

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

ECOFACOR, INC,

Plaintiff,

v.

DAIKIN INDUSTRIES, LTD.,

Defendant.

Case No. 6:20-cv-00077

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff EcoFactor, Inc. (“Plaintiff” or “EcoFactor”) makes the following allegations against Defendant Daikin Industries, Ltd. (“Defendant”):

INTRODUCTION

1. This complaint arises from Defendant’s unlawful infringement of the following United States patents owned by EcoFactor: U.S. Patent No. 8,180,492 (“492 Patent”); U.S. Patent No. 8,412,488 (“488 Patent”); U.S. Patent No. 8,738,327 (“327 Patent”); and U.S. Patent No. 10,534,382 (“382 Patent”) (collectively the “Asserted Patents”).

PARTIES

2. EcoFactor is a privately held company, having its principal place of business at 441 California Avenue, Number 2, Palo Alto, CA 94301.¹ EcoFactor was founded in 2006 and is

¹ Prior to October 2019, EcoFactor’s principal place of business was at 1450 Veterans Blvd., Suite 100, Redwood City, CA 94063.

headquartered in Palo Alto, California. EcoFactor is a leader in smart home energy management services. EcoFactor delivers smart home energy management services that improve energy efficiency, reduce energy bills and vastly increase demand response efficacy – all while maintaining consumer comfort. EcoFactor’s patented big-data analytics and machine learning algorithms collect and process massive amounts of residential data – including home thermodynamics, family comfort preferences and schedules, plus external data such as weather – to continually monitor, adapt and learn for optimum energy savings. The company provides homeowners significant cost savings and energy usage benefits. EcoFactor’s award-winning service has been offered through channel partners such as utilities, energy retailers, broadband service providers and HVAC companies.

3. EcoFactor has transformed how homes use energy by applying advanced analytics to connected devices in the home. EcoFactor’s platform actively manages thermostats on occupants’ behalf in intelligent ways that improve comfort while helping them save time, energy and money. Utilities, home service providers and homeowners rely on EcoFactor for demand response, energy efficiency, and HVAC performance monitoring services.

4. The HVAC industry and researchers in the field recognize the technological and commercial impact of EcoFactor’s patented technologies and innovations. For example, EcoFactor’s demand response solution has been recognized multiple times from the Association of Energy Services Professionals (AESP) for outstanding achievement in pricing and demand response. EcoFactor was also named “Innovator of the Year” by San Mateo County Economic Development Association for EcoFactor’s automated approach to energy efficiency and demand response services, and has also been named Owlcr HOT in Redwood City, CA. Moreover, EcoFactor received Powergrid International’s Demand Response/Energy Efficiency Project of the

Year award, and was assessed as one of the top innovators with some of the most commercially important smart home patents.

5. Daikin Industries, Ltd. is a Japanese company with its principal place of business at Umeda Center Bldg., 2-4-12, Nakazaki-Nishi, Kita-ku, Osaka 530-8323, Japan.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant in this action because Defendant has committed acts within this District giving rise to this action, and have established minimum contacts with this forum such that the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice. Defendant, directly and through subsidiaries or intermediaries, have committed and continue to commit acts of infringement in this District by, among other things, importing, offering to sell, and selling products that infringe the asserted patents.

8. Venue is proper in this District under 28 U.S.C. § 1400(b). Upon information and belief, Defendant has transacted business in this District and have committed acts of direct and indirect infringement in this District by, among other things, making, using, offering to sell, selling, and importing products that infringe the asserted patents. Defendant Daikin Industries, Ltd. is a foreign company and subject to venue in any District, including this District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 8,180,492

9. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully

set forth herein.

10. Plaintiff is the owner and assignee of United States Patent No. 8,180,492 titled “System and method for using a networked electronic device as an occupancy sensor for an energy management system.” The ’492 Patent was duly and legally issued by the United States Patent and Trademark Office on May 15, 2012. Plaintiff is the owner and assignee, possessing all substantial rights, to the ’492 Patent. A true and correct copy of the ’492 Patent is attached as Exhibit 1.

11. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’492 Patent, and continue to do so. By way of illustrative example, these infringing products and services include, without limitation, Defendant’s products and services, *e.g.*, ComfortNet Thermostats, CTK04 Thermostat, Daikin One+, Daikin ENVi Thermostat, and Daikin Comfort Control Application and all versions and variations thereof since the issuance of the ’492 Patent (“Accused Instrumentalities”).

12. Defendant has had knowledge of the ’492 patent from a date no later than the date of filing of this complaint. Defendant has known how the Accused Products are made and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the accused products within the United States, or importing the Accused Products into the United States, would constitute infringement.

13. Defendant has induced, and continue to induce, infringement of the ’492 patent by actively encouraging others (including distributors and end customers) to use, offer to sell, sell, and import the Accused Products. On information and belief, these acts include providing information and instructions on the use of the Accused Products; providing information,

education and instructions supporting sales by distributors; providing the Accused Products to distributors; and indemnifying patent infringement within the United States.

14. Defendant has also infringed, and continue to infringe, claims of the '492 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Products, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the components in the Accused Products to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently are, contributorily infringing the '492 patent, in violation of 35 U.S.C. § 271(c).

