

**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.

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**DEFENDANT INDUSTRIAL HEAT, LLC'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF ANDREA ROSSI'S SECOND 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") Second 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:** All documents and records relied upon to support your claims in this matter.

**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. Federal Rule of Civil Procedure 34(a)(1) requires that a request for production “describe with particularity each item or category of items to be inspected,” thus requests of this type which essentially seek “each and every document supporting your claim” are objectionably broad. Industrial Heat further objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrine. This request seeks a compilation of documents that would reveal attorney strategies, opinions and/or mental impressions.

**REQUEST NO. 2:** All documents and records relied upon to support your affirmative defenses to Plaintiffs’ claims against you.

**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. Federal Rule of Civil Procedure 34(a)(1) requires that a request for production “describe with particularity each item or category of items to be inspected.” Thus requests of

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<sup>1</sup> As explained below, Rossi’s First Set of Interrogatories 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.

this type which essentially seek “each and every document supporting your claim” are objectionably broad. Industrial Heat further objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrine. This request seeks a compilation of documents that would reveal attorney strategies, opinions, and/or mental impressions.

**REQUEST NO. 3:** All documents and records relied upon as a basis for responding to Plaintiff, Andrea Rossi’s First Set of Interrogatories to Defendant, IH.

**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. Federal Rule of Civil Procedure 34(a)(1) requires that a request for production “describe with particularity each item or category of items to be inspected.” Thus requests of this type which essentially seek “each and every document supporting your claim” are objectionably broad. Industrial Heat further objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrine. This request seeks a compilation of documents that would reveal attorney strategies. opinions and/or mental impressions.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce the non-privileged documents Industrial Heat stated it would produce in its Responses and Objections to Plaintiff Andrea Rossi’s First Set of Interrogatories.

**REQUEST NO. 4:** All documents evidencing any communication(s) by and between you and any of the below-named individuals and/or entities, from January 1, 2011 through the date of production:

- a. Andrea Rossi
- b. Leonardo Corporation
- c. Henry Johnson

- d. Fulvio Fabiani
- e. Barry West
- f. Fabio Penon
- g. Ray Montano
- h. Jesus Armante
- i. James Stokes
- j. Robert Godes
- k. Brillouin Energy
- l. Fred Zoepfl

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is unduly burdensome, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. This Document Request is an attempted fishing expedition into the communications 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 Court's Order granting in part Defendants' motion to dismiss ("Dismissal Order"), and the Second Amended Answer, Additional Defenses, Counterclaims and Third Party Claims ("2nd Amended AACT"). This request seeks any communications with respect to any issue whatsoever and is not tied or tethered to an allegation in any of the pleadings. For example, as drafted, this request encompasses communications between Industrial Heat and Rossi regarding travel plans and the scheduling of teleconferences, as well as communications regarding Industrial Heat's other investments, which are not a part of this case. Industrial Heat further objects to this request to the extent it seeks documents protected by an Applicable Privilege or Protection.

**REQUEST NO. 5:** Any and all documents which fall within the categories described by you in your initial disclosures.

**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. Rule 26 regarding initial disclosures requires parties to disclose categories of

documents that they may use to support their claims or defenses. This Document Request, which therefore seeks each and every document which may support Industrial Heat's claims or defenses runs afoul of Rule 34(a)(1) which requires that a request for production "describe with particularity each item or category of items to be inspected." Requests of this type which essentially seek "each and every document supporting your claim" are objectionably broad.

**REQUEST NO. 6:** Any and all documents evidencing Cherokee's relationship with IH including, but not limited to, stock ownership, funds invested into IH, potential and/or actual investments in IH, agreements, contracts, term sheets, operating agreements, partnership agreements, management agreements and/or stockholder agreements.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence and not proportionate to the needs of this case. This Document Request is a fishing expedition for information regarding the relationship between Cherokee and IH, and is not tethered to an allegation in any of the pleadings. There is no allegation in the Complaint (as narrowed by the Dismissal Order) that makes material, or even relevant, to this case Cherokee's relationship with IH and the details of such relationship including the terms of agreements relating thereto. This is particularly true absent a limitation or requirement connecting such a relationship to an issue in dispute in this litigation. 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 non-privileged documents, located as a result of the reasonable search, sufficient to show any contractual or ownership relationship between Industrial Heat and Cherokee.

**REQUEST NO. 7:** Any and all patent applications, patent registrations, WIPO applications, PCT applications, PCT's, patents, patent assignments or any other document evidencing any attempt to protect any intellectual property by, or on behalf of, IH from January 1, 2012 through the date of your response to this request.

