Docket #1706 Date Filed: 09/24/2025

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MIDAS CLAIM OBJECTION HEARING

IN RE RHODIUM ENCORE LLC, ET AL.

NO. 24-90448-ARP

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS

HONORABLE ALFREDO R. PEREZ

SEPTEMBER 23, 2025

PRESENTATION OVERVIEW

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I. Preliminary Points: Jurisdiction, Preclusion, & Sanctions Standards

II. Midas Green's Objectively Baseless Patent Infringement Claim

III. Midas Cannot Prove Infringement or Damages

IV. The Midas Claims Should Be Estimated At Zero

V. The Court Should Deny Midas's Motion to Withdraw the Reference

I. Jurisdiction, Preclusion, & Sanctions Standards

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The Midas Claims

- On September 18 and November 21, 2024, Midas filed seven substantially similar proofs of claim alleging patent infringement against Debtors Rhodium Enterprises, Inc., Rhodium 10MW LLC, Rhodium 30MW LLC, Rhodium 2.0 LLC, Rhodium Technologies LLC, Rhodium Renewables Sub LLC, and Rhodium Encore LLC.
- Midas attached the same Complaint filed in the District Court Litigation on March 29, 2023.
  - Midas failed to inform this Court that it had already withdrawn all asserted claims of one patent and all but two asserted claims of the remaining patent.
  - Midas failed to inform this Court of the District Court's grant of summary judgment of non-infringement.
- The Midas Claims, as amended, assert over $10 in purported damages that are speculative, and Midas failed to defend or support in response to the Debtors' summary judgment motion.

Midas submitted to this Court's exclusive jurisdiction by filing its proofs of claim

- By filing its proofs of claim, Midas submitted itself to the jurisdiction of this Court.
  - "The filing of the proof invokes the special rules of bankruptcy concerning objections to the claim, estimation of the claim for allowance purposes, and the rights of the claimant to vote on the proposed distribution. Understood in this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy." *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987).
- "If the proceeding is one that would arise only in bankruptcy, it is also a core proceeding; for example, the filing of a proof of claim."). *WRT Creditors Liquidation Tr. v. C.I.B.C. Oppenheimer Corp.*, 75 F. Supp. 2d 596, 607 (S.D. Tex. 1999).

MIDAS CLAIM OBJECTION HEARING

PRELIMINARY POINT: SANCTIONS

Exhibit 29

From: Elizabeth Brannen <EBrannen@stris.com>
Sent: Tuesday, August 15, 2023 5:33 PM
To: Joe Thomas; Grant Thomas; William Kolegraff
Cc: service-rhodiummidasgreen; Melissa Smith; travis@gillamsmithlaw.com; 'Henry.pogorzelski@klgates.com'; 'nicholas.lenning@klgates.com'; 'ruby.nagamine@klgates.com'; 'courtney.neufeld@klgates.com'; 'jim.shimota@klgates.com'; 'becca.skupin@solidcounsel.com'; 'Michael C. Smith - Scheef & Stone (michael.smith@solidcounsel.com)'; Tierra Mendiola
Subject: RE: Midas Green v. Rhodium - Inspection - Info needed

Joe, logistically in addition to what you've said you'll provide tomorrow please note that we also need copies of the drivers licenses for the background check.

On the merits, we will have to agree to disagree. The case is so weak that continuing to pursue it subjects Midas Green to an award of fees and costs in Rhodium's favor. Among other fatal problems, there is no basis for or hope of establishing the claimed control facility.

We also do not agree that the inspections should hold up depositions. Your stated position on this issue is inconsistent with your firm view that the systems as they exist could support a claim of infringement. If you promptly provide the requested information despite what is now over a week of delay we will work with you to try to sequence the depositions so that they happen after the inspection. But we do not agree that this is necessary or that any further extension would be warranted.

Given that you still insist on inspecting all 3 sites, despite our view that this makes no sense given the status of the small non-operational site, we will allow all 3 inspections. The requested information is a gating item on scheduling, but you had previously identified end of August as the desired timing and I think we should work toward that. We will have to check with Rhodium too, but, assuming all the security requirements and background checks are satisfied, could you tentatively plan for August 29th-30th or 30th-31st?

Best,
Liz

"The case is so weak that continuing to pursue it subjects Midas Green to an award of fees and costs in Rhodium's favor. Among other fatal problems, there is no basis for or hope of establishing the claimed control facility."

Patent Act Sanctions

- The patent statute provides that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285.
- Courts determine whether a case is exceptional in the "exercise of their discretion, considering the totality of the circumstances." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014).
- "[A]n '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." *Id*.

Rule 11 Sanctions

- The Fifth Circuit interprets Rule 11 to impose three affirmative duties that attorneys and litigants certify they have complied with each time they sign a pleading:
  1. the attorney has conducted a reasonable inquiry into the facts which support the document;
  2. the attorney has conducted a reasonable inquiry into the law such that the document embodies existing legal principles or a good faith argument for the extension, modification, or reversal of existing law; and
  3. the pleading is not filed for purposes of delay, harassment, or increasing the costs of litigation. *Childs v. State Farm Mut. .Auto. Ins. Co.*, 29 F.3d 1018, 1023–24 (5th Cir. 1994).
- Rule 11 sanctions are mandatory, and if the Court finds that Midas violated Rule 11, it must issue appropriate sanctions.
  - *Thomas v. Cap. Sec. Servs., Inc.*, 836 F.2d 866, 876 (5th Cir. 1988) ("There are no longer any 'free passes' for attorneys and litigants who violate Rule 11. Once a violation of Rule 11 is established, the rule mandates the application of sanctions.").
  - *Uptown Grill, LLC v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 388 (5th Cir. 2022).

Section 105 Sanctions

- Section 105 authorizes a bankruptcy court to issue orders as necessary to further the purposes of the Bankruptcy Code. *In re Dansereau*, 274 B.R. 686, 689 (Bankr. W.D. Tex. 2002).
- A bankruptcy court's authority to issue sanctions under § 105 comports with its inherent power to sanction. *In re Brown*, 444 B.R. 691, 694 (Bankr. E.D. Tex. 2009).
- To support sanctions under section 105, the Court must find that Midas filed its claims in bad faith. *In re Rodriguez*, 652 B.R. 750, 760 (Bankr. S.D. Tex. 2023).
- Bad faith conduct may be established if a court finds that the party "deliberately abused the judicial process." *Id*. Intentional deceit also shows bad faith warranting sanctions. *In re Paige*, 365 B.R. 632, 639 (Bankr. N.D. Tex. 2007).