15. The Accused Products satisfy all claim limitations of one or more claims of the '492 Patent. For example the Accused Instrumentalities infringe claim 10 of the '492 Patent. One, non-limiting, example of the Accused Instrumentalities' infringement is presented below.

16. The Accused Instrumentalities include: "A system for altering the setpoint on a thermostat for space conditioning of a structure comprising: at least one thermostat having at least a first temperature setpoint associated with a non-occupied structure, and at least a second temperature setpoint associated with the existence of occupants in said structure." For example, the Accused Instrumentalities recognize when the building is unoccupied and will adjust the temperature settings accordingly.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

17. The Accused Instrumentalities include “one or more electronic devices having at least a graphic user interface comprising a display wherein said electronic devices receive input from one or more users and wherein use of said electronic devices comprises at least one of cursor movement, keystrokes or other user interface actions intended to alter a state of one or more of said electronic devices by one or more users wherein activity of one or more networked electronic devices indicates whether said thermostat should be changed from said first temperature setpoint to said second temperature setpoint.” For example, the Accused Instrumentalities can receive instruction via a mobile device using a graphic user interface.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

Programming

- Seven-day programmable system
- Auto heat / cool change-over option: automatically switches between heating and cooling programs
- Customizable home screen
- Dehumidification control
- Independent humidification control
- Airflow speed trimming adjustment
- Intuitive installer menus
- Four steps per daily schedule sequence
- Simultaneous heat and cool program storage
- Energy Management Recovery program (EMR)
- Program-loss, start-up temperature
- USB uploadable dealer information and set-point profiles

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

Features

- Pre-programmed indoor and outdoor control boards automatically determine the proper system setup and properly manage airflow and system capacity settings
- Advanced active diagnostics simplifies system troubleshooting today and for the life of the system
- Wireless remote control system management from any personal computer iPad iPhone or Android device (with Honeywell RedLINK Internet Gateway)

See <https://daikincomfort.com/products/thermostats-controls/ctk04>

18. The Accused Instrumentalities include “wherein said electronic devices and said thermostat are connected to a network; an application comprising one or more computer processors in communication with said network, wherein said application determines whether said one or more electronic devices are in use and in response, whether said thermostat is set to said first temperature setpoint that indicates said structure is not occupied.” For example, The Accused Instrumentalities are connected via the internet to mobile devices running an application, which can determine, inter alia, whether or not the structure is occupied.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

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See <https://daikincomfort.com/products/thermostats-controls/ctk04>

19. The Accused Instrumentalities include "said application determining that said one or more users has previously indicated a preference that said user's input be obtained before automatically changing said first HVAC temperature setpoint to said second HVAC temperature setpoint indicating that said structure is deemed to be occupied; said application prompting said one or more users based on said determining that said one or more of said user's input should be obtained, wherein said application provides electronic notice to one or more of said users of said electronic devices that said thermostat is set for a non-occupied structure and whether to keep said first temperature setpoint or change to said second temperature setpoint; and wherein said application in response to said prompting, receives input from said one or more users to keep said first HVAC temperature setpoint; and wherein said thermostat is kept at said first temperature setpoint based upon said input from said one or more users." The Accused Instrumentalities with the ZigBee Pro option, will keep the setpoint for the unoccupied building in place until changed by a user, including a user at a remote laptop or other mobile device. This device provides information as to the current setpoint and allows the user to change the setpoint.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

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See <https://daikincomfort.com/products/thermostats-controls/ctk04>

20. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, Defendant has injured Plaintiff and are liable for infringement of the '492 Patent pursuant to 35 U.S.C. § 271.

21. As a result of Defendant's infringement of the '492 Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

22. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '492 Patent, and, specifically, enjoining further manufacture, use, sale, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 8,412,488

23. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

24. Plaintiff is the owner and assignee of United States Patent No. 8,412,488 titled “System and method for using a network of thermostats as tool to verify peak demand reduction.” The ’488 patent was duly and legally issued by the United States Patent and Trademark Office on April 2, 2013. Plaintiff is the owner and assignee, possessing all substantial rights, to the ’488 Patent. A true and correct copy of the ’488 Patent is attached as Exhibit 2.

25. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’488 Patent, and continue to do so. By way of illustrative example, these infringing products and services include, without limitation, Defendant’s products and services, *e.g.*, ComfortNet Thermostats, CTK04 Thermostat, Daikin One+, Daikin ENVi Thermostat, and Daikin Comfort Control Application and all versions and variations thereof since the issuance of the ’488 Patent (“Accused Instrumentalities”)

26. Defendant has had knowledge of the ’488 patent from a date no later than the date of filing of this complaint. Defendant has known how the Accused Products are made and have known, or have been willfully blind to the fact, that making, using, offering to sell, and selling the accused products within the United States, or importing the Accused Products into the United States, would constitute infringement.

27. Defendant has induced, and continue to induce, infringement of the ’488 patent by actively encouraging others (including distributors and end customers) to use, offer to sell, sell, and import the Accused Products. On information and belief, these acts include providing information and instructions on the use of the Accused Products; providing information, education and instructions supporting sales by distributors; providing the Accused Products to distributors; and indemnifying patent infringement within the United States.

28. Defendant has also infringed, and continue to infringe, claims of the '488 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Products, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the components in the Accused Products to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently are, contributorily infringing the '488 patent, in violation of 35 U.S.C. § 271(c).

