

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

HYPERTRONICS CORPORATION,

Plaintiff,

v.

LEMO USA INC. and LEMO S.A.,

Defendants.

Civil Action No. 12-11085

**COMPLAINT**

Plaintiff Hypertronics Corporation, by its undersigned attorneys, for its Complaint against Defendants LEMO USA Inc. and LEMO S.A., states as follows:

**THE PARTIES**

1. Plaintiff Hypertronics Corporation (“Hypertronics”) is a Massachusetts corporation with its principal place of business at 16 Brent Drive, Hudson, Massachusetts, 01749.
2. Hypertronics is informed and believes that Defendant LEMO USA Inc. is a corporation organized and existing under the laws of the State of California, with a principal place of business located in Rohnert Park, California.
3. Hypertronics is informed and believes that Defendant LEMO S.A. is a Swiss company having a principal place of business at Chemin des Champs-Corbes 28, P.O. Box 194, CH 1024 Ecublens, Switzerland.
4. Upon information and belief, LEMO USA Inc. is a subsidiary of, and operates under the control of, LEMO S.A.

**JURISDICTION AND VENUE**

5. This is an action for design patent infringement arising out of LEMO USA Inc.'s and LEMO S.A.'s (collectively "LEMO's") unauthorized use, manufacture, importation, offers for sale, and/or sales of one or more configurations of the REDEL XP series connectors that infringe Hypertronics' U.S. Design Patent No. D596,127 ("the '127 Patent"). Because this is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

7. This Court has personal jurisdiction over LEMO in that at all times pertinent hereto, upon information and belief, LEMO has had systematic activities in this judicial district and directly, or indirectly through its agents, is committing infringing acts in this District.

8. More specifically, upon information and belief, LEMO directly, or indirectly through its agents, transacts business in this Judicial District and has committed acts within this Judicial District giving rise to this action, at least by offering for sale and selling infringing products through representatives, dealers, and distributors in this Judicial District and/or placing them into the stream of commerce in such a way as to reach customers in this Judicial District, and/or because it has sufficient minimum contacts with this Judicial District.

9. On information and belief, infringing products are available for purchase in this Judicial District through LEMO's authorized distributors and representatives, including: D.A. Crowley & Associates, located at 3 Overlook Drive, Amherst, NH 03031; Powell Electronics, Inc., located at 4 Mount Royal, Suite 210, Marlboro, Massachusetts 01752; Heiland Electronics, Inc., located at 58 Jonspin Road, Wilmington, Massachusetts 01887; and Sager Electronics,

located at 19 Leona Drive, Middleborough, Massachusetts 02346 and 240 Andover Street, Wilmington, Massachusetts 01887.

10. In addition, LEMO has sold and shipped infringing products to BKT Supply Co. Inc., one of its authorized distributors, who in turn has sold infringing products to customers in this Judicial District.

11. The Massachusetts long-arm statute, G.L. c. 223A § 2-3, permits personal jurisdiction over LEMO because the claims arise from its transaction of business within this Commonwealth; commission of tortious acts within this Commonwealth; ownership, use, or possession of real estate situated within this Commonwealth; and/or the making or performance of any contract or promise substantially connected with this Commonwealth.

