

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

ANDREA ROSSI, ET AL.,

Plaintiffs,

vs.

THOMAS DARDEN, ET AL.,

Defendants.

_____ /

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

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

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

1 A. No.

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

4 A. I don't know that.

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

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

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

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

18 A. No.

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

21 A. No.

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

24 A. I don't know that.

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

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

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

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

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

11 A. No.

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

14 A. No.

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

17 A. I don't know that.

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

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

3 A. No.

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

6 A. Not to my knowledge.

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

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

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

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

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

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

25 A. No.

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

3 A. Not to my knowledge.

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

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

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

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

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

16 A. No.

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

19 A. No.

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

22 A. I'm not aware of any.

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

1 Investment Partners?

2 A. Yes.

3 Q. Okay.

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

6 Q. Yeah. Did I misstate that?

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

8 Q. What was the name?

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

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

15 BY MR. CHAIKEN:

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

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

23 A. No.

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

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

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

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

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

12 A. No.

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

15 A. Not to my knowledge.

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

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

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

25 "Paragraph A, Leonardo and Rossi disclosed that

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

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

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

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

9 A. No.

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

12 A. No.

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

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

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

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

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

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

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

3 A. Me personally?

4 Q. No. You on behalf of IPH.

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

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

9 A. Yes.

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

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

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

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

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

20 BY MR. CHAIKEN:

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

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

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

1 same information that Industrial Heat, LLC has.

2 BY MR. CHAIKEN:

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

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

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

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

13 A. No.

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

16 A. Not to my knowledge.

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

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

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

25 What proof or evidence does IPH have in support

1 of that allegation?

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

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

6 A. No.

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

9 A. Not to my knowledge.

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

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

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

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

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

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

24 A. No.

25 Q. Does IPH have any knowledge independent of what

1 Industrial Heat knows?

2 A. Not to my knowledge.

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

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

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

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

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

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

21 A. No.

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

24 A. Not to my knowledge.

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

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

3 A. No.

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

6 A. Not to my knowledge.

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

9 A. Other than as stated in this document?

10 Q. Yeah.

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

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

15 A. It is a different allegation.

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

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

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

23 A. Yes.

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

1 untimely. Would you agree with that?

2 A. Yes. We did review that earlier.

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

5 A. Yes.

6 Q. Okay. Two different breaches, correct?

7 A. Yes.

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

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

16 Q. Okay.

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

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

22 A. In paragraph 98 --

23 Q. Yep.

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

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

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

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

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

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

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

18 A. Yes.

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

22 A. Yes, I see that.

23 Q. Did IPH pay Leonardo 1.5 million?

24 A. No.

25 Q. Who did?

1 IPH right now. What is IPH seeking?

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

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

8 BY MR. CHAIKEN:

9 Q. Okay.

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

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

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

16 THE WITNESS: The \$10 million payment.

17 BY MR. CHAIKEN:

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

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

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

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

25 Q. Okay.

1 A. -- of those charges.

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

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

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

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

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

14 BY MR. CHAIKEN:

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

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

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

24 BY MR. CHAIKEN:

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

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

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

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

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

12 A. No.

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

15 A. Not that I'm aware of.

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

19 A. No.

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

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

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

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

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

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

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

8 A. No.

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

11 A. Not to my knowledge.

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

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

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

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

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

23 A. I don't.

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

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

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

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

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

11 A. No.

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

14 A. Not to my knowledge.

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

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

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

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

24 THE WITNESS: Can you restate the question.

25 BY MR. CHAIKEN:

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

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

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

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

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

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

15 THE WITNESS: No.

16 BY MR. CHAIKEN:

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

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

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

25 What evidence or proof does IPH have in support

1 of that allegation?

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

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

6 A. No.

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

9 A. Not to my knowledge.

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

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

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

17 Do you know what patent applications those
18 were?

19 A. No.

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

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

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

1 Industrial Heat about that?

2 A. No.

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

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

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

9 A. But I'm not recalling.

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

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

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

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

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

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

1 Q. Let me ask it this way, maybe we can clarify:
2 Is it your understanding that there is a difference
3 between a failure to assign licensed patents and a
4 failure to consult about existing patents?

5 A. No.

6 Q. There is no difference?

7 A. I'm sorry. If this is trying to confuse me, I
8 apologize. I'm --

9 Q. I am not trying to confuse you.

10 A. I am confused.

11 Q. Okay. I am absolutely not trying to confuse
12 you, but I am looking at your counterclaim, IPH's
13 counterclaim.

14 A. Okay.

15 Q. Is there a difference between what is alleged
16 in paragraph 113 and what is alleged in paragraphs 116 and
17 117, in your mind?

18 A. Yes.

19 Q. Okay. What is the difference?

20 A. 113 references licensed patents, patents, and
21 117 or I guess 116 refers to filed patent applications.

22 Q. Okay.

23 A. Those, while I'm not a patent expert, seem to
24 be different to me.

25 Q. Fair enough. And I treated them as different

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

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

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

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

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

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

14 A. Paragraph 23.

15 Q. 123?

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

21 And then paragraph 124 --

22 Q. Okay.

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

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

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

3 Do you see that?

4 A. Yes.

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

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

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

13 BY MR. CHAIKEN:

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

16 A. Yes.

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

20 A. No.

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

23 A. Not to my knowledge.

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

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

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

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

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

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

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

16 A. No.

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

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

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

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

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

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

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

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

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

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

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

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

21 Does that help you?

22 BY MR. CHAIKEN:

23 Q. Kind of.

24 A. Good.

25 Q. Paragraph 131 --

1 MR. ARAN: I am going to --

2 BY MR. CHAIKEN:

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

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

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

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

15 A. No.

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

18 A. Not to my knowledge.

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

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

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

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

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

6 BY MR. CHAIKEN:

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

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

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

15 A. Not to my knowledge.

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

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

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

22 BY MR. CHAIKEN:

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

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

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

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

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

15 A. No.

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

18 A. Not to my knowledge.

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

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

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

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

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

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

7 A. No.

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

10 A. Not to my knowledge.

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

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

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

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

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

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

1 A. No.

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

4 A. Not to my knowledge.

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

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

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

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

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

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

18 A. No.

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

21 A. Not to my knowledge.

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

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

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

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

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

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

13 A. No.

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

16 A. Not to my knowledge.

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

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

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

1 or costs charged to counter-plaintiff."

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

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

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

8 A. No.

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

11 A. Not to my knowledge.

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

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

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

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

25 A. The same information that Industrial Heat, LLC

1 has to support the allegation.

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

4 A. No.

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

7 A. Not to my knowledge.

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

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

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

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

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

19 BY MR. CHAIKEN:

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

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

22 Q. Looking at -- let's go back to paragraph 98.
23 And, again, you have got three subparts to paragraph 98.
24 Where would the damages related to violations of the
25 Florida Deceptive and Unfair Trade Practices Act fall in

1 respect to the three buckets in paragraph 98?

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

7 MR. CHAIKEN: Right.

8 BY MR. CHAIKEN:

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

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

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

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

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

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

24 Q. Is it your understanding that you are?

25 MR. LOMAX: Objection to the form of the

1 question.

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

6 BY MR. CHAIKEN:

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

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

13 THE WITNESS: You asked me money damages?

14 BY MR. CHAIKEN:

15 Q. Yes.

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

18 Q. Okay. So --

19 A. -- in 143.

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

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

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

1 stated here.

2 BY MR. CHAIKEN:

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

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

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

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

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

19 BY MR. CHAIKEN:

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

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

24 Q. Okay.

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

1 else.

2 Q. Do you know specifically what information was
3 provided by Industrial Heat regarding this allegation?

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

6 THE WITNESS: I don't have any information
7 other than what Industrial Heat's provided.

8 BY MR. CHAIKEN:

9 Q. Do you know if Industrial Heat's provided
10 information regarding this allegation?

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

13 THE WITNESS: I didn't speak to Industrial Heat
14 about the allegations.

15 BY MR. CHAIKEN:

16 Q. Okay. Paragraph 58, does IPH have any facts or
17 evidence with respect to the allegations contained in
18 paragraph 58?

19 A. I don't have any information other than the
20 information provided by Industrial Heat, LLC.

21 Q. Did you speak to anyone from Industrial Heat
22 regarding this allegation?

23 A. No.

24 Q. Look at your answer on Page 10 of the
25 Exhibit 3. The answer to paragraph 58 states that,

1 "Defendants further admit that Industrial Heat paid the
2 second payment of \$10 million under the license agreement
3 and first amendment."