29. The Accused Products satisfy all claim limitations of one or more claims of the '488 Patent. For example the Accused Instrumentalities infringe claim 1 of the '488 Patent. One, non-limiting, example of the Accused Instrumentalities' infringement is presented below.

30. The Accused Instrumentalities include “[a] system for monitoring the operational status of an HVAC system comprising: at least one HVAC control system associated with a first structure that receives temperature measurements from at least a first structure conditioned by at least one HVAC system.” For example, the Accused Instrumentalities receive temperature measurements from inside the building that it is servicing.

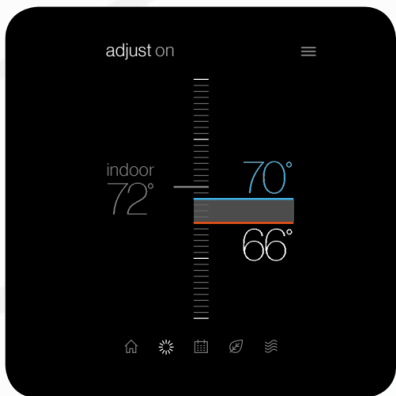


See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

WIRELESS INDOOR SENSOR

When paired with a ComfortNet CTK04 communicating control, the indoor sensor allows customers to change the sensing location of the thermostat, average temperature in large rooms, or monitor temperature and humidity in separate spaces.

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/specifications/ss-dctk04.pdf?sfvrsn=7>



The **adjust screen** displays the current temperature on the left and set-points on the right. Change the set-points by dragging them or by turning the dial.

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>



The **air quality screen** displays indoor air quality levels (when a Daikin *One* home air monitor is connected), outdoor air quality, and weather (when connected to the internet).

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/hg-one-st.pdf?sfvrsn=12>

By default, the Daikin ENVi thermostat's Internal Sensor is used for an accurate indication of the room temperature (recommended setting).

The Indoor Unit is also equipped with a room temperature sensor which you can use instead. You can also enable both sensors to provide an average sensing temperature. However, the Indoor Unit sensor and averaging methods are not recommended because the Indoor Unit sensor, especially wall-mounted models, can be affected by certain operations such as starting up and defrosting in a short time which may cause improper control of the indoor unit by the ENVi Thermostat.

See Daikin ENVi Thermostat. User Manual.

31. The Accused Instrumentalities include “one or more processors that receive measurements of outside temperatures from at least one source other than said HVAC system.” For example, the Accused Instrumentalities receive measurements of outside temperature from the internet or wireless sensors.



Innovative Control

Wireless Technology

The CTK04's RedLINK™ wireless technology and its full suite of wireless enabled accessories help to best meet your personal comfort needs. Wireless accessory add-ons offer comfort, convenience and connection, and the ease of wireless installation means simplified installation capabilities now and in the future.

Internet Gateway

Connect the RedLINK Internet Gateway to any CTK04 thermostat to build your wireless system through Honeywell's free Total Connect Comfort Services website. Once registered, you have the ability to customize your system and alert settings, download free mobile apps and more through the Honeywell Total Comfort Connect portal.

See ComfortNet™ Communicating Controls CTK04 High-Definition Thermostat.



The **air quality screen** displays indoor air quality levels (when a Daikin *One* home air monitor is connected), outdoor air quality, and weather (when connected to the internet).

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/hg-one-st.pdf?sfvrsn=12>

This feature uses the Internet to obtain the current outdoor temperature. If no Internet is available, the Outdoor Unit's temperature sensor is used instead.

See Daikin ENVi Thermostat. User Manual.

Note that when you register, it's important to select your location accurately, as Daikin ENVi will use your local weather data to optimize your heating and cooling. You must register your Daikin ENVi thermostat for this feature to operate.

See Daikin ENVi Thermostat. User Manual.

The Daikin ENVi thermostat learns how your home and system performs. Intelligent algorithms combine weather data, your system run times and occupancy schedules to optimize performance and maximize energy savings. This means you can be comfortable when you are home and save money when you are not.

See Daikin ENVi Thermostat. User Manual.

32. The Accused Instrumentalities include “wherein said one or more processors compares the inside temperature of said first structure and the outside temperature over time to derive an estimation for the rate of change in inside temperature of said first structure in response to outside temperature, and wherein said one or more processors compare an inside temperature recorded inside the first structure with said estimation for the rate of change in inside temperature of said first structure to determine whether the first HVAC system is on or off.” For example, the Accused Instrumentalities will compare internal temperature and external temperature and, other factors, to calculate the rate of change of inside temperature, and use this calculation to determine

when to turn the HVAC system on or off.

The Daikin ENVi thermostat learns how your home and system performs. Intelligent algorithms combine weather data, your system run times and occupancy schedules to optimize performance and maximize energy savings. This means you can be comfortable when you are home and save money when you are not.

See Daikin ENVi Thermostat. User Manual.

