UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **CERTAIN SMART THERMOSTAT SYSTEMS, SMART HVAC SYSTEMS, SMART HVAC CONTROL SYSTEMS, AND COMPONENTS THEREOF**	**Inv. No. 337-TA-1258**

ORDER NO. 18: CONSTRUING THE TERMS OF THE ASSERTED CLAIMS OF THE PATENTS AT ISSUE

(September 1, 2021)

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I. INTRODUCTION

This Investigation was instituted by the Commission on December 29, 2020 to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of smart thermostat systems, smart HVAC systems, smart HVAC control systems, and components thereof by reason of infringement of one or more of: claims 1, 2, 5, and 7 of U.S. Patent No. 8,423,322 ("the 322 patent"); claims 1, 2, 5, 7, 15, 16, 19, and 20 of U.S. Patent No. 8,019,567 ("the 567 patent"); claims 1-3 and 16-18 of U.S. Patent No. 10,612,983 ("the 983 patent"); claims 1, 5-7, 9, 13-15, and 17 of U.S. Patent No. 8,596,550 ("the 550 patent"); and claims 1, 2, 5, 7-10, and 13-15 of U.S. Patent No. 8,886,488 ("the 488 patent"). *See* 86 Fed. Reg. 17403 (April 2, 2021). The Complainant is EcoFactor, Inc. ("EcoFactor"). The Respondents are Carrier Global Corporation ("Carrier"); ecobee Ltd. and ecobee Inc. (collectively, "ecobee"); and Google LLC ("Google") (collectively, "Respondents").

EcoFactor recently dismissed the 322 Patent. Order No. 16 (August 5, 2021). The Commission did not review the Initial Determination. EDIS Doc. No. 749920.

No *Markman* hearing was held; however, the parties filed joint proposed claim construction charts setting forth a limited set of terms to be construed, and also filed initial and reply claim construction briefs wherein each party offered its construction for the claim terms in dispute.[1]

[1] For convenience, the briefs and amended chart submitted by the parties are referred to as:

CIMB	Complainant's Initial *Markman* Brief
CRMB	Complainant's Reply *Markman* Brief
RIMB	Respondents' Initial *Markman* Brief
RRMB	Respondents' Reply *Markman* Brief
JC	Joint Claim Construction Chart

II. IN GENERAL

The claim terms addressed below are construed for the purposes of this Investigation, and those terms not in dispute need not be construed. *See Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311, 1323 (Fed. Cir. 2004) (noting that the administrative law judge need only construe disputed claim terms). The meaning of claim terms not presently disputed will be addressed in connection with the evidentiary hearing.

III. RELEVANT LAW

"An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*) (internal citations omitted), *aff'd*, 517 U.S. 370 (1996). Claim construction is a "matter of law exclusively for the court." *Id.* at 970-71. "The construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims." *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

Claim construction focuses on the intrinsic evidence, which consists of the claims themselves, the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*); *see also Markman*, 52 F.3d at 979. As the Federal Circuit in *Phillips* explained, courts must analyze each of these components to determine the "ordinary and customary meaning of a claim term" as understood by a person of ordinary skill in art at the time of the invention. 415 F.3d at 1313. "Such intrinsic evidence is the most significant source of the legally operative meaning of disputed claim language." *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Grp., Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001).

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