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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

HYPER ICE, INC., a California
corporation and HYPERICE IP SUBCO,
LLC, a Delaware limited liability
company,

Plaintiffs,

v.

THERABODY, INC.,

Defendant.

Case No. 8:24-cv-00390-JWH-DFM
LEAD CASE

**DEFENDANT THERABODY,
INC.'S FIRST AMENDED P.R. 4-2
IDENTIFICATION OF
PRELIMINARY CLAIM
CONSTRUCTIONS**

1 **I. INTRODUCTION**

2 Pursuant to the Court’s Order (Dkt. No. 33) and P.R. 4-2, Defendant
3 Therabody, Inc. (“Therabody”) hereby provides the following first amended list of
4 preliminary constructions for claim terms, phrases, or clauses in U.S. Patent Nos.
5 11,857,482 (“the ’482 Patent”) and 11,938,082 (“the ’082 Patent”).
6

7 Therabody’s preliminary claim constructions are based on Therabody’s
8 analysis and investigation to date. The positions taken in this document are
9 preliminary, and Therabody reserves the right to amend their proposed claim
10 constructions. Therabody reserves the right to modify, add to, or delete from its list
11 based on, without limitation, the preliminary claim constructions identified by
12 Plaintiff; the parties’ meet and confer discussions regarding the preliminary claim
13 constructions; any other positions taken by Plaintiff regarding the construction or
14 meaning of claim terms; any additional relevant information learned through
15 discovery; any relevant proceedings before the Patent Office; and any orders of the
16 Court in this matter. Therabody reserves the right to supplement or otherwise amend
17 its preliminary claim constructions should Plaintiff be granted leave to amend its
18 Infringement Contentions or assert additional claims against Therabody. Therabody
19 further reserves the right to modify its preliminary claim constructions based on
20 constructions or positions taken by one or more parties in related Case Nos. 2:24-cv-
21 00410-JWH-DFM and 2:24-cv-03212-JWH-DFM.
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1 To the extent the claim terms, phrases, or clauses set forth herein include
2 particular terms, phrases, or clauses appropriate to be construed separately, such
3 terms, phrases, or clauses are deemed part of this disclosed list. Similarly, to the
4 extent it is appropriate to construe terms, phrases, or clauses listed herein in the
5 context of additional claim language, such additional language is deemed part of this
6 disclosure.
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8
9 Therabody's disclosure of extrinsic evidence is preliminary and based on its
10 analysis and investigation to date. Therabody reserves the right to rely on extrinsic
11 evidence identified by Plaintiff as supporting Plaintiff's preliminary claim
12 constructions and to amend or modify its disclosure of extrinsic evidence supporting
13 Therabody's preliminary constructions, as well as submit additional evidence
14 (including any new extrinsic evidence), in response to: intrinsic and extrinsic
15 evidence identified by Plaintiff as supporting Plaintiff's preliminary claim
16 constructions; the parties' meet and confer discussions regarding the preliminary
17 claim constructions; any other positions taken by Plaintiff regarding the construction
18 or meaning of claim terms; any additional relevant information learned through
19 discovery; any relevant proceedings before the Patent Office; and any orders of the
20 Court in this matter. Therabody's disclosure of specific extrinsic evidence does not
21 imply or admit that any technical features referenced in the extrinsic evidence are
22 relevant to or are within the scope of any claim term. For example, Therabody's
23 disclosure of extrinsic evidence encompasses both affirmative evidence and rebuttal
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evidence that Therabody reasonably anticipates may be relevant at this stage. Therabody reserves the right to rely on any extrinsic evidence produced by Plaintiff and to submit additional rebuttal evidence.

Therabody identifies the below list of preliminary claim constructions for claim terms, phrases, or clauses of the Asserted Patents and extrinsic evidence. Therabody also reserves the right to rely on the intrinsic evidence, including the patent specification and claims, the prosecution history for the patents and any related patents, any post-grant review, *inter partes* review, or other Patent Office proceedings and filings involving the patents, and any prior art cited in the forgoing.

II. IDENTIFICATION OF PRELIMINARY CLAIM CONSTRUCTION

Subject to the foregoing, Therabody identifies the following preliminary claim constructions:

	Term	Preliminary Construction	Intrinsic and Extrinsic Evidence
1.	“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)	“the distal end of the piston includes a structure that is specially designed and adapted to quickly and easily secure the first massaging head to the piston regardless of rotational alignment while the piston reciprocates a predetermined stroke length at the first	’482 Patent at 2:37-39; 6:53-7:14; FIGs. 6, 6A, 6B App. No. 17/681,367, File History, Mar. 21, 2023 Amdt. at 7-9 App. No. 17/681,367, File History, Mar. 24, 2023 Interview Summary App. No. 17/681,367, File History, Mar. 29, 2023 Amdt. at 7-9

