

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

OLLNOVA TECHNOLOGIES LIMITED,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 2:22-CV-00072-JRG
	§	
ECOBEE TECHNOLOGIES ULC d/b/a	§	
ECOBEE,	§	
	§	
<i>Defendant.</i>	§	

ORDER ON PRETRIAL MOTIONS AND MOTIONS *IN LIMINE*

The Court held a Pretrial Conference in the above-captioned matter on Thursday, August 10, 2023 regarding pending pretrial motions and motions *in limine* (“MILs”) filed by Plaintiff Ollnova Technologies Limited (“Ollnova”) and Defendant Ecobee Technologies ULC d/b/a ecobee (“ecobee”) (collectively with Ollnova, the “Parties”). (Dkt. Nos. 122, 123, 124, 125, 127, 128, 129, 130, 191, 192, and 193.) This Order memorializes the Court’s rulings on the aforementioned pretrial motions and MILs as announced from the bench and into the record, including additional instructions that were given to the Parties. While this Order summarizes the Court’s rulings as announced into the record during the pretrial hearing, this Order in no way limits or constrains such rulings from the bench. Accordingly, it is hereby **ORDERED** as follows:

PRETRIAL MOTIONS

1. **ecobee's Motion for Partial Summary Judgment as to Pre-Notice Damages (Dkt. No. 122) and Ollnova's Motion for Partial Summary Judgment on Defendant's Marking Defense (Dkt. No. 127)**

The motions were **DENIED**. (Dkt. No. 212 at 42:21.) The Court found that Ollnova had not shown ecobee failed to meet its burden under *Arctic Cat*, and ecobee had not foreclosed all factual disputes as to the Siemens APOGEE system practicing the patents. (*Id.* at 42:9–20.)

2. **ecobee's Motion to Exclude Portions of Expert Testimony of Dr. Vijay Madiseti Pursuant to *Daubert* (Dkt. No. 125)**

The motion was **DENIED**. (Dkt. No. 212 at 51:2.) ecobee's complaints as to Dr. Madiseti's opinions are adequately addressed through robust cross examination. (*Id.* at 50:18–51:1.)

3. **ecobee's Motion for Summary Judgment of Invalidity of U.S. Patent No. 7,860,495 Under 35 U.S.C. §101 (Dkt. No. 123)**

The motion was **DENIED**. (Dkt. No. 212 at 69:9.) The Court found that there are outstanding issues of material fact that preclude a grant of summary judgment. (*Id.* at 69:5–13.) The Court also found that the Court's prior ruling that claim 1 of the '495 Patent is directed to an abstract idea should not be disturbed. (*Id.* at 69:14–22.)

4. **ecobee's Motion to Exclude Portions of Expert Testimony of Jim W. Bergman Pursuant to *Daubert* (Dkt. No. 124)**

The motion was **DENIED**. (Dkt. No. 212 at 91:9–11.) The complaints with Mr. Bergman's opinions are adequately addressed through robust cross examination. (*Id.* at 91:9–16.)

5. **Ollnova's Motion to Strike Evidence and Exclude Opinions of Shoukri Souri (Dkt. No. 128)**

The motion was **GRANTED** and the Court **STRUCK** paragraphs 107–111 of Dr. Souri's rebuttal expert report. (Dkt. No. 212 at 117:5–118:4.) Both ecobee and Ollnova argued, in

essence, a claim construction dispute regarding the proper scope of claim 1 of the '282 Patent. (*Id.* at 113:22–114:1, 116:13–18.) The Court, having confirmed the existence of an actual dispute regarding the proper scope of the recited term “[a]n automation component” in the preamble of claim 1, construed the term. *See O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360–62 (Fed. Cir. 2008). The Court finds that, had this matter come before the Court during the claim construction process, the Court would have held (and now holds) that the general rule under *Baldwin* applies, such that the article “a” or “an” means “one or more.” *See Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008). Accordingly, the Court found paragraphs 107–111 of Dr. Sourì’s rebuttal expert report inconsistent with that construction. Further, ecobee’s Cross Motion to Strike Evidence and Exclude Opinions of Dr. Vijay Madiseti (Dkt. No. 150), contained within its opposition to Ollnova’s motion, was **DENIED**. (Dkt. No. 212 at 118:5–21.)

