

Composite Exhibit 20

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 1:16-cv-21199-CMA/O'SULLIVAN
4

5 ANDREA ROSSI, ET AL.,

6 Plaintiffs,

7 vs.

8 THOMAS DARDEN, ET AL.,

9 Defendants.
10 _____/

11 Casa de Campo
12 Resort & Villas
13 La Romana, D.R.
14 Wednesday, February 22, 2017
15 9:06 a.m. - 7:42 p.m.
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21 VIDEOTAPED DEPOSITION OF FABIO PENON
22
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24
25

26 Taken on behalf of the Plaintiffs before
27 Diana Santos, Shorthand Reporter and Notary Public
28 in and for the State of Florida at Large, pursuant
29 to Notice of Taking Deposition filed in the above
30 cause.

1 APPEARANCES:	Page 2	1 DEFENDANT'S EXHIBITS	Page 4
2		2 NUMBER DESCRIPTION PAGE	
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4 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.		Exhibit 24 First Amendment to License151	
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21 Rick A. Smith, P.E., Applied Thermal Engineering, Inc.			
22 Ugo V. Chiarato, Interpreter			
23			
24			
25			
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		21 Exhibit 13 BATES NO. PENON000021376	
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<p style="text-align: right;">Page 6</p> <p>1 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION - continued</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3</p> <p>4 Exhibit 16 BATES NO. PENON0000292101</p> <p>5</p> <p>6 Exhibit 17 BATES NO. PENON0000268112</p> <p>7 Exhibit 18 BATES NO. PENON0000273113</p> <p>8</p> <p>9 Exhibit 19 BATES NO. PENON0000354115</p> <p>10 Exhibit 20 BATES NO. PENON0000295116</p> <p>11</p> <p>12 Exhibit 21 BATES NO. PENON0000180117</p> <p>13 Exhibit 22 BATES NO. PENON0000333120</p> <p>14</p> <p>15 Exhibit 23 BATES NO. PENON 0000153122</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 and testified as follows:</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. ANNESSER:</p> <p>4 Q Good morning, Dr. Penon.</p> <p>5 A Good morning.</p> <p>6 Q Thank you for coming here today. I want</p> <p>7 to first ask a couple of questions regarding your</p> <p>8 experience with depositions. Have you ever had your</p> <p>9 deposition taken before?</p> <p>10 A No.</p> <p>11 Q The purpose of this deposition is to learn</p> <p>12 the facts in this case. Unless I specifically</p> <p>13 instruct you, I am not asking you for an opinion,</p> <p>14 I'm asking you -- I'm asking you, sir, for the facts</p> <p>15 that you know. If you don't know an answer, that is</p> <p>16 okay, just tell us that. My questions are not meant</p> <p>17 to harass or embarrass you in any way. If you do</p> <p>18 not understand any of my questions, please let me</p> <p>19 know that. If you do not say anything, I will</p> <p>20 assume that you understood. Is that okay?</p> <p>21 A Okay.</p> <p>22 Q If at any time you need a break, or need</p> <p>23 to speak with your attorney, just let me know and we</p> <p>24 will -- we will accommodate you.</p> <p>25 May I ask you to state your full name for</p>
<p style="text-align: right;">Page 7</p> <p>1 THE VIDEOGRAPHER: All right. Good</p> <p>2 morning. We are now on the video record. This</p> <p>3 is the videotape deposition of Fabio Penon in</p> <p>4 the matter of the case Andrea Rossi and</p> <p>5 Leonardo Corporation, et al. versus Thomas</p> <p>6 Darden, et al.</p> <p>7 Today is Wednesday, February the 22nd of</p> <p>8 2017, and the local time in La Romana,</p> <p>9 Dominican Republic is 9:06 a m.</p> <p>10 At this time, counsel, please introduce</p> <p>11 themselves for the record and after this the</p> <p>12 court reporter will swear in the witness.</p> <p>13 MR. ANNESSER: John Annesser on behalf of</p> <p>14 the plaintiffs.</p> <p>15 MR. PACE: Chris Pace on behalf of the</p> <p>16 defendants, and along with me is Rick Smith.</p> <p>17 MR. LUKACS: Also in attendance is John</p> <p>18 Lukacs. I am here as attorney for the witness.</p> <p>19 (Thereupon, UGO V. CHIARATO was duly</p> <p>20 sworn, responding "I do," to translate from English</p> <p>21 to Italian and from Italian to English.)</p> <p>22 Thereupon:</p> <p>23 FABIO PENON</p> <p>24 Was called as a witness and, having been first duly</p> <p>25 sworn and responding, "I do," was examined</p>	<p style="text-align: right;">Page 9</p> <p>1 the record?</p> <p>2 A Fabio Penon; F A-B-I-O P-E-N-O-N.</p> <p>3 Q And what is your business address?</p> <p>4 A V-I-A; Settefratelli,</p> <p>5 S-E-T-T-E-F-R-A-T-E-L-L-I Cervi; C-E-R-V-I; Number</p> <p>6 one; Abano Terme, A-B-A-N-O T-E-R-M-E.</p> <p>7 Q What is your home address, sir?</p> <p>8 A The same. Via Settefratelli,</p> <p>9 S-E-T-T-E-F-R-A-T-A-L-L-I.</p> <p>10 Q Are you currently employed, sir?</p> <p>11 A I am a free professional, self-employed</p> <p>12 and owner of the company, Poesis, P-O-E-S-I-S.</p> <p>13 MR. ANNESSER: Madam Court Reporter, do</p> <p>14 you have exhibit labels?</p> <p>15 THE COURT REPORTER: (Nods head.)</p> <p>16 MR. ANNESSER: Thank you.</p> <p>17 BY MR. ANNESSER:</p> <p>18 Q I will show you a document we will mark as</p> <p>19 Exhibit 1 and ask you is this a current copy of your</p> <p>20 resume.</p> <p>21 (Thereupon, Plaintiff's Exhibit 1 was</p> <p>22 marked for identification.)</p> <p>23 THE WITNESS: Yes, sir, it is.</p> <p>24 BY MR. ANNESSER:</p> <p>25 Q Is the information contained in this</p>

<p style="text-align: right;">Page 98</p> <p>1 A Yes, one certain unit and then a second 2 unit. The first report is referred to the first 3 unit and the second is referred to the second unit. 4 Q On this document PENON174, the date on 5 this document appears to be after the beginning of 6 the test at the Doral location; do you know why that 7 would be? 8 A Because I realized that the entity of the 9 flow -- 10 Q That the what, sir? 11 A The entity -- of the power, the electric 12 power could reach to the point of saturation of the 13 first instrument. 14 Q What do you mean "the point of 15 saturation"? 16 A The value of the magnitude of electrical 17 magnitude when they reach certain limits, they could 18 result into different conclusions. 19 Q I'm sorry. I don't understand. 20 MR. ANNESSER: Actually, I am going to ask 21 to go off the record here for just a moment. 22 We will take a short break and we will leave 23 that question pending, and you can think about 24 it and we will come right back to it. I am 25 going to use the restroom.</p>	<p style="text-align: right;">Page 100</p> <p>1 calibrated an analyzer more important. 2 BY MR. ANNESSER: 3 Q Was it a different type of analyzer? 4 A Yes, but it was able to measure currents 5 more elevated level. 6 Q And was that -- was this analyzer 7 referenced on PENON174 used during the guaranteed 8 performance test or -- I'm sorry -- during the test 9 at the Doral location? 10 A Can you rephrase the question, repeat it? 11 Q Was the power analyzer referenced in the 12 document with 174 used for the test at the Doral? 13 THE INTERPRETER: 164 document? 14 MR. ANNESSER: 174. 15 BY MR. ANNESSER: 16 Q Was that used for the test at the Doral 17 location? 18 A After an initial use of the PEN169 then it 19 has been used 174. 20 Q Looking, sir, to the last document in this 21 last packet, PENON178. The document refers to a 22 pressure transducer. 23 THE INTERPRETER: Translated. 24 BY MR. ANNESSER: 25 Q Was this a pressure transducer used during</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. PACE: Got it. I was going to say it 2 was a weird break. 3 THE VIDEOGRAPHER: All right. Let's go 4 off the record. The time is 2:48. 5 (Thereupon, a recess was taken from 2:48 6 p.m. - 2:58 p.m., after which the following 7 proceedings were had:) 8 THE VIDEOGRAPHER: All right. The time is 9 2:58. Media No. 4. Back on the record. 10 BY MR. ANNESSER: 11 Q Sir, before we took a short break I think 12 you were going to explain to me why there were two 13 PC 830 power analyzers? 14 MR. PACE: I'm sorry. Just for reference. 15 Can we get back to page -- can you help me with 16 this? 17 MR. ANNESSER: 174. 18 MR. PACE: Got it. Sorry. 19 THE WITNESS: It was not two analyzers; it 20 was one analyzer, which during the working of 21 the equipment, seeing the evolution of the 22 flows and the tensions, I realized could have 23 the potential of not reaching the measurement 24 of the certain values that the current power 25 could reach. This is why I acquired and I</p>	<p style="text-align: right;">Page 101</p> <p>1 the test at the Doral location? 2 A Yes, sir. 3 Q Based on your review of all of these 4 documents, were you satisfied that the equipment 5 would accurately measure according to the test plan? 6 A Yes, absolutely, yes. 7 Q Sir, I will show you a document we'll mark 8 as Exhibit 16. 9 (Thereupon, Plaintiff's Exhibit 16 was 10 marked for identification.) 11 BY MR. ANNESSER: 12 Q The first page of this document appears to 13 be an e-mail from you to Thomas Darden. 14 A Yes, it is. 15 Q Can you tell me what the purpose -- did 16 you send this e-mail? 17 A Yes, sir. 18 Q What was the purpose of this e-mail? 19 A Corresponding to my -- only each of my 20 visits to the place -- to the plant at the Doral 21 after concluding the verification progress of the 22 entire status of the instruments, and after having 23 acquired all the data I processed a report -- a 24 synthetical report where the describing -- 25 describing the size -- describing the development of</p>

