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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

IPR2020-01504

Patent No. 8,498,753

-----)

GOOGLE, LLC,

Petitioner,

v.

ECOFACOR, INC.,

Patent Owner.

-----)

REMOTE DEPOSITION OF
JOHN A. PALMER, Ph.D.

August 27, 2021

Reported by:
Linda Salzman
JOB NO. 198525

Page 2

1
2 August 27, 2021
3 10:00 a.m. (MDT)
4
5
6 Remote videotaped deposition of
7 JOHN A. PALMER, the witness herein,
8 held remotely pursuant to Notice,
9 before Linda Salzman, a Notary
10 Public of the State of New York.
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Page 3

1
2 REMOTE APPEARANCES:
3
4 SMITH BALUCH
5 Attorneys for Petitioner, Google LLC
6 1100 Alma Street
7 Menlo Park, CA 94025
8 BY: MATTHEW SMITH, ESQ.
9
10
11
12
13 RUSS AUGUST & KABAT
14 Attorneys for Patent Owner, EcoFactor, Inc.
15 800 Maine Avenue SW
16 Washington, DC 20024
17 BY: JONATHAN LINK, ESQ.
18
19
20
21
22
23
24
25

Page 4

1 John A. Palmer
2
3 JOHN A. PALMER,
4 called as a witness, having been duly
5 sworn by a Notary Public, was examined
6 and testified as follows:
7
8 EXAMINATION BY
9 MR. SMITH:
10 Q. This is Matt Smith for the
11 petitioner, Google, from the firm of Smith
12 Baluch LLP.
13 Dr. Palmer, thanks for coming in
14 this morning on to Zoom. I don't know if
15 you can access the Zoom chat. I have
16 dropped four exhibits in there. It's just
17 the '753 patent, your declaration and the
18 two pieces of prior art.
19 Can you see those?
20 A. I clicked on chat. Nothing came
21 up.
22 Q. So you just have an empty chat
23 box now?
24 A. Yes.
25 Q. Okay. Do you have copies of

Page 5

1 John A. Palmer
2 those documents?
3 A. Yes.
4 Q. Okay. Do you want to refer to
5 those?
6 A. I'm fine with that.
7 Q. Okay. Do you have notes on them
8 or anything like that?
9 A. A few.
10 Q. Okay.
11 (Off-the-record discussion
12 held.)
13 A. There we go. They're coming up
14 now.
15 Q. So thank you for coming in,
16 Dr. Palmer, and this is a deposition being
17 conducted by Zoom. I take it you now have
18 copies of the exhibits I've uploaded. You
19 should see Exhibit 1001, the '753 patent.
20 Exhibit 2002, a Declaration of John
21 Palmer.
22 I'm sorry. I think I uploaded
23 the wrong ones. I did.
24 So you should have Exhibit 1001,
25 the '753 patent. Exhibit 1006 the

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1 John A. Palmer
2 Wedekind prior art. Exhibit 1008, the
3 Ehlers' prior art. And Exhibit 2002,
4 which is a copy of your declaration.
5 Do you have those now?
6 A. Yes.
7 Q. Okay. Good.
8 So first of all, just to clarify
9 this, you are the John Palmer who authored
10 a declaration for this particular matter,
11 right?
12 A. Yes.
13 Q. Great. And you've been deposed,
14 I take, it many times before?
15 A. I have.
16 Q. And including for on behalf of
17 EcoFactor, correct?
18 A. I have been deposed on behalf of
19 EcoFactor previously.
20 Q. Great. And about how many times
21 have you been subject to deposition as an
22 expert for EcoFactor?
23 A. I've only got one instance that
24 I'm remembering off the top of my head for
25 a deposition.

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1 John A. Palmer
2 prepare?
3 A. I did have a meeting with
4 Mr. Link, as well as reviewing my
5 declaration, the prior art references that
6 were put forward by Mr. Shah, and
7 Mr. Shah's deposition and declaration. I
8 think I covered everything.
9 Q. I'm going to refer to
10 Exhibit 2002, which I've uploaded to the
11 chat, which is called the Declaration of
12 John A. Palmer, Ph.D.
13 This is the declaration you're
14 referring to, right?
15 A. Yes.
16 Q. And you signed it under oath?
17 A. I did.
18 Q. Sorry to ask, but I do have to
19 check this.
20 Did you read it and understand
21 it thoroughly prior to signing it?
22 A. Yes.
23 Q. I would assume so.
24 Now, the declaration relates to
25 Patent No. 8 498 753 correct?

