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11 HYPERICE IP SUBCO, LLC

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

15
16 HYPER ICE, INC. and HYPERICE IP
SUBCO, LLC,

17 Plaintiffs,

18 v.

19 JOICOM CORPORATION d/b/a
20 RENPHO,

21 Defendant.

22 HYPER ICE, INC. and HYPERICE IP
SUBCO, LLC,

23 Plaintiff,

24 v.

25 THERABODY, INC.,

26 Defendant.
27
28

**CASE NO. 8:24-cv-00098-JWH-DFM
(Lead Case)**

**Therabody: 8:24-cv-00390-JWH-
DFM (Consolidated)**

**HYPERICE'S OPENING CLAIM
CONSTRUCTION BRIEF**

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	<u>Page</u>
<u>TABLE OF CONTENTS</u>	
I. INTRODUCTION	1
II. U.S. PATENT NOS. 11,857,482 AND 11,938,082.....	2
III. PATENT CLAIM TERMS AT ISSUE.....	3
A. The '482 Patent	3
B. The '082 Patent	5
IV. PROSECUTION HISTORY	7
A. The '482 Patent	7
B. The '082 Patent	8
V. APPLICABLE LAW.....	8
VI. CLAIM CONSTRUCTION ARGUMENTS	10
A. Quick Release Connector/Quick-Connect System	10
B. A Substantially Cylindrical Pocket to Receive the Quick Release Connector	14
C. Wherein the Bore Comprises a Substantially Cylindrical Bore	16
VII. CONCLUSION	17

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.</i> , 694 F.3d 1312, 1326 (Fed. Cir. 2012)	9
<i>Bd. of Trs. of Leland Stanford Jr. Univ. v. Roche Molecular Sys., Inc.</i> , 528 F. Supp. 2d 967, 976 (N.D. Cal. 2007).....	9
<i>Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.</i> , 381 F.3d 1111, 1116 (Fed. Cir. 2004)	9
<i>Medline Indus., Inc. v. C.R. Bard, Inc.</i> , 14 C 3618, 2019 WL 174980, at *1, *2-5 (N.D. Ill. Jan. 11, 2019)	10, 12
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303, 1312-13 (Fed. Cir. 2005)	8
<i>SuperGuide Corp. v. DirecTV Enters., Inc.</i> , 358 F.3d 870, 875 (Fed. Cir. 2004).....	10
<i>Teleflex, Inc. v. Ficosa N. Am. Corp.</i> , 299 F.3d 1313, 1324 (Fed. Cir. 2002)	9
<i>Vitronics Corp. v. Conceptoronic, Inc.</i> , 90 F.3d 1576, 1582 (Fed. Cir. 1996)	8

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1 **I. INTRODUCTION**

2 Plaintiffs Hyper Ice, Inc., and Hyperice IP Subco, LLC, (“Plaintiffs” or,
3 collectively, “Hyperice”) contend that Defendant Therabody, Inc. (“Defendant” or
4 “Therabody”) directly infringes Hyperice’s U.S. Patent No. 11,857,482 (“the ’482
5 Patent”), attached hereto as Exhibit 1,¹ and U.S. Patent No. 11,938,082 (“the ’082
6 Patent”), attached hereto as Exhibit 2, by selling, offering for sale, and importing
7 numerous Theragun and TheraFace products. Attached hereto as Exhibits 3 and 4 are
8 exemplary claim charts detailing the infringement by two Therabody products – the
9 Theragun Relief massage gun and the Theragun PRO Plus massage gun.

10 Hyperice is a technology-driven company based in Irvine, California
11 specializing in compression, thermal, vibration, contrast, and percussion technology.
12 For more than a decade, Hyperice has led a global movement at the confluence of
13 recovery and wellness, specializing in products such as the Hypervolt percussive
14 massage devices and the Normatec dynamic air compression boots designed to help
15 athletes, and everyone else, move better. Hyperice has been a leading seller of
16 percussive massage devices in the United States for many years, but Hyperice has
17 seen its share of the market erode due to widespread patent infringement. For the past
18 several years, Hyperice has utilized litigation and licensing to address this
19 infringement. In the past 12 months alone, Hyperice has licensed the ’482 and ’082
20 Patents to more than 40 companies throughout the world.

