

# Exhibit B

Industrial Heat Corporate Representative  
Deposition Transcript Excerpts

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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.

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PERLMAN, BAJANDAS, YEVOLI &  
ALBRIGHT, P.L.  
282 CATALONIA AVENUE  
SUITE 200  
CORAL GABLES, FL 33134  
Monday, February 13, 2017  
9:07 a.m. - 5:18 p.m.

VIDEOTAPED DEPOSITION OF JOHN THOMAS VAUGHN  
(Corporate Representative of Industrial Heat, LLC)

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.

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1 Q. When in time was this structure put into place?  
 2 A. This was a reorganization that was undertaken  
 3 prior to Woodford coming in. Woodford's bias is to invest  
 4 in UK companies. And they have more allocation for UK  
 5 companies. And in addition, UK companies are not a bad  
 6 domicile, based on analysis we were receiving, for an  
 7 endeavor that is focussed on holding and then  
 8 commercializing IP, even if that IP had not necessarily  
 9 held necessarily in the UK.  
 10 Q. So this was done in 2015?  
 11 A. Yeah. So the Woodford investment closed in May  
 12 of 2015. And this all happened around about that time. I  
 13 don't know if it was, you know, April '15 and then closing  
 14 or the exact date. But -- and some of these entities may  
 15 have been set up after that, right? So it might not have  
 16 all been in place at closing. But the broad plan was in  
 17 place and parenting was in place.  
 18 Q. So what happened to people who had equity in  
 19 Industrial Heat, LLC? Were they provided with an equity  
 20 interest in IH Holdings International Limited?  
 21 A. Yes.  
 22 Q. Just a swap or was there some type of ratio?  
 23 A. No. People owned, you know, whatever you owned  
 24 in Industrial Heat, LLC when it was the parent, you owned  
 25 the same amount pro rata in IH Holdings International

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1 Limited when that was formed. And then, of course,  
 2 Woodford invested into IH Holdings International Limited,  
 3 so everybody's ownership was diluted by that incoming  
 4 investment.  
 5 Q. Now, looking at this flowchart, specifically  
 6 looking at the bottom left three companies, was there a  
 7 time in which Industrial Heat, LLC was the owner of IPH  
 8 International BV?  
 9 A. I believe that there was. But we -- and there  
 10 is -- there is many presentations about this  
 11 reorganization, so it should kind of spell out. Price  
 12 Waterhouse Coopers did this work for us and it should  
 13 spell out how this reorganization was completed, or  
 14 consummated, I should say.  
 15 But I believe -- I am trying to remember if --  
 16 what I am trying to recall is Industrial Heat, LLC, did it  
 17 ever own as a subsidiary IPH International or were they  
 18 always brother-sister relationship? And that is what I  
 19 would have to refresh myself on. But I believe that they  
 20 did, that Industrial Heat, LLC did at one point own IPH  
 21 International BV.  
 22 Q. And do you know why it was decided to move IPH  
 23 International BV to IPH BV Holdings Limited?  
 24 A. To move it or to --  
 25 Q. To transfer it, sell it. I'm not sure what the

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1 transaction was. But clearly, if it was once owned by  
 2 Industrial Heat, LLC and is now owned by IPH BV Holdings  
 3 Limited, there was transfer of that interest, right?  
 4 A. Right.  
 5 Q. Right?  
 6 A. You know, we would have to visit the PWC  
 7 analysis on this. But it had to do with their  
 8 recommendations on corporate structuring. And I am trying  
 9 to recall why they felt the need to have IPH BV Holdings  
 10 Limited as the immediate parent to IPH International BV.  
 11 Q. Let's talk about the negotiations for the  
 12 license agreement. When did those negotiations begin, as  
 13 far as you know?  
 14 A. I believe that was in -- I am trying to  
 15 remember if it was June or July of '12. I am going back  
 16 to a point when Tom first met with Andrea. This is not  
 17 necessarily a negotiation started then, but it is a  
 18 starting point. I think it was in June or July of '12.  
 19 Q. And was Tom the lead negotiator?  
 20 A. I would say primarily. And I was -- yeah, I  
 21 would say that, yes. And I was providing some input to  
 22 him.  
 23 Q. Was there anybody else who was negotiating  
 24 directly with Dr. Rossi?  
 25 A. John Mazzarino was involved at times, but not

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1 -- more so as an advisor, but not as a negotiator.  
 2 Q. Okay. Do you know who proposed the purchase  
 3 price? I believe it was a little over a hundred million.  
 4 A. Andrea did, I believe.  
 5 Q. Was there any negotiation over the purchase  
 6 price?  
 7 A. Not that I recall. Not that I recall.  
 8 Q. How did -- how did IH value the technology at  
 9 that time?  
 10 A. At that time?  
 11 MR. BELL: Objection to form.  
 12 THE WITNESS: It was a -- you know, when you  
 13 kind of have to do a potential value scenario and  
 14 with a spectrum. So we didn't say, Oh, we think it  
 15 is worth X. Right? Some people may do that. That  
 16 is not really -- what we do, we say, We don't know  
 17 what it is worth. If it works as advertised, it is  
 18 worth a lot. Right? If it doesn't, it is worth, you  
 19 know, zero, or in this case negative zero, due to all  
 20 the legal costs that we are incurring.  
 21 BY MR. CHAIKEN:  
 22 Q. Was there any type of methodology that IH used  
 23 to try to value the technology or to value the license  
 24 agreement?  
 25 A. Can you say that one more time? I'm sorry.

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1 what he provided.  
 2 Are there any other documents that you are  
 3 aware of sitting here today which evidence Penon's intent  
 4 to deceive Industrial Heat?  
 5 A. We are reviewing the documents.  
 6 Q. I am not asking you whether you are reviewing  
 7 them. I am asking if you are aware sitting here today of  
 8 any other documents that you can point me to.  
 9 A. We are reviewing the documents, so I don't  
 10 know, is the answer to your question.  
 11 Q. Okay. Well, you can't point me to another  
 12 document, can you?  
 13 A. Today there is a whole trove of discovery --  
 14 Q. Right.  
 15 A. -- pointed to. And it needs further analysis.  
 16 We are not all the way through it.  
 17 Q. Has anyone from Industrial Heat performed that  
 18 analysis?  
 19 A. They are working on it.  
 20 Q. Okay. Today you can't point me to one, right?  
 21 A. That is not what I am telling you. We are  
 22 still working on it.  
 23 Q. Then say you can't point me to one.  
 24 A. I am telling you in my own words that we are  
 25 still working on it and that we believe that Penon did not

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1 act with pure intentions.  
 2 Q. Okay. Did you talk to anybody who told you  
 3 that Penon didn't act with pure intentions?  
 4 A. Who would we have talked to besides Andrea?  
 5 Q. That is what I am asking about. That is why  
 6 we're having this deposition.  
 7 A. Penon is -- you know, Penon is wherever he is.  
 8 He is inaccessible to us. Hopefully, somebody will get to  
 9 ask him some questions later this week or next week. But  
 10 who could we have talked to?  
 11 Q. That is what I am asking you. Okay.  
 12 A. All we have is what you guys have provided in  
 13 discovery.  
 14 Q. Do you know who Fulvio Fabiani is?  
 15 A. I do.  
 16 Q. Who is he?  
 17 A. He is a technician Andrea worked with.  
 18 Q. And did Industrial Heat hire Fulvio Fabiani?  
 19 A. We paid him, at Andrea's request, to assist  
 20 Andrea in his work. So he was not an employee of  
 21 Industrial Heat.  
 22 Q. Was he a consultant for Industrial Heat?  
 23 A. He was.  
 24 Q. And did you do due diligence into Fulvio  
 25 Fabiani prior to hiring him?

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1 A. I don't know if we did. Because if Andrea had  
 2 told us or Fulvio had told us, one, that he was  
 3 Maddalena's -- Maddalena's mother had adopted Fulvio.  
 4 Maddalena is Andrea's wife. And so that is how Andrea  
 5 knew him, as I recall. And Andrea had, you know, given  
 6 him an opportunity to work as a technician on this  
 7 technology.  
 8 Q. Okay. I am going to refer you back to the  
 9 license agreement, Exhibit 13. Specifically, I am going  
 10 to refer you to the schedule in the back of it. It is  
 11 Exhibit 13. It is called Schedule 3.2 (b). Page 23.  
 12 A. What page?  
 13 Q. 23.  
 14 MR. BELL: What is it on the pacer ID?  
 15 MR. CHAIKEN: Yeah, it's page 24 of 25. I'm  
 16 sorry, I was looking at the bottom of the page. It  
 17 is Schedule 3.2 (b). Page 25 at the bottom.  
 18 THE WITNESS: I don't know if we are looking at  
 19 the same page number.  
 20 MR. BELL: Look up here.  
 21 THE WITNESS: Sorry. Sorry. Sorry.  
 22 BY MR. CHAIKEN:  
 23 Q. It is okay.  
 24 A. Okay.  
 25 Q. Are you familiar with the schedule?