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1 John A. Palmer
2 Q. Okay. But you're familiar with
3 the rules of deposition. I will ask
4 questions. Jonathan may object. You need
5 to answer the question unless he tells you
6 not to answer the question on the basis of
7 privilege. If you don't understand
8 something, ask.
9 That's all familiar to you,
10 right?
11 A. Of course.
12 Q. Great. Is there any reason you
13 can't testify accurately today?
14 A. No.
15 Q. Without getting into specifics,
16 any medical or other issues that would
17 interfere with the testimony, require
18 frequent breaks, that sort of thing?
19 A. No.
20 Q. Did you prepare for the
21 deposition today?
22 A. I did.
23 Q. Great. And without getting into
24 specifics of what you may have said to
25 attorneys, what basically did you do to

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1 John A. Palmer
2 A. Yes, that is correct.
3 Q. And you refer to that as the
4 '753 patent in your declaration. Can we
5 do that here?
6 A. That's absolutely fine.
7 Q. Great. And after you signed
8 this declaration, I understand there's
9 typically a wait, you know, some period of
10 time before something happens in these
11 cases.
12 After that point in time, about
13 how much time did you spend preparing for
14 this deposition?
15 A. Maybe 15 hours.
16 Q. Okay. And did you look at
17 the '753 patent again?
18 A. I did.
19 Q. You feel pretty familiar with
20 the contents of that patent?
21 A. I do.
22 Q. Okay. Did you review the two
23 main pieces of prior art, Wedekind and
24 Ehlers?
25 A. Yes.

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1 John A. Palmer
2 Q. And, Dr. Palmer, have you ever
3 in your career done an analysis to
4 determine whether or not a product
5 infringes a patent claim?
6 MR. LINK: Objection. Beyond
7 the scope.
8 A. Yes, I have.
9 Q. So I read the description of
10 your background in the declaration, and it
11 seems like you are a specialist in
12 electric power engineering; is that
13 correct?
14 A. That definitely is a major
15 portion of my education and experience.
16 Q. So you're probably pretty
17 familiar with concepts like utility power
18 generation, correct?
19 A. Yes.
20 Q. Now, your exposure to concepts
21 relating to HVAC control systems was not
22 as clear to me from your declaration. I'm
23 wondering if you could tell me how you
24 became familiar with HVAC control systems
25 in the course of your career.

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1 John A. Palmer
2 but basically subrogation would be the
3 most frequent situation where I've been
4 involved in evaluating HVAC systems.
5 Q. Subrogation basically being two
6 insurance companies fighting it out to see
7 who's liable?
8 A. Two or more.
9 Q. Okay. Fair enough.
10 Now, is it primarily through
11 these engagements that you have learned
12 about the subject matter of HVAC control
13 systems? Or is there something else I
14 should know about from your background?
15 A. I'm sorry?
16 Q. Or is there something else I
17 should know about from your background?
18 A. No. I think that's a fair
19 summary. That's where I've had, you know,
20 the most introductory experience.
21 Certainly I've actually worked on my own
22 HVAC systems and replaced thermostats and
23 done a variety of things where I've got
24 hands-on experience on a personal level.
25 But in terms of you know my

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1 John A. Palmer
2 A. Sure. In my role as a forensic
3 engineer, failure analysis, I have looked
4 at -- at a wide variety of HVAC systems,
5 generally those that have been involved in
6 failures. But I've looked at both the
7 control and the operation and the energy
8 management elements of HVAC systems in
9 that role as a forensic engineer.
10 Q. And the role as a forensic
11 engineer is, just correct me if I am
12 mischaracterizing this, you are a
13 consultant who is brought in to analyze
14 system failures; is that correct?
15 A. That is a fair summary.
16 Q. And are you mainly doing that
17 for products liability cases or what's the
18 capacity in which you do that?
19 A. I do work for both insurance
20 companies and attorneys. And so they are,
21 I wouldn't say necessarily product
22 liability cases, but cases -- situations
23 that may become product liability cases,
24 or they may be, you know, workmanship of
25 those who have worked on it and so forth;

