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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.

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PERLMAN, BAJANDAS, YEVOLI &  
ALBRIGHT, P.L.  
282 CATALONIA AVENUE  
SUITE 200  
CORAL GABLES, FL 33134  
Monday, February 13, 2017  
9:07 a.m. - 5:18 p.m.

VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN  
(Corporate Representative of Industrial Heat, LLC)

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.

1 A. Not to my knowledge at least.

2 Q. Okay. We talked a little bit earlier about  
3 Industrial Heat and when it was formed. Do you recall  
4 when it was formed?

5 A. I believe that it was formed October 24, 2012.  
6 But I am sure you guys have this, this information.

7 Q. Do you know why it was formed?

8 A. For the purposes of entering into a license  
9 agreement.

10 Q. Okay. IPH, do you know when that was formed?

11 A. I don't recall the exact date. I am trying to  
12 recall the time period. If I recall correctly, and I  
13 didn't review this, so my memory may fail me here, but I  
14 think it was formed prior to the second step of the  
15 validation -- of the license agreement, what was referred  
16 to as the validation phase. If I recall correctly. You  
17 guys have all this information.

18 Q. My question is going to be, why was IPH formed?

19 A. It was formed -- we have had a concern all  
20 along about protecting IP in this field and ensuring that  
21 that IP is -- cannot be subject to a government declaring  
22 it property of the government for national security  
23 reasons or other reasons.

24 Our goal has always been to ensure that this  
25 technology can be made widely available around the world,

1 if those provisions were met, true?

2 A. Industrial Heat was planning to raise  
3 additional capital, either from Tom and John, the original  
4 sources, or others. And that was, you know, that was a  
5 known fact.

6 Q. Okay. Let's look at 3.2 (a). And take a  
7 minute to review it. Let me know when you are done.

8 A. Okay.

9 Q. Okay. Did, in fact, Industrial Heat make this  
10 payment under 3.2 (a)?

11 A. Industrial Heat paid 1.5 million upon executing  
12 the agreement.

13 Q. I'm sorry. Can you repeat your answer?

14 A. Sure. Industrial Heat paid 1.5 million after  
15 executing the agreement.

16 Q. Right. Now, did Industrial Heat cut that check  
17 or did someone pay on behalf of Industrial Heat?

18 A. I would have to go check, but I believe that  
19 Industrial Heat -- I'm not sure, in fact, if Industrial  
20 Heat -- I am trying to recall when Industrial Heat set up  
21 its bank account and if that was originally paid on behalf  
22 of Tom and John or if it was paid on behalf of Industrial  
23 Heat. I don't recall. I apologize. But we could look it  
24 up.

25 Q. Okay. Is there a reason someone would pay on

1 Q. Did Industrial Heat and Leonardo amend this  
2 agreement to provide for a date outside the 120-day  
3 period?

4 A. No, not to my knowledge.

5 Q. Has Industrial Heat, prior to the initiation of  
6 this lawsuit, ever made a claim that it was entitled to a  
7 refund of the 1.5 million paid under 3.2 (a)?

8 A. Prior to the initiation of the lawsuit, I don't  
9 believe so.

10 Q. Okay. Had Industrial Heat ever informed  
11 Dr. Rossi that they believed that Leonardo Corporation was  
12 in violation of Section 3.2 (a)?

13 MR. BELL: Can I have that read back?

14 (A portion of the record was read by the  
15 reporter.)

16 MR. BELL: You are saying before the lawsuit?

17 MR. CHAIKEN: At any time.

18 THE WITNESS: Not to my knowledge.

19 BY MR. CHAIKEN:

20 Q. Now, Section 3.2 (a) refers to Section 4 of the  
21 agreement. Are you familiar with Section 4?

22 A. I would need to review it.

23 Q. Go ahead. It starts on page three, goes to  
24 page four.

25 A. Okay.

1 Q. Okay. Is it your understanding or is it your  
2 belief sitting here today that Industrial Heat is entitled  
3 to a refund of that \$1.5 million?

4 A. Yes, based on successful validation of a plant.  
5 Again, it's a kind of what you know then versus what you  
6 know now. But at the time we consented to pay the 11 and  
7 a half -- an aggregate of 11 and a half million. In  
8 retrospect, knowing what we know today, we shouldn't have  
9 done that. And in retrospect, the technology did not  
10 perform as we were being led to believe that it did.

11 Q. So it is your understanding sitting here today  
12 that Industrial Heat's entitled to a refund of the --  
13 let's not talk about the \$10 million yet, let's just talk  
14 about the 1.5. You are suggesting that Industrial Heat is  
15 entitled to a return of 1.5 million?

16 A. Just to review the conditions under which that  
17 could be returned. It said: "In the event a plant is not  
18 delivered or validation is not achieved within the time  
19 period set forth in Section 4, the full 1.5 million will  
20 be refunded within two business days of its request.  
21 Refund of the 1.5 million will not be provided for any  
22 other reason and no other refund will be provided for any  
23 reason."

24 Q. Did the company make a request for the  
25 1.5 million back?

1           A.       Not prior to the initiation of this lawsuit, I  
2       don't believe. So if that is a requirement, and I am not  
3       a lawyer, if the company did not make that request, then I  
4       don't know. I mean, you guys would have to figure that  
5       out.

6                    But if it is based on validation, which is what  
7       I am more focussed on, then it seems to me there is an  
8       argument that we are due back that capital because it did  
9       not validate, as specified, though, at the time, of  
10      course, Penon was saying that it did. Anyway, it is a  
11      what you know then versus what you know now.

12           Q.       We will get into the validation in a little  
13      bit, in a little while. But just talking about the time  
14      frame for this to take place.

15                    Is Industrial Heat making a claim that because  
16      it wasn't performed timely, that it should be entitled to  
17      a refund of the 1.5 million?

