

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
Monday, February 13, 2017
9:07 a.m. - 5:18 p.m.

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

Taken on behalf of the Plaintiff before
Elizabeth Cordoba, RMR, CRR, FPR, Notary Public in
and for the State of Florida at Large, pursuant to
Plaintiff's Notice of Taking Deposition in the above
cause.

1 A. Let me refresh. The reason I remember, I
2 remember the format. It is an outline of what would take
3 place for the validation protocol in the agreement.

4 Q. So this is what the parties agreed to would be
5 the protocol for purposes of the validation tests as
6 identified in Section 3.2 (a) of the agreement?

7 A. I believe that is correct, Brian. I am just
8 reviewing that here. I believe that is correct.

9 Q. Okay. Now, you said that you prepared it with
10 the help of Tom and T. Barker Dameron; is that correct?

11 A. I believe that is correct.

12 Q. Did you have any other scientists or engineers
13 participate in its draft or review?

14 A. I don't recall. I don't recall. I can't
15 recall, for example, did I run this by the 3 Phoenix guys
16 or Tom D'Muhala? I don't think so.

17 Q. Did you think you had enough eyes on it that
18 you felt comfortable with the protocol at the time?

19 A. Yeah. It is a good thing to specify, at the
20 time, versus kind of retrospectively. At the time I think
21 we thought that because we thought that it was a serious
22 amount of real energy and a serious real COP. And if
23 those were the cases, then it shouldn't be as difficult to
24 determine its performance. Or at least that was our
25 belief at the time. I think we underestimated it.

1 for Cherokee.

2 Do you know why they reference Cherokee in this
3 matter?

4 A. I don't. But, you know, it was -- sure, again,
5 in reference to, as we have described earlier, stuff that
6 Tom and John are doing, but on the venture side of things.

7 Q. And down below in their opinion they state that
8 they believed based on, I am quoting, "on our collective
9 review and discussion that the test is sufficient to
10 demonstrate whether the tested device meets the
11 contractual specifications."

12 Did you have any discussions with Dewey Weaver
13 or Paul Morris about the protocol?

14 A. I imagine that I did. I don't recall a lot of
15 those discussions or particulars about those discussions.
16 But it is hard to believe that I would not have asked them
17 to elaborate on this.

18 Q. Now, going back to the Exhibit A to the first
19 amendment. That one. Exactly. It references an expert
20 responsible for validation, "ERV".

21 Was there an ERV selected for purposes of the
22 validation test?

23 MR. BELL: I'm sorry, where are you? Okay. I
24 apologize. I am with you.

25 THE WITNESS: We -- you know, we thought it was

1 A. Not to my knowledge.

2 Q. Does Industrial Heat claim today that it's
3 entitled to keep the license to the E-Cat IP?

4 A. That it is entitled to keep the license to the
5 E-Cat IP?

6 Q. Yeah.

7 A. I see no reason why we wouldn't be entitled to
8 keep the license. I don't think that we have any interest
9 in retaining the license because it doesn't work.

10 Q. Has Industrial Heat offered to give the license
11 back to Leonardo Corporation?

12 A. I can't recall. Have we offered that? I don't
13 recall. I know that has been discussed.

14 MR. BELL: Don't go into discussions that you
15 have had with your counsel.

16 THE WITNESS: I apologize.

17 MR. BELL: So I think his answer was -- let's
18 have the question read back. Just answer his
19 question yes or no.

20 (A portion of the record was read by the
21 reporter.)

22 THE WITNESS: I'm not sure. I don't think so
23 at this point.

24 BY MR. CHAIKEN:

25 Q. Does Industrial Heat believe it has value?

1 A. That the license agreement has value to date?

2 Q. Yes.

3 A. No.

4 Q. Does Industrial Heat believe that the E-Cat IP
5 has value?

6 A. No, with one caveat. And this is, you know, it
7 would be an obtuse kind of minimal value, which would be
8 if some of the claims in some of its patent applications
9 were allowed and they, in fact, relate to something
10 somebody else is doing that does work. But that is a
11 pretty hypothetical scenario, so I think the answer is no.
12 But you could paint a hypothetical or possibly it could be
13 some value there.

14 Q. Is there a provision in the license agreement,
15 that is Exhibit 13 still, that provides that IH must be
16 able to successfully replicate a certain COP result
17 without the assistance of Dr. Rossi?

18 MR. BELL: Objection to form.

19 THE WITNESS: I would have to review the
20 license agreement. Clearly, there was a --
21 requirements that -- I would have to review it,
22 Brian. I'm not sure.

23 BY MR. CHAIKEN:

24 Q. Are you aware of one sitting here today?

25 A. What is that?

1 need more information to be able to make that sort of
2 assessment.

3 Q. Okay. Looking at the allegations in the
4 counterclaim, paragraph 50 is a recitation of a Rossi
5 e-mail dated April 23, 2013.

6 And you state in paragraph 51: Upon
7 information and belief, Rossi had no such meeting with the
8 Ferrara Health Office and Rossi's statement was false that
9 Italian law would not allow for the 24-hour validation
10 process as set forth in the license agreement without
11 first obtaining a permit that would require "at least six
12 months" to obtain.

13 What proof do you have that no such meeting
14 took place?

15 A. We have no proof that such meeting took place.
16 I guess that is our proof.

17 Q. Got it. Okay. What proof do you have that
18 there is no Italian law that would require a permit for
19 such test?

20 A. Counsel has looked into this and they have
21 looked into Italian law in this matter.

22 Q. Okay. Do you know if -- well, strike that. I
23 will move on.

24 Did your -- do you have an understanding of
25 what the Italian law actually provides as it relates to

1 such a validation process? Is it set forth in the license
2 agreement?

3 A. Do I?

4 Q. Yes.

5 A. I'm not sure. I would have to ask our counsel.
6 But I don't think that it requires permitting for this
7 sort of activity.

8 Q. And what is the basis for your statement, other
9 than communications with your counsel?

10 A. Communication with the counsel.

11 Q. Okay.

12 A. I haven't done the primary analysis of Italian
13 law.

14 Q. Okay. I am going to refer you to paragraphs 95
15 and 96 of your counterclaim, which is on page 52 and 53.
16 And this goes right to what we have been talking about,
17 the ability to replicate.

18 A. Mm-hmm.

19 Q. And 95 sets forth that: Leonardo and Rossi
20 purportedly transferred and delivered all E-Cat IP.

21 And paragraph 96, Industrial Heat states: Only
22 one of three conclusions can be drawn from the foregoing
23 facts. One, Leonardo and Rossi did not transfer and
24 deliver all E-Cat IP. Two, validation was never achieved
25 and Penon's reported COP calculations were false. Or