

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA )  
3 ANDREA ROSSI and LEONARDO )  
4 CORPORATION, )  
5 Plaintiffs, )  
6 VS. )  
7 ) No. 1:16-cv-2119-CMA  
8 THOMAS DARDEN; JOHN T. VAUGHN; )  
9 INDUSTRIAL HEAT, LLC; IPH )  
10 INTERNATIONAL B.V.; and )  
11 CHEROKEE INVESTMENT PARTNERS, )  
12 LLC, )  
13 Defendants. )  
14 INDUSTRIAL HEAT, LLC and IPH )  
15 INTERNATIONAL B.V., )  
16 Counter-Plaintiffs, )  
17 Vs. )  
18 ANDREA ROSSI and LEONARDO )  
19 CORPORATION, )  
20 Counter-Defendants, )  
21 And )  
22 J.M. PRODUCTS, INC.; HENRY )  
23 JOHNSON; FABIO PENON; UNITED )  
24 STATES QUANTUM LEAP, LLC; )  
25 FULVIO FABIANI; and JAMES )  
BASS, )  
Third-Party Defendants. )

21 Videotaped Deposition of  
22 THOMAS DARDEN  
23 (Taken by Plaintiff)  
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina  
24 February 16, 2017  
25 Reported in Stenotype By  
Leslie Christian  
Transcript produced by computer-aided transcription



1 THE WITNESS: Well, people often would  
2 ask me to speak about Cherokee's activities and so I  
3 would talk to -- let me see what this was used for but  
4 -- I don't know if this was a fund raising document,  
5 you know, talking to other investors.

6 Back at the back it says, "Industrial  
7 Heat Challenge. Industrial Heat is raising an  
8 additional 20 million in order to" -- this process. I  
9 don't know if that was -- and, you know, we talked  
10 about organization, Industrial Heat, who are we,  
11 founded by Tom Darden CEO of Cherokee. We talk about  
12 the separate Cherokee entities here. And so I don't  
13 know if this was a fund raising document or something  
14 -- a presentation to some group.

15 So I will speak occasionally to  
16 environmental groups; organizations that have an  
17 interest in carbon, air pollution, issues like that.  
18 And, you know, they might be -- you know, if they're  
19 familiar, if they've heard about what we're doing of  
20 course they're all curious because this would be a  
21 solution to important environmental problems that we  
22 have.

23 And I often will accept those  
24 opportunities to speak. I think it's a -- you know,  
25 something that we're -- we've been proud to be involved

1 **Raleigh, North Carolina 27601.**

2 Q. Is that where you live?

3 **A. That's my office address.**

4 Q. Can I have your home address, please.

5 **A. 2351 Hales Road, Raleigh 27608.**

6 Q. How long have you lived there?

7 **A. Thirty years approximately.**

8 Q. And do you have an e-mail address?

9 **A. Yes, I do.**

10 Q. Do you have several e-mail addresses?

11 **A. Yes.**

12 Q. Can you please provide those.

13 **A. Tdarden@industrialheatco,**

14 **tdarden@cherokeefund.com, tfdarden@aol.com,**

15 **tfdarden@yahoo.com.**

16 Q. Can you please briefly describe your post  
17 high school education.

18 **A. I went to UNC Chapel Hill in North Carolina**

19 **-- University of North Carolina, Chapel Hill, and**

20 **studied mostly liberal arts and environmental policy.**

21 **I have a bachelor's degree. I then attended graduate**

22 **school in city planning, urban planning. I studied**

23 **pollution technology, urban pollution cleanup -- or**

24 **urban pollution waste management, landfills, sewage**

25 **treatment, etc.**

1 I then went to law school at Yale and  
2 studied a general law program plus a fair number of  
3 courses associated with environment or kind of  
4 management and private -- public sector management sort  
5 of city planning-related type of management issues.  
6 And that's my education.

7 MR. BELL: Brian, did somebody just  
8 join the call?

9 MR. CHAIKEN: Did someone join?

10 MR. BELL: Maybe that was just Rudy.

11 MR. CHAIKEN: Rudy said he was going  
12 to be on and off.

13 MR. BELL: Okay.

14 MR. NUNEZ: Yes, that was me. This is  
15 Rudy. I inadvertently called on.

16 (BY MR. CHAIKEN)

17 Q. Are you currently a member of any state  
18 bar?

19 A. I am inactive. So I initially was a member  
20 of the North Carolina Bar but I went inactive.

21 Q. And when did you go inactive?

22 A. A long time ago. Like, not long after I  
23 joined the bar. I was not practicing law. I never  
24 practiced law and I never -- I didn't want -- when they  
25 put in the continuing legal education requirements I

1 chose not to spend the time doing that so I went  
2 inactive.

3 Q. Understood. Are you currently employed?

4 A. Yes.

5 Q. By whom are you currently employed?

6 A. I work for Cherokee Investment Partners. I  
7 also work on behalf of a number of the different  
8 venture deals that we've invested in.

9 (Whereupon Exhibit 1 was marked for  
10 identification as of this date.)

11 Q. Got it. I'll show you what's been marked  
12 as Exhibit Number 1 to your deposition today. Exhibit  
13 Number 1 is a document that's been bates stamped  
14 IH-113114. It's a flowchart. Have you ever seen this  
15 document before?

16 A. I don't know if I've seen this particular  
17 one, but I've seen other charts that show some of this  
18 organization structure.

19 Q. Okay. I kind of want to go through some of  
20 these entities on this page and get an understanding as  
21 to whether or not you have a position in these  
22 companies. And we'll just start at the top with the  
23 big triangle which is IH Holdings International Limited  
24 (UK). Are you familiar with that entity?

25 A. Yes, I am familiar with that entity.

1 Q. Are you a director of that entity?

2 A. I don't know the precise titles that are  
3 used for that company, but I believe the answer is yes.

4 Q. Okay. Are you an officer of that company?

5 A. I believe that I am an officer of that  
6 company.

7 Q. Does the officer have a specific title?

8 A. I don't remember the title there.

9 Q. Okay. As an officer and/or director are  
10 you a person who makes decisions on behalf of that  
11 company?

12 A. Yes.

13 Q. Is there anybody else who does make  
14 decisions on behalf of that company?

15 A. Well, J.T. Vaughn has been involved in  
16 decision-making associated with that company. I don't  
17 remember what his specific role there is.

18 Q. Anybody else?

19 A. Well, legal counsel would be involved in  
20 making decisions associated with the structure. Price  
21 Waterhouse as our accounting firm would be involved in  
22 that. So other service providers. It's a holding  
23 company so it's not very active.

24 Q. Okay. Well, as I phrase my questions I'm  
25 going to ask similar questions with respect to all of

1 the entities. But I understand you may have legal  
2 counsel or accounting firms advise the management team,  
3 but ultimately I'm only asking about people who are  
4 either officers, directors or otherwise in a position  
5 to make decisions on behalf of the company.

