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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

REPLY IN SUPPORT OF MOTION TO ESTIMATE CONTINGENT AND UNLIQUIDATED CLAIMS OF MIDAS GREEN TECHNOLOGIES LLC AND GRANT RELATED RELIEF
(Relates to ECF Nos. 954, 1069, 1413, 1483, 1523)

Rhodium Encore LLC, and its affiliates, as debtors and debtors in possession (collectively, the "Debtors" or "Rhodium") in the above-captioned chapter 11 cases, hereby file the *Reply in Support of Motion to Estimate Contingent and Unliquidated Claims of Midas Green Technologies LLC and Grant Related Relief* (the "Reply") in response to *Midas Green Technologies, LLC's Opposition to Motion to Estimate Contingent and Unliquidated Claims of Midas Green Technologies LLC and Grant Related Relief* (ECF No. 1523) (the "Response"). In support of this Reply, the Debtors respectfully state as follows:

[1] The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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PRELIMINARY STATEMENT

1. Midas's Response represents yet another attempt to achieve leverage over the Debtors using unjustified delay and shameless gamesmanship. Midas starts on familiar ground, advocating the same strained interpretation of the District Court's statements as in Midas's prior pleadings; once again failing to acknowledge the District Court's clear ruling of noninfringement, the District Court's decision to cancel all proceedings, and the fact that Midas made no effort to continue the case in over a year. Ignoring these facts, Midas demands over $12 million dollars for defunct patent claims for which it has no hope of any recovery.

2. Rather than engage with the substance of the Debtors' motion, Midas dedicates the bulk of its Response to an entirely new argument, claiming that this Court cannot hear the Midas Claims because they involve issues of patent law, and that the possibility that Midas may file a motion to withdraw the reference sometime in the future means the Debtors' bankruptcy cases should be paused indefinitely. The Court should not countenance Midas's tardy excuse for even further delay.

3. Midas has forced the Debtors to spend extensive time and resources litigating its Claims in this court. It has been eight months since the Debtors filed their objection to Midas's Claims, nearly six weeks since this Court issued a scheduling order providing a briefing schedule to estimate Midas's Claims, and a week since Midas filed the Response. Still, it has not filed its hypothetical motion to withdraw the reference. Midas's new but woefully late theory seeks only to inject confusion and prejudice into a patent infringement case that requires only a straightforward application of law to facts. This latest effort to dodge the timely adjudication of the Midas Claims must be rejected.

REPLY

I. By Filing Its Proofs of Claim, Midas Submitted Itself to the Bankruptcy Court's Jurisdiction

4. The Response conflates the question of jurisdiction and abstention, concluding that the Bankruptcy Court has no jurisdiction over its Claims despite putting forth no jurisdictional argument. The judicial doctrine of abstention, which requires that bankruptcy courts decline to exercise their jurisdiction over certain issues, does not negate that the resolution of the Midas Claims is a core proceeding that falls squarely in the Bankruptcy Court's jurisdiction. **"**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." 28 U.S.C. § 157(b)(2). By filing its proof of claim, Midas subjected itself to the jurisdiction of this court. *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."); *WRT Creditors Liquidation Tr. v. C.I.B.C. Oppenheimer Corp.*, 75 F. Supp. 2d 596, 607 (S.D. Tex. 1999) ("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").

5. Moreover, Midas bears the ultimate burden to prove its Claims. Section 502 of the Bankruptcy Code provides that: "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest … objects." 11 U.S.C. §502(a). The proper filing of a proof of claim constitutes prima facie evidence of the claim's validity and amount. *In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998) (citing Bankruptcy Rule 3001(f)). A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting

party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (holding "[if] evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to 'prove the validity of the claim by a preponderance of the evidence'" (citation omitted)). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id*. Despite this shifting burden during the claim objection process, "[t]he ultimate burden of proof always rests upon the claimant." *Id*. If Midas fails to meet its burden and prove its Claims to this Court, the Midas Claims must be disallowed.

II. Any Motion to Withdraw the Reference Would Be Untimely and Prejudicial

6. Midas spends the bulk of its Response describing how if it filed a motion to withdraw the reference, that motion would prevent the Court from estimating its claims. However, Midas has failed to file such a motion, and it is now too late. Section 157(d) provides for mandatory abstention "***on timely motion of a party***." 28 U.S.C. § 157(d) (emphasis added). Though the statute provides no exact measure of timeliness, 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) (quoting *In re NOVAK,* 116 B.R. 626, 628 (N.D.Ill.1990); *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). This requirement exists to prevent litigation gamesmanship and judicial waste. As one court explained:

> 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.

