

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**DEBTORS' REPLY IN SUPPORT OF SUMMARY JUDGMENT MOTION IN
SUPPORT OF AMENDED OMNIBUS OBJECTION TO CLAIM NUMBERS 004, 062,
AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES LLC
(Relates to ECF Nos. 953, 954, 1069, 1413, 1484, 1522)**

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



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Rhodium respectfully submits this reply in support of its summary judgment motion (ECF No. 1484, “Motion”) in support of *Debtors’ Amended Omnibus Objection To Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC* set for remote hearing at 1:00 pm on September 23, 2025.

INTRODUCTION

1. Rhodium’s Motion established that (1) the District Court’s April 9, 2024 summary judgment ruling bars Midas’s proofs of claim, (2) that ruling was correct, and (3) even if Midas *could* present a colorable claim of infringement, it cannot recover on its proofs of claim because it cannot reliably prove damages. Midas offers no response to Rhodium’s damages argument; that failure is dispositive. But even setting aside that Midas has conceded it cannot recover, Midas has no persuasive rejoinder to Rhodium’s finality or merits arguments. Its Opposition (ECF No. 1522) is pure smoke and mirrors. Midas’s patent infringement claim against Rhodium is baseless. The Court should enter summary judgment rejecting Midas’s claims.

ARGUMENT

I. Summary Judgment Is Warranted Because Rhodium Showed That Midas Can’t Prove Damages, And Midas Failed To Respond.

2. Midas bears the burden of proof to establish the amount of its damages. *Oiness v. Walgreen Co.*, 88 F.3d 1025, 1029 (Fed. Cir. 1996). As Rhodium’s Motion explained, because it cannot carry that burden, Midas is entitled at most to nominal damages and the Court should reject its claims (or reduce them to at most \$1). *See* Motion ¶¶ 66-69 (citing *Spex Techs., Inc. v. Western Digital Corp.*, No. 8:16-CV-01799-JVS, 2025 WL 1748190, at *11 (C.D. Cal. June 16, 2025) (remittitur to \$1)); *see also, e.g., TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1291 (Fed. Cir. 2020) (affirming post-trial award reducing damages to zero for lack of evidence); *Exafer Ltd v. Microsoft Corp.*, No. 1:20-CV-131-RP, 2024 WL 4212347, at *4, *9 (W.D. Tex. Aug. 15, 2024) (dismissing

case with prejudice “based on the lack of evidence in the record that a jury could use to arrive at a non-speculative reasonable royalty”); *Rex Medical v. Intuitive Surgical, Inc.*, No. 1:19-CV-00005, 2023 WL 6142254, at *11 (D. Del. Sept. 20, 2023) (remittitur to \$1).

3. By failing to address Rhodium’s argument that Midas’s only evidence of damages—the testimony of its expert, J. Duross O’Bryan²—cannot possibly be sufficient to support an award of more than nominal damages in its favor, Midas has conceded the point. *Lexington Ins. Co. v. ACE Am. Ins. Co.*, No. H-12-0531, 2014 WL 3406512, at *22 (S.D. Tex. July 7, 2014) (“Where a party fails to respond to arguments in the opposing party’s motion for summary judgment, the points are conceded.”).

4. Nothing Midas has submitted to this Court makes any effort to defend the substance of O’Bryan’s reasonable royalty calculation. *Cf.* ECF No. 1523 (Opp. to Estimation Motion). Midas simply fails to address Rhodium’s strong showing that O’Bryan’s royalty analysis is flawed because it overlooks evidence of Midas’s real-world negotiations with its key customer (Riot), and that O’Bryan ignored competing, non-infringing technologies. *See* Motion ¶ 68. Instead, Midas corrects only certain mistakes in O’Bryan’s calculation and fails to address the other fatal flaws Rhodium has identified. Because Midas has no evidence on which a reasonable factfinder could award damages, the Court should award summary judgment that Midas is not entitled to recover (or that it cannot take more than \$1) on its claims.

² In paragraph 11, Midas notes that it has withdrawn much of O’Bryan’s analysis and now purports to offer him only on a reasonable royalty. But this concession that the bulk of O’Bryan’s opinion is flawed is not a defense of the remainder, and cannot help Midas escape its waiver.