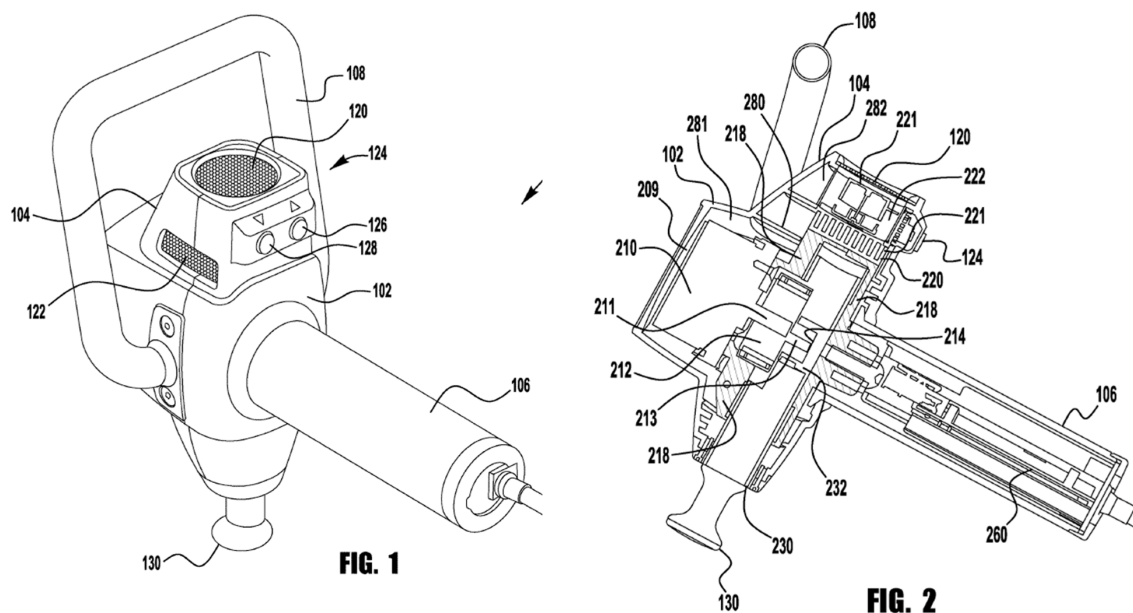
21 The parties in this action and the related cases have proposed claim terms for
22 construction. This opening brief addresses Hyperice’s proposed constructions of the
23 claim terms selected by Hyperice and/or Therabody. Hyperice will address
24 Therabody’s proposed constructions in Hyperice’s responsive brief.

25 _____
26 ¹ All exhibits cited hereto, unless otherwise noted, are to the Declaration of
27 Benjamin A. Herbert In Support Of Hyperice’s Opening Claim Construction Brief,
28 filed concurrently herewith.

For the reasons detailed below, based on the caselaw and intrinsic evidence, Hyperice respectfully requests that this Court adopt Hyperice's proposed constructions.

II. U.S. PATENT NOS. 11,857,482 AND 11,938,082

The '482 and '082 Patents are generally directed to deep muscle-stimulating devices used to increase muscle metabolism, improve the lactic acid cycle, and relieve pain. (*See, e.g.*, Ex. 1 ('482 Patent) at Abstract, 1:23-25, and claims 1-61).² The following figures illustrate one embodiment of this percussive massage device:



The '482 and '082 Patents disclose and claim improvements to deep muscle-stimulating, percussive massage devices. (*See* Ex. 1 at 1:21-30). The patents explain that, when providing a deep tissue massage using a percussive massage device, it may be desirable to switch massaging heads to work on different muscles or different portions of muscles during the massage. (*See id.* at 6:49-53). Thus, one of the claimed improvements is a “massaging head 130 [that] includes a quick-release connection.”

² The '482 and '082 Patents share identical written descriptions and figures. For the sake of efficiency, Hyperice will cite to only the '482 Patent's written description.

(*Id.* at 3:41-44, Figs. 1-3, 6-6A; *see also id.* at 2:4-8 (“In yet another exemplary embodiment, a messaging device includes a handle, a piston, a quick-connection mechanism and one or more massaging heads releasably connectable to the piston by the quick-connection mechanism.”)). One such embodiment of a quick-release connection—discussed in more detail below—is the “quick-connect system 600 for connecting a massaging head to a piston” while the piston reciprocates, and without turning off the device. (*See Ex. 1* at 6:47-49, Figs 6-6A; *see also id.* at 2:37-39 (“FIGS. 6, 6A and 6B illustrate an exemplary quick-disconnect mechanism for connecting one or more massaging heads to a massaging device”), 3:41-44).

At issue here, independent Claim 34 of the ’482 Patent claims a quick release connector and a massaging head with a substantially cylindrical pocket to receive the connector while the piston reciprocates. (*See Ex. 1* at Claim 34). Claim 1 of the ’082 Patent claims a quick-connect system where a massaging head can be inserted into or removed from the bore while the piston reciprocates, and dependent Claim 13 claims a substantially cylindrical bore. (*See Ex. 2* at Claims 1, 13).

