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 REPLY IN SUPPORT OF ITS SECTION 285 OBJECTION AND ITS OPPOSITIONS TO DEBTORS' MOTIONS FOR SANCTIONS

(Relating to ECF Nos. 1793, 1794, 2366, 2397, 2421, 2422, and 2427)

Midas Green Technologies, LLC ("Midas") submits this reply in support of its Section 285 Objection (ECF No. 2397) and its oppositions to the Debtors' motions for sanctions (ECF Nos. 2421 and 2422), and in response to the new matter raised in the Wind Down Debtor's combined response and reply (ECF No. 2427). This reply addresses Debtors' sanctions theories under Bankruptcy Rule 9011, 28 U.S.C. § 1927, 11 U.S.C. § 105, the Court's inherent authority, and 35 U.S.C. § 285.

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I. INTRODUCTION

Debtors' sanctions motions rest on a single premise: that the District Court's April 9, 2024 oral grant of summary judgment was a final, unassailable disposition that rendered Midas's later proofs of claim frivolous, abusive, or sanctionable when filed. That premise fails as a matter of law. Until the District Court entered its written order on May 4, 2026 — more than eighteen months after Midas filed its proofs of claim — the April 9 ruling was interlocutory and freely revisable. A ruling that a later written order must "memorialize" is, by definition, not yet a final judgment. Midas's decision to preserve its rights against the estates before the bar date, while that ruling remained subject to revision, was objectively reasonable and cannot support sanctions under any of Debtors' theories.

Debtors' response does not cure that defect; it confirms it. Debtors concede that the April 9 ruling had to be "memorialize[d]" by a later written order, and they themselves moved this Court for stay relief so that the District Court could "enter an order and judgment memorializing its April 9, 2024, bench ruling." A party that represents further District Court action is required to "enter an order and judgment" cannot also maintain that Midas acted in bad faith by treating the case as not yet finally resolved. The remainder of Debtors' brief recasts a good-faith dispute over the status and effect of an interlocutory ruling as misconduct. Each sanctioning source, however, has distinct elements that Debtors do not meet: Rule 9011 requires strict safe-harbor compliance; § 1927 reaches only counsel and requires vexatious multiplication; § 105 and the Court's inherent authority require clear and convincing bad faith and must operate within the Code; and § 285 requires a proper forum, a prevailing party, and an exceptional case under *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545 (2014). Section 105 illustrates the point most starkly: sanctions under § 105 and the Court's inherent authority require a finding of bad faith proven by

clear and convincing evidence, and Debtors have produced no evidence at all to carry that demanding burden, resting instead on attorney argument and their incorporated summary-judgment papers.

Finally, Debtors' own submission lays bare the overbreadth of their request. Debtors ask this Court to award, as a bankruptcy sanction, more than $5 million in pre-petition fees incurred litigating the patent case in the District Court. Those are the patent action's own fees. If recoverable under § 285 at all, they belong in a § 285 motion before the District Court that tried the case — not in a § 105, Rule 9011, or inherent-power sanctions motion in bankruptcy, and not in a final fee judgment entered by this Court over Midas's express objections and without its consent.

II. THE APRIL 9, 2024 ORAL STATEMENTS WERE AT BEST INTERLOCUTORY AND SUBJECT TO REVISION UNTIL THE MAY 4, 2026 WRITTEN ORDER, AND MIDAS'S RIGHTS-PRESERVING CONDUCT WAS THEREFORE OBJECTIVELY REASONABLE

Debtors' entire theory depends on treating the April 9, 2024 District Court's oral statements as a final disposition that fixed the parties' rights before Midas filed its claims. As a matter of law, it did not.

A. An Oral Summary-Judgment "Ruling" Not Reduced To A Final Judgment Is Interlocutory And Revisable At Any Time.

Under the Federal Rules of Civil Procedure, a "judgment" is the decree from which an appeal lies, and an order that "adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties" does not end the action and "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(a), (b). District courts possess the inherent procedural power to reconsider, rescind, or modify

interlocutory orders before the entry of a final judgment. *AIG Specialty Ins. Co. v. Agee,* No. 22-5410, 2024 WL 887694, 2024 U.S. Dist. LEXIS 35988, *5-6 (E.D. La. Mar. 1, 2024). A trial court is free to reconsider and even reverse its own interlocutory orders "for any reason it deems sufficient," even without new evidence or an intervening change in the law, and the law-of-the-case doctrine does not constrain that power. *Stoffels v. SBC Commc'ns, Inc.,* 677 F.3d 720 (5th Cir. 2012).

It follows that, from the April 9, 2024 hearing until the District Court entered its written order on May 4, 2026, the summary-judgment ruling was interlocutory and revisable "for any reason" the District Court deemed sufficient — including the amendment of the expert report and infringement contentions that Midas believed remained possible. Midas's belief that the patent action remained open and subject to revision was therefore not merely a hope; it was the legal status of the case. A litigant does not act in bad faith, much less sanctionably, by treating a revisable interlocutory ruling as revisable.

