

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Plaintiffs,)

v.)

THOMAS DARDEN; JOHN T. VAUGHN,)
INDUSTRIAL HEAT, LLC; IPH)
INTERNATIONAL B.V.; and)
CHEROKEE INVESTMENT PARTNERS,)
LLC,)

Defendants.)

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

INDUSTRIAL HEAT, LLC and IPH)
INTERNATIONAL B.V.,)

Counter-Plaintiffs,)

v.)

ANDREA ROSSI and LEONARDO)
CORPORATION,)

Counter-Defendants,)

and)

J.M. PRODUCTS, INC.; HENRY)
JOHNSON; FABIO PENON; UNITED)
STATES QUANTUM LEAP, LLC;)
FULVIO FABIANI; and JAMES BASS,)

Third-Party Defendants.)

DEFENDANT INDUSTRIAL HEAT, LLC'S RESPONSES AND OBJECTIONS TO PLAINTIFF ANDREA ROSSI'S SECOND SET OF INTERROGATORIES

Defendant Industrial Heat, LLC ("Industrial Heat"), pursuant to Federal Rules of Civil Procedure ("Federal Rules") 26 and 33, hereby responds to Plaintiff Andrea Rossi's ("Rossi") Second Set of Interrogatories ("Interrogatories").

PRELIMINARY STATEMENT

Industrial Heat provides these responses and objections ("Responses") without waiving any objections as to the admissibility in evidence of these Responses, the information produced pursuant to, or referenced in, these Responses, or the subject matter of the Interrogatories or of the information produced pursuant to, or referenced in, these Responses. The Responses are also subject to and without waiver of Industrial Heat's rights: (i) to object to other discovery directed to the subject matter of the Interrogatories or Responses; (ii) to make additional objections or to seek protective orders; and (iii) to revise, correct, add to, or clarify the Responses or information referred to below in accordance with all applicable rules. Industrial Heat reserves the right to supplement these Responses after it has had a full and fair opportunity to participate in discovery.

Industrial Heat has not completed investigation of the facts related to this case. Therefore, Industrial Heat responds to these Interrogatories based upon information and documents acquired and reviewed to date, which may or may not be inclusive of all documents relevant to the matters in dispute in this case. Accordingly, the present Responses are offered without prejudice to supplementation or modification at a later date.

INTERROGATORY RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1: With respect to your claim in paragraph 105 of your counterclaims that “Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a test of the Plant,” please indicate to whom Leonardo and Rossi disclosed this information and the specific date(s) and means/method of each disclosure.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, protection or restriction upon discovery (“Applicable Privilege or Protection”). Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

4. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

5. Industrial Heat objects to this interrogatory on the grounds that it is unduly burdensome. Most, if not all, of Leonardo and Rossi's disclosures occurred through postings on the internet, including on Rossi's blog, Journal of Nuclear Physics ("JONP"). JONP receives a sizable number of site visits per day from individuals in the United States and abroad. It is impossible for Industrial Heat to identify every individual viewing the JONP website, and therefore, impossible to identify each and every person to whom disclosures were made. Additionally, to the extent that Rossi makes disclosures on the internet through the use of online aliases, Industrial Heat is not able to identify all of the disclosures made by Rossi and/or Leonardo over the years.

Subject to and without waiving the foregoing objections, Industrial Heat states that Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a test of the Plant, including but not limited to, on the following occasions:

- i. April 5, 2016 through the public filing of the License Agreement as an exhibit to the Complaint.
- ii. September 20, 2013 through a posting on JONP.
- iii. November 2, 2014 through a posting on JONP.
- iv. November 26, 2014 through a posting on JONP.
- v. January 7, 2015 through a posting on JONP.
- vi. February 12, 2015 through a posting on JONP.
- vii. May 15, 2015 through a posting on JONP.
- viii. May 22, 2015 through a posting on JONP.
- ix. July 2, 2015 through a posting on JONP.
- x. September 24, 2015 through a posting on JONP.

