

Composite Exhibit 9

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA)
3 ANDREA ROSSI and LEONARDO)
CORPORATION,)
4 Plaintiffs,)
5 VS.) No. 1:16-cv-2119-CMA
6 THOMAS DARDEN; JOHN T. VAUGHN;)
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

Pages 2..5

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<p>1 APPEARANCES:</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.</p> <p>4 BRIAN CHAIKEN, ESQ.</p> <p>5 JOHN W. ANNESSER, ESQ.</p> <p>6 283 Catalonia Avenue</p> <p>7 Second Floor</p> <p>8 Coral Gables, Florida 33134</p> <p>9 (305)337-0781</p> <p>10 bchaiken@pbylaw.com</p> <p>11 jannesser@pbylaw.com</p> <p>12 FOR THE DEFENDANTS:</p> <p>13 MILLER FRIEL, PLLC</p> <p>14 BERNARD P. BELL, ESQ.</p> <p>15 1200 New Hampshire Ave, NW</p> <p>16 Suite 800</p> <p>17 Washington, D.C. 20036</p> <p>18 (202)760-3158</p> <p>19 BellB@MillerFriel.com</p> <p>20 ON BEHALF OF THIRD-PARTY DEFENDANTS</p> <p>21 J.M. PRODUCTS, INC., HENRY JOHNSON, and JAMES BASS:</p> <p>22 ARAN, CORREA & GUARCH, P.A.</p> <p>23 FERNANDO S. ARAN, ESQ. (Via teleconference)</p> <p>24 225 University Drive</p> <p>25 Coral Gables, Florida 33134-6732</p> <p>(305)665-3400</p> <p>aran@acg-law.com</p> <p>ON BEHALF OF THIRD-PARTY DEFENDANTS</p> <p>FULVIO, and UNITED STATES QUANTUM LEAP, LLC:</p> <p>RUDOLFO NUNEZ, P.A.</p> <p>RUDOLFO NUNEZ, ESQ.</p> <p>255 University Drive</p> <p>Coral Gables, Florida 33134-6732</p> <p>(305)665-3400</p> <p>rnunez@acg-law.com</p> <p>ALSO PRESENT:</p> <p>MICHAEL KIRBY, CLVS</p> <p>DR. ANDREA ROSSI</p>		<p>1 TABLE OF CONTENTS</p> <p>2 EXAMINATIONS - ATTORNEY PAGE</p> <p>3 Direct - Mr. Chaiken 6</p> <p>4 Cross - Mr. Aran 287</p> <p>5 Recross - Mr. Nunez 308</p> <p>6 EXHIBITS</p> <p>7 NO. PAGE</p> <p>8 Exhibit 1 IH Holdings Structure 9</p> <p>9 Exhibit 2 E-mail chain 32</p> <p>10 Exhibit 3 E-mail chain 36</p> <p>11 Exhibit 4 High Temperature Catalyzer Test 37</p> <p>12 Exhibit 5 E-mail chain 49</p> <p>13 Exhibit 6 Industrial Heat, LLC document 58</p> <p>14 Exhibit 7 E-mail chain 61</p> <p>15 Exhibit 8 Industrial Heat, LLC document 65</p> <p>16 Exhibit 9 E-mail chain 70</p> <p>17 Exhibit 10 E-mail chain 73</p> <p>18 Exhibit 11 License Agreement 81</p> <p>19 Exhibit 12 E-mail chain 84</p> <p>20 Exhibit 13 Amendment to License Agreement 94</p> <p>21 Exhibit 14 E-mail chain 101</p> <p>22 Exhibit 15 E-mail chain 114</p> <p>23 Exhibit 16 Amendment to License Agreement 116</p> <p>24 Exhibit 17 Myers Bigel letter 121</p> <p>25 Exhibit 18 E-mail 131</p> <p>26 Exhibit 19 Confidential Memorandum 133</p> <p>27 Exhibit 20 E-mail chain 139</p> <p>28 Exhibit 21 E-mail chain 143</p> <p>29 Exhibit 22 Industrial Heat 18-Month Bus. Plan 144</p> <p>30 Exhibit 23 E-mail chain 148</p> <p>31 Exhibit 24 E-mail chain 152</p> <p>32 Exhibit 25 E-mail chain 162</p> <p>33 Exhibit 26 E-mail chain 167</p> <p>34 Exhibit 27 E-mail 181</p> <p>35 Exhibit 28 Term Sheet 185</p> <p>36 Exhibit 29 E-mail chain 190</p> <p>37 Exhibit 30 E-mail chain 203</p> <p>38 Exhibit 31 E-mail chain 204</p> <p>39 Exhibit 32 E-mail 210</p> <p>40 Exhibit 33 E-mail chain 213</p> <p>41 Exhibit 34 E-mail 216</p> <p>42 Exhibit 35 E-mail 217</p> <p>43 Exhibit 36 E-mail chain 220</p> <p>44 Exhibit 37 E-mail chain 221</p> <p>45 Exhibit 38 Fourth Amended Answer 234</p> <p>46 Exhibit 39 E-CAT Energy Plant in Miami 250</p> <p>47 Exhibit 40 E-mail chain 258</p> <p>48 Exhibit 41 E-mail chain 261</p> <p>49 Exhibit 42 Feasibility Report 264</p>	
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1 MR. ARAN: Fernando Aran on behalf of
2 third-party defendant J.M. Products, Henry Johnson and
3 James Bass.

4 MR. NUNEZ: Also on the phone this is
5 Rudy Nunez on behalf of Fulvio Fabiani and United
6 States Quantum Leap, LLC. I'm going to be going back
7 on the phone in a couple of minutes.

8 THE VIDEOGRAPHER: Court Reporter,
9 please swear in the witness.

10

11 P R O C E E D I N G S

12 Whereupon,

13 THOMAS DARDEN,
14 having been duly sworn by the Notary Public, was
15 examined and testified as follows:

16 DIRECT EXAMINATION BY

17 MR. CHAIKEN:

18 Q. Good morning, Mr. Darden. Could you please
19 state your name and spell your last name for the
20 record.

21 A. **Thomas F. Darden, D-a-r-d-e-n.**

22 Q. And where do you currently live?

23 A. **In Raleigh.**

24 Q. Can you please provide your address.

25 A. **My -- well, 111 East Hargett Street,**

1 **Raleigh, North Carolina 27601.**

2 Q. Is that where you live?

3 **A. That's my office address.**

4 Q. Can I have your home address, please.

5 **A. 2351 Hales Road, Raleigh 27608.**

6 Q. How long have you lived there?

7 **A. Thirty years approximately.**

8 Q. And do you have an e-mail address?

9 **A. Yes, I do.**

10 Q. Do you have several e-mail addresses?

11 **A. Yes.**

12 Q. Can you please provide those.

13 **A. Tdarden@industrialheatco,**
14 **tdarden@cherokeefund.com, tfdarden@aol.com,**
15 **tfdarden@yahoo.com.**

16 Q. Can you please briefly describe your post
17 high school education.

18 **A. I went to UNC Chapel Hill in North Carolina**
19 **-- University of North Carolina, Chapel Hill, and**
20 **studied mostly liberal arts and environmental policy.**
21 **I have a bachelor's degree. I then attended graduate**
22 **school in city planning, urban planning. I studied**
23 **pollution technology, urban pollution cleanup -- or**
24 **urban pollution waste management, landfills, sewage**
25 **treatment, etc.**

1 I then went to law school at Yale and
2 studied a general law program plus a fair number of
3 courses associated with environment or kind of
4 management and private -- public sector management sort
5 of city planning-related type of management issues.
6 And that's my education.

7 MR. BELL: Brian, did somebody just
8 join the call?

9 MR. CHAIKEN: Did someone join?

10 MR. BELL: Maybe that was just Rudy.

11 MR. CHAIKEN: Rudy said he was going
12 to be on and off.

13 MR. BELL: Okay.

14 MR. NUNEZ: Yes, that was me. This is
15 Rudy. I inadvertently called on.

16 (BY MR. CHAIKEN)

17 Q. Are you currently a member of any state
18 bar?

19 A. I am inactive. So I initially was a member
20 of the North Carolina Bar but I went inactive.

21 Q. And when did you go inactive?

22 A. A long time ago. Like, not long after I
23 joined the bar. I was not practicing law. I never
24 practiced law and I never -- I didn't want -- when they
25 put in the continuing legal education requirements I

1 chose not to spend the time doing that so I went
2 inactive.

