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10 *Attorneys for Plaintiffs*
HYPER ICE, INC., and
11 HYPERICE IP SUBCO, LLC

12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
15

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

18 Plaintiffs,

19 v.

20 JOICOM CORPORATION d/b/a
21 RENPHO,

22 Defendant.

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

24 Plaintiff,

25 v.

26 THERABODY, INC.,

27
28 Defendant.

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

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

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

The Hon. John W. Holcomb

Trial Date: None Set.

Therabody EX2007
Hyper Ice v. Therabody
PGR2026-00051

1. Plaintiffs Hyper Ice, Inc. and Hyperice IP Subco, LLC (“Plaintiffs” or collectively “Hyperice”) allege as follows for this Complaint for Patent Infringement (“Complaint”) against defendant Therabody, Inc. (“Defendant” or “Therabody”):

THE PARTIES

2. Plaintiff Hyper Ice, Inc. is a California corporation with its principal place of business at 525 Technology Drive, Suite 100, Irvine, California 92618.

3. Plaintiff Hyperice IP Subco, LLC is a limited liability company organized under the laws of the State of Delaware.

4. Hyperice is informed and believes, and based thereon alleges, that Defendant is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1640 S. Sepulveda Blvd., Suite 300, Los Angeles, CA 90025.

5. On information and belief, either itself or through its subsidiaries, parents, or other related companies, Defendant sells infringing products, via Amazon.com, Therabody.com, and various online and physical retail stores, to consumers in this District, throughout the State of California, and throughout the United States.

JURISDICTION AND VENUE

6. This is an action for patent infringement under 35 U.S.C. §§ 271 *et seq.* brought by Hyperice against Defendant for Defendant's infringement of U.S. Patent No. 11,857,482 ("the '482 Patent") and U.S. Patent No. 11,938,082 ("the '082 Patent").

7. This Court has subject matter jurisdiction over Hyperice's claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because those claims arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

8. This Court has personal jurisdiction over Defendant by virtue of, *inter alia*, Defendant's conduct of business in this District; its purposeful availment of the rights and benefits of California law; and its substantial, continuous, and systematic

1 contacts with the State of California and this District. On information and belief,
2 Defendant: (1) intentionally markets and sells its infringing products to residents of
3 this State; (2) enjoys substantial income from this State; and (3) maintains its principal
4 place of business in this State.

5 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28
6 U.S.C. § 1400(b) because Defendant has committed acts of infringement in this
7 District and has a regular and established place of business in this District.

8 **GENERAL ALLEGATIONS**

9 10. The '482 Patent is entitled "Massage Device Having Variable Stroke
10 Length" and issued on January 2, 2024, claiming priority to Application No.
11 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693, filed
12 on July 1, 2013. A true and correct copy of the '482 Patent is attached hereto as
13 Exhibit 1.

14 11. The '082 Patent is entitled "Massage Device Having Variable Stroke
15 Length" and issued on March 26, 2024, claiming priority to Application No.
16 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693, filed
17 on July 1, 2013. A true and correct copy of the '082 Patent is attached hereto as
18 Exhibit 2.

19 12. Philip C. Danby and John Charles Danby are the named inventors of the
20 inventions disclosed in the '482 Patent and the '082 Patent. Hyperice IP Subco, LLC,
21 a wholly owned subsidiary of Hyper Ice, Inc., is the owner of the '482 Patent and the
22 '082 Patent. Hyper Ice, Inc. is the exclusive licensee that has been granted the express,
23 irrevocable right to enforce and defend the '482 Patent and the '082 Patent.

24 13. This action arises out of Defendant's direct infringement of the '482
25 Patent and the '082 Patent.

26 14. Since at least 2018, Hyperice has developed, arranged for the
27 manufacture of, offered for sale, and sold the Hypervolt line of battery-powered
28 percussive massage devices, including the Hypervolt Go 2, Hypervolt 2, and

1 Hypervolt 2 Pro, all of which are covered by one or more claims of the '482 Patent
2 and the '082 Patent.

3 15. Defendant offers for sale and/or sells products that infringe the '482
4 Patent, including but not limited to the TheraFace PRO, TheraFace LED, Theragun
5 PRO, Theragun Sense, Theragun Elite, Theragun Prime, Theragun Mini, and
6 Theragun Relief. Attached as Exhibits 3-9 are claim charts for the TheraFace PRO
7 (substantially equivalent to the TheraFace LED for infringement analyses), Theragun
8 PRO, Theragun Sense, Theragun Elite, Theragun Prime, Theragun Mini, and
9 Theragun Relief.

