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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:16-cv-21199-CMA

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

_____ /

PERLMAN, BAJANDAS, YEVOLI &
ALBRIGHT, P.L.
282 CATALONIA AVENUE
SUITE 200
CORAL GABLES, FL 33134
Tuesday, February 14, 2017
8:01 a.m. - 3:16 p.m.

VIDEOTAPED DEPOSITION OF SLOCUM HATCH FOGLEMAN
(Corporate Representative of IPH International BV)

Taken on behalf of the Plaintiff before
Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
and for the State of Florida at Large, pursuant to
Plaintiff's Notice of Taking Deposition in the above
cause.

EXHIBIT "7"

1 APPEARANCES:

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24
25 ALSO PRESENT

CHRISTIAN HERNANDEZ, VIDEOGRAPHER

1 could. If you could give an audible answer to my
2 questions, that would help.

3 To the extent that you don't understand one of
4 my questions, I would ask you to tell me you don't
5 understand. I will try to rephrase it. If you do answer
6 my question, I am going to assume that you understood it.

7 This isn't an endurance test. If at any point
8 in time you need to take a break, let me know. And if
9 there is a question pending, I would ask first that you
10 answer the question before we take the break. Sound fair?

11 A. Yes.

12 Q. Okay. Have you been designated as the 30(b)(6)
13 witness for Inter -- IPH International BV?

14 A. Yes.

15 Q. And who designated you as that corporate
16 representative?

17 A. The management of the company.

18 Q. And who was that?

19 A. Tom Darden.

20 Q. Anybody else?

21 A. Not -- no.

22 Q. Okay. Who are the directors of -- I use the
23 phrase "IPH" to shorten it. Do we understand when I say
24 "IPH" that means IPH International BV?

25 A. Okay.

1 Q. Who are the directors of IPH?

2 A. The director A is IPH BV Holdings, Limited, and
3 director B is Ben Van Wijke, which I think is spelled
4 W-I-J-K-E. He is a Dutchman.

5 Q. Okay. Any other directors?

6 A. No.

7 Q. Okay. Who are the officers of IPH?

8 A. There are no officers.

9 Q. Does IPH have any employees?

10 A. No.

11 Q. How does IPH conduct operations if it has no
12 employees?

13 A. It does not conduct operations.

14 Q. Okay. Does it have a contract, a services
15 contract with Industrial Heat, LLC?

16 A. Yes.

17 Q. And what is the nature of that contract?

18 A. The nature of the contract is for Industrial
19 Heat to provide services that are specified in the
20 contract.

21 Q. What type of services does it provide?

22 A. Related to -- primarily related to R&D in
23 connection with the license agreement, the intellectual
24 property in the license agreement.

25 Q. Is this the license agreement that is at issue

1 MR. ARAN: Don't worry about it. I have the
2 normal notice. But it is okay.

3 MR. CHAIKEN: I'm sorry, guys. I have the
4 amended one here. Let me go off the record for a
5 second.

6 THE VIDEOGRAPHER: Off the record. The time is
7 8:06 a.m.

8 (Thereupon, a recess was taken.)

9 THE VIDEOGRAPHER: We are back on the record.
10 The time is 8:09 a.m.

11 MR. CHAIKEN: I apologize. Thank you,
12 Mr. Lomax, for pointing out my error. We have
13 provided now the new amended notice for taking
14 deposition.

15 BY MR. CHAIKEN:

16 Q. Mr. Fogleman, have you seen this document
17 before?

18 A. No.

19 Q. You have not. Okay. What did you do to
20 prepare for today's deposition?

21 A. I spent time reviewing the matter with counsel
22 yesterday, with Jones Day.

23 Q. Did you do anything else?

24 A. I read -- he presented me with the complaint
25 and our response -- response of the defendants.

1 Q. Okay.

2 A. So I read through that briefly. I believe the
3 license agreement and the assignment was attached to the
4 complaint. So I briefed through that.

5 Q. Okay.

6 A. I don't recall any other things.

7 Q. Did you talk -- did you talk to any Industrial
8 Heat employees about the allegations and the defenses
9 raised in this matter?

10 A. I have had a couple of conversations with JT
11 Vaughn.

12 Q. Okay. Could I ask you to quickly look through
13 Pages A-4 and A-5 of Exhibit 1, which is the topics for
14 which we have requested a corporate representative of IPH
15 to appear and answer questions to. After you have had a
16 chance to review, I will ask you a question, so let me
17 know.

18 A. Okay.

19 Q. Okay. Is there any topic on this list that you
20 are not prepared to testify about to?

21 A. No.

22 Q. So you are prepared to testify about all the
23 topics listed on Pages A-4 and A-5?

24 A. Is that the same question?

25 Q. Yes.

1 Heat, LLC, has.

2 BY MR. CHAIKEN:

3 Q. Okay. But I'm not talking to Industrial Heat
4 today, I am talking to IPH. So I am asking what -- what
5 information you have independent of that.

6 MR. LOMAX: Objection to the form of the
7 question.

8 THE WITNESS: I don't have information
9 independent of the information that Industrial Heat,
10 LLC has.

11 BY MR. CHAIKEN:

12 Q. Okay. I am trying to understand what
13 information Industrial Heat has now since you are relying
14 upon it. So what information does Industrial Heat have to
15 support that allegation?

16 MR. LOMAX: Objection to the form of the
17 question.

18 THE WITNESS: I think that is the same question
19 you asked before.

20 BY MR. CHAIKEN:

21 Q. Yeah.

22 A. And I would refer you to the testimony from
23 Industrial Heat, LLC.

24 Q. Okay. But you don't know what that testimony
25 is?

1 A. I don't.

2 Q. Okay. What information does IPH have to
3 support the allegation that in paragraph 51, "Rossi's
4 statement was false that Italian law would not allow the
5 24-hour validation process as set forth in the license
6 agreement without first obtaining a permit that would
7 require at least six months to obtain"?

8 A. Okay. I think this is the same question you
9 have just asked.

10 Q. No, actually I am talking about a different
11 allegation.

12 A. Please repeat the question.

13 Q. Sure. Well, I just read directly from
14 paragraph 51 of your complaint, excuse me, from your
15 counterclaim where you allege that Rossi's statement was
16 false in paragraph 51.

17 What proof did IPH have that Rossi's statement
18 was false?

19 MR. LOMAX: What is the difference between this
20 question and the last question?

21 MR. CHAIKEN: The question was -- the last part
22 was Rossi had no such meeting with the Ferrara health
23 office and I asked what --

24 MR. LOMAX: Okay. Asking about a different
25 fact.

1 Q. Okay. So your answer is -- well, I am not
2 going to state your answer.

3 A. Pardon?

4 Q. Strike that.

5 Sitting here today, you don't know a specific
6 dollar damage that you can attribute to the breach in
7 paragraph 60. Would that be true?

8 A. Yes.

9 Q. Okay. Is there anybody from IPH that could
10 provide that answer?

11 A. Not to my knowledge.

12 Q. Okay. Okay. Paragraph 63 on Page 41, the
13 second sentence states, "Nevertheless, Leonardo and Rossi
14 made no efforts to commence such a test during 2013 and
15 speaking to the guaranteed performance test."

16 What evidence does IPH have regarding Leonardo
17 and Rossi's efforts to commence the test?

18 A. The same information that Industrial Heat, LLC,
19 has regarding that issue.

20 Q. Did you talk to anybody from Industrial Heat,
21 LLC about that allegation?

22 A. No.

23 Q. Okay. Does IPH have any independent knowledge
24 regarding the allegation other than what it has been told
25 by Industrial Heat?

1 A. No.

2 Q. Does anyone else from IPH or would anybody else
3 from IPH be able to answer this question better than you?

4 A. I don't know that.

5 Q. Okay. Paragraph 64 states, "Despite Rossi's
6 presence and participation in the testing in North
7 Carolina, the E-Cat testing in North -- excuse me -- the
8 E-Cat testing in North Carolina was never able reliably or
9 credibly to reproduce the COP of 10.5 as reported by Penon
10 or even reach the lowest threshold identified in the
11 license agreement, which was a COP of 4.0."

12 What evidence is IPH aware of to support that
13 allegation?

14 A. The same evidence that Industrial Heat, LLC has
15 to support that evidence.

16 Q. And did you talk to somebody from Industrial
17 Heat about that allegation?

18 A. No.

19 Q. Do you have any independent knowledge about
20 that allegation other than what Industrial Heat knows?

21 A. No.

22 Q. Does anyone else from IPH or would anyone else
23 from IPH be better able to answer this question?

24 A. I don't know that.

25 Q. Okay. If you go to paragraph 66 on Page 43,

1 the last sentence of paragraph 66 states, "None of the
2 testing replicated or came close to replicating the high
3 COP results previously claimed by Leonardo, Rossi and
4 Penon or otherwise generated in measurable excess energy."

5 What evidence does IPH have in support of that
6 allegation?

7 A. The same evidence that Industrial Heat, LLC,
8 has to support that evidence.

9 Q. Did you talk to somebody from Industrial Heat
10 about that allegation?

11 A. No.

12 Q. Does IPH have independent knowledge other than
13 what IH knows?

14 A. No.

15 Q. Would anyone from IPH be able to better answer
16 that question?

17 A. I don't know that.

18 Q. Okay. Paragraph 68 on Page 43 goes all the way
19 to 44, states, "In 2014, knowing that the high COP results
20 that Leonardo, Rossi and Penon had previously claimed
21 could not be replicated by the various testing by E-Cat
22 reactors in North Carolina, some done at the direct
23 participation of Rossi, or even by the scientists in
24 Lugano, though Rossi had significant control over their
25 testing, Leonardo, Rossi and others devised a scheme to

1 get the plant removed from under Industrial Heat's control
2 in North Carolina and to a location in Florida where
3 Leonardo, Rossi and others could operate the plant without
4 careful oversight and could control how many measurements
5 of the plant's performance were conducted."

6 What facts or evidence does IPH have to support
7 that allegation?

8 A. The same facts and evidence that Industrial
9 Heat, LLC has to support that evidence.

10 Q. And did you talk to anybody from Industrial
11 Heat about that allegation?

12 A. No.

13 Q. And does IPH have any information separate and
14 apart from what Industrial Heat knows?

15 A. No.

16 Q. Would anyone from IPH be better able to answer
17 that question?

18 A. I don't know that.

19 Q. Do you know if -- are you familiar with the
20 document entitled "The Term Sheet" or called "The Term
21 Sheet"?

22 A. I am familiar with the title of the term sheet.

23 Q. Did you review it?

24 A. I don't recall reviewing it.

25 Q. Okay. Do you know if the term sheet provided

1 that Industrial Heat would have oversight and control over
2 the testing in Doral, Florida?

3 MR. LOMAX: Objection to the form of the
4 question.

5 THE WITNESS: I did not review the term sheet.

6 BY MR. CHAIKEN:

7 Q. Okay. So you don't know the answer to that
8 question?

9 A. No, I don't.

10 Q. Okay. Go to paragraph 72 on Page 46.

11 Paragraph 72 states, "Unbeknownst to counter-plaintiffs,
12 everything material in the Leonardo and Rossi proposal was
13 false. There was no customer in Florida who needed steam
14 power for its chemical products processing."