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1 John A. Palmer
2 motivation to dig into HVAC systems and
3 understand how they work, understand how
4 their thermostats work and so forth, that
5 generally has been associated with my
6 forensic failure analysis efforts.
7 Q. And about how many consulting
8 engagements would you say you've had that
9 required you to, as you put it, delve into
10 how HVAC systems work?
11 A. I frankly don't have a specific
12 recollection. I'd say probably somewhere
13 between 10 and 30, but, you know, it's
14 something I've been doing for a couple of
15 decades and putting a more refined number
16 on it would be difficult.
17 Q. Would you be able to put a
18 number on how many hours you have spent
19 looking into how HVAC systems and HVAC
20 control systems work?
21 A. I don't think I could.
22 Q. Have you ever held a position
23 where your primary responsibility was
24 designing or building HVAC control
25 systems?

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1 John A. Palmer
2 A. I have not.
3 Q. Have you ever worked on the
4 design of an HVAC control system?
5 A. Not on the design.
6 Q. Have you ever held a position
7 where your primary responsibility was
8 researching HVAC control systems?
9 A. I guess I wouldn't say that was
10 ever a primary responsibility. Certainly
11 it's -- as I said, it's been an element of
12 my experience in interacting with HVAC
13 systems and including their control
14 systems. But I would never say that it
15 was my primary job responsibility.
16 Perhaps in some situations it was a
17 primary responsibility under a specific
18 assignment but not a job -- job position
19 responsibility.
20 Q. Understood.
21 You said that you worked on, in
22 a personal capacity, doing things like
23 changing I guess temperature sensors in
24 your thermostat --
25 A. I've actually replaced

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1 John A. Palmer
2 undergraduate in engineering?
3 A. It would not.
4 Q. No? So what specifically was
5 that?
6 A. The course is a -- the title of
7 the course is Forensic Engineering and
8 Failure -- Electrical Forensic Engineering
9 and Failure Analysis. And so, in that
10 context, I discuss failures in general,
11 talk about control systems and how they
12 relate to failures. And I have included
13 in some of those some case studies
14 associated with temperature control
15 systems and so forth.
16 Q. How does a temperature control
17 system relate to an HVAC control system in
18 your mind?
19 A. Well, an HVAC system is a
20 specific type of temperature control
21 system that is focused on ensuring the
22 ambient temperature inside the house is at
23 a desired temperature. And so -- or I say
24 house. House or commercial facility or
25 industrial building. A structure I guess

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1 John A. Palmer
2 thermostats.
3 Q. Oh, replaced thermostats. Okay.
4 Now, have you ever installed or
5 serviced an HVAC control system in a
6 professional capacity?
7 A. No.
8 Q. Are you a named inventor on any
9 patents relating to HVAC control systems?
10 A. Not related to HVAC control
11 systems.
12 Q. Have you ever taught any courses
13 that dealt with the subject of HVAC
14 control systems?
15 A. I have taught courses where we
16 talked about control systems in general,
17 and specifically their application and
18 some of the caveats and nuances associated
19 with ensuring safe operation, and that has
20 included some, you know, temperature
21 control systems to a certain extent. But
22 in terms of teaching a course on HVAC
23 control systems, no, I have not done that.
24 Q. Would this be sort of the course
25 on controls that one might get as an

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1 John A. Palmer
2 might be a little more general term.
3 Q. Understood.
4 A. And so the principles apply the
5 same as, for example, a large commercial
6 paint oven is going to also have
7 temperature controls. It will have some
8 added features and interlocks between
9 safeties on gas and temperature and door
10 open and various things. But the basic
11 principles of thermostatic control apply
12 whether the application is a structure or
13 a particular appliance.
14 Q. Can you explain basically how a
15 thermostat acts to control the temperature
16 within a structure?
17 MR. LINK: Objection. Vague.
18 A. I'm sorry. Can you ask that
19 question again?
20 Q. Yes.
21 Can you explain basically how a
22 thermostat acts to control a temperature
23 within a structure?
24 MR. LINK: Same objection.
25 A. Within a structure a

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