Programming

- Seven-day programmable system
- Auto heat / cool change-over option: automatically switches between heating and cooling programs
- Customizable home screen
- Dehumidification control
- Independent humidification control
- Airflow speed trimming adjustment
- Intuitive installer menus
- Four steps per daily schedule sequence
- Simultaneous heat and cool program storage
- Energy Management Recovery program (EMR)
- Program-loss, start-up temperature
- USB uploadable dealer information and set-point profiles

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

Programming:

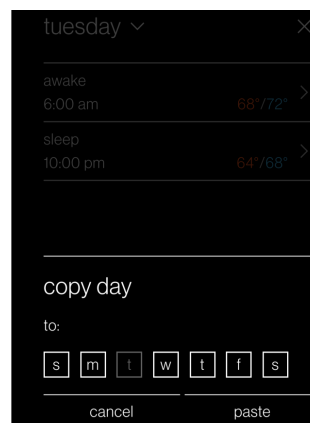
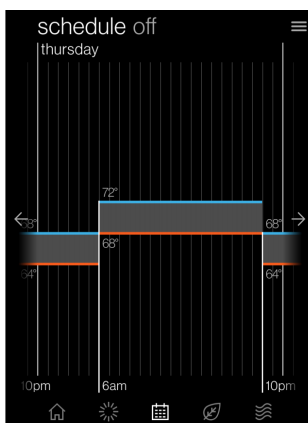
- » Smart scheduling feature programmable to any lifestyle
- » User Interaction Log provides a searchable history of setting changes
- » Advanced staging control
- » Heat and cool cycle rate adjustment
- » Energy management recovery
- » Keypad lockout options
- » Dealer contact information options
- » USB upload and download options
- » Maximum heat and minimum cool set-point temperatures

See COMFORTNET™ COMMUNICATING CONTROLS CTK04 High-Definition Thermostat.

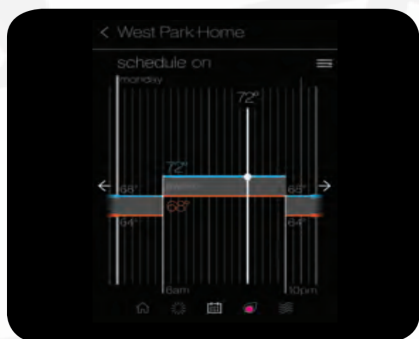
Schedule

- The schedule is presented as 7 days, displaying one day at a time, with 24 hours fitting on the screen.
- You can use the drop down menu or swipe to enable schedule editing.
- Copy and paste is a feature that makes scheduling seamless.

Note: Unlike other screens, scheduling requires saving edits before exiting the mode.



See https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/installation-manual/trc-3-daikin-one-installation-commissioning_v4.pdf



The **schedule screen** displays upcoming set-point changes and scheduled times. It also offers access to edit mode, where you can adjust the schedule.

See Daikin One+ Smart Thermostat.

33. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, Defendant has injured Plaintiff and are liable for infringement of the '488 Patent pursuant to 35 U.S.C. § 271.

34. As a result of Defendant's infringement of the '488 Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

35. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '488 Patent, and, specifically, enjoining further manufacture, use, sale, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 8,738,327

36. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

37. Plaintiff is the owner and assignee of United States Patent No. 8,738,327 titled "System and method for using a network of thermostats as tool to verify peak demand reduction." The '327 patent was duly and legally issued by the United States Patent and Trademark Office on May 27, 2014. Plaintiff is the owner and assignee, possessing all substantial rights, to the '327 Patent. A true and correct copy of the '327 Patent is attached as Exhibit 3.

38. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '327 Patent, and continue to do so. By way of illustrative

example, these infringing products and services include, without limitation, Defendant's products and services, *e.g.*, the ComfortNet Thermostats, CTK04 Thermostat, Daikin One+, Daikin ENVi Thermostat, and Daikin Comfort Control Application and all versions and variations thereof since the issuance of the '382 Patent ("Accused Instrumentalities").

39. Defendant has had knowledge of the '327 patent from a date no later than the date of filing of this complaint. Defendant has known how the Accused Products are made and have known, or have been willfully blind to the fact, that making, using, offering to sell, and selling the accused products within the United States, or importing the Accused Products into the United States, would constitute infringement.

40. Defendant has induced, and continue to induce, infringement of the '327 patent by actively encouraging others (including distributors and end customers) to use, offer to sell, sell, and import the Accused Products. On information and belief, these acts include providing information and instructions on the use of the Accused Products; providing information, education and instructions supporting sales by distributors; providing the Accused Products to distributors; and indemnifying patent infringement within the United States.

41. Defendant has also infringed, and continue to infringe, claims of the '327 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Products, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the components in the Accused Products to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently are, contributorily infringing the '327 patent, in violation of 35 U.S.C. § 271(c).

42. The Accused Products satisfy all claim limitations of one or more claims of the '327 Patent. For example the Accused Instrumentalities infringe claim 1 of the '327 Patent. One, non-limiting, example of the Accused Instrumentalities' infringement is presented below.

43. For example, the Accused Instrumentalities include “[a] system for controlling the operational status of an HVAC system comprising: at least one thermostat associated with a structure that receives temperature measurements from inside the structure, the structure conditioned by at least one HVAC system, the thermostat having at least a first setting stored therein.” For example, the Accused Instrumentalities have a thermostat that receives temperature settings from inside the structure which can store settings, including a schedule for heating and cooling.