6 **A. Right, right.**

7 Q. Next one on the far left, IPHBV Holdings  
8 Limited. Are you a director of a company?

9 **A. I don't remember who the directors and  
10 officers are of each of the different subsidiaries. I  
11 think I'm probably going to answer all of them that  
12 way.**

13 Q. Okay. So just looking at this entire  
14 structure here, you believe but are not positive that  
15 you're a director of all of these entities?

16 **A. No. I don't think I'm a director of all  
17 these entities, but I don't know -- I don't know the  
18 personnel for each of these entities.**

19 Q. I see. Well, and I guess I --

20 **A. If you had a chart that showed each of the  
21 names I could probably confirm if it's likely that that  
22 person is, but I don't know specifically each of the  
23 entities and its current officers and directors.**

24 Q. I see. Well, I guess we have to go through  
25 them one by one based on what you're telling me unless

1 you can identify certain companies on this list that  
2 are not -- that you definitely know that you're not a  
3 director or officer.

4 MR. BELL: Well, some of them are  
5 irrelevant so why don't you just ask about the ones you  
6 care about.

7 (BY MR. CHAIKEN)

8 Q. Well, we talked about IPHBV Holdings  
9 Limited. Are you an officer of that company?

10 A. I don't remember whether I'm an officer or  
11 director of that company. I believe that I am.

12 Q. Okay. Are you a decision-maker on behalf  
13 of that company?

14 A. Well, through my capacity as a  
15 decision-maker for the parent company then, you know,  
16 there are certain decisions that the parent company  
17 would be involved in for that, but I would have some  
18 influence over decisions that are made there.

19 Q. Anybody else besides yourself?

20 A. Well, J.T. Vaughn also. In some cases Jim  
21 Fogleman would have some input into some of these.

22 Q. Okay. Anyone else?

23 A. And Ben Van Wyk.

24 Q. Who's that?

25 A. Ben Van Wyk.



1 Q. Okay.

2 A. So there's a Dutch guy who's involved in  
3 that company as well.

4 Q. Understood. IPH International BV. Are you  
5 a director?

6 A. I would answer the same about that entity.  
7 I can't remember. Oh, I'm sorry. Ben Van Wyk. I  
8 thought that was the Dutch company. You were  
9 discussing IPHBV Holdings (UK)?

10 Q. Right.

11 A. So I don't know the -- I would answer the  
12 same regarding the IPH International and IPHBV. I  
13 don't know who plays which role vis-à-vis of those two  
14 different companies.

15 Q. Okay. Industrial Heat, LLC. Are you a  
16 director of that company?

17 A. I don't know that it has directors as an  
18 LLC.

19 Q. Member. Are you a member of that company?

20 A. I believe that Industrial Heat, LLC is  
21 wholly owned.

22 Q. By IH Holdings International?

23 A. By their parent company. And so I thought  
24 that it had only one member. I'm not completely  
25 certain that's correct.

1 Q. Are you a manager of Industrial Heat, LLC?

2 A. I believe that I am an officer or a manager  
3 of that company.

4 Q. Is there a specific title?

5 A. I don't remember the title.

6 Q. Are you a decision-maker for Industrial  
7 Heat, LLC?

8 A. Well, at least through my capacity as being  
9 involved in decisions at the parent company. At least  
10 indirectly, but I would have some influence there.

11 Q. Is anybody else a decision-maker?

12 A. J.T. Vaughn.

13 Q. Now, I understand that this structure was  
14 put in place in approximately May of 2015; is that  
15 correct?

16 A. I didn't remember that date, but that would  
17 probably make sense.

18 Q. Prior to the structure being put in place  
19 were you still a director and/or officer of Industrial  
20 Heat, LLC?

21 A. I would have to look at the records for the  
22 different times. I don't remember the organization  
23 structure details.

24 Q. I believe Industrial Heat, LLC was formed  
25 in 2012. Does that sound right?

1           **A.    Makes sense.**

2           Q.    Is there any point in time that you --  
3 based on your recollection that you were not an officer  
4 or director of Industrial Heat, LLC?

5           **A.    I don't remember not being. I don't**  
6 **remember that.**

7           Q.    Okay. There's a few other entities that  
8 I'm really not concerned about other than just to  
9 understand what your role is. L Holdings, LLC.

10                   MR. BELL: What's the question?

11                   MR. CHAIKEN: Is he an officer or  
12 director?

13                   **THE WITNESS: I don't remember.**

14 (BY MR. CHAIKEN)

15           Q.    New Heat, LLC?

16           **A.    Also don't remember.**

17           Q.    Are both of those companies wholly owned by  
18 IH Holdings International Limited?

19           **A.    I believe that both of those are wholly**  
20 **owned. I believe, but I would want to consult with our**  
21 **attorneys or accountants to confirm that.**

22           Q.    What about IHJ Holdings Limited?

23           **A.    I would also want to consult with our**  
24 **accountants about the precise structure there. It's a**  
25 **complicated structure that we relied heavily on limited**

1 **settings.**

2 Q. Okay. You say you're currently working for  
3 Cherokee Investment Partners; is that correct?

4 **A. Yes.**

5 Q. Is there -- are you an owner of that  
6 company?

7 **A. Yes, I am an owner of that company.**

8 Q. What percentage ownership do you have?

9 **A. I think it's 56 percent.**

10 Q. Are there other Cherokee-related entities  
11 that you are an owner of?

12 MR. BELL: Objection to form.

13 **THE WITNESS: There are other Cherokee**  
14 **entities that have "Cherokee" in the name that I'm an**  
15 **owner of.**

16 (BY MR. CHAIKEN)

17 Q. Okay. Approximately how many?

18 **A. Ten.**

19 MR. BELL: Same objection.

20 **THE WITNESS: I would have to think**  
21 **about it and count, but several.**

22 (BY MR. CHAIKEN)

23 Q. Okay. And what is the general business  
24 that these entities are engaged in?

25 MR. BELL: Objection to form.

1 THE WITNESS: Well, to pick some  
2 specifically -- some of the entities specifically --  
3 Cherokee Investment Partners, LLC is in the business of  
4 finding investment opportunities, helping with the due  
5 diligence and the analysis of the investment  
6 opportunity and helping to arrange the financing for  
7 that.

8 We have other Cherokee entities. For  
9 example, Cherokee Advisors plays a role as the manager  
10 or the advisor to one of our -- one or two of our  
11 investment funds advise environmentally contaminated  
12 real estate. There's some other Cherokee-named  
13 entities that are relatively inactive now, but at least  
14 from the past there was one called Cherokee  
15 Environmental Realty Associates, the purpose of which  
16 was to buy or to consult about the purchase of  
17 environmentally contaminated real estate.

