

# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 16-CV-21199-CMA/JJO

ANDREA ROSSI, *et al.*,  
Plaintiffs,

vs.

THOMAS DARDEN, *et al.*,  
Defendants.

Miami, Florida  
January 10, 2017  
Pages 1-37

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TRANSCRIPT OF DISCOVERY HEARING  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

*Perlman, Bajandas, Yevoli & Albright, P.L.*  
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BY: JOHN WILLIAM ANNESSER, ESQ.  
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FOR THE DEFENDANTS:

*Jones Day*  
BY: CHRISTOPHER R.J. PACE, ESQ.  
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1 that's ridiculous. But if it is, let him go for consideration.  
2 We're asking for the documents from him. We're not here to  
3 subpoena anyone connected to the Nobel Prize or even subpoena  
4 some of these individuals, at least one of whom is dead, so he  
5 knows is not voting on the Nobel Prize. There's a  
6 confidentiality order. We can't go sharing those with the rest  
7 of the world. So these protests are silly.

8 I mean, the fact of the matter is both of these tests  
9 are pled in here. Both of them used a product provided by  
10 Mister/Dr. Rossi. He provided it to them, that's how they did  
11 the testing on it. We're seeking simply their communications  
12 with him, not just about the testing. But you've heard the word  
13 "independence" being raised here several times, we've got  
14 e-mails where they're identified as independent. If they're not  
15 independent, we're entitled to know that. If they are  
16 independent, we're not.

17 THE COURT: Okay. I'm only going to allow you to get  
18 the communications regarding the E-Cat testing, not all  
19 communications between them. I find that it's not relevant,  
20 there's no showing that they were anything but independent. You  
21 know, in the other area you're able to come to me and show me  
22 that Rossi was -- you know, this company was actually Rossi.  
23 Here, you know, you're talking about five people who are, you  
24 know, respected people. Even in your own allegations you  
25 indicate that they're respected, whatever, people with

1 institutions, prominent institutions in other countries.

2 MR. PACE: I understand, Your Honor. As long as it's  
3 related to the E-Cat or the E-Cat intellectual property. That  
4 would be the only additional element I would say to make sure.

5 THE COURT: What do you say about that?

6 MR. ANNESSER: Your Honor, I believe that's still  
7 overly expansive. Again, to the extent that he's got  
8 communications with them and he's had communications with this  
9 group of people going back for some time. Again, it's entirely  
10 unrelated here to the extent he sends an e-mail and says  
11 gentlemen, I've got a development on getting great success or  
12 otherwise, on testing that's completely irrelevant to the  
13 testing under the license agreement and the deal that we've got  
14 between Dr. Rossi and Industrial Heat, I think it's overly  
15 expansive.

16 You're talking about -- and I don't know what the body  
17 of documents is so I can't represent how many there are going to  
18 be, but to the extent that there are communications, especially  
19 a -- you know, what do you guys think, is the Nobel Prize going  
20 to happen on my E-Cat, that's in there.

21 THE COURT: Well, if it relates to the Nobel Prize, you  
22 don't need to provide it. If it doesn't, then you need to  
23 provide it.

24 MR. ANNESSER: Your Honor, and the determination  
25 between those two is going to be difficult because the whole

1 purpose --

2 THE COURT: well, here's what you do. You provide it.  
3 If you're unsure -- in other words, if it says Nobel Prize in  
4 it, I mean, it may not all relate to it, I don't know. You're  
5 going to need to look at the document. It's hard to come in  
6 here and argue about documents that you haven't looked at. So  
7 go look to the document. If they don't relate to the Nobel  
8 Prize, if they relate to the E-Cat, give it to them. If you  
9 think that they should be protected, put them on some kind of  
10 list, provide a list to him and then come back to me with the  
11 documents and I'll tell you whether or not they're relevant.

12 MR. ANNESSER: Your Honor, are we applying the same  
13 time period as we did with the Third Party Defendants through?

14 THE COURT: Yeah. Yeah. Yeah, yeah.

15 All right. What else? Anything else?

16 MR. PACE: I think the last issue, Your Honor, is just  
17 --

18 THE COURT: If you're ever going to subpoena these  
19 people, let them know ahead of time.

20 MR. PACE: We have to go with the federal rules in any  
21 event. But Your Honor, they're all in Europe, I don't think we  
22 will ever subpoena them. But I agree. If we will, we will give  
23 them advance notice of any doing so.

24 THE COURT: Okay.

25 MR. PACE: I do note that somewhere so I don't screw