

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

In re:

RHODIUM ENCORE, LLC, et al.,

Debtors,

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

MIDAS GREEN TECHNOLOGIES, LLC’S OPPOSITION TO
DEBTORS’ MOTION FOR SANCTIONS RELATING TO CLAIM
NUMBERS 004, 062, AND 068-072 FILED
BY MIDAS GREEN TECHNOLOGIES LLC (ECF NO. 1602)

Midas Green Technologies, Inc. (“Midas”) submits this opposition to
Debtors’ Motion for Sanctions.



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INTRODUCTION

1. Midas has a pending patent case against the Debtors with a reasonable and good-faith belief that the Debtors' immersion cooling systems infringe the Midas '457 patent. Based on this infringement and the current case status, Midas estimates the Debtors' liabilities to be \$12,306,387. Midas filed its proof of claims in this Court to protect its debtor interests. There is no improper purpose, no unnecessary delay, and the claims are fully supported by evidence. Further, the patent case status supports the fact that the District Court is preparing to issue a written ruling with regard to the Debtors' MSJ. As a result, Midas has done nothing sanctionable. In fact, Midas has filed leave to amend its proof of claims to reduce the Debtors' exposure and to provide more certainty to the damages claim to allow the bankruptcy plan to proceed timely.

2. Midas filed a patent infringement suit against the Debtors on January 13, 2022, in District Court. This patent case is still active and pending, and the Parties are presently waiting for the District Court to issue his written final ruling regarding the Debtors pending Motion for Summary Judgment ("MSJ") on non-infringement. Judge Albright requested and received detailed proposed orders from the Parties and has indicated that a written final ruling is forthcoming. The District Court has clearly indicated it has additional work to

do on the MSJ, and that it is going to issue a final written ruling for formal entry.

3. The last communication from the District Court was on January 30, 2025, where it said that the Parties submission of draft proposed orders “will help this case begin to progress towards a resolution.” Clearly, the District Court is still working toward a resolution, and the case is active.

4. Midas filed its original proof of claims in this bankruptcy action to protect its interest in the currently pending District Court litigation against the Debtors. Contrary to the Debtors’ repeated assertion, Midas is not seeking to affirmatively reassert its patent claims against the Debtors in a different forum. Instead, Midas simply intends to ensure that its existing rights in the pending District Court litigation are not extinguished by adjudication in the Debtors’ bankruptcy matter without a final judgment on the merits in *Midas Green Technologies, LLC v. Rhodium Enterprise, Inc. et al*, Case No. 6:22CV-00050-ADA.

5. Since there is no final ruling regarding the MSJ and the patent case is still active, and *has not* been dismissed, this Court has no basis for finding any sanctionable conduct. On the contrary, Midas acted reasonably and prudently in filing its original proof of claims to protect its rights in enforcing a future judgment in the patent case. Further, after Judge Albright gave

guidance in the pretrial hearing, Midas filed leave to amend proof of claims, which reduces the Debtors' potential liability. Midas's current proof of claims is part of a good faith effort to pursue its claims for damages for patent infringement in the District Court. The claims at issue were not "abandoned" nor "rejected as a matter of law" as alleged by the Debtors. Midas's continued pursuit of these claims is consistent with the procedural history of the case and the rights afforded to it by the District Court

6. The 5th Circuit has a strict rule regarding notice requirements prior to filing a motion for sanctions. *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008). The Debtors failed to follow those requirements, so much, if not all, of their motion must be stricken. In its draft motion for sanctions sent to Midas, the Debtors only alleged damages pursuant to Rule 9011 and 35 U.S.C. § 285. However, the motion as filed seeks the bulk of sanctions pursuant to Rule 11 or Section 105, which were NEVER even mentioned in the draft motion that was sent to Midas. This is a significant and material departure from the draft motion for sanctions that Midas received. For example, Rule 11 and Section 105 are asserted for the first time in the filed motion at paragraphs 9, 12, 13, 18-22, and 26-28. Instead of including these assertions in the draft motion, the Debtors generally refer to them in a cover letter. Apparently recognizing their mistake when filing the full motion for sanctions, in ¶9 of its

motion, the Debtors refer to and attach only the cover letter, but “conveniently” did not attach the deficient draft motion. For a clear and complete record, Midas attaches the draft motion as Exhibit A that was originally served, so the Court can see the substantial differences between the draft motion and the motion that the Debtors actually filed with this Court.

7. As a result of its utter failure to comply with the safe harbor provisions, all the sanctions that the Debtors’ seek pursuant to Rule 11 and Section 105 must be stricken. Midas further believes these new assertions infect all aspects of the motion, and for that reason alone, the motion should be stricken in its entirety.

8. Further, the Debtors shockingly ask this Court to find the underlying District Court patent case as an exceptional case under 35 U.S.C. § 285. But, the U.S. Constitution, the patent statutes, and case law are black-letter clear: A bankruptcy court has no authority or jurisdiction to find a patent case exceptional under the patent laws. *See* 35 U.S.C. § 285; *see also Marrama v. Citizens Bank of Mass.*, 549 U. S. 365, 375-376, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007); *see also Amneal Pharms. LLC v. Almirall, LLC*, 960 F.3d 1368, 1371 (Fed. Cir. 2020). It is abundantly clear that it is only the district court that has such authority. *Id.* This Court must fully ignore the Debtors’ arguments and assertions under 35 U.S.C. § 285. Motion at ¶¶ 23-25.

9. The Debtor's motion is also an egregious overreach. Exhibit M to the Declaration of C. Topping is a summary of what the Debtors allege to have spent with regard to opposing Midas's Claims, which equals \$137,059. But that is not what the Debtors seek. Instead, the Debtors seek an astounding \$6,254,298.72. The Debtors are asking this Court to find the District Court case exceptional under 35 U.S.C. § 285, and to award \$6,117,149 in fees and expenses the Debtors allegedly spent litigating in the District Court matter. Not only is this an unhinged request, but this Court does not even have the jurisdiction to make such a determination under Section 285.

10. In this case there is a bad actor, but it is not Midas. Briefly, here are a few examples of actions taken by the Debtors, at least some of which Midas believes rise to sanctionable actions by the Debtors.

- a. Asserted that this Court has the authority to make the determination that a case is exceptional under 35 U.S.C. § 285 when the Debtors know that would be in violation of the U.S. Constitution, patent law, and controlling case law.
- b. Debtors filed this Motion for Sanctions without complying with the Safe Harbor provisions and then attempted to conceal their noncompliance by attaching only a cover letter and falsely asserting that they had sent a draft motion to Midas. That assertion

is demonstrably untrue. The draft motion never once mentioned Rule 11 or Section 105. Rule 9011 is unequivocal: the moving party must serve the actual motion they intend to file, giving the respondent 21 days to amend or withdraw its filing. The rule does not permit bait-and-switch tactics. Debtors cannot alter the content of the motion after service, nor can they satisfy Rule 9011 by sending an incomplete or materially different document.

- c. The Debtors' primary complaint is that Midas's should not have filed its Proof of Claims in the Bankruptcy Court. But they seek to recover not only the fees and costs related to the claims but seek every fee and cost from the entire underlying patent case.

BACKGROUND

11. On January 13, 2022, Midas filed a patent infringement suit against the Debtors in the Western District of Texas. In its Third Amended Complaint ("TAC") Midas asserted U.S. Patent No. 10,405,457 ('457 Patent) and US Patent No. 10,820,446 ('446 Patent), alleging that the Debtors' immersion cooling systems at both its Temple and Rockdale facilities infringe both patents.

12. It is disturbing that the Debtors attempt to mislead this Court by misrepresenting the record in the District Court. In particular, the Debtors

repeatedly assert to this Court that Midas “abandoned” a patent and several claims and portrays this as concrete evidence of Midas’s bad faith and shows a pattern of bad behavior. Possibly this misinterpretation is due to an unfamiliarity with patent law in general, or with the District Court local rules specifically, but Midas was REQUIRED by the local rules to simplify the case by reducing the number of asserted claims. As required by the District Court and its local patent rules, just prior to Markman briefing, Midas reduced the number of asserted claims to simplify and streamline the jury trial. The ‘457 and ‘446 are related patents, that is, they share a common specification and drawings, the claims are slightly different, but largely duplicative. As a result, Midas withdrew all of the ‘446 patent claims, as well as duplicative claims of the ‘457 patent. This withdrawal had no effect on the number of infringing products, or the damages claim, and the reduction was required by the District Court. It is disingenuous for the Debtors to portray this court-required reduction of claims as some sinister “abandonment.”