3 Q. Understood. Are you currently employed?

4 A. Yes.

5 Q. By whom are you currently employed?

6 A. I work for Cherokee Investment Partners. I
7 also work on behalf of a number of the different
8 venture deals that we've invested in.

9 (Whereupon Exhibit 1 was marked for
10 identification as of this date.)

11 Q. Got it. I'll show you what's been marked
12 as Exhibit Number 1 to your deposition today. Exhibit
13 Number 1 is a document that's been bates stamped
14 IH-113114. It's a flowchart. Have you ever seen this
15 document before?

16 A. I don't know if I've seen this particular
17 one, but I've seen other charts that show some of this
18 organization structure.

19 Q. Okay. I kind of want to go through some of
20 these entities on this page and get an understanding as
21 to whether or not you have a position in these
22 companies. And we'll just start at the top with the
23 big triangle which is IH Holdings International Limited
24 (UK). Are you familiar with that entity?

25 A. Yes, I am familiar with that entity.

1 Q. Are you a director of that entity?

2 A. I don't know the precise titles that are
3 used for that company, but I believe the answer is yes.

4 Q. Okay. Are you an officer of that company?

5 A. I believe that I am an officer of that
6 company.

7 Q. Does the officer have a specific title?

8 A. I don't remember the title there.

9 Q. Okay. As an officer and/or director are
10 you a person who makes decisions on behalf of that
11 company?

12 A. Yes.

13 Q. Is there anybody else who does make
14 decisions on behalf of that company?

15 A. Well, J.T. Vaughn has been involved in
16 decision-making associated with that company. I don't
17 remember what his specific role there is.

18 Q. Anybody else?

19 A. Well, legal counsel would be involved in
20 making decisions associated with the structure. Price
21 Waterhouse as our accounting firm would be involved in
22 that. So other service providers. It's a holding
23 company so it's not very active.

24 Q. Okay. Well, as I phrase my questions I'm
25 going to ask similar questions with respect to all of

1 the entities. But I understand you may have legal
2 counsel or accounting firms advise the management team,
3 but ultimately I'm only asking about people who are
4 either officers, directors or otherwise in a position
5 to make decisions on behalf of the company.

6 **A. Right, right.**

7 Q. Next one on the far left, IPHBV Holdings
8 Limited. Are you a director of a company?

9 **A. I don't remember who the directors and**
10 **officers are of each of the different subsidiaries. I**
11 **think I'm probably going to answer all of them that**
12 **way.**

13 Q. Okay. So just looking at this entire
14 structure here, you believe but are not positive that
15 you're a director of all of these entities?

16 **A. No. I don't think I'm a director of all**
17 **these entities, but I don't know -- I don't know the**
18 **personnel for each of these entities.**

19 Q. I see. Well, and I guess I --

20 **A. If you had a chart that showed each of the**
21 **names I could probably confirm if it's likely that that**
22 **person is, but I don't know specifically each of the**
23 **entities and its current officers and directors.**

24 Q. I see. Well, I guess we have to go through
25 them one by one based on what you're telling me unless

1 you can identify certain companies on this list that
2 are not -- that you definitely know that you're not a
3 director or officer.

4 MR. BELL: Well, some of them are
5 irrelevant so why don't you just ask about the ones you
6 care about.

7 (BY MR. CHAIKEN)

8 Q. Well, we talked about IPHBV Holdings
9 Limited. Are you an officer of that company?

10 A. I don't remember whether I'm an officer or
11 director of that company. I believe that I am.

12 Q. Okay. Are you a decision-maker on behalf
13 of that company?

14 A. Well, through my capacity as a
15 decision-maker for the parent company then, you know,
16 there are certain decisions that the parent company
17 would be involved in for that, but I would have some
18 influence over decisions that are made there.

19 Q. Anybody else besides yourself?

20 A. Well, J.T. Vaughn also. In some cases Jim
21 Fogleman would have some input into some of these.

22 Q. Okay. Anyone else?

23 A. And Ben Van Wyk.

24 Q. Who's that?

25 A. Ben Van Wyk.

1 Q. Okay.

2 A. So there's a Dutch guy who's involved in
3 that company as well.

4 Q. Understood. IPH International BV. Are you
5 a director?

6 A. I would answer the same about that entity.
7 I can't remember. Oh, I'm sorry. Ben Van Wyk. I
8 thought that was the Dutch company. You were
9 discussing IPHBV Holdings (UK)?

10 Q. Right.

11 A. So I don't know the -- I would answer the
12 same regarding the IPH International and IPHBV. I
13 don't know who plays which role vis-à-vis of those two
14 different companies.

15 Q. Okay. Industrial Heat, LLC. Are you a
16 director of that company?

17 A. I don't know that it has directors as an
18 LLC.

19 Q. Member. Are you a member of that company?

20 A. I believe that Industrial Heat, LLC is
21 wholly owned.

22 Q. By IH Holdings International?

23 A. By their parent company. And so I thought
24 that it had only one member. I'm not completely
25 certain that's correct.

1 Q. Are you a manager of Industrial Heat, LLC?

2 A. I believe that I am an officer or a manager
3 of that company.

4 Q. Is there a specific title?

5 A. I don't remember the title.

6 Q. Are you a decision-maker for Industrial
7 Heat, LLC?

8 A. Well, at least through my capacity as being
9 involved in decisions at the parent company. At least
10 indirectly, but I would have some influence there.

11 Q. Is anybody else a decision-maker?

12 A. J.T. Vaughn.

13 Q. Now, I understand that this structure was
14 put in place in approximately May of 2015; is that
15 correct?

16 A. I didn't remember that date, but that would
17 probably make sense.

18 Q. Prior to the structure being put in place
19 were you still a director and/or officer of Industrial
20 Heat, LLC?

21 A. I would have to look at the records for the
22 different times. I don't remember the organization
23 structure details.

24 Q. I believe Industrial Heat, LLC was formed
25 in 2012. Does that sound right?

1 **A. Makes sense.**

2 Q. Is there any point in time that you --
3 based on your recollection that you were not an officer
4 or director of Industrial Heat, LLC?

5 **A. I don't remember not being. I don't**
6 **remember that.**

7 Q. Okay. There's a few other entities that
8 I'm really not concerned about other than just to
9 understand what your role is. L Holdings, LLC.

10 MR. BELL: What's the question?

11 MR. CHAIKEN: Is he an officer or
12 director?

13 **THE WITNESS: I don't remember.**

14 (BY MR. CHAIKEN)

15 Q. New Heat, LLC?

16 **A. Also don't remember.**

17 Q. Are both of those companies wholly owned by
18 IH Holdings International Limited?

19 **A. I believe that both of those are wholly**
20 **owned. I believe, but I would want to consult with our**
21 **attorneys or accountants to confirm that.**

22 Q. What about IHJ Holdings Limited?

23 **A. I would also want to consult with our**
24 **accountants about the precise structure there. It's a**
25 **complicated structure that we relied heavily on limited**

1 **settings.**

2 Q. Okay. You say you're currently working for
3 Cherokee Investment Partners; is that correct?

4 **A. Yes.**

5 Q. Is there -- are you an owner of that
6 company?

7 **A. Yes, I am an owner of that company.**

8 Q. What percentage ownership do you have?

9 **A. I think it's 56 percent.**

10 Q. Are there other Cherokee-related entities
11 that you are an owner of?

12 MR. BELL: Objection to form.

13 **THE WITNESS: There are other Cherokee**
14 **entities that have "Cherokee" in the name that I'm an**
15 **owner of.**

16 (BY MR. CHAIKEN)

17 Q. Okay. Approximately how many?

18 **A. Ten.**

19 MR. BELL: Same objection.

20 **THE WITNESS: I would have to think**
21 **about it and count, but several.**

22 (BY MR. CHAIKEN)

23 Q. Okay. And what is the general business
24 that these entities are engaged in?

25 MR. BELL: Objection to form.

1 THE WITNESS: Well, to pick some
2 specifically -- some of the entities specifically --
3 Cherokee Investment Partners, LLC is in the business of
4 finding investment opportunities, helping with the due
5 diligence and the analysis of the investment
6 opportunity and helping to arrange the financing for
7 that.

8 We have other Cherokee entities. For
9 example, Cherokee Advisors plays a role as the manager
10 or the advisor to one of our -- one or two of our
11 investment funds advise environmentally contaminated
12 real estate. There's some other Cherokee-named
13 entities that are relatively inactive now, but at least
14 from the past there was one called Cherokee
15 Environmental Realty Associates, the purpose of which
16 was to buy or to consult about the purchase of
17 environmentally contaminated real estate.

