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15 Counsel for Plaintiffs,
16 Bob and Brad, LLC and
17 Sichuan Qianli-Beoka Medical Technology Inc.,

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **SOUTHERN DIVISION**

21 Bob and Brad, LLC and Sichuan
22 Qianli-Beoka Medical Technology Inc.,

Case No.:

23 Plaintiffs,

24 vs.

25 **DECLARATORY JUDGMENT**
26 **COMPLAINT**

27 Hyper Ice, Inc. and Hyperice IP Subco,
28 LLC,

Defendants.

1 Plaintiffs Bob and Brad, LLC (“B&B”) and Sichuan Qianli-Beoka Medical
2 Technology Inc. (“Beoka”) for their Complaint against Defendants Hyper Ice, Inc.
3 and Hyperice IP Subco, LLC (collectively, “HYPERICE”) allege:

4 **NATURE OF THE ACTION**

5 1. This is a civil action arising under the Declaratory Judgment Act , 28
6 U.S.C. § 2201 et seq. and the Patent Laws of the United States, 35 U.S.C. § 1 et
7 seq. for declaratory judgment of non-infringement and invalidity of U.S. Patent
8 No. 11,938,082 (“the ‘082 Patent”—attached as Exhibit 1).

9 2. This case also is a civil action for unfair competition under Cal. Bus.
10 & Prof. Code § 17200.

11 3. Plaintiffs bring this action in view of the actual controversy that
12 HYPERICE has created under the ‘082 Patent by asserting a patent infringement
13 claim against B&B’s products with Amazon, which caused Amazon to remove
14 B&B’s listing for those products on Amazon.com.

15 4. HYPERICE’s action have caused B&B to lose sales on Amazon, its
16 primary sales platform, and has harmed B&B’s reputation and goodwill.

17 **PARTIES**

18 5. B&B is a limited liability company organized under Minnesota law
19 with its principal place of business at 66 Shady Oak Ct., Winona, MN 55987.

20 6. Beoka is a Chinese company, with a principal place of business at
21 Longtan Industrial Park 2nd Sec., East 3rd Ring Road, Chenghua District,
22 Chengdu, China.

23 7. Beoka manufactures certain massage guns, which it sells to various
24 retailers including B&B.

1 8. Upon information and belief, Hyper Ice, Inc. is a corporation
2 organized under California law with its principal place of business at 525
3 Technology Drive, Suite 100, Irvine, CA 92618.

4 9. Upon information and belief, Hyperice IP Subco, LLC is a limited
5 liability company organized under Delaware law.

6 10. Upon information and belief, Hyperice IP Subco, LLC is a wholly-
7 owned subsidiary of Hyper Ice, Inc.

8 **JURISDICTION AND VENUE**

9 11. The Court has subject matter jurisdiction over the patent claims in this
10 action under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and under 28
11 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the
12 United States, Title 35 U.S.C. § 1 et seq.

13 12. The Court has supplemental subject matter jurisdiction over the state
14 law claim for unfair competition under 28 U.S.C. § 1367 because that claim arises
15 under the same common nucleus of facts as the declaratory judgment patent
16 claims.

17 13. The Court has personal jurisdiction over Hyper Ice, Inc. because,
18 upon information and belief, Hyper Ice, Inc. resides in California and in this
19 judicial district.

20 14. The Court has personal jurisdiction over Hyperice IP Subco, LLC
21 because, upon information and belief, Hyperice IP Subco, LLC is wholly owned by
22 Hyper Ice, Inc. and functions purely as a holding company for patents acquired by
23 Hyper Ice, Inc.

24 15. Upon information and belief, Hyper Ice, Inc. and Hyperice IP Subco,
25 LLC have filed multiple patent enforcement lawsuits in various jurisdictions as
26 joint co-plaintiffs.

1 25. Claim 1 requires:
2 a drive mechanism that controls a predetermined stroke
3 length of the piston

4 ‘082 Patent at column 10, lines 4-5.

