

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

FTC SENSORS, LLC, <i>Plaintiff,</i> v. ECOBEE INC., <i>Defendant.</i>	§ § § § § § § § § §	Civil Action No. 2:16-cv-581
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**PLAINTIFF FTC SENSORS, LLC’S
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff FTC Sensors, LLC files this Complaint for patent infringement against Defendant ecobee Inc., and alleges as follows:

PARTIES

1. Plaintiff FTC Sensors, LLC (“FTC”) is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 1400 Preston Road, Suite 475, Plano, Texas 75093-5186.

2. Upon information and belief, Defendant ecobee, Inc. (“Ecobee”) is a corporation organized and existing under the laws of Canada, with its principal place of business located at 250 University Avenue, Suite 400, Toronto, ON M5H 3E5. Ecobee has an office in the United States located at 7310 Avalon Dr., Northborough, Massachusetts 01532.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Ecobee is subject to the specific personal jurisdiction of this Court's because FTC's claims for patent infringement against Ecobee arise from Ecobee's acts of infringement in the State of Texas. These acts of infringement include selling and offering to sell infringing products in Texas and inducing infringement of the patents-in-suit by end users of the infringing products. In particular, Ecobee has placed infringing products into the stream of commerce through established distribution channels with full awareness that substantial quantities of the infringing products have been and would be shipped into Texas. Ecobee has sales representatives responsible for sales of Ecobee products, including the products accused of infringement in this lawsuit, throughout the United States, including a sales representative for the Southwest Region, which includes Texas. The infringing products have been and are sold through national retail outlets including Amazon, Apple Stores, Best Buy, Lowes and Home Depot, including retail outlets located in Texas. In addition, Ecobee has operated an interactive website – ecobee.com – facilitating the sale of infringing products in the Texas. Therefore, this Court has personal jurisdiction over the Ecobee under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Ecobee has engaged in acts of infringement in the State of Texas described above sufficient to subject it to personal jurisdiction in this District if the district were a separate State. In particular, Ecobee has offered to sell and has sold the products accused of infringement in this lawsuit through established distribution channels in this District, including in Plano, Tyler and Texarkana, Texas.

ASSERTED PATENTS

7. On July 8, 2008, the United States Patent and Trademark Office issued United States Patent No. 7,397,369 (“the ’369 Patent”) entitled “Sensor and transmission control circuit in adaptive interface package,” a true copy of which is attached as Exhibit 1.

8. On April 13, 2010, the United States Patent and Trademark Office issued United States Patent No. 7,696,870 (“the ’870 Patent”) entitled “Sensor and transmission control circuit in adaptive interface package,” a true copy of which is attached as Exhibit 2.

9. On April 16, 2013, the United States Patent and Trademark Office issued United States Patent No. 8,421,621 (“the ’621 Patent”) entitled “Sensor and transmission control circuit in adaptive interface package,” a true copy of which is attached as Exhibit 3.

10. FTC is the owner by assignment of the Asserted Patents and owns all right, title, and interest in the Asserted Patents, including the right to sue for and recover all past, present, and future damages for infringement of the Asserted Patents.

ACCUSED INSTRUMENTALITIES

11. Ecobee has made, imported, used, offering for sale, and/or sold certain “smart thermostat” devices and associated products, including the Ecobee3 Thermostat, which infringe one or more claims of the Asserted Patents. The Ecobee3 Thermostat along with any other products that comprise a sensor module coupled to a configurable programmable interface module that executes instructions in response to a threshold signal and generates alerts, that comprise a sensor module coupled to a configurable programmable interface module that executes instructions in response to a threshold signal and generates alerts, or that sense environmental conditions in two power modes and signal an alert are referred to herein as the Accused Instrumentalities.

**FIRST CLAIM FOR RELIEF
(Infringement of the '369 Patent)**

12. FTC incorporates paragraphs 1 through 11 as though fully set forth herein.

13. Ecobee has been and is now directly and/or indirectly infringing one or more claims of the '369 Patent by (1) making, using, offering for sale, and/or selling in the United States, and/or importing into the United States patented inventions, and (2) by actively inducing others to directly infringe the '369 Patent.

14. For example, but not as a limitation, Ecobee's direct infringement of Claims 1 and 2 of the '369 Patent is shown in the claim chart attached as Exhibit 4.

15. More particularly, without limitation, upon information and belief, Ecobee has been and is now directly infringing one or more claims of the '369 Patent by making, using (including use for testing purposes), offering for sale, and/or selling the Accused Instrumentalities in the United States, and/or importing into the United States, all in violation of 35 U.S.C. § 271(a). The Accused Instrumentalities include a system comprising a sensor module coupled to a configurable programmable interface module that executes instructions in response to a threshold signal and generates alerts as described and claimed in the '369 Patent.

16. In addition, Ecobee has been and is now indirectly infringing one or more claims of the Asserted Patents by inducing customers to use the Accused Instrumentalities in the United States to directly infringe one or more claims of the '369 Patent in violation of 35 U.S.C. § 271(b).

17. Ecobee has been aware of the '369 Patent no later than the service of this complaint upon Ecobee.

18. Ecobee has engaged in indirect infringement by its conduct of providing its Accused Instrumentalities to end users of those products for the purpose of enabling those end

users to use the Accused Instrumentalities to directly infringe the '369 Patent. Ecobee has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the '369 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

19. In particular, Ecobee's customers purchase the Accused Instrumentalities and, when the customers use the Accused Instrumentalities, the system comprising a sensor module for detecting two types of environmental threats using minimal power coupled to an interface module that increases power to the sensor module and is coupled to a communication module that signals when a threshold is crossed as described and claimed in the '369 Patent. Thus, Ecobee's customers directly infringe the claimed systems of the '369 Patent by using the Accused Instrumentalities. Because the use of the claimed systems is an essential part of the functionality of the Accused Instrumentalities, the Accused Instrumentalities do not have any substantial uses that do not infringe the '369 Patent.

20. Ecobee provides instructions to end users of its Accused Instrumentalities instructing the end users how to install and use the Accused Instrumentalities resulting in infringement of the '369 Patent. In particular, Ecobee provides an Installation Guide and Quick User Guide with the packaging containing the Accused Instrumentalities instructing end users how to install and use the Accused Instrumentalities. In addition, Ecobee has made available on the website the ecobee3 Quick Start Guide, the ecobee3 User Guide and a video entitled "using the ecobee3 mobile app." Ecobee, therefore, is aware that the Accused Instrumentalities infringe the '369 Patent and that it induces end users of those products to directly infringe the '369 Patent when end users use those products by engaging in the conduct described above.

21. Thus, Ecobee has been aware at least as of the filing of this complaint that the Accused Instrumentalities use the claimed systems and, therefore, that Ecobee's customers infringe the '369 Patent by using the Accused Instrumentalities. Ecobee has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the '369 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

22. As a direct and proximate consequence of the acts and practices of the Ecobee's infringing activities with regard to '369 Patent, FTC has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF
(Infringement of the '870 Patent)**

23. FTC incorporates paragraphs 1 through 11 as though fully set forth herein.

24. Ecobee has been and is now directly and/or indirectly infringing one or more claims of the '870 Patent by (1) making, using, offering for sale, and/or selling in the United States, and/or importing into the United States patented inventions, and (2) by actively inducing others to directly infringe the '870 Patent.

25. For example, but not as a limitation, Ecobee's direct infringement of Claims 1-3, 7, 10, and 17 of the '870 Patent is shown in the claim chart attached as Exhibit 5.

26. More particularly, without limitation, upon information and belief, Ecobee has been and is now directly infringing one or more claims of the '870 Patent by making, using (including use for testing purposes), offering for sale, and/or selling the Accused Instrumentalities in the United States, and/or importing into the United States, all in violation of

35 U.S.C. § 271(a). The Accused Instrumentalities include a system comprising a sensor module coupled to a configurable programmable interface module that executes instructions in response to a threshold signal and generates alerts as described and claimed in the '870 Patent.

27. In addition, Ecobee has been and is now indirectly infringing one or more claims of the Asserted Patents by inducing customers to use the Accused Instrumentalities in the United States to directly infringe one or more claims of the '870 Patent in violation of 35 U.S.C. § 271(b).

28. Ecobee has been aware of the '870 Patent no later than the service of this complaint upon Ecobee.

29. Ecobee has engaged in indirect infringement by its conduct of providing its Accused Instrumentalities to end users of those products for the purpose of enabling those end users to use the Accused Instrumentalities to directly infringe the '870 Patent. Ecobee has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the '870 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

30. In particular, Ecobee's customers purchase the Accused Instrumentalities and, when the customers use the Accused Instrumentalities, the system comprising a sensor module for detecting two types of environmental threats using minimal power coupled to an interface module that increases power to the sensor module and is coupled to a communication module that signals when a threshold is crossed as described and claimed in the '870 Patent. Thus, Ecobee's customers directly infringe the claimed systems of the '870 Patent by using the Accused Instrumentalities. Because the use of the claimed systems is an essential part of the

functionality of the Accused Instrumentalities, the Accused Instrumentalities do not have any substantial uses that do not infringe the '870 Patent.

31. Ecobee provides instructions to end users of its Accused Instrumentalities instructing the end users how to install and use the Accused Instrumentalities resulting in infringement of the '870 Patent. In particular, Ecobee provides an Installation Guide and Quick User Guide with the packaging containing the Accused Instrumentalities instructing end users how to install and use the Accused Instrumentalities. In addition, Ecobee has made available on the website the ecobee3 Quick Start Guide, the ecobee3 User Guide and a video entitled "using the ecobee3 mobile app." Ecobee, therefore, is aware that the Accused Instrumentalities infringe the '870 Patent and that it induces end users of those products to directly infringe the '870 Patent when end users use those products by engaging in the conduct described above.

32. Thus, Ecobee has been aware at least as of the filing of this complaint that the Accused Instrumentalities use the claimed systems and, therefore, that Ecobee's customers infringe the '870 Patent by using the Accused Instrumentalities. Ecobee has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the '870 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

33. As a direct and proximate consequence of the acts and practices of the Ecobee's infringing activities with regard to '870 Patent, FTC has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF
(Infringement of the '621 Patent)**

34. FTC incorporates paragraphs 1 through 11 as though fully set forth herein.

35. Ecobee has been and is now directly and/or indirectly infringing one or more claims of the '621 Patent by (1) making, using, offering for sale, and/or selling in the United States, and/or importing into the United States patented inventions, and (2) by actively inducing others to directly infringe the '621 Patent.

36. For example, but not as a limitation, Ecobee's direct infringement of Claims 1-12 of the '621 Patent is shown in the claim chart attached as Exhibit 6.

37. More particularly, without limitation, upon information and belief, Ecobee has been and is now directly infringing one or more claims of the '621 Patent by making, using (including use for testing purposes), offering for sale, and/or selling the Accused Instrumentalities in the United States, and/or importing into the United States, all in violation of 35 U.S.C. § 271(a). The Accused Instrumentalities include the systems and/or methods for sensing environmental conditions in two power modes and signaling an alert as described and claimed in the '621 Patent.

38. In addition, Ecobee has been and is now indirectly infringing one or more claims of the Asserted Patents by inducing customers to use the Accused Instrumentalities in the United States to directly infringe one or more claims of the '621 Patent in violation of 35 U.S.C. § 271(b).

39. Ecobee has been aware of the '621 Patent no later than the service of this complaint upon Ecobee.

40. Ecobee has engaged in indirect infringement by its conduct of providing its Accused Instrumentalities to end users of those products for the purpose of enabling those end

users to use the Accused Instrumentalities to directly infringe the '621 Patent. Ecobee has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the '621 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

41. In particular, Ecobee's customers purchase the Accused Instrumentalities and, when the customers use the Accused Instrumentalities, the system comprising a sensor module for detecting two types of environmental threats using minimal power coupled to an interface module that increases power to the sensor module and is coupled to a communication module that signals when a threshold is crossed as described and claimed in the '621 Patent. Thus, Ecobee's customers directly infringe the claimed systems of the '621 Patent by using the Accused Instrumentalities. Because the use of the claimed systems is an essential part of the functionality of the Accused Instrumentalities, the Accused Instrumentalities do not have any substantial uses that do not infringe the '621 Patent.

42. Ecobee provides instructions to end users of its Accused Instrumentalities instructing the end users how to install and use the Accused Instrumentalities resulting in infringement of the '621 Patent. In particular, Ecobee provides an Installation Guide and Quick User Guide with the packaging containing the Accused Instrumentalities instructing end users how to install and use the Accused Instrumentalities. In addition, Ecobee has made available on the website the ecobee3 Quick Start Guide, the ecobee3 User Guide and a video entitled "using the ecobee3 mobile app." Ecobee, therefore, is aware that the Accused Instrumentalities infringe the '621 Patent and that it induces end users of those products to directly infringe the '621 Patent when end users use those products by engaging in the conduct described above.

43. Thus, Ecobee has been aware at least as of the filing of this complaint that the Accused Instrumentalities use the claimed systems and, therefore, that Ecobee's customers infringe the '621 Patent by using the Accused Instrumentalities. Ecobee has intended, and continues to intend, to induce such patent infringement by end users of its Accused Instrumentalities, and has had knowledge that its inducing acts would cause infringement of the '621 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent.

44. As a direct and proximate consequence of the acts and practices of the Ecobee's infringing activities with regard to '621 Patent, FTC has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, FTC hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, FTC requests the following relief:

(a) A judgment in favor of FTC that Ecobee has directly infringed and/or has indirectly infringed by way of inducement of one or more claims of the Asserted Patents;

(b) A judgment and order requiring Ecobee to pay FTC damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages may include lost profits but in no event shall be less than a reasonable royalty for its usage made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs, including expenses and disbursements;

(c) A judgment awarding FTC its costs as provided under FED. R. CIV. P. 54(d)(1);

- (d) A judgment awarding FTC post-judgment royalties; and
- (e) Any and all such further necessary or proper relief as this Court may deem just and equitable.

Dated: June 1, 2016

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies 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 per Local Rule CV-5(a) on this 1st day of June, 2016. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Eric W. Buether

Eric W. Buether