**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 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 2nd Amended AACT. This Document Request is an attempted fishing expedition into the confidential, proprietary, intellectual property of Industrial Heat, and is not tethered to an allegation in any of the pleadings. As written, this Document Request would require Industrial Heat to produce documents relating to its intellectual property that are wholly unrelated to this lawsuit such as trademark applications, copyrights, and patent information for unrelated technologies. Industrial Heat further objects to this request to the extent it seeks documents protected by the attorney-client privilege or any other 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 any non-privileged patent applications, patent registrations, WIPO applications, PCT applications, PCT's, patents, patent assignments or other documents evidencing an attempt to protect the ECat IP, located as a result of the reasonable search.

**REQUEST NO. 8:** Any and all documents reflecting and/or pertaining to the relationship between IH and the persons/entities listed below including, but not limited to, agreements, contracts, subcontracts, K-1's, W-2's, W-9's, personnel files, cancelled checks, loans, payments made to such individuals or entities, payments received from such individuals or entities, and payments made to other persons or entities for services performed by the below-named individuals or entities:

- a. Fulvio Fabiani
- b. Barry West

- c. Joseph "Joe" Murray
- d. Thomas Darden
- e. John "JT" Vaughn
- f. Andrea Rossi
- g. T. Barker Dameron
- h. Joseph "Joe" Pike
- i. Daniel Pike
- j. Robert Godes
- k. IPH International, B.V.
- l. IPH Management, B.V.
- m. IPHBV Holdings International, Ltd.
- n. IH Holdings International, Ltd.
- o. JPIH Holding, LLC.
- p. AmpEnergo, Inc.
- q. CF Woodford Equity Income
- r. Woodford Patient Capital Trust, PLC

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence and not proportionate to the needs of this case. This request is a fishing expedition into the relationships between Industrial Heat and third parties and is not tied or tethered to an allegation in any of the pleadings. For example, there is no allegation in the Complaint (as narrowed by the Dismissal Order) that makes material, or even relevant, to this case the information contained in K-1's, W-2's, W-9's, personnel files, cancelled checks, or loans to any of the individuals or entities listed, especially those who are not even parties to this lawsuit. This is particularly true absent a limitation or requirement connecting such information to an issue in dispute in this litigation. Moreover, as written this request encompasses all payments made to or from Industrial Heat and the listed individuals and entities, which would include payments wholly unrelated to the claims and defenses in this action such as salary payments, bonus payments, and reimbursements for travel and office-related expenses. This request also encompasses documents relating to Industrial Heat's investors and investments, which based on the Dismissal Order, are not a part of this case. Industrial Heat further objects to

this request to the extent it seeks documents protected by the attorney-client privilege or any other 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 any contractual agreements between Industrial Heat and Andrea Rossi, IPH International, B.V., Thomas Darden, John “JT” Vaughn, Fulvio Fabiani or AmpEnergo, Inc., located as a result of the reasonable search.

**REQUEST NO. 9:** Any and all documents reflecting and/or pertaining to any test(s) performed on the E-Cat or any of its components, irrespective of whether the test was performed by IH or another person and/or entity, including, but not limited to, all measurements taken, observations recorded, conclusions, test protocols, reports and/or any recordings of any type.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request to the extent it seeks documents reflecting and/or “pertaining to” tests performed on “components” of the E-Cat. The phrase “pertaining to” is vague and overbroad as used in this Document Request, and the term “components” is not a defined term and, therefore, is vague and ambiguous. As written, this Document Request would encompass documents reflecting tests performed on even the most basic parts of the E-Cat such as wires, pipes, tubes or bolts, even if the parts were not being tested for use in the E-Cat. It would also encompass documents that only marginally relate to tests performed such as receipts for the purchase of materials. 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 non-privileged documents which reflect, discuss or address any tests performed on the E-Cat, located as a result of the reasonable search. Industrial Heat’s counsel is also willing to meet and confer with Rossi’s counsel regarding the meaning of “components.”

**REQUEST NO. 10:** Any and all documents including, but not limited to, photographs, recordings, renditions, sketches, drawings, plans, or other illustrations which depict the E-Cat and/or the Testing Facility (defined above) including the areas used and controlled by JM Chemical Products, Inc. a/k/a JM Products, Inc.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request to the extent it characterizes the facility located at 7861 NW 46th Street, Doral, Florida 33166 as the “Testing Facility.” 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. 11:** Any and all documents reflecting any attempt(s) made by IH, its agents, employees, representatives or assigns, whether successful or not, to replicate the E-Cat (or any component thereof) and/or the operation and function of the E-Cat, including, but not limited to, documents reflecting attempted construction or operation of an E-Cat unit (or any part thereof), and attempted use of the E-Cat IP, attempts to replicate fuel mixtures, operational testing of existing E-Cat units, recharging E-Cat unit(s) or modifying E-Cat units.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the ground that the terms “representatives” and “assigns” are not defined terms and are vague and ambiguous. Industrial Heat further objects to this request to the extent it seeks documents reflecting attempts made to replicate any “component” of the E-Cat and attempted constructions or operations of any “part” of an E-Cat Unit. The terms “component” and “part” are not defined terms and are vague and ambiguous. As written, this Document Request encompasses documents reflecting attempts to replicate the most basic parts of the E-Cat and E-Cat Unit such as wires, pipes, tubes or bolts, even if those parts were not being replicated for use in the E-Cat or E-Cat Unit. Industrial Heat also objects to this request to the extent it seeks document 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 reflecting attempts made to replicate the E-Cat and/or the operation and function of the E-Cat, located as a result of the reasonable search. Industrial Heat's counsel is also willing to meet and confer with Rossi's counsel regarding the meaning of "component" and "part."

