

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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THERABODY, INC.  
Petitioner

v.

HYPERICE IP SUBCO, LLC  
Patent Owner.

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Case No. PGR2025-00026  
U.S. Patent No. 12,036,174

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**PETITIONER'S MOTION FOR PRO HAC VICE ADMISSION PURSUANT  
TO 37 C.F.R. §42.10(C)**

## **I. INTRODUCTION**

Pursuant to 37 C.F.R. § 42.10(C), Therabody, Inc. (“Petitioner”) respectfully requests that the Board recognize Bradley M. Berg as counsel *pro hac vice* in this proceeding. Petitioner’s lead counsel in this proceeding is a registered practitioner and, as illustrated below, Mr. Berg is an experienced litigator with an established familiarity with this proceeding’s subject matter. Thus, there is good cause for the Board to recognize Mr. Berg *pro hac vice* in this proceeding.

## **II. TIME FOR FILING**

This Motion for Pro Hac Vice Admission is being filed no sooner than twenty one (21) days after service of the petition. *Unified Patents, Inc. v. Parallel Iron, LLC*, Case IPR2013-00639, Paper No. 7 (P.T.A.B. Oct. 15, 2013).

## **III. STATEMENT OF FACTS**

This motion is authorized by the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response that was mailed on February 25, 2025 (Paper No. 5). Petitioner’s lead and back-up counsel are registered practitioners.

Where lead counsel is a registered practitioner, the Board may permit a nonregistered practitioner to appear *pro hac vice* “upon a showing that counsel is an experienced litigating attorney and has established familiarity with the subject matter at issue in the proceeding.” 37 C.F.R. §42.10(c); *Unified Patents, Case*

IPR2013-00639, Paper 7 (setting forth requirements for pro hac vice admission).

As set forth in his Declaration submitted herewith (Ex. 1051), Mr. Berg is an experienced litigator. He is a Counsel with O'Melveny & Myers LLP with ten years of experience representing clients in patent and technology related litigation, including matters involving technology similar to that at issue in this proceeding.

Mr. Berg is familiar with the subject matter of this proceeding. He has reviewed and analyzed the patent at issue in this post grant review, U.S. Patent No. 12,036,174 ("the '174 Patent") as well as the prior art at issue in this proceeding. Specifically, he has assisted Petitioner in its district court litigation, *Hyper Ice, Inc. v. Therabody, Inc.*, Case No. 8:24-cv-02034-JWH-(DFMx) (C.D. Cal.), which involves the same patent and technology at issue in this PGR.

Based on his work for Petitioner in litigations and proceedings involving similar technologies, involvement with the petition in this proceeding, and the other facts detailed in his declaration, Mr. Berg has significant familiarity with the subject matter in this proceeding. Petitioner wishes to apply Mr. Berg's knowledge of the patent and litigation experience by employing him as counsel in this proceeding. Because Mr. Berg is an experienced practitioner with an established familiarity with the subject matter of this proceeding, Petitioner respectfully submits that there is good cause under 37 C.F.R. § 42.10(c) to recognize Mr. Berg as counsel pro hac vice during this proceeding.

**IV. DECLARATION OF INDIVIDUAL SEEKING TO APPEAR**

This motion for *Pro Hac Vice* Admission is supported by the accompanying Declaration of Bradley M. Berg (Ex. 1051), as required by Unified Patents, Case IPR2013-00639, Paper 7.

Respectfully Submitted,

/s/ Marc J. Pensabene

Marc J. Pensabene (Reg. No. 37,416)