18           A.       Based on contract here, I think that is one  
19      thing that should be examined. The other thing that I  
20      would say should be examined is whether or not the  
21      technology actually validated as advertised.

22           Q.       Let's put those two things, separate them out.

23           A.       Okay.

24           Q.       You are here today as the representative of  
25      Industrial Heat. I am asking you, is Industrial Heat

1 A. Let me refresh. The reason I remember, I  
2 remember the format. It is an outline of what would take  
3 place for the validation protocol in the agreement.

4 Q. So this is what the parties agreed to would be  
5 the protocol for purposes of the validation tests as  
6 identified in Section 3.2 (a) of the agreement?

7 A. I believe that is correct, Brian. I am just  
8 reviewing that here. I believe that is correct.

9 Q. Okay. Now, you said that you prepared it with  
10 the help of Tom and T. Barker Dameron; is that correct?

11 A. I believe that is correct.

12 Q. Did you have any other scientists or engineers  
13 participate in its draft or review?

14 A. I don't recall. I don't recall. I can't  
15 recall, for example, did I run this by the 3 Phoenix guys  
16 or Tom D'Muhala? I don't think so.

17 Q. Did you think you had enough eyes on it that  
18 you felt comfortable with the protocol at the time?

19 A. Yeah. It is a good thing to specify, at the  
20 time, versus kind of retrospectively. At the time I think  
21 we thought that because we thought that it was a serious  
22 amount of real energy and a serious real COP. And if  
23 those were the cases, then it shouldn't be as difficult to  
24 determine its performance. Or at least that was our  
25 belief at the time. I think we underestimated it.

1 for Cherokee.

2 Do you know why they reference Cherokee in this  
3 matter?

4 A. I don't. But, you know, it was -- sure, again,  
5 in reference to, as we have described earlier, stuff that  
6 Tom and John are doing, but on the venture side of things.

7 Q. And down below in their opinion they state that  
8 they believed based on, I am quoting, "on our collective  
9 review and discussion that the test is sufficient to  
10 demonstrate whether the tested device meets the  
11 contractual specifications."

12 Did you have any discussions with Dewey Weaver  
13 or Paul Morris about the protocol?

14 A. I imagine that I did. I don't recall a lot of  
15 those discussions or particulars about those discussions.  
16 But it is hard to believe that I would not have asked them  
17 to elaborate on this.

18 Q. Now, going back to the Exhibit A to the first  
19 amendment. That one. Exactly. It references an expert  
20 responsible for validation, "ERV".

21 Was there an ERV selected for purposes of the  
22 validation test?

23 MR. BELL: I'm sorry, where are you? Okay. I  
24 apologize. I am with you.

25 THE WITNESS: We -- you know, we thought it was

1 Q. Are there any written communications from  
2 Industrial Heat where Industrial Heat says We disagree  
3 with Penon as the ERV?

4 A. There is written communications where it is  
5 clear that we expected that it would be Bureau Veritas.  
6 And then it changed from Bureau Veritas being the ERV to  
7 Penon, an employee with Bureau Veritas, to, Oh, he is not  
8 exactly an employee, he is a consultant to Bureau Veritas.  
9 Whether he is or not, I don't know.

10 Q. Okay. My question is really simple. Is there  
11 an e-mail or any communication where Industrial Heat says,  
12 We disagree with Penon as the ERV? Either it exists or it  
13 doesn't.

14 A. Not to my knowledge. But you would have to  
15 check the e-mails.

16 Q. If such a communication existed, we would have  
17 received it in the course of discovery, would we not?

18 A. Correct.

19 Q. Exactly.

20 A. But there are e-mails, just to elaborate, that  
21 speak to our belief and desire that it would be Bureau  
22 Veritas certifying at the validation stage.

23 Q. And you are confident that no one from  
24 Industrial Heat ever agreed to use Penon as the ERV?

25 A. As I said before, Andrea selected Penon. We

1 thought it was going to be Bureau Veritas. We were  
2 provided a plethora of information around this time,  
3 including Levi and the Uppsala professor's report, which  
4 made us more willing to allow Andrea to continue, when in  
5 retrospect we probably could have been much more  
6 confrontational at the time.

7 Q. So based on your response, there is no  
8 communications that you are aware of in which Industrial  
9 Heat agreed to use Penon as the ERV, correct?

10 A. I don't know. There may be. There may not be.  
11 I'm not sure.

12 Q. Well, based on what you just told me, you said  
13 Industrial Heat did not agree or approve Penon. They  
14 allowed the test to go forward, but they didn't approve  
15 Penon, did they?

16 THE WITNESS: Could you read what I said?

17 (A portion of the record was read by the  
18 reporter.)

19 BY MR. CHAIKEN:

20 Q. Okay. So you would agree with me that, as far  
21 as you know, Industrial Heat never approved and never said  
22 specifically, We agree that Penon is the ERV?

23 A. I am unaware of communication where we  
24 specifically agreed with Penon being the ERV, but there  
25 may be such communication out there. I can't recall all

1 of our e-mails and all of our documents.

2 (Exhibit 17, IH99334 through 99336, was marked  
3 for Identification.)

4 BY MR. CHAIKEN:

5 Q. Let me show you what has been marked as  
6 Exhibit 17. Exhibit 17 has been Bates stamped IH99334  
7 through 99336. On the first page of this exhibit is a  
8 couple of e-mails. The first one is from JT Vaughn to CJ  
9 Case and Christopher Lomax. Those are attorneys for Jones  
10 Day; is that correct?

11 A. That is correct. That is in May 2016.

12 Q. Right. The e-mail on the bottom of the page is  
13 from Tom Darden, dated April 24, 2013 to Andrea Rossi and  
14 it cc's yourself and John Mazzarino. Do you see that?

15 A. I see it.

16 Q. And it talks about test process?

17 A. Mm-hmm.

18 Q. And on the second paragraph Tom Darden writes  
19 to Andrea Rossi and he says: "Here are my thoughts.  
20 First, as we indicated, we can accept Fabio Penon as the  
21 ERV instead of BV." Do you see that?

