

1       The opinion in support of the decision being entered today was *not* written  
2                   for publication and is *not* binding precedent of the Board  
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4                   UNITED STATES PATENT AND TRADEMARK OFFICE  
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7                   BEFORE THE BOARD OF PATENT APPEALS  
8                                   AND INTERFERENCES  
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11                   *Ex parte GAIL L. GERSTMAR*  
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14                   Appeal 2007-0270  
15                   Application 10/434,712  
16                   Technology Center 3700  
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19                   Decided: March 30, 2007  
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22       *Before:* TERRY J. OWENS, MURRIEL E. CRAWFORD, and  
23                   STUART S. LEVY, *Administrative Patent Judges.*

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25       LEVY, *Administrative Patent Judge.*  
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28                   DECISION ON APPEAL  
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30                   STATEMENT OF CASE

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32       Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection  
of claims 1-5 and 7. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

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34       Appellant invented a modular cervical support and redefinition  
structure (Specification 1).

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36       Claim 1 is representative of the invention and reads as follows:

1       1. Modular cervical support and redefinition structure  
2       comprising

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4           a collar having a central cervical region, and possessing  
5       opposite-side inside and outside surfaces and upper and lower  
6       edges, removeably wrapable about a user's neck with said  
7       inside surface disposed directly adjacent the neck, said central  
8       cervical region disposed against the cervix, and said outside  
9       surface facing substantially 180° rearwardly away from the  
10      neck, and

11  
12           pillow structure removeably attachable to said outside  
13       surface of said collar at the location of said central cervical  
14       region, and substantially vertically centrally between said upper  
15       and lower edges, to coact with the collar, outwardly and  
16       rearwardly thereof, in the furnishing of cervical support for the  
17       user with such coaction taking place along a line-of-action  
18       which extends from the pillow structure, through said collar's  
19       opposite-side inside and outside surfaces, and through the  
20       central cervical region of the collar to the user's cervix, and  
21       with this line-of-action lying in a plane which, with said support  
22       and redefinition structure in use by a user, intersects said collar,  
23       said pillow structure, and the user's neck and cervix, at a  
24       location which is generally vertically centered on the user's  
25       cervix.

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27       The Examiner rejected claims 1- 5 and 7 under 35 U.S.C. § 102(b) as  
28       being anticipated by Flinsch.

29       The prior art relied upon by the Examiner in rejecting the claims on  
30       appeal is:

31           Flinsch    May 14, 1901  
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33       Appellant contends, *inter alia*, that the Examiner has misinterpreted  
34       the phrase "vertically centered" by treating these terms as separate and non-  
35       interdependent concepts (Reply Br. 2). It is argued that the phrase

1 "vertically centered" means centered in a vertical sense between something  
2 above and something below. (Reply Br. 3). The Examiner's position can be  
3 found on pages 3-4 of the Answer.

4 We reverse.

5 ISSUE

6 Has Appellant shown that the Examiner erred in holding that Flinsch  
7 anticipates claims 1-5 and 7. The issue turns on whether Flinsch teaches the  
8 pillow member being located "substantially vertically centrally between the  
9 upper and lower edges" of the collar, as recited in claim 1 and as similarly  
10 recited in independent claims 3 and 4.

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12 FINDINGS OF FACT

- 13 1. Appellant invented a modular cervical support and redefinition  
14 structure. (Specification 1).
- 15 2. Flinsch discloses a support for the neck and head to prevent  
16 stiffness in the neck and to obviate pains in the head. (p. 1, l. 6 and  
17 ll. 18-23).
- 18 3. Flinsch further discloses a cushion or bolster and an auxiliary  
19 cushion b, which is attached to cushion a by spring press-buttons c.  
20 (p. 1, ll. 35-42).
- 21 4. Flinsch additionally discloses that the auxiliary cushion b may be  
22 attached to cushion a, along the outer rim of cushion a. (p. 1, ll. 41-  
23 43).

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1 PRINCIPLES OF LAW

2 A claim is anticipated only if each and every element as set forth in  
3 the claim is found, either expressly or inherently described, in a single prior  
4 art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2  
5 USPQ2d 1051, 1053 (Fed. Cir. 1987). The inquiry as to whether a reference  
6 anticipates a claim must focus on what subject matter is encompassed by the  
7 claim and what subject matter is described by the reference. As set forth by  
8 the court in *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ  
9 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to "read on"  
10 something disclosed in the reference, i.e., all limitations of the claim are  
11 found in the reference, or "fully met" by it.

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13 ANALYSIS

14 From our review of the record, we find that to meet the language  
15 "substantially vertically centrally between said upper and lower edges", it is  
16 necessary that the pillow structure be located substantially vertically  
17 between the upper and lower edges of the collar 22. This is shown in  
18 Appellant's figure 4 where the pillow 26 is vertically centered between the  
19 upper and lower edges of the collar 22. The term "centered" refers to being  
20 centered between the upper and lower edges, not in the back of the collar.  
21 Turning to Flinsch, we find that auxiliary cushion b, while it can be located  
22 along the back of the collar, is attached at c near the top of the cushion a.

1 Because the auxiliary collar is located near the top of the cushion a, the  
2 auxiliary cushion is not located vertically centrally between the upper and  
3 lower edges of the cushion a. Accordingly, we agree with Appellant (Reply  
4 Br. 3) that the Examiner erred in finding that Flinsch anticipates claims 1-5  
5 and 7.

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#### CONCLUSION OF LAW

8 On the record before us, Appellant has shown that the Examiner has  
9 erred in holding that the teachings of Flinsch anticipate claims 1-5 and 7. It  
10 follows that we cannot sustain the rejection of these claims.

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#### DECISION

13 The Examiner's rejection of claims 1-5 and 7 is reversed.

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REVERSED

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