

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

ANDREA ROSSI and LEONARDO )  
CORPORATION, )

Plaintiffs, )

v. )

THOMAS DARDEN; JOHN T. VAUGHN, )  
INDUSTRIAL HEAT, LLC; IPH )  
INTERNATIONAL B.V.; and )  
CHEROKEE INVESTMENT PARTNERS, )  
LLC, )

Defendants. )

CASE NO. 1:16-cv-21199-CMA

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INDUSTRIAL HEAT, LLC and IPH )  
INTERNATIONAL B.V., )

Counter-Plaintiffs, )

v. )

ANDREA ROSSI and LEONARDO )  
CORPORATION, )

Counter-Defendants, )

and )

J.M. PRODUCTS, INC.; HENRY )  
JOHNSON; FABIO PENON; UNITED )  
STATES QUANTUM LEAP, LLC; )  
FULVIO FABIANI; and JAMES BASS, )

Third-Party Defendants. )

**DEFENDANT INDUSTRIAL HEAT, LLC'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF ANDREA ROSSI'S FIRST REQUEST FOR PRODUCTION**

Defendant Industrial Heat, LLC ("Industrial Heat" or "IH"), pursuant to Federal Rules of Civil Procedure ("Federal Rules") 26 and 34, hereby responds to Plaintiff Andrea Rossi's ("Rossi") First Request for Production (the "Request").

**PRELIMINARY STATEMENT**

Industrial Heat provides these responses and objections ("Responses") without waiving any objections as to the admissibility in evidence of these Responses, the information produced pursuant to, or referenced in, these Responses, or the subject matter of the Request or of the information produced pursuant to, or referenced in, these Responses. Industrial Heat's Responses are also subject to and without waiver of: (i) the right to object to other discovery directed to the subject matter of the Request or Responses; (ii) the right to make additional objections or to seek protective orders; and (iii) the right to revise, correct, add to, or clarify the Responses or information referred to below in accordance with all applicable rules.

Industrial Heat responds to this Request based upon information and documents acquired and reviewed to date, which may or may not be inclusive of all documents relevant to the matters in dispute in this case. Accordingly, the present Responses are offered without prejudice to supplementation or modification at a later date.

A statement in Industrial Heat's Responses that documents will be produced is not intended to mean that any such documents actually exist. Rather, such a statement is only intended to mean that, if documents exist, can be located based on a reasonable search, are in the possession, custody or control of Industrial Heat, and are not privileged or otherwise protected from discovery on any other applicable ground, they will be produced within sixty (60) days of

the date of this Response. Likewise, an objection to producing documents does not mean that documents otherwise responsive to a particular Document Request in fact exist.

### **GENERAL OBJECTIONS**

Industrial Heat asserts the following General Objections to each of the Document Requests contained in the Request. These objections are in addition to objections set forth separately in each and every Response, and these objections are incorporated into each and every Response.

1. Industrial Heat objects to the Definitions, Instructions and Document Requests to the extent they seek the disclosure of documents or other information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, protection or restriction upon discovery (“Applicable Privilege or Protection”). Inadvertent disclosure of any privileged or protected information or documents in response to this Request shall not be deemed a waiver of the Applicable Privilege or Protection.

2. To the extent a Document Request seeks proprietary information possessed by Industrial Heat, information which would invade the privacy rights of third parties if disclosed, or information that is otherwise confidential, Industrial Heat will produce such documents – unless subject to an objection stated herein, including that a document is subject to an Applicable Privilege or Protection – pursuant to the terms of a protective order governing confidentiality entered by the Court. Industrial Heat anticipates that the parties will propose such a protective order to the Court soon.