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Issue Preclusion Bars Midas's Claims

- Issue preclusion bars parties from relitigating an issue that has already been decided by a final judgment of another court. *Montana v. United States*, 440 U.S. 147, 153 (1979).
- The doctrine works to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1980).
- The District Court considered the issue of Rhodium's infringement on Midas's water cooling systems, and "grant[ed] the motion for summary judgment of noninfringement."
  - Midas concedes that the District Court litigation concerns the same patent infringement at issue in this case. ECF 1069 ¶ 5.
  - Midas concedes that the District Court issued an "oral ruling" and "stated its intent to grant summary judgment in favor of the Debtors." ECF 1069 ¶1.

Multiple Preclusion Doctrines Bar Midas's Claims

- Midas challenges only finality; however
- Law of the case does not require a final ruling; and
- Midas essentially concedes finality:
  - It concedes that it could have appealed when "the Court ha[d] not entered a final order after 150 days." (ECF No. 1522 at 15.)
  - The transcript in which the District Court granted summary judgment of noninfringement has been available on the docket for well over 365 days.

Law of the Case Bars Midas's Claims

- Law of the Case "expresses the practice of courts generally to refuse to reopen what has been decided." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816-17 (1988).
- "It has also been used as a rule of comity for decisions made by trial courts." *Gulliford v. Thrash,* 8 F. App'x 766, 768 (9th Cir. 2001).
- "[T]he doctrine applies as much to the decisions of a coordinate court in the same case as to a court's own decisions." *Id.*
- *See United States ex rel. Kennard v. Comstock Res., Inc.*, 2009 WL 10708957, at *8 (E.D. Tex. Feb. 20, 2009) (applying law of the case based on 10th Circuit ruling).

The *Kessler* Doctrine Bars Midas's Claims

- Under the *Kessler* doctrine, Rhodium's systems enjoy a "non-infringing status" that cannot be undone in a second lawsuit. *See, e.g., Wisconsin Alumni Research Foundation v. Apple Inc.*, 112 F.4th 1364, 1384-86 (Fed. Cir. 2024).
- The non-infringer's right to have the product "freely bought and sold without restraint or interference" …. "attaches to its product—to a particular thing—as an article of lawful commerce." *Rubber Tire Wheel Co. v. Goodyear Tire & Rubber Co.*, 232 U.S. 413, 418 (1914).
- The *Kessler* Doctrine also protects Rhodium's systems from subsequent actions alleging infringement. *See Corning Inc. v. Wilson Wolf Mfg. Corp.*, 569 F. Supp. 3d 920, 933 (D. Minn. 2021).

Claim Preclusion Bars Midas's Claims

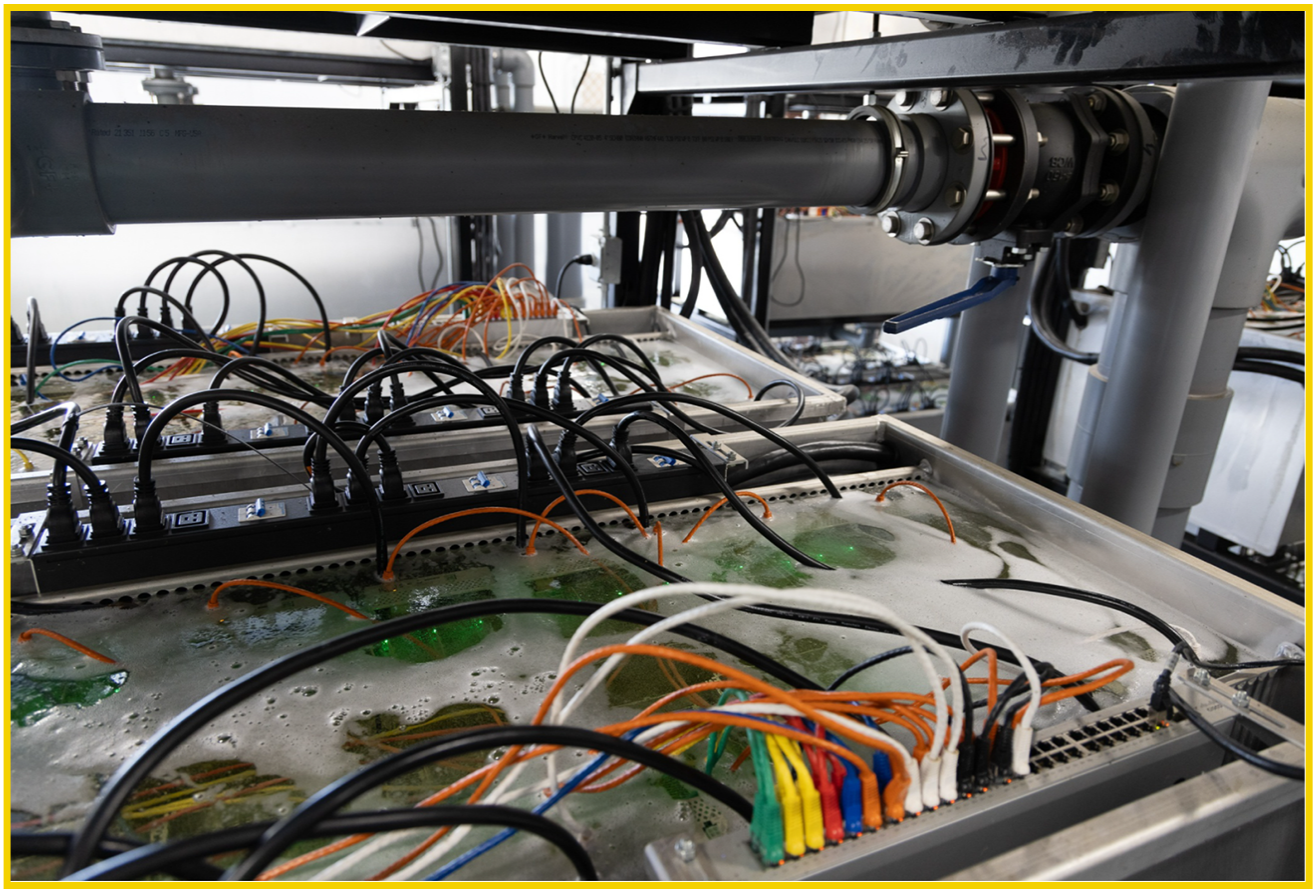
- Claim preclusion bars parties from bringing causes of action that have already been litigated.
- It applies when **"the scope of the asserted patent claims in the two suits is essentially the same."**
- Midas is pursuing the same causes of action already litigated in District Court in this new forum.
  - Midas concedes that its Claims are part of its effort to "pursue its claims for damages for patent infringement in District Court." ECF 1069 ¶ 2.

