

EXHIBIT 3

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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.

_____ /

PERLMAN, BAJANDAS, YEVOLI &
ALBRIGHT, P.L.
282 CATALONIA AVENUE
SUITE 200
CORAL GABLES, FL 33134
Tuesday, February 14, 2017
8:01 a.m. - 3:16 p.m.

VIDEOTAPED DEPOSITION OF SLOCUM HATCH FOGLEMAN
(Corporate Representative of IPH International BV)

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.

Page 22

1 BY MR. CHAIKEN:
 2 Q. Okay.
 3 A. Page 53.
 4 Q. I am with you. And that is the amount -- those
 5 are the amounts you claim that IPH has been damaged as a
 6 result of the equipment being shipped late?
 7 A. My response is -- my response was that the
 8 damages are set forth in the document you presented me,
 9 this document.
 10 Q. Right.
 11 A. And now I am saying those damages are stated in
 12 paragraph 98.
 13 Q. Okay. I am being very specific because I have
 14 to parse out all the different claims that have been made
 15 in this case. So you're telling me that IPH has been
 16 damaged as a result of Leonardo shipping the plant late.
 17 Now I am asking you specifically, what is the
 18 money damage that is related to that breach? Are you
 19 telling me that paragraph 98 is responsive to my question?
 20 A. Paragraph 98 states that, "As a result of
 21 Leonardo and Rossi's breach, counter-plaintiffs have
 22 suffered and continue to suffer damages, including but not
 23 limited to" and then it lists out the damages.
 24 Q. Right. Okay. But as you stated, as a result
 25 of Leonardo and Rossi's breach. What breach are we

Page 23

1 talking about?
 2 A. The breach -- breach of contract.
 3 Q. Okay.
 4 A. Claims.
 5 Q. Is it your understanding that IPH is claiming
 6 that Leonardo has only made one breach, or are there
 7 multiple breaches?
 8 A. There are multiple breaches in this document
 9 that have been alleged.
 10 Q. Okay. So which breach are we talking about as
 11 far as paragraph 98 goes? One or all of them or a few of
 12 them?
 13 A. Breach of contract to me means breach of
 14 contract.
 15 Q. Okay. Well, let's -- we need to parse out the
 16 various breaches. So we just parsed out one in
 17 paragraph 60. Would you agree with that?
 18 A. One breach, yes.
 19 Q. Okay. So what is the damage that -- are you
 20 able to parse out the damage related to the breach in
 21 paragraph 60?
 22 MR. LOMAX: Objection to the form of the
 23 question.
 24 THE WITNESS: My answer to that would be no.
 25 BY MR. CHAIKEN:

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1 Q. Okay. So your answer is -- well, I am not
 2 going to state your answer.
 3 A. Pardon?
 4 Q. Strike that.
 5 Sitting here today, you don't know a specific
 6 dollar damage that you can attribute to the breach in
 7 paragraph 60. Would that be true?
 8 A. Yes.
 9 Q. Okay. Is there anybody from IPH that could
 10 provide that answer?
 11 A. Not to my knowledge.
 12 Q. Okay. Okay. Paragraph 63 on Page 41, the
 13 second sentence states, "Nevertheless, Leonardo and Rossi
 14 made no efforts to commence such a test during 2013 and
 15 speaking to the guaranteed performance test."
 16 What evidence does IPH have regarding Leonardo
 17 and Rossi's efforts to commence the test?
 18 A. The same information that Industrial Heat, LLC,
 19 has regarding that issue.
 20 Q. Did you talk to anybody from Industrial Heat,
 21 LLC about that allegation?
 22 A. No.
 23 Q. Okay. Does IPH have any independent knowledge
 24 regarding the allegation other than what it has been told
 25 by Industrial Heat?

Page 25

1 A. No.
 2 Q. Does anyone else from IPH or would anybody else
 3 from IPH be able to answer this question better than you?
 4 A. I don't know that.
 5 Q. Okay. Paragraph 64 states, "Despite Rossi's
 6 presence and participation in the testing in North
 7 Carolina, the E-Cat testing in North -- excuse me -- the
 8 E-Cat testing in North Carolina was never able reliably or
 9 credibly to reproduce the COP of 10.5 as reported by Penon
 10 or even reach the lowest threshold identified in the
 11 license agreement, which was a COP of 4.0."
 12 What evidence is IPH aware of to support that
 13 allegation?
 14 A. The same evidence that Industrial Heat, LLC has
 15 to support that evidence.
 16 Q. And did you talk to somebody from Industrial
 17 Heat about that allegation?
 18 A. No.
 19 Q. Do you have any independent knowledge about
 20 that allegation other than what Industrial Heat knows?
 21 A. No.
 22 Q. Does anyone else from IPH or would anyone else
 23 from IPH be better able to answer this question?
 24 A. I don't know that.
 25 Q. Okay. If you go to paragraph 66 on Page 43,

