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HYPERICE IP SUBCO, LLC

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,

Plaintiff,

v.

THERABODY, INC.,

Defendant.

**CASE NO. 8:24-cv-00390-JWH-
DFMx**

**PLAINTIFFS' CORRECTED AND
FIRST AMENDED RESPONSES TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs Hyper Ice, Inc. and Hyperice IP Subco, LLC (collectively, "Hyperice" or "Hyper Ice") provides corrected and first amended responses to the Interrogatories propounded by Defendant Therabody, Inc. ("Therabody").

GENERAL RESPONSES

1
2 1. Hyperice's objections and responses are based upon information that is
3 presently available, and Hyperice reserves the right to further supplement or amend
4 these objections and responses as discovery progresses in accordance with Fed. R.
5 Civ. P. 26(e). Discovery is ongoing and Hyperice is still investigating and analyzing
6 the relevant facts and law. Hyperice's objections and responses are therefore made
7 without prejudice to its right to add, modify, or otherwise amend them.

8 2. Hyperice reserves all objections and other questions as to the
9 competency, relevance, materiality, privilege, or admissibility of Hyperice's
10 responses and any information, document, or thing identified herein or provided in
11 response thereto.

12 3. Hyperice's responses and objections are based on Hyperice's
13 interpretation and understanding of each request. If Therabody and/or the Court
14 asserts a different interpretation or understanding of any request, Hyperice reserves
15 the right to supplement or amend its responses and/or objections. Therabody's First
16 Set of Interrogatories also contains terms and phrases with specific legal significance.
17 Neither Hyperice's objections, responses, nor provision of information or production
18 of any documents in response to any request is to be construed as an admission or
19 indication that such information or documents are relevant to any legal theory or that
20 any of the legal terms apply to information or documents that may be produced by
21 Hyperice.

22 4. Any response that indicates that Hyperice will produce documents or
23 things should not be construed to mean that responsive documents or things in fact
24 exist; only that, if such responsive, non-privileged, non-objectionable documents or
25 things exist, are in Hyperice's possession, custody, or control, and are located after a
26 reasonable search of the location or locations where responsive documents or things
27 are likely to be located, such documents or things will be produced in a timely manner.
28

DEFINITIONS

4. The term “**Related Patents**” means: (a) any patent or patent application which claims priority from the Asserted Patent; (b) any patents or patent applications that claim priority from any patent on which the Asserted Patent claims priority; (c) any patents or patent applications on which the Asserted Patent depends for priority; (d) any reissues or reexaminations of any of the aforementioned patents or patent applications; and (e) any foreign counterparts of any of the aforementioned patents or patent applications—all whether or not abandoned and whether or not issued.

1 5. As used herein, “**Infringement Contentions**” means Hyper Ice’s
2 disclosures of accused products, asserted claims, and claim charts served on July 5,
3 2024, any amendments or supplements thereto, and any other allegations of
4 infringement.

5 6. As used herein, “**Asserted Claim(s)**” means each or all of the claims of
6 the Asserted Patent that Hyper Ice contends are infringed by Therabody as identified
7 in Hyper Ice’s Infringement Contentions.

8 7. As used herein, “**Prior Assignee**” means any entity (including
9 predecessors (merged, acquired, or otherwise), successors, subsidiaries, and parents)
10 who previously was assigned or held rights in the Asserted Patent or any of the
11 Related Patents.

12 8. As used herein, “**Priority Date**” shall mean the earliest date to which a
13 patent or patent application claims priority, whether based on an earlier-filed parent
14 patent application, foreign or international patent application, or provisional
15 application, or based on prior conception or reduction to practice.

16 9. As used herein, “**Accused Product(s)**” means every Therabody-branded
17 apparatus, product, device, service, process, method, act, or other instrumentality that
18 Hyper Ice contends falls within the scope of any claim of the Asserted Patent, as
19 identified in Hyper Ice’s Infringement Contentions, and any permitted amendments
20 thereto, and/or any other assertion of infringement.

21 10. The terms “**Action**” and “**Litigation**” refer to the above-captioned
22 lawsuit filed on February 23, 2024, in the United States District Court for the Central
23 District of California, and any allegations, claims, and counterclaims therein.

24 11. The term “**Complaint**” refers to Hyper Ice’s Complaint for Patent
25 Infringement filed in the Action on February 23, 2024.

26 12. As used herein, “**Past Litigation(s)**” means any past legal proceeding
27 (including federal court litigations, proceedings before the USPTO, and USITC
28 investigations) involving the Asserted Patent or one or more of the Related Patents.

1 13. As used herein, “**Related Litigation(s)**” means any pending legal
2 proceeding (including federal court litigations, proceedings before the USPTO, and
3 USITC investigations) involving the Asserted Patent or one or more of the Related
4 Patents.

5 14. The terms “**PTO**” and “**USPTO**” refer to the United States Patent and
6 Trademark Office.

7 15. The term “**Prior Art**” is used as that phrase is generally understood in
8 proceedings before the PTO. The term “Prior Art” also includes all information that
9 was subject to a duty of disclosure to the PTO with respect to the applications leading
10 to the Asserted Patent and all information now known to You or to Your attorneys
11 that would have been subject to a duty of disclosure to the PTO had that information
12 been known to the named inventors or to You or Your attorneys during the
13 prosecution of any applications leading to the Asserted Patent. The term “Prior Art”
14 also refers to, by way of example and without limitation, the subject matter described
15 in 35 U.S.C. §§ 102 and 103, including without limitation (1) publications, physical
16 devices, prototypes, uses, sales and offers for sale, and any document or thing
17 evidencing any of the foregoing and/or (2) any document or thing that any person has
18 at any time suggested, stated, or contended invalidates (or may invalidate), anticipates
19 (or may anticipate), or makes obvious (or may make obvious), alone or in combination
20 with other documents or things (or the skill or knowledge of a person of ordinary skill
21 in the art), (a) any claim of the Asserted Patent, (b) any claim pending during the
22 prosecutions of any patent applications leading to the Asserted Patent, (c) any claim
23 of any division, continuation, continuation-in-part, reissue or reexamination patent,
24 or patent application derived from the Asserted Patent, or (d) any claim of any foreign
25 patent or claim pending at any time during the prosecution of any foreign patent
26 application either corresponding to (or relying on the priority filing of) the Asserted
27 Patent or any applications leading to the Asserted Patent.

1 16. As used herein, the present tense of any word shall be interpreted to
2 include the past tense and vice versa.

3 17. As used herein, the singular form of any word shall be interpreted to
4 include the plural and vice versa.

5 18. As used herein, the masculine form of any word shall be interpreted to
6 include the feminine and vice versa.

7 19. Except where the context does not permit, the term “**including**” means
8 including without limitation.

9 20. Except where the context does not permit, the terms “**and**” and “**or**” are
10 both conjunctive and disjunctive.

11 21. Except where the context does not permit, the terms “**each**,” “**all**,”
12 “**every**,” and “**any**” mean any and all.