22 A. I see that.

23 Q. Were you aware -- have you seen this e-mail  
24 before?

25 A. Clearly, I have seen it before. I haven't

1 scene it recently.

2 Q. Does this change your mind as to whether or not  
3 a writing exists showing that Industrial Heat approved  
4 Fabio Penon as the ERV?

5 A. That is what Tom is doing in this e-mail.

6 Q. Right so you would agree with me then that the  
7 parties agreed that Fabio Penon was going to be the ERV,  
8 right?

9 A. Based on this e-mail, which is from Tom to  
10 Andrea, it appears that he accepts Fabio Penon as the ERV  
11 instead of BV.

12 You can see, consistent with what I said, this  
13 is all happening very close to the April 30th date when we  
14 were also receiving additional information from Andrea  
15 that was -- appeared to be positive.

16 Q. Right. Did the -- if you could go back to the  
17 license agreement itself. The license agreement, which is  
18 Exhibit 13, did the license agreement contemplate multiple  
19 ERVs or just one ERV?

20 A. You know, I would have to read it through. I  
21 was under the impression that it was multiple ERVs, ERVs  
22 at the validation stage and then an ERV later, at the next  
23 phase. But, you know, it may be only one. I would have  
24 to go back and read it.

25 I think that this is one of the things that you

1 but I can't recall whether or not it was.

2 The nuclear engineer was a gentleman I referred  
3 to previously, or supposedly is a nuclear engineer, I  
4 really don't know. Ruggiero, whatever Ruggiero's name  
5 was. So that is who reviewed it, as I recollect.

6 Q. And within five days of validation, well, let  
7 me put it this way. Sometime in -- sometime after the  
8 validation test in April or May 2013, Leonardo did, in  
9 fact, receive a \$10 million payment from Industrial Heat,  
10 agreed?

11 A. Right.

12 Q. Okay. So was it the position, at least at the  
13 time, that the provisions of section 3.2 (b) had been met  
14 by Leonardo?

15 A. At the time clearly we were satisfied enough to  
16 transfer the 10 million, the next tranche.

17 Q. Now, I understand that you have issues with the  
18 validation test and the process and procedure, and we are  
19 going to leave that for a second. Is there anything other  
20 than that that you contend Leonardo violated with respect  
21 to this provision?

22 A. You know, one question, and this is kind of  
23 looking back in retrospect. Again, we were blinded by the  
24 positive news from the professor's report and, you know,  
25 the apparently positive Penon data. But it says, And a

1 A. Not to my knowledge.

2 Q. Does Industrial Heat claim today that it's  
3 entitled to keep the license to the E-Cat IP?

4 A. That it is entitled to keep the license to the  
5 E-Cat IP?

6 Q. Yeah.

7 A. I see no reason why we wouldn't be entitled to  
8 keep the license. I don't think that we have any interest  
9 in retaining the license because it doesn't work.

10 Q. Has Industrial Heat offered to give the license  
11 back to Leonardo Corporation?

12 A. I can't recall. Have we offered that? I don't  
13 recall. I know that has been discussed.

14 MR. BELL: Don't go into discussions that you  
15 have had with your counsel.

16 THE WITNESS: I apologize.

17 MR. BELL: So I think his answer was -- let's  
18 have the question read back. Just answer his  
19 question yes or no.

20 (A portion of the record was read by the  
21 reporter.)

22 THE WITNESS: I'm not sure. I don't think so  
23 at this point.

24 BY MR. CHAIKEN:

25 Q. Does Industrial Heat believe it has value?

1 A. That the license agreement has value to date?

2 Q. Yes.

3 A. No.

4 Q. Does Industrial Heat believe that the E-Cat IP  
5 has value?

6 A. No, with one caveat. And this is, you know, it  
7 would be an obtuse kind of minimal value, which would be  
8 if some of the claims in some of its patent applications  
9 were allowed and they, in fact, relate to something  
10 somebody else is doing that does work. But that is a  
11 pretty hypothetical scenario, so I think the answer is no.  
12 But you could paint a hypothetical or possibly it could be  
13 some value there.

14 Q. Is there a provision in the license agreement,  
15 that is Exhibit 13 still, that provides that IH must be  
16 able to successfully replicate a certain COP result  
17 without the assistance of Dr. Rossi?

18 MR. BELL: Objection to form.

19 THE WITNESS: I would have to review the  
20 license agreement. Clearly, there was a --  
21 requirements that -- I would have to review it,  
22 Brian. I'm not sure.

23 BY MR. CHAIKEN:

24 Q. Are you aware of one sitting here today?

25 A. What is that?

1 word "replicate" appear anywhere in the agreement?

2 MR. BELL: Objection to form.

3 THE WITNESS: As I stated earlier this morning,  
4 we were, when Andrea drafted the agreement, we were  
5 trying not to change his language unless we felt  
6 absolutely we needed to. And when you combine 12 (b)  
7 and 13-1, we believe that gets the same effect.

8 BY MR. CHAIKEN:

9 Q. During the one year following validation, call  
10 it May 1, 2013, did Industrial Heat ever tell Dr. Rossi  
11 that it could not replicate?

12 A. Yes.

13 Q. When did it do that?

14 A. I believe on numerous different occasions. But  
15 one explicit conversation that comes to mind is a  
16 conversation that Tom and I had with Andrea around the  
17 kitchen table at Triangle Drive. Triangle Drive is where  
18 the initial facility where Andrea worked is located. And  
19 the basis of that conversation was to say to Andrea, you  
20 know, Look, you think things are going swimmingly. We  
21 don't believe that is the case. We can't replicate it.  
22 You think it's -- the results are fine. We are not seeing  
23 the same results.

