

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

HYPER ICE, INC. AND
HYPERICE IP SUBCO, LLC.

CASE NO.:

Plaintiffs,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS, AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE A,

Defendants,

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs HYPER ICE, INC. and HYPERICE IP SUBCO, LLC. (“Hyperice”), by and through undersigned counsel hereby sues Defendants, the individuals, corporations, limited liability companies, partnerships, and unincorporated associations and foreign entities identified on Schedule A (collectively, “Defendants”). Defendants are promoting, selling, offering for sale, and importing goods into the United States that infringe US Patent No. 11,857,482, within this district, through various Defendant names and/or online marketplace accounts and storefronts as also set forth on Schedule A (the “Seller IDs”). Hyperice alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. §§ 271 *et seq.* brought by Hyperice to combat online vendors who trade upon Hyperice’s reputation and goodwill by making, using, offering for sale, selling and/or importing into the United States for subsequent sale or use,

unauthorized and unlicensed products that infringe Hyperice's U.S. Patent No. 11,857,482 (the "Hyperice Patent" or "'482 Patent").

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the patent infringement claims arising under the patent laws of the United States pursuant to 28 U.S.C. § 1338(a) and the supplemental jurisdiction of the Court as provided in 28 U.S.C. § 1367.

3. Defendants are subject to personal jurisdiction in this district because they direct business activities toward and conduct business with customers through the United States, including within the State of Florida and this district, through at least the Internet based e-commerce stores, such as Amazon.com (the "Amazon Marketplace"), operating under the Defendants' Amazon stores and Seller IDs, and upon information and belief through other interactive commercial internet websites accessible in Florida.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(b).

PLAINTIFF HYPERICE

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

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

7. Hyperice IP Subco, LLC. is a wholly owned subsidiary of Hyper Ice, Inc.; Hyperice IP Subco, LLC and Hyper Ice, Inc. collectively referred to as "Hyperice."

8. Hyperice was founded in 2011 and sells its Hyperice Products to consumers in over sixty countries. In 2021, Hyperice was recognized by Fast Company as one of the World's Most Innovative Companies.

HYPERICE PRODUCTS and PATENT

9. The Hyperice Patent is entitled “Massage Device Having Variable Stroke Length” issued on January 2, 2024, as patent number 11,857,482, claiming priority to Application No. 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693, filed on July 1, 2013. Philip C. Danby and John Charles Danby are the named inventors of the Hyperice Patent. A true and correct copy of the Hyperice Patent is attached hereto as Exhibit 1.

10. Hyperice IP Subco, LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the assignee and owner of the Hyperice Patent. Hyper Ice, Inc. is the exclusive licensee that has been granted the express, irrevocable right to, *inter alia*, sublicense, enforce, and defend the Hyperice Patent.

11. This action arises out of Defendants’ direct infringement of the Hyperice Patent.

12. Since at least 2018, Hyperice has developed, arranged for the manufacture of, offered for sale, and sold the Hypervolt line of battery-powered percussive massage devices, including the Hypervolt Go 2, Hypervolt 2, and Hypervolt 2 Pro, all of which are covered by one or more claims of the Hyperice Patent.

THE DEFENDANTS

13. Each of the Defendants directly and/or indirectly imports, develops, designs, manufactures, distributes, markets, offers to sell and/or sells products infringing one or more claims of the Hyperice Patent, including through the Amazon Marketplace.

14. The Defendants are individuals and business entities who, upon information and belief, are located primarily in the People’s Republic of China or other foreign jurisdictions.

15. The Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their illegal operations. Hyperice is forced to file

this action to combat Defendants' infringement of the Hyperice Patent, as well as to protect unknowing consumers from purchasing the Infringing Products sold by Defendants.

COUNT I
UTILITY PATENT INFRINGEMENT (35 U.S.C. § 271)

16. Hyperice incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

17. Defendants have infringed and continue to infringe the '482 Patent under the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* literally and/or under the doctrine of equivalents. Defendants offer for sale and/or sell the infringing products at issue in this case.

18. Defendants infringe at least claim 1 of the '482 Patent, as detailed in the representative claim charts, (*See* Declaration of Brian Arnold in support of Motion for TRO and Exhibit 2 attached thereto)¹. Defendants offer for sale and/or sell infringing products, which are battery-powered percussive massagers that include all the claim limitations found in at least claim 1 of the '482 Patent (the "Infringing Products"). Hyperice believes that the Infringing Products literally meet the limitations of claim 1 of the '482 Patent for the devices identified in Exhibit 2 to the Declaration of Brian Arnold. If any of the limitations are not literally met, the Infringing Products meet the limitations under the doctrine of equivalents, because they perform substantially the same function in substantially the same way to achieve substantially the same result, and/or because the relevant structures and functions of the infringing products are insubstantially different from the claimed limitation. Namely, the following limitations found in claim 1 of the '482 Patent:

- a. a housing;

¹ Plaintiffs have concurrently filed an *Ex Parte* Application for Entry of a Temporary Restraining Order, Including a Temporary Injunction, A Temporary Asset Restraint and Expedited Discovery.

- b. a piston having a proximal end and a distal end, the distal end of the piston having a substantially cylindrical bore;
- c. a motor at least partially within the housing and operatively connected to the proximal end of the piston, wherein the motor is configured to cause the piston to reciprocate at a first speed;
- d. a drive mechanism that controls a predetermined stroke length of the piston; and
- e. a quick-connect system comprising the distal end of the piston and a first massaging head, wherein the quick-connect system is configured to secure the first massaging head to the percussive massager by a proximal end of the massaging head being slid into the bore while the piston reciprocates the predetermined stroke length at the first speed.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment on all Counts of this Complaint and an award of equitable and monetary relief against Defendants as follows:

1. That this Court enter judgment of infringement of the '482 Patent in favor of Hyperice and against Defendants;
2. That this Court enter a permanent injunction against Defendants from infringing the '482 Patent;
3. That this Court award Hyperice compensatory damages for infringement of the '482 Patent, as well as interest thereon;
4. That this Court award Hyperice its costs of this suit;
5. That this Court award Hyperice increased damages in an amount not less than three times the damages assessed for Defendants' infringement of the '482 Patent, in accordance with 35 U.S.C. §284.
6. That this Court declare this an exceptional case under 35 U.S.C. §285 and award Hyperice its attorneys' fees and any other costs incurred in connection with this action;
7. That this Court award Hyperice prejudgment and post-judgment interest; and
8. That this Court grant such further relief as the Court deems just and proper.

JURY DEMAND

Hyperice demands a trial by jury of all issues so triable.

Dated: May 8, 2024

Respectfully submitted,

/s/ Kenneth W. Cohen

Kenneth W. Cohen (FL Bar No. 0030185)

Jason M. Drangel (*pro hac vice forthcoming*)

Jodi-Ann McLane (*pro hac vice forthcoming*)

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