

UNITED STATES DISTRICT COURT

CERTIFIED COPY

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable HAYWOOD S. GILLIAM, JR., Judge

GOOGLE LLC,)	Claim Construction
)	
Plaintiff,)	
)	
vs.)	NO. C 21-03220 HSG
)	
ECOFACOR, INC.,)	Pages 1 - 122
)	
Defendant.)	Oakland, California
_____)	Friday, July 22, 2022

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Proceedings reported by electronic/mechanical stenography;
transcript produced by computer-aided transcription.

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1 Friday, July 22, 2022

1:33 p.m.

2 P R O C E E D I N G S

3 --o0o--

4 **THE CLERK:** Now calling civil matter
5 4:21-CV-03220-HSG, Google LLC versus EcoFactor, Incorporated.
6 Counsel, please state your appearances starting with the
7 plaintiff, please.

8 **MR. LAM:** Good afternoon, Your Honor. Leo Lam from
9 Keker, Van Nest & Peters for DJ plaintiff Google.

10 Can the Court hear me?

11 **THE COURT:** I can.

12 **MR. LAM:** Thank you, Your Honor. Good afternoon.
13 With me at counsel table are Ed Bayley and Victor Chiu
14 from the Keker firm, as well as Eric Lancaster from Allen &
15 Overy.

16 And also with us, Your Honor, in the gallery, are Chester
17 Day from Google. And then again from the Keker firm, Anna
18 Porto, and our summer associates, Amrutha Doral, Grant
19 Strudwick, and Alex Williams.

20 Thank you, Your Honor.

21 **THE COURT:** All right. Good afternoon.

22 **MR. MIRZAIE:** Your Honor, this is Reza Mirzaie for
23 defendants. Good afternoon.

24 **THE COURT:** Good afternoon.

25 **MR. MIRZAIE:** With me today is Minna Chan, James

1 Pickens, and Chris Davis, all from the Russ August & Kabat law
2 firm. And we represent DJ defendants in this case, and we're
3 ready to proceed.

4 **THE COURT:** Good afternoon.

5 **MR. MIRZAIE:** Thank you.

6 **THE COURT:** All right. We're here for the claim
7 construction hearing this afternoon. The way I'd like to
8 proceed is we'll just go through the claims and in the
9 sequence that they're presented in the papers, and we'll do
10 each one claim by claim. So I'll hear from each side as to
11 each claim, and then we'll move to the next claim.

12 We've got a total of an hour and a half -- I'm sorry --
13 hour and a half per side set aside this afternoon, and we'll
14 need to be efficient in moving through everything for that
15 reason.

16 All right. I think the way we've been proceeding is that
17 the patent owners have gone first. Have you all talked about
18 whether you have a preference as to what the sequence is?

19 **MR. LAM:** Well, Your Honor, notwithstanding the --
20 Leo Lam for Google. Notwithstanding the briefing sequence,
21 theoretically neither side has the burden of proof on claim
22 construction except for Google as to issues of indefiniteness.
23 So I would ask the Court and -- I don't know about EcoFactor's
24 preferences that we at least take turns going first. And I
25 don't know whether the Court has any particular preference for

1 **THE COURT:** Sure. All right. EcoFactor?

2 **MS. CHAN:** Good afternoon, Your Honor. Minna Chan
3 for the defendant, EcoFactor.

4 So I think Your Honor, I think, is correct that Google
5 does appear to be injecting ambiguity into the claim term.
6 And just to be clear, there are actually -- there -- it
7 originally appeared there were two disputes in Google and
8 EcoFactor's proposal. One was the "indoor temperature value,"
9 which we don't agree. And then second was the "achieve and
10 maintain" that Google wanted. It appears Google is no longer
11 contending that there is a dispute, and therefore the Court
12 should adopt the "achieve or maintain" in EcoFactor's proposal
13 for this construction.

14 In terms of the time issue, there really is no question
15 that setpoint always has a time component. In fact, the
16 preferred embodiment at lines -- at column 5, lines 35 to 40
17 shows that the precooling setpoint has a temperature which is
18 the future inside temperature and also a time component when
19 it will turn on.

20 And in the specification at lines -- at column 1, lines 37
21 to 41, it clearly talks about an example where the homeowner
22 is getting out of bed at 7:00 a.m., setting the thermostat to
23 change from the overnight setpoint of 64 degrees to 70 at
24 6:00 a.m., to make the house comfortable when the consumer
25 gets up.

1 So whenever "setpoint" is being discussed, there is always
2 a time component to it. One is -- so Google's construction is
3 problematic, for example, because it really does contradict
4 the plain meaning of "setpoint," which as we've pointed out in
5 our briefs, has been adopted by Google itself and multiple
6 other parties throughout many different litigations over the
7 course of two and a half years.

8 **THE COURT:** Although it sounds like the problem is
9 what it often is, that they may have agreed to it and then
10 they realized later that the way you were using it, the
11 dispute hadn't been resolved. And so why not resolve it
12 sooner.

13 And just looking at the specification, so in column 5, it
14 looks like it's lines, basically starting around 54, there's
15 this discussion where it's basically a formula, the data
16 should include each of the following, and time and the
17 setpoint are discussed differently.

18 So why doesn't that tend to support Google's proposed
19 construction?

20 **MS. CHAN:** It's talking about it -- to get -- I'm
21 sorry, Your Honor. Give me one moment to grab --

22 (Pause in the proceedings.)

23 **MS. CHAN:** So the entire discussion at columns -- the
24 bottom of column 5 and going onto column 6, it's always
25 talking about temperature and time hand in hand when it is

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