**REQUEST NO. 12:** Any and all documents evidencing communications between you and any other person or entity which mentions, references and/or discusses any of the information contained within the E-Cat IP.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges or Protections. Industrial Heat further objects to this request on the grounds that it is overbroad, not proportionate to the needs of the case and not tethered to an allegation in any of the pleadings. As written this Document Request seeks documents which mention, reference and/or discuss "any of the information contained within the E-Cat IP," and therefore would require production of documents referencing even the most basic elements contained in the E-Cat IP, such as nickel, even if the documents have nothing to do with the E-Cat, the E-Cat IP or the issues in this case.

**REQUEST NO. 13:** Any and all documents reflecting the ownership of IH including, but not limited to all K-1's issued by IH, all tax returns filed by IH, shareholder agreements, stockholder agreements, partnership agreements, operating agreements, stock certificates share allocations and/or resolutions.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence and not proportionate to the needs of this case. This request is a fishing expedition for information regarding the ownership of and investors in IH and is not tethered to an allegation in any of the pleadings. There is no allegation in the

Complaint (as narrowed by the Dismissal Order) that makes material, or even relevant, to this case those who have an ownership interest in IH and the details of such ownership interests including financial documents and agreements relating to such interests. This is particularly true absent a limitation or requirement connecting such an interest to an issue in dispute in this litigation. Indeed, Plaintiffs' only claim that contained allegations regarding the investors in Industrial Heat – Plaintiffs' breach of fiduciary claim – was dismissed by the Court in the Dismissal Order. 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 non-privileged documents sufficient to show the ownership structure of Industrial Heat, located as a result of the reasonable search.

**REQUEST NO. 14:** Any and all documents reflecting shareholder and/or investor communications relating to the E-Cat technology, Leonardo, and/or anything related thereto.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence and not proportionate to the needs of this case. This request is a fishing expedition for information regarding the owners of and investors in IH and is not tethered to an allegation in any of the pleadings. There is no allegation in the Complaint (as narrowed by the Dismissal Order) that makes material, or even relevant, a sweeping request for communications with shareholders of or investors in IH involving “anything related” to the E-Cat technology or Leonardo. This is particularly true absent a limitation or requirement connecting such communications to an issue in dispute in this litigation. Indeed, Plaintiffs' only claim that contained allegations regarding the investors in Industrial Heat – Plaintiffs' breach of fiduciary claim – was dismissed by the Court in the Dismissal Order. Industrial Heat further

objects to this request to the extent it seeks documents protected by an Applicable Privilege or Protection.

**REQUEST NO. 15:** Any and all documents evidencing studies, tests, evaluations, performance summaries, and/or operational reports pertaining to the E-Cat or E-Cat IP generated by, or on behalf of, IH from January 1, 2011 through the date of your response to this request.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is duplicative of Document Request No. 9. Industrial Heat further objects to this request on the grounds that the terms “studies,” “evaluations,” “performance summaries,” and “operational reports” are not defined terms and are vague and ambiguous. Additionally, the phrase “pertaining to the E-Cat or E-Cat IP” is vague and overbroad as used in this Document Request, as it would encompass, for example, document relating to the purchase of materials. Industrial Heat further objects to this request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Industrial Heat construes this Document Request as seeking the same documents sought in Request No. 9 and therefore, subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which reflect, discuss, or address any tests performed on the E-Cat, located as a result of the reasonable search.

**REQUEST NO. 16:** Any and all documents evidencing communications between you and any other person or entity in which you object(ed) to the appointment of Fabio Penon as the Expert Responsible for Validation of the E-Cat for either the Validation Test or the Guaranteed Performance Test as described in paragraphs 4 and 5 respectively of the License Agreement.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges or Protections.

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. 17:** Any and all documents evidencing communications between you and any other person or entity in which you stated your belief that the test which commenced in February 2015 at the Testing Facility was not the “Guaranteed Performance” test contemplated in paragraph 5 of the License Agreement, excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege. Industrial Heat further objects to this request to the extent that it characterizes the facility located at 7861 NW 46th Street, Doral, Florida 33166 as the “Testing Facility.”