<p style="text-align: right;">Page 102</p> <p>1 each measurement of interest and the calculation of 2 the related COP. Each of these documents 3 constituted the basis of the final report. 4 Q When -- 5 MR. PACE: Objection as nonresponsive. 6 BY MR. ANNESSER: 7 Q When you sent this e-mail, sir, did 8 Mr. Darden or anyone from Industrial Heat respond to 9 you or have any questions regarding this document? 10 A The reference is up to 12th of 11 January 2016 up to the -- up to the point of 12 January 2016, no reaction that I can remember. 13 Q Did you receive any response to any of the 14 incremental tests reports that you -- reports that 15 you submitted? 16 A Can you repeat it? 17 Q During the tests at the Doral facility, 18 did you receive any response to your e-mails 19 containing measurements such as this one? 20 A Not that I can remember. 21 Q Looking, sir, to the first page, can you 22 tell me what this is? 23 A This is a part of a synthetic document 24 structured as follows: The first column refers to 25 the date and time of the beginning of the reporting.</p>	<p style="text-align: right;">Page 104</p> <p>1 very responsive. I have asked him to explain 2 what we were looking at. 3 BY MR. ANNESSER: 4 Q Looking, sir, at the fourth column the 5 supplied energy, how did you make that measurement? 6 A The chain of measurements started from the 7 initial power -- the initial power from the 8 measurement of this was loaded into my computer and 9 has been added to for the last 24 hours. At that 10 point it is rounded off in lowering it to the 100th, 11 to the lower 100th. Just to explain. If the 12 measurer indicates 240,900, it was noted as 246,000. 13 Q I'm sorry. Can you repeat it? 14 A No, no. It is not correct. It was 15 rounded out to the highest -- to the highest 16 thousands; not the lowest. 17 Q What device did you use to measure? 18 A CA 30 (sic). 19 Q I'm sorry. What device? 20 MR. PACE: Objection. Only because I 21 don't think you ever finished the question. 22 What did he use to -- and he answers, because 23 he understand English well, but why don't we 24 get the whole question out, get it translated 25 and then we will answer.</p>
<p style="text-align: right;">Page 103</p> <p>1 The second column the date and the time of the 2 conclusion. The third column indicates the average 3 power given. The fourth column the energy supplied. 4 The fifth column, the water temperature. The sixth 5 column, the flow of the water actually transited 6 around the door (phonetic) at the thousand -- at the 7 lower thousands. The seventh column reports the 8 water flows reduced by seven percent, according to 9 the concept that we expressed shortly now. The 10 eighth column, minimal temperature of the steam. 11 The third of the last column -- of the right end 12 column, the pressure of the steam. The column 13 before the last the energy produced VAT per hour. 14 The last column COP calculated to be specified now. 15 In the column T max we refer to always in compliance 16 with the conservative criteria to the maximum 17 temperature of the water as explained in the latest 18 24-hours. In the column steam T min the reference 19 is to always for the same criteria to the minimum 20 temperature of the steam that is being experienced 21 in the last 24 hours. 22 MR. PACE: Objection. Move to strike as 23 almost entirely not responsive other than his 24 last sentence. 25 MR. ANNESSER: Actually, I thought it was</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MR. ANNESSER: 2 Q Sir, what device was used to measure the 3 supplied energy as reflected in the fourth column? 4 A The PC860 what is called net analyzer -- 5 network analyzer. 6 Q How often was that data transmitted to 7 you? 8 A There was not a regular frequency of 9 transmittal, but taking into account the fact that 10 each four months I was physically at Doral frequents 11 of two months -- each two months, every two months. 12 Q Did the equipment store the data on a 13 daily basis? 14 A Yes, certainly. Yes, certainly. Yes, it 15 was stored. 16 Q Did you collect that data on your visits 17 to the plant? 18 A I checked the data and when I deemed 19 convenient at least twice -- every two months I had 20 to get them to transmit me the data up to that 21 point. 22 Q Is it possible that that data was 23 manipulated? 24 A No, because the system -- if this had 25 happened it would have shown an echo continuity of</p>

<p style="text-align: right;">Page 106</p> <p>1 consistency of the data. 2 Q Would that machine or that device record 3 any changes made to the data? 4 A Yes. 5 MR. PACE: Objection to the question, but 6 go ahead. 7 THE WITNESS: Definitely, yes. 8 BY MR. ANNESSER: 9 Q Looking at the fifth column, tank water 10 T-max. How was that measured? 11 A With the temperature sensor. 12 Q Where? 13 THE INTERPRETER: Where? 14 BY MR. ANNESSER: 15 Q Where was the sensor located? 16 A Indicated in the diagram, if I remember 17 well, in the reference to -- 18 Q Are you referencing Exhibit 9? 19 A Yes, Exhibit 9. No, it is not. 20 MR. PACE: You are covering up the mic. 21 BY MR. ANNESSER: 22 Q Let me ask you, sir, not to waste time on 23 that. 24 How was that data recorded? 25 A With the same principle, the analogical</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: Not that I can imagine. 2 BY MR. ANNESSER: 3 Q How often would you monitor the tank water 4 temperature from Italy? How often would you 5 monitor...? 6 A Each two months they were transmitted to 7 me and every two months, approximately, I was 8 checking this data. 9 Q How were they transmitted to you? 10 A E-mail. 11 Q Who would send it to you via e-mail? 12 A Fabiani. 13 Q Did he also receive the temperature data 14 to his computer? 15 A Can you repeat it? 16 Q Did Mr. Fabiani also receive the 17 temperature data to his computer? 18 A No. I think Fabiani had his own system of 19 recovering this data. 20 Q Okay. Okay. Column six, "effective 21 flowed water". How was that measured? 22 A Through the measure of the water power. 23 Q Was that the flowmeter? 24 A The flow meter, yes. 25 Q How did you retrieve the data from the</p>
<p style="text-align: right;">Page 107</p> <p>1 signal reached to a certain -- that realized the 2 conversion, digital analogical to reverse to 3 download to my computer. 4 Q Did you have a computer at the Doral 5 facility? 6 A It was that one which had to be -- to 7 gather all data. 8 Q Was that data transmitted to you in Italy? 9 A These are the data that I said them to 10 transfer regularly to Italy. 11 Q Did anyone have access to your computer at 12 the Doral facility? Let me finish. Was it password 13 protected? 14 MR. PACE: Objection to the question. 15 MR. ANNESSER: Let me restate. 16 BY MR. ANNESSER: 17 Q Your computer at the Doral facility, was 18 it password protected? 19 A Yes, it was protected if I don't -- if I 20 remember well by a password technology. 21 Q Did anyone at the Doral facility have 22 access that they can alter the data recorded in that 23 computer? 24 MR. PACE: Objection to the question. 25 Objection to the question.</p>	<p style="text-align: right;">Page 109</p> <p>1 flowmeter? 2 A Datas were read every night by Dr. Rossi 3 and Rossi had to report them in the -- in the log -- 4 in the logbook and every night it was transmitted in 5 this data. 6 Q Did you have any way to verify the data 7 that Dr. Rossi was providing you? 8 A The correctness of the data? 9 Q Yes. 10 A When I visited to the Doral plant one of 11 the controls that I wanted to make is the 12 reconciliation between the data transmitted by Rossi 13 and the data relieved in the -- in the meter. 14 Q So you would reconcile the data provided 15 by Dr. Rossi with the change from your last visit, 16 the change in water flow? 17 A With the relevant data in the opportunity 18 of my business. 19 Q Sir, some people have said that it is 20 impossible to have the same amount of water flow 21 every -- multiple days in a row. I'm sorry. Can 22 you explain why -- why the measurements are all to 23 the -- to the thousandth, I believe they are 24 thousand kilogram per day? 25 A Can you repeat?</p>