5 26. Claim 18 requires:
6 providing a drive mechanism configured to control a
7 predetermined stroke length of the piston

8 ‘082 Patent at column 11, lines 10-11.

9 27. Accordingly, all claims in the ‘082 Patent require a drive mechanism
10 that controls a predetermined stroke length of the piston.

11 28. Claim 1 also requires:
12 a quick-connect system comprising the distal end of the
13 piston and a first massaging head, wherein the quick-
14 connect system is configured to have a proximal end of
15 the first massaging head inserted into or removed from
16 the bore while the piston reciprocates the predetermined
17 stroke length at the first speed.

18 ‘082 Patent at column 10, lines 6-11.

19 29. Claim 18 also requires:
20 providing a quick-connect system comprising the distal
21 end of the piston and a first massaging head, wherein a
22 proximal end of the first massaging head is configured to
23 be inserted into or removed from the bore while the
24 piston reciprocates the predetermined stroke length at the
25 first speed.

26 ‘082 Patent at column 11, lines 12-17.

27 30. Accordingly, all claims in the ‘082 Patent require a quick-connect
28 system at a distal end of the piston and a first massaging head.

 31. The ‘082 Patent is a continuation of application No. 18/466,702,
which is a continuation of U.S. Patent No. 11,857,482 (“the ‘482 Patent”).

1 32. The application for the ‘482 Patent was filed on February 25, 2022.
2 The ‘482 Patent issued on January 2, 2024.

3 33. On January 3, 2024, the day after the ‘482 Patent issued, HYPERICE
4 filed a complaint in the District of Minnesota asserting the ‘482 Patent against
5 B&B.

6 34. The litigation HYPERICE initiated against B&B was transferred to
7 this district, and is styled *Hyper Ice, Inc. and Hyperice IP Subco, LLC v. Bob and*
8 *Brad, LLC*, Case No. 2:24-cv-03212-JWH-DFM.

9 35. Upon information and belief, on or around January 5, 2024, within
10 days after the ‘482 Patent issued, HYPERICE submitted an infringement report
11 with Amazon.com under the ‘482 Patent against certain B&B massager products.

12 36. Amazon has its own procedures through which patent owners may
13 enforce their patent rights in the Amazon marketplace.

14 37. Under these procedures, a patent owner may file a patent infringement
15 report with Amazon.

16 38. Amazon may then invite the patent owner and the accused Amazon
17 seller to engage in a dispute resolution procedure involving an outside “neutral
18 evaluator.”

19 39. Upon information and belief, HYPERICE submitted the infringement
20 report with Amazon to try and initiate the dispute resolution procedure against
21 B&B.

22 40. Upon information and belief, Amazon did not initiate the dispute
23 resolution procedure against B&B because HYPERICE had already asserted the
24 ‘482 Patent against B&B in district court.

1 41. Upon information and belief, HYPERICE has learned that it cannot
2 initiate an Amazon dispute resolution procedure with a patent that is the subject of
3 an on-going litigation.

4 42. Upon information and belief, sometime in March or April 2024,
5 shortly after the '082 Patent issued, HYPERICE initiated an Amazon dispute
6 resolution procedure under the '082 Patent against certain third-party (not B&B)
7 massager products on Amazon.com.

8 43. Upon information and belief, HYPERICE obtained a decision in the
9 dispute resolution procedure that it was likely to prove infringement under the '082
10 Patent against the third-party massager products.

11 44. Upon information and belief, as a result of the decision from the
12 dispute resolution procedure, the third-party massager products were delisted from
13 Amazon.

14 45. Upon information and belief, because HYPERICE successfully
15 delisted the third-party massager products, if HYPERICE submits an infringement
16 report under the '082 Patent against any other massager products that are similar in
17 relevant respects to the third-party delisted massager products, Amazon delists the
18 product without first giving the accused seller an opportunity to present a non-
19 infringement defense.

20 46. Upon information and belief, on or about June 19, 2024, HYPERICE
21 submitted an infringement report under the '082 Patent against various B&B
22 massager products ("Accused Massage Guns").

