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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-00098-JWH-DFM (Lead Case)

Case No. 8:24-cv-00390-JWH-DFM (Consolidated)

THERABODY, INC.'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Plaintiffs Hyper Ice, Inc. and Hyperice IP Subco, LLC, (collectively, "Hyper Ice" or "Plaintiffs") accuse Defendant Therabody, Inc. ("Therabody") of infringing U.S. Patent Nos. 11,857,482 ("'482 Patent") and 11,938,082 ("'082 Patent") (the "Asserted Patents"). The Asserted Patents claim devices with connectors that must be "configured to" perform specific functions—securing a massaging head; inserting or removing the massaging head—"***while*** the piston reciprocates a predetermined stroke length at the first speed." The only disclosed embodiment of such a connector, and, in fact, the only connector described in the Asserted Patents, uses magnets to purportedly provide a "quick-connect system." This description of the claimed connectors was the reason these patents issued in the first place, as the applicants relied on the connectors being "configured to" perform these functions to overcome prior art.

Therabody proposes constructions of these two connector terms that are consistent with this intrinsic evidence and with a wealth of precedent holding that a system "configured to" perform a certain function is one specially designed to do so. Hyper Ice, on the other hand, asks the Court to rewrite the claims contrary to controlling precedent to recite that the connectors merely "allow" this function.

The other two disputed claim terms focus on a term of degree—"substantially cylindrical"—that the specification never uses. The specification never even describes ***any*** shape for the components it claims to be "substantially cylindrical," much less explain how far from cylindrical they can be. No POSITA could reasonably discern the scope of the claims and how much the components can deviate from a perfect cylinder. Accordingly, these terms are indefinite.

II. LEGAL STANDARD

The construction of terms found in patent claims is a question of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). "Claim construction is a matter of resolution of disputed meanings and technical scope, to

clarify and when necessary to explain what the patentee covered by the claims." *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997); *see also O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008) (claim construction "is to determine the meaning and scope of the patent claims asserted to be infringed") (citation omitted).

III. OVERVIEW OF THE ASSERTED PATENT

A. The Asserted Patents

The two Asserted Patents are related, share the same specification and figures, and are titled "Massage Device Having a Variable Stroke Length." As the name suggests, the disclosure largely focuses on various aspects of a massage device's motor and drive system, including a "lost motion system" that can "adjust the throw or the stroke length of the massaging head." *See, e.g.,* Ex. A[1] at 7:20-28.[2]

But the Asserted Patents also disclose a single embodiment describing a "quick-connect system" that "allows a user to quickly switch massaging heads" and "may be used without turning off the massaging device." Ex. A at 6:47-57. The only disclosure of the "quick-connect system," shown in Figure 6A below, includes a "piston 602 that has a hollow-end bore 608 for receiving the shaft of a massaging head," a "cylindrical seat" within the bore of the piston, and a massaging head with "a cylindrical pocket 622 at the distal end." *Id*. at 6:57–64. The seat in the piston and the pocket in the massaging head each contain magnets 606 and 624. *Id.*

[1] All citations to Exhibits A-V are citations to the Joint Appendix to Defendants' Claim Construction Briefing, filed concurrently herewith.

[2] Because the specification and figures are identical, all patent citations herein, unless otherwise specified, are to the '482 Patent (Ex. A) for clarity.

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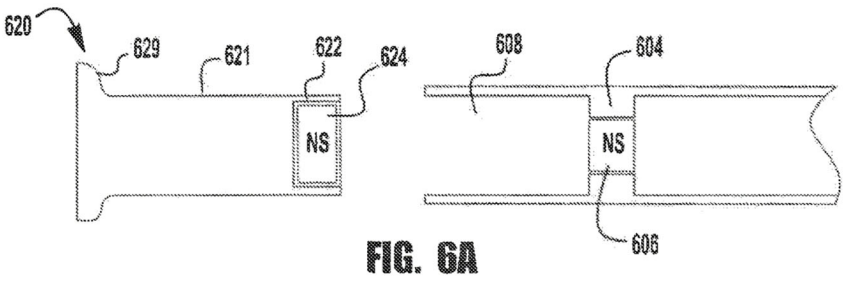