<p style="text-align: right;">Page 114</p> <p>1 A This was the report relating the visit, 2 the surprise visit of October. It was -- this was a 3 control of the various units constitute (sic) in 4 the -- making -- being part of E-Cat that I 5 requested to perform in order to be able to assess 6 the anomalia (sic) in the system. 7 Q The what in the system? 8 A What is not normal, abnormality, okay. 9 Q An anom -- 10 THE INTERPRETER: Yes 11 BY MR. ANNESSER: 12 Q Any anomalies in the system; is that...? 13 A No, but they wanted to make sure that it 14 was uniform and homogenous the process. 15 Q Looking at the document attached as 16 PENON0000271, did you prepare this report? 17 A Yes, I did. 18 Q Do you maintain this report as part of 19 your business records? 20 MR. PACE: Objection to the form. 21 THE WITNESS: I don't understand the 22 question. 23 MR. ANNESSER: Sure. 24 BY MR. ANNESSER: 25 Q Have you -- okay. Let me strike the</p>	<p style="text-align: right;">Page 116</p> <p>1 A Yes. 2 Q To the best of your knowledge are the 3 facts contained within this report true and correct? 4 A Yes. 5 Q Was this report transmitted to Mr. Darden? 6 A Yes. 7 Q Has Mr. Darden ever contacted you 8 regarding this report? 9 A No. 10 Q Has anyone at Industrial Heat contacted 11 you regarding this report? 12 A No. 13 Q I will show you a document we will mark as 14 Exhibit 20 as -- as Bates stamped PENON0000295. 15 (Thereupon, Plaintiff's Exhibit 20 was 16 marked for identification.) 17 BY MR. ANNESSER: 18 Q This document purports to be a letter 19 dated February 4th, 2016 from you to Tom Darden and 20 Andrea Rossi. Did you send this e-mail to 21 Mr. Darden and Mr. Rossi? 22 A Yes. 23 Q What was the purpose of this e-mail? 24 A As per contractual agreement it was the 25 report on the visit by myself.</p>
<p style="text-align: right;">Page 115</p> <p>1 question. 2 Is the information contained in this 3 report true and correct to the best of your 4 knowledge? 5 A Absolutely, yes. 6 Q And you transmitted this report to 7 Mr. Darden? 8 A Yes and Rossi. 9 Q Did Mr. Darden or anyone at Industrial 10 Heat ever contact you regarding this report? 11 A No. 12 Q Let me show you a document we will mark as 13 Exhibit 19. 14 (Thereupon, Plaintiff's Exhibit 19 was 15 marked for identification.). 16 BY MR. ANNESSER: 17 Q This document has the Bates No. 18 PENON0000354. It purports to be an e-mail dated 19 March 29th, 2016 from you to Mr. Darden to 20 Mr. Rossi. Do you recall sending this e-mail? 21 A Yes. 22 Q Attached to this e-mail, sir, was an 23 energy multiple valuation from December 1st, 2015 to 24 February 15, 2016. Did you prepare this report, 25 sir?</p>	<p style="text-align: right;">Page 117</p> <p>1 Q Did Mr. Darden respond to this e-mail? 2 A No. 3 Q Did anyone from Industrial Heat respond to 4 this e-mail? 5 A To the best of my recollection, no. 6 (Thereupon, Plaintiff's Exhibit 21 was 7 marked for identification.) 8 BY MR. ANNESSER: 9 Q I will show you a composite document that 10 we'll mark as Exhibit 21. This document has 11 beginning Bates No. PENON0000180. Can you tell me 12 what this document is, sir? 13 MR. PACE: Objection. Are you identifying 14 it as a composite exhibit and you are calling 15 it one document. Are you saying -- one or the 16 other, but it can't be a composite exhibit and 17 a document. 18 MR. ANNESSER: Okay. Fair enough. 19 BY MR. ANNESSER: 20 Q Can you tell me what this first document 21 is, sir? 22 A Client conclusion document after the test 23 plan agreement that summarizes the working of the 24 plant for a total of 352 actual days reporting for 25 every day the COP actually calculated, and proving</p>

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1 the compliance with the contractual agreement.
2 Q Did you prepare this document, sir?
3 A Yes.
4 Q Does this document contain your
5 observations and your measurements?
6 A Yes.
7 MR. PACE: Objection. Go ahead.
8 BY MR. ANNESSER:
9 Q Does this first document and the documents
10 attached to the back contain your measurements and
11 calculations, sir?
12 MR. PACE: Objection.
13 THE INTERPRETER: You said the first or
14 the last page?
15 MR. ANNESSER: The whole document.
16 MR. PACE: Same objection.
17 MR. ANNESSER: The whole exhibit.
18 THE WITNESS: Yes.
19 BY MR. ANNESSER:
20 Q To the best of your knowledge, sir, is the
21 information and measurements contained within
22 Exhibit 21 true correct and accurate?
23 A Yes, they do.
24 Q Do you have any reason to believe that any
25 of the measurements contained in this exhibit are

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1 not correct or accurate?
2 A No.
3 Q Were you paid for your services as the ERV
4 for performing the tests at the Doral facility?
5 THE INTERPRETER: Service in Doral?
6 MR. ANNESSER: Yes, for the Doral test.
7 THE WITNESS: Are we talking about the
8 payment of both parties?
9 BY MR. ANNESSER:
10 Q Were you paid at all?
11 A Yes, I have been paid.
12 Q Who was to pay you?
13 A If I remember correctly, 50 percent --
14 50 percent was due by the Leonardo Corporation and
15 50 percent by Industrial Heat.
16 Q Were you ultimately paid for your services
17 as the ERV?
18 A Yes, in conclusion I have been finally
19 paid.
20 Q By both parties?
21 A Leonardo Corporation paid also a portion
22 of Industrial Heat, the company.
23 Q Do you know if Industrial Heat ever
24 reimbursed Leonardo for those fees?
25 A I don't know.

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1 Q I'd like to ask you about the last couple
2 of days of the test.
3 At the conclusion of the test did you come
4 to Florida to shut down the plant?
5 A I ordered to turn off equipment which has
6 been affected by -- carried out by Dr. Rossi.
7 Q Do you recall meeting a gentleman there
8 named Joe Murray? Joe Murray.
9 A Yes.
10 Q Now, did you speak with Mr. Murray while
11 you were at the plant?
12 A Yes, I did pay.
13 Q I'm sorry. Yes?
14 A I did pay -- I did talk to him.
15 Q Did he have questions for you at that
16 time?
17 A Yes, he raised questions.
18 Q Did he ask you to send him any documents?
19 A Yes, he did.
20 (Thereupon, Plaintiff's Exhibit 22 was
21 marked for identification.)
22 BY MR. ANNESSER:
23 Q I will show you a document we will mark as
24 Exhibit 22 with Bates No. PENON0000333. This
25 document purports to be an e-mail dated

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1 February 23rd, 2016. And it appears to be from you
2 to Mr. Murray, Mr. Darden and Dr. Rossi.
3 THE INTERPRETER: Sorry. Can you repeat
4 the three names?
5 MR. ANNESSER: Murray, Darden and Rossi.
6 THE WITNESS: Yes, I did send it.
7 BY MR. ANNESSER:
8 Q Was this sent in response to a request to
9 Mr. Murray?
10 A Yes.
11 Q Did you answer all of Mr. Murray's
12 questions when you spoke to him at the conclusion of
13 the test?
14 A Yes.
15 Q Has Mr. Murray since posed additional
16 questions?
17 A Can you repeat again?
18 Q Has Mr. Murray, since that time, requested
19 you answer any additional questions?
20 A Yes, he did.
21 Q Did you answer those questions?
22 A No.
23 Q Why not?
24 A Because it was a repetition of the same
25 question raised at Doral.