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- Energy Management Recovery program (EMR)
- Program-loss, start-up temperature
- USB uploadable dealer information and set-point profiles

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

Programming:

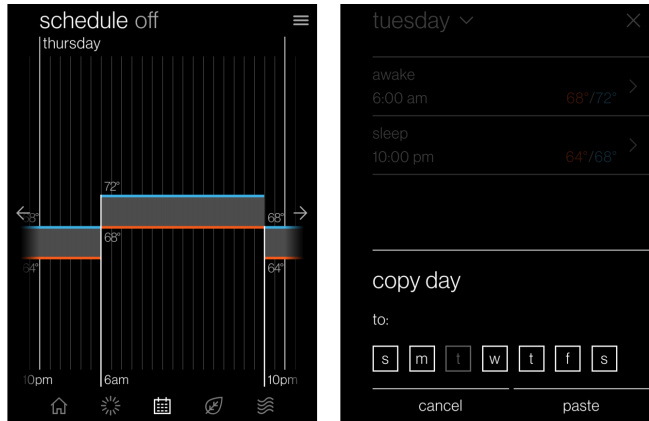
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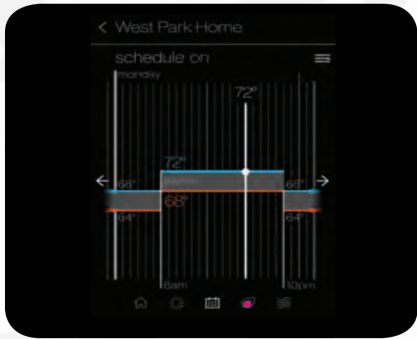
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Note: Unlike other screens, scheduling requires saving edits before exiting the mode.



See https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/installation-manual/trc-3-daikin-one-installation-commissioning_v4.pdf



The **schedule screen** displays upcoming set-point changes and scheduled times. It also offers access to edit mode, where you can adjust the schedule.

See Daikin One+ Smart Thermostat.

44. For example, the Accused Instrumentalities include “one or more servers located

remotely from the structure, the one or more servers configured to receive measurements of outside temperatures from at least one source other than the HVAC system.” For example, the Accused Instrumentalities receive measurements of outside temperature from the internet and other sources.

WIRELESS OUTDOOR SENSOR

Installed on the exterior of a home or building, the wireless outdoor sensor communicates through RedLINK to display the outdoor temperature and humidity on all RedLINK-enabled thermostats and the portable comfort control (see above).

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.



Wireless Technology

Innovative Control

The CTK04's RedLINK™ wireless technology and its full suite of wireless enabled accessories help to best meet your personal comfort needs. Wireless accessory add-ons offer comfort, convenience and connection, and the ease of wireless installation means simplified installation capabilities now and in the future.

Internet Gateway

Connect the RedLINK Internet Gateway to any CTK04 thermostat to build your wireless system through Honeywell's free Total Connect Comfort Services website. Once registered, you have the ability to customize your system and alert settings, download free mobile apps and more through the Honeywell Total Comfort Connect portal.

See ComfortNet™ Communicating Controls CTK04 High-Definition Thermostat.



The **air quality screen** displays indoor air quality levels (when a Daikin *One* home air monitor is connected), outdoor air quality, and weather (when connected to the internet).

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/hg-one-st.pdf?sfvrsn=12>

This feature uses the Internet to obtain the current outdoor temperature. If no Internet is available, the Outdoor Unit's temperature sensor is used instead.

See Daikin ENVi Thermostat. User Manual.

Note that when you register, it's important to select your location accurately, as Daikin ENVi will use your local weather data to optimize your heating and cooling. You must register your Daikin ENVi thermostat for this feature to operate.

See Daikin ENVi Thermostat. User Manual.

45. For example, Accused Instrumentalities include “the one or more servers are further configured to communicate with the thermostat via a network, wherein the one or more servers

receive inside temperatures from the thermostat and compares the inside temperatures of the structure and the outside temperatures over time to derive an estimation for the rate of change in inside temperature of the structure in response to outside temperature.” For example, the Accused Instrumentalities will compare internal temperature and external temperature and, other factors, to calculate the rate of change of inside temperature.

The Daikin ENVi thermostat learns how your home and system performs. Intelligent algorithms combine weather data, your system run times and occupancy schedules to optimize performance and maximize energy savings. This means you can be comfortable when you are home and save money when you are not.

See Daikin ENVi Thermostat. User Manual.

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- Program-loss, start-up temperature
- USB uploadable dealer information and set-point profiles

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

Programming:

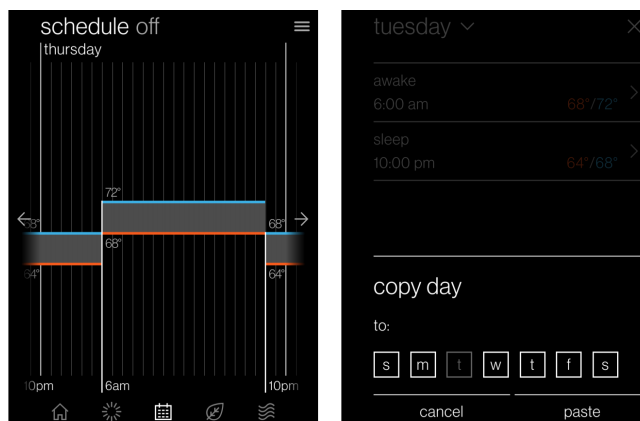
- » Smart scheduling feature programmable to any lifestyle
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- » USB upload and download options
- » Maximum heat and minimum cool set-point temperatures