3. Industrial Heat objects to the Definitions, Instructions and Document Requests to the extent they seek to impose duties upon Industrial Heat beyond those imposed by the Federal Rules, the Local Rules of this Court, or the Court’s Order Setting Trial and Pre-Trial Schedule,

as amended if amended. Industrial Heat objects to Instruction No. 4 because it purports to impose obligations on Industrial Heat beyond what are permitted for a document request under Federal Rule 34, as it is more in the form of an interrogatory that must be propounded on Industrial Heat separately under Federal Rule 33. Industrial Heat objects to Instruction No. 6 to the extent it purports to require information in a privilege log beyond what is required under the Federal Rules and the Local Rules. Industrial Heat objects to Instruction No. 7 purporting to define the form and format by which ESI is produced, but Industrial Heat's counsel will meet and confer with Rossi's counsel to negotiate agreed forms and formats for producing ESI.

4. Industrial Heat objects to the Request to the extent words or phrases used by Rossi in his Definitions, Instructions and Document Requests are vague, ambiguous, undefined, and/or subject to multiple interpretations. Industrial Heat will respond to the Request according to its understanding of the ordinary meaning of such words or phrases, and reserves the right to amend its Responses if Rossi subsequently advances a different interpretation of those words or phrases.

5. Industrial Heat objects to Rossi's Definition (b) to the extent it defines "Plaintiffs" as Andrea Rossi and Thomas Darden. Industrial Heat interprets this as a typographical error and that Plaintiffs is intended to include only Rossi and Leonardo Corporation.

6. Industrial Heat objects to the definition of "ECat IP" to the extent that it is intended to encompass information beyond that encompassed by the definition of "E-Cat IP" contained in the License Agreement.

7. There are defined terms and phrases in the Request that are not used in any of the specific document requests. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in

any subsequent discovery request. Furthermore, to the extent any defined term or phrase in the Request reflects a characterization by Rossi but the meaning of the defined term or phrase is clear (such as describing the property located at 7861 NW 46<sup>th</sup> Street<sup>1</sup> as the “Testing Facility”), Industrial Heat does not accept or endorse the characterization, but does not object to the defined term or phrase since its meaning is clear and any characterization is irrelevant.

### **RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION**

**REQUEST NO. 1:** Any and all documents evidencing the source of the Ten Million Dollars (\$10,000,000.00) paid to the escrow agent, Henry Johnson, Esq., in accordance with paragraph 3.2(b) of the License Agreement.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. This Document Request is an attempted fishing expedition into the financial affairs of Industrial Heat, and it is not tethered to the issues in this litigation as reflected in the Complaint, as narrowed by the Court’s Order granting in part Defendants’ motion to dismiss (“Dismissal Order”), and the Second Amended Answer, Additional Defenses, Counterclaims and Third Party Claims (“2<sup>nd</sup> Amended AACT”). There is no dispute that the \$10 million dollar payment was made, and nothing in the Complaint, as narrowed by the Dismissal Order, or the 2<sup>nd</sup> Amended AACT, makes the source of that payment at issue in this litigation.

**REQUEST NO. 2:** Any and all documents reflecting the funds available to Industrial Heat, LLC to pay any or all of the Eighty-Nine Million Dollar (\$89,000,000) payment referenced in paragraph 3.2(c) of the License Agreement between January 1, 2012 and April 30, 2016 including, but not limited to, ledgers and/or other funding agreements.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible

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<sup>1</sup> As explained below, Rossi’s First Request for Production states that the property located at 4861 NW 46th Street is the “Testing Facility.” Industrial Heat assumes that Rossi intended to reference the property located at 7861 NW 46th Street.

evidence. This Document Request is an attempted fishing expedition into the financial affairs of Industrial Heat, and as written is beyond the scope of (and hence not proportional to) the issues in this litigation as reflected in the Complaint, as narrowed by the Dismissal Order, and the 2<sup>nd</sup> Amended AACT. Documents reflecting the source of funds Industrial Heat anticipated or expected to use, at or before the time that the License Agreement was entered, to pay the \$89 million payment under the License Agreement were the conditions for such a payment ever met by the counterparties to the License Agreement is tethered to the fraudulent inducement claim in the Complaint.

Accordingly, subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce responsive, non-privileged documents that address the source of funds Industrial Heat anticipated or expected to use, at or before the time that the License Agreement was entered, to pay the \$89 million payment under the License Agreement were the conditions for such a payment ever met by the counterparties to the License Agreement, located as a result of the reasonable search.