FIG. 6A

'082 Patent, FIG. 6A

These magnets are the crux of the "quick-connect system." When "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. And to remove the massaging head 620, "a user need only apply a sufficient amount of force to separate the two magnets 606, 624." *Id.* at 7:4-6. The magnets are purportedly "sized to prevent the massaging head 620 from separating from the piston 602 during normal use, and yet allow a user to quickly remove and replace the massaging head 620." *Id.* at 7:7-9. The specification also notes that the end of the massaging head can be "rounded, pointed or tapered" to "allow it to easily slip into the opening" of the piston, "even while the piston 608 is moving." *Id.* at 7:10-13.

Hyper Ice asserts two independent claims against Therabody: Claim 34 of the '482 Patent, and Claim 1 of the '082 Patent, both of which include a limitation directed to the connection system described above. Claim 34 of the '482 Patent recites a percussive massager that includes:

> 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 . . .

Ex. A at 11:64–12:11 (emphasis added).

Similarly, Claim 1 of the '082 Patent recites a percussive massager that includes:

> 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.

Ex. B at 9:64–10:11 (emphasis added).

Both patents also include claim elements directed to "substantially cylindrical" structures. Claim 34 of the '482 Patent recites that the first massaging head "has a substantially cylindrical pocket to receive the quick-release connector." Ex. A at 12:12-14. Dependent Claim 13 of the '082 Patent recites that "the bore comprises a substantially cylindrical bore." Ex. B at 10:59-60.

B. Level of Ordinary Skill in the Art

The Asserted Patents relate to the mechanical aspects of percussive massage devices. As discussed by Dr. John Pratt, and based on the relevant factors, *see In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995), a hypothetical person having ordinary skill in the art ("POSITA") would have had a bachelor's degree in mechanical engineering, or a related field, and two-to-three years of experience in the research, design, development, or testing of rotating or reciprocating mechanisms, with additional education substituting for experience and vice versa. Work experience could substitute for formal education and additional formal education could substitute for work experience. Ex. T at ¶¶ 22-25.

As discussed further below, a person of ordinary skill in the art would understand Therabody's proposed constructions to be correct.

IV. ARGUMENT

A. "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)

Hyper Ice's Proposal	Therabody's Proposal
a quick release connector at the distal end of the piston, wherein ***the design of 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	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 speed, ***not merely capable of doing so***

The parties' primary dispute is whether a quick release connector "configured to" perform a certain function in a particular way requires structures that are specially designed and adapted for such operation, as Therabody proposes, or if instead this language is satisfied by a device merely being capable of being operated in this way. The other aspects of Therabody's proposed construction reflect the Applicants' arguments during prosecution as to why other connectors were not "configured" in this manner.

i. The claim language supports Therabody's construction.

The Applicants chose to claim a connector "configured to" secure the massaging head while the piston reciprocates. The term "configured to" "embraces the concept of a device ***intentionally and specifically*** made to act in a certain way." *McHugh v. Hillerich & Bradsby Co.*, No. C 07-3677 JSW, 2010 WL 682339 at *6 (N.D. Cal. Feb. 24, 2010) (emphasis added). In other words, it "refer[s] to an intentional design." *Id. See also Boston Sci. Corp. v. Cordis Corp.*, No. C 02-01474 JW, 2006 WL 3782840, at *1–3 (N.D. Cal. Dec. 20, 2006) (the term "'configured to' embraces the concept of a device intentionally and specifically made to act in a certain way").