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. 18:** Any and all documents evidencing communications between you and any other person or entity in which you express any concern, disapproval, objection or rejection of the test commencing February 2015 on the grounds that the test was being conducted using the 1MW E-Cat as opposed to any other E-Cat unit and/or the “Six Cylinder Unit”.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges or Protections. Industrial Heat further objects to this request to the extent the word “test” is meant to mean the “Guaranteed Performance Test” referred to in the License Agreement.

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. 19:** Any and all documents evidencing communications between you and any other person or entity in which you mention, discuss or refer to any deficiency or non-compliance with any testing procedures or test plan, in relation to the E-Cat.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges or Protections. Industrial Heat further objects to this request on the grounds that the phrase “testing procedures or test plan, in relation to the E-Cat” is vague and ambiguous. Industrial Heat interprets this phrase to mean the operation of the 1MW E-Cat plant, commencing in February 2015, at the facility located at 7861 NW 46th Street, Doral, Florida 33166.

Accordingly, subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which evidence communications between Industrial Heat and any other person or entity in which Industrial Heat mentions, discusses or refers to any deficiency or non-compliance with the operation of the 1MW E-Cat plant, commencing in February 2015, at the facility located at 7861 NW 46th Street, Doral, Florida 33166, located as a result of the reasonable search.

**REQUEST NO. 20:** Any and all documents evidencing communications between you and any other person or entity in which you mention, discuss, reference and/or refer to the “Guaranteed Performance” test.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges or Protections.

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. 21:** Any and all documents reflecting any draft or other version of the License Agreement and amendments thereto.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request to the extent it seeks documents protected by and Applicable Privilege or Protection. Industrial Heat further objects to this request on the grounds that the phrase “other version” is not defined and is vague and ambiguous. Industrial Heat interprets “other version” to mean “final version,” and therefore, subject to, and without waiving the foregoing General and Specific Objections, will conduct a reasonable search for and produce non-privileged draft and final versions of the License Agreement and amendments thereto, located as a result of the reasonable search.

**REQUEST NO. 22:** Any and all documents evidencing communications between you and any other person or entity in which you use any of the following terms or combination of terms.

- a. “Guaranteed Performance”
- b. “Validation” and “E-Cat” or “Ecat” or “1MW”
- c. “Lugano”
- d. “6 cylinder Unit”
- e. “Second Amendment”
- f. “License Agreement”
- g. “Penon”
- h. “Fabiani”
- i. “Rossi” and “payment”
- j. “Rossi” and “breach”
- k. “Leonardo” and “payment”
- l. “Leonardo” and “breach”
- m. “Water flow”
- n. “test” and “improper”
- o. “test plan”
- p. “report” and “E-Cat” or “Ecat” or “1MW”
- q. “1MW” and “test”
- r. “Replicate”

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence and not proportionate to the needs of this case. This Document Request is an attempted fishing expedition into the communications of Industrial Heat, and is not tethered to an allegation in any of the pleadings. For example, many of the terms listed, including “Second Amendment,” “License Agreement,” “water flow,” “test plan” and “replicate” are generic terms that, if used to search electronically stored information, would return documents evidencing communications that are wholly unrelated to the claims and defenses in this action. Industrial Heat further object to this request to the extent it seeks documents protected by the attorney-client privilege or any other Applicable Privilege or Protection. Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat’s counsel is willing to meet and confer with Rossi’s counsel regarding appropriate search terms and topics for electronically stored information.

**REQUEST NO. 23:** Any and all press releases, articles or publications made by IH, or on behalf of IH, from January 1, 2012 through the date of your answer to this request.

**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. As written this Document Request 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 2nd Amended AACT. This Document Request is not tethered to an allegation in any of the pleadings, and encompasses *all of* Industrial Heat’s press releases, articles or publications on *all topics*, even those that are not relevant to the E-Cat or the E-Cat IP.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged press releases which reflect, address or discuss the E-Cat or the E-Cat IP, located as a result of the reasonable search.

**REQUEST NO. 24:** Any and all documents evidencing communications between you and APCO Worldwide including any of its employees, agents, affiliates or representatives.

**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. As written this Document Request 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 2nd Amended AACT. This Document Request is not tethered to an allegation in any of the pleadings, and encompasses *all* communications with APCO Worldwide on *all topics*, even those that are not relevant to the E-Cat, the E-Cat IP, or the claims or defenses being asserted. Industrial Heat further objects to this request on the grounds that the terms “affiliates” and “representatives” are not defined terms and are vague and ambiguous. 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 communications between Industrial Heat and APCO Worldwide, including employees and agents thereof, which discuss, address, or reflect the E-Cat or the E-Cat IP.