**REQUEST NO. 3:** Any and all notes, records, photographs, videos or other recordings of any type taken by Industrial Heat, LLC, its officers, employees, agents, guests, customers, representatives and/or assigns during any visit to the Test Facility between January 1, 2015 through the date of production.

**ANSWER:** Industrial Heat objects to this Request on the ground that the terms “representatives” and “assigns” are not defined terms and are vague and ambiguous in the context of this Document Request. Industrial Heat further objects to this Request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce responsive, non-privileged documents, located as a result of the reasonable search.

**REQUEST NO. 4:** Any and all documents supporting Defendant's allegation that the testing conducted at the Test Facility was "fatally flawed" as alleged in paragraph 73 of Industrial Heat, LLC's Amended Counterclaim.

**ANSWER:** Industrial Heat objects to this Request on the ground that it refers to paragraph 73 of Industrial Heat, LLC's Amended Counterclaim, which is no longer an operative pleading. Because paragraph 73 of the now operative 2<sup>nd</sup> Amended AACT is the same as paragraph 73 of the Amended Counterclaim, Industrial Heat will respond to this Request as if it refers to the 2<sup>nd</sup> Amended AACT.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce responsive, non-privileged documents, located as a result of the reasonable search.

**REQUEST NO. 5:** Any and all documents supporting your allegation that J.M Products, Inc. "was in fact owned by persons whom Johnson represented in writing did not have any ownership interest in JMP" as alleged in paragraph 74 of Industrial Heat, LLC's Amended Counterclaim.

**ANSWER:** Industrial Heat objects to this Request on the ground that it refers to paragraph 74 of Industrial Heat, LLC's Amended Counterclaim, which is no longer an operative pleading. Because paragraph 74 of the now operative 2<sup>nd</sup> Amended AACT is the same as paragraph 74 of the Amended Counterclaim, Industrial Heat will respond to this Request as if it refers to the 2<sup>nd</sup> Amended AACT. Industrial Heat further objects to this Request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce responsive, non-privileged documents, located as a result of the reasonable search.

**REQUEST NO. 6:** Industrial Heat, LLC's entire employment file for Joseph Murray.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this Request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. This Document Request is an attempted fishing expedition into the personnel files of an Industrial Heat employee, and as written is beyond the scope of (and hence not proportional to) the issues in this litigation as reflected in the Complaint, as narrowed by the Dismissal Order, and the 2<sup>nd</sup> Amended AACT.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce any resume or C.V. for Joseph Murray, located as a result of the reasonable search.

**REQUEST NO. 7:** All “all E-Cat IP” (sic) which was purportedly delivered to you on June 9, 2013 as alleged in Paragraph 96 of Industrial Heat, LLC’s Amended Counterclaim.

**ANSWER:** Industrial Heat objects to this Request on the ground that it refers to paragraph 96 of Industrial Heat, LLC’s Amended Counterclaim, which is no longer an operative pleading. Because paragraph 96 of the now operative 2<sup>nd</sup> Amended AACT is the same as paragraph 96 of the Amended Counterclaim, Industrial Heat will respond to this Request as if it refers to the 2<sup>nd</sup> Amended AACT.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce responsive, non-privileged documents, located as a result of the reasonable search.

**REQUEST NO. 8:** Any and all documents supporting or contending to support, the damages allegedly incurred by Industrial Heat, LLC. (sic) as alleged in Paragraph 99 of Industrial Heat, LLC’s Amended Counterclaim including, but not limited to, all documents evidencing the alleged “multi-million dollar payments made to a third party.”

**ANSWER:** Industrial Heat objects to this Request on the ground that it refers to paragraph 99 of Industrial Heat, LLC’s Amended Counterclaim, which is no longer an operative pleading.