The Federal Circuit has long recognized this specialized meaning, and that a device that is merely "capable of" or "allows" a function is not one that is "configured to" perform that function. *See, e.g., In re Man Mach. Interface Techs. LLC*, 822 F.3d 1282, 1286 (Fed. Cir. 2016) (contrasting narrower terms "configured to," "made to," or "designed to" with broader terms of "capable of" or "suitable for"); *In re Giannelli*, 739 F.3d 1375, 1379–80 (Fed. Cir. 2014) (same); *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1349 (Fed. Cir. 2012) ("configured to" should be understood more narrowly than "capable of"); *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1380 (Fed. Cir. 2011) (distinguishing between a device configured to perform a certain function and a device that is simply capable of being configured to perform that function). *See also Ameranth, Inc. v. Genesis Gaming Sols., Inc.*, No. SACV 11-0189 AG (RNBx), 2014 WL 12577148, at *6 (C.D. Cal. Aug. 4, 2014) ("Federal Circuit law strongly suggests that 'configured to' is narrower than mere capability") (collecting cases); *Radware Ltd. v. A10 Networks, Inc.*, No. C-13-2021 RMW, 2014 WL 1572644, at *12 (N.D. Cal. Apr. 18, 2014) ("configured to" is a "patent term of art" and "courts have generally interpreted 'configured to' more narrowly than simply 'capable of'") (collecting cases).[3]

The "configured to" language in Claim 34 contrasts with the claim language in a related, but not asserted, patent, also assigned to Hyper Ice. U.S. Patent No. 12,133,826 claims a device with a "quick connect system" that "***allows*** a first massaging head to be connected or removed while the piston reciprocates the predetermined stroke length at the first speed." Ex. E at 10:1–20 (emphasis added). Whatever the proper scope of that unasserted claim, the Applicants' choice of

[3] This is also consistent with the plain and ordinary meaning of "configured to." For example, the American Heritage Dictionary defines "configure" to mean "design, arrange, set up, or shape with a view to specific applications or uses. . ." Ex. Q at 385-86. Similarly, Merriam-Webster's Collegiate Dictionary defines "configure" as "to set up for operation esp. in a particular way." Ex. P at 261.

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"allows" instead of "configured to" confirms the narrower scope of the latter language in Claim 34 of the asserted '482 Patent.

The Applicants' characterization of the connector as a "quick release connector" also supports Therabody's construction. That phrase is not used in the specification, but is presumably a reference to the "quick-connect system" that "allows a user to ***quickly switch*** massaging heads," *id.* at 6:53-54 (emphasis added), and "***quickly remove and replace*** the massaging head," *id.* at 7:8-9 (emphasis added).[4] The Applicants' use of "quick release" to describe the claimed connector confirms the action it is specially designed and adapted to perform—secure the massage head quickly and easily while the piston reciprocates.

ii. The specification supports Therabody's construction.

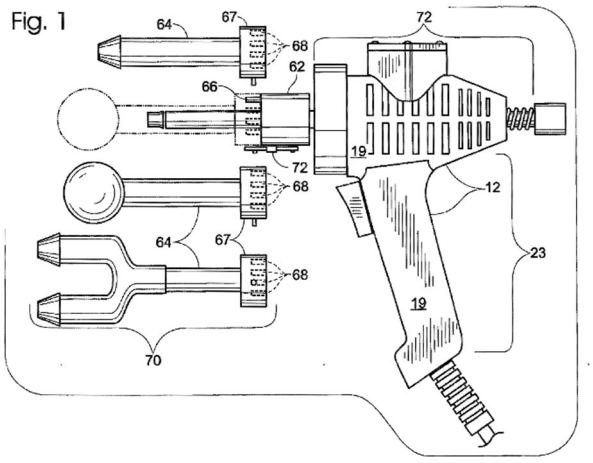
The specification's only embodiment relating to this limitation—the "quick-connect system" shown in Figures 6 and 6A—supports Therabody's construction, because it makes clear that the system ***is*** specially designed and adapted to secure a massaging head while the piston is reciprocating. The specification explains that the quick connect system "allows a user to quickly switch massaging heads" and "may be used without turning off the massaging device." Ex. A at 6:53-56. It describes the features of the quick connect system's design that specifically provide this functionality, including magnets located in a bore of the piston and the shaft of the massaging head "are sized to prevent the massaging head 620 from separating from the piston 602 during normal use, and yet allow a user to quickly remove and replace the massaging head 620." *Id.* at 7:6-9; *see also id.* at 7:9-13 ("In some embodiments the end 626 of the massaging head 620 is rounded, pointed or tapered (not shown) to allow it to easily slip into the opening 608 even while the piston 608 is moving").