B. The District Court Record Confirms The Ruling Was Not Yet Final When Midas Filed And Maintained Its Claims.

The contemporaneous record establishes that no final, appealable judgment existed during the relevant period. The District Court's minute entry after the April 9, 2024 hearing stated only that a "WRITTEN ORDER FORTHCOMING." On January 30, 2025, the District Court requested proposed orders reflecting the parties' competing understandings of the April 9 rulings, including disputed language, and stated that it would compare those submissions against its own notes before entering an order. And Debtors themselves moved this Court for stay relief to permit the District Court to "enter an order and judgment memorializing its April 9, 2024, bench ruling." Each of these events is consistent with only one conclusion: as of the period in which Midas filed and

maintained its claims, the April 9 ruling had not been reduced to a final judgment. Debtors cannot represent that further District Court action was required to "enter an order and judgment" and simultaneously fault Midas for treating the case as not yet finally resolved.

C. Debtors' "Memorialization" And "Nondisclosure" Arguments Do Not Change The Analysis.

Debtors emphasize that the May 4, 2026 Written Order states it "memorializes the Court's ruling and reasoning" from April 9, 2024. That language confirms Midas's position rather than refuting it. A ruling that a later order must "memorialize" was not itself the final judgment; the very need for a forthcoming written order is the hallmark of an interlocutory disposition. And because an interlocutory order may be revised "for any reason," *Stoffels*, supra. Midas's belief that the ruling remained open to revision was not objectively baseless. Debtors' reading of the clerk's request for a proposed order does not help them either; whether or not the District Court had decided how it would rule, it had not yet entered the final judgment that alone would have fixed the parties' rights and started the clock on prevailing-party status and any § 285 motion.

Debtors' suggestion that Midas "deceptively" failed to disclose the oral ruling in its proofs of claim is procedurally improper and substantively wrong. As a threshold matter, this "nondisclosure" theory appears nowhere in Debtors' sanctions motions (ECF Nos. 1793 and 1794). It surfaces for the first time in Debtors' reply. A movant may not premise sanctions on a theory of misconduct raised for the first time in reply, and the Court should not consider it. See *Gillaspy v. Dallas Indep. Sch. Dist.,* 278 F. App'x 307, 315 (5th Cir. 2008) (courts do not consider arguments raised for the first time in reply). That alone disposes of the point.

In any event, the theory fails on the merits. A proof of claim is a statement of a right to payment; it does not require a creditor to narrate the procedural status of parallel litigation, and the

Bankruptcy Code expressly contemplates contingent, disputed, and unliquidated claims. 11 U.S.C. § 101(5). There was no final judgment to conceal — the claim was genuinely contingent on an interlocutory record — and there was no one to deceive: Debtors were Midas's adversary in the very District Court action and had complete knowledge of the April 9 ruling. Nondisclosure, on a claim form that does not call for it, of a fact fully known to the opposing party is not evidence of bad faith.

Debtors also fault Midas for not seeking relief from the automatic stay to pursue further action in the District Court. The premise is mistaken. It was Debtors who moved for stay relief during these proceedings — to permit the District Court to enter its order and judgment — and Midas did not oppose that relief. More fundamentally, the automatic stay did not bar Midas from preserving its rights against the estates: filing a proof of claim is the stay-compliant mechanism by which a creditor preserves its right to distributions before the bar date, and it requires no separate stay relief. Midas's decision to preserve its estate recovery by a timely proof of claim cannot be recast as sanctionable because Midas did not also move to lift a stay that did not impede the act of filing a claim.

D. Filing Protective Proofs Of Claim While The Patent Case Remained Unresolved Was Not Sanctionable.

The Bankruptcy Code defines "claim" broadly to include contingent, disputed, and unliquidated rights to payment. 11 U.S.C. § 101(5). That principle controls here because Debtors treat the proofs of claim as if they asserted that liability had already been finally adjudicated in Midas's favor. A proof of claim signifies no such thing, particularly where, as shown above, the related District Court ruling was interlocutory and the parties' rights had not been finally fixed.

Midas's oppositions explain that the proofs of claim were filed to preserve rights in the pending District Court action before the bankruptcy bar date. The Joseph Thomas declarations state that Midas believed in good faith that, if it failed to file claims while the patent action remained unresolved, it risked forfeiting any ability to recover from the estates, and that Midas filed the claims to preserve rights pending final District Court action — not to relitigate finally decided issues in bankruptcy court.

A creditor that files a proof of claim subjects itself to the claims-allowance process. See *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990); *Katchen v. Landy*, 382 U.S. 323, 336 (1966). But that does not make the filing sanctionable merely because the dispute is contested or later rejected. The question is not whether the Court ultimately disallowed or estimated the claims at zero; it is whether filing them, before the District Court's final written ruling, was so objectively baseless or improperly motivated as to justify sanctions. On this record, it was not.