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1 Q. Partners.
 2 A. And Cherokee Advisors, LLC.
 3 Q. Okay. Does it also provide services for
 4 entities that are not affiliates or subsidiaries of
 5 Cherokee Investment Partners or Cherokee Advisors?
 6 A. Not to my knowledge.
 7 Q. Okay. To your knowledge, is Industrial Heat a
 8 subsidiary or affiliate of Cherokee Investment Partners?
 9 A. No.
 10 Q. Is Industrial Heat a subsidiary or affiliate of
 11 Cherokee Advisors?
 12 A. I would consider it an affiliate through the
 13 ownership, common ownership.
 14 Q. Okay. What about IPH? The same?
 15 A. IPH is a -- was a subsidiary of Industrial
 16 Heat, LLC.
 17 Q. My question is, was IPH a subsidiary or
 18 affiliate of Cherokee Advisors?
 19 A. Not a subsidiary.
 20 Q. Affiliate?
 21 A. Through ownership by Industrial Heat, LLC.
 22 Q. Okay. There was a point in time when
 23 Industrial Heat owned IPH; is that correct?
 24 A. IPH -- I'm sorry. Restate.
 25 Q. Industrial Heat -- was there a point in time

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1 when Industrial Heat owned IPH?
 2 A. Not directly.
 3 Q. Indirectly?
 4 A. Yes.
 5 Q. Can you explain how that worked.
 6 A. There was a subsidiary holding entity, I
 7 believe it was called IPH Management, LLC, which was the
 8 intermediate holding entity.
 9 Q. So Industrial Heat owned the management company
 10 which owned IPH BV?
 11 A. That is my recollection.
 12 Q. And that is not the case anymore?
 13 A. No.
 14 Q. And who owns IPH BV today?
 15 A. IPH International BV is owned by IPH BV
 16 Holdings, Limited.
 17 Q. Okay. And when was that change made?
 18 A. I believe it was May 2015.
 19 Q. And why was that change made?
 20 MR. LOMAX: Objection to the form of the
 21 question.
 22 THE WITNESS: The company went through a
 23 restructuring in connection with a capital raise.
 24 BY MR. CHAIKEN:
 25 Q. Was that the capital raise with Woodford

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1 Investment Partners?
 2 A. Yes.
 3 Q. Okay.
 4 A. I'm sorry. You said Woodford Investment
 5 Partners?
 6 Q. Yeah. Did I misstate that?
 7 A. That is not the name, by my recollection.
 8 Q. What was the name?
 9 MR. LOMAX: Objection to the form of the
 10 question.
 11 THE WITNESS: We -- we refer to Woodford as
 12 Woodford Funds. There are two specific Woodford
 13 Funds that invested as part of that restructuring or
 14 capital raise.
 15 BY MR. CHAIKEN:
 16 Q. Okay. Is IPH wholly owned by IH directly or
 17 indirectly today? And I know I may have asked that
 18 earlier, but I just want to make it very clear.
 19 In -- in the structure that it was re -- in
 20 the -- in the restructuring of the entities, sitting here
 21 today, is IPH International BV directly or indirectly
 22 owned by Industrial Heat, LLC?
 23 A. No.
 24 Q. Okay. Turning back to the fourth amended
 25 counterclaim, paragraph 103 on Page 54, paragraph 103

Page 49

1 states, "Notwithstanding the clarity of the
 2 confidentiality provisions set forth above, Rossi, both
 3 individually and on behalf of Leonardo as its owner and
 4 sole operating officer, repeatedly violated the
 5 confidentiality provisions."
 6 What information or proof does IPH have in
 7 support of that allegation?
 8 A. The same information that Industrial Heat, LLC
 9 has to support that allegation.
 10 Q. Did you speak to anyone from Industrial Heat
 11 about that?
 12 A. No.
 13 Q. Does IPH have any information independent of
 14 Industrial Heat?
 15 A. Not to my knowledge.
 16 Q. Would anyone from IPH be able to better answer
 17 my questions regarding that allegation?
 18 A. I can't speak for anyone else. I don't know
 19 that.
 20 Q. Okay. Paragraph 104 on Page 54 states,
 21 "Addressing solely the time period prior to the filing of
 22 their complaint in April 2016, Leonardo and Rossi violated
 23 the first confidentiality provision by disclosing various
 24 specific terms of the agreement.
 25 "Paragraph A, Leonardo and Rossi disclosed that