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1 A. You know, I haven't reviewed it recently, but  
 2 broadly speaking, yes.  
 3 Q. So this provides -- and it is entitled  
 4 Procedures For Validation of E-Cat IP. And it provides  
 5 for things that are required to happen prior to Leonardo  
 6 being entitled to be paid the \$10 million. And if you  
 7 want to just take a second to review it.  
 8 A. Okay.  
 9 Q. You don't need to take my word for it. That is  
 10 what it says.  
 11 My first question relates just to the first  
 12 paragraph.  
 13 A. Okay.  
 14 Q. Where it says: "No later than five days  
 15 following validation of the plant, Leonardo and Rossi will  
 16 deliver to any combination of one or more of the United  
 17 States patent attorneys and a nuclear engineer."  
 18 Was a nuclear engineer selected by the parties  
 19 or a US patent attorney selected by the parties?  
 20 A. That is where I am going to be a little fuzzy  
 21 on recollection of this. But partly because the IP was  
 22 ultimately disclosed to Tom and not to me. But I don't  
 23 believe that it was ultimately -- I'm not sure if it was  
 24 reviewed by a US patent attorney. I just don't know. If  
 25 it was, I am sure this information is in the documents,

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1 have to check with Jim Fogleman. But I don't believe  
 2 if you would look at a cap table of Industrial Heat,  
 3 LLC or IH Holdings International Limited that  
 4 Cherokee Advisors would be listed there. But it may  
 5 be, and I just don't think it is. Because I think  
 6 that it was helping cover costs and was later paid  
 7 back.  
 8 BY MR. CHAIKEN:  
 9 Q. Okay. We mentioned Woodford Investments. And  
 10 you said, I think, the Woodford Investment Fund invested  
 11 in May of 2015?  
 12 A. Correct.  
 13 Q. And they invested \$50 million?  
 14 A. Correct.  
 15 Q. And is it your understanding that the valuation  
 16 for Woodford was a \$2 billion valuation at that time?  
 17 A. No.  
 18 Q. What was the valuation, as far as you  
 19 understood it?  
 20 A. It was a -- they bought -- they -- it's a  
 21 nuance question. It is not just because of the way they  
 22 structured it. They had the ability to buy additional  
 23 equity at specified prices. So they provided 50 million  
 24 initially and received, I believe, just under five percent  
 25 for that. They also had the option to buy up to an

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1 additional -- I think it was at least 15 percent at  
 2 different price points. And so they bought the right, in  
 3 effect, to own up to 20 percent of the company. I believe  
 4 it was 20 percent.  
 5 Q. But they would have to pay more for that,  
 6 right?  
 7 A. Yeah. They would have to make additional  
 8 investments.  
 9 Q. Right. Exactly. So you are saying there  
 10 wasn't a \$2 billion valuation; it was something less?  
 11 A. Yes.  
 12 Q. Do you know what it was?  
 13 A. Well, it's a -- it is a difficult question  
 14 because it's -- I will tell you what they received in  
 15 exchange for the capital they provided and then, you know,  
 16 a valuation analyzer could tell you what was the  
 17 valuation. But they paid 50 million bucks and they  
 18 received just under five percent, as well as options to  
 19 purchase an additional 15 percent.  
 20 Q. Right.  
 21 A. And I believe that part of that was at the same  
 22 valuation and part of that was at an increased valuation.  
 23 Q. Okay. Prior to them making that investment,  
 24 were they ever told that Industrial Heat was unable to  
 25 replicate the technology?

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1 A. Sure.  
 2 (Exhibit 22, IH81230 through 81234, was marked  
 3 for Identification.)  
 4 BY MR. CHAIKEN:  
 5 Q. Let me show you what has been marked as  
 6 Exhibit 22.  
 7 A. I will just add, just along the lines, Woodford  
 8 was investing in a portfolio strategy. It wasn't just  
 9 about the E-Cat.  
 10 Q. Okay. We are going to get there.  
 11 Exhibit 22 is an e-mail chain Bates stamped  
 12 IH81230 through 81234. And I am really concerned about  
 13 the e-mail that begins on the second page that was  
 14 forwarded from John Mazzarino on September 6, 2014 to Joe  
 15 Pike, Tom Darden and John Mazzarino and it states: Draft  
 16 TE e-mail to paul@wim. WIM stands for what?  
 17 A. Are you on page two?  
 18 Q. Yeah, page two. The subject line.  
 19 A. Oh. Sorry. Woodford Investment Management  
 20 Company.  
 21 Q. Right. And who is TD?  
 22 A. Tom Darden.  
 23 Q. Tom Darden, right. So specifically looking at  
 24 that e-mail, it is a lengthy e-mail, it goes on to the  
 25 third page. And I am most concerned about the last two

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1 paragraphs on the page. And the last, the second to last  
 2 paragraph starts: "With respect to the valuation, I can  
 3 give you some background. We talked to Neil about the  
 4 \$2 billion figure earlier this summer, providing him with  
 5 a draft of the test report prepared by the Royal Swedish  
 6 Academy of Sciences, which awards Nobel prize in physics.  
 7 The report described a 32-day test conducted by a number  
 8 of prominent European physicists, apparently including  
 9 members of the committee that select the Nobel prize  
 10 winner, and concludes that Rossi has discovered a new  
 11 source of energy, the properties rivaling nuclear fission,  
 12 but without releasing radiation or producing radioactive  
 13 waste. So this technology seems to be without precedent  
 14 and extremely valuable."  
 15 See that?  
 16 A. I do, yeah.  
 17 Q. Does this refresh your recollection as to  
 18 whether or not there was a \$2 billion valuation?  
 19 A. Well, I didn't -- I didn't need this to refresh  
 20 my memory on that.  
 21 Q. Got it.  
 22 A. Because there's -- there's -- that may have  
 23 been put forth, but that is not what was -- what was  
 24 ultimately agreed to is what I just told you.  
 25 Q. Got it. Was there anything else besides

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1 August 2013. I know that Andrea felt he needed to rebuild  
 2 the unit, which we assisted him in doing. And then  
 3 otherwise it should have been started shortly thereafter.  
 4 He kept wanting to work on other things, specifically  
 5 preparing for the Lugano test, which ended up taking place  
 6 in February and March of '15. So he was running a lot of  
 7 tests to destruction and doing this, that and the other.  
 8 But there was no reason that it shouldn't have started in  
 9 August or September.  
 10 Q. Did Industrial Heat ask Dr. Rossi to start the  
 11 test in August or September of 2013?  
 12 A. We -- we had conversations about what his plans  
 13 were in that regard, you know, and he was delaying. What  
 14 reason? I think the reason was he wanted to focus on the  
 15 Lugano test. But we definitely did talk about that and  
 16 where it would be located and things like that.  
 17 Q. Did Industrial Heat have the funding lined up  
 18 to pay Dr. Rossi \$89 million as of August 2013?  
 19 A. Yes. The funding was not a concern of ours, so  
 20 long as he performed. It would be in addition to  
 21 Woodford's interest, others would be more -- it would be  
 22 an easy thing to raise capital for. So that wasn't --  
 23 that wasn't at the top of our concern list. Our concern  
 24 was, does it work and can it be proven to work and is the  
 25 technology transferred? If we could prove those things,

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1 then 89 million was pretty easy, in our view of the world.  
 2 Q. If you turn to page three of this document, it  
 3 has a paragraph in the middle of the page that says "new  
 4 facility." Do you see that?  
 5 A. I see it.  
 6 Q. It says: "Later on," in the middle of the  
 7 paragraph, "later on, we hope to find a nearby beta  
 8 customer with a secure site where we can operate this  
 9 plant for a year or more. We are impeded in finding this  
 10 customer now because we are not publicizing our  
 11 involvement. If any of you have a suggestion, please let  
 12 me know."  
 13 Whose idea was it to have a customer for the  
 14 purposes of testing the E-Cat equipment?  
 15 A. Andrea's. And, you know, I think Tom mentions  
 16 that because Andrea had already broached that idea.  
 17 Q. And when did he broach that idea?  
 18 A. I'm not sure of the exact time, but clearly  
 19 early on, after delivery of the plant in August 2015.  
 20 Q. I see.  
 21 A. One of his consistent themes was, you know, we  
 22 always -- he believed it needed to be ratified by a  
 23 customer. We could care less about a customer, but that  
 24 was important to Andrea.  
 25 Q. Did you have conversations with Dr. Rossi about