13 22. The terms “**relate to**,” “**related to**,” and “**relating to**” mean in whole or
14 in part constituting, containing, embodying, reflecting, describing, analyzing,
15 identifying, mentioning, stating, referring directly or indirectly to, dealing with,
16 tending to support or refute, or in any way pertaining to.

17 23. The term “**date**” means the exact date, if known, or the closest
18 approximation to the exact date as can be specified, including without limitation the
19 year, month, week in a month, part of a month, and day.

20 24. The terms “**person**” and “**persons**” mean any individual, corporation,
21 proprietorship, association, joint venture, company, partnership, or other business or
22 legal entity, including governmental bodies and agencies.

23 25. The term “**document**,” “**documents**,” and “**documentation**” shall be
24 construed under the broadest possible construction under the Federal Rules of Civil
25 Procedure and shall include without limitation any written, recorded, graphic, or other
26 matter whether sent or received or made or used internally, however produced or
27 reproduced and whatever the medium on which it was produced or reproduced
28 (whether on paper, cards, charts, files, or printouts; tapes, discs, belts, video tapes,

1 audiotapes, tape recordings, cassettes, or other types of voice recording or
2 transcription; computer tapes, databases, e-mails; pictures, photographs, slides, films,
3 microfilms, motion pictures; or any other medium), and any other tangible item or
4 thing of readable, recorded, or visual material of whatever nature, including without
5 limitation originals, drafts, and all non-identical copies of each document (which, by
6 reason of any variation, such as the presence or absence of handwritten notes or
7 underlining, represents a distinct version). By way of example, the term
8 “document(s)” as used herein shall include without limitation: correspondence;
9 blueprints; memoranda; notes; diaries; letters; telegraphs; telegrams; telexes; emails;
10 minutes; agendas; contracts; reports; studies; checks; statements; receipts; returns;
11 summaries; pamphlets; circulars; press releases; advertisements; books; inter-office
12 and intra-office communications; handwritten or typewritten notes; notations or
13 summaries of telephone conversations, meetings, or conferences; bulletins; computer
14 printouts; databases; teletypes; telefax; invoices; worksheets; photographs; tape
15 recordings; and all other tangible items of readable, recorded, or visual material of
16 any kind.

17 26. The term “**thing**” shall be construed under the broadest possible
18 construction under the Federal Rules of Civil Procedure.

19 27. The term “**communication**” means any transmission of information in
20 any context or situation by or between two or more persons by any means or medium
21 whatsoever, whether in the form of an original, a draft, or a copy, whether stored in
22 hard copy, electronically or digitally, or on tape, either orally or in writing, including
23 without limitation conversations, correspondence, electronic mails, telexes, facsimile,
24 transmissions, telecopies, recordings in any medium of oral, written, or typed
25 communication, telephone or message logs, notes or memoranda relating to written
26 or oral communications, or any translation thereof.

27 28. The terms “**identify**,” “**identity**,” and “**describe**” mean:
28

- 1 (a) as applied to an individual, to state the individual's full name,
2 present or last known address and telephone number, present or
3 last known employer, present or last known business address and
4 telephone number, present and prior employment positions and
5 corresponding dates of such positions, and a description of the
6 individual's present employment responsibilities;
- 7 (b) as applied to a person other than a natural person (including
8 without limitation any business or other entity), to state the
9 entity's full name, place and date of incorporation or formation,
10 principal place of business or activity, and the identity of the
11 natural persons within that entity having knowledge of the matter
12 with respect to which that entity is named;
- 13 (c) as applied to a document (whether or not any claim of privilege is
14 made in respect thereof), to state the type of document, the date of
15 creation of the document, the date of communication of the
16 document, the names and identities of the individuals who drafted,
17 authored, or signed the document or to whom a copy thereof was
18 addressed or sent, a summary of the subject matter of the
19 document, the number of pages of the document, the present
20 whereabouts of the document, including without limitation all
21 originals and copies, and the name and address of the present or
22 last-known custodian of the document;
- 23 (d) as applied to a thing, to state the date that the thing was first
24 introduced for sale, the date of the thing's first sale, all versions,
25 parts, or revision numbers or codes, all product names, and all
26 team names or project titles used in connection with the design,
27 development, testing, or engineering of that product;
28

- 1 (e) as applied to a process, to state the date that the process was first
2 used, the date the products or goods made by the process were first
3 sold, all numbers or codes used to refer to the process, including
4 without limitation process revision numbers or codes, all process
5 names, and all team names or project titles used in connection with
6 the design, development, testing, or engineering of that process;
- 7 (f) as applied to a communication, to state the type of communication,
8 the date and the parties to such communication, and if such
9 communication has been recorded in documentary form, to
10 identify all documents recording such communication;
- 11 (g) as applied to conception and reduction to practice, to state the date
12 each alleged invention was first conceived, the date each alleged
13 invention was first reduced to practice, all evidence of reasonable
14 diligence between the date each alleged invention was first
15 conceived and the date each alleged invention was first reduced to
16 practice, and all persons who participated in the conception and
17 reduction to practice of each such alleged invention; or
- 18 (h) as applied to transfers and assignments of patent ownership rights,
19 to state the timing and circumstances of each transfer or
20 assignment of rights or interests, the identification of all persons
21 or entities involved in each transfer or assignment, the terms of
22 any agreement(s) related to each transfer or assignment, any
23 consideration tendered in recognition of those agreement(s), and
24 the terms of any other agreement(s) concerning any
25 cooperation/noncooperation or consultation of any person or
26 entity related to patent ownership or enforcement.
- 27
28

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail all facts and circumstances regarding Hyper Ice's standing to bring suit against Therabody with respect to the Asserted Patent, including identifying the current and all prior owners of the Asserted Patent, any documents relevant to ownership of the Asserted Patent, any assignments of the Asserted Patent, or any grant or offer to grant rights in the Asserted Patent; identifying all documents that support or undermine Hyper Ice's standing to bring suit; and identifying all persons with knowledge that either supports or undermines Hyper Ice's standing to bring suit.

RESPONSE TO INTERROGATORY NO. 1:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or attorney work-product doctrine. Hyperice further objects to this interrogatory on the ground that it is impermissibly compound and constitutes multiple interrogatories—in this case three distinct interrogatories. Subject to and without waiving these objections, Hyperice responds as follows:

Hyperice IP Subco, LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the owner of the '482 Patent. Hyper Ice, Inc. is the exclusive licensee that has been granted the express, irrevocable right to enforce and defend the '482 Patent. Hyperice further intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing these business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party.

AMENDED RESPONSE TO INTERROGATORY NO. 1:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or attorney work-product doctrine. Hyperice further objects to this interrogatory on the ground that it is impermissibly compound and constitutes multiple interrogatories—in this case three distinct interrogatories. Subject to and without waiving these objections, Hyperice responds as follows:

Hyperice IP Subco, LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the owner of the ‘482 Patent and the ‘082 Patent. Hyper Ice, Inc. is the exclusive licensee that has been granted the express, irrevocable right to enforce and defend the ‘482 Patent and the ‘082 Patent. Hyperice further intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing these business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party

INTERROGATORY NO. 2:

For each of the Asserted Claims of the Asserted Patent, identify the factual and legal support for Your contention that each claim meets the written description and enablement requirements of 35 U.S.C. § 112, Paragraph 1, including an identification of, on a limitation-by-limitation basis in chart or table format by column and line number(s) (or by page and paragraph if the document does not include line numbers), the portion(s) of the Asserted Patent that You contend provides supporting disclosure therefor.