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1 their agreement with counter-plaintiffs required a test of
 2 the plant."
 3 What proof does IPH have in support of that
 4 allegation?
 5 A. The same information that Industrial Heat, LLC
 6 has to support that allegation.
 7 Q. Do you have any independent knowledge other
 8 than what Industrial Heat has?
 9 A. No.
 10 Q. Did you speak to anyone from Industrial Heat
 11 prior to coming here today about that allegation?
 12 A. No.
 13 Q. Would anyone from IPH be able to better answer
 14 my questions?
 15 A. I don't know that. I can't speak for anyone
 16 else.
 17 Q. Okay. Paragraph B states -- well, before I get
 18 on to paragraph B, paragraph A, do -- does IPH know
 19 exactly when Leonardo and Rossi made that disclosure?
 20 A. IPH has the same information that Industrial
 21 Heat has.
 22 Q. Okay. Does IPH know, sitting here today, when
 23 that breach of the confidentiality provision was made?
 24 A. IPH would know the same thing that Industrial
 25 Heat, LLC, knows.

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1 Q. But I am asking what you know, sitting here
 2 today.
 3 A. Me personally?
 4 Q. No. You on behalf of IPH.
 5 A. IPH knows the same thing Industrial Heat, LLC,
 6 knows.
 7 Q. Okay. But you are here on behalf of IPH,
 8 correct?
 9 A. Yes.
 10 Q. Okay. I am asking what IPH knows, sitting here
 11 today?
 12 A. I didn't discuss this with anyone at IH, so no,
 13 I don't personally know.
 14 Q. I am not asking what you personally know. I am
 15 asking what IPH knows.
 16 MR. LOMAX: Objection to the form of the
 17 question.
 18 THE WITNESS: IPH know the same thing that
 19 Industrial Heat, LLC knows.
 20 BY MR. CHAIKEN:
 21 Q. Okay. Sitting here today, IPH can't answer my
 22 question?
 23 MR. LOMAX: Objection to the form of the
 24 question.
 25 THE WITNESS: IPH's answer is that IPH has the

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1 same information that Industrial Heat, LLC has.
 2 BY MR. CHAIKEN:
 3 Q. Okay. Let's go to paragraph B. "Leonardo and
 4 Rossi disclose that their agreement with
 5 counter-plaintiffs required a test to be conducted over
 6 400 days."
 7 What evidence does IPH have in support of that
 8 allegation?
 9 A. The same information that Industrial Heat, LLC,
 10 has.
 11 Q. And did you speak to anyone from Industrial
 12 Heat about it?
 13 A. No.
 14 Q. And does IPH have any knowledge independent of
 15 what Industrial Heat knows?
 16 A. Not to my knowledge.
 17 Q. And does anyone else from IPH have better
 18 information about this than you?
 19 A. I can't speak for anyone else. I don't know
 20 that.
 21 Q. Paragraph C states, "Leonardo and Rossi
 22 disclosed that their agreement with counter-plaintiffs
 23 required a test involving 350 days of operation at the
 24 E-Cat plant."
 25 What proof or evidence does IPH have in support

Page 53

1 of that allegation?
 2 A. The same information that Industrial Heat, LLC
 3 has to support that allegation.
 4 Q. Did you speak to anyone from Industrial Heat
 5 about that allegation?
 6 A. No.
 7 Q. Does IPH have any knowledge independent of what
 8 Industrial Heat knows?
 9 A. Not to my knowledge.
 10 Q. Would anyone from IPH have better knowledge
 11 than you?
 12 A. I don't know that. I can't speak for anyone
 13 else.
 14 Q. Paragraph D states, "Leonardo and Rossi
 15 disclosed that their agreement with counter-plaintiffs
 16 required a guaranteed performance or a guarantee of
 17 performance test."
 18 What proof or evidence does IPH have in support
 19 of that allegation?
 20 A. The same information that Industrial Heat, LLC
 21 has to support that allegation.
 22 Q. Did you speak to anyone from Industrial Heat
 23 about that?
 24 A. No.
 25 Q. Does IPH have any knowledge independent of what

Page 54

1 Industrial Heat knows?
 2 A. Not to my knowledge.
 3 Q. Would anyone from IPH be better able to answer
 4 that question?
 5 A. I don't know that. I can't speak for anyone
 6 else.
 7 Q. Okay. Going to Page 55, paragraph 106, "IPH
 8 alleges that Leonardo and Rossi violated the second
 9 confidentiality provision by disclosing various
 10 information about the E-Cat IP, specifically paragraph A.
 11 Leonardo and Rossi, without any written waiver from IPH,
 12 provided samples of the E-Cat fuel to the scientists
 13 preparing the Lugano report or authorizing scientists to
 14 obtain samples."
 15 What proof does IPH have in support of that
 16 allegation?
 17 A. The same information that Industrial Heat, LLC
 18 has. And I see there is a reference to an exhibit.
 19 Q. Yeah. Okay. Did you speak to anyone from
 20 Industrial Heat about that allegation?
 21 A. No.
 22 Q. Does IPH have any knowledge independent of what
 23 Industrial Heat knows?
 24 A. Not to my knowledge.
 25 Q. Do you know if Tom Darden or JT Vaughn approved

