

**IN THE UNITED STATES COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

HYPERTHERM, INC.,

Plaintiff,

v.

WENZHOU RUIXIA E-COMMERCE CO.,
LTD d/b/a JACK & DAVE,

Defendant.

Civil Action No. 1:21-cv-607

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Hypertherm, Inc. (“Hypertherm”) brings this action for patent infringement against Wenzhou Ruixia E-Commerce Co., Ltd d/b/a Jack & Dave (“Jack & Dave”) based on its systematic and ongoing infringement of nine United States patents: U.S. Patent Nos. 7,829,816, 7,989,727, 8,115,136, 8,513,565, 8,541,712, 8,546,718, 8,835,796, 8,884,179, and 9,462,670 (collectively, “the Patents-In-Suit”).

INTRODUCTION

1. Hypertherm is a worldwide leader in the technological development, manufacturing, and marketing of plasma arc cutting systems and replacement parts. Since its founding in 1968, Hypertherm has contributed pioneering advances to metal cutting technologies. The company has over 200 United States patents protecting its innovations from copying by others.

2. Jack & Dave is a Chinese company that imports into the United States and sells consumable replacement parts, including torch tips, nozzles, and shield caps designed specifically for Hypertherm torches, without authorization, and in violation of Hypertherm’s intellectual property rights.

THE PARTIES

3. Hypertherm is a corporation organized and existing under the laws of New Hampshire, with its principal place of business at 21 Great Hollow Road, Hanover, NH, 03755.

4. On information and belief, Defendant Jack & Dave is a corporation organized and existing under the laws of the People's Republic of China, with its principal place of business at Room D09 D Community, College Students' Pioneering Park, Ouhai District Wenzhou, Zhejiang, 325035, China.

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over Jack & Dave under Federal Rule of Civil Procedure 4(k)(2). Hypertherm's claims arise under federal law. On information and belief, Jack & Dave is not subject to jurisdiction in any state's court of general jurisdiction, and the exercise of jurisdiction over Jack & Dave comports with due process. Jack & Dave has personally availed itself of the privilege of conducting business in the United States by importing and selling consumable replacement parts for Hypertherm products on Amazon.com and other online retailers. On information and belief, Jack & Dave imports infringing products from China and sells them to individuals throughout the United States and in this District. The Jack & Dave "seller" page on Amazon states: "We are a cross-border e-commerce company, focusing on the development of new products welding accessories [sic]." On information and belief, online orders for infringing products placed through Amazon are sold by Jack & Dave and shipped throughout the United States by Amazon Fulfillment.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c)(3).

THE PATENTS-IN-SUIT

8. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 7,829,816 (“the ’816 Patent”), titled “Plasma Arc Torch Providing Angular Shield Flow Injection.” The ’816 Patent was duly issued by the United States Patent and Trademark Office on November 9, 2010, and is enforceable. A copy of the ’816 Patent is attached hereto as **Exhibit A**.

9. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 7,989,727 (“the ’727 Patent”), titled “High Visibility Plasma Arc Torch.” The ’727 Patent was duly issued by the United States Patent and Trademark Office on August 2, 2011, and is enforceable. A copy of the ’727 Patent is attached hereto as **Exhibit B**.

10. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 8,115,136 (“the ’136 Patent”), titled “Electrode for a Contact Start Plasma Arc Torch and Contact Start Plasma Arc Torch Employing Such Electrodes.” The ’136 Patent was duly issued by the United States Patent and Trademark Office on February 14, 2012, and is enforceable. A copy of the ’136 Patent is attached hereto as **Exhibit C**.

11. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 8,513,565 (“the ’565 Patent”), titled “Nozzle Head with Increased Shoulder Thickness.” The ’565 Patent was duly issued by the United States Patent and Trademark Office on August 20, 2013, and is enforceable. A copy of the ’565 Patent is attached hereto as **Exhibit D**.

12. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 8,541,712 (“the ’712 Patent”), titled “Electrode for a Contact Start Plasma Arc Torch and Contact Start Plasma Arc Torch Employing Such Electrodes.” The ’712 Patent was duly issued by the United States Patent and Trademark Office on September 24, 2013, and is enforceable. A copy of the ’712 Patent is attached hereto as **Exhibit E**.

13. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 8,546,718 (“the ’718 Patent”), titled “Electrode for a Contact Start Plasma Arc Torch and Contact Start Plasma Arc Torch Employing Such Electrodes.” The ’718 Patent was duly issued by the United States Patent and Trademark Office on October 1, 2013, and is enforceable. A copy of the ’718 Patent is attached hereto as **Exhibit F**.

14. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 8,835,796 (“the ’796 Patent”), titled “Diffuser Shape Vent Slots in a Hand Torch Shield Castellation.” The ’796 Patent was duly issued by the United States Patent and Trademark Office on September 16, 2014, and is enforceable. A copy of the ’796 Patent is attached hereto as **Exhibit G**.

15. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 8,884,179 (“the ’179 Patent”), titled “Torch Flow Regulation Using Nozzle Features.” The ’179 Patent was duly issued by the United States Patent and Trademark Office on November 11, 2014, and is enforceable. A copy of the ’179 Patent is attached hereto as **Exhibit H**.

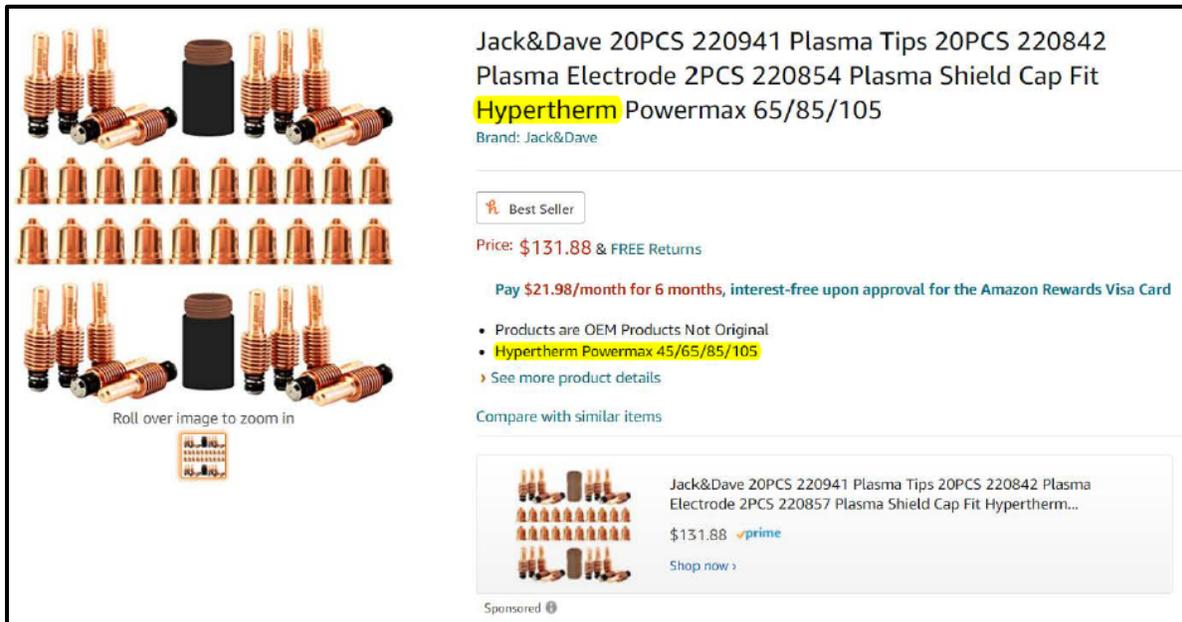
16. Hypertherm is the owner of all right, title, and interest in and to U.S. Patent No. 9,462,670 (“the ’670 Patent”), titled “Diffuser Shape Vent Slots in a Hand Torch Shield Castellation.” The ’670 Patent was duly issued by the United States Patent and Trademark Office on October 4, 2016, and is enforceable. A copy of the ’670 Patent is attached hereto as **Exhibit I**.

17. Pursuant to 35 U.S.C. § 287(a), Hypertherm has provided notice of the Patents-In-Suit to potential infringers and the public, including Jack & Dave, by marking its product labels with the word “patent,” together with an address of a posting on the Internet (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, listing the patents both by product and by part number.

