

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-CV-21199-CMA/O'Sullivan

ANDREA ROSSI, *et al.*,

Plaintiffs,

v.

THOMAS DARDEN; *et al.*,

Defendants.

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITIONS

Plaintiffs ANDREA ROSSI AND LEONARDO CORPORATION, by and through their undersigned counsel and pursuant to Federal Rules of Civil Procedure, hereby give notice of taking the following depositions:

<u>NAME</u>	<u>DATE & TIME</u>	<u>LOCATION</u>
*Corporate Representative of Industrial Heat, LLC	February 13, 2017, at 9:00 a.m.	Perlman Bajandas, Yevoli & Albright, P.L. 283 Catalonia Avenue, Suite 200 Coral Gables, FL 33134
*Corporate Representative of IPH International B.V.	February 14, 2017, at 9:00 a.m.	Perlman Bajandas, Yevoli & Albright, P.L. 283 Catalonia Avenue, Suite 200 Coral Gables, FL 33134
*Corporate Representative of Cherokee Investment Partners, LLC	February 15, 2017, at 9:00 a.m.	Perlman Bajandas, Yevoli & Albright, P.L. 283 Catalonia Avenue, Suite 200 Coral Gables, FL 33134

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EXHIBIT "3"

The deponent is hereby notified and required to be present at that time and place to testify in accordance with this notice. The oral examinations will continue from day to day until completed, before Caseworks, a notary public or other person authorized by law to take depositions. The deposition will be videotaped and also recorded stenographically. The deposition is being taking for the purposes of discovery for use as evidence, and for such other uses and purposes as are permitted under the Federal Rules of Civil Procedure and other applicable law.

*Pursuant to Fed. R. Civ. P. 30(b)(6), you must designate one or more officers, directors, or managing agents, or other persons (corporate representatives) who will consent to testify on your behalf as to the matters for examination identified in **AMENDED SCHEDULE A** below. You may set out the matters on which each person(s)/corporate representative(s) designated will testify. The person(s)/corporate representative(s) designated must testify about information known or reasonable available.

PLEASE GOVERN YOURSELF ACCORDINGLY

Dated: January 20, 2017.

Respectfully submitted,

/s/ John W. Annesser

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*Counsel for Plaintiffs, Andrea Rossi and
Leonardo Corporation*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by in the manner specified below on January 20, 2017 on all counsel or parties of record on the attached Service List.

/s/ John W. Annesser

John W. Annesser, Esq.

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AMENDED SCHEDULE “A”

DEFINITIONS

- a. The term “action” shall mean the above described case pending in the United States District Court, Southern District of Florida, Case No. 1:16-cv-21199-CMA/O’Sullivan.
- b. The words “any” and “all” shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. Furthermore, the use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa. The term “including” means “including without limitation.”
- c. The terms “communication” and “communications” mean any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (email), memoranda, documents, writings, or other forms of communications, including but not limited to both oral and written communications.
- d. The term “copies of” means authentic duplicates of the originals as noted, kept, maintained, and organized in the ordinary course of business.
- e. The term “Defendant” means any and all principals, agents, employees or representatives of Defendants Industrial Heat, LLC (“IH”), IPH International, B.V. (“IPH”), Thomas Darden, John T. Vaughn, and Cherokee Investment Partners, LLC (“Cherokee”).
- f. The terms “discussion,” “discussions,” “discuss,” “discusses,” “mention,” “mentions,” “describe,” “describes,” “analyze” or “analyzes” mean any and all inquiries, conferences, conversations, negotiations, agreements or other forms or methods of oral communication or such dialogue sent via e-mail, facsimile, letter, telegram, or other written communication.
- g. The terms “document,” “documents,” “internal communication,” “internal communications,” “record,” “records,” “written communication,” “written communication,” and/or “written correspondence” mean all data, papers, and books, transcriptions, pictures, drawings or diagrams or every nature, whether transcribed by hand or by some mechanical, electronic, photographic or other means, as well as sound reproductions of oral statements or conversations by whatever means made, including written papers or memoranda which summarize oral conversations, whether in your actual or constructive possession or under your control or not, relating to or pertaining to or in any way to the subject matters in connection which it is used and includes originals, all file copies, all other copies, no matter how prepared and all drafts prepared in connection with such writing, whether used or not, including by way of illustration and not by way of limitation, the following: books; records; reports; contracts; agreements; video, audio and

