

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE, LLC,  
Petitioner,

v.

ECOFACITOR, INC.,  
Patent Owner.

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IPR2022-00475  
Patent 8,740,100

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Record of Oral Hearing  
Held: May 11, 2023

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

IPR2022-00475  
Patent 8,740,100

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ELIZABETH A. LAUGHTON, ESQ.  
of Smith Baluch LLP  
700 Pennsylvania Avenue, SE  
Washington, D.C. 20003  
(703) 585-8839  
laughton@smithbaluch.com

ON BEHALF OF THE PATENT OWNER:

JONATHAN D. LINK, ESQ.  
of Russ August & Kabat  
800 Maine Avenue, SW  
Washington, D.C. 20024  
(310) 826-7474  
jlink@raklaw.com

The above-entitled matter came on for hearing on Thursday, May 11, 2023, commencing at 8:59 a.m. at the U.S. Patent and Trademark Office, 1961 Stout Street, Denver, Colorado.

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

(8:59 a.m.)

JUDGE KORNICZKY: Good morning. This is a hearing in IPR 2022-00475, Google versus EcoFactor. As I said, I'm Judge Korniczky. To my right is Judge Dougal, and on the screen is Judge Howard.

Counsel for Petitioner, would you please identify yourself for the record?

MS. LAUGHTON: Good morning, Your Honors. My name is Elizabeth Laughton from the law firm of Smith Baluch LLP, representing the Petitioner, Google, LLC. I have with me here [on the public phone line] Chester Day, who is in-house counsel at Google, and I believe on the line we also have Emily Chen, who is in-house counsel at Google, and Matt Smith, who is also from my law firm, Smith Baluch.

JUDGE KORNICZKY: Would you please move the mic closer to you?

MS. LAUGHTON: Sure. Was everybody able to hear that or do I need to repeat it?

JUDGE KORNICZKY: That was good. Thank you.

And counsel for Patent Owner?

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

JUDGE KORNICZKY: All right. Thank you. It's good to see you all again. So we have, I guess, agreed to give the parties 60 minutes each.

MS. Laughton, how much time do you want to save for rebuttal?

MS. LAUGHTON: May I please reserve 20 minutes?

JUDGE KORNICZKY: 20 minutes. Okay.

1 All right. First of all, thank you for filing that summary of the  
2 different litigations and proceedings. That was helpful. And then, last week  
3 in our hearing in the morning, which I cannot remember the case number,  
4 we had agreed to incorporate the transcript into this case because some of  
5 the issues are the same. And I guess one of the things I want to ask is during  
6 your argument, if there's anything you want to add to your argument from  
7 last week, you know, please be sure to do so. Okay? There's no reason to  
8 repeat everything, but if there's something new you want to add, that would  
9 be helpful.

10 MS. LAUGHTON: Thank you, Your Honor. May I ask a question?

11 JUDGE KORNICZKY: Sure.

12 MS. LAUGHTON: Our understanding is all three of the transcripts  
13 would be incorporated in all three of the cases. Is that the board's intention?

14 JUDGE KORNICZKY: If it's agreeable to the parties, yes.

15 MR. LINK: It's agreeable to the Patent Owner, Your Honor.

16 MS. LAUGHTON: Great. Thank you.

17 JUDGE DOUGAL: So Petitioner, ready?

18 MS. LAUGHTON: Yes, Your Honor.

19 JUDGE KORNICZKY: The other thing I want to make sure you do -  
20 - you know, Judge Howard is on the screen -- when you're going through  
21 your slides, your PowerPoint presentation, please be sure to identify the slide  
22 so Judge Howard can follow along and the court reporter can follow along as  
23 well.

24 MS. LAUGHTON: Absolutely. I will do my best.

25 Judge Howard, can you hear me?

26 JUDGE HOWARD: Yes, I can hear you.

1 MS. LAUGHTON: Good morning, Your Honors. May it please the  
2 board. My name is Elizabeth Laughton from the law firm of Smith Baluch  
3 LLC, and I represent Petitioner, Google, LLC, in connection with this inter  
4 partes review of the '100 patent. At the outset, I'd like to start by answering  
5 the board's question which was posed at the hearings last week in the IPR of  
6 the '186 and '597 patents regarding the level of ordinary skill in the art.

7 Petitioner submits that the challenged claims of the '100 patent are obvious  
8 under either proposed level of ordinary skill and that the obviousness of the  
9 challenged claims does not turn on the level of ordinary skill adopted here.

10 Turning to the next issue, in connection with the '597 and '186 patent  
11 IPRs last week, the parties presented argument regarding Ehlers '330 rate of  
12 change teachings. As we've discussed, but I'd like to reiterate here, the  
13 evidence and argument in this proceeding is very similar. Again, MR.  
14 Shah, Petitioner's expert, submitted a reply declaration explaining Ehlers  
15 '330's use of its thermal gain rates, and EcoFactor did not seek to depose  
16 MR. Shah on that declaration and, again, largely ignores it in its surreply. I  
17 don't plan to reprise all of those arguments in detail unless the board has any  
18 specific questions, but I would like to address a couple of discrete issues  
19 relating to Ehlers '330's teachings with respect to the claim limitations at  
20 issue here.

21 So turning to what is Slide 6 of Petitioner's demonstratives, first, as  
22 we've discussed, EcoFactor argues here, as well as in the other IPRs, that the  
23 thermal gain rate taught by Ehlers '330 is the rate of heat absorption. As we  
24 have seen, Ehlers '330 teaches tracking the thermal gains by measuring the  
25 temperature and the time, as Patent Owner's expert Dr. Palmer admits, and  
26 we can see this in particular on Slide 6.

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