II. Midas Has No Effective Response To Rhodium’s Preclusion And Merits Arguments.

A. Midas’s Responses To Rhodium’s Preclusion Arguments Fail.

5. Midas devotes the bulk of its brief to a series of attempts to avoid the preclusive effect of the District Court’s oral order. But each boils down to the same argument: Midas contends that each of claim preclusion, issue preclusion, the law of the case doctrine, and the *Kessler* rule do not apply because the District Court’s order is not final. Opp. ¶¶ 29-46 (failing to address any other prong of any applicable doctrine). Midas is wrong: Judge Albright’s oral order was a final ruling. But in any event, this argument can’t defeat Rhodium’s Motion, because the law of the case doctrine does not require finality and is enough to dispose of Midas’s claims.

1. The District Court’s Decision Is Final.

6. “The test for finality is whether the district court intended that its order be ‘effective immediately.’” *Ueckert v. Guerra*, 38 F.4th 446, 450 (5th Cir. 2022) (quoting *In re United States Bureau of Prisons*, 918 F.3d 431, 437 (5th Cir. 2019)).

7. The District Court’s oral ruling plainly indicates an understanding that the case is over: “The Court is going to grant the motion for summary judgment of noninfringement. I think that fully takes care of the case for the time being. I’m not going to take up the motions *in limine* given my ruling on that motion, which I think obviates the need for a trial at this time.”³ Motion ¶ 35. Contrary to Midas’s assertion (at Opposition ¶ 6), and as Rhodium has explained and Midas ignores, the District Court’s *later* grant of summary judgment mooted its grant of permission for Midas to amend its expert’s report just as much as it obviated the need to reach those motions or hold trial. Motion ¶ 36. And the District Court’s subsequent conduct confirms that it “intends to

³ Judge Albright made these statements after hearing argument from the parties and without qualification. For Midas to suggest that Judge Albright’s turns of phrase (“going to grant”) mean that his statements were “merely a prediction about how the court would rule sometime in the future” defies reality. *Ueckert*, 38 F.4th at 451.

have nothing further to do” with the case. *Ueckert*, 38 F.4th at 450 (quotation marks omitted). Between granting the summary judgment ruling and the automatic stay, the District Court did nothing to indicate that the case was still open. *Ueckert*, 38 F.4th at 451 (“And the fact that the court never issued a written memorandum or opinion erased any doubt that it intended its first word to be its last.”). No further expert schedule was set. Midas did not even seek one.⁴ Rather, when the stay was partially lifted, the Court asked for a proposed order “reflecting [its] rulings”—rulings that were already complete, and which only needed to be memorialized for administrative purposes. Ex. 15.⁵ Midas’s suggestion otherwise, that the Court’s “words and actions” prove that “the underlying case is very much alive,” is a shameless attempt to twist the record.

8. Midas also argues that the District Court’s ruling is not final because it has not entered a ruling or judgment on its docket and has not complied with the finality mandates of Rule 58 and Rule 79(a). Opp. ¶¶ 33, 39 (arguing that without a “docket indicating that the Motion for Summary Judgment has been granted . . . there is no potential to appeal”). But *Ueckert* (which *Midas* cites at paragraphs 30 and 46) forecloses each of Midas’s Rule 58 theories. *Ueckert* squarely holds that an oral order can be final, and that a written ruling is not required. 38 F.4th at 449-450 (“The form of the ruling is immaterial.”). And it likewise disposes of Midas’s argument that it cannot appeal without a “docket” (a term that Midas does not define, perhaps because it knows the transcript containing the District Court’s ruling is filed on the docket). There, the losing party made the same argument as Midas—that it could not appeal from an oral ruling memorialized in a minute entry without a separate written judgment. *Id.* at 449. The Court disagreed, holding that while the

⁴ For example, it did not file a motion requesting that the Court enter a new scheduling order allowing it to serve a revised expert report. Midas’s inaction suggests that it understood the District Court’s order to be final, and that its position now is contrived.

⁵ Citations to Exhibits 1 – 16 refer to the exhibits to Rhodium’s Motion.

order “did not comply with Rule 58’s requirement that every ‘judgment’ be set out in a separate order,” the losing party could still appeal. *Id.* at 451-52. As the Court explained, Rule 4 acknowledges that the failure to comply with Rule 58 “does not affect the validity of an appeal,” and non-compliance with Rule 58 is waivable by the losing party (Midas).⁶ *Id.* at 452-53. Midas cannot use Rule 58 to avoid the District Court’s final ruling.