18 There was one called Cherokee
19 Environmental Group that is -- it's not operating
20 currently but dealing with polluted land. There is one
21 called Cherokee Instruments that was set up to build
22 and then distribute pollution control equipment for
23 measuring pollution. So there have been a number of
24 different Cherokee entities.

25 Q. And when did you first start operating --

1 or when was the first Cherokee entity formed?

2 **A. 1984.**

3 Q. And since 1984 you made -- you -- I say
4 "you," I'm going to say the entities that you have
5 formed have invested in whether it be environmentally
6 -- what's the word I'm looking for.

7 Environmentally-harmed properties.

8 **A. Contaminated land.**

9 Q. Contaminated properties. That was the
10 word. Thank you. Have any of the funds or any of the
11 entities that you have formed ever filed for
12 bankruptcy?

13 **A. Some entities that we have formed have**
14 **filed for bankruptcy.**

15 Q. Do you know which ones?

16 **A. We had a -- we had a property that we owned**
17 **in New Jersey -- I don't remember the name of the**
18 **entity -- that in the financial crisis filed for**
19 **bankruptcy probably 2008 or so. I don't remember the**
20 **name of that. It was some entity that was owned by one**
21 **of the funds. So that's an example of one. I'm trying**
22 **to think of others. There could be another one, but**
23 **it's not coming to mind right now.**

24 Q. Did you ever hear of an entity called
25 Ashley 1 or Ashley 2? Is that what you're speaking of?

1 A. Yes. Well, so that was an entity that held
2 property that was in South Carolina in the financial
3 crisis. And I couldn't remember that it filed for
4 bankruptcy or not, but it did own property. It was in
5 the financial crisis, and it definitely was deeply
6 affected by the financial crisis.

7 Q. What about a company called N-CAP?

8 A. That was the one that was in New Jersey
9 that I was referring to.

10 Q. Got it. Do you know a gentleman by the
11 name of William Gauger, G-a-u-g-e-r?

12 A. Yes, yes; I know him.

13 Q. Who is he?

14 A. He was the guy who was the manager of the
15 N-CAP deal for us. So he brought us the N-CAP deal.

16 Q. Did you appoint him as the CEO of one of
17 your companies?

18 A. Well, he was the CEO of the deal at the
19 time that we invested in it. So I don't remember the
20 precise entity or whether there was some
21 reorganizations, but he was the guy who brought us the
22 deal. He owned it and we invested into it.

23 Q. Got it. Did you do anything to prepare for
24 today's deposition?

25 A. Yes, I did.

1 Q. What did you do?

2 A. I read through some notes from -- past
3 notes or information that I had. I talked to counsel
4 some about the process or how it would go.

5 MR. BELL: I would just caution the
6 witness not to disclose the content of our
7 communications described there.

8 (BY MR. CHAIKEN)

9 Q. Did you review any deposition transcripts?

10 A. I did look at deposition transcripts from
11 J.T. Vaughn.

12 Q. Anybody else?

13 A. I started to look at John Mazzarino's but I
14 didn't get very far.

15 Q. Did you talk to anyone other than counsel?

16 A. Generally around the office we've talked a
17 fair amount about the case. So I would say whether
18 that was in preparation for the deposition or just in
19 general I don't know.

20 Q. Did you review the complaints and the Forth
21 Amended Answer, Additional Defenses and Counterclaims
22 filed in this case?

23 A. I did not review them before in preparation
24 for this deposition.

25 Q. Did you participate in helping draft

1 whether it be the First Answer and Counterclaims or any
2 of the subsequent amendments?

3 MR. BELL: Objection to form.

4 THE WITNESS: I reviewed at least. I
5 don't remember if I wrote any of the claims, but I
6 certainly reviewed them at the time.

7 (BY MR. CHAIKEN)

8 Q. Are you familiar with the allegations made
9 against my clients as well as the third-party
10 defendants in this case?

11 A. Generally. I don't remember them all
12 specifically.

13 Q. Is it your contention that they're all true
14 and correct? Everything that's been alleged?

15 A. I believe so.

16 Q. Are any of the claims brought by my clients
17 against -- whether it be you or any of the entities
18 that you have an interest in covered by any insurance
19 policies?

20 A. I'm not aware that they are.

21 Q. Have you asked -- well, let me ask it.
22 Does any of the entities that are defendants in this
23 case have insurance policies for which a claim has been
24 submitted?

25 A. I don't believe that we've filed -- that

1 we've submitted claims for any of these. I don't know
2 if we've noticed any insurance companies with respect
3 to any of the litigation. I don't know really the
4 distinction between those two. But, anyway, so I'm not
5 sure.

6 Q. You told me a little bit earlier you
7 founded Cherokee back in 1984; is that correct?

8 A. Yes.

9 Q. What was the original purpose for finding
10 or for founding Cherokee?

11 MR. BELL: Objection to form.

12 THE WITNESS: I started -- I started
13 -- Cherokee Sanford Group was the name of the initial
14 company, in order to purchase a series of struggling
15 brick manufacturing plants that used a lot of energy.
16 And the plan was to convert them to using alternative
17 energy -- saving costs and reducing pollution -- and I
18 did that.

19 They also had contaminated land. The
20 manufacturing plants had contaminated land, and I had
21 found some technology for using to clean up
22 contaminated land. And so that became Cherokee
23 Environmental Group. That led to a business of
24 cleaning up contaminated land. We used bacteria --
25 mostly used bacteria for that. I backed some

1 professors at Virginia Tech University who were soil
2 bacteria professors. And so we developed bacteria to
3 use for consuming pollution.

4 (BY MR. CHAIKEN)

5 Q. And after that you started investing in
6 similar things or more properties?

7 A. Yes. Just kept looking for additional new
8 technologies, other technologies that had some
9 environmental impact usually with some kind of
10 professor. I would back the professor, and we would
11 start a business to develop the technology.

12 But then also I saw some contaminated land
13 that we could purchase that was inexpensive. We bought
14 property outside Boston initially; Stanford,
15 Connecticut. And we could buy the land at cheap
16 prices. We could use our methods and knowledge to
17 clean it up and then we could sell the land.

18 So we kind of started with two different
19 business activities. Some were pollution technical and
20 some were land owning.

21 Q. And over time did you -- well, did you
22 trademark the name "Cherokee"?

23 A. I don't believe we ever trademarked it.
24 It's a fairly generic name around here. Actually,
25 there are a lot of companies named Cherokee around here

1 including other investment companies. There was
2 another brick company called Cherokee.

3 It was quite fascinating. These two
4 companies had co-existed for 50 years probably. The
5 predecessor Cherokee company and another brick company
6 that was called Cherokee that was in Georgia. There
7 were two companies.

8 Q. Do you currently have a website? A
9 Cherokee website?

10 A. Cherokee Investment Partners has a website.

11 Q. What's it called? What's the domain name?

12 A. Cherokeefund.com, I'm virtually certain. I
13 haven't been to it.

14 Q. Is there only one?

15 MR. BELL: Objection to form.

16 THE WITNESS: I don't remember that we
17 have another Cherokee entity website at this point.
18 We've had conversations in the past about whether we
19 should have multiple websites for the different
20 activities but I don't -- we might have a Cherokee
21 Gives Back website or it might be The Cherokee Gives
22 Back, which is our philanthropic branch. That may be a
23 subset of the Cherokee website so I'm not sure.

24 (BY MR. CHAIKEN)

25 Q. How did you first get introduced to Dr.

1 with the technology. No, in fact, I'm almost sure they
2 had been to meetings observing the technology with
3 other potential investors or developers of it. And so,
4 yeah, they were relatively familiar with the
5 technology.

6 Q. Did you just have conversations with them
7 about it or did you ask them for documents or
8 materials? Did you make due diligence requests to
9 them?

10 A. I don't remember what all we asked them
11 for, but I'm sure that they did give us some materials.

12 Q. Okay. And on that same subject, what due
13 diligence did you do before you entered into the
14 license agreement with Leonardo?

15 A. Well, J.T. Vaughn went to a conference or a
16 demonstration of some kind that Rossi had. We visited
17 facilities. We talked to a lot of different people who
18 were in the field. When I say "in the field," people
19 who were knowledgeable about LENR and what's going on.
20 We saw equipment operating. So we did a lot of
21 research. Just a broad-based set of activities.