JACK & DAVE’S INFRINGING PRODUCTS

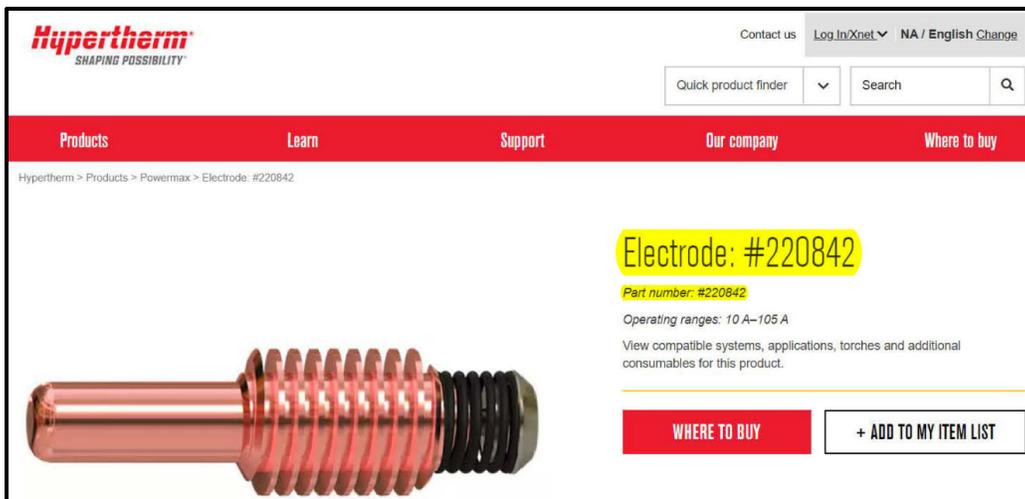
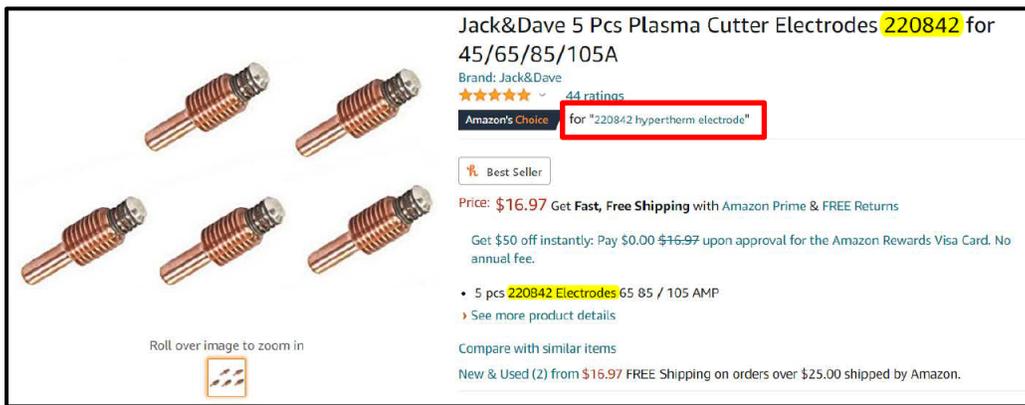
18. Jack & Dave imports into the United States and sells unauthorized copies of consumable replacement parts designed specifically for Hypertherm products in violation of 35 U.S.C. § 271. Jack & Dave has no relationship with Hypertherm, and it does not have permission to offer for sale, sell, or import patent-protected parts for Hypertherm’s plasma arc torch cutting systems.

19. Jack & Dave advertises its consumable parts for use with Hypertherm’s plasma torch cutting systems. Many of Jack & Dave’s product listings on Amazon specifically reference Hypertherm, as shown in the example below.¹ Hypertherm’s genuine consumable replacement parts are protected by one or more of the Patents-In-Suit.



¹ Available at: https://www.amazon.com/Jack-Dave-220941-220842-220854/dp/B08NPHSVW2/ref=sr_1_3_sspa?dchild=1&keywords=Jack%26Dave+hypertherm&qid=1621627744&sr=8-3-spons&psc=1&spLa=ZW5jcnlwdGVkUXVhbGlmaWVyPUEyTVINQkUxVkhFUEVVJmVuY3J5cHRlZElkPUEwODkzNzMTYWRk81SjhCTjhYTiZlbnNyeXB0ZWRBZEIkPUEwODU1NDQ4MlZHSTIxRjRLWkhHTyZ3aWRnZXROYWl1PjNwX2F0ZiZhY3Rpb249Y2xpY2tSZWRpcmVjdCZkb05vdExvZ0NsaWNrPXRydwU=, last accessed May, 21, 2021.

20. Jack & Dave also assigns part numbers that are identical to the part numbers of genuine Hypertherm consumables. By way of example, Jack & Dave sells “Plasma Cutter Electrodes” associated with Part No. 220842, as shown below with yellow highlighting.² This is an unauthorized copy of the electrode that Hypertherm sells as Part No. 220842.³ The accused Jack & Dave parts are designed exclusively for Hypertherm’s plasma cutting systems and can only be used with Hypertherm’s cutting systems.



² Available at: https://www.amazon.com/Jack-Dave-Plasma-Cutter-Electrodes/dp/B076HH7VJ5/ref=sr_1_13?dchild=1&keywords=Jack%26Dave+220816&qid=1621628281&sr=8-13, last accessed May 21, 2021.