13. The District Court held a pre-trial conference on April 9, 2024, and the Court excluded a portion of Midas’s damages report regarding lost profits, but the sections regarding reasonable royalty remained intact. As found in the pending Motion for Leave to File Amended Proof of Claims, Midas has adjusted its damage model to portray only the reasonable royalty calculation

model. The Court also excluded a portion of the Midas's infringement report but granted the opportunity to resubmit the infringement report.

14. Immediately after the pre-trial conference, the Court issued a brief Minute Entry. The entry states:

Minute Entry for proceedings held before Judge Alan D Albright:

ZOOM FINAL Pretrial Conference held on 4/9/2024. PARTIES

ANNOUNCE READY. STATEMENTS AND ARGUMENTS OF

COUNSEL HEARD. WRITTEN ORDER FORTHCOMING. (ECF 186)

15. Importantly, the above Minute Entry makes no reference to any ruling made regarding the MSJ and certainly does not indicate that anything Judge Albright said at the oral hearing was made final. As such, no dismissal was issued either. Instead, the Minute Entry makes it abundantly clear that the Court has more work to do prior to making a final ruling, as there is a “written order forthcoming.”

16. On January 7, 2025, the debtors filed with this Bankruptcy Court: DEBTORS' MOTION FOR ENTRY OF AN ORDER GRANTING LIMITED RELIEF FROM AUTOMATIC STAY TO CONTINUE DISTRICT COURT LITIGATION. [ECF 611]. In paragraph 1 of this motion, the Debtors told this Court:

By this Motion, the Debtors seek entry of an order (the “Proposed

*Order”), pursuant to sections 362 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 4001, granting limited relief from the automatic stay **solely to permit the resolution of the patent infringement claim** Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., 6:22-cv-00050 (the “District Court Litigation”) filed in the Western District of Texas (the “District Court”) by Midas Green Technologies, LLC (“Midas”) against the Debtors and certain non-debtor affiliates (collectively, “Rhodium”). Specifically, Debtors ask that the stay be lifted 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 to Rhodium. (emphasis added).*

17. The Debtors already admitted to this Court that the oral ruling was not a final ruling, and that Judge Albright needed to take additional steps to make it final in order to permit resolution of the patent infringement claims. This does not indicate a dismissal. Even the Debtors are fully aware that the District Court needed to “enter an order” for finality. But now the Debtors backtrack trying to convince this Court that the District Court does not need to “enter an order.”

18. On January 30, 2025, the District Court, recognizing it needed to do investigation to issue a final ruling, requested the Parties submit detailed

proposed orders. The clerk stated:

Given the time that has passed, it is necessary that the parties in this case submit a joint proposed order reflecting the parties' understandings of Judge Albright's rulings at the 4/9/2024 hearing (if there are disputes, please include proposed language in different colors). Please submit an omnibus order for all of the pretrial motions and a separate single order comprising all of the MILs. The Court will compare with its internal notes and enter the order reflecting those rulings shortly thereafter.

19. The District Court acknowledged that its oral comments were ambiguous and subject to differing interpretations, noting that it had only “notes” requiring comparison with the parties’ submissions before entering a final order “shortly.” The law clerk further confirmed that additional steps remained before resolution, emphasizing that the oral comments were neither binding nor final. This was the last communication from the Court, making clear that Judge Albright remains engaged with the case and is working toward a written ruling.

20. On February 5, 2025, this Court granted the motion for lifting the stay and agreed with the Debtors that the District Court still had work to do and needed to draft and have the clerk file an order and judgment.

21. On February 7, 2025, the Parties submitted their proposed orders with regard to the pretrial conference. As indicated above, the District Court stated that it planned to issue its final written ruling “shortly” after getting the Parties’ dueling proposed orders. However, those proposed orders were submitted almost 18 months ago, and the District Court has yet to issue its written order. If the District Court had planned to merely memorialize its discussion at the hearing, it would have done so promptly. Instead, it appears that the District Court is doing a full and careful analysis of the MSJ and intends to issue a complete and thoughtful written opinion. Only by receiving and understanding the ruling of the District Court can this Court fairly make a determination of what is owed to Midas.

STATEMENT OF LAW

22. The 5th Circuit’s notice requirement is strict and absolute—failure to comply requires dismissal of the sanctions motion. *In re Pratt*, 524 F.3d at 588. Here, the Debtors’ motion falls squarely within that prohibition because the document filed with this Court is materially different from the draft served on Midas. The draft motion only cited Rule 9011 and 35 U.S.C. § 285, while the filed motion—without any prior notice—adds sweeping claims for sanctions under Rule 11 and Section 105. These new bases for relief appear for the first time in ¶¶ 9, 12, 13, 18–22, and 26–28 of the filed motion. By claiming in paragraph 9 that a “draft of this Motion” was served yet attaching only a

cover letter and omitting the deficient draft, the Debtors attempted to mask their failure to comply. For clarity, Midas attaches the actual draft motion as Exhibit A, which demonstrates the fundamental differences between what was served and what was ultimately filed.

23. The Debtors' Rule 9011 sanctions Motion is materially different from the sanctions Motion served by the Debtors during the Safe Harbor period. For that reason, the Debtors' current motion is barred by the failure to serve the sanctions motion that conformed to the sanctions Motion served on Midas therefore fails to strictly comply with the statute and the Court is deprived of authority to award sanctions on that basis.

24. Rule 9011(c)(1)(A) of the Federal Rules of Bankruptcy Procedure states that a "motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion. . . the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008). "Rule 9011 is substantially identical to Federal Rule of Civil Procedure 11," 18 therefore, we may refer to Rule 11 jurisprudence when considering sanctions under Rule 9011. *Id.* "Strict compliance with Rule 11 is mandatory." *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008) (finding Rule 9011 sanctions motion that failed to strictly comply with Rule 11 procedure was barred.)

25. Section 28 U.S.C. § 1927 does not provide the authority to grant sanctions in this matter. There has been no duplication, let alone unnecessary duplication, of proceedings in this case. First, Midas only filed its proof of claims to ensure that its rights were not extinguished by the filing of the bankruptcy claim. Second, the proof of claims are a mere continuation of the unresolved litigation pending before the Judge Albright in the District Court.

26. A district court may shift reasonable fees to "[a]ny attorney. . . who . . . multiplies the proceedings in any case unreasonably and vexatiously." 28 U.S.C. § 1927. Under the plain terms of that statute, then, these sanctions are imposed only on offending attorneys -- clients may not be ordered to pay such awards. *Vanderhoff v. Pacheco*, 344 Fed. Appx. 22, 27 (5th Cir. 2009); *citing Proctor & Gamble Co.*, 280 F.3d 519, 525 (5th Cir. 2002); *see also Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, 38 F.3d 1414, 1416 (5th Cir. 1994). To impose sanctions against an attorney, the district court must find that the sanctioned attorney multiplied the proceedings both "unreasonably" and "vexatiously." *Id.* This requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Id.*; *citing Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1998). Section 1927 only authorizes shifting fees that are associated with "the persistent prosecution of a meritless claim." *Id. citing Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991). "To shift the entire cost of defense, the claimant must prove, by clear and

convincing evidence, that every facet of the litigation was patently meritless, . . . and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial" *Id. citing Proctor & Gamble Co.*, 280 F.3d at 526 (citations omitted).

27. Any sanctions against Midas for legal fees unrelated to this bankruptcy action would be punitive rather than compensatory, which is beyond the authority of this Court. Awarding sanctions for the underlying litigation, which Midas has moved for withdrawal, is not within this Court's jurisdiction. Further, punishing Midas for filing an unresolved lawsuit would be beyond this Court's jurisdiction and authority.