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1 finding a customer in North Carolina?  
 2 A. We did talk to him about that, you know, as he  
 3 was asking about this. So there was customer next door.  
 4 It was at -- Southern Industrial Contractors was the  
 5 facility next door and actually the owner of our building  
 6 that we were in. And they washed trucks using hot water,  
 7 hot steam, steam such water. So one easy thing that we  
 8 proposed was just piping up hot water, you know, piping  
 9 the heat, I should say, over there to heat their water for  
 10 that purpose for washing their trucks.  
 11 Another one was brick company installation. I  
 12 can't remember if it was brick or plywood. Anyway, there  
 13 was a facility just kind south of Raleigh, an industrial  
 14 area where Tom was familiar with.  
 15 Q. Did Industrial Heat ever make agreements with  
 16 anyone else to do that exact experiment, combine the E-Cat  
 17 with an existing customer?  
 18 A. No. Andrea kept coming up with reasons as to  
 19 why it wasn't sufficient or he didn't want to do it. His  
 20 goal was to get it down in Miami.  
 21 Q. Did Industrial Heat ever ask specifically  
 22 Dr. Rossi to start doing the guaranteed performance tests  
 23 required by the contract?  
 24 A. You know, I imagine that that conversation came  
 25 up. It is hard to believe that that conversation wouldn't

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1 have come up, as when do you want to start this test?  
 2 When is this test going to start? And what is that  
 3 process going to be? Are there e-mail communications on  
 4 that? I'm not sure. Again, at this point we were seeing  
 5 him almost daily, so it would have been easier to talk  
 6 about it.  
 7 Q. Did Industrial Heat ask Dr. Rossi to  
 8 participate in tests in Industrial Heat's facility in  
 9 North Carolina?  
 10 A. Sure. But these were not -- these were tests  
 11 of single devices.  
 12 Q. Right.  
 13 A. Sure, we did.  
 14 Q. Was there any -- was there ever a time that  
 15 Dr. Rossi told you that he would not agree to participate  
 16 in doing testing, whether it be in Industrial Heat's  
 17 facility or anywhere else?  
 18 A. Do you mean with regard to one megawatt or do  
 19 you mean with regard to testing of the individual units?  
 20 Q. Let's talk about everything other than the one  
 21 megawatt.  
 22 A. Any time we wanted to conduct testing, he  
 23 always -- he wouldn't -- he would be very obstructionist  
 24 or not participate, unless he was controlling all the  
 25 variables, which was not helpful to us. We wanted him to

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1 Q. So at that time, at least at the time of this  
 2 document, was Industrial Heat willing to postpone the  
 3 start of the guaranteed performance test?  
 4 MR. BELL: Objection to form.  
 5 THE WITNESS: It appears that that was  
 6 contemplated by this amendment, which was never put  
 7 into effect.  
 8 BY MR. CHAIKEN:  
 9 Q. Okay. And whose signature is on page three?  
 10 A. Tom Darden's and Andrea Rossi's.  
 11 Q. And you say this agreement was not put into  
 12 effect, and you say that because why?  
 13 A. It was never signed by AEG. For it to be  
 14 effective, it had to be signed by all parties. And I  
 15 think there was later notice circulated that said it was  
 16 not in effect because it had never been signed by AEG.  
 17 Q. Got it. Did -- any time after October 2013 and  
 18 prior to this lawsuit beginning, did Industrial Heat  
 19 inform Dr. Rossi that, The time had passed, you could no  
 20 longer achieve guaranteed performance, and you could no  
 21 longer achieve an \$89 million payment?  
 22 A. I'm not sure that we informed him of that  
 23 verbatim, as you stated.  
 24 Q. Okay. Did you say it to him in any -- any  
 25 summary of that, in any -- in any way did you say, Listen,

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1 the time has passed, you are -- we are not having a  
 2 guaranteed performance test?  
 3 A. I am trying to recall. You know, I -- I don't  
 4 recall.  
 5 Q. Do you think that was something that would be  
 6 important to inform him, that he no longer had the  
 7 opportunity to earn \$89 million?  
 8 A. Again, we were planning to pay him, if he could  
 9 perform. Notwithstanding the fact that he had violated  
 10 the agreement, not met the conditions of the agreement.  
 11 So if we had done that, let's take a hypothetical  
 12 scenario, dealing with a volatile character, you don't  
 13 know how he is going to respond. Our goal, as stewards  
 14 and as managers, is to determine definitively the state of  
 15 the art. And by being confrontational, sooner rather than  
 16 later, it ensured that you would just blow up in -- there  
 17 was a chance, at least, that you would blow up the entire  
 18 relationship and Andrea would stop working on it  
 19 altogether and so, therefore, we just wouldn't know.  
 20 Versus getting more information and getting more data to  
 21 determine the state of the art.  
 22 Q. Well, couldn't you have told him, Hey,  
 23 Dr. Rossi, we think that the time has passed, but if you  
 24 perform, we are willing to still pay you?  
 25 MR. BELL: Objection to form.

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1 THE WITNESS: Again, in a hypothetical  
 2 scenario, a lot of things are possible and that is  
 3 one possibility.  
 4 BY MR. CHAIKEN:  
 5 Q. Did you ever -- did you ever say that or  
 6 communicate that with Dr. Rossi?  
 7 A. No. He wanted to do a specific thing and we  
 8 wanted to allow him to do that thing to better understand  
 9 the state of the art.  
 10 Q. Did Industrial Heat inform its investors that  
 11 it had considered the time for performance of the  
 12 guaranteed performance test having -- had passed?  
 13 A. I believe that we did.  
 14 Q. And how did you do that?  
 15 A. I am guessing, but I am guessing it was either  
 16 an e-mail -- most likely an e-mail or in a memo. But at  
 17 the same time, Woodford was as eager as we were to pay him  
 18 if it performed and the technology would have been  
 19 transferred.  
 20 Q. And you know that because Woodford told you  
 21 that?  
 22 A. Correct. I think, more precisely, said that to  
 23 Tom.  
 24 BY MR. CHAIKEN:  
 25 Q. When did Industrial Heat first come to the

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1 conclusion that the time for the guaranteed performance  
 2 test had passed?  
 3 A. I don't recall. But from a technical  
 4 perspective, it would have been 60 days after delivery of  
 5 the plants, presumably.  
 6 (Exhibit 28, IH45757 through 45819, was marked  
 7 for Identification.)  
 8 BY MR. CHAIKEN:  
 9 Q. I will show you what has been marked as  
 10 Exhibit 28. Exhibit 28 has been Bates marked IH45757  
 11 through 45819. It is a letter from Myers Bigel to Tom  
 12 Darden.  
 13 Have you seen this before?  
 14 MR. BELL: Before you answer, any questions on  
 15 this document, I believe we called this back, did we  
 16 not?  
 17 MR. CHAIKEN: I believe we contested that.  
 18 MR. BELL: I am not going to let him answer any  
 19 questions on it.  
 20 MR. CHAIKEN: Okay. You are going to instruct  
 21 him not to answer?  
 22 MR. BELL: I am going to instruct him not to  
 23 answer.  
 24 MR. CHAIKEN: Okay. We will save that one.  
 25 (Exhibit 29, 107550 through 107552, was marked



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1 for Identification.)  
 2 BY MR. CHAIKEN:  
 3 Q. I am going to show you what has been marked as  
 4 Exhibit 29.  
 5 A. Thank you.  
 6 Q. Exhibit 29 has been Bates stamped 107550  
 7 through 107552. It is an e-mail from you to John  
 8 Mazzarino and Tom Darden. It is an IH timeline.  
 9 And specifically I want to refer you to the  
 10 second -- well, first of all, do you recall sending this  
 11 e-mail?  
 12 A. I recall this e-mail. Again, it's -- I don't  
 13 recall specifically sending it. I mean, but I recall this  
 14 e-mail. I need to review it.  
 15 Q. I am only going to refer to one line.  
 16 A. Okay. Go ahead.  
 17 Q. It is on the very bottom of the second page.  
 18 It says Mid-2014, May through September. It states:  
 19 "Rossi begins working on one megawatt unit, prepare it to  
 20 operate on a continuous basis for 350 days, per the terms  
 21 of the agreement with IH." See that?  
 22 A. I see that.  
 23 Q. Was it your opinion as of September 11, 2014  
 24 that Dr. Rossi was preparing for a 350-day test, pursuant  
 25 to the agreement?