10 16. By no later than January 3, 2024, Defendant knew of the '482 Patent and
11 knew, or acted with willful, intentional, and conscious disregard of the objectively
12 high likelihood, that its conduct constitutes infringement of the '482 Patent. On
13 January 3, 2024, Hyperice filed suit in the United States District Court for the District
14 of Delaware, alleging infringement of the '482 Patent. *Hyper Ice, Inc. et al. v.*
15 *Therabody, Inc.*, Case No. 1:24-cv-00004 (the "Delaware Litigation"). On February
16 16, 2024, Hyperice filed a First Amended Complaint in the Delaware Litigation, and
17 Hyperice included the detailed claim charts that are attached hereto as Exhibits 3-6.
18 Moreover, Hyperice had provided the claim charts and related videos to Therabody's
19 counsel prior to filing the First Amended Complaint in the Delaware Litigation.

20 17. On February 23, 2024, Therabody filed a Complaint against Hyperice in
21 this District. In order to promote judicial efficiency, Hyperice dismissed the Delaware
22 Litigation and filed its initial Complaint in the instant action in this District.

23 18. Defendant offers for sale and/or sells products that infringe the '082
24 Patent, including the Theragun PRO Plus. Attached as Exhibit 10 is a claim chart for
25 the Theragun PRO Plus.

26 19. By no later than June 18, 2024, Defendant knew of the '082 Patent and
27 knew, or acted with willful, intentional, and conscious disregard of the objectively
28 high likelihood, that its conduct constitutes infringement of the '082 Patent. On or

1 about June 17, 2024, Hyperice notified Amazon.com that Therabody infringed the
2 '082 Patent. Hyperice is informed and believes, and thereon alleges, that Amazon.com
3 removed Therabody's listing of the Theragun PRO Plus on or about June 18, 2024,
4 and that Amazon notified Therabody regarding the '082 Patent on the same date.

5 **COUNT 1 – PATENT INFRINGEMENT**

6 20. Hyperice incorporates by reference the allegations in Paragraphs 1-19
7 above.

8 21. Defendant has infringed and continues to infringe the '482 Patent under
9 the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Defendant offers for
10 sale and/or sells the infringing products at issue in this case.

11 22. Defendant infringes at least Claim 34 of the '482 Patent. Therabody's
12 infringing products are battery-powered percussive massagers that include the
13 following claim limitations. Hyperice believes that the infringing products literally
14 meet the following claim limitations. If any of the limitations are not literally met, the
15 infringing products meet the limitations under the doctrine of equivalents, because
16 they perform the same function in substantially the same way to achieve substantially
17 the same result, and/or because the relevant structures and functions of the infringing
18 products are insubstantially different from the claimed limitation:

- 19 a. a housing;
- 20 b. a piston in the housing having a proximal end and a distal end;
- 21 c. a motor at least partially within the housing and operatively
- 22 connected to the proximal end of the piston, wherein the motor is
- 23 configured to cause the piston to reciprocate at a first speed;
- 24 d. a drive mechanism between the motor and the piston that controls
- 25 a predetermined stroke length of the piston; and
- 26 e. a quick release connector at the distal end of the piston, wherein
- 27 the quick release connector is configured to secure a first
- 28

1 massaging head while the piston reciprocates a predetermined
2 stroke length at the first speed, wherein the first massaging head
3 has a substantially cylindrical pocket to receive the quick release
4 connector.

5 23. Defendant's infringement of the '482 Patent has caused, and will
6 continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled to
7 an award of damages adequate to compensate it for the infringement in an amount
8 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284. Hyperice
9 is also entitled to recover prejudgment interest, post-judgment interest, and costs.

10 24. As a result of Defendant's infringement of the '482 Patent, Hyperice has
11 suffered irreparable harm and impairment of the value of its patent rights, and
12 Hyperice will continue to suffer irreparable harm and impairment of the value of its
13 patent rights, unless and until Defendant is permanently enjoined by this Court from
14 infringing the '482 Patent under 35 U.S.C. §283. Hyperice has no adequate remedy
15 at law and is entitled to a permanent injunction against Defendant.

16 25. Defendant's infringement of the '482 Patent has been and continues to
17 be willful. As noted above, Defendant has had knowledge of the '482 Patent and
18 knew, or acted with willful, intentional, and conscious disregard of the objectively
19 high likelihood, that its conduct constitutes infringement of the '482 Patent.
20 Nevertheless, Defendant continues to infringe the '482 Patent—wanton, malicious,
21 and egregious conduct that constitutes willful infringement under 35 U.S.C. §284,
22 entitling Hyperice to enhanced damages.

