

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

ECOFACITOR, INC.,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Case No. 6:22-cv-00068-ADA

JURY TRIAL DEMANDED

ECOFACITOR, INC.,

Plaintiff,

v.

RESIDEO TECHNOLOGIES, INC.,

Defendant.

Case No. 6:22-cv-00069-ADA

JURY TRIAL DEMANDED

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

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Defendants Amazon.com, Inc. (“Amazon”) and Resideo Technologies, Inc. (“Resideo”) (collectively “Defendants”) hereby submit their opening claim construction brief for U.S. Patent No. 10,584,890 (the “’890 patent”).

I. INTRODUCTION

The ’890 patent is directed to the concept of using building occupancy to adjust temperature with a conventional HVAC system. It describes, and claims, a “thermostat system” that communicates with mobile devices and other devices external to a building to obtain information such as geo-positioning data and weather conditions. It does not disclose the interconnected nature of a modern smart home, nor does it claim a system that comprises not only a thermostat, but also a user’s mobile device and servers that may be hundreds of miles away. Yet that appears to be EcoFactor’s reading of the term “thermostat system.” EcoFactor’s infringement contentions cite both the thermostat display and the display on a user’s mobile device as the thermostat system’s “display,” and processors in both the thermostat itself and in backend or cloud servers as the thermostat system’s “processors.” EcoFactor’s April 15, 2022 Preliminary Infringement Contentions (excerpted), Exs. A and B. Claim construction is necessary to resolve the parties’ dispute.

To provide clarity on what the ’890 patent actually claims, the Court should construe “a thermostat system” recited in the claim 1 preamble as “a thermostat.” This construction addresses the parties’ dispute over claim scope consistent with the intrinsic record. The ’890 patent discloses “thermostat system” synonymously with “thermostat” in both the claims and specification, including by using “a thermostat system” as the antecedent basis for “the thermostat.” EcoFactor proposes only “plain and ordinary meaning,” which neither resolves the antecedent basis problem nor provides a clear definition of claim scope as required at the claim construction stage. The

Court should also find claims 12, 13, and 16 indefinite, as “the automatic adjustment of the temperature setpoint” lacks antecedent basis and is fatally ambiguous.

II. SUMMARY OF THE '890 PATENT

The '890 patent is directed to “automatically adjusting the temperature setpoint on a thermostatic HVAC control.” '890 patent at Abs. “Heating and cooling systems for buildings . . . have been controlled for decades by thermostats.” *Id.* at 1:28–44. The '890 patent explains that “[a]lthough progress in residential HVAC control has been slow,” advances in mobile devices “create the possibility that a consumer can, with an appropriate mobile device and a network-enabled HVAC system, control his or her HVAC system even when away from home.” *Id.* at 3:21–36. The '890 patent also explains that “[m]any new mobile devices now incorporate another significant new technology—the ability to geolocate the device.” *Id.* at 3:37–50. The purported invention “pertains to the use of geographic movement of network-connected mobile devices to occupancy [sic] to inform an energy management system, to provide enhanced efficiency, and to verify demand response.” *Id.* at 1:18–24. The '890 patent purports to disclose processing of geopositioning data to change settings of a thermostat. *Id.* at 10:1–29, 11:47–19, Fig. 7. The '890 patent has one independent claim, which claims a “thermostat system” comprising a housing, electrical contacts; a display; a wireless radio; a temperature sensor; “one or more processors” configured with electronic circuitry to receive and determine various signals, data, and parameters; additional “electronic circuitry” configured to allow adjustment, analysis of parameters, and communication of certain metrics; and a compressor delay circuit. *Id.* at claim 1.

The specification of the '890 patent recites a “thermostat system” only once: “FIG. 35 shows the steps used in the core ramped setpoint algorithm in the context of a remotely managed thermostat system.” *Id.* at 29:53–67. The '890 patent, however, never explicitly defines what a “thermostat system” is and the first and only time the '890 patent describes what could be in a

“thermostat system” is in the entirety of claim 1, which recites “a thermostat system comprising:
...”

Instead, Figure 4 is the closest the patent comes to defining “thermostat system.” It contains nearly all of the claimed “thermostat system” components from claim 1. It consists of a block diagram of a thermostat and a corresponding description:

FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. Thermostat 108 includes temperature sensing means 252, which may be a thermistor, thermal diode or other means commonly used in the design of electronic thermostats. It includes a microprocessor 254, memory 256, a display 258, a power source 260, a relay 262, which turns the HVAC system on and off in response to a signal from the microprocessor, and contacts by which the relay is connected to the wires that lead to the HVAC system.

