

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

CASE NO. 16-21199-CIV-ALTONAGA/O'Sullivan

**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.

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

Counter-Plaintiffs,

v.

**ANDREA ROSSI and LEONARDO
CORPORATION,**

Counter-Defendants,

v.

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

Third-Party Defendants.

ORDER

THIS CAUSE came before the Court upon three motions for summary judgment filed by the parties between March 22, 2017 and April 5, 2017: (1) Plaintiffs' Motion for Partial

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Summary Judgment¹ [ECF No. 214]; (2) Defendants' Motion for Summary Judgment² [ECF No. 203]; (3) and Third-Party Defendants' Combined Motion for Partial Summary Judgment as to Counts III and IV of . . . [the] Fourth Amended Counterclaims³ [ECF No. 242]. The Court has carefully considered the parties' extensive written submissions, the record, and applicable law.

This case arises from disputes connected with a license to manufacture and use intellectual property related to Plaintiffs' low-energy nuclear reaction technologies — the E-Cat technology. The Court has summarized the factual background underlying the parties' Motions on multiple occasions. (*See* Order [ECF No. 24]; Order [ECF No. 76]; Order [ECF No. 120]). Because the factual background remains the same, the background sections of those Orders are incorporated here.

Summary judgment may only be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a), (c). An issue of fact is “material” if it might affect the outcome of the case under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). It is “genuine” if the evidence could

¹ On April 2, 2017, Defendants filed an Opposition to Plaintiffs' Statement of Material Facts [ECF No. 236] and an Opposition to Plaintiffs' Motion [ECF No. 237]. Plaintiffs filed a Reply [ECF No. 254] on April 11, 2017.

² Defendants' Motion is accompanied by a Statement of Material Facts [ECF No. 207], filed separately on March 23, 2017. On April 4, 2017, Plaintiffs filed a Response [ECF No. 238], to which Defendants filed a Reply [ECF No. 253]. Additionally, on April 4, 2017, Third-Party Defendants filed a Combined Statement of Material Facts in Opposition and Memorandum of Law in Opposition [ECF No. 243], to which Defendants filed a Reply [ECF No. 256]. Defendants also submitted a Notice of Filing Exhibit 23 [ECF No. 23], to include an exhibit they inadvertently omitted from the Defendants' Statement of Material Facts.

³ On April 5, 2017, Defendants filed an Opposition to Third-Party Defendants' Combined Motion [ECF No. 244] and an Opposition to Third-Party Defendants' Statement of Material Facts [ECF No. 245]. Third-Party Defendants filed a Combined Reply [ECF No. 255] on April 12, 2017.

lead a reasonable jury to find for the non-moving party. *See id.*; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

At summary judgment, the moving party bears the initial burden of identifying “those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (alterations and internal quotation marks omitted)). If “the moving party fails to demonstrate the absence of a genuine issue of material fact, the motion should be denied.” *Kernel Records Oy v. Mosley*, 694 F.3d 1294, 1300 (11th Cir. 2012) (citations omitted). The filing of cross-motions for summary judgment does not change the standard of review. *See LSQ Funding Group, L.C. v. EDS Field Servs.*, 879 F. Supp. 2d 1320, 1325 (M.D. Fla. 2012) (citation omitted).

The parties’ voluminous, competing briefing and submissions plainly show the record is brimming over with disputed issues of material fact. Indeed, the Court is hard-pressed to locate any material facts on which the parties agree. Disputed factual issues are for the jury to determine. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge” (alteration added)).

Accordingly, it is


ORDERED AND ADJUDGED as follows:

1. Plaintiffs’ Motion for Partial Summary Judgment [ECF No. 214] is **DENIED**.
2. Defendants’ Motion for Summary Judgment [ECF No. 203] is **DENIED**.

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3. Third-Party Defendants' Combined Motion for Partial Summary Judgment as to Counts III and IV of . . . [the] Fourth Amended Counterclaims [ECF No. 242] is **DENIED.**

DONE AND ORDERED in Miami, Florida this 17th day of May, 2017.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record