

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

United States Courts
Southern District of Texas
FILED

MAY 08 2025

In re:
RHODIUM ENCORE, LLC, et al.,

Debtors,

Chapter 11

Nathan Ochsner, Clerk of Court

Case No. 24-90448 (ARP)

(Jointly Administered)

**MIDAS GREEN TECHNOLOGIES, LLC'S RESPONSE TO DEBTORS'
AMENDED OMNIBUS OBJECTION TO CLAIM NUMBERS 004, 062,
AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES, LLC**

Midas Green Technologies, Inc. ("Midas") submits these responses to the objections lodged to Midas's proof of claims submitted by Rhodium Enterprises, Inc. Rhodium 10MW LLC, Rhodium 30MW LLC, Rhodium 2.0 LLC, Rhodium Technologies LLC, Rhodium Renewables Sub LLC, and Rhodium Encore LLC.



24904482505090000000000002

PRELIMINARY STATEMENT

1. Contrary to the Debtors' assertions, the District Court did not conclusively rule against Midas' claims. In fact, the District Court granted Midas leave to amend its pleadings, which clearly demonstrates that the claims were not finally adjudicated on the merits. (Tr. 187, 54:19-55:3). While the District Court stated its intent to grant summary judgment in favor of the Debtors on certain grounds, it was not clear if it did so without prejudice to allowing Midas the opportunity to amend its expert reports and infringement contentions. A written opinion has not yet been issued by the District Court.

2. Furthermore, the characterization that Midas is seeking "another bite of the apple" is inaccurate and misleading. Midas' current proofs of claim are part of a good faith effort to pursue its claims for damages for patent infringement in the District Court. The claims at issue were not "abandoned" nor "rejected as a matter of law" as alleged. Midas' continued pursuit of these claims is consistent with the procedural history of the case and the rights afforded to it by the District Court.

RELIEF REQUESTED

3. Overrule the Debtors' Objections to Midas' Proof Claims.

JURISDICTION

4. This Court does not have jurisdiction to adjudicate Midas' claims

for patent infringement against the Debtors.

BACKGROUND

I. Statement of Facts.

5. On January 7, 2025, Rhodium Encore LLC, and its affiliates, as debtors and debtors in possession (collectively, the “Debtors”) moved for entry of an order granting limited relief from automatic stay to continue district court litigation. [Dkt 611]. Debtors also acknowledged that “Lifting the stay will not interfere with these bankruptcy cases. The District Court litigation concerns the discrete issue of patent infringement, which does not implicate bankruptcy law or any other issues in these cases. The District Court can competently assess Midas’ claim, and its further benefits from a developed record enabled by a multiple-year discovery process.” [Dkt. 611] at ¶ 17.

6. On January 30, 2025, this Court issued an order modifying the automatic stay pursuant to Bankruptcy Code section 362(d) and Bankruptcy Rule 4001. The stay was lifted for the limited purpose of allowing the District Court to rule on the pending summary judgment motion in *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc.*, et al, Case No. 6:22-cv-0050-ADA filed in the Western District of Texas.

7. In this Court’s limited order granting relief of the automatic stay, the District Court presiding over the patent infringement case was limited to ruling

consistent with its bench ruling, as identified by Rhodium in its moving papers. However, as will be further described below, the District Court's bench ruling was not a clear and unequivocal final ruling in favor of Rhodium.

8. On April 9, 2023, the District Court heard a number of pretrial motions, including Debtors' Motion for Summary Judgment on Noninfringement. In an oral ruling, the Court stated: "The Court is going to grant the motion for summary judgment of noninfringement. I think that fully takes care of the case for the time being." (Tr. 187, 54:10-13).

9. Immediately after this oral ruling, Midas counsel inquired: "MR. KOLEGRAFF: Your Honor, would we be able to readdress this—after we get Pokharna's report redone, would we be able to readdress this issue on the motion for summary judgment? THE DISTRICT COURT: Well, you know, you've had your chance, but obviously, it's a fairly severe ruling. Let me talk to my clerks and see if they think anything additional that an expert would say might benefit us. And if it is, we'll let you know. As of right now, I don't think it would." (Tr. 187, 54:19-55:3). Thus, the District Court left open the issue as to whether the expert report and infringement contentions could be amended, which would in turn require reconsideration of the ruling on the Motion for Summary Judgment.

10. Prior to the ruling on Debtors Summary Judgment motion, the District Court orders specifically that Dr. Pokharna's testimony regarding Prime Control's

Control System be excluded for failure to identify the System in Midas' Final Infringement Contentions. (Tr. 187, 18:6.) The Court granted leave to amend Dr. Pokharna's report to address the issues that Midas believes would make Dr. Pokharna's opinion render the system operational and therefore infringing. (Tr. 187, 20:12-23.).

11. On the record, the Court did not announce any reasoning for granting the Motion for Summary Judgment. To date, the parties are not certain if the motion was granted in whole or in part on the exclusion of Dr. Pokharna's report, on issues of claim construction, or on other announced issues. There is no ruling that can be appealed by Midas.

12. A court must issue a ruling on the record identifying the reasons for granting a motion for Summary Judgment. FRCP 56(a) ("The court should state on the record the reasons for granting or denying the motion.") The District Court must put its reasoning on the record, otherwise the court face remand for clarification. *See Nazomi Commc'ns, Inc. v. ARM Holdings, PLC*, 403 F.3d 1364, 1371-72 (Fed. Cir. 2005) (remanding for clarification of noninfringement ruling due to "the absence of findings of fact on the nature of the accused device" and of claim construction based on inadequate analysis that did not "supply [a] basis . . . sufficient for a meaningful review"); *Superior Fireplace Co. v. Majestic Prods. Co.*, 270 F.3d 1358, 1377 (Fed. Cir. 2001) (remanding for clarification of conclusion that case was not exceptional

for purposes of attorney's fees award because "the district court's failure to provide any findings or reasoning prevents us from reviewing its decision"); *Telectronics Pacing Sys., Inc. v. Ventritex, Inc.*, 982 F.2d 1520, 1526 (Fed Cir. 1992) (noting that a remand for clarification of a judgment entered through summary judgment is appropriate "if the 'district court's underlying holdings would otherwise be ambiguous or in ascertainable'" (quoting *Hanson v. Aetna Life & Cas.*, 625 F.2d 573, 575 (5th Cir. 1980); *Bott v. Four Star Corp.*, 807 F.2d 1567, 1574-75 (Fed. Cir. 1986) (remanding for clarification of ambiguity as to the amount of damages the district court intended to award), overruled on other grounds by *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020 (Fed. Cir. 1992); *Cable Elec. Prods., Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1020 (Fed. Cir. 1985) (recognizing that remand for clarification may be necessary when the logic of a judgment under review "cannot be discerned"), overruled on other grounds by *Midwest Indus., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356 (Fed. Cir. 1999); see also *In re Frilette*, 423 F.2d 1397, 1400-01, 57 C.C.P.A. 991 (CCPA 1970) (remanding for clarification of ambiguity as to whether patent application was rejected for lack of enablement or for indefiniteness of claim language).

13. By way of this objection, Debtors wish for this Court to resolve an issue that is entirely within the jurisdiction of the District Court. In Debtors' own terms: "The District Court litigation concerns the discrete issue of patent infringement,

which does not implicate bankruptcy law or any other issues in these cases. The District Court can competently assess Midas' claim, and it further benefits from a developed record enabled by a multiple-year discovery process." [Dkt. 611] at ¶ 17.

14. To date, no final ruling has been issued by the District Court. No clear reasons for the District Court's Ruling have been placed on the record. Without the benefit of the District Court's analysis, Debtors ask this Court to rule that Midas's claims are void. Ruling on this objection, without the benefit of a developed record enabled by a multiple-year discovery process would deprive Midas of its due process rights and is beyond the jurisdiction of the Bankruptcy Court.

CONCLUSION

15. The Bankruptcy Court should reserve the ruling on the Debtor's objection until after a final ruling is issued by the District Court.

DATED: May 8, 2025

Respectfully submitted,
/s/ Joseph E. Thomas

Joseph E. Thomas (*admitted p.h.v.*)
William J. Kolegraff (*admitted p.h.v.*)
Grant J. Thomas (*admitted p.h.v.*)
THOMAS WHITELAW &
KOLEGRAFF LLP
18101 Von Karman Ave., Suite 230
Irvine, California 92612
Telephone: (949) 679-6400
Fax: (949) 679-6405
jthomas@twtlaw.com
bkolegraff@twtlaw.com

gthomas@twtlaw.com

Michael C. Smith

Texas Bar No. 18650410

michael.smith@solidcounsel.com

Scheef & Stone, LLP

113 E. Austin Street

Marshall, TX 75670

(903) 938-8900

Attorneys for Plaintiff Midas Green
Technologies, LLC

CERTIFICATE OF SERVICE

I, Tierra Mendiola, hereby certify that on the 8th day of May, 2025, a copy of the foregoing Response was served by email from tmendiola@twtlaw.com to Counsel to the Debtors and Debtors-In-Possession via email to pattytomasco@quinnemanuel.com; cameronkelly@quinnemanuel.com; alainjaquet@quinnemanuel.com; rachelharrington@quinnemanuel.com and mailed to 700 Louisiana Street, Suite 3900, Houston, Texas 77002.

/s/ Tierra Mendiola