Docket #2397 Date Filed: 06/04/2026

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

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

MIDAS GREEN TECHNOLOGIES, LLC'S REQUEST TO DENY OR DEFER THE DEBTORS' REQUEST FOR ATTORNEY'S FEES UNDER 35 U.S.C. § 285, TO LIMIT ANY SANCTIONS TO FEES INCURRED IN THESE CASES, AND, IN THE ALTERNATIVE, TO WITHDRAW THE REFERENCE OF THE § 285 ISSUE

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Midas Green Technologies, LLC ("Midas") respectfully submits this Request directed at a single component of the Debtors' pending sanctions motion: the Debtors' request to recover attorney's fees under 35 U.S.C. § 285. Midas does not, by this Request, contest the Court's authority to consider sanctions under Bankruptcy Rule 9011, Federal Rule of Civil Procedure 11, 11 U.S.C. § 105(a), or the Court's inherent power for conduct in these chapter 11 cases. Midas's objection is narrow: the Debtors may not obtain an award of attorney's fees under § 285 in this proceeding—and certainly not an award of all of the fees incurred in the separate patent litigation, which this Court did not preside over and much of which predates both these cases and current counsel's involvement.

For the reasons below, the § 285 request should be denied, or at least deferred, in any forum, because there is no prevailing party and no final judgment in the patent action; any sanctions the Court awards should be limited to the fees and costs incurred in these chapter 11 cases; Midas does not consent to final adjudication of the § 285 issue by this Court and asks that any such adjudication proceed by proposed findings subject to de novo review under 28 U.S.C. § 157(c)(1); and, in the alternative, the reference of the § 285 issue should be withdrawn to preserve Article III review. In support, Midas respectfully states as follows:

Most of the relief Midas seeks is for this Court to decide directly: whether to deny or defer the § 285 request, whether to limit any sanctions to fees incurred in these cases, and whether to proceed by proposed findings under 28 U.S.C. § 157(c)(1). To the extent the Motion alternatively seeks withdrawal of the reference of the § 285 issue under 28 U.S.C. § 157(d), that request is presented to this Court for a recommendation to the United States District Court pursuant to Bankruptcy Local Rule 5011-1.

I. RELIEF REQUESTED

Midas respectfully requests that the Court enter an order:

1. Denying the Debtors' request for an award of attorney's fees under 35 U.S.C. § 285, without prejudice, because the patent action has not reached final judgment and there is as yet no prevailing party; or, at minimum, deferring or abating adjudication of the § 285 request until final resolution of the patent action, including resolution of Rhodium's invalidity counterclaim and entry of a final judgment;
2. Limiting any sanctions the Court awards to the attorney's fees and costs incurred in these chapter 11 cases, and declining to award the fees incurred in the separate patent litigation;
3. Determining that Midas does not consent to the entry of a final order or judgment by this Court on the § 285 issue, and that, to the extent the Court adjudicates that issue, it will do so by proposed findings of fact and conclusions of law subject to de novo review by the District Court under 28 U.S.C. § 157(c)(1);
4. In the alternative, recommending that the District Court withdraw the reference of the § 285 issue under 28 U.S.C. § 157(d);
5. In the further alternative, continuing the June 30, 2026 hearing by 45 days so that the parties may present the witnesses and evidence necessary for a full and fair adjudication; and
6. Granting Midas such other and further relief to which it may be justly entitled.

II. BACKGROUND

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. The District Court held a pre-trial conference on April 9, 2024. The Court also excluded a portion of the Midas's infringement report but granted the opportunity to resubmit the infringement report. After granting leave to amend the expert reports, the Court heard argument on the Motion for Summary Judgment and took the matter under submission. 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].

On May 4, 2026, the District Court entered its written Order Granting Summary Judgment of noninfringement; on May 5, 2026, it entered an Omnibus Order Regarding Pretrial Motions. Both were filed under seal in these cases on May 21, 2026. [ECF No. 2385.] On May 4, after issuing the written order, this Court submitted an email to all parties requesting: "The Court has submitted a sealed written order setting forth reasoning for granting Defendant's Motion for Summary Judgment of Non-Infringement and it should be docketed shortly. Please advise on the status of Defendant's Counterclaim for Invalidity."