[4] The specification does include a single reference to a "quick-release connection" in reference to a component in an attachment, not on the piston as claimed. *See* Ex. A at 3:42-44.

iii. The file history supports Therabody's construction.

In the file history of the '482 Patent, the Applicants explained an aspect of the design that made a connector "configured to" secure a massaging head while the piston reciprocates: it must be capable of being connected regardless of rotational alignment.

At the time, the pending claims recited "a quick release connector at the distal end of the piston," and "a first massaging head releasably coupled to the distal end of the piston via the quick release connector." Ex. J at 2. The Examiner rejected that claim based on prior art, including alleging that the quick release connector was taught by U.S. Published Patent App. No. 2003/0195443 to Miller. *Id.* at 6-7. Miller purported to address a need for "easily adjustable impact pressure and impact heads" for percussive therapeutic devices. Ex. O at [0005]. To that end, Miller described a piston having a coupler that "is used for affixing impact heads 70 of varying shapes." *Id.* at [0026]. The coupler, pictured below, "permit[ted] the impact head 70 to be removably affixed" to the piston. *Id.* It retained the impact head on the coupler by a pin 66 being inserted into a pin notch 68 on the impact head, and a "simple retaining hook or loop 72 or similar means" shown on the bottom of the piston. *Id.*



Ex. O at Figure 1

In response to the rejection based on the Miller prior art reference, the Applicants amended the claim to recite that "the quick release connector is configured to connect the first massaging head **while the piston moves between the minimum reciprocation stroke length and the maximum reciprocation stroke length at the first speed**," similar to the limitation found in issued Claim 34. Ex. J at 2, 8-9 (emphasis in original). The Applicants then argued that Miller's connector did not meet this new limitation because it "***must be aligned in one orientation***," with a pin on the bottom of the collar 62 aligned with hook or loop 72, and pin 66 being aligned with pin notch 68. *Id.* (emphasis added); *see also* Ex. J at Figure 1 (reproduced above). Hyper Ice's claimed "quick release connector," by contrast, "enables quick removal and replacement of a massaging head with the apparatus." *Id.* at 9. In other words, as Dr. Pratt explains, the Applicants distinguished their claimed connector that was "configured to connect" the massaging head while the piston reciprocates from one that requires rotational alignment of its orientation. *See* Ex. T at ¶¶ 43-45.

Because Federal Circuit precedent, the plain meaning of the claim, and all of the intrinsic evidence support Therabody's proposed construction for what it means for a connector to be a "quick release connector" that is "configured to secure a first massaging head while the piston reciprocates a predetermined stroke length at the first speed," that construction should be adopted.

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B. "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)

Hyper Ice's Proposal	Therabody's Proposal
a quick-connect system comprising the distal end of the piston and a first messaging head, wherein the design of 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	the distal end of the piston and first 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 Alternative Construction**:** Indefinite

The "quick connect system" term in Claim 1 of the '082 Patent presents a nearly identical dispute between the parties as to what is required for a component to be "configured to" perform the task of securing a massaging head while the piston reciprocates. The differences in Therabody's proposed construction for this term compared to the "quick release connector" term discussed in Section IV.A account for the two differences in the claim language of these terms. First, the '082 Patent Claim 1 recites a "system" that includes the end of the piston and the first massaging head, rather than only the "connector" on the piston. Second, the function that the system in Claim 1 of the '082 patent is configured to provide is a little different than the '482 Patent, Claim 1, with the system being "configured to have a proximal end of the first massaging head inserted into or removed from the bore."

Therabody's proposed construction for the "quick-connect system" term of Claim 1 of the '082 Patent is correct for the same reasons as its proposed construction for the "quick release connector" term. Both terms require that the respective

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structures be "configured to" perform the recited functions while the piston reciprocates, not merely be capable of doing so. Both terms also incorporate the patents description that the function be performed quickly and easily. Both terms unquestionably refer to the same sole disclosed embodiment of such a connector described in Figures 6 and 6A. And the Applicants arguments to the patent office as to what is required for a connector to be "configured" in this way apply equally to both terms.