28. A fee-shifting sanction... is supposed to be compensatory. *Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 98 F.4th 170, 175 (5th Cir. 2024); *citing Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 137 S. Ct. 1178, 197 L. Ed. 2d 585 (2017).

29. In *Goodyear Tire*, the Court reversed the sanction in question because the district court failed to "establish a causal link[] between the litigant's misbehavior and legal fees paid by the opposing party." *Id.* The required causal link means that a bankruptcy court may shift "only those attorney's fees incurred because of the misconduct at issue." *Id.* at 109; (fee shifting awards "may go no further than to redress the wronged party for losses sustained" (quotation and citation omitted)); *ibid.* (courts must "calibrate[]" fee shifting awards "to the damages caused by the

bad-faith acts on which [they are] based" (quotation and citation omitted)).

30. Absent that because-of link, the sanction is punitive rather than compensatory and hence falls outside the bankruptcy court's statutorily limited powers. Thus, if a contempt movant "would have incurred an expense" even absent the non-movant's contumacious conduct, "he has suffered no incremental harm . . . and so the court lacks a basis for shifting the expense." *Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 98 F.4th 170, 175 (5th Cir. 2024).

31. This Court lacks the inherent authority under 11 U.S.C. § 105 to sanction Midas for actions outside of this Bankruptcy proceeding. The Bankruptcy code limits the Bankruptcy Court's inherent authority to issue sanctions to actions within the Bankruptcy Code. Further, the Debtors failed to assert Section 105 in its draft motion to Midas, so it is barred from using Section 105 in its Motion as filed.

32. A Bankruptcy Court has statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. *Law v. Siegel*, 571 U.S. 415, 420-421 (2014); citing 11 U. S. C. § 105(a). And it may also possess "inherent power . . . to sanction 'abusive litigation practices.'" *Marrama v. Citizens Bank of Mass.*, 549 U. S. 365, 375-376, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007). But in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions. *Law*, 571 U.S. at 420-421. "[W]hatever equitable powers remain in the bankruptcy courts

must and can only be exercised within the confines of” the Bankruptcy Code. [Citations omitted] *Id.* The Bankruptcy Code limits awarding attorneys’ fees to the statutory authority which authorizes this Court to award fees. See 11 U.S.C. §§ 105, 303, 362, 707 and Bankruptcy Rule 7037, 7053, and 9011. None of these enumerated statutes allow this Court to award attorney’s fees under 35 U.S.C. § 285. Further, none of these statutes authorize this Court to award attorneys’ fees from a case pending before another Court to as sanction under Bankruptcy Rule 9011. See *Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 98 F.4th 170, 175 (5th Cir. 2024).

33. The authority to determine that a patent case is exceptional under 35 U.S.C. § 285 resides only in the District Court. *Samsung Elecs. Co. v. Ramus Inc* (523 F.3d 1374, 1379). In its entirety, 35 U.S.C. § 285 provides: “*The court in exceptional cases may award reasonable attorney fees to the prevailing party.*” *This section of Title 35 provides attorney fees in exceptional cases. The statute requires the trial court to find a case "exceptional" before proceeding to consideration of attorney fees. Thus, exceptionality is an element or precondition for the imposition of attorney fees. The statute does not make a finding of exceptionality a separate sanction. Thus, a trial court does not retain jurisdiction to make an "exceptional case" finding.*

34. The Supreme Court clarified [s]ection 285 of the Patent Act authorizes

a district court to award attorney fees to the prevailing party." *Giesecke+Devrient GmbH v. United States*, 150 Fed. Cl. 330, 340 (2020); *citing Octane Fitness, LLC v. ICON Health & Fitness*, 572 U.S. 545, 548, 134 S. Ct. 1749, 188 L. Ed. 2d 816 (2014) (emphasis added). The Federal Court of Claims determined that it did not have the authority to award attorney's fees under 35 U.S.C. Section 285, or to utilize Section 285 to award fees under other relevant statutes authorizing fee awards in the federal claims context. *Giesecke+Devrient GmbH supra*, 330, 346-348 (2020). Similarly, Bankruptcy Courts have found that application of Title 35 is beyond straight forward application of federal law and have declined to analyze cases apply Title 35 when a party moved for mandatory withdrawal. *In re Electro-Mechanical Indus.*, 2008 Bankr. LEXIS 5177, *9 (S.D. Tex. Feb. 20, 2008). In this way, Section 285 is limited to the authority of the district court.

ARGUMENT

A. The Motion Should Be Denied Due To The Debtors' Failure To Comply With The Safe Harbor Provisions

35. The 5th Circuit demands strict compliance with its Safe Harbor rule regarding filing a motion for sanctions. *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008). Failure to comply mandates the motion to be dismissed. *Id.* The Debtors' conduct is a textbook example of bad faith. The draft motion they served made no mention whatsoever of Rule 11 or Section

105, yet those provisions became the cornerstone of the motion they ultimately filed. Fully aware of this material change, the Debtors intentionally withheld the draft motion from this Court and instead attached only a cover letter—an act calculated to mislead the Court into believing Midas had received the true draft. A cover letter outlining “possible” causes of action is not a substitute for the actual motion, and the Debtors knew it. The differences between the draft and the filed motion are not technical or trivial—they are fundamental. Rule 11 and Section 105 appear for the first time in the filed motion at paragraphs 9, 12, 13, 18–22, and 26–28. By concealing their defective draft and attempting to disguise their noncompliance, the Debtors have abused the Safe Harbor rule, and their motion for sanctions must be dismissed in its entirety.

**B. This Court Has No Authority or Jurisdiction To Make A
Determination Under 35 U.S.C. § 285**

36. The Debtors have repeatedly urged this Court to dive deep into the underlying patent case to evaluate the complex technology, judge claim scope, make infringement determinations, and assess a reasonable patent royalty. These determinations are all required to be made by the District Court, as fully set out in Midas’s Motion for Mandatory Withdrawal. [ECF 1579]. But now the Debtors take it even further and ask this Court to make a determination that Midas’s actions in the District Court patent case make it an exceptional case

under 35 U.S.C. § 285. The law on Section 285 is crystal clear: only the District Court can make a determination that a case is exceptional. *Amneal Pharms. LLC v. Almirall, LLC*, 960 F.3d 1368, 1371 (Fed. Cir. 2020). (Courts have recognized a district court's ability to award attorney fees under section 285 for work done in district court patent infringement actions.). It is clear from the words of Section 285 itself, and by court interpretation. It is also clear that a Section 285 determination can only be made by a Section III judge, which does not include bankruptcy judges. *Id. see also Bowmar Instr. Corp. v. Tex. Instr., Inc.*, No. F74-137, 1978 U.S. Dist. LEXIS 16234, 1978 WL 21733, at *1 (N.D. Ind. Aug. 1, 1978) (explaining that, under *Reddy* and *Meitzner*, section 285 does "not authorize it to award fees to a party prevailing in that court in an interference proceeding" before the USPTO). *See also Giesecke+Devrient*, where the Supreme Court clarified section 285 of the Patent Act authorizes *only a district court* to award attorney fees pursuant to 35 U.S.C. § 285."

37. As a result, this Court must ignore all the Debtors' assertions and arguments it makes with respect to 35 U.S.C. § 285, which would at least include paragraphs 23-25 of the Motion as filed.

C. Midas's Filing its Proof of Claims was in Good Faith

38. As will be more fully discussed below, Midas's filing of its original proof of claims and its Motion for Leave to Amend its Proof of Claims

are both done in good faith. It is clear from the record and the court docket that the underlying patent case has not been dismissed, and that no final ruling has been made regarding infringement. As a result, Midas has a good faith belief that any issues raised in the pretrial hearing can be resolved, and Midas will get to present its case to a jury. Midas believes it will prevail at trial, and that the jury will award substantial damages for the Debtors' years of infringement of the Midas '457 Patent.

i. Sanctions Cannot Be Imposed While the Patent Action Is Still Active

39. There is nothing in the docket at the District Court to indicate that the patent case has been dismissed as the Debtors argue. To the contrary, this case is still actively pending in the District Court and there is no final ruling adjudicating the rights and liabilities of the parties.

