
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC, et al.,

Defendants.

**ORDER DENYING RULE 59(e)
AND RULE 52(b) MOTION**

Case No. 2:15-cv-00828-DN

District Judge David Nuffer

Defendants RaPower-3 LLC, International Automated Systems Inc., LTB1 LLC, R. Gregory Shepard, and Neldon Johnson (collectively, “Defendants”) have filed a motion (the “Motion”)¹ to amend the findings of fact, conclusions of law, judgment, and other orders under [Fed. R. Civ. P. 52\(b\)](#) and [59\(e\)](#) based on “new evidence previously unavailable” and “the need to . . . prevent manifest injustice.”² According to Defendants, the findings, conclusions, and judgment should be amended “[i]n light of the availability of . . . new evidence”—in the form of expert testimony—indicating that the “lenses at issue in this case have been successfully used to generate independently measurable electricity.”³

Each party was given full opportunity at trial to present whatever evidence it thought was relevant. The expert testimony that Defendants now seek to introduce was within their control to produce before and at trial. If they thought it was relevant, then they should have come forward

¹ Defendants’ Rule 59(e) and Rule 52(b) Motion, [docket no. 451](#), filed September 14, 2018; *see* United States’ Opposition to Defendants’ Motion to Alter or Amend Findings, Orders, and Judgment, [docket no. 460](#), filed September 28, 2018; Defendants’ Reply in Support of Their Rule 59(e) and Rule 52(b) Motion, [docket no. 470](#), filed October 9, 2018.

² Motion, *supra* note 1, at 2 (citation and internal quotation marks omitted).

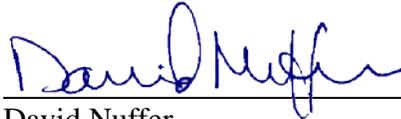
³ *Id.* at 2-3.

with it. Instead, they chose to rest without calling a single witness during their case-in-chief. “Blessed with the acuity of hindsight, [Defendants] may now realize that [they] did not make [their] initial case as compellingly as [they] might have, but [they] cannot charge the District Court with responsibility for that failure through this . . . motion.”⁴

THEREFORE, IT IS HEREBY ORDERED that the Motion⁵ is DENIED.

Signed December 4, 2018.

BY THE COURT:

A handwritten signature in blue ink that reads "David Nuffer". The signature is written in a cursive style and is positioned above a horizontal line.

David Nuffer
United States District Judge

⁴ *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1220 (5th Cir. 1986).

⁵ Docket no. 451, filed September 14, 2018.