**UPDATED LIST OF EXHIBITS<sup>1</sup>**

Ex. No.	Description
Ex-1001	U.S. Patent No. 12,036,174 (“the ’174 Patent”)
Ex-1002	Declaration for Morten O. Jensen
Ex-1003	Curriculum Vitae of Morten O. Jensen
Ex-1004	Prosecution History of the ’174 Patent (Application No. 18/526,980)
Ex-1005	Korean Unexamined Application Publication No. 10-2001-0008111 (“Lee”)
Ex-1006	Certified Translation of Korean Unexamined Application Publication No. 10-2001-0008111 (“Lee”)
Ex-1007	U.S. Patent Application Publication No. 2016/0310353 (“Barasch”)
Ex-1008	Korean Patent No.10-1123926 (“Choi”)
Ex-1009	Certified Translation of Korean Patent No.10-1123926 (“Choi”)
Ex-1010	U.S. Patent No. 7,384,405 (“Rhoades”)
Ex-1011	U.S. Patent Application Publication No. 2015/0305969 (“Giraud”)
Ex-1012	Chunpeng Jiang et al., <i>A Wearable Braille Recognition System Based on High Density Tactile Sensors</i> , 2020 IEEE 33rd Int’l Conf. on Micro Electro Mech. Sys. (MEMS) 28-31 (2020)
Ex-1013	<i>The Cadence Tablet</i> , Tactile Engineering, <a href="https://www.tactileengineering.com/cadence">https://www.tactileengineering.com/cadence</a> (last visited Jan. 16, 2025)

<sup>1</sup> Four-digit pin citations that begin with 0 are to the page stamps added by Therabody in the bottom right corner of the exhibits. All other pin citations are to original page, column, paragraph, and/or line numbers.

Ex. No.	Description
Ex-1014	Devin Thorpe, <i>These 6 Women Undergrads at MIT Invented a GameChanger for the Blind</i> , Forbes, <a href="https://www.forbes.com/sites/devinthorpe/2016/12/20/these-6-womenundergrads-at-mit-invented-a-game-changer-for-the-blind/">https://www.forbes.com/sites/devinthorpe/2016/12/20/these-6-womenundergrads-at-mit-invented-a-game-changer-for-the-blind/</a> (Dec. 20, 2016)
Ex-1015	<i>O-Rejuv Facial Device</i> , O Cosmedics, <a href="https://www.ocosmedics.com/orejuv-facial-device.html">https://www.ocosmedics.com/orejuv-facial-device.html</a> (last visited Jan. 16, 2025)
Ex-1016	<i>ZAQ Facial Rejuvenation Device</i> , ZAQ, <a href="https://zaq.com/products/zaqfacial-rejuvenation-7-color-led-device-rf-ems-sonic-vibration-hotmassager">https://zaq.com/products/zaqfacial-rejuvenation-7-color-led-device-rf-ems-sonic-vibration-hotmassager</a> (last visited Jan. 16, 2025)
Ex-1017	Sooyeon Choi et al., <i>Efficacy and Safety of a Home-Use Handheld Multi-Energy-Based Device for Skin Rejuvenation: Clinical, Ex Vivo, and Histological Studies</i> , 39 <i>Lasers Med. Sci.</i> 38 (2024)
Ex-1018	<i>Ergonomics and Handheld Medical Devices: Five Vital Elements for Design Success</i> , Medical Design Briefs, <a href="https://www.medicaldesignbriefs.com/component/content/article/%2029-108-ergonomics-and-handheld-medical-devices-five-vital-elements-for-design-success">https://www.medicaldesignbriefs.com/component/content/article/%2029-108-ergonomics-and-handheld-medical-devices-five-vital-elements-for-design-success</a> (lasted visited Jan. 16, 2025)
Ex-1019	<i>Finding a Percussion Massager for Effective Muscle Recovery</i> , Pulse Therapy Hub, <a href="https://pulsetherapyhub.com/the-difference-between-a-percussion-massager-and-a-vibration-massager">https://pulsetherapyhub.com/the-difference-between-a-percussion-massager-and-a-vibration-massager</a> (lasted visited Jan. 16, 2025)
Ex-1020	Claim Correlation Chart
Ex-1021	<i>Percussion Massage v. Vibration Massage</i> , Dr. Graeme, <a href="https://www.drgraeme.com/articles/2021/06/percussion-massager-vs-vibration-massage">https://www.drgraeme.com/articles/2021/06/percussion-massager-vs-vibration-massage</a> (lasted visited Jan. 16, 2025)
Ex-1022	<i>Vibration vs. Percussion Massagers: Which One is the Best?</i> , The Fitness Tribe, <a href="https://thefitnesstribe.com/vibration-vs-percussionmassagers">https://thefitnesstribe.com/vibration-vs-percussionmassagers</a> (lasted visited Jan. 16, 2025)

