

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 1:16-cv-21199-CMA

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.

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.

ORDER ON DISCOVERY ISSUES

This matter coming to be heard before the Court [D.E. 71] on Defendant Industrial Heat LLC's Responses and Objections to: (1) Plaintiffs' First Set of Interrogatories, (2) Plaintiffs' First Request for Production of Documents, and (3) Plaintiffs' Second Request for Production of Documents, as well as Defendant John T. Vaughn's Responses and Objections to Plaintiffs' First Set of Interrogatories,

IT IS HEREBY ORDERED:

WITH RESPECT to Defendant Industrial Heat's Responses and Objections to Plaintiffs' First Set of Interrogatories:

- General Objections 1 and 2 are overruled and stricken. (Tr. 10:5-6)
- General Objection 3 is sustained in that Defendant shall provide a privilege log pursuant to the Federal Rules of Civil Procedure and the local rules of the Court. (Tr.10:8-10)
- General Objection 4 – the first sentence is stricken, and the second sentence is sustained. (Tr. 14:13-21)
- General Objection 5 is overruled, in that to the extent that Defendant is aware of documents that are missing or have been destroyed, Defendant shall identify such documents. Defendant is under no obligation to conduct a separate search for missing or destroyed documents. (Tr. 12:14-21)
- General Objection 5 is sustained, in that the definition of the "E-Cat IP" shall be limited to how that term is defined in the parties' License Agreement (Tr. 19:11-15)
- General Objection 6 is sustained. (Tr. 20:2-5)
- General Objection 7 is limited in that Defendant's responses are to include persons or entities for whom the Defendant knows are acting or purporting to act on its behalf. (Tr. 21: 7-10)
- Interrogatory No. 1 – Defendant will provide answers so as to identify those persons, excluding legal counsel, who contributed to answering interrogatories 1, 2, 3, 4, 7, 8, 9 and 10. (Tr. 22:17-21)

WITH RESPECT to Defendant Industrial Heat's Responses and Objections to Plaintiffs' First Requests for Production of Documents:

- Defendant shall produce all documents directly related to the E-Cat or E-Cat IP by November 7, 2016. (Tr. 31: 1-22)
- Defendant shall produce all communications, or documents memorializing communications, between the parties (e-mail, texts, etc.) by November 22, 2016.

- Defendant shall produce any remaining discovery responses by December 7, 2016¹.
- Request No. 1 – Defendant agrees that it will provide documents evidencing the source of the \$10 million payment. (Tr. 47: 9-12)
- Request No. 2 – In addition to providing documents proving that Defendant had access to \$89 million at or before the time the License Agreement was executed, Defendant shall answer the following interrogatories: “Did you or did you not have access to \$89 million as of February 15, 2016? If you had less than \$89 million, then identify the amount of money you did have.” (Tr. 46:4-13)
- Request No. 6 – Defendant’s objections are sustained in part; Defendant shall provide Joe Murray’s CV or resume, his dates of employment, and any employment agreements regarding his compensation in regards to this case or in regards to E-Cat technology. (Tr. 51:9-21)
- Request Nos. 8, 9 and 10 – Defendant agrees to provide responsive documents sufficient to show the basis and amount of damages claimed (Tr. 52:16-18)

WITH RESPECT to Defendant Industrial Heat’s Responses and Objections to Plaintiffs’ Second Requests for Production of Documents:

- Request Nos. 1 and 2 – Defendant’s objections are overruled. (Tr. 58:19 – 59:1)
- Request No. 3 – Defendant’s objections are overruled (Tr. 60:18-20)
- Request No. 4 –
 - o With respect to Ray Montano, Jesus Armante, James Stokes and Fred Zoepfl, Defendant will produce all emails (Tr. 64:23-25; 65:23-66:3)
 - o With respect to Andrea Rossi, Leonardo, Henry Johnson, Fulvio Fabiani and Fabio Penon, Defendant will produce all emails (Tr. 71:5-9)
 - o With respect to Barry West, Robert Godes and Brillouin Energy, Defendant will produce communications referencing E-Cat, E-Cat IP, Rossi, Leonardo and/or Guaranteed Performance (Tr. 71:22- 72:4)
- Request No. 22 – the parties agreed to limit the search terms for electronic documents, including emails, to the following:
 - o E-Cat
 - o E-Cat IP
 - o Leonardo
 - o Rossi
 - o Guaranteed Performance (Tr. 38:3-9)

This applies both to Request No. 22 and to the other Requests for documents relating to Rossi, Leonardo, E-Cat, E-Cat IP, and/or Guaranteed Performance.

¹ The dates by which Defendant shall produce responsive documents applies to both the First and Second Requests for Production of Documents.

DONE AND ORDERED in Miami, Florida this 8th day of November, 2016.



HONORABLE JOHN O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

cc: counsel of record