

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ECOBEE TECHNOLOGIES, ULC,
Petitioner

v.

ECOFACITOR, INC.,
Patent Owner

IPR2022-00983
Patent No. 8,596,550

PATENT OWNER'S SUR-REPLY

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Cases

<i>BlephEx, LLC v. Myco Indus., Inc.</i> , 24 F.4th 1391 (Fed. Cir. 2022)	3
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<i>Stone Basket Innovations, LLC v. Cook Med. LLC</i> , 892 F.3d 1175 (Fed. Cir. 2018).....	3

Exhibits

Exhibit No.	Description
2001	<i>Ecobee, Inc. v. EcoFactor, Inc.</i> , 1-21-cv-00323 (D. Del. March 2, 2012), Dkt. 20 (Ecobee's Motion to Dismiss)
2002	<i>Ecobee, Inc. v. EcoFactor, Inc.</i> , 1-21-cv-00323 (D. Del. March 2, 2012), Dkt. 1 (Complaint)
2003	<i>Ecobee, Inc. v. EcoFactor, Inc.</i> , 1-21-cv-00323 (D. Del. March 2, 2012), Dkt. 18 (ecobee Opposition to Motion to Stay)
2004	Ecobee's Disclosure of Initial Invalidity Contentions, March 17, 2022 in <i>Ecobee, Inc. v. EcoFactor, Inc.</i> , 1-21-cv-00323
2005	<i>Ecobee, Inc. v. EcoFactor, Inc.</i> , 1-21-cv-00323 (D. Del. March 2, 2012), Dkt. 26 (Order Denying EcoFactor's Motion to Stay)
2006	Expert Declaration of John A. Palmer
2007	Curriculum Vitae of John A. Palmer
2008	February 2, 2023, Deposition Transcripts of Dr. David Auslander, IPR2022-00983.
2009	<i>Smart Thermostat Systems, Smart HVAC Systems, Smart HVAC Control Systems, and Components Thereof</i> , U.S. Int'l Trade Comm'n, 337-TA-1258 1258 Investigation, Order No. 18 - Construing the Terms of the Asserted Claims, at 1
2010	U.S. Pat. No. 7,130,719 ("Ehlers '719")
2011	June 7, 2023, Deposition Transcripts of Dr. David Auslander, IPR2022-00969 and IPR2022-00983.

I. Introduction

Petitioner continues to fundamentally misunderstand Ehlers and its teachings regarding thermal gain. Petitioner and its expert continue to ignore this, and instead use improper hindsight to create the claims of the '550 patent out of the prior art.

Petitioner further fails to demonstrate that the combination of Ehlers '330, Wruck and/or Harter teaches calculating automated setpoints. Ehlers '330 shows ramping and recovery time, but not calculating automated setpoints. With these automated setpoints, there can be no comparison with anything else. Instead, Petitioner identifies an unexplained term cited just once in Wruck and the creates an unsupported story to argue that it meets this comparison. Moreover, Harter does not correct any of these deficiencies. Finally, Petitioner does not contest that there is no motivation to combine Ehlers '330 and Wruck.

For these reasons, Petitioner has failed to demonstrate that the claims of the '550 patent are invalid.

II. Level of a Person of Ordinary Skill in the Art (POSITA)

Petitioner and Dr. Auslander assert that the different levels for a POSITA between EcoFactor and Petitioner does not affect the outcome. Reply at 2; Ex. 1023, ¶¶6-7.

Notably, Petitioner does not actually dispute EcoFactor's proposed level of ordinary skill in the art ("POSITA") for the '550 patent as someone having a

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