24 And it became a heated conversation. And Tom  
25 eventually, you know, after he kind of pounded the table

1 quite literally, stormed out. And I think that was in the  
2 fall -- I know that was in the fall of '13. I don't  
3 remember was it September, October, November. I don't  
4 remember exactly. But it was during that period of time.

5 Q. Did Industrial Heat ever make that  
6 communication to Dr. Rossi in writing?

7 A. I don't know if we did. And we were seeing him  
8 quite frequently in person at that time. And so it  
9 wouldn't surprise me if we did not, that it was only  
10 verbal. But I don't know. There may be some written  
11 communication along those lines.

12 And, you know, the other thing is, it was much  
13 easier to communicate in person with Andrea than it was  
14 via e-mail because of the way he would react or appeared  
15 to react via e-mail. You can see that in his responses.

16 Q. Mr. Vaughn, did you ever -- and I was hoping to  
17 get a yes or no question to this, you can explain if you  
18 need to -- did you ever in writing point to those two  
19 contractual provisions that you just pointed me to, and  
20 put those in writing and say, Dr. Rossi, you are in  
21 violation of these two provision?

22 A. I don't believe that we did, with the  
23 explanation I just provided.

24 (Exhibit 19, Fourth Amended Answer, Additional  
25 Defenses, Counterclaims and Third Party Claims, was

1 marked for Identification.)

2 BY MR. CHAIKEN:

3 Q. Okay. I am going to show you, let's mark this  
4 one as Exhibit 19. This is the Fourth Amended Answer,  
5 Additional Defenses, Counterclaims and Third Party Claims  
6 filed by the defendants in this case.

7 You said you reviewed this before?

8 A. Yeah. And I also during break reviewed this  
9 document. And I was -- you know, you had asked me earlier  
10 about did we believe that Rossi had violated the protocol  
11 for validation. And so I reviewed this. This is, as I  
12 said, I might need to go back to review these claims. It  
13 refreshed me that only 18 of the specified 30 units were  
14 tested. This was based on a health law requirement Andrea  
15 represented to us.

16 But, anyway, that was another example of a  
17 validation of that process. I apologize. I didn't -- I  
18 reviewed it during break and wanted to highlight that. I  
19 didn't recall that specific example when you asked me  
20 earlier.

21 Q. I am glad you brought that up. Let's go to  
22 that. So on page 37 you write here, Industrial Heat  
23 states that paragraph 49, Because Leonardo and Rossi knew  
24 that the plant could not achieve validation at the time of  
25 the license agreement, they manipulated the validation

1 testing procedure to deceive counter-plaintiffs into  
2 making the second payment under the license agreement.

3 You say "manipulated the validation testing  
4 procedure." Does that include manipulating actual data or  
5 is it just the procedure we are talking about?

6 A. That is a good question. You know, I mean, I  
7 don't know that we know whether or not he manipulated the  
8 data, as well, in addition to the procedure. If we go  
9 through it, if you read kind of 50, and 50 to -- on a  
10 little bit, it talks about how the protocol was  
11 manipulated with this health office issue, etc., etc.

12 Q. Okay. Well, let's talk about that for a  
13 second. Let's just be very clear. There is a difference  
14 between manipulating procedure and manipulating data,  
15 correct?

16 MR. BELL: Objection to form.

17 THE WITNESS: There is a difference between  
18 manipulating procedure and data. I would say that  
19 that's true.

20 BY MR. CHAIKEN:

21 Q. Okay.

22 A. But it could be -- it could be overlapped.

23 Q. Okay. Well, just for purposes of my question,  
24 I want to make sure that we are talking about -- we are  
25 separating those two different things.

1 A. That is fine.

2 Q. Okay. Does Industrial Heat have any  
3 information or proof or a document that you can point me  
4 to that shows that Dr. Rossi manipulated any data with  
5 respect to the validation test in Italy?

6 A. You know, we would have to -- I would have to  
7 refer that question to experts who are reviewing the data.  
8 Me sitting here today, I don't -- you know, I can't  
9 specifically point to a piece of data, for example, and  
10 say -- what you would like to be able to do is say  
11 something as clear as, well, he advertised this amount of  
12 input power and over here it showed this amount of input  
13 power. Clearly, there is a discrepancy.

14 Sitting here today, do I know of such a thing?  
15 I'm not sure. But our experts are reviewing that data and  
16 they may have specifics that they could reference.

17 Q. Okay. So you as the representative of  
18 Industrial Heat can't point me to a single document and  
19 you are going to rely on your experts, correct?

20 A. And their analysis of the data, yes.

21 Q. Okay. At the time that this complaint was  
22 filed -- when I say "this complaint," I mean this lawsuit,  
23 so back in April -- did you have possession of any  
24 information that would lead you to believe that the data  
25 for the validation test in Italy had been manipulated?

1 three, both. Correct?

2 A. Yeah. I'm sorry, I just lost -- Sorry, I've  
3 got it back.

4 Q. Are you with me?

5 A. I am with you, yep.

6 Q. But isn't it true that there other conclusions  
7 that could be drawn?

8 A. If there are, they don't come to mind. If  
9 there are other conclusions that could be drawn, they  
10 don't come to mind.

11 Q. I mean, couldn't it be that you could conclude  
12 that Industrial Heat lied about its ability to replicate?  
13 Is that a conclusion that could be drawn?

14 A. We did not lie about our ability to replicate.

15 Q. I am not saying that you did or didn't. I am  
16 saying, isn't that a conclusion that could be drawn?

17 A. Hypothetically, I suppose that one could make  
18 that argument.

19 Q. Could we conclude that Industrial Heat did not  
20 have competent scientists or engineers working for it when  
21 it tried to replicate?

22 A. No. As I mentioned, we had -- we progressed  
23 along the lines of sophistication the more we failed in  
24 replication. We kept thinking, well, we didn't  
25 successfully replicate. We must not know what we are

1 doing. So we continued to get more sophisticated parties.  
2 For example, Bowling and then later our engineering team,  
3 both without success.