**REQUEST NO. 25:** Any and all documents evidencing or reflecting payments made to, or for the benefit of, Leonardo Corporation, Andrea Rossi, Fulvio Fabiani, Barry West, Fabio Penon, Robert Godes, Brillouin Energy, AmpEnergo, Inc. or Cherokee Investment Partners, LLC.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to

the discovery of admissible evidence and not proportionate to the needs of this case. This Document Request is a fishing expedition into payments made and is not tethered to an allegation in any of the pleadings. As written this Document Request encompasses documents relating to payments that are wholly unrelated to the claims or defenses being asserted such as reimbursements for travel and office-related expenses, and also seeks documents reflecting payments made in connection with Industrial Heat's other investments, which are not a part of this case. Industrial Heat further objects to this request on the grounds that it is vague and ambiguous as it does not specify the maker of the payments Rossi is referring to in the request. Industrial Heat also objects to this request to the extent it seeks "any and all documents" evidencing or reflecting payments, which would require Industrial Heat to search for and, if located, produce documents unnecessarily redundant as to a particular payment – e.g., as to a payment Industrial Heat made to Plaintiffs, 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.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat interprets this request as seeking documents evidencing or reflecting payments made by Industrial Heat, and will conduct a reasonable search for and produce non-privileged documents sufficient to show payments made by Industrial Heat to Leonardo Corporation, Andrea Rossi, Fulvio Fabiani, Barry West, Fabio Penon, AmpEnergio, Inc. or Cherokee Investment Partners, LLC, located as a result of the reasonable search.

**REQUEST NO. 26:** Any and all documents evidencing your ownership of, or ownership interest in, any other company, partnership, corporation or other business entity including, but not limited to, stock certificates, operating agreements, shareholder agreements, partnership agreements and K-1's.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence and not proportionate to the needs of this case. This Document Request is a fishing expedition for information regarding Industrial Heat's ownership interests, and is not tethered to an allegation in any of the pleadings. The Court has already determined that Plaintiffs' allegations that Defendants created foreign and domestic companies are not sufficient to support Plaintiffs' claims. Thus, there is no allegation in the Complaint (as narrowed by the Dismissal Order) that makes material, or even relevant, to this case Industrial Heat's ownership interests, particularly absent a limitation or requirement connecting such an interest to an issue in dispute in this litigation. Industrial Heat further objects to this request to the extent it seeks documents protected by an Applicable Privilege or Protection.

**REQUEST NO. 27:** The entire personnel file for the following individuals, including any employment agreements, subcontractor agreements, and/or other contracts for services between you and the below-named individuals:

- a. Barry West
- b. Joseph Murray
- c. Thomas Darden
- d. John T. Vaughn
- e. T. Barker Dameron
- f. Fulvio Fabiani

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, not reasonably calculated to lead to the discovery of admissible evidence, and not tethered to an allegation in any of the pleadings. This Document Request is an attempted fishing expedition into the personnel files of Industrial Heat employees and consultants, 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 2nd Amended AACT.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce any resumes or CVs of Joseph Murray, T. Barker Dameron and Fulvio Fabiani, located as a result of the reasonable search.

**REQUEST NO. 28:** Any and all “sublicense” agreements entered into by you in relation to the E-Cat or E-Cat IP.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that the phrase “in relation to” is not defined and is vague and ambiguous. 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 non-privileged “sublicense” agreements entered into by Industrial Heat covering the E-Cat or the E-Cat IP, located as a result of the reasonable search.

**REQUEST NO. 29:** Any and all documents reflecting/pertaining to negotiations for any “sublicense” agreement identified in response to the previous request.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that phrase “pertaining to” is vague and overbroad as used in this Document Request. For example, documents “pertaining to” negotiations would encompass documents relating to the logistics of the negotiations, which have no actual bearing on the substance of the negotiations, such as making arrangements for a conference room and cost of travel for those who participated in the negotiations. Industrial Heat further objects to this request to the extent it seeks document protected by the attorney-client privilege or any other 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 which reflect, discuss or address negotiations for all “sublicense” agreements entered into by Industrial Heat covering the E-Cat or the E-Cat IP, located as a result of the reasonable search.

**REQUEST NO. 30:** Any and all documents which support and/or pertain to your claim that “Neither IPH nor IH ‘engaged’ Mr. Penon to serve as the ERV for the Guaranteed Performance process, which is a requirement under Section 5.”, (sic) as stated in the letter of December 4, 2015, which has been attached hereto as Exhibit “A”.

**ANSWER:** In addition to its General Objections, Industrial Heat 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 which support and/or pertain to Industrial Heat’s claim that “[n]either IPH nor IH ‘engaged’ Mr. Penon to serve as the ERV for the Guaranteed Performance process, which is a requirement under Section 5,” as stated in the letter of December 4, 2015, located as a result of the reasonable search.

