

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ECOBEE TECHNOLOGIES, ULC and GOGGLE LLC,  
Petitioner,

v.

ECOFACITOR, INC.,  
Patent Owner.

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IPR2022-00969 and IPR2022-00983  
(Patent 8,596,550)

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Record of Oral Hearing  
Held: August 18, 2023

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

IPR2022-00969 and IPR2022-00983  
(Patent 8,596,550)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing Monday, August 18, 2023, commencing at 12:03 p.m. EDT, via Video-conference.

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

12:03 p.m.

JUDGE KORNICZKY: Good day. This is Judge Paul Korniczky. With me on our panel is Judge Brent Dougal and Judge Scott Howard. I'd like to get appearances from everybody.

Petitioner, would you please introduce yourself?

MR. OLIVER: Thank you, Your Honor. Justin Oliver of Venable on behalf of the Petitioner, Ecobee Technologies.

JUDGE KORNICZKY: Is anyone else on the line from Petitioner?

MR. OLIVER: No, Your Honor.

JUDGE KORNICZKY: Okay. Patent Owner? Patent Owner, we can't hear you. I think you're muted.

MR. LINK: There you go. Thank you. Sorry about that.

JUDGE KORNICZKY: Sorry. Yes, thanks, Counsel.

MR. LINK: Yes. Good afternoon. My name is Jonathan Link of the law firm of Russ August & Kabat on behalf of the Patent Owner, Ecofactor. And I'm the only one on the line from my side.

JUDGE KORNICZKY: All right. Thank you. Okay. So -- and our Court Reporter is Ms. Munoz.

So, this hearing concerns, I guess, four cases. The first case is IPR 2022-00969. The Petitioners are Ecobee Technologies, ULC and Google, LLC v. the Patent Owner, Ecofactor, Inc. The second case is IPR 2022-00983, which has the same parties. And the third case is IPR 2023-00355, which was Google, LLC v. Ecofactor, Inc. The '355 case has been joined with the '969 case. Then the fourth case is IPR 2023-00356, which is

1 Google, LLC v. Ecofactor, Inc. And the '356 case has been joined with the  
2 '983 case.

3 So, as we go forward today, please make sure that you identify the  
4 slides as you -- you know, we have the slides, we've reviewed all the  
5 materials. Please identify the slides for the Court Reporter, and the parties,  
6 and the Panel.

7 And, Mr. Oliver, how much time would you -- so we have 60 minutes,  
8 how much time would you like to reserve for rebuttal?

9 MR. OLIVER: Fifteen minutes, Your Honor.

10 JUDGE KORNICZKY: I'm sorry, you said 15?

11 MR. OLIVER: Yes.

12 JUDGE KORNICZKY: Okay. I will try to remind you as we get  
13 closer to the 45 minutes. Let me get my timer going, one second.

14 Do you gentlemen have any questions before we start?

15 MR. OLIVER: No, Your Honor.

16 MR. LINK: No, Your Honor.

17 JUDGE KORNICZKY: All right. Mr. Oliver, why don't you start?

18 MR. OLIVER: Thank you. May it please the Board. The claims of  
19 the '550 patent are directed to thermostatic controllers. The claims generally  
20 recite two separate learning functions that have been known in the field.  
21 First, predicting the rates of change for internal temperatures based on  
22 outside temperatures, and then using that prediction to automate setpoints in  
23 the future. This simply involves accounting for the effects of outside  
24 temperatures on the heating and cooling of internal spaces.

25 And the second main point or learning feature of the claims is  
26 detecting changes to automated settings. And this simply involves that when  
27 a user make a manual adjustment to the thermostat, the thermostat

1 recognizes and logs the change. This is typically done, as we'll see, to  
2 account for such changes in future programming.

3 Both features have been long known in the prior art. For insistence,  
4 the Ehlers reference describes tracking how internal temperatures respond to  
5 various outside temperatures so as to predict that rate of change so that it can  
6 be used in the future in order to set new setpoints that conserve energy.  
7 With respect to tracking changes to setpoints, Ehlers describes doing so in  
8 the idea of learning from the user's preferences so that those preferences can  
9 be replicated in the future so that the user doesn't have to make such  
10 changes.

11 In an attempt to avoid these clear teachings, the Patent Owner makes  
12 an off-base argument. Specifically with respect to Ehlers, Patent Owner  
13 argues that Ehlers' clear teachings of tracking internal temperatures with  
14 respect to outside temperatures should be ignored because Ehlers uses the  
15 term thermal gain to describe that rate of change of inside temperatures.

16 As we'll discuss, Ehlers clearly discusses, and describes, and  
17 illustrates that the internal temperature change is tracked, and that rate of  
18 change is used. Notably, this Panel in a IPR of a child of the '550 patent,  
19 specifically IPR 20 --

20 JUDGE KORNICZKY: Mr. Oliver, this is Judge Korniczky. Can  
21 you lean forward? When you lean back, we start to get an echo. When you  
22 lean forward, it seems to be a little bit better. Or move your --

23 MR. OLIVER: Certainly, Your Honor.

24 JUDGE KORNICZKY: I'm not sure. But we're getting a little echo it  
25 seems when you lean back.

26 (Simultaneous speaking.)

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