E. Midas's Failure To Present Evidence At The Contested Matter Does Not Support Sanctions.

Debtors emphasize that Midas did not appear at the September 2025 hearing with evidence. That point does not alter the sanctions analysis for two independent reasons.

First, Midas relied on what it believed was a timely filed motion to withdraw the reference. Midas's position was that the patent issues, and certainly the Patent Act fee issues under § 285, belonged in the district court, a position supported by the withdrawal arguments under 28 U.S.C. § 157(d). Whether the Court agreed or not, reliance on a pending withdrawal position does not establish bad faith.

Second, Debtors' sanctions motions do not seek sanctions because Midas failed to put on evidence at the contested matter. Docket No. 1793 is directed to Rule 11, Rule 9011, and § 285;

Docket No. 1794 is directed to § 105 and § 285. The alleged wrong is Midas's filing and prosecution of the claims, not an evidentiary default at a later hearing. Debtors cannot retroactively convert hearing conduct into a sanctions basis not pleaded in their motions. *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108–09 (2017), requires a causal link between the challenged misconduct and the fees sought; the absence of hearing evidence does not supply that link for sanctions premised on the filing of claims.

Debtors' opposition to Midas's request to continue the June 30, 2026 hearing should also be rejected. Midas filed that request on June 4, 2026 — promptly, and not on the eve of the hearing. Midas seeks the continuance so that its expert witness may testify regarding Midas's good-faith belief that Rhodium infringed. That testimony is directly relevant to whether any award under § 285 is available at all: the substantive strength of Midas's litigating position is the core of the exceptionality inquiry under *Octane*, and Midas's good-faith belief in infringement bears equally on the bad-faith predicate Debtors must establish for sanctions under Rule 9011, § 105, and the Court's inherent authority. Live expert testimony on a contested fact of that importance cannot fairly be compressed into an argument-only hearing, particularly now that Debtors have escalated their demand to more than $6 million in fees across multiple forums. The continuance is sought to make the record accurate, not to create delay.

F. Debtors' Factual Narrative Does Not Substitute For The Required Legal Showings.

Debtors' opposition has rhetorical force because it portrays Midas as having lost on summary judgment and then repeated the same claims in bankruptcy, imposing needless cost. But even accepting that narrative, sanctions do not follow automatically. Each theory has distinct elements:

(1) Rule 9011 requires strict safe-harbor compliance and a sanctionable paper;

(2) § 1927 requires unreasonable and vexatious multiplication by counsel;

(3) § 105 and inherent authority require clear and convincing bad faith and must operate within the limits of *Law v. Siegel* and *Chambers*; and

(4) § 285 requires a proper forum, a prevailing party, and an exceptional case under *Octane*.

Debtors collapse these distinct doctrines into a single generalized claim that Midas's conduct was wasteful and therefore sanctionable. That is not enough. The dispositive fact is legal, not rhetorical: the April 9, 2024 ruling was interlocutory and revisable until May 4, 2026, which means Midas's position was not so obviously foreclosed that only bad faith could explain its decision to preserve its rights before the bar date.

III. THE DECISIONS DEBTORS CITE FOR BANKRUPTCY-COURT ADJUDICATION OF PATENT AND § 285 ISSUES ARE INAPPOSITE BECAUSE EACH AROSE FROM A CONSENSUAL ADVERSARY PROCEEDING AND NONE AWARDED CONTESTED § 285 FEES OVER A JURISDICTIONAL OBJECTION

Debtors rely on a line of bankruptcy decisions — *In re AI Realty Marketing / Sunbeam v. Wing Shing, Monsanto v. Roeder, and In re Clausen* — to suggest that this Court may finally adjudicate the patent and § 285 issues and enter a prevailing-party fee award. Those decisions do not support that result. Each was an adversary proceeding in which the bankruptcy court exercised jurisdiction over patent claims the affected party had placed before it or accepted — by invoking the court's jurisdiction, by stipulating to infringement, or by litigating the merits to judgment without objection. None involved a contested claim objection under § 502 and Rule 9014 in which the party against whom a final patent and § 285 determination is sought expressly objected to the court's authority and moved to withdraw the reference. That difference is dispositive, because

consent supplied the footing in Debtors' cases and is precisely what is absent here. *Stern*, 564 U.S. 462; *Wellness,* 575 U.S. at 685–86 (final adjudication of a Stern claim turns on the parties' knowing and voluntary consent).

A. *In Re AI Realty* / *Sunbeam* v. *Wing Shing* Was A Debtor-Initiated Adversary Proceeding That Denied § 285 Fees.

In *Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd.* (*In re AI Realty Mktg. of N.Y., Inc.*), 293 B.R. 586 (Bankr. S.D.N.Y. 2003), the debtor itself — *Sunbeam* — commenced the adversary proceeding, affirmatively asking the bankruptcy court to declare that it owned the design patent, held an exclusive license, and was a joint inventor. *Id.* at 593–94. The patent holder counterclaimed for infringement; the court treated the matter as core under § 157(b); and both sides tried ownership, inventorship, infringement, notice, laches, and damages to judgment without contesting the court's authority. *Id.* at 595, 597–621. That is consent in its clearest form. And on the fee question the court denied § 285 fees, finding the case not exceptional. *Id.* at 620–21. Debtors' clarification that *Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd.*, 311 B.R. 378 (S.D.N.Y. 2004), is cited only as *AI Realty's* appellate history confirms the point: the sole § 285 ruling in that line was the bankruptcy court's denial of fees, left undisturbed on appeal. *AI Realty* thus offers Debtors no support for a contested § 285 award and affirmatively illustrates the restraint § 285 demands.