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1 Leonardo and Rossi providing samples to the scientists who
 2 prepared the Lugano report?
 3 A. No.
 4 Q. Would anyone from IPH other than yourself have
 5 any additional information regarding these allegations?
 6 A. Not to my knowledge.
 7 Q. Do you know how IPH has been harmed or if IPH
 8 has been harmed as a result of this disclosure?
 9 A. Other than as stated in this document?
 10 Q. Yeah.
 11 A. A breach of contract. We went over this
 12 before.
 13 Q. Right. But this is a different breach of
 14 contract, right?
 15 A. It is a different allegation.
 16 Q. Right. Right. It is a -- it is a different
 17 allegation. So has IPH been harmed separately as a result
 18 of the violation of the confidentiality provision versus
 19 providing or -- or delivering the plant late?
 20 A. It's -- it's the breach of contract that's --
 21 that's the -- leads to the damage in this document.
 22 Q. Right. But there are separate breaches, right?
 23 A. Yes.
 24 Q. Okay. So one breach that we talked about
 25 earlier was the plant was delivered not timely or

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1 untimely. Would you agree with that?
 2 A. Yes. We did review that earlier.
 3 Q. Okay. Now we are talking about a breach of the
 4 confidentiality provision. Do you understand that?
 5 A. Yes.
 6 Q. Okay. Two different breaches, correct?
 7 A. Yes.
 8 Q. Okay. How has IPH been harmed by the breach of
 9 the confidentiality provision?
 10 A. The subject matter of the contract is
 11 intellectual property that -- and the contract included
 12 specific provisions to maintain confidentiality of that
 13 information to protect the parties in the contract. So a
 14 breach of that provision would be a direct violation of
 15 the contract.
 16 Q. Okay.
 17 A. And by that disclosure of confidential
 18 information into -- to persons outside the parties would
 19 lead -- would, by my understanding, lead to damages.
 20 Q. Okay. My question to you is, what are those
 21 damages?
 22 A. In paragraph 98 --
 23 Q. Yep.
 24 A. -- did we cover that? Is that what you are
 25 asking?

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1 Q. No. Well, I am asking you, is there a dollar
 2 amount that you can attribute to this claim by IPH that
 3 Leonardo and Rossi have violated the provisions of the
 4 license agreement as it relates to confidentiality? So --
 5 A. I think your question was about dollar amounts,
 6 and the dollar amounts are stipulated in paragraph 98.
 7 Q. Okay. Is there anywhere else that dollar
 8 amounts are stipulated to or are alleged as it relates to
 9 specifically the breach of the non-confidentiality
 10 provision -- excuse me, breach of the confidentiality
 11 provision?
 12 MR. LOMAX: Objection to the form of the
 13 question.
 14 THE WITNESS: I don't recall that at this time.
 15 BY MR. CHAIKEN:
 16 Q. Looking at paragraph 98, which you referred to,
 17 do you have that in front of you, 98?
 18 A. Yes.
 19 Q. You are saying that IPH has made a damage claim
 20 for, at least in subparagraph A-98, 1.5 million and 10
 21 million. See that?
 22 A. Yes, I see that.
 23 Q. Did IPH pay Leonardo 1.5 million?
 24 A. No.
 25 Q. Who did?

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1 A. Industrial Heat.
 2 Q. So why is IPH entitled to a return of
 3 1.5 million?
 4 MR. LOMAX: Objection to the form of the
 5 question.
 6 THE WITNESS: Did I say they were entitled to
 7 the 1.5 million?
 8 BY MR. CHAIKEN:
 9 Q. No. You said they were seeking damages for
 10 that. I am trying to understand why.
 11 A. The paragraph says the counter-plaintiffs, as a
 12 group --
 13 Q. Yeah.
 14 A. -- are seeking these damages.
 15 Q. Okay.
 16 A. IPH is one of the counter-plaintiffs.
 17 Q. Okay. So is IPH seeking a return of
 18 1.5 million?
 19 MR. LOMAX: Objection to the form of the
 20 question.
 21 THE WITNESS: It's -- it, along with the other
 22 counter-plaintiffs, is seeking the damages that are
 23 stipulated in paragraph 98.
 24 BY MR. CHAIKEN:
 25 Q. Okay. But I am asking you specifically about