4 Q. But without knowing all that background  
5 information, isn't that a conclusion that could be drawn?

6 A. That one could say we weren't sophisticated  
7 enough to assess whether or not -- I don't know. That  
8 would seem to me that that would be equally absurd. But I  
9 guess you can hypothetically make that argument.

10 Q. Could someone conclude that Industrial Heat  
11 used faulty equipment when it was running its test?

12 MR. BELL: Objection to form.

13 THE WITNESS: You could make that argument,  
14 Brian. But I don't believe that, you know, if you  
15 were -- if an expert were to go back and review all  
16 that we did and how we did it, that is not a  
17 conclusion they would come to.

18 BY MR. CHAIKEN:

19 Q. Okay. Could someone conclude that Industrial  
20 Heat used inferior materials for the catalyst?

21 A. Again --

22 MR. BELL: Objection to form.

23 THE WITNESS: -- I believe all of these are  
24 hypothetical arguments that could be made. But it's,  
25 you know, we know what we did and we exhaustively

1 tested this, so that we would know before entering  
2 into a conflict like this if it did, in fact, work or  
3 not. Because certainly you wouldn't be in this  
4 position if it does, in fact, work.

5 BY MR. CHAIKEN:

6 Q. Could someone possibly conclude from these  
7 facts that Industrial Heat didn't properly follow  
8 Dr. Rossi's instructions?

9 MR. BELL: Objection to form.

10 THE WITNESS: That was his -- the burden was on  
11 him to ensure that we did follow the instructions and  
12 that we were doing what he told us to do based on  
13 transfer of the IP. And so, you know, if you want  
14 to -- if Andrea is saying, Well, they didn't do what  
15 I told them to do, then tell us what to do. You  
16 know, I think we were there and saying that  
17 frequently.

18 So it is hard to -- in my opinion, that is a  
19 hard argument to make, as well. Again, it falls  
20 under your hypothetical category. But I don't see  
21 how, based on the exhaustive work that we did  
22 initially, T. Barker and myself to some extent,  
23 admittedly those were less sophisticated than the  
24 other efforts, but it was because we thought it was  
25 easy and a high order of magnitude signal. No

1           Early on, we were overly optimistic and overly  
2 confident, I would say, in our ability to assess the  
3 performance of this thing.

4           Q.     Let me broaden the scope of my question.

5           A.     Sure.

6           Q.     Has Industrial Heat or any of its affiliates,  
7 in any of its LENR investments ever come across a positive  
8 COP in any of its testing?

9           A.     It would work as also indeterminate and  
10 ongoing. So it is ongoing. We will see.

11          Q.     Has Industrial Heat ever told its investors  
12 that it had received or it had achieved positive COP in  
13 any of its testing?

14          A.     Again, if we have, it was in a preliminary  
15 communication that was later retracted. I'm not sure that  
16 we have. But I just want to caveat that. Because I see  
17 you are putting in front of me an e-mail here where it  
18 says, I mentioned the 1.3 times COP test, and it looks  
19 like maybe this was a draft update. Again, it is kind of  
20 preliminary exuberance over something that we thought had  
21 affirmed results which we were hopeful about. But later,  
22 in further analysis, did not affirm those results.

23          Q.     Well, let's talk about Exhibit 20. Exhibit 20  
24 is Bates marked 96250 through 95252. It is an e-mail  
25 dated July 16, 2013 from you to Tom Darden. At the top it

1 looks like it was forwarded from an earlier e-mail that  
2 day. And it's at the middle or three-quarters of the way  
3 down, excuse me, one-third of the way down, it says  
4 "Industrial Heat update July 2013."

5 What was the purpose of this update?

6 A. I imagine, if I had to guess, it was an update  
7 to existing investors at that time.

8 Q. And do you know if this update was ever sent  
9 out to investors?

10 A. I don't know for certain, as Tom was sending  
11 out the updates at that time. But if I had to guess, a  
12 version of it likely was. Whether it was this version, I  
13 don't know.

14 Q. Okay. The second paragraph below, where it  
15 says Industrial Heat update July 2013, the document  
16 states, in the middle of that paragraph: "We tested our  
17 plant at the end of April and beginning of May for four  
18 days. During the test we operate 37 different reactors  
19 for periods ranging from 24 hours to a few hours and the  
20 results were good. Our engineer and the independent  
21 engineer operating the test reported the machines produced  
22 far more energy than they required to operate. Nearly 11  
23 times as much in some instances versus our test  
24 requirement of six times during the 24-hour test."

25 A. Mm-hmm.

1 have to check with Jim Fogleman. But I don't believe  
2 if you would look at a cap table of Industrial Heat,  
3 LLC or IH Holdings International Limited that  
4 Cherokee Advisors would be listed there. But it may  
5 be, and I just don't think it is. Because I think  
6 that it was helping cover costs and was later paid  
7 back.

8 BY MR. CHAIKEN:

9 Q. Okay. We mentioned Woodford Investments. And  
10 you said, I think, the Woodford Investment Fund invested  
11 in May of 2015?

12 A. Correct.

13 Q. And they invested \$50 million?

14 A. Correct.

15 Q. And is it your understanding that the valuation  
16 for Woodford was a \$2 billion valuation at that time?

17 A. No.

18 Q. What was the valuation, as far as you  
19 understood it?

20 A. It was a -- they bought -- they -- it's a  
21 nuance question. It is not just because of the way they  
22 structured it. They had the ability to buy additional  
23 equity at specified prices. So they provided 50 million  
24 initially and received, I believe, just under five percent  
25 for that. They also had the option to buy up to an

1 MR. BELL: Are you making any representations  
2 about the program set forth and the authorship of  
3 this document?

4 MR. CHAIKEN: No. I am just wondering if the  
5 fact he was aware that Industrial Heat had a joint  
6 venture with a market in China.