³ Available at: <https://www.hypertherm.com/en-US/hypertherm/powermax/electrode-duramax-and-duramax-lock-10-105-a/>, last accessed May 21, 2021.

CLAIM ONE
Infringement of U.S. Patent No. 7,829,816

21. Hypertherm repeats each of the allegations above as if fully set forth herein.

22. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '816 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

23. Jack & Dave Part Nos. 220816 and 220941 infringe at least claim 27 of the '816 Patent. Attached as **Exhibit J** and incorporated by reference is a detailed claim chart showing infringement of the '816 Patent by Jack & Dave.

24. Jack & Dave received constructive notice of the '816 Patent based on Hypertherm's virtual marking of its products.

25. On information and belief, Jack & Dave received actual notice and has knowledge of the '816 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

26. On information and belief, Jack & Dave's infringement of the '816 Patent has been willful.

27. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '816 Patent.

28. Jack & Dave's infringement of the '816 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM TWO
Infringement of U.S. Patent No. 7,989,727

29. Hypertherm repeats each of the allegations above as if fully set forth herein.

30. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '727 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

31. Jack & Dave Part No. 220478 infringes at least claim 13 of the '727 Patent. Attached as **Exhibit K** and incorporated by reference is a detailed claim chart showing infringement of the '727 Patent by Jack & Dave.

32. Jack & Dave received constructive notice of the '727 Patent based on Hypertherm's virtual marking of its products.

33. On information and belief, Jack & Dave received actual notice and has knowledge of the '727 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

34. On information and belief, Jack & Dave's infringement of the '727 Patent has been willful.

35. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '727 Patent.

36. Jack & Dave's infringement of the '727 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM THREE
Infringement of U.S. Patent No. 8,115,136

37. Hypertherm repeats each of the allegations above as if fully set forth herein.

38. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '136 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

39. Jack & Dave Part No. 220842 infringes at least claim 1 of the '136 Patent. Attached as **Exhibit L** and incorporated by reference is a detailed claim chart showing infringement of the '136 Patent by Jack & Dave.

40. Jack & Dave received constructive notice of the '136 Patent based on Hypertherm's virtual marking of its products.

41. On information and belief, Jack & Dave received actual notice and has knowledge of the '136 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

42. On information and belief, Jack & Dave's infringement of the '136 Patent has been willful.

43. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '136 Patent.

44. Jack & Dave's infringement of the '136 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM FOUR
Infringement of U.S. Patent No. 8,513,565

45. Hypertherm repeats each of the allegations above as if fully set forth herein.

46. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '565 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

47. Jack & Dave Part Nos. 220816 and 220941 infringe at least claim 1 of the '565 Patent. In addition, Jack & Dave Part Nos. 220816, 220941, 220817, and 220818 infringe at least claim 44 of the '565 Patent. Attached as **Exhibit M** and incorporated by reference is a detailed claim chart showing infringement of the '565 Patent by Jack & Dave.

48. Jack & Dave received constructive notice of the '565 Patent based on Hypertherm's virtual marking of its products.

49. On information and belief, Jack & Dave received actual notice and has knowledge of the '565 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and

enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

50. On information and belief, Jack & Dave's infringement of the '565 Patent has been willful.

51. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '565 Patent.

52. Jack & Dave's infringement of the '565 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM FIVE
Infringement of U.S. Patent No. 8,541,712

53. Hypertherm repeats each of the allegations above as if fully set forth herein.

54. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '712 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

55. Jack & Dave Part No. 220842 infringes at least claim 1 of the '712 Patent. Attached as **Exhibit N** and incorporated by reference is a detailed claim chart showing infringement of the '712 Patent by Jack & Dave.

56. Jack & Dave received constructive notice of the '712 Patent based on Hypertherm's virtual marking of its products.

57. On information and belief, Jack & Dave received actual notice and has knowledge of the '712 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles

with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

58. On information and belief, Jack & Dave's infringement of the '712 Patent has been willful.

59. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '712 Patent.

60. Jack & Dave's infringement of the '712 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM SIX
Infringement of U.S. Patent No. 8,546,718

61. Hypertherm repeats each of the allegations above as if fully set forth herein.

62. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '718 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

63. Jack & Dave Part No. 220842 infringes at least claim 1 of the '718 Patent. Attached as **Exhibit O** and incorporated by reference is a detailed claim chart showing infringement of the '718 Patent by Jack & Dave.

64. Jack & Dave received constructive notice of the '718 Patent based on Hypertherm's virtual marking of its products.

65. On information and belief, Jack & Dave received actual notice and has knowledge of the '718 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable

products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

66. On information and belief, Jack & Dave's infringement of the '718 Patent has been willful.

67. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '718 Patent.