22 Q. Did you conclude that it was a
23 controversial field?

24 A. Yes. We definitely knew that it was a
25 controversial field from the very beginning.

1 Q. And that the chances of it being a -- you
2 know, maybe something that doesn't work, something
3 that's not provable, something that has a lot of risk
4 with it? Is that your understanding?

5 MR. BELL: Objection to form.

6 THE WITNESS: Yes. We felt that there
7 was a good chance that the technology would not work.
8 We also felt that there were -- there was enough
9 evidence of LENR being observed in different settings
10 that it was worth investing in even knowing that it
11 might not be successful.

12 Q. I'm going to distinguish Dr. Rossi the
13 person from the technology for a second. Did you do
14 any due diligence into Dr. Rossi the person prior to
15 entering into the license agreement?

16 A. Yes, we did.

17 Q. What due diligence did you do?

18 A. We talked to him about his background and
19 the experiences he had had. And he was very
20 forthcoming that he had been in jail. He was -- said
21 that it was a function of him having not agreed to give
22 half of his business to the Mafia and that after
23 refusing to do that the police came and arrested him,
24 that his business was operating well at the time that
25 they came.

1 THE WITNESS: Well, people often would
2 ask me to speak about Cherokee's activities and so I
3 would talk to -- let me see what this was used for but
4 -- I don't know if this was a fund raising document,
5 you know, talking to other investors.

6 Back at the back it says, "Industrial
7 Heat Challenge. Industrial Heat is raising an
8 additional 20 million in order to" -- this process. I
9 don't know if that was -- and, you know, we talked
10 about organization, Industrial Heat, who are we,
11 founded by Tom Darden CEO of Cherokee. We talk about
12 the separate Cherokee entities here. And so I don't
13 know if this was a fund raising document or something
14 -- a presentation to some group.

15 So I will speak occasionally to
16 environmental groups; organizations that have an
17 interest in carbon, air pollution, issues like that.
18 And, you know, they might be -- you know, if they're
19 familiar, if they've heard about what we're doing of
20 course they're all curious because this would be a
21 solution to important environmental problems that we
22 have.

23 And I often will accept those
24 opportunities to speak. I think it's a -- you know,
25 something that we're -- we've been proud to be involved

1 There's one in Rhode Island that, you know, is trying
2 to create valuable metals through transmutation. So
3 that was the analog in my mind.

4 Q. Did you make any attempts after this time
5 November of 2013 to do exactly that? Run tests and see
6 if they could transmute isotopes?

7 A. We didn't feel that the -- we did test for
8 transmutation of isotopes after that. We did not find
9 transmutation of isotopes in any of the machines that
10 we ran, and we didn't find the evidence of
11 transmutation ultimately to be credible.

12 Q. Were those tests you ran in Raleigh?

13 A. We ran them in Raleigh.

14 Q. What timeframe?

15 A. 2015. Maybe '16.

16 Q. Now, at some point in time you began
17 negotiating with Dr. Rossi about the license agreement.
18 Who on behalf of your group was responsible for those
19 negotiations?

20 A. In 2012?

21 Q. '12.

22 A. Negotiating with the license agreement?

23 Q. Yes.

24 A. I would say I was. John Mazzarino was
25 involved. J.T. Vaughn was involved. You know, the

1 Q. I'm only worried about the e-mail on the
2 first page from you dated April 24th, 2013 to Dr. Rossi
3 cc'ing J.T. Vaughn and John Mazzarino. And the second
4 full paragraph of your e-mail states, "Here are my
5 thoughts. First, as we indicated, we can accept Fabio
6 Penon as the ERV, instead of BV."

7 A. Um-hm.

8 Q. Do you see that?

9 A. Yes.

10 Q. Did you, in fact, write that e-mail?

11 A. I assume that I did, yes.

12 Q. Is there any question in your mind that you
13 accepted Fabio Penon as the ERV?

14 MR. BELL: Objection to form.

15 THE WITNESS: That we accept him as
16 the ERV in this test. We either accepted him or we
17 said we were willing to pay notwithstanding that.

18 (BY MR. CHAIKEN)

19 Q. Well, do you contest what you wrote saying
20 specifically "we can accept"?

21 A. No, I don't. I don't contest that.

22 Q. Did you ever change your mind after you
23 wrote this e-mail?

24 MR. BELL: Objection to form.

25 THE WITNESS: That we had accepted him

1 **A. Yes, I did initial this page.**

2 Q. Who drafted this protocol?

3 **A. I don't know.**

4 Q. By initialling this protocol did that
5 signify your agreement to it?

6 **A. I assume that we accepted this protocol**
7 **from that test, yes.**

8 Q. Okay. Is it your contention sitting here
9 today that this protocol was not followed or not
10 properly followed?

11 MR. BELL: Objection.

12 **THE WITNESS: I think it was not**
13 **followed, and I think it was not sufficiently monitored**
14 **to be able to know whether it was followed or**
15 **whether -- whether there were other flaws in the test.**

16 Like, for example, we were not able to
17 go inside the unit to see what was going on. Like, we
18 were prevented from entering into the -- from getting
19 close to the device as it was operating. It would have
20 been highly relevant.

21 (BY MR. CHAIKEN)

22 Q. Prior to the initiation of this lawsuit on
23 April of 2016 did you ever tell Leonardo or Dr. Rossi
24 that you believed that this protocol was not properly
25 followed?

1 But we wanted it to be tested in a manner
2 -- not a trick test. Not a test that was sort of
3 designed to be obfuscated but a test that was designed
4 to be extremely transparent where everybody -- we would
5 know. It would be clear to us that the technology
6 actually worked as opposed to the test where we weren't
7 able to get access to it, our instruments weren't -- we
8 weren't allowed to put separate instruments on it.

9 We were saying, "This is ridiculous. We've
10 got to know that this technology works." So we wanted
11 to continue working on it with him, notwithstanding
12 this prior behavior, to say, "Well, let's see if it
13 might work."

14 Q. So I think you said earlier that after this
15 test, the validation test -- and this took place in
16 approximately or approximately as of April 30th/May
17 1st, 2013; is that correct?

18 A. Um-hm.

19 Q. After the test concluded, Industrial Heat
20 did, in fact, make a 10 million dollar payment to
21 Leonardo; is that correct?