To allow the thermostat to communicate bi-directionally with the computer network, the thermostat also includes means 264 to connect the thermostat to a local computer or to a wireless network. Such means could be in the form of Ethernet, wireless protocols such as IEEE 802.11, IEEE 802.15.4, Bluetooth, cellular systems such as CDMA, GSM and GPRS, or other wireless protocols. The thermostat 250 may also include controls 266 allowing users to change settings directly at the thermostat, but such controls are not necessary to allow the thermostat to function.

Id. at 8:52–9:4. The only two elements of claim 1 **not** listed in these two paragraphs are either not explicitly disclosed at all (1[a]: “a housing”) or are disclosed as part of a thermostat elsewhere in the specification (1[j]: “a compressor delay circuit,” *see id.* at 14:38–52).

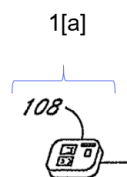


Figure 1. Excerpt from Figure 2 of the '890 patent, annotated to show element 1[a].

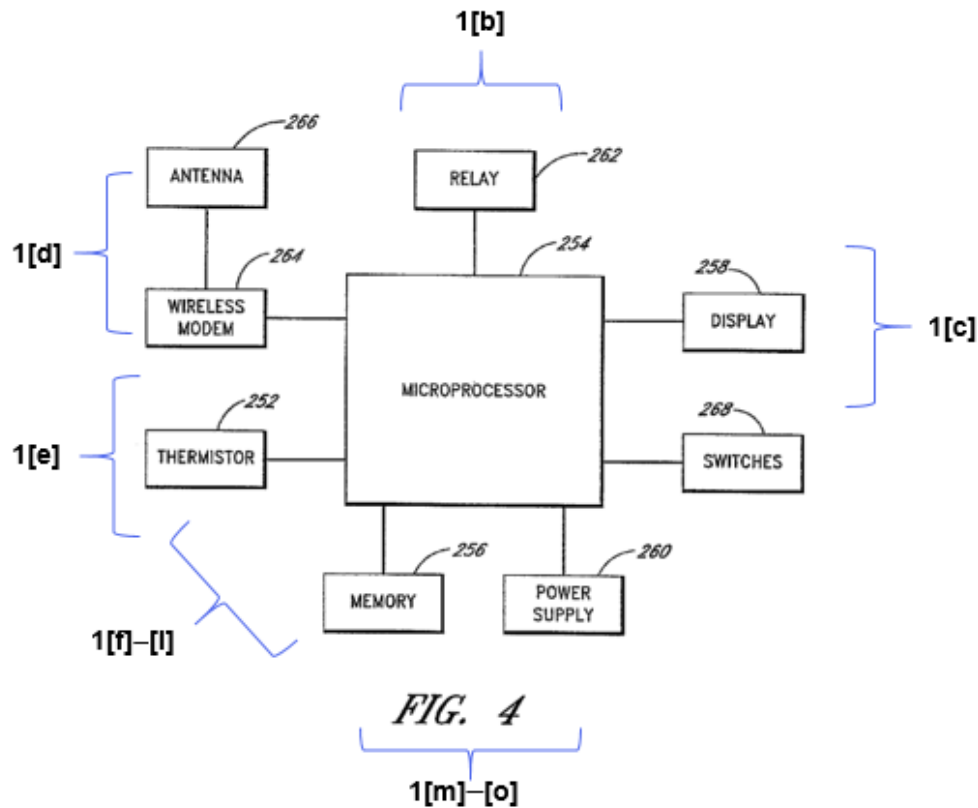


Figure 2. Figure 4 of the '890 patent, annotated to show elements 1[b]–1[o].