B. *Monsanto v. Roeder* Was A § 523(A)(6) Dischargeability Adversary in Which Infringement Was Stipulated.

In Monsanto Co. v. Roeder (In re Roeder), the creditor brought an adversary proceeding to except its patent-infringement debt from discharge under 11 U.S.C. § 523(a)(6). The court identified the matter as core under § 157(b)(2)(I), and the parties agreed that the debtor's conduct

constituted infringement "without regard to his state of mind." 2009 Bankr. LEXIS 748, at *2–3 (Bankr. N.D. Iowa Apr. 1, 2009). Infringement was therefore not adjudicated over objection; it was conceded, and what remained was the quintessentially core question of dischargeability, which the debtor litigated without challenging the court's authority. The subsequent fee ruling Debtors cite, 2009 WL 4907014 (Bankr. N.D. Iowa Dec. 14, 2009), rests on that consensual, stipulated foundation. Roeder thus involved neither a contested patent adjudication nor a § 285 award over a jurisdictional objection.

C. *In Re Clausen* Confirms Midas's Position And Denied § 285 Fees.

In re Clausen Co., 81 B.R. 285 (Bankr. D.N.J. 1988), is the decision most damaging to Debtors. There, the district court transferred only the breach-of-settlement-agreement count (Count II) to the bankruptcy court and retained the patent-infringement count (Count I) for itself. *Id.* at 286–87. The bankruptcy court resolved the transferred contract claim as a core proceeding under § 157(b)(2)(B), but — critically — declined to enter judgment on the patent-infringement claim, observing that "since the District Court has retained jurisdiction over Count I … the disposition of that Count is for the District Court to determine." *Id.* at 289. And on fees, *Clausen* denied § 285 attorney's fees outright, finding no "unconscionable conduct or bad faith." *Id.* at 289–90. Far from authorizing a contested bankruptcy § 285 award, *Clausen* withheld one and routed the patent claim to the Article III court.

D. Debtors' "Distinction Without A Difference" Answer Misses The Point.

Debtors dismiss this distinction as one "without a difference," asserting that, as in *Roeder* and *AI Realty*, the Court here has already "become familiar with the facts." But the distinction is not about familiarity; it is constitutional. *Stern* and *Wellness* make consent — not the adjudicator's familiarity with the record — the touchstone for a bankruptcy court's authority to enter final

judgment on a matter of this character. A court intimately familiar with a Stern claim still may not finally adjudicate it without consent. Debtors' "familiarity" rationale also proves too much: carried to its conclusion, it would permit any bankruptcy court that managed a claim objection to enter final patent and § 285 judgments over a party's objection simply because it had "lived with" the dispute — the precise result Stern forecloses. The difference between these cases and this one is not how well the court knows the facts, but how the patent issues arrived: by a party's invocation, concession, or unopposed litigation of the merits in Debtors' cases, versus a defensive, contingent proof of claim coupled with an express jurisdictional objection here. And on the merits, none of Debtors' authorities supports the contested, multimillion-dollar § 285 award they seek: *Roeder* rested on stipulated infringement, and both *AI Realty* and *Clausen* denied § 285 fees.

IV. THE COURT SHOULD DECLINE TO AWARD FEES UNDER 35 U.S.C. § 285

Debtors seek to use § 285 aggressively in this bankruptcy forum. That request should be denied or, at most, addressed only by report and recommendation.

A. This Court May Not Enter A Final § 285 Fee Judgment Over Midas's Objection; The Proper Course Is A Report And Recommendation.

Debtors argue that, having found the claims-allowance dispute core under 28 U.S.C. § 157(b)(2)(B), the Court may also award § 285 fees as "part and parcel" of that determination, and that § 285 is a fee-shifting decision rather than a separate claim. *Elan Pharms., LLC v. Sexton*, 421 F. Supp. 3d 1119, 1125 (D. Kan. 2019); *Lokai Holdings LLC v. Twin Tiger USA LLC*, 306 F. Supp. 3d 629, 644 (S.D.N.Y. 2018). That argument proves too much. *Elan* and *Lokai* hold only that § 285 is not a separately pleaded claim requiring proof at trial; they say nothing about whether a non-Article III court may enter a final judgment, over objection, awarding Patent Act fees premised on the merits of a patent-infringement action. If, as Debtors insist, the § 285 award is inseparable

from the patent merits, then it inherits the patent claim's character as a matter that, absent consent, must be finally adjudicated by an Article III court. *Stern v. Marshall,* 564 U.S. 462 (2011). Debtors cannot treat § 285 as "part and parcel" of the patent merits for one purpose while detaching it from those merits for Stern purposes.

A "core" designation does not resolve the constitutional question. Stern holds that even a core proceeding may not be finally adjudicated by a bankruptcy court where the claim is one that, by its nature, must proceed before an Article III tribunal. Resolving whether to allow or disallow Midas's proofs of claim is a proper exercise of the claims-allowance power; entering an affirmative, multimillion-dollar Patent Act fee judgment in favor of the patent defendant is not. Where the bankruptcy court lacks authority to enter final judgment on such a matter, the proper course is to proceed by proposed findings of fact and conclusions of law subject to de novo review. 28 U.S.C. § 157(c)(1); *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 36 (2014); *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 685–86 (2015). Debtors themselves concede that the Court "can (and should) make a recommendation." That concession is dispositive of the procedural question: if the Court reaches § 285 at all, it should do so by report and recommendation, not by a final fee award over Midas's objection.

Debtors' "part and parcel" theory also overlooks what is actually before the Court. Section 285 authorizes fee-shifting to the prevailing party in a patent "case" — a patent infringement action. Filing and objecting to a proof of claim is not the litigation of a patent infringement action; it is a claims-allowance dispute under § 502 and Rule 9014. *Elan* and *Lokai* presuppose a patent case in which § 285 operates as a post-judgment fee-shifting remedy; neither holds that a § 285 award may be grafted onto a contested claim objection. The § 285 remedy belongs to the patent case in the District Court, not to the Rule 9014 contested matter here.

Debtors' footnote authorities confirm the point rather than rebut it. *Apotex Inc. v. UCB, Inc.,* No. 12-cv-60706, 2015 WL 11622480, at *2–5 (S.D. Fla. Dec. 4, 2015), and *Energy Heating, LLC v. Heat On-The-Fly, LLC*, 15 F.4th 1378, 1380–82 (Fed. Cir. 2021), each involved a district court — an Article III court with unquestioned authority over the patent case — awarding § 285 fees in the patent case before it, based on inequitable conduct before the Patent Office that the court adjudicated as a theory of unenforceability within that very case. Neither authorizes a non-Article III bankruptcy court to enter a final fee award, over objection, for an entire separate Article III patent action. And to the extent Debtors invoke those cases for the broader proposition that a court may shift fees for work performed before a different tribunal, that avenue is now sharply limited by *Dragon Intellectual Prop. LLC v. DISH Network L.L.C.,* 101 F.4th 1366, 1371–72 (Fed. Cir. 2024), which holds that fees incurred in a separate proceeding are not recoverable under § 285 absent the non-optional circumstance recognized in *PPG Industries, Inc. v. Celanese Polymer Specialties Co.,* 840 F.2d 1565 (Fed. Cir. 1988) — a limitation that forecloses, rather than supports, the cross-forum award Debtors seek.

The distinction is fundamental, and it is fatal to Debtors' reliance on these authorities. In both *Energy Heating* and *Apotex,* the inequitable conduct before the Patent Office was not a separate proceeding for which a court shifted fees; it was a theory of unenforceability that the patentee's adversary proved, and that the district court fully adjudicated, within the patent case then before it. *Energy Heating* affirmed a § 285 award that rested on the district court's own finding — made in the patent action that court tried — that the patent was unenforceable for inequitable conduct in its procurement. Energy Heating, 15 F.4th at 1380–82. *Apotex* is identical in structure: the district court found the asserted patent unenforceable for inequitable conduct before the Patent Office, adjudicated that defense as part of the case before it, and then awarded § 285 fees for that

same case. Apotex, 2015 WL 11622480, at *2–5. In each, the fee award compensated the prevailing party for litigating the patent case in the very court that entered the award; in neither did a court award fees for proceedings conducted before a different adjudicating body. That the underlying misconduct occurred at the Patent Office is beside the point: the invalidity theory, the merits adjudication, the prevailing-party determination, and the fee award all occurred in a single Article III patent case before a single Article III judge. *Energy Heating* and *Apotex* thus stand only for the unremarkable proposition that the court presiding over a patent case may award § 285 fees for that case. Neither remotely suggests that a non-Article III bankruptcy court may award, over Midas's objection, the fees of a separate Article III patent action that it never tried and that remains pending before another court.

B. Debtors' § 285 Request Was Not, And Is Not, Ripe On A Posture That Fixes Prevailing-Party Status.

Debtors respond that § 285 requires only a "prevailing party" — a judicially sanctioned material alteration of the legal relationship, *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 422 (2016) — and that a party need not prevail on all claims, *Luv n' Care, Ltd. v. Laurain*, 98 F.4th 1081, 1106 (Fed. Cir. 2024). But the threshold problem for Debtors is more basic: there is no final judgment in the patent case at all. The District Court has not entered an all-claims judgment; Rhodium's invalidity counterclaim remains unresolved; and the District Court has done no more than request an update on it. Without a final judgment, there is no prevailing party, and *CRST* is not satisfied. A "judicially sanctioned" material alteration of the parties' legal relationship arises upon entry of an enforceable final judgment, not upon a revisable oral pronouncement. As shown in Part II, no such judgment existed until May 4, 2026 — long after Debtors first sought § 285

relief in September and October 2025 — so Debtors' own § 285 requests were premature when filed.

Debtors' own concession underscores the point. Debtors say their invalidity counterclaim "may be dismissed as moot." Even if that were so, a counterclaim that "may be" dismissed at some future time has not been dismissed; no final, all-claims judgment has entered; and there is therefore no prevailing party now. *Cardinal Chemical* separately confirms that a judgment of noninfringement does not automatically dispose of a pending invalidity counterclaim, *Cardinal Chem. Co. v. Morton Int'l, Inc.,* 508 U.S. 83, 93–98 (1993), which is why § 285 motions are ordinarily made only after entry of final judgment, Fed. R. Civ. P. 54(d)(2)(B); *IPXL Holdings, L.L.C. v. Amazon.com, Inc.,* 430 F.3d 1377, 1386 (Fed. Cir. 2005).

C. Debtors Have Not Shown This Is An "Exceptional" Case Under Octane.

Under *Octane*, an exceptional case is 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. 572 U.S. at 554. That is a totality-of-the-circumstances inquiry; losing is not enough, and weakness is not enough. Midas had an expert-supported infringement position, a patent case that was interlocutory and revisable when it filed, a bar date requiring claim preservation, and a good-faith belief that amendment of the expert report might still be permitted. Conduct taken while a ruling remained legally open to revision does not make a case "stand out" as exceptional.

D. Any § 285 Award Is Overbroad And Causally Defective.

Debtors' own submission demonstrates the overbreadth. Debtors seek to recover, as a bankruptcy sanction, more than $5 million in pre-petition fees incurred litigating the patent case in the District Court, plus the fees incurred here. Topping Decl. ¶¶ 2–3. The pre-petition fees are

the patent action's own fees. If recoverable under § 285 at all, they belong in a § 285 motion before the District Court that tried the case, not in a sanctions motion in bankruptcy.

Debtors' reliance on *Dragon Intellectual Property* and *PPG Industries* does not bridge that gap. Those cases address whether fees for a related proceeding are recoverable as part of a § 285 award entered by the court presiding over the patent case; they presuppose that court's authority to award fees. *Dragon*, 101 F.4th at 1371–72. Neither authorizes a bankruptcy court to award, over objection, the fees of a separate Article III patent action. And Goodyear independently caps any fee sanction at the fees that would not have been incurred but for the specific sanctionable conduct — a limit Debtors' request, sweeping in years of District Court patent fees, plainly exceeds.

E. Debtors' Timeliness Objection To Withdrawal Does Not Authorize A Final § 285 Judgment Over Objection.

Debtors argue that Midas's request to withdraw the reference of the § 285 issue is untimely under General Order 2011-12. The argument fails on its own terms. Debtors themselves invoke the standard that the period runs from when the grounds for withdrawal "should have become apparent." See *J.T. Thorpe Co. v. Am. Motorists*, No. H-02-4598, 2003 WL 23323005, at *4 (S.D. Tex. June 9, 2003). The grounds here became apparent only with new evidence that did not exist until 2026: the District Court's written order, entered May 4, 2026, and the entry of judgment on May 5, 2026, which together first established the prevailing-party and final-judgment predicate that a § 285 request requires. There could be no ripe § 285 issue to withdraw before that predicate existed. Procedurally, the sanctions matter had been abated, and this Court lifted the abatement on May 18, 2026. Midas filed its motion to withdraw the reference of the § 285 issue on June 4, 2026 — within twenty-one days of the lifting of the abatement, and promptly after the written ruling resolved the issues left open at the April 8, 2024 hearing. The motion was timely.

In all events, the *Stern* problem is not cured by a timeliness rule. Even if a withdrawal motion were untimely, a bankruptcy court still may not enter final judgment on a *Stern* matter absent the parties' consent; the constitutionally required course is to proceed by proposed findings subject to de novo review. 28 U.S.C. § 157(c)(1); *Arkison*, 573 U.S. at 36; *Wellness*, 575 U.S. at 685–86. The timeliness of a withdrawal motion thus bears on whether the district court withdraws the reference, not on whether this Court may enter a final § 285 judgment over Midas's objection. It may not — and Debtors' own concession that a recommendation is available confirms the appropriate course.

The Court on its own motion, for good cause, can withdraw a case or proceeding. 27 U.S.C. § 157. Now that Judge Albright has issued a final written ruling on the motion for summary judgment and Debtors have indicated their willingness to waive their counterclaims for invalidity, Judge Albright can enter final judgment. Thus, Judge Albright can make a determination whether this case is exception and issue a finding as to whether Debtors are entitled to attorneys fees pursuant to Section 285. Here, Midas respectfully requests this Court withdraw the reference, if not on the basis of Midas' timely noticed motion, on its own motion to allow Debtors to seek those fees in the proper forum and to avoid encroaching on the jurisdiction of Judge Albright. Judge Albright is long serving patent judge who presided over this case for over two years and is in the best position to determine whether this case meets the exacting exception case standard. On that basis, this reference should be withdrawn.

V. DEBTORS DID NOT COMPLY WITH RULE 9011'S SAFE HARBOR, WHICH MUST PRECEDE THE MOTION ACTUALLY FILED

Rule 9011 is penal and is construed strictly, and Fifth Circuit authority requires strict compliance with its safe-harbor procedure. See *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580,

586–88 (5th Cir. 2008); *Elliott v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995). The rule is exacting by design: a sanctions motion "shall not be filed with or presented to the court" unless the offending paper is not withdrawn within twenty-one days after service of that motion. Fed. R. Bankr. P. 9011(c)(1)(A). The motion served must be the motion filed, served far enough in advance that the safe-harbor period runs before the motion is presented to the court. Informal notice will not do, and the served and filed papers must be identical. *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.,* 46 F.4th 374, 389 (5th Cir. 2022); *OrchestrateHR, Inc. v. Trombetta*, 178 F. Supp. 3d 476, 498–500 (N.D. Tex. 2016). Debtors did not satisfy that requirement.

Debtors served a draft sanctions motion on August 7, 2025, and then filed their First Sanctions Motion — which Midas fully briefed and opposed, and which was set for and taken up at hearing. (Dkt. 1602.) Debtors First Sanctions Motion contained significant changes from the draft motion, violating rule 9011. Midas briefed and defended against this motion. (Dkt. 1662.) Only when it became apparent at that hearing that the First Sanctions Motion was non-conforming and would not be granted did Debtors dismissed their first Motion for Sanctions and subsequently asked for leave to refile. Debtors then filed the Second Sanctions Motion on October 14, 2025, without serving a new safe-harbor letter and without observing a fresh twenty-one-day period before that filing. The safe harbor that preceded the First Sanctions Motion cannot be recycled to validate a successor motion filed after the first was briefed, opposed, and litigated to the brink of denial.

That is not a hyper-technical objection; it is the core of the rule. The safe harbor exists to give the offender an opportunity to withdraw the challenged paper before any sanctions motion is filed and presented to the court. Once Debtors filed and litigated the First Sanctions Motion, that opportunity was spent, and the rule's protections could not be revived by back-dating the safe

harbor of a withdrawn motion to a later, separately filed motion. The strict-compliance and identicality requirements of *Pratt* and *Uptown Grill* require that the safe harbor precede the motion actually filed — here, the Second Sanctions Motion — not merely some earlier, non-conforming motion that Debtors abandoned. The practical consequence confirms the defect: Midas was forced to oppose the same sanctions request twice, which is precisely the burden the safe harbor is designed to prevent.

Finally, the premise on which both versions of the motion rested has since collapsed. Each iteration of Debtors' sanctions request was grounded in the contention that Judge Albright's April 9, 2024 oral ruling was intended to be the final ruling in the patent case, with no further ruling to follow. The District Court's subsequent written order, entered May 4, 2026 — which the District Court itself described as "memorializ[ing]" the earlier ruling — refutes that premise, as explained in Part II. A motion whose factual foundation has been disproven by the very court that issued the ruling should not be the vehicle for sanctions against Midas.

VI. DEBTORS HAVE NOT SHOWN BAD FAITH UNDER § 105 OR THE COURT'S INHERENT AUTHORITY, AND § 105 CANNOT SUPPLY PATENT-ACT FEES

Debtors' motion under ECF No. 1794 invokes 11 U.S.C. § 105 and the Court's inherent authority. Neither authorizes the relief Debtors seek.

Section 105 does not create free-floating authority to shift fees. The Supreme Court has held that a bankruptcy court may not invoke § 105(a) to contravene a specific provision of the Code or to circumvent the American Rule's requirement of specific statutory authorization for fee-shifting. *Law v. Siegel*, 571 U.S. 415, 421 (2014); accord *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 126 (2015). Debtors' authorities do not overcome that limit. *Rojas v. Citi Corp Tr. Bank FSB (In re Rojas)*, No. 07-70058, 2009 WL 2496807, at *6 (Bankr. S.D. Tex. Aug. 12, 2009),

Bavelis v. Doukas (In re Bavelis), 563 B.R. 672, 687–88 (Bankr. S.D. Ohio 2017), and *In re Royal Manor Mgmt., Inc.,* 525 B.R. 338, 368 (B.A.P. 6th Cir. 2015), aff'd, 652 F. App'x 330 (6th Cir. 2016), each involved claims-process misconduct with aggravating features absent here — a claim filed after it had been assigned to another party, or a sustained course of vexatious prosecution of a frivolous claim — not the timely filing of a contingent protective claim while a parallel Article III action remained nonfinal. To the extent any of those decisions could be read to make § 105 an independent font of fee-shifting, that reading cannot survive *Law v. Siegel*.

More fundamentally, § 105 cannot be used to award Patent Act fees that Congress channeled through the specific framework of § 285 — a prevailing party, an exceptional case, and the discretion of the court that presided over the patent litigation. Using § 105 to award the very patent fees that § 285 does not authorize in this forum and posture would be precisely the end-run that *Law v. Siegel* forbids.

Inherent-power sanctions likewise require restraint and a specific finding of bad faith. *Chambers v. NASCO, Inc.,* 501 U.S. 32, 44–50 (1991). Midas does not contend that only fraud will suffice; Chambers permits a fee award for bad faith shown "by delaying or disrupting the litigation." *Id.* at 46. But the factual predicate is missing. In the Fifth Circuit, bad faith for fee sanctions must be established by clear and convincing evidence. See *In re Parsley*, 384 B.R. 138, 179 (S.D. Tex. 2008); *Goldin v. Bartholow,* 166 F.3d 710, 722 (5th Cir. 1999); *Rodriguez v. Smith (In re Rodriguez)*, 652 B.R. 750, 760 (S.D. Tex. 2023). The record instead shows:

(1) an interlocutory, revisable patent ruling at the time of claim filing;

(2) a minute entry stating a written order was forthcoming;

(3) a later District Court request for proposed orders because the rulings required formalization;

(4) Debtors' own acknowledgment that an order and judgment still needed to be entered;

(5) a written ruling that did not enter until May 4, 2026; and

(6) a bar date requiring Midas to preserve rights or risk forfeiture.

That is not clear and convincing evidence of bad-faith delay or disruption. *Chambers* permits a fee award where a party shows bad faith "by delaying or disrupting the litigation," but there is no evidence that Midas did either. Midas filed a single contingent proof of claim before the bar date — a routine, timely act of rights preservation that is the opposite of delay. Midas did not file repetitive motions, multiply the proceedings, or flout any order of this Court. That Debtors had to respond to a properly filed claim is simply the ordinary operation of the claims-allowance process, not litigation-disrupting bad faith; if it were otherwise, every disputed proof of claim would expose the claimant to sanctions. Debtors' "deceptive nondisclosure" theory fails for the further reasons stated in Part II.C: it was never pleaded, a proof of claim does not call for disclosure of parallel-litigation status, the claim was genuinely contingent, and Debtors knew of the April 9 ruling because they litigated it. *Goodyear* also independently limits any fee sanction to fees that would not have been incurred but for the sanctionable conduct, 581 U.S. at 108–09 — a limit Debtors' request, which sweeps in years of District Court patent fees, plainly exceeds.

VII. SECTION 1927 DOES NOT SUPPORT SANCTIONS

Debtors' reply does not defend their § 1927 theory, and the point appears abandoned. In any event it fails. First, § 1927 applies to attorneys or other persons admitted to conduct cases, not to parties. See *Procter & Gamble Co. v. Amway Corp.,* 280 F.3d 519, 525–26 (5th Cir. 2002); *Vanderhoff v. Pacheco*, 344 F. App'x 22, 27 (5th Cir. 2009). Second, § 1927 requires unreasonable and vexatious multiplication of proceedings together with bad faith, improper motive, or reckless disregard. *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1998). Filing protective

proofs of claim to preserve rights in an unresolved district court action does not meet that standard. Third, there remains a division of authority over whether bankruptcy courts may impose § 1927 sanctions at all; the Court need not resolve that question because the statutory elements are not met.

VIII. CONCLUSION

Debtors' motions for sanctions should be denied. The District Court's April 9, 2024 ruling was interlocutory and subject to revision until the written order entered on May 4, 2026, so Midas had a substantial, objectively reasonable, and good-faith basis to preserve its rights in bankruptcy before the bar date. Midas's decision not to present evidence at the September 2025 hearing does not justify sanctions, and Debtors' motions are not predicated on that conduct in any event.

Debtors did not comply with Rule 9011's safe harbor as to the motion they actually filed, have not established bad faith by the clear and convincing showing required for § 105 or inherent-authority sanctions, have not met the requirements of § 1927, and have not demonstrated that this Court may finally adjudicate or award Patent Act fees under § 285 over Midas's objection — much less that this is an exceptional case under Octane Fitness. The decisions Debtors cite are inapposite because each arose from a consensual adversary proceeding, and none awarded contested § 285 fees over a jurisdictional objection. To the extent the Court reaches § 285 at all, the proper course, which Debtors concede is available, is a report and recommendation subject to de novo district court review, not a final fee award. For these reasons, the Court should deny Debtors' motions in their entirety.

DATED: June 25, 2026

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notification of such filing to all counsel of record who are registered CM/ECF users.

I further certify that all participants in this case who are registered CM/ECF users will be served by the CM/ECF system pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court.

Dated: June 25, 2026

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