Ex. No.	Description
Ex-1023	<i>Vibrational Massagers vs. Percussive Massagers</i> , Fit Body Factory, <a href="https://thefitbodyfactory.com/blogs/news/vibrational-massagers-vspercussive-massagers">https://thefitbodyfactory.com/blogs/news/vibrational-massagers-vspercussive-massagers</a> (lasted visited Jan. 16, 2025)
Ex-1024	U.S. Patent No. 10,940,081 (“Nazarian”)
Ex-1025	<i>How to Implement In-Sensor Vibration Monitoring with ISM330IS</i> , ST Community, <a href="https://community.st.com/t5/mems-and-sensors/how-toimplement-in-sensor-vibration-monitoring-with-ism330is/ta-p/572988">https://community.st.com/t5/mems-and-sensors/how-toimplement-in-sensor-vibration-monitoring-with-ism330is/ta-p/572988</a> (lasted visited Jan. 16, 2025)
Ex-1026	U.S. Patent Application Publication No. 2020/0276079 (“Cheng”)
Ex-1027	<i>EMS Gua Sha Massager   Cooling &amp; Heating for Lymphatic Drainage Massage, Contouring, Oil &amp; Acne Control   LED Therapy &amp; Microcurrent</i> , Arte Reverie, <a href="https://artereverie.com/products/gua-shaems-massager">https://artereverie.com/products/gua-shaems-massager</a> (lasted visited Jan. 16, 2025)
Ex-1028	<i>MG 600   Massage Gun with Hot &amp; Cold Function</i> , Medisana, <a href="https://www.medisana.com/en/Wellness/Massage-devices/MG-600Massage-Gun-with-hot-cold-function.html">https://www.medisana.com/en/Wellness/Massage-devices/MG-600Massage-Gun-with-hot-cold-function.html</a> (lasted visited Jan. 16, 2025)
Ex-1029	<i>What’s the Difference Between TENS and EMS Units</i> , Healthline, <a href="https://www.healthline.com/health/tens-vs-ems">https://www.healthline.com/health/tens-vs-ems</a> (lasted visited Jan. 16, 2025)
Ex-1030	<i>Digital EMS &amp; TENS Device, EM49</i> , Beurer, <a href="https://www.shopbeurer.com/products/digital-ems-tens-device-em49">https://www.shopbeurer.com/products/digital-ems-tens-device-em49</a> (lasted visited Jan. 16, 2025)
Ex-1031	<i>Understanding E-Stim Devices: A Guide to Electrical Muscle Stimulation</i> , Optimal Wellness Center, <a href="https://www.owchealth.com/blog/2024/10/15/understanding-e-stimdevices-a-guide-to-electrical-muscle-stimulation">https://www.owchealth.com/blog/2024/10/15/understanding-e-stimdevices-a-guide-to-electrical-muscle-stimulation</a> (lasted visited Jan. 16, 2025)

