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Google LLC

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12
13 GOOGLE LLC,
14 Plaintiff,
15 v.
16 ECOFACTOR, INC.,
17 Defendant.

Case No. 5:21-cv-3220
**COMPLAINT FOR
DECLARATORY JUDGMENT**
DEMAND FOR JURY TRIAL

18
19 Plaintiff Google LLC (“Google”), for its complaint against Defendant EcoFactor, Inc.
20 (“EcoFactor”), alleges:

21 **NATURE OF THE ACTION**

22 1. This is an action for declaratory judgment of non-infringement of U.S. Patent Nos.
23 8,740,100 (“100 Patent”), 8,751,186 (“186 Patent”), 9,194,597 (“597 Patent”) and 10,584,890
24 (“890 Patent”) (collectively, the “Asserted Patents,” attached as Exhibits 1-4, respectively)
25 against EcoFactor, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the
26 patent laws of the United States, 35 U.S.C. § 100 et seq., and for any and all other relief the Court
27 deems just and proper.
28

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1 2. Google requests this relief because EcoFactor filed a complaint with the Western
2 District of Texas (“W.D. Tex.”), Docket No. 6:21-cv-00428 (the “ecobee W.D. Tex. Action”),
3 claiming that ecobee, Inc. infringed the Asserted Patents because ecobee designed, developed,
4 manufactured, tested, used, offered for sale, sold, and/or imported “smart thermostats, smart
5 HVAC systems, smart HVAC control systems, and components thereof.” A true and correct copy
6 of EcoFactor’s public complaint is attached as Exhibit 5 (the “ecobee W.D. Tex. Complaint”).

7
8 3. The products accused in the ecobee W.D. Tex. Action are “smart thermostat
9 systems, smart HVAC systems, smart HVAC control systems, and all components (including
10 accessories) thereof” (the “Product Category”). Ex. 5, ¶ 10. Google also makes and sells smart
11 thermostat systems, including the Nest Thermostat and the Nest Third Generation Learning
12 Thermostat (the “Accused Google Products”), which have been accused of patent infringement by
13 EcoFactor in prior pending litigation.

14 4. EcoFactor previously asserted a dozen patents, including patents related to the
15 Asserted Patents, in multiple pending cases against both ecobee and Google, also accusing the
16 same technology, such as in the Product Category. *See infra* ¶¶ 14-20. So far, EcoFactor has
17 sued multiple defendants at a time on each set of asserted patents. Such repeated filings against
18 Google, ecobee, and other defendants identified below over the same and related technology
19 constitute a course of conduct that demonstrates EcoFactor’s preparedness and willingness to
20 enforce its patent rights against Google. Moreover, EcoFactor’s past litigation conduct
21 demonstrates that it enforces the same patents against ecobee and Google in the Product
22 Category.
23

24 5. An actual and justiciable controversy therefore exists under 28 U.S.C. §§ 2201-
25 2202 between Google and EcoFactor as to whether Google is infringing or has infringed the
26 Asserted Patents.
27
28

THE PARTIES

6. Plaintiff Google LLC is a subsidiary of Alphabet Inc. with its principal place of business located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

7. Upon information and belief, Defendant EcoFactor, Inc. is a privately held company organized under Delaware’s laws, with a principal place of business at 441 California Avenue, Number 2, Palo Alto, California 94301.

JURISDICTION AND VENUE

8. Google files this complaint against EcoFactor pursuant to the patent laws of the United States, Title 35 of the United States Code, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the federal courts of the United States, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. §§ 1-390.

9. This Court has subject matter jurisdiction over this action, which arises under the United States’ patent laws, pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a).

10. This Court has personal jurisdiction over EcoFactor, which has its principal place of business in Palo Alto, California.

11. Venue in this District is proper under 28 U.S.C. §§ 1391(b) because EcoFactor resides in this District, and also because EcoFactor is subject to personal jurisdiction in this District, and a substantial part of the events giving rise to Google’s declaratory judgment claim of non-infringement (such as the development and sale of Nest thermostats) occurred in this District.

INTRADISTRICT ASSIGNMENT

12. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this is an Intellectual Property Rights Action subject to assignment on a district-wide basis.