40. As a result of the patent case still pending, Midas has a good faith belief that it can win an infringement determination at a jury trial, and that the Debtors will be found liable for substantial patent damages.

ii. The District Court's Minute Order Was Not a Final Ruling

41. The Court has not entered a final judgment as required by Federal Rule of Civil Procedure 58, nor has it issued a minute order granting the Debtors' Motion for Summary Judgment under Federal Rule of Civil Procedure

Rule 79(a). In the absence of either a final written order or a qualifying minute order, the limited exception in Rule 58(d)—which permits appeal 150 days after entry of a compliant minute order—does not apply. As a result, Midas is left without any avenue for review. Simply put, there is no final judgment under Rule 58 or Rule 79(a), and without one, appellate rights cannot be triggered.

42. A "final decision is one by which a district court disassociates itself from a case" and "terminate[s] an action." *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 329 (5th Cir. 2022); citing *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408-09, 135 S. Ct. 897, 190 L. Ed. 2d 789 (2015). "[A]n order resolving liability without addressing a plaintiff's requests for relief is not final." *Riley v. Kennedy*, 553 U.S. 406, 419, 128 S. Ct. 1970, 170 L. Ed. 2d 837 (2008).

43. "To understand whether an order is final, we look chiefly to the language the district court used. For example, we noted in *Logue* that a district court's memorandum saying that "'[a] preliminary injunction will be issued' . . . did not reflect the district court's intent that the opinion act as an operable judgment." . . . " *Ueckert v. Guerra*, 38 F.4th 446, 450 (5th Cir. 2022). In *Midas v. Rhodium*, the Court's oral ruling mirrored the wording, "will grant", to the wording "will issue" which is recognized as being nonfinal. Further, "the test for finality is whether the District Court intended that its order be 'effective

immediately’. Said another way, a court's ruling is only final if a judge ‘intends to have nothing further to do’ with the motion or the case. *Id.* (citations removed).

44. Here, the District Court clearly did not intend his comments at the oral hearing to be “effective immediately.” Indeed, Judge Albright made those comments almost 16 months ago and has not acted to end the case. The only action he has taken is to request the Parties submit proposed orders, which again leads to the conclusion that his discussion at the hearing was never intended to be “effective immediately.”

45. Further, the Court’s words and actions shows that the Court intends to do more with the case and clearly did not intent to have “nothing further to do” with the case. As shown by the words and actions of the Court, the underlying patent case has not been dismissed, and Judge Albright’s discussions at the pretrial conference were not intended to have any final effect.

- a. In his April 9, 2024, discussion at the pretrial conference, the Court indicated it was going to meet with his law clerks and determine if Midas could refile expert reports.
- b. At the end of the hearing, the Judge indicated to Midas he had not determined the basis or scope of any ruling.
- c. In its minute entry of April 9, 2024, the Court indicated it was

going to have a “written order forthcoming.”

- d. On January 10, 2025, the District Court requested the Parties submit proposed orders regarding the pretrial conference and indicated the Court would compare the proposed orders to the Court’s own internal notes.
- e. The last communication from the District Court was on January 30, 2025, where it said that the Parties submission of draft proposed orders “will help this case begin to progress towards a resolution.” Clearly, the District Court is still working toward a resolution, and the case is active.
- f. On February 7, 2025, the Court received the Parties’ proposed orders for review.

46. No final, appealable order has been issued in this case. The District Court expressly stated it would confer with its clerks before deciding whether to grant summary judgment, and it never articulated any reasoning or basis for a finding of non-infringement on the record, as required by Rule 56(a). Moreover, the Court has not entered a final written judgment under Rule 58, nor has it entered a docket entry granting summary judgment as required by Rule 79(a). Without such an entry, the narrow exception under Rule 58(d) and Rule 42(d) does not apply, and the appellate court lacks jurisdiction under 28 U.S.C. § 1291. Accordingly, the case

remains pending. The Court's oral comments were tentative, nonfinal, and expressly conditioned on further review of its notes and comparison with the proposed orders, with a final written order still "forthcoming."

iii. Ongoing Infringement of the '457 Patent Bars Any Sanctions

47. The Debtors operate two large bitcoin mining facilities in Texas: the Temple facility and the Rockdale facility. Each facility had tens of thousands of specialized mining computers that were cooled using Midas's patented immersion cooling system. For example, at its Temple facility, the Debtors spent millions of dollars installing a complex electrical design system which includes sensors that measure temperature of the dielectric fluid along the fluid path. These sensors are designed to transmit data to a central controller, which would allow for the controller to monitor and control the primary and secondary fluid circulation facilities as a function of the dielectric fluid in the tank. Further, the Debtors admit that the VFDs have sensors that can be enabled to monitor the fluid temperature. The system the Debtors designed allows for these inputs to be reported to the central controller as well.

48. The Debtors have spent millions of dollars designing and installing sensors, variable control pumps and fans, computer systems, and data networks to implement a sophisticated and cutting-edge control system for their Temple

immersion cooling system installation. They boast about it to their investors and to the SEC. Even if it is true that at a single moment in time certain features have not been completed by Prime Controls, the control system at Temple is still adapted to coordinate the circulation facilities and therefore is an infringing control facility. The Prime Controls system is still in place, and ready to be completed. A significant question of fact is to what extent the Prime Controls system is active, and what effort is required to complete the installation.

49. The systems installed at Temple have no non-infringing purpose, and were custom designed, built and installed to provide dielectric fluid control as a function of the temperature of that fluid. As a consequence, the cooling systems at the Debtors' Temple facility infringe the Midas '457 Patent.

50. As fully set out in Midas's Opposition to the Debtors' MSJ, all the immersion cooling systems at both Rockdale and Temple also infringe Midas's '457 patent due to the temperature control system on the evaporative coolers. The evaporative coolers have temperature sensors in the output fluid line that sense the temperature of the dielectric fluid flowing out of the evaporative cooler. The temperature of sensed fluid is indicative of the temperature of the dielectric fluid in the tank. The coolers have an adaptive control system that is adapted to adjust the cooler's fan speed in response to the temperature of the

input and output fluid.

51. In this way the cooler systems control the temperature of the fluid from the secondary fluid circulation facility, which is then pumped to the primary fluid circulation facility where the fluid is circulated through the tank and the bitcoin miners. The temperature control is done as a function of the temperature of the dielectric fluid as it exists the tank, which is also the temperature of the fluid as it enters the Guntner cooler. Consequently, all the Debtors' immersion cooling systems at both Rockdale and Temple infringe the Midas '457 patent.

52. At both the Temple and Rockdale facilities, the Debtors' many immersion cooling tanks contain dielectric fluid that flows through specialized bitcoin mining computers. These computers each have one or more "hash boards" that each have an application specific integrated circuit ("ASIC"). Each bitcoin computer has an application programming interface ("API") that provides a summary report when interrogated. The API report contains temperature information on the ASIC chip temperature and the fluid temperature. The Debtors use this heat information to adjust the power consumption of the miners to control the temperature of the fluid circulating in the immersion cooling system.

53. As set out fully in Midas's Opposition to the MSJ, all the Debtor's

immersion cooling systems at Rockdale and Temple infringe the Midas ‘457 Patent.

D. This Court Does Not Have Jurisdiction to Decide Underlying Patent Issues

54. Once again, the Debtors wrongly ask this Court to do a deep dive into the extremely complex and difficult technology of immersion cooling, and to then apply patent law to determine infringement under 35 U.S.C. §271, damages under 35 U.S.C. §284, and sanctions under 35 U.S.C. §285. As fully set out in the pending Motion for Mandatory Withdrawal, this Court does not have jurisdiction over these complex patent matters.

