

Implications of the Federal Circuit's Decision in *EcoFactor, Inc. v. Google LLC*

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June 10, 2025

The Federal Circuit's recent *en banc* decision in *EcoFactor, Inc. v. Google LLC* has already been touted as a landmark decision on expert damages testimony in patent cases. In *EcoFactor*, the Federal Circuit weighed in on the gatekeeping function of trial courts and found that the district court abused its discretion in failing to exclude the unreliable testimony of EcoFactor's damages expert.

EcoFactor, a company specializing in smart thermostat technology, filed a lawsuit against Google in January 2020. EcoFactor claimed that Google's Nest thermostats infringed U.S. Patent No. 8,738,327 (the '327 patent), which relates to the operation of smart thermostats within computer-networked heating and cooling systems. After months of discovery and motion practice, Google moved to exclude testimony from EcoFactor's damages expert, arguing that his proposed reasonable royalty for the patented technology was unsupported by reliable methodology or sufficient factual basis. The district court denied this motion, and the case proceeded to trial.

At trial, EcoFactor's damages expert testified that Google should pay damages based on a royalty amount per allegedly infringing unit. The jury ultimately awarded lump-sum damages of more than \$20 million. Google filed a renewed motion for judgment as a matter of law of noninfringement and a motion for a new trial on damages, arguing that EcoFactor's expert's opinion should have been excluded as unreliable. Again, the district court denied these motions.

Google then appealed the district court's rulings to the Federal Circuit. On the denial of Google's motion for a new trial on damages, a panel of the court affirmed. Google petitioned for rehearing *en banc*, arguing that the majority erred because the expert's testimony was unreliable and inadmissible, and *en banc* review was granted.

The Federal Circuit's *en banc* decision focuses on whether the district court abused its discretion in admitting EcoFactor's expert testimony on damages. The expert, Mr. Kennedy, had based his opinion on three lump-sum settlement license agreements between EcoFactor and Daikin Industries, Schneider Electric, and Johnson Controls. Each of these licenses included a preliminary recital, which stated EcoFactor's belief that the lump-sum payments were based on a reasonable royalty calculation of \$X per unit. Mr. Kennedy then opined that Google should pay the same rate as that negotiated by EcoFactor in these license agreements.

The court found several issues with this approach and ultimately concluded that the existing licenses were insufficient – individually or in combination – to support Mr. Kennedy's opinion on a reasonable royalty. Notably, the court observed that Mr. Kennedy did not merely assume that the licenses reflected a particular royalty rate; rather, he put forth his own opinion that they did so. In addition, the court noted that the operative payment provisions of the Daikin and Schneider licenses explicitly stated that the lump-sum amounts were not based on sales and did not reflect or constitute a royalty. This directly contradicted Mr. Kennedy's conclusion that the lump sums were calculated based on the \$X-per-unit rate. The Johnson license contained a similar recital but did not involve the '327 patent directly, further weakening Mr. Kennedy's reliance on this license.

Mr. Kennedy also relied on the testimony of EcoFactor's CEO, Shayan Habib, who claimed that the lump-sum payments were calculated by multiplying the licensees' past and future projected sales by the \$X-per-unit rate.

The court found that Mr. Habib's testimony was unsupported by any record evidence. Mr. Habib admitted that neither he nor anyone at EcoFactor had access to the sales data for Daikin, Schneider, or Johnson, which would be necessary to verify the calculations. Because Mr. Habib's testimony amounted to an unsupported assertion, the court determined that it could not provide a sufficient factual basis for Mr. Kennedy's opinion.

The Federal Circuit emphasized the importance of conducting an appropriate analysis under Rule 702 and *Daubert* to ensure that expert testimony is based on reliable principles and methods and is supported by sufficient facts or data. The *en banc* Federal Circuit found that the district court failed to fulfill its gatekeeping responsibilities in admitting Mr. Kennedy's unreliable testimony, and this testimony was "undoubtedly prejudicial," as it was crucial to Mr. Kennedy's damages analysis. Consequently, the court reversed the district court's denial of Google's motion for a new trial on damages and remanded the case for a new trial on this specific issue.

The *EcoFactor* decision has several important implications. While expert opinions are often subject to challenge and motion practice in patent cases, this decision reinforces the district court's gatekeeping role and may lead to heightened scrutiny of expert testimony in future cases. This decision complements the amendments to Rule 702 that went into effect on December 1, 2023, which clarified that it is the proponent's burden to demonstrate that its proffered expert's opinion is based on sufficient facts or data, is the product of reliable principles and methods, and reflects a reliable application of the principles and methods to the facts of the case.

In addition, this decision highlights the importance of using thoughtful and precise language in patent license agreements. These licenses – whether negotiated in the ordinary course of business or in connection with litigation – may set the foundation for future royalty calculations in litigation, and any ambiguity on the applicable royalty rate could undermine a reasonable royalty analysis.

The Federal Circuit's ruling in *EcoFactor, Inc. v. Google LLC* serves as a critical reminder of the importance of reliable and well-supported expert testimony in patent litigation. It reinforces the need for clear and unambiguous contract language in patent licenses and highlights the gatekeeping role of judges in ensuring the admissibility of expert evidence. This case will likely influence how future courts handle expert testimony and contract interpretation in patent disputes, ultimately contributing to more rigorous and transparent judicial processes.

For more information about the *EcoFactor* decision, patent litigation, or patent licensing agreements, please contact [Edward D. Lanquist](#), [Nicole Berkowitz Riccio](#), or any member of Baker Donelson's [Intellectual Property Group](#).