<p style="text-align: right;">Page 134</p> <p>1 problems of the -- to verify the contract agreement.</p> <p>2 Q Did you follow all of the test protocols</p> <p>3 as they had been drafted?</p> <p>4 A Yes, I did.</p> <p>5 Q Were there any deviations from the</p> <p>6 protocol that could have affected the COP</p> <p>7 measurement?</p> <p>8 MR. PACE: Objection.</p> <p>9 THE WITNESS: Can you repeat it again to</p> <p>10 make sure?</p> <p>11 BY MR. ANNESSER:</p> <p>12 Q Were there any deviations from the test</p> <p>13 protocol that could have affected your calculation</p> <p>14 of the COP?</p> <p>15 MR. PACE: Objection. Can I have an</p> <p>16 objection ahead of time so he can answer it</p> <p>17 because I'm afraid when I object it's</p> <p>18 distracting him. So I'll have a standing</p> <p>19 objection on this one.</p> <p>20 MR. ANNESSER: Sure. What is your</p> <p>21 objection?</p> <p>22 MR. PACE: I think this is kind of a</p> <p>23 strange hypothetical, because you were asking</p> <p>24 him could there have been anything that could</p> <p>25 have affected it beyond what he knows about.</p>	<p style="text-align: right;">Page 136</p> <p>1 side of the wall, that's it.</p> <p>2 Q Do you know if it was vented, the heat was</p> <p>3 vented to an external source?</p> <p>4 MR. PACE: Objection.</p> <p>5 THE INTERPRETER: Excuse me. I have a</p> <p>6 problem with "vented".</p> <p>7 MR. LUKACS: Ventilate.</p> <p>8 BY MR. ANNESSER:</p> <p>9 Q Dumped outside?</p> <p>10 MR. PACE: You got to make do.</p> <p>11 THE INTERPRETER: Can you repeat the</p> <p>12 question?</p> <p>13 BY MR. ANNESSER:</p> <p>14 Q Do you know if the heat was -- from the</p> <p>15 E-Cat plant was dumped outside?</p> <p>16 MR. PACE: Objection.</p> <p>17 MR. ANNESSER: Released.</p> <p>18 THE INTERPRETER: I understand. I know he</p> <p>19 was answering.</p> <p>20 THE WITNESS: The question is do I know if</p> <p>21 the steam was sent to the other part of the</p> <p>22 wall?</p> <p>23 MR. ANNESSER: No.</p> <p>24 BY MR. ANNESSER:</p> <p>25 Q When the heat was sent to the other side,</p>
<p style="text-align: right;">Page 135</p> <p>1 Are you just saying are you aware of anything,</p> <p>2 just so you know my objection.</p> <p>3 BY MR. ANNESSER:</p> <p>4 Q Are you aware -- I will do it that way --</p> <p>5 are you aware of any deviations from the test</p> <p>6 protocol that could have affected your calculation</p> <p>7 of the COP?</p> <p>8 A What do you intend deviation?</p> <p>9 Q Anything other than what was in the test</p> <p>10 protocol?</p> <p>11 A As far as I can imagine, no.</p> <p>12 Q The defendants in this case have argued</p> <p>13 that the amount of steam generated by the E-Cat</p> <p>14 would have caused the factory or the -- I'm sorry --</p> <p>15 the warehouse to be in excess of 200 degrees</p> <p>16 Fahrenheit.</p> <p>17 A How much centigrades?</p> <p>18 Q I believe they have said over 100 degrees</p> <p>19 centigrade.</p> <p>20 A Can you repeat again?</p> <p>21 Q The defendants have argued -- you know</p> <p>22 what, I'm going to strike that.</p> <p>23 Do you know what was done with the heat</p> <p>24 generated by the E-Cat?</p> <p>25 A I only know that it was used on the other</p>	<p style="text-align: right;">Page 137</p> <p>1 do you know what happened to it after that?</p> <p>2 A Absolutely, I did not know.</p> <p>3 Q I'm sorry. Absolutely?</p> <p>4 THE INTERPRETER: I did not know.</p> <p>5 BY MR. ANNESSER:</p> <p>6 Q Did anyone assist you in preparing your</p> <p>7 final report which we -- which we have marked as</p> <p>8 Exhibit 21?</p> <p>9 A Yes. What does it mean which other</p> <p>10 people -- other people taking part in doing it?</p> <p>11 Q Did anyone else help him create this</p> <p>12 report?</p> <p>13 A I did it personally.</p> <p>14 Q Have you reviewed any of the expert</p> <p>15 reports that have been served in this case?</p> <p>16 A Which report?</p> <p>17 Q I believe there have been reports by</p> <p>18 Mr. Murray, Mr. Wong and Mr. Smith. Mr. Murray and</p> <p>19 Smith?</p> <p>20 A I remember the one sent by Mr. Murray</p> <p>21 immediately after the closing, the validation.</p> <p>22 MR. ANNESSER: If we can go off the record</p> <p>23 for a couple of minutes.</p> <p>24 THE VIDEOGRAPHER: Off the record. The</p> <p>25 time is 4:44.</p>

<p style="text-align: right;">Page 146</p> <p>1 law of thermodynamics.</p> <p>2 Q Dr. Penon, I am not saying that you were</p> <p>3 required in writing your reports to do so, but I'm</p> <p>4 asking you a question. You've -- you've worked with</p> <p>5 this E-Cat plant or measuring this E-Cat plant for a</p> <p>6 couple of years now; correct?</p> <p>7 MR. ANNESSER: Object to the form.</p> <p>8 THE WITNESS: For one year, he says.</p> <p>9 BY MR. PACE:</p> <p>10 Q For one year. So how would you measure --</p> <p>11 I'm sorry.</p> <p>12 You worked in the validation test in 2013;</p> <p>13 correct?</p> <p>14 MR. ANNESSER: Object to the form.</p> <p>15 THE WITNESS: One week.</p> <p>16 BY MR. PACE:</p> <p>17 Q So at least since 2013 you've been aware</p> <p>18 of E-Cat and the E-Cat technology?</p> <p>19 MR. ANNESSER: Object to the form.</p> <p>20 THE WITNESS: I do not know the principle</p> <p>21 or function of E-Cat because it is an</p> <p>22 industrial secret.</p> <p>23 BY MR. PACE:</p> <p>24 Q I can wrap this up pretty easily. You</p> <p>25 have no opinion on whether the functioning of the</p>	<p style="text-align: right;">Page 148</p> <p>1 him talk to his counsel for a second.</p> <p>2 THE VIDEOGRAPHER: Off the record. The</p> <p>3 time is 5:11 p m.</p> <p>4 (Thereupon, a recess was taken from 5:11</p> <p>5 p m. - 5:23 p m., after which the following</p> <p>6 proceedings were had:)</p> <p>7 THE VIDEOGRAPHER: Okay. We are now back</p> <p>8 on the record. The time is 5:23.</p> <p>9 BY MR. PACE:</p> <p>10 Q Dr. Penon, before we broke I was asking</p> <p>11 you your opinion in terms of whether the E-Cat</p> <p>12 violated the law of thermodynamics. I believe,</p> <p>13 without getting into what the opinion is, you said</p> <p>14 you had an opinion and you didn't want to express</p> <p>15 it; is that fair?</p> <p>16 A I thought that my opinion on the E-Cat was</p> <p>17 not relevant to the object of the conversation</p> <p>18 today, of this -- of this session but...</p> <p>19 Q I didn't hear the very end of what he</p> <p>20 said. Not relevant to the session?</p> <p>21 A And this is why.</p> <p>22 MR. LUKACS: May I interject? This is</p> <p>23 John Lukacs for the record. We have been here</p> <p>24 for over five and a half hours now. Dr. Penon</p> <p>25 is here to testify to facts and circumstances</p>
<p style="text-align: right;">Page 147</p> <p>1 E-Cat is consistent or inconsistent with any laws of</p> <p>2 thermodynamics?</p> <p>3 MR. ANNESSER: Object to form.</p> <p>4 THE WITNESS: I have my opinion, but it is</p> <p>5 not within the jurisdiction of my work.</p> <p>6 BY MR. PACE:</p> <p>7 Q I understand that. I actually asked for</p> <p>8 your opinion.</p> <p>9 A I see I have an opinion, but I don't see</p> <p>10 how relevant it is in this situation.</p> <p>11 Q Dr. Penon, understand you can take the</p> <p>12 position that you are not going to answer my</p> <p>13 questions and you can walk out of this examination.</p> <p>14 That's your right, but --</p> <p>15 A It is not my intention not to respond.</p> <p>16 Simply what I appreciate to get questions related to</p> <p>17 the main, you know, our meeting.</p> <p>18 Q Dr. Penon, I am allowed to make, and you</p> <p>19 can speak with your lawyer. I am allowed to</p> <p>20 approach issues in maybe manners other than you</p> <p>21 would normally approach them or want them to be</p> <p>22 approached.</p> <p>23 MR. ANNESSER: Chris, why don't we go off</p> <p>24 the record?</p> <p>25 MR. PACE: Let's go off the record and let</p>	<p style="text-align: right;">Page 149</p> <p>1 surrounding the process in question, as opposed</p> <p>2 to express opinions. So if I can simply have</p> <p>3 interrogation continue on that basis it would</p> <p>4 be time well served.</p> <p>5 MR. PACE: I understand the position. I</p> <p>6 just want to be clear that he is not willing to</p> <p>7 provide the opinion. So let me circle it to</p> <p>8 this way.</p> <p>9 BY MR. PACE:</p> <p>10 Q Whatever your opinion is it did not</p> <p>11 influence any of the testing or measurements you did</p> <p>12 on the E-Cat?</p> <p>13 A No.</p> <p>14 Q Let me take you back to the validation</p> <p>15 test in 2013. Do you recall that?</p> <p>16 A (Nods head.)</p> <p>17 Q Do you recall that there was a change to</p> <p>18 what was going to be tested --</p> <p>19 MR. ANNESSER: Objection.</p> <p>20 BY MR. PACE:</p> <p>21 Q -- shortly before the test occurred?</p> <p>22 MR. ANNESSER: Object to the form.</p> <p>23 THE WITNESS: A change related to what?</p> <p>24 BY MR. PACE:</p> <p>25 Q Do you remember there being a change to</p>