FACTUAL BACKGROUND

13. Google’s headquarters at 1600 Amphitheatre Parkway, Mountain View, California

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1 94043 are located in this District. Google’s mission is to organize the world’s information and
2 make it universally accessible and useful. Over the past two decades, in service of that mission,
3 Google has become one of the world’s most innovative technology companies.

4 14. EcoFactor has asserted its patents against allegedly infringing products that
5 originated at Nest Labs that launched in 2010 in Palo Alto. The founders of Nest sought to save
6 the planet while saving consumers money with their energy usage. After merging with the
7 Google family of companies in 2014, the Nest product division has continued to operate primarily
8 in the San Francisco Bay Area. The vast majority of technical and business activities related to
9 Nest have occurred and continue to occur in this District.
10

11 15. Starting in late 2019, EcoFactor conducted a patent litigation campaign against
12 Google and other smart thermostat manufacturers, such as ecobee. Against Google, EcoFactor
13 asserted 12 patents across four different cases, including lawsuits in the District of Massachusetts,
14 the Western District of Texas, and the International Trade Commission (“ITC”).
15

16 16. On November 12, 2019, EcoFactor sued Google in the District of Massachusetts,
17 asserting four patents related to the Asserted Patents. *See EcoFactor, Inc. v. Google LLC*, No.
18 1:19-cv-12322-DJC (D. Mass.). That case is currently stayed pending the ITC case below.

19 17. On November 22, 2019, EcoFactor filed another lawsuit against Google at the
20 ITC, asserting the patents in the Massachusetts action above. *See In the matter of Certain Smart*
21 *Thermostats, Smart HVAC Systems and Components Thereof*, Investigation No. 337-TA-1185
22 (ITC) (the “1185 Investigation”). The 1185 Investigation confirmed that the venue at the center
23 of the allegations is in this District because EcoFactor’s witnesses, Google’s source code (and the
24 review of such source code), and Google’s U.S. witnesses are all located in this District. On
25 April 20, 2021, the ITC issued an initial determination in the 1185 Investigation, finding no
26 violation by Google or any other respondents.
27

28 18. On January 31, 2020, EcoFactor then filed another lawsuit against Google in the

1 Western District of Texas, asserting another four patents related to the Asserted Patents. *See*
2 *EcoFactor, Inc. v. Google LLC*, No. 6:20-cv-00075 (W.D. Tex.). That case is currently
3 proceeding through discovery, with trial set for December 6, 2021.

4 19. On February 25, 2021, EcoFactor filed a fourth lawsuit against Google, at the ITC,
5 asserting another four patents related to the Asserted Patents. *See In the matter of Certain Smart*
6 *Thermostat Systems, Smart HVAC Systems, Smart HVAC Control Systems, And Components*
7 *Thereof*, Investigation No. 337-TA-1258 (ITC, filed Feb. 25, 2021) (the “1258 Investigation”).
8 That case is currently proceeding through discovery.

9
10 20. On March 1, 2021, Google filed a declaratory relief action in this District relating
11 to the patents at issue in the 1258 Investigation. EcoFactor stipulated to a stay of that action
12 pending resolution of the 1258 Investigation. *See Google LLC v. EcoFactor, Inc.*, No. 5:21-cv-
13 1468-JD (N.D. Cal.).

14
15 21. Across four cases filed within the past 18 months, EcoFactor has asserted 12
16 patents against Google, all related to smart thermostat systems, and all accusing Google’s Nest
17 line of smart thermostat products. Those dozen patents are related to the Asserted Patents.
18 EcoFactor has also sued multiple other companies in these litigations, including: ecobee, Vivint,
19 Inc., Alarm.com Inc., Johnson Controls Inc., Emerson Electric Co., Resideo Technologies, Inc.,
20 Honeywell International Inc., Siemens Industry, Inc., Siemens AG, Daikin Industries, Ltd.,
21 Schneider Electric USA, Inc., and Carrier Global Corp. EcoFactor’s litigation conduct evidences
22 that the same patents are asserted against ecobee and Google in the Product Category.

23
24 22. From this litigation activity, EcoFactor engages in a course of conduct that shows
25 a preparedness and a willingness to enforce its patent rights relating to the same technology
26 against the same set of products. These repeated assertions demonstrate a substantial risk that
27 Google will face harm from further patent infringement allegations, including the new Asserted
28 Patents that EcoFactor asserts against ecobee. EcoFactor’s past actions demonstrate that it plans

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