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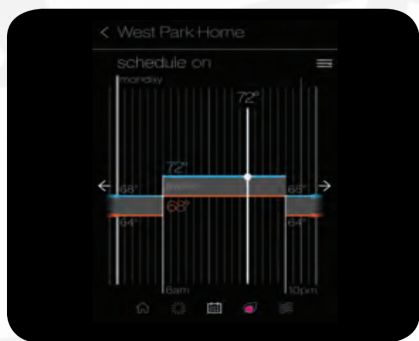
Schedule

- The schedule is presented as **7 days**, displaying one day at a time, with **24 hours** fitting on the screen.
- You can use the drop down menu or swipe to enable schedule editing.
- Copy and paste is a feature that makes scheduling seamless.

Note: Unlike other screens, scheduling requires saving edits before exiting the mode.



See https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/installation-manual/trc-3-daikin-one-installation-commissioning_v4.pdf



The **schedule screen** displays upcoming set-point changes and scheduled times. It also offers access to edit mode, where you can adjust the schedule.

See Daikin One+ Smart Thermostat.

46. The Accused Instrumentalities further include “the one or more servers are further configured to receive a demand reduction request and determine whether the structure is associated with demand rejection request, and based on the determination that the structure is associated with the demand reduction request, the one or more servers are further configured to send a signal to the thermostat to change the setting to a second setting to reduce electricity demand by the HVAC system.” For example, using the remote application on a mobile device, the user can instruct the device to lower the power setting and reduce heating or cooling, an example of a demand reduction

request.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

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- Advanced active diagnostics simplifies system troubleshooting today and for the life of the system
- Wireless remote control system management from any personal computer iPad iPhone or Android device (with Honeywell RedLINK Internet Gateway)

See <https://daikincomfort.com/products/thermostats-controls/ctk04>

47. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, Defendant has injured Plaintiff and are liable for infringement of the '327 Patent pursuant to 35 U.S.C. § 271.

48. As a result of Defendant's infringement of the '327 Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with

interest and costs as fixed by the Court.

49. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '327 Patent, and, specifically, enjoining further manufacture, use, sale, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 10,534,382

50. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

51. Plaintiff is the owner and assignee of United States Patent No. 10,534,382 titled "System and method for using a wireless device as a sensor for an energy management system." The '382 patent was duly and legally issued by the United States Patent and Trademark Office on January 14, 2020. Plaintiff is the owner and assignee, possessing all substantial rights, to the '382 Patent. A true and correct copy of the '382 Patent is attached as Exhibit 4.

52. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '382 Patent, and continue to do so. By way of illustrative example, these infringing products and services include, without limitation, Defendant's products and services, *e.g.*, the ComfortNet Thermostats, CTK04 Thermostat, Daikin One+, Daikin ENVi Thermostat, and Daikin Comfort Control Application and all versions and variations thereof since the issuance of the '382 Patent ("Accused Instrumentalities").

53. Defendant has had knowledge of the '382 patent from a date no later than the date of filing of this complaint. Defendant has known how the Accused Products are made and have

known, or have been willfully blind to the fact, that making, using, offering to sell, and selling the accused products within the United States, or importing the Accused Products into the United States, would constitute infringement.

54. Defendant has induced, and continue to induce, infringement of the '382 patent by actively encouraging others (including distributors and end customers) to use, offer to sell, sell, and import the Accused Products. On information and belief, these acts include providing information and instructions on the use of the Accused Products; providing information, education and instructions supporting sales by distributors; providing the Accused Products to distributors; and indemnifying patent infringement within the United States.

55. Defendant has also infringed, and continue to infringe, claims of the '382 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Products, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the components in the Accused Products to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently are, contributorily infringing the '382 patent, in violation of 35 U.S.C. § 271(c).

56. The Accused Products satisfy all claim limitations of one or more claims of the '382 Patent. For example the Accused Instrumentalities infringe claim 1 of the '382 Patent. One, non-limiting, example of the Accused Instrumentalities' infringement is presented below.

57. The Accused Instrumentalities include: “[a] system for controlling an HVAC system at a user's building, the system comprising: a memory; and one or more processors with circuitry and code designed to execute instructions.” For example, the Accused Instrumentalities

include memory, processors, circuitry, and code for storing and running a heating and cooling schedule.

The Daikin HVAC equipment and ENVi thermostat help homeowners conserve energy, save money and reduce their environmental impact. Our products automate energy conservation, making it comfortable when you are home and saving money when you are not.

For more information, visit us at DaikinAC.com and DaikinENVi.com.

See Daikin ENVi Thermostat. User Manual.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

Programming

- Seven-day programmable system
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- Energy Management Recovery program (EMR)
- Program-loss, start-up temperature
- USB uploadable dealer information and set-point profiles

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

Features

- Pre-programmed indoor and outdoor control boards automatically determine the proper system setup and properly manage airflow and system capacity settings
- Advanced active diagnostics simplifies system troubleshooting today and for the life of the system
- Wireless remote control system management from any personal computer iPad iPhone or Android device (with Honeywell RedLINK Internet Gateway)

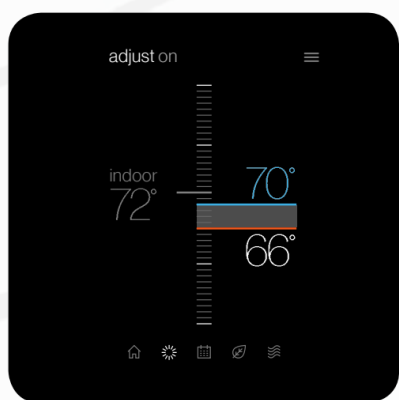
See <https://daikincomfort.com/products/thermostats-controls/ctk04>

58. The Accused Instrumentalities include “the one or more processors with circuitry and code designed to execute instructions to receive a first data from at least one sensor, wherein the first data from the at least one sensor includes a measurement of at least one characteristic of the building.” For example, the Accused Instrumentalities can receive data concerning the internal temperature of the structure, as well as whether the structure is occupied.

WIRELESS INDOOR SENSOR

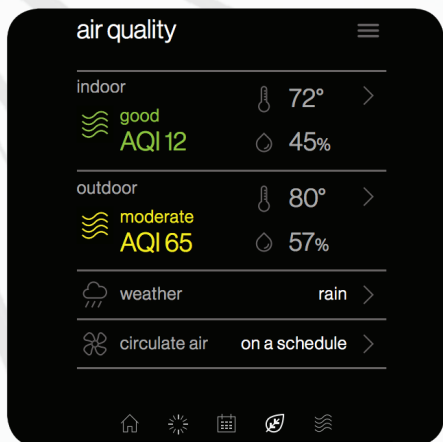
When paired with a ComfortNet CTK04 communicating control, the indoor sensor allows customers to change the sensing location of the thermostat, average temperature in large rooms, or monitor temperature and humidity in separate spaces.

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/specifications/ss-dctk04.pdf?sfvrsn=7>



The **adjust screen** displays the current temperature on the left and set-points on the right. Change the set-points by dragging them or by turning the dial.

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>



The **air quality screen** displays indoor air quality levels (when a Daikin *One* home air monitor is connected), outdoor air quality, and weather (when connected to the internet).

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/hg-one-st.pdf?sfvrsn=12>

By default, the Daikin ENVi thermostat's Internal Sensor is used for an accurate indication of the room temperature (recommended setting).

The Indoor Unit is also equipped with a room temperature sensor which you can use instead. You can also enable both sensors to provide an average sensing temperature. However, the Indoor Unit sensor and averaging methods are not recommended because the Indoor Unit sensor, especially wall-mounted models, can be affected by certain operations such as starting up and defrosting in a short time which may cause improper control of the indoor unit by the ENVi Thermostat.

See Daikin ENVi Thermostat. User Manual.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

59. The Accused Instrumentalities include “the one or more processors with circuitry and code designed to execute instructions to receive a second data from a network connection, wherein the second data from the network connection is collected from a source external to the building, wherein the second data from the network connection is received via the Internet.” For example, the Accused Instrumentalities receive information concerning outdoor temperature from the internet.

WIRELESS OUTDOOR SENSOR

Installed on the exterior of a home or building, the wireless outdoor sensor communicates through RedLINK to display the outdoor temperature and humidity on all RedLINK-enabled thermostats and the portable comfort control (see above).

See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.



Innovative Control

Wireless Technology

The CTK04's RedLINK™ wireless technology and its full suite of wireless enabled accessories help to best meet your personal comfort needs. Wireless accessory add-ons offer comfort, convenience and connection, and the ease of wireless installation means simplified installation capabilities now and in the future.

Internet Gateway

Connect the RedLINK Internet Gateway to any CTK04 thermostat to build your wireless system through Honeywell's free Total Connect Comfort Services website. Once registered, you have the ability to customize your system and alert settings, download free mobile apps and more through the Honeywell Total Comfort Connect portal.

See ComfortNet™ Communicating Controls CTK04 High-Definition Thermostat.



The **air quality screen** displays indoor air quality levels (when a Daikin *One* home air monitor is connected), outdoor air quality, and weather (when connected to the internet).

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/manual/hg-one-st.pdf?sfvrsn=12>

This feature uses the Internet to obtain the current outdoor temperature. If no Internet is available, the Outdoor Unit's temperature sensor is used instead.

See Daikin ENVi Thermostat. User Manual.

Note that when you register, it's important to select your location accurately, as Daikin ENVi will use your local weather data to optimize your heating and cooling. You must register your Daikin ENVi thermostat for this feature to operate.

See Daikin ENVi Thermostat. User Manual.

The Daikin ENVi thermostat learns how your home and system performs. Intelligent algorithms combine weather data, your system run times and occupancy schedules to optimize performance and maximize energy savings. This means you can be comfortable when you are home and save money when you are not.

See Daikin ENVi Thermostat. User Manual.

