

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

CASE NO. 1:16-cv-21199-CIV-ALTONAGA/O'Sullivan

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,

v.

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

Third-Party Defendants.

**THIRD-PARTY DEFENDANTS J.M. PRODUCTS, INC., HENRY JOHNSON, AND
JAMES A. BASS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST
REQUEST FOR PRODUCTION TO THIRD-PARTY DEFENDANTS**

Third-Party Defendants, J.M. Products, Inc. ("JMP"), Henry Johnson ("Johnson"), and
James A. Bass ("Bass") (collectively, "Third-Party Defendants"), pursuant to Federal Rules of

Civil Procedure (“Federal Rules”) 26 and 33, hereby respond to Defendants’/Counter-Plaintiffs’ Thomas Darden, John T. Vaughn, Industrial Heat, LLC (“IH”), IPH International B.V. (“IPH”), and Cherokee Investment Partners, LLC (“Cherokee”) (collectively, “Counter-Plaintiffs”) First Request for Production to Third-Party Defendants (“First Request”).

GENERAL RESPONSES AND OBJECTIONS

Third-Party Defendants provide these responses and objections (“Responses”) without waiving any objections as to the admissibility in evidence of these Responses, the information produced, or the subject matter of the request. By producing any information or documents, Third-Party Defendants do not admit that such information or documents (or related information or documents) are properly discoverable, waive any objections which might otherwise be made to any request for information or documents, or admit that any such information or documents are admissible at trial. Third-Party Defendants’ Responses are also subject to and without waiver of: (i) the right to object to other discovery directed to the subject matter of any 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.

Third-Party Defendants respond to this First 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 Third-Party Defendants’ Responses that documents will be produced is intended to mean that if any responsive documents exist, can be located upon a reasonable search, are in the possession, custody or control of Third-Party Defendants, and are not

privileged or otherwise protected from discovery on any other applicable ground, they will be produced or made available for inspection and copying at the office of the undersigned counsel with fifteen (15) days of the date of these Responses. In the alternative, the undersigned counsel will confer with counsel for Counter-Plaintiffs and will coordinate to have copies of such responsive documents/information made for Counter-Plaintiffs at Counter-Plaintiffs' expense. Similarly, an objection to producing documents does not mean that documents otherwise responsive to a particular request in fact exist or are in Third-Party Defendants' possession, custody or control.

Third-Party Defendants are in the process of conducting a reasonable search for responsive documents and additional documents may be located after the initial production. Any such documents shall be produced in accordance with the requirements of Federal Rule of Civil Procedure 26(e).

Third-Party Defendants object to the definition of "Johnson" in Definition No. 7 of the First Request to the extent that this definition intends to include Henry Johnson in his capacity as attorney for any related party. Responses to as to any requests to Johnson will not include any information or documents obtained as a result of his capacity as attorney for any related party as that is deemed outside the scope of the First Request and otherwise overbroad and not related to the instant action.

Third-Party Defendants object to the time frame in Instruction No. 7 of the First Request because the time frame suggested is outside the scope of the instant action against Third-Party Defendants. The relevant time frame as set forth in the Counter-Plaintiffs Second Amended Counterclaims and Third-Party Claims (the "Counterclaims and Third-Party Claims") begins in June of 2014 (the time period where the transfer of the Plant to Florida was being contemplated)

through February of 2016 (the time period when the operation and testing of the Plant was concluded). Accordingly, all Responses are being limited to the production of documents during the relevant time frame suggested herein: June 2014 through February 2016, inclusive.

These general objections shall be deemed to be continuing throughout and incorporated in Third-Party Defendants' specific Responses to each and every request in Counter-Plaintiffs' First Request.

RESPONSES AND OBJECTIONS TO FIRST REQUEST FOR PRODUCTION

REQUEST NO. 1: All Documents/ESI that reflect, address, discuss, reference or memorialize any Test, or the results of any Test, performed by You or any other Person on the E-Cat or on any device that utilizes or was designed using the E-Cat IP (*e.g.*, the "Big Frankies", the 1MW E-Cat Unit, the Hot Cat, the Six Cylinder Unit, E-Cat reactors and/or any E-Cat Products) ("E-Cat Device"), including, but not limited to, any Tests conducted at the Doral Location, any Tests conducted at the Triangle Drive Facility, and any Tests conducted in connection with the Ferrara Report or Lugano Report. This request specifically includes, but is not limited to, Documents/ESI reflecting, addressing, discussing or referencing (i) any methodologies or protocols used in conducting a Test, (ii) any data derived from a Test, and (iii) any observations, conclusions or reports resulting from a Test.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 1 to the extent that it seeks production of Documents/ESI that are outside the scope of the Term Sheet and the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged documents related to the Guaranteed Performance test (as defined in the Counterclaims and Third-Party Claims) at the Doral Location.