other electronic recordings; memoranda (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts and activities); minutes; diaries; calendars; desk pads; scrapbooks; notes; notebooks; correspondence; drafts; bulletins; electronic mail (e-mail); facsimiles; circulars; forms; pamphlets; notice; statements; journals; postcards; letters; telegrams; publications; inter- and intra- office communications; photocopies; microfilm; maps; drawings; diagrams; sketches; analyses; transcripts; electronically stored information (ESI) and any other documents within defendant's possession, custody or control from which information can be obtained or translated, if necessary, by detection devices into reasonably usable form, i.e. typed in English. **This definition of Documents includes all such items: directly in your custody or possession; in the possession of your attorneys, accountants, agents or employees and all other documents, wherever located, to which you have the right of control or possession.**

- h. The term "E-Cat" means the Energy Catalyzer which is the subject of the License Agreement entered into between Industrial Heat, LLC, Andrea Rossi, Leonardo Corporation and Ampenergo, Inc.
- i. The term "E-Cat IP" means the Energy Catalyzer Intellectual Property including, but not limited to, the patents, designs, trade secrets, technology, know-how, products and business plans and all other intellectual property related directly or indirectly to energy production and conversion technologies and to the development, manufacture and sale of products using such technologies, including the Energy Catalyzer ("E-Cat") the catalyzer formula used to fuel the E-Cat, the "Hot Cat" and related energy production and conversion technologies as further described in the License Agreement attached to Plaintiffs' Complaint as Exhibit "B" thereto.
- j. The terms "electronically stored information" and/or "ESI" mean any Information on operational systems including accounting, financial, distribution, or manufacturing systems; E-mail; Instant Messages (IM); Web pages; text messages; cell phone data; Excel spreadsheets and underlying formulae; metadata; computer databases (i.e., Access); erased, fragmented or damaged data; Blackberry data; and anything stored on computer or other electronic means located on or in, but not limited to cache memory; optical disks; magnetic tapes/back-up tapes; magnetic disks (hard drive, floppy disks, etc.); PDAs, Blackberries and Palm Pilots; cell phones; IM tools; or USB drives.
- k. The term "Energy Production Application" means any and all technology(ies), device(s), intellectual property, discovery(ies), research, design, plans, procedure, and/or technique which generates, maintains, produces, increases, creates, amplifies and/or results in the release of, energy in excess of the amount of energy input into such application.

- l. The words “or” and “and” shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa. J. “Request,” and “Requests” mean and are limited to the numerical requests set forth in this motion for production of documents.
- m. The term “identify,” when used in reference to a document, means and includes the name and address of the custodian of the document, the location of the document, and a general description of the document, including (1) the type of document (i.e. correspondence, memorandum, facsimile, email, etc.); (2) the general subject matter of the document; (3) the date of the document; (4) the author of the document; (5) the addressee of the document; and (6) the relationship of the author and addressee to each other.
- n. The term “identify” when used in reference to a communication means and includes the name and address of each party to the communication, whether it was oral or written, substance and subject matter of the communication, the date of the communication.
- o. The term “identify” when used with reference to an individual shall mean his (her) full name, residence address, business address and telephone number. Identify when used in reference to an entity to a person other than an individual shall mean the entity’s full name, address, telephone number and full name of the representative of the entity.
- p. The words “pertain to” and/or “pertaining to” mean anything that relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts.
- q. The term “person” means any individual, corporation, proprietorship, partnership, trust, association or any other entity.
- r. The terms “third party” and/or “third parties” refer to the individuals or entities that are not a party to this action.
- s. The term “Testing Facility” means the property located at located at 7861 NW 46th Street, Doral, FL 33166 in which the E-Cat is/was located.