**REQUEST NO. 31:** Any and all documents which support your position that “The project on which Leonardo is currently working cannot be the Guaranteed Performance process set forth in the Agreement”, as stated in the letter dated December 4, 2015 attached hereto as Exhibit “A”.

**ANSWER:** In addition to its General Objections, Industrial Heat 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. 32:** Any and all documents which support, pertain to or evidence your claims that “... Mr. Dameron was correctly listed [in the PCT Application] as a co-inventor”, as stated in the letter dated December 4, 2015 attached hereto as Exhibit “A”, excepting only attorney-client privileged communications.

**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 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 2nd Amended AACT, and is not tethered to an allegation in any of the pleadings. This request is only tethered to Plaintiffs' claim for patent infringement which was dismissed by the Court in the Dismissal Order. Industrial Heat objects to this request because, on its face, it seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

**REQUEST NO. 33:** Any and all documents which support, pertain to or evidence your statement that "...Leonardo has long since failed to achieve Guaranteed Performance as described in the Second Amendment", as stated in the letter dated December 24, 2015, which has been attached hereto as Exhibit "B", excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege. Industrial Heat further objects to this request on the grounds that the phrase "pertain to" is vague and overbroad as used in this Document Request because it is unclear whether that phrase extends beyond documents that would support or refute the statement at issue, for example documents merely showing that the plant was not operating on a particular date.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which reflect, discuss, or address (whether or not they support) Industrial Heat's statement that "Leonardo has long since failed to achieve Guaranteed Performance as described in the Second Amendment," as stated in the letter dated December 24, 2015, located as a result of the reasonable search.

**REQUEST NO. 34:** Any and all documents which evidence, pertain to or support your position that "...it is clear that the correspondence between Mr. Darden and Dr. Rossi, and between Mr. Darden and engineer Penon, was not about Penon being engaged in connection with the Guaranteed Performance process", as stated in the letter dated December 24, 2015 attached hereto as Exhibit "B", excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

Subject to, and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which evidence, pertain to or support Industrial Heat's position that "it is clear that the correspondence between Mr. Darden and Dr. Rossi, and between Mr. Darden and engineer Penon, was not about Penon being engaged in connection with the Guaranteed Performance process," as stated in the letter dated December 24, 2015, located as a result of the reasonable search.

**REQUEST NO. 35:** Any and all documents which evidence, pertain to or support your contention that "...Mr. Dameron made significant inventive contributions to the subject matter of certain claims stated in the PCT application", as stated in the letter dated December 24, 2015 attached hereto as Exhibit "B", excepting only attorney-client privileged communications.

**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 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 2nd Amended AACT, and is not tethered to an allegation in any of the pleadings. This request is only tethered to Plaintiffs' claim for patent infringement which was dismissed by the Court in the Dismissal Order. Industrial Heat further objects to this request because, on its face, it seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

**REQUEST NO. 36:** Any and all documents which evidence, pertain to or support your statement that “To provide just one clear illustration of Mr. Dameron’s inventive contribution, he invented a recess in the refractory layer to receive a thermal unit therein, for example, a spiral groove with a resistive wire helically-disposed in the groove”, as stated in the letter dated December 24, 2015 attached hereto as Exhibit “B”, excepting only attorney-client privileged communications.

**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 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 2nd Amended AACT, and is not tethered to an allegation in any of the pleadings. This request is only tethered to Plaintiffs’ claim for patent infringement which was dismissed by the Court in the Dismissal Order. Industrial Heat further objects to this request because, on its face, it seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

**REQUEST NO. 37:** Any and all documents evidencing site visits made to the Testing Facility between January 1, 2015 and March 31, 2016 by IH, any person on IH’s behalf and/or IH’s potential and/or actual investors.

**ANSWER:** In addition to its General Objections, Industrial Heat 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. 38:** Any and all documents supporting, pertaining to or evidencing your claim that “The flow meter used for Mr. Penon’s measurements has a minimum operational flow rate of 1.6m<sup>3</sup>/hour”, as claimed in the letter dated April 1, 2016, which has been attached hereto as Exhibit “C”, excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

Subject to, and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents supporting, pertaining to or evidencing Industrial Heat's claim that "[t]he flow meter used for Mr. Penon's measurements has a minimum operational flow rate of 1.6m<sup>3</sup>/hour," as claimed in the letter dated April 1, 2016, located as a result of the reasonable search.

**REQUEST NO. 39:** Any and all documents supporting, pertaining to or evidencing your claim that "...as required by the flow meter manufacturer's specifications, the flow meter requires the entire pipe volume to be full of liquid to function properly", as claimed in the letter dated April 1, 2016 attached hereto Exhibit "C", excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents supporting, pertaining to or evidencing Industrial Heat's claim that "as required by the flow meter manufacturer's specifications, the flow meter requires the entire pipe volume to be full of liquid to function properly," as claimed in the letter dated April 1, 2016, located as a result of the reasonable search.