RESPONSE TO INTERROGATORY NO. 2:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ.

1 P. 26(b). Hyperice further objects to this interrogatory on the ground that the
2 interrogatory requests information protected by the attorney-client privilege and/or
3 attorney work-product doctrine. Hyperice further objects to this interrogatory on the
4 ground that the interrogatory is premature. Hyperice intends to detail its bases for its
5 contention that that each claim meets the written description and enablement
6 requirements of 35 U.S.C. § 112, Paragraph 1, in expert report(s) that Hyperice
7 expects to produce in this litigation, after obtaining discovery from Therabody and
8 taking depositions of relevant individuals and corporations. Subject to and without
9 waiving these objections, Hyperice responds as follows:

10 The written-description requirement is satisfied because persons of ordinary
11 skill in the field of the invention would recognize, from reading the patent
12 specification, that the inventors possessed the subject matter finally claimed in the
13 patent. In addition, the written-description requirement is satisfied because the
14 specification shows that the inventors possessed their invention as of the effective
15 filing date of the claimed invention, even though the claims may have been changed
16 or new claims added since that time. It is unnecessary to spell out every detail of the
17 invention in the specification, and specific examples are not required. Enough must
18 be included in the specification to convince persons of ordinary skill in the art that the
19 inventors possessed the full scope of the invention.

20 The enablement requirement is satisfied because the patent discloses sufficient
21 information to enable or teach persons of ordinary skill in the field of the invention as
22 of the effective filing date of the claimed invention to make and use the full scope of
23 the claimed invention without undue experimentation. A patent need not expressly
24 state information that persons of ordinary skill would be likely to know or could
25 obtain. The fact that some experimentation may be required for a person of ordinary
26 skill in the field of the invention to practice the claimed invention does not mean that
27 a patent does not meet the enablement requirement.

28

The support for each limitation of each Asserted Claim includes the following:

Limitation	Support
34. A percussive massager comprising: a housing;	Figures 1-3; 1:54-57; 1:63-64; 2:2; 3:33-41; 4:4-5; 4:35
a piston in the housing having a proximal end and a distal end,	Figures 1-4, 6, 6A; 1:34-54; 2:1-17; 6:47-49; 6:57-59
a motor at least partially within the housing	Figures 2, 3; 4:35-42
and operatively connected to the proximal end of the piston,	Figures 2-4; 4:35 – 5:13
wherein the motor is configured to cause the piston to reciprocate at a first speed;	3:49-51
a drive mechanism between the motor and the piston that controls a predetermined stroke length of the piston; and	Figures 2-4; 2:8-9; 4:64 – 5:13
a quick release connector at the distal end of the piston,	Figures 1, 2, 6, 6A; 3:42-44; 6:47 – 7:19
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,	Figures 1, 2, 6, 6A; 3:42-44; 6:47 – 7:19
wherein the first massaging head has a substantially cylindrical pocket to receive the quick release connector.	Figures 6, 6A; 3:42-44; 6:47 – 7:19
35. The percussive massager of claim 34, further comprising: a second massaging head configured to releasably couple to the distal end of the piston via the quick release connector.	Figures 6, 6B; 3:42-44; 6:47 – 7:19

1	36. The percussive massager of claim 34, wherein	3:51-53
2	the motor is configured to cause the piston to	
3	reciprocate the predetermined stroke length at a	
4	second speed.	
5	37. The percussive massager of claim 36, wherein	3:67 – 4:3; 4:38-40; 5:20
6	the first speed and the second speed are each less	
7	than or equal to 3600 strokes per minute.	
8	38. The percussive massager of claim 36, wherein	3:67 – 4:3; 4:38-40; 5:20
9	the first speed and the second speed are each	
10	greater than or equal to 600 strokes per minute.	
11	40. The percussive massager of claim 36, further	Figure 1; 3:45 – 4:34; 8:52-
12	comprising:	56
13	a control panel positioned on an exterior of the	
14	housing	
15	41. The percussive massager of claim 40, wherein	Figure 1; 3:45 – 4:34; 8:52-
16	the control panel is configured to display one or	56
17	more visual indicators.	
18	43. The percussive massager of claim 40, wherein	Figure 1; 3:45 – 4:34; 8:52-
19	the control panel has one or more inputs.	56
20	44. The percussive massager of claim 43, wherein	Figure 1; 3:45 – 4:34; 8:52-
21	the one or more inputs comprise at least one of: a	56
22	button, a switch, and a dial.	
23	45. The percussive massager of claim 43, wherein	Figure 1; 3:45 – 4:34; 8:52-
24	the first speed and the second speed are each	56
25	selectable via the one or more inputs.	
26	46. The percussive massager of claim 43, wherein a	Figure 1; 3:45 – 4:34
27	first selection of the one or more inputs is	
28	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.	

1 58. The percussive massager of claim 34, wherein 2 the motor has an output shaft configured to rotate 3 about a rotation axis, and wherein the drive 4 mechanism comprises: 5 a flywheel operatively connected to the output shaft 6 of the motor to rotate about a flywheel axis, the 7 output shaft extending into the flywheel along the 8 flywheel axis;	Figures 2-4; 4:41 – 5:6
9 and a crank pin extending from the flywheel, the 10 crank pin being operatively connected to the piston.	Figures 2-4; 4:41 – 5:6
11 60. The percussive massager of claim 59, wherein 12 the motor is directly connected to the flywheel, and 13 wherein the crank pin is directly connected to the 14 flywheel.	Figures 2-4; 4:41 – 5:6

AMENDED RESPONSE TO INTERROGATORY NO. 2:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or attorney work-product doctrine. Hyperice further objects to this interrogatory on the ground that the interrogatory is premature. Hyperice intends to detail its bases for its contention that that each claim meets the written description and enablement requirements of 35 U.S.C. § 112, Paragraph 1, in expert report(s) that Hyperice expects to produce in this litigation, after obtaining discovery from Therabody and taking depositions of relevant individuals and corporations. Subject to and without waiving these objections, Hyperice responds as follows:

The written-description requirement is satisfied because persons of ordinary skill in the field of the invention would recognize, from reading the patent specification, that the inventors possessed the subject matter finally claimed in the

patent. In addition, the written-description requirement is satisfied because the specification shows that the inventors possessed their invention as of the effective filing date of the claimed invention, even though the claims may have been changed or new claims added since that time. It is unnecessary to spell out every detail of the invention in the specification, and specific examples are not required. Enough must be included in the specification to convince persons of ordinary skill in the art that the inventors possessed the full scope of the invention.

The enablement requirement is satisfied because the patent discloses sufficient information to enable or teach persons of ordinary skill in the field of the invention as of the effective filing date of the claimed invention to make and use the full scope of the claimed invention without undue experimentation. A patent need not expressly state information that persons of ordinary skill would be likely to know or could obtain. The fact that some experimentation may be required for a person of ordinary skill in the field of the invention to practice the claimed invention does not mean that a patent does not meet the enablement requirement.

