

**United States Court of Appeals
for the Federal Circuit**

ECOFACOR, INC.,
Plaintiff-Appellee

v.

GOOGLE LLC,
Defendant-Appellant

2023-1101

Appeal from the United States District Court for the Western District of Texas in No. 6:20-cv-00075-ADA, Judge Alan D. Albright.

REZA MIRZAIE, Russ August & Kabat, Los Angeles, CA, for EcoFactor, Inc. Also represented by KRISTOPHER DAVIS, MARC A. FENSTER, MINNA JAY, BRIAN DAVID LEDAHL, JAMES PICKENS.

GINGER ANDERS, Munger, Tolles & Olson LLP, Washington, DC, for Google LLC. Also represented by VINCENT LING, Los Angeles, CA; EVAN JENNINGS MANN, San Francisco, CA; STEPHANIE JILL GOLDBERG, KRISTIN ELIZABETH HUCEK, LEO L. LAM, ROBERT ADAM LAURIDSEN, EUGENE M. PAIGE, ROBERT A. VAN NEST, Kecker, Van Nest & Peters LLP, San Francisco, CA.

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA,
TARANTO, CHEN, HUGHES, STOLL, and STARK, *Circuit*
Judges.¹

PER CURIAM.

ORDER

The court granted rehearing en banc “limited to addressing the district court’s adherence to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in its allowance of testimony from EcoFactor’s damages expert assigning a per-unit royalty rate to the three licenses in evidence in this case.” Google’s argument at pages 41–58 of its brief exceeds the scope of the court’s en banc rehearing, as its footnote 11 all but recognizes. EcoFactor should not address this argument in its response brief.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

December 4, 2024
Date

¹ Circuit Judge Newman and Circuit Judge Cunningham did not participate.