II. Midas Green's Objectively Baseless Patent Infringement Claim

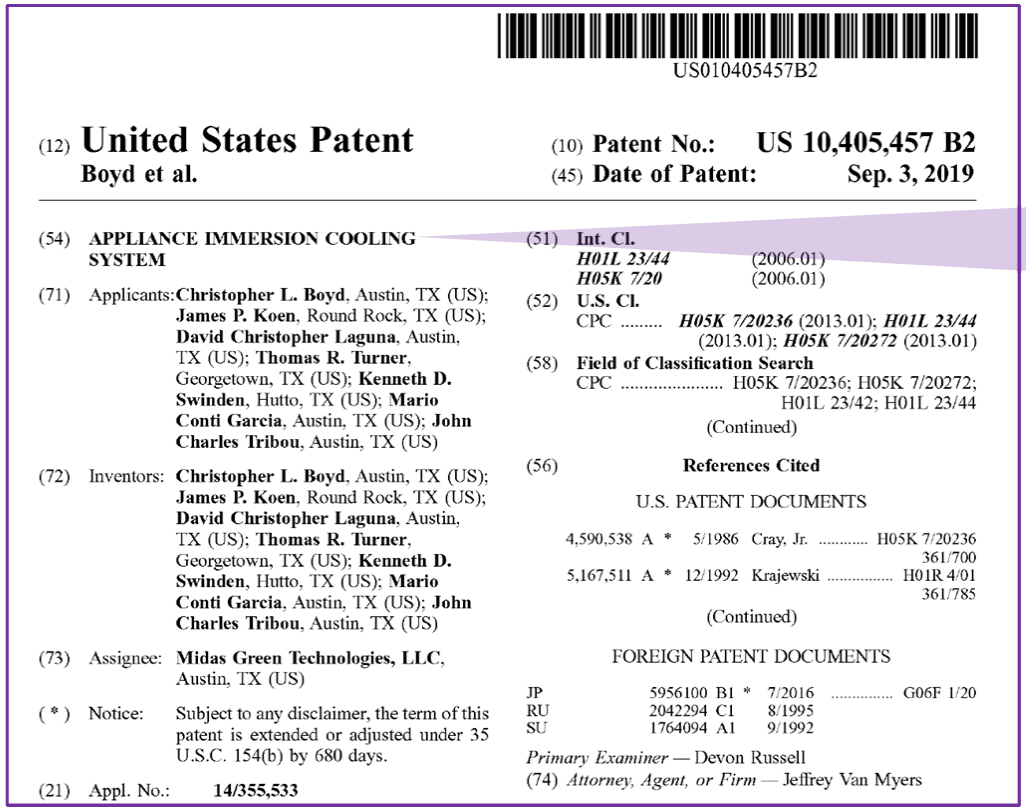
OVERVIEW

- **Rhodium's liquid Immersion Cooling Systems at its former Temple and Rockdale Sites**
- **The '457 Patent**
- **The Asserted Claims [1 and 5]**
- **4 Patent requirements that Rhodium lacks**

Rhodium's accused systems at Rockdale and Temple both used Immersion Cooling



U.S. PATENT NO. 10,405,457



US010405457B2

(12) **United States Patent**
Boyd et al.

(10) **Patent No.: US 10,405,457 B2**
(45) **Date of Patent: Sep. 3, 2019**

(54) **APPLIANCE IMMERSION COOLING SYSTEM**

(71) Applicants: **Christopher L. Boyd**, Austin, TX (US); **James P. Koen**, Round Rock, TX (US); **David Christopher Laguna**, Austin, TX (US); **Thomas R. Turner**, Georgetown, TX (US); **Kenneth D. Swinden**, Hutto, TX (US); **Mario Conti Garcia**, Austin, TX (US); **John Charles Tribou**, Austin, TX (US)

(72) Inventors: **Christopher L. Boyd**, Austin, TX (US); **James P. Koen**, Round Rock, TX (US); **David Christopher Laguna**, Austin, TX (US); **Thomas R. Turner**, Georgetown, TX (US); **Kenneth D. Swinden**, Hutto, TX (US); **Mario Conti Garcia**, Austin, TX (US); **John Charles Tribou**, Austin, TX (US)

(73) Assignee: **Midas Green Technologies, LLC**, Austin, TX (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 680 days.

(21) Appl. No.: **14/355,533**

(51) **Int. Cl.**
H01L 23/44 (2006.01)
H05K 7/20 (2006.01)

(52) **U.S. Cl.**
CPC ***H05K 7/20236*** (2013.01); ***H01L 23/44*** (2013.01); ***H05K 7/20272*** (2013.01)

(58) **Field of Classification Search**
CPC H05K 7/20236; H05K 7/20272; H01L 23/42; H01L 23/44
(Continued)

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Primary Examiner — Devon Russell
(74) *Attorney, Agent, or Firm* — Jeffrey Van Myers

'457 Patent

APPLIANCE IMMERSION COOLING SYSTEM

Title of the '457 Patent

Independent Claim 1

Dependent Claim 5

Asserted Claims of the '457 Patent

The Asserted Claims

"1 . An appliance immersion cooling system comprising:

a tank adapted to immerse in a dielectric fluid a plurality of electrical appliances, each in a respective appliance slot distributed vertically along, and extending transverse to, a long wall of the tank, the tank comprising . . . "

"5 . The system of claim 1

wherein the control facility further comprises a communication facility adapted to facilitate monitoring and control of the control facility from a remote location."

The '457 Patent Abstract

(57) **ABSTRACT**

A appliance immersion tank system comprising: a generally rectangular tank adapted to immerse in a dielectric fluid a plurality of appliances, each in a respective appliance slot distributed vertically along, and extending transverse to, the long axis of the tank; a primary circulation facility adapted to circulate the dielectric fluid through the tank; a secondary fluid circulation facility adapted to extract heat from the dielectric fluid circulating in the primary circulation facility, and to dissipate to the environment the heat so extracted; and a control facility adapted to coordinate the operation of the primary and secondary fluid circulation facilities as a function of the temperature of the dielectric fluid in the tank. A plenum, positioned adjacent the bottom of the tank, is adapted to dispense the dielectric fluid substantially uniformly upwardly through each appliance slot. A weir, integrated horizontally into a long wall of the tank, is adapted to facilitate substantially uniform recovery of the dielectric fluid flowing through each appliance slot. All active and most passive components of both the primary and secondary fluid circulation facilities, and the control facility are fully redundant, and are adapted automatically to operate in a fail-soft mode.