<p style="text-align: right;">Page 150</p> <p>1 the number of units, E-Cat units that were going to</p> <p>2 be tested?</p> <p>3 MR. ANNESSER: Object to the form.</p> <p>4 THE WITNESS: You are referring to the</p> <p>5 problem generated by -- by the relation with</p> <p>6 the Italian requirements?</p> <p>7 BY MR. PACE:</p> <p>8 Q The Italian requirements, did you say</p> <p>9 Ferrara in there?</p> <p>10 THE INTERPRETER: Sorry?</p> <p>11 BY MR. PACE:</p> <p>12 Q I was listening to his answer. I thought</p> <p>13 he said Ferrara in there so ...</p> <p>14 A Ferrara.</p> <p>15 Q Let me ask you. What was the Italian law</p> <p>16 limitation or requirement?</p> <p>17 MR. ANNESSER: Object to the form.</p> <p>18 THE WITNESS: I was trying to remember.</p> <p>19 Whatever the generated power could have been</p> <p>20 higher than, if I remember 35 kilobytes because</p> <p>21 it was necessary to obtain all sorts of</p> <p>22 authorizations long -- requiring a long time</p> <p>23 and complication in order to have. And if you</p> <p>24 are referring to this, it appears that for</p> <p>25 these reasons there has been a change.</p>	<p style="text-align: right;">Page 152</p> <p>1 pitching arm.</p> <p>2 BY MR. PACE:</p> <p>3 Q My first question really is simple,</p> <p>4 Dr. Penon, have you ever seen this document before?</p> <p>5 A No.</p> <p>6 Q Did Dr. Rossi or anyone else tell you</p> <p>7 that -- actually. I'm sorry. If you will do me a</p> <p>8 favor. If you look at the last page of this</p> <p>9 document. Did you have any involvement in creating</p> <p>10 this what's called E-Cat validation protocol?</p> <p>11 MR. PACE: Object to the form.</p> <p>12 BY MR. PACE:</p> <p>13 Q Let me ask you a question, Dr. Penon. You</p> <p>14 have been looking at that exhibit for a while. Is</p> <p>15 there some familiarity to that exhibit to you?</p> <p>16 A I do not remember getting involved at this</p> <p>17 level on the processing of the protocol.</p> <p>18 Q Okay. Just to be clear, you don't -- what</p> <p>19 you are testifying is that you didn't have any</p> <p>20 involvement in preparing Exhibit A?</p> <p>21 MR. ANNESSER: Object to the form.</p> <p>22 MR. LUKACS: Objection. Misstatement of</p> <p>23 the witness's testimony.</p> <p>24 MR. PACE: Then rather than misstate, let</p> <p>25 me just do it this way. I will ask the</p>
<p style="text-align: right;">Page 151</p> <p>1 BY MR. PACE:</p> <p>2 Q Who told you what the Italian law was?</p> <p>3 MR. ANNESSER: Object to the form.</p> <p>4 THE WITNESS: Dr. Rossi preparing the</p> <p>5 environment to affect the signal -- he weighed</p> <p>6 this problem. He suggested that this was a</p> <p>7 problem to be solved.</p> <p>8 BY MR. PACE:</p> <p>9 Q I understand. So Dr. Rossi explained the</p> <p>10 problem to you and came up with the solution?</p> <p>11 MR. ANNESSER: Object to the form.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. PACE:</p> <p>14 Q Let me see if I can...</p> <p>15 MR. PACE: Do we have -- number 24.</p> <p>16 (Thereupon, Defendant's Exhibit 24 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. PACE:</p> <p>19 Q I am going to hand you what is marked as</p> <p>20 Exhibit 20...</p> <p>21 MR. PACE: That's very strange.</p> <p>22 BY MR. PACE:</p> <p>23 Q I am going to hand you what's been marked</p> <p>24 as Exhibit 24.</p> <p>25 MR. PACE: Sorry. My left is not my</p>	<p style="text-align: right;">Page 153</p> <p>1 question again because you might have said</p> <p>2 something different.</p> <p>3 BY MR. PACE:</p> <p>4 Q Did you have any involvement in preparing</p> <p>5 Exhibit A, the last page of what I've marked as</p> <p>6 Exhibit 24?</p> <p>7 A I don't think so. I don't think I</p> <p>8 remember.</p> <p>9 Q If you can turn back to me to Exhibit 8.</p> <p>10 Exhibit 8 would be -- it is an e-mail from you and</p> <p>11 it has your -- if you can turn to the third page of</p> <p>12 that exhibit. The bottom has the numbers 74 in the</p> <p>13 corner.</p> <p>14 A Yes.</p> <p>15 Q I want to just walk through some parts of</p> <p>16 this report. One is you have under for Leonardo</p> <p>17 Corporation Mr. F. Fabiani and Mr. A. Rossi. F.</p> <p>18 Fabiani is Fulvio Fabiani?</p> <p>19 A Fulvio; F-U-L-V-I-O.</p> <p>20 MR. PACE: Excellent.</p> <p>21 BY MR. PACE:</p> <p>22 Q And he was working for Leonardo</p> <p>23 Corporation?</p> <p>24 MR. ANNESSER: Object to the form.</p> <p>25 THE WITNESS: Yes, I think so.</p>