18 There was one called Cherokee  
19 Environmental Group that is -- it's not operating  
20 currently but dealing with polluted land. There is one  
21 called Cherokee Instruments that was set up to build  
22 and then distribute pollution control equipment for  
23 measuring pollution. So there have been a number of  
24 different Cherokee entities.

25 Q. And when did you first start operating --

1 or when was the first Cherokee entity formed?

2 **A. 1984.**

3 Q. And since 1984 you made -- you -- I say  
4 "you," I'm going to say the entities that you have  
5 formed have invested in whether it be environmentally  
6 -- what's the word I'm looking for.

7 Environmentally-harmed properties.

8 **A. Contaminated land.**

9 Q. Contaminated properties. That was the  
10 word. Thank you. Have any of the funds or any of the  
11 entities that you have formed ever filed for  
12 bankruptcy?

13 **A. Some entities that we have formed have  
14 filed for bankruptcy.**

15 Q. Do you know which ones?

16 **A. We had a -- we had a property that we owned  
17 in New Jersey -- I don't remember the name of the  
18 entity -- that in the financial crisis filed for  
19 bankruptcy probably 2008 or so. I don't remember the  
20 name of that. It was some entity that was owned by one  
21 of the funds. So that's an example of one. I'm trying  
22 to think of others. There could be another one, but  
23 it's not coming to mind right now.**

24 Q. Did you ever hear of an entity called  
25 Ashley 1 or Ashley 2? Is that what you're speaking of?

1           A.    Yes.  Well, so that was an entity that held  
2 property that was in South Carolina in the financial  
3 crisis.  And I couldn't remember that it filed for  
4 bankruptcy or not, but it did own property.  It was in  
5 the financial crisis, and it definitely was deeply  
6 affected by the financial crisis.

7           Q.    What about a company called N-CAP?

8           A.    That was the one that was in New Jersey  
9 that I was referring to.

10          Q.    Got it.  Do you know a gentleman by the  
11 name of William Gauger, G-a-u-g-e-r?

12          A.    Yes, yes; I know him.

13          Q.    Who is he?

14          A.    He was the guy who was the manager of the  
15 N-CAP deal for us.  So he brought us the N-CAP deal.

16          Q.    Did you appoint him as the CEO of one of  
17 your companies?

18          A.    Well, he was the CEO of the deal at the  
19 time that we invested in it.  So I don't remember the  
20 precise entity or whether there was some  
21 reorganizations, but he was the guy who brought us the  
22 deal.  He owned it and we invested into it.

23          Q.    Got it.  Did you do anything to prepare for  
24 today's deposition?

25          A.    Yes, I did.

1 Q. What did you do?

2 A. I read through some notes from -- past  
3 notes or information that I had. I talked to counsel  
4 some about the process or how it would go.

5 MR. BELL: I would just caution the  
6 witness not to disclose the content of our  
7 communications described there.

8 (BY MR. CHAIKEN)

9 Q. Did you review any deposition transcripts?

10 A. I did look at deposition transcripts from  
11 J.T. Vaughn.

12 Q. Anybody else?

13 A. I started to look at John Mazzarino's but I  
14 didn't get very far.

15 Q. Did you talk to anyone other than counsel?

16 A. Generally around the office we've talked a  
17 fair amount about the case. So I would say whether  
18 that was in preparation for the deposition or just in  
19 general I don't know.

20 Q. Did you review the complaints and the Forth  
21 Amended Answer, Additional Defenses and Counterclaims  
22 filed in this case?

23 A. I did not review them before in preparation  
24 for this deposition.

25 Q. Did you participate in helping draft



1 whether it be the First Answer and Counterclaims or any  
2 of the subsequent amendments?

3 MR. BELL: Objection to form.

4 THE WITNESS: I reviewed at least. I  
5 don't remember if I wrote any of the claims, but I  
6 certainly reviewed them at the time.

7 (BY MR. CHAIKEN)

8 Q. Are you familiar with the allegations made  
9 against my clients as well as the third-party  
10 defendants in this case?

11 A. Generally. I don't remember them all  
12 specifically.

13 Q. Is it your contention that they're all true  
14 and correct? Everything that's been alleged?

15 A. I believe so.

16 Q. Are any of the claims brought by my clients  
17 against -- whether it be you or any of the entities  
18 that you have an interest in covered by any insurance  
19 policies?

20 A. I'm not aware that they are.

21 Q. Have you asked -- well, let me ask it.  
22 Does any of the entities that are defendants in this  
23 case have insurance policies for which a claim has been  
24 submitted?

25 A. I don't believe that we've filed -- that

1 we've submitted claims for any of these. I don't know  
2 if we've noticed any insurance companies with respect  
3 to any of the litigation. I don't know really the  
4 distinction between those two. But, anyway, so I'm not  
5 sure.

6 Q. You told me a little bit earlier you  
7 founded Cherokee back in 1984; is that correct?

8 A. Yes.

9 Q. What was the original purpose for finding  
10 or for founding Cherokee?

11 MR. BELL: Objection to form.

12 THE WITNESS: I started -- I started  
13 -- Cherokee Sanford Group was the name of the initial  
14 company, in order to purchase a series of struggling  
15 brick manufacturing plants that used a lot of energy.  
16 And the plan was to convert them to using alternative  
17 energy -- saving costs and reducing pollution -- and I  
18 did that.

19 They also had contaminated land. The  
20 manufacturing plants had contaminated land, and I had  
21 found some technology for using to clean up  
22 contaminated land. And so that became Cherokee  
23 Environmental Group. That led to a business of  
24 cleaning up contaminated land. We used bacteria --  
25 mostly used bacteria for that. I backed some

1 professors at Virginia Tech University who were soil  
2 bacteria professors. And so we developed bacteria to  
3 use for consuming pollution.

4 (BY MR. CHAIKEN)

5 Q. And after that you started investing in  
6 similar things or more properties?

7 A. Yes. Just kept looking for additional new  
8 technologies, other technologies that had some  
9 environmental impact usually with some kind of  
10 professor. I would back the professor, and we would  
11 start a business to develop the technology.

12 But then also I saw some contaminated land  
13 that we could purchase that was inexpensive. We bought  
14 property outside Boston initially; Stanford,  
15 Connecticut. And we could buy the land at cheap  
16 prices. We could use our methods and knowledge to  
17 clean it up and then we could sell the land.

18 So we kind of started with two different  
19 business activities. Some were pollution technical and  
20 some were land owning.

21 Q. And over time did you -- well, did you  
22 trademark the name "Cherokee"?

23 A. I don't believe we ever trademarked it.  
24 It's a fairly generic name around here. Actually,  
25 there are a lot of companies named Cherokee around here

1 including other investment companies. There was  
2 another brick company called Cherokee.