(Continued)

4 Patent requirements that Rhodium Lacks:

1. A tank that contains "appliance slots"
2. A component adjacent to the bottom of the tank "adapted to dispense the dielectric fluid substantially uniformly upwardly through each appliance slot"
3. A "secondary fluid circulation facility"
4. A "control facility adapted to coordinate the operation of the primary and secondary fluid circulation facilities as a function of the temperature of the dielectric fluid in the tank"

MIDAS CLAIM OBJECTION HEARING

MIDAS'S BASELESS INFRINGEMENT CLAIM

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"1 . An appliance immersion cooling system comprising: a tank adapted to immerse in a dielectric fluid a plurality of electrical appliances, each in a respective appliance slot distributed vertically along, and extending transverse to, a long wall of the tank, the tank comprising:

a weir, integrated horizontally into the long wall of the tank adjacent all appliance slots, having an overflow lip adapted to facilitate substantially uniform recovery of the dielectric fluid flowing through each appliance slot; and; . . . "

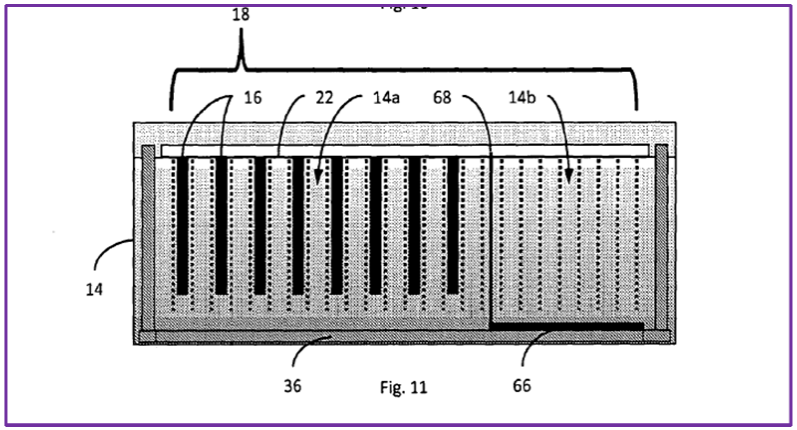


Fig. 11

FIG. **1** illustrates, in partial cut-away form, a front perspective of a tank module of an appliance immersion cooling system constructed in accordance with our invention;

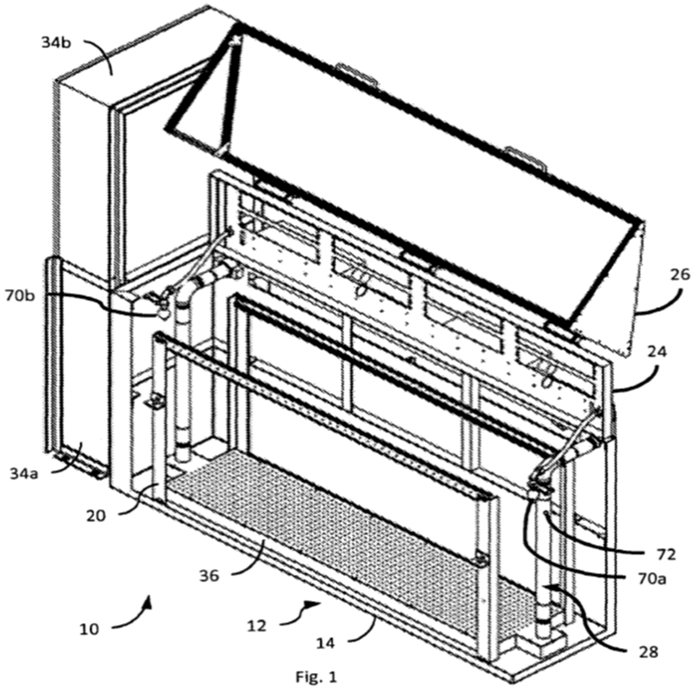


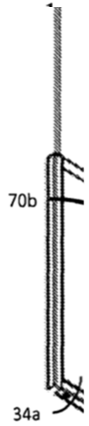
Fig. 1

DETAILED DESCRIPTION OF THE INVENTION

Shown in FIG. **1** (front view) and FIG. **2** (rear view) i tank module **10** adapted for use in an appliance immers cooling system constructed in accordance with a prefer embodiment of our invention. For convenience of referen we have illustrated in FIG. **1** the tank facility **12** of immersion module **10** in partial cut-away to emphas several important internal facilities; we have shown the ta facility **12** in isolation in FIG. **5**. In general, the tank facil **12** comprises: a tank **14** adapted to immerse in a dielect fluid a plurality of electrical appliances **16**, e.g., contem rary computer servers (see, e.g., FIG. **11**), each in a resp tive appliance slot **18***a* distributed vertically along, a extending transverse to, a long axis of the tank **14** (s generally, FIG. **10**); an appliance rack facility **20** of c vention design adapted to suspend the appliances **16** (s e.g., FIG. **11**) in respective appliance slots **18** (see, FIG. **1** a weir **22** (best seen in isolation in FIG. **5** and FIG. integrated horizontally into one long wall of the tank adjacent all appliance slots **18**, and adapted to facilit substantially uniform recovery of the dielectric fluid flow through each of the appliance slots **18**; an interconnect pa

Col. 8, ll. 16-19 of '457 Patent (excerpted)

Although we have described our invention in the context of particular embodiments, one of ordinary skill in this art will readily realize that many modifications may be made in such embodiments to adapt either to specific implementations. By way of example, it will take but little effort to adapt our invention for use with electronic appliances other than contemporary servers; and to adjust the dimensions of the appliance accommodation slots accordingly. Similarly, prac-