4 Is it your understanding that Industrial Heat
5 made this payment or did IPH make this payment?

6 A. It is my understanding that Industrial Heat
7 contributed \$10 million in capital to IPH BV -- I'm sorry,
8 yeah, IPH International BV and, in turn, the \$10 million
9 was recorded by IPH International BV as a payment for the
10 license agreement.

11 Q. Okay. And so is this response incorrect or
12 inaccurate when it states that, "Defendants further admit
13 that Industrial Heat paid the second payment of
14 \$10 million under the license agreement in the first
15 amendment"?

16 A. Literal payment of the payment was from a bank
17 account titled, "Industrial Heat, LLC."

18 Q. Okay. So you think that is accurate?

19 A. If Industrial Heat -- it says, "Industrial Heat
20 paid the second payment of \$10 million" and I said the
21 payment was made by wire transfer from a bank account
22 titled, "Industrial Heat, LLC."

23 Q. Okay. Paragraph 63 on Page 12 of the
24 complaint. Are you aware of any facts or evidence with
25 respect to the allegation contained in paragraph 63?

1 A. No.

2 Q. Does IPH have any knowledge independent of what
3 Industrial Heat knows with respect to paragraph 73?

4 A. Not to my knowledge.

5 Q. Is there anyone at IPH who has more knowledge
6 than you regarding paragraph 73?

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

8 Q. Paragraph 79 on Page 15. Does IPH have any
9 proof or evidence with respect to the allegations
10 contained in paragraph 79?

11 A. No information other than what Industrial Heat,
12 LLC, has.

13 Q. And did you speak to Industrial Heat about the
14 allegations set forth in paragraph 79?

15 A. No.

16 Q. Does IPH have any knowledge regarding that
17 allegation independent of what Industrial Heat knows?

18 A. Not to my knowledge.

19 Q. Is there anyone at IPH who has more knowledge
20 with you with respect to paragraph 79?

21 A. I can't speak for anyone else at IPH
22 International BV.

23 Q. Would you agree that IPH has refused to make an
24 \$89 million payment to Leonardo?

25 A. Yes.

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

3 (Thereupon, a recess was taken.)

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

6 BY MR. CHAIKEN:

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

11 A. Yes.

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

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

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

20 A. No.

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

23 A. Not to my knowledge.

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

1 A. I can't speak to that.

2 Q. Okay.

3 A. Can I ask you a question.

4 Q. Sure.

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

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

14 A. Okay.

15 Q. The second defense on Page 22?

16 A. Okay.

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

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

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

23 A. No.

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

1 A. Not to my knowledge.

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

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

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

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

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

13 A. No.

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

16 A. Not to my knowledge.

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

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

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

24 A. Tom Darden.

25 Q. Okay. Anybody else?

1 that?

2 A. Yes. You presented this earlier?

3 Q. Right. Now, that assignment provides in
4 paragraph 2 that there will be a purchase price of
5 \$460,000 paid by IPH to Industrial Heat. Is that your
6 understanding?

7 A. Yes.

8 Q. And paragraph 4 states that that payment will
9 be made on or before April 29, 2016. Do you see that?

10 A. Yes.

11 Q. Was that payment made?

12 A. An actual bank transaction payment was not
13 made. It was recorded through an intracompany account.

14 Q. Okay. Can you explain to me how that works.

15 A. How it works.

16 Q. Is this a book entry?

17 A. Yes.

18 Q. I see. So there wasn't really an exchange of
19 funds?

20 A. My recollection is there was not a cash
21 transaction at the time.

22 Q. Okay. Did -- does IPH maintain a separate bank
23 account from Industrial Heat?

24 A. Yes.

25 Q. And for how long has it done that? Since its

1 test?

2 A. No.

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

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

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

11 BY MR. CHAIKEN:

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

14 A. No.

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

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

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

23 BY MR. CHAIKEN:

24 Q. Okay.

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

1 the same view.

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

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

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

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

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

10 BY MR. CHAIKEN:

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

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

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

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

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

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

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

1 plant"?

2 A. Yes.

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

5 A. I am aware of that, yes.

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

9 A. Care?

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

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

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

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

21 Q. Right.

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

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

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

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

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

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

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

15 A. I did not.

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

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

22 Q. Mm-hmm.

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