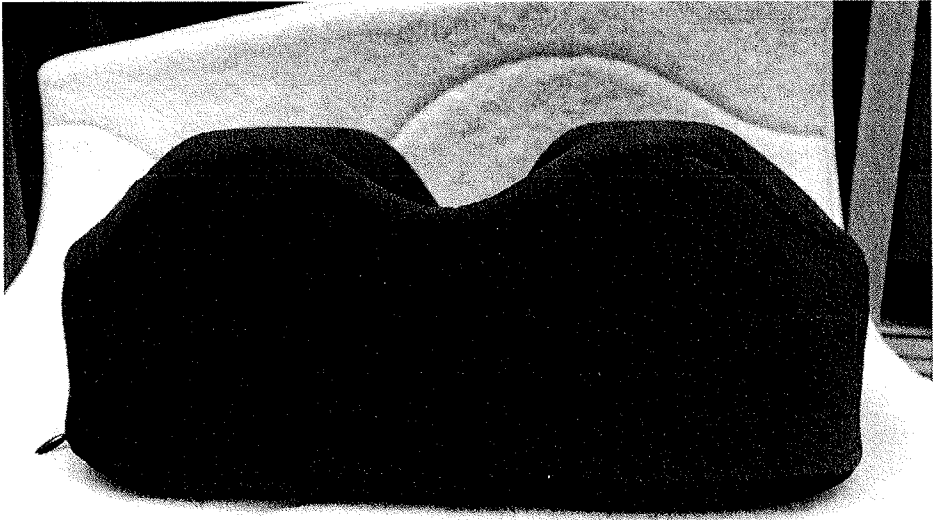
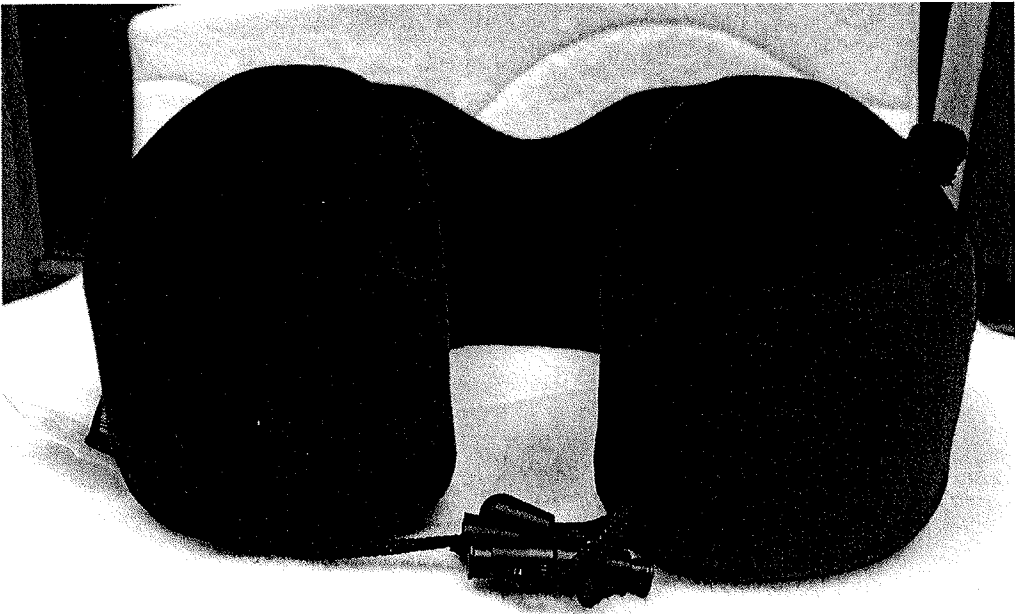
**Related This Item Also Viewed**

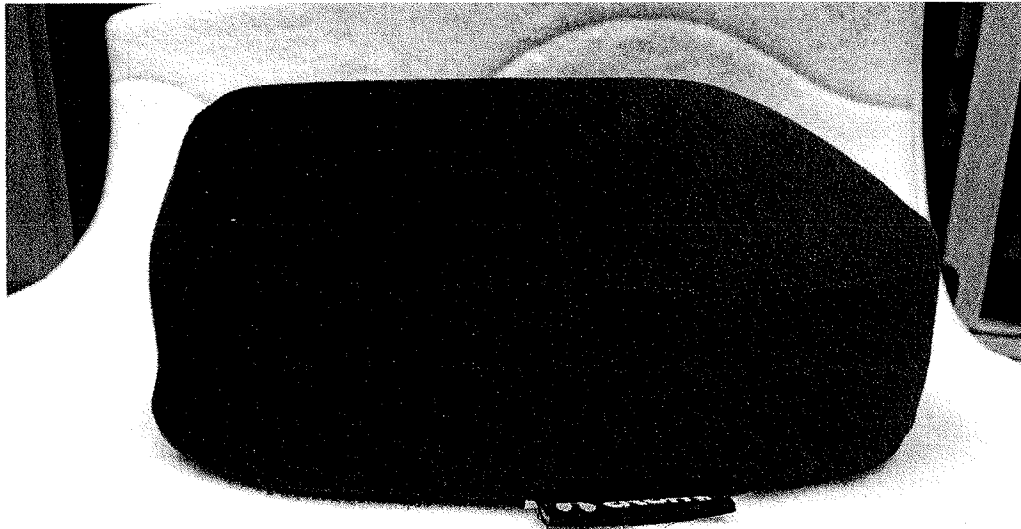
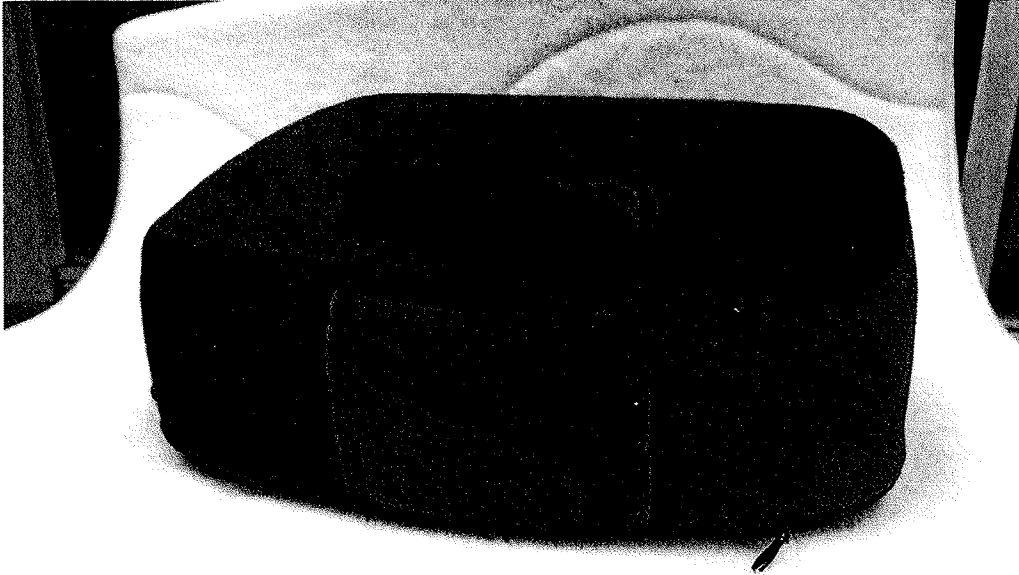


# EXHIBIT “D”











# EXHIBIT “E”

