

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

MIDAS GREEN TECHNOLOGIES,
LLC

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February 21, 2025

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VS.

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CIVIL ACTION NO. 6:24-CV-166

GREEN REVOLUTION
COOLING, INC.

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BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING (via Zoom)

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10:00 1 (Hearing begins.)

10:00 2 DEPUTY CLERK: A civil action in Case
10:01 3 6:24-CV-166, Midas Green Technologies, LLC versus Green
10:01 4 Revolution Cooling, Incorporated. Case called for a
10:01 5 Markman hearing.

10:01 6 THE COURT: Announcements from counsel?

10:01 7 MR. SIEGMUND: Good morning, Your Honor.
10:01 8 This is Mark Siegmund with Cherry Johnson Siegmund
10:01 9 James on behalf of plaintiff Midas. With me today are
10:01 10 my colleagues Henry Pogorzelski, Bill Kolegraff and
10:01 11 Matthew Blair with K&L Gates, and all of them are going
10:01 12 to be sharing in the responsibilities for arguing the
10:01 13 discovery dispute as well as the Markman terms, Your
10:01 14 Honor. We're ready to proceed.

10:01 15 MR. ULLMER: Good morning, Your Honor.
10:01 16 Stephen Ullmer for defendant Green Revolution Cooling
10:01 17 or, more simply, GRC. With me today via video is my
10:01 18 assistant Jonathan Presvelis. He'll also be arguing
10:01 19 the Markman dispute and the discovery dispute after the
10:02 20 Markman today. And our lead counsel, Ashley Moore, is
10:02 21 also on via video.

10:02 22 THE COURT: Very good. Give me one
10:02 23 second. There we go.

10:02 24 The first claim term, I believe, is
10:02 25 plenum, p-l-e-n-u-m. I'm happy to hear an argument --

10:02 1 oh, there's an agreed construction on that.

10:02 2 Good.

10:02 3 Next up I have disputed term weir, like
10:02 4 Bob Weir, W-e-i-r. Y'all are too young to remember Bob
10:02 5 Weir, but -- so I will hear -- give me one second.

10:02 6 I'll hear from defendant on their
10:02 7 proposal, please.

10:02 8 MR. ULLMER: Sure. This is Stephen
10:02 9 Ullmer again for GRC. I'll be taking this term and the
10:02 10 third term. So I'll just get started with weir here.

10:02 11 Mr. Presvelis, if you could share
10:02 12 Slide 3.

10:02 13 On Slide 3, we have the parties'
10:03 14 constructions. And we received Your Honor's
10:03 15 preliminary construction yesterday which aligned with
10:03 16 Midas' proposal.

10:03 17 Slide 3, JP.

10:03 18 MR. PRESVELIS: Is it not moving on the
10:03 19 screen?

10:03 20 MR. ULLMER: I'm not seeing it move. I
10:03 21 don't know if that's a problem on my end only.

10:03 22 MR. PRESVELIS: I will do it this way.
10:03 23 That might resolve the problem.

10:03 24 MR. ULLMER: Okay. Now I'm seeing it.

10:03 25 Thank you.

10:03 1 So again, we have the parties' proposals
10:03 2 for weir on the screen, and this is admittedly a
10:03 3 strange claim construction dispute for me because we're
10:03 4 arguing about two Midas constructions. Our proposal is
10:03 5 Midas' own construction from three prior cases and
10:03 6 Midas is arguing for something new.

10:03 7 I'm not here today to defend Midas' old
10:03 8 proposal against its new one except to say that we
10:03 9 think the old construction is more proper substantively
10:04 10 and as well as for purposes of consistency in
10:04 11 considering this patent.

10:04 12 But what I do want to clarify is a few
10:04 13 things in the record with respect to Midas' briefing
10:04 14 just so before the Court issues a final construction,
10:04 15 it has a clear picture of what's gone on. And the
10:04 16 first issue stems from Midas' surreply brief at Page 2,
10:04 17 which is on the bottom of this slide, where it says
10:04 18 "Midas previously stipulated to the claim construction
10:04 19 proposed by Immersion Systems."

10:04 20 So to be clear, we want to walk through
10:04 21 how it was not a one-time statement and it was not
10:04 22 merely a construction that Immersion proposed in a
10:04 23 different case.

10:04 24 Mr. Presvelis, if you could go to
10:04 25 Slide 4.

10:04 1 So first, in the upper right portion of
10:04 2 this slide we showed Judge O'Connor's claim
10:04 3 construction order from the Midas versus Immersion
10:04 4 case. And that order notes that the parties agreed on
10:05 5 a meaning of "weir," which is the proposed construction
10:05 6 we have from our side today, which is an overflow
10:05 7 structure or barrier that determines the level of
10:05 8 liquid. And so, presumably, the construction that
10:05 9 Midas says Immersion proposed and to which Midas
10:05 10 stipulated. But that's not the whole story.

10:05 11 The second part -- you know, the second
10:05 12 construction where Midas agreed to propose this
10:05 13 construction is from a joint stipulation. We have it
10:05 14 on the left side of this slide. That's from the Midas
10:05 15 versus Rhodium case in this district. And I'll call
10:05 16 Your Honor to the yellow highlighting from Page 1 where
10:05 17 it shows that even though the Rhodium defendants in
10:05 18 that case did not believe that a construction with the
10:05 19 terms listed below was necessary, to avoid further
10:05 20 dispute they agreed to the following constructions as
10:05 21 proposed by Midas. Again, it's the same construction
10:05 22 we're proposing here. Midas proposed that in that
10:05 23 case, not just Immersion proposing and asking Midas to
10:06 24 stipulate to that meaning.

10:06 25 Then the bottom right of this slide we

10:06 1 have the third time where Midas defined this term.
10:06 2 That's in a preliminary response in an IPR proceeding.
10:06 3 Immersion filed that IPR proceeding, but Midas
10:06 4 submitted a preliminary response. They filed a brief.
10:06 5 They told the Patent Office what they think weir means.
10:06 6 And again, they said it means an overflow structure or
10:06 7 barrier that determines the level of a liquid.

10:06 8 So in this case, while Midas' brief says
10:06 9 that it was just a construction tailored for one
10:06 10 particular case and proposed by Immersion, a different
10:06 11 entity, the reality is they admitted and agreed to that
10:06 12 construction in the Immersion case and then they
10:06 13 proposed it themselves against Rhodium, and that's also
10:06 14 what they told the Patent Office what the term means.
10:06 15 So that's not one isolated proposal or stipulation.
10:06 16 That's three definitions, three different proceedings,
10:06 17 and at least two of those proceedings the definition
10:06 18 came from Midas' own mouth.

10:06 19 So we just think there's no reason the
10:06 20 same meaning should not apply here just because Midas
10:07 21 is now litigating against GRC instead of one of those
10:07 22 other parties.

10:07 23 We also take issue with a statement in
10:07 24 Midas' brief where Midas says weir means sets the level
10:07 25 of the fluid.

10:07 1 If you could turn to Slide 5.

10:07 2 This is from Midas' surreply at 3 --

10:07 3 Page 3. I've highlighted the statement where they say,
10:07 4 "We've made the argument that Midas' position is that
10:07 5 Midas' claim term be defined as sets the level of the
10:07 6 fluid in an IPR." I'm not totally sure what that
10:07 7 statement means, but I just want to clarify, we're not
10:07 8 arguing that the construction is "sets the level of
10:07 9 fluid." We are arguing that to the Patent Office Midas
10:07 10 said, "Weir means an overflow structure or barrier that
10:07 11 determines the level of the liquid."

10:07 12 Now, finally, the last point I want to
10:07 13 make about this term is -- turning to Slide 6 -- we
10:07 14 cited the Aylus case in our reply brief, and Midas
10:08 15 argued that the Federal Circuit's decision in Aylus
10:08 16 doesn't apply here because there's been no disclaimer.
10:08 17 I don't know that we're actually relying on a
10:08 18 disclaimer argument. We're relying on what Aylus says
10:08 19 about the patent record.

10:08 20 And in the bottom of that slide we quoted
10:08 21 the Federal Circuit on this point which says, "The
10:08 22 patent owner's preliminary response is an official
10:08 23 paper filed with the PTO, and in such papers the patent
10:08 24 owner can define terms and otherwise make
10:08 25 representations about claim scope. Regardless of when

10:08 1 those statements are made, during the proceeding the
10:08 2 public is entitled to rely on those representations."

10:08 3 That's why we cited the Aylus case.
10:08 4 That's what we think applies here. Midas told the
10:08 5 Patent Office that weir means what we proposed it
10:08 6 means, which is Midas' own prior construction. We
10:08 7 think we should be able to rely on their
10:08 8 representations to the Patent Office and that you
10:08 9 should -- that this Court could adopt that construction
10:08 10 rather than the new construction, which is inconsistent
10:09 11 with the old construction and, you know, broader at
10:09 12 least in some respects than the construction that has
10:09 13 been consistently applied in at least three prior
10:09 14 proceedings.

10:09 15 So with those clarifications and a record
10:09 16 in mind, I'm happy to answer any questions Your Honor
10:09 17 may have and otherwise cede the floor to Midas for
10:09 18 rebuttal.

10:09 19 THE COURT: A response?

10:09 20 MR. KOLEGRAFF: Yes. Mr. Blair, can you
21 put the slides up, please?

10:09 22 This is Bill Kolegraff.

23 THE COURT: Thank you.

10:09 24 MR. KOLEGRAFF: First of all, as we go
10:09 25 through the handful of slides here, we're going to show

10:09 1 that this really is the proper construction of the name
10:09 2 "weir." It is more consistent than the prior
10:09 3 construction, and it certainly is not inconsistent with
10:10 4 the prior construction. So, for example, go to the
10:10 5 next slide, please.

10:10 6 You'll see in Claim 1 and in Claim 6
10:10 7 there is a weir that is claimed, and you'll see it in
10:10 8 red there. The parties generally agree on the
10:10 9 proposal. They both agree that it's an overflow
10:10 10 structure or barrier. It's just the last few words
10:10 11 that are in dispute. We believe it means that a liquid
10:10 12 flows over where GRC says that determines the level of
10:10 13 fluid.

10:10 14 Go to the next slide.

10:10 15 First of all, there is -- our proposal
10:10 16 with -- that a liquid flows over has good internal
10:10 17 consistency with the way the claim currently reads. So
10:10 18 if you see the portion in yellow, it says, "A
10:10 19 dielectric fluid recovery reservoir positioned
10:10 20 vertically beneath the overflow lip of the weir and
10:10 21 adapted to receive the dielectric fluid as it flows
10:10 22 over the weir."

10:10 23 So again, this is consistent with the
10:10 24 existing language within Claim 1 and Claim 6 itself.

10:11 25 Go to the next slide.

10:11 1 This is also very consistent with the way
10:11 2 it is entirely set out in the specification both in the
10:11 3 figures and in the text. If you look at Figure 5,
10:11 4 you'll see there's a weir. We have it shown with the
10:11 5 blue highlighted arrow, and it's shown as No. 22. It's
10:11 6 generally a long rectangular shaped weir at the back of
10:11 7 this tank. That is described in the text, which is
10:11 8 highlighted in yellow. It's positioned vertically
10:11 9 beneath the overflow lip of the weir, 22, and adapted
10:11 10 smoothly to receive the dielectric fluid as it flows
10:11 11 over the weir. So again, the weir is intended to allow
10:11 12 the fluid to flow over the overflow lip.

10:11 13 You can go to the next slide.

10:11 14 This is also consistent with what one
10:11 15 skilled in the art is going to believe a weir is going
10:11 16 to be. So from a respected article, by definition, the
10:11 17 weir is -- in yellow, "A weir is a dam over which
10:12 18 liquids are forced to flow." Again, that is very
10:12 19 consistent with our proposal.

10:12 20 Next slide.

10:12 21 This is a picture, again, out of that
10:12 22 same teaching article, and it shows that the primary
10:12 23 function of a weir is to provide a barrier that
10:12 24 prevents liquid from flowing when the level of the
10:12 25 liquid is below the barrier and allow for liquid flow

10:12 1 when the liquid is above the barrier. So you can see
10:12 2 that it is the surface of the weir, the overflow lip,
10:12 3 that allows the lowest level of the fluid to be set.
10:12 4 So again, ours is very consistent with the claim
10:12 5 language itself, the specification, and one skilled in
10:12 6 the art would need.

10:12 7 Go to the next slide.

10:12 8 Now, this prior stipulated construction
10:12 9 that Midas had is just not binding here. First, GRC
10:13 10 has not proven a key factor for judicial estoppel to
10:13 11 apply in the Fifth Circuit. In order for judicial
10:13 12 estoppel to apply, the proposed claim term has to be
10:13 13 plainly inconsistent with the prior position. And we
10:13 14 have the case cite there.

10:13 15 And to be clearly inconsistent, that
10:13 16 position must be mutually exclusive. What's important
10:13 17 here is that prior stipulation is actually a narrower
10:13 18 limitation than the current proposal. This broadens it
10:13 19 slightly to what it really should be based on the claim
10:13 20 scope and the specification. The GRC proposal focuses
10:13 21 on just one of the effects a weir may have. This --
10:13 22 our proposal is not mutually exclusive of the prior
10:13 23 stipulated construction because their construction, the
10:13 24 other construction, is actually within the scope of our
10:13 25 construction.

10:13 1 Now, GRC cites to the Aylus case, and
10:13 2 that's just simply not relevant here. That case was
10:14 3 directed to prosecution disclaimer and not claim
10:14 4 construction. And it's important to note that that IPR
10:14 5 was never instituted, and the PTAB made no comments on
10:14 6 and did not adopt the construction that was presented
10:14 7 there. It just is not applicable here.

10:14 8 More applicable is the case we cite to in
10:14 9 our briefing, which is DDR Holdings v. Priceline, which
10:14 10 is a Federal Circuit case from 2024, and the cite is
10:14 11 2024 U.S. App. LEXIS 31009 and at *16, and I'll quote
10:14 12 from this case. It says --

10:14 13 THE COURT: I got it. I got it.

10:14 14 MR. KOLEGRAFF: Oh, you got it. Okay.

10:14 15 So the bottom line here is the new
10:14 16 proposal is the proper Midas construction for the claim
10:14 17 weir. And with that, I'm open for questions or turn it
10:14 18 back over for a response.

10:14 19 THE COURT: Rebuttal?

10:14 20 MR. ULLMER: Very briefly, Your Honor.
10:14 21 This is Steve Ullmer again for GRC.

10:14 22 And I want to point out that Midas'
10:14 23 proposal is really just that a weir is an overflow
10:15 24 structure or barrier. They went through -- yeah, thank
10:15 25 you. Mr. Presvelis is putting the Slide 3 up on the

10:15 1 screen from Midas' slide or their presentation.

10:15 2 And this additional aspect of the
10:15 3 construction that a liquid flows over, that's already
10:15 4 set forth in the claims. So they're essentially saying
10:15 5 a weir is an overflow structure or barrier. We think
10:15 6 that's somewhat incomplete.

10:15 7 Mr. Presvelis, if you could go to Slide 4
10:15 8 of their slide. Actually one more, Slide 5.

10:15 9 So as they just walked through, as
10:15 10 Mr. Kolegraff just walked through, a weir is a dam over
10:15 11 which liquids are forced to flow. That, I think is
10:15 12 consistent with the old Midas proposal and more
10:15 13 complete and consistent with the record than their
10:15 14 current proposal, which is the weir has to set the
10:15 15 level of liquid that is going to flow over. That's
10:15 16 what a dam does, right? If the liquid's below the
10:16 17 level of the dam, it won't flow. If it's over, it
10:16 18 will.

10:16 19 That's also consistent with the
10:16 20 definition of weir they showed us from a textbook or
10:16 21 that -- the image they showed us. Simply put, it's
10:16 22 more than just an overflow structure or barrier. It
10:16 23 has something to do with the level of liquid, right?
10:16 24 And the claim language already requires that the liquid
10:16 25 flows over this weir. So that doesn't add anything to

10:16 1 their proposed construction, and that's -- it's really
10:16 2 just -- it's not complete enough. And so that's why we
10:16 3 suggest we should stick with the consistent
10:16 4 construction that's already been applied.

10:16 5 And with that, I have nothing further.

10:16 6 THE COURT: I'll be back in a second.

10:16 7 (Pause in proceedings.)

10:17 8 THE COURT: The Court is going to
10:17 9 maintain its preliminary construction.

10:17 10 Next up I have disputed claim term
10:18 11 dielectric fluid recovery reservoir and goes on from
10:18 12 there. The Court has plain meaning. And I'll hear
10:18 13 from the defendant on this.

10:18 14 MR. PRESVELIS: Okay. Good morning, Your
10:18 15 Honor. This is Jonathan Presvelis from
10:18 16 GreenbergTraurig on behalf of GRC.

10:18 17 THE COURT: Good morning.

10:18 18 MR. PRESVELIS: Share my slides again.

10:18 19 Okay. So I'll be discussing the recovery
10:18 20 reservoir term. The Court has provided a preliminary
10:18 21 construction that this term be given its plain meaning.
10:18 22 Respectfully, we believe that there remains a dispute
10:18 23 regarding the "as it flows over the weir" portion of
10:18 24 this term. In light of the preliminary construction
10:18 25 and the definitions that were provided by Midas during

10:18 1 briefing, GRC has provided a proposed modification of
10:18 2 our proposed construction that gives meaning to all the
10:19 3 words while also potentially alleviating some of the
10:19 4 concerns raised by Midas.

10:19 5 So specifically, here we have the
10:19 6 original proposal. We have replaced "as soon as" with
10:19 7 the word "when" so that the construction reads in its
10:19 8 entirety, "The dielectric fluid is received by the
10:19 9 recovery reservoir when the fluid flows over the weir."

10:19 10 So just taking a quick step back, the
10:19 11 disputed phrase is part of a larger limitation
10:19 12 regarding the recovery reservoir, and it has two
10:19 13 requirements. And I put them up on the screen. The
10:19 14 first is that the recovery reservoir be positioned
10:19 15 vertically beneath the overflow lip of the weir.
10:19 16 There's no dispute about that. The parties agree that
10:19 17 those words have meaning and that it describes where
10:19 18 the fluid recovery reservoir is.

10:19 19 The dispute is about the meaning and the
10:19 20 scope of the second requirement that the recovery
10:20 21 reservoir be adapted to receive the dielectric fluid as
10:20 22 it flows over the weir. And it's the "as it flows over
10:20 23 the weir" part that we're focused on.

10:20 24 And as discussed in our briefing, we
10:20 25 believe that Midas' proposal is reading out that

10:20 1 language rendering it meaningless while hiding behind
10:20 2 its plain meaning construction.

10:20 3 And that's -- taking a look at their
10:20 4 brief, it shows that the parties agree here that the
10:20 5 dielectric cooling fluid exiting the weir must be
10:20 6 captured in a reservoir, parties agree on that. That
10:20 7 the reservoir must be positioned vertically beneath the
10:20 8 lip or crest of the weir. That is the claim language.
10:20 9 We agree on that as well.

10:20 10 But the last sentence is what highlights
10:20 11 the dispute here and that according to Midas under the
10:20 12 plain meaning, the reservoir can receive the fluid
10:20 13 exiting the weir using intervening structures such as
10:20 14 piping, fluid collection containers, troughs,
10:20 15 et cetera.

10:20 16 So under Midas' interpretation of this
10:21 17 claim term, any recovery reservoir that is located
10:21 18 vertically beneath the lip or the crest of the weir and
10:21 19 receives fluid satisfies this limitation regardless of
10:21 20 whether or not that fluid is received as the claim
10:21 21 requires as it flows over the weir.

10:21 22 And I just highlighted this on the slide
10:21 23 that if we were to just chop off "as it flows over the
10:21 24 weir" from the claim language, this truncated claim
10:21 25 language shows precisely how Midas' characterizing the

10:21 1 plain meaning of this term. And it would render "as it
10:21 2 flows over the weir" meaningless.

10:21 3 As I mentioned previously, Midas, in its
10:21 4 briefing, provided a definition for the word "as." It
10:21 5 quoted dictionary.com and said that "as" means used to
10:21 6 indicate that something happens during the time when
10:21 7 something is taking place. And GRC agrees that the
10:22 8 word "as" within the disputed claim language should
10:22 9 have some meaning. So we've taken that meaning and
10:22 10 we've included it in our amended proposed construction
10:22 11 below, and we believe that our position is supported by
10:22 12 Midas' definition, and it's consistent with the
10:22 13 language.

10:22 14 The dielectric fluid is received by the
10:22 15 recovery reservoir, that is the something that happens,
10:22 16 when the fluid flows over the weir, the something
10:22 17 taking place. And that's consistent with the
10:22 18 definition that Midas provided during their briefing.

10:22 19 And then I just quickly want to touch on
10:22 20 this point. I don't want to belabor this issue.
10:22 21 Midas' interpretation of the plain meaning is in
10:22 22 conflict with the specification and the file history.
10:22 23 In the specification the patentee specifically
10:22 24 distinguished the placement of this claim, the recovery
10:22 25 reservoir, immediately adjacent to the tank from or as

10:23 1 opposed to, opposite to, their embodiment in the first
10:23 2 provisional. And I'm going to pull that up for you.

10:23 3 So these images are from the first
10:23 4 provisional, which GRC provided as Exhibit 10,
10:23 5 Docket 39-2. And it shows this distinguished
10:23 6 embodiment with these U shaped drain tubes highlighted
10:23 7 in blue, and it shows that the U shaped drain tubes
10:23 8 received the heated fluid that flows over, and then it
10:23 9 drains the fluid, as shown in that last portion,
10:23 10 through piping into a sump, which is highlighted in
10:23 11 green. And this is exactly what the patentee was
10:23 12 distinguishing the claimed recovery reservoir from.

10:23 13 So this highlights kind of the dispute
10:23 14 here where Midas is pointing to this sump, which is
10:23 15 located with piping between it such that the sump
10:23 16 receives the fluid, but it does not receive it as it
10:23 17 flows over the weir. So regardless of that, they say
10:24 18 it's covered by the scope of this claim.

10:24 19 And I'll just, lastly, focus on -- these
10:24 20 are the images from the patent itself. This is what
10:24 21 the patentee pointed to as supporting this recovery
10:24 22 reservoir limitation, and the highlighted green is the
10:24 23 recovery reservoir on the left, and on the right we
10:24 24 pointed to it, it's No. 42. And these -- recovery
10:24 25 reservoir and all the figures show that it is

10:24 1 immediately adjacent to the tank and the weir, and most
10:24 2 importantly, it allows the recovery reservoir to
10:24 3 receive the fluid that flows over the weir as it flows
10:24 4 over the weir when, which is our proposed construction.

10:24 5 So we respectfully request the Court
10:24 6 adopt our modified construction to resolve this dispute
10:24 7 and give meaning to all the words in the claim.

10:24 8 And unless you have some questions, I
10:24 9 will hand it over to the other side.

10:25 10 THE COURT: A response?

10:25 11 MR. BLAIR: Yes, Your Honor. This is
10:25 12 Matthew Blair. Give me a moment to share my slides.

10:25 13 Good morning, Your Honor. So we believe
10:25 14 that the term "as it flows over the weir" doesn't
10:25 15 require a construction. It's going to be evident to a
10:25 16 jury what that means. And there's really two issues
10:25 17 here with what GRC is trying to do. Legally, they're
10:25 18 trying to limit the claim language to a specific
10:25 19 preferred embodiment that is disclosed in the
10:25 20 specification. And there's plenty of case law out
10:25 21 there that says that that's improper even if it's the
10:25 22 only disclosed embodiment.

10:25 23 We refer to the Liebel-Flarsheim versus
10:25 24 Medrad case that we cited in our briefing, which says
10:25 25 that it is improper to do exactly that. And there

10:26 1 doesn't seem to be a dispute about whether this
10:26 2 alternative arrangement that uses intermediary piping
10:26 3 is disclosed in the 2012 specification. Both sides
10:26 4 included this in our slide deck.

10:26 5 In that 2012 provisional, there is this
10:26 6 configuration where there's a side view of the tank,
10:26 7 the fluid flows over into this -- it calls it a U
10:26 8 shaped drain tube. It's sort of like a trough or like
10:26 9 the drainage gutter on a roof, and then the fluid flows
10:26 10 off into this sump. And really, what the dispute
10:26 11 centers on is whether there has been a clear and
10:26 12 unmistakable disclaimer of that embodiment. And we
10:26 13 don't believe that defendants have met their burden to
10:26 14 show that there has been a clear and unmistakable
10:26 15 disclaimer.

10:27 16 If you look at the language that appears
10:27 17 in the specification that talks about this, GRC counsel
10:27 18 focused on this alternative arrangement language as
10:27 19 opposed to the alternative arrangement proposed in the
10:27 20 first provisional. But the important thing to note
10:27 21 here is that this is explicitly calling out a preferred
10:27 22 embodiment. It's not saying that this is the only
10:27 23 embodiment. It's not disclaiming that earlier 2012
10:27 24 provisional. It's just saying that what is depicted in
10:27 25 the Figure 13 is a preferred embodiment. And so we

10:27 1 don't believe there's a clear and unmistakable
10:27 2 disclaimer, Your Honor, and we believe that there's no
10:27 3 reason to depart from the plain meaning on this term.

10:27 4 THE COURT: A response?

10:27 5 MR. PRESVELIS: Yes, briefly, Your Honor.

10:27 6 Okay. I'd like to just address a few
10:27 7 things. First, opposing counsel cited the
10:28 8 Liebel-Flarsheim case. One thing I'd like to point out
10:28 9 in that case is that the Court pointed out that the
10:28 10 defendant didn't point to any language in the
10:28 11 specification that expressed and to limit the scope to
10:28 12 that embodiment.

10:28 13 We have precisely here -- I put up the
10:28 14 same portion of the specification that we're talking
10:28 15 about, and Midas keeps separating and pointing to two
10:28 16 different portions of this specification, the preferred
10:28 17 embodiment and the alternative arrangement, but ignores
10:28 18 the clear language for here as to "as opposed to" which
10:28 19 is evidenced in the specification that they're limiting
10:28 20 the scope and expressly opposing this alternative
10:28 21 arrangement.

10:28 22 And secondly -- well, that rolls into the
10:28 23 same point that it's not just that there's one
10:28 24 preferred embodiment. The claim -- the specification
10:29 25 here says it's all of the embodiments, all of the

10:29 1 images describe the -- the recovery reservoir located
10:29 2 adjacent to the tank such that it can receive the
10:29 3 liquid as it flows over the weir. That's consistent
10:29 4 with the file history. When they added this
10:29 5 limitation, they cited to those figures as supporting
10:29 6 it and saying that it distinguishes it from the prior
10:29 7 art. So we think that that is clear, and we think our
10:29 8 proposed construction gives meaning to all the terms
10:29 9 and all the words including "as it flows over the
10:29 10 weir."

10:29 11 THE COURT: Okay. I'll be back -- I'm
10:29 12 sorry?

10:29 13 MR. PRESVELIS: That's all I've got.

10:29 14 THE COURT: I'll be back in a second.

10:29 15 (Pause in proceedings.)

10:30 16 THE COURT: The Court is going to
10:30 17 maintain its construction.

10:30 18 Next up is -- I have Claim Term 4 --
10:30 19 Disputed Term 4 in Claim 2. The tank and primary
10:31 20 circulation facility comprises a highly-integrated
10:31 21 module. Defendant argues that it's indefinite, and
10:31 22 I'll hear argument about that.

10:31 23 MR. ULLMER: Yes, Your Honor. Stephen
10:31 24 Ullmer again for defendant GRC.

10:31 25 So the issue with the highly-integrated

1 term is it's just not clear whether particular module
2 that had the paint and primary circulating ability in
3 it is just a regular module, an integrated module or a
4 highly-integrated module. And the Court knows this
5 area of the law well. We cited your U.S. Well Services
6 versus Halliburton case in our briefing. That case is
7 instructive here. The issue in dispute there was a
8 term "high pressure" where spraying out frac -- for
9 fracking. And that issue was you don't know when it's
10 high pressure versus not high pressure or very high
11 pressure.

12 We have the same issue here. A person of
13 skill in the art cannot differentiate between
14 highly-integrated modules, integrated modules or just
15 merely a plain old module. And our briefing walked
16 through that Pages 16 to 18 of our opening brief. Our
17 expert goes through it in Paragraph 52 to 60 of his
18 declaration. I don't think it's useful to rehash the
19 briefing here.

20 THE COURT: Let me ask you this. I'm
21 sorry to interrupt. I'll admit, I'm not -- I do tend
22 if I -- in the very rare circumstances where I granted
23 indefinite arguments, it has usually been grammatical.
24 You're right about that. And here, I'm not -- I'm not
25 sure what your point is.

10:32 1 And what I mean by that is the tank --
10:33 2 what if they had just said the tank and primary
10:33 3 circulation facility comprises an integrated module? I
10:33 4 mean, your argument is highly-integrated module is
10:33 5 indefinite -- makes it indefinite. I don't mean to
10:33 6 sound -- I don't mean this the way it's going to come
10:33 7 out, but who cares if -- and I give you guys a hard
10:33 8 time. One of my best friends who I ran with this
10:33 9 morning is a patent prosecutor, so it's not personal.
10:33 10 I wasn't smart enough to be qualified to be a
10:33 11 prosecutor.

10:33 12 But I do give you guys a hard time
10:33 13 that -- I'm not sure that if the claim term had said
10:33 14 the tank and primary circulation of the facility
10:33 15 comprised an integrated module, you wouldn't be saying
10:33 16 it's indefinite because your guys don't know whether
10:33 17 it's a module or a highly-integrated module. And so
10:33 18 I'm not -- I'm not sure what your point -- why it's
10:33 19 indefinite. I'm not -- I'm not quite following. That
10:34 20 was a long ramble, but hopefully it made sense.

10:34 21 MR. ULLMER: It makes complete sense,
10:34 22 Your Honor. I understand the issue enough. Exactly
10:34 23 where I'm headed. And so, first of all, if the claim
10:34 24 had said integrated, I think that has a meaning that
10:34 25 would be sufficient enough. It sort of -- you can

10:34 1 identify what a module is, you can usually identify
10:34 2 what an integrated module is, person of skill in the
10:34 3 art can tell what that means.

10:34 4 But in this case we have two concrete
10:34 5 examples that show that there are different sides of
10:34 6 this letter that are pretty far apart.

10:34 7 THE COURT: Okay.

10:34 8 MR. ULLMER: The first one that -- so a
10:34 9 person of ordinary skill in the art might look at
10:34 10 highly-integrated and say, okay, that means everything
10:34 11 has to be packed together as tightly and compactly as
10:34 12 physically possible. That's one position. The other
10:34 13 one is, well, as long as stuff is physically connected
10:34 14 in this module and the stuff is in the same facility,
10:34 15 that's good enough too.

10:34 16 Those examples are not examples that I'm
10:35 17 making up. That's not stuff that GRC conjured out of
10:35 18 thin air just to make a dispute for you to decide.
10:35 19 Those are what Midas' expert and the patent examiner
10:35 20 said about this claim term.

10:35 21 So, Mr. Presvelis, if we could turn to
10:35 22 Slide 19.

10:35 23 This is Midas' position from their
10:35 24 responsive brief at Pages 19 and 20. And there they
10:35 25 conclude that highly-integrated means as compact as

10:35 1 possible. That's the underlined red portion of the
10:35 2 lower highlighted section. How did they get to that
10:35 3 conclusion? They said, a person of skill in the art
10:35 4 would have to comply with the physical design
10:35 5 requirements of the components that go into the module.
10:35 6 So I understand that to mean, okay, we have pipe and
10:35 7 pumps and things that have minimum tolerances, but you
10:35 8 don't want any additional space beyond what's the
10:35 9 minimum allowed. Okay. And then they go through the
10:35 10 spec. They cite a few things. They talk about
10:35 11 minimizing volumes, the benefits of compact design,
10:35 12 these are sort of generic goals of a person of skill in
10:36 13 the art, and they conclude that the POSITA would
10:36 14 understand the resulting need to make the circulation
10:36 15 system have compact as possible while maintaining
10:36 16 component performance.

10:36 17 So you've got to jam everything in there
10:36 18 as tightly as you can while making sure the components
10:36 19 still work, but as compact as possible. That's Midas'
10:36 20 position.

10:36 21 On Slide 20, if you could go there.

10:36 22 This is the same position from the expert
10:36 23 declaration that Midas filed. Midas never cited that
10:36 24 expert declaration, but it's in the record. Midas'
10:36 25 expert cites the same disclosures, comes to the same

10:36 1 conclusion, highly-integrated means as compact as
10:36 2 possible. Okay.

10:36 3 So Midas and its expert takes one of the
10:36 4 positions I mentioned before where highly-integrated is
10:36 5 extremely compact, but the problem is that's not an
10:36 6 objective standard that Midas pulled from its patent
10:36 7 and it's not part of Midas' proposed construction. So
10:36 8 the claim remains subjective. Whoever's looking at
10:36 9 this claim is the one deciding whether it's
10:37 10 highly-integrated or just integrated.

10:37 11 And we know that there are different
10:37 12 subjective opinions about what constitutes highly
10:37 13 because during prosecution, I think Mr. Presvelis has
10:37 14 already put Slide 21 on the screen, we know that's what
10:37 15 the examiner did. This is a slide showing an excerpt
10:37 16 of a 2017 Office Action. There the examiner found that
10:37 17 a prior art reference disclosed a highly-integrated
10:37 18 module because the devices are all inherently
10:37 19 physically connected to one another and located in the
10:37 20 same facility.

10:37 21 So on one hand, we have Midas and its
10:37 22 expert saying highly-integrated means as compact as
10:37 23 possible. On the other hand, we have the examiner who
10:37 24 is, you know, somewhat -- at least somewhat skilled in
10:37 25 this area of technology saying, well, the module's

10:37 1 highly-integrated just because it's physically
10:37 2 connected in the same facility. Those are wildly
10:37 3 different subjective interpretations of
10:37 4 highly-integrated. So we don't know -- again, we don't
10:37 5 know if a module is just a module, an integrated module
10:37 6 or highly-integrated module. The examiner thinks many
10:38 7 things are highly-integrated. Midas has a stricter
10:38 8 view of it. That's why Midas and the examiner arrived
10:38 9 at wildly different understandings on what this term
10:38 10 means.

10:38 11 I have one additional point on this that
10:38 12 I'd like you to look at, and in particular, I'd like
10:38 13 you to consider Midas' surreply brief. There they,
10:38 14 once again, did not offer objective criteria from the
10:38 15 patent itself. Instead, on Page 10 -- and, JP, I don't
10:38 16 think there's a slide on this one.

10:38 17 On Page 10 of the surreply brief, they go
10:38 18 through the components, they go into the module. They
10:38 19 say those components are well defined, and, quote, "If
10:38 20 those are tightly co-locating within the tank" -- "with
10:38 21 the tank, then it is a highly-integrated system."

10:38 22 So the passage I just quoted has a typo
10:38 23 in it. I think what they meant to say was co-located,
10:38 24 but it's telling that Midas turned back to this
10:38 25 language "co-located."

10:38 1 We look at Slide 24.

10:39 2 That comes from the same portion of the
10:39 3 specification where the term "highly-integrated" is
10:39 4 used. It's only used once. Tightly co-located is used
10:39 5 in the same sentence. That was their original claim
10:39 6 language. They told -- the original claim said, okay,
10:39 7 we have a module that requires tightly co-located. The
10:39 8 examiner said, that's not sufficiently understood or
10:39 9 specially defined in -- by the specification. It's not
10:39 10 definite. So they switched from tightly co-located to
10:39 11 highly-integrated.

10:39 12 Well, that's the same -- that causes the
10:39 13 same problem. During prosecution, tightly co-located
10:39 14 was indefinite so they changed to highly-integrated.
10:39 15 In their surreply brief, they argue the opposite. They
10:39 16 say, well, highly-integrated just means tightly
10:39 17 co-located. That's sufficient enough for a person of
10:39 18 skill in the art.

10:39 19 We can go round and round saying that
10:39 20 back and forth, but that's not an objective baseline in
10:39 21 the specification that a person of skill in the art can
10:39 22 use to evaluate whether module is highly-integrated or
10:39 23 not.

10:39 24 So based on that, we believe you should
10:39 25 change your preliminary construction and find

10:40 1 highly-integrated indefinite.

10:40 2 THE COURT: Thank you, sir.

10:40 3 A response?

10:40 4 MR. BLAIR: Thank you, Your Honor. This
10:40 5 is Matthew Blair again. And let me share my slides.

10:40 6 So, Your Honor, our position is that the
10:40 7 Patent Office already looked at this exact issue. As
10:40 8 GRC counsel pointed out, during the prosecution
10:40 9 history, there was, in fact, indefiniteness rejection.
10:40 10 It was not for the term "highly-integrated." It was
10:40 11 for this other term "tightly co-located." And
10:40 12 highly-integrated is the term that the patent owner
10:40 13 provided which resolved that indefiniteness issue.

10:40 14 The Patent Office is presumed to be
10:40 15 knowledgeable about the art. They're presumed to have
10:40 16 done their job correctly. And they're presumed to have
10:40 17 got it right. If the Patent Office didn't have a
10:40 18 problem with this term and they found it sufficiently
10:41 19 definite to grant the patent, then we don't believe
10:41 20 that defendants have met their high burden in order to
10:41 21 overcome that presumption.

10:41 22 And the other thing I'd like to point
10:41 23 out, Your Honor, the first place that GRC went in
10:41 24 discussing this term is saying, well, we don't know
10:41 25 what the difference between highly-integrated and

10:41 1 integrated is. And so it seems like they're really
10:41 2 focused on "highly" as the source of this alleged
10:41 3 indefiniteness. But the claim language doesn't
10:41 4 actually ask a person of skill in the art to
10:41 5 distinguish between whether something is integrated or
10:41 6 highly-integrated. It's not the case where we have
10:41 7 some claims directed to an integrated module and then
10:41 8 other claims directed to a highly-integrated module.
10:41 9 It -- it's just -- it's a highly-integrated module.
10:41 10 It's hyphenated. It's just one idea. And so we think
10:41 11 this is exactly what Your Honor suggested at the
10:41 12 beginning. That it really is just one concept. It's a
10:42 13 highly-integrated module, and a person of skill in the
10:42 14 art is not going to have any trouble understanding what
10:42 15 that means in this context.

10:42 16 THE COURT: Anything else from the
10:42 17 defendant?

10:42 18 MR. ULLMER: Yeah. Very briefly.

10:42 19 So the term at issue during prosecution
10:42 20 that was amended away from was tightly co-located.
10:42 21 They switched to highly-integrated. And then in their
10:42 22 briefing, they do the opposite. They say, well, it's
10:42 23 highly -- you know, highly-integrated is sufficient
10:42 24 because it means tightly co-located, and that is just
10:42 25 circular logic. That doesn't make sense.

10:42 1 But above and beyond that, the idea that
10:42 2 just because the Patent Office granted the patent, it's
10:42 3 certainly definite. That's not how this works. Every
10:42 4 patent that's ever been invalidated for indefiniteness
10:42 5 was issued by the Patent Office. That's just how this
10:42 6 works. Here, they haven't been able to point to
10:43 7 anything objective in the spec. They actually pointed
10:43 8 back to the thing that was indefinite during
10:43 9 prosecution. And I'll leave it at that.

10:43 10 THE COURT: I was on mute. If you didn't
10:43 11 hear me, I said I'll be back in a second. So I
10:43 12 apologize.

10:43 13 (Pause in proceedings.)

10:45 14 THE COURT: This may come across as more
10:45 15 of a left-handed compliment than I mean for it to.
10:45 16 When I got here, I really didn't think you had any
10:45 17 chance in your argument, and I thought I'm going to --
10:45 18 I don't think it's indefinite, but I'm going to tell
10:45 19 you I thought you did an excellent job arguing it, and
10:45 20 I understand your position. You couldn't have done any
10:45 21 better job arguing it. And maybe a different judge
10:45 22 would agree with you. I disagree with you, but I think
10:45 23 you did a compelling argument on your side.

10:45 24 And then we have a discovery dispute. I
10:45 25 think I -- I have a mix of discovery dispute. If I'm

10:45 1 wrong, someone yell.

10:45 2 And then it's whether or not the
10:46 3 defendant has complied with everything they want --
10:46 4 that Midas thinks they should give. So I'll hear from
10:46 5 Midas, and Midas can tell me what they're unhappy
10:46 6 about, and then I'll hear from the defendant.

7 MR. POGORZELSKI: Yes, Your Honor. Thank
10:46 8 you. This is Henry Pogorzelski on behalf of the
10:46 9 plaintiff. If I may share my screen, please.

10:46 10 So, Your Honor, thank you for this
10:46 11 opportunity. A little bit of background first. Your
10:46 12 Honor, there are four items that we're requesting, and
10:46 13 first the legal standard is technical documents
10:46 14 sufficient to show how the accused products work.

10:46 15 There are, in this case, two accused
10:46 16 products or two sets of accused products. There's a
10:47 17 product here called the ICeraQ10, and then there's
10:47 18 another product called the HashRaQ Max.

10:47 19 And, Your Honor, as you've just construed
10:47 20 some terms in this claim, I wanted to point out the
10:47 21 representative claim so that you can see the items that
10:47 22 we're looking for when we look at the documents
10:47 23 produced by GRC with regard to the accused products.

10:47 24 And specifically, I want to highlight
10:47 25 this last term "control facility" because we're going

10:47 1 to have the burden -- Midas will have the burden to
10:47 2 show that there is a control facility in the accused
10:47 3 products, and so that's why we're asking for documents
10:47 4 or we're focused, in part, upon documents that relate
10:47 5 to the control system in the accused products.

10:47 6 Now, there are four issues, but I think
10:47 7 we can resolve the first two fairly quickly. I'm going
10:48 8 to go in reverse order because I think it makes more
10:48 9 sense to do it that way. So the first request is we're
10:48 10 looking for control system documents for the HashRaQ
10:48 11 Max.

10:48 12 In response to us submitting the
10:48 13 discovery chart to the Court, GRC produced a number of
10:48 14 documents, and we looked at those very closely to
10:48 15 understand what was being disclosed. As far as control
10:48 16 systems for the HashRaQ Max, I think the best document
10:48 17 we have is this document. It's -- it looks to be an
10:48 18 electrical schematic, and we could get an electrical
10:48 19 engineer to point out what exactly this is. That's not
10:48 20 my skill set.

10:48 21 But we think that they're fairly likely
10:48 22 that GRC developed some design documents and they
10:49 23 wanted -- they knew in advance how they intended to
10:49 24 control this, and they would have created, we think,
10:49 25 control strategy documents, flow sheets like that, and

10:49 1 then they would have gone to their electrical
10:49 2 engineers, their CAD drawing people, and they would
10:49 3 have provided -- they would have given instructions to
10:49 4 say here's how we want to control the system. You guys
10:49 5 go start building schematics for us. So this is the
10:49 6 best document we got. We would need an expert to
10:49 7 understand how this document shows the control
10:49 8 schematic or how this document shows how the HashRaQ
10:49 9 Max device works.

10:49 10 Now, if GRC counsel says that, well, this
10:49 11 product was never sold, this is the best they have,
10:49 12 there are no other documents that more clearly show how
10:49 13 the system is controlled, then we're fine with that.
10:50 14 And if GRC counsel wants to say on the record this is
10:50 15 it, then, you know, maybe the Court can deny without
10:50 16 prejudice our motion with respect to the control
10:50 17 systems for the HashRaQ Max.

10:50 18 But we think it's highly likely that
10:50 19 there are better documents and that GRC just hasn't
10:50 20 gone out and found them from their client. So I would
10:50 21 pass and ask if -- I would ask if the Court has any
10:50 22 questions about what we're looking at?

10:50 23 THE COURT: No. I'm good.

10:50 24 MR. POGORZELSKI: Your Honor, I think
10:50 25 maybe I should pass the --

10:50 1 THE COURT: I was expecting counsel for
10:50 2 defendant to go.

10:50 3 MR. PRESVELIS: Good morning still, Your
10:50 4 Honor. It's Jonathan Presvelis again.

10:51 5 I think you're still sharing your screen.
10:51 6 Okay.

10:51 7 So a couple points and I think we can
10:51 8 address all of them pretty quickly. Starting off,
10:51 9 counsel raised this issue four -- four months after we
10:51 10 produced documents, counsel raised an issue here, and
10:51 11 they claim that they didn't have sufficient documents.
10:51 12 We discussed it with them. We told them to take a look
10:51 13 again at the documents that were there. They seemed to
10:51 14 not exactly know exactly what they had. And then they
10:51 15 went back and looked at it, and they said that they
10:51 16 were missing certain CAD drawings, that they wanted
10:51 17 additional documents, and then they raised this
10:51 18 dispute. And we said, we are producing the documents
10:51 19 as highlighted in our discovery dispute letter. We
10:52 20 said, documents are incoming, you know, we're working
10:52 21 with the other side, and then we did produce documents.

10:52 22 As cited by opposing counsel, they
10:52 23 received, after filing this motion, six additional CAD
10:52 24 drawings regarding the HashRaQ Max. CAD drawings which
10:52 25 show the wiring diagrams, which we had put up earlier,

10:52 1 the tank heat exchanger, the install kit, the frame
10:52 2 assembly, the coolant distribution unit, the assembly
10:52 3 rack, substantial amount of documents and substantial
10:52 4 detail that show the functionality, and it's sufficient
10:52 5 to show how this system works.

10:52 6 And critically, I think what's missing
10:52 7 from the presentation here is that we also produced
10:52 8 documents including product specifications talking
10:52 9 about temperature, water, showing and demonstrating the
10:52 10 fluid flow. I saw in some of these slides that,
10:53 11 according to Midas, there's not -- it's not visible how
10:53 12 the fluid is flowing or they can't -- they can't see it
10:53 13 from the CAD drawings.

10:53 14 We produced marketing documents -- well,
10:53 15 they call them marketing documents, but documents that
10:53 16 show the product specifications for both the ICeraQ and
10:53 17 the HashRaQ that show the fluid flow and the rendering
10:53 18 of the entire product with cutouts of the product.

10:53 19 In addition -- maybe I'm jumping ahead to
10:53 20 the ICeraQ, but we also produced a bunch of videos
10:53 21 which show the device in motion being used, the fluid
10:53 22 flowing with substantial detail, that would show better
10:53 23 than a CAD drawing how the system operates.

10:53 24 And just to address this control system
10:53 25 issue that opposing counsel raised, they had mentioned

10:53 1 previously that they wanted control system documents.
10:54 2 We believe that the documents produced are sufficient
10:54 3 to show how everything operates, but to the extent that
10:54 4 they want to know specific software-related issues of
10:54 5 how it works, we offered our source code available, we
10:54 6 said come take a look at -- together with what we
10:54 7 produced and that would be sufficient, and opposing
10:54 8 counsel said they had -- they didn't want source code.
10:54 9 They didn't want to review source code.

10:54 10 So we tried to make this available for
10:54 11 them, and they refused, so I'm not really sure what
10:54 12 they're looking for. They keep saying it's (inaudible)
10:54 13 and highly likely, but -- about what we have or don't
10:54 14 have. We've produced the documents we think are
10:54 15 sufficient and --

10:54 16 THE COURT: Do you have CAD drawings and
10:54 17 is there a reason you are not --

10:54 18 MR. PRESVELIS: We've produced CAD
10:54 19 drawings for both accused products, and they show the
10:54 20 entirety of the accused product, both the ICeraQ and
10:54 21 the HashRaQ. And additionally, we have --

10:54 22 THE COURT: I believe you.

10:55 23 MR. POGORZELSKI: May I respond?

24 THE COURT: Yes, sir.

10:55 25 MR. POGORZELSKI: Your Honor, so there

10:55 1 are four distinct requests here. Two requests relate
10:55 2 to the control systems, two relate to the other -- the
10:55 3 mechanical structures. And I'd like to address each of
10:55 4 those in turn. But to address what GRC counsel has
10:55 5 indicated now, we're first looking at the control
10:55 6 systems. You'll see in the discovery chart that there
10:55 7 is nothing in that discovery chart that relates to
10:55 8 control systems. So they're trying to direct --

10:55 9 THE COURT: I get it. Here's what I'm
10:55 10 going to do. You tell me you don't have it; they tell
10:55 11 me you have it. So I'm going to allow you to send a
10:56 12 30(b)(6) to the defendant and say on there it will
10:56 13 be -- whatever you're telling me, you -- the buckets of
10:56 14 documents you want, and the defendant will produce
10:56 15 someone who will be able -- who when you say -- I don't
10:56 16 understand any of this, but when you say we want the
10:56 17 flow documents, what have you produced? That witness
10:56 18 will be prepared to tell you the documents that have
10:56 19 been produced.

10:56 20 At that point, if -- and you can ask that
10:56 21 person, the person should be prepared, is there
10:56 22 anything else that you have that relates to this that
10:56 23 would help us, and if there are, I'll order the
10:56 24 defendant to produce those in a timely manner, too.
10:56 25 But we're not going to get anywhere here this morning

10:56 1 with you telling me you -- you clearly know -- you
10:57 2 clearly think you know, at least, what it is that you
10:57 3 want that you think has not been produced, and so go
10:57 4 take a 30(b)(6) of the defense -- of a defense witness
10:57 5 and have them give you the Bates numbers of the
10:57 6 documents that have been produced. Ask them if there
10:57 7 are additional documents or source code or whatever
10:57 8 that are available, and if ultimately it turns out that
10:57 9 the only way you can get satisfaction is for -- is to
10:57 10 go look at the source code, defense counsel told me
10:57 11 that they will make that available to you. So that's
10:57 12 what I'm going to do this morning.

10:57 13 So you all can get together and figure
10:57 14 out when -- is there any upcoming discovery deadline
10:57 15 I'm unaware of that will make this difficult that I
10:57 16 should deal with now, or are you in pretty good shape
10:57 17 in being able to get this done within the discovery
10:57 18 deadlines?

10:57 19 MR. POGORZELSKI: I think, Your Honor,
10:58 20 we're fine with the current schedule. There's nothing
10:58 21 coming up.

10:58 22 THE COURT: So once you've taken your
10:58 23 30(b)(6) and you'll have -- you'll have more
10:58 24 information, you'll have exactly what they have. If
10:58 25 you feel like defendant is not providing you

10:58 1 documentation or information, CAD drawings or whatever,
10:58 2 source code, that you think you need, the door's still
10:58 3 open here, but I want you to take that step first
10:58 4 because right now I just have lawyers -- you're
10:58 5 unhappy; they're unhappy. Once we have a record, it'll
10:58 6 help me a lot. And if you happen to go to trial, it'll
10:58 7 help me at the time of trial to see exactly what was
10:58 8 produced.

10:58 9 So is there anything else we need to take
10:58 10 up today?

10:58 11 MR. POGORZELSKI: No, Your Honor, on
10:58 12 behalf of Midas.

10:58 13 THE COURT: Okay.

10:59 14 (Brief off-the-record discussion.)

10:59 15 MR. SIEGMUND: Could I ask a quick
10:59 16 question, just a quick clarification?

17 THE COURT: Sure.

10:59 18 MR. SIEGMUND: I just wanted to make sure
10:59 19 that this wasn't -- your ruling today isn't going to
10:59 20 prejudice from serving our more fulsome 30(b)(6). This
10:59 21 is kind of like you said a more --

10:59 22 THE COURT: No, no, no, no. Absolutely
10:59 23 not. No, no. And this is -- this is me ordering you
10:59 24 to -- or allowing you, I guess maybe, but allowing you
10:59 25 to do a boresighted 30(b)(6) on this issue to help me.

10:59 1 No, you -- it doesn't prejudice your -- either side's
10:59 2 rights to do 30(b)(6) down the road.

10:59 3 MR. POGORZELSKI: And, Your Honor,
10:59 4 apologies.

10:59 5 THE COURT: No.

10:59 6 MR. POGORZELSKI: Could we set a deadline
10:59 7 for this 30(b)(6) say within the next two weeks so that
10:59 8 this doesn't get kicked down the road?

10:59 9 THE COURT: Well, I'm going to rely on
11:00 10 the good -- I have no reason to think that the lawyers
11:00 11 on either side aren't going to cooperate, and they have
11:00 12 reasons, but if you feel like -- even though they have
11:00 13 things they're doing, they'll have to find a witness to
11:00 14 prepare. And so, you know, I'm somewhat sympathetic to
11:00 15 that, but if you feel like you can't get a date from
11:00 16 them, then I will certainly, again, be happy to get you
11:00 17 a date, if you feel like they're being unreasonable and
11:00 18 when it will take place.

11:00 19 And I'm fine with it taking place by
11:00 20 Zoom, if that's what you -- if -- how things are done
11:00 21 now too. So that's up to you guys.

11:00 22 So anything else?

11:00 23 MR. SIEGMUND: Thank you, Your Honor.
11:00 24 Appreciate it.

11:00 25 THE COURT: Have a great day. Have a

11:00 1 great weekend.

11:00 2 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 24th day of
14 February 2025.

15
16 /s/ Kristie M. Davis
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