III. PATENT CLAIM TERMS AT ISSUE

A. The ’482 Patent

The following are the asserted claims of the ’482 patent, with the disputed terms underlined, bolded, and highlighted in yellow:

34. A percussive massager comprising:
a housing;
a piston in the housing having a proximal end and a distal end;
a motor at least partially within the housing and operatively
connected to the proximal end of the piston, wherein the motor
is configured to cause the piston to reciprocate at a first speed;
a drive mechanism between the motor and the piston that controls
a predetermined stroke length of the piston; and
**a quick release connector at the distal end of the piston,
wherein the quick release connector is configured to secure
a first massaging head while the piston reciprocates a
predetermined stroke length at the first speed**, wherein the

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1 first massaging head has a **substantially cylindrical pocket to**
2 **receive the quick release connector**.

3 35. The percussive massager of claim 34, further comprising:
4 a second massaging head configured to releasably couple to the
5 distal end of the piston via the quick release connector.

6 36. The percussive massager of claim 34, wherein the motor is
7 configured to cause the piston to reciprocate the predetermined stroke
8 length at a second speed.

9 37. The percussive massager of claim 36, wherein the first
10 speed and the second speed are each less than or equal to 3600 strokes
11 per minute.

12 38. The percussive massager of claim 36, wherein the first
13 speed and the second speed are each greater than or equal to 600 strokes
14 per minute.

15 40. The percussive massager of claim 36, further comprising:
16 a control panel positioned on an exterior of the housing.

17 41. The percussive massager of claim 40, wherein the control
18 panel is configured to display one or more visual indicators.

19 42. The percussive massager of claim 40, wherein the control
20 panel has a display device.

21 43. The percussive massager of claim 40, wherein the control
22 panel has one or more inputs.

23 44. The percussive massager of claim 43, wherein the one or
24 more inputs comprise at least one of: a button, a switch, and a dial.

25 45. The percussive massager of claim 43, wherein the first
26 speed and the second speed are each selectable via the one or more
27 inputs.

28 46. The percussive massager of claim 43, wherein a first
selection of the one or more inputs is configured to cause the percussive
massager to power on and wherein a second selection of the one or more
inputs is configured to cause the percussive massager to power off.

58. The percussive massager of claim 34, wherein the motor has
an output shaft configured to rotate about a rotation axis, and wherein
the drive mechanism comprises:

a flywheel operatively connected to the output shaft of the motor
to rotate about a flywheel axis, the output shaft extending into
the flywheel along the flywheel axis; and

a crank pin extending from the flywheel, the crank pin being
operatively connected to the piston.

1 59. The percussive massager of claim 58, wherein an offset
2 between the flywheel axis and an axis of the crank pin controls the
predetermined stroke length of the piston.

3 60. The percussive massager of claim 59, wherein the motor is
4 directly connected to the flywheel, and wherein the crank pin is directly
connected to the flywheel.

5 61. The percussive massager of claim 34, further comprising a
6 handle, wherein the handle is on an opposite side of the piston with
7 respect to the motor.

8 **B. The '082 Patent**

9 The following are the asserted claims of the '082 patent, with the agreed-upon
10 terms italicized and highlighted in green, and the disputed terms underlined, bolded,
11 and highlighted in yellow:

- 12 1. A percussive massager comprising:
13 a housing;
14 a piston having a proximal end and a distal end, the distal end of
the piston having a bore;
15 a motor operatively connected to the proximal end of the piston,
wherein the motor is configured to cause the piston to
16 reciprocate at a first speed;
17 a drive mechanism that controls a predetermined stroke length of
the piston; and

18 **a quick-connect system comprising the distal end of the piston**
19 **and a first massaging head, wherein the quick-connect**
20 **system is configured to have a proximal end of the first**
21 **massaging head inserted into or removed from the bore**
22 **while the piston reciprocates the predetermined stroke**
23 **length at the first speed.**

24 2. The percussive massager of claim 1, wherein the motor is
configured to cause the piston to reciprocate at a second speed.

25 3. The percussive massager of claim 1, further comprising:
26 a control panel positioned on an exterior of the housing.

27 4. The percussive massager of claim 3, wherein the control
panel is configured to display one or more visual indicators.

28 5. The percussive massager of claim 1, further comprising a
handle and a flywheel, wherein *the handle is on an opposite side of the
flywheel with respect to the motor.*

6. The percussive massager of claim 1, further comprising a

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1 handle, wherein the motor is positioned within the housing opposite the
2 handle.