3 It was quite fascinating. These two  
4 companies had co-existed for 50 years probably. The  
5 predecessor Cherokee company and another brick company  
6 that was called Cherokee that was in Georgia. There  
7 were two companies.

8 Q. Do you currently have a website? A  
9 Cherokee website?

10 A. Cherokee Investment Partners has a website.

11 Q. What's it called? What's the domain name?

12 A. Cherokeefund.com, I'm virtually certain. I  
13 haven't been to it.

14 Q. Is there only one?

15 MR. BELL: Objection to form.

16 THE WITNESS: I don't remember that we  
17 have another Cherokee entity website at this point.  
18 We've had conversations in the past about whether we  
19 should have multiple websites for the different  
20 activities but I don't -- we might have a Cherokee  
21 Gives Back website or it might be The Cherokee Gives  
22 Back, which is our philanthropic branch. That may be a  
23 subset of the Cherokee website so I'm not sure.

24 (BY MR. CHAIKEN)

25 Q. How did you first get introduced to Dr.

1 Q. I'm only worried about the e-mail on the  
2 first page from you dated April 24th, 2013 to Dr. Rossi  
3 cc'ing J.T. Vaughn and John Mazzarino. And the second  
4 full paragraph of your e-mail states, "Here are my  
5 thoughts. First, as we indicated, we can accept Fabio  
6 Penon as the ERV, instead of BV."

7 A. Um-hm.

8 Q. Do you see that?

9 A. Yes.

10 Q. Did you, in fact, write that e-mail?

11 A. I assume that I did, yes.

12 Q. Is there any question in your mind that you  
13 accepted Fabio Penon as the ERV?

14 MR. BELL: Objection to form.

15 THE WITNESS: That we accept him as  
16 the ERV in this test. We either accepted him or we  
17 said we were willing to pay notwithstanding that.

18 (BY MR. CHAIKEN)

19 Q. Well, do you contest what you wrote saying  
20 specifically "we can accept"?

21 A. No, I don't. I don't contest that.

22 Q. Did you ever change your mind after you  
23 wrote this e-mail?

24 MR. BELL: Objection to form.

25 THE WITNESS: That we had accepted him

1           But we wanted it to be tested in a manner  
2 -- not a trick test. Not a test that was sort of  
3 designed to be obfuscated but a test that was designed  
4 to be extremely transparent where everybody -- we would  
5 know. It would be clear to us that the technology  
6 actually worked as opposed to the test where we weren't  
7 able to get access to it, our instruments weren't -- we  
8 weren't allowed to put separate instruments on it.

9           We were saying, "This is ridiculous. We've  
10 got to know that this technology works." So we wanted  
11 to continue working on it with him, notwithstanding  
12 this prior behavior, to say, "Well, let's see if it  
13 might work."

14           Q.    So I think you said earlier that after this  
15 test, the validation test -- and this took place in  
16 approximately or approximately as of April 30th/May  
17 1st, 2013; is that correct?

18           A.    Um-hm.

19           Q.    After the test concluded, Industrial Heat  
20 did, in fact, make a 10 million dollar payment to  
21 Leonardo; is that correct?

22           A.    We did.

23           Q.    Do you contend sitting here today that  
24 Industrial Heat is entitled to return of those funds?

25           A.    I think we are.

1 anyone ever could produce any energy with this IP is  
2 not clear.

3           It's hard to prove a negative. It's sort  
4 of hard to say this could not have any value  
5 whatsoever. It's hard to say. But we -- we don't see  
6 that this technology has value at all materially  
7 relative to the kinds of numbers we were talking about  
8 then.

9           Q. Do you think it has any value -- based on  
10 that and based on what you know sitting here today, do  
11 you think it has any value whatsoever?

12           A. We don't know. It's an option on future  
13 value. Is it possible that someone in the future might  
14 be able to do something with this IP. We can't; Rossi  
15 can't. But is it possible that somebody might or that  
16 occasionally at some point it might work. We don't  
17 know.

18                           MR. CHAIKEN: We can stop here. Off  
19 the record.

20                           THE VIDEOGRAPHER: We're off the  
21 record at 11:14 a.m.

22   (Whereupon a break was taken.)

23                           THE VIDEOGRAPHER: We are back on the  
24 record at 11:26 a.m.

25 (BY MR. CHAIKEN)

1 Therefore, I'd say the end of August."

2 **A. Um-hm.**

3 Q. Do you think he was referring to -- or is  
4 it your understanding that he was referring to the  
5 shipment of the one megawatt plant from Italy to  
6 Raleigh, North Carolina?

7 **A. I think probably so.**

8 Q. Was he -- did you have any conversation  
9 with him after this e-mail where he said anything other  
10 than, "I would like to start the test as soon as the  
11 two containers arrive"?

12 **A. Well, once he began working on the other  
13 units, the other devices, then he stopped working on  
14 the -- getting this test going.**

15 Q. Got it. Is there anything in writing that  
16 you put back to him saying, "Hey, we're ready to start  
17 as soon as the shipment -- as soon as the containers  
18 get here we're ready to start"?

19 **A. I mean, maybe this. But I don't know other  
20 than that.**

21 Q. All right. Now, after you had made the  
22 first payment -- the 1.5 million at the start of the  
23 agreement --

24 **A. Um-hm.**

25 Q. And my understanding is if we want to go



1 through it we can. The license agreement. But the one  
2 megawatt unit was then owned by Industrial Heat,  
3 correct?

4 **A. I think so.**

5 Q. So Industrial Heat was able to control when  
6 that equipment was started up, right?

7 **A. We could have started it ourselves, and we**  
8 **actually talked about doing that a fair amount. Rossi**  
9 **vehemently objected to that and said, "No, I need the**  
10 **help working on these other devices." You know, he**  
11 **didn't want us to start working on that.**

12 Q. But conversely could Dr. Rossi have started  
13 up the plant without your consent? Yours being --

14 **A. That plant?**

15 Q. Yeah, that plant. The one megawatt.

16 **A. We owned it. I guess not. I mean, we**  
17 **would have let him.**

18 (Whereupon Exhibit 16 was marked for  
19 identification as of this date.)

20 Q. Right. I'll show you what's been marked as  
21 Exhibit 16. Exhibit 16 is the Second Amendment to the  
22 License Agreement. This is what you talked about  
23 earlier about changing the timeframe and changing the  
24 equipment for the purposes of the guaranteed  
25 performance test?

1           **A.    Um-hm.**

2           Q.    And who drafted this document?

3           **A.    I don't know.**

4           Q.    Now, this is your signature on page three  
5 of this document?

6           **A.    Yes, I believe it is.    Yes.**

7           Q.    Now, at some point in time -- and this --  
8 it's not dated. This is the -- it says on the first  
9 page October, blank, 2013.