The support for each limitation of each Asserted Claim includes the following:

'482 Patent

Limitation	Support
34. A percussive massager comprising: a housing;	Figures 1-3; 1:54-57; 1:63-64; 2:2; 3:33-41; 4:4-5; 4:35
a piston in the housing having a proximal end and a distal end,	Figures 1-4, 6, 6A; 1:34-54; 2:1-17; 6:47-49; 6:57-59
a motor at least partially within the housing	Figures 2, 3; 4:35-42
and operatively connected to the proximal end of the piston,	Figures 2-4; 4:35 – 5:13
wherein the motor is configured to cause the piston to reciprocate at a first speed;	3:49-51

1	a drive mechanism between the motor and the piston	Figures 2-4; 2:8-9; 4:64 –
2	that controls a predetermined stroke length of the	5:13
3	piston; and	
4	a quick release connector at the distal end of the	Figures 1, 2, 6, 6A; 3:42-44;
5	piston,	6:47 – 7:19
6	wherein the quick release connector is configured	Figures 1, 2, 6, 6A; 3:42-44;
7	to secure a first massaging head while the piston	6:47 – 7:19
8	reciprocates a predetermined stroke length at the	
9	first speed,	
10	wherein the first massaging head has a substantially	Figures 6, 6A; 3:42-44; 6:47
11	cylindrical pocket to receive the quick release	– 7:19
12	connector.	
13	35. The percussive massager of claim 34, further	Figures 6, 6B; 3:42-44; 6:47
14	comprising:	– 7:19
15	a second massaging head configured to releasably	
16	couple to the distal end of the piston via the quick	
17	release connector.	
18	36. The percussive massager of claim 34, wherein	3:51-53
19	the motor is configured to cause the piston to	
20	reciprocate the predetermined stroke length at a	
21	second speed.	
22	37. The percussive massager of claim 36, wherein	3:67 – 4:3; 4:38-40; 5:20
23	the first speed and the second speed are each less	
24	than or equal to 3600 strokes per minute.	
25	38. The percussive massager of claim 36, wherein	3:67 – 4:3; 4:38-40; 5:20
26	the first speed and the second speed are each	
27	greater than or equal to 600 strokes per minute.	
28	40. The percussive massager of claim 36, further	Figure 1; 3:45 – 4:34; 8:52-
	comprising:	56
	a control panel positioned on an exterior of the	
	housing	

41. The percussive massager of claim 40, wherein the control panel is configured to display one or more visual indicators.	Figure 1; 3:45 – 4:34; 8:52-56
43. The percussive massager of claim 40, wherein the control panel has one or more inputs.	Figure 1; 3:45 – 4:34; 8:52-56
44. The percussive massager of claim 43, wherein the one or more inputs comprise at least one of: a button, a switch, and a dial.	Figure 1; 3:45 – 4:34; 8:52-56
45. The percussive massager of claim 43, wherein the first speed and the second speed are each selectable via the one or more inputs.	Figure 1; 3:45 – 4:34; 8:52-56
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.	Figure 1; 3:45 – 4:34
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;	Figures 2-4; 4:41 – 5:6
and a crank pin extending from the flywheel, the crank pin being operatively connected to the piston.	Figures 2-4; 4:41 – 5:6
60. The percussive massager of claim 59, wherein the motor is directly connected to the flywheel, and wherein the crank pin is directly connected to the flywheel.	Figures 2-4; 4:41 – 5:6

'082 Patent

Limitation	Support
1. A percussive massager comprising: a housing;	Figures 1-3; 1:54-57; 1:63-64; 2:2; 3:33-41; 4:4-5; 4:35
a piston having a proximal end and a distal end, the distal end of the piston having a bore	Figures 1-4, 6, 6A; 1:34-54; 2:1-17; 6:47-49; 6:57-59
a motor operatively connected to the proximal end of the piston, wherein the motor is configured to cause the piston to reciprocate at a first speed;	Figures 2-4; 3:49-51; 4:35 – 5:13
a drive mechanism that controls a predetermined stroke length of the piston; and	Figures 2-4; 2:8-9; 4:64 – 5:13
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.	Figures 1, 2, 6, 6A; 3:42-44; 6:47 – 7:19
2. The percussive massager of claim 1, wherein the motor is configured to cause the piston to reciprocate the predetermined stroke length at a second speed.	3:51-53
3. The percussive massager of claim 1, further comprising: a control panel positioned on an exterior of the housing	Figure 1; 3:45 – 4:34; 8:52-56
4. The percussive massager of claim 3, wherein the control panel is configured to display one or more visual indicators.	Figure 1; 3:45 – 4:34; 8:52-56

1	5. The percussive massager of claim 1, further	Figures 1-4; 4:31 – 5:13
2	comprising a handle and a flywheel, wherein the	
3	handle is on an opposite side of the flywheel with	
4	respect to the motor.	
5	6. The percussive massager of claim 1, further	Figures 1-4; 4:31 – 5:13
6	comprising a handle, wherein the motor is	
7	positioned within the housing opposite the handle.	
8	7. The percussive massager of claim 1, wherein the	Figures 1-4; 4:31 – 5:13
9	motor has an output shaft configured to rotate	
10	about a rotation axis, and wherein the drive	
11	mechanism comprises:	
12	a flywheel operatively connected to the output shaft	
13	of the motor to rotate about a flywheel axis, the	
14	output shaft extending into the flywheel along the	
15	flywheel axis; and	
16	a crank pin extending from the flywheel, the crank	
17	pin being operatively connected to the piston.	
18	8. The percussive massager of claim 7, further	Figures 1-4; 4:31 – 5:13
19	comprising a handle, wherein the motor and the	
20	handle are on opposite sides of a plane	
21	perpendicular to the flywheel axis that extends	
22	through the flywheel.	
23	9. The percussive massager of claim 7, further	Figures 1-4; 4:31 – 5:13,
24	comprising a handle, wherein the motor and the	9:23-62
25	handle are on a same side of a plane perpendicular	
26	to the flywheel axis that extends through the	
27	flywheel.	
28	10. The percussive massager of claim 7, wherein	Figures 2, 4; 4:31 – 5:13
	an offset between the flywheel axis and an axis of	
	the crank pin controls the predetermined stroke	
	length of the piston.	

11. The percussive massager of claim 7, wherein the motor is directly connected to the flywheel, and wherein the crank pin is directly connected to the flywheel.	Figures 1-4; 4:31 – 5:13
12. The percussive massager of claim 7, wherein the motor is configured to cause the piston to reciprocate at the first speed along a longitudinal axis, and further comprising: a first bearing located on a first side of the flywheel; and 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.	Figures 1-5A; 4:31 – 6:2
13. The percussive massager of claim 1, wherein the bore comprises a substantially cylindrical bore.	Figures 1-4, 6, 6A; 6:47 – 7:13

INTERROGATORY NO. 3:

To the extent You contend any Asserted Claim of the Asserted Patent is entitled to the priority date of an earlier filed application (including any provisional application), identify the factual and legal support for Your contention that such earlier application(s) satisfy the written description and enablement requirements of 35 U.S.C. § 112, Paragraph 1, including an identification of, on a limitation-by-limitation basis in chart or table format by column and line number(s) (or by page and paragraph if the document does not include line numbers), the portion(s) of the earlier filed application(s) that You contend provides supporting disclosure therefor.