3 7. The percussive massager of claim 1, wherein the motor has
4 an output shaft configured to rotate about a rotation axis, and wherein
5 the drive mechanism comprises:

6 a flywheel operatively connected to the output shaft of the motor
7 to rotate about a flywheel axis, the output shaft extending into
8 the flywheel along the flywheel axis; and

9 a crank pin extending from the flywheel, the crank pin being
10 operatively connected to the piston.

11 8. The percussive massager of claim 7, further comprising a
12 handle, wherein *the motor and the handle are on opposite sides of a
13 plane perpendicular to the flywheel axis that extends through the
14 flywheel.*

15 9. The percussive massager of claim 7, further comprising a
16 handle, wherein *the motor and the handle are on a same side of a plane
17 perpendicular to the flywheel axis that extends through the flywheel.*

18 10. The percussive massager of claim 7, wherein an offset
19 between the flywheel axis and an axis of the crank pin controls the
20 predetermined stroke length of the piston.

21 11. The percussive massager of claim 7, wherein the motor is
22 directly connected to the flywheel, and wherein the crank pin is directly
23 connected to the flywheel.

24 12. The percussive massager of claim 7, wherein the motor is
25 configured to cause the piston to reciprocate at the first speed along a
26 longitudinal axis, and further comprising:

27 a first bearing located on a first side of the flywheel; and

28 a second bearing located on a second side of the flywheel, wherein
the first bearing and the second bearing are configured to
restrain reciprocation of the piston to the longitudinal axis.

13. The percussive massager of claim 1, **wherein the bore
comprises a substantially cylindrical bore.**

The parties agree on the construction of the following terms in the '082 Patent:

Claim Term	Agreed Upon Construction
the handle is on an opposite side of the flywheel with respect to the motor'082 Patent, Claim 5)	The motor is positioned on one side of the flywheel and the handle is positioned on an opposite side of the flywheel

Claim Term	Agreed Upon Construction
the motor and the handle are on opposite sides of a plane perpendicular to the flywheel axis that extends through the flywheel '082 Patent, Claim 8)	The motor is positioned on one side of a plane perpendicular to the flywheel axis that extends through the flywheel and the handle is positioned on an opposite side of the plane perpendicular to the flywheel axis that extends through the flywheel
wherein the motor and the handle are on a same side of a plane perpendicular to the flywheel axis that extends through the flywheel '082 Patent, Claim 9)	The motor and handle are both positioned on the same side of a plane perpendicular to the flywheel axis that extends through the flywheel

IV. PROSECUTION HISTORY

A. The '482 Patent

The application leading to the '482 Patent was submitted as a Track One³ request in February 2022. The applicants made numerous changes to the original proposed claim language to overcome rejections based on, *inter alia*, 35 U.S.C. § 103 (obviousness) and 35 U.S.C. § 112 (indefiniteness). The following illustrates representative changes from one of the original claims to the issued independent claim 34, at issue here, with additions shown in bold underline and deletions shown in strikethrough:

~~An apparatus~~ **percussive massager** comprising:
a housing;
~~a handle on the housing;~~
a piston **in the housing** having a proximal end and a distal end;
a motor **at least partially** within the housing operatively connected to the proximal end of the piston, wherein the motor is configured to cause the piston to reciprocate ~~between a minimum reciprocation stroke length and a maximum reciprocation stroke length~~ at a first speed;

³ The USPTO offers Track One for prioritized examination of utility patent applications.

1 a cam having a first rotational position that controls a predetermined
2 stroke length of the piston to the minimum reciprocation stroke length, a second
3 rotational position that controls the predetermined stroke length of the piston
4 to the maximum reciprocation stroke length, and a plurality of intermediate
5 rotational positions that control the predetermined stroke length of the piston
6 to a plurality of intermediate stroke lengths between the minimum reciprocation
7 stroke length and the maximum reciprocation stroke length;

8 **a drive mechanism between the motor and the piston that controls a**
9 **predetermined stroke length of the piston; and**

10 a connection mechanism **a quick release connector** at the distal end of
11 the piston,; and **wherein the quick release connector is configured to secure**
12 **a first massaging head releasably coupled to the distal end of the piston via the**
13 **connection mechanism. while the piston reciprocates a predetermined**
14 **stroke length at the first speed, wherein the first massaging head has a**
15 **substantially cylindrical pocket to receive the quick release connector.**

16 (See file history for application leading to '482 Patent, attached as Exhibit 5, at
17 HYPER-TBDY000100 at 114, 502).

18 B. The '082 Patent

19 The application leading to the '082 Patent was submitted as a Track One
20 request in November 2023. The Examiner rejected only one claim – a method claim
21 that is not at issue in the instant action – based on 35 U.S.C. § 112 (indefiniteness).
22 (See file history for application leading to '082 Patent, attached as Exhibit 6, at
23 HYPER-TBDY003007 at 021-022). All other initially-filed claims were rejected
24 based on only double patenting, which the applicants cured by filing a terminal
25 disclaimer. (See *id.* at 022-025, 053).

26 V. APPLICABLE LAW

27 Claim terms “are generally given their ordinary and customary meaning,”
28 which is “the meaning that the term would have to a person of ordinary skill in the art
in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-
13 (Fed. Cir. 2005) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576,
1582 (Fed. Cir. 1996)). In some cases, the plain and ordinary meaning of claim
language is readily apparent and claim construction will involve little more than “the

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1 application of the widely-accepted meaning of commonly understood words.”
2 *Phillips*, 415 F.3d at 1314. In fact, it is often proper for a court to conclude that certain
3 terms have plain meanings that do not require additional construction. *See*
4 *ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1326 (Fed.
5 Cir. 2012); *see also, e.g., Bd. of Trs. of Leland Stanford Jr. Univ. v. Roche Molecular*
6 *Sys., Inc.*, 528 F. Supp. 2d 967, 976 (N.D. Cal. 2007) (“The terms ‘therapeutically
7 effective’ or ‘therapeutically ineffective’ are commonplace[.] . . . These terms do not
8 need to be construed because they are neither unfamiliar to the jury, confusing to the
9 jury, nor affected by the specification or prosecution history.”).

10 In other cases, claim terms have a specialized meaning, and it is necessary to
11 determine what a person of ordinary skill in the art would have understood disputed
12 claim language to mean by analyzing “the words of the claims themselves, the
13 remainder of the specification, the prosecution history, and extrinsic evidence
14 concerning relevant scientific principles, as well as the meaning of technical terms,
15 and the state of the art.” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc.*
16 *v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)).

17 “[T]he context in which a term is used in the asserted claim can be highly
18 instructive.” *Phillips*, 415 F.3d at 1314. “[T]he claims define the scope of the right to
19 exclude; the claim construction inquiry, therefore, begins and ends in all cases with
20 the actual words of the claim.” *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313,
21 1324 (Fed. Cir. 2002); *see Phillips*, 415 F.3d at 1312. Furthermore, “[b]ecause claim
22 terms are normally used consistently throughout the patent, the usage of a term in one
23 claim can often illuminate the meaning of the same term in other claims.” *Phillips*,
24 415 F.3d at 1314.

25 In cases in which the meaning of a disputed claim term in the context of the
26 patent’s claims is uncertain, the specification is used as the “single best guide to the
27 meaning of a disputed term.” *Phillips*, 415 F.3d at 1321. “The construction that stays
28 true to the claim language and most naturally aligns with the patent’s description of

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1 the invention will be, in the end, the correct construction.” *Id.* at 1316. A particular
2 embodiment described in the specification, however, should not be read into a claim
3 when the claim language is broader than the embodiment. *SuperGuide Corp. v.*
4 *DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004); *Medline Indus., Inc. v. C.R.*
5 *Bard, Inc.*, 14 C 3618, 2019 WL 174980, at *1, *2-5 (N.D. Ill. Jan. 11, 2019) (“A
6 particular embodiment described in the specification . . . should not be read into a
7 claim when the claim language is broader than the embodiment.” (citation omitted)).

8 In addition, the “prosecution history can often inform the meaning of the claim
9 language by demonstrating how the inventor understood the invention,” although “it
10 often lacks the clarity of the specification and thus is less useful for claim construction
11 purposes.” *Phillips*, 415 F.3d at 1317.

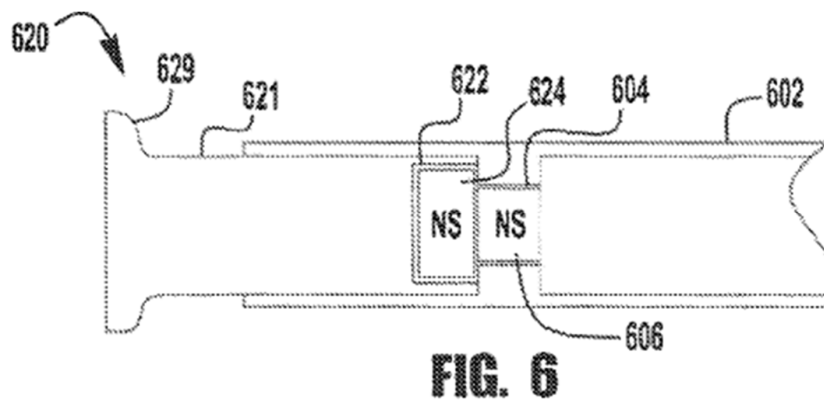
12 Extrinsic evidence, such as dictionaries and expert testimony, may be used only
13 if the intrinsic evidence alone is insufficient to determine the meaning of the claim
14 terms. *Vitronics*, 90 F.3d at 1583. “[U]ndue reliance on extrinsic evidence poses the
15 risk that it will be used to change the meaning of claims in derogation of the
16 indisputable public records consisting of the claims, the specification and the
17 prosecution history, thereby undermining the public notice function of patents.”
18 *Phillips*, 415 F.3d at 1319 (internal quotations omitted); *see also id.* at 1321 (“reliance
19 on the dictionary divorced from the intrinsic evidence risks transforming the meaning
20 of the claim term to the artisan into the meaning of the term in the abstract, out of its
21 particular context, which is the specification”).

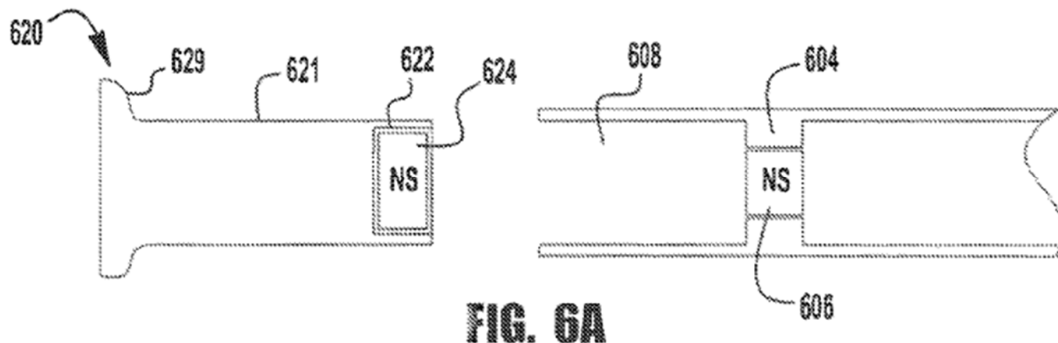
22 VI. CLAIM CONSTRUCTION ARGUMENTS

23 A. Quick Release Connector/Quick-Connect System

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25
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27
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Claim Language	Hyperice's Proposed Construction
a quick release connector at the distal end of the piston, wherein the quick release connector is configured to secure a first massaging head while the piston reciprocates a predetermined stroke length at the first speed ('482 Patent, Claim 34)	a quick release connector at the distal end of the piston, wherein the quick release connector is configured to secure a first massaging head while the piston reciprocates a predetermined stroke length at the first speed.
a quick-connect system comprising the distal end of the piston and a first massaging head, wherein the quick-connect system is configured to have a proximal end of the first massaging head inserted into or removed from the bore while the piston reciprocates the predetermined stroke length at the first speed ('082 Patent, Claim 1)	a quick-connect system comprising the distal end of the piston and a first massaging head, wherein the quick-connect system allows a proximal end of the first massaging head to be inserted into or removed from the bore of the percussive massager while its piston reciprocates at the predetermined stroke length at the first speed.





Figures 6 and 6A illustrate one embodiment of a quick release connector/ quick-connect system, including a magnet with its north pole 606 located inside the piston, and a massaging head 620 with a magnet 624 with its south pole at the far end of the massaging head. (*See* Ex. 1 at 6:57-67). “[W]hen the shaft 621 of massaging head 620 is slid into opening in bore 608, the magnets 606 and 624 are attracted to one another and magnetically hold massaging head 620 firmly in place.” (*Id.* at 6:67-7:3). Of course, the ’482 and ’082 Patents are not limited to this embodiment of the quick release connector/ quick-connect system. “Those skilled in the art may readily adopt one or more of the inventive aspects, concepts or features into additional embodiments and uses within the scope of the present inventions even if such embodiments are not expressly disclosed herein.” (*Id.* at 9:38-42). Indeed, the ’482 and ’082 Patents disclose embodiments that expressly do not contain magnets. (*Id.* at 2:4-8, 3:41-44, Figs. 1-3). Accordingly, the claims of the ’482 and ’082 Patents should not be read as limited to a single embodiment that utilizes magnets. *See, e.g., SuperGuide Corp.*, 358 F.3d at 875; *Medline Indus., Inc.*, 2019 WL 174980, at *1, *2-5.