12. LEMO is amenable to service of process pursuant to the Massachusetts long-arm statute and Fed. R. Civ. P. 4(e).

13. Requiring LEMO to respond to this action will not violate due process.

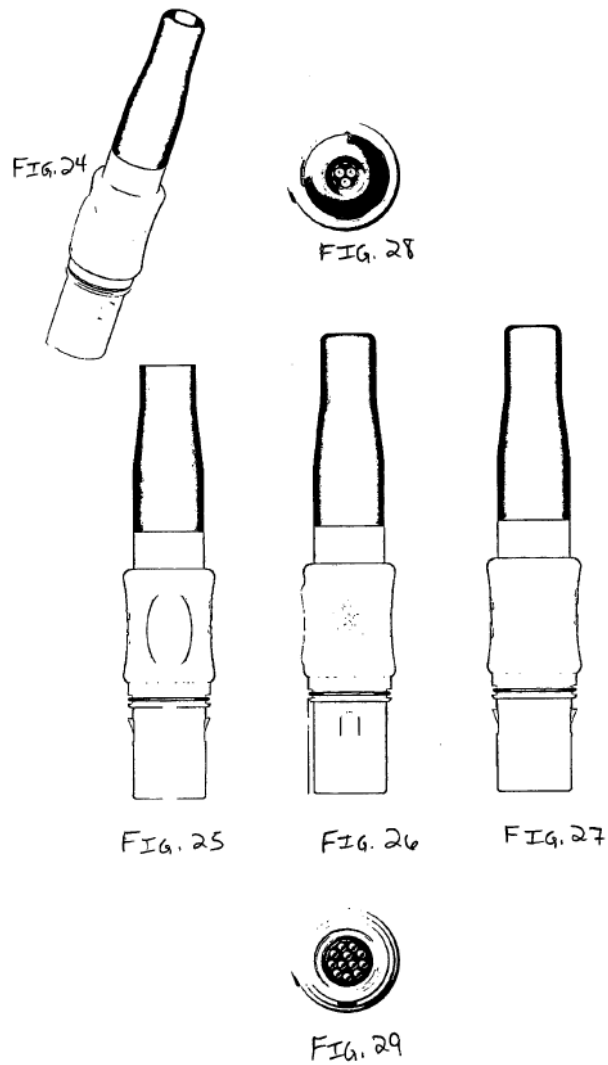
#### **BACKGROUND FACTS**

14. Hypertronics is a supplier of high-reliability, high-performance interconnect solutions consisting of electrical/electronic connectors and cabling for demanding applications. For the past 40 years, Hypertronics has offered both standard and custom design solutions that include cabling, mechanical, instrumentation housing, and electrical modeling and testing for a variety of industries. Hypertronics also offers complete interconnect solutions.

15. Hypertronics' connectors are specifically designed to be resistant to vibration, and are especially suited to implementation in the military and aerospace industries. Specifically, in applications that require frequent connector mating cycles, Hypertronics' proprietary technology will perform up to 100,000 insertion/extraction cycles with little degradation in performance.

16. In 2003, Hypertronics made a strategic decision to launch a product line specific to the medical and health care industry. As part of this initiative, Hypertronics designed and developed a new set of connectors with features specifically developed to appeal to the medical industry. These new connector plugs were designed to have a distinctive appearance that customers would associate with Hypertronics.

17. On November 21, 2003, Hypertronics filed U.S. Patent Application Serial No. 29/194,315. The application included various figures depicting views of Hypertronics' new ornamental plug design, including:



18. Hypertronics launched its HyperGrip<sup>®</sup> product line of connectors (“HyperGrip<sup>®</sup>”) in 2004. The HyperGrip<sup>®</sup> connectors are user-configurable circular connectors, which are color-coded and customer-keyable for accurate and quick connections on medical equipment. The HyperGrip<sup>®</sup> keying system allows customers greater freedom and diversity to build connectors with six different keying options from a set of common components, thereby reducing cost, lead time and inventory. HyperGrip<sup>®</sup> connectors are designed to meet medical industry requirements relating to flammability and sterilization. The HyperGrip<sup>®</sup> connectors are designed for applications that require frequent connector mating cycles, and will perform up to 100,000 insertion/extraction cycles. The HyperGrip<sup>®</sup> connector plugs embody the ‘127 Patent, among other patents.