REQUEST NO. 2: All Communications between You and Fabio Penon.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 2 to the extent that it seeks production of Communications that are outside the scope of the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Communications for the

relevant time frame to the extent any such Communications are related to the allegations in the Counterclaims and Third-Party Claims (including the E-Cat and E-Cat IP).

REQUEST NO. 3: All Communications between You and Rossi, Leonardo, Fabiani and/or USQL.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 3 to the extent that it seeks production of Communications that are outside the scope of the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Communications for the relevant time frame to the extent any such Communications are related to the allegations in the Counterclaims and Third-Party Claims (including the E-Cat and E-Cat IP).

REQUEST NO. 4: All Communications between You and Giuseppe Levi, Evelyn Foschi, Torbjorn Hartman, Bo Hoistad, Roland Pettersson, Lars Tegner and/or Hanno Essen.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 4 to the extent that it seeks production of Communications that are outside the scope of the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Communications for the relevant time frame to the extent any such Communications are related to the allegations in the Counterclaims and Third-Party Claims (including the E-Cat and E-Cat IP).

REQUEST NO. 5: All Communications reflecting, addressing, discussing or referencing the E-Cat, the E-Cat IP, or any E-Cat Device, between You and any of the following Persons:

- (a) John T. Vaughn
- (b) Thomas Darden
- (c) T. Barker Dameron
- (d) Barry West
- (e) Joseph Murray
- (f) Norman Cook
- (g) Craig Cassarino
- (h) Ron Engleman
- (i) Richard Noceti
- (j) Robert Gentile
- (k) Karl Norwood

(1) John Mazzarino

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 5 to the extent that it seeks production of Communications that are outside the scope of the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Communications for the relevant time frame to the extent any such Communications are related to the allegations in the Counterclaims and Third-Party Claims (including the E-Cat and E-Cat IP).

REQUEST NO. 6: All Documents/ESI that reflect, address, discuss or reference the License Agreement, the First Amendment, the Proposed Second Amendment and/or the Term Sheet, including, but not limited to, all drafts of the License Agreement, First Amendment, Proposed Second Amendment or Term Sheet, and any negotiations over or involving the License Agreement, First Amendment, Proposed Second Amendment or Term Sheet.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 6 to the extent that it seeks production of Documents/ESI that are outside the scope of the Term Sheet and the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Documents/ESI for the relevant time frame to the extent any such Documents/ESI are related to the Term Sheet and allegations in the Counterclaims and Third-Party Claims.

REQUEST NO. 7: All Documents/ESI that reflect, address, discuss or reference the operation, measurement or monitoring of any E-Cat Device at the Doral Location, from December 1, 2014 through the present, including, but not limited to, all Documents/ESI reflecting, addressing, discussing or referencing: (i) maintenance, repairs, replacement of parts, alterations, modifications or any other type of work done on or for any E-Cat Device at the Doral Location, (ii) monitoring of the activity of any E-Cat Device at the Doral Location (including the event log required by the License Agreement), (iii) data collected in connection with the operation, measurement or monitoring of any E-Cat Device at the Doral Location (including power data collected by Fulvio Fabiani and the original power data files generated by the "PCE-830" power and harmonics analyzer) and (iv) costs and expenses associated with the operation any E-Cat Device at the Doral Location.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 7 to the extent that it seeks production of Documents/ESI that are outside the scope of the Term Sheet

and the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Documents/ESI for the relevant time frame to the extent any such Documents/ESI are related to the Term Sheet and allegations in the Counterclaims and Third-Party Claims (including the E-Cat).

REQUEST NO. 8: All Documents/ESI that reflect, address, discuss or reference (i) visits by any Person to the Doral Location or (ii) the use of any equipment (including computer equipment), materials, machinery or devices in connection with the operation, measurement or monitoring of any E-Cat Device at the Doral Location, from December 1, 2014 through the present.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 8 to the extent that it seeks production of Documents/ESI that are outside the scope of the Term Sheet and the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Documents/ESI for the relevant time frame to the extent any such Documents/ESI are related to the Term Sheet and allegations in the Counterclaims and Third-Party Claims (including the E-Cat).

REQUEST NO. 9: All Communications between or among J.M. Products, Johnson and/or Bass reflecting, addressing, discussing or referencing the E-Cat, the E-Cat IP, or any E-Cat Device.

RESPONSE: Third-Party Defendants object to the overbroad nature of Request No. 9 to the extent that it seeks production of Communications that are outside the scope of the Term Sheet and the allegations in the Counterclaims and Third-Party Claims. Subject to and without waiving any objections, Third-Party Defendants shall produce non-privileged Communications for the relevant time frame to the extent any such Communications are related to the Term Sheet and allegations in the Counterclaims and Third-Party Claims (including the E-Cat and E-Cat IP).

Respectfully submitted this 21st day of November, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2016, copies of the foregoing will be served upon all counsel on the service list below via e-mail.

/s/ Francisco J. León de la Barra
Francisco J. León de la Barra

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