

1 Bijal V. Vakil (CA State Bar No. 192878)  
bvakil@whitecase.com  
2 Shamita D. Etienne-Cummings (CA State Bar No. 202090)  
setienne@whitecase.com  
3 Henry Y. Huang (CA State Bar No. 252832)  
henry.huang@whitecase.com  
4 WHITE & CASE LLP  
3000 El Camino Real  
5 Two Palo Alto Square, Suite 900  
Palo Alto, CA 94306-2109  
6 Telephone: 650.213.0300  
Facsimile: 650.213.8158  
7

8 Attorneys for Plaintiff  
Google LLC  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 GOOGLE LLC,  
14 Plaintiff,  
15 v.  
16 ECOFACTOR, INC.,  
17 Defendant.  
18

Case No. 5:21-cv-1468

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

DEMAND FOR JURY TRIAL

WHITE & CASE LLP  
ATTORNEYS AT LAW  
SILICON VALLEY

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Plaintiff Google LLC (“Google”), for its complaint against Defendant EcoFactor, Inc.  
2 (“EcoFactor”), alleges:

3 **NATURE OF THE ACTION**

4 1. This is an action for declaratory judgment of non-infringement of U.S. Patent Nos.  
5 8,019,567 (the “’567 patent”), 8,596,550 (the “’550 patent”), 8,886,488 (the “’488 patent”), and  
6 10,612,983 (the “’983 patent”) (collectively, the “Asserted Patents,” attached as Exhibits 1-4,  
7 respectively) against EcoFactor, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-  
8 02, and the patent laws of the United States, 35 U.S.C. § 100 et seq., and for other relief the Court  
9 deems just and proper.

10 2. Google requests this relief because EcoFactor has filed a complaint with the  
11 International Trade Commission (“ITC”), Docket No. 3535, claiming that Google (among other  
12 defendants) has infringed the Asserted Patents because Google designed, developed,  
13 manufactured, tested, used, offered for sale, sold, and/or imported “smart thermostats, smart  
14 HVAC systems, smart HVAC control systems, and components thereof.” A true and correct copy  
15 of EcoFactor’s public ITC complaint is attached as Exhibit 5. The products asserted in the ITC  
16 Investigation are the Nest Thermostat and the Nest Third Generation Learning Thermostat  
17 (“Accused Products”).

18 3. An actual and justiciable controversy therefore exists under 28 U.S.C. §§ 2201-  
19 2202 between Google and EcoFactor as to whether Google is infringing or has infringed the  
20 Asserted Patents.

21 **THE PARTIES**

22 4. Plaintiff Google LLC is a subsidiary of Alphabet Inc. with its principal place of  
23 business located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

24 5. Upon information and belief, Defendant EcoFactor, Inc. is a privately held  
25 company organized under Delaware's laws, with a principal place of business at 441 California  
26 Avenue, Number 2, Palo Alto, CA 94301.

27 **JURISDICTION AND VENUE**

28 6. Google files this complaint against EcoFactor pursuant to the patent laws of the

1 United States, Title 35 of the United States Code, with a specific remedy sought based upon the  
2 laws authorizing actions for declaratory judgment in the federal courts of the United States, 28  
3 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. §§ 1-390.

4 7. This Court has subject matter jurisdiction over this action, which arises under the  
5 United States' patent laws, pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a).

6 8. This Court has personal jurisdiction over EcoFactor, which has its principal place  
7 of business in Palo Alto, California.

8 9. Venue in this District is proper under 28 U.S.C. §§ 1391(b) because EcoFactor  
9 resides in this District, and also because EcoFactor is subject to personal jurisdiction in this  
10 District, and a substantial part of the events giving rise to Google's declaratory judgment claim of  
11 non-infringement (such as the development of Nest thermostats) occurred in this District.

12 **INTRADISTRICT ASSIGNMENT**

13 10. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this is an Intellectual Property Rights  
14 Action subject to assignment on a district-wide basis.

15 **FACTUAL BACKGROUND**

16 11. Google's headquarters at 1600 Amphitheatre Parkway, Mountain View, CA 94043  
17 are located in this District. Google's mission is to organize the world's information and make it  
18 universally accessible and useful. Over the past two decades, in service of that mission, Google  
19 has become one of the world's most innovative technology companies.