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1 A. He was preparing for that. It doesn't mean  
 2 that he hadn't also violated the chance to perform under  
 3 that agreement. Clearly, though, you know, we were -- we  
 4 were acknowledging that he was planning to test the one  
 5 megawatt unit for an extended period of time. And we were  
 6 planning to pay, if he could prove that it performed.  
 7 (Exhibit 30, 107246 through 247, was marked for  
 8 Identification.)  
 9 BY MR. CHAIKEN:  
 10 Q. Let me show you what has been marked as  
 11 Exhibit 30. Exhibit 30 has been Bates stamped 107246  
 12 through 247. It is an e-mail from John Mazzarino to Tom  
 13 Darden and yourself, dated September 29, 2014.  
 14 And specifically -- well, you have never seen  
 15 this before, have you? Actually, you were, you were  
 16 forwarded this e-mail. At the very top, see that?  
 17 A. Mm-hmm.  
 18 Q. Do you recall seeing this e-mail?  
 19 A. I mean, clearly I must have seen it. It went  
 20 to me. But I don't know that I recall this specifically.  
 21 Q. Right. On the second page, I am just concerned  
 22 about one sentence.  
 23 A. Okay.  
 24 Q. On the second page of this document, paragraph  
 25 begins: "With Andrea back from Switzerland, he is

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1 beginning to plan for the next three weeks. Our top  
 2 priority is to get the one megawatt steam plant operating  
 3 and tested, and thankfully Andrea agrees."  
 4 Do you see that?  
 5 A. I see that.  
 6 MR. BELL: Where are you again?  
 7 MR. CHAIKEN: The paragraph -- next page.  
 8 Third paragraph down.  
 9 MR. BELL: Okay. Sorry.  
 10 MR. CHAIKEN: Sure.  
 11 BY MR. CHAIKEN:  
 12 Q. Was it Industrial Heat's top priority to get  
 13 the one megawatt steam plant operating and tested as of  
 14 September 2014?  
 15 A. That is what is stated here in this e-mail. I  
 16 would say that that was a little bit of a narrow  
 17 statement. Meaning we had other things going on that were  
 18 also, I would say, very important. But clearly we were  
 19 interested to see if the one megawatt unit could perform.  
 20 Q. Now, as of September 2014, you weren't talking  
 21 about the 600, you were talking about the one megawatt,  
 22 right?  
 23 A. It appears right here that one megawatt steam  
 24 plant is referenced.  
 25 (Exhibit 31, 106452 through 106474, was marked

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1 for Identification.)  
 2 BY MR. CHAIKEN:  
 3 Q. Right. Let me show you what has been marked as  
 4 Exhibit 31. Exhibit 31 has been Bates stamped 106452  
 5 through 106474. It's titled Industrial Heat IPH  
 6 International PD 18-Month Business Plan.  
 7 Do you know who prepared this?  
 8 A. I prepared this, with input from others on the  
 9 team.  
 10 Q. As of October -- I believe this was prepared in  
 11 October of 2014. Do you know if that is true?  
 12 A. I don't know. There should be a date on it  
 13 somewhere.  
 14 Q. I think I got that date from the medidata of a  
 15 document. But you can correct me if I am wrong.  
 16 A. I think that October '14 is likely correct. I  
 17 am surprised there is not a date on it, though. Keep  
 18 going.  
 19 Q. Yeah. Who -- what was the -- who was the  
 20 audience for this document?  
 21 A. Woodford Investment Funds, I believe.  
 22 Q. Specifically on page seven of this document,  
 23 you were still budgeting, or at least had a contingency  
 24 that Rossi might earn his \$89 million fee, true?  
 25 A. Correct. And that was, you know, again,



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1 Florida?

2 MR. BELL: Objection to form.

3 THE WITNESS: No. What we allowed him to move

4 forward with his proposal, which was to do testing

5 with a customer he represented as an affiliate of

6 Johnson Matthey in Florida. And we thought, Well,

7 you know, if a group like Johnson Matthey can affirm

8 that this technology performs as advertised, that is

9 a good thing. And so we allowed that to proceed.

10 BY MR. CHAIKEN:

11 Q. We will get into that in a second.

12 But what equipment did Industrial Heat agree

13 would be tested in Florida?

14 MR. BELL: Objection to form.

15 THE WITNESS: Again, he wanted to test, what he

16 was telling us, was the one megawatt plant in Florida

17 with a customer. And so, you know, again, trying to

18 be accommodative and probably overly gracious, in

19 hindsight, we allowed that.

20 BY MR. CHAIKEN:

21 Q. So you agreed to test the one megawatt plant in

22 Florida?

23 MR. BELL: Objection to form.

24 BY MR. CHAIKEN:

25 Q. Agreed?

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1 A. We allowed him to do what he was proposing to

2 do.

3 Q. Okay. And what he was proposing to do is test

4 the one megawatt?

5 MR. BELL: Objection to form.

6 THE WITNESS: He was proposing to install the

7 one megawatt at a facility where an affiliate of

8 Johnson Matthey would use it for industrial processes

9 and would provide, you know, feedback on their power

10 consumption from the one megawatt device.

11 BY MR. CHAIKEN:

12 Q. Was the discussion about him doing that test

13 with a six cylinder?

14 MR. BELL: Objection to form.

15 THE WITNESS: I don't recall. I recall him,

16 again, around the second amendment, but I don't

17 recall whether or not at that point he was requesting

18 the six cylinder.

19 BY MR. CHAIKEN:

20 Q. At this point in time the owner of the one

21 megawatt was Industrial Heat, correct?

22 A. Correct.

23 Q. And Industrial Heat controlled where that unit

24 was located, correct?

25 A. Correct. All the while, trying to keep Andrea

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1 happy.

2 Q. Okay. But it had full control. Andrea

3 couldn't move the one megawatt without Industrial Heat's

4 agreement, correct?

5 A. Again, we allowed him to take it down there.

6 Q. Right. And, in fact, Industrial Heat did ship

7 the one megawatt to Florida, did it not?

8 A. I believe that we helped Andrea ship it. Now,

9 did we ship it or did Andrea ship it? I don't recall.

10 But it would not surprise me if, in fact, we contracted to

11 transfer, a transportation contractor that was used to

12 move it.

13 Q. Do you know exactly when it was shipped?

14 A. I don't recall exactly. I believe it would

15 have been -- was it December of '14? I don't recall

16 exactly. January of '15. I don't recall exactly.

17 Q. December '14, January '15, somewhere around

18 there?

19 A. I think. I'm not sure.

20 Q. Did -- well, was there -- was there a

21 requirement in the contract, and I know we talked about

22 this a little bit before, that there be an actual customer

23 using the heat generated by the heat gap?

24 A. No.

25 Q. Okay. Would or could that guaranteed -- I will

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1 call it for purposes of ease and reference, I am going to

2 call it the guaranteed performance test. You can dispute

3 whether it was or not, but just for the sake of my

4 questioning, I am going to use that term. Fair?

5 A. Okay.

6 Q. Could the guaranteed performance test have been

7 performed without an actual customer?

8 MR. BELL: Objection to form.

9 THE WITNESS: Sure. As originally

10 contemplated, there was no customer involved.

11 BY MR. CHAIKEN:

12 Q. Right. But did IH think it was important to

13 have an actual customer?