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1 IPH right now. What is IPH seeking?
 2 MR. LOMAX: Objection to the form of the
 3 question.
 4 THE WITNESS: IPH is specifically seeking the
 5 damages that it incurred that are included in this
 6 paragraph. And I have already said that it did not
 7 pay the 1.5 million.
 8 BY MR. CHAIKEN:
 9 Q. Okay.
 10 A. So to the extent the rest of these damages were
 11 incurred by IPH, IPH is seeking those damages.
 12 Q. Okay. And what specifically is the amount that
 13 IPH is seeking?
 14 MR. LOMAX: Objection to the form of the
 15 question.
 16 THE WITNESS: The \$10 million payment.
 17 BY MR. CHAIKEN:
 18 Q. IPH made the \$10 million payment to Leonardo?
 19 A. Do you want to go through the transaction?
 20 Q. Yeah. I am asking. Did IPH make the
 21 \$10 million payment to Leonardo?
 22 A. IPH -- IH, LLC, contributed the \$10 million in
 23 capital to IPH and -- and then the \$10 million payment
 24 to -- for the license payment --
 25 Q. Okay.

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1 A. -- was attributed to IPH.
 2 Q. Okay. So you are saying IPH is seeking
 3 \$10 million in damages?
 4 MR. LOMAX: Objection to the form of the
 5 question.
 6 THE WITNESS: Among the other amounts
 7 included --
 8 BY MR. CHAIKEN:
 9 Q. Okay.
 10 A. -- incurred by IPH.
 11 Q. What other amounts are those?
 12 MR. LOMAX: Objection to the form of the
 13 question.
 14 THE WITNESS: Well, it says the other payments
 15 made to Leonardo and Rossi to reimburse them for
 16 unnecessary services, equipment and expenses.
 17 BY MR. CHAIKEN:
 18 Q. And has IPH computed what those amounts are?
 19 A. I'm sure we have. I don't have that number
 20 here right now. But we have and I think we have provided
 21 it.
 22 Q. Okay. And did you prepare -- did you review
 23 that before coming today?
 24 A. I reviewed a list of those --
 25 Q. Okay.

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1 A. -- of those charges.
 2 Q. Do you have an approximate number as to what
 3 that totals to?
 4 A. I don't recall the total. I just remember the
 5 list.
 6 Q. Okay. Let's go back now to paragraph 106A and
 7 what portion of those damages that IPH is seeking is
 8 attributable to the breach of the confidentiality
 9 provision?
 10 MR. LOMAX: Objection to the form of the
 11 question.
 12 THE WITNESS: I'm not aware that the damages
 13 have been bifurcated in that manner.
 14 BY MR. CHAIKEN:
 15 Q. Okay. Sitting here today, can IPH tell me how
 16 much they have been damaged as a result of the breach of
 17 the confidentiality provision as alleged in
 18 paragraph 106A?
 19 MR. LOMAX: Objection to the form of the
 20 question.
 21 THE WITNESS: Not specifically with respect to
 22 106 -- we have not bifurcated the damages in that
 23 way.
 24 BY MR. CHAIKEN:
 25 Q. Okay. Let's go to paragraph 106B. B states,

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1 "Leonardo and Rossi, without any written waiver from IPH,
 2 disclosed scientific information about the E-Cat fuels to
 3 Norman Cook, a professor at Kansai University in Osaka,
 4 Japan."
 5 Q. What proof or evidence does IPH have in support
 6 of that allegation?
 7 A. The same evidence that Industrial Heat, LLC has
 8 to support the allegation. And there is a reference to an
 9 exhibit.
 10 Q. Right. And did you speak to anyone from
 11 Industrial Heat about that allegation?
 12 A. No.
 13 Q. Does IPH have any knowledge independent of what
 14 Industrial Heat knows?
 15 A. Not that I'm aware of.
 16 Q. Do you know if anyone from Industrial Heat or
 17 whether Tom Darden or JT Vaughn approved of Leonardo and
 18 Rossi sharing information with Dr. Cook?
 19 A. No.
 20 Q. Would anyone from IPH have any information
 21 other than what you told me today?
 22 A. I don't know that. I can't speak for anyone
 23 else about that.
 24 Q. Paragraph C states, "Leonardo and Rossi,
 25 without any written waiver from IPH, have made public

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1 comments about the E-Cat fuel sample on the Internet."
 2 Q. What proof or facts does IPH have in support of
 3 those allegations?
 4 A. The same support that Industrial Heat has --
 5 Industrial Heat, LLC has to support the allegation.
 6 Q. Did you speak to anyone from Industrial Heat,
 7 LLC about that allegation?
 8 A. No.
 9 Q. Does IPH have any knowledge independent of what
 10 Industrial Heat knows?
 11 A. Not to my knowledge.
 12 Q. Does anyone from IPH have better information
 13 than you have?
 14 A. I don't know that. I can't speak for anyone
 15 else.
 16 Q. Okay. Do you know what specific confidential
 17 information Leonardo and Rossi disclosed that is violative
 18 of the confidentiality provision?
 19 A. I'm sorry. Restate, please.
 20 Q. Yeah. Do you know what specific confidential
 21 information Leonardo and Rossi disclosed that is violative
 22 of the confidentiality provision?
 23 A. I don't.
 24 Q. Okay. Paragraph 113 on Page 56 states
 25 "Leonardo and Rossi's failure to assign the license