10          **A.    Um-hm.**

11          Q.    Do you know approximately when you signed  
12 this?

13          **A.    No, I don't know.**

14          Q.    Do you know where you were when you signed  
15 it?

16          **A.    Um-um.    Sorry.    I don't know.**

17          Q.    After you signed it did you send it to  
18 Ampenergo?

19          **A.    I'm trying to remember the details.    Did we  
20 send it or did Rossi send it or -- I can't remember the  
21 details.**

22          Q.    Did you have any conversations with  
23 Ampenergo after you had signed the document?

24          **A.    I'm sure we did.**

25          Q.    I mean, who specifically at Ampenergo do

1 you recall speaking to?

2 **A. I don't remember the specifics. I remember**  
3 **they didn't want to do it.**

4 Q. And did they ever explain to you why  
5 they didn't want to sign this?

6 **A. No, we were -- we were confused about that.**

7 Q. Is there any reason that you're aware of  
8 today as to why they would not want to sign?

9 **A. I don't remember the conversations around**  
10 **that. I think J.T. might have been the one talking to**  
11 **them.**

12 Q. Did you have discussions with Dr. Rossi  
13 about Ampenergo's refusal to sign it?

14 **A. Yes, we did.**

15 Q. And what were those conversations?

16 **A. Well, they said, "Well, they didn't sign.**  
17 **So, you know, I guess that deal is off or can't do**  
18 **that."**

19 Q. So after that conversation took place did  
20 you say, "Hey, listen, Ampenergo didn't sign. The  
21 license agreement says you guys start the test as soon  
22 as you get -- as soon as the equipment arrives;  
23 therefore, you're in breach"?

24 **A. Yes. We said, "We don't owe you -- you**  
25 **know, sorry. You missed the date. They don't agree to**

1 this so what are we going to do." We said to him, "We  
2 would love to pay you some more money if we had  
3 technology that worked. So why don't you think of some  
4 other kind of test that we could do. We're willing to  
5 pay you money if you -- if we can build devices and we  
6 can operate those devises. We don't care how long it  
7 is really." I mean, we care a little bit but, you  
8 know, we're willing to be very malleable about that.  
9 "Let's build some devices. Let's get something  
10 operating." You know, but, I mean, the agreement  
11 speaks for itself.

12 Q. Did you put that -- that subsequent offer  
13 in writing?

14 A. I don't know. I mean, it was -- did we say  
15 to him in writing somewhere, "We can't build these  
16 units. We want to build these units. Help us build  
17 these units. Let's get something going." I don't know  
18 but we -- I'm sure that we said to him, "Andrea, the  
19 problem is not money. We're happy to pay money if we  
20 have technology that works. We don't have technology  
21 that works. Help us get some technology working  
22 somewhere and we're happy to pay you some money."

23 Q. Right. But did you ever say in writing,  
24 "Hey, listen, the time for the test has now come and  
25 gone. We need to reach some other arrangement. We're

1 happy to pay you money, but it's got to be under  
2 different terms"?

3 MR. BELL: Objection to form.

4 THE WITNESS: I don't remember  
5 specific writing about that. You know, we were in the  
6 same office so we talked about a lot of this.

7 (BY MR. CHAIKEN)

8 Q. Did you -- after you had the conversation  
9 with Dr. Rossi about Ampenergo not signing off did you  
10 say, "Hey, you know what, Ampenergo didn't sign off.  
11 Let's start the guaranteed performance test right away  
12 because the clock is ticking and we made this  
13 investment, and time is money"?

14 MR. BELL: Objection to form.

15 THE WITNESS: Well, we said all the  
16 time, "We want to get something running." I'm sure  
17 that we didn't say, "Let's start the guaranteed  
18 performance test." You know, the time period for that  
19 had passed.

20 Q. Got it. So it's your testimony today that  
21 Dr. Rossi knew all along right after October 2013 that  
22 his ability to enforce the 89 million dollar payment  
23 pursuant to the license agreement had come and gone?

24 A. Yes. He knew that his ability to enforce  
25 that had come and gone. We also told him that if we

1 had successful evidence after the technology worked,  
2 that we approved devices that we built, we would be  
3 happy to discuss paying you more money.

4 (Whereupon Exhibit 17 was marked for  
5 identification as of this date.)

6 Q. I'm going to show you what's been marked as  
7 Exhibit 17. Now, your counsel is going to object to  
8 this document.

9 MR. BELL: Yeah, I am. So why are you  
10 going to do it?

11 MR. CHAIKEN: Because I'm going  
12 to make you object to it.

13 MR. BELL: Here's the problem that I  
14 have with it -- and we can do it however you choose to  
15 see fit. But our view is that this is clearly in  
16 violation of the protective order. You're violating  
17 court order by using -- attempting to use this at a  
18 deposition when it's been clawed back under the  
19 protective order and you're potentially subject to  
20 sanctions for that.

21 MR. CHAIKEN: Okay.

22 MR. BELL: With that, do you still  
23 want to mark it?

24 MR. CHAIKEN: Yes. And what I would  
25 like to do is if you want to move for a protective

1 given access to all pending patent applications  
2 included in the E-CAT IP or filed by Rossi afterwards."  
3 Has your opinion changed since you wrote that or since  
4 Industrial Heat wrote that?

5 **A. I don't know that -- had applications that**  
6 **had been filed that we were not given. I don't know**  
7 **either way. May or may not had been given all the**  
8 **patent applications.**

9 Q. Sitting here today are you aware of any  
10 pending patent applications or approved patent  
11 applications that you had not been given by Rossi that  
12 you were entitled to?

13 **A. I don't know whether he has filed any since**  
14 **-- you know, since he went to Florida. So if he had**  
15 **then we would be entitled to receive those. But I'm**  
16 **not aware. I don't remember of any. None come to mind**  
17 **right now.**

18 Q. Okay. Do you know if you ever told  
19 investors as of July of 2014 that the results of the  
20 validation tests in May of 2013 had resulted in a COP  
21 of close to ten?

22 **A. We probably gave them the report.**

23 Q. Right. And did you ever tell potential  
24 investors that the data in the process had been  
25 reviewed by Industrial Heat?

1 the remedy is to rip it up, throw away all your notes  
2 and make a motion to compel. I'm happy to, you know,  
3 add this to the list and put this in camera with the  
4 judge if he wants to see it. I think this is an  
5 appropriate procedure.

6                                   It's not really -- the way a  
7 protective order works isn't that you scrutinize the  
8 document and make your own determination whether it's  
9 privileged.

10                               MR. CHAIKEN: Well, we can agree to  
11 disagree or not. Maybe -- can we go off the record for  
12 a second.

13                               THE VIDEOGRAPHER: We are off the  
14 record at 1:35 p.m.

15   (Whereupon a break was taken.)