**REQUEST NO. 40:** Any and all documents which evidence, pertain to or support your claims that "The flow meter measurements cannot be valid when the pipe volume was far less than full", as claimed in the letter dated April 1, 2016 attached hereto as Exhibit "C", excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which evidence, pertain to or support Industrial Heat's claims that "[t]he flow meter measurements cannot be valid when the pipe volume was far less than full," as claimed in the letter dated April 1, 2016, located as a result of the reasonable search.

**REQUEST NO. 41:** Any and all documents which evidence, pertain to or support your claim that "The reported flow rate statistics in Mr. Penon's report are not credible", as stated in the letter dated April 1, 2016 attached hereto as Exhibit "C", excepting only attorney-client privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

Subject to, and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which evidence, pertain to or support Industrial Heat's claim that "[t]he reported flow rate statistics in Mr. Penon's report are not credible." as stated in the letter dated April 1, 2016, located as a result of the reasonable search.

**REQUEST NO. 42:** Any and all documents which evidence or support your claim that "For steam to flow, a pressure differential is required to overcome the losses in the pipe.", (sic) as stated in the letter dated April 1, 2016 attached hereto as Exhibit "C", excepting only attorney-client (sic) privileged communications.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or

Protection other than the attorney-client privilege. Industrial Heat further objects to this request on the grounds that the statement that “[f]or steam to flow, a pressure differential is required to overcome the losses in the pipe” is a general principle of physics and therefore, as written this request would require production of all educational materials, textbooks, scientific publications and the like which support this principle.

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 that “[f]or steam to flow, a pressure differential is required to overcome the losses in the pipe,” located as a result of the reasonable search.

**REQUEST NO. 43:** Any and all documents which evidence, pertain to or support your claim that you are not responsible for the payment of the Eighty-Nine Million Dollars (\$89,000,000.00) as required by the License Agreement for any reason whatsoever, excepting only attorney-client privileged communications.

**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. Federal Rule of Civil Procedure 34(a)(1) requires that a request for production “describe with particularity each item or category of items to be inspected”; thus, requests of this type which essentially seek “each and every document supporting your claim” are objectionably broad. As written, this Document Request essentially seeks any and all documents relating to Industrial Heat’s claims and defenses in this action. Industrial Heat also objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

**REQUEST NO. 44:** Any and all documents evidencing that you have or had \$89 million in available funds to honor the agreement if/when Leonardo performed its contractual obligations.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it is overbroad, not reasonably calculated to lead to the discovery of admissible evidence and constitutes an improper attempt to obtain pre-judgment financial discovery. 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 2nd Amended AACT. Industrial Heat further objects to this request to the extent it seeks documents protected by an Applicable Privilege or Protection. Only Industrial Heat's ability at or before the time the License Agreement was entered into, 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 ability of Industrial Heat, at or before the time the License Agreement was entered into, 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. 45:** Any and all documents evidencing, pertaining to or supporting your claim that "Guaranteed Performance has not been achieved in accordance with the clear requirements of the License Agreement", as claimed in the letter dated April 1, 2016 attached hereto as Exhibit "C", excepting only attorney-client privileged communications.

**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. Federal Rule of Civil Procedure 34(a)(1) requires that a request for production "describe with particularity each item or category of items to be inspected"; thus, requests of this

type which essentially seek “each and every document supporting your claim” are objectionably broad. As written, this Document Request essentially seeks any and all documents relating to Industrial Heat’s breach of contract claims. Industrial Heat also objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

**REQUEST NO. 46:** Any and all documents which evidence or pertain to any breach of the License Agreement by Andrea Rossi and/or Leonardo Corporation which you claim occurred (a) prior to the initial Complaint being filed in the present lawsuit and (b) after the filing of the initial Complaint, excepting only attorney-client privileged communications.

**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. Federal Rule of Civil Procedure 34(a)(1) requires that a request for production “describe with particularity each item or category of items to be inspected”; thus, requests of this type which essentially seek “each and every document supporting your claim” are objectionably broad. As written, this Document Request essentially seeks any and all documents relating to Industrial Heat’s breach of contract claims. Industrial Heat also objects to this request because, on its face, the request seeks documents that may be protected by an Applicable Privilege or Protection other than the attorney-client privilege.