In re Giorgio, 50 B.R. 327, 328-29 (D. R.I. 1985) (internal citations omitted).

7. Here, any forthcoming and yet illusory motion to withdraw the reference must fail as untimely and prejudicial. The theoretical grounds for such a motion—apparently, solely that the Midas Claims involve patents—have been clear at least since the Debtors filed their initial objection to the Midas Claims in January and were present when Midas initially submitted itself to the core jurisdiction of this Court by filing its proofs of claim. But rather than promptly move to withdraw the reference then, as section 157(d) requires, Midas has spent the last seven months filing multiple briefs in this Court, requiring the Debtors to waste resources on the same. *See* ECF Nos. 1413, 1485, 1486, 1523. The parties also attended a hearing regarding the Midas Claims over a month ago. In that time, Midas has never claimed grounds to withdraw the reference.

8. The timing of Midas's potential future motion reflects the exact kind of forum-shopping and gamesmanship that section 157(d)'s timeliness requirement seeks to avoid. Midas still has not filed a motion to withdraw the reference, and has given no indication that it plans to do so any time soon. But even were such a motion filed today, it would still be after numerous rounds of briefing, and three days before the originally scheduled hearing date. Had Midas moved to withdraw the reference when Debtors filed their objection seven months ago, the Debtors and the Bankruptcy Court might have saved resources—now, withdrawal of the reference would only grant Midas its much-desired delay and jeopardize the resolution of these cases.

9. 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) ("the Veldekens did not request this Court to abstain until

more than eight months after GE removed the suit…These circumstances underscore the untimeliness of the Veldekens' Motion to Abstain."); *In re Green Field Energy Servs., Inc.*, 2017 WL 2729065, at *2 (Bankr. D. Del. June 23, 2017) ("Defendants waited four months . . . to seek withdrawal of the reference. Certainly, the Withdrawal Motion was not timely filed.*"); In re Allegheny Health Educ. & Rsch. Found.*, 2006 WL 3843572, at *2 (W.D. Pa. Dec. 19, 2006) ("Each of [the government's] arguments has one thing in common-it could have been made the day that the adversary proceeding complaint was filed. Nothing changed over the more than ten months that passed before the United States filed its motion to withdraw, other than the United States's apparent growing dissatisfaction and frustration with the bankruptcy court's handling of the matter."); *In re H & W Motor Express Co.*, 343 B.R. 208, 214 (N.D. Iowa 2006) ("Waldner . . . did not file his Motion [for withdrawal] until April 29, 2005—more than five months after he filed his Answer. Waldner has not offered any reasons to justify this lengthy delay."); *Laine v. Gross*, 128 B.R. 588, 589 (D. Maine 1991) ("The Court, therefore, is faced with a situation in which Defendants failed to seek withdrawal of the reference when, upon service of the complaint [six months prior], it was clear that they had the same grounds to do so that they now assert. Only after the Bankruptcy Court denied their motion to dismiss, having invested a significant amount of time and energy, did Defendants try another tack and seek withdrawal of the reference."); *In re GTS 900 F, LLC*, 2010 WL 4878839, at *3 (C.D. Cal. Nov. 23, 2010) (finding four-month delay untimely); *Horowitz v. Sulla*, 2016 WL 5799011, at *3 (D. Haw. Sept. 30, 2016) (finding five-month delay untimely). This Court should do the same.

III. The Midas Claims Do Not Trigger Mandatory Abstention

10. Even if Midas had filed a timely motion to withdraw the reference, that motion still would not have resulted in Midas's desired outcome. To trigger mandatory abstention under

section 157, the proceeding must involve a "substantial and material question of both title 11 and non-Bankruptcy Code federal law." *Lifemark Hosps.,* 161 B.R. at 24 (citing *United States v. Gypsum Co. (In re Nat'l Gypsum Co.),* 145 B.R. 539, 541 (Bankr.N.D.Tex.1992)). 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 abstention 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); see *In re Vicars Ins. Agency, Inc.,* 96 F.3d at 952 (noting that permitting withdrawal whenever any minor non-bankruptcy federal question is implicated would "encourage delaying tactics (perhaps further draining the resources of the debtor), forum shopping, and generally unnecessary litigation."); *In re Kenai Corp.*, 136 B.R. 59, 61 (S.D.N.Y. 1992) (cautioning that withdrawal should be employed "judiciously in order to prevent it from becoming just another litigation tactic for parties eager to find a way out of bankruptcy court").