16                               THE VIDEOGRAPHER: We are back on the  
17 record at 1:46 p.m.

18                               MR. CHAIKEN: We have made an attempt  
19 to reach out to Judge O'Sullivan to see if we can get a  
20 quick ruling on this document. While we wait to see if  
21 we can get him on the line we're going to proceed with  
22 the deposition.

23 (BY MR. CHAIKEN)

24                               Q. At some point in time, Mr. Darden, did  
25 Industrial Heat agree to allow the one megawatt plant



1 to be shipped to Florida?

2 A. Yes.

3 Q. And why did it do that?

4 A. We felt like it would be beneficial for us  
5 and it would be beneficial for Andrea if we could use  
6 that as a way to see if the tech --

7 MR. CHAIKEN: Hello. Someone just  
8 joined?

9 MR. ANNESSER: I just -- this is John  
10 Annesser.

11 MR. CHAIKEN: Oh, hey, John.

12 (BY MR. CHAIKEN)

13 Q. I'm sorry.

14 A. We could use the -- the operation of the  
15 unit as a way of seeing if, in fact, the technology  
16 might work. In other words, we're still at a point of  
17 not knowing which was true. Does it never work, can it  
18 never work or has he simply concealed from us how to  
19 make it work.

20 And so to see the technology operate would  
21 be -- we were willing -- it was interesting enough to  
22 us to see it operate -- if we could actually see it and  
23 measure it -- that we were willing to let the plant go.  
24 In addition, he could sell licenses off of it; he could  
25 advocate for or promote the technology as he would.

1 that has the name Johnson Matthey in it that -- that  
2 was produced in discovery.

3 (BY MR. CHAIKEN)

4 Q. Did you ever receive anything in writing  
5 from Dr. Rossi where he said specifically that he was  
6 purchasing products from Johnson Matthey?

7 A. I don't remember that.

8 Q. In the course of this case defendants have  
9 produced over 65,000 pages of documents. I haven't  
10 seen one which says specifically anything to the effect  
11 of J.M. Chemical Products, Inc., is a subsidiary or  
12 affiliate of Johnson Matthey. Is it your contention  
13 that such a written document exists?

14 A. I know -- I don't know whether such a  
15 written document exists.

16 Q. Okay. If it did exist it would have been  
17 produced, correct?

18 A. I would assume that it would have.

19 Q. Okay. Now, you mentioned that pursuant to  
20 this agreement, Industrial Heat would have been  
21 entitled to \$365,000 per year, correct?

22 A. Yes.

23 Q. Did Industrial Heat ever seek to collect  
24 that money?

25 A. After the plant got it -- no, we did not.

1 After the plant got installed in Florida and we saw  
2 that Rossi had removed all of the instrumentation and  
3 the monitoring access that we had, and as we realized  
4 that he was restricting access to it so it was not  
5 going to be a fully transparent bona fide test, at that  
6 point we became very suspicious.

7           We realized that it was -- something bad  
8 was going on down there. And we don't want to get  
9 thrown in jail for participating in some kind of fraud  
10 so we said we don't want to receive payment from them.

11           Q.    What measurement equipment did you --

12           A.    I don't know the details of it, but we had  
13 put on access ports on places where instruments could  
14 be put so that we could put our own instruments on it  
15 and cut it all off.

16           Q.    Who -- who knows more about that than you?

17           A.    T. Barker knows about it.

18           Q.    Anybody else?

19           A.    Barry probably knows something about it.

20           Q.    Did you ever inform Dr. Rossi and said,  
21 "Hey, why are you removing all this measuring  
22 equipment"?

23           A.    We did talk about that.

24           Q.    You talked about it. Did you ever send him  
25 an e-mail and say, "Hey, why are you moving all this

1           **A. We asked him some questions. His answers**  
2 **were very unsatisfying and so -- unsatisfactory and so**  
3 **at that point we stopped.**

4           Q. That wasn't my question. My question was  
5 did you reject the plan in writing?

6           **A. I don't believe that we did.**

7           Q. Why not?

8           **A. We didn't accept it.**

9           Q. Well, why wouldn't you reject it in writing  
10 if you didn't agree with it?

11           **A. We didn't care if he went ahead with his**  
12 **measurements. And we were willing to pay even if they**  
13 **were bad measurements.**

14           Q. That doesn't sound like a good business  
15 plan to me to pay for bad measurements.

16           **A. We would have preferred --**

17                           MR. BELL: There's no question.

18 (BY MR. CHAIKEN)

19           Q. Why would you agree to pay for something  
20 you didn't agree with?

21           **A. Any data was better than no data, and we**  
22 **figured our alternative was to get no data. We wanted**  
23 **someone to be measuring something from the plant. We**  
24 **didn't trust the data that we were getting from Fabio**  
25 **and Rossi.**

1 people are saying about the technology.

2 I perceived that this memo is from Brian  
3 saying that what Rossi is saying is inappropriate.  
4 He's gloating about the success of the technology when,  
5 in fact, it's not being successful. We wouldn't want  
6 to do that. That's the sort of thing that we find  
7 aversive. So we would be inclined to say, and Brian  
8 would be inclined to say, we would support Brian in  
9 saying don't gloat about a technology that's still  
10 extremely speculative.

11 Q. Did Industrial Heat start bringing visitors  
12 to the plant in Doral?

13 A. Excuse me?

14 Q. Did Industrial Heat bring visitors to the  
15 plant in Doral?

16 A. Yes, we did.

17 Q. For what purpose?

18 A. We had a lot of interest in -- in the -- in  
19 the technology. And so there were people who wanted to  
20 see it so we took -- there were some Chinese visitors  
21 that wanted to come see it about the prospect of  
22 becoming manufacturing partners in China, and Woodford  
23 wanted to see it. The Woodford team wanted to see it.

24 Q. The Chinese people who visited, were they  
25 interested in making an investment or a JD partnership?

1 Anything like that?

2           **A.**     **The real motivation was to take the**  
3 **technology to China. They might have been interested**  
4 **in or willing to invest in a U.S. company as well. But**  
5 **their primary motivation was to be the partners for**  
6 **developing the technology in China. And we said to**  
7 **them, "We don't know if we have a technology that works**  
8 **that we could use in China, but you're welcome to come**  
9 **see it."**

10           **Q.**     **I'm going to show you what's been marked as**  
11 **Exhibit 38. Exhibit 38 is a copy of Industrial Heat's**  
12 **-- it's a long-titled document so bear with me.**  
13 **Supplemental -- Supplement to Defendant Industrial Heat**  
14 **LLC's Amended Responses and Objections to Plaintiff**  
15 **Andrea Rossi's Second Requests for Production -- that's**  
16 **the wrong document. I'm sorry. They gave me the wrong**  
17 **document.**

18           **A.**     **Do you want it back?**

19           **Q.**     **Yeah. Let me have it back. It's not what**  
20 **I meant to hand you. Sorry about that.**

21                           **MR. BELL:**   **No worries.**

22 **(BY MR. CHAIKEN)**

23           **Q.**     **They're all the same.**

24           **A.**     **Hm?**

25           **Q.**     **I said they're all the same. They're all**

1           **A.    Yes.**

2           Q.    Have you done any type of calculation as to  
3 how you've been damaged or how Industrial Heat has been  
4 damaged as a result of these breaches?

