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ECOFACOR, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GOOGLE LLC,

Plaintiff/Counterclaim Defendant,

v.

ECOFACOR, INC.,

Defendant/Counterclaim Plaintiff.

Case No. 5:21-cv-3220-TSH

ANSWER

DEMAND FOR JURY TRIAL

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ANSWER

Defendant, EcoFactor, Inc., a Delaware corporation (“Defendant,” “Counterclaim Plaintiff,” or “EcoFactor”) through its undersigned counsel, hereby answers the Complaint for Declaratory Judgment filed by Plaintiff Google LLC (“Plaintiff,” “Counterclaim Defendant,” or “Google”) as follows:

NATURE OF THE ACTION

1. EcoFactor admits that the Complaint purports to set forth a claim for declaratory judgment of non-infringement of U.S. Patent Nos. 8,740,100 (“100 Patent”), 8,751,186 (“186 Patent”), 9,194,597 (“597 Patent”) and 10,584,890 (“890 Patent”) (collectively, the “Asserted Patents”) under Titles 28 and 35 of the United States Code, but otherwise denies the allegations of Paragraph 1 of the Complaint.

2. EcoFactor admits that it has filed a complaint with the Western District of Texas (“W.D. Tex.”), Docket No. 6:21-cv-00428 (the “ecobee W.D. Tex. Action”), claiming that ecobee, Inc. infringed the Asserted Patents because ecobee designed, developed, manufactured, tested, used, offered for sale, sold, and/or imported “smart thermostats, smart HVAC systems, smart HVAC control systems, and components thereof,” but otherwise denies the allegations of Paragraph 2 of the Complaint.

3. EcoFactor admits that the products accused in the ecobee W.D. Tex. Action are “smart thermostat systems, smart HVAC systems, smart HVAC control systems, and all components (including accessories) thereof.” EcoFactor similarly admits that it has accused Google’s Nest Thermostat and Nest Third Generation Learning thermostat of patent infringement in prior pending litigation, but otherwise denies the allegations of Paragraph 3 of the Complaint.

4. EcoFactor admits that it has previously asserted various patents at various times in cases pending against ecobee, Google, and others accusing various smart thermostats and HVAC systems, but otherwise denies the allegations of Paragraph 4 of the Complaint.

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1 5. Denied.

2 **THE PARTIES**

3 6. Admitted.

4 7. Admitted.

5 8. EcoFactor admits that the Complaint purports to set forth a claim for
6 remedy under Titles 28 and 35 of the United States Code, but otherwise denies the
7 allegations of Paragraph 6 of the Complaint.

8 9. Admitted.

9 10. Admitted.

10 11. Admitted.

11 **INTRADISTRICT ASSIGNMENT**

12 12. Admitted.

13 **FACTUAL BACKGROUND**

14 13. EcoFactor admits that Google is headquartered at 1600 Amphitheatre
15 Parkway, Mountain view, California, 94043. EcoFactor is without sufficient
16 knowledge or information so as to form a belief as to the truth of the allegations
17 contained in Paragraph 13 of the Complaint and therefore denies the same.

18 14. EcoFactor is without sufficient knowledge or information so as to form a
19 belief as to the truth of the allegations contained in Paragraph 14 of the Complaint
20 and therefore denies the same.

21 15. EcoFactor admits that it has filed other lawsuits against Google in the
22 District of Massachusetts, the Western District of Texas, and the ITC asserting
23 various patents, but otherwise denies the allegations of Paragraph 15 of the
24 Complaint.

25 16. EcoFactor admits that it filed suit on November 12, 2019, against Google
26 in the District of Massachusetts asserting infringement of four of EcoFactor patents
27 and that the case is currently stayed pending the ITC case below, but otherwise
28 denies the allegations of Paragraph 16 of the Complaint.

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1 17.EcoFactor admits that it filed suit against Google at the ITC on November
2 22, 2019 (the “1185 Investigation”), asserting the same patents as those at issue in
3 the Massachusetts action identified in Paragraph 16 of the Complaint. The 1185
4 Investigation determined, for example, that the accused Google products infringed
5 the asserted claims of U.S. Patent No. 10,018,371, that the patent is not patent-
6 ineligible under 35 U.S.C. § 101, and that respondents did not show that the patent
7 was invalid under 35 U.S.C. §§ 102 or 103. Parties to the 1185 Investigation have
8 petitioned for Commission review of certain findings in the administrative law
9 judge’s final initial determination. EcoFactor otherwise denies the allegations of
10 Paragraph 17 of the Complaint.

11 18.EcoFactor admits that it filed suit on January 31, 2020, against Google, in
12 the Western District of Texas, asserting four of EcoFactor’s patents, and that the
13 case is currently proceeding through discovery, with trial set for December 6, 2021,
14 but otherwise denies the allegations of Paragraph 18 of the Complaint.

15 19.EcoFactor admits that it filed suit on February 25, 2021, against Google,
16 in the ITC, asserting four of EcoFactor’s patents, and that the case is currently
17 proceeding through discovery, but otherwise denies the allegations of Paragraph 19
18 of the Complaint.

19 20.Admitted.

20 21.EcoFactor admits that it has filed four cases against Google’s Nest line of
21 smart thermostat products within the past 18 months asserting infringement of 12 of
22 EcoFactor’s patents—some of which Google has been found to infringe. EcoFactor
23 further admits that it is presently asserting or has previously asserted claims of patent
24 infringement against ecobee, Vivint, Inc., Alarm.com Inc., Johnson Controls Inc.,
25 Emerson Electric Co., Resideo Technologies, Inc., Honeywell International Inc.,
26 Siemens Industry, Inc., Siemens AG, Daikin Industries, Ltd., Schneider Electric
27 USA, Inc., and Carrier Global Corp. EcoFactor otherwise denies the allegations of
28 Paragraph 21 of the Complaint.

1 22.EcoFactor admits that it is prepared and willing to enforce its patent rights.
2 EcoFactor otherwise denies the allegations of Paragraph 22 of the Complaint.

3 23.Denied.

4 **COUNT I:**

5 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '100**
6 **PATENT**

7 24.EcoFactor realleges and incorporates by reference the foregoing
8 paragraphs as if fully set forth herein.

9 25.Admitted.

10 26.EcoFactor admits that the ecobee W.D. Tex. Complaint alleges
11 infringement by certain accused products, such as the ecobee3 lite and ecobee
12 SmartThermostat with Voice Control, but otherwise denies the allegations of
13 Paragraph 26 of the Complaint.

14 27.Denied.

15 28.Denied.

16 29. EcoFactor admits that Google seeks the requested relief, but otherwise
17 denies the allegations of Paragraph 29 of the Complaint.

18 **COUNT II:**

19 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '186**
20 **PATENT**

21 30.EcoFactor realleges and incorporates by reference the foregoing
22 paragraphs as if fully set forth herein.

23 31.Admitted.

24 32.EcoFactor admits that the ecobee W.D. Tex. Complaint alleges
25 infringement by certain accused products, such as the ecobee3 lite and ecobee
26 SmartThermostat with Voice Control, but otherwise denies the allegations of
27 Paragraph 32 of the Complaint.

28 33.Denied.

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