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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.

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?

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

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

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

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.

1 MR. LOMAX: Objection to the form of the  
2 question.

3 THE WITNESS: I don't see payment of --  
4 nonpayment of taxes referenced specifically in  
5 paragraph 98.

6 BY MR. CHAIKEN:

7 Q. Okay. Do you have an understanding as to how  
8 IPH was damaged as a result of Leonardo and Rossi's  
9 failure to pay taxes?

10 A. My understanding of the provision in the  
11 contract is to protect the parties from perhaps a claim  
12 resulting from nonpayment of tax against perhaps a  
13 property, the subject property of the license agreement.

14 Q. Did any such claim take place or happen?

15 A. Not to my knowledge.

16 Q. Okay. Do you have knowledge of any damage that  
17 IPH incurred as a result of the allegation that Leonardo  
18 and Rossi failed to pay taxes?

19 MR. LOMAX: Objection to the form of the  
20 question.

21 THE WITNESS: I'm not aware of that.

22 BY MR. CHAIKEN:

23 Q. Going back to paragraph 135, Page 61. I take  
24 it back. Paragraph 134 states, "Rossi and Leonardo, JMP  
25 and Johnson, falsely represented to Industrial Heat that