7 THE WITNESS: No, was the answer.

8 BY MR. CHAIKEN:

9 Q. Okay. Did Leonardo deliver the E-Cat plant to  
10 Raleigh, North Carolina in August 2013?

11 A. I believe that is correct.

12 Q. And did Industrial Heat ever tell Leonardo that  
13 its delivery in August of 2013 was late and, therefore, a  
14 breach of the license agreement?

15 A. Prior to this lawsuit?

16 Q. Yep.

17 A. I don't recall that we did.

18 Q. Is it making a claim now that it breached the  
19 license agreement by delivering the plant late?

20 A. He did not deliver the plant within the time  
21 frame specified by the license agreement.

22 Q. Yeah, but is it Industrial Heat's position  
23 today that that's a breach of the license agreement?

24 A. I believe that is correct.

25 Q. So you are making that claim?

1           Was it Industrial Heat's position that as of  
2 August of 2013 that Dr. Rossi could still work towards the  
3 third payment that he could earn under the terms of the  
4 license agreement?

5           A.     Our perspective was that, notwithstanding the  
6 fact that he delivered the plant late, we were willing to  
7 pay for performance. If he performed, we were still  
8 willing to pay him.

9           Q.     Okay. So you were operating under that -- that  
10 fact scenario, right?

11           MR. BELL: Objection to the form.

12 BY MR. CHAIKEN:

13           Q.     That being that if he could perform, he would  
14 still be entitled to payment?

15           A.     Yes. If the device could be proven to generate  
16 real high levels of energy output, such as one megawatt,  
17 real COPs such as ten, and the technology had been  
18 transferred, then we were willing to pay.

19           Q.     And the section in that, goes to the section,  
20 third payment, that singular license agreement, we will  
21 get to that in a second. But is there a reason that that  
22 third test, what we call, I will call it the guaranteed  
23 performance test, is there a reason it didn't start in  
24 August of 2013?

25           A.     I'm not sure why it did not start in

1 then 89 million was pretty easy, in our view of the world.

2 Q. If you turn to page three of this document, it  
3 has a paragraph in the middle of the page that says "new  
4 facility." Do you see that?

5 A. I see it.

6 Q. It says: "Later on," in the middle of the  
7 paragraph, "later on, we hope to find a nearby beta  
8 customer with a secure site where we can operate this  
9 plant for a year or more. We are impeded in finding this  
10 customer now because we are not publicizing our  
11 involvement. If any of you have a suggestion, please let  
12 me know."

13 Whose idea was it to have a customer for the  
14 purposes of testing the E-Cat equipment?

15 A. Andrea's. And, you know, I think Tom mentions  
16 that because Andrea had already broached that idea.

17 Q. And when did he broach that idea?

18 A. I'm not sure of the exact time, but clearly  
19 early on, after delivery of the plant in August 2015.

20 Q. I see.

21 A. One of his consistent themes was, you know, we  
22 always -- he believed it needed to be ratified by a  
23 customer. We could care less about a customer, but that  
24 was important to Andrea.

25 Q. Did you have conversations with Dr. Rossi about

1 Q. So at that time, at least at the time of this  
2 document, was Industrial Heat willing to postpone the  
3 start of the guaranteed performance test?

4 MR. BELL: Objection to form.

5 THE WITNESS: It appears that that was  
6 contemplated by this amendment, which was never put  
7 into effect.

8 BY MR. CHAIKEN:

9 Q. Okay. And whose signature is on page three?

10 A. Tom Darden's and Andrea Rossi's.

11 Q. And you say this agreement was not put into  
12 effect, and you say that because why?

13 A. It was never signed by AEG. For it to be  
14 effective, it had to be signed by all parties. And I  
15 think there was later notice circulated that said it was  
16 not in effect because it had never been signed by AEG.

17 Q. Got it. Did -- any time after October 2013 and  
18 prior to this lawsuit beginning, did Industrial Heat  
19 inform Dr. Rossi that, The time had passed, you could no  
20 longer achieve guaranteed performance, and you could no  
21 longer achieve an \$89 million payment?

22 A. I'm not sure that we informed him of that  
23 verbatim, as you stated.

24 Q. Okay. Did you say it to him in any -- any  
25 summary of that, in any -- in any way did you say, Listen,

1 the time has passed, you are -- we are not having a  
2 guaranteed performance test?

3 A. I am trying to recall. You know, I -- I don't  
4 recall.

5 Q. Do you think that was something that would be  
6 important to inform him, that he no longer had the  
7 opportunity to earn \$89 million?

8 A. Again, we were planning to pay him, if he could  
9 perform. Notwithstanding the fact that he had violated  
10 the agreement, not met the conditions of the agreement.  
11 So if we had done that, let's take a hypothetical  
12 scenario, dealing with a volatile character, you don't  
13 know how he is going to respond. Our goal, as stewards  
14 and as managers, is to determine definitively the state of  
15 the art. And by being confrontational, sooner rather than  
16 later, it ensured that you would just blow up in -- there  
17 was a chance, at least, that you would blow up the entire  
18 relationship and Andrea would stop working on it  
19 altogether and so, therefore, we just wouldn't know.  
20 Versus getting more information and getting more data to  
21 determine the state of the art.

22 Q. Well, couldn't you have told him, Hey,  
23 Dr. Rossi, we think that the time has passed, but if you  
24 perform, we are willing to still pay you?

25 MR. BELL: Objection to form.

1 THE WITNESS: Again, in a hypothetical  
2 scenario, a lot of things are possible and that is  
3 one possibility.

4 BY MR. CHAIKEN:

5 Q. Did you ever -- did you ever say that or  
6 communicate that with Dr. Rossi?

7 A. No. He wanted to do a specific thing and we  
8 wanted to allow him to do that thing to better understand  
9 the state of the art.

10 Q. Did Industrial Heat inform its investors that  
11 it had considered the time for performance of the  
12 guaranteed performance test having -- had passed?