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1 patents caused IPH to suffer damages that is unable to
 2 secure any value that might have been derived from having
 3 control over the license and patents."
 4 Q. What proof or evidence do you have in support
 5 of the allegations that Leonardo and Rossi failed to
 6 assign license patents to IPH?
 7 A. The same information that Industrial Heat, LLC
 8 has to support the allegation.
 9 Q. And did you speak to anyone from Industrial
 10 Heat about that allegation?
 11 A. No.
 12 Q. Does IPH have knowledge independent of what
 13 Industrial Heat knows?
 14 A. Not to my knowledge.
 15 Q. Would anyone from IPH be able to better answer
 16 the question?
 17 A. I don't know that. I can't speak for anyone
 18 else.
 19 Q. Is it your understanding that IPH is claiming
 20 that the license that is at issue in this case is
 21 valueless?
 22 MR. LOMAX: Objection to the form of the
 23 question.
 24 THE WITNESS: Can you restate the question.
 25 BY MR. CHAIKEN:

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1 Q. Yeah. Is it your understanding that IPH is
 2 claiming that the IP, pursuant to the license agreement,
 3 is valueless?
 4 MR. LOMAX: Objection to the form of the
 5 question.
 6 THE WITNESS: Valueless?
 7 BY MR. CHAIKEN:
 8 Q. Yeah.
 9 A. Not specifically.
 10 Q. Is it your understanding that the IP that is
 11 the subject of the license agreement has some value?
 12 MR. LOMAX: Objection to the form of the
 13 question.
 14 THE WITNESS: Based on the results of the
 15 efforts to replicate the IP, we haven't been able to
 16 determine an answer to that question. I think that
 17 is the issue.
 18 BY MR. CHAIKEN:
 19 Q. So, sitting here today, IPH doesn't know
 20 whether it has any value, if any. Would you agree with
 21 that?
 22 A. So far we have not been able to prove that
 23 there is any value in the intellectual property in the
 24 license agreement.
 25 Q. Okay. So what damages are or is IPH claiming

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1 as a result of the claim that Leonardo and Rossi breached
 2 the license agreement by failing to assign license
 3 patents?
 4 A. The same damages that we have reviewed in
 5 paragraph 98.
 6 Q. Is there a dollar amount, a dollar amount that
 7 is in paragraph 98?
 8 A. To my knowledge we haven't bifurcated the
 9 dollar amounts in that manner.
 10 Q. Okay. So you can't assign a specific dollar
 11 amount to damages as a result of Leonardo and Rossi's
 12 failure to assign license patents; is that correct?
 13 MR. LOMAX: Objection to the form of the
 14 question.
 15 THE WITNESS: No.
 16 BY MR. CHAIKEN:
 17 Q. No, it is not correct or no, you can't?
 18 A. We have not been able to assign a value to that
 19 specific allegation.
 20 Q. Okay. Paragraph 117 states on Page 57 that,
 21 "Leonardo also failed to keep IPH informed of the progress
 22 of the patent application related to the license patents.
 23 And, finally, Leonardo, without prior consent from IPH,
 24 abandoned several patent applications."
 25 What evidence or proof does IPH have in support

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1 of that allegation?
 2 A. IPH has the same information that IH, LLC, has
 3 to support that allegation.
 4 Q. And did you speak to anyone from Industrial
 5 Heat about that allegation?
 6 A. No.
 7 Q. And does IPH have any independent knowledge
 8 regarding that allegation?
 9 A. Not to my knowledge.
 10 Q. Does anyone else from IPH have greater
 11 information about that allegation than you?
 12 A. I don't know that. I can't speak for anyone
 13 else.
 14 Q. Paragraph 116 states, "After executing the
 15 license agreement, Leonardo filed patent applications
 16 relating to license patents without informing IPH."
 17 Do you know what patent applications those
 18 were?
 19 A. No.
 20 Q. Do you know how many licensed patent
 21 applications Leonardo and Rossi filed?
 22 A. IPH -- I'm sorry, Industrial Heat, LLC would
 23 have that information, so I would refer you to Industrial
 24 Heat, LLC for that answer.
 25 Q. Okay. Do you have any -- did you speak to

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1 Industrial Heat about that?
 2 A. No.
 3 Q. Do you know what dollar amounts IPH is claiming
 4 as a result of Leonardo's failure to inform IPH about
 5 patent applications it was filing?
 6 A. Did we cover this a few minutes ago?
 7 Q. Different question. Pretty close. Pretty
 8 similar but close.
 9 A. But I'm not recalling.
 10 Q. Sure. The other one talks about --
 11 A. Why don't you just ask the question if it is a
 12 different question.
 13 Q. Sure. This one is specific to the allegation
 14 that Leonardo filed patent applications relating --
 15 relating to the license patents without informing IPH.
 16 That is in paragraph 116.
 17 And it was to combine it with 117 where
 18 Leonardo filed to keep IPH informed about its patent
 19 applications and abandoned several patent applications
 20 without the written consent of IPH.
 21 So taking 116 and 117 together, is there a
 22 dollar amount that IPH is claiming as a result of the
 23 breaches set forth in paragraphs 116 and 117?
 24 MR. LOMAX: Objection to the form of the
 25 question.