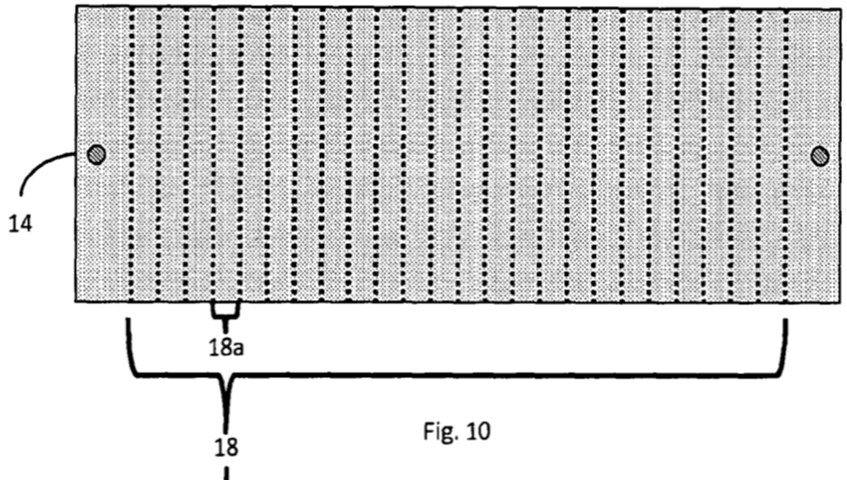


Fig. 10

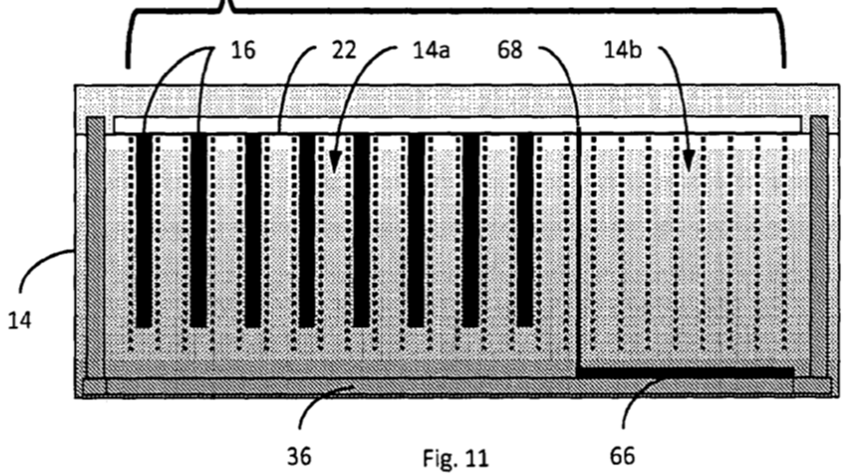


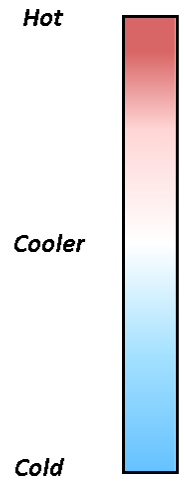
Fig. 11

PRIMARY AND SECONDARY CIRCULATION FACILITIES

"1 . An appliance immersion cooling system comprising . . .

a secondary fluid circulation facility adapted to extract heat from the dielectric fluid circulating in the primary circulation facility, and to dissipate to the environment the heat so extracted; and . . . "

Claim 1 of the '457 Patent (excerpted)



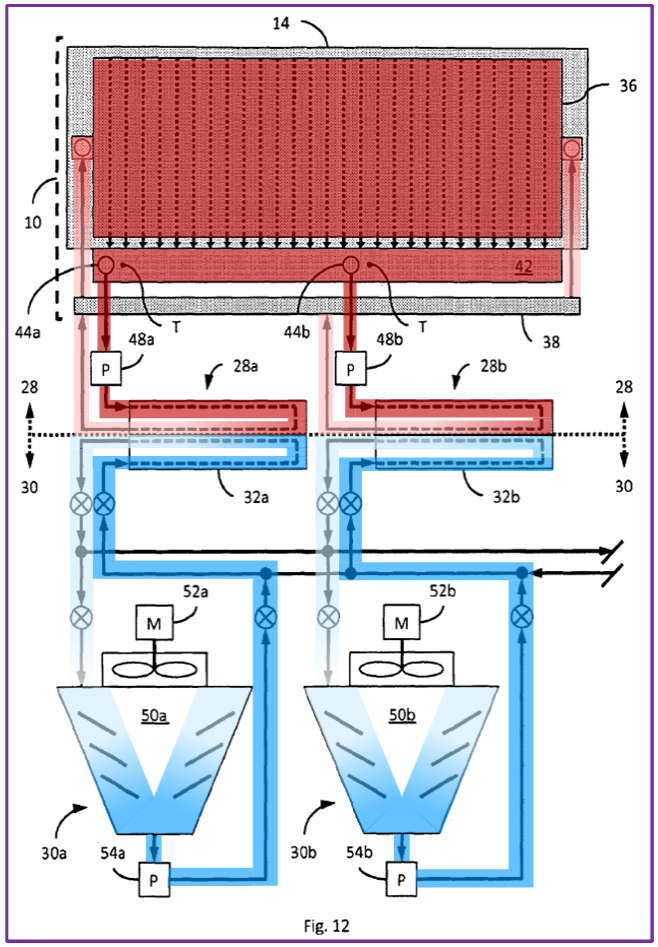


Fig. 12 of the '457 Patent (color added)

CIRCULATION FACILITY = CIRCULATION LOOP

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" . . . A common header arrangement can be implemented as illustrated in the secondary fluid circulation loop, with flow control valves located at key flow control points as is known."

Col. 5, ll. 13-15 of '457 Patent (excerpted)

" . . . Requires continuous monitoring and control of several essential operating parameters, including fluidic temperatures, pressures, conductivity and pH at several points in the primary and secondary circulation loops."

Col. 5, ll. 21-25 of '457 Patent (excerpted)

"To solve a reciprocal problem, namely leakage from an external portion of the primary circulation loop **28** resulting in the dielectric fluid in the tank being back-siphoned . . ."

Col. 8, ll. 16-19 of '457 Patent (excerpted)

". . . The primary circulation facility **28** . . . Comprises both passive (conduits, couplers, etc.) and active (valves, pumps, sensors, etc.) components . . ."

Col. 8, ll. 5-8 of '457 Patent (excerpted)

CIRCULATION FACILITY = CIRCULATION LOOP

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From Midas Green's Opposition to Debtors' Summary Judgment Motion (ECF 1522)
p. 33, ¶ 66

" . . . Indeed, the preferred embodiment of Fig. 13 contemplates several structures and ways to adapt the control facility to coordinate the operation of the circulation facilities. As illustrated below, Fig. 13 shows that in the oil loop temperature sensors can be coupled to the recovery reservoir (T) or placed in/on the piping circulating the oil (S). This information is then communicated to the master controller, which can be used to affect the water loop. Fig. 13 also shows that in the water loop temperature sensors (S) can be placed in/on the piping circulating the water. This information is then communicated to the master controller, which can be used to affect the oil loop. In this way, the control facility of Fig. 13 shows that temperature sensors can be located at various places in either the primary or secondary facilities and be used for coordinating circulation."

KEY CONCEPT

‘487 Patent Column 8, Lines 47-54:

> “It will be recognized that, in all of the embodiments described herein, emphasis was placed on minimizing the total volume of the dielectric fluid circulating throughout each immersion module 10. We submit that the key concept here is to move the secondary fluid to the point of heat exchange with the primary fluid, rather than to move the primary fluid to the point of heat exchange with the secondary fluid.”