13 A. I believe that we did.

14 Q. And how did you do that?

15 A. I am guessing, but I am guessing it was either  
16 an e-mail -- most likely an e-mail or in a memo. But at  
17 the same time, Woodford was as eager as we were to pay him  
18 if it performed and the technology would have been  
19 transferred.

20 Q. And you know that because Woodford told you  
21 that?

22 A. Correct. I think, more precisely, said that to  
23 Tom.

24 BY MR. CHAIKEN:

25 Q. When did Industrial Heat first come to the

1 conclusion that the time for the guaranteed performance  
2 test had passed?

3 A. I don't recall. But from a technical  
4 perspective, it would have been 60 days after delivery of  
5 the plants, presumably.

6 (Exhibit 28, IH45757 through 45819, was marked  
7 for Identification.)

8 BY MR. CHAIKEN:

9 Q. I will show you what has been marked as  
10 Exhibit 28. Exhibit 28 has been Bates marked IH45757  
11 through 45819. It is a letter from Myers Bigel to Tom  
12 Darden.

13 Have you seen this before?

14 MR. BELL: Before you answer, any questions on  
15 this document, I believe we called this back, did we  
16 not?

17 MR. CHAIKEN: I believe we contested that.

18 MR. BELL: I am not going to let him answer any  
19 questions on it.

20 MR. CHAIKEN: Okay. You are going to instruct  
21 him not to answer?

22 MR. BELL: I am going to instruct him not to  
23 answer.

24 MR. CHAIKEN: Okay. We will save that one.

25 (Exhibit 29, 107550 through 107552, was marked

1 for Identification.)

2 BY MR. CHAIKEN:

3 Q. I am going to show you what has been marked as  
4 Exhibit 29.

5 A. Thank you.

6 Q. Exhibit 29 has been Bates stamped 107550  
7 through 107552. It is an e-mail from you to John  
8 Mazzarino and Tom Darden. It is an IH timeline.

9 And specifically I want to refer you to the  
10 second -- well, first of all, do you recall sending this  
11 e-mail?

12 A. I recall this e-mail. Again, it's -- I don't  
13 recall specifically sending it. I mean, but I recall this  
14 e-mail. I need to review it.

15 Q. I am only going to refer to one line.

16 A. Okay. Go ahead.

17 Q. It is on the very bottom of the second page.  
18 It says Mid-2014, May through September. It states:  
19 "Rossi begins working on one megawatt unit, prepare it to  
20 operate on a continuous basis for 350 days, per the terms  
21 of the agreement with IH." See that?

22 A. I see that.

23 Q. Was it your opinion as of September 11, 2014  
24 that Dr. Rossi was preparing for a 350-day test, pursuant  
25 to the agreement?

1 A. He was preparing for that. It doesn't mean  
2 that he hadn't also violated the chance to perform under  
3 that agreement. Clearly, though, you know, we were -- we  
4 were acknowledging that he was planning to test the one  
5 megawatt unit for an extended period of time. And we were  
6 planning to pay, if he could prove that it performed.

7 (Exhibit 30, 107246 through 247, was marked for  
8 Identification.)

9 BY MR. CHAIKEN:

10 Q. Let me show you what has been marked as  
11 Exhibit 30. Exhibit 30 has been Bates stamped 107246  
12 through 247. It is an e-mail from John Mazzarino to Tom  
13 Darden and yourself, dated September 29, 2014.

14 And specifically -- well, you have never seen  
15 this before, have you? Actually, you were, you were  
16 forwarded this e-mail. At the very top, see that?

17 A. Mm-hmm.

18 Q. Do you recall seeing this e-mail?

19 A. I mean, clearly I must have seen it. It went  
20 to me. But I don't know that I recall this specifically.

21 Q. Right. On the second page, I am just concerned  
22 about one sentence.

23 A. Okay.

24 Q. On the second page of this document, paragraph  
25 begins: "With Andrea back from Switzerland, he is

1 Florida?

2 MR. BELL: Objection to form.

3 THE WITNESS: No. What we allowed him to move  
4 forward with his proposal, which was to do testing  
5 with a customer he represented as an affiliate of  
6 Johnson Matthey in Florida. And we thought, Well,  
7 you know, if a group like Johnson Matthey can affirm  
8 that this technology performs as advertised, that is  
9 a good thing. And so we allowed that to proceed.

10 BY MR. CHAIKEN:

11 Q. We will get into that in a second.

12 But what equipment did Industrial Heat agree  
13 would be tested in Florida?

14 MR. BELL: Objection to form.

15 THE WITNESS: Again, he wanted to test, what he  
16 was telling us, was the one megawatt plant in Florida  
17 with a customer. And so, you know, again, trying to  
18 be accommodative and probably overly gracious, in  
19 hindsight, we allowed that.

20 BY MR. CHAIKEN:

21 Q. So you agreed to test the one megawatt plant in  
22 Florida?

23 MR. BELL: Objection to form.

24 BY MR. CHAIKEN:

25 Q. Agreed?

1 A. We allowed him to do what he was proposing to  
2 do.

3 Q. Okay. And what he was proposing to do is test  
4 the one megawatt?

5 MR. BELL: Objection to form.

6 THE WITNESS: He was proposing to install the  
7 one megawatt at a facility where an affiliate of  
8 Johnson Matthey would use it for industrial processes  
9 and would provide, you know, feedback on their power  
10 consumption from the one megawatt device.

11 BY MR. CHAIKEN:

12 Q. Was the discussion about him doing that test  
13 with a six cylinder?

14 MR. BELL: Objection to form.

15 THE WITNESS: I don't recall. I recall him,  
16 again, around the second amendment, but I don't  
17 recall whether or not at that point he was requesting  
18 the six cylinder.

19 BY MR. CHAIKEN:

20 Q. At this point in time the owner of the one  
21 megawatt was Industrial Heat, correct?

22 A. Correct.

23 Q. And Industrial Heat controlled where that unit  
24 was located, correct?

25 A. Correct. All the while, trying to keep Andrea

1 happy.