<p style="text-align: right;">Page 154</p> <p>1 BY MR. PACE: 2 Q If you turn to -- it is actually page 3 of 3 6 of this report. I'm sorry. The corner Bates No. 4 76. I will do that. That is probably easier to 5 find your way around the document. 6 If you can look up there under history of 7 the test. "In order to comply with the Italian law 8 the trial was conducted by activating only 18 E-Cat 9 units." Was it Dr. Rossi who communicated that 10 limitation to you that the right number of E-Cats to 11 use was 18? 12 MR. ANNESSER: Object to the form. 13 THE WITNESS: Yes, he did. 14 BY MR. PACE: 15 Q Did you discuss that -- that limitation or 16 that number with anyone else prior to the test being 17 run? 18 A I don't remember. 19 Q All right. Going down underneath that I 20 see at the beginning of the test is at 1330 or 1:30 21 on April 30th. 22 A 11:30? 1330. 23 Q 1330? 24 A 1:30 p m., yes. 25 Q So let me try this again. Am I reading</p>	<p style="text-align: right;">Page 156</p> <p>1 entire -- the entire -- the quantity of the steam 2 gone -- flowing in the unity of time. 3 Q So a -- is there a different equipment 4 that's used to measure steam flow versus steam 5 quality? 6 MR. ANNESSER: Object to the form. 7 THE WITNESS: I do not have elements for a 8 precise answer. 9 BY MR. PACE: 10 Q Well, what -- what would be used to 11 measure the -- the flow of -- of steam or heated 12 fluid? 13 MR. ANNESSER: Object to the form. 14 THE WITNESS: I never proved this question 15 in my mind because -- because the level did 16 not -- did not state that it was necessary. It 17 was not necessary to know the flux of the -- 18 the flow of the steam, but the conservation of 19 the mass of the water inflow and the steam 20 out -- steam out flowing. 21 BY MR. PACE: 22 Q The -- did the -- you mean the temperature 23 of the -- when you say "the steam out flow" -- 24 A No. The water goes in -- goes into the 25 black box. After verification there is no change of</p>
<p style="text-align: right;">Page 155</p> <p>1 this correctly that the test that was done on these 2 E-Cat units, the test began at 1330 on April 30th? 3 A Correct. 4 Q And it ended at 1300 on the first of May? 5 A Thirteen o'clock. 6 Q So it ran for 23 and a half hours; 7 correct? 8 A Correct. 9 Q Do you recall why it wasn't run for the 10 full 24 hours? 11 A No, I don't remember. 12 Q Is there -- what is the difference between 13 steam -- steam flow and steam quality? 14 MR. ANNESSER: Object to the form. 15 THE WITNESS: Steam? 16 BY MR. PACE: 17 Q Steam flow versus steam quality? 18 A Normally when you mention about the 19 quality of the steam, you refer to the percentage of 20 the humidity which is present in the steam. This 21 means that the -- the steam is a condition of 22 saturated steam where there is a flux of steam, yes. 23 We are on the right track? 24 Q Yes. 25 A The flux is the maximum -- is the</p>	<p style="text-align: right;">Page 157</p> <p>1 loss. The mass does not disappear for a principle 2 of conservation or mass conservation and this mass 3 it is becoming steam. 4 Q Okay. So just let me go back to my 5 original question and then come back to what you've 6 been saying now. 7 You -- you don't -- you are not aware of 8 what equipment would be used to measure the flow of 9 steam or heated fluid because you didn't need to 10 know that for the work you were doing with 11 Dr. Rossi? 12 MR. ANNESSER: Object to the form. 13 THE WITNESS: No, I -- I didn't need 14 the -- to measure the flow of measurement of 15 the steam. 16 BY MR. PACE: 17 Q Steam quality, is there a -- is there -- 18 do you know whether there is equipment that can be 19 used to measure steam quality? 20 MR. ANNESSER: Object to the form. 21 THE WITNESS: Certainly, yes. 22 BY MR. PACE: 23 Q Was that equipment -- did you use any of 24 that equipment in connection with your -- the 25 validation testing?</p>

<p style="text-align: right;">Page 166</p> <p>1 looking at page 27 of what I have marked as Exhibit 2 25. At the top of that page you see an e-mail from 3 Tom Darden. The very top, it starts with "Let's 4 make sure". Do you see "Let's make sure that there 5 is more than one way to measure the temperature in 6 that pipe." I want to use it really to transition 7 to page 26, because we have a response from 8 Dr. Rossi to the issue. If you look at his e-mail 9 there at the bottom. Do you see the paragraph that 10 starts with the -- several lines down. "The 11 temperature in the steam pipe, as you correctly 12 remember, is taken in two positions by means of two 13 thermocouples that have been brought in position 14 today by Engineer Penon." He also says, "Also the 15 temperature of the water in the tank inside the 16 container to feed the pumps is measured by two 17 thermocouples brought and installed under the 18 direction of Engineer Penon. And then he says, and 19 the pressure of the steam is measured with two 20 instruments brought by Engineer Penon." 21 Is -- did you bring two measuring devices, 22 whether for temperature or for pressure, and then 23 you used one and you had Fabio -- you allowed Rossi 24 or Fabiani to use the other? 25 MR. ANNESSER: Object to the form.</p>	<p style="text-align: right;">Page 168</p> <p>1 by two different instruments? 2 A The steam pressure was measured by -- by 3 the probe, and as far as I can remember from the 4 manometer which had a symbol reading -- manual 5 reading. 6 Q The manometer was read manually every day? 7 THE INTERPRETER: Yes. 8 THE WITNESS: He was checking the 9 manometer during my visits to verify the 10 consistency of the probe with the pressure. 11 MR. ANNESSER: Object to the form. Move 12 to strike. 13 BY MR. PACE: 14 Q Were there two -- did you bring -- 15 according to this e-mail it says, "Also the pressure 16 of the steam is measured with two instruments 17 brought by Engineer Penon." Is that accurate? 18 A I don't remember at this very time. 19 Q Okay. If you can go down for me a few 20 lines, there is -- let me just read it and then we 21 can talk about it. 22 "All those instruments for the measurement 23 of temperature of the steam, of the pressure of the 24 steam, and of temperature of the water in the water 25 tank inside the container are connected with the</p>
<p style="text-align: right;">Page 167</p> <p>1 THE WITNESS: I brought two technical 2 probes. Yes, I brought two probes, technical 3 probes. One of those was going directly on the 4 document which was transforming from analogical 5 to digital and then it was stuck in his 6 computer. 7 The other one was to verify when I was 8 visiting the plant the consistency collected to 9 verify the thermometer connected with the 10 second -- with the second. 11 THE INTERPRETER: I got lost. 12 THE WITNESS: The second probe was 13 connected to the thermometer to verify the -- 14 the relationship -- the correspondence of the 15 data from the relevance of the thermometer and 16 how much it was revealed by the first probe. 17 MR. PACE: Okay. 18 BY MR. PACE: 19 Q Is the same applied for the pressure 20 probes? 21 MR. ANNESSER: Object to the form. 22 THE WITNESS: Can you repeat? 23 MR. PACE: Yes. 24 BY MR. PACE: 25 Q Was there also the steam pressure measured</p>	<p style="text-align: right;">Page 169</p> <p>1 computer of property of Engineer Penon." Do you see 2 where I'm reading in the document? 3 A Yes. Yes, I see it. 4 Q Sir, it follows that -- it says shortly 5 after "Obviously, Penon will consider for his 6 calculations only the data registered by the 7 computer." 8 MR. ANNESSER: Objection. 9 MR. PACE: -- "And we can compare the data 10 that he will find with the data that we will 11 find." 12 MR. ANNESSER: Object to the form. 13 BY MR. PACE: 14 Q Do you see that? 15 A I do not understand it. Can you repeat 16 it? 17 MR. PACE: Yes. 18 BY MR. PACE: 19 Q Do you see the sentence in the e-mail that 20 starts with, "Obviously Penon will consider for his 21 calculations only the data registered by his 22 computer, but we can compare the data." You can 23 compare the data. 24 Is that -- did that occur during the 25 course of the test that you compared the data that</p>