RESPONSE TO INTERROGATORY NO. 3:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or

1 attorney work-product doctrine. Hyperice further objects to this interrogatory on the
2 ground that it is impermissibly compound and constitutes multiple interrogatories—
3 in this case two distinct interrogatories. Hyperice further objects to this interrogatory
4 on the ground that the interrogatory is premature. Hyperice intends to detail its bases
5 for its contention that that each Asserted Claim of the Asserted Patent is entitled to
6 the priority date of an earlier filed application in expert report(s) that Hyperice expects
7 to produce in this litigation, after obtaining discovery from Therabody and taking
8 depositions of relevant individuals and corporations. Subject to and without waiving
9 these objections, Hyperice responds as follows:

10 The written-description requirement is satisfied because persons of ordinary
11 skill in the field of the invention would recognize, from reading the provisional patent
12 application specification, U.S. Provisional Patent Application No. 61/841,693 filed
13 on July 1, 2013, that the inventors possessed the subject matter finally claimed in the
14 patent. In addition, the written-description requirement is satisfied because the
15 specification shows that the inventors possessed their invention as of the effective
16 filing date of the claimed invention, even though the claims may have been changed
17 or new claims added since that time. It is unnecessary to spell out every detail of the
18 invention in the specification, and specific examples are not required. Enough must
19 be included in the specification to convince persons of ordinary skill in the art that the
20 inventors possessed the full scope of the invention.

21 The enablement requirement is satisfied because the provisional patent
22 application, U.S. Provisional Patent Application No. 61/841,693 filed on July 1, 2013,
23 discloses sufficient information to enable or teach persons of ordinary skill in the field
24 of the invention as of the effective filing date of the claimed invention to make and
25 use the full scope of the claimed invention without undue experimentation. A
26 specification need not expressly state information that persons of ordinary skill would
27 be likely to know or could obtain. The fact that some experimentation may be required
28 for a person of ordinary skill in the field of the invention to practice the claimed

invention does not mean that a specification does not meet the enablement requirement.

The support for each limitation of each Asserted Claim includes the following:

Limitation	Support
34. A percussive massager comprising: a housing;	Figures 1-3; Paragraphs 5, 6, 25,
a piston in the housing having a proximal end and a distal end,	Figures 1-4, 6, 6A; Paragraphs 3-9, 33-36
a motor at least partially within the housing	Figures 2, 3; Paragraphs 3-8, 32-34, 37, 43
and operatively connected to the proximal end of the piston,	Figures 2-4; Paragraphs 32 - 36
wherein the motor is configured to cause the piston to reciprocate at a first speed;	Paragraph 26
a drive mechanism between the motor and the piston that controls a predetermined stroke length of the piston; and	Figures 2-4; Paragraphs 35 - 36
a quick release connector at the distal end of the piston,	Figures 1, 2, 6, 6A; Paragraphs 21, 47-50
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,	Figures 1, 2, 6, 6A; Paragraphs 21, 47-50
wherein the first massaging head has a substantially cylindrical pocket to receive the quick release connector.	Figures 6, 6A; Paragraphs 21, 47-50

1	35. The percussive massager of claim 34, further	Figures 6, 6B; Paragraphs
2	comprising:	21, 47-50
3	a second massaging head configured to releasably	
4	couple to the distal end of the piston via the quick	
5	release connector.	
6	36. The percussive massager of claim 34, wherein	Paragraph 26
7	the motor is configured to cause the piston to	
8	reciprocate the predetermined stroke length at a	
9	second speed.	
10	37. The percussive massager of claim 36, wherein	Paragraphs 27, 32, 37
11	the first speed and the second speed are each less	
12	than or equal to 3600 strokes per minute.	
13	38. The percussive massager of claim 36, wherein	Paragraphs 27, 32, 37
14	the first speed and the second speed are each	
15	greater than or equal to 600 strokes per minute.	
16	40. The percussive massager of claim 36, further	Figure 1; Paragraphs 26-31,
17	comprising:	61
18	a control panel positioned on an exterior of the	
19	housing	
20	41. The percussive massager of claim 40, wherein	Figure 1; Paragraphs 26-31,
21	the control panel is configured to display one or	61
22	more visual indicators.	
23	43. The percussive massager of claim 40, wherein	Figure 1; Paragraphs 26-31,
24	the control panel has one or more inputs.	61
25	44. The percussive massager of claim 43, wherein	Figure 1; Paragraphs 26-31,
26	the one or more inputs comprise at least one of: a	61
27	button, a switch, and a dial.	
28	45. The percussive massager of claim 43, wherein	Figure 1; Paragraphs 26-31,
	the first speed and the second speed are each	61
	selectable via the one or more inputs.	

1 46. The percussive massager of claim 43, wherein a 2 first selection of the one or more inputs is 3 configured to cause the percussive massager to 4 power on and wherein a second selection of the one 5 or more inputs is configured to cause the 6 percussive massager to power off.	Figure 1; Paragraphs 26-31
6 58. The percussive massager of claim 34, wherein 7 the motor has an output shaft configured to rotate 8 about a rotation axis, and wherein the drive 9 mechanism comprises: 10 a flywheel operatively connected to the output shaft 11 of the motor to rotate about a flywheel axis, the 12 output shaft extending into the flywheel along the 13 flywheel axis;	Figures 2-4; 4:41 – 5:6
12 and a crank pin extending from the flywheel, the 13 crank pin being operatively connected to the piston.	Figures 2-4; Paragraphs 32-36
14 60. The percussive massager of claim 59, wherein 15 the motor is directly connected to the flywheel, and 16 wherein the crank pin is directly connected to the 17 flywheel.	Figures 2-4; Paragraphs 32-36

AMENDED RESPONSE TO INTERROGATORY NO. 3:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or attorney work-product doctrine. Hyperice further objects to this interrogatory on the ground that it is impermissibly compound and constitutes multiple interrogatories—in this case two distinct interrogatories. Hyperice further objects to this interrogatory on the ground that the interrogatory is premature. Hyperice intends to detail its bases for its contention that that each Asserted Claim of the Asserted Patent is entitled to the priority date of an earlier filed application in expert report(s) that Hyperice expects

1 to produce in this litigation, after obtaining discovery from Therabody and taking
2 depositions of relevant individuals and corporations. Subject to and without waiving
3 these objections, Hyperice responds as follows:

4 The written-description requirement is satisfied because persons of ordinary
5 skill in the field of the invention would recognize, from reading the provisional patent
6 application specification, U.S. Provisional Patent Application No. 61/841,693 filed
7 on July 1, 2013, that the inventors possessed the subject matter finally claimed in the
8 patent. In addition, the written-description requirement is satisfied because the
9 specification shows that the inventors possessed their invention as of the effective
10 filing date of the claimed invention, even though the claims may have been changed
11 or new claims added since that time. It is unnecessary to spell out every detail of the
12 invention in the specification, and specific examples are not required. Enough must
13 be included in the specification to convince persons of ordinary skill in the art that the
14 inventors possessed the full scope of the invention.

15 The enablement requirement is satisfied because the provisional patent
16 application, U.S. Provisional Patent Application No. 61/841,693 filed on July 1, 2013,
17 discloses sufficient information to enable or teach persons of ordinary skill in the field
18 of the invention as of the effective filing date of the claimed invention to make and
19 use the full scope of the claimed invention without undue experimentation. A
20 specification need not expressly state information that persons of ordinary skill would
21 be likely to know or could obtain. The fact that some experimentation may be required
22 for a person of ordinary skill in the field of the invention to practice the claimed
23 invention does not mean that a specification does not meet the enablement
24 requirement.

25 The support for each limitation of each Asserted Claim includes the following:
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'482 Patent

Limitation	Support
34. A percussive massager comprising: a housing;	Figures 1-3; Paragraphs 5, 6, 25
a piston in the housing having a proximal end and a distal end,	Figures 1-4, 6, 6A; Paragraphs 3-9, 33-36
a motor at least partially within the housing	Figures 2, 3; Paragraphs 3-8, 32-34, 37, 43
and operatively connected to the proximal end of the piston,	Figures 2-4; Paragraphs 32 - 36
wherein the motor is configured to cause the piston to reciprocate at a first speed;	Paragraph 26
a drive mechanism between the motor and the piston that controls a predetermined stroke length of the piston; and	Figures 2-4; Paragraphs 35 - 36
a quick release connector at the distal end of the piston,	Figures 1, 2, 6, 6A; Paragraphs 21, 47-50
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,	Figures 1, 2, 6, 6A; Paragraphs 21, 47-50
wherein the first massaging head has a substantially cylindrical pocket to receive the quick release connector.	Figures 6, 6A; Paragraphs 21, 47-50
35. The percussive massager of claim 34, further comprising: a second massaging head configured to releasably couple to the distal end of the piston via the quick release connector.	Figures 6, 6B; Paragraphs 21, 47-50

1	36. The percussive massager of claim 34, wherein	Paragraph 26
2	the motor is configured to cause the piston to	
3	reciprocate the predetermined stroke length at a	
4	second speed.	
5	37. The percussive massager of claim 36, wherein	Paragraphs 27, 32, 37
6	the first speed and the second speed are each less	
7	than or equal to 3600 strokes per minute.	
8	38. The percussive massager of claim 36, wherein	Paragraphs 27, 32, 37
9	the first speed and the second speed are each	
10	greater than or equal to 600 strokes per minute.	
11	40. The percussive massager of claim 36, further	Figure 1; Paragraphs 26-31,
12	comprising:	61
13	a control panel positioned on an exterior of the	
14	housing	
15	41. The percussive massager of claim 40, wherein	Figure 1; Paragraphs 26-31,
16	the control panel is configured to display one or	61
17	more visual indicators.	
18	43. The percussive massager of claim 40, wherein	Figure 1; Paragraphs 26-31,
19	the control panel has one or more inputs.	61
20	44. The percussive massager of claim 43, wherein	Figure 1; Paragraphs 26-31,
21	the one or more inputs comprise at least one of: a	61
22	button, a switch, and a dial.	
23	45. The percussive massager of claim 43, wherein	Figure 1; Paragraphs 26-31,
24	the first speed and the second speed are each	61
25	selectable via the one or more inputs.	
26	46. The percussive massager of claim 43, wherein a	Figure 1; Paragraphs 26-31
27	first selection of the one or more inputs is	
28	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.	

1 58. The percussive massager of claim 34, wherein	Figures 2-4; 4:41 – 5:6
2 the motor has an output shaft configured to rotate	
3 about a rotation axis, and wherein the drive	
4 mechanism comprises:	
5 a flywheel operatively connected to the output shaft	
6 of the motor to rotate about a flywheel axis, the	
7 output shaft extending into the flywheel along the	
8 flywheel axis;	
9 and a crank pin extending from the flywheel, the	Figures 2-4; Paragraphs 32-
10 crank pin being operatively connected to the piston.	36
11 60. The percussive massager of claim 59, wherein	Figures 2-4; Paragraphs 32-
12 the motor is directly connected to the flywheel, and	36
13 wherein the crank pin is directly connected to the	
14 flywheel.	

'082 Patent

Limitation	Support
1. A percussive massager comprising:	Figures 1-3; Paragraphs 5, 6,
a housing;	25
a piston having a proximal end and a distal end, the	Figures 1-4, 6, 6A;
distal end of the piston having a bore	Paragraphs 3-9, 33-36
a motor operatively connected to the proximal end	Figures 2, 3; Paragraphs 3-8,
of the piston, wherein the motor is configured to	26, 32-37, 43
cause the piston to reciprocate at a first speed;	
a drive mechanism that controls a predetermined	Figures 2-4; Paragraphs 35 -
stroke length of the piston; and	36

1 a quick-connect system comprising the distal end of	Figures 1-4, 6, 6A;
2 the piston and a first massaging head, wherein the	Paragraphs 21, 47-50
3 quick-connect system is configured to have a	
4 proximal end of the first massaging head inserted	
5 into or removed from the bore while the piston	
6 reciprocates the predetermined stroke length at the	
7 first speed.	
8 2. The percussive massager of claim 1, wherein the	Paragraph 26
9 motor is configured to cause the piston to	
10 reciprocate the predetermined stroke length at a	
11 second speed.	
12 3. The percussive massager of claim 1, further	Figure 1; Paragraphs 26-31,
13 comprising:	61
14 a control panel positioned on an exterior of the	
15 housing	
16 4. The percussive massager of claim 3, wherein the	Figure 1; Paragraphs 26-31,
17 control panel is configured to display one or more	61
18 visual indicators.	
19 5. The percussive massager of claim 1, further	Figures 1-4; Paragraphs 31-
20 comprising a handle and a flywheel, wherein the	36
21 handle is on an opposite side of the flywheel with	
22 respect to the motor.	
23 6. The percussive massager of claim 1, further	Figures 1-4; Paragraphs 31-
24 comprising a handle, wherein the motor is	36
25 positioned within the housing opposite the handle.	
26	
27	
28	

1 2 3 4 5 6 7	7. The percussive massager of claim 1, 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.	Figures 1-4; Paragraphs 31-36
8 9 10 11	8. The percussive massager of claim 7, further comprising a handle, wherein the motor and the handle are on opposite sides of a plane perpendicular to the flywheel axis that extends through the flywheel.	Figures 1-4; Paragraphs 31-36
12 13 14 15	9. The percussive massager of claim 7, further comprising a handle, wherein the motor and the handle are on a same side of a plane perpendicular to the flywheel axis that extends through the flywheel.	Figures 1-4; Paragraphs 31-36, 66
16 17 18 19	10. The percussive massager of claim 7, wherein an offset between the flywheel axis and an axis of the crank pin controls the predetermined stroke length of the piston.	Figures 2, 4; Paragraphs 31-36
20 21 22	11. The percussive massager of claim 7, wherein the motor is directly connected to the flywheel, and wherein the crank pin is directly connected to the flywheel.	Figures 1-4; Paragraphs 31-36

12. The percussive massager of claim 7, wherein the motor is configured to cause the piston to reciprocate at the first speed along a longitudinal axis, and further comprising: a first bearing located on a first side of the flywheel; and 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.	Figures 1-5A; Paragraphs 31-42
13. The percussive massager of claim 1, wherein the bore comprises a substantially cylindrical bore.	Figures 1-4, 6, 6A; Paragraphs 47-49, 66

INTERROGATORY NO. 4:

If You contend that secondary considerations and objective evidence of nonobviousness apply to any of the Asserted Claims, explain the basis for all such contentions, including without limitation the presence or absence of any commercial success, long-felt need, commercial acquiescence, industry recognition, unexpected results, expressions of skepticism, copying, teaching away, successful or failed attempts by others, or simultaneous development.

RESPONSE TO INTERROGATORY NO. 4:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or attorney work-product doctrine. Hyperice further objects to this interrogatory on the ground that the interrogatory is premature. Hyperice intends to detail its bases that Hyperice contends relate to objective evidence or secondary considerations of non-obviousness in expert report(s) that Hyperice expects to produce in this litigation, after obtaining discovery from Therabody and taking depositions of relevant

1 individuals and corporations. Subject to and without waiving these objections,
2 Hyperice responds as follows:

3 Secondary considerations and objective evidence of nonobviousness apply to
4 all of the Asserted Claims. The products covered by the Asserted Claims have
5 achieved tremendous commercial success, and they are commercially successful due
6 to the merits of the claimed inventions. There was a long-felt need for a solution to
7 the problem facing the inventors, which was satisfied by the claimed inventions. As
8 disclosed in the patent, the deep muscle-stimulating device disclosed in the Asserted
9 Claims is useful in, among other things, increasing muscle metabolism, increasing the
10 lactic acid cycle, and relieving pain. The vibrating massage devices on the market at
11 the time of the inventions suffered from many deficiencies, as described in the patent,
12 including the fact that they were bulky, hot, noisy and/or difficult to use for extended
13 periods of time. Others tried, and failed, to solve the problem solved by the claimed
14 inventions. Hyperice researched, developed, and commercialized one of the earliest
15 and most successful devices covered by the patent, and numerous competitors soon
16 began copying. The prior art of record teaches away from the claimed inventions. The
17 inventions achieved unexpectedly superior results over the closest prior art. Many in
18 the field praised the claimed invention. Due to the merits of the claimed invention,
19 many infringers have accepted confidential licenses, and Hyper Ice will produce
20 copies of relevant licenses following the entry of a Protective Order in this action.
21 Hyperice further intends to produce business records, pursuant to Fed. R. Civ. P.
22 33(d). The answer to this interrogatory may be determined by examining, auditing,
23 compiling, abstracting, or summarizing these business records, and the burden of
24 deriving or ascertaining the answer will be substantially the same for either party.

25 **INTERROGATORY NO. 5:**

26 Describe in detail Hyper Ice's knowledge of Prior Art to the Asserted Patent or
27 any of the Related Patents, including an identification of all Prior Art or potential
28 Prior Art to the Asserted Patent or any of the Related Patents known to Hyper Ice,

1 made known to Hyper Ice, or ever brought to Hyper Ice's attention by any person,
2 including a description of the circumstances of how and when Hyper Ice was first
3 aware of, notified of, or first learned of the Prior Art or potential Prior Art, and a list
4 any and all relevant documents and things by production number.

5 **RESPONSE TO INTERROGATORY NO. 5:**

6 Hyperice objects to this interrogatory on the ground that the interrogatory
7 requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ.
8 P. 26(b). Hyperice further objects to this interrogatory on the ground that the
9 interrogatory requests information protected by the attorney-client privilege and/or
10 attorney work-product doctrine. Hyperice further objects to this interrogatory on the
11 ground that it is impermissibly compound and constitutes multiple interrogatories—
12 in this case two distinct interrogatories. Subject to and without waiving these
13 objections, Hyperice responds as follows:

14 Hyperice has a general knowledge regarding much of the Prior Art asserted in
15 the prosecution of the application leading to the Asserted Patent, as well as the Prior
16 Art asserted in the prosecution of the applications leading to Related Patents. Hyperice
17 further intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The
18 answer to this interrogatory may be determined by examining, auditing, compiling,
19 abstracting, or summarizing these business records, and the burden of deriving or
20 ascertaining the answer will be substantially the same for either party.

21 **INTERROGATORY NO. 6:**

22 Identify every person or entity with a current or prior financial, ownership, or
23 other interest in the Asserted Patent or Related Patents, the Litigation, Related
24 Litigations, or Past Litigations, and for each such person or entity, describe the nature
25 of the interest currently or previously held by that person or entity, and the relationship
26 between such person or entity and its affiliates, on the one hand, and Hyper Ice, on
27 the other hand, including an identification of all agreements to which Hyper Ice, its
28 affiliates, a Prior Assignee, or any other person or entity was a party that conveyed

1 any rights in Hyper Ice, the Asserted Patent, any of the Related Patents, the Litigation,
2 and Related Litigations.

3 **RESPONSE TO INTERROGATORY NO. 6:**

4 Hyperice objects to this interrogatory on the ground that the interrogatory
5 requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ.
6 P. 26(b). Hyperice further objects to this interrogatory on the ground that the
7 interrogatory requests information protected by the attorney-client privilege and/or
8 attorney work-product doctrine. Hyperice further objects to this interrogatory on the
9 ground that it is impermissibly compound and constitutes multiple interrogatories—
10 in this case two distinct interrogatories. Subject to and without waiving these
11 objections, Hyperice responds as follows:

12 Hyperice IP Subco, LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the
13 owner of the '482 Patent. Hyper Ice, Inc. is the exclusive licensee that has been
14 granted the express, irrevocable right to enforce and defend the '482 Patent. Hyperice
15 further intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The
16 answer to this interrogatory may be determined by examining, auditing, compiling,
17 abstracting, or summarizing these business records, and the burden of deriving or
18 ascertaining the answer will be substantially the same for either party.

19 **AMENDED RESPONSE TO INTERROGATORY NO. 6:**

20 Hyperice objects to this interrogatory on the ground that the interrogatory
21 requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ.
22 P. 26(b). Hyperice further objects to this interrogatory on the ground that the
23 interrogatory requests information protected by the attorney-client privilege and/or
24 attorney work-product doctrine. Hyperice further objects to this interrogatory on the
25 ground that it is impermissibly compound and constitutes multiple interrogatories—
26 in this case two distinct interrogatories. Subject to and without waiving these
27 objections, Hyperice responds as follows:
28

Hyperice IP Subco, LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the owner of the '482 Patent and the '082 Patent. Hyper Ice, Inc. is the exclusive licensee that has been granted the express, irrevocable right to enforce and defend the '482 Patent and the '082 Patent. Hyperice further intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing these business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party.