Accordingly, for the reasons described above, Therabody's proposed construction for the "quick-connect system" term in Claim 1 of the '082 Patent should also be adopted.

C. If Therabody's Proposed Constructions for "Quick Release Connector" and "Quick-Connect System" Are Not Adopted, Those Terms Are Indefinite.

A patent is indefinite "if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). When that "required guidance is not provided by the claims, specification, and prosecution history," the claims are indefinite. *Dow Chem. Co. v. Nova Chems. Corp. (Canada)*, 803 F.3d 620, 634 (Fed. Cir. 2015).

Here, the claims, specification, and prosecution history all point to Therabody's proposed construction as correctly describing what it means for a connector to fall within the scope of being "configured to" receive or remove an attachment "while the piston reciprocates." If the claims are not construed accordingly, the limitations are rendered indefinite.

Hyper Ice's proposed construction is illustrative of the ambiguity of this claim without the proper construction. Hyper Ice asks the Court to eschew the intrinsic evidence about what it means to configure a device to perform this way, but then goes even further. Contrary to controlling Federal Circuit precedent,

Hyper Ice seeks to broaden the scope of the claims to capture any product that would "***allow***" the attachment to be secured, inserted, and/or removed while the piston is reciprocating.

The '482 and '082 Patents say nothing about what would (or would not) "allow" this. For example, if a user were capable of forcibly jamming an attachment onto or ripping it off of the piston, does that connector "allow" this to happen regardless of its design? "A device does not infringe simply because it has been made to do something that it was not intended to do." *Figa v. Apple Inc.*, No. 08-10304-NG, 2009 WL 10693521, at *13 (D. Mass. Sept. 21, 2009) (*citing High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 49 F.3d 1551, 1555-56 (Fed. Cir. 1995)). Yet Hyper Ice's proposed construction would sweep a wide variety of connectors within the scope of the claimed "quick release connector" and "quick-connect system," bounded only by whether the designers of those products were able to foresee and prevent all potential misuse.

Thus, if these terms are not construed according to the guidance of the intrinsic evidence, they should be determined to be indefinite, as their ambiguity prevents one of skill in the art from understanding the scope of the claims.

D. "a substantially cylindrical pocket to receive the quick release connector" ('482 Patent, Claim 34)

Hyper Ice's Proposal	Therabody's Proposal
This term is not indefinite. Validity is not at issue for this claim construction proceeding; regardless, all claims are valid. a pocket that is substantially or entirely cylindrical that the quick release connector can be inserted into	Indefinite and/or invalid for lack of written description support/enablement. **Alternative Construction (if not invalid):** "the pocket is sufficiently cylindrical such that it can receive the quick release connector without the need for rotational alignment"

i. The claimed "substantially cylindrical pocket" is indefinite.

Words of degree like "substantially" are "not 'inherently indefinite,' but 'the

court must determine whether the patent provides some standard for measuring that degree.'" *Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274, 1284 (Fed. Cir. 2023) (quoting *Biosig Instruments, Inc. v. Nautilus, Inc.*, 783 F.3d 1374, 1378 (Fed. Cir. 2015)). Here, the '482 Patent provides no such standard for measuring whether a pocket is "substantially cylindrical." Indeed, the phrase is not even used anywhere in the specification.

But even with the lack of any supporting disclosure, there must be some difference in scope between a "cylindrical" pocket and the "substantially cylindrical" one that is claimed. Hyper Ice's proposed construction ("substantially ***or*** entirely cylindrical") acknowledges that fact. And the '482 Patent does describe other elements (seat 604 and the pocket 622, both of which hold magnets) as "cylindrical," without a modifier. '482 Patent, 6:59-65. *See In re Taasera Licensing LLC, Pat. Litig.*, No. 2:22-MD-03042-JRG, 2023 WL 8628323, at *20 (E.D. Tex. Dec. 13, 2023) (where patent contains both "real time" and "substantially real time," it "suggests some difference in scope").

Yet there is no guidance in the claims, the specification, or the file history that would allow a POSITA to determine the difference between the two, or to determine what amount of deviation from a perfect cylinder would still constitute a "substantially cylindrical" pocket. Neither the specification nor the figures contain any disclosure of any "substantially cylindrical" elements that could guide such an assessment. *See* Ex. A at Figs. 6, 6A, 6B. *See also* Ex. T at ¶¶ 33-34.