22 A. We did.

23 Q. Do you contend sitting here today that
24 Industrial Heat is entitled to return of those funds?

25 A. I think we are.

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<p style="text-align: right;">Page 98</p> <p>1 Q. Okay. And it's because you think that that 2 test was not performed properly?</p> <p>3 A. I think it was --</p> <p>4 MR. BELL: Objection to form.</p> <p>5 THE WITNESS: I think the test was not 6 performed properly, but I think it was part of an 7 overall -- overall setup to fool us.</p> <p>8 (BY MR. CHAIKEN)</p> <p>9 Q. Okay. And does Industrial Heat contend 10 that it's also entitled to keep the license to the 11 E-CAT IP, sitting here today?</p> <p>12 MR. BELL: Objection to form. You 13 know he's not here to testify as to Industrial Heat.</p> <p>14 THE WITNESS: I haven't --</p> <p>15 MR. CHAIKEN: That's okay.</p> <p>16 THE WITNESS: I haven't thought about 17 that in relation to the return of the initial capital. 18 I don't know about it legally.</p> <p>19 (BY MR. CHAIKEN)</p> <p>20 Q. Do you think the E-CAT IP has any value?</p> <p>21 A. It's clear that it does not have the value 22 that we were told that it had or that we perceived it 23 had. If you could easily replicate these reactors 24 using that IP then it would be extremely valuable. It 25 clearly does not have that kind of value. Whether</p>	<p style="text-align: right;">Page 99</p> <p>1 anyone ever could produce any energy with this IP is 2 not clear.</p> <p>3 It's hard to prove a negative. It's sort 4 of hard to say this could not have any value 5 whatsoever. It's hard to say. But we -- we don't see 6 that this technology has value at all materially 7 relative to the kinds of numbers we were talking about 8 then.</p> <p>9 Q. Do you think it has any value -- based on 10 that and based on what you know sitting here today, do 11 you think it has any value whatsoever?</p> <p>12 A. We don't know. It's an option on future 13 value. Is it possible that someone in the future might 14 be able to do something with this IP. We can't; Rossi 15 can't. But is it possible that somebody might or that 16 occasionally at some point it might work. We don't 17 know.</p> <p>18 MR. CHAIKEN: We can stop here. Off 19 the record.</p> <p>20 THE VIDEOGRAPHER: We're off the 21 record at 11:14 a.m.</p> <p>22 (Whereupon a break was taken.)</p> <p>23 THE VIDEOGRAPHER: We are back on the 24 record at 11:26 a.m.</p> <p>25 (BY MR. CHAIKEN)</p>
<p style="text-align: right;">Page 100</p> <p>1 Q. Mr. Darden, I had asked you some questions 2 about the license agreement prior to taking a break. I 3 believe one of the conditions in order for Leonardo to 4 earn that 10 million dollar payment was to transfer the 5 composition of the fuel he used as the catalyst to you. 6 Did that happen?</p> <p>7 A. It's not clear. I mean, the requirement 8 was to transfer all of the information needed to build 9 a replicated technology and for Dr. Rossi to work with 10 us to build and successfully produce these machines, 11 have them work, be able to sell them.</p> <p>12 And so he transferred information to me 13 about the fuel that he described as being the IP of the 14 company or the IP of the devices. He also gave us some 15 drawings that showed some of the mechanism of some of 16 the plants that were being built at that point. That 17 then evolved over time.</p> <p>18 However, none of that ever worked. We were 19 never able to build devices that successfully produced 20 energy. So did he transfer some formulas or a formula 21 to me. The answer is yes. Was it the transfer of the 22 IP needed to build these devices, no.</p> <p>23 Q. That's your opinion though, right? You 24 don't believe it was the fuel or the catalyst that was 25 required or it didn't work?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. I don't know whether it was the fuel and 2 the catalyst that didn't work or the device that didn't 3 work or the whole thing doesn't work. I don't know 4 which parts of it don't work, but something doesn't 5 work.</p> <p>6 (Whereupon Exhibit 14 was marked for 7 identification as of this date.)</p> <p>8 Q. I'll show you what's been marked as 9 Exhibit 14. Exhibit 14 has been bates stamped IH-81230 10 through 1234. This is a series of e-mails from 11 September of 2014.</p> <p>12 A. Um-hm.</p> <p>13 Q. And the one I'm most concerned with is the 14 one on -- it starts on page 81231. And it looks like a 15 forwarded e-mail from John Mazzarino to Joe Pike, 16 yourself and John Mazzarino. And the paragraph I want 17 to refer to is on actually the third page, 81232.</p> <p>18 A. Um-hm.</p> <p>19 Q. And you're describing the IH investment in 20 -- or to Paul Lamacraft.</p> <p>21 A. Um-hm.</p> <p>22 Q. And you're talking about a two billion 23 dollar evaluation, and you describe that evaluation. 24 Do you see that?</p> <p>25 A. Um-hm.</p>

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1 A. Um-hm.

2 Q. And the last sentence of that paragraph
3 states, "One ultimate goal, if we can manage the
4 intellectual property and ownership issues, is to use
5 Rossi's fuel and catalyst methods with some of the
6 other promising handling and support systems to see if
7 the combinations produce better results."

8 A. Um-hm.

9 Q. Was that one of your goals?

10 A. We wanted to get the industry together
11 broadly. So -- and we talked to Rossi about this. We
12 talked to the other inventors and we said, "Look, why
13 don't you guys work together and see if there's some
14 way that you can combine your efforts." And some
15 people were interested in that and some people weren't.

16 But there were big IP and ownership issues
17 associated with that so it was very difficult to do.
18 We never did it. But it was kind of a dream or a hope.
19 Wouldn't it be great if we could get all these
20 different smart scientists working in this field to
21 start sharing their ideas between themselves, among
22 themselves, instead of keeping everything secret.

23 Q. Did you talk to Dr. Rossi about this
24 specifically? Using his fuel with other people in his
25 field?

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1 A. Well, not with other people but with their
2 information using it to see if it was helpful for
3 Rossi's process. And we did, in fact. And he said --
4 he said that would be a strategy because at first he
5 thought why would you be so stupid or why would you
6 waste your money investing in these other idiots who
7 won't be successful. I mean, this is what he said.

8 And I said, "Well, I don't know if they
9 won't be successful." And some of them appeared to
10 have more sophisticated kind of measurement systems,
11 containment devices. I don't know. I mean, other
12 parts of the system. Just as a naive person it
13 certainly looked much more sophisticated. I thought
14 what if we could get access to some of those
15 technologies.

16 And since we owned such a huge position in
17 Rossi's technology, we're making small investments in
18 these others, wouldn't it be good -- our advice would
19 be to take those other technologies and then bring them
20 in and see if they worked with what Rossi was doing.

21 At that point he said that would be a
22 strategy. You know, I thought, well, okay, I guess
23 there would be some logic to that. The idea of
24 transfer -- we never want to transfer something that we
25 had such a big position in -- Rossi's technology -- to

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1 somebody else.

2 Q. So you never took his fuel and tried to use
3 it with anybody else's technology?

4 A. We never did.

5 Q. Did you ever use someone else's technology
6 and tried to use it with Rossi's fuel?

7 A. We never did.

8 Q. Okay. Who at this time -- I guess I'll
9 define the time as 2013 July through September of 2014.
10 Who was working -- who was the engineering staff
11 working for Industrial Heat? Who were the members?

12 A. Well, we had, you know, T. Barker working
13 in the shop. I mean, primarily it was Andrea and
14 Fulvio were working together. So they both were there.

15 Q. Is that Fulvio Fabiani?

16 A. Yeah, Fulvio Fabiani. Alex Rosa was around
17 some. A young guy. A young engineer in training. I
18 don't know if he had his degree at that point. There
19 was a guy -- an engineer -- a mechanical or a civil
20 engineer by training, I believe, named David Perry who
21 was involved some. The tests at that point were not so
22 much like research. It was more doing what Rossi was
23 telling us to do in terms of building things.

24 T. Barker, Rosa, Alex. J.T. was around of
25 course. John Mazzarino would come in from time to time

1 Therefore, I'd say the end of August."

2 **A. Um-hm.**

3 Q. Do you think he was referring to -- or is
4 it your understanding that he was referring to the
5 shipment of the one megawatt plant from Italy to
6 Raleigh, North Carolina?

7 **A. I think probably so.**

8 Q. Was he -- did you have any conversation
9 with him after this e-mail where he said anything other
10 than, "I would like to start the test as soon as the
11 two containers arrive"?

12 **A. Well, once he began working on the other**
13 **units, the other devices, then he stopped working on**
14 **the -- getting this test going.**

15 Q. Got it. Is there anything in writing that
16 you put back to him saying, "Hey, we're ready to start
17 as soon as the shipment -- as soon as the containers
18 get here we're ready to start"?

19 **A. I mean, maybe this. But I don't know other**
20 **than that.**

21 Q. All right. Now, after you had made the
22 first payment -- the 1.5 million at the start of the
23 agreement --

24 **A. Um-hm.**

25 Q. And my understanding is if we want to go

1 through it we can. The license agreement. But the one
2 megawatt unit was then owned by Industrial Heat,
3 correct?

4 **A. I think so.**

5 Q. So Industrial Heat was able to control when
6 that equipment was started up, right?

7 **A. We could have started it ourselves, and we**
8 **actually talked about doing that a fair amount. Rossi**
9 **vehemently objected to that and said, "No, I need the**
10 **help working on these other devices." You know, he**
11 **didn't want us to start working on that.**

12 Q. But conversely could Dr. Rossi have started
13 up the plant without your consent? Yours being --

14 **A. That plant?**

15 Q. Yeah, that plant. The one megawatt.

16 **A. We owned it. I guess not. I mean, we**
17 **would have let him.**

18 (Whereupon Exhibit 16 was marked for
19 identification as of this date.)

20 Q. Right. I'll show you what's been marked as
21 Exhibit 16. Exhibit 16 is the Second Amendment to the
22 License Agreement. This is what you talked about
23 earlier about changing the timeframe and changing the
24 equipment for the purposes of the guaranteed
25 performance test?

1 **A. Um-hm.**

2 Q. And who drafted this document?

3 **A. I don't know.**

4 Q. Now, this is your signature on page three
5 of this document?

6 **A. Yes, I believe it is. Yes.**

7 Q. Now, at some point in time -- and this --
8 it's not dated. This is the -- it says on the first
9 page October, blank, 2013.

