

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ECOFACOR, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No.: 6:22-cv-00350

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT AGAINST
GOOGLE LLC**

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff EcoFactor, Inc. (“Plaintiff” or “EcoFactor”) makes the following allegations against Defendant Google LLC (“Defendant”):

INTRODUCTION

1. This complaint arises from Defendant’s unlawful infringement of the following United States patents owned by EcoFactor: U.S. Patent Nos. 8,019,567 (“’567 Patent”); 10,612,983 (“’983 Patent”); 8,596,550 (“’550 Patent”); and 8,886,488 (“’488 Patent”) (collectively, the “Asserted Patents”). EcoFactor owns all right, title, and interest in each of the Asserted Patents. EcoFactor notes that Defendant filed a declaratory judgment action against these same patents that was stayed almost immediately after the case was filed. *See Google LLC v. EcoFactor, Inc.*, Case No. 5:21-cv-01468 (N.D. Cal.). However, this case is the appropriate vehicle for adjudicating the parties’ dispute—not Defendant’s declaratory judgment action.

2. EcoFactor is a privately held company, having its principal place of business at 441 California Avenue, Number 2, Palo Alto, CA 94301. EcoFactor was founded in 2006 and is headquartered in Palo Alto, California. EcoFactor is a leader in smart home energy management

services. EcoFactor delivers smart home energy management services that improve energy efficiency, reduce energy bills and vastly increase demand response efficacy – all while maintaining consumer comfort. EcoFactor’s patented big-data analytics and machine learning algorithms collect and process massive amounts of residential data – including home thermodynamics, family comfort preferences and schedules, plus external data such as weather – to continually monitor, adapt and learn for optimum energy savings. The company provides homeowners significant cost savings and energy usage benefits. EcoFactor’s award-winning service has been offered through channel partners such as utilities, energy retailers, broadband service providers and HVAC companies.

3. EcoFactor transformed how homes use energy by applying advanced analytics to connected devices in the home. EcoFactor developed a suite of software known as the “EcoFactor Platform” that incorporates EcoFactor’s patented data analytics and machine learning algorithms, as well as EcoFactor’s award-winning smart HVAC control technologies. The EcoFactor Platform is software that runs on servers, including cloud servers, in the United States, and provides service to customers in the United States. The source code of the EcoFactor Platform, including for example the platform, quant, and mobile application source code, that comprises the EcoFactor Platform was designed by, created by, and is continuously maintained and improved by EcoFactor employees working in the United States. The EcoFactor Platform actively manages thermostats on occupants’ behalf in intelligent ways that improve comfort while helping them save time, energy and money. Utilities, home service providers and homeowners rely on EcoFactor for demand response, energy efficiency, and HVAC performance monitoring services. The EcoFactor Platform includes the software that practices EcoFactor’s patents on these features. For example, the EcoFactor Platform includes EcoFactor’s patented techniques for monitoring the health and

performance of HVAC systems over time, smart thermostat scheduling to improve energy savings and optimize comfort for occupants, and thermodynamic modeling of the user’s home and HVAC system to enable dynamic pre-cooling and pre-heating to further improve comfort, save energy, or both, by creating comfortable schedules that also shift energy usage out of periods of peak energy demand.

4. The patented innovations at issue in this action were invented by EcoFactor engineers and researchers. EcoFactor has played a significant role in the development and advancement of such improvements to energy management technology—and the domestic market for them. EcoFactor has expended tens of millions of dollars of research and development and technical services and support in the United States. In recent years, an explosion of imported products that infringe EcoFactor’s innovative Asserted Patents has significantly eroded EcoFactor’s market standing. This infringement action is about several patented improvements to smart thermostat systems, smart HVAC systems, and smart HVAC control systems—which took years of research and millions of dollars in U.S. investments to develop, and which are infringed by Defendant’s accused products.

PARTIES

5. Plaintiff EcoFactor is a privately held company, having its principal place of business at 441 California Avenue, Number 2, Palo Alto, CA 94301. EcoFactor was founded in 2006 and is headquartered in Palo Alto, California. EcoFactor is the sole owner of all right, title, and interest in each Asserted Patents.

6. Google LLC is a wholly-owned subsidiary of Alphabet, Inc, and a Delaware limited liability company with a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google LLC operates a division named Google Nest (“Nest”) which, on

information and belief, designs and manufactures, among other things, smart Thermostats. Google LLC may be served with process through its registered agent, the Corporation Service Company, at 211 East. 7th Street, Suite 620, Austin, Texas 78701. Google LLC is registered to do business in the State of Texas and has been since at least November 17, 2006.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendant in this action because Defendant has committed acts within this District giving rise to this action, and has established minimum contacts with this forum such that the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice. Defendant, directly and through subsidiaries or intermediaries, has committed and continue to commit acts of infringement in this District by, among other things, importing, offering to sell, and selling products that infringe the Asserted Patents.

9. Venue is proper in this District under 28 U.S.C. § 1400(b). Upon information and belief, Defendant has transacted business in this District and has committed acts of direct and indirect infringement in this District by, among other things, making, using, offering to sell, selling, and importing products that infringe the asserted patents. Defendant has at least one regular and established place of business in the District. For example, Google invested \$20 million to build a corporate office at 500 West 2nd Street, Austin, Texas 78701. Further, this District has a significant interest in this case. In addition to Defendant's long-standing presence in this District, Defendant's employees in this District have relevant knowledge about the accused products and

services, including Defendant's software engineers as well as Defendant's employees responsible for maintaining energy industry partnerships with local energy companies (e.g., Austin Energy) who collaborate with Defendant to offer "smart" thermostat products and services to customers in this District, including products and services that are accused of infringing the Asserted Patents.

THE TECHNOLOGY AND PRODUCTS AT ISSUE

10. The products accused of infringing one or more of the Asserted Patents are smart thermostat systems, smart HVAC systems, smart HVAC control systems, and all components (including accessories) thereof offered for sale by Defendant.

11. The Accused Products include thermostat systems that connect to and control an HVAC system, they include smart HVAC systems, and they include components of such systems such as, for example, hubs, panels, and remote sensors. Defendant's smart thermostat devices communicate over a network with other devices and systems offered by Defendant. Defendant's smart thermostat devices connect to the network managed by Defendant via the Internet. For example, the smart thermostats connect to Defendant's networked servers and data centers, online interfaces, and related accessories.

12. When connected as designed, the Accused Products form a smart thermostat system, smart HVAC system, and/or smart HVAC control system. Defendant's smart thermostat systems are "smart" because they are designed to connect to Defendant's servers and data centers (including, e.g., cloud-based servers and backend support), related online interfaces (including, e.g., mobile apps and web portals), and related accessories (e.g., remote temperature sensors), upon importation in the United States, and these connections provide additional "smart" features beyond the capabilities of a traditional thermostat. Further, Defendant's smart thermostat systems are "smart" because they support and are marketed as providing features to end users that analyze

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