**REQUEST NO. 47:** Any and all documents pertaining to the due diligence performed by you and/or any of your investors, both actual and prospective, pertaining to the E-Cat and/or the E-Cat IP from January 1, 2012 through the present.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that the phrase “pertaining to” is vague and overbroad as used in this Document Request. As written, this request would encompass, for example, documents concerning travel to Italy such as airline tickets and hotel reservation confirmations. Industrial Heat further objects to this request on the grounds that the term “due diligence” is not defined and is vague and

ambiguous because it is not tethered to a particular agreement or transaction. Industrial Heat understands the phrase “due diligence” to mean, in the context of the Document Request, due diligence as to the License Agreement or subject thereof before entering the License Agreement. Industrial Heat also objects to this request to the extent it seeks due diligence conducted by Industrial Heat’s investors which is not in the possession, custody or control of Industrial Heat, and to the extent it seeks document 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 that address, discuss or reflect the due diligence performed by Industrial Heat or any of its actual or prospective investors as to the License Agreement or a subject thereof before entering the License Agreement, located as a result of the reasonable search.

**REQUEST NO. 48:** All documents supplied to Brillouin Energy, AmpEnergo, Inc., and/or any other entity pertaining to the E-Cat and/or the E-Cat IP, excepting only documents supplied to your attorneys.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that the phrases “any other entity” and “pertaining to” are vague and overbroad as used in this Document Request. As written, this request encompasses any document supplied to any entity in the world that mentions even the most basic part of the E-Cat and/or E-Cat IP, such as wire or pipe. This request is also vague and ambiguous because it does not specify the supplier of the documents Rossi seeks. Industrial Heat interprets this request as seeking documents supplied by Industrial Heat. Industrial Heat further objects to this request to the extent it seeks documents protected by an Applicable Privilege or Protection.

Accordingly, subject to and without waiving the foregoing General Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents supplied by

Industrial Heat to Brillouin Energy or AmpEnergo, Inc. which reflect, discuss, or address the E-Cat and/or the E-Cat IP, located as a result of the reasonable search.

**REQUEST NO. 49:** Any and all documents reflecting any attempt(s) made by Brillouin Energy, whether successful or not, to develop and/or replicate the E-Cat (or any component thereof) and/or the operation and function of the E-Cat, including, but not limited to, documents reflecting attempted construction or operation of an E-Cat unit (or any part thereof), any attempted use of the E-Cat IP, attempts to replicate fuel mixtures, operational testing of existing E-Cat units, recharging E-Cat unit(s) and/or modifying E-Cat units.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request to the extent it seeks documents reflecting attempts made to replicate any “component” of the E-Cat and attempted constructions or operations of any “part” of an E-Cat Unit. The terms “component” and “part” are not defined terms and are vague and ambiguous. As written, this Document Request encompasses documents reflecting attempts to replicate basic parts of the E-Cat or E-Cat Unit such as wires, pipes, tubes and bolts, even if the replication was not for use in connection with the E-Cat. 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 non-privileged documents reflecting attempts made by Brillouin Energy to replicate the E-Cat and/or the operation and function of the E-Cat, located as a result of the reasonable search. Industrial Heat’s counsel is also willing to meet and confer with Rossi’s counsel regarding the meaning of “component” and “part.”

**REQUEST NO. 50:** Any and all documents pertaining to the transfer of the E-Cat IP, including but not limited to, license agreements and assignments, by and/or to IH, including the consideration therefore.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges and Protections. Industrial Heat further objects to this Request on the grounds that the

phrase “pertaining to” and the term “transfer” are vague and overbroad as used in this Document Request. Industrial Heat interprets the term “transfer” to mean a legal transfer through a license agreement or assignment.

Accordingly, subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce non-privileged documents which reflect, discuss, or address the legal transfer of the E-Cat IP through a license agreement or assignment by and/or to IH, located as a result of the reasonable search.

**REQUEST NO. 51:** All documents reflecting agreements made by IH with any person pertaining to the E-Cat and/or the E-Cat IP in whole or in part.

**ANSWER:** In addition to its General Objections, Industrial Heat objects to this request on the grounds that the phrase “pertaining to” is vague and overbroad as used in this Document Request. For example, as written, this request would encompass an agreement to purchase a piece of sheet metal to be used in the E-Cat. Industrial Heat further objects to this Request to the extent it seeks documents reflecting agreements pertaining “in part” to the E-Cat IP. As written, this Document Request encompasses agreements pertaining to even the most basic elements contained in the E-Cat IP such as nickel. Industrial Heat also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and other Applicable Privileges and Protections.

Subject to and without waiving the foregoing General and Specific Objections, Industrial Heat will conduct a reasonable search for and produce agreements made by IH with any person that cover the E-Cat or the E-Cat IP, located as a result of the reasonable search.

**REQUEST NO. 52:** Any and all agreements between IH and AmpEnergo, Inc.

**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. As written this Document Request 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 2nd Amended AACT. This Document Request is not tethered to an allegation in any of the pleadings, and encompasses *all* agreements between IH and AmpEnergco, Inc., including those that are not relevant to the E-Cat, the E-Cat IP. 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 agreements between IH and AmpEnergco, Inc. which cover the E-Cat IP, located as a result of the reasonable search.

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

**SERVICE LIST**

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