<p style="text-align: right;">Page 170</p> <p>1 you were -- that you were storing in your computer</p> <p>2 with the data that was being collected by Rossi and</p> <p>3 Fabiani?</p> <p>4 MR. ANNESSER: Object to the form.</p> <p>5 THE WITNESS: It happened in some visits</p> <p>6 that we compared the data -- the data recovered</p> <p>7 on the spot, at the very same time, with the</p> <p>8 ones of Fabiani.</p> <p>9 BY MR. PACE:</p> <p>10 Q And did you ever find any inconsistencies?</p> <p>11 A I was not really interested very frankly</p> <p>12 in the data of Fabiani, because with the system of</p> <p>13 comparison between different -- I was in a condition</p> <p>14 of feeling sure about my collection of data.</p> <p>15 Q And that collection of data, you said</p> <p>16 that -- they sent it to you every couple of weeks?</p> <p>17 MR. ANNESSER: Object to the form.</p> <p>18 THE WITNESS: No. If you refer to the</p> <p>19 data gathered in my computer at Doral I was</p> <p>20 real -- I was requesting them to transfer the</p> <p>21 data every two months.</p> <p>22 BY MR. PACE:</p> <p>23 Q And how were they doing that?</p> <p>24 A They sent me the file with the entire data</p> <p>25 of the period -- of the period in which I was</p>	<p style="text-align: right;">Page 172</p> <p>1 THE WITNESS: He could access, but for</p> <p>2 some limited tasks.</p> <p>3 BY MR. PACE:</p> <p>4 Q And does that -- does that -- where is</p> <p>5 that computer today?</p> <p>6 A I think it is in the container at the</p> <p>7 Doral.</p> <p>8 Q So you -- you did not take that with you</p> <p>9 when you returned to Italy in February of 2016?</p> <p>10 A No, because I had already all the data.</p> <p>11 Q When you -- when you took any of the data</p> <p>12 from the computer that you had at Doral, would you</p> <p>13 erase it from the computer?</p> <p>14 THE INTERPRETER: Excuse me?</p> <p>15 BY MR. PACE:</p> <p>16 Q After you had reviewed the data that was</p> <p>17 on the computer in Doral, would it get erased?</p> <p>18 Would it get erased?</p> <p>19 MR. ANNESSER: Object to the form.</p> <p>20 THE WITNESS: I don't remember honestly.</p> <p>21 I took them for sure, but I don't know if I</p> <p>22 deleted it.</p> <p>23 BY MR. PACE:</p> <p>24 Q So it may be on the computer that's in</p> <p>25 Doral. You don't know?</p>
<p style="text-align: right;">Page 171</p> <p>1 interested.</p> <p>2 Q And who is the "they"?</p> <p>3 THE INTERPRETER: Sorry.</p> <p>4 BY MR. PACE:</p> <p>5 Q Who would send you this data?</p> <p>6 A Fabiani.</p> <p>7 Q So Fulvio Fabiani would send you the data</p> <p>8 from your computer every couple of months?</p> <p>9 MR. ANNESSER: Object to the form.</p> <p>10 THE WITNESS: According to my request.</p> <p>11 BY MR. PACE:</p> <p>12 Q Okay. So you made the request -- let me</p> <p>13 rephrase it then.</p> <p>14 Roughly every couple of months you made</p> <p>15 the request for Fabiani to send you your data and</p> <p>16 when you made such a request he would send it to</p> <p>17 you?</p> <p>18 MR. ANNESSER: Object to the form.</p> <p>19 THE WITNESS: Correct. He was sending the</p> <p>20 data in the computer.</p> <p>21 BY MR. PACE:</p> <p>22 Q So he had the ability to access your</p> <p>23 computer to make at least a copy of the data to send</p> <p>24 you?</p> <p>25 MR. ANNESSER: Object to the form.</p>	<p style="text-align: right;">Page 173</p> <p>1 A It could be in the computer.</p> <p>2 Q Have you maintained a copy of this, this</p> <p>3 data?</p> <p>4 A My personal data -- my personal data on my</p> <p>5 computer. No additional -- no other copies exist.</p> <p>6 Q But just so I understand. These data --</p> <p>7 these devices for collecting information are</p> <p>8 collecting temperature and pressure readings on a</p> <p>9 very regular basis, very consistent basis; correct?</p> <p>10 MR. ANNESSER: Object to the form.</p> <p>11 THE WITNESS: Correct, yes.</p> <p>12 BY MR. PACE:</p> <p>13 Q And you testified that your report largely</p> <p>14 uses average numbers for a day usually rounded up or</p> <p>15 down?</p> <p>16 MR. ANNESSER: Object to the form.</p> <p>17 THE WITNESS: Can you repeat again?</p> <p>18 MR. PACE: Sure.</p> <p>19 BY MR. PACE:</p> <p>20 Q You were looking with Mr. Annesser at some</p> <p>21 of your reports and the annexes to the reports, and</p> <p>22 you were talking about how those numbers -- you</p> <p>23 don't report several hundred numbers for a given</p> <p>24 day. You report one number for a day.</p> <p>25 A The reports were related to 24 hours</p>

<p style="text-align: right;">Page 190</p> <p>1 BY MR. PACE: 2 Q I believe you said that daily Dr. Rossi 3 sent you a measurement? 4 MR. ANNESSER: Object to the form. 5 THE WITNESS: Yes. 6 BY MR. PACE: 7 Q How did he send that to you? 8 A Compiling the log of the implant and there 9 was sending the log updated. 10 Q But was it a daily e-mail you would get 11 from Dr. Rossi? 12 A Correct. Daily. 13 Q Okay. So you have over 350 -- at some 14 point you have almost -- let me start over again. 15 Were there roughly 350 or 360 of these 16 e-mails? 17 A Approximately, yes. 18 Q Okay. And these e-mails, when it has the 19 flow meter data, it is the exact reading, he is 20 supposed to provide you the exact reading, not a 21 rounded off reading? 22 A Yes. 23 Q And then the other data that was being 24 sent to you when you would request from Fabio -- 25 from Fulvio Fabiani, that would also be sent to you</p>	<p style="text-align: right;">Page 192</p> <p>1 now. We are off the record. 2 THE VIDEOGRAPHER: Off the record. The 3 time is 6:58. 4 (Thereupon, a recess was taken from 6:58 5 p.m. - 7:14 p.m., after which the following 6 proceedings were had:) 7 THE VIDEOGRAPHER: We are now back on the 8 record. The time is 7:14. 9 BY MR. PACE: 10 Q Dr. Penon, I have been advised that I have 11 got 15 more minutes to ask you questions so I'm 12 going to try to -- to move a little quickly now, if 13 I can. 14 Can you look at Exhibit 18 for me? 15 A Page number? 16 Q Exhibit 18, the first two pages. Do you 17 have 18 with you? 18 THE INTERPRETER: Is it the big one? 19 BY MR. PACE: 20 Q Did you find it? If you could turn to the 21 second page of that exhibit. This is the picture 22 of -- it says in reactors -- you see how it refers 23 to electrical measures and reactors BF1, BF2 and 24 BF3; correct? BF1 -- do you know what BF is short 25 for or stands for?</p>
<p style="text-align: right;">Page 191</p> <p>1 by e-mail? 2 MR. ANNESSER: Object to the form. 3 THE WITNESS: Correct. 4 BY MR. PACE: 5 Q Now, I understand these -- I understand 6 this temperature data would record temperature every 7 few seconds. 8 MR. ANNESSER: Object to the form. 9 BY MR. PACE: 10 Q Is that correct? 11 A There the frequency -- I don't remember 12 exactly, after the certain number of seconds there 13 was a new -- a new. 14 Q Measurement? 15 THE INTERPRETER: Output, measurement. 16 BY MR. PACE: 17 Q And these are the large files that would 18 be sent by Fulvio Fabiani to you? 19 MR. ANNESSER: Object to the form. 20 MR. LUKACS: Okay. Let me just stay on 21 the record for a moment. We started at 22 9:00 o'clock this morning Dominican Republic 23 time. It is now 6:58 here in the Dominican 24 Republic. I have a 6:00 o'clock call Eastern 25 Standard Time that I am going to make right</p>	<p style="text-align: right;">Page 193</p> <p>1 A The grouping of -- the E-Cat unit. The 2 unit BF1 unit BF2 unit. 3 Q So this is what they call the Big Frankie 4 units? 5 A I did not go deeply into the matter. 6 Q Is it true that there is also a BF4? 7 A No, I don't know. 8 Q So -- 9 A I do not know. 10 Q So at the plant you do not recall there 11 being four units of this type, only three? 12 MR. ANNESSER: Object to the form. 13 THE WITNESS: These were -- we perform it 14 on these three units because they were working. 15 I ignore how many other units were not working. 16 It was not of my interest, so I didn't need it. 17 BY MR. PACE: 18 Q So when you went there on this date 19 October 13th, if you look at the actual signature it 20 has October 13 at the very top if you look date 21 October 13th, 2016. Let me just be quick if I can. 22 There were three of these collections of 23 E-Cats working? 24 MR. ANNESSER: Object to the form. 25 THE WITNESS: We verified the function of</p>