2 Q. Okay. But it had full control. Andrea  
3 couldn't move the one megawatt without Industrial Heat's  
4 agreement, correct?

5 A. Again, we allowed him to take it down there.

6 Q. Right. And, in fact, Industrial Heat did ship  
7 the one megawatt to Florida, did it not?

8 A. I believe that we helped Andrea ship it. Now,  
9 did we ship it or did Andrea ship it? I don't recall.  
10 But it would not surprise me if, in fact, we contracted to  
11 transfer, a transportation contractor that was used to  
12 move it.

13 Q. Do you know exactly when it was shipped?

14 A. I don't recall exactly. I believe it would  
15 have been -- was it December of '14? I don't recall  
16 exactly. January of '15. I don't recall exactly.

17 Q. December '14, January '15, somewhere around  
18 there?

19 A. I think. I'm not sure.

20 Q. Did -- well, was there -- was there a  
21 requirement in the contract, and I know we talked about  
22 this a little bit before, that there be an actual customer  
23 using the heat generated by the heat gap?

24 A. No.

25 Q. Okay. Would or could that guaranteed -- I will

1 call it for purposes of ease and reference, I am going to  
2 call it the guaranteed performance test. You can dispute  
3 whether it was or not, but just for the sake of my  
4 questioning, I am going to use that term. Fair?

5 A. Okay.

6 Q. Could the guaranteed performance test have been  
7 performed without an actual customer?

8 MR. BELL: Objection to form.

9 THE WITNESS: Sure. As originally  
10 contemplated, there was no customer involved.

11 BY MR. CHAIKEN:

12 Q. Right. But did IH think it was important to  
13 have an actual customer?

14 A. We thought, when we thought it was Johnson  
15 Matthey, we were thinking, wow, that is a real reputable  
16 company. It was not totally absurd that it would be  
17 Johnson Matthey, weirdly enough. I realize if someone  
18 said, Well, GE is going to do this, that would maybe sound  
19 crazy. But Johnson Matthey has a weird history in the  
20 LENR field. They have been involved through supplying of  
21 materials and kind of a -- if you do a little bit of  
22 research on it, they are not -- they do appear to have at  
23 least some tangential interest in the LENR field. So it  
24 wasn't totally absurd that, of all the companies out  
25 there, Johnson Matthey might actually be willing to test a

1 MR. BELL: Objection to form.

2 THE WITNESS: I think Tom was saying that the  
3 core issue was the state of the art, does it work and  
4 to what degree? He is getting more particular that  
5 -- one and two are more particular. Who is the  
6 customer? And then how much steam or presumably  
7 energy is being supplied? But I believe the core  
8 issue he is referencing is, does it work and to what  
9 degree?

10 BY MR. CHAIKEN:

11 Q. Did Industrial Heat ever tell any of its  
12 investors or partners that the customer in the group that  
13 Leonardo had or Industrial Heat had was, in fact, an  
14 affiliate of Johnson Matthey?

15 A. I am not sure. We may have. Just because, you  
16 know, that's what we were led to believe. But I'm not  
17 sure.

18 Q. Did the tests done in Florida begin in around  
19 February 2015?

20 A. Yes.

21 Q. Now, when the test was running, did anyone from  
22 Industrial Heat ever express anything other than positive  
23 feedback to Dr. Rossi regarding that test?

24 MR. BELL: Can I have the question read back,  
25 please?

1 explain the visit, which would have involved feedback  
2 and you didn't let him finish.

3 BY MR. CHAIKEN:

4 Q. I will restate my question. Did anyone from  
5 Industrial Heat ever express negative feedback to  
6 Dr. Rossi from February 2015 to November 2015?

7 A. I would have to go back review the  
8 communication between, for example, did T. Barker say  
9 anything after his visit? I'm not sure. By and large,  
10 our protocol at that time was to allow him to continue to  
11 operate the technology to see if we could learn more about  
12 his performance before being confrontational.

13 Joe Murray and I tried to go down there in  
14 July of '15 and were barred from doing so, Joe was.  
15 Presumably, because he is engineer with a skill set  
16 necessary to determine exactly what is going on.

17 Q. Did Industrial Heat ever bring potential  
18 investors to the facility in Doral?

19 A. As I mentioned before, we took Paul Lamacraft  
20 there prior to Woodford's investment. So you could have  
21 considered him a potential investor at that point. That  
22 visit was very eye-opening.

23 Q. I am not asking you about what happened at the  
24 visit; I am just asking if you brought them.

25 A. Sure.

1 Q. Did you bring any other investors?

2 A. I did not bring any others. I believe there  
3 was a visit by Tom with others from China. And whether or  
4 not those were prospective investors or not, I'm not sure.

5 Q. Why did Industrial Heat bring investors to the  
6 facility in Doral?

7 A. One, I am not certain, other than Paul  
8 Lamacraft, right, that we did. Two, it would have been,  
9 if Tom did, and I'm not sure if he did or not, then it  
10 would have been to say, Well, you know, this is one of X  
11 number of things we have going on in the LENR world, and  
12 who knows whether or not this will pan out.

13 (Exhibit 39, Industrial Heat's Supplement to  
14 Defendant Industrial Heat, LLC's Amended Responses  
15 and Objections to Plaintiff Andrea Rossi's First Set  
16 of Interrogatories, was marked for Identification.)

17 BY MR. CHAIKEN:

18 Q. I will mark this one as Exhibit 39. Let me  
19 show you what has been marked as Exhibit 39.

20 A. Thanks.

21 Q. Exhibit 39 are Industrial Heat's Supplement to  
22 Defendant Industrial Heat, LLC's Amended Responses and  
23 Objections to Plaintiff Andrea Rossi's First Set of  
24 Interrogatories. That is a hell of a title.

25 Have you seen -- let me say it this way. I