19. Views of a commercial embodiment of the HyperGrip<sup>®</sup> connector plug are shown below:



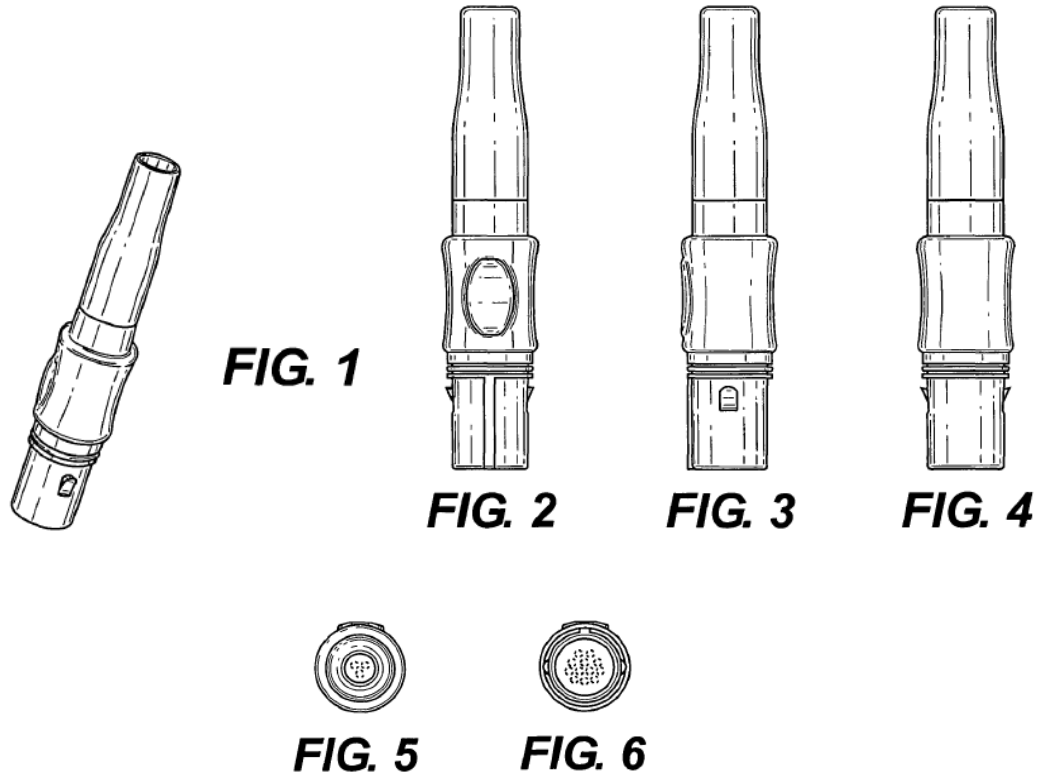
20. Hypertronics' HyperGrip<sup>®</sup> connectors are extensively promoted and sold worldwide and throughout the United States, including in this Judicial District. Hypertronics sells its connectors directly through its website and through a variety of distributors. Hypertronics designed the HyperGrip<sup>®</sup> connectors to differentiate itself visually from other connectors on the market, and is known for the unique shape of its connector plugs. HyperGrip<sup>®</sup> connectors have become successful commercial products for Hypertronics due in part to their unique and distinctive designs.

### **THE PATENT-IN-SUIT**

21. United States Design Patent No. D596,127 was duly and legally issued by the United States Patent and Trademark Office on July 14, 2009, from Application Serial No. 29/194,315, filed on November 21, 2003. A true and correct copy of the '127 Patent is attached hereto as Exhibit A. The '127 Patent is presumed to be, and is, valid.

22. Hypertronics is the assignee and owner of all right, title, and interested in the '127 Patent, including the right to sue for and recover damages for past, present, and future damages for infringement.

23. The '127 Patent claims an ornamental design for an electrical connector, as shown and described in the following figures:



24. Since July 14, 2009, Hypertronics has substantially and continuously marked the packaging for the HyperGrip<sup>®</sup> connectors, as well as Hypertronics' website, with the '127 Patent number.

**THE INFRINGING PRODUCTS**

25. Upon information and belief, LEMO launched its REDEL XP Series connectors in or about November of 2010 and introduced them to the United States shortly thereafter.