10 **A. Um-hm.**

11 Q. Do you know approximately when you signed
12 this?

13 **A. No, I don't know.**

14 Q. Do you know where you were when you signed
15 it?

16 **A. Um-um. Sorry. I don't know.**

17 Q. After you signed it did you send it to
18 Ampenergo?

19 **A. I'm trying to remember the details. Did we**
20 **send it or did Rossi send it or -- I can't remember the**
21 **details.**

22 Q. Did you have any conversations with
23 Ampenergo after you had signed the document?

24 **A. I'm sure we did.**

25 Q. I mean, who specifically at Ampenergo do

1 you recall speaking to?

2 **A. I don't remember the specifics. I remember**
3 **they didn't want to do it.**

4 Q. And did they ever explain to you why
5 they didn't want to sign this?

6 **A. No, we were -- we were confused about that.**

7 Q. Is there any reason that you're aware of
8 today as to why they would not want to sign?

9 **A. I don't remember the conversations around**
10 **that. I think J.T. might have been the one talking to**
11 **them.**

12 Q. Did you have discussions with Dr. Rossi
13 about Ampenergo's refusal to sign it?

14 **A. Yes, we did.**

15 Q. And what were those conversations?

16 **A. Well, they said, "Well, they didn't sign.**
17 **So, you know, I guess that deal is off or can't do**
18 **that."**

19 Q. So after that conversation took place did
20 you say, "Hey, listen, Ampenergo didn't sign. The
21 license agreement says you guys start the test as soon
22 as you get -- as soon as the equipment arrives;
23 therefore, you're in breach"?

24 **A. Yes. We said, "We don't owe you -- you**
25 **know, sorry. You missed the date. They don't agree to**

1 this so what are we going to do." We said to him, "We
2 would love to pay you some more money if we had
3 technology that worked. So why don't you think of some
4 other kind of test that we could do. We're willing to
5 pay you money if you -- if we can build devices and we
6 can operate those devises. We don't care how long it
7 is really." I mean, we care a little bit but, you
8 know, we're willing to be very malleable about that.
9 "Let's build some devices. Let's get something
10 operating." You know, but, I mean, the agreement
11 speaks for itself.

12 Q. Did you put that -- that subsequent offer
13 in writing?

14 A. I don't know. I mean, it was -- did we say
15 to him in writing somewhere, "We can't build these
16 units. We want to build these units. Help us build
17 these units. Let's get something going." I don't know
18 but we -- I'm sure that we said to him, "Andrea, the
19 problem is not money. We're happy to pay money if we
20 have technology that works. We don't have technology
21 that works. Help us get some technology working
22 somewhere and we're happy to pay you some money."

23 Q. Right. But did you ever say in writing,
24 "Hey, listen, the time for the test has now come and
25 gone. We need to reach some other arrangement. We're

1 happy to pay you money, but it's got to be under
2 different terms"?

3 MR. BELL: Objection to form.

4 THE WITNESS: I don't remember
5 specific writing about that. You know, we were in the
6 same office so we talked about a lot of this.

7 (BY MR. CHAIKEN)

8 Q. Did you -- after you had the conversation
9 with Dr. Rossi about Ampenergo not signing off did you
10 say, "Hey, you know what, Ampenergo didn't sign off.
11 Let's start the guaranteed performance test right away
12 because the clock is ticking and we made this
13 investment, and time is money"?

14 MR. BELL: Objection to form.

15 THE WITNESS: Well, we said all the
16 time, "We want to get something running." I'm sure
17 that we didn't say, "Let's start the guaranteed
18 performance test." You know, the time period for that
19 had passed.

20 Q. Got it. So it's your testimony today that
21 Dr. Rossi knew all along right after October 2013 that
22 his ability to enforce the 89 million dollar payment
23 pursuant to the license agreement had come and gone?

24 A. Yes. He knew that his ability to enforce
25 that had come and gone. We also told him that if we

1 had successful evidence after the technology worked,
2 that we approved devices that we built, we would be
3 happy to discuss paying you more money.

4 (Whereupon Exhibit 17 was marked for
5 identification as of this date.)

6 Q. I'm going to show you what's been marked as
7 Exhibit 17. Now, your counsel is going to object to
8 this document.

9 MR. BELL: Yeah, I am. So why are you
10 going to do it?

11 MR. CHAIKEN: Because I'm going
12 to make you object to it.

13 MR. BELL: Here's the problem that I
14 have with it -- and we can do it however you choose to
15 see fit. But our view is that this is clearly in
16 violation of the protective order. You're violating
17 court order by using -- attempting to use this at a
18 deposition when it's been clawed back under the
19 protective order and you're potentially subject to
20 sanctions for that.

21 MR. CHAIKEN: Okay.

22 MR. BELL: With that, do you still
23 want to mark it?

24 MR. CHAIKEN: Yes. And what I would
25 like to do is if you want to move for a protective

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<p style="text-align: right;">Page 122</p> <p>1 order as it relates to this document we could go off 2 the record, we could call the judge now or I could ask 3 my questions and you can mark it highly confidential. 4 And if we -- that way I don't have to 5 call him back. If I get -- I'm right in my argument 6 then I don't have to call him back and we don't have to 7 have this deposition again. So we can do that either 8 way. 9 MR. BELL: Well, I already have a 10 protective order. The flaw in the reasoning is I have 11 a protective order -- 12 MR. CHAIKEN: Right. 13 MR. BELL: -- in place, and what it 14 says is if we call the document back, you send it back. 15 You destroy all notes. It doesn't say you challenge 16 it. It doesn't give you the right to challenge it. If 17 you want to challenge the plaintiff codes you can do 18 that in the motion to compel. But I don't need to move 19 for a protective order because I have a protective 20 order. 21 MR. CHAIKEN: Let's go off the record 22 and take a look at that order and then maybe we can 23 reach an agreement. 24 MR. BELL: That's fine. 25 THE VIDEOGRAPHER: We're going off the</p>	<p style="text-align: right;">Page 123</p> <p>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</p>
<p style="text-align: right;">Page 124</p> <p>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</p>	<p style="text-align: right;">Page 125</p> <p>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</p>

1 can't prove that we have anything that we know works.
2 If something didn't even work as well as three times we
3 would be pretty excited. But, you know, can we get
4 something to work two times COP."

5 I mean, you know, we're -- money is not our
6 concern. It's the effectiveness of the technology. We
7 would say that to him. Like, we have plenty of money.
8 That's not the problem. We can pay all the money that
9 anybody wants whether it's fair or whether it's
10 consistent with the contract. That's a different
11 issue. But we're willing to pay money if we have
12 technology that worked.

13 Q. Okay. Now, talking about the timeframe
14 October 2013 going forward, you were performing tests
15 -- and when I say "you," Industrial Heat was performing
16 tests on various -- various reactors or various single
17 units in Raleigh; was it not?

18 A. Um-hm.

19 Q. At anytime between October 2013 through,
20 let's say, June 2014 did Dr. Rossi ever refuse to
21 perform tests that Industrial Heat requested of him?