23 47. The Accused Massage Guns do not infringe the '082 Patent because
24 they do not include a drive mechanism that controls a predetermined stroke length
25 of the piston, as required by all of the '082 claims.

1 48. The Accused Massage Guns also do not infringe the ‘082 Patent
2 because they do not include a quick-connect system at a distal end of the piston
3 and a first massaging head, as required by all of the ‘082 claims.

4 49. HYPERICE submitted an Amazon infringement report under the ‘082
5 and Patent even though the accused B&B massager products do not infringe any
6 claim of that patent.

7 50. Prompted by HYPERICE’s infringement claims, Amazon removed the
8 listings for the Accused Massage Guns before giving B&B a chance to present any
9 arguments in its own defense.

10 51. Amazon’s delisting has the effect of enjoining B&B’s sales of the
11 Accused Massage Guns.

12 52. Under the expedited Amazon de-listing process, B&B has not had a
13 chance to present its defenses to a neutral arbiter in a judicial or quasi-judicial
14 proceeding.

15 53. Moreover, Amazon’s IP enforcement procedures do not allow B&B in
16 any event to assert the full range of patent infringement defenses that are available
17 under federal law. For example, Amazon will not consider evidence that the ‘082
18 Patent is invalid.

19 54. Further, Amazon typically will not enforce through its internal IP
20 enforcement procedures patents that are the subject of district court litigation.

21 55. To sidestep that rule, Hyperice has exploited the Amazon delisting
22 procedure against B&B (and many other massage gun sellers) using the ‘082
23 Patent while pursuing district court patent litigation against B&B (and many other
24 massage gun competitors) under the ‘482 patent, which is closely related to the
25 ‘082 Patent (both derive from the same “parent” patent application) and which
26 contains the same key claim limitations.
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1 56. Because B&B sells the Accused Massage Guns primarily through its
2 Amazon storefront, HYPERICE’s manipulation of the Amazon delisting procedure
3 has wreaked havoc on B&B’s sales for these products, causing extensive economic
4 harm as well as reputational harm to B&B.

5 57. HYPERICE’s baseless infringement claims are damaging the hard-
6 won reputation and good will that Bob and Brad built over more than a decade.

7 **COUNT I**

8 **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT -**
9 **‘082 PATENT)**

10 58. The allegations of each of the foregoing paragraphs are
11 incorporated by reference as if fully set forth herein.

12 59. An actual, justiciable, and continuing controversy exists between the
13 Plaintiffs and the Defendants concerning whether the Accused Massage Guns
14 infringe the ‘082 Patent.

15 60. The Accused Massage Guns do not infringe any claim of the ‘082
16 Patent.

17 61. Plaintiffs seek a declaration that the Accused Massage Guns do not
18 infringe any ‘082 Patent claims.

19 **COUNT II**

20 **(INVALIDITY - ‘082 PATENT)**

21 62. The allegations of each of the foregoing paragraphs are
22 incorporated by reference as if fully set forth herein.

23 63. An actual, justiciable, and continuing controversy exists between the
24 Plaintiffs and the Defendants concerning whether the claims of the ‘082 Patent are
25 valid.

1 64. All claims of the ‘082 Patent are invalid under 35 U.S.C. § 102 and/or
2 § 103 in view of at least one or more of the following references, alone or in
3 combination:

- 4 U.S. Patent No. 6,682,496
- 5 U.S. Patent No. 5,134,777
- 6 U.S. Patent Publication No. 2008/0243039
- 7 U.S. Patent Publication No. 2015/0374576
- 8 U.S. Patent No. 8,083,699
- 9 U.S. Patent No. 6,432,072
- 10 U.S. Patent No. 1,339,179

11 65. Plaintiffs seek a declaration that the ‘082 Patent claims are invalid.

COUNT III

UNFAIR COMPETITION

CAL. BUS. & PROF. CODE §17200

12 66. The allegations of each of the foregoing paragraphs are
13 incorporated by reference as if fully set forth herein.
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15 67. California statutory law prohibits acts of “unfair competition”
16 including any “unlawful, unfair and fraudulent business act or practice.” Cal. Bus.
17 & Prof. Code §17200.