Ex. No.	Description
Ex-1032	Claim Chart for Theragun Prime Plus
Ex-1033	Stipulation of Partial Dismissal, <i>Hyper Ice, Inc. v. Therabody, Inc.</i> , No. 8:24-cv-01472-JWH-DFM (Lead Case), 8:24-cv-02034-JWH-DFM (Consolidated) (C.D. Cal. June 12, 2025), ECF No. 60
Ex-1034	Motion to Stay Pending Instituted Post-Grant Review, <i>Hyper ice, Inc. v. Therabody, Inc.</i> , No. 8:24-cv-00390-JWH-DFM (C.D. Cal. May 12, 2025), ECF No. 46
Ex-1035	Plaintiff's First Amended Disclosure of Asserted Claims and Infringement Contentions (P.R. 3-1 & 3-2), <i>Hyper Ice, Inc. v. Therabody, Inc.</i> , No. 8:24-cv-02034-JWH-DFM (C.D. Cal. Feb. 27, 2025)
Ex-1036	Docket Sheet, <i>Gene Pool Techs., Inc. v. Coastal Harvest, LLC</i> , No. 5:21-cv-01328-JWH-SHK (C.D. Cal.)
Ex-1037	Docket Sheet, <i>Pavemetrics Systems, Inc. v. Tetra Tech</i> , No. 2:21-cv01289-MCS-MAA (C.D. Cal.)
Ex-1038	Coke Morgan Stewart, Leadership 2025: Welcoming Remarks and Opening Keynote (Apr. 1, 2025)
Ex-1039	Defendant Therabody, Inc.'s Disclosure of Invalidity Contentions, <i>Hyper Ice, Inc. v. Therabody, Inc.</i> , No. 8:24-cv-2034-JWH-DFM (C.D. Cal. Mar. 7, 2025)
Ex-104	Minute Order, <i>Fontem Ventures, B.V. v. NJOY, Inc.</i> , No. 2:14-cv-GWMrw (C.D. Cal. Sept. 24, 2014), ECF No. 32
Ex-1041	Minute Order, <i>DMF, Inc. v. AMP Plus, Inc.</i> , No. 2:18-cv-07090-CASGJSx (C.D. Cal. July 12, 2019), ECF No. 251
Ex-1042	Claim Construction Order, <i>Gene Pool Techs., Inc. v. Coastal Harvest, LLC</i> , No. 5:21-cv-01328-JWH-SHK (C.D. Cal. Oct. 23, 2022), ECF No. 87

Ex. No.	Description
Ex-1043	Civil Trial Scheduling Order, <i>Gene Pool Techs., Inc. v. Coastal Harvest, LLC</i> , No. 5:21-cv-01328-JWH-SHK (C.D. Cal. Nov. 23, 2022), ECF No. 94
Ex-1044	Stipulation to Continue Discovery Deadlines and Order, <i>Pensmore Reinforcement Techs., LLC d/b/a/ Helix Steel v. Cornerstone Mfg. and Distrib., Inc.</i> , No. 5:21-cv-1556-JWH-SHK (C.D. Cal. Dec. 2, 2022), ECF No. 94
Ex-1045	Minute Order, <i>Pensmore Reinforcement Techs., LLC d/b/a/ Helix Steel v. Cornerstone Mfg. and Distrib., Inc.</i> , No. 5:21-cv-1556-JWH-SHK (C.D. Cal. Aug. 23, 2022), ECF No. 81
Ex-1046	Scheduling Notice, <i>Shenzhen Kelaisiman Trading Co. v. Hyper Ice, Inc.</i> , No. 8:24-cv-01472-JWH-DFM (C.D. Cal. June 20, 2025), ECF No. 61
Ex-1047	Scheduling Order, <i>Hyper Ice, Inc. v. Joicom Corp.</i> , No. 8:24-cv-00098JWH-DFM (C.D. Cal. June 21, 2024), ECF No. 26
Ex-1048	Order Granting Joint Stipulation and Motion to Modify Case Schedule, <i>Hyper Ice, Inc. v. Joicom Corp.</i> , No. 8:24-cv-00098-JWH-DFM (C.D. Cal. Aug. 19, 2024), ECF No. 33
Ex-1049	Scheduling Notice, <i>Hyper Ice, Inc. v. Joicom Corp.</i> , No. 8:24-cv-00098JWH-DFM (C.D. Cal. Jan. 21, 2025), ECF No. 47
Ex-1050	Scheduling Notice, <i>Hyper Ice, Inc. v. Joicom Corp.</i> , No. 8:24-cv-00098JWH-DFM (C.D. Cal. Apr. 10, 2025), ECF No. 67
Ex-1051	Declaration of Bradley M. Berg In Support of Petitioner’s Motion for Pro Hac Vice Admission Pursuant to 37 C.F.R. §42.10(C)
Ex-1052	Declaration of Brett J. Williamson In Support of Petitioner’s Motion for Pro Hac Vice Admission Pursuant to 37 C.F.R. §42.10(C)

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2025, I caused a true and correct copy of the foregoing PETITIONER'S MOTION FOR PRO HAC VICE ADMISSION PURSUANT TO 37 C.F.R. §42.10(C) to be served electronically on counsel for Patent Owner at the following addresses:

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