14 A. We thought, when we thought it was Johnson

15 Matthey, we were thinking, wow, that is a real reputable

16 company. It was not totally absurd that it would be

17 Johnson Matthey, weirdly enough. I realize if someone

18 said, Well, GE is going to do this, that would maybe sound

19 crazy. But Johnson Matthey has a weird history in the

20 LENR field. They have been involved through supplying of

21 materials and kind of a -- if you do a little bit of

22 research on it, they are not -- they do appear to have at

23 least some tangential interest in the LENR field. So it

24 wasn't totally absurd that, of all the companies out

25 there, Johnson Matthey might actually be willing to test a

<p style="text-align: right;">Page 226</p> <p>1 Q. Right. What was the purpose of that meeting? 2 A. To meet a corporate representative of Johnson 3 Matthey. 4 Q. Specifically to meet a corporate representative 5 of Johnson Matthey? 6 A. That is what Andrea had said. And then we got 7 to the meeting and it was Henry Johnson, and then the 8 company that they were talking about was JM Chemical 9 Products or JM Products, I can't think of what the name 10 was. And Andrea said, Well, you know, Johnson Matthey 11 doesn't want publicity around this or wants to not be -- 12 be detached from this, so they have set up a subsidiary 13 which Henry Johnson is going to be the president of. 14 Q. Before we get to the meeting and what was said 15 at the meeting, how did or when did Dr. Rossi inform you 16 that the purpose of the meeting was to meet the corporate 17 representative of the Johnson Matthey? 18 A. Prior to the meeting, he was saying, you know, 19 we will go and we will meet Johnson Matthey's 20 representative. 21 Q. And did he say that in writing or was that 22 oral? 23 A. I can't recall if it was in writing or oral or 24 both. But my recollection is that's why we were both 25 there at that meeting, right? I mean, if we were just</p>	<p style="text-align: right;">Page 228</p> <p>1 This is Henry Johnson, who Johnson Matthey has hired to be 2 the president of JM Chemical Products, Inc. and they are 3 trying to distance themselves from it. 4 You know, I don't remember exactly what he 5 communicated. But that was the effect of the message. He 6 wanted us -- we wanted to meet a representative and we 7 were even willing to go to the UK to meet somebody at 8 Johnson Matthey who could affirm what he was saying. He 9 said, Well, actually, I will have their representative 10 come up. He is in Miami. And we will meet in Raleigh. 11 And that is the meeting at Red Robin. 12 Q. Is there anything else that Dr. Rossi said at 13 that meeting? 14 A. I am sure he said other stuff. 15 Q. I mean in general. 16 A. I don't remember. 17 Q. Substance. 18 A. The thing that I recall is what I have 19 described, the points that I recall is what I described. 20 Q. What did Henry Johnson say at that meeting? 21 A. I don't recall him saying a whole lot, you 22 know. I remember being unimpressed by his general 23 appearance and presence and disposition. He doesn't come 24 off as a particularly confidence-inspiring person. But I 25 don't remember anything specific that he said. Other than</p>
<p style="text-align: right;">Page 227</p> <p>1 going to be there to meet his real estate attorney, I 2 don't think Tom would have taken the time to come. 3 Q. Is there some e-mail you can point me to where 4 Dr. Rossi said specifically, We are going to meet with 5 representatives of Johnson Matthey? 6 A. There may be. I'm not sure. I am not the guy 7 who has gone through all the discovery. 8 Q. Okay. Because I didn't -- if there wasn't one 9 produced in discovery, it doesn't exist, correct? 10 A. I suppose it. Yeah, everything was produced in 11 discovery. So if it is not in the discovery batch, then 12 it doesn't exist. 13 Q. Now, at the meeting, what was said by Dr. Rossi 14 at that meeting? 15 A. I don't recall quotes. What I recall is being 16 surprised, and I don't remember if it was during the 17 meeting or after the meeting, that it was Henry Johnson, 18 you know, Rossi's attorney who was going to be the 19 president of this company. 20 Q. Okay. 21 A. So I don't remember, excuse me, quotes or, you 22 know, exactly how he introduced him. It would be just, 23 Here is Henry Johnson, the president of JM Chemical 24 Products, Inc. or JM Products, Inc. or whatever the name 25 of the company was, or if he would have said, you know,</p>	<p style="text-align: right;">Page 229</p> <p>1 just, Hey, how is it going? Nice to meet you. Things 2 like that. 3 Q. After that meeting, did Industrial Heat perform 4 any due diligence into JM Chemicals or JM Products at that 5 time? 6 A. I don't recall. You know, I think there was 7 some analysis done on where the entity was -- was formed 8 by the secretary of state filings. And then there was an 9 OFAC compliance document that had representations in it 10 that were signed by Johnson and by Andrea. 11 Q. Now, where did you find out JM Products was 12 formed? 13 A. I believe that it is formed in the state of 14 Florida. And I don't remember when we discovered that, 15 but they represented that it was controlled by a UK 16 company. 17 Q. Did you know what JM Products business was or 18 did you inquire into that? 19 A. I believe we were told, if I recall correctly, 20 that they were manufacturing some sort of platinum sponges 21 or things like that. We were always -- it was always kind 22 of under the guise, Oh, you can't -- they want to be top 23 secret about this. You can't know what they are doing. 24 And they don't want you to know that Johnson Matthey is 25 involved, but they are involved.</p>

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1 Andrea Rossi dated June 10, 2014 to Tom Darden, yourself,  
 2 Joe Pike.  
 3 Have you seen this e-mail before?  
 4 A. I suppose that I have if, it was sent to me. I  
 5 don't recall reviewing it recently.  
 6 Q. So, again, this is a June 10, 2014 e-mail.  
 7 This predates the e-mails I just showed you. And in the  
 8 middle of the page, I will just read the first three  
 9 sentences. He says: "I have completed the organization  
 10 of my plan to put the one megawatt in operation. I  
 11 confirm all I already said. We have a customer who pays a  
 12 thousand dollars a day to rent the one megawatt plant.  
 13 Put it in his factory in Miami, produce catalyzers that he  
 14 sells." And then he says, I will direct -- "I will direct  
 15 the operation of the plant for the first year."  
 16 A. Right. He means the one megawatt plant.  
 17 Q. Are you sure?  
 18 A. That is how I read it. And I think any other  
 19 interpretation would be an incorrect interpretation. Why  
 20 would he be running -- why would he say, I will operate  
 21 Johnson Matthey's plant? It doesn't make sense.  
 22 Q. Where does he say Johnson Matthey in this  
 23 e-mail?  
 24 A. That was his whole -- that was his whole pitch  
 25 at the time. This is Johnson Matthey, Johnson Matthey,

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1 Johnson Matthey. Why would Andrea be saying to us, I am  
 2 going to operate Johnson Matthey's plant? Clearly, that  
 3 doesn't make sense.  
 4 Q. Sure, it does. If, in fact, he intended to  
 5 operate JM's facility for a year.  
 6 A. He never intended to do that. That is why he  
 7 had James Bass involved as their makeshift corporate  
 8 representative.  
 9 What he is saying here is, you know, I will  
 10 direct the operation of the plant, the one megawatt plant  
 11 as referenced in the prior sentence, for the first year.  
 12 Q. Did you have a conversation with him after you  
 13 received that first e-mail where that was clarified?  
 14 A. I don't recall if I did or not. There is no  
 15 need to clarify something that is clear.  
 16 MR. BELL: He is just asking you what you --  
 17 what Industrial Heat --  
 18 BY MR. CHAIKEN:  
 19 Q. It says right after that, I will -- after he  
 20 says, "I will direct the operation of the plant for the  
 21 first year, the contract will be for three years,  
 22 renewable," was there a three-year commitment or was there  
 23 a three-year test having to do with the one megawatt  
 24 plant?  
 25 MR. BELL: Objection to form.

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1 THE WITNESS: I think what he is saying here is  
 2 that, you know, you could continue to sell energy to  
 3 these guys, if you wanted to, for up to three years.  
 4 BY MR. CHAIKEN:  
 5 Q. Who negotiated the term sheet with JM Products  
 6 on behalf of Industrial Heat?  
 7 A. Tom and myself.  
 8 Q. Okay. And who represented Leonardo  
 9 Corporation?  
 10 A. Andrea.  
 11 Q. And who represented JM Products or JM  
 12 Chemicals?  
 13 A. Presumably, Henry Johnson.  
 14 Q. Did you ever exchange drafts of the term sheet  
 15 with Henry Johnson?  
 16 A. No. Again, this was all part of Andrea's  
 17 scheme, you know. I am coordinating with these guys. Let  
 18 me tell you what they are willing to do.  
 19 BY MR. CHAIKEN:  
 20 Q. Isn't it possible that Dr. Rossi was  
 21 representing JM Products or Chemicals for the purposes of  
 22 that negotiation?  
 23 A. Is it possible that --  
 24 MR. BELL: Objection to form.  
 25 BY MR. CHAIKEN:

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1 Q. Was it possible?  
 2 MR. BELL: Objection to form.  
 3 THE WITNESS: Again, as I acknowledged earlier,  
 4 anything is hypothetically possible.  
 5 BY MR. CHAIKEN:  
 6 Q. Did Industrial Heat's attorneys review the term  
 7 sheet prior to it being executed?  
 8 A. Yes.  
 9 Q. Which attorneys were those?  
 10 A. Schell Bray.  
 11 Q. Industrial Heat is seeking damages against  
 12 Leonardo Corporation and Dr. Rossi; is that correct?  
 13 A. I believe so.  
 14 Q. And Industrial Heat claims it has been damaged;  
 15 is that correct?  
 16 A. I believe so.  
 17 Q. And what are the damages that Industrial Heat  
 18 is claiming?  
 19 A. All the out-of-pocket expenses incurred  
 20 associated in dealing with Andrea.  
 21 Q. Are there any other damages besides the  
 22 out-of-pocket expenses incurred?  
 23 A. Besides reputational damages? I would have to  
 24 reference our claims. I'm not sure. But it's -- I think  
 25 it is like a \$20 million number.

