

# **EXHIBIT 5**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**ANDREA ROSSI, et al.,** )  
 )  
 Plaintiffs, )  
 v. )  
 )  
**THOMAS DARDEN, et al.,** )  
 )  
 Defendants. )  
\_\_\_\_\_ )

No. 16-cv-21199-CMA (JJO)

**DECLARATION OF RICK A. SMITH**

I, Rick A. Smith, P.E., in accordance with 28 U.S.C. § 1746, declare as follows:

1. I am the principal of Applied Thermal Engineering, Inc., located at 7400 Brown Road, Ostrander, OH 43061.
2. I have been retained by counsel for Defendants in the above-captioned litigation to provide my opinions concerning the reported validation of certain low energy nuclear reactor (“LENR”) technology referred to as the “E-Cat.”
3. In my initial report, I explained that prior to completing my report, I had not yet been able to inspect the E-Cat site in Florida, located at 7861 NW 46th Street, Doral, FL 33166-5470 (“Doral Facility”). I included this fact because in my opinion, inspecting the Doral Facility would be helpful in formulating my opinions.
4. I was prepared to complete an inspection of the Doral Facility starting on the morning of February 21, 2017, but learned that day that if an inspection were to occur, it would have to occur at night after the completion of a deposition in this case. An inspection

beginning that night would have been insufficient due to time constraints and limited lighting at the Doral Facility.

5. I was able to inspect the Doral Facility on March 2, 2017. The inspection began around 9:00 AM and was completed around 4:00 PM. Joseph Murray, counsel for Plaintiffs, and counsel for Defendants were also present during the inspection.
6. During the inspection, Mr. Murray and I took measurements and photographs of the Doral Facility, including the second floor mezzanine that purportedly housed a heat exchanger during the operation of the E-Cat Plant. Mr. Murray and I were not permitted to inspect the black box on the J.M. Products side of the Doral Facility.
7. My observations during the inspection shed further light on the facts underlying the opinions and conclusions in my initial report. For example, I confirmed that there was no physical evidence supporting the existence of a heat exchanger on the second floor of the Doral Facility. There was no lighting, other than the windows, no electrical power (save two small junction boxes and some small conduit), no holes or patches where conduit and power boxes would have been mounted, no holes or patches where piping would have been supported, no hole patches in the floor or the drywall wall – in short, nothing. The only access to the second floor is a rickety wooden stairs. Moreover, the door to the second floor is about 22-1/2” wide by about 79” high. It would be extremely difficult to get equipment, piping, conduit, duct work, and the other items for such an installation up the narrow, rickety stairs and through that narrow door into the second floor. The other alternative would have been to remove one of the window assemblies and rig the equipment from the west parking lot up into the second floor.

8. Additionally, during the inspection, Mr. Murray discovered a small Grundfos circulating pump under the stairs to the mezzanine. A photograph produced by J.M. Products shows that this Grundfos pump was installed on the outlet of the serpentine coil inside the black box during the operation of the E-Cat. The previously produced photograph did not reveal that it was a Grundfos pump. The site inspection allowed me to determine this fact and use it to better understand the impact of this pump on the E-Cat Plant's operation.
9. Observing the general physical configuration of the E-Cat, as not revealed in photographs or otherwise, was important to my analysis.
10. As a result, I prepared a supplemental report that expands upon the opinions and conclusions in my original report based upon information obtained during my inspection of the Doral Facility.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3<sup>rd</sup> day of April, 2017.



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Rick A. Smith