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1 THE WITNESS: Sorry, but I am confused about
 2 how this is different from the previous question.
 3 BY MR. CHAIKEN:
 4 Q. Sure. Well, the previous question was about
 5 the failure to assign licensed patents. And -- and this
 6 one deals with the failure to inform or consult on patent
 7 applications. So they are different allegations made by
 8 IPH.
 9 A. I'm sorry. I'm confused. I thought we covered
 10 117 before but you are saying we had not.
 11 Q. No, we had not.
 12 MR. LOMAX: Well, I think we talked about 117
 13 in a different context.
 14 MR. CHAIKEN: Context, right.
 15 MR. LOMAX: We already did talk about 117,
 16 right?
 17 MR. CHAIKEN: Well, yeah, we talked about 117
 18 in terms of what information he had but not about the
 19 damages. They are different allegations and
 20 different damages, I would guess.
 21 So I had asked about damages about
 22 paragraph 113, which was the failure to assign
 23 patents, which is a different allegation as to what
 24 is contained in 116 and 117.
 25 BY MR. CHAIKEN:

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1 Q. Let me ask it this way, maybe we can clarify:
 2 Is it your understanding that there is a difference
 3 between a failure to assign licensed patents and a
 4 failure to consult about existing patents?
 5 A. No.
 6 Q. There is no difference?
 7 A. I'm sorry. If this is trying to confuse me, I
 8 apologize. I'm --
 9 Q. I am not trying to confuse you.
 10 A. I am confused.
 11 Q. Okay. I am absolutely not trying to confuse
 12 you, but I am looking at your counterclaim, IPH's
 13 counterclaim.
 14 A. Okay.
 15 Q. Is there a difference between what is alleged
 16 in paragraph 113 and what is alleged in paragraphs 116 and
 17 117, in your mind?
 18 A. Yes.
 19 Q. Okay. What is the difference?
 20 A. 113 references licensed patents, patents, and
 21 117 or I guess 116 refers to filed patent applications.
 22 Q. Okay.
 23 A. Those, while I'm not a patent expert, seem to
 24 be different to me.
 25 Q. Fair enough. And I treated them as different

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1 myself. So I was asking, is there a difference between
 2 the damage you are claiming pursuant to the allegations
 3 of -- of breach in 113 versus the allegations of breach in
 4 116 and 117?
 5 A. We have not bifurcated damages in that manner.
 6 Q. Okay. That -- that is what I was getting to.
 7 I wasn't trying to confuse you.
 8 Does -- looking at paragraphs 120 through 124,
 9 does IPH claim that Industrial -- excuse me, Leonardo and
 10 Rossi have violated the covenant not to compete?
 11 A. Yes, it states in here that --
 12 Q. And specifically you are referring to what
 13 paragraph?
 14 A. Paragraph 23.
 15 Q. 123?
 16 A. I'm sorry, 123, states that, "As a result of
 17 the conduct referenced in the preceding paragraphs,
 18 regardless of whether it will ever lead to creation of a
 19 viable commercial product that can be sold leased or
 20 rented, is in direct conflict with the license agreement."
 21 And then paragraph 124 --
 22 Q. Okay.
 23 A. -- references the covenant not to compete.
 24 Q. Right. And that refers to paragraph -- I guess
 25 you are referring to -- 123 refers back to paragraph 121

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1 where it states that, "Leonardo and Rossi claim they have
 2 sold at least three E-Cat units."
 3 Do you see that?
 4 A. Yes.
 5 Q. Do you know whether or not that was true,
 6 whether or not Leonardo and Rossi had, in fact, sold at
 7 least three E-Cat units?
 8 MR. LOMAX: Objection to the form of the
 9 question.
 10 THE WITNESS: The information we would have
 11 about that would be the same information that
 12 Industrial Heat, LLC has about that allegation.
 13 BY MR. CHAIKEN:
 14 Q. Okay. So IPH doesn't have information
 15 independent of what Industrial Heat has?
 16 A. Yes.
 17 Q. And did you speak to anyone from Industrial
 18 Heat about the allegations contained in paragraphs 120
 19 through 124?
 20 A. No.
 21 Q. And does IPH have any information independent
 22 of what Industrial Heat has?
 23 A. Not to my knowledge.
 24 Q. Do you know when in time Leonardo and Rossi
 25 allegedly violated the covenant not to compete?