6. Ollnova’s Motion to Strike Evidence and Exclude Opinions of Shoukri Sourì and Todd Schoettelkotte (Dkt. No. 129)

The motion was **DENIED**. (Dkt. No. 212 at 129:13–15.) The Court found that Dr. Sourì’s opinions offered in rebuttal to Ollnova’s allegations of specific non-infringing alternatives did not constitute an improper late disclosure. (*Id.* at 128:17–129:12.)

7. Ollnova’s Motion for Partial Summary Judgment of No Invalidity of U.S. Patent No. 7,746,887 (Dkt. No. 130)

The motion was **DENIED**. (Dkt. No. 212 at 136:7.) The Court found there to be underlying issues of fact that preclude granting summary judgment. (*Id.* at 135:16–136:2.)

MOTIONS IN LIMINE

Further to the Court's Standing Order on Motions *In Limine* issued May 19, 2023, it is **ORDERED** that the Parties, their witnesses, and counsel shall not raise, discuss, or argue the following before the venire panel or the jury without prior leave of the Court:

I. PLAINTIFF'S MOTIONS IN LIMINE (Dkt. No. 193)

Plaintiff's MIL 1 **Confidential documents restrict by protective order in other litigation.**

The MIL was **GRANTED** as clarified in the record. (Dkt. No. 212 at 142:1–9.) The Court will be an active gatekeeper as to inquiries of Mr. Bergman about his participation, available access to information, or related role in the Carrier litigation. (*Id.* at 142:10–14.)

Plaintiff's MIL 2 **No evidence, testimony, or argument regarding comparison of ecobee non-accused products to the patents-in-suit or accused products.**

The MIL was **GRANTED AS AGREED**. (Dkt. No. 212 at 138:4–6.) The MIL, as agreed, was announced into the record and counsel for both parties confirmed this agreement. (*Id.* at 137:21–138:3.)

Plaintiff's MIL 3 **Other litigation.**

The MIL was **DENIED**. (Dkt. No. 212 at 148:6–8.) The Court noted that the MIL is subsumed by the Court's standing MIL no. 13. (*Id.* at 146:3–147–19.)

Plaintiff's MIL 4 **No evidence, testimony, or argument regarding a party's prior or current law firm's or the party's retention of the same expert in other litigation.**

The MIL was **GRANTED AS AGREED** and as clarified in the record. (Dkt. No. 212 at 149:10–12.) The MIL, as agreed, was announced into the record and counsel for both parties confirmed this agreement. (*Id.* at 149:1–9.)

II. DEFENDANT'S MOTIONS IN LIMINE (Dkt. No. 191)

Defendants' MIL 1 **Preclude evidence, testimony, argument, or other comments concerning IPR proceeding No. IPR2023-00082 involving U.S. Patent**

No. 7,860,495, including any opinion, finding, or decision by the PTAB in such proceeding.

The MIL was **DENIED**. (Dkt. No. 212 at 154:8–9.) The Court noted that the MIL is subsumed by the Court’s standing MIL no. 6. (*Id.* at 153:6–154:13.)

Defendants’ MIL 2 **To preclude evidence, testimony, argument, or other comments concerning the “Patent Rights Fee” set forth in the document titled “Escrow Agreement” produced by Ollnova bearing Bates numbers Ollnova-Eco-0001588–00001618.**

The MIL was **DENIED**. (Dkt. No. 212 at 159:11–12.)

Defendants’ MIL 3 **To preclude evidence, testimony, argument, or other comments concerning the actual or apparent subjective intent, motivations and/or state of mind of any third party, including, without limitation, such third party’s subjective intent, motivations and/or state of mind in connection with any contract.**

The MIL was **DENIED**. (Dkt. No. 212 at 163:2–3.) The Court noted that this MIL is subsumed by the Federal Rules of Evidence. (*Id.* at 162:12–22.)

III. JOINT MOTIONS *IN LIMINE* (Dkt. No. 192)

Agreed MIL 1 **No evidence, testimony, or argument directed to the law firms retained by the parties, including Russ, August & Kabat LLP’s (“RAK”) prior retention by Ollnova, RAK’s subsequent withdrawal from this action as counsel of record for Ollnova, the fact that BC Law Group, P.C.’s attorneys in this matter were previously employed by attorneys at RAK or any speculation about the circumstances surrounding these events, or ecobee’s current or prior retention of Venable LLP and/or its attorneys.**

Agreed MIL 2 **No evidence, testimony, argument, or suggestion that any ecobee accused product is covered by any Generac or ecobee patent. For clarity, this does not preclude ecobee from generally discussing the fact that it has been issued patents or the general subject matter covered by Generac’s or ecobee’s patents.**

Agreed MIL 3 **Neither the parties, their witnesses nor their counsel shall present evidence, testimony, attorney argument, or other comments concerning Generac Holdings Inc., including without limitation the acquisition of ecobee by Generac Holdings Inc., and the amount of money and/or other consideration involved in such acquisition. For clarity, the parties are permitted to ask jurors during voir dire**

questions about their knowledge and potential relationship to Generac Holdings Inc., but the parties shall not reference the amount of money and/or other consideration involved in the acquisition of ecobee by Generac Holdings Inc. during voir dire.

The Court **ACCEPTED** and **ADOPTED** the agreed-upon MILs set forth in the Parties' submission to the Court (Dkt. No. 192). (Dkt. No. 212 at 164:6–8.)

If the Parties desire to introduce any evidence or argument or otherwise raise or mention any of the foregoing subjects addressed by the MILs set forth herein and before the jury, they must first approach the bench and obtain leave from the Court. This also includes all MILs in the Court's Standing Order on Motions *In Limine*.

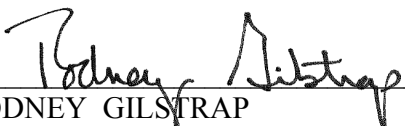
All remaining MILs not addressed herein or otherwise addressed by the Court on the record are **DENIED-AS-MOOT**.

RESOLUTION OF REMAINING PRETRIAL ISSUES

As for trial exhibits, the Parties represented that they had reached resolution on disputed exhibits whereby Ollnova withdrew its objections to ecobee's exhibits DTX-40, 41, 42, 67, 69, 75, 78, 79, 80, 86, 109, 137, and 201. (Dkt. No. 212 at 164:12–17.) The Court **PRE-ADMITTED** ecobee's exhibits without objection from Ollnova. (*Id.* at 165:7–10.) Ollnova represented that it is withdrawing exhibits PX-14, 26, 76, and 79. (*Id.* at 165:12.) The Parties agreed that PX-15 would be split into seven individual exhibits, subject to the Court's approval, which the Court **GRANTED**. (*Id.* at 168:20–23.) ecobee withdrew its objections to Ollnova's remaining exhibits, except for PX-35. (*Id.* at 168:14–19, 169:2–5.) Concerning PX-35, the parties agreed that Ollnova does not seek pre-admission of schedules 1 through 3 of the Bergman expert report as exhibits, and that schedules 8 through 12 can be presented to the jury as exhibits as summaries of voluminous information. (*Id.* at 169:18–25.) The Court **DENIED** Ollnova's

request to pre-admit schedules 4 through 7, finding the same appropriate for use as demonstratives but not as exhibits. (*Id.* at 174:19–22, 175:14–19.)

So ORDERED and SIGNED this 22nd day of August, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE