

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ROSEN TECHNOLOGIES LLC,

Plaintiff,

v.

ECOBEE TECHNOLOGIES ULC d/b/a
ECOBEE.

Defendant.

Civil Action No. 2:23-cv-0033

Plaintiff's P.R. 3-1 and 3-2 Disclosures

PLAINTIFF'S PATENT RULE 3-1 AND 3-2 DISCLOSURES

Plaintiff Rosen Technologies LLC ("Plaintiff") provides this Disclosure of Asserted Claims and Preliminary Infringement Contentions to Defendant Ecobee Technologies ULC ("Defendant") pursuant to Patent Rules 3-1 and 3-2, and the Court's Order (Dkt. No. 11).

Local Patent Rule 3-1 – Disclosure of Asserted Claims and Infringement Contentions

3-1(a) - Identification of Each Infringed Claim

Plaintiff accuses Defendant of infringing claims 1, 3, 6, 7, 8, 9, 10, and 12 of U.S. Patent No. RE40,371 (the "437 Patent").

3-1(b) - Identification of Accused Instrumentalities

Plaintiff accuses Defendant's Ecobee Smart Thermostats, *i.e.*, the EB-STATE5-01, EB-STATE6-01, and EB-STATE6L-01 (the "Accused Instrumentalities") of infringing claims 1, 3, 6, 7, 8, 9, 10, and 12 of the 437 Patent.

3-1(c) - Charts Identifying Infringement of Accused Instrumentalities

Plaintiff provides the attached Exhibits A, B, and C showing in detail where each element of each asserted claim is found within the Accused Instrumentalities.

3-1(d) - Literal Infringement and Infringement Under the Doctrine Of Equivalents

Based on the information presently available, it appears that each element of each asserted claim of the '437 Patent is literally infringed by the Accused Instrumentalities. Based on Plaintiff's present understanding of the claim language and scope, each claim step is performed by the Accused Instrumentalities.

Additionally, and/or alternatively, Plaintiff asserts that each element of each asserted claim of the '437 Patent is infringed by the Accused Instrumentalities under the doctrine of equivalents. For example, Plaintiff reserves the right to assert the doctrine of equivalents. In addition, Plaintiff asserts that, for any claim limitation Defendant argues is not literally met by the Accused Instrumentalities, such claim limitation is at least met under the doctrine of equivalents because a person of ordinary skill in the art would find that the differences between that claim language and the operation of the Accused Instrumentalities, as explained by Defendant, to be insubstantial.

3-1(e) - Patent Priority Dates

The '437 Patent, which is a reissue of U.S. Patent No. 7,058,477, claims priority to U.S. Patent App. No. 10/995,574, which was filed on November 23, 2004. As such, the earliest claimed priority date for each of the asserted claims of the '437 Patent is at least as early as November 23, 2004.

3-1(f) – Reservations of rights

Plaintiff does not anticipate relying on an assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention.

Local Patent Rule 3-2 Production

3-2(a)

Plaintiff states that it is not aware of any documents that may be seen as relating to discussions with, disclosures to, or other manner of providing to a third party, or sale of or offer to sell, the claimed inventions of the '437 Patent prior to the date of application.

3-2(b)

Plaintiff states that it is not aware of any documents that may be seen as relating to the conception, reduction to practice, design, and development of each claimed invention.

3-2(c)

Plaintiff hereby produces the files histories for the Asserted Patents herewith as ROSEN-ECO – 000001 through 000161.

DATED: May 16, 2023

Respectfully submitted,

By: /s/ Stevenson Moore

Hao Ni
Texas Bar No. 24047205
hni@nilawfirm.com
Neal Massand
Texas Bar No. 24039038
nmassand@nilawfirm.com
Timothy T. Wang
Texas Bar No. 24067927
twang@nilawfirm.com
Stevenson Moore V
Texas Bar No. 24076572
smoore@nilawfirm.com

NI, WANG & MASSAND, PLLC
8140 Walnut Hill Ln., Ste. 500
Dallas, TX 75231
Tel: (972) 331-4600
Fax: (972) 314-0900

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2023, I served copies of the foregoing on all counsel of record for Defendant via electronic mail.

/s/ Stevenson Moore
Stevenson Moore