- xi. April 18, 2016 through a posting on JONP.
- xii. July 3, 2016 through a posting on JONP.
- xiii. August 29, 2016 through a posting on JONP.

Industrial Heat will also produce a copy of the JONP that Plaintiffs can search as readily as Industrial Heat for additional examples.

INTERROGATORY NO. 2: With respect to your claim in paragraph 105 of your counterclaims that “Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a test to be conducted over 400 days,” please indicate to whom Leonardo and Rossi disclosed this information and the specific date(s) and means/method of each disclosure.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by an Applicable Privilege or Protection. Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

4. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the

above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

5. Industrial Heat objects to this interrogatory on the grounds that it is unduly burdensome. Most, if not all, of Leonardo and Rossi's disclosures occurred through postings on the internet, including on Rossi's blog, Journal of Nuclear Physics ("JONP"). JONP receives a sizable number of site visits per day from individuals in the United States and abroad. It is impossible for Industrial Heat to identify every individual viewing the JONP website, and therefore, impossible to identify each and every person to whom disclosures were made. Additionally, to the extent that Rossi makes disclosures on the internet through the use of online aliases, Industrial Heat is not able to identify all of the disclosures made by Rossi and/or Leonardo over the years.

Subject to and without waiving the foregoing objections, Industrial Heat states that Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a test to be conducted over 400 days, including but not limited to, on the following occasions:

- i. April 5, 2016 through the public filing of the License Agreement as an exhibit to the Complaint
- ii. February 5, 2015 through a posting on JONP.
- iii. May 2, 2015 through a posting on JONP.
- iv. December 21, 2015 through a posting on JONP.
- v. January 16, 2016 through a posting on JONP.
- vi. April 10, 2016 through a posting on JONP.

Industrial Heat will also produce a copy of the JONP that Plaintiffs can search as readily as Industrial Heat for additional examples.

INTERROGATORY NO. 3: With respect to your claim in paragraph 105 of your counterclaims that “Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a test involving 350 days of operation of the E-Cat Plant,” please indicate to whom Leonardo and Rossi disclosed this information and the specific date(s) and means/method of each disclosure.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by an Applicable Privilege or Protection. Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

4. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

5. Industrial Heat objects to this interrogatory on the grounds that it is unduly burdensome. Most, if not all, of Leonardo and Rossi’s disclosures occurred through postings on

the internet, including on Rossi's blog, Journal of Nuclear Physics ("JONP"). JONP receives a sizable number of site visits per day from individuals in the United States and abroad. It is impossible for Industrial Heat to identify every individual viewing the JONP website, and therefore, impossible to identify each and every person to whom disclosures were made. Additionally, to the extent that Rossi makes disclosures on the internet through the use of online aliases, Industrial Heat is not able to identify all of the disclosures made by Rossi and/or Leonardo over the years.

Subject to and without waiving the foregoing objections, Industrial Heat states that Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a test involving 350 days of operation of the E-Cat Plant, including but not limited to, on the following occasions:

- i. April 5, 2016 through the public filing of the License Agreement as an exhibit to the Complaint
- ii. April 26, 2015 through a posting on JONP.
- iii. May 2, 2015 through a posting on JONP.
- iv. August 4, 2015 through a posting on JONP.
- v. August 7, 2015 through a posting on JONP.
- vi. December 21, 2015 through a posting on JONP.
- vii. January 17, 2016 through a posting on JONP.
- viii. February 18, 2016 through a posting on JONP.
- ix. April 10, 2016 through a posting on JONP.

Industrial Heat will also produce a copy of the JONP that Plaintiffs can search as readily as Industrial Heat for additional examples.