The patent action has not ended. Rhodium's affirmative counterclaim that the '457 Patent is invalid remains pending and unadjudicated, and the District Court has directed the parties to advise whether Rhodium intends to pursue it. No final judgment disposing of all claims has been entered; the Summary Judgment Order provides that final judgment shall be entered separately. Debtors have failed to inform the Court whether Debtors intend to proceed with the Defendant's counterclaim for invalidity. As such, the case is still pending before Judge Albright which makes a motion for prevailing party attorneys' fees premature.

In these cases, Midas timely filed proofs of claim asserting patent-infringement damages; the Debtors objected and moved to estimate; and on October 28, 2025 the Court sustained the objections and estimated the claims at $0 [ECF No. 1878] and issued a Report and Recommendation that the District Court deny Midas's earlier motion to withdraw the reference of the Claims Objections and Estimation Motion [ECF No. 1880]. The Debtors are proceeding toward confirmation of a chapter 11 plan.

The Debtors have separately moved for sanctions against Midas. That motion invokes Bankruptcy Rule 9011 and Rule 11 and seeks, among other relief, an award of the attorney's fees the Debtors incurred in the patent litigation under 35 U.S.C. § 285. The Court has set an evidentiary hearing for June 30, 2026. Midas does not contest the Court's authority to consider sanctions under Rule 9011, Rule 11, § 105(a), or its inherent power for conduct in these cases; it contests only the § 285 request and the Debtors' effort to recover, as a sanction, the fees of the separate patent action.

On May 20, 2026 Midas Counsel met and conferred with Wind Down Debtors. Midas counsel informed counsel for the Wind Down Debtors that there was no basis to seek attorneys' fees under 35 U.S.C. § 285. Counsel for Midas requested case law supporting Wind Down Debtors' request for attorney's fees in this forum under § 285. Counsel for Midas requested that counsel for Wind Down Debtors pursue fees under § 285 before Judge Albright after the case concludes. Finally, Counsel for Midas informed Wind Down Debtor's counsel that it needed a continuance to accommodate its experts who were not available on June 30, 2026. Wind Down Debtor's counsel stated they needed to confer with their client before giving any answers to the following questions. Counsel for Midas informed Wind Down Debtors counsel that Midas would be forced to move for emergency relief if it did not receive an answer to the following. As of the

date of filing, Wind Down Debtors' counsel did not follow up on any of the items discussed at the meet and confer.

III. LEGAL STANDARD

A. Section 285 Requires a Prevailing Party in An Exceptional Case.

Section 285 provides that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285. The attorney fee provision set forth in § 285 "applies only to [patent] infringement actions." *California Eastern Laboratories v. Gould*, 896 F.2d 400, 403 (9th Cir. 1990); *see also Machinery Corp. of America v. Gullfiber AB*,774 F.2d 467, 475 (Fed. Cir. 1985) ("[w]e recognize that when an action embraces both patent and nonpatent claims, no fees under § 285 can be awarded for time incurred in the litigation of the non-patent issues").

An "exceptional" case is one that stands out from others based on the strength of a party's litigating position or the unreasonable manner in which the case was litigated, judged on the totality of the circumstances. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). That discretionary inquiry is committed to the district court that presided over the litigation. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563–64 (2014). Section 285 also requires a prevailing party—one in whose favor there has been a judicially sanctioned, material alteration of the parties' legal relationship. *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 422 (2016). A request for § 285 fees is made by motion in the patent case, ordinarily after entry of final judgment. Fed. R. Civ. P. 54(d)(2)(B); *see* Fed. R. Bankr. P. 7054.

B. A Bankruptcy Court's Authority to Enter Final Judgment is Limited.

Even as to matters statutorily designated "core," a non-Article III bankruptcy court may not enter final judgment on claims that the Constitution reserves to an Article III court. *Stern v. Marshall*, 564 U.S. 462, 469, 487 (2011). Where the bankruptcy court may not enter final

judgment, it may hear the matter and submit proposed findings of fact and conclusions of law to the district court for de novo review. 28 U.S.C. § 157(c)(1); *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 36–38 (2014). A party may consent to final adjudication by the bankruptcy court, and consent may be implied from a failure to object; a party therefore preserves the objection by declining to consent. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 685–86 (2015).

C. Sanctions are Limited to the Proceedings Before the Sanctioning Court.

A monetary sanction under Rule 11—and its bankruptcy analog, Rule 9011—is limited to what suffices to deter the sanctioned conduct and to fees "directly resulting from the violation." Fed. R. Civ. P. 11(c)(4); Fed. R. Bankr. P. 9011(c). And when a court invokes its inherent power to shift fees for bad-faith conduct, the award must be limited to the fees the misconduct actually caused. *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108–09 (2017).