The table below summarizes the composition of the claimed “thermostat system” of claim 1, and where the specification discloses that component as part of a thermostat:

Claim Element	Comprising:	Specification Support for a Thermostat with These Components
1[a]	A housing	None. Implied in Fig. 2 (disclosing a thermostat 108).
1[b]	Electrical contacts	“FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. . . . It includes a microprocessor 254, memory 256, a display 258, a power source 260, a relay 262 , which turns the HVAC system on and off in response to a signal from the microprocessor, and contacts by which the relay is connected to the wires that lead to the HVAC system. ” <i>Id.</i> at 8:52–9:4 (emphases added).
1[c]	A display	“FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. . . . It includes a microprocessor 254, memory 256, a display 258 , a power source 260, a relay 262, which turns the HVAC system on and off in response to a signal from the microprocessor, and contacts by which

		the relay is connected to the wires that lead to the HVAC system.” <i>Id.</i> (emphases added).
1[d]	A wireless radio	“FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. . . . To allow the thermostat to communicate bi-directionally with the computer network, the thermostat also includes means 264 to connect the thermostat to a local computer or to a wireless network. ” <i>Id.</i> (emphases added).
1[e]	A temperature sensor	“FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. Thermostat 108 includes temperature sensing means 252 , which may be a thermistor, thermal diode or other means commonly used in the design of electronic thermostats.” <i>Id.</i> (emphases added).
1[f]–[l]	One or more processors	“FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. . . . It includes a microprocessor 254 , memory 256, a display 258, a power source 260, a relay 262, which turns the HVAC system on and off in response to a signal from the microprocessor, and contacts by which the relay is connected to the wires that lead to the HVAC system.” <i>Id.</i> (emphases added).
1[m]–[o]	electronic circuitry	“FIG. 4 shows a high-level block diagram of thermostat 108 used as part of an embodiment of the subject invention. . . . It includes a microprocessor 254 , memory 256 , a display 258, a power source 260, a relay 262, which turns the HVAC system on and off in response to a signal from the microprocessor, and contacts by which the relay is connected to the wires that lead to the HVAC system.” <i>Id.</i> (emphases added).
1[p]	A compressor delay circuit	“The server may optionally limit the process by assigning a minimum programming interval (e.g., at least ten minutes between setpoint changes) to avoid frequent switching of the HVAC system, which can reduce accuracy because of the thermostat's compressor delay circuit , which may prevent quick corrections.” <i>Id.</i> at 14:38–52 (emphasis added).

Table 1.

III. ARGUMENT

A. “A thermostat system”/“the thermostat”

Defendants Proposed Construction	EcoFactor Proposed Construction
Preamble limiting. “A thermostat.”	No construction necessary; plain and ordinary meaning
“the thermostat” of the preamble or, in the alternative, indefinite.	No construction necessary; plain and ordinary meaning

1. The Preamble Needs Construction and Should Not be Given Its “Plain and Ordinary” Meaning.

EcoFactor and Defendants agree that the preamble, “[a] thermostat system,” is limiting. The parties dispute the construction of a “thermostat system,” however. Defendants contend, consistent with the intrinsic record, that a “thermostat system” means a “thermostat.” EcoFactor contends: “no construction necessary; plain and ordinary meaning.” “When the parties raise an actual dispute regarding the proper scope of these claims, the court, not the jury, must resolve that dispute.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). “A determination that a claim term ‘needs no construction’ or has the ‘plain and ordinary meaning’ may be inadequate . . . when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.” *Id.* at 1361.

EcoFactor’s Preliminary Infringement Contentions further demonstrate the parties’ dispute. Throughout its contentions, EcoFactor jumps back and forth among different devices connected to the thermostat to meet claim limitations, confirming that EcoFactor interprets “thermostat system” to be, at a minimum, the thermostat, a user’s mobile phone, and Amazon servers located miles away from the thermostat. For example, element 1[c] recites “a display configured to present information to a user.” In its infringement contentions, EcoFactor cites to both a “digital temperature display” on Amazon’s smart thermostat, and a display on a mobile device. Ex. A at 12–15. Likewise, for element 1[f], which claims “one or more processors,” EcoFactor cites processors in the thermostat as well as “Amazon backend or cloud servers” and “Resideo backend or cloud servers.” Ex. A at 23–29, Ex. B at 42. But the ’890 patent does not disclose a “thermostat system” that is an arbitrary box drawing exercise comprising any device that communicates with a thermostat. It discloses a “thermostat system” that is a thermostat that communicates with devices external to that system, such as a mobile phone or other devices

connected via a network. Construing the term to have its “plain and ordinary meaning” will not resolve the parties’ dispute. *O2 Micro*, 521 F.3d at 1361.

2. The Preamble “A Thermostat System” Means “A Thermostat.”

The only meaning of “[a] thermostat system” that is supported by the intrinsic evidence is “a thermostat.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (emphasizing primacy and “importance of intrinsic evidence in claim construction”).