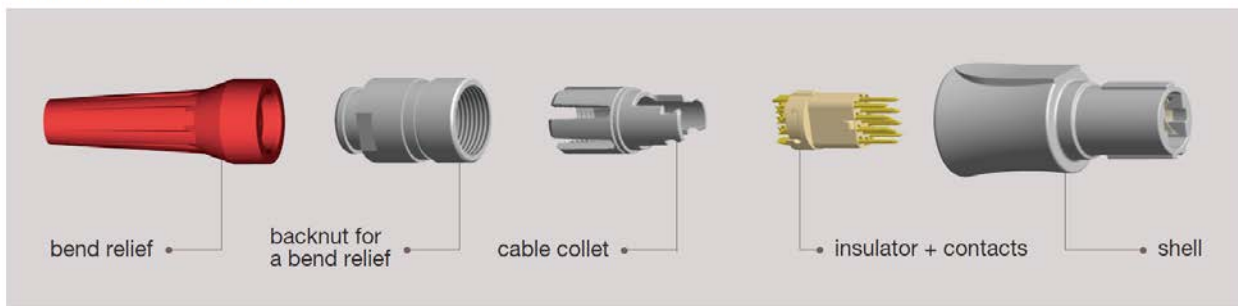
26. The REDEL XP Series connectors compete with Hypertronics' HyperGrip<sup>®</sup> connectors.

27. The product catalog for LEMO's XP connectors is available at LEMO's website, <http://www.lemo.com/defaultwidgets.asp>. A true and accurate copy of the catalog is attached hereto as Exhibit B.

28. According to LEMO’s catalog, “[t]he REDEL XP connectors are plastic Push-Pull connectors ... [that] are especially adapted for applications such as medical electronics and test & measurement.” Ex. B., at 2. The catalog goes on to state that “[t]he complete connector can be assembled from spare parts (even the contact configuration) therefore offering good flexibility in stock keeping. ... A large choice of bend relief is available in different colour and size.” *Id.*

29. As described and depicted in LEMO’s catalog, the XP connector plug assembly is available in various configurations, including configurations comprising a straight “shell,” an “insulator + contacts” component, a cable collet, a “backnut” or nut for fitting a “bend relief” component, and a “bend relief” component. These plug components are depicted in exploded form from right to left in the following excerpt from page 1 of LEMO’s catalog, which instructs how the components are to be assembled together:

**Straight plug with bend relief**



30. According to LEMO’s part numbering system, explained on page 3 of its catalog, plug assembly part numbers beginning with “XA” and ending with “Z” comprise: a straight plug “shell,” an “insulator + contacts” component, a cable collet, and a “backnut” or nut for fitting a bend relief component. Numerous configurations of this plug assembly are available, with variations for, among other things, keying, contact configuration, color, contact type, and cable diameter. The LEMO catalog (at page 4) depicts a plug assembly with these components fitted



together – which it describes as a “[s]traight plug ... with cable collet and nut for fitting a bend relief,” as follows:



31. On information and belief, plug assemblies having part numbers beginning with “XA” and ending with “Z” have no substantial use other than to be used in combination with bend relief components as described below.

32. Page 10 of the LEMO catalog describes the “bend relief” component as “designed for plugs and free sockets with cable collet and nut.” The bend relief is designated with part numbers beginning with “GMA.1B,” and it is available in several configurations, varying by length (“L”), diameter (“A”), and color. Page 10 of the LEMO catalog depicts the bend relief component as follows:



33. As indicated on pages 3, 4, and 10 of the LEMO catalog, the bend relief component is attached to the plug shell and collet using the “nut for fitting a bend relief.” Page 9

of the catalog indicates that the part numbers of this component begin with “XAM.130,” and that the component comes in grey, white, or black. Page 9 depicts the nut component as follows:



34. Views of an embodiment of the a REDEL XP connector, comprising plug assembly part number XANM13GLA6GZ and bend relief part number GMA1B054DA, is shown below:



35. On information and belief, an ordinary observer, familiar with the prior art electrical connector designs, giving the degree of attention normally given by a purchaser, would be deceived into believing that commercial embodiments of the REDEL XP connector having the bend relief component – i.e., at least plug assemblies having part numbers beginning with “XA” and ending with “Z,” assembled with bend relief components having part numbers beginning with “GMA.1B” – are the same as Hypertronics’ patented design.