D. Withdrawal of The Reference.

Under 28 U.S.C. § 157(d), the district court may withdraw the reference of any proceeding "for cause shown," and must do so where resolution requires substantial and material consideration of non-bankruptcy federal law. *In re Nat'l Gypsum Co.*, 145 B.R. 539, 541 (N.D. Tex. 1992). Cause for permissive withdrawal is assessed under the factors set out in *Holland America Insurance Co. v. Succession of Roy*, 777 F.2d 992, 998 (5th Cir. 1985). A motion to withdraw is filed with the bankruptcy clerk and, under Bankruptcy Local Rule 5011-1, presented to the bankruptcy judge for a recommendation.

IV. ARGUMENT

A. This Court Does Not Have The Authority To Award Fees Under 35 U.S.C. § 285.

This Court should deny any request for 35 U.S.C. § 285 because (1) 35 U.S.C. § 285 is a prevailing party attorneys fees statute that only allows a Court presiding over a patent infringement

action to award attorneys fees, and (2) only a district court who has presided over that case is authorized to award attorney's fees under 35 USC § 285.

The attorney fee provision set forth in § 285 "applies only to [patent] infringement actions." *California Eastern Laboratories v. Gould*, 896 F.2d 400, 403 (9th Cir. 1990); *see also Machinery Corp. of America v. Gullfiber AB*,774 F.2d 467, 475 (Fed. Cir. 1985). "Section 285 of the Patent Act authorizes a district court to award attorney's fees in patent litigation." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.,* 572 U.S. 545, 548 (2014). A "district court is particularly well-positioned to determine whether a case before it is exceptional because it "lives with the case over a prolonged period of time." *Highmark Inc. v. Allcare Health Mgmt. Sys*., 572 U.S. 559, 564 (2014).

First, this Court does not have jurisdiction to award prevailing party attorneys' fees because this Court did not preside over a patent infringement action. Instead, this Court only presided over the claims allowance and disallowance proceedings which are distinct from patent infringement. Therefore, 35 U.S.C. § 285 is inapplicable to this action and should not be relied upon to award fees. In *Langenkamp*, the Supreme Court held that a creditor who files a proof of claim "triggers the process of 'allowance and disallowance of claims,' thereby subjecting [the creditor] to the bankruptcy court's equitable power." *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990). (*citing Katchen v. Landy*, 382 U.S. 323, 336 (1966)). However, the equitable power of allowance or disallowance of a claim does not transform this bankruptcy matter into a patent infringement action. *See generally Stern v. Marshall*, 564 U.S. 462, 495-501 (2011). Because this case is not a patent infringement within the meaning of Title 35 of the US Code, Section 285 does not apply.

Second, this Court should decline to award fees that were incurred before Judge Albright. Courts held that fees incurred in parallel proceedings are not recoverable under § 285. An

instructive case on this issue is *Dragon Intell. Prop. LLC v. DISH Network L.L.C.,* 101 F.4th 1366, 1372 (Fed. Cir. 2024.) In *Dragon Intell. Prop LLC*, the court held that § 285 does not allow recovery of fees by a party in patent litigation that were incurred in the voluntarily undertaken parallel IPR proceedings between the same parties and arising out of the same facts and circumstances. *Id*. *Dragon Intell. Prop LLC* found: "[w]ere "cases" under § 285 to include IPR proceedings, district court judges would be tasked with evaluating the exceptionality of arguments, conduct, and behavior in a proceeding in which they had no involvement. Such an inquiry is inconsistent with the rationale articulated in *Highmark* and the deference with which we review exceptionality determinations." *Id*. The same reasoning applies here. Rhodium seeking an award of over $5.0 Million of attorney's fees which were incurred solely before Judge Albright. Midas sued Rhodium in the Western District of Texas, proceeding before Judge Albright. The case was litigated for two years before the Final Status Conference at which time the court heard argument on pre-trial motions, including a summary judgement motion, at which time the court took the motion submission and stated that a minute order would be issued. In Judge Albright's oral interlocutory order, Judge Albright left the issue of whether the expert reports could be amended open and undecided. Subsequently, Rhodium petitioned for bankruptcy in the Southern District of Texas. Midas filed contingent proofs of claims based on the pending action, which had not been finally decided because no written order had been issued and the ability to amend Midas' expert reports remained open and undecided. These contingent proofs of claims were parallel proceedings. This Court is not authorized to award attorney's fees under 35 U.S.C. § 285 for the two years prior to Rhodium's petition for bankruptcy.