The specification supports the construction that a “thermostat system” is a thermostat. *See Phillips*, 415 F.3d at 1315–17. “[W]hen a patentee uses a claim term throughout the entire patent specification, in a manner consistent with only a single meaning, he has defined that term ‘by implication.’” *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1271 (Fed. Cir. 2001). The specification recites the term “thermostat system” only in the context of generating “ramped setpoints.” ’890 patent at 29:53–67; *see also supra* at 2–3. The ’890 patent explains that ramping of setpoints involves “implementing small, repeated changes in setpoint,” which is advantageous because it uses less energy compared to traditional methods. *Id.* at 28:10–33. The purported “invention can automatically generate optimized ramped setpoints that could save energy without compromising the comfort of the occupants.” *Id.* at 28:34–41. This disclosed “ramped setpoint” generation is introduced through Figures 33 and 34, which show the “programming of a thermostat.” *Id.* at 6:45–48; 28:42–67. Figure 34 in particular “represents implementation of a three-phase ramped setpoint” in a thermostat. *Id.* at 28:56–67. Figure 35 shows the “steps used in the core ramped setpoint algorithm in the context of a remotely managed thermostat system.” *Id.* at 29:53–67 (emphasis added). This is the only time the term “thermostat system” is used in the specification. Thus, the sole reference in the patent to a “thermostat system” with respect to Figure 35 refers to the thermostat disclosed in Figures 33 and 34. The term “thermostat system” should be construed accordingly. *See Homeland Housewares, LLC v.*

Whirlpool Corp., 865 F.3d 1372, 1377 (Fed. Cir. 2017) (limiting term “low speeds” to specification by implication, noting that “the term ‘low speeds’ appears only once in the specification” and use of “low” elsewhere in the specification supports same use.)

Likewise, the words of the claims themselves support the construction that the claimed “thermostat system” is a thermostat. *See Phillips*, 415 F.3d at 1314–15. The “thermostat system” recited in the preamble is the only source of antecedent basis for four instances of the term “the thermostat.” *See* ’890 Patent Cls. 1, 5, 8. Nowhere else does the ’890 patent claim “a thermostat.” But the term “the thermostat” can properly rely on the term “a thermostat system” for antecedent basis only if both terms refer to the same thing—a/the thermostat. *See Sensor Elec. Tech., Inc. v. Bolb, Inc.*, No. 18-CV-05194-LHK, 2019 WL 4645338, at *31 (N.D. Cal. Sept. 24, 2019) (“For a claim term to have antecedent basis support, an indefinite article (for instance, ‘a’ or ‘an’) must precede a claim term the first time the claim term is used in the claims.”).

Further, the surrounding claim language in view of the specification makes clear that the “thermostat system” of the preamble is the thermostat itself, and does not sweep in separate devices with which the thermostat may communicate. As shown in Figures 1 and 2 and Table 1 above, all of the claimed components of the “thermostat system” can be found in: (1) Fig. 4, which shows a block diagram of a thermostat, ’890 Patent at Fig. 4, 8:52–9:4, (2) Fig. 2, which, by virtue of showing an image of a thermostat, implies that the thermostat has the claimed housing, *see id.* at Fig. 2, and (3) a sentence in the specification that discloses the claimed compressor delay circuit as part of a thermostat, *id.* at 14:38–52 (disclosing a “thermostat’s compressor delay circuit”). Other devices and components are referenced in the claims as devices or components with which the “thermostat system” would communicate, not part of the “thermostat system” itself. For example, Claim 1 recites that the “thermostat system” has “electrical contacts” to connect to a

building's HVAC system with wires, not that the building's HVAC system is also part of the "thermostat system." The claim recites a radio whose purpose is to communicate with a location-aware mobile device; it does not claim the mobile device itself as part of the "thermostat system." It recites that the "thermostat system" must collect a second data parameter from a source external to the building, not that the source external to the building is also part of the "thermostat system." All of the claim language supports that the "thermostat system" comprises a thermostat that connects to and communicates with other devices, not that the "thermostat system" consists of both the thermostat and everything with which it may communicate.

Because the intrinsic evidence shows that a "thermostat system" means a thermostat, the Court should construe the term "[a] thermostat system" to mean "a thermostat."

3. Construing "Thermostat System" to Mean a "Thermostat" Avoids Indefiniteness and Written Description Concerns.

Under any other construction, including plain and ordinary meaning, the preamble's recitation of a "thermostat system" would fail to provide the necessary antecedent basis for the term "the thermostat" recited twice in claim 1 and again in claims 5 and 8. The relevant portion of claim 1 is replicated below, with key terms bolded.