The quick release connectors disclosed in the ’482 Patent and claimed in Claim 34, and the quick-connect systems disclosed in the ’082 Patent and claimed in Claim 1, simply allow the massaging head to be connected to or removed from the percussive massager while the piston reciprocates:

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FIGS. 6 and 6A illustrate an exemplary embodiment of a quick-connect system 600 for connecting a massaging head 620 to a piston 602. When providing a deep tissue massage using a massaging device, such as, for example, massaging device 100, it may be desirable to switch massaging heads to work on different muscles or different portions of muscles during the massage. The exemplary quick-connect system 600 allows a user to quickly switch massaging heads 620. Moreover, the exemplary quick-connect system 600 may be used without turning off the massaging device 100.

(Ex. 1 at 6:47-56).

The use of the term “configured to” elsewhere in the claims of the ’482 Patent, including in Claim 34 itself, and the ’082 Patent, including in Claim 1 itself, confirms that the language should be read broadly. *See Phillips*, 415 F.3d at 1314 (some claim terms have specialized meaning and it is necessary to determine what a person of ordinary skill in art would have understood disputed claim language to mean by analyzing “the words of the claims themselves.... [Furthermore,] [b]ecause claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims”). Attached hereto as Exhibit 7 is a list of all instances of the “configured to” language in the claims of the ’482 Patent and ’082 Patent. In every instance, “configured to” is used broadly to describe mechanisms that simply allow or cause something to occur. The following illustrate a few of the many examples of this usage:

Claim Language	Claim Meaning
wherein the motor is <u>configured to</u> cause the piston to reciprocate at a first speed (’482 Patent Claims 1, 32, 34; ’082 Patent Claims 1, 18)	wherein the motor <u>causes</u> the piston to reciprocate at a first speed
wherein the control panel is <u>configured to</u> display one or more visual indicators (’482 Patent Claims 8, 41; ’082 Patent Claim 4)	wherein the control panel <u>allows</u> the display [of] one or more visual indicators

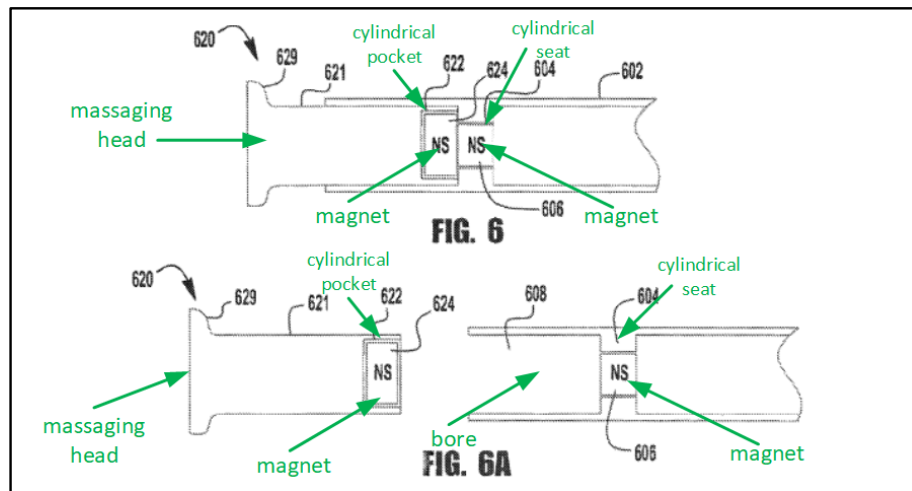
Claim Language	Claim Meaning
wherein a first selection of the one or more inputs is <u>configured to</u> cause the percussive massager to power on ('482 Patent Claims 13, 46)	wherein a first selection of the one or more inputs <u>causes</u> the percussive massager to power on
wherein the motor has an output shaft <u>configured to</u> rotate about a rotation axis ('482 Patent Claims 25, 58; '082 Patent Claim 7)	wherein the motor has an output shaft <u>that allows</u> rotation about a rotation axis

Thus, Hyperice's proposed construction of the "quick release connector . . ." and "quick-connect system . . ." claim terms stays true to the claim language and most naturally aligns with the patent's description of the invention and is, therefore, the correct construction." *Phillips*, 415 F.3d at 1316. Nothing in the specification or prosecution history mandates a different construction.