20 12. EcoFactor's identification of allegedly infringing products originated at Nest Labs  
21 that launched in 2010 in Palo Alto. The founders of Nest sought to save the planet while saving  
22 consumers money with their energy usage. After merging with the Google family of companies  
23 in 2014, the Nest product division has continued to operate primarily in the San Francisco Bay  
24 Area. The vast majority of technical and business activities related to Nest have occurred and  
25 continue to occur in this District.

26 13. EcoFactor filed an earlier lawsuit against Google at the International Trade  
27 Commission asserting patents related to the Asserted Patents. *See In the matter of Certain Smart*  
28 *Thermostats, Smart HVAC Systems and Components Thereof*, Investigation No. 337-TA-1185

1 (ITC, filed Nov. 22, 2019) (the “1185 Investigation”). The 1185 Investigation confirmed that the  
2 venue at the center of the allegations is this District because EcoFactor’s witnesses, Google’s  
3 source code (and the review of such source code), and Google’s U.S. witnesses are all located in  
4 this District.

5 14. Google’s Accused Products do not directly or indirectly infringe any asserted  
6 claim of the Asserted Patents, either literally or under the doctrine of equivalents. Google has not  
7 caused, directed, requested, or facilitated any such infringement, and it did not have any specific  
8 intent to do so.

9 **COUNT I:**

10 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE ’567 PATENT**

11 15. Google hereby restates and incorporates by reference the allegations set forth in  
12 paragraphs 1 through 14 of this Complaint as if fully set forth herein.

13 16. EcoFactor claims to own all right, title, and interest in the ’567 patent by  
14 assignment.

15 17. In its ITC complaint, EcoFactor alleges that Google directly and indirectly  
16 infringes the ’567 patent. *See, e.g.*, Ex. 5 ¶ 100.

17 18. The Accused Products do not include or practice multiple claim limitations of the  
18 claims of the ’567 patent, including, but not limited to: “evaluating changes in the operational  
19 efficiency of an HVAC system over time,” “at least one HVAC control system,” “receiv[ing]  
20 temperature measurements from at least a first structure,” “receiv[ing] status of [an] HVAC  
21 system,” “receiv[ing] measurements of outside temperatures,” “compar[ing] said temperature  
22 measurements from said first structure,” “compar[ing] the inside temperature of said first  
23 structure and the outside temperature over time to derive an estimation for the rate of change in  
24 inside temperature of said first structure,” “compar[ing] an inside temperature recorded inside the  
25 first structure with said estimation for the rate of change in inside temperature of said first  
26 structure to determine whether the operational efficiency of the HVAC system has decreased over  
27 time,” “analyz[ing] the changes in the operational efficiency over time to suggest a cause of  
28 degradation,” “compar[ing] [] temperature measurements from [a] first HVAC system and [a]

1 second HVAC system and said outside temperature measurements over time to determine the  
2 relative efficiency of the first HVAC system and the second HVAC system,” “comparing with  
3 one or more processors said temperature measurements from said first structure with outside  
4 temperature measurements over time to derive expected temperature measurements of a rate of  
5 change in inside temperature,” and “compar[ing] an inside temperature recorded inside the first  
6 structure with said expected temperature measurements to determine whether the operational  
7 efficiency of the HVAC system has decreased.”

8 19. An actual and justiciable controversy therefore exists between Google and  
9 EcoFactor regarding whether any of the accused devices have infringed any of the asserted claims  
10 of the '567 patent. A judicial declaration is necessary to determine the parties' respective rights  
11 regarding the '567 patent.

12 20. Google seeks a judgment declaring that Google does not directly or indirectly  
13 infringe any asserted claims of the '567 patent, either literally or under the doctrine of  
14 equivalents.

15 **COUNT II:**

16 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '550 PATENT**

17 21. Google hereby restates and incorporates by reference the allegations set forth in  
18 paragraphs 1 through 14 of this Complaint as if fully set forth herein.

19 22. EcoFactor claims to own all right, title, and interest in the '550 patent by  
20 assignment.

21 23. In its ITC complaint, EcoFactor alleges that Google directly and indirectly  
22 infringes the '550 patent. *See, e.g.*, Ex. 5 ¶ 102.

23 24. The Accused Products do not include or practice multiple claim limitations of the  
24 claims of the '550 patent, including, but not limited to: “detecting manual changes to the setpoint  
25 for a thermostatic controller,” “using the stored data to predict a rate of change of temperatures  
26 inside the structure in response to at least changes in outside temperatures,” “calculating []  
27 scheduled programming of setpoints in the thermostatic controller based on the predicted rate of  
28 change,” “generating with one or more computer processors, a difference value based on

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.