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1 tell me about the company's knowledge as to who Fulvio  
 2 Fabiani is?  
 3 A. He is a technician that has assisted Andrea  
 4 Rossi. It is my understanding that he was adopted by  
 5 Maddalena, who is my understanding is Andrea's wife --  
 6 Maddalena's mother, when he was younger. And she raised  
 7 him. And Andrea, out of consideration for that, employed  
 8 Fulvio.  
 9 Q. Did you know that before you did any work with  
 10 him?  
 11 A. That is a good question. I don't know at what  
 12 point I learned that. Whether, you know, that came from  
 13 Andrea before we contracted him or if that came after,  
 14 when, you know, I got to know Fulvio a little bit. I just  
 15 don't recall.  
 16 But preliminarily the reason we contracted him  
 17 was because Andrea said that he needed him as his  
 18 technician to work on the electrical side of things.  
 19 Q. Do you recall if you did any due diligence on  
 20 Mr. Fabiani and his background?  
 21 A. His background? I think we looked into it  
 22 some, but not extensively. I think he is a pretty hard  
 23 guy to find any information on, if you Google him. I  
 24 don't think there is a lot out there on him. I think he  
 25 has a Facebook page, but I don't think there is a lot of

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1 information about his past work.  
 2 He also, this is just kind of coming to mind as  
 3 I am talking to you, I am just remembering more about  
 4 Fulvio, but he also told us that he previously worked -- I  
 5 can't remember where -- I want to say with the UN in some  
 6 capacity, or NATO, or I am trying to remember, some  
 7 organization like that. But, anyway, I don't recall the  
 8 exact amount of diligence we did into his background. We  
 9 knew that Andrea wanted him and that was fine if Andrea  
 10 wanted him to act as his technician.  
 11 Q. And in that respect did Industrial Heat engage  
 12 Mr. Fabiani or his company United States Quantum leap to  
 13 work and provide services for IH, Industrial Heat?  
 14 A. We did. And really to assist Andrea, right?  
 15 We were paying him, but he was working at the direction of  
 16 Andrea.  
 17 Q. Was that the underlying purpose of your  
 18 engagement with Mr. Fabiani?  
 19 A. Correct.  
 20 (Exhibit 40, Technical Consulting Agreement,  
 21 was marked for Identification.)  
 22 BY MR. NUNEZ:  
 23 Q. Let me show you what I will have marked  
 24 Exhibit 40 to the deposition.  
 25 Do you recognize that, Mr. Vaughn?

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1 A. I do.  
 2 Q. And what is that? What have I shown you?  
 3 A. It looks like it is a technical consulting  
 4 agreement between Fulvio and Industrial Heat, LLC. Or  
 5 between USQL, United States Quantum Leap, LLC and  
 6 Industrial Heat, LLC.  
 7 Q. Would it be fair for me to say, from your  
 8 testimony a minute ago, that the intent behind that  
 9 contract was for Mr. Fabiani to assist Mr. Rossi in his  
 10 work with Industrial Heat?  
 11 A. I believe so.  
 12 Q. And what -- on behalf of the company, what were  
 13 his specific duties pursuant to that contract?  
 14 A. Fulvio's, pursuant to this contract, what were  
 15 his duties?  
 16 Q. Yes, sir.  
 17 A. Hang on. Let me review it. I believe there  
 18 was -- you know, one of the topics discussed inventions  
 19 that he would work on, about they would be property of the  
 20 company.  
 21 Q. Well, let me show you there. That is not a  
 22 duty of his employment under the contract. That is just a  
 23 provision in the contract --  
 24 A. Okay.  
 25 Q. -- with regard to any inventions or any new

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1 developments, correct?  
 2 A. Right. Okay. That is fine.  
 3 Q. Well, I am asking you. You tell me what  
 4 your -- what the company's --  
 5 A. So I can describe to you --  
 6 Q. Sure.  
 7 A. -- what I described to you, which was how he  
 8 worked in our company. Right? And if I need to get more  
 9 precise than that, I might have to review the contract.  
 10 But he -- he assisted Andrea and was kind of directed by  
 11 Andrea to work on the E-Cat technology. He never worked  
 12 on technologies for us other than the E-Cat technology we  
 13 broadly defined, E-Cat Hot Cat, Quad Cat. But broadly  
 14 speaking, that was his role and responsibility. He  
 15 reported to Andrea, even though the agreement was with us.  
 16 He was working at the discretion or direction of Andrea.  
 17 And he, you know, if and when he had inventive  
 18 ideas, we helped capture those. And I don't know if we  
 19 ever filed any IP around it, but we would at least try to  
 20 capture that information. That is about the extent of,  
 21 you know. So if you need me to be more particular,  
 22 meaning what does the contract say --  
 23 Q. No, I think that is fine. Let me stop you  
 24 there.  
 25 And that contract, I believe it is dated

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1 September 2013; is that correct?  
 2 A. That sounds right.  
 3 Q. I think it is on the first page.  
 4 A. I see it back at the back. 9-9-13. Yes. It  
 5 is effective as of September 1, '13. And it looks like he  
 6 signed it, there is a joinder signed on 9-9-13.  
 7 Q. And does that date seem, to your recollection,  
 8 when he actually did start working --  
 9 A. I believe so.  
 10 Q. -- for you guys?  
 11 A. Yeah. I believe so.  
 12 Q. And where was that work taking place at that  
 13 time?  
 14 A. At that time it was in Raleigh.  
 15 Q. Do you recall at that time, did Mr. Fabiani,  
 16 were any of his duties related to collection of data for  
 17 Industrial Heat?  
 18 A. At that time, I am trying to recall if he  
 19 collected data at that time. I think he did help Andrea  
 20 with some of that. Meaning we didn't, you know, Fulvio  
 21 wasn't our data capturing expert. To the de gree that  
 22 Andrea directed him to record data and capture data, he  
 23 may have done that. But I don't recall specifically.  
 24 You know, I remember him more during that  
 25 period of time kind of helping build things and do

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1 electrical -- modify electrical input power, things like  
 2 that, at Andrea's direction.  
 3 Q. So your company wasn't relying on him for any  
 4 data collection that you can recall to date?  
 5 MR. BELL: Objection to form.  
 6 THE WITNESS: At that period of time, if he did  
 7 supply us data, you know, we were definitely looking  
 8 at it and it is a data point that is relevant.  
 9 Later, he was providing us some data from the test in  
 10 Doral and then stopped doing that.  
 11 BY MR. NUNEZ:  
 12 Q. Okay. Well, we will get to that.  
 13 A. Okay.  
 14 Q. But in his time in Raleigh, that wasn't his --  
 15 that wasn't part of his duties?  
 16 A. It may have been something that he did, but it  
 17 wasn't our -- it wasn't the primary thing that jumps out  
 18 that he was doing, you know, providing us data.  
 19 Q. And I think you testified a lot today about the  
 20 performance and the measurement of performance of  
 21 Mr. Rossi's invention.  
 22 A. Mm-hmm.  
 23 Q. And I think your testimony was that it wasn't  
 24 reaching -- you weren't seeing the results that you needed  
 25 to under the agreements between Industrial Heat and your

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1 affiliates?  
 2 A. Yeah, any results, yeah.  
 3 Q. You weren't seeing any results. You weren't  
 4 using Mr. Fabiani's data for those conclusions, were you?  
 5 A. It was a -- again, I guess I will go back to  
 6 kind of the stuff that he provided in Doral. It would be  
 7 of interest to us if we could have all of his data sets,  
 8 to compare those against anything that Andrea may have  
 9 provided or Fabiani.  
 10 Q. Well, let me stop you. Because I understand  
 11 your claims and I understand that is part of your claims  
 12 today.  
 13 A. Right.  
 14 Q. I am ask asking you back in Raleigh, when you  
 15 are making --  
 16 A. Okay. So you are back in Raleigh?  
 17 Q. Yeah, back to Raleigh, when you are making the  
 18 decisions that you are not seeing the result, any result,  
 19 you weren't relying on anything Mr. Fabiani was doing? Or  
 20 you weren't relying on any data that Mr. Fabiani was  
 21 providing you?  
 22 A. To a degree that it was -- I would say that it  
 23 could be some data that we would rely on. For example,  
 24 Fabiani was collecting and reporting input power data that  
 25 would have been of interest to us. Right? So it is hard

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1 to say that he didn't provide us any data that we relied  
 2 on. He may have.  
 3 What -- again, the primary role or  
 4 responsibility that I recollect Fulvio having is modifying  
 5 power supplies and working on designs that Andrea would  
 6 instruct him to work on.  
 7 Q. Do you recall if that technical consulting  
 8 agreement, was it ever extended or did you enter into an  
 9 extension? Because I believe that contract's for one  
 10 year, correct?  
 11 A. I would have to review. But I don't know. I  
 12 would have to review whether or not we extended.  
 13 Is this only a one-year contract or is this a  
 14 two-year contract?  
 15 Q. I think if you go to paragraph eight, duration  
 16 of the agreement.  
 17 A. Mm-hmm. Okay. So I don't recall if we -- if  
 18 this contract was extended and we assigned it -- if there  
 19 was another fully executed contract after this or if we  
 20 just began paying Fulvio month to month after that and he  
 21 was operating in effectively the same capacity.  
 22 I know at one point his contract had lapsed and  
 23 we were just paying him month to month. But I don't  
 24 remember if the initial ones extended and then that  
 25 happened or if that happened after the initial contract.