INTERROGATORY NO. 4: With respect to your claim in paragraph 105 of your counterclaims that “Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a guaranteed performance, or ‘guarantees of performance’ test,” please indicate to whom Leonardo and Rossi disclosed this information and the specific date(s) and means/methods of each disclosure.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by an Applicable Privilege or Protection. Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

4. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

5. Industrial Heat objects to this interrogatory on the grounds that it is unduly burdensome. Most, if not all, of Leonardo and Rossi’s disclosures occurred through postings on

the internet, including on Rossi's blog, Journal of Nuclear Physics ("JONP"). JONP receives a sizable number of site visits per day from individuals in the United States and abroad. It is impossible for Industrial Heat to identify every individual viewing the JONP website, and therefore, impossible to identify each and every person to whom disclosures were made. Additionally, to the extent that Rossi makes disclosures on the internet through the use of online aliases, Industrial Heat is not able to identify all of the disclosures made by Rossi and/or Leonardo over the years.

Subject to and without waiving the foregoing objections, Industrial Heat states that Leonardo and Rossi disclosed that their agreement with Counter-Plaintiffs required a guaranteed performance, or "guarantees of performance" test, including but not limited to, on the following occasions:

- i. April 5, 2016 through the public filing of the License Agreement as an exhibit to the Complaint
- ii. August 2, 2014 through a posting on JONP.
- iii. November 2, 2014 through a posting on JONP.

Industrial Heat will also produce a copy of the JONP that Plaintiffs can search as readily as Industrial Heat for additional examples.

INTERROGATORY NO. 5: With respect to your claim in paragraph 110 of your counterclaims that "any value associated with the exclusive control over the disclosure of the E-Cat IP was diminished with any disclosure of the E-Cat IP by Leonardo and Rossi without IPH's written waiver," please state the specific decreased value which you claim as damages with respect to this allegation.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by an Applicable Privilege or Protection.

Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. Industrial Heat objects to the definition of “E-Cat IP” to the extent that it is intended to encompass information beyond that encompassed by the definition of “E-Cat IP” contained in the License Agreement.

4. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

5. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

Subject to and without waiving the foregoing objections, Industrial Heat states that paragraph 110 is part of a counterclaim claim being asserted by IPH International B.V., not part of a counterclaim being asserted by Industrial Heat, and therefore Industrial Heat is not claiming a specific damages amount with respect to the counterclaim that encompasses paragraph 110.

INTERROGATORY NO. 6: Please identify the specific E-Cat IP, if any, that you claim Rossi and/or Leonardo did not deliver to you as alleged in paragraphs 97-98 of your counterclaims.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by an Applicable Privilege or Protection. Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. Industrial Heat objects to the definition of “E-Cat IP” to the extent that it is intended to encompass information beyond that encompassed by the definition of “E-Cat IP” contained in the License Agreement.

4. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

5. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

Subject to and without waiving the foregoing objections, Industrial Heat states that, pursuant to sections 12 and 13 of the License Agreement, Andrea Rossi and Leonardo Corporation were required to deliver the E-Cat IP to Industrial Heat so that Industrial Heat could replicate the results Rossi and Leonardo claimed from the E-Cat technology. Industrial Heat was not able to replicate the results Rossi and Leonardo claimed from the E-Cat technology using the E-Cat IP delivered to it. Therefore, the specific E-Cat IP Industrial Heat claims Leonardo and Rossi did not deliver, is the E-Cat IP necessary to replicate the results Rossi and Leonardo claimed from the E-Cat technology, assuming the E-Cat technology in fact works as Rossi and Leonardo claim.

INTERROGATORY NO. 7: Please identify the nature of any E-Cat IP that you claim Rossi and/or Leonardo did not deliver to you as alleged in paragraphs 97-98 of your counterclaims.

ANSWER: Industrial Heat objects to this interrogatory on the following grounds:

1. Industrial Heat objects to the Definitions, Instructions and Interrogatories to the extent they seek the disclosure information protected by an Applicable Privilege or Protection. Inadvertent disclosure of any privileged or protected information or documents in response to this interrogatory shall not be deemed a waiver of the Applicable Privilege or Protection.