In sum, 35 U.S.C. § 285 is inapplicable to this case and therefore Midas respectfully requests this Court decline to award fees on this ground. Alternatively, this Court should deny or

decline to consider fees incurred in a separate Court for the reasons Articulated in *Dragon* and *Highmark.*

B. The § 285 Request Is Not Ripe and Should Be Denied Now In Any Forum—or, At Minimum, Deferred.

The patent infringement case is still pending before Judge Albright, and therefore, there is no prevailing party under Federal Rule 54. Any "claim to attorney fees must be processed in compliance with Rule 54(d)(2)(B). No provision in section 285 exempts requests for attorney fees there under from compliance with Rule 54(d)(2)(B). *IPXL Holdings, L.L.C. v. Amazon.com, Inc*., 430 F.3d 1377, 1386 (2005). Thus, any award of attorneys' fees under 35 U.S.C. § 285 is not ripe and should be denied or differed. On that basis, Midas respectfully request this Court deny the request for fees under § 285 without prejudice and allow the fees to be sought before Judge Albright once the case is concluded.

The threshold problem with the § 285 request is that there is no prevailing party and no final judgment. Section 285 authorizes fees only "to the prevailing party" and only "in exceptional cases." 35 U.S.C. § 285. Although the District Court has entered summary judgment of noninfringement, Rhodium's affirmative counterclaim of invalidity remains pending and unadjudicated, and the District Court has asked whether Rhodium will pursue it. A judgment of noninfringement does not moot or resolve a counterclaim of invalidity. *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 93–98 (1993). Until that counterclaim is resolved and a final judgment is entered, the patent action is not over, and no party can be said to have prevailed.

Although the validity of the '457 Patent was not contested in the claims-objection proceeding before this Court [ECF No. 1880 at 9], Rhodium's affirmative invalidity counterclaim in the District Court action remains live—which is precisely why the patent action is not yet final.

The two are not inconsistent: a patent's validity can be uncontested for purposes of the bankruptcy claims objection while the defendant's affirmative invalidity counterclaim remains pending in the district court.

In conclusion, Midas respectfully requests this Court deny the attorney's fees request under § 285 without prejudice. There is no final judgment, no § 285 motion is procedurally proper in any forum. A § 285 request is made after judgment under Rule 54(d)(2)(B). The Debtors' attempt to obtain § 285 fees now—before judgment, and in the bankruptcy court rather than the patent court—is premature on its own terms, and the request should be denied without prejudice to a properly timed motion in the patent action. At the very least, the § 285 request should be deferred or abated until the patent action is finally resolved.

C. Any Sanction Must be Limited to Fees Incurred In These Cases.

The Debtors are seeking over $5.0 Million in fees for two years of litigation preceding the proofs of claims filed before this Court. The Debtors ask the Court to award, as a sanction, the attorney's fees they incurred in the patent litigation—a separate action in the Western District of Texas that this Court did not preside over, much of it predating both these cases and current counsel's involvement. That request cannot be reconciled with the limits on sanctions authority.

Rule 9011 and Rule 11 sanctions are confined to deterring the sanctioned filing and to fees "directly resulting from the violation." Fed. R. Civ. P. 11(c)(4). They do not authorize a court to award the fees of a different litigation litigated before a different court. Likewise, a court's inherent power to shift fees reaches only the fees caused by the misconduct before it: the court "can shift only those attorney's fees incurred because of the misconduct at issue." *Goodyear*, 581 U.S. at 108. The fees the Debtors incurred litigating patents in the Western District were not caused by any filing in this Court.

The only mechanism that authorizes recovery of patent-litigation fees is § 285 itself—and that remedy belongs to the prevailing party in the patent case, to be awarded by the court that presided over it, after final judgment. The Debtors cannot use a bankruptcy sanctions motion to capture the entire patent-litigation fee award while bypassing § 285's prevailing-party and exceptional-case requirements and the patent court's discretion. Whatever sanctions the Court may consider under Rule 9011, § 105(a), or its inherent power must therefore be limited to the fees and costs incurred in these chapter 11 cases.

D. Midas Does Not Consent to Final Adjudication of The § 285 Issue, Which Should Proceed, If At All, By Proposed Findings Under § 157(c)(1).

To the extent the Court reaches the § 285 issue, Midas respectfully does not consent to its final adjudication by this Court and reserves all objections under Article III and *Stern v. Marshall*. A determination of § 285 entitlement—particularly one that would adjudicate the right to fees generated in a separate Article III patent action—is not a matter a non-Article III tribunal may finally decide, regardless of the "core" label. *Stern*, 564 U.S. at 469, 487. Because consent to final adjudication can be implied from conduct, Midas states its non-consent expressly now and does not waive it by appearing at or participating in the June 30 hearing. *Wellness*, 575 U.S. at 685–86.

The proper course, if the Court is to address § 285 at all, is the one the statute provides for matters a bankruptcy court may not finally decide: the Court should hear the matter and submit proposed findings of fact and conclusions of law to the District Court for de novo review. 28 U.S.C. § 157(c)(1); *Exec. Benefits*, 573 U.S. at 36–38. That procedure preserves the parties' right to Article III adjudication without removing the matter from this Court's management.

E. In The Alternative, The Reference of The § 285 Issue Should Be Withdrawn to Preserve Article III Review.

If the Court will not proceed by proposed findings under § 157(c)(1), then—to secure Article III adjudication and preserve Midas's appellate rights—the reference of the discrete § 285 issue should be withdrawn under 28 U.S.C. § 157(d). Withdrawal is the appropriate backstop precisely because the § 285 determination implicates the Article III concerns described above and turns on the specialized, discretionary exceptional-case inquiry committed to the district court. *Octane Fitness*; *Highmark*.

This request is timely and is not foreclosed by the Court's October 28, 2025, Report and Recommendation [ECF No. 1880], which addressed only the Claims Objections and Estimation Motion—not § 285 or any request for fees. The § 285 fees-as-sanctions issue is new: it arose with the Debtors' sanctions motion and the District Court's May 2026 rulings, after that recommendation issued. Timeliness is measured from when a party "should have learned the grounds for such a motion," *J.T. Thorpe Co. v. Am. Motorists Ins. Co.*, No. H-02-4598, 2003 WL 23323005, at *4 (S.D. Tex. June 9, 2003), and the grounds here are recent. Withdrawal of this discrete issue would not disturb the claims-allowance and estimation rulings the Court has already made, nor delay confirmation.

F. If The June 30 Hearing Proceeds On The § 285 Issue, It Should Be Continued.

Finally, if the § 285 issue is neither denied, deferred, nor removed, and the June 30, 2026, hearing proceeds on that issue, the hearing must be continued by 45 days based on Midas' expert current unavailability. The exceptional-case inquiry under *Octane Fitness* is fact-intensive, and a compressed schedule would prejudice Midas's ability to present the expert and fact testimony

relevant to § 285. A short continuance is modest given the unresolved merits posture and the specialized nature of the inquiry.

V. CONCLUSION AND PRAYER

At most, the Debtors may be entitled to ask this Court to consider sanctions for conduct before the Bankruptcy Court. However, this entitlement does not extend to an analysis of whether fees are warranted under 35 U.S.C. § 285. The Debtors are not entitled to use that request to obtain, in the wrong court and before any prevailing party exists, an award of all the attorney's fees of a separate patent litigation under § 285. That request should be denied or deferred; any sanctions should be limited to fees incurred here.

For these reasons, Midas respectfully requests that the Court (i) deny the Debtors' request for attorney's fees under 35 U.S.C. § 285, or defer it until the patent action is finally resolved; (ii) limit any sanctions to fees and costs incurred in these chapter 11 cases; (iii) determine that Midas does not consent to final adjudication of the § 285 issue and that any such adjudication will proceed by proposed findings under 28 U.S.C. § 157(c)(1); (iv) in the alternative, recommend that the District Court withdraw the reference of the § 285 issue; (v) in the further alternative, continue the June 30, 2026 hearing by 45 days; and (vi) grant such other and further relief as is just.

DATED: June 4, 2026

Respectfully submitted,
/s/ Joseph E. Thomas

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CERTIFICATE OF CONFERENCE

I certify that on May 20, 2026, counsel for Midas conferred with counsel for Rhodium regarding the relief requested in this Motion, and they opposed.