9. As to Rule 79(a): Midas’s argument makes little sense. Rule 79(a) requires a court clerk to keep a chronological docket, including “appearances, orders, verdicts, and judgments.” Fed. R. Civ. P. 79(a)(2)(C). The Clerk complied with that rule here, entering the transcript of the District Court’s ruling on the court’s docket. Transcript filed of Proceedings, *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc. et al.*, No. 6:2022-cv-00050 (W.D. Tex. Apr. 11, 2024), ECF No. 187. There is no requirement, as Midas suggests, to reflect the judgment in a separate minute entry. *Cf. Ueckert*, 38 F.4th at 451 (“[M]inute entries are not orders and cannot be appealed,” but a “bench ruling can be final.”). Midas’s Rule 79 theory fails.⁷

10. The District Court’s summary judgment ruling was final. This Court’s January 30, 2025 order granting partial relief from the automatic stay “for the limited purpose of allowing the District Court . . . to enter an order and judgment memorializing its April 9, 2024 bench ruling granting summary judgment of noninfringement to Rhodium,” ECF No. 737, is certainly not to the contrary.⁸ The District Court’s ruling precludes Midas’s claims. Motion ¶¶ 29-47.

⁶ In essence, the Fifth Circuit’s decision treats Rule 58 as an administrative case processing rule; it is important for good housekeeping but cannot impact the substance of a case.

⁷ *Ueckert* dealt with a similar Rule 79 argument. There, the losing party tried to avoid finality by faulting the clerk for not keeping a “copy” of the oral ruling. That argument failed, too. 38 F.4th at 453-54.

⁸ Nor did Rhodium “admit” that the District Court proceedings were non-final. Opp. ¶ 20. Rhodium asked to allow the District Court to “enter an order and judgment *memorializing* its April 9, 2024 bench ruling granting summary judgment,” ECF No. 611, ¶ 1, consistent with

2. The Law Of The Case Doctrine Bars Midas’s Claims.

11. What’s more, even if Midas were right that the District Court ruling is non-final, its claims are still barred by law of the case.

12. The law of the case doctrine “generally precludes reexamination of issues of law or fact” once they are decided in the course of a litigation. *Alpha/Omega Ins. Servs., Inc. v. Prudential Ins. Co. of Am.*, 272 F.3d 276, 279 (5th Cir. 2001). The rule “serve[s] to enhance judicial efficiency” by limiting a party’s ability to attack adverse earlier decisions. *Loumar, Inc. v. Smith*, 698 F.2d 759, 762 (5th Cir. 1983). And, contrary to Midas’s assertion, Opp. ¶ 41, the law-of-the-case doctrine does not require a final decision—as Midas concedes a paragraph later, the doctrine specifically operates “during the pendency of a lawsuit,” Opp. ¶ 42 (quoting *Loumar, Inc. v. Smith*, 698 F.2d 759, 762 (5th Cir. 1983)).

13. To be sure, the law of the case doctrine is not an absolute barrier to reconsideration of earlier rulings. *See* Opp. ¶ 43. But the Fifth Circuit has directed that courts should only revisit their earlier rulings in limited circumstances: where new evidence is available that is “substantially different” than at the time of the earlier determination, where controlling authority has changed, or where the earlier decision was “clearly erroneous and would work . . . manifest injustice.” *Propes v. Quarterman*, 573 F.3d 225, 228 (5th Cir. 2009); *see also United States v. O’Keefe*, 128 F.3d 885, 891 (5th Cir. 1997) (transferee judge “should not overrule the earlier judge’s order or judgment merely because the later judge might have decided matters differently”).

14. Midas does not present any reason that this Court *should* revisit Judge Albright’s earlier order. It does not persuasively argue that the ruling was wrong, nor does it put forward any

the standard practice of issuing a written order pursuant to FRCP 58. To “memorialize” is to capture in writing what was said, not to rule in the first instance.

new evidence. *See infra* ¶¶ 15-16, 18-19, 23, 32-33. At most, it argues that the District Court failed adequately to explain its reasoning, but as Rhodium explained (Motion ¶¶ 38-39) “there is no legal requirement that the rationale behind a nonpartial grant of summary judgment, including a recitation of undisputed factual inferences and applications of legal principles, be made explicit.” *Cable Elec. Prods., Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1021 (Fed. Cir. 1985), *overruled on other grounds by* *Midwest Indus. Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356 (Fed. Cir. 1999). The Court should not let Midas waste any more estate resources litigating what has already been decided. The law of case doctrine bars its proofs of claim.

B. Midas Presents No Facts Or Evidence That Create A Genuine Issue of Infringement And Instead Offers Specious Legal Arguments.

15. On the merits, Midas’s motion is untethered to reality. Despite its unsupported protestations to the contrary, Midas submitted to this Court’s jurisdiction by filing its proofs of claim. Motion ¶ 1. And all the “evidence” Midas conjures to try to manufacture a triable question of fact would require this Court to overlook fatal deficiencies that Midas has not attempted to answer. Most notably: the main system Midas accused, at Temple, was never operable. Nothing at Temple was capable of measuring the temperature of the dielectric fluid—not in the tank or anywhere else. Motion ¶¶ 5, 40, 55 & n.19. Equally telling, however, is Midas’s steadfast refusal to acknowledge that Rhodium no longer operates at Temple or Rockdale. Motion ¶ 25. *Cf., e.g.*, Opposition ¶ 73 (erroneously asserting that “[a] significant question of fact is to what extent the Prime Controls system is active, and what effort is required to complete the installation.”).

16. Midas does not dispute any of the key facts on which Rhodium’s Motion rests. Instead, it attempts to muddy the waters and makes incorrect legal arguments—all in an effort to dodge the simple reality that the accused systems lacked a key element that its patent claims require and thus, did not infringe. Neither of Rhodium’s former facilities at Temple or Rockdale used the

temperature of the dielectric fluid in its immersion tanks in any way—let alone to coordinate not one but two different fluid circulation facilities—as the Midas patent claims require. The claims fail for lack of proof. *Ferguson v. Texas Farm Bureau*, No. 6:17-CV-00111-ADA-JCM, 2021 WL 2349340 at *2 (W.D. Tex. May 19, 2021) (“[T]he moving party can satisfy its burden ... by ... pointing out the absence of evidence supporting a material element of the nonmovant’s claim.”).⁹

In particular:

1. Midas Concedes that Rhodium’s Temple Facility Could Not Measure Temperature.

17. Midas *does not dispute* its own expert’s admission that the dry cooler system at the Temple facility was unfinished and incapable of measuring a temperature. Instead, it makes the incorrect legal argument that an incomplete, inoperable system can still infringe. It cannot. *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 525-29 (1972) (superseded by statute on other grounds), *cited in Rotec Indus., Inc. v. Mitsubishi Corp.*, 215 F.3d 1246, 1252 n.2 (Fed. Cir. 2000) (“as to claims brought under § 271(a), *Deepsouth* remains good law: one may not be held liable under § 271(a) for ‘making’ or ‘selling’ less than a complete invention”); *Synchronoss Technologies, Inc. v. Dropbox, Inc.*, 987 F.3d 1358, 1368 (Fed. Cir. 2021) (same, quoting *Rotec*); *CTD Networks, LLC v. Google, LLC*, 688 F.Supp.3d 490, 500 (W.D. Tex. 2023) (same, and infringing use requires use of each and every element of the claimed system); *INVT SPE LLC v. Int’l Trade Comm’n*, 46 F.4th 1361, 1365 (Fed. Cir. 2022).

18. Midas’s Opposition is wholly silent about its expert’s admission that the temperature sensors at the unfinished Temple facility were never wired to the rest of the system

⁹ Midas prefaces its arguments about the patents with a story about Rhodium’s alleged nefariousness that is irrelevant to this motion but also, it is worth noting, completely unsupported by any citation to evidence. Opp. ¶¶ 59-60. It is untrue and the Court should disregard it.

and could not measure a temperature. *See* Motion ¶ 55 (citing Ex. 3 at 222). The only “evidence” Midas cites is a hodgepodge of items that refer to that never-completed, inoperable system and thus completely miss the mark: an invoice it does not explain, a photograph it does not explain, and a snippet of Chase Blackmon’s testimony that Rhodium spent roughly a million dollars on the Prime Controls system for the Temple facility dry cooler. Opp. ¶¶ 68, 73 (citing Opp. Exs. B, C and D). None of this evidence rebuts Midas’s own expert’s testimony or the other ample, undisputed evidence that the Prime Controls system was never finished. Ex. 3 at 9, n.13 (citing deposition testimony of Chase Blackmon at 189:2–4 [Ex. 3 at 265] (“Q. Are there any temperature probes installed in the Kelvion coolers? A. Not to my knowledge.”), 187:9–23 [Ex. 3 at 263] (Prime Controls installed saddles to leave option of adding sensors in future), 181:8–182:6, 188:13–189:1, 192:16–20, [Ex. 3 at 257-258, 264-265, 268] (there is no monitoring of fluid temperatures at the Temple facility), 185:1–3 [Ex. 3 at 261], 186:1–3 [Ex. 3 at 262]; *see also* Ex. 3 at 215-216, 222 (deposition testimony of Dr. Himanshu Pokharna): Ex. 3 at 281 (Rhodium’s Third Supplemental Responses and Objections to Plaintiff’s First Set of Interrogatories). Indeed, the invoice Midas cites *confirms* Chase Blackmon’s testimony that Rhodium stopped paying and the project was not finished: the invoice was for nearly 2.3 million dollars, Opp. Ex. B at 35, while Mr. Blackmon testified that Rhodium paid only \$1M, less than half the billed amount. Opp. Ex. D at 222. And the cited invoice pages show only that saddles (holders) for temperature sensors were billed—they do not indicate that the sensors were paid for, installed or connected, and the unchallenged evidence, cited just above, is that they weren’t. None of these items refute Midas’s expert’s clear concession that the Temple system had no way of knowing the fluid temperature in the dry cooler (and so could not use that temperature to coordinate anything).

19. Midas tries to overcome the fatal gap in its evidence by arguing that a system can infringe even if it would have to be physically modified in order to function as the claim requires. Opp. ¶¶ 68-74. Not so. *High Tech Med., Inc. v. New Image, Inc.*, 49 F.3d 1551, 1555 (Fed. Cir. 1995) (“a device does not infringe simply because it is possible to alter it in a way that would satisfy all the limitations of a patent claim”); *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1330 (Fed. Cir. 2001) (“[T]hat a device is capable of being modified to operate in an infringing manner is not sufficient, by itself, to support a finding of infringement.”); *Smith & Nephew, Inc. v. Arthrex, Inc.*, No. 2:07-CV-335-TJW-CE, 2010 WL 457142, at *2 (E.D. Tex. Feb. 5, 2010) (“accused device [must] contain each limitation of the claim exactly; any deviation from the claim precludes a finding of literal infringement”).

20. The cases Midas cites lack application here. They address a very different scenario: a product that is sold with *all required parts*, designed to be used only in an infringing manner, and ready to be assembled. Opp. ¶ 69-70. They do not and could not find infringement by an *incomplete* system that *lacks* all required parts.¹⁰ They stand for a proposition that does not remotely apply here. In *Mass Engineered Design, Inc. v. Ergotron, Inc.*, the accused flat-panel monitor stands were designed solely to be used with monitors in a way that infringed, and were sold with the monitors in a complete kit. 633 F. Supp. 2d 361, 376-77 (E.D. Tex. 2009). The same was true in *Paper Converting Mach. Co. v. Magna-Graphics Corp.*, 745 F.2d 11, 19 (Fed. Cir. 1984), which *Mass Engineered Design* relied on for the proposition that a set of components of a machine may infringe if they are “ready for assembly and serve ‘no useful non-infringing purpose.’” 633 F. Supp. 2d at 377. *See also VirnetX Inc. v. Apple Inc.*, 792 F. App’x 796, 808 (Fed.

¹⁰ *Deepsouth, cited in Rotec*, 215 F.3d at 1252 n.2 (“as to claims brought under § 271(a), *Deepsouth* remains good law: one may not be held liable under § 271(a) for ‘making’ or ‘selling’ less than a complete invention”) and other cases cited *supra* ¶ 17.

Cir. 2019) (software for performing claimed functions existed in product as sold) (cited by Opp. ¶ 72).

21. At Temple, by contrast, there was never a complete set of parts ready for assembly into a system that could detect temperature or use temperature to coordinate anything. The wires necessary to connect the temperature sensors were indisputably missing, as were the vast majority of the sensors, while none of the variable frequency drives attached to the dry coolers (which Midas claimed could vary the level of cooling) had a working sensor or control. Exhibit 3 at 14, n. 24.¹¹ *High Tech Med.*, cited by Midas, underlines the impossibility of finding infringement on this record. That case found there could be no infringement where the device, as sold, did not infringe, the user would have to loosen existing screws to put it in an infringing configuration, and there was no evidence any user had done so. 49 F.3d at 1555-56. Here, Rhodium would have had to buy and install additional wiring, sensors, and variable frequency drive controls, a vastly greater physical alteration than loosening screws. *See id.* at 1555 (“a device does not infringe simply because it is possible to alter it in a way that would satisfy all the limitations of a patent claim”); *Telemac*, 247 F.3d at 1330 (same); *Smith & Nephew*, 2010 WL 457142, at *2 (“accused device [must] contain each limitation of the claim exactly; any deviation from the claim precludes a finding of literal infringement”).

22. Midas’s remaining cited authority misses the mark, as it merely holds that the claim phrase “adapted to” can mean “capable of.” Opp. ¶¶ 71-72 (citing *Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1349 (Fed. Cir. 2010); *Finjan, Inc. v. Secure Computing Corporation*, 626 F.3d 1197 (Fed. Cir. 2010); *Hilgraeve Corp. v. Symantec Corp.*, 265 F.3d 1336, 1343 (Fed.

¹¹ Contrary to Midas’s assertion, the Temple system also plainly *had* a useful noninfringing purpose: it operated as an immersion cooling facility even without the ability to determine or do anything based upon the temperature of the dielectric fluid.

Cir. 2001)). Even if that proposition were correct,¹² it cannot help Midas because the Temple facility was *not* capable of measuring fluid temperature, as Midas’s expert conceded. Motion ¶ 55 (citing Ex. 3 at 222).¹³

2. Midas Concedes That The Fluid Temperatures In Rhodium’s Dry Coolers Were Different From The Claimed “Dielectric Fluid Temperature In The Tank.”

23. Midas does not dispute that the Temple facility would (if completed) have measured, and the Rockdale facility did measure, the fluid temperature in the dry cooler, in another building far from the tanks—and not “the dielectric fluid temperature in the tank.” Opp. ¶¶ 80, 81, 86 (asserting only that the temperature of the fluid exiting the cooler is “indicative” of the fluid temperature in the tank, with no explanation of how it is “indicative” and no citation to evidence). This is fatal to literal infringement. Motion ¶ 57. And Midas again makes no attempt to (nor could it) explain why measuring that different temperature could suffice for infringement under the doctrine of equivalents, and has thus waived that argument. Motion ¶ 65; Ex. 5 at 12.

24. Instead, Midas runs away from the patent claim language, asserting that it suffices if the accused system coordinates the operation of the two circulation facilities “as a function of the temperature,” repeatedly omitting the claim words “in the tank.” Opp. ¶¶ 62, 65, 83, 85. That evasion sidesteps the law—Midas may not redraft the patent claim to suit its infringement case.

¹² This proposition is context-specific; “adapted to” often means actually “configured to,” rather than the broader “capable of.” *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1349 (Fed. Cir. 2012).

¹³ Midas also cites cases holding there can be infringement (in certain circumstances) when a third party carries out some of the claim steps. Opp. ¶¶ 75-76 (discussing *Centillion Data Sys., LLC v. Qwest Commc’ns Int’l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011) and *Georgetown Rail Equip. Co. v. Holland L.P.*, 867 F.3d 1229, 1239 (Fed. Cir. 2017)). That principle is not at issue in this case and those authorities have no bearing here. Nor does the Court need to decipher how they might apply to Midas’s confusing assertion that temperature data collected from the printed circuit boards is somehow used “to create system temperature input on both the Kelvion or Guntner Coolers.” Opp. ¶ 76. Midas cites no evidence for that assertion; the Court may disregard it.

Lemelson v. United States, 752 F.2d 1538, 1551 (Fed. Cir. 1985) (“It is ... well settled that *each element of a claim is material and essential*, and that in order for a court to find infringement, the plaintiff must show the presence of every element or its substantial equivalent in the accused device”) (emphasis added); *see Bright Response, LLC v. Google, Inc.*, No. 2:07-CV-371-CE, 2010 WL 11056580, at *4 (E.D. Tex. July 30, 2010) (“Under the ‘all elements rule,’ every claim limitation is material, and no claim limitation may be read completely out of a claim. ... if a theory of equivalence would entirely vitiate a particular claim element, partial or complete judgment [of noninfringement] should be rendered by the court”) (citing *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1016–17 (Fed. Cir. 2006) and *Warner–Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 29 (1997)).¹⁴

25. Midas tries to deflect attention from its effort to delete claim language by accusing Rhodium of applying a “new claim construction” that improperly narrows the claim. Opp. ¶ 61. Rhodium’s Motion did no such thing. Midas attempted the same gambit in the District Court and failed to prevail based upon this same incorrect attack. Ex. 4 at 11-14, 16; Ex. 5 at 7-10; Ex. 9 at 33:24-34:5. Midas is (mis)using patent jargon to try to create the impression that the Court needs to resolve a complex technical issue. False. Claim construction is the procedure a court employs to interpret the terms of a patent claim before applying those terms to the accused device to determine whether there is infringement. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977 (Fed. Cir. 1995). Here, that procedure took place in the District Court, which did not construe any of the language in the “control facility” limitation at issue in this Motion. Therefore, all terms

¹⁴ *See also Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”); *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“[C]laims are interpreted with an eye toward giving effect to all terms in the claim.”).

in that limitation are given their ordinary and customary meaning. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (this refers to “the meaning that the term would have to a person of ordinary skill in the art”). Rhodium’s Motion rests firmly on this plain meaning construction.

26. Applying the ordinary meaning, the issue is straightforward: the claim language requires “a control facility” that is “adapted to coordinate the primary and secondary fluid circulation facilities as a function of the dielectric fluid temperature in the tank.” To infringe, a system must be able to do what the claim says: “coordinate” two different circulation facilities (the “primary” and “secondary”) based on the temperature of the dielectric fluid “in the tank”—not a different temperature. But as Rhodium’s Motion explained, and as Midas cannot dispute, Rhodium’s systems at Temple and Rockdale never coordinated the operation of anything as a function of that temperature—much less two different fluid circulation facilities as the claim requires. Motion ¶¶ 55-62; Ex. 3 at 12-23 (noting that none of Midas’s infringement theories addresses the primary circulation facility); Ex. 5 at 14.

27. Midas’s accusation that Rhodium is narrowing the claim is wrong. According to Midas, Rhodium supposedly argues that the claims require a temperature sensor in the tank. Not so. Rhodium has argued simply that the claim recites use of the tank fluid temperature. To be able to use that temperature to coordinate anything, a system must ascertain it in some manner. Since Rhodium’s systems could not do so, they did not and could not infringe.

28. Midas also incorrectly asserts that if the claim words “in the tank” mean what they say, the claim would exclude “preferred embodiments” (i.e., examples of the invention) in the patent specification that place the temperature sensors elsewhere in the system. Opp. ¶¶ 62, 64-66. This is a red herring because Rhodium has not argued that the claims require a sensor in the tank. This argument also misstates how patent law works. It is the claims that define the right to exclude,

not the specification. *SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (“[C]laims are infringed, not specifications It is the *claims* that measure the invention.”). And certainly “when the patent describes multiple embodiments, every claim does not need to cover every embodiment. This is particularly true where the plain language of a limitation of the claim does not appear to cover that embodiment.” *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 708 (Fed. Cir. 2020). Midas could have written claims covering the use of fluid temperature measurements from elsewhere in the system. It didn’t. It chose to cover, in plain terms, the use of the “dielectric fluid temperature in the tank.” A patentee is held to the claim language it chose—which here does not cover use of the temperature of the dielectric fluid in any place other than the tank. *Resonate Inc. v. Alteon Websystems, Inc.*, 338 F.3d 1360, 1364 (Fed. Cir. 2003) (“the written description is not a substitute for, nor can it be used to rewrite, the chosen claim language”).

3. Midas Concedes The Temperatures In Rhodium’s Miners Were Different From The “Dielectric Fluid Temperature in The Tank.”

29. Midas does not dispute its expert’s admission that the temperatures measured in the miners were different from the temperature of the dielectric fluid in the tank, and only “correlated” with the fluid temperature in the tank in some unspecified way. Motion ¶ 64 (citing Ex. 3 at 85). As Dr. Pokharna conceded, Rhodium prevented overheating by being able to shut off miners based on the temperature of the chip junction, which was not in contact with the dielectric fluid, could vary by 20-30 degrees Celsius (36-54° F), and could differ from the fluid temperature to a large degree. Ex. 3 at 224-227. That temperature, too, did not equate to the temperature of the dielectric fluid in the tank.

30. Ignoring that problem entirely, Midas tries to create the appearance of a fact dispute by pointing to a temperature on another part of the miner, namely, the hash board (also referred to as the printed circuit board), which was in contact with the dielectric fluid. Opp. ¶¶ 87-90. Here

too, Midas’s expert conceded the hash board temperature was different from and merely correlated to the tank fluid temperature (though in this instance he testified the two temperatures did not differ by much). Opp. Ex. A, 259-60. But even if this equated to “the temperature of the dielectric fluid in the tank”—and it did not—the argument fails for another reason: There is no evidence the printed circuit board temperature could be used or was used to trigger a reboot of the miners (or indeed to coordinate the operation of anything), and Midas does not point to any such evidence. In addition, the district court excluded any infringement theory based on the printed circuit board temperature because Midas failed to timely disclose that theory. Ex. 9 at 13:12-13, 18:6.