60. The Accused Instrumentalities include “the one or more processors with circuitry and code designed to execute instructions to receive a first temperature setpoint for the building corresponding to a desired temperature setting when the building is occupied, and a second temperature setpoint for the building corresponding to a desired temperature setting when the

building is unoccupied.” For example, the Accused Instrumentalities will adjust the temperature of a room to a desired temperature based on whether or not the occupancy sensor detects that the room is occupied.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

61. The Accused Instrumentalities include “the one or more processors with circuitry and code designed to execute instructions to receive commands through the Internet by way of a remote interface on a mobile, wireless device running software application code; wherein the interface is configured to allow the user to adjust temperature setpoints for the HVAC system; the one or more processors with circuitry and code designed to execute instructions to send user-specific data through the Internet, wherein user-specific information about the building and HVAC system is generated based at least in part on the user-specific data, wherein the user-specific information is configured to be presented on a user interface on a mobile, wireless device running

software application code via the Internet.” For example, a user of the remote application can adjust the temperature setpoints of the thermostat to a user-specific setting over the internet.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

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See CTK04 ComfortNet. Communicating Control for Residential and Light Commercial Applications.

Features

- Pre-programmed indoor and outdoor control boards automatically determine the proper system setup and properly manage airflow and system capacity settings
- Advanced active diagnostics simplifies system troubleshooting today and for the life of the system
- Wireless remote control system management from any personal computer iPad iPhone or Android device (with Honeywell RedLINK Internet Gateway)

See <https://daikincomfort.com/products/thermostats-controls/ctk04>

62. The Accused Instrumentalities include “the one or more processors with circuitry and code designed to execute instructions to determine whether the building is occupied or unoccupied, and based on that determination, to control the HVAC system to provide heating or cooling to the building at an operational temperature.” For example, the Accused Instrumentalities will provide heating or cooling based on whether a building is occupied or unoccupied.

The Daikin *One+* smart thermostat supports casual temperature adjustment, automatic settings changes driven by an easy-to-program schedule, and an energy savings mode invoked manually or by geo-fencing on a mobile app. (The app recognizes when everyone is away and changes settings to reduce energy use.)

See <https://cms.daikincomfort.com/docs/default-source/default-document-library/brochure/cb-one-st.pdf?sfvrsn=14>

63. The Accused Instrumentalities include “wherein the one or more processors comprises a first processor with circuitry and code designed to execute instructions, which is located remotely from the memory and is not electrically connected to the memory; the first processor with circuitry and code designed to execute instructions to communicate with the memory.” For example, a user can provide instructions to the thermostat via a mobile device which is not connected to the memory.

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64. The Accused Instrumentalities include “wherein the memory is configured to store historical values of the first data and second data.” For example, on information and belief, the Accused Instrumentalities store historical information about when the room was occupied and the external temperature, among other things.

Note that when you register, it’s important to select your location accurately, as Daikin ENVi will use your local weather data to optimize your heating and cooling. You must register your Daikin ENVi thermostat for this feature to operate.

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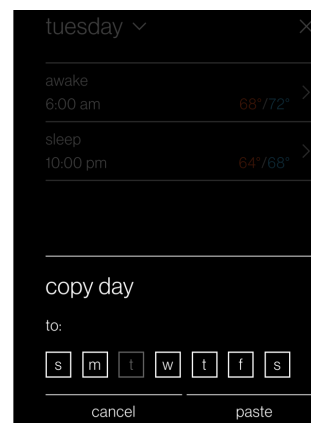
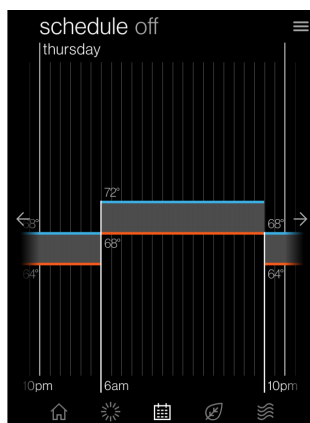
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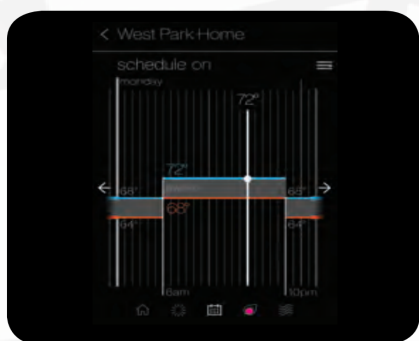
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65. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, Defendant has injured Plaintiff and are liable for infringement of the '382 Patent pursuant to 35 U.S.C. § 271.

66. As a result of Defendant's infringement of the '382 Patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

67. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '382 Patent, and, specifically, enjoining further manufacture, use, sale, importation, and/or offers for sale that come within the scope of the patent claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

- a. A judgment in favor of Plaintiff that Defendant has infringed, either literally and/or under the doctrine of equivalents, the '492 Patent, the '488 Patent, the '327 Patent, and the '382 Patent;
- b. A permanent injunction prohibiting Defendant from further acts of infringement of the '492 Patent, the '488 Patent, the '327 Patent, and the '382 Patent;
- c. A judgment and order requiring Defendant to pay Plaintiff its damages, enhanced damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '492 Patent, the '488 Patent, the '327 Patent, and the '382 Patent;
- d. A judgment and order requiring Defendant to provide an accounting and to pay

supplemental damages to Plaintiff, including without limitation, pre-judgment and post-judgment interest;

e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against Defendant; and

f. Any and all other relief as the Court may deem appropriate and just under the circumstances

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: January 31, 2020

Respectfully submitted,

/s/ Reza Mirzaie

Reza Mirzaie

Marc A. Fenster

Paul A. Kroeger

C. Jay Chung

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