/s/ Joseph E. Thomas
Joseph E. Thomas

CERTIFICATE OF SERVICE

I certify that on June 3, 2026, a true and correct copy of the foregoing Motion was served on all parties registered to receive electronic notice in these cases via the Court's CM/ECF system.

/s/ Joseph E. Thomas
Joseph E. Thomas

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

In Re: RHODIUM ENCORE, LLC, et al Debtors	Chapter 11 Case No. 24-90448 (ARP) (Jointly Administered)

DECLARATION OF JOSEPH E. THOMAS IN SUPPORT OF MIDAS GREEN TECHNOLOGIES, LLC'S REQUEST TO DENY OR DEFER THE DEBTORS' REQUEST FOR ATTORNEY'S FEES UNDER 35 U.S.C. § 285, TO LIMIT ANY SANCTIONS TO FEES INCURRED IN THESE CASES, AND, IN THE ALTERNATIVE, TO WITHDRAW THE REFERENCE OF THE § 285 ISSUE

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.

   I make this declaration in support of Midas Green Technologies, LLC's Motion To Deny Or Defer The Debtors' Request For Attorney's Fees Under 35 U.S.C. § 285, To Limit Any Sanctions To Fees Incurred In These Cases, And, In The Alternative, To Withdraw The Reference Of The § 285 Issue.

2. Attached as **Exhibit A** is a true and accurate email to Debtors counsel requesting their position on whether they intend to pursue Debtors counter claim for invalidity. This email evidences that the case remains open and ongoing without a final judgment and therefore without a prevailing party.

3. On May 20, 2026 Midas Counsel met and conferred with Wind Down Debtors. Midas counsel informed counsel for the Wind Down Debtors that there was no basis to seek attorneys' fees under 35 U.S.C. § 285. Counsel for Midas requested case law supporting Wind Down Debtors' request for attorneys fees in this forum under § 285. Counsel for Midas requested that counsel for Wind Down Debtors pursue fees under § 285 before Judge Albright after the case concludes. Finally, Counsel for Midas informed Wind Down Debtor's counsel that it needed a continuance to accommodate its experts who were not available on June 30, 2026. Wind Down Debtor's counsel stated they needed to confer with their client before giving any answers to the following questions. Counsel for Midas informed Wind Down

Debtors counsel that Midas would be forced to move for emergency relief if it did not receive an answer to the following. As of the date of filing, Wind Down Debtors' counsel did not follow up on any of the items discussed at the meet and confer.

4. I have conferred with Midas' expert witnesses regarding their availability for the currently scheduled trial date of June 30, 2026. Specifically, I discussed availability with damages expert Duross O'Bryan, infringement expert Himanshu Pokharna, and invalidity expert Jim Lee. Each of these experts has informed me that they are unavailable to appear and testify on June 30, 2026, due to preexisting professional commitments.

5. Because the testimony of these experts is essential to Midas' presentation of their claims and defenses, Midas respectfully request that the Court continue the trial date by forty-five (45) days. The requested continuance is necessary to secure the availability of these expert witnesses and to ensure that the matter may be fully and fairly presented on its merits.

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

DATED: June 4, 2026

Respectfully submitted,
/s/ Joseph E. Thomas

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

I certify that on June 4, 2026, a true and correct copy of the foregoing Motion was served on all parties registered to receive electronic notice in these cases via the Court's CM/ECF system.

/s/ Joseph E. Thomas
Joseph E. Thomas

EXHIBIT A

From: Anna Schmidt <Anna_Schmidt@txwd.uscourts.gov>
Sent: Monday, May 4, 2026 1:55 PM
To: becca.skupin@solidcounsel.com; ebrannen@stris.com; Grant Thomas <gthomas@twtlaw.com>; henry.pogorzelski@klgates.com; travis@gillamsmithlaw.com; Joe Thomas <jthomas@twtlaw.com>; khalpern@stris.com; Melissa@gillamsmithlaw.com; michael.smith@solidcounsel.com; pbrody@stris.com; srahimi@stris.com; William Kolegraff <bkolegraff@twtlaw.com>
Subject: 6:22-cv-50 Status

Counsel,

The Court has submitted a sealed written order setting forth reasoning for granting Defendant's Motion for Summary Judgment of Non-Infringement and it should be docketed shortly. Please advise on the status of Defendant's Counterclaim for Invalidity.

Best,

Anna Schmidt
Law Clerk to the Honorable Alan D Albright
United States District Court, Western District of Texas
Anna_Schmidt@txwd.uscourts.gov