CONTROL FACILITY

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1. An appliance immersion cooling system comprising:
a tank adapted to immerse in a dielectric fluid a plurality of electrical appliances, each in a respective appliance slot distributed vertically along, and extending transverse to, a long wall of the tank, the tank comprising:
a weir, integrated horizontally into the long wall of the tank adjacent all appliance slots, having an overflow lip adapted to facilitate substantially uniform recovery of the dielectric fluid flowing through each appliance slot; and;
a dielectric fluid recovery reservoir positioned vertically beneath the overflow lip of the weir and adapted to receive the dielectric fluid as it flows over the weir;
a primary circulation facility adapted to circulate the dielectric fluid through the tank, comprising:
a plenum, positioned adjacent the bottom of the tank, adapted to dispense the dielectric fluid substantially uniformly upwardly through each appliance slot;
a secondary fluid circulation facility adapted to extract heat from the dielectric fluid circulating in the primary circulation facility, and to dissipate to the environment the heat so extracted; and
a control facility adapted to coordinate the operation of the primary and secondary fluid circulation facilities as a function of the temperature of the dielectric fluid in the tank.

" . . . a control facility adapted to coordinate the operation of the primary and secondary fluid circulation facilities as a function of the temperature of the dielectric fluid in the tank."

Claim 1 of the '457 Patent (excerpted)

MIDAS'S INFRINGEMENT THEORIES LARGELY EXCLUDED

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"Midas failed to timely disclose its new infringement theories or seek leave to amend its contentions . . ." re: Prime Controls, PCB, Kelvion, and Appliance Slots.

"Dr. Pokharna's infringement opinions that rely on the Prime Controls system, which is admittedly *inoperable*, are too unreliable to reach the jury."

Excerpt from Rhodium's Motion to Exclude Dr. Pokharna
District Court ECF 152, pp. 3-5 & 7 (Rebuttal Exhibit)

The District Court granted Rhodium's Motion to Exclude Dr. Pokharna
Exhibit 13, at 13:12 – 18:6, then said he could amend, but then ultimately granted summary judgment of noninfringement.

Temple's Kelvion Sensors Are Far from the Tanks and Inoperable

- Prime Controls never completed its work.
- The main system Midas accused, at Temple, was never operable.
- Most sensors were missing; none were wired in.
- Concededly could not measure temperature. Pokharna Dep. Tr., Ex. 44 at 81:17-20 ("In the present state, it cannot measure temperature.").

Rockdale's Guntner Coolers Sensors Are Far from the Tanks

III. Midas Cannot Prove Damages

- Midas's damages claim, even reduced by its proposed amendment, is too speculative.
- To recover damages on its patent claims after any finding of infringement, Midas would have to prove the amount of its damages.
- If proven, Midas would be entitled to "damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer. . . ." 35 U.S.C. § 285.

Midas's Damages Expert

- Midas's damages expert, J. Duross O'Bryan, offered two alternative calculations for Midas's supposed damages: a lost profits calculation and a reasonable royalty analysis. Exhibit 6 at 42-43.
- The District Court excluded lost profits (and all future damages).
- Reasonable royalty analysis (even as amended) is equality flawed (Exhibit 4 Summary Judgment Motion):
  - Entirely derivative of lost profits (Exhibit 19 at 14-16).
  - No reliable basis to assert that Midas would have been able to negotiate at the time of the hypothetical negotiation (in 2020) for $50K profits as a "royalty." (*Id.* at 16-18).
  - Failed to consider rejected offer for less than half that amount. (*Id.* 18-20).
  - Untethered to value of the claimed invention. *Id.*

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Midas failed to meet its burden

- Midas bears the burden of proof to establish the amount of its damages. *Oiness v. Walgreen Co.*, 88 F.3d 1025, 1029 (Fed. Cir. 1996).
- But Midas failed to respond to the summary judgment argument regarding damages and has waived its right to do so. *See Lexington Ins. Co. v. ACE Am. Ins. Co.*, 2014 WL 3406512, at *22 (S.D. Tex. July7, 2014) ("Where a party fails to respond to arguments in the opposing party's motion for summary judgment, the points are conceded.").
- **Midas is entitled at most to nominal damages** Exhibit 5 (Summary Judgment Reply):
  - *Spex Techs., Inc. v. Western Digital Corp.*, 2025 WL 1748190, at *11 (C.D. Cal. June 16, 2025) (remittitur to $1))
  - *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1291 (Fed. Cir. 2020) (affirming post-trial award reducing damages to zero for lack of evidence)
  - *Exafer Ltd v. Microsoft Corp.*, 2024 WL 4212347, at *4, *9 (W.D. Tex. Aug. 15, 2024) (dismissing case with prejudice "based on the lack of evidence in the record that a jury could use to arrive at a non-speculative reasonable royalty");
  - *Rex Medical v. Intuitive Surgical, Inc.*, 2023 WL 6142254, at *11 (D. Del. Sept. 20, 2023) (remittitur to $1).

IV. The Midas Claims Should Be Estimated At Zero

The Midas Claims Are Contingent

- A claim is contingent if it "has not yet accrued and … is dependent upon some future event that may never happen." *See, e.g., In re Energy Future Holdings Corp.*, 531 B.R. 499, 515 & n.71 (Bankr. D. Del. 2015).
  - **Rhodium has no obligation** to pay Midas's patent claims **unless** and **until there is a finding of liability.**
- The District Court's summary judgment of noninfringement (the "SJ Order") is a **final ruling that bars further litigation** of Midas's patent claims.
- But even if the SJ Order was none of the above, **the Midas Claims are still contingent on a future judgment in Midas's favor**, a future event that will not occur because:
  - (1) The District Court cancelled the trial and all pending motions *in limine*.
  - (2) The District Court Litigation stagnated since April 2024.
  - (3) The District Court informed the parties that it intends to "memorialize its ruling" and move towards "resolution of the case."
  - (4) As reflected in the District Court's ruling, Midas's Claims fail as a matter of law.

The Midas Claims Are Unliquidated

- A claim is unliquidated when it is not subject to ready determination and precise computation of the amount due. *In re Vaughn*, 276 B.R. 323, 325 (Bankr. D. N.H. 2002). In particular, when the discretion or judgment of the Court is required to determine the amount of the claim, then the claim is unliquidated. *In re Kreisler*, 407 B.R. 321, 326 (Bankr. N.D. Ill. 2009).
- Patent infringement claims perfectly fit the box of unliquidated claims, given that the estimation of the related damages "is not an exact science, and the methodology of assessing and computing damages is committed to the sound discretion of the [] [C]ourt." *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1576-77 (Fed. Cir. 1989); *see also* 28 U.S.C.A. § 1499(a) (damages for patent infringement should be "reasonable and entire compensation") and 35 U.S.C. § 28 ("damages for patent infringement no [] less than a reasonable royalty for the use made of the invention by the infringer.").
- Considering the foregoing, **the Midas Claims are undoubtedly unliquidated**—indeed:
  - The same Midas is unable to precisely quantity its unfounded Claims, given through its puzzling (and disputed) method of calculation, Midas can only provide a range between **$25 million and $43 million** for its alleged damages.
  - Any attempts of the Court to calculate the amount allegedly lost by Midas would necessarily rely on **approximations and assumptions**.

Estimation Will Avoid Undue Delay in the Administration of these Cases

- What is "undue delay" under section 502(c) of the Bankruptcy Code—section 502(c), "'ultimately rests on the exercise of judicial discretion in light of the circumstances of the case, particularly the probable duration of the liquidation process as compared with the future uncertainty due to the contingency in question.'" *In re Roman Catholic Archbishop of Portland*, 339 B.R. 215, 222 (Bankr. D. Or. 2006) (citation omitted).
- Estimation of an alleged creditor's claim is particularly necessary where, as in the case of the Midas's Claims, the amount alleged threatens to **jeopardize consummation of a chapter 11 plan**. *See, e.g., In re Mud King Prods., Inc.*, 2015 WL 862319, at *4 (S.D. Tex. Feb. 27, 2015).
- Thus, **estimation of the Midas Claims is proper because it avoids undue delay** in the administration of the Debtors' jointly administered cases.
- Without an estimation of Midas's Claims, the Debtors are not in a position to swiftly confirm and implement any chapter 11 plan. Accordingly, an estimation of Midas's Claims is well suited to avoid unnecessary delays to the detriment of the estates and all stakeholders.

Estimation Will Avoid Undue Delay in the Administration of these Cases

- **Midas will suffer little to no prejudice from estimation of its Claims**, considering that:
  - Through the District Court Litigation, the parties had the opportunity to engage in discovery and all of which is available for use in connection with the estimation; and
  - As detailed in the Summary Judgement Motion, Midas has not raised a genuine issue of material fact, so that the resolution of the case turns on matters of law that the Court is well positioned to address.
- Midas requests that the parties await the District Court's ruling, but the District Court Litigation has stagnated for over a year.
  - In that respect, "when the liquidation of a claim is premised on litigation pending in a non-bankruptcy court, and the final outcome of the matter is not forthcoming, the bankruptcy court should estimate the claim." *In re Lionel L.L.C.*, 2007 WL 2261539, at *2 (Bankr. S.D.N.Y. Aug. 3, 2007) (citation omitted).

The Court Should Estimate the Midas Claims at Zero

- The District Court's finding of noninfringement means that **the Midas Claims should be estimated at zero**.
  - When a claim pending in another court would have been dismissed, that claim should be estimated to have no value. *In re Innovasystems, Inc.*, 2014 WL 7235527, at *8 (Bankr. D.N.J. Dec. 18, 2014).
  - *See also In re Kaplan*, 186 B.R. 871, 874 (Bankr. D. N.J. 1995) ("[i]t is not inappropriate to value a party's claim at zero where the claim is contingent and where the bankruptcy court finds that the party probably would not succeed on the merits in a state court action" … "the estimation process protects the interests of other creditors in not having their distributions diminished by allowing a claim whose contingency may never occur"); *Matter of Baldwin-United Corp.*, 55 B.R. 885, 902-03 (Bankr. S.D. Ohio 1985). A court should also estimate a claim at zero if it is found to be without merit as a matter of law. *In re Cont'l Airlines Corp.*, 57 B.R. 845, 854 (Bankr. S.D. Tex. 1985) ("[T]he unions' claims…have no validity and are without merit as a matter of law, and the value is estimated, pursuant to 11 U.S.C. § 502(c), to be zero.").
- Here: (i) the District Court plainly ruled that the Midas Claims have no merit and requested a proposed order stating as much; (ii) the District Court Litigation is a preview of the inevitable resolution of this case; and (iii) Debtors' sale of the Temple and Rockdale facilities makes the ongoing infringement alleged in Midas's Complaint impossible.

V. The Court Should Deny Midas's Motion to Withdraw the Reference

Midas Submitted Itself to the Court's Jurisdiction by Filing its Proofs of Claim

- Midas confuses the question of jurisdiction and withdrawal of the reference, concluding—without citing any authority—that the Midas Claims present "non-core issues" and that by asking this Court to resolve proofs of claim that **Midas filed in these bankruptcy cases**, the Debtors seek to bypass the District Court's jurisdiction.
  - The judicial doctrine of abstention, which requires that bankruptcy courts decline to exercise their jurisdiction over certain issues, does not apply; but even if it did, **the resolution of the Midas Claims is a core proceeding** under 28 U.S.C. § 157(b)(2) ("Core proceedings include…allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11."); *see also* 28 U.S.C. 157(b)(4) (no mandatory abstention over claim allowance).
- **Midas subjected itself to the jurisdiction of this court by filing its proofs of claim**. *See*, *e.g.*, *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987) ("The filing of the proof invokes the special rules of bankruptcy concerning objections to the claim, estimation of the claim for allowance purposes, and the rights of the claimant to vote on the proposed distribution. Understood in this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy.").

Midas's Motion to Withdraw the Reference Is Untimely and Prejudicial

- Midas waited almost five months after the Debtors objected to its Claim to file its Motion to Withdraw the Reference; thus, **it is now too late** and Midas's Motion must fail.
  - Section 157(d) of the Bankruptcy Code provides for mandatory withdrawal "**on timely motion of a party**."
  - Courts have widely held that "a party acts in a timely fashion when he or she moves as soon as possible after he or she should have learned the grounds for such a motion." *J.T. Thorpe Co. v. Am. Motorists*, 2003 WL 23323005, at *4 (S.D. Tex. June 9, 2003) (citation omitted).
    - *See also Dabney v. Bank of Am., N.A.*, 2020 WL 8618051, at *6 (D.S.C. Dec. 23, 2020) ("Courts have defined timely to mean as soon as possible after the moving party has notice of the grounds for withdrawing the reference.") (internal quotations omitted).
    - *See also In re Giorgio*, 50 B.R. 327, 328-29 (D. R.I. 1985) ("In our jurisprudence generally, the word 'timely' means 'at first reasonable opportunity.' The fair intendment of [28 U.S.C. § 157(d)] is to insure that the request for withdrawal be filed as soon as practicable after it has become clear that 'other laws' of the genre described in 28 U.S.C. § 157(d) are implicated, so as to protect the court and the parties in interest from useless costs and disarrangement of the calendar, and to prevent unnecessary delay and the use of stalling tactics. Once it becomes apparent that such an issue is in the case, a party has a plain duty to act diligently—or else, to forever hold his peace." (internal citations omitted)).

MIDAS CLAIM OBJECTION HEARING

WITHDRAWAL

RHODIUM

Midas's Motion to Withdrawal Is Untimely and Prejudicial

- Midas seeks to mischaracterize its Motion as running from the time of Debtors' estimation and summary judgment motions, which were filed pursuant to the briefing schedule set by this Court.
  - **But the grounds for Midas's Motion**—solely that the Midas Claims involve issues of patent law— **have been obvious at least since** the Debtors filed their initial objection to the Midas Claims in **April 2025** and were present when Midas initially submitted itself to the core jurisdiction of this Court by filing its proofs of claim.
- The timing of the Motion reflects the exact kind of **forum-shopping** and **gamesmanship** that section 157(d)'s timeliness requirement seeks to avoid. *See In re Giorgio*, 50 B.R. at 328-29.
- Had Midas moved to withdraw the reference when Debtors filed their objection months ago, **the Debtors and the Bankruptcy Court might have saved resources**. In contrast, a withdrawal of the reference would only grant Midas undue leverage and its much-desired delay, jeopardizing and delaying the resolution of these cases.
  - Under similar circumstances, and after similar periods of delay, courts have uniformly rejected motions for withdrawal as untimely. *See, e.g., In re Drs. Hosp*. 1997, L.P., 351 B.R. 813, 843 (Bankr. S.D. Tex. 2006); *In re Green Field Energy Servs*., Inc., 2017 WL 2729065, at *2 (Bankr. D. Del. June 23, 2017); *In re Allegheny Health Educ. & Rsch. Found.*, 2006 WL 3843572, at *2 (W.D. Pa. Dec. 19, 2006).
  - **The Court should do the same here.**

RHODIUM

The Midas Claims Do Not Trigger Mandatory Withdrawal of the Reference

- Even if Midas had filed a timely Motion to Withdraw the Reference, **the Motion still fails**.
- To trigger mandatory withdrawal under section 157(d), the proceeding must involve a "substantial and material question of both title 11 and non-Bankruptcy Code federal law." *Lifemark Hosps. of Louisiana, Inc. v. Liljeberg Enters.*, Inc., 161 B.R. 21, 24 (E.D. La. 1993) (citation omitted).
  - The Fifth Circuit interprets the mandatory withdrawal provision "restrictively," *Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 203 (S.D. Tex. 2008), and withdrawal should not be granted if resolution of the claim requires only "the mere application of well-settled law." *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341, 348 (Bankr. S.D. Tex. 2009).
  - Indeed, withdrawal becomes mandatory only "when the court must undertake analysis of significant open and unresolved issues regarding the non-title 11 law." *Id.* (quotation omitted).
  - The foregoing principles apply to patent claims as well as claims implicating other federal statutes. *See In re Quality Lease & Rental Holdings, LLC*, 2016 WL 416961, at *6 (Bankr. S.D. Tex. Feb. 1, 2016), *report and recommendation adopted*, 2016 WL 11644051 (S.D. Tex. Feb. 29, 2016).

RHODIUM

The Midas Claims Do Not Trigger Mandatory Withdrawal

- The District Court already determined the question of liability when it granted summary judgment on non-infringement.
- Through estimation or disallowance, the Court is more than capable of the analysis required to reach the same or related conclusion. The patent claims at issue here:
  - Are barred by multiple preclusion doctrines;
  - Can command at-best nominal damages; and
  - Require only straightforward application of the law to the facts.

RHODIUM

The Midas Claims Do Not Trigger Mandatory Withdrawal

- On the merits, adjudication of a patent infringement claim requires consideration of two key questions:
  - *First*, the court must construe the asserted patent claims to determine their meaning and scope. *Freedman Seating Co. v. Am. Seating Co.*, 420 F.3d 1350, 1357 (Fed. Cir. 2005).
  - *Second*, the court must determine whether the accused product or process contains each limitation of the properly construed claims, either literally or, if alleged, under the doctrine of equivalents. *Id.*
  - "The first step is a question of law; the second step is a question of fact." *In re Electro-Mechanical Indus.*, 2008 U.S. Dist. LEXIS 111991, at *14 (S.D. Tex. July 8, 2008) (quotation omitted).
- In this case, the first step has already been done: the District Court construed the Midas Claims. ECF No. 50 (W.D. Tex., July 11, 2022) (order approving stipulated constructions of "plenum" and "weir.").
  - The remaining claim terms are given their plain and ordinary meaning to a person of ordinary skill in the field. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc).

The Midas Claims Do Not Trigger Mandatory Withdrawal

- What remains are straightforward questions that require routine legal analysis, and certainly do not implicate a "substantial and material consideration of non-bankruptcy federal law."
  - Midas does not identify a single characteristic of its claims that would necessitate substantial and material application of non-bankruptcy law, apparently arguing that this Court could never consider any claims that implicated patent law.
  - This argument fails logically and ignores the myriad cases in which bankruptcy courts considered patent infringement claims. *See, e.g., In re Ridgeway*, 2018 WL 6287983, at *2 (Bankr. E.D. La. Nov. 30, 2018); *In re Benun*, 386 B.R. 59, 117 (Bankr. D. N.J. 2008); *In re Innovasystems, Inc.*, 2014 WL 7235527 (Bankr. D. N.J. Dec. 18, 2014).
  - Midas largely relies on one inapposite case, *In re Electro-Mechanical Indus.,* in which the court withdrew the reference of a patent claim. 2008 Bankr. LEXIS 5177 (S.D.T.X. 2008).
    - Contrary to the present case, *In re Electro-Mechanical Indus.* involved a material question of non-bankruptcy law because it involved a claim disputing the validity of the patent itself and an infringement claim that required substantive claim construction. *Id*. at *9.
    - Here, the Debtors' pending motions do not rest on the validity of the patent, claim construction is done, and the Debtors have sold their facilities containing accused systems—making continuing infringement impossible.

Finality Is Not an Element of Withdrawal or Mandatory Abstention

- Midas's Motion states that the District Court's summary judgment of noninfringement is not a final ruling with preclusive effect, presumably anticipating that the Debtors would feel compelled to spend time on the same.
- The Debtors repeatedly addressed and disproved this contention. *See* ECF Nos. 1413 ¶ 5-7, 1486 ¶ 29-42, 1524 ¶ 5-10.
- That said, Midas's exposition of the finality about the District Court's ruling concerns none of the elements of the withdrawal analysis for the Midas Claims.
  - Midas provides no case law connecting the two issues of withdrawal and finality, and the Debtors have found none.