23 **COUNT 2 – PATENT INFRINGEMENT**

24 26. Hyperice incorporates by reference the allegations in Paragraphs 1-19
25 above.

26 27. Defendant has infringed and continues to infringe the '082 Patent under
27 the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Defendant offers for
28

1 sale and/or sells the infringing products at issue in this case.

2 28. Defendant infringes at least Claim 1 of the '082 Patent. Therabody's
3 infringing products are battery-powered percussive massagers that include the
4 following claim limitations. Hyperice believes that the infringing products literally
5 meet the following claim limitations. If any of the limitations are not literally met, the
6 infringing products meet the limitations under the doctrine of equivalents, because
7 they perform the same function in substantially the same way to achieve substantially
8 the same result, and/or because the relevant structures and functions of the infringing
9 products are insubstantially different from the claimed limitation:

- 10 a. a housing;
- 11 b. a piston having a proximal end and a distal end, the distal end of
12 the piston having a bore;
- 13 c. a motor operatively connected to the proximal end of the piston,
14 wherein the motor is configured to cause the piston to reciprocate
15 at a first speed;
- 16 d. a drive mechanism that controls a predetermined stroke length of
17 the piston; and
- 18 e. a quick-connect system comprising the distal end of the piston and
19 a first massaging head, wherein the quick-connect system is
20 configured to have a proximal end of the first massaging head
21 inserted into or removed from the bore while the piston
22 reciprocates the predetermined stroke length at the first speed.

23 29. Defendant's infringement of the '082 Patent has caused, and will
24 continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled to
25 an award of damages adequate to compensate it for the infringement in an amount
26 that is in no event less than a reasonable royalty pursuant to 35 U.S.C. §284. Hyperice
27 is also entitled to recover prejudgment interest, post-judgment interest, and costs.

28 30. As a result of Defendant's infringement of the '082 Patent, Hyperice has

1 suffered irreparable harm and impairment of the value of its patent rights, and
2 Hyperice will continue to suffer irreparable harm and impairment of the value of its
3 patent rights, unless and until Defendant is permanently enjoined by this Court from
4 infringing the '082 Patent under 35 U.S.C. §283. Hyperice has no adequate remedy
5 at law and is entitled to a permanent injunction against Defendant.

6 31. Defendant's infringement of the '082 Patent has been and continues to
7 be willful. As noted above, Defendant has had knowledge of the '082 Patent and
8 knew, or acted with willful, intentional, and conscious disregard of the objectively
9 high likelihood, that its conduct constitutes infringement of the '082 Patent.
10 Nevertheless, Defendant continues to infringe the '082 Patent—wanton, malicious,
11 and egregious conduct that constitutes willful infringement under 35 U.S.C. §284,
12 entitling Hyperice to enhanced damages.

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14 **PRAYER FOR RELIEF**

15 WHEREFORE, Hyperice prays for the following relief:

16 1. That this Court enter judgment of infringement of the '482 Patent and
17 the '082 Patent in favor of Hyperice and against Defendant;

18 2. That this Court enter judgment that Defendant has willfully infringed the
19 '482 Patent and the '082 Patent;

20 3. That this Court enter a permanent injunction against Defendant from
21 infringing the '482 Patent and the '082 Patent;

22 4. That this Court award Hyperice compensatory damages for infringement
23 of the '482 Patent and the '082 Patent, as well as interest thereon;

24 5. That this Court award Hyperice its costs of suit;

25 6. That this Court award Hyperice increased damages in an amount not less
26 than three times the damages assessed for Defendant's infringement of the '482 Patent
27 and the '082 Patent, in accordance with 35 U.S.C. §284.

28 7. That this Court declare this an exceptional case under 35 U.S.C. §285

1 and award Hyperice its attorneys' fees and any other costs incurred in connection with
2 this action;

3 8. That this Court award Hyperice prejudgment and post-judgment interest;
4 and

5 9. That this Court grant such further relief as the Court deems just and
6 proper.

7
8 DATED: September 12, 2024

MILLER BARONDESS LLP

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10 By: /s/ Ben Herbert

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21 HYPER ICE, INC. and

22 HYPERICE IP SUBCO, LLC
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs
HYPER ICE, INC. and HYPERICE IP SUBCO, LLC hereby demand a trial by jury
of all issues triable by jury.

DATED: September 12, 2024 **MILLER BARONDESS LLP**

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