That is a critical omission because, in the context of the claimed invention of the '482 Patent, the difference between a "cylindrical" pocket and a "substantially cylindrical" one is meaningful. As Dr. Pratt explains, if the pocket recited in claim 34 were only "substantially cylindrical," a perfectly cylindrical piston would either not fit or not be securely held by that pocket. *Id.* ¶ 35. On the other hand, if the pocket ***and*** the piston were both not cylindrical but only "substantially cylindrical," securing the attachment to the piston would require careful alignment and thus not

be "configured to secure a first massaging head while the piston reciprocates a predetermined stroke length at the first speed." *Id.*

The specification provides no guidance as to how cylindrical the claimed pocket must be to practice the claimed invention, with its requirement of "a substantially cylindrical pocket to receive the quick release connector." This ambiguity prevents a POSITA from understanding what is being claimed with reasonable certainty. *Id.* ¶ 36. Accordingly, this term is indefinite.

Even if the term is not indefinite, this claim must still be found invalid because the specification never describes "***the first massaging head*** ha[ving] a substantially cylindrical pocket to receive the quick release connector." The sole disclosed embodiment in Figure 6A includes a bore 608 ***in the piston*** that receives the shaft 621 of the massaging head 620. Ex. A at 6:57-58; FIG. 6A. In other words, the only embodiment of the specification describes the opposite configuration to that recited in the claims, with the pocket (or bore) in the piston rather in the massaging head, as recited in Claim 34. Moreover, the '482 Patent never describers ***any*** shape of that bore 608, describing it only as a "hollow-end bore." *Id.*

In its Patent Owner Preliminary Response to the Post Grant Review petition filed by Therabody ("POPR"), Plaintiff makes three arguments for why the specification does provide written description and enables this term. None are sufficient to meet the requirements of 35 U.S.C. § 112. First, Plaintiff argues that the "specification shows a 'female' bore 608 (which is the same as a pocket) ***in the piston***." Ex. V at 40 (emphasis added). But even this female bore is part of the ***piston*** and thus cannot provide written description for the claimed "pocket," which is claimed as part of the "first massaging head," not the piston.

Perhaps recognizing this flaw, Plaintiff next argues that a "skilled artisan could easily swap these, so that the 'male' portion of the piston could be inserted into a 'female' bore/pocket in the massaging head." *Id.* at 41. But the written description requirement requires the supporting disclosure to be within the four corners of the

specification—how a skilled artisan would modify the disclosure is irrelevant. *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (citing *Lockwood v. Am. Airlines*, 107 F.3d 1565, 1571–72 (Fed.Cir.1997)). Thus, Plaintiff's argument essentially admits the written description itself is lacking.

Plaintiff's third argument in the POPR suffers from the same shortcoming. Here, Plaintiff attempts to redraw Figure 6A entirely, stating: "a skilled artisan could accomplish something similar by revising the structure shown in Figure 6A . . . [by] simply extend[ing] magnet 606 (extension shown in blue), extend the length of massaging head 620 (extension shown in red), and create a pocket (shown in purple) into which magnet 606 could be inserted." Ex. V at 41. Again, these modifications are found nowhere in the written description itself. Accordingly, if nothing else, this term is invalid for lack of written description support or enablement.

ii. If this term is not indefinite, it must be construed according to the function it is intended to accomplish.

If the Court is not inclined to find this term of degree indefinite, then the term must at a minimum be construed "to meet the purpose of the claimed invention." *Ironburg*, 64 F.4th at 1288. In other words, "embodiments that allow the claim's purpose to be effectuated are within the scope of the claims, while those that do not are not." *Id.* The Federal Circuit affirmed this approach in *Grace Instrument Indus., LLC v. Chandler Instruments Co., LLC*, 57 F.4th 1001 (Fed. Cir. 2023), where it reversed the district court's conclusion of indefiniteness, but construed the term "enlarged chamber" to be large enough to perform its stated function in the specification. *Id.* at 1009, 1012.

