

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER**

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436**

In the Matter of

**CERTAIN SMART THERMOSTATS,
SMART HVAC SYSTEMS, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-1185

INITIAL DETERMINATION

Administrative Law Judge David P. Shaw

Pursuant to the notice of investigation, 84 Fed. Reg. 65421 (Nov. 27, 2019), this is the initial determination in *Certain Smart Thermostats, Smart HVAC Systems, and Components Thereof*, United States International Trade Commission Investigation No. 337-TA-1185.

It is held that no violation of section 337 of the Tariff Act, as amended, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain smart thermostats, smart HVAC systems, and components thereof, with respect to asserted claims 1, 2, and 5 of U.S. Patent No. 8,131,497, asserted claims 1, 2, and 5 of U.S. Patent No. 8,423,322, and asserted claim 9 of U.S. Patent No. 10,018,371.

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER**

(Souri RWS) at Q/A 41. Nothing in the intrinsic record suggests a departure from this plain and ordinary meaning. EcoFactor’s proposed construction is improper because it allows for a rate of change between two measurements to be calculated for a span of time that is unrelated to the times when each temperature measurement is taken.

7. “one or more processors” / “said one or more processors” (’497 patent, claim 1; ’322 patent claim 1)

Claim term	EcoFactor’s Proposed Construction	Respondents’ Proposed Construction	Staff’s Proposed Construction
“one or more processors” / “said one or more processors” (’497 Patent, claims 1, 2; ’322 Patent, claims 1 and 2)	No construction necessary	For ’497 / ’322 patent: “said one or more processors” means “the same one or more processors perform all of the associated functions in the claims.”	No construction necessary

See Compl. Br. at 22-23; Resps. Br. at 28-29; Staff Br. at 22; Joint Claim Construction Chart, EDIS Doc. ID 704350, at 4.

The claim term “one or more processors” appears in independent claim 1 of the ’497 patent. JX-0001 (’497 patent) at col. 13, ln. 39. The claim term “one or more processors” also appears in independent claim 1 of the ’322 patent. JX-0002 (’322 patent) at col. 13, ln. 36.

EcoFactor argues, in part:

Claim construction “is not an obligatory exercise in redundancy.” *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed.Cir.1997). There is no need to construe these “processor” terms. A POSITA obviously would understand them.

Staff and EcoFactor agree that these ordinary terms “one or more processors” or “remote processor” requires no construction. Even Respondents agree that a PHOSITA understands what “one or more processors” or “remote processor” mean, as their proposed constructions includes “one or more processors” or “remote processor” in them. There is no need to add Respondents’ chosen words into a term that everyone agrees is readily understandable. *O2 Micro*

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER**

Int'l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1362 (Fed. Cir. 2008) (“courts are not (and should not be) required to construe every limitation present in a patent's asserted claims.”).

Moreover, to the extent Respondents rely on some argument concerning antecedent basis, that still does not change the correct result here. The claims themselves are clear on what the antecedent basis. The '497 and '322 patents' claims recite “one or more processors” and thereafter recite “said one or more processors.” There is no need to add Respondents' baggage to the clear language of the claims.

Compl. Br. at 21-23.

Respondents argue, in part:

The parties' dispute is whether the use of “said one or more processors” means that the same set of processors must be configured to perform all of the functional aspects of the claims associated with the processors. After the initial introduction of “one or more processors,” the claims consistently refer to them as “said one or more processors.” Use of the word “said” announces that terms following “said”—in this case “one or more processors”—reference a previously introduced element or term. *See Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1343 (Fed. Cir. 2008) (noting that claim terms using “said” are “anaphoric phrases, referring to the initial antecedent phrase.”). In other words, each instance in which “said one or more processors” is used refers to the same “one or more processors.” *See Wi-LAN, Inc. v. Apple Inc.*, 811 F.3d 455, 462 (Fed. Cir. 2016) (“Subsequent use of the definite articles ‘the’ or ‘said’ in a claim refers back to the same term recited earlier in the claim.”). The “one or more processors” are defined in the claims by the functions they perform within the claim elements.

Take for example claim 1 of the '322 patent. In this claim, the same “one or more processors” must be capable of performing all associated functions in the claim. The “one or more processors” must: (1) “receive measurements of outside temperature” [element 1[b]]; (2) “compare[] said temperature measurements” [element 1[b]]; (3) “compare[] the inside temperature of said structure and the outside temperature over time” [element 1[b]]; (4) “compare[] an inside temperature recorded inside the first structure with an inside temperature of said first structure recorded at a different time” [element 1[d]]; **and** (5) “determine whether the operational efficiency of the HVAC system has decreased over time.” [element 1[d]].

Resps. Br. at 28-29.

The Staff argues, in part:

The Staff agrees with EcoFactor that these terms do not need to be

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER**

construed, and there is no need to add Respondents' chosen words into a term that everyone agrees is readily understandable. CPreHBr. at 20. Also, Respondents' proposed construction of "said remote processor" appears to simply restate an antecedent basis rule. RPreHBr. at 21. There is no need for such a construction because, as EcoFactor explains, the claims themselves are clear on what the antecedent basis is: the '497's and '322 patents' claims recite "one or more processors" then thereafter recite "said one or more processors." Claim 5 of the '753 patent recites "at least one remote processor," and thereafter claims 6 and 7—which depend from claim 5—recite "said remote processor." CPreHBr. at 20-21. Therefore, there is no need for the ALJ to construe these terms.

Staff Br. at 22.

As proposed by EcoFactor, it is determined that the claim terms "one or more processors" and "said one or more processors" are construed to have their plain and ordinary meaning. Respondents' proposed construction simply restates an antecedent basis rule. There is no need for such a construction because the claims themselves are clear on what the antecedent basis is: the '497 and '322 patents' claims recite "one or more processors" then thereafter recite "said one or more processors".

8. "actual setpoint" ('371 patent, claim 9)

EcoFactor's Proposed Construction	Respondents' Proposed Construction	Staff's Proposed Construction
"an actual temperature setting for a thermostat to achieve or maintain"	"a temperature setting for a thermostat to achieve or maintain recorded at a thermostatic controller"	"a temperature setting for a thermostat to achieve or maintain recorded at a thermostat"

See Compl. Br. at 24; Resps. Br. at 29; Staff Br. at 22-23; Joint Claim Construction Chart, EDIS Doc. ID 704350, at 4.

The claim term "actual setpoint" appears in independent claim 9 of the '371 patent.

JX-0004 ('371 patent) at col. 9, lns. 14-15.

EcoFactor argues, in part:

There is a "heavy presumption" that claim terms carry their "full ordinary