22 A. Yes.

23 Q. When?

24 A. Often during that time period. So we had
25 built a device that -- that where the unit -- it was a

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<p style="text-align: right;">Page 138</p> <p>1 given access to all pending patent applications 2 included in the E-CAT IP or filed by Rossi afterwards." 3 Has your opinion changed since you wrote that or since 4 Industrial Heat wrote that? 5 A. I don't know that -- had applications that 6 had been filed that we were not given. I don't know 7 either way. May or may not had been given all the 8 patent applications. 9 Q. Sitting here today are you aware of any 10 pending patent applications or approved patent 11 applications that you had not been given by Rossi that 12 you were entitled to? 13 A. I don't know whether he has filed any since 14 -- you know, since he went to Florida. So if he had 15 then we would be entitled to receive those. But I'm 16 not aware. I don't remember of any. None come to mind 17 right now. 18 Q. Okay. Do you know if you ever told 19 investors as of July of 2014 that the results of the 20 validation tests in May of 2013 had resulted in a COP 21 of close to ten? 22 A. We probably gave them the report. 23 Q. Right. And did you ever tell potential 24 investors that the data in the process had been 25 reviewed by Industrial Heat?</p>	<p style="text-align: right;">Page 139</p> <p>1 A. I would assume that we would have, yes. 2 Q. And was that a true statement? 3 A. That we had reviewed the data in the 4 process? 5 Q. Yeah. 6 A. Yes. Not as much as we had liked but that 7 we had reviewed the process and the data. 8 (Whereupon Exhibit 20 was marked for 9 identification as of this date.) 10 Q. I'll show you what's been marked as Exhibit 11 Number 20. Exhibit Number 20 is a -- well, it's been 12 bates stamped IH-107550 through 107552. It's an e-mail 13 dated September 11th, 2014 from J.T. Vaughn to you and 14 John Mazzarino. 15 A. Um-hm. 16 Q. Do you recall receiving this e-mail? 17 A. I don't remember receiving it but it looks 18 like I did. 19 Q. This is an internal e-mail between the 20 three of you in which J.T. Vaughn is drafting a 21 timeline. Does that seem right to you? 22 A. Yes, it does. 23 Q. If you turn to the second page, Vaughn 24 writes for 2014, "May - September: Rossi begins working 25 on the one megawatt plant unit to prepare it to operate</p>
<p style="text-align: right;">Page 140</p> <p>1 on a continuous basis for 350 days, per the terms of 2 the agreement with IH." What agreement with IH is 3 Mr. Vaughn referring to based on your understanding? 4 A. Where are you now? 5 Q. The bottom of page two. It says, "May - 6 September: Rossi begins working." 7 A. I don't know actually. In other words, 8 what was he thinking versus what the documents say 9 versus what agreements did we have. So, you know, we 10 had said that, you know, he was welcome to operate that 11 device. I'm trying to think of the chronology here. 12 But he was welcome to operate that device 13 and if it worked, you know, he could use it to sell 14 licenses off of or for other purposes. And if we were 15 happy with its performance that we would talk to him 16 about paying him some extra money. 17 Q. Was there some other agreement besides the 18 license agreement that provided for Rossi to do a 19 350-day test? 20 A. We told -- he wanted to do a 350-day test. 21 I mean, he felt that was very important to do a 350-day 22 test. We said repeatedly we don't care about 350 days. 23 It doesn't matter. The idea of a doing a 350-day test, 24 publicizing it, talking about it, selling licenses to 25 other people off of that, you know, sort of</p>	<p style="text-align: right;">Page 141</p> <p>1 demonstrating the technology in a way that would be 2 credible, having a bona fide, you know, customer use 3 the steam. This was all very important to Rossi. 4 We were saying we don't care about any of 5 that. It doesn't matter that the device be tested for 6 any particular amount of time. We just want to make 7 sure that we have good, accurate measurements. A 8 credible third party who's taking the steam would be 9 valuable to us but, you know, we -- it was all his goal 10 to run this thing for 350 days to prove to the world 11 that this technology worked. 12 Q. I understand your response, Mr. Darden. 13 However, my question is a little bit different. 14 A. Sure. 15 Q. Specifically what other agreement, if not 16 the license agreement, is being referred to in this 17 paragraph? 18 MR. BELL: Objection to form. 19 THE WITNESS: I don't know what other 20 agreement J.T. was referring to there. But we did say 21 to him, "You can take this device." I don't know the 22 chronology, but you can operate this device. 23 (BY MR. CHAIKEN) 24 Q. And I understand your answer. But this 25 paragraph speaks to an agreement. And I guess my</p>

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<p style="text-align: right;">Page 154</p> <p>1 Mr. Darden consulted in November of 2015.</p> <p>2 MR. CHAIKEN: All right. Let me ask</p> <p>3 -- I'm going to ask not about this e-mail but about</p> <p>4 Mr. Zali.</p> <p>5 MR. BELL: That's fair.</p> <p>6 (BY MR. CHAIKEN)</p> <p>7 Q. Who is Zali?</p> <p>8 A. It's Jaffee actually. So his name is Zali</p> <p>9 Jaffee. And he's an attorney in Israel, and he works</p> <p>10 with a -- someone that I know who invested in some</p> <p>11 energy plants that were in Europe and ended up hiring</p> <p>12 Zali to represent him. And I'm an investor in that</p> <p>13 transaction. That's how I came to know Zali.</p> <p>14 Q. And you're telling me that Industrial Heat</p> <p>15 retained him for legal services?</p> <p>16 A. Yes, we did.</p> <p>17 Q. What type of legal services did you retain</p> <p>18 him to do?</p> <p>19 A. We wanted advice about -- oh, international</p> <p>20 fraud.</p> <p>21 Q. What type of international fraud?</p> <p>22 A. Whether we might be a victim of an</p> <p>23 international fraud.</p> <p>24 Q. And what jurisdictions or what territories</p> <p>25 was Mr. Zali licensed to practice law in?</p>	<p style="text-align: right;">Page 155</p> <p>1 A. I don't know.</p> <p>2 Q. Do you know if he was licensed to practice</p> <p>3 law in the United States?</p> <p>4 A. I don't know.</p> <p>5 Q. Did you ask him that question?</p> <p>6 A. I don't remember.</p> <p>7 Q. Is there a retention agreement between</p> <p>8 Industrial Heat and Mr. Zali?</p> <p>9 A. I don't know if he sent us an engagement</p> <p>10 agreement or not. We definitely worked with him</p> <p>11 regularly in this other transaction.</p> <p>12 Q. Did you ask for legal advice with respect</p> <p>13 to the license agreement at issue in this case?</p> <p>14 A. Say it again.</p> <p>15 Q. Did you ask for him to provide you with</p> <p>16 legal services with respect to the license agreement in</p> <p>17 this case?</p> <p>18 A. Yes, we did.</p> <p>19 Q. What type of legal service did you ask him</p> <p>20 to perform?</p> <p>21 MR. BELL: I think that's privileged.</p> <p>22 MR. CHAIKEN: I don't think this is a</p> <p>23 privileged document.</p> <p>24 MR. BELL: Well, I think we're back to</p> <p>25 the point where under the -- under the protective order</p>
<p style="text-align: right;">Page 156</p> <p>1 the remedy is to rip it up, throw away all your notes</p> <p>2 and make a motion to compel. I'm happy to, you know,</p> <p>3 add this to the list and put this in camera with the</p> <p>4 judge if he wants to see it. I think this is an</p> <p>5 appropriate procedure.</p> <p>6 It's not really -- the way a</p> <p>7 protective order works isn't that you scrutinize the</p> <p>8 document and make your own determination whether it's</p> <p>9 privileged.</p> <p>10 MR. CHAIKEN: Well, we can agree to</p> <p>11 disagree or not. Maybe -- can we go off the record for</p> <p>12 a second.</p> <p>13 THE VIDEOGRAPHER: We are off the</p> <p>14 record at 1:35 p.m.</p> <p>15 (Whereupon a break was taken.)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record at 1:46 p.m.</p> <p>18 MR. CHAIKEN: We have made an attempt</p> <p>19 to reach out to Judge O'Sullivan to see if we can get a</p> <p>20 quick ruling on this document. While we wait to see if</p> <p>21 we can get him on the line we're going to proceed with</p> <p>22 the deposition.</p> <p>23 (BY MR. CHAIKEN)</p> <p>24 Q. At some point in time, Mr. Darden, did</p> <p>25 Industrial Heat agree to allow the one megawatt plant</p>	<p style="text-align: right;">Page 157</p> <p>1 to be shipped to Florida?</p> <p>2 A. Yes.</p> <p>3 Q. And why did it do that?</p> <p>4 A. We felt like it would be beneficial for us</p> <p>5 and it would be beneficial for Andrea if we could use</p> <p>6 that as a way to see if the tech --</p> <p>7 MR. CHAIKEN: Hello. Someone just</p> <p>8 joined?</p> <p>9 MR. ANNESSER: I just -- this is John</p> <p>10 Annesser.</p> <p>11 MR. CHAIKEN: Oh, hey, John.</p> <p>12 (BY MR. CHAIKEN)</p> <p>13 Q. I'm sorry.</p> <p>14 A. We could use the -- the operation of the</p> <p>15 unit as a way of seeing if, in fact, the technology</p> <p>16 might work. In other words, we're still at a point of</p> <p>17 not knowing which was true. Does it never work, can it</p> <p>18 never work or has he simply concealed from us how to</p> <p>19 make it work.</p> <p>20 And so to see the technology operate would</p> <p>21 be -- we were willing -- it was interesting enough to</p> <p>22 us to see it operate -- if we could actually see it and</p> <p>23 measure it -- that we were willing to let the plant go.</p> <p>24 In addition, he could sell licenses off of it; he could</p> <p>25 advocate for or promote the technology as he would.</p>