4. Midas Concedes That Rhodium’s Systems Could Not Coordinate the Operation of Two Fluid Circulation Facilities As A Function of Temperature.

31. Midas does not dispute that the Rhodium systems lacked the ability to the coordinate the operation of the primary and secondary fluid circulation facilities, asserting at most that each one could adjust the operation of only one fluid circulation facility, not both, as the claim requires.

32. Midas’s assertions of fact about how Rhodium’s systems supposedly used a temperature to coordinate the operation of the primary and secondary fluid circulation facilities are bare bones—almost totally devoid of substance and evidence. In any case, each relates to at most one circulation facility, never to coordinating two. Opp. ¶¶ 80-82 (asserting Guntner cooler control system at Rockdale was “adapted to adjust the cooler’s fan speed,” that is, the secondary circulation facility only—no discussion of coordination with primary circulation facility), ¶ 86 (relying on Guntner cooler system argument for Temple facility as well), ¶¶ 87-92 (no discussion of either primary or secondary fluid circulation facilities in connection with theory about rebooting miners when they overheat). Accordingly, even if they had record support, they would fail to establish a genuine issue of infringement.

33. Midas fails to show that rebooting the miners to lower heat input constitutes coordination of even a single facility. The miners are in the tank, near the pumps and pipes that Midas identified as the primary circulation facility, Ex. 3 at 79 (expert report of Dr. Himanshu Pokharna), but its expert conceded that those pumps were “single-speed pumps” and that the Rhodium system could not change the pump speed or the flow rate of the dielectric fluid. Opp. Ex. A, 282:4-12. Therefore, rebooting the miners could not and did not “coordinate” the primary circulation facility. That is why Midas makes only the modest assertion that “changing the heat generation” by rebooting would “cause a second order cooling effect.” Opp. ¶ 92. Midas does not even try to adduce facts or evidence showing that this “cooling effect” constitutes “coordinating” the primary circulation facility, and it says nothing about the secondary circulation facility at all. And as in the District Court, it presents no argument under the doctrine of equivalents and so has waived any such argument. Motion ¶ 65. Midas has raised no factual dispute as to whether Rhodium’s systems were able to coordinate the operation of the primary and secondary circulation facilities as a function of temperature. They were not.

CONCLUSION

34. The Court should enter summary judgment for Rhodium and dismiss Midas’s claims.

RESERVATION OF RIGHTS

35. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors’ or any party in interest’s rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or

rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Respectfully submitted this 19th day of August, 2025.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Cameron Kelly

Patricia B. Tomasco (SBN 01797600)
Cameron Kelly (SBN 24120936)
Alain Jaquet (*pro hac vice*)
Rachel Harrington (*pro hac vice*)
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: 713-221-7000
Facsimile: 713-221-7100
Email: pattytomasco@quinnemanuel.com
Email: cameronkelly@quinnemanuel.com
Email: alainjaquet@quinnemanuel.com
Email: rachelharrington@quinnemanuel.com

- and -

Eric Winston (*pro hac vice*)
Razmig Izakelian (*pro hac vice*)
Ben Roth (*pro hac vice*)
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: 213-443-3000
Facsimile: 213-443-3100
Email: ericwinston@quinnemanuel.com
Email: razmigizakelian@quinnemanuel.com
Email: benroth@quinnemanuel.com

- and -

STRIS & MAHER LLP

Peter K. Stris
Elizabeth R. Brannen
17785 Center Court Dr N., Suite 600
Cerritos, CA 90703
Phone: (213) 995-6800
Fax: (213) 261-0299
pstris@stris.com
ebrannen@stris.com

*Counsel to the Debtors and
Debtors-In-Possession*

Certificate of Service

I, Cameron Kelly, hereby certify that on the 19th day of August, 2025, a copy of the foregoing Reply was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and to Midas Green Technologies, LLC, c/o Joseph Thomas, 18101 Von Karman Avenue, Suite 230, Irvine, CA 92612, email jthomas@twtlaw.com.

/s/ Cameron Kelly

Cameron Kelly