5           **A.    Well, we don't know yet what damages we  
6 might have depending on whether someone is successful  
7 with the technology.**

8           Q.    So would it be fair to say you haven't made  
9 a computation of damages?

10          **A.    We have not made a computation.  Sorry.  I  
11 didn't answer the question.**

12          Q.    And you had mentioned some specific  
13 instances where you felt that the nondisclosure had  
14 been breached.  Were there any others that come to mind  
15 now that you've had a break?

16          **A.    I didn't think about it any further.  It's  
17 not coming to mind right now, sir.**

18          Q.    Okay.  The second item mentioned in this  
19 paragraph four on page 23 states, "Failing to assign  
20 certain patents and/or patent applications to IPH."  Do  
21 you know specifically any patents or patent  
22 applications that plaintiffs had failed to assign?

23          **A.    I think there were several.  I mean, our  
24 counsel got involved in this, and I think we had  
25 conversations with Rossi and/or his counsel's office.**

1 Q. Do you know sitting here today what those  
2 are?

3 **A. I don't remember, sitting here today.**

4 Q. Do you know -- well, let me ask you this.  
5 Do you contend that IPH still wants those patents or  
6 patent applications?

7 **A. I don't have a firm opinion about that  
8 right now.**

9 Q. Okay. Have you made any assessment of  
10 damages as it relates to this breach?

11 **A. I think the damages are contingent upon the  
12 technology working or the patents or IP being effective  
13 for someone else who makes the technology work. So if  
14 someone else is effective then the breach will have  
15 harmed us.**

16 Q. But sitting here today has IPH or IH made  
17 any attempt to calculate damages as it relates to that?

18 **A. I don't believe that anyone in the company  
19 has done that.**

20 Q. When -- well, let me ask it this way. Did  
21 IH or IPH ever notify plaintiffs that they felt that  
22 this was a breach of the license agreement?

23 **A. I believe that we did.**

24 Q. Do you know when?

25 **A. No, I don't remember the date.**



1           A.    I haven't seen the tax return, and I don't  
2 have anything clearly documented that says he didn't  
3 pay taxes except my recollection that he said that.

4           Q.    "He" being someone from Ampenergo?

5           A.    Well, Andrea.

6           Q.    Andrea told you directly that he didn't pay  
7 his taxes?

8           A.    He said either he didn't pay the taxes or  
9 he wasn't going to owe the taxes. And I couldn't  
10 figure out how that could be the case because it was a  
11 U.S. company.

12          Q.    And how, in fact, has IH or IPH been harmed  
13 as a result?

14          A.    Well, our credibility is, unfortunately,  
15 tied to Rossi's credibility. And so if Rossi has legal  
16 problems or credibility problems associated with  
17 compliance then it affects us.

18          Q.    But sitting here today you don't know if  
19 that's true or not?

20          A.    I don't know if -- if it has been  
21 manifested at this point. I don't know.

22          Q.    And have you done anything to count -- to  
23 compute what your actual damages are as a result of any  
24 failure to pay taxes?

25          A.    I don't believe that any of us -- I have

1 not, and I don't believe that others of us have made  
2 such a computation.

3 MR. CHAIKEN: Anybody just join the  
4 call?

5 MR. ARAN: Fernando here. I'm still  
6 here. I'm not sure --

7 MR. CHAIKEN: We're going to keep  
8 going. Somebody just join now?

9 MR. ANNESSER: This is John. I got  
10 disconnected.

11 MR. CHAIKEN: Okay. Thanks for  
12 announcing yourself.

13 (BY MR. CHAIKEN)

14 Q. Back -- back to my questions. I forgot to  
15 ask Mr. Darden with respect to the third category,  
16 "Failing to inform or consult with Industrial Heat and  
17 IPH on the existence of certain patent applications."  
18 How has -- or let me ask it this way. Has IP -- IH or  
19 IPH computed how it's -- what its actual damages are as  
20 a result of that allegation?

21 A. I don't believe that we've computed that.  
22 We know how much money we've spent pursuing this  
23 technology. If it jeopardized that then certainly it  
24 would be the value of the money that we spent.

25 Q. Okay. There's one last paragraph there.

1 Mr. Fukuda about what IH technologies could do?

2           **A.**    We certainly had conversations about the  
3 different technologies that we were looking at so, yes,  
4 generally. I'm sure that I never said to him that we  
5 had good evidence of a system that generated a COP of  
6 ten.

7           **Q.**    Do you know if you ever had a conversation  
8 with Dewey Weaver about that?

9           **A.**    I don't know.

10                   MR. BELL: I'm sorry. Are you asking  
11 if Tom did or if Fukuda did?

12                   MR. CHAIKEN: If Tom did.

13                   MR. BELL: I see.

14                   **THE WITNESS:** I'm sorry. So the  
15 question is did I ever talk to Dewey Weaver about the  
16 performance of the systems that we had or did I ever  
17 say to Dewey Weaver that we had a system that generated  
18 a COP of ten?

19 (BY MR. CHAIKEN)

20           **Q.**    That's a great distinction. And my  
21 question -- the answer to your question is yes. Did  
22 you either --

23           **A.**    I'm sure that I talked to Dewey Weaver  
24 about the performance of the different technologies  
25 that we had. I'm sure that I never said to Dewey

1           **A.**    We knew that the test was going to happen  
2 in Lugano.  Yes.  We were very familiar with the fact  
3 that he wanted to have a test with those scientists.

4           Q.    Did you ever say, "Hey, listen, we don't  
5 think it's a good idea.  You're going to be disclosing  
6 our IP"?

7           **A.**    Yes, we did.

8           Q.    And how did you do that?

9           **A.**    We had many conversations about it.

10          Q.    Did you put anything in writing about it?

11          **A.**    I don't remember writing about that.  I  
12 remember we specifically said, "You can't disclose to  
13 them what's in the fuel."  And he said, "Don't worry.  
14 I can protect it.  I'll take a sample that doesn't come  
15 from the part of the reactor that has the fuel in it --  
16 the real fuel sample in it."

17                               (Whereupon Exhibit 43 was marked for  
18 identification as of this date.)

19          Q.    I'm showing you what's been marked as  
20 Exhibit 43.  Exhibit 43 is a document bates stamped  
21 IH-7623.  I believe it's dated February 3rd, 2014 and  
22 -- actually, I take it back.  March 2nd, 2014.  I was  
23 reading it backwards.