68. Jack & Dave's infringement of the '718 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM SEVEN
Infringement of U.S. Patent No. 8,835,796

69. Hypertherm repeats each of the allegations above as if fully set forth herein.

70. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '796 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

71. Jack & Dave Part No. 220818 infringes at least claim 1 of the '796 Patent. Attached as **Exhibit P** and incorporated by reference is a detailed claim chart showing infringement of the '796 Patent by Jack & Dave.

72. Jack & Dave received constructive notice of the '796 Patent based on Hypertherm's virtual marking of its products.

73. On information and belief, Jack & Dave received actual notice and has knowledge of the '796 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of

Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

74. On information and belief, Jack & Dave's infringement of the '796 Patent has been willful.

75. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '796 Patent.

76. Jack & Dave's infringement of the '796 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM EIGHT
Infringement of U.S. Patent No. 8,884,179

77. Hypertherm repeats each of the allegations above as if fully set forth herein.

78. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '179 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

79. Jack & Dave Part Nos. 220816 and 220941 infringe at least claim 1 of the '179 Patent. In addition, Jack & Dave Part Nos. 220816, 220941, and the Jack & Dave nozzle retaining cap infringe at least claim 10 of the '179 Patent. Attached as **Exhibit Q** and incorporated by reference is a detailed claim chart showing infringement of the '179 Patent by Jack & Dave.

80. Jack & Dave received constructive notice of the '179 Patent based on Hypertherm's virtual marking of its products.

81. On information and belief, Jack & Dave received actual notice and has knowledge of the '179 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

82. On information and belief, Jack & Dave's infringement of the '179 Patent has been willful.

83. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '179 Patent.

84. Jack & Dave's infringement of the '179 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

CLAIM NINE
Infringement of U.S. Patent No. 9,462,670

85. Hypertherm repeats each of the allegations above as if fully set forth herein.

86. On information and belief, Jack & Dave offers for sale, sells, and imports into the United States products that infringe one or more claims of the '670 Patent, including products manufactured by Jack & Dave for use with Hypertherm plasma cutting systems.

87. Jack & Dave Part No. 220818 infringes at least claim 19 of the '670 Patent. Attached as **Exhibit R** and incorporated by reference is a detailed claim chart showing infringement of the '670 Patent by Jack & Dave.

88. Jack & Dave received constructive notice of the '670 Patent based on Hypertherm's virtual marking of its products.

89. On information and belief, Jack & Dave received actual notice and has knowledge of the '670 Patent based on (i) the fact that Jack & Dave procures and makes direct copies of Hypertherm's consumable replacement parts, (ii) the product label for Hypertherm's consumable products, which includes a URL (www.hypertherm.com/patents) that associates patented articles with the number of each corresponding patent, (iii) notice of an infringement claim and enforcement actions provided to and relayed by Amazon, and/or (iv) the filing and service of this Complaint.

90. On information and belief, Jack & Dave's infringement of the '670 Patent has been willful.

91. Hypertherm has suffered and will suffer damages as a result of Jack & Dave's infringement of the '670 Patent.

92. Jack & Dave's infringement of the '670 Patent has caused and will cause Hypertherm to suffer substantial and irreparable harm, unless Jack & Dave is enjoined from continuing to sell infringing copies of genuine Hypertherm consumable replacement parts.

PRAYER FOR RELIEF

WHEREFORE, Hypertherm respectfully requests that the Court enter an Order:

- A. That Jack & Dave has infringed the Patents-In-Suit under 35 U.S.C. § 271;
- B. That Jack & Dave's infringement of the Patents-In-Suit has been willful;
- C. That Jack & Dave, its officers, members, directors, agents, servants, employees, confederates, representatives, and all persons acting in concert or participation with

them, be preliminarily and permanently enjoined from any further infringement of the Patents-In-Suit;

- D. That Jack & Dave be directed to file with the Court and serve on Hypertherm, within thirty (30) days after entry of a final injunction, a report in writing under oath setting forth in detail the manner and form in which Jack & Dave has complied with the injunction;
- E. That Hypertherm be awarded all monetary relief available under the patent laws of the United States, including, but not limited to, actual damages, pre- and post-judgment interest, enhanced damages, and costs pursuant to 35 U.S.C. § 284;
- F. That this case is exceptional and Hypertherm is entitled to reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- G. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Hypertherm hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues so triable.

Dated: July 20, 2021

Respectfully submitted,

By: /s/ Henry C. Quillen

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