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1 MR. LUKACS: 9:00 o'clock this morning and
2 it is now 20 minutes until 8:00.
3 MR. PACE: And it is now 20 minutes until
4 8:00 a.m.
5 MR. LUKACS: 8:00 p.m.
6 MR. PACE: And at this point -- 8:00 p.m
7 you are calling it into the deposition.
8 MR. LUKACS: Most respectfully, I might
9 add.
10 THE VIDEOGRAPHER: All right. Going off
11 the video record. The time is 7:42 p.m. in the
12 Dominican Republic.
13 MR. LUKACS: Reporter, thank you so much.
14 No waive. We'll have an opportunity to read.
15 (Thereupon, the taking of the deposition
16 was concluded at 7:42 p.m.)
17
18
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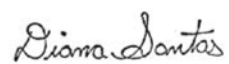
1 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.
2 DEPO OF: FABIO PENON
3 TAKEN: February 22, 2017
4
5 EXCEPT FOR ANY CORRECTIONS
6 MADE ON THE ERRATA SHEET BY
7 ME, I CERTIFY THIS IS A TRUE
8 AND ACCURATE TRANSCRIPT.
9 FURTHER DEPONENT SAYETH NOT.
10
11 FABIO PENON
12
13 STATE OF FLORIDA)
14) SS:
15 COUNTY OF MIAMI-DADE)
16
17 Sworn and subscribed to before me this
18 day of _____, 2017.
19 PERSONALLY KNOWN _____ OR I.D. _____
20
21 _____
22 Notary Public in and for
23 the State of Florida at
24 Large.
25 My commission expires:

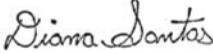

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1 ERRATA SHEET
2 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.
3 DEPO OF: FABIO PENON
4 TAKEN: February 22, 2017
5 JOB# 2547735
6 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
7 Page #| Line #| Change | Reason
8 _____
9 _____
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16 _____
17 _____
18 _____
19 _____
20 _____
21 State of Florida)
22 County of)
23
24 Under penalties of perjury, I declare that I have
25 read by deposition transcript, and it is true and
correct subject to any changes in form or
substance entered here.

Date FABIO PENON

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1 CERTIFICATE OF OATH OF INTERPRETER
2
3 STATE OF FLORIDA)
4) SS:
5 COUNTY OF MIAMI-DADE)
6
7 I, DIANA SANTOS, Notary Public in and for
8 the State of Florida at Large, certify that the
9 Interpreter, UGO V. CHIARATO personally appeared
10 before me on February 22, 2017 and was duly sworn by
11 me.
12 WITNESS my hand and official seal this
13 22nd day of February, 2017.
14
15 
16 DIANA SANTOS
17 Notary Public, State of Florida
18 at Large
19 Notary #FF030013
20 My commission expires: 7/7/17
21
22
23
24
25

<p style="text-align: right;">Page 210</p> <p>1 CERTIFICATE OF OATH OF WITNESS</p> <p>2</p> <p>3 STATE OF FLORIDA)</p> <p>4) SS:</p> <p>5 COUNTY OF MIAMI-DADE)</p> <p>6 I, DIANA SANTOS, Notary Public in and for</p> <p>7 the State of Florida at Large, certify that the</p> <p>8 witness, FABIO PENON, personally appeared before me</p> <p>9 on February 22, 2017 and was duly sworn by me.</p> <p>10 WITNESS my hand and official seal this</p> <p>11 22nd day of February, 2017.</p> <p>12</p> <p>13</p> <p>14 </p> <p>15 DIANA SANTOS</p> <p>16 Notary Public, State of Florida</p> <p>17 at Large</p> <p>18 Notary #FF030013</p> <p>19 My commission expires: 7/7/17</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 212</p> <p>1 VERITEXT FLORIDA CO.</p> <p>2 ONE BISCAYNE TOWER</p> <p>3 2 S. Biscayne Tower, Suite 2250</p> <p>4 Miami, Florida 33131</p> <p>5 (305) 371-1884</p> <p>6 March _____, 2017</p> <p>7 FABIO PENON</p> <p>8 c/o JOHN CHARLES LUKACS, ESQUIRE</p> <p>9 HINSHAW & CULBERTSON LLP</p> <p>10 2525 Ponce de Leon Boulevard</p> <p>11 Coral Gables, Florida 33134</p> <p>12 Telephone: (305)358-7747</p> <p>13 E-mail:jlukacs@hinshawlaw.com</p> <p>14 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.</p> <p>15 DEPO OF: FABIO PENON</p> <p>16 TAKEN : February 22, 2017</p> <p>17 READ & SIGN BY: April _____, 2017</p> <p>18</p> <p>19 Dear FABIO PENON:</p> <p>20</p> <p>21 This letter is to advise you that the transcript</p> <p>22 of the deposition listed above is completed and</p> <p>23 is awaiting reading and signing.</p> <p>24</p> <p>25 Please arrange to stop by our office in Suite 1020,</p> <p>19 West Flagler Street, Miami, Florida to read and</p> <p>sign the transcript. Our office hours are from</p> <p>8:00 a.m. to 4:00 p.m. Monday through Friday.</p> <p>Depending on the length of the transcript, you</p> <p>should allow yourself sufficient time.</p> <p>If the reading and signing has not been completed</p> <p>prior to the referenced date, we shall conclude</p> <p>that you have waived the reading and signing of the</p> <p>deposition transcript.</p> <p>Your prompt attention to this matter is appreciated.</p> <p>Sincerely,</p> <p>DIANA SANTOS</p> <p>cc: JOHN W. ANNESSER, ESQUIRE</p> <p>CHRISTOPHER R.J. PACE, ESQUIRE</p>
<p style="text-align: right;">Page 211</p> <p>1 REPORTER'S DEPOSITION CERTIFICATE</p> <p>2</p> <p>3 I, DIANA SANTOS, certify that I was</p> <p>4 authorized to and did stenographically report the</p> <p>5 deposition of FABIO PENON, the witness herein on</p> <p>6 February 22, 2017; that a review of the transcript</p> <p>7 was requested; that the foregoing pages numbered</p> <p>8 from 1 to 206 inclusive is a true and complete</p> <p>9 record of my stenographic notes of the deposition by</p> <p>10 said witness; and that this computer-assisted</p> <p>11 transcript was prepared under my supervision.</p> <p>12 I further certify that I am not a</p> <p>13 relative, employee, attorney or counsel of any of</p> <p>14 the parties, nor am I a relative or employee of any</p> <p>15 of the parties' attorney or counsel connected with</p> <p>16 the action.</p> <p>17 DATED this 22nd day of February, 2017.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 </p> <p>22 DIANA SANTOS</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 213</p> <p>1 VERITEXT FLORIDA CO.</p> <p>2 ONE BISCAYNE TOWER</p> <p>3 2 S. Biscayne Boulevard, Suite 2250</p> <p>4 Miami, Florida 33131</p> <p>5 (305) 371-1884</p> <p>6 March _____, 2017</p> <p>7 JOHN W. ANNESSER, ESQUIRE</p> <p>8 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.</p> <p>9 283 Catalonia Avenue</p> <p>10 Suite 200</p> <p>11 Coral Gables, Florida 33134</p> <p>12 Telephone: (305)377-0086</p> <p>13 E-mail: jannesser@pbylaw.com</p> <p>14 RE: ANDREA ROSSI, ET AL. VS. THOMAS DARDEN, ET AL.</p> <p>15 DEPO OF: FABIO PENON</p> <p>16 TAKEN : February 22, 2017</p> <p>17 READ & SIGN BY: April _____, 2017</p> <p>18</p> <p>19 Dear JOHN W. ANNESSER, ESQUIRE:</p> <p>20 The original transcript of the deposition listed</p> <p>21 above was previously provided to your office. The</p> <p>22 witness did not waive reading and signing and was</p> <p>23 duly notified to come in and read the transcript.</p> <p>24</p> <p>25 Attached to this letter you will find a copy</p> <p>of the corrections made by the witness.</p> <p>PLEASE ATTACH THEM TO YOUR COPY OF THE</p> <p>DEPOSITION SO IT WILL BE COMPLETE.</p> <p>The witness made no corrections to transcript.</p> <p>As of the above date, the witness has not come</p> <p>in to read and sign the transcript which has</p> <p>been noted on the original transcript.</p> <p>Sincerely,</p> <p>DIANA SANTOS</p> <p>cc: JOHN CHARLES LUKACS, ESQUIRE</p> <p>CHRISTOPHER R.J. PACE, ESQUIRE</p>

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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