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

ECOFACTOR, INC. Plaintiff, v. GOOGLE LLC, Defendant.	Case No. 6:20-cv-00075-ADA
ECOFACTOR, INC., Plaintiff, v. ECOBEE, INC., Defendant.	Case No. 6:20-cv-00078-ADA
ECOFACTOR, INC., Plaintiff, v. VIVINT, INC., Defendant.	Case No. 6:20-cv-00080-ADA

Plaintiff EcoFactor, Inc.'s Opening Claim Construction Brief

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I. INTRODUCTION

EcoFactor, Inc. ("EcoFactor") and Defendants[1] offer not just competing claim construction proposals but completely different approaches to claim construction. EcoFactor's proposals stay consistent with the terms' plain meaning and clarify that meaning only when necessary under controlling law, or when helpful to narrow the disputes for the Court. EcoFactor's proposals are also the only ones that are faithful to the full scope of the intrinsic record.

Defendants' proposals, on the other hand, ask this Court to recharacterize and burden clear terms by importing artificial and extraneous baggage, often from extrinsic evidence that they have cherry-picked to support their litigation-driven proposed constructions. But Defendants cannot identify any clear and unmistakable disclaimer or clear lexicography to support those importations. Accepting their constructions can only invite reversible error. For many of their proposals, Defendants' arguments are inconsistent with the claim language itself, and in others, they are superfluous and/or confusing. In either event, such litigation-driven proposals are improper under controlling law and do nothing to help any factfinder. Defendants' proposals should be rejected.

II. BACKGROUND OF THE PATENTED TECHNOLOGIES

The four asserted patents are U.S. Patent Nos. 8,412,488 ("the '488 patent"; Ex. 2); 8,738,327 ("the '327 patent"; Ex. 3); 8,180,492 ("the '492 patent"; Ex. 1); and 10,534,382 ("the '382 patent"; Ex. 4); The '488 and '327 patents are related to each other and share substantially the same specification; and the '492 and '382 patent are related to each other and share substantially the same specification.

A. The '488 and '327 patents

The '488 and '327 patents are entitled "system and method for using a network of thermostats as tool to verify peak demand reduction," and claim priority to a provisional patent application filed on August 3, 2007, another provisional patent application filed on September

[1] Google LLC, Ecobee, Inc., and Vivint, Inc.

17, 2007, and a non-provisional application filed on July 31, 2008. The '488/'327 patents recognized that "the cost of energy and the demand for electricity have increased," and that "residential air conditioning is the largest single component of peak demand" of energy. '488 patent at 1:29-2:41. The '488/'327 patents also recognized that "[i]t would be desirable to have a system that could both implement and verify residential peak demand reduction with reduced expenses." *Id.* at 3:19-21.

The '488/'327 patents discloses a novel invention and describes number of embodiments to address the problems they recognized, including those that estimate the rate of change in temperature inside a structure. For example, the specification describes:

> At least one thermostat located is inside the structure and is used to control an climate control system in the structure. At least one remote processor is in communication with said thermostat and at least one database stores data reported by the thermostat. At least one processor compares the outside temperature at least one location and at least one point in time to information reported to the remote processor from the thermostat. The processor uses the relationship between the inside temperature and the outside temperature to determine whether the climate control system is "on" or "off".

'488 patent at Abstract. The patents further describe embodiments that include a computer server that "logs the ambient temperature sensed by each thermostat vs. time and the signals sent by the thermostats to the HVAC systems to which they are attached. The server preferably also logs outside temperature and humidity data for the geographic locations for the buildings served by the connected HVAC systems." '488 patent at 3:48-67. Patents further explain that:

> By using these multiple data streams to compare the performance of one system versus another, and one system versus the same system at other times, the server is able to estimate the effective thermal mass of the structure, and thereby predict the expected thermal performance of a given structure in response to changes in outside temperature. Thus, for example, if the air conditioning is shut off on a hot afternoon, given a known outside temperature, it will be possible to predict how quickly the temperature in the house should rise. If the actual temperature change is significantly different from the predicted rate of change, or does not change at all, it is possible to infer that the air conditioning has not, in fact been shut off.

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