36. On information and belief, LEMO’s REDEL XP connectors were designed to imitate Hypertronics’ distinctive design.

37. On information and belief, LEMO’s REDEL XP connectors do not perform at the level of the HyperGrip<sup>®</sup> connectors.

38. On information and belief, LEMO makes, uses, offers for sale, and sells REDEL XP connector assemblies – including at least plug assemblies having part numbers beginning with “XA” and ending with “Z,” assembled with bend relief components having part numbers beginning with “GMA.1B” – and/or components thereof in the United States, and imports such REDEL XP connector assemblies and/or components thereof into the United States.

39. On information and belief, purchasers of LEMO’s REDEL XP connectors – including at least plug assemblies having part numbers beginning with “XA” and ending with “Z,” assembled with bend relief components having part numbers beginning with “GMA.1B” – use such connectors for their intended purpose.

40. On information and belief, purchasers of components of LEMO’s REDEL XP connectors – including at least plug assemblies having part numbers beginning with “XA” and ending with “Z,” and bend relief components having part numbers beginning with “GMA.1B” –

assemble such components according to the instructions and illustrations contained in LEMO's catalog and use the assembled connectors for their intended purpose.

41. The REDEL XP series connectors and components thereof are not manufactured by Hypertronics, nor is LEMO associated or connected with Hypertronics, or licensed, authorized, sponsored, endorsed, or approved by Hypertronics in any way. Hypertronics has never provided any authorization, license, assignment, or other permission to LEMO to use the '127 Patent.

42. By letter dated January 24, 2011, Hypertronics informed LEMO that the REDEL XP series connectors infringe the '127 Patent. (Ex. C) Hypertronics demanded, among other things, that LEMO immediately stop manufacturing and selling the infringing REDEL XP series connectors, and any and all other infringing products. Hypertronics' counsel sent a second cease and desist letter on September 22, 2011. (Ex. D)

43. In response to Hypertronics' letters, LEMO asserted that Hypertronics' patented design was functional rather than ornamental, and that LEMO's design did not infringe. LEMO did not assert that the '127 Patent is invalid over prior art.

44. Hypertronics is informed and believes that LEMO continues to make, use, offer for sale, and sell REDEL XP connector assemblies in the United States, and to import REDEL XP connector assemblies and/or components thereof into the United States, with knowledge of the '127 Patent and Hypertronics' assertion of infringement thereof. By doing so, LEMO has acted and continues to act despite an objectively high likelihood that its actions constitute infringement of a valid patent, and this risk was and is known to LEMO.

### **COUNT I**

(Infringement of U.S. Design Patent No. D596,127 in Violation of 35 U.S.C. § 271(a)-(c))

45. Hypertronics repeats and realleges Paragraphs 1-42 as though fully set forth herein.

46. The '127 Patent is valid and enforceable.

47. By making, using, offering for sale, and selling REDEL XP connector assemblies – including at least plug assemblies having part numbers beginning with “XA” and ending with “Z,” assembled with bend relief components having part numbers beginning with “GMA.1B” – in the United States, and/or importing at least such REDEL XP connector assemblies and/or components thereof into the United States, LEMO has infringed and continues to infringe the '127 Patent.

48. By making, using, offering for sale, and selling at least plug assemblies having part numbers beginning with “XA” and ending with “Z” in the United States, and/or importing at least plug assemblies having part numbers beginning with “XA” and ending with “Z” into the United States, LEMO has contributed to, and is contributing to, the infringement by others of the '127 patent in the United States. At least plug assemblies having part numbers beginning with “XA” and ending with “Z” constitute a material part of the invention of the '127 Patent, and LEMO knows them to be especially made or especially adapted for use in the infringing product, and not staple articles or commodities of commerce having substantial noninfringing uses. Direct infringement occurs at least when LEMO, its agents, its customers, and users of its products assemble at least plug assemblies having part numbers beginning with “XA” and ending with “Z” together with at least bend relief components having part numbers beginning with “GMA.1B.” Direct infringement also occurs at least when its customers and others use REDEL XP connector assemblies – including at least plug assemblies having part numbers

beginning with “XA” and ending with “Z,” assembled with bend relief components having part numbers beginning with “GMA.1B” – for their intended purpose.