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1 Q. Do you recall if there was ever a new contract  
 2 entered into by Industrial Heat and Mr. Fabiani that  
 3 increased his duties with regard to data collection?  
 4 A. I don't recall. I don't recall entering into a  
 5 contract -- another contract with Fabiani that focussed on  
 6 his abilities or comments with regard to collecting data.  
 7 Q. And the reason I ask, obviously now in the  
 8 complaint there's -- the main charge against him is that  
 9 he hasn't given you certain data. I mean, that is one of  
 10 the big things.  
 11 A. Mm-hmm.  
 12 Q. But when the contract started, I think his  
 13 duties were to assist Mr. Rossi. So I wanted to, was  
 14 there ever a time that in writing increased his duties to  
 15 require him to give you more than he had in Raleigh?  
 16 A. Yeah. At some point I believe Fulvio was  
 17 saying to us, Hey, you know, I will supply you this data.  
 18 I will send you updates. You need any data, you just let  
 19 me know. So we said, Great, you know, we need the data.  
 20 And sometimes he would send it, or periodically he would  
 21 send it. And then towards the end he stopped providing  
 22 any data.  
 23 So that was -- that is the answer to your  
 24 question. I don't know if that's, you know, what you are  
 25 looking for.

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1 Q. So I guess my question is, was that in writing  
 2 or was that verbal?  
 3 A. I don't recall precisely, but I would think  
 4 that there may be e-mails around this with Fabiani. But  
 5 it may not have been, actually. Because often I would  
 6 call Fabiani or -- I am trying to remember -- or e-mail  
 7 him -- or I'm not sure. I don't remember if that's  
 8 captured in the e-mail.  
 9 Because -- but I do recall exchanges with him,  
 10 whether or not it was in e-mail or phone or otherwise,  
 11 saying, Hey, you know, we need more data. Can you send us  
 12 more data? Sure. Sure. No problem. I will send you  
 13 what you want. You know, that was just kind of Fulvio's  
 14 classic quote. What you want? I will send you what you  
 15 want. Let me know.  
 16 Q. Well, let me -- we are short on time, so don't,  
 17 you know, please excuse me if I cut you off.  
 18 A. Mm-hmm.  
 19 Q. Would it be fair to say that there was no  
 20 written contract between Industrial Heat and Fabiani or  
 21 United States Quantum Leap that increased or added  
 22 additional duties to provide data?  
 23 MR. BELL: Objection to form.  
 24 THE WITNESS: I don't believe that we entered  
 25 an additional contract that specified data

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1 collection.  
 2 BY MR. NUNEZ:  
 3 Q. Okay. Now, we talked about Raleigh. And you  
 4 were discussing some issues with Doral, I think in your  
 5 answer. So when the plant moved to Doral, Mr. Fabiani  
 6 also moved, came down to Doral to work with Mr. Rossi; is  
 7 that correct?  
 8 A. That is correct. And I don't recall exactly  
 9 who moved down there first exactly. But pretty much when  
 10 Rossi and the plant moved down there. Fabiani may have  
 11 moved before then. I don't recall.  
 12 Q. Okay. And a couple minutes ago your testimony  
 13 was that you would ask him to give you more data. He said  
 14 yes, he would.  
 15 A. Mm-hmm.  
 16 Q. So is it correct that he would send you  
 17 periodically data from the test ongoing in Doral at the  
 18 Doral facility?  
 19 A. Periodically I believe that he provided some  
 20 data, you know. But then he stopped providing it.  
 21 Q. Do you know the time period around when he  
 22 stopped providing the data that you are complaining of in  
 23 the complaint?  
 24 A. I would have to review the complaint. I mean,  
 25 clearly, at the end we asked Fulvio to send us all the

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1 data that he had, and he didn't do that. Prior to that,  
 2 you know, when is the last time I specifically requested  
 3 the data from Fulvio? I don't recall. And when is the  
 4 last time he sent data, regardless of whether or not I  
 5 explicitly requested it? Because I kind of said, Sure,  
 6 please, send us monthly data. I don't recall when he  
 7 stopped sending it.  
 8 Q. Now, I don't have them and we don't have the  
 9 time to go through them and look through them, but I know  
 10 that there are some e-mails in March or April of 2016 when  
 11 maybe Mr. Murray, Mr. Dameron are requesting from him,  
 12 Hey, remember to send us the data.  
 13 Would you agree that those e-mails reflect the  
 14 time where he was being requested for data that he wasn't  
 15 turning over?  
 16 A. That is one time, yes. And I don't know if  
 17 there were others.  
 18 I know Joe and I met with him here in Miami and  
 19 talked about it. And he said, I will prepare it, I will  
 20 send it to you. No problem. What you want? I mean,  
 21 typical kind of response.  
 22 Q. Do you recall the date of that meeting?  
 23 A. Oh, man. It was after the plant had shut down.  
 24 I think it was in February. It may have been in March. I  
 25 don't remember the exact date.



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1 don't have it?

2 A. He may have been manipulating stuff. We don't

3 know. Just because we don't have the data doesn't mean he

4 wasn't manipulating anything.

5 Q. Okay. So we are -- you are basically acting

6 on -- I mean, we are talking about you are speculating.

7 Let me strike that.

8 We are sitting here in your depo, we are

9 getting ready for trial. You are the corporate rep for

10 Industrial Heat. Do you have any facts that you could

11 state on the record that show that either Mr. Fabiani or

12 his company or somebody on behalf of his company

13 manipulated the validation and testing of the E-Cat?

14 A. We don't have complete discovery from him or

15 his data sets.

16 Q. And so the answer would be no?

17 A. I wouldn't say the answer is no. I would say

18 we don't have discovery from him, so we can't answer that

19 question.

20 Q. Let me try to put it this way. Can you tell us

21 here today any facts that support that allegation?

22 Leaving aside your caveat you haven't looked at all the

23 discovery.

24 A. But also he didn't provide us the data. Right?

25 Q. I understand he didn't. But the allegation in

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1 the complaint is he manipulated the validation

2 guaranteeing performance testing. So do you have any

3 facts as we sit here today, and keeping in mind your

4 caveat that you haven't looked through all the discovery?

5 A. The fact that he did not provide us the data,

6 which he said he would provide us. Right? And then for

7 whatever reason --

8 Q. Mr. Vaughn I don't want to get -- again, I

9 understand you saying he didn't give you the data.

10 Do you have any facts that he manipulated

11 anything?

12 A. We may, if we could get ahold of the data.

13 Q. So you are not going to give me a yes or no?

14 Do you have any facts?

15 A. I am answering the question.

16 Q. Are you?

17 A. Yeah.

18 Q. Tell me again one more time. Do you have any

19 facts that he manipulated any data for the testing of the

20 E-Cat?

21 A. We may, if we had the data to review.

22 Q. Now, Industrial Heat also claims that they were

23 manipulated into moving the plant from North Carolina to

24 Doral, Florida, right?

25 A. Mm-hmm.

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1 Q. Did Mr. Fabiani have any involvement in

2 convincing Industrial Heat to move the plant?

3 A. I'm not sure.

4 Q. Okay. Does Industrial Heat have any facts to

5 support the allegation that Fabiani helped or was part of

6 a scheme to restrict Industrial Heat's access to the JM

7 portion of the Doral facility?

8 A. I'm not sure.

9 Q. Last question, with regard to determining COP

10 results, were you using any of Fabiani's data for that in

11 North Carolina or in Doral?

12 A. I would say the answer to that is probably so.

13 And because he was -- if he provided us data from Doral,

14 for example, we would want to check that data against data

15 provided by either Andrea or Penon. So you would want to

16 calculate results with each data set.