1. A **thermostat** system comprising:
 - a housing;
 - electrical contacts configured to connect **the thermostat** with wires that allow for at least two electrical connections from a building's HVAC system to the contacts;
 - ...
 - a second data parameter from a network connected to **the thermostat**, wherein the second data parameter comprises an outside weather condition collected from a source external to the building;
 - ...

Claim 5 is replicated below, with the key term bolded.

5. The thermostat system of claim 1, wherein the one or more processors is further configured to receive a third data parameter from a first sensor, wherein the third data parameter from the first sensor includes a measurement of at least one characteristic of a building within which **the thermostat** is located.

Claim 8 is replicated below, with the key term bolded.

8. The thermostat system of claim 7, wherein the second data parameter from the network connected to **the thermostat** further comprises a measurement of the outdoor humidity.

As other courts have recognized, a claim term must be preceded by an indefinite article “the first time the claim term is used in the claims” for that term to have antecedent basis support. *Sensor Elec. Tech.*, 2019 WL 4645338, at *31. Here, the only possible antecedent basis for the term “the thermostat” comes from the word “thermostat” recited in the preamble as there are no other preceding terms it could possibly rely upon.

“[A] claim could be indefinite if a term does not have proper antecedent basis where such basis is not otherwise present by implication or the meaning is not reasonably ascertainable.” *Halliburton Energy Servs. Inc. v. M-I LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008). At the same time, “claims should be so construed, if possible, as to sustain their validity.” *MBO Lab’ys, Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1332 (Fed. Cir. 2007). Accordingly, this court should construe “thermostat system” to mean “thermostat,” avoiding a construction that leaves “the thermostat” with no antecedent basis.

Relatedly, not construing the term “thermostat system” and allowing for EcoFactor’s broader reading would both render claim 1, the sole independent claim of the ’890 patent, indefinite and leave claim 1 without written description support. If “thermostat system” does not mean “thermostat,” then there is no defined boundary in the specification for the claimed system. As such, the term would “fail to inform, with reasonable certainty, those skilled in the art

about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). Similarly, if “thermostat system” means something broader than “thermostat,” the claim would lack written description support, as the only “thermostat system” described in the specification is one that consists of a thermostat that communicates with other devices, not a broader system that consists of a thermostat and other devices such as mobile phones and remote servers. *See LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1344–45 (Fed. Cir. 2005) (“Whether the flaw in the specification is regarded as a failure to demonstrate that the patentee possessed the full scope of the invention . . . or a failure to enable the full breadth of that claim, the specification provides inadequate support for the claim under section 112, paragraph one.”) As discussed above, the specification refers to “thermostat system” only in the context of generating ramped setpoints, which are themselves discussed in the context of the “programming of a thermostat.” *See supra* Section III.A.2. The specification does not disclose a single embodiment of the “thermostat system” that comprises elements beyond a thermostat itself. There is therefore no disclosure of a “thermostat system” comprising anything broader than a thermostat to indicate that the patentee possessed the full scope of such an invention. *LizardTech, Inc.*, 424 F.3d at 1345.

B. “The automatic adjustment of the temperature setpoint”

Defendants Proposed Construction	EcoFactor Proposed Construction
No antecedent basis; indefinite	No construction necessary; plain and ordinary meaning

“[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus*, 572 U.S. at 901. As explained above, a claim term must be preceded by an indefinite article “the first time the claim term is used in the

claims” for that term to have antecedent basis support, and may be indefinite if that term lacks antecedent basis. *Sensor Elec. Tech.*, 2019 WL 4645338, at *31. The term “the automatic adjustment of the temperature setpoint” recited in claims 12, 13, and 16 lacks antecedent basis, and the broader context of the claim does not make clear the meaning of the term. The term is therefore indefinite.

Claim 1 requires “determin[ing]” a first and second temperature setpoint data parameter, each of which includes both a temperature value and a time value. Claim 1 then requires “automatically adjusting *a temperature value* based on geo-positioning data.” Nowhere does claim 1 disclose adjusting the *setpoint*. Yet claims 12, 13, and 16 each recite “the automatic adjustment of the temperature setpoint.” There is no antecedent basis for this term, and it is impossible to determine the appropriate scope of the relevant claims. For example, it is impossible to determine whether (1) there is a typo in claim 1 such that it was intended to recite “the automatic adjustment of a temperature *setpoint*,” (2) there is a typo in claims 12, 13, and 16 such that they were intended to recite “the automatic adjustment of the temperature *value*,” or (3) whether the dependent claims are somehow intended to require automatically adjusting the temperature *setpoint*, despite no antecedent basis for the term or an adequate explanation of two different automatic adjustments.