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1 A. I don't have information about that other than
 2 what Industrial Heat, LLC, has.
 3 Q. And do you know what damages IPH incurred as a
 4 result of this alleged breach?
 5 A. We have not bifurcated them, the damages in
 6 that manner.
 7 Q. Okay. Going back to my -- I asked you
 8 questions about 113 and the damages related to the
 9 assignment of patents. I want to -- I forgot to ask you
 10 questions. Do you know when in time Leonardo and Rossi
 11 failed to assign licensed patents?
 12 A. IPH International BV has the same information
 13 that Industrial Heat, LLC has about that allegation.
 14 Q. So, sitting here today, you don't know when in
 15 time?
 16 A. No.
 17 Q. When in time -- I'm referring now to paragraphs
 18 116 and 17 again -- when in time did Leonardo and Rossi
 19 file patent applications without informing IPH?
 20 A. That information is -- would be information
 21 provided by Industrial Heat, LLC.
 22 Q. So you don't know that, sitting here today,
 23 when in time that happened?
 24 A. I don't know any information other than what
 25 Industrial Heat, LLC would know.

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1 ERRATA SHEET
 2 IN RE: ANDREA ROSSI, ET AL. v. THOMAS DARDEN, ET AL.
 3 DEPO OF : SLOCUM HATCH FOGLEMAN
 4 TAKEN: February 14, 2017
 5 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE

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14 State of Florida)
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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
 19 here.
 20 Date _____ SLOCUM HATCH FOGLEMAN

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1 REPORTER'S DEPOSITION CERTIFICATE
 2
 3 I, ELIZABETH CORDOBA, RMR, CRR, FPR,
 4 certify that I was authorized to and did stenographically
 5 report the deposition of SLOCUM HATCH FOGLEMAN, the
 6 witness herein on February 14, 2017; that a review of the
 7 transcript was requested; that the foregoing pages
 8 numbered from 1 to 234 inclusive is a true and complete
 9 record of my stenographic notes of the deposition by said
 10 witness; and that this computer-assisted transcript was
 11 prepared under my supervision.
 12 I further certify that I am not a relative,
 13 employee, attorney or counsel of any of the parties, nor
 14 am I a relative or employee of any of the parties'
 15 attorney or counsel connected with the action.
 16 DATED this February 26, 2017.
 17
 18
 19
 20 *E Cordoba*
 21 _____
 22 ELIZABETH CORDOBA, RMR, CRR,
 23 FPR
 24
 25

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1 CERTIFICATE OF OATH OF WITNESS
 2
 3
 4 STATE OF FLORIDA)
 5) SS:
 6 COUNTY OF MIAMI-DADE)
 7
 8 I, ELIZABETH CORDOBA, RMR, CRR, FPR, Notary
 9 Public in and for the State of Florida at Large, certify
 10 that the witness, SLOCUM HATCH FOGLEMAN, personally
 11 appeared before me on February 14, 2017 and was duly
 12 sworn by me.
 13 WITNESS my hand and official seal this
 14 February 26, 2017.
 15
 16 *E Cordoba*
 17 _____
 18 ELIZABETH CORDOBA, RMR, CRR, FPR
 19 Notary Public, State of Florida
 20 at Large
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 22 My commission expires: 3/17/2019
 23
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 8 SLOCUM HATCH FOGLEMAN
 9 c/o CHRISTOPHER LOMAX ESQ.
 10 JONES DAY
 11 600 BRICKELL AVENUE
 12 SUITE 3300
 13 MIAMI FL 33131
 14 RE: ANDREA ROSSI, ET AL. v. THOMAS DARDEN, ET AL.
 15 DEPO OF: SLOCUM HATCH FOGLEMAN
 16 TAKEN : February 14, 2017
 17 READ & SIGN BY: Within 30 Days
 18
 19 Dear SLOCUM HATCH FOGLEMAN:
 20 This letter is to advise you that the transcript of the
 21 deposition listed above is completed and is awaiting
 22 reading and signing.
 23 Please arrange to stop by our office in Suite 2250, 2
 24 South Biscayne Blvd., Miami, Florida to read and sign the
 25 transcript. Our office hours are from 8:00 a.m. to 4:00
 p.m. Monday through Friday. Depending on the length of
 the transcript, you should allow yourself sufficient
 time.
 If the reading and signing has not been completed prior
 to the referenced date, we shall conclude that you have
 waived the reading and signing of the deposition
 transcript. Your prompt attention to this matter is
 appreciated.
 Sincerely,
 ELIZABETH CORDOBA, RMR, CRR, FPR
 cc: All counsel on appearance page