49. On information and belief, LEMO possesses specific intent to contribute to the infringement of the ‘127 Patent by others as demonstrated by LEMO’s failure to cease and desist from its sales and offers to sell the above-identified components of the REDEL XP Series connectors, notwithstanding having received express notice of its infringement from Hypertronics.

50. LEMO has induced and is inducing the infringement of the ‘127 Patent by others in the United States with knowledge that the induced acts constitute infringement. Through its marketing materials, including its product catalog, LEMO instructs users of the REDEL XP connectors how to assemble at least plug assemblies having part numbers beginning with “XA” and ending with “Z” together with at least bend relief components having part numbers beginning with “GMA.1B.” Direct infringement occurs at least when LEMO, its agents, its customers, and users of its products assemble at least plug assemblies having part numbers beginning with “XA” and ending with “Z” together with at least bend relief components having part numbers beginning with “GMA.1B.” Direct infringement also occurs at least when its customers and others use REDEL XP connector assemblies – including at least plug assemblies having part numbers beginning with “XA” and ending with “Z,” assembled with bend relief components having part numbers beginning with “GMA.1B” – for their intended purpose

51. On information and belief, LEMO possesses specific intent to induce infringement of the ‘127 Patent by others infringement, as demonstrated by LEMO’s failure to cease and desist from its sales and offers to sell the above-identified components of the REDEL XP Series connectors, together with its continued distribution of instructions as to how to

assemble connectors that infringe the '127 Patent, notwithstanding express notice of its infringement. (Ex. B, pg. 1, shown above; Exs. C, D)

52. LEMO's infringement of the '127 Patent has been and continues to be willful.

53. LEMO's conduct has caused and will continue to cause Hypertronics damage in an amount to be proven at trial.

54. LEMO's conduct warrants an award of damages under 35 U.S.C. §§ 284 and 289.

55. LEMO's willful infringement of Hypertronics' rights in the '127 Patent warrants an award of treble damages under 35 U.S.C. § 284 and makes this an exceptional case warranting an award of Hypertronics' reasonable attorneys' fees and costs under 35 U.S.C. § 285.

56. Hypertronics' damages include irreparable harm, for which Hypertronics has no adequate remedy at law, unless and until LEMO is enjoined from infringing the '127 Patent. As a result, Hypertronics is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

**PRAYER FOR RELIEF**

WHEREFORE, Hypertronics respectfully asks this Court to enter judgment against LEMO, granting the following relief:

- A. The entry of judgment in favor of Hypertronics and against LEMO;
- B. A preliminary injunction prohibiting further infringement of the '127 Patent;
- C. A permanent injunction prohibiting further infringement of the '127 Patent;
- D. An award of damages adequate to compensate Hypertronics for the infringement that has occurred, but in no event less than a reasonable royalty in an amount to be proven at trial for the use made of the inventions of the '127 Patent as provided in 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- E. An award of damages totaling LEMO's total profits in an amount to be proven at trial as provided in 35 U.S.C. § 289, together with prejudgment interest from the date the infringement began;
- F. A finding that LEMO's infringement is willful and an award of increased damages for willful infringement pursuant to 35 U.S.C. § 284;
- G. An award to Hypertronics of all remedies available under 35 U.S.C. § 284;
- H. For an order finding that this case is exception under 35 U.S.C. § 285 and an award to Hypertronics of its reasonable attorneys' fees, expenses, and costs incurred in this action; and
- I. Such other relief to which Hypertronics is entitled under law, and any other and further relief that this Court or a jury may deem just and proper.



**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Hypertronics demands a trial by jury on all issues so triable.

By Its Attorneys,

*/s/ Greer N. Shaw*

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Dated: June 18, 2012

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