

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and ECOBEE TECHNOLOGIES ULC,

Petitioner

v.

ECOFACITOR, INC.,
Patent Owner

IPR2022-00538¹
Patent 9,194,597 B2

**PETITIONER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

¹ IPR2022-01461 (ecobee Technologies ULC) has been joined with this proceeding.

Pursuant to 37 C.F.R. §42.64(b)(1), Petitioner Google LLC hereby submits the following objections to Patent Owner’s Sur-Reply. Petitioner objects to Exhibits 2014 and 2015, filed with Patent Owner’s Sur-Reply, for the following reasons:

Exhibits 2014 and 2015 are improper under 37 C.F.R. § 42.23(b) which provides that “[a] sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” Because Patent Owner elected not to take the deposition of Petitioner’s reply witness, the submission of any new evidence accompanying Patent Owner’s Sur-Reply is improper.

Petitioner further objects to Exhibit 2014 which Patent Owner’s Sur-Reply identifies as “Petitioner Google’s Reply in IPR2022-00473.” This document in fact appears to be a copy of Petitioner Google’s Reply filed in the present IPR and is thus not what Patent Owner purports it to be.

Petitioner further objects to Exhibit 2015, which Patent Owner identifies as “January 6, 2023, Deposition of Dr. John A. Palmer, IPR2022-00473” as apparently duplicative. Petitioner notes that the Transcript of January 6, 2023 Deposition of John A. Palmer in IPR2022-00473 was filed as Exhibit 1023 to Petitioner’s Reply. Patent Owner did not object to this exhibit.

These objections are being timely served within 5 business days of service

of the Patent Owner's Sur-Reply and accompanying exhibits.

Respectfully submitted,

Dated: March 8, 2023

/Matthew A. Smith/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PETITIONER'S OBJECTIONS TO EVIDENCE PURSUANT TO 37 C.F.R. § 42.64 was served by electronic mail on March 7 2023, on all counsel of record at the United States Patent & Trademark Office.

Date: March 8, 2023

/Matthew A. Smith/ (RN 49,003)

Matthew A. Smith