Because paragraph 99 of the now operative 2<sup>nd</sup> Amended AACT is the same as paragraph 99 of the Amended Counterclaim, Industrial Heat will respond to this Request as if it refers to the 2<sup>nd</sup> Amended AACT. Industrial Heat further objects to this Document Request as overbroad and unduly burdensome because it seeks “any and all documents” supporting damages amounts, which would require Industrial Heat to search for and, if located, produce documents unnecessarily redundant as to a source of damages – *e.g.*, as to a payment Industrial Heat made to Plaintiffs that Plaintiffs should not have properly requested, the Document Request would require not only production of the invoice seeking the payment from Plaintiffs and proof of payment by Industrial Heat, but also any accounting records or ledger recording the payment and any tracking documents as to the payment. Industrial Heat also objects to this Request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents sufficient to show the bases for the damages incurred by Industrial Heat as referred in this Document Request, located as a result of the reasonable search.

**REQUEST NO. 9:** Any and all documents supporting or contending to support, the damages allegedly incurred by Industrial Heat, LLC. (sic) as alleged in Paragraph 139 of Industrial Heat, LLC’s Amended Counterclaim including, but not limited to, all documents evidencing the alleged “multi-million dollar payments made to a third party.”

**ANSWER:** Industrial Heat objects to this Request on the ground that it refers to paragraph 139 of Industrial Heat, LLC’s Amended Counterclaim, which is no longer an operative pleading. Because paragraph 139 of the now operative 2<sup>nd</sup> Amended AACT is the same as paragraph 139 of the Amended Counterclaim, Industrial Heat will respond to this Request as if it refers to the 2<sup>nd</sup> Amended AACT. Industrial Heat further objects to this Document Request as overbroad and unduly burdensome because it seeks “any and all documents” supporting damages amounts,

which would require Industrial Heat to search for and, if located, produce documents unnecessarily redundant as to a source of damages – *e.g.*, as to a payment Industrial Heat made to Plaintiffs that Plaintiffs should not have properly requested, the Document Request would require not only production of the invoice seeking the payment from Plaintiffs and proof of payment by Industrial Heat, but also any accounting records or ledger recording the payment and any tracking documents as to the payment. Industrial Heat also objects to this Request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents sufficient to show the bases for the damages incurred by Industrial Heat as referred in this Document Request, located as a result of the reasonable search.

**REQUEST NO. 10:** Any and all documents supporting or contending to support, the damages allegedly incurred by Industrial Heat, LLC. (sic) as alleged in Paragraph 148 of Industrial Heat, LLC’s Amended Counterclaim including, but not limited to, all documents evidencing the alleged “multi-million dollar payments made to a third party.”

**ANSWER:** Industrial Heat objects to this Request on the ground that it refers to paragraph 148 of Industrial Heat, LLC’s Amended Counterclaim, which is no longer an operative pleading. Because paragraph 148 of the now operative 2<sup>nd</sup> Amended AACT is the same as paragraph 148 of the Amended Counterclaim, Industrial Heat will respond to this Request as if it refers to the 2<sup>nd</sup> Amended AACT. Industrial Heat further objects to this Document Request as overbroad and unduly burdensome because it seeks “any and all documents” supporting damages amounts, which would require Industrial Heat to search for and, if located, produce documents unnecessarily redundant as to a source of damages – *e.g.*, as to a payment Industrial Heat made to Plaintiffs that Plaintiffs should not have properly requested, the Document Request would require not only production of the invoice seeking the payment from Plaintiffs and proof of

payment by Industrial Heat, but also any accounting records or ledger recording the payment and any tracking documents as to the payment. Industrial Heat also objects to this Request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents sufficient to show the bases for the damages incurred by Industrial Heat as referred in this Document Request, located as a result of the reasonable search.

**REQUEST NO. 11:** Any and all documents identified in response to Plaintiff, Andrea Rossi's, First Set of Interrogatories to Defendant, Industrial Heat, LLC dated August 26, 2016.

**ANSWER:** Subject to and without waiving the foregoing General Objections, Industrial Heat will produce responsive, non-privileged documents.

Dated: October 7, 2016.

Respectfully submitted,

*/s/ Christopher R.J. Pace*

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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail on counsel of record on the service list below this 7<sup>th</sup> day of October, 2016.

*/s/ Erika S. Handelson*

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Erika S. Handelson

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