

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.

IPR2022-00538
Patent 9,194,597

Record of Oral Hearing
Held: May 3, 2023

Before SCOTT B. HOWARD, PAUL J. KORNICZKY, and
BRENT M. DOUGAL *Administrative Patent Judges*.

IPR2022-00538
Patent 9,194,597

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday, May 3, 2023, commencing at 9:00 a.m. at the U.S. Patent and Trademark Office, 1961 Stout Street, Denver, Colorado.

PROCEEDINGS

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(9:00 a.m.)

JUDGE DOUGAL: Good morning.

This is the hearing for IPR 2022-00538. Before I read my opening, I want to clarify. I believe we have two hearings today, the 00538 case and the 00473. From the schedule, my understanding is we're planning on doing these separately, the 538 right now at 9 o'clock and then the 473 at noon. Is that everyone's -- the parties' understanding?

MR. LINK: Yes, Your Honor.

MS. LAUGHTON: Yes.

JUDGE DOUGAL: Just to get that out there, make sure the hearing staff and everybody is consistent across the board that that's what we're doing today. There was a little confusion because sometimes when we have two hearings, we consolidate them and do them all at the same time, but that is not the plan for today.

So hopefully -- is that what you were informed as well?

THE COURT REPORTER: I just was told to be here all day.

JUDGE DOUGAL: All right. That works, that works. Excellent.

Okay.

So this is the hearing again for IPR 2022-00538. We are officially now on the record for this case. I am Judge Dougal. I am joined virtually by Judges Howard and Korniczky. So we thank you all for being here today and taking the time to go over these cases with us.

As you know, even though this hearing is not virtual, we have two judges who are virtual, and so it's just as important as normal to speak into

1 the microphone, make sure your microphone is on, its important for the
2 record to identify which slide, or demonstrative you are referring to. We
3 have the slides. We have the full record before us. So if you have any
4 questions about that, please let us know.

5 I also want to make you aware that we do have a public line listening
6 in, and I'm sure you probably have colleagues who are listening on the
7 phone; and I know that it's being used today.

8 So with that to start us off, we will start with counsel. So who do we
9 have today for Petitioner?

10 MS. LAUGHTON: This is Elizabeth Laughton, representing
11 Petitioner, Google LLC.

12 JUDGE DOUGAL: And for Patent Owner?

13 MR. LINK: Good morning, Your Honor. Jonathan Link of Russ
14 August & Kabat on behalf of Patent Owner EcoFactor.

15 JUDGE DOUGAL: Jonathan Lincoln, did you say?

16 MR. LINK: Link, L-i-n-k.

17 JUDGE DOUGAL: Okay. So I believe we have a full hour, right, for
18 both sides. Petitioner, how much time would you like to reserve for
19 rebuttal?

20 MS. LAUGHTON: 15 minutes, Your Honor.

21 JUDGE DOUGAL: 15 minutes. Okay. Mr. Link?

22 MR. LINK: 20 minutes, Your Honor.

23 JUDGE DOUGAL: 20. Okay. Great.

24 Ms. Laughton, please proceed when you're ready.

25 MS. LAUGHTON: Can everyone hear me? Okay. Great.

1 Good morning, Your Honor. May it please the Board. My name is
2 Elizabeth Laughton from Smith Baluch LLP, and I represent the Petitioner,
3 Google LLC, in this inter partes review of the '597 patent.

4 I'd like to focus my presentation today on the claim elements that are
5 disputed by the Patent Owner EcoFactor in its briefings, but before I turn to
6 that, I'd first like to discuss the independent claims, claims 1, 9, and 17, and
7 some of the differences in these claims.

8 Now, with reference to Slides 2 and 3, here I've reproduced the
9 independent claims. All three independent claims here relate to detecting a
10 manual change to a thermostat set point. So as just an example for
11 reference, in the context of these claims, there's a programmable thermostat
12 and it's controlling the inside temperature of the structure to a particular set
13 point. It's turning on the heating or the cooling to maintain the inside
14 temperature at or around that particular temperature. And then, as an
15 example, it isn't cool enough for a user, so the user walks up to the
16 thermostat and changes that set point to a lower value. That would be an
17 example of a manual change to a set point. In the claims system, the
18 methods can detect the user has made such a manual change.

19 Claim 9 additionally cites that the manual changes are incorporated
20 into programming. As can be seen in the last element, a set point is then
21 changed based on a rule for the interpretation of the user 's manual change.

22 Now, all three claims involve storing data. This data consists of
23 inside and outside temperature measurements, and they also involve
24 predicting changes in inside temperatures in response to outside
25 temperatures. All three claims involve calculating an automated set point
26 for the HVAC system, and in particular in claims 9 and 17, this calculation

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