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HYPERICE IP SUBCO, LLC
10

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

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

16 Plaintiff,

17 v.

18 JOICOM CORPORATION d/b/a
19 RENPHO,

20 Defendant.
21

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

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

8:24-cv-00410-JWH-DFM
(Consolidated)

8:24-cv-03212-JWH-DFM
(Consolidated)

8:24-cv-01394-JWH-DFM
(Consolidated)

8:24-cv-01512-JWH-DFM
(Consolidated)

HYPERICE'S P.R. 4.2 EXCHANGE
OF CLAIM TERMS FOR
CONSTRUCTION AND
EXTRINSIC EVIDENCE

1 **I. INTRODUCTION**

2 Pursuant to the Court's Order (Dkt. No. 33) and P.R. 4-2, Plaintiffs Hyper Ice,
3 Inc. and Hyperice IP Subco, LLC (collectively "Hyperice") hereby provide their
4 Preliminary Claim Constructions and Extrinsic Evidence.

5 **II. PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS**

6 Hyperice identifies the following proposed terms based on the asserted
7 claims in its Infringement Contentions and its present understanding of the
8 Invalidity Contentions served by the parties in the related cases identified above and
9 its present understanding of those parties' perceived scope of the asserted patents
10 and claims. Hyperice reserves the right to modify, amend, add to, or delete from its
11 list, preliminary constructions, and/or evidence in support thereof based on, without
12 limitation, the preliminary claim constructions or supporting evidence identified by
13 such parties. Hyperice reserves the right to supplement or otherwise amend its list of
14 terms, preliminary constructions, and/or supporting evidence should any party in a
15 related case be granted leave to amend their Invalidity Contentions or assert
16 additional defenses against Hyperice. Hyperice also reserves the right to rely upon
17 any evidence identified by any party in the related cases identified above.

18 The identification of any term and provision of a preliminary claim
19 construction in the following list is not an admission or indication that such term has
20 a special or uncommon meaning. Hyperice reserves the right to refine this list and
21 provide additional preliminary constructions, and supporting evidence, to any
22 portion of any identified term or element, additional language surrounding any
23 identified term or element, or any term or element similar to an identified term or
24 element found in any additional claim limitations within any of the asserted claims.
25 To the extent the claim terms or elements set forth herein include particular terms or
26 elements appropriate for separate constructions, such terms or elements are deemed
27 part of this disclosed list. Similarly, to the extent additional claim language provides
28 appropriate context to construe terms or elements listed herein, such additional

language is deemed part of this disclosure.

III. Preliminary Claim Constructions and Supporting Evidence

Subject to the foregoing, Hyperice identifies the following preliminary claim constructions and supporting evidence:

Proposing Party	Term	Hyperice's Proposed Construction	Support
Therabody	a quick release connector...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...wherein the quick release connector allows a first massaging head to be connected to the percussive massager while its piston reciprocates a predetermined stroke length at the first speed	'482 Patent: Figs. 3, 6A, 6B; 2:4-8; 2:37-39; 6:47-7:59; 9:22-63; 10:6; 10:20; 10:24; 10:40; 10:53; 10:55; 10:58; 10:66; 11:5; 11:24; 11:50; 11:57; 11:62; 12:9; 12:17; 12:37; 12:50; 12:52; 12:63; 13:2; 14:2; Claims 1, 2, 3, 8, 13, 14, 17, 19, 25, 29, 30, 31, 32, 34, 35, 36, 41, 46, 47, 50, 52, 58. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000502-504, HYPERICE000509, HYPERICE000530-534, HYPERICE000544-557, HYPERICE000567-573, HYPERICE000587, HYPERICE000593-598, HYPERICE000603-618, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000692, HYPERICE000702-708, HYPERICE000717-719.

Proposing Party	Term	Hyperice's Proposed Construction	Support
Therabody	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	'482 Patent: Figs. 4, 6, 6A, 6B; 5:62-64; 6:57-7:59; 9:22-63; 10:2; 11:40; 11:42; 11:45; 11:54; Claims 1, 29, 30, 31, 32, 34. Prosecution History: HYPERICE000373-374, HYPERICE000469-471, HYPERICE000502-504, HYPERICE000530-534, HYPERICE000567-573, HYPERICE000593-598, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000702-708, HYPERICE000717-719.