B. A Substantially Cylindrical Pocket to Receive the Quick Release Connector

Claim Language	Hyperice's Proposed Construction
a substantially cylindrical pocket to receive the quick release connector ('482 Patent, Claim 34)	a pocket that is substantially or entirely cylindrical that the quick release connector can be inserted into

As illustrated in a cross-sectional view in Figs. 6 and 6A, one embodiment of the quick-connect system 600 includes a piston 602 that has a hollow-end bore 608 for receiving the shaft 621 of a massaging head 620. A "cylindrical seat 604" can be "[l]ocated within the bore 608 of piston 602." (Ex. 1 at 6:59-60). The cylindrical seat 604 can have a magnet 606, which assists in holding the massaging head in place. (*See id.* at 6:57-7:3).



“Massaging head 620 includes a shaft 621 having a cylindrical pocket 622 at the distal end.” (*Id.* at 6:63-64). The “cylindrical pocket 622” can include a magnet 624. (*See id.* at 6:64-65). As disclosed in the ’482 and ’082 Patents, if the magnets are utilized, when the shaft 621 of massaging head 620 slides (or is slid) into opening in bore 608, the magnets 606 and 624 are attracted to one another and magnetically hold massaging head 620 firmly in place. (*See id.* at 6:67-7:3). Among other things, this inventive configuration allows “a user to quickly remove and replace the massaging head” during normal use of the percussive massage device. (*See id.* at 7:8-9). Again, one skilled in the art could readily adopt this disclosure to a different embodiment of the quick release connector/quick-connect system that would also allow for quick removal/replacement during operation. (*See id.* at 9:38-42). One skilled in the art could utilize a pocket in the massaging head that is substantially or entirely cylindrical in order to implement this system.

Thus, the claimed “substantially cylindrical pocket to receive the quick release connector” is “a pocket that is substantially or entirely cylindrical that the quick release connector can be inserted into.” Nothing in the specification or prosecution history mandates an alternative construction. Hyperice’s proposed construction of the “substantially cylindrical pocket . . .” claim term stays true to the claim language and

Claim Language	Hyperice's Proposed Construction
wherein the bore comprises a substantially cylindrical bore ('082 Patent, Claim 13)	wherein at least a portion of the bore is substantially cylindrical in shape

FIG. 4

Figures 6 and 6A illustrate a cross-sectional view of piston 602 with bore 608. A “cylindrical seat 604” can be “[l]ocated within the bore 608 of piston 602.” (Ex. 1 at 6:59-60). Although the specification does not explicitly disclose that at least a portion of bore 608 is substantially cylindrical, one of skill in the art would understand that this is the case, because (a) Figure 4 shows that the at least a portion of the bore is substantially cylindrical, and because (b) the cross-sectional shape of bore 608 is similar to “cylindrical seat 604.”

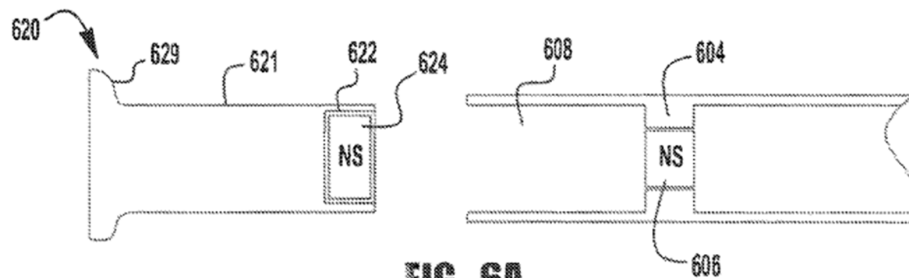


FIG. 6A

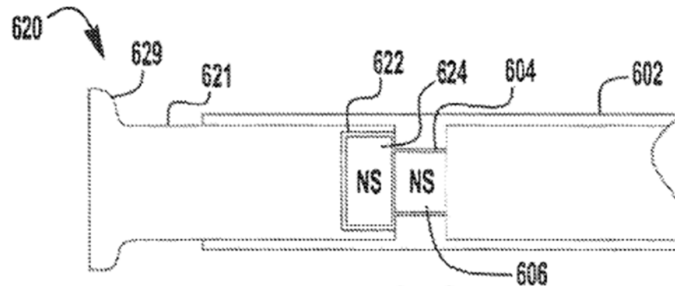


FIG. 6

Nothing in the specification or prosecution history mandates an alternative construction. Hyperice’s proposed construction of the “wherein the bore comprises a substantially cylindrical bore” claim term stays true to the claim language and most naturally aligns with the patent’s description of the invention and is, therefore, the correct construction.” *Phillips*, 415 F.3d at 1316.

VII. CONCLUSION

For the reasons detailed above, Hyperice respectfully requests that this Court adopt Hyperice’s proposed constructions of the disputed claim terms.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 4,683 words, which complies with the word limit of L.R. 11-6.1.

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