11. Withdrawal becomes mandatory only "when the court must undertake analysis of significant open and unresolved issues regarding the non-title 11 law." *Rodriguez v. Countrywide Home Loans, Inc.,* 421 B.R. 341, 348 (Bankr. S.D. Tex.2009) (quotation omitted). This maxim applies 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) ("The Court has serious reservations whether consideration of the federal securities laws claims in this adversary proceeding…rises to the level of 'substantial and material consideration' of non-bankruptcy federal law…The Court sees no novel theory that would require the interpretation of the applicable statutes.").

12. The District Court already determined the question of liability when it granted summary judgment of infringement, and through estimation, the Bankruptcy Court is more than capable of the analysis required to reach the same conclusion. The patent claims at issue here require only straightforward application of the law to the facts. 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). This step is commonly known as claim construction or interpretation. 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) (quoting *Freedman Seating Co.* 420 F.3d at 1357).

13. In this case, the first step has already been done. That is, during the District Court Litigation, the District Court construed the claims. ECF No. 50 (W.D. Tex., July 11, 2022) (order approving stipulated constructions of "plenum" and "weir"). Neither of the terms the District Court construed could now be at issue in this proceeding, and 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). Lay jurors are routinely tasked with applying the plain and ordinary meaning of claim terms, *see, e.g., LePlus, Inc. v. Lawson Software, Inc.*, 700 F.3d 509, 520 (Fed. Cir. 2012), and this Court may do the same.

14. What remains are straightforward questions that require little if any legal analysis, and certainly do not implicate a "substantial and material consideration of non-bankruptcy federal law." And the Response points to none, relying instead on conclusory statements that "the

determination of infringement of the Midas '457 Patent will necessarily require a substantial and material application and interpretation of Title 35 of the U.S. Code." Response ¶ 37. Midas does not identify a single characteristic of its claims that would necessitate substantial and material application of nonbankruptcy law, apparently asserting that this Court would be unable to consider any claims that implicated patent law. This argument of course fails logically and ignores the myriad cases in which bankruptcy courts consider 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).

15. Even a surface analysis of Midas's case cites demonstrates the point. The Response's argument predominantly relies on one 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); *see* Response ¶¶ 31-37;41-43. But that case *did* involve 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. There, the bankruptcy court determined that the facts of that case required a substantial application of patent law. *Id.* ("This is not simply a straightforward application of federal law to the facts. The validity of the patent is disputed as a matter of law. *See* 35 U.S.C. 282 ('[a] patent shall be presumed valid'). If the patent survives the allegations of invalidity, the ensuing infringement analysis will likewise require substantial application of Title 35. Indeed, examining claim construction to determine the invention's scope has been held to be a matter of law reserved to the court."). The *Electro-Mechanical* case also considered the possibility that the potentially infringing product would be put into interstate commerce and interfere with the sale of competing products. *Id.* at *10. In the case here, neither

the Debtors nor Midas question the validity of the patent, claim construction is done, and the Debtors have sold their accused systems—making continuing infringement impossible. Indeed, prior to finding noninfringement and cancelling the trial, the questions raised by Debtors' motion were two weeks away from being presented to a jury—and the District Court correctly concluded there was not even enough evidence of infringement to create a triable issue of fact.

16. Further, the District Court, already determined that there is no infringement, case law provides a guide for this Court to estimate Midas's claims. While Midas seeks a $12,306,278 windfall, when a claim pending in another court would have been dismissed, courts have held 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) ([T]he Proveris Claim is a claim whose contingency may never occur. Moreover, Proveris's ultimately prevailing on its claims, in light of its lack of success at the appellate level, is uncertain at best."); *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).

17. And as explained at length in the Debtor's Summary Judgment Motion, *see* ECF No. 1486, the Midas claims have no merit. 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."). Consistent with this

standard, the Court can competently estimate Midas's Claims and determine that they have no value.

CONCLUSION

WHEREFORE, the Debtors respectfully the Court estimate the Midas Claims to be worth zero (0) dollars and grant such other and further relief as the Court may deem just and appropriate.

RESERVATION OF RIGHTS

18. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

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

Respectfully submitted this 19th day of August, 2025.

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CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 19th day of August 2025, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and to Midas Green Technologies, LLC, c/o Joseph Thomas, 18101 Von Karman Avenue, Suite 230, Irvine, CA 92612, email jthomas@twtlaw.com.

/s/ Patricia B. Tomasco
Patricia B. Tomasco