**AREAS OF INQUIRY FOR THE CORPORATE REPRESENTATIVES OF
(1) CHEROKEE, (2) INDUSTRIAL HEAT, LLC, AND (3) IPH INTERNATIONAL, B.V.**

1. All contract negotiations between the parties to this lawsuit, including but not limited to the License Agreement and amendments thereto, the Term Sheet, and any other agreements.
2. All sources of funds to be used to pay the full amounts contemplated by the License Agreement.
3. All communications between the parties pertaining to the Guaranteed Performance Test.
4. All communications between the parties pertaining to the ERV for the Guaranteed Performance Test.
5. All communications between the parties pertaining to the protocols for the Guaranteed Performance Test.
6. All communications between the parties pertaining to problems or issues with the Guaranteed Performance Test.
7. All internal communications (including those with employees or independent contractors retained by you) pertaining to the Guaranteed Performance Test, including but not limited to those pertaining to:
 - a. the ERV for the Guaranteed Performance Test,
 - b. the protocols for the Guaranteed Performance Test, and
 - c. problems or issues with the Guaranteed Performance Test.
8. All communications with investors pertaining to: Rossi, Leonardo, E-Cat and E-CAT technology, and/or the Guaranteed Performance Test.
9. All internal communications pertaining to investor communications regarding Rossi, Leonardo, E-Cat and E-CAT technology, and/or the Guaranteed Performance Test.
10. All communications with Brillouin Energy pertaining to: Rossi, Leonardo, E-Cat and E-CAT technology, and/or the Guaranteed Performance Test.
11. All communications with Fred Zeopfl pertaining to: Rossi, Leonardo, E-Cat and E-CAT technology, the Guaranteed Performance Test, and/or the facility in Doral being used for testing the E-CAT technology.
12. All communications with any employee of the State of Florida pertaining to: Rossi, Leonardo, E-Cat and E-CAT technology, the Guaranteed Performance Test, and/or the facility in Doral being used for testing the E-CAT technology.
13. All attempts to replicate any of Plaintiffs' claimed E-Cat testing results.

14. All patent applications filed that incorporate, expand upon or otherwise relate to Plaintiffs' E-Cat technology, including but not limited to WIPO Patent Application number WO 2015/127263 A2 filed on August 27, 2015.
15. Your claims that Plaintiffs disclosed the E-Cat IP without prior consent, including to (a) the scientists who prepared the Lugano Report and (b) Norman Cook.
16. All communications with Henry Johnson and J.M. Products, Inc.
17. All due diligence performed by you pertaining to:
 - a. Andrea Rossi
 - b. E-Cat technology
 - c. Fabio Penon
 - d. United States Quantum Leap, LLC
 - e. Fulvio Fabiani
 - f. Henry Johnson
 - g. J.M. Products, Inc.
18. Your claims that Plaintiffs have breached the License Agreement.
19. Your claims that Plaintiffs have fraudulently induced you to enter into the Term Sheet.
20. Your claims that Plaintiffs have violated the Florida Deceptive and Unfair Trade Practices Act.
21. Your affirmative defenses filed in this case.
22. Any and all evidence which forms the basis for your good faith belief that Plaintiffs have not paid their taxes as you have alleged.

SUPPLEMENTAL AREAS OF INQUIRY

23. The source of all IH and IPH operating funds to pay or fund employees, contractors, consultants, or other individuals performing work for or on behalf of IH and IPH.
24. All services provided for or on behalf of IH and IPH.
25. Your knowledge of the facts used to support the affirmative defenses in this case.
26. Your knowledge of test protocol proposed or utilized by IH for operation, test, and or replication attempt, including but not limited to, test protocols performed in Ferraro, Italy; Lugano, Switzerland; Raleigh, North Carolina; and Doral, Florida.
27. Any alterations or proposed alterations to any test protocol, proposed test protocol, or procedure for the testing of the E-Cat or related E-Cat IP.