INTERROGATORY NO. 7:

Identify all communications between Hyper Ice and any other person or entity regarding actual or potential infringement, validity, licensing, assignment, damages and/or royalties (potential or actual) with respect to the Asserted Patent or Related Patents, including the identity of each person or entity involved; the dates of each such communication; the license, settlement, covenant-not-to-sue, acquisition, and/or assignment agreements; the products at issue; the patents and patent claims at issue; any resulting royalty rate(s), damages or other terms; and the outcome, result, and/or status of such communications.

RESPONSE TO INTERROGATORY NO. 7:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the interrogatory requests information protected by the attorney-client privilege and/or attorney work-product doctrine. Hyperice further objects to this interrogatory on the ground that it is impermissibly compound and constitutes multiple interrogatories—in this case two distinct interrogatories. Subject to and without waiving these objections, Hyperice responds as follows:

Hyperice has had hundreds of communications with persons or entities regarding actual or potential infringement, validity, licensing, assignment, damages

1 and/or royalties (potential or actual) with respect to the Asserted Patent or Related
2 Patents. Hyperice intends to produce business records, pursuant to Fed. R. Civ. P.
3 33(d). The answer to this interrogatory may be determined by examining, auditing,
4 compiling, abstracting, or summarizing these business records, and the burden of
5 deriving or ascertaining the answer will be substantially the same for either party.

6 **INTERROGATORY NO. 8:**

7 Separately for the Asserted Patent and each of the Related Patents, describe in
8 detail any attempts to value the Asserted Patent and Related Patents, including without
9 limitation by identifying by name and production number any studies, analyses,
10 reports, and/or internal memoranda in Your possession relating to the value of the
11 Asserted Patent and Related Patents.

12 **RESPONSE TO INTERROGATORY NO. 8:**

13 Hyperice objects to this interrogatory on the ground that the interrogatory
14 requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ.
15 P. 26(b). Hyperice further objects to this interrogatory on the ground that it is vague
16 and ambiguous with respect to the phrase “attempts to value.” Hyperice further
17 objects to this interrogatory on the ground that the interrogatory requests information
18 protected by the attorney-client privilege and/or attorney work-product doctrine.
19 Hyperice further objects to this interrogatory on the ground that it is impermissibly
20 compound and constitutes multiple interrogatories—in this case two distinct
21 interrogatories. Subject to and without waiving these objections, Hyperice responds
22 as follows:

23 Hyperice intends to produce business records, pursuant to Fed. R. Civ. P. 33(d).
24 The answer to this interrogatory may be determined by examining, auditing,
25 compiling, abstracting, or summarizing these business records, and the burden of
26 deriving or ascertaining the answer will be substantially the same for either party.

INTERROGATORY NO. 9:

Describe in detail any products, components, and/or services sold, provided, or offered by Hyper Ice that You contend practice the Asserted Patent or Related Patents, including a chart showing on a limitation-by-limitation basis how each claim of such patent(s) is alleged to be present in the Hyper Ice product, component or service.

RESPONSE TO INTERROGATORY NO. 9:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that it is impermissibly compound and constitutes multiple interrogatories—in this case two distinct interrogatories. Subject to and without waiving these objections, Hyperice responds as follows:

Hyperice contends that the following products currently sold by Hyperice – the Hypervolt 2 Pro, Hypervolt 2, and Hypervolt Go 2 – practice the following claims of the ‘482 Patent: Claims 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 24, 25, 26, 27, and 28.

AMENDED RESPONSE TO INTERROGATORY NO. 9:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that it is impermissibly compound and constitutes multiple interrogatories—in this case two distinct interrogatories. Subject to and without waiving these objections, Hyperice responds as follows:

Hyperice contends that the following products currently sold by Hyperice – the Hypervolt 2 Pro, Hypervolt 2, and Hypervolt Go 2 – practice the following claims of the ‘482 Patent: Claims 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 24, 25, 26, 27, and 28.

Hyperice contends that the following products currently sold by Hyperice – the Hypervolt 2 Pro, Hypervolt 2, and Hypervolt Go 2 – practice the following claims of the ‘082 Patent: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13.

INTERROGATORY NO. 10:

Describe in detail Your sales, royalties, revenues, and profits that are or were attributable to products sold, provided, or offered by Hyper Ice that You contend practice the Asserted Patent or Related Patents, including: the customers, dates, units, dollar amounts and cost of goods sold of sales; and the sources of all other royalties, revenues, and profits.

RESPONSE TO INTERROGATORY NO. 10:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Subject to and without waiving these objections, Hyperice responds as follows:

Hyperice intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing these business records, and the burden of deriving or ascertaining the answer will be substantially the same for either party.

INTERROGATORY NO. 11:

For each video referenced in Paragraph 15 of the Complaint and referenced in Hyper Ice's Infringement Contentions, describe in detail the creation of that video, including identifying who was involved in the creation of the video; when the video was created; the process for creating the video, including whether more attempts than those shown in the video to conduct the activity shown in the video were conducted; whether videos of any attempts other than those shown in the video to conduct the activity shown in the video were deleted; and the location of the devices and any retained attempts to create the videos that have not yet been produced to Therabody.

RESPONSE TO INTERROGATORY NO. 11:

Hyperice objects to this interrogatory on the ground that the interrogatory requests information exceeding the proper scope of discovery pursuant to Fed. R. Civ. P. 26(b). Hyperice further objects to this interrogatory on the ground that the

1 interrogatory requests information protected by the attorney-client privilege and/or
2 attorney work-product doctrine. Hyperice further objects to this interrogatory on the
3 ground that it is impermissibly compound and constitutes multiple interrogatories—
4 in this case two distinct interrogatories. Subject to and without waiving these
5 objections, Hyperice responds as follows:

6 Ashley Price created the videos referenced in Hyper Ice's Infringement
7 Contentions. Hyperice has, or will, produce all such videos, including all outtakes, if
8 any. Hyperice is not aware of any deletion of any videos relevant to the Infringement
9 Contentions. Hyperice has possession of the devices shown in the videos. Hyperice
10 intends to produce business records, pursuant to Fed. R. Civ. P. 33(d). The answer to
11 this interrogatory may be determined by examining, auditing, compiling, abstracting,
12 or summarizing these business records, and the burden of deriving or ascertaining the
13 answer will be substantially the same for either party.

14
15 DATED: February 26, 2025

MILLER BARONDESS, LLP

16
17
18 By: 

19 BENJAMIN A. HERBERT
20 Attorneys for HYPER ICE, INC. and
21 HYPERICE IP SUBCO, LLC
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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 February 26, 2025, I served true copies of the following document(s) described as:

**PLAINTIFFS' CORRECTED AND FIRST AMENDED RESPONSES TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

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 bherbert@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 February 26, 2025, at Los Angeles, California.

/s/ Benjamin A. Herbert

Benjamin A. Herbert

SERVICE LIST

Hyperice, Inc. et al v. Therabody, Inc.
Case No. 8:24-cv-00390-JWH-DFM

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