17 In North Carolina, to the degree that he

18 collected data, I am sure we would have also, you know,

19 used that data, right, to analyze performance. So yes, I

20 am sure that, to the extent that he provided data, we used

21 it to analyze performance.

22 MR. NUNEZ: All right. That is all I have.

23 MR. ARAN: Okay. Let the record reflect -- how

24 much time do I have?

25 THE VIDEOGRAPHER: 15 minutes.

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1 MR. ARAN: I have been given about 15 minutes.

2 I did cross-notice this deposition. I know there

3 were a lot of discussions. We asked if we could go

4 over, so we can have about an hour and a half

5 additional time, and that was not agreed to. I'll

6 try to do my best in 15 minutes, but obviously I

7 cannot, by any means, do a full examination of the

8 witness.

9 MR. NUNEZ: And I join in that objection.

10 MR. ARAN: We will see where that goes, where

11 those chips lay on a later date. I am going to go as

12 fast as I can.

13 Let me ask you if you can pass this on as

14 Exhibit 42.

15 (Exhibit 42, Term Sheet, was marked for

16 Identification.)

17 CROSS-EXAMINATION

18 BY MR. ARAN:

19 Q. And Exhibit 42, even though it says Exhibit 17

20 in front, is what we have commonly referred to as the term

21 sheet, sir?

22 A. Yes.

23 Q. Are you familiar with this document?

24 A. Yes, sir.

25 Q. Did you sign this document on behalf of

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1 he asked?  
 2 A. Yes.  
 3 Q. Did he get answers?  
 4 A. Yes.  
 5 Q. What specifically do you recall him actually  
 6 saying?  
 7 A. Well, he said, for example, to Andrea, you  
 8 know, When is this going to be online? When is it going  
 9 to be ready? And Andrea was saying, Well, we have had a  
 10 little setback, but it will be -- it should be in the next  
 11 week or so. Questions like that.  
 12 Q. Questions of that nature?  
 13 A. Yes.  
 14 Q. Did he make any representations at that meeting  
 15 that the plant was operating correctly? I would assume  
 16 not, correct? Because it wasn't.  
 17 A. Yeah. He was asking, if I recall correctly,  
 18 kind of when is it going to be ready? When is it going to  
 19 be online?  
 20 Q. So were you at any point in time involved or  
 21 present in any conversation with Bass where he was  
 22 actually stating that the amount of steam received by the  
 23 JMC side was sufficient or good or enough?  
 24 A. I was not in a meeting with Bass that he stated  
 25 that.

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1 Q. Do you know anybody that was in a meeting with  
 2 Bass when he may have stated that?  
 3 A. Not to my knowledge. We didn't meet with Bass  
 4 frequently. I think -- I think that this was the only  
 5 time that we met with Bass.  
 6 Q. And when you met with Mr. Bass, Mr. Darden was  
 7 also present, correct?  
 8 A. Correct.  
 9 Q. So let me ask you, other than in a meeting, in  
 10 this meeting, did you have any other conversations with  
 11 Mr. Bass? On the phone?  
 12 A. On the phone or e-mail? I don't recall talking  
 13 to him on the phone.  
 14 Q. Okay.  
 15 A. And I am trying to recall if we ever e-mailed  
 16 with him. I'm not sure.  
 17 Q. Okay. Was this the only meeting that IH would  
 18 have had with Mr. Bass as a company?  
 19 A. I'm not sure. But it is the only one that  
 20 comes to mind.  
 21 Q. Okay. And if there would have been another  
 22 meeting with Mr. Bass where the other party present was  
 23 IH, it in all likelihood would have been you or  
 24 Mr. Darden, correct, at that point?  
 25 A. There were other people that could have been,

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1 you know, a representative of IH in a meeting with Bass,  
 2 Joe Murray or T. Barker Dameron or others. So it wouldn't  
 3 have had to be Tom or me.  
 4 Q. Did any of those people report to you that they  
 5 had, in fact, met with Mr. Bass?  
 6 A. I don't recall. You know, at one point I think  
 7 Barry reported that he had met Bass on occasion. But not  
 8 had a meeting with him, but just kind of met him. I don't  
 9 recall if others met with him.  
 10 Q. Am I correct in summing up your testimony, and  
 11 I hate to do that, but time is limited, that at least from  
 12 your perspective, you never heard of any conversation or  
 13 representation by Mr. Bass concerning the adequacy or  
 14 sufficiency of the power being received by JMC from the  
 15 E-Cat side of the plant?  
 16 A. What we received in that regard was mainly from  
 17 Hank Johnson, the quarterly, like a request to bill him  
 18 effectively. I don't recall Bass sending  
 19 representations --  
 20 Q. Okay.  
 21 A. -- regarding the performance of the technology.  
 22 Q. And now that you mentioned that, in that  
 23 request by Mr. Johnson to send the invoice, based upon the  
 24 steam received, do you recall whether IH ever sent him an  
 25 invoice?

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1 A. I don't believe that we did.  
 2 Q. They did not, correct? No other  
 3 representations that you recall at all from Bass to you or  
 4 to another IH individual?  
 5 A. Aside from those made in the meetings? I mean,  
 6 he did represent to be the engineering manager, plant  
 7 manager for JM Chemical Products. Aside from anything  
 8 made in the meeting of February 9th, I'm not sure if  
 9 anything comes to mind. I am trying to recall if we met  
 10 with -- if anybody else met with him at another time, and  
 11 nothing is coming to mind.  
 12 Q. Okay. And have you since learned whether  
 13 Mr. Bass is, in fact, a licensed engineer with a degree  
 14 from Rutgers University?  
 15 A. I don't know if he is or not.  
 16 Q. Did you do any research to find out if he was?  
 17 A. I, myself, have not. Others may have looked  
 18 into it.  
 19 Q. Did you know that he worked -- he has worked in  
 20 the Armed Forces and dealt with matters that dealt with  
 21 nuclear power?  
 22 A. I did not know that.  
 23 Q. And controls for nuclear power?  
 24 A. I did not know that.  
 25 Q. Any reason to believe that he was not an

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1 tell him that Johnson Matthey has anything to do with  
 2 this, correct? You didn't hear that from Bass?  
 3 MR. BELL: Objection to form.  
 4 THE WITNESS: We would have to review all of  
 5 it. I am just going by the few things that I have  
 6 seen, which did not mention Johnson Matthey, but did  
 7 tell him what to say to us.  
 8 MR. ARAN: Understood. Let me have just one  
 9 moment because I have been told that I have got  
 10 almost no time left.  
 11 THE WITNESS: What time is -- what is the time?  
 12 THE VIDEOGRAPHER: One minute.  
 13 MR. ARAN: Just go off.  
 14 THE VIDEOGRAPHER: Off the record. The time is  
 15 5:15 p.m.  
 16 (Thereupon, a recess was taken.)  
 17 THE VIDEOGRAPHER: We are back on the record.  
 18 The time is 5:18 p.m.  
 19 BY MR. ARAN:  
 20 Q. Mr. Vaughn, do you have any reason to believe  
 21 that Mr. Bass was not JMC's director of engineering?  
 22 A. Reason to believe that he was not? That is who  
 23 he represented to be.  
 24 Q. Is there any reason for you to believe he  
 25 wasn't?

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1 A. He was not? I don't have a specific reason  
 2 that comes to mind.  
 3 MR. ARAN: Okay. Thank you. Very much. No  
 4 further questions.  
 5 THE VIDEOGRAPHER: We are off the record. The  
 6 time is 5:18 p.m.  
 7 MR. ANNESSER: Mr. Vaughn, on behalf of IH, you  
 8 have the right to read or waive.  
 9 MR. BELL: We are going to read and sign.  
 10 (The deposition was concluded at 5:18 p.m.)  
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1 RE: ANDREA ROSSI, ET AL. v. THOMAS DARDEN, ET AL.  
 DEPO OF: JOHN THOMAS VAUGHN  
 2 TAKEN : February 13, 2017  
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 12 MIAMI-DADE  
 13 Sworn and subscribed to before me this  
 \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
 14 PERSONALLY KNOWN \_\_\_\_\_ OR I.D. \_\_\_\_\_  
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1 ERRATA SHEET  
 2 IN RE: ANDREA ROSSI, ET AL. v. THOMAS DARDEN, ET AL.  
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 3 TAKEN: February 13, 2017 Job No. FLA2506289  
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 16 Under penalties of perjury, I declare that I have read  
 17 by deposition transcript, and it is true and correct  
 18 subject to any changes in form or substance entered  
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