24          **A.**    Um-hm.

25          Q.    It's -- the first e-mail is Dr. Rossi

1 do what he was going to do. Meanwhile, we were very  
2 happy to see the technology being tested if it was  
3 being tested in a professional manner.

4 Q. Do you know for a fact whether or not he  
5 disclosed the fuel to the Swedish professors?

6 A. Yes, he did. Well, let me rephrase that.  
7 I don't know whether he disclosed the fuel because I  
8 don't know what fuel was used. I don't know where the  
9 sample came from. I know that he said he disclosed the  
10 fuel to the Swedish professors.

11 Q. He said that to you?

12 A. He said it because he said that he had  
13 given them the fuel to test. I don't know if it was  
14 true. I know that he said that.

15 Q. And you were present during at least some  
16 or part of that conversation, correct?

17 A. Yeah. While they were running the  
18 machines.

19 Q. While they were running the machines. Did  
20 you prepare some of the fuel for that test?

21 A. I don't know. I prepared fuel before that  
22 test.

23 Q. Got it.

24 A. We fueled one reactor. That reactor was  
25 not the one that was run. There were three empty

1 reactors that went over there. One of those reactors  
2 ran. We don't know what ran in that reactor. It may  
3 have been the fuel that we prepared; maybe not.

4 (Whereupon Exhibit 44 was marked for  
5 identification as of this date.)

6 Q. I'll show you what's been marked as  
7 Exhibit 44. Exhibit 44 has been bates stamped  
8 IH-107140. The top of the page is an e-mail from you  
9 to Brian McLaughlin dated October 2nd, 2014.

10 A. Um-hm.

11 Q. I believe you're talking about this -- the  
12 Lugano test as well. You can correct me if I'm wrong.

13 A. Um-hm.

14 Q. And you write in this e-mail, "Also, he  
15 would say that they've now done one and four." And  
16 you're referring to the e-mail down below. "They  
17 tested the isotopes before and after (as I understand  
18 -- and FYI, the professors did take the "after" fuel  
19 sample from the Lugano device, i.e. AR didn't control  
20 it)." What did you mean by that?

21 A. I thought that was in -- I did not remember  
22 that that was the case. My recollection, as I sit here  
23 now, was that he did control it. So the question is  
24 who actually took the sample from the device and was it  
25 the device that ran. And was it the same device -- was

1 **sample. Those types of issues.**

2 Q. Is it your contention still that Dr. Rossi  
3 was in control of the test in general?

4 A. Yes. And by that, to elaborate, I know  
5 that the professors would have made many different  
6 kinds of measurements had they been able to do so. And  
7 I know that they were unhappy that they were not able  
8 to take those different kinds of measurements. They  
9 also told me clearly that the heat output from the  
10 device was overstated based on the way the thermal  
11 measurement happened.

12 Q. Going back to Exhibit 38 which was the  
13 Fourth Amended Counterclaim. We talked a little bit  
14 about the Lugano report. I want to talk a little bit  
15 about the next one which is disclosure of specific  
16 information about E-CAT fuel to Norman Cook. Who is  
17 Norman Cook?

18 A. He's a professor at Kansai University in  
19 Osaka.

20 Q. Got it. And did you have discussions with  
21 Dr. Rossi prior to Norman Cook issuing a report?

22 A. I don't remember when we talked to Rossi  
23 about it. I believe that Rossi told us before Rossi  
24 wrote -- before Cook wrote a paper about it that he was  
25 going to do so.

1 wrongfully disclosing our IP"?

2           **A. I don't remember the chronology of those**  
3 **conversations, but it was a fairly regular**  
4 **communication that we had. "Please don't disclose so**  
5 **much information about our IP."**

6           Q. Do you recall reading the final report?

7           **A. The paper -- the Cook paper?**

8           Q. Yeah.

9           **A. I don't remember. I don't remember reading**  
10 **it.**

11          Q. Was there --

12          **A. I'm sure that I would have looked at it,**  
13 **but I don't remember.**

14          Q. Was there some specific IP that was  
15 disclosed that you thought was violative of the license  
16 agreement?

17          **A. I don't remember reading it so I don't**  
18 **remember specifically what it was.**

19                               (Whereupon Exhibit 46 was marked for  
20 identification as of this date.)

21          Q. I'll show you what's been marked as  
22 Exhibit 46. 46 has been bates stamped IH-89665 through  
23 666. It's a series of e-mails dated February 8th and  
24 9th, 2015. At the top of it is an e-mail from you to  
25 Daniel Pike; February 9th, 2015.



1           You write, "I've just read the presentation  
2 and the abstract and they appear to be safe. Our IP  
3 attorneys and we will be reading the paper tomorrow.  
4 Thanks." Do you recall sending that e-mail?

5           **A. I don't recall, but I see it here. I must  
6 have.**

7           Q. Do you recall talking to your IP attorneys  
8 after this date?

9           **A. No, I don't remember that conversation.**

10          Q. Do you recall anybody telling you -- and,  
11 again, do you recall anyone other than your counsel  
12 telling you that they felt that some improper IP had  
13 been disclosed as a result of the issuance of this  
14 paper?

15          **A. I don't remember the feedback. As I sit  
16 here now, I don't remember the feedback that we got  
17 from the IP attorneys about it. My comment about the  
18 presentation and the abstract appearing to be safe  
19 meant that it appeared to be okay to send the abstract  
20 and the presentation to the people in China who he  
21 wanted to send that to.**

22                   But there's nothing that -- they were going  
23 to get the paper one way or another. I doubt that the  
24 abstract or the presentation had more information than  
25 the paper itself.

1 (Whereupon Exhibit 47 was marked for  
2 identification as of this date.)

3 Q. I'm going to show you what's been marked as  
4 Exhibit 47. 47 has been bates stamped IH-7010 through  
5 7011. At the top of it is an e-mail from you to Dr.  
6 Rossi.

7 A. Um-hm.

8 Q. And it's dated April 10th, 2015. And he's  
9 telling you -- first, actually, I think Daniel Pike is  
10 telling you at the bottom that the Rossi/Cook paper was  
11 translated in Chinese. And you wrote at the top, "This  
12 is very exciting to think about. Now 1.5 billion  
13 people can read your paper. What a great world it is."  
14 Do you see that?

15 A. Um-hm.

16 Q. If you had issues with the paper and  
17 thought that it had improperly disclosed IP would you  
18 have been happy about it?

19 A. It had already happened.

20 Q. Got it.

21 A. I had no choice at that point. If there  
22 was good news in it then I would have been happy that  
23 1.5 billion people would have seen it.

24 MR. CHAIKEN: Let's go off the record.  
25 Do you want to take about five minutes and I'm done.