15 And I will go on in a minute, but what evidence
16 does IPH have in support of that allegation?

17 A. The same evidence that Industrial Heat, LLC has
18 to support that allegation.

19 Q. And did you speak to anyone at Industrial Heat
20 about that allegation?

21 A. No.

22 Q. Does IPH have any independent knowledge other
23 than what Industrial Heat knows?

24 A. No.

25 Q. Would anyone from IPH be better able to answer

1 that question?

2 A. I don't know that.

3 Q. The next phrase states, "There was no intention
4 for Leonardo and Rossi to operate the plant to provide
5 power to a real customer."

6 Are you aware of any evidence to support that
7 allegation?

8 A. I'm not aware of any evidence other than what
9 Industrial Heat, LLC, has to support that allegation.

10 Q. Did you speak to anyone at IPH to support that
11 allegation?

12 A. No.

13 Q. Why not?

14 MR. LOMAX: Objection to the form of the
15 question.

16 THE WITNESS: It just hasn't come up in our
17 conversations.

18 BY MR. CHAIKEN:

19 Q. When you were preparing for the deposition, you
20 didn't think you would have to know anything about what
21 was alleged?

22 A. I knew that we were going to rely on the
23 evidence that Industrial Heat, LLC has to support the
24 allegations.

25 Q. "We" being IPH?

1 A. I'm sorry. IPH International BV.

2 Q. Okay. Would anyone else from IPH be able to
3 answer the question as to what evidence you have in
4 support of that allegation?

5 A. I can't speak for anyone else.

6 Q. The next section here states, "And there was no
7 intention for Leonardo and Rossi to seek authorizations
8 from regulatory agencies to allow the plant or subsequent
9 E-Cat plants to be used for other commercial purposes."

10 What evidence does IPH have to support that
11 allegation?

12 A. The same evidence that Industrial Heat, LLC has
13 to support that allegation.

14 Q. Did you speak to anyone at Industrial Heat
15 about that one?

16 A. No.

17 Q. And does IPH have any independent knowledge
18 about that allegation?

19 A. No.

20 Q. Okay. Would anyone from IPH other than
21 yourself be able to better answer that question?

22 A. I can't speak for anyone else.

23 Q. Okay. The next sentence in that paragraph
24 states, "Instead, the sole intention of Leonardo and Rossi
25 all along was to find a way to get the plants away from

1 counter-plaintiffs and then to conduct a fatally flawed
2 and fatally late run that demonstrated guaranteed
3 performance so that they could be falsely entitled to
4 \$89 million payment under the license agreement."

5 What evidence does IPH have in support of that
6 allegation?

7 A. The same evidence that Industrial Heat, LLC,
8 has to support that allegation.

9 Q. Did you speak to anyone at Industrial Heat
10 about that allegation?

11 A. No.

12 Q. Does IPH have any independent information
13 regarding that allegation?

14 A. No.

15 Q. Would anybody else from IPH be better able to
16 answer that question?

17 A. I can't speak for anyone else.

18 Q. How was the test run in Doral fatally flawed as
19 alleged in paragraph 72?

20 MR. LOMAX: Objection to the form of the
21 question.

22 THE WITNESS: I would rely on Industrial Heat,
23 LLC to provide that information.

24 BY MR. CHAIKEN:

25 Q. IPH doesn't have that information?

1 A. IPH International BV has the same information
2 that Industrial Heat, LLC has.

3 Q. But you don't know what that information is,
4 sitting here today?

5 A. Not that specific information, not me.

6 Q. Okay. Paragraph 73 states, second sentence,
7 "During this meeting -- " referring to a meeting in
8 July 2014, " -- Rossi and Johnson made a number of false
9 representations to Industrial Heat, most notably that JMP,
10 at the time called JM Chemical Products, Inc., was a
11 confidential subsidiary of Johnson Matthey, PLC, and that
12 Johnson Matthey was interested in using E-Cat technology
13 in connection with a confidential manufacturing process it
14 wants to operate in Florida."

15 What evidence does IPH have in support of that
16 allegation?

17 A. The same evidence that Industrial Heat, LLC,
18 has to support that allegation.

19 Q. Did you speak to anyone from Industrial Heat
20 about it?

21 A. No.

22 Q. Does IPH have any evidence or knowledge other
23 than what Industrial Heat knows?

24 A. Not to my knowledge.

25 Q. Does anyone from IPH other than yourself have

1 better or be able to better answer that question?

2 A. I can't speak for anyone else.

3 Q. Later in this paragraph, turn to Page 47, the
4 last sentence states, "JMP, however, has never been a
5 subsidiary of Johnson Matthey, was not operating or
6 planning to operate any manufacturing process of Florida,
7 and was, in fact, owned by persons from Johnson
8 represented in writing did not have any ownership interest
9 in JMP."

10 What facts or evidence does IPH have in support
11 of that allegation?

12 A. The same facts and evidence Industrial Heat,
13 LLC, has to support that.

14 Q. Did you speak to anyone from Industrial Heat
15 about it?

16 A. No.

17 Q. And does IPH have any independent knowledge
18 other than what Industrial Heat knows?

19 A. No, not to my knowledge.

20 Q. Would anyone else from IPH be able to better
21 answer that question?

22 A. I don't know that. I can't speak for anyone
23 else.

24 Q. Okay. Paragraph 77 states "JMP's further role
25 intensified when it, along with Leonardo, Rossi, Johnson

1 and Fabiani, went so far as to have Bass pose as director
2 of engineer for JMP."

3 What facts or evidence does IPH have in support
4 of that allegation?

5 A. The same evidence that Industrial Heat, LLC has
6 to support that allegation.

7 Q. Did you speak to anyone at Industrial Heat
8 about it?

9 A. No.

10 Q. And does IPH have any independent knowledge
11 apart from what Industrial Heat knows?

12 A. Not to my knowledge.

13 Q. Would anyone from IPH be better able to answer
14 that question?

15 A. I don't know that. I can't speak for anyone
16 else.

17 Q. Okay. Paragraph 78, middle of the page --
18 middle of the paragraph states, "Bass also met with
19 others, falsely claiming JMP was using steam from the
20 plant in a secretive manufacturing process. All the while
21 JMP, Leonardo, Rossi, Johnson, Fabiani and Bass knew there
22 was no secretive manufacturing process taking place and
23 JMP had no real use for the steam power."

24 What proof or evidence does IPH have with
25 respect to those allegations?

1 A. The same proof or evidence that Industrial
2 Heat, LLC has to support that allegation.

3 Q. Did you speak to anyone from Industrial Heat
4 about these allegations?

5 A. No.

6 Q. Does IPH have any knowledge independent of
7 Industrial Heat?

8 A. Not to my knowledge.

9 Q. And would be anybody else from IPH be better
10 able to answer that question?

11 A. I don't know that. I can't speak for anyone
12 else.

13 Q. Okay. Paragraph 79 states, "In mid 2015,
14 Industrial Heat hired Joseph Murray to serve as vice
15 president of engineering and empowered him to assemble a
16 team of engineers and scientists to elevate the level of
17 Industrial Heat's testing and evaluation of LENR
18 technology."

19 Do you know who Joe Murray is?

20 A. Yes.

21 Q. And is this allegation true, as far as you
22 know?

23 MR. LOMAX: Objection to the form of the
24 question.

25 THE WITNESS: Yes.

1 BY MR. CHAIKEN:

2 Q. Why was it necessary for Industrial Heat to
3 elevate the level of Industrial Heat's testing?

4 MR. LOMAX: Objection to the form of the
5 question.

6 THE WITNESS: That was a decision made by
7 Industrial Heat, LLC not by IPH International BV.

8 BY MR. CHAIKEN:

9 Q. So did you talk to Industrial Heat about this
10 allegation?

11 A. No.

12 Q. You have no independent knowledge about it?

13 A. No.

14 Q. Paragraph 82 on Page 49 states, "Leonardo.
15 Rossi, JMP, Johnson, USQL, Fabiani and Bass also
16 restricted access to the JMP area at the Doral location,
17 claiming that there was a secretive manufacturing process
18 being conducted there when, in fact, it was simply
19 recycling steam for plant and sending it back to the plant
20 as water."

21 What proof or evidence does IPH have in support
22 of that allegation?

23 A. The same evidence that Industrial Heat, LLC has
24 to support the allegation.

25 Q. Did you discuss this allegation with Industrial

1 Heat?

2 A. No.

3 Q. Does IPH have any independent knowledge other
4 than what Industrial Heat knows?

5 A. Not to my knowledge.

6 Q. Would anyone from IPH be better able to answer
7 that question?

8 A. I don't know that. I can't speak for anyone
9 else.

10 Q. Do you know if Industrial Heat agreed to have
11 the access in the JMP area at the plant restricted?

12 MR. LOMAX: Objection to the form of the
13 question.

14 THE WITNESS: No.

15 BY MR. CHAIKEN:

16 Q. Paragraph 83 states, "Fabiani, USQL and Penon
17 also played critical roles in the scheme to hide the fact
18 that the plant does not perform up to standards set forth
19 in the license agreement."

20 What proof or evidence does IPH have in support
21 of that allegation?

22 A. The same evidence that Industrial Heat, LLC has
23 in support.

24 Q. Did you speak to anyone at Industrial Heat
25 about that allegation?

1 A. No.

2 Q. Does IPH have any knowledge independent of what
3 Industrial Heat knows?

4 A. Not to my knowledge.

5 Q. Would anyone from IPH be able to better answer
6 that question?

7 A. I don't know that. I can't speak for anyone
8 else.

9 Q. Paragraph 85 states, "In part, USQL and Fabiani
10 have purposely only been providing very limited
11 information to Industrial Heat. They have not been
12 providing Industrial Heat with complete accurate
13 information on the plant, knowing that such information
14 would demonstrate the plant was not performing at levels
15 claimed by Leonardo, Rossi and Penon."

16 What evidence or proof does IPH have in support
17 of that allegation?

18 A. The same evidence that Industrial Heat, LLC,
19 has to support the allegation.

20 Q. Did you speak to anyone at Industrial Heat
21 about that?

22 A. No.

23 Q. And does IPH have any knowledge independent
24 from what Industrial Heat knows?

25 A. Not to my knowledge.

1 Q. Would anyone from IPH be better able to answer
2 that question?

3 A. I don't know that. I can't speak for anyone
4 else.

5 Q. Paragraph 86 states, "Furthermore, Fabiani and
6 USQL have refused and continue to refuse to provide
7 records, tests or results and other information relating
8 to their engagement under the USQL agreement to Industrial
9 Heat even though they agreed that such information is the
10 property of Industrial Heat."

11 What proof or evidence does IPH have in support
12 of that allegation?

13 A. The same information that Industrial Heat, LLC
14 has.

15 Q. Did you speak to someone from Industrial Heat
16 about that allegation?

17 A. No, I did not.

18 Q. Does IPH have any knowledge independent of what
19 Industrial Heat knows?

20 A. Not to my knowledge.

21 Q. Would anyone from IPH be better able to answer
22 that question?

23 A. I don't know that. I can't speak for anyone
24 else.

25 Q. Okay. Page 51, paragraph 89. The second

1 sentence states, "To start his initial plan -- " speaking
2 of Fabio Penon "-- Penon's initial plan and design for
3 measuring the power coming into and out of the plant was,
4 as he well knew, fundamentally flawed."

5 Do you know how his plan was fundamentally
6 flawed?

7 A. I don't know anything other than what
8 Industrial Heat, LLC, knows.

9 Q. And did you speak to anyone from Industrial
10 Heat about what they believed was fundamentally flawed
11 about Mr. Penon's plan?

12 A. No, I did not.

13 Q. Does IPH have any independent knowledge
14 regarding that issue?

15 A. Not to my knowledge.

16 Q. Would anyone from IPH be better able to answer
17 this question?

18 A. I don't know that. I can't speak for anyone
19 else.

20 Q. Okay. Paragraph 90 states, "Penon further
21 knowingly relied on flawed or fabricated data collections
22 in his supposed evaluation of the plant's performance."

23 What proof does IPH have in support of that
24 allegation?

25 A. Same proof that Industrial Heat, LLC has.

1 Q. And did you speak to anyone from Industrial
2 Heat about that?

3 A. No.

4 Q. And does IPH have any knowledge independent of
5 what Industrial Heat knows?

6 A. Not to my knowledge.

7 Q. Would anyone from IPH be better able to answer
8 that question?

9 A. I don't know that. I can't speak for anyone
10 else.

11 Q. Paragraph 95 on Page 52 states, "However, after
12 numerous attempts, both with and without Rossi's
13 involvement, counter-plaintiffs have been unable, using
14 the transfer to E-Cat IP, to replicate the results
15 included in the evaluation report purportedly certifying
16 validation, that validation was achieved from April 30th
17 to May 1, 2013, or otherwise generate measurable excess
18 energy."

19 What proof was IPH have with respect to that
20 allegation?

21 A. The same proof that Industrial Heat, LLC has to
22 support that allegation.

23 Q. Did you speak to anyone at Industrial Heat
24 about that allegation?

25 A. No.

1 Q. Does IPH have any independent knowledge outside
2 of what Industrial Heat knows?

3 A. Not to my knowledge.

4 Q. Would anyone from IPH be better able to answer
5 that question?

6 A. I don't know that. I can't speak for anyone
7 else.

8 Q. Paragraph 96 states, "Only one of three
9 conclusions can be drawn from the foregoing facts. One,
10 Leonardo and Rossi did not transfer and deliver all E-Cat
11 IP to counter-plaintiffs.

12 "Two, validation was never achieved and Penon's
13 reported COP calculations were false or three, both."

14 Are you aware of any other conclusions that
15 could be drawn from those facts?

16 A. No.

17 Q. Did you speak to anyone from Industrial Heat
18 about this allegation?

19 A. No.

20 Q. Did Industrial Heat have the ability or
21 authority to execute contracts on behalf of IPH?

22 A. I'm not aware of any.

23 Q. Okay. Did IPH have the ability to -- excuse
24 me. Did IH have the ability to enter contracts with
25 people about the testing of the plant in Florida?

1 Investment Partners?

2 A. Yes.

3 Q. Okay.

4 A. I'm sorry. You said Woodford Investment
5 Partners?

6 Q. Yeah. Did I misstate that?

7 A. That is not the name, by my recollection.

8 Q. What was the name?

9 MR. LOMAX: Objection to the form of the
10 question.

11 THE WITNESS: We -- we refer to Woodford as
12 Woodford Funds. There are two specific Woodford
13 Funds that invested as part of that restructuring or
14 capital raise.

15 BY MR. CHAIKEN:

16 Q. Okay. Is IPH wholly owned by IH directly or
17 indirectly today? And I know I may have asked that
18 earlier, but I just want to make it very clear.

19 In -- in the structure that it was re -- in
20 the -- in the restructuring of the entities, sitting here
21 today, is IPH International BV directly or indirectly
22 owned by Industrial Heat, LLC?

23 A. No.

24 Q. Okay. Turning back to the fourth amended
25 counterclaim, paragraph 103 on Page 54, paragraph 103

1 states, "Not withstanding the clarity of the
2 confidentiality provisions set forth above, Rossi, both
3 individually and on behalf of Leonardo as its owner and
4 sole operating officer, repeatedly violated the
5 confidentiality provisions."

6 What information or proof does IPH have in
7 support of that allegation?

8 A. The same information that Industrial Heat, LLC
9 has to support that allegation.

10 Q. Did you speak to anyone from Industrial Heat
11 about that?

12 A. No.

13 Q. Does IPH have any information independent of
14 Industrial Heat?

15 A. Not to my knowledge.

16 Q. Would anyone from IPH be able to better answer
17 my questions regarding that allegation?

18 A. I can't speak for anyone else. I don't know
19 that.

20 Q. Okay. Paragraph 104 on Page 54 states,
21 "Addressing solely the time period prior to the filing of
22 their complaint in April 2016, Leonardo and Rossi violated
23 the first confidentiality provision by disclosing various
24 specific terms of the agreement.

25 "Paragraph A, Leonardo and Rossi disclosed that

1 their agreement with counter-plaintiffs required a test of
2 the plant."

3 What proof does IPH have in support of that
4 allegation?

5 A. The same information that Industrial Heat, LLC
6 has to support that allegation.

7 Q. Do you have any independent knowledge other
8 than what Industrial Heat has?

9 A. No.

10 Q. Did you speak to anyone from Industrial Heat
11 prior to coming here today about that allegation?

12 A. No.

13 Q. Would anyone from IPH be able to better answer
14 my questions?

15 A. I don't know that. I can't speak for anyone
16 else.

17 Q. Okay. Paragraph B states -- well, before I get
18 on to paragraph B, paragraph A, do -- does IPH know
19 exactly when Leonardo and Rossi made that disclosure?

20 A. IPH has the same information that Industrial
21 Heat has.

22 Q. Okay. Does IPH know, sitting here today, when
23 that breach of the confidentiality provision was made?

24 A. IPH would know the same thing that Industrial
25 Heat, LLC, knows.

1 Q. But I am asking what you know, sitting here
2 today.

3 A. Me personally?

4 Q. No. You on behalf of IPH.

5 A. IPH knows the same thing Industrial Heat, LLC,
6 knows.

7 Q. Okay. But you are here on behalf of IPH,
8 correct?

9 A. Yes.

10 Q. Okay. I am asking what IPH knows, sitting here
11 today?

12 A. I didn't discuss this with anyone at IH, so no,
13 I don't personally know.

14 Q. I am not asking what you personally know. I am
15 asking what IPH knows.

16 MR. LOMAX: Objection to the form of the
17 question.

18 THE WITNESS: IPH know the same thing that
19 Industrial Heat, LLC knows.

20 BY MR. CHAIKEN:

21 Q. Okay. Sitting here today, IPH can't answer my
22 question?

23 MR. LOMAX: Objection to the form of the
24 question.

25 THE WITNESS: IPH's answer is that IPH has the

1 same information that Industrial Heat, LLC has.

2 BY MR. CHAIKEN:

3 Q. Okay. Let's go to paragraph B. "Leonardo and
4 Rossi disclose that their agreement with
5 counter-plaintiffs required a test to be conducted over
6 400 days."

7 What evidence does IPH have in support of that
8 allegation?

9 A. The same information that Industrial Heat, LLC,
10 has.

11 Q. And did you speak to anyone from Industrial
12 Heat about it?

13 A. No.

14 Q. And does IPH have any knowledge independent of
15 what Industrial Heat knows?

16 A. Not to my knowledge.

17 Q. And does anyone else from IPH have better
18 information about this than you?

19 A. I can't speak for anyone else. I don't know
20 that.

21 Q. Paragraph C states, "Leonardo and Rossi
22 disclosed that their agreement with counter-plaintiffs
23 required a test involving 350 days of operation at the
24 E-Cat plant."

25 What proof or evidence does IPH have in support

1 of that allegation?

2 A. The same information that Industrial Heat, LLC
3 has to support that allegation.

4 Q. Did you speak to anyone from Industrial Heat
5 about that allegation?

6 A. No.

7 Q. Does IPH have any knowledge independent of what
8 Industrial Heat knows?

9 A. Not to my knowledge.

10 Q. Would anyone from IPH have better knowledge
11 than you?

12 A. I don't know that. I can't speak for anyone
13 else.

14 Q. Paragraph D states, "Leonardo and Rossi
15 disclosed that their agreement with counter-plaintiffs
16 required a guaranteed performance or a guarantee of
17 performance test."

18 What proof or evidence does IPH have in support
19 of that allegation?

20 A. The same information that Industrial Heat, LLC
21 has to support that allegation.

22 Q. Did you speak to anyone from Industrial Heat
23 about that?

24 A. No.

25 Q. Does IPH have any knowledge independent of what

1 Industrial Heat knows?

2 A. Not to my knowledge.

3 Q. Would anyone from IPH be better able to answer
4 that question?

5 A. I don't know that. I can't speak for anyone
6 else.

7 Q. Okay. Going to Page 55, paragraph 106, "IPH
8 alleges that Leonardo and Rossi violated the second
9 confidentiality provision by disclosing various
10 information about the E-Cat IP, specifically paragraph A.
11 Leonardo and Rossi, without any written waiver from IPH,
12 provided samples of the E-Cat fuel to the scientists
13 preparing the Lugano report or authorizing scientists to
14 obtain samples."

15 What proof does IPH have in support of that
16 allegation?

17 A. The same information that Industrial Heat, LLC
18 has. And I see there is a reference to an exhibit.

19 Q. Yeah. Okay. Did you speak to anyone from
20 Industrial Heat about that allegation?

21 A. No.

22 Q. Does IPH have any knowledge independent of what
23 Industrial Heat knows?

24 A. Not to my knowledge.

25 Q. Do you know if Tom Darden or JT Vaughn approved

1 Leonardo and Rossi providing samples to the scientists who
2 prepared the Lugano report?

3 A. No.

4 Q. Would anyone from IPH other than yourself have
5 any additional information regarding these allegations?

6 A. Not to my knowledge.

7 Q. Do you know how IPH has been harmed or if IPH
8 has been harmed as a result of this disclosure?

9 A. Other than as stated in this document?

10 Q. Yeah.

11 A. A breach of contract. We went over this
12 before.

13 Q. Right. But this is a different breach of
14 contract, right?

15 A. It is a different allegation.

16 Q. Right. Right. It is a -- it is a different
17 allegation. So has IPH been harmed separately as a result
18 of the violation of the confidentiality provision versus
19 providing or -- or delivering the plant late?

20 A. It's -- it's the breach of contract that's --
21 that's the -- leads to the damage in this document.

22 Q. Right. But there are separate breaches, right?

23 A. Yes.

24 Q. Okay. So one breach that we talked about
25 earlier was the plant was delivered not timely or

1 untimely. Would you agree with that?

2 A. Yes. We did review that earlier.

3 Q. Okay. Now we are talking about a breach of the
4 confidentiality provision. Do you understand that?

5 A. Yes.

6 Q. Okay. Two different breaches, correct?

7 A. Yes.

8 Q. Okay. How has IPH been harmed by the breach of
9 the confidentiality provision?

10 A. The subject matter of the contract is
11 intellectual property that -- and the contract included
12 specific provisions to maintain confidentiality of that
13 information to protect the parties in the contract. So a
14 breach of that provision would be a direct violation of
15 the contract.

16 Q. Okay.

17 A. And by that disclosure of confidential
18 information into -- to persons outside the parties would
19 lead -- would, by my understanding, lead to damages.

20 Q. Okay. My question to you is, what are those
21 damages?

22 A. In paragraph 98 --

23 Q. Yep.

24 A. -- did we cover that? Is that what you are
25 asking?

1 Q. No. Well, I am asking you, is there a dollar
2 amount that you can attribute to this claim by IPH that
3 Leonardo and Rossi have violated the provisions of the
4 license agreement as it relates to confidentiality? So --

5 A. I think your question was about dollar amounts,
6 and the dollar amounts are stipulated in paragraph 98.

7 Q. Okay. Is there anywhere else that dollar
8 amounts are stipulated to or are alleged as it relates to
9 specifically the breach of the non-confidentiality
10 provision -- excuse me, breach of the confidentiality
11 provision?

12 MR. LOMAX: Objection to the form of the
13 question.

14 THE WITNESS: I don't recall that at this time.
15 BY MR. CHAIKEN:

16 Q. Looking at paragraph 98, which you referred to,
17 do you have that in front of you, 98?

18 A. Yes.

19 Q. You are saying that IPH has made a damage claim
20 for, at least in subparagraph A-98, 1.5 million and 10
21 million. See that?

22 A. Yes, I see that.

23 Q. Did IPH pay Leonardo 1.5 million?

24 A. No.

25 Q. Who did?

1 A. Industrial Heat.

2 Q. So why is IPH entitled to a return of
3 1.5 million?

4 MR. LOMAX: Objection to the form of the
5 question.

6 THE WITNESS: Did I say they were entitled to
7 the 1.5 million?

8 BY MR. CHAIKEN:

9 Q. No. You said they were seeking damages for
10 that. I am trying to understand why.

11 A. The paragraph says the counter-plaintiffs, as a
12 group --

13 Q. Yeah.

14 A. -- are seeking these damages.

15 Q. Okay.

16 A. IPH is one of the counter-plaintiffs.

17 Q. Okay. So is IPH seeking a return of
18 1.5 million?

19 MR. LOMAX: Objection to the form of the
20 question.

21 THE WITNESS: It's -- it, along with the other
22 counter-plaintiffs, is seeking the damages that are
23 stipulated in paragraph 98.

24 BY MR. CHAIKEN:

25 Q. Okay. But I am asking you specifically about

1 IPH right now. What is IPH seeking?

2 MR. LOMAX: Objection to the form of the
3 question.

4 THE WITNESS: IPH is specifically seeking the
5 damages that it incurred that are included in this
6 paragraph. And I have already said that it did not
7 pay the 1.5 million.

8 BY MR. CHAIKEN:

9 Q. Okay.

10 A. So to the extent the rest of these damages were
11 incurred by IPH, IPH is seeking those damages.

12 Q. Okay. And what specifically is the amount that
13 IPH is seeking?

14 MR. LOMAX: Objection to the form of the
15 question.

16 THE WITNESS: The \$10 million payment.

17 BY MR. CHAIKEN:

18 Q. IPH made the \$10 million payment to Leonardo?

19 A. Do you want to go through the transaction?

20 Q. Yeah. I am asking. Did IPH make the
21 \$10 million payment to Leonardo?

22 A. IPH -- IH, LLC, contributed the \$10 million in
23 capital to IPH and -- and then the \$10 million payment
24 to -- for the license payment --

25 Q. Okay.

1 A. -- was attributed to IPH.

2 Q. Okay. So you are saying IPH is seeking
3 \$10 million in damages?

4 MR. LOMAX: Objection to the form of the
5 question.

6 THE WITNESS: Among the other amounts
7 included --

8 BY MR. CHAIKEN:

9 Q. Okay.

10 A. -- incurred by IPH.

11 Q. What other amounts are those?

12 MR. LOMAX: Objection to the form of the
13 question.

14 THE WITNESS: Well, it says the other payments
15 made to Leonardo and Rossi to reimburse them for
16 unnecessary services, equipment and expenses.

17 BY MR. CHAIKEN:

18 Q. And has IPH computed what those amounts are?

19 A. I'm sure we have. I don't have that number
20 here right now. But we have and I think we have provided
21 it.

22 Q. Okay. And did you prepare -- did you review
23 that before coming today?

24 A. I reviewed a list of those --

25 Q. Okay.

1 A. -- of those charges.

2 Q. Do you have an approximate number as to what
3 that totals to?

4 A. I don't recall the total. I just remember the
5 list.

6 Q. Okay. Let's go back now to paragraph 106A and
7 what portion of those damages that IPH is seeking is
8 attributable to the breach of the confidentiality
9 provision?

10 MR. LOMAX: Objection to the form of the
11 question.

12 THE WITNESS: I'm not aware that the damages
13 have been bifurcated in that manner.

14 BY MR. CHAIKEN:

15 Q. Okay. Sitting here today, can IPH tell me how
16 much they have been damaged as a result of the breach of
17 the confidentiality provision as alleged in
18 paragraph 106A?

19 MR. LOMAX: Objection to the form of the
20 question.

21 THE WITNESS: Not specifically with respect to
22 106 -- we have not bifurcated the damages in that
23 way.

24 BY MR. CHAIKEN:

25 Q. Okay. Let's go to paragraph 106B. B states,

1 "Leonardo and Rossi, without any written waiver from IPH,
2 disclosed scientific information about the E-Cat fuels to
3 Norman Cook, a professor at Kansai University in Osaka,
4 Japan."

5 What proof or evidence does IPH have in support
6 of that allegation?

7 A. The same evidence that Industrial Heat, LLC has
8 to support the allegation. And there is a reference to an
9 exhibit.

10 Q. Right. And did you speak to anyone from
11 Industrial Heat about that allegation?

12 A. No.

13 Q. Does IPH have any knowledge independent of what
14 Industrial Heat knows?

15 A. Not that I'm aware of.

16 Q. Do you know if anyone from Industrial Heat or
17 whether Tom Darden or JT Vaughn approved of Leonardo and
18 Rossi sharing information with Dr. Cook?

19 A. No.

20 Q. Would anyone from IPH have any information
21 other than what you told me today?

22 A. I don't know that. I can't speak for anyone
23 else about that.

24 Q. Paragraph C states, "Leonardo and Rossi,
25 without any written waiver from IPH, have made public

1 comments about the E-Cat fuel sample on the Internet."

2 What proof or facts does IPH have in support of
3 those allegations?

4 A. The same support that Industrial Heat has --
5 Industrial Heat, LLC has to support the allegation.

6 Q. Did you speak to anyone from Industrial Heat,
7 LLC about that allegation?

8 A. No.

9 Q. Does IPH have any knowledge independent of what
10 Industrial Heat knows?

11 A. Not to my knowledge.

12 Q. Does anyone from IPH have better information
13 than you have?

14 A. I don't know that. I can't speak for anyone
15 else.

16 Q. Okay. Do you know what specific confidential
17 information Leonardo and Rossi disclosed that is violative
18 of the confidentiality provision?

19 A. I'm sorry. Restate, please.

20 Q. Yeah. Do you know what specific confidential
21 information Leonardo and Rossi disclosed that is violative
22 of the confidentiality provision?

23 A. I don't.

24 Q. Okay. Paragraph 113 on Page 56 states
25 "Leonardo and Rossi's failure to assign the license

1 patents caused IPH to suffer damages that is unable to
2 secure any value that might have been derived from having
3 control over the license and patents."

4 What proof or evidence do you have in support
5 of the allegations that Leonardo and Rossi failed to
6 assign license patents to IPH?

7 A. The same information that Industrial Heat, LLC
8 has to support the allegation.

9 Q. And did you speak to anyone from Industrial
10 Heat about that allegation?

11 A. No.

12 Q. Does IPH have knowledge independent of what
13 Industrial Heat knows?

14 A. Not to my knowledge.

15 Q. Would anyone from IPH be able to better answer
16 the question?

17 A. I don't know that. I can't speak for anyone
18 else.

19 Q. Is it your understanding that IPH is claiming
20 that the license that is at issue in this case is
21 valueless?

22 MR. LOMAX: Objection to the form of the
23 question.

24 THE WITNESS: Can you restate the question.

25 BY MR. CHAIKEN:

1 Q. Yeah. Is it your understanding that IPH is
2 claiming that the IP, pursuant to the license agreement,
3 is valueless?

4 MR. LOMAX: Objection to the form of the
5 question.

6 THE WITNESS: Valueless?

7 BY MR. CHAIKEN:

8 Q. Yeah.

9 A. Not specifically.

10 Q. Is it your understanding that the IP that is
11 the subject of the license agreement has some value?

12 MR. LOMAX: Objection to the form of the
13 question.

14 THE WITNESS: Based on the results of the
15 efforts to replicate the IP, we haven't been able to
16 determine an answer to that question. I think that
17 is the issue.

18 BY MR. CHAIKEN:

19 Q. So, sitting here today, IPH doesn't know
20 whether it has any value, if any. Would you agree with
21 that?

22 A. So far we have not been able to prove that
23 there is any value in the intellectual property in the
24 license agreement.

25 Q. Okay. So what damages are or is IPH claiming

1 as a result of the claim that Leonardo and Rossi breached
2 the license agreement by failing to assign license
3 patents?

4 A. The same damages that we have reviewed in
5 paragraph 98.

6 Q. Is there a dollar amount, a dollar amount that
7 is in paragraph 98?

8 A. To my knowledge we haven't bifurcated the
9 dollar amounts in that manner.

10 Q. Okay. So you can't assign a specific dollar
11 amount to damages as a result of Leonardo and Rossi's
12 failure to assign license patents; is that correct?

13 MR. LOMAX: Objection to the form of the
14 question.

15 THE WITNESS: No.

16 BY MR. CHAIKEN:

17 Q. No, it is not correct or no, you can't?

18 A. We have not been able to assign a value to that
19 specific allegation.

20 Q. Okay. Paragraph 117 states on Page 57 that,
21 "Leonardo also failed to keep IPH informed of the progress
22 of the patent application related to the license patents.
23 And, finally, Leonardo, without prior consent from IPH,
24 abandoned several patent applications."

25 What evidence or proof does IPH have in support

1 of that allegation?

2 A. IPH has the same information that IH, LLC, has
3 to support that allegation.

4 Q. And did you speak to anyone from Industrial
5 Heat about that allegation?

6 A. No.

7 Q. And does IPH have any independent knowledge
8 regarding that allegation?

9 A. Not to my knowledge.

10 Q. Does anyone else from IPH have greater
11 information about that allegation than you?

12 A. I don't know that. I can't speak for anyone
13 else.

14 Q. Paragraph 116 states, "After executing the
15 license agreement, Leonardo filed patent applications
16 relating to license patents without informing IPH."

17 Do you know what patent applications those
18 were?

19 A. No.

20 Q. Do you know how many licensed patent
21 applications Leonardo and Rossi filed?

22 A. IPH -- I'm sorry, Industrial Heat, LLC would
23 have that information, so I would refer you to Industrial
24 Heat, LLC for that answer.

25 Q. Okay. Do you have any -- did you speak to

1 Industrial Heat about that?

2 A. No.

3 Q. Do you know what dollar amounts IPH is claiming
4 as a result of Leonardo's failure to inform IPH about
5 patent applications it was filing?

6 A. Did we cover this a few minutes ago?

7 Q. Different question. Pretty close. Pretty
8 similar but close.

9 A. But I'm not recalling.

10 Q. Sure. The other one talks about --

11 A. Why don't you just ask the question if it is a
12 different question.

13 Q. Sure. This one is specific to the allegation
14 that Leonardo filed patent applications relating --
15 relating to the license patents without informing IPH.
16 That is in paragraph 116.

17 And it was to combine it with 117 where
18 Leonardo filed to keep IPH informed about its patent
19 applications and abandoned several patent applications
20 without the written consent of IPH.

21 So taking 116 and 117 together, is there a
22 dollar amount that IPH is claiming as a result of the
23 breaches set forth in paragraphs 116 and 117?

24 MR. LOMAX: Objection to the form of the
25 question.

1 myself. So I was asking, is there a difference between
2 the damage you are claiming pursuant to the allegations
3 of -- of breach in 113 versus the allegations of breach in
4 116 and 117?

5 A. We have not bifurcated damages in that manner.

6 Q. Okay. That -- that is what I was getting to.
7 I wasn't trying to confuse you.

8 Does -- looking at paragraphs 120 through 124,
9 does IPH claim that Industrial -- excuse me, Leonardo and
10 Rossi have violated the covenant not to compete?

11 A. Yes, it states in here that --

12 Q. And specifically you are referring to what
13 paragraph?

14 A. Paragraph 23.

15 Q. 123?

16 A. I'm sorry, 123, states that, "As a result of
17 the conduct referenced in the preceding paragraphs,
18 regardless of whether it will ever lead to creation of a
19 viable commercial product that can be sold leased or
20 rented, is in direct conflict with the license agreement."

21 And then paragraph 124 --

22 Q. Okay.

23 A. -- references the covenant not to compete.

24 Q. Right. And that refers to paragraph -- I guess
25 you are referring to -- 123 refers back to paragraph 121

1 where it states that, "Leonardo and Rossi claim they have
2 sold at least three E-Cat units."

3 Do you see that?

4 A. Yes.

5 Q. Do you know whether or not that was true,
6 whether or not Leonardo and Rossi had, in fact, sold at
7 least three E-Cat units?

8 MR. LOMAX: Objection to the form of the
9 question.

10 THE WITNESS: The information we would have
11 about that would be the same information that
12 Industrial Heat, LLC has about that allegation.

13 BY MR. CHAIKEN:

14 Q. Okay. So IPH doesn't have information
15 independent of what Industrial Heat has?

16 A. Yes.

17 Q. And did you speak to anyone from Industrial
18 Heat about the allegations contained in paragraphs 120
19 through 124?

20 A. No.

21 Q. And does IPH have any information independent
22 of what Industrial Heat has?

23 A. Not to my knowledge.

24 Q. Do you know when in time Leonardo and Rossi
25 allegedly violated the covenant not to compete?

1 A. I don't have information about that other than
2 what Industrial Heat, LLC, has.

3 Q. And do you know what damages IPH incurred as a
4 result of this alleged breach?

5 A. We have not bifurcated them, the damages in
6 that manner.

7 Q. Okay. Going back to my -- I asked you
8 questions about 113 and the damages related to the
9 assignment of patents. I want to -- I forgot to ask you
10 questions. Do you know when in time Leonardo and Rossi
11 failed to assign licensed patents?

12 A. IPH International BV has the same information
13 that Industrial Heat, LLC has about that allegation.

14 Q. So, sitting here today, you don't know when in
15 time?

16 A. No.

17 Q. When in time -- I'm referring now to paragraphs
18 116 and 17 again -- when in time did Leonardo and Rossi
19 file patent applications without informing IPH?

20 A. That information is -- would be information
21 provided by Industrial Heat, LLC.

22 Q. So you don't know that, sitting here today,
23 when in time that happened?

24 A. I don't know any information other than what
25 Industrial Heat, LLC would know.

1 Q. Okay. Same thing with 117? You don't know
2 when, in time, Leonardo, without prior written consent,
3 abandoned several patent applications?

4 A. I don't know anything other than what
5 Industrial Heat, LLC knows about that allegation.

6 Q. Did anyone from IPH contribute to providing
7 information for purposes of this counterclaim?

8 A. I'm sorry. Repeat the question, please.

9 Q. Sure. Did anyone from IPH provide information
10 that was used to create this counterclaim that we are
11 looking at?

12 MR. LOMAX: Objection to the form of the
13 question.

14 THE WITNESS: The director for IPH
15 International BV, as we stated earlier, is IPH BV
16 Holdings, Limited. The director of that entity is
17 Tom Darden.

18 So I don't -- I don't know the extent of what
19 Tom Darden contributed to this on behalf of IPH
20 versus on behalf of Industrial Heat.

21 Does that help you?

22 BY MR. CHAIKEN:

23 Q. Kind of.

24 A. Good.

25 Q. Paragraph 131 --

1 MR. ARAN: I am going to --

2 BY MR. CHAIKEN:

3 Q. -- on Page 60 states, "Notwithstanding the
4 foregoing, on information and belief, Leonardo and Rossi
5 have not paid their federal taxes on payments made to them
6 from counter-plaintiffs and have not filed all tax returns
7 or reports relating to reports made to them from
8 counter-plaintiffs."

9 What proof or evidence does IPH have in support
10 of that allegation?

11 A. The same information that Industrial Heat, LLC
12 has to support the allegation.

13 Q. Did you speak to anyone from Industrial Heat
14 about that allegation?

15 A. No.

16 Q. Did you -- does IPH have any knowledge
17 independent from what Industrial Heat has?

18 A. Not to my knowledge.

19 Q. Would anyone from IPH other than you be better
20 able to answer that question?

21 A. I don't know that. I can't speak for anyone
22 else.

23 Q. Do you know how IPH -- do you know how IPH has
24 been damaged as a result of Leonardo and Rossi's failure
25 to pay taxes?

1 A. I believe there is a provision in the license
2 agreement that references payment of taxes.

3 Q. That is not my question, though. My question
4 is, how has IPH been damaged.

5 A. To the extent nonpayment of taxes would be a
6 breach of the contract, then I would refer back to the
7 breach of contract damages.

8 Q. Back to paragraph 98?

9 A. Yes.

10 Q. Okay. There is no way for you to apportion out
11 the damages that IPH suffered as a result of Leonardo and
12 Rossi's failure to pay taxes?

13 MR. LOMAX: Objection to the form of the
14 question.

15 THE WITNESS: We have not bifurcated the
16 damages in that manner.

17 BY MR. CHAIKEN:

18 Q. Would the -- well, let's go back to
19 paragraph 98. 98 apportions out several different types
20 of damages, and it sets forth really three categories of
21 damages, right? Would you agree with me that paragraph 98
22 sets forth three categories of damages?

23 A. Yes. You are referring to A, B and C.

24 Q. Correct. Where in those buckets, A, B or C,
25 would the failure to pay taxes damages be included?

1 MR. LOMAX: Objection to the form of the
2 question.

3 THE WITNESS: I don't see payment of --
4 nonpayment of taxes referenced specifically in
5 paragraph 98.

6 BY MR. CHAIKEN:

7 Q. Okay. Do you have an understanding as to how
8 IPH was damaged as a result of Leonardo and Rossi's
9 failure to pay taxes?

10 A. My understanding of the provision in the
11 contract is to protect the parties from perhaps a claim
12 resulting from nonpayment of tax against perhaps a
13 property, the subject property of the license agreement.

14 Q. Did any such claim take place or happen?

15 A. Not to my knowledge.

16 Q. Okay. Do you have knowledge of any damage that
17 IPH incurred as a result of the allegation that Leonardo
18 and Rossi failed to pay taxes?

19 MR. LOMAX: Objection to the form of the
20 question.

21 THE WITNESS: I'm not aware of that.

22 BY MR. CHAIKEN:

23 Q. Going back to paragraph 135, Page 61. I take
24 it back. Paragraph 134 states, "Rossi and Leonardo, JMP
25 and Johnson, falsely represented to Industrial Heat that

1 JMP was a manufacturing company with a real commercial use
2 for steam power generated by plant."

3 What facts or proof was IPH have in support of
4 that allegation?

5 A. The same information that Industrial Heat, LLC
6 has to support the allegation.

7 Q. Let's move up to paragraph 140 on Page 62.
8 Paragraph 140 states, "As described in greater detail
9 above, Rossi, Leonardo, Johnson, JMP, Fabiani, USQL and
10 Bass were all engaged in a common scheme against
11 counter-plaintiffs."

12 What information specifically does IPH have in
13 support of that allegation?

14 A. The same information that Industrial Heat, LLC
15 has to support the allegation.

16 Q. And did you speak to anyone from Industrial
17 Heat about that?

18 A. No.

19 Q. And does IPH have any knowledge independent
20 from what Industrial Heat has?

21 A. Not to my knowledge.

22 Q. Would anyone from IPH have better knowledge
23 than you on that subject?

24 A. I don't know that. I can't speak for anyone
25 else.

1 Q. Paragraph 145 on Page 64 goes through specific
2 actions and we will have to walk through them one by one.
3 So paragraph A states that, "The defendants'
4 unconscionable, unfair and deceptive acts and practices
5 included a) deceiving counter-plaintiffs about JPM, the
6 operations of JPM, the supposed role of Bass and the
7 reasons for JPM wanting to use the steam power that could
8 be generated by the plant."

9 What facts or proof does IPH have in support of
10 145A?

11 A. The same facts or proof that Industrial Heat,
12 LLC has to support the claim.

13 Q. And did you speak to anyone from Industrial
14 Heat about what facts and proof Industrial Heat had?

15 A. No.

16 Q. Does IPH have any knowledge independent from
17 what Industrial Heat has?

18 A. Not to my knowledge.

19 Q. Does or would anyone from IPH have greater
20 information about that than you?

21 A. I don't know that. I can't speak for anyone
22 else.

23 Q. 145B states, "deceiving counter-plaintiffs as
24 for the reasons for wanting to move the plant from North
25 Carolina to Florida."

1 What proof or evidence does IPH have in support
2 of that allegation?

3 A. The same information that Industrial Heat, LLC
4 has to support the allegation.

5 Q. And did you speak to anyone from Industrial
6 Heat about that?

7 A. No.

8 Q. Does IPH have any knowledge independent from
9 what Industrial Heat has?

10 A. Not to my knowledge.

11 Q. Would anyone from IPH have greater information
12 on that than you?

13 A. I don't know that. I can't speak for anyone
14 else.

15 Q. Paragraph C, "Manipulating the operation of the
16 plant and the measurements of the plant's operations to
17 create the false impression and appearance that it was
18 producing a COP far in excess of the COP it was, in fact,
19 achieving."

20 What support or proof does IPH have in support
21 of that allegation?

22 A. Same information that Industrial Heat, LLC has
23 to support that allegation.

24 Q. Did you speak to anyone from Industrial Heat
25 about that?

1 A. No.

2 Q. Does IPH have any knowledge independent of what
3 Industrial Heat knows?

4 A. Not to my knowledge.

5 Q. Would anyone from IPH have greater information
6 than you?

7 A. I don't know that. I can't speak for anyone
8 else.

9 Q. Paragraph D states, "Providing false
10 information to counter-plaintiffs as the operation of the
11 plant and the measurements of the plant's operations."

12 What proof or evidence does IPH have in support
13 of that allegation?

14 A. The same information that Industrial Heat has
15 to support the allegation.

16 Q. Did you speak to anyone from Industrial Heat
17 about that allegation?

18 A. No.

19 Q. Does IPH have any knowledge independent of what
20 Industrial Heat knows?

21 A. Not to my knowledge.

22 Q. Would anyone else from IPH have information
23 greater than you on that subject?

24 A. I don't know that. I can't speak for anyone
25 else.

1 Q. Paragraph E, "Refusing to provide other
2 information properly requested by counter-plaintiffs and
3 to which counter-plaintiffs were entitled, pursuant to the
4 license agreements, the term sheet, the USQL agreements
5 and/or the nature of the purportedly but, in fact, not
6 independent work being done by Penon."

7 What fact or evidence do you have in support of
8 that allegation?

9 A. The same facts or evidence that Industrial
10 Heat, LLC has to support that allegation.

11 Q. Did you speak to anyone from Industrial Heat
12 about that allegation?

13 A. No.

14 Q. Does IPH have any knowledge independent of what
15 IPH knows about that?

16 A. Not to my knowledge.

17 Q. Does anyone from IPH have more information
18 about that than you?

19 A. I can't speak for anyone else. I don't know
20 that.

21 Q. Paragraph F states, "Preventing or blocking
22 counter-plaintiffs from obtaining truthful information
23 about the plant's operations, the measurements of those
24 operations, the role of JMP, use by JMP of steam provided
25 by the plant, the role of Penon or the basis for expenses

1 or costs charged to counter-plaintiff."

2 What proof or evidence does IPH have in support
3 of that allegation?

4 A. The same information that Industrial Heat, LLC
5 has to support the allegation.

6 Q. Did you speak to anyone from Industrial Heat
7 about that allegation?

8 A. No.

9 Q. Does IPH have any knowledge independent of what
10 Industrial Heat knows?

11 A. Not to my knowledge.

12 Q. And does anyone else from IPH have greater
13 information about that than you?

14 A. I don't know that. I can't speak for anyone
15 else.

16 Q. Okay. Paragraph G on the following page
17 states, "Charging counter-plaintiffs for services,
18 expenses and equipment that were purportedly being used
19 either for the benefit of and for the goals of
20 counter-plaintiffs when, in fact, no such services
21 expenses or equipment were being used for
22 counter-plaintiff's benefit."

23 What facts or information do you have in
24 support of that allegation?

25 A. The same information that Industrial Heat, LLC

1 has to support the allegation.

2 Q. Did you speak to anyone from Industrial Heat
3 about that allegation?

4 A. No.

5 Q. Does IPH have any knowledge independent from
6 what Industrial Heat knows about that allegation?

7 A. Not to my knowledge.

8 Q. And would anyone else from IPH be able to
9 better answer questions about that allegation?

10 A. I don't know that. I can't speak for anyone
11 else.

12 Q. Is there a dollar amount that IPH is seeking as
13 a result of the alleged violations of the Florida
14 Deceptive and Unfair Trade Practices Act?

15 MR. LOMAX: Objection to the form of the
16 question.

17 THE WITNESS: The same damages that we have
18 been reviewing in paragraph 98.

19 BY MR. CHAIKEN:

20 Q. Okay. The damages aren't separated out?

21 A. We have not bifurcated damages in that matter.

22 Q. Looking at -- let's go back to paragraph 98.
23 And, again, you have got three subparts to paragraph 98.

24 Where would the damages related to violations of the
25 Florida Deceptive and Unfair Trade Practices Act fall in

1 respect to the three buckets in paragraph 98?

2 MR. LOMAX: Objection to the form of the
3 question to the extent that paragraph 98 begins "as a
4 result of Leonardo and Rossi's breach." This
5 question is about Florida Deceptive and Unfair Trade
6 Practices Act.

7 MR. CHAIKEN: Right.

8 BY MR. CHAIKEN:

9 Q. So if not -- well, based on your counsel's
10 objection, is there some other place in this document
11 where I can find the damages claimed by IPH with respect
12 to the Count 4 which is the Florida Deceptive and Unfair
13 Trade Practices Act claim?

14 A. Paragraph 148 describes -- it states that,
15 "Counter-plaintiffs have suffered and continue to suffer
16 actual damages as described above."

17 Q. Right. And is there a dollar amount associated
18 with what those damages are?

19 A. I don't see a dollar amount in here.

20 Q. Okay. Is IPH aware of or is making a claim for
21 damages, dollar damages, money damages, as it relates to
22 this count?

23 A. It doesn't state that we are, no.

24 Q. Is it your understanding that you are?

25 MR. LOMAX: Objection to the form of the

1 question.

2 THE WITNESS: My understanding is what is
3 stated here in the document. I don't have a
4 different understanding. I'm not sure what you are
5 asking me.

6 BY MR. CHAIKEN:

7 Q. Okay. Well, my -- my question is, if, in fact,
8 IPH is seeking money damages as it relates to the
9 allegations contained in Count 4, what are those money
10 damages?

11 MR. LOMAX: Objection to the form of the
12 question.

13 THE WITNESS: You asked me money damages?

14 BY MR. CHAIKEN:

15 Q. Yes.

16 A. I don't see money damages other than the
17 reference to the \$89 million payment --

18 Q. Okay. So --

19 A. -- in 143.

20 Q. Okay. So is it your understanding based on
21 that, that there are -- that IPH is not seeking money
22 damages from Leonardo and Rossi as it relates to Count 4?

23 MR. LOMAX: Objection to the form of the
24 question.

25 THE WITNESS: I don't see money damages being

1 stated here.

2 BY MR. CHAIKEN:

3 Q. So would you agree with me that IPH is not
4 seeking money damages?

5 A. I agree with what is in the document. That is
6 it.

7 Q. Well, let's put the document aside. I am
8 asking you, as the representative of IPH, is it your
9 understanding that IPH is seeking money damages from
10 Leonardo and Rossi as a result of a violation of the
11 Florida Deceptive and Unfair Trade Practices Act?

12 MR. LOMAX: Objection to the form of the
13 question.

14 THE WITNESS: Maybe I don't understand how you
15 are asking or what you are asking or what your point
16 is. But I don't understand anything different on
17 behalf of IPH International BV that is not stated
18 here in the document.

19 BY MR. CHAIKEN:

20 Q. Okay. Based on your reading of the document,
21 what is the dollar damages, if any, that IPH is seeking?

22 A. I think I said earlier, I don't see a dollar
23 amount in the document.

24 Q. Okay.

25 A. If I didn't say that, I'm sorry.

1 THE VIDEOGRAPHER: We are off the record. The
2 time is 10:48 a.m.

3 (Thereupon, a recess was taken.)

4 THE VIDEOGRAPHER: We are back on the record.
5 The time is 10:59 a.m.

6 BY MR. CHAIKEN:

7 Q. Mr. Fogleman, I am still going to refer you to
8 Exhibit Number 3, which is the fourth amended answer
9 additional defenses counterclaims and third party claims.
10 Do you still have that in front of you?

11 A. Yes.

12 Q. Okay. I am going to refer you to the
13 affirmative and other additional defenses, which starts on
14 Page 21. Does IPH have any evidence or facts in support
15 of its first -- the first defense set forth on Page 21?

16 A. No information other than what Industrial Heat,
17 LLC has.

18 Q. Okay. Did you speak to anyone from Industrial
19 Heat regarding affirmative defense number one?

20 A. No.

21 Q. Okay. Does IPH have any knowledge or evidence
22 independent of what Industrial Heat has?

23 A. Not to my knowledge.

24 Q. Would there be anyone from IPH that would have
25 more knowledge regarding this first defense than you?

1 A. I can't speak to that.

2 Q. Okay.

3 A. Can I ask you a question.

4 Q. Sure.

5 A. When you ask me the first question and I tell
6 you that all I have is what Industrial Heat has and then
7 the third question you ask me if IPH has any knowledge
8 other than what Industrial Heat has, is there a point to
9 that that I am missing? I am afraid that I might be
10 missing something.

11 Q. I don't think there is a point that you are
12 missing. I am just trying to make sure that there is
13 nothing that I am missing.

14 A. Okay.

15 Q. The second defense on Page 22?

16 A. Okay.

17 Q. Does IPH have any knowledge or facts or proof
18 in support of the second defense?

19 A. Not any information other than what Industrial
20 Heat, LLC has.

21 Q. And did you speak to anyone from Industrial
22 Heat regarding the second defense?

23 A. No.

24 Q. And does IPH have any knowledge independent or
25 separate from what Industrial Heat knows?

1 A. Not to my knowledge.

2 Q. Would anyone from IPH have greater information
3 regarding the second defense than you?

4 A. I can't speak to that. I don't -- I can't
5 speak for someone else.

6 Q. Looking at the third defense on Page 22, does
7 IPH have any evidence or knowledge in support of the
8 allegations set forth in this third defense?

9 A. No information other than the information that
10 Industrial Heat, LLC has.

11 Q. And did you speak to anyone at Industrial Heat
12 regarding this third defense?

13 A. No.

14 Q. And does IPH have any information separate and
15 apart from what Industrial Heat has?

16 A. Not to my knowledge.

17 Q. And is there anyone from IPH who would have
18 greater information with respect to this third defense
19 than you?

20 A. I can't speak for anyone else. I don't know
21 that.

22 Q. I may have asked this before, but who makes
23 decisions on behalf of IPH?

24 A. Tom Darden.

25 Q. Okay. Anybody else?

1 A. Not that I'm aware of.

2 Q. When you say "Tom Darden," would he be the
3 person with authority to bind IPH to contracts or anything
4 else like that?

5 A. Tom Darden, as the director of IPH BV holdings
6 Limited, which, in turn, is the director of IPH
7 International BV, it is my understanding that is his
8 authority.

9 Q. Got it. Okay. Thanks.

10 Let's go back to the document, Page 23, the
11 fourth defense, does IPH have any proof or evidence in
12 support of its fourth defense?

13 A. No information other than what Industrial Heat,
14 LLC has.

15 Q. And did you speak to anyone from Industrial
16 Heat, LLC regarding this fourth defense?

17 A. No.

18 Q. And does IPH have any information separate and
19 apart from what Industrial Heat, LLC has?

20 A. Not to my knowledge.

21 Q. And would anyone from IPH other than yourself
22 have more information regarding this fourth defense?

23 A. I can't speak for anyone else.

24 Q. Okay. Fifth defense. Does IPH have any
25 evidence or proof in support of its fifth defense?

1 A. Not any information other than the information
2 that Industrial Heat, LLC has.

3 Q. Did you speak to anyone from Industrial Heat
4 regarding the fifth defense?

5 A. No.

6 Q. And does IPH have any information separate and
7 apart from what Industrial Heat has?

8 A. Not to my knowledge.

9 Q. Would anyone from IPH be able to better answer
10 questions regarding this fifth defense than you?

11 A. I can't speak for anyone else. I don't know
12 that.

13 Q. Okay. Sixth defense. Does IPH have any facts
14 or evidence in support of the sixth defense?

15 A. No information other than what Industrial Heat,
16 LLC has.

17 Q. Did you speak to anyone from Industrial Heat
18 regarding the sixth defense?

19 A. No.

20 Q. And does IPH have any information separate and
21 apart from Industrial Heat knows?

22 A. Not to my knowledge.

23 Q. Would there be anyone from IPH who has more
24 knowledge regarding the sixth defense than you?

25 A. I just can't speak for anyone else. I'm sorry.

1 Q. Okay. Seventh defense is on Page 25. Does IPH
2 have any information or facts in support of its seventh
3 defense?

4 A. Not any information other than what Industrial
5 Heat, LLC has.

6 Q. Did you speak to anyone from Industrial Heat
7 regarding the seventh defense?

8 A. No.

9 Q. Does IPH have any knowledge independent from
10 what Industrial Heat knows regarding the seventh defense?

11 A. Not to my knowledge.

12 Q. Is there anyone at IPH who has more knowledge
13 than you regarding the seventh defense?

14 A. I can't speak for anyone else.

15 Q. The eighth defense is also on Page 25. Does
16 IPH have any evidence or support with respect to the
17 eighth defense?

18 A. No information other than what Industrial Heat,
19 LLC has.

20 Q. And did you speak to anyone from Industrial
21 Heat regarding the eighth defense?

22 A. No.

23 Q. And does IPH have any information separate and
24 apart from what Industrial Heat knows regarding the eighth
25 defense?

1 A. Not to my knowledge.

2 Q. Would anyone from IPH have more information
3 regarding the eighth defense than you?

4 A. I can't speak for anyone else. I'm sorry.

5 Q. Top of Page 26 says "additional defenses." Are
6 you aware of any additional defenses that IPH has or may
7 assert in this case?

8 A. Not at this time.

9 MR. CHAIKEN: Okay. I think we are thankfully
10 done with that document.

11 (Exhibit 5, IH107598 through 107777, was marked
12 for Identification.)

13 BY MR. CHAIKEN:

14 Q. I am going to show you what has been marked as
15 Exhibit 5. Exhibit 5 has been Bates-stamped IH107598
16 through 107777. The first page of this document is an
17 e-mail from JT Vaughn to you, cc'ing John Mazzarino and it
18 has an attachment which is the, I believe, July 2014 PPM.

19 And my first question is, do you recall
20 receiving this e-mail?

21 A. No, I don't recall receiving this e-mail, but
22 it looks like I did, based on the first page.

23 Q. Do you have any reason to believe you didn't
24 receive it?

25 A. No.

1 inception?

2 A. At or about its inception. I don't remember
3 the exact date.

4 Q. Do you know if Industrial Heat would pay
5 expenses incurred by IPH?

6 A. It would pay expenses under the services
7 agreement on behalf of IPH and then rebill them through
8 the services agreement to IPH International BV.

9 Q. Would IPH reimburse Industrial Heat for
10 payments made by Industrial Heat?

11 A. Yes.

12 Q. Are you familiar with what's been called the
13 validation test pursuant to the license agreement?

14 A. Familiar with the term.

15 Q. Okay. Are you familiar with the fact that it
16 took place on or around April 30, 2013?

17 A. I tell you, I don't have any information other
18 than what Industrial Heat has that I recall that date.

19 Q. Okay. Were you familiar -- and I am talking
20 about when I say "you," I mean IPH. I am not talking
21 about Jim Fogleman.

22 Does IPH or did IPH or anyone on behalf of IPH
23 review the protocol for that validation test?

24 A. Industrial Heat, LLC would have --

25 Q. Okay.

1 A. -- performed the service.

2 Q. Do you know who specifically on behalf of
3 Industrial Heat did that?

4 A. I don't know.

5 Q. Does IPH contend that -- well, let me ask a
6 different question.

7 Does IPH know whether or not Industrial Heat
8 agreed to the protocol for the validation test?

9 A. I don't know.

10 Q. Did you ever ask anybody at Industrial Heat?

11 A. I did not.

12 Q. Does IPH contend that the protocol that was
13 used for the validation test was somehow flawed?

14 MR. LOMAX: Objection to the form.

15 THE WITNESS: The information related to that
16 is the information that Industrial Heat, LLC has.

17 BY MR. CHAIKEN:

18 Q. Did you ask anybody from Industrial Heat about
19 that?

20 A. No, I didn't.

21 Q. Okay. Does IPH now contend that the data from
22 that validation test was somehow manipulated?

23 MR. LOMAX: Objection to the form of the
24 question.

25 THE WITNESS: IPH would have the same

1 information that Industrial Heat, LLC has regarding
2 that matter.

3 BY MR. CHAIKEN:

4 Q. Did you talk to anyone from -- from Industrial
5 Heat about whether or not the data was manipulated?

6 A. No, I did not.

7 Q. Are you familiar with the term "guaranteed
8 performance "or "guaranteed performance test"?

9 A. I am aware of the term in the license
10 agreement.

11 Q. Okay. Do you know if IPH agreed to the use of
12 what is called an ERV, the contract requires for expert
13 response for validation. Have you heard of that term?

14 A. I am aware of the term in the agreement.

15 Q. Do you know if IPH agreed to Fabio Penon as the
16 ERV for purposes of the guaranteed performance test?

17 A. Industrial Heat would have that information.
18 We would not have information different from Industrial
19 Heat regarding that matter.

20 Q. Do you know if Industrial Heat agreed to use
21 Fabio Penon as the ERV for the guaranteed performance
22 test?

23 MR. LOMAX: Objection to the form of the
24 question.

25 THE WITNESS: I don't know that.

1 BY MR. CHAIKEN:

2 Q. Do you know if Industrial Heat agreed to use
3 Fabio Penon as the ERV for the validation test?

4 MR. LOMAX: Objection to the form of the
5 question.

6 THE WITNESS: I don't know that.

7 BY MR. CHAIKEN:

8 Q. Did you ask anyone from Industrial Heat about
9 that?

10 A. I did not ask anyone at Industrial Heat about
11 that.

12 Q. Did you ask anyone from Industrial Heat about
13 whether or not Fabio Penon was agreed to for purposes of
14 the guaranteed performance test?

15 A. I did not ask anyone at Industrial Heat that
16 question.

17 Q. Okay. Is it IPH's position that there was no
18 ERV for the guaranteed performance test?

19 MR. LOMAX: Objection to the form of the
20 question.

21 THE WITNESS: Your question implies there was a
22 guaranteed performance test.

23 BY MR. CHAIKEN:

24 Q. Mm-hmm.

25 A. And IPH -- IPH International BV would not have

1 information different from Industrial Heat regarding
2 whether or not that test took place and any matter
3 regarding the ERV.

4 Q. Got it. So is it IPH's position that a
5 guaranteed performance test pursuant to the license
6 agreement did not take place?

7 MR. LOMAX: Objection to the form of the
8 question.

9 THE WITNESS: I believe that is correct for IPH
10 International BV.

11 BY MR. CHAIKEN:

12 Q. Okay. And what facts are you aware of in
13 support of that position?

14 A. The information that Industrial Heat, LLC has
15 regarding the performance of the test that you are
16 referring to.

17 Q. And you didn't speak to anyone at Industrial
18 Heat regarding that position, did you?

19 A. No.

20 Q. Is IPH aware as to whether or not it had agreed
21 to a protocol for the guaranteed performance test?

22 A. No information other than what Industrial Heat
23 has regarding that.

24 Q. Did you speak to anybody at Industrial Heat
25 regarding the protocol for the guaranteed performance

1 test?

2 A. No.

3 Q. Is it IPH's position that the protocol prepared
4 by Fabio Penon for the guaranteed performance test was
5 flawed?

6 MR. LOMAX: Objection to the form of the
7 question.

8 THE WITNESS: To the -- to the extent
9 Industrial Heat, LLC has that information, we would
10 not have information any different.

11 BY MR. CHAIKEN:

12 Q. Did you speak to Industrial Heat about any
13 flaws in the protocol prepared by Fabio Penon?

14 A. No.

15 Q. Is it IPH's position that Dr. Rossi manipulated
16 the data that was taken pursuant to the test that was
17 performed in Florida in 2015?

18 MR. LOMAX: Objection to the form of the
19 question.

20 THE WITNESS: IPH International BV has no
21 information different than Industrial Heat has
22 regarding what you refer to as manipulation of data.

23 BY MR. CHAIKEN:

24 Q. Okay.

25 A. So we would have the same information and have

1 the same view.

2 Q. Okay. So your position is identical to that of
3 Industrial Heat?

4 A. Yes. If I understand your question, yes.

5 Q. And do you know what their position is?

6 MR. LOMAX: Objection to the form of the
7 question.

8 THE WITNESS: I have not discussed the matter
9 with Industrial Heat.

10 BY MR. CHAIKEN:

11 Q. So, sitting here today, you don't know
12 whether -- one way or the other whether they believe that
13 the data was manipulated?

14 A. It has been stipulated, so, yes, I believe -- I
15 believe I know their position.

16 Q. Okay. Do you have any facts to support that?

17 A. No facts other than the facts that Industrial
18 Heat, LLC, has.

19 Q. Do you know or does IPH have a position as to
20 whether or not it agreed to what equipment was going to be
21 tested for purposes of the guaranteed performance test?

22 A. I don't have information about that particular
23 matter any different than Industrial Heat would have.

24 Q. And did you talk to anyone from Industrial Heat
25 about that?

1 A. No.

2 Q. Did IPH conduct any research and development on
3 the E-Cat or E-Cat IP?

4 A. I'm sorry. Please restate the question.

5 Q. Sure. Did IPH ever conduct any research and
6 development on the E-Cat IP?

7 A. No. It relied on Industrial Heat through the
8 service agreement to provide those services.

9 Q. Was Industrial Heat working, doing R&D on
10 the -- on the E-Cat on behalf of IPH or was it doing R&D
11 on behalf of itself?

12 A. It is my understanding it was doing it on
13 behalf of IPH International BV under the terms of the
14 service agreement.

15 Q. Okay. If that is the case, then IPH, through
16 Industrial Heat, was doing R&D on the E-Cat, right?

17 A. If that is what you are getting at, then I
18 don't disagree.

19 Q. Okay. Do you know whether or not the R&D
20 resulted in any positive test with respect to the E-Cat or
21 the E-Cat IP?

22 MR. LOMAX: Objection to the form of the
23 question.

24 THE WITNESS: It is my understanding that the
25 results did not -- the results did not produce any

1 agreement as of November 12, 2014. It calls that the
2 original agreement.

3 A. I see that.

4 Q. Do you think that is the right date?

5 A. I don't know. You presented documents with two
6 different dates.

7 Q. Actually, Industrial Heat presented documents
8 with two different dates. These aren't my documents.

9 At the Page 7 there is a signature under
10 Industrial Heat. Is that JT Vaughn's signature? Do you
11 recognize it?

12 A. It appears to be.

13 Q. Do you know if -- well, you have never seen
14 this before. So I guess you wouldn't know whether or not
15 IPH International ever executed this document?

16 A. I don't. I'm sorry. I haven't seen this
17 document.

18 Q. I am done with that for now. Before I started
19 talking about those documents I was asking you a little
20 bit about the research and development that was performed.
21 You said it was performed by Industrial Heat on behalf of
22 IPH. Do you recall that?

23 A. Yes.

24 Q. And I asked you some questions about whether or
25 not positive COP was ever achieved by any of the R&D. Do

1 you know for a fact that Industrial Heat never achieved a
2 single positive COP?

3 A. I don't know for a fact.

4 Q. Okay. Did you ever ask anyone from Industrial
5 Heat as to whether or not they ever received a positive
6 COP on any test?

7 A. I did not.

8 Q. Okay. Did you ever hear anyone from Industrial
9 Heat state that they achieved a COP of 1.302?

10 A. I didn't hear that from anyone at Industrial
11 Heat, LLC.

12 Q. Did you ever hear that anyone from Industrial
13 Heat received a COP of 4.0?

14 A. I did not hear that from anyone at Industrial
15 Heat, LLC.

16 Q. Okay. If Industrial Heat represented to
17 investors or potential investors that they had achieved a
18 positive COP, do you have any reason to believe that those
19 reports were untrue?

20 MR. LOMAX: Objection to the form.

21 THE WITNESS: I don't have knowledge of that.

22 I'm sorry.

23 BY MR. CHAIKEN:

24 Q. Okay. Are you familiar with the fact that
25 the -- are you familiar with the term "one megawatt

1 plant"?

2 A. Yes.

3 Q. Are you familiar with the fact that the one
4 megawatt plant was shipped from North Carolina to Florida?

5 A. I am aware of that, yes.

6 Q. Okay. Did IPH care or have an opinion as to
7 where it wanted the guaranteed performance test pursuant
8 to the license agreement to take place?

9 A. Care?

10 Q. Yeah. Did it have an opinion as to, hey, we
11 really want the test to take place in North Carolina or
12 South Carolina or anywhere else?

13 A. That -- that decision rested with Industrial
14 Heat, LLC. And so IPH International BV would have relied
15 on Industrial Heat, LLC for that.

16 Q. Okay. Did it make a difference to IPH whether
17 or not there was a third party customer involved with the
18 guaranteed performance test?

19 A. I don't recall that being a stipulation in the
20 license agreement.

21 Q. Right.

22 A. So that decision would, again, rest with
23 Industrial Heat, LLC.

24 Q. So it didn't matter to IPH? Whatever
25 Industrial Heat preferred?

1 A. To my knowledge, IPH International BV did not
2 have input on that decision since it rested with
3 Industrial Heat, LLC.

4 Q. Okay. Would you agree with me that -- well,
5 strike that.

6 At any time prior to the initiation of this
7 lawsuit, which was approximately April of 2016, did IPH
8 ever tell Dr. Rossi or Leonardo that they believed that
9 Rossi and Leonardo were in breach of the license
10 agreement?

11 A. I am not aware of that communication, as you
12 have described it.

13 Q. Okay. Did you talk to Industrial Heat about
14 that?

15 A. I did not.

16 Q. If Leonardo had fulfilled its terms or
17 fulfilled its obligations under the license agreement, who
18 would have been responsible for paying the \$89 million?
19 Would it have been IPH or would it having Industrial Heat?

20 A. It is my understanding the obligation was in
21 the license agreement.

22 Q. Mm-hmm.

23 A. But I also believe the assignment agreement
24 maybe referred to the obligations. And whatever -- the
25 assignment agreement should speak for itself.

1 counterclaims and third party claims to the extent it was
2 provided to me by counsel.

3 Q. What else did you do?

4 A. I met with counsel and discussed the documents.

5 Q. What else? Anything else?

6 A. I don't recall anything specific.

7 Q. Did you meet with anyone from Industrial Heat,
8 LLC to prepare for this deposition?

9 A. No.

10 Q. Was there a reason why you did not meet with
11 anyone from Industrial Heat?

12 MR. LOMAX: Object to the form of the question.

13 THE WITNESS: I don't recall a reason.

14 BY MR. NUNEZ:

15 Q. Did you speak with Mr. Vaughn about his
16 testimony yesterday?

17 A. I don't believe we spoke about his testimony.

18 Q. Did you take any part --

19 A. I don't recall that specifically.

20 Q. Well, his testimony was yesterday. Did you
21 speak with Mr. Vaughn last night after his deposition?

22 A. We had a phone call. It was on the way to the
23 airport.

24 Q. Did you talk about this case at all?

25 A. I don't remember specifically specifics about

1 the case. We just communicated that he had finished up.
2 He was on his way out of town and bid me well.

3 Q. Now, correct me if I'm wrong, the majority of
4 your testimony that I did hear today when you were
5 questioned about allegations in the complaint, you
6 deferred to the knowledge of Industrial Heat and that IPH
7 did not have any independent knowledge; is that correct?

8 A. Generally, yes.

9 Q. Are there any areas that you were questioned
10 today that you do have or IPH has independent knowledge of
11 the facts backing up the allegations in the fourth amended
12 third party complaint?

13 A. Seems I recall a question about payment of the
14 \$89 million.

15 Q. Does IPH have any independent knowledge with
16 regard to the allegations concerning Fulvio Fabiani?

17 A. To my knowledge, IPH International BV did not
18 engage that person directly. It is my understanding that
19 person was engaged, employed by, whatever the form of
20 engagement was, by Industrial Heat, LLC.

21 Q. Fair enough. Because there is a count in the
22 complaint that is just Industrial Heat versus Mr. Fabiani.
23 So I am asking, does Industrial -- does IPH have any
24 independent knowledge of Mr. Fabiani as it relates to
25 Count 4, the claim under the Florida Deceptive and Unfair

1 Q. Did you make any attempt to coordinate your
2 schedule with theirs to make yourself knowledgeable about
3 the areas of inquiry?

4 A. I don't recall making an attempt.

5 Q. Did Mr. Darden make any comment to you after
6 informing you that you would be designated as the 30(b)(6)
7 witness of how to make yourself knowledgeable?

8 A. No.

9 Q. Now, other than coordinating schedules, is
10 there any other reason why you were not -- it was not
11 reasonable for you to become knowledgeable about these
12 areas of inquiry?

13 A. If I understand your question, it would have
14 been duplicate effort to go through this same information
15 that they have available regarding these allegations.

16 Q. And was that a -- and I think I asked you
17 earlier, was that a decision that you made on your own?

18 A. No.

19 Q. Who made that decision? Who was involved in
20 making that decision?

21 A. Did you ask this question before?

22 Q. I don't think you answered. Maybe.

23 A. Please repeat the question.

24 MR. NUNEZ: Can you read that back.

25 (A portion of the record was read by the

1 reporter.)

2 MR. LOMAX: I think he wants to know what the
3 question is about the decision.

4 BY MR. NUNEZ:

5 Q. Let me -- let me ask it. Think you just
6 testified that the reason why you did not become or make
7 yourself knowledgeable about these areas of inquiry is
8 because you thought it would be duplicative and I
9 assume -- and correct me if I am wrong -- duplicative of
10 Mr. Vaughn's becoming knowledgeable about these areas of
11 inquiry. Is that correct? Was that your testimony?

12 A. My testimony -- I believe my testimony was that
13 I was aware that a representative of IH -- of Industrial
14 Heat, LLC would be deposed in the matter prior to my
15 deposition and that their information would then be
16 available.

17 The same information I have referred to today
18 as their information with respect to these allegations
19 would have already been covered. That is what I meant by
20 duplicative.

21 Q. Okay. My question is, who made the decision
22 that, because you thought it was duplicative, to then not
23 make yourself knowledgeable about the areas of inquiry?

24 MR. LOMAX: Objection to the form of the
25 question.

1 THE WITNESS: The decision -- my recollection
2 is the -- we arrived at that through our preparation
3 for today by our review of the complaint, our review
4 of the answer and my meetings with counsel.

5 BY MR. NUNEZ:

6 Q. See, because I think that is where I am not
7 getting the answer. I don't know that you are necessarily
8 answering my question.

9 So that decision was made by yourself with the
10 direction of counsel? Is that your answer?

11 MR. LOMAX: Objection to the form of the
12 question. Instruct the answer to not get into any
13 privileged conversations with counsel.

14 THE WITNESS: And I am trying to do that.

15 BY MR. NUNEZ:

16 Q. Aside -- leaving out counsel, who made that
17 decision that it was duplicative and that you would not
18 make yourself knowledgeable about these areas of inquiry?

19 A. Your instruction was to leave out counsel and I
20 cannot leave out counsel.

21 Q. Okay. You got counsel. Who else?

22 A. The decision was made through the review of the
23 complaint, review of the second amended answer and in my
24 meetings with counsel.

25 Q. All right. That is how. I am more looking for

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CERTIFICATE OF OATH OF WITNESS

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I, ELIZABETH CORDOBA, RMR, CRR, FPR, Notary Public in and for the State of Florida at Large, certify that the witness, SLOCUM HATCH FOGLEMAN, personally appeared before me on February 14, 2017 and was duly sworn by me.

WITNESS my hand and official seal this February 26, 2017.

E Cordoba

ELIZABETH CORDOBA, RMR, CRR, FPR
Notary Public, State of Florida
at Large

Notary #EE075383

My commission expires: 3/17/2019