

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,

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**AFFIDAVIT OF DR. ANDREA ROSSI IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

**BEFORE ME**, the undersigned authority, personally appeared Dr. ANDREA ROSSI, being first duly sworn on oath, deposes and states:

1. I, Dr. ANDREA ROSSI ("Affiant"), am over the age of majority, and am personally familiar and have personal knowledge of the facts contained herein.

2. Your Affiant is the creator and owner of certain technology that provides for the creation of heat energy in a safe and efficient process using a combination of unique fueling agents and reactions. The technology is referred to as the "Energy Catalyzer" or the "E-Cat." ("E-Cat"). Your Affiant has successfully patented such technology globally, receiving patents from the USPTO (patent no. 9,115,913 B1) and WIPO (patent no. 2016/018851 A1), among others.

3. Your Affiant is a Plaintiff in the above-styled action, and is the chief executive officer of co-Plaintiff, Leonardo Corporation ("Leonardo").

4. On October 26, 2012, your Affiant and Leonardo entered into a License Agreement with Defendant, Industrial Heat, LLC ("Industrial Heat"), for the purchase and territorial license of your Affiant's E-Cat intellectual property.

5. The License Agreement set forth a purchase price of \$100.5 million, which Industrial Heat was to pay in three (3) tranches: (1) \$1.5 million upon execution of the License Agreement; (2) \$10 million upon successful completion of a 24 hour validation test; and (3) \$89

million upon successful completion of a 400-day guaranteed performance test (which the parties referred to, typically, as either the 350-day and/or 400-day test).

6. Industrial Heat paid the first tranche in October 2012 at or around the time the parties executed the License Agreement.

7. Industrial Heat, Leonardo and Rossi executed two (2) amendments to the License Agreement. The First Amendment occurred on April 29, 2013, and the Second Amendment occurred in October 2013.

8. The First Amendment revised the time for validation, the protocol to be used for validation, and the section pertaining to assignment of the License Agreement.

9. The Second Amendment revised the section pertaining to the guaranteed performance test, including the equipment to be used and the timing thereof. The Second Amendment indicated that a Six Cylinder Unit would be used for the guaranteed performance test, but the parties ultimately agreed upon the use of a 1MW plant.

10. On the same date of the First Amendment, April 29, 2013, Industrial Heat assigned its rights under the License Agreement to IPH International, B.V. (“IPH”).

11. Irrespective of any amendments and/or assignments, the License Agreement provided that an agreed-upon expert responsible for validation (“ERV”) would perform the validation of the plant underlying the second tranche and the guaranteed performance test underlying the third tranche.

12. Your Affiant and Industrial Heat agreed that Fabio Penon (“Penon”) would serve as the ERV. The Defendants never advised your Affiant of any objections to Penon serving as ERV with respect to the validation test or the subsequent guaranteed performance test.

13. The validation test took place on April 30 and May 1, 2013 with Penon as ERV. Following the validation test, Industrial Heat paid the second tranche in the amount of \$10 million.

14. Pursuant to Section 3.2(b) of the License Agreement, your Affiant and Leonardo were to transfer to Industrial Heat all intellectual property associated with the E-Cat following the validation test. Accordingly, your Affiant transferred all such intellectual property to the Defendants in conjunction with payment of the second tranche. To be clear, your Affiant did not withhold and/or otherwise fail or refuse to transfer any such intellectual property.

15. Following transfer of the E-Cat intellectual property, the Defendants did not advise your Affiant at any time prior to November 2015 that the Defendants were unable to replicate your

Affiant's technology. In any event, the License Agreement and the amendments did not contemplate replication as a pre-requisite to the payment of any tranche.

16. In or around December 2014, Industrial Heat shipped the 1 MW Plant from North Carolina to Florida. This shipment was in preparation of performing the guaranteed performance test underlying the third tranche.

17. Subsequently, in or around February 2015, Penon submitted a guaranteed performance test protocol to your Affiant and Defendant Thomas Darden. Your Affiant reviewed the protocol, which identified the 1 MW Plant as the equipment to be tested.

18. Your Affiant also reviewed the written comments that Mr. Darden provided to Penon in response to the protocol, including Mr. Darden thanking Penon for his "important work."

19. Your Affiant then began the guaranteed performance test in February 2015 with the understanding that Penon's protocol—including the equipment to be used, the timing of the test, and Penon serving as ERV—were all agreed to by Mr. Darden and the Defendants.

20. From the day the guaranteed performance test began, through the day it ended in February 2016, your Affiant consistently apprised the Defendants and their investors, in writing, of the status of such test.

21. Despite your Affiant's frequent communications throughout the test, none of the Defendants informed your Affiant that they objected and/or disagreed as to whether your Affiant was performing the guaranteed performance test contemplated by the License Agreement any time prior to November of 2015.

22. Rather, the Defendants allowed your Affiant to often work over sixteen (16) hours a day performing the 350+ day guaranteed performance test.

23. The conditions in the facility were extremely hot, as a result of the steam being generated by the E-Cat. The heat created an uncomfortable working environment.

24. Notably, throughout the guaranteed performance test, Industrial Heat brought certain of their investors to the 1 MW Plant. The investors toured the plant, and Industrial Heat encouraged your Affiant to discuss the E-Cat and the status of the guaranteed performance test during such visits.

25. In addition to the foregoing, the License Agreement set forth that Leonardo would not abandon any patent application or patent that is a Licensed Patent without consent of Industrial Heat (or IPH, following the April 29, 2013 assignment). Leonardo accordingly did not abandon

any such Licensed Patent without prior written consent. Similarly, your Affiant never failed to inform and consult with IPH regarding patent prosecution and maintenance of the E-Cat intellectual property.

26. Finally, your Affiant and Leonardo have not engaged in any prohibited competition in violation of the License Agreement; have not advertised, solicited, provided, offered or distributed any tangible or intangible good, service, or property associated with the technology and/or the License Agreement; and have otherwise performed their obligations pursuant to the License Agreement in good faith. In that respect, at no time prior to November 2015 did the Defendants provide your Affiant with any notice that they believed Leonardo violated the License Agreement.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 22<sup>nd</sup> day of March, 2017.

  
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ANDREA ROSSI

STATE OF FLORIDA :  
COUNTY OF MIAMI-DADE :

The foregoing Affidavit was sworn to under penalty of perjury before me this 22<sup>nd</sup> day of March, 2017, by ANDREA ROSSI, who is personally known to me/or has produced  
Passport as identification.

  
\_\_\_\_\_  
Signature of Notary Public

Suzanne Martinez  
Name of Notary Typed, Printed or  
Stamped



SUZANNE MARTINEZ  
MY COMMISSION # FF 175226  
EXPIRES: November 11, 2018  
Bonded Thru Budget Notary Services

\_\_\_\_\_  
Commission Number/Expiration