

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA )  
3 ANDREA ROSSI and LEONARDO )  
CORPORATION, )  
4 Plaintiffs, )  
5 VS. )  
6 THOMAS DARDEN; JOHN T. VAUGHN; ) No. 1:16-cv-2119-CMA  
INDUSTRIAL HEAT, LLC; IPH )  
7 INTERNATIONAL B.V.; and )  
CHEROKEE INVESTMENT PARTNERS, )  
8 LLC, )  
9 Defendants. )  
INDUSTRIAL HEAT, LLC and IPH )  
10 INTERNATIONAL B.V., )  
11 Counter-Plaintiffs, )  
12 Vs. )  
13 ANDREA ROSSI and LEONARDO )  
CORPORATION, )  
14 Counter-Defendants, )  
15 And )  
16 J.M. PRODUCTS, INC.; HENRY )  
17 JOHNSON; FABIO PENON; UNITED )  
STATES QUANTUM LEAP, LLC; )  
18 FULVIO FABIANI; and JAMES )  
BASS, )  
19 Third-Party Defendants. )  
20  
21 Videotaped Deposition of  
THOMAS DARDEN  
22 (Taken by Plaintiff)  
3509 North Haworth Drive, Suite 403, Raleigh, North Carolina  
23  
February 16, 2017  
24 Reported in Stenotype By  
Leslie Christian  
25 Transcript produced by computer-aided transcription

02/16/2017 Thomas Darden

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1 record at 11:54 a.m.

2 (Whereupon a break was taken.)

3 THE VIDEOGRAPHER: We are back on the  
4 record at 12:03 p.m.

5 (BY MR. CHAIKEN)

6 Q. Mr. Darden, I was about to ask you some  
7 questions about what had been marked as Exhibit  
8 Number 17. Counsel -- your counsel and I have been  
9 discussion it off the record.

10 MR. CHAIKEN: I believe, Mr. Bell,  
11 you're going to instruct your witness not to answer any  
12 questions regarding this document.

13 MR. BELL: That's correct. My  
14 position, as I stated before we went off the record, is  
15 under paragraphs -- whatever that was we just looked  
16 at. 21 or 22 or 20 and 21 of the protective order.

17 MR. CHAIKEN: Right. Our position is  
18 that that document -- any privileges that have been  
19 waived as to that document I guess we'll have that  
20 issue before the court. So I'm not going to ask any  
21 further questions on that document.

22 (BY MR. CHAIKEN)

23 Q. So my question now is as of January -- and  
24 I guess your position isn't going to change. But as of  
25 January 2014 it was your opinion that the guaranteed

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1 performance test pursuant to the contract could not be  
2 performed, correct?

3 **A. Yes, that test.**

4 Q. Right. And your -- and you believe that  
5 you communicated that position to Dr. Rossi orally, but  
6 you don't know if you communicated it to him in  
7 writing; is that correct?

8 A. I don't remember whether we did it in  
9 writing, but I distinctly remember it orally more than  
10 once and, particularly, the issue of he had not  
11 transferred the technology. Therefore, he had breached  
12 the agreement. We were not able to replicate. The  
13 measurements were not accurate. And we had some very  
14 contentious meetings around that including one in Miami  
15 that -- where I went down there to meet to talk about  
16 that specific subject.

17 Q. So let me step back a second. So my  
18 understanding was that the guaranteed performance test  
19 could not have happened due to timing issues as of  
20 October 2013. The issues relating to being able to  
21 replicate and the other issues, were those all -- were  
22 those all issues at that time October 2013 as well?

23 **A. I'm sorry. Can you say that part again.**

24 Q. Yeah. And I'm a little confused by your  
25 prior response because we had been talking about the

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1 guaranteed performance tests in terms of timing.

2 A. Um-hm.

3 Q. And you just mentioned a whole bunch of  
4 other issues that I wasn't sure was the issue as of  
5 that time October 2013.

6 A. Okay. So those conversations were around,  
7 "We're out of contract or, you know, the deal is over  
8 or the -- you know, the time has passed. We're no  
9 longer talking about that particular contract.  
10 However, we want technology that works. If we have  
11 technology that works that we can replicate then we're  
12 willing to discuss with you paying you a lot of money  
13 even though we shouldn't have to do that."

14 Q. Right. So were there other issues besides  
15 timing issues in or around October 2013 with respect to  
16 guaranteed performance tests?

17 A. I don't remember October '13 but -- so, I  
18 mean, we had said that if a device -- we had previously  
19 said that if we ran the six cylinder unit, which also  
20 carried with it the implication that we built it  
21 because it's a small unit and we had to have built  
22 those reactors and it was easy to measure because it's  
23 small.

24 So something that we could really get our  
25 heads around. So that's -- and I say if we ran the six