55. “Once subject matter jurisdiction vests with the district court, bankruptcy judges then have authority by reference under *28 U.S.C. § 157*. *Section 157* states that each district court may provide that "proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges." *28 U.S.C. § 157(a)*. The statute distinguishes between cases directly under or arising under title 11 and cases which are only "related to" a case under title 11. *Id.* at § 157(c); *Wood*, 825 F.2d at 95. A case which is arising under or arising in a case under title 11 is a core proceeding. *28 U.S.C. § 157(b)*; *Wood*, 825 F.2d at 97 (a "proceeding is core under *section 157* if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a

bankruptcy case."). The statute provides [*6] a nonexclusive list of sixteen matters considered "core." 28 U.S.C. § 157(b)(2)(A) - (P). A matter is considered non-core if it is "related to" a case under title 11. *Id.* at § 157(c)(1).” *In re Electro-Mechanical Indus.*, 2008 Bankr. LEXIS 5177, *9 (S.D. Tex. Feb. 20, 2008).

56. *Electro-Mechanical* is very much on point to the facts presented here. Universal had a pending patent infringement case against Electro-Mechanical (“EMI”). EMI filed for chapter 11 in the Southern District of Texas, Houston Division. Universal filed a proof of claim for over \$5M, and EMI filed a Motion to Estimate. Universal then filed a Motion to Withdraw the reference to the extent it called for a determination of liability under patent law. (*Id.* at *2-4) The court granted the Motion, finding that withdrawal was mandatory of the determination of infringement in a patent case. (*Id.* at *10-11)

57. *Electro-Mechanical* at *7-9 states Section 157(d) states that the "district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d) (emphasis added). Patent infringement claims such as “this proceeding involves a question of non-Bankruptcy federal law, and, as set forth above, a question of Title 11.”

58. [C]ourts have generally held that a mandatory withdrawal of

reference is warranted where "substantial and material consideration" of federal statutes other than the Bankruptcy Code is "necessary" to the resolution of a case or proceeding. *In re Nat'l Gypsum*, 145 B.R. at 541.

59. Patent "infringement analysis will likewise require substantial application of Title 35. Indeed, examining claim construction to determine the invention's scope has been held to be a matter of law reserved to the court." citing *Markman v. Westview Instruments*, 517 U.S. 370 (1996).

60. As noted by Justice Souter in *Markman*, "the claims of patents have become highly technical in many respects as the result of special doctrines relating to the proper form and scope of claims that have been developed by the courts and the Patent Office." *Id.* at 388 (quoting Woodward, Definiteness and Particularity in Patent Claims, 46 MICH. L.REV. 755, 765 (1948)). Unique aspects of claim construction have developed based on the dictates of Title 35. See e.g. *Tech. Prop. Ltd. v. Matsushita Elec. Indus*, 514 F. Supp. 2d 916, 921-22 (E.D. Tex. 2007) (explaining the "guideposts" for courts to follow in construing claims).

61. The Court found that a finding of infringement was subject to mandatory removal: "The Court, therefore, finds the determination of patent validity and infringement falls under the mandatory withdrawal provision of § 157(d) and recommends the reference be withdrawn accordingly." *Electro-*

*Mechanical at *10.*

62. As in *Electro-Mechanical*, the Debtors are improperly asking this Court to evaluate the underlying patent case and make both legal and factual determinations on infringement liability. The issues here involve highly technical questions concerning complex immersion cooling systems, and any determination of infringement of the Midas '457 Patent necessarily requires a substantial and material application and interpretation of Title 35 of the U.S. Code. This is not a routine application of federal law to straightforward facts, and such determinations fall outside the jurisdiction and authority of the Bankruptcy Court. This Court does not have jurisdiction to make a determination as to infringement of the '457 Patent, amounts of damages due to an infringement, or the application of sanctions as an exceptional case under 35 U.S.C. § 285.

CONCLUSION

63. The Debtors' Motion should be denied in its entirety for the Debtors' failure to comply with the Safe Harbor provisions, and then attempting to conceal that failure from this Court.

64. The Court should ignore all the Debtors' assertions and arguments related to Rule 11 and Section 105, as these were first raised in the motion as filed and not presented to Midas initially.

65. This Court does not have jurisdiction to make a determination that

a case is exceptional under 35 U.S.C. § 285, something we would have expected the Debtors' counsel to be aware of.

66. This Court should not consider any sanctions related to the underlying patent case, as it lacks jurisdiction to find a case exceptional.

67. For the reasons set forth above, this Court should deny the Debtors' Motion for Sanctions in its entirety.

DATED: September 19, 2025

Respectfully submitted,

/s/ Joseph E. Thomas

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Attorneys for Plaintiff Midas Green
Technologies, LLC

CERTIFICATE OF SERVICE

I, Tierra Mendiola, hereby certify that on September 19, 2025, a copy of the foregoing was served by email from tmendiola@twtlaw.com to Counsel to the Debtors and Debtors-In-Possession via email to pattytomasco@quinnemanuel.com; cameronkelly@quinnemanuel.com; alainjaquet@quinnemanuel.com; rachelharrington@quinnemanuel.com and mailed to 700 Louisiana Street, Suite 3900, Houston, Texas 77002.

/s/ Tierra Mendiola

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

Midas Green Technologies, LLC,

Plaintiff,

- VS. -

Rhodium Enterprises, Inc.;
Rhodium Technologies LLC;
Rhodium 10mw LLC;
Rhodium 2.0 LLC;
Rhodium 30mw LLC;
Rhodium Encore LLC;
Rhodium Renewables LLC;

Defendants.

Civil Action No. 6:22-cv-00050-
ADA

Jury Trial Demanded

**DECLARATION OF JOSEPH E. THOMAS IN SUPPORT OF MIDAS
GREEN TECHNOLOGIES, LLC'S OPPOSITION TO DEBTORS'
MOTION FOR SANCTIONS RELATING TO CLAIM NUMBERS 004,
062, AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES LLC
(ECF NO. 1602)**

I, Joseph E. Thomas, declare as follows:

1. I am the managing partner at Thomas Whitelaw & Kolegraff LLP, counsel of record for Midas Green Technologies, LLC (“Midas”) in this action. The facts stated in this declaration are true to my knowledge, and if called as a witness, I can and would testify competently to them.
2. I make this declaration in support of Midas’s Opposition to Debtors’ Motion for Sanctions relating to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC.
3. On August 7, 2025, Rachel Harrington from the law firm Quinn Emanuel attached the Debtors' Draft Rule 11 Motion to Midas. The draft motion only cited Rule 9011 and 35 U.S.C. § 285, while the filed motion—without any prior notice—adds sweeping claims for sanctions under Rule 11 and Section 105. These new bases for relief appear for the first time in ¶¶ 9, 12, 13, 18–22, and 26–28 of the filed motion.
4. By claiming in ¶9 that a “draft of this Motion” was served yet attaching only a cover letter and omitting the deficient draft, the Debtors attempted to mask their failure to comply.
5. For clarity, Midas attaches the actual draft motion as **Exhibit A**, which demonstrates the fundamental differences between what was served and what was ultimately filed.

6. Attached as **Exhibit A** is a true and accurate of the draft motion for sanctions that was served on Midas by the Debtors' counsel, which was omitted from their filing with this Court.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

DATED: September 19, 2025

Respectfully submitted,
/s/ Joseph E. Thomas

Joseph E. Thomas (*admitted p.h.v.*)
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CERTIFICATE OF SERVICE

I, Tierra Mendiola, hereby certify that on September 19, 2025, a copy of the foregoing was served by email from tmendiola@twtlaw.com to Counsel to the Debtors and Debtors-In-Possession via email to pattytomasco@quinnemanuel.com; cameronkelly@quinnemanuel.com; alainjaquet@quinnemanuel.com; rachelharrington@quinnemanuel.com and mailed to 700 Louisiana Street, Suite 3900, Houston, Texas 77002.

/s/ Tierra Mendiola

EXHIBIT A

From: [Joe Thomas](#)
To: [Tierra Mendiola](#); [William Kolegraff](#); [Grant Thomas](#)
Subject: FW: In re Rhodium Encore LLC, et al., Case No. 24-90448 (ARP)
Date: Thursday, August 7, 2025 11:35:30 AM
Attachments: [Rhodium Rule 11 Letter to Midas.pdf](#)
[DRAFT Rule 11 Motion Midas Green.pdf](#)

See attached.

From: Rachel Harrington <rachelharrington@quinnemanuel.com>
Sent: Thursday, August 7, 2025 11:17 AM
To: Joe Thomas <jthomas@twtlaw.com>; William Kolegraff <bkolegraff@twtlaw.com>; Grant Thomas <gthomas@twtlaw.com>; michaelsmith@solidcounsel.com
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Elizabeth Brannen <ebrannen@stris.com>; Ken Halpern <khalpern@stris.com>
Subject: In re Rhodium Encore LLC, et al., Case No. 24-90448 (ARP)

Counsel,

Please see attached correspondence.

Rachel Harrington
Associate
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**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' MOTION FOR SANCTIONS RELATING TO CLAIM
NUMBERS 004, 062, AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES LLC**
(Relates to ECF Nos. 953, 954, 1069, 1413)

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXSB.USCOURTS.GOV/](https://ecf.txsb.uscourts.gov/) WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS

Pursuant to Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9011 and 35 U.S. Code § 285, Rhodium Encore LLC and its affiliates, as debtors and debtors in possession

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.

(collectively, the “Debtors” or “Rhodium”) in the above-captioned chapter 11 cases, hereby file this motion for sanctions against Midas Green Technologies LLC and its counsel for filing *Debtors’ Amended Omnibus Objection To Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC* (the “Objection”) and briefs in support thereof, for an improper purpose, based upon legal contentions not warranted by existing law (or a non-frivolous argument for the extension of existing law or creation of new law), and based upon factual contentions that are without evidentiary support.² In support of this motion, the Debtors respectfully state as follows:

INTRODUCTION

1. Midas Green Technologies, LLC (“MGT,” “Midas Green,” or “Midas”) filed *seven* proofs of claim seeking damages of \$25-43 million, based on alleged patent infringement at Debtors’ former Temple and Rockdale locations. As explained more fully in *Debtors’ Summary Judgment Motion In Support Of Amended Omnibus Objection To Claim Numbers 004, 062, and 068-072 Filed By Midas Green Technologies LLC* (ECF No. 1486) (the “Summary Judgment Motion”), which Debtors incorporate herein by reference along with all supporting papers, Midas’s claims lack any legal grounds. Midas’s claims, which are for patent infringement, were previously dismissed on summary judgment by the United States District Court for the Western District of Texas or dropped by Midas. It is evident that Midas interposed its objections for the improper purpose of delaying a bankruptcy proceeding in which time is of the essence for confirming a reorganization plan. Midas hopes, by holding the estate and its creditors hostage, to force a favorable settlement of claims it has already lost or withdrawn, and it knows are baseless. Because its contentions are unsupported by law or evidence, and its conduct reveals a purpose to delay and

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Objection.

to leverage the parties' need to make distributions in this case, Debtors should be awarded their reasonable attorneys' fees and expenses incurred in opposing Midas's proofs of claim. Bankruptcy Rule 9011(b)(1)-(3); 28 U.S.C. § 1927; 35 U.S.C. § 285.³

BACKGROUND

2. Midas already litigated these same patent claims and lost. It first asserted the patent infringement claims on which its proofs of claim are based in a complaint it filed on January 13, 2022, in the U.S. District Court for the Western District of Texas. Over the course of two-plus years of litigation, Midas dropped one of the asserted patents entirely (U.S. Patent No. 10,820,446, "the '446 Patent"), and withdrew all but two claims of the other (U.S. Patent No. 10,405,457, "the '457 Patent"). At the final pretrial conference on April 9, 2024, after fulsome discovery, numerous expert reports, and nearly all pretrial procedures were complete, the district court granted summary judgment of noninfringement, dismissing Midas's last two patent claims, and canceled the impending trial. Apr. 9 Hrg. Tr. at 54:10-16.

3. Midas asked the district court if it would be possible to re-address the summary judgment ruling after amending its expert report, and in response the court said, "you've had your chance" and that it "d[id]n't think it [an amendment] would" benefit it, but would let the parties know if that changed. *Id.* at 54-55. The district court never sought further submissions from the parties. In late January 2025, likely prompted by this Court's lifting of the automatic stay for the

³ See *In re Royal Manor Mgmt., Inc.*, 525 B.R. 338, 373 (B.A.P. 6th Cir. 2015), aff'd, 652 F. App'x 330 (6th Cir. 2016) (awarding sanctions for dilatory filing of proofs of claim seeking "to lever the collective desire for efficient administration that bankruptcy seeks to afford claim holders to gain recognition of a claim that had no merit" and noting that "[i]t appears that [Claimaint] thought his blockades to distribution might substitute for the lack of merit of the claims that he advanced.").

limited purpose of allowing it to issue a written ruling, the district court asked the parties to submit a proposed form of written order “reflecting those rulings,”—confirming its intent to memorialize the ruling it had already made, not to revisit it. Jan. 30, 2025 email.

4. Undeterred, Midas filed proofs of claim in this bankruptcy proceeding based on its defunct claims of patent infringement. When it filed its proofs of claim, Midas attached the same operative complaint it previously filed in District Court in March of 2023—without informing this Court that (i) during the prior litigation it had subsequently withdrawn one of the two patents asserted in that complaint (the ’446 Patent) entirely and had dropped seven asserted claims of the other asserted patent (the ’457 Patent), leaving only two asserted claims; or that (ii) the district court had already considered those two claims, found in Rhodium’s favor, and granted summary judgment against Midas.

5. Midas compounded its vexation by mischaracterizing the district court’s ruling, suggesting it was not final when it was.

6. In its prior pleadings in this Court, Midas baldly, impermissibly sought to relitigate its claims, making identical arguments to those the district court had already rejected.

7. Even if Midas were making these arguments for the first time, they would be sanctionably weak. In the first instance, and again here, Midas (i) accused a system whose heat sensors were not installed and thus was not physically capable of taking a temperature and infringing, (ii) accused systems that did not take or use, and were incapable of taking or using, “the temperature of the dielectric fluid in the tank” even though every claim of Midas’s patents specifically requires the use of that variable, (iii) abandoned all of its equivalence arguments (which are required if there is no literal infringement) on summary judgment, and (iv) never

identified any component that could even arguably “coordinate the operation of the primary and secondary fluid circulation facilities” as the asserted claims require.

ARGUMENT

8. Bankruptcy Rules 9011(b) and (c) allow this Court to sanction parties that submit petitions and pleadings with an improper purpose, assert legal contentions not warranted by existing law (or a non-frivolous argument for the extension of existing law or creation of new law), and/or make factual contentions that are without evidentiary support. Subparagraphs (b) and (c) of Rule 9011 read as follows (with emphases added):

(b) Representations to the Court. By presenting to the court a petition, pleading, written motion, or other document—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

(1) ***it is not presented for any improper purpose, such as to harass, cause unnecessary delay***, or needlessly increase litigation costs;

(2) ***the claims, defenses, and other legal contentions are warranted by existing law*** or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law;

(3) ***the allegations and factual contentions have evidentiary support***—or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence—or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that (b) has been violated, the court may, subject to the conditions in this subdivision (c), impose an appropriate sanction on any attorney, law firm, or party that committed the violation or is responsible for it. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

9. If the Court deems sanctions to be warranted for effective deterrence, it may issue “an order directing payment to the movant of all or part of the reasonable attorney's fees and other expenses directly resulting from the violation.” Bankruptcy Rule 9011(c)(4)(A)(iii).

10. Section 285 of the Patent Act also provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” 35 U.S.C. § 285. A bankruptcy court hearing a patent claim is empowered to apply section 285. *Id.* (“*The court ... may award...*”); *see, e.g., In re Roeder*, No. ADV 07-009189S, 2009 WL 4907014, at *13 (Bankr. N.D. Iowa Dec. 14, 2009) (finding case exceptional and awarding attorney fees under § 285); *In re AI Realty Mktg. of New York, Inc.*, 293 B.R. 586, 620 (Bankr. S.D.N.Y. 2003), *adhered to on reconsideration*, 304 B.R. 622 (Bankr. S.D.N.Y. 2004), and *aff'd in part, rev'd in part sub nom. Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd.*, 311 B.R. 378 (S.D.N.Y. 2004), *aff'd*, 153 F. App'x 703 (Fed. Cir. 2005) (recognizing authority to award fees under § 285 but declining on the merits to award them).

11. “The awarding of attorney fees pursuant to 35 U.S.C. § 285 is an issue unique to patent law that is subject to Federal Circuit law.” *Special Devices, Inc. v. OEA, Inc.*, 269 F.3d 1340, 1343 (Fed. Cir. 2001). Under Federal Circuit law, “an ‘exceptional’ case is simply one that stands out from others with respect to the substantive strength of a party's litigating position ... or the unreasonable manner in which the case was litigated.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). Bases for exceptionality can include clear weakness of the infringement claims on the merits; public availability of information demonstrating noninfringement before the infringement suit was filed; notice of noninfringement after the complaint was filed; and the continuation of litigation after it was apparent the claims were objectively baseless. *Dragon Intell. Prop. LLC v. DISH Network L.L.C.*, 101 F.4th 1366, 1370, 1371 (Fed. Cir. 2024) (affirming exceptional case finding and decision to award attorney fees, citing these factors). All of those factors are present in Midas’s proof of claim.

12. On the merits, Midas’s infringement claims are baseless and were obviously baseless from the beginning of the district court action. The grant of summary judgment made the

obvious inescapable. The record before the District Court and this Court demonstrate that Rhodium never used any invention patented by Midas. Yet Midas persisted and continues to persist. Knowing its infringement case to be futile, Midas seeks to calculatedly use the judicial process to hold up Debtors' reorganization in the hope of extracting a payment for worthless claims. *See, e.g. In re Royal Manor Mgmt.*, 525 B.R. at 373. First, as set forth fully in the Summary Judgment Motion, Midas primarily accused a system at Rhodium's former Temple facility that did not have temperature sensors installed and that consequently was not physically capable of measuring a temperature, even though the patent claims require taking a step as "a function of the temperature of the dielectric fluid in the tank." Summary Judgment Motion ¶ 55. No colorable argument exists for infringement by a system that cannot measure temperature at all.

13. Second, Midas levied throw-away accusations at systems that did not and could not measure "the temperature of the dielectric fluid *in the tank*"—only other temperatures—even though every claim of Midas's patents specifically requires the use of that variable. Summary Judgment Motion at ¶¶ 56-57, 60-61, 64. This meant there could not possibly be literal infringement, which requires the accused device to contain every element of the claim exactly. *Id.* at ¶ 57; *Smith & Nephew, Inc. v. Arthrex, Inc.*, 2010 WL 457142, at *2 (E.D. Tex. Feb. 5, 2010). The only other path to infringement is the doctrine of equivalents. But Midas abandoned all its equivalence arguments on summary judgment, thereby implicitly conceding that those theories were so weak they were not even worth presenting to a court. Summary Judgment Motion ¶ 65.

14. Third, Midas never identified any component that could even arguably meet the "adapted to coordinate the operation of the primary and secondary fluid circulation facilities" claim element—only components that acted upon either the primary or the secondary fluid circulation

facility, but were not adapted to coordinate both as the asserted claims require. Summary Judgment Motion ¶¶ 58-59, 62, 63.

15. These glaring defects show the undeniable substantive weakness of Midas's claims on the merits. They support an exceptional case finding. *Dragon*, 101 F.4th at 1370. And they exemplify Midas's advancement of claims and allegations that are unsupported by law or evidence, warranting sanctions for that reason alone. Bankruptcy Rule 9011(b)(2)-(3).

16. While a reasonable litigant would have recognized these obvious flaws in Midas's infringement case long before the summary judgment stage, the weakness of Midas's case became undeniable—even to an *unreasonable* litigant—when the District Court rejected it on summary judgment. The summary judgment ruling constituted a substantive judicial determination (on a full record) that Midas's claims lacked evidentiary support, and that decision has preclusive effect in this Court. Summary Judgment Motion ¶¶ 29-47. But Midas pressed those claims in this Court anyway, even though it was intimately familiar with both the evidentiary record and the District Court's ruling, before it filed its proof of claim. *See Dragon*, 101 F.4th at 1370 (continuing litigation after it is apparent claims are baseless contributes to exceptional case finding); Bankruptcy Rule 9011(b)(2)-(3).

17. To make matters worse, in the proofs of claim it filed, Midas did not inform this Court that the District Court had granted summary judgment against it. Summary Judgment Motion, Ex. 11.] And Midas attached its operative complaint from 2023 to detail its claims, even though that complaint asserted seven claims of the '457 Patent and six claims of the '446 Patent (i.e., all the claims it had asserted for that patent), which Midas had subsequently dropped in the District Court litigation. Summary Judgment Motion, ¶12 (text), 12 n.5. In purporting to revive

claims and a patent it had withdrawn, Midas sought to expand a case in this Court that had already been narrowed through a highly contested litigation process.

18. Midas also advanced unsupported damages claims on a scale (\$25-\$43M) large enough to ensure its claims would pose an obstacle to the reorganization of Debtors, force delay, and attempt to give Midas an unwarranted tactical leverage. Midas seeks damages considerably larger than the \$22M it demanded in the District Court—even though that court had *reduced* Midas’s damages claims by excluding (i) its theory based on projected future profits (which are also unavailable as a matter of law in this Court), (ii) its lost profits theory, and (iii) its reasonable royalty theory that was based on its rejected lost profits theory, fatally speculative, and rife with other errors. Summary Judgment Motion, ¶¶ 66-69; Motion to Estimate, ¶¶. As Midas must know, its damages claims are preposterous. It has nonetheless presented an inflated damages claim, despite the lack of supporting evidence and dramatic reductions by the District Court, for the tactical purpose of attempting to put pressure on Debtors.

19. Midas’s attempt to relitigate claims it has already lost or abandoned and to seek an enormous sum it could never hope to prove are wasteful. They bespeak its motive is to churn proceedings, cause delay that holds up Debtors’ reorganization, and by so doing, give itself leverage using claims it knows (and was told by the Western District) have no merit. That is grounds for sanctions under both § 285, *see Highmark, Inc. v. Allcare Health Mgmt. Sys., Inc.*, 2015 WL 6777377, at *2 (N.D. Tex. June 23, 2015) (“maintain[ing plaintiff’s] infringement claims well after such claims had been shown by its own experts to be without merit and for the express purpose of maintaining leverage against” defendant supported exceptional case finding), and Bankruptcy Rule 9011(b)(1) (filing made for the purpose of causing unnecessary delay warrants sanctions).

CONCLUSION

Debtors respectfully request that the Court find that this case is exceptional under 35 U.S.C. § 285 and find that Midas has violated Bankruptcy Rule 9011(b)(1)-(3). Debtors pray that they be awarded sanctions in such amount as will compensate them for their damages and expenses caused by the filing of Midas's proofs of claim, as well as deter conduct of this type in the future; further, Movant respectfully requests that the Court grant such other and further relief to which Movant may be entitled, at law or in equity.

RESERVATION OF RIGHTS

20. 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.

NOTICE

21. Notice of this Reply will be provided to (i) the Office of the United States Trustee; (ii) counsel to the Creditors' Committee; (iii) Midas, (iv) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (v) any other party entitled to notice pursuant to Local Rule 9013-1(d).

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 7th day of August, 2025.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Patricia B. Tomasco

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Certificate of Service

I, Patricia B. Tomasco, hereby certify that on the th day of July, 2025, a copy of the foregoing Objection 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/ DRAFT

Patricia B. Tomasco

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

In re:

RHODIUM ENCORE, LLC, et al.,

Debtors,

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

**MIDAS GREEN TECHNOLOGIES, LLC’S OBJECTIONS TO
DEBTORS’ DECLARATION OF CHARLES R. TOPPING IN SUPPORT
OF DEBTORS’ MOTION FOR SANCTIONS RELATING TO CLAIMS
FILED BY MIDAS GREEN TECHNOLOGIES LLC (ECF No. 1641)**

Midas Green Technologies, Inc. (“Midas”) hereby objects to Debtor’s Declaration of Charles R. Topping in Support of Debtors’ Motion for Sanctions relating to Claims filed by Midas Green Technologies.

INTRODUCTION

Debtor's Motion for Sanctions under Federal Rule of Bankruptcy Procedure 9011 is procedurally defective and substantively without merit. The Motion improperly seeks to recover attorneys' fees and expenses far beyond the scope of Rule 9011, fails to comply with the mandatory safe-harbor protections, and rests on filings that were objectively reasonable and made in good faith.

Moreover, Debtors' evidentiary submission — a declaration attaching over 570 pages of invoices — highlights the impropriety of their request. The invoices do not parse out which fees, if any, were “directly resulting from” the alleged sanctionable conduct. Instead, Debtors indiscriminately included billing entries for unrelated matters, block-billed time, storage charges, and even invoices billed to entirely different matters. These defects confirm that the Motion is not a good-faith attempt to recover narrowly tailored expenses, but rather an effort to shift all of Debtors' litigation costs onto Midas for filing claims against them.

For these reasons, the Motion should be denied in its entirety.

LEGAL STANDARD

Rule 9011, like Rule 11 of the Federal Rules of Civil Procedure, permits sanctions only when filings are presented for an improper purpose or

without a reasonable basis in fact or law. Sanctions are deterrent, not compensatory, and any monetary award must be limited to “the reasonable attorney’s fees and other expenses directly resulting from the violation.” Fed. R. Bankr. P. 9011(c)(2). The Fifth Circuit requires courts to apply this standard narrowly and only in clear cases of abuse. *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 878 (5th Cir. 1988) (en banc).

OBJECTIONS TO EVIDENCE OF FEES AND EXPENSES

A. Sanctions Are Limited to Deterrence, Not Fee Shifting

The Motion improperly seeks broad recovery of attorneys’ fees and costs, contrary to Rule 9011’s deterrent purpose. Courts in this Circuit prohibit using sanctions as a vehicle for wholesale fee shifting. *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994).

Midas objects to the purported evidentiary submissions offered in support of Debtors’ claim that Rhodium paid not less than \$2,500,000 in fees to Kirkland & Ellis with \$81,778.87 in costs, and an additional \$2,596,065.00 in fees to Stris & Maher LLP (“Stris”) with \$320,376.00 in costs.

Debtors’ claimed payment of not less than \$2,500,000 in attorneys’ fees to Kirkland & Ellis and \$81,778.87 in costs is not recoverable as a sanctionable “expense” under Rule 9011. Rule 9011 is limited to deterrence and authorizes only those sanctions that are “sufficient to deter repetition of such conduct or

comparable conduct by others similarly situated.” Attorneys’ fees and expenses may only be awarded to the extent they were directly and reasonably incurred as a result of the specific sanctionable conduct at issue. The Kirkland & Ellis fees represent work performed in unrelated patent litigation and not in connection with the alleged Rule 9011 violation before this Court. Likewise, the claimed \$81,778.87 in “costs” are not shown to be caused by, or necessary to address, the conduct giving rise to the motion. Because these amounts are unrelated, excessive, and outside the scope of Rule 9011, they cannot be shifted to Midas as a sanction and should be disallowed in their entirety.

No competent evidence has been presented to establish that these expenses were actually incurred, let alone that they were directly and reasonably caused by the specific conduct at issue under Rule 9011. Debtors have failed to submit invoices, billing records, payment records, or other admissible documentation substantiating these amounts.

Rule 9011 sanctions must be limited to expenses “directly resulting from” the sanctionable conduct, not generalized or unrelated litigation expenditures. (See *In re DeVille*, 361 F.3d 539, 548–49 (9th Cir. 2004).) The Kirkland & Ellis fees and costs relate to prior patent litigation and not this proceeding. Likewise, there are no documents in the record supporting the alleged Stris fees or costs prior to November 24, nor showing any causal nexus

to the alleged sanctionable conduct.

Because Debtors have not carried their evidentiary burden, these claimed amounts are speculative, irrelevant, and inadmissible, and should be disregarded in ruling on the motion for sanctions.

B. Debtors' Fee Submission Is Grossly Overbroad and Defective

Even if sanctions were theoretically available (they are not), Debtors' evidentiary submission is fatally flawed:

Overinclusive Billing: Debtors submitted a declaration attaching 570 pages of invoices without parsing which entries relate to the alleged sanctionable conduct.

- i. Inclusion of Unrelated Matters: The invoices sweep in work on unrelated matters, including disputes involving for example, Midas and GRC, Ameritex, etc., which bear no connection to the alleged conduct before this Court.
- ii. Block Billing: Debtors openly admit to block billing, combining sanction-related tasks with wholly unrelated work, making it impossible to separate recoverable from non-recoverable fees.
- iii. Improper "Storage Fees": Debtors seek recovery for monthly discovery hosting charges, yet these expenses are not "directly resulting from" any sanctionable conduct and, by their own

admission, continue even though the so-called district court litigation has concluded.

- iv. Undocumented Expert Fees: Debtors included thousands of dollars in expert consultant charges without providing a single detailed invoice explaining the nature of the work performed. These entries cannot be verified and are not recoverable.
- v. Misallocated Billing: Debtors further misrepresent their records by attributing \$55,720 as billed to the Midas patent case, when Exhibit H clearly shows the charges were billed to Whinstone, which is a fully unrelated lease dispute between the Debtors and their landlord.

These defects reveal that Debtors simply “threw everything under the sun” into their fee request in hopes of recovering their entire bankruptcy litigation costs under the guise of sanctions. Rule 9011 does not permit such sweeping recovery.

C. Debtors’ Evidence Fails to Meet Their Burden of Proof

Under Bankruptcy Rule 9013, the Debtors’ bear the burden of supporting their motion with admissible evidence establishing entitlement to relief. See *In re Terrell*, 410 F. App’x 754, 756 (5th Cir. 2011) (sanctions require specific factual findings supported by evidence). The declaration and invoices Debtors

submitted do not satisfy this burden:

- i. They fail to segregate recoverable fees from non-recoverable litigation expenses.
- ii. They rely on conclusory statements without identifying which fees are tied to the alleged sanctionable conduct.
- iii. They omit critical supporting documentation, such as detailed invoices for expert consultant charges.
- iv. Without competent evidence demonstrating that specific, identifiable fees were “directly resulting from” sanctionable conduct, Debtors cannot carry their evidentiary burden. The Court is left with only speculation, which cannot support an award of sanctions.

CONCLUSION

For the foregoing reasons, Midas respectfully requests that the Court deny Debtors’ Motion for Sanctions in its entirety and grant such other and further relief as the Court deems just and proper.

DATED: September 19, 2025

Respectfully submitted,
/s/ Joseph E. Thomas

Joseph E. Thomas (*admitted p.h.v.*)
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CERTIFICATE OF SERVICE

I, Tierra Mendiola, hereby certify that on September 19, 2025, a copy of the foregoing was served by email from tmendiola@twtlaw.com to Counsel to the Debtors and Debtors-In-Possession via email to pattytomasco@quinnemanuel.com; cameronkelly@quinnemanuel.com; alainjaquet@quinnemanuel.com; rachelharrington@quinnemanuel.com and mailed to 700 Louisiana Street, Suite 3900, Houston, Texas 77002.

/s/ Tierra Mendiola

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

In re:

RHODIUM ENCORE, LLC, et al.,

Debtors,

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

ORDER DENYING
DEBTORS' MOTION FOR SANCTIONS

(Relates to ECF No. 1602)

Before the Court is Rhodium's Motion for Sanctions currently pending before the United States Bankruptcy Court for the Southern District of Texas. Having considered the motion, the briefing, the applicable law, and the record, the Court finds that good cause exists to deny the requested relief.

1. The Motion for Sanctions pursuant to Rule 9011 & Fed. R. Civ. P. 11 is **DENIED** in its entirety.
2. The request for relief under 35 USC § 285 is **DENIED**.
3. The relief requested therein, including but not limited to attorney's fees and expenses is likewise **DENIED**.

SO ORDERED.

Dated: _____, 2025

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE