Ecofactor, Inc. v. Google, LLC, No. 23-1101 (Fed. Cir. May 21, 2025) (en banc)

In a significant ruling on damages, the Federal Circuit overturned a $20 million jury award in favor of EcoFactor against Google. Although a jury had previously found Google liable for infringing EcoFactor's patents through its Nest thermostats, the *en banc* court determined that critical testimony from EcoFactor's expert lacked a reliable factual foundation under Federal Rule of Evidence 702 and the *Daubert* standard. EcoFactor's expert relied on past lump sum settlement licenses with third parties to assert an established per-unit royalty rate, but the court found those agreements, along with EcoFactor's CEO's testimony, insufficient to substantiate that such a rate had been accepted by the licensees.

The ruling underscores the heightened scrutiny expert testimony faces, especially when it comes to financial damages in patent cases. The court emphasized that EcoFactor's analysis rested on the assumption that past licensees had agreed to a specific per-unit royalty rate, when in fact the agreements contained language explicitly disavowing such an interpretation. Moreover, EcoFactor's expert lacked access to actual sales data to support his conclusions, relying instead on the assertions of EcoFactor's CEO, who himself admitted to lacking concrete figures. Because the expert's methodology depended on flawed or unsupported premises, the court concluded that the trial judge abused discretion by allowing the jury to hear his expert testimony. Consequently, the case was remanded for a new trial on damages.

Although the court reinstated other aspects of the prior panel ruling as to issues other than damages, it notably clarified the gatekeeping obligations of trial courts in assessing expert evidence. The majority's decision sparked partial dissents from Judges Reyna and Stark, who contended that the expert's testimony was sufficiently grounded and that any potential error was harmless given other corroborative evidence. Nevertheless, the holding signals a stricter threshold for admissibility of damages models, particularly those that extrapolate royalties from settlement agreements, reinforcing the principle that expert conclusions must rest on robust and verifiable factual underpinnings.