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Therabody, MerchSource, and Bob & Brad	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 messaging 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	'482 Patent: Figs. 3, 6A, 6B; 2:4-8; 2:37-39; 6:47-7:59; 9:22-63; 10:6; 10:20; 10:24; 10:40; 10:53; 10:55; 10:58; 10:66; 11:5; 11:24; 11:50; 11:57; 11:62; 12:9; 12:17; 12:37; 12:50; 12:52; 12:63; 13:2; 14:2; Claims 1, 2, 3, 8, 13, 14, 17, 19, 25, 29, 30, 31, 32, 34, 35, 36, 41, 46, 47, 50, 52, 58. '082 Patent: Figs. 3, 6, 6A, 6B; 2:7-12; 2:40-43; 6:47-7:59; 9:22-63; 10:2; 10:14; 10:20; 10:29; 10:52; 10:57; 11:7; 11:10; 11:14; Claims 1, 2, 4, 7, 12, 18. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000502-504, HYPERICE000509, HYPERICE000530-534, HYPERICE000544-557, HYPERICE000567-573, HYPERICE000587, HYPERICE000593-598, HYPERICE000603-618, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000692, HYPERICE000702-708, HYPERICE000717-719, HYPERICE002878-2982, HYPERICE003146-3149. Extrinsic Evidence: https://www.merriam-webster.com/dictionary/pre-determined ("to determine beforehand"). Hyperice does not believe that this term is a means-plus-function limitation governed by 35 U.S.C. § 112(6). If the Court disagrees, Hyperice identifies the following function: allowing quick connection during operation.
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Proposing Party	Term	Hyperice's Proposed Construction	Support
			Structures, acts, or materials corresponding to the limitation's function: piston with a bore, ~~massaging head~~ .
Therabody and MerchSource	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	'482 Patent: Figs. 4, 6, 6A, 6B; 5:62-64; 6:57-7:59; 9:22-63; 10:2; 11:40; 11:42; 11:45; 11:54; Claims 1, 29, 30, 31, 32, 34. '082 Patent: Figs. 4, 6, 6A, 6B; 5:62-64; 6:57-7:59; 10:2; 11:40; 11:42; 11:45; 11:54; Claims 13-16. Prosecution History: HYPERICE000373-374, HYPERICE000469-471, HYPERICE000502-504, HYPERICE000530-534, HYPERICE000567-573, HYPERICE000593-598, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000702-708, HYPERICE000717-719.
MerchSource	substantially cylindrical bore ('482 Patent, Claim 1)	a bore that is either substantially or entirely cylindrical in shape	'482 Patent: Figs. 4, 6, 6A, 6B; 6:57-7:19; 9:22-63; 10:2; 11:40; 11:42; 11:45; 11:54; Claims 1, 29, 30, 31, 32, 34. Prosecution History: HYPERICE000373-374, HYPERICE000469-471, HYPERICE000502-504, HYPERICE000530-534, HYPERICE000567-573, HYPERICE000593-598, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000702-708, HYPERICE000717-719,

Proposing Party	Term	Hyperice's Proposed Construction	Support
MerchSource and Bob & Brad	predetermined stroke length of the piston ('482 Patent, Claim 1; '082 Patent, Claim 1)	a stroke length of the piston that is determined in advance	'482 Patent: Figs 2-4; 4:41-5:2; 7:20-21; 9:22-63; Claims 1, 3-6, 25, 26, 32,34, 36-39, 59. '082 Patent: Figs 2-4; 4:41-5:2; 7:20-21; 9:22-63; Claims 1, 10, 18. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000502-504, HYPERICE000509, HYPERICE000530-534, HYPERICE000544-557, HYPERICE000567-573, HYPERICE000587, HYPERICE000593-598, HYPERICE000603-618, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000692, HYPERICE000702-708, HYPERICE000717-719. Extrinsic Evidence: https://www.merriam-webster.com/dictionary/predetermined ("to determine beforehand").

1	MerchSource	a drive	one or more	'482 Patent: Figs 2-4; 4:41-
2	and	mechanism that	components	5:2; 7:20-21; 9:22-63;
3	Bob & Brad	controls a	that operatively	Claims 1, 3-6, 25, 26,
4		predetermined	connect the	32,34, 36-39, 59.
5		stroke length of	motor to the	'082 Patent: Figs 2-4; 4:41-
6		the piston ('482	piston so that	5:2; 7:20-21; 9:22-63;
7		Patent, Claim 1;	the rotation of	Claims 1, 10, 18.
8		'082 Patent,	the motor	Prosecution History:
9		Claim 1)	causes the	HYPERICE000373-386,
10			piston to move,	HYPERICE000469-482,
11			wherein the	HYPERICE000502-504,
12			design and	HYPERICE000509,
13			layout of	HYPERICE000530-534,
14			certain	HYPERICE000544-557,
15			components	HYPERICE000567-573,
16			determines the	HYPERICE000587,
17			stroke length of	HYPERICE000593-598,
18			the piston	HYPERICE000603-618,
19				HYPERICE000656-663,
20				HYPERICE000678-684,
21				HYPERICE000692,
22				HYPERICE000702-708,
23				HYPERICE000717-719,
24				HYPERICE002878-2982,
25				HYPERICE003146-3149.
26				Extrinsic Evidence:
27				https://www.merriam-
28				webster.com/dictionary/pre
				determined ("to determine
				beforehand").
				Hyperice does not believe
				that this a means-plus-
				function limitation
				governed by 35 U.S.C. §
				112(6).
				If the Court disagrees,
				Hyperice identifies the
				following functions: driving
				the piston and controlling
				the predetermined stroke
				length of the piston.
				Hyperice identifies the
				following structures, acts,
				or materials corresponding
				to the limitation's function:
				one or more of the
				following components –
				flywheel, crank pin, crank
				bearing, spring bar.

1	MerchSource	quick-connect	quick-connect	'482 Patent: Figs. 2-4, 6,
2	and	system	system	6A, 6B; 2:4-8; 2:37-39;
3	Bob & Brad	comprising the	comprising the	4:41-5:2; 6:47-7:59; 9:22-
4		distal end of the	distal end of the	63; 10:6; 10:20; 10:24;
5		piston and a first	piston and a	10:40; 10:53; 10:55; 10:58;
6		massaging head,	first massaging	10:66; 11:5; 11:24; 11:50;
7		wherein the	head, wherein	11:57; 11:62; 12:9; 12:17;
8		quick-connect	the quick-	12:37; 12:50; 12:52; 12:63;
9		system is	connect system	13:2; 14:2; Claims 1, 2, 3-6,
10		configured to	allows the first	8, 13, 14, 17, 19, 25, 26, 29,
11		secure the first	massaging head	30, 31, 32, 34, 35, 36-39,
12		massaging head	to be connected	41, 46, 47, 50, 52, 58, 59.
13		to the	to the	
14		percussive	percussive	Prosecution History:
15		massager by a	massager by a	HYPERICE000373-386,
16		proximal end of	proximal end of	HYPERICE000469-482,
17		the massaging	the massaging	HYPERICE000502-504,
18		head being slid	head being slid	HYPERICE000509,
19		into the bore	into the bore	HYPERICE000530-534,
20		while the piston	while the piston	HYPERICE000544-557,
21		reciprocates the	reciprocates the	HYPERICE000567-573,
22		predetermined	predetermined	HYPERICE000587,
23		stroke length at	stroke length at	HYPERICE000593-598,
24		the first speed	the first speed	HYPERICE000603-618,
25		('482 Patent,		HYPERICE000656-663,
26		Claim 1)		HYPERICE000678-684,
27				HYPERICE000692,
28				HYPERICE000702-708,
				HYPERICE000717-719.
				Extrinsic Evidence:
				https://www.merriam-
				webster.com/dictionary/pre-
				determined ("to determine
				beforehand").
				Hyperice does not believe
				that this a means-plus-
				function limitation
				governed by 35 U.S.C. §
				112(6).
				If the Court disagrees,
				Hyperice identifies the
				following function:
				allowing quick connection
				during operation.
				Structures, acts, or
				materials corresponding to
				the limitation's function:
				piston with a bore,
				massaging head.

Proposing Party	Term	Hyperice's Proposed Construction	Support
MerchSource	the motor is positioned within the housing opposite a handle ('482 Patent, Claim 24; '082 Patent, Claim 6)	the motor is positioned within the housing across from the handle	'482 Patent: Figs 1-3; 4:35; 9:22-63; Claims 24, 28, 57, 61. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000544-557, HYPERICE000603-618.
MerchSource	a handle is on an opposite side of the piston with respect to the motor ('482 Patent, Claim 28)	a handle and the motor are on different sides of the piston's axis	'482 Patent: Figs 1-3; 4:35; 9:22-63; Claims 24, 28, 57, 61. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000544-557, HYPERICE000603-618.
MerchSource	the handle is on an opposite side of the flywheel with respect to the motor ('082 Patent, Claim 5)	the handle and the motor are on different sides of a plane perpendicular to the flywheel axis that extends through the flywheel	'482 Patent: Figs 1-3; 4:35; 9:22-63; Claims 24, 28, 57, 61. '082 Patent: Figs 1-3; 4:35; 9:22-63; Claims 5, 6, 8, 9. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000544-557, HYPERICE000603-618.
MerchSource	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 and the handle are on different sides of a plane perpendicular to the flywheel axis that extends through the flywheel	'482 Patent: Figs 1-3; 4:35; 9:22-63; Claims 24, 28, 57, 61. '082 Patent: Figs 1-3; 4:35; 9:22-63; Claims 5, 6, 8, 9. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000544-557, HYPERICE000603-618.

Proposing Party	Term	Hyperice's Proposed Construction	Support
MerchSource	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)	wherein the motor and the handle are on the same side of a plane perpendicular to the flywheel axis that extends through the flywheel	'482 Patent: Figs 1-3; 4:35; 9:22-63; Claims 24, 28, 57, 61. '082 Patent: Figs 1-3; 4:35; 9:22-63; Claims 5, 6, 8, 9. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000544-557, HYPERICE000603-618.
Bob & Brad	controls ('482 Patent, Claims 1, 26; '082 Patent, Claims 1, 10)	determines	Hyperice contends that this term should be construed in the context of additional claim language, as detailed above. '482 Patent: Figs 2-4; 4:41-5:2; Claims 1, 25. '082 Patent: Figs 2-4; 4:41-5:2. HYPERICE000373-386, HYPERICE000469-482, HYPERICE000502-504, HYPERICE000509, HYPERICE000530-534, HYPERICE000544-557, HYPERICE000567-573, HYPERICE000587, HYPERICE000593-598, HYPERICE000603-618, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000692, HYPERICE000702-708, HYPERICE000717-719, HYPERICE002878-2982, HYPERICE003146-3149.

Proposing Party	Term	Hyperice's Proposed Construction	Support
Bob & Brad	configured to secure ('482 Patent, Claim 1)	allows to be connected	Hyperice contends that this term should be construed in the context of additional claim language, as detailed above. '482 Patent: Figs. 6, 6A, 6B; 2:4-8; 2:37-39; 6:47-7:59; 9:22-63; 10:6; 10:20; 10:24; 10:40; 10:53; 10:55; 10:58; 10:66; 11:5; 11:24; 11:50; 11:57; 11:62; 12:9; 12:17; 12:37; 12:50; 12:52; 12:63; 13:2; 14:2; Claims 1, 2, 3, 8, 13, 14, 17, 19, 25, 29, 30, 31, 32, 34, 35, 36, 41, 46, 47, 50, 52, 58. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000502-504, HYPERICE000509, HYPERICE000530-534, HYPERICE000544-557, HYPERICE000567-573, HYPERICE000587, HYPERICE000593-598, HYPERICE000603-618, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000692, HYPERICE000702-708, HYPERICE000717-719. Hyperice does not believe that this a means-plus-function limitation governed by 35 U.S.C. § 112(6). If the Court disagrees, Hyperice identifies the following function: allowing quick connection during operation. Structures, acts, or materials corresponding to the limitation's function: piston with a bore, massaging head.

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Bob & Brad	configured to have ('082 Patent, Claim 1)	allows	Hyperice contends that this term should be construed in the context of additional claim language, as detailed above. '482 Patent: Figs. 6, 6A, 6B; 2:4-8; 2:37-39; 6:47-7:59; 9:22-63; 10:6; 10:20; 10:24; 10:40; 10:53; 10:55; 10:58; 10:66; 11:5; 11:24; 11:50; 11:57; 11:62; 12:9; 12:17; 12:37; 12:50; 12:52; 12:63; 13:2; 14:2; Claims 1, 2, 3, 8, 13, 14, 17, 19, 25, 29, 30, 31, 32, 34, 35, 36, 41, 46, 47, 50, 52, 58. '082 Patent: Figs. 3, 6, 6A, 6B; 2:7-12; 2:40-43; 6:47-7:59; 9:22-63; 10:2; 10:14; 10:20; 10:29; 10:52; 10:57; 11:7; 11:10; 11:14; Claims 1, 2, 4, 7, 12, 18. Prosecution History: HYPERICE000373-386, HYPERICE000469-482, HYPERICE000502-504, HYPERICE000509, HYPERICE000530-534, HYPERICE000544-557, HYPERICE000567-573, HYPERICE000587, HYPERICE000593-598, HYPERICE000603-618, HYPERICE000656-663, HYPERICE000678-684, HYPERICE000692, HYPERICE000702-708, HYPERICE000717-719, HYPERICE002878-2982, HYPERICE003146-3149. Hyperice does not believe that this term is a means-plus-function limitation governed by 35 U.S.C. § 112(6). If the Court disagrees, Hyperice identifies the following function: allowing quick connection during operation.
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Proposing Party	Term	Hyperice's Proposed Construction	Support
			Structures, acts, or materials corresponding to the limitation's function: piston with a bore, massaging head.

Hyperice reserves the right to request constructions of all or part of any claim terms, phrases, and/or clauses requested to be construed by any party to a related case and reserves the right to rely on any evidence cited by any such party in support of their construction.

DATED: November 25, 2024

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By:



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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2600, Los Angeles, CA 90067.

On November 25, 2024, I served true copies of the following document(s) described as:

HYPERICE'S P.R. 4.2 EXCHANGE OF CLAIM TERMS FOR CONSTRUCTION AND EXTRINSIC EVIDENCE

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address eperkins@millerbarondess.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 25, 2024, at Los Angeles, California.

/s/ Erica Perkins

Erica Perkins

SERVICE LIST
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Case No. 8:24-cv-00098-JWH-DFM

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