

RESTRICTED – CONFIDENTIAL SOURCE CODE

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ECOFACITOR, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 6:20-cv-00075 (ADA)

JURY TRIAL DEMANDED

**REBUTTAL EXPERT REPORT OF DR. DON TURNBULL REGARDING THE NON-
INFRINGEMENT OF U.S. PATENT NOS. 8,412,488, 8,738,327 AND 10,534,382**

Dated: October 22, 2021



Don Turnbull, Ph.D.

[REDACTED]

XI. THE ACCUSED PRODUCTS DO NOT PRACTICE ANY OF THE ASSERTED CLAIMS OF THE '382 PATENT

335. I am of the opinion that Google does not directly or indirectly infringe the '382 Patent and that Google's Nest Thermostat, Nest Thermostat E, and Nest Learning Thermostat Third Generation do not practice the asserted claims of the '382 Patent.

336. I understand that EcoFactor accuses the Home/Away features of Google's Nest Thermostat, Nest Thermostat E, and Nest Learning Thermostat Third Generation devices of infringing the asserted claims.

A. Claim 1

1. Claim element 1[b]: "one or more processors with circuitry and code designed to execute instructions"

337. As EcoFactor conceded in its August 16, 2021 Patent Owner's Response, the "one or more processors with circuitry and code designed to execute instructions" required by claim element 1[b] *must* include at least a single processor that meets all of the limitations of the '382

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Patent. See August 16, 2021 Patent Owner’s Response (IPR2021-00054) at 13 (“all of the ‘one or more processors’ must be able to perform the functions recited in claim elements [1d], [1e], [1f], [1g], [1i], [1k], and [1l]. That is, there needs to be at least a single processor that meets all of the limitations of claim elements [1d], [1e], [1f], [1g], [1i], [1k], and [1l]. Put another way, if a processor only met the limitations of claim elements [1d] and [1f], it would not meet the full limitations [sic] of claim 1.”); *Id.* at 17 (“More troublesome is that the Petition provides no mapping of the specific ‘embodiment’ of memory or processors in Gaedelmann and Ehlers that meets the claim limitations of the ’382 patent. Instead, [i]t mixes and matches different processors, often asserting that two or three processors meet a particular claim limitation.”).

338. Each of the claim elements that reference “one or more processors with circuitry and code designed to execute instructions” specifically refer to “*the* one or more processors with circuitry and code.” See ’382 Patent at 8:17-62. As EcoFactor concedes, a POSITA looking at this claim language would recognize that “the one or more processors with circuitry and code designed to execute instructions” referenced in the claim limitations refers to the same “one or more processors.”

339. None of the processors identified in Mr. de la Iglesia’s Infringement Report perform all the limitations of the ’382 Patent claims that reference “the one or more processors with circuitry and code” throughout Claim 1. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]