The specification does not provide the necessary clarity. At best, it mentions automatic adjustment of “the temperature setpoints” in passing twice using the same language: “[i]n a different embodiment, the temperature setpoints are varied automatically.” ’890 patent at 4:41–47, 5:11–17. The specification also discusses automatically adjusting “ramped setpoints.” *Id.* at 28:34–41, 29:19–37. But the term “ramped setpoints” appears nowhere in the claims, and as noted above, the first instance of “the automatic adjustment of the temperature setpoint” is in the

dependent claims with no antecedent basis support. It therefore remains impossible to determine whether “the automatic adjustment of the temperature setpoint” in the claims is intended to refer to this concept of “ramping setpoints” despite no antecedent basis in the claims, or the automatic adjustment of temperature values that actually is recited in the claims.

The Federal Circuit’s opinion in *Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, is instructive. 813 F. App’x 522 (Fed. Cir. 2020). There, the claim reciting the term “said different IP Address” was indefinite. As an initial matter, the *Bushnell* court found that the term had no antecedent basis. *Id.* at 526. So too here. The *Bushnell* court then turned to the claim language. The *Bushnell* court, noting that the claim language uses three different types of “IP Address,” concluded that a POSA “is left to wonder which of the different IP addresses is ‘said’ different one.” *Id.* Here, the confusion and resulting indefiniteness is even more problematic as the term “the automatic adjustment of the temperature setpoint” is never discussed in the independent claims at all.

The *Bushnell* court then turned to the specification. The *Bushnell* court found that the specification repeatedly used the term “different IP Address” without explanation or clear antecedent basis. *Bushnell*, 813 F. App’x at 526. The *Bushnell* court ultimately concluded that the term “different IP Address” is indefinite because it lacks antecedent basis and a “POSA, faced with the claims and the specification, could not, with reasonable certainty, discern the meaning of the claim term.” *Id.* at 526–27 (citing *Nautilus*, 572 U.S. at 901). Here again, the confusion in the ’890 patent is more significant as there are multiple different options, including (1) automatic adjustment of temperature *values*, based on the antecedent basis support from claim 1, or (2) automatic adjustment of temperature *setpoints*, which is the express language but lacks any

antecedent basis support. It is impossible to determine which of those options is correct. Accordingly, the term “the automatic adjustment of temperature setpoints” is indefinite.

IV. CONCLUSION

Defendants respectfully request that the Court construe “a thermostat system” in the Claim 1 preamble as “a thermostat” and find claims 12, 13, and 16 to be indefinite.

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By: /s/ Nathan B. Sabri

Stefani E. Shanberg (TX SBN 24009955)
Nathan B. Sabri (admitted *pro hac vice*)
Jennifer J. Schmidt (admitted *pro hac vice*)
Robin L. Brewer (admitted *pro hac vice*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel: (415) 268-7000
sshanberg@mofo.com
nsabri@mofo.com
jschmidt@mofo.com
rbrewer@mofo.com

Brian Christopher Nash (TX SBN 24051103)
MORRISON & FOERSTER LLP
701 Brazos Street, Suite 1100
Austin, TX 78701
Tel.: (737) 309-0700
bnash@mofo.com

*Attorneys for Defendant
Amazon.com, Inc.*

By: /s/ S. Benjamin Pleune

S. Benjamin Pleune
Stephen R. Lareau
Matthew M. Turk
ALSTON & BIRD LLP
One South at The Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280
Telephone: 704-444-1000
ben.pleune@alston.com
stephen.lareau@alston.com
matthew.turk@alston.com

Ted Stevenson
Brady Cox
ALSTON & BIRD LLP
Chase Tower
2200 Ross Avenue, Suite 2300
Dallas, Texas 75201
Telephone: 214-922-3400
ted.stevenson@alston.com
brady.cox@alston.com

Nicholas Choi
ALSTON & BIRD LLP
90 Park Avenue, 15th Floor
New York, NY 10016
Telephone: 212-210-9448
nick.choi@alston.com

*Attorneys for Defendant
Resideo Technologies Inc.*

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on August 1, 2022.

/s/ S. Benjamin Pleune

S. Benjamin Pleune