2. Industrial Heat will respond to the Interrogatories according to its understanding of the ordinary meaning of any vague, ambiguous or undefined words or phrases contained therein.

3. Industrial Heat objects to the definition of “E-Cat IP” to the extent that it is intended to encompass information beyond that encompassed by the definition of “E-Cat IP” contained in the License Agreement.

4. There are defined terms and phrases in the definitions section of the Interrogatories that are not used in any of the specific interrogatories. As a result, it is

unnecessary for Industrial Heat to object to such unnecessary definitions but does not thereby waive any objections to those definitions as used in any subsequent discovery request.

5. Industrial Heat objects to the definition of “you”, “yours” and “yourselves” to the extent it includes persons or entities “purporting to act,” but not in fact acting, on behalf of Industrial Heat because Rossi has provided no basis for the identification of such persons or entities and further because such persons or entities are not, by definition, acting on behalf of the above identified companies, but only purporting to do so. However, these Responses include persons or entities Industrial Heat knows are acting or purporting to act on its behalf.

6. Industrial Heat objects to this interrogatory on the grounds that it is duplicative of interrogatory no. 6. Industrial Heat further objects to this interrogatory on the grounds that the phrase “nature of any E-Cat IP” is vague and ambiguous.

Subject to and without waiving the foregoing objections, see Industrial Heat’s response to interrogatory no. 6.

Dated: February 27, 2017.

Respectfully submitted,

/s/ Christopher R.J. Pace

Christopher R.J. Pace
cpace@jonesday.com
Florida Bar No. 721166
Christopher M. Lomax
clomax@jonesday.com
Florida Bar No. 56220
Christina T. Mastrucci
cmastrucci@jonesday.com
Florida Bar No. 113013
Erika S. Handelson
ehandelson@jonesday.com
Florida Bar No. 91133
JONES DAY
600 Brickell Avenue
Brickell World Plaza
Suite 3300
Miami, FL 33131
Tel: 305-714-9700
Fax: 305-714-9799

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail on counsel of record on the service list below this 27th day of February, 2017.

/s/ Erika S. Handelson

Erika S. Handelson

SERVICE LIST

John W. Annesser, Esq.
Brian Chaiken
Paul D. Turner
D. Porpoise Evans
PERLMAN, BAJANDAS, YEVOLI &
ALBRIGHT, P.L.
283 Catalonia Avenue, Suite 200
Coral Gables, FL 33134
Tel.: (305) 377-0086
Fax: (305) 377-0781
jannesser@pbyalaw.com
bchaiken@pbyalaw.com
pturner@pbyalaw.com
pevans@pbyalaw.com
Counsel for Plaintiffs

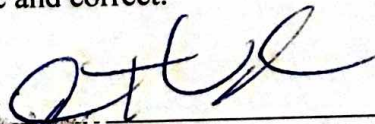
Fernando S. Aran
ARAN, CORREA & GUARCH, P.A.
255 University Drive
Coral Gables, FL 33134-6732
Tel.: (305) 665-3400
Fax: (305) 665-2250
faran@acg-law.com
Counsel for JM Products, Inc. and Henry Johnson

Rodolfo Nuñez
RODOLFO NUNEZ, P.A.
255 University Drive
Coral Gables, Florida 33134
Tel: (305) 665-3400
Fax: (305) 665-2250
rnunez@acg-law.com
Counsel for United States Quantum Leap, LLC and Fulvio Fabiani

VERIFICATION

I, John T. Vaughn, am currently Vice President of Industrial Heat, LLC (“Industrial Heat”). I am authorized by Industrial Heat to verify on its behalf the Responses and Objections to Rossi’s Second Set of Interrogatories (“Responses”). I have read the Responses and know the contents thereof. I state that the facts contained in the Responses are true and correct to the best of my knowledge, information and belief, subject to the objections set forth in the Responses. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON 2/27, 2017

BY: 

John T. Vaughn