To the extent the '482 Patent's intrinsic evidence provides any guidance at all, it would inform a POSITA that the pocket must be cylindrical enough that it can receive the quick release connector without the need for rotational alignment. In the context of Claim 34, the purpose of the "substantially cylindrical" pocket is "to receive the connector" "while the piston reciprocates a predetermined stroke length

at the first speed." Ex. A at 10:10-14. This capability is the purported benefit of the "quick-connect system" disclosed in the specification. *Id.* at 6:55-56. And as discussed above in Section IV.A.iii, the Applicants' statements in the file history confirm that to receive the connector while the piston reciprocates, the connecting elements must be able to do so without the need for rotational alignment. *See* Ex. T at ¶¶ 33-36; Ex. J at 8 (distinguishing Miller because "Miller's head must be aligned in one orientation, such that the pin on the bottom of the collar 62 mates with hook or loop 72 to retain the impact head 70," and "the horizontal pin must be aligned and inserted into a pin notch 68 in order to retain the impact head.").

Accordingly, to the extent the specification and file history provide any guidance at all to render this claim term sufficiently definite, that guidance is that the shape of the claimed "cylindrical pocket" must be sufficiently cylindrical such that it can receive the quick release connector without regard to rotational alignment.

E. "wherein the bore comprises a substantially cylindrical bore" ('082 Patent, Claim 13)

Hyper Ice's Proposal	Therabody's Proposal
This term is not indefinite. Validity is not at issue for this claim construction proceeding; regardless, all claims are valid. wherein at least a portion of the bore is substantially cylindrical in shape	Indefinite and/or invalid for lack of written description support/enablement. **Alternative Construction (if not invalid):** "the bore is sufficiently cylindrical such that it can receive the proximal end of the first massaging head without the need for rotational alignment"

The "substantially cylindrical bore" term in claim 13 of the '082 Patent presents a nearly identical dispute as the "substantially cylindrical pocket" term in the '482 patent, but in the case of the '082 patent the claimed bore (or pocket) is in the piston, rather than in the massage head, as in the '482 Patent. The concept of a bore in a piston at least finds some written description support in the disclosed embodiment, in contrast to the pocket in the massage head. *See* Ex. B at FIG. 6A and 6:57-59 ("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."). But once again, the specification is silent as to ***any*** shape of that bore, which is depicted (as shown below) as merely a two-dimensional opening with no cylindrical sides.

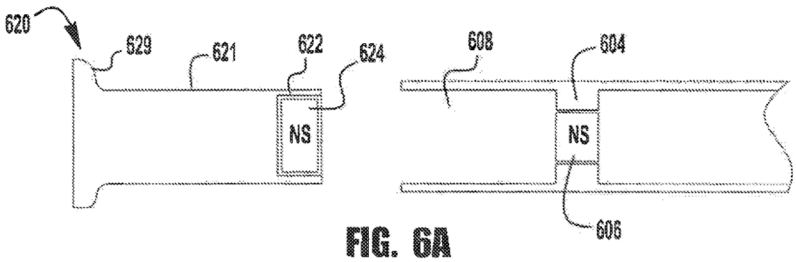

FIG. 6A

'082 Patent, FIG. 6A

Moreover, the '082 Patent confirms that the Applicants understood there to be *some* difference between a "cylindrical" object and a "substantially cylindrical" one. Dependent Claim 15, which is not asserted in this case, recites that a "***substantially cylindrical*** structure comprises a ***cylindrical*** seat." *Id.* at 10:63-65 (emphasis added). Once again, the specification is silent as to how far from cylindrical the bore can be to still perform its purpose – i.e., to "have a proximal end of the first massaging head inserted into or removed from" it "while the piston reciprocates the predetermined stroke length at the first speed." *Id.* at 10:7-12.

Thus, the Court should find that "substantially cylindrical bore" is indefinite for the same reasons given above in Section IV.D, or in the alternative construe the term to meet the purpose of the purported invention, i.e., sufficiently cylindrical such that the bore can receive the proximal end of the first massaging head without the need for rotational alignment.

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