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Term	Preliminary Construction	Intrinsic and Extrinsic Evidence
	speed, not merely capable of doing so” Alternatively, the term is indefinite.	App. No. 17/681,367, File History, May 15, 2023 Office Action at 5-6, 8-9, 15 App. No. 17/681,367, File History, Jun. 7, 2023 Amdt. App. No. 17/681,367, File History, Jun. 14, 2023 Examiner Interview Summary App. No. 17/681,367, File History, Jul. 6, 2023 Office Action App. No. 17/681,367, File History, Aug. 10, 2023 Amdt. at 12-14, 15-16 App. No. 17/681,367, File History, Sep. 13, 2023 Notice of Allowance U.S. Publication No. 2007/0150004 (“Colloca”) U.S. Publication No. 2008/0243039 (“Rhoades”) U.S. Publication No. 2003/195443 (“Miller”) U.S. Patent No. 12,133,826, Claim 1 <i>Configure</i> , Merriam-Webster’s Collegiate Dictionary (11th ed., 2014) (“to set up for operation esp. in a particular way”) <i>Configure</i> , The American Heritage Dictionary of the English Language (5th ed., 2011) (“To design, arrange,

	Term	Preliminary Construction	Intrinsic and Extrinsic Evidence
			set up, or shape with a view to specific applications or uses”) <i>Configure</i>, Cambridge Advanced Learner’s Dictionary (4th ed., 2013) (“to arrange something or change the controls on a computer or other device so that it can be used in a particular way”) <i>Configure</i>, New Oxford American Dictionary (3rd ed., 2010) (“shape or put together in a particular form or configuration”)
2.	“a substantially cylindrical pocket to receive the quick release connector” (’482 Patent, Claim 34)	Indefinite and/or invalid for lack of written description support/enablement. Otherwise, “the pocket is sufficiently cylindrical such that it can receive the quick release connector without the need for rotational alignment.”	’482 Patent at 6:57-7:3; FIGs. 6, 6A, 6B. U.S. Publication No. 2008/0243039 (“Rhoades”) App. No. 17/681,367, File History, Aug. 10, 2023 Amdt. at 12-14, 15-16 App. No. 17/681,367, File History, Aug. 18, 2023 Examiner Interview Summary App. No. 17/681,367, File History, Sep. 13, 2023 Notice of Allowance
3.	“a quick-connect system comprising the	“the distal end of the piston and first	’082 Patent at 2:40-43; 6:53-7:14; FIGs. 6, 6A, 6B

Term	Preliminary Construction	Intrinsic and Extrinsic Evidence
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)	massaging head include structures that connect the proximal end of the first massaging head to the bore of the piston, wherein the structures are specially designed and adapted to quickly and easily connect or disconnect by the proximal end being inserted or removed from the bore regardless of rotational alignment while the piston reciprocates the predetermined stroke length at the first speed, not merely capable of doing so” Alternatively, the term is indefinite.	App. No. 17/681,367, File History, Mar. 21, 2023 Amdt. at 7-9 App. No. 17/681,367, File History, Mar. 24, 2023 Interview Summary App. No. 17/681,367, File History, Mar. 29, 2023 Amdt. at 7-9 App. No. 17/681,367, File History, May 15, 2023 Office Action at 5-6, 8-9, 15 App. No. 17/681,367, File History, Jun. 7, 2023 Amdt. App. No. 17/681,367, File History, Jun. 14, 2023 Examiner Interview Summary App. No. 17/681,367, File History, Jul. 6, 2023 Office Action App. No. 17/681,367, File History, Aug. 10, 2023 Amdt. at 12-14, 15-16 App. No. 17/681,367, File History, Sep. 13, 2023 Notice of Allowance U.S. Publication No. 2007/0150004 (“Colloca”) U.S. Publication No. 2008/0243039 (“Rhoades”) U.S. Publication No. 2003/195443 (“Miller”)

	Term	Preliminary Construction	Intrinsic and Extrinsic Evidence
			U.S. Patent No. 12,133,826, Claim 1 <i>Configure</i>, Merriam-Webster's Collegiate Dictionary (11th ed., 2014) ("to set up for operation esp. in a particular way") <i>Configure</i>, The American Heritage Dictionary of the English Language (5th ed., 2011) ("To design, arrange, set up, or shape with a view to specific applications or uses") <i>Configure</i>, Cambridge Advanced Learner's Dictionary (4th ed., 2013) ("to arrange something or change the controls on a computer or other device so that it can be used in a particular way") <i>Configure</i>, New Oxford American Dictionary (3rd ed., 2010) ("shape or put together in a particular form or configuration")
4.	"wherein the bore comprises a substantially cylindrical bore" ('082 Patent, Claim 13)	Indefinite and/or invalid for lack of written description support/enabement. Otherwise, "the bore is sufficiently cylindrical such that it can receive the proximal end of the	'082 Patent at 6:57-7:3; FIGs. 6, 6A, 6B. U.S. Publication No. 2008/0243039 ("Rhoades") App. No. 17/681,367, File History, Aug. 10, 2023 Amdt. at 12-14, 15-16

	Term	Preliminary Construction	Intrinsic and Extrinsic Evidence
		first massaging head without the need for rotational alignment.”	App. No. 17/681,367, File History, Aug. 18, 2023 Examiner Interview Summary App. No. 17/681,367, File History, Sep. 13, 2023 Notice of Allowance

Dated: December 17, 2024

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CERTIFICATE OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 610 Newport Center Drive, 17th Floor, Newport Beach, California 92660.

On December 17, 2024, I caused the below document described as:

**DEFENDANT THERABODY, INC.'S FIRST AMENDED P.R. 4-2
IDENTIFICATION OF PRELIMINARY CLAIM CONSTRUCTIONS**

to be served by email to the email addresses identified below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 17, 2024, at Newport Beach, California.



Kristin Godfrey