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<p>Page 158</p> <p>1 That was beneficial to him. He wanted to do it. If it 2 were credibly instrumented and measured then we would 3 have found the results important to note. 4 Q. Did you have discussions with Dr. Rossi 5 prior to agreeing to let it go to Florida? 6 A. Sure. 7 Q. And was there a discussion about doing a 8 six cylinder test or a one megawatt test in Florida? 9 A. We would do either one. 10 Q. And were there -- 11 A. We wanted to see any device operate, 12 preferably at our location, but if he would only do it 13 at his location, while we felt extorted by that, we 14 were willing to let that happen. 15 Q. Did you ever put in writing, "Hey, we think 16 the tests should take place in North Carolina. We 17 don't want to move it to Florida"? 18 MR. BELL: Objection to form. 19 THE WITNESS: I don't remember that. 20 I wouldn't be surprised if we did. 21 (BY MR. CHAIKEN) 22 Q. Was the issue of having a customer be a 23 part of that test something raised by Industrial Heat 24 or was it raised by Dr. Rossi? 25 MR. BELL: Objection to form.</p>	<p>Page 159</p> <p>1 THE WITNESS: We felt that having a 2 bona fide customer would be an additional way of being 3 able to measure energy output. That if someone 4 credible were receiving the energy then that would be 5 one added way to ratify the power production. So, as I 6 said earlier when we were talking about measurement, 7 the problem with measurement is if you have only one 8 way of doing it with a new device or something that's 9 not well characterized, it's hard to know what the 10 output is. 11 So what you want to do in a setting 12 like that is to set up as many different measurement 13 systems as you can. Measure input, measure output. 14 Measure output lots of different ways. And so having 15 someone honest receiving the energy, measuring the 16 energy, was a way to ratify or show how much was being 17 produced. You wouldn't need it if you had really good 18 instruments. 19 In other words, an instrument in front 20 of a radiator or something would also work. But absent 21 that, having a very credible customer would be 22 beneficial in terms of verification. 23 (BY MR. CHAIKEN) 24 Q. So getting back to that, was it IH's or was 25 it your idea or was it Dr. Rossi's idea to have that</p>
<p>Page 160</p> <p>1 customer? 2 MR. BELL: Objection to form. 3 THE WITNESS: I think it was Rossi's 4 idea. 5 (BY MR. CHAIKEN) 6 Q. And do you know when he brought that up? 7 A. He mentioned it from very early on that he 8 felt like a customer would make a difference. 9 Q. Was there any other benefit other than the 10 ability to measure it that you saw to having a customer 11 be a part of the testing? 12 A. Well, if the operation were where we were I 13 would say no. We could measure the steam energy 14 output. But if it was -- if we didn't have good access 15 to the machine then to have a credible customer 16 measuring how much was coming from it would have been a 17 benefit. 18 Q. Was -- 19 A. So the only benefit to me was -- was -- the 20 only benefit I cared about was third-party 21 ratification. And that was an indirect way of doing 22 that. I guess if there were some famous customers 23 saying that they were using the steam and it was a 24 credible company and it worked great, that there could 25 be some advantage to that as well.</p>	<p>Page 161</p> <p>1 Q. And what kind of advantage would that be? 2 A. Well, let's say we had a device, the device 3 worked, and the device had been in operation in the 4 plant of, you know, a credible entity. That would be a 5 great testimonial. 6 Q. Did you think that being able to tell that 7 to investors would help raise money for Industrial 8 Heat? 9 A. It wouldn't have mattered. 10 Q. Why not? 11 A. Well, everything matters a little bit but, 12 I mean, if we had a successful device that was 13 well-characterized and honestly monitored and we knew 14 we had built it, the device we built operated, we could 15 replicate it, then raising money was a complete 16 non-issue. We didn't need anything to sell investors. 17 Q. So really at the end of the day it didn't 18 matter to you who the customer was, if any? 19 MR. BELL: Objection to form. 20 THE WITNESS: No, it depends. If the 21 device were sufficiently instrumented, if you had 22 enough measurement, if you had an honest measurement 23 system set up and us having full access to it, us being 24 able to put on it whatever instruments we wanted, us 25 being able to get credible professionals -- you know,</p>

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<p style="text-align: right;">Page 162</p> <p>1 Duke University. I don't know. Bureau Veritas --</p> <p>2 people like that to come in and set up a system for</p> <p>3 measurement, we would have said we're happy not having</p> <p>4 a customer. But absent that, a customer was sort of an</p> <p>5 added way of ratifying the power.</p> <p>6 (BY MR. CHAIKEN)</p> <p>7 Q. Putting aside the issue of the time of</p> <p>8 performance, the license agreement itself didn't</p> <p>9 provide that a customer was required for the guaranteed</p> <p>10 performance test, did it?</p> <p>11 MR. BELL: Objection to form.</p> <p>12 THE WITNESS: I believe that that's</p> <p>13 correct that it did not.</p> <p>14 (BY MR. CHAIKEN)</p> <p>15 Q. Okay. I'll show you what's been marked as</p> <p>16 Exhibit 25.</p> <p>17 (Whereupon Exhibit 25 was marked for</p> <p>18 identification as of this date.)</p> <p>19 Q. Exhibit 25 is -- have been marked IH-7126</p> <p>20 through 7127. It's a series of e-mails dated July</p> <p>21 10th, 2014 between you and Dr. Rossi. Have you seen</p> <p>22 these e-mails before?</p> <p>23 A. Um-hm, yes.</p> <p>24 Q. Specifically I'm going to point you to the</p> <p>25 first e-mail from you to Dr. Rossi. Paragraph ten of</p>	<p style="text-align: right;">Page 163</p> <p>1 this e-mail -- and I guess these are terms pursuant to</p> <p>2 an agreement that you were negotiating at the time; is</p> <p>3 that correct?</p> <p>4 A. The moving of the plant down to Florida.</p> <p>5 Q. Right.</p> <p>6 A. Allowing the plant to go.</p> <p>7 Q. Right. That's what's being negotiated in</p> <p>8 these e-mails?</p> <p>9 A. Um-hm.</p> <p>10 Q. And paragraph ten states -- this is your</p> <p>11 e-mail to Dr. Rossi -- "Attached to this contract is</p> <p>12 the letter of the Healthcare Office of Miami allowing</p> <p>13 the operation of the one megawatt plant." Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you think that that was a requirement</p> <p>17 to allow the plant to go to Florida?</p> <p>18 A. No.</p> <p>19 Q. Did you have a discussion with Dr. Rossi</p> <p>20 about it?</p> <p>21 A. I don't remember talking to him about that.</p> <p>22 Q. Do you know why it was included in the --</p> <p>23 in these negotiations?</p> <p>24 MR. BELL: Objection to form.</p> <p>25 THE WITNESS: I did not include it in</p>
<p style="text-align: right;">Page 164</p> <p>1 this.</p> <p>2 (BY MR. CHAIKEN)</p> <p>3 Q. My question is do you know why it was?</p> <p>4 A. I don't know why. But, to elaborate, I</p> <p>5 think consistently we saw a pattern of trying to get</p> <p>6 some type of certification, some type of stamp of</p> <p>7 approval, something like that from some other entity as</p> <p>8 a way of giving credibility to the technology.</p> <p>9 It didn't matter to us, but I think it</p> <p>10 mattered a lot to Andrea. Meanwhile, in addition to</p> <p>11 that, you know, given the sort of profile that Rossi</p> <p>12 had out there -- has -- I think the possibility of --</p> <p>13 you know, I think the more kind of external ways of</p> <p>14 saying, you know, some big company, some government</p> <p>15 entity, some certifier, some professors have looked at</p> <p>16 this and said it's okay was something that he liked.</p> <p>17 But that's me -- you know, I'm speculating about his</p> <p>18 motivations.</p> <p>19 Q. Did it -- so as part of this the</p> <p>20 negotiation included, you know, a customer to be using</p> <p>21 the steam; is that correct?</p> <p>22 A. Yes. I mean, it was something that he</p> <p>23 represented was going to exist. And as we were</p> <p>24 thinking should we let this machine go --</p> <p>25 Q. Right.</p>	<p style="text-align: right;">Page 165</p> <p>1 A. -- you know, meanwhile, we thought we could</p> <p>2 get paid a lot of money for it too. So the whole thing</p> <p>3 looked pretty good when it was Johnson Matthey.</p> <p>4 Q. And at this time June-July of 2014 was it</p> <p>5 -- did it matter to you what that customer did with the</p> <p>6 steam that was going to be produced?</p> <p>7 A. We wanted to be sure that they measured it</p> <p>8 and that we