18 68. Hyper Ice., Inc., acting in concert with its wholly-owned subsidiary,
19 Hyperice IP Subco, LLC, has acted unlawfully and unfairly by manipulating
20 Amazon’s IP enforcement procedures to procure, in effect, a wrongful injunction
21 that prevents its competitor, B&B, from selling competing massage gun products
22 on Amazon.com.

23 69. Hyper Ice., Inc., acting in concert with its wholly-owned subsidiary,
24 Hyperice IP Subco, LLC, has exploited Amazon’s IP enforcement procedures by
25 asserting the ‘082 to shut down B&B’s sales of the Accused Massage Gun products
26

1 when it knows or reasonably should know that these products do not infringe any
2 valid claim of the '082 Patent.

3 70. In effect, Hyper Ice, Inc., acting in concert with its wholly-owned
4 subsidiary, Hyperice IP Subco, LLC, manipulated Amazon's IP enforcement
5 procedures to wrongfully interfere with B&B's lawful sales on Amazon.com,
6 which is the primary market through which B&B sells the Accused Massage Gun
7 products.

8 71. Upon information and belief, HYPERICE is aware that Amazon
9 typically will not allow patent owners to engage in Amazon's IP enforcement
10 procedures to enforce a patent that is the subject of a federal district court patent
11 litigation.

12 72. To circumvent this rule, HYPERICE obtained two patent from the
13 U.S. Patent Office that are identical in all relevant respects, and launched a district
14 court lawsuit with one (the '482 Patent) while asserting the second (the '082
15 Patent) in an expedited Amazon enforcement action in which it knew that Amazon
16 would delist the Accused Massage Gun products—effectively imposing a
17 preliminary injunction against B&B's Amazon sales—without first offering B&B
18 an opportunity to assert asserted any defenses and without allowing B&B to show
19 that the '082 Patent is invalid.

20 73. HYPERICE has not sought a preliminary injunction in their district
21 court action, which asserts claims under the nearly identical '482 Patent.

22 74. Had HYPERICE sought a preliminary injunction in their district court
23 action, B&B would have been entitled to brief the infringement and validity issues
24 and to present its defenses at an evidentiary hearing. HYPERICE also would have
25 been required to post a bond to secure the damage claim to which B&B would be
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1 entitled if B&B later established that the preliminary injunction was wrongfully
2 entered.

3 75. Knowing that they could not prove their case in a preliminary
4 injunction hearing in district court, HYPERICE instead deprived B&B of its
5 procedural protections and knowingly disrupted B&B's Amazon sales.

6 76. B&B has suffered substantial economic losses as well as reputational
7 harms resulting from HYPERICE's actions.

8 77. HYPERICE's actions constitute unfair competition under Cal. Bus. &
9 Prof. Code § 17200.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiffs B&B and Beoka ask this Court to:

12 a. Find that none of B&B's Accused Massage Gun products infringe the
13 '082 Patent;

14 b. Find that the '082 Patent claims are invalid;

15 c. Award Plaintiffs a permanent injunction enjoining HYPERICE from
16 asserting the '082 Patent against B&B's Accused Massage Gun;

17 d. Enter an injunction ordering HYPERICE to withdraw from
18 Amazon.com its '082 Patent infringement claims against the Accused Massage
19 Guns;

20 e. Find that this case is an "exceptional case" under 35 U.S.C. § 285 and
21 that B&B is entitled to its attorney fees;

22 f. Award B&B actual damages caused by HYPERICE's tortious actions
23 under the California unfair competition statute;

24 g. Award B&B other and further relief as may be proper under the
25 circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs B&B and Beoka request a trial by jury under Rule 38 of the Federal Rules of Civil Procedure of all issues that may be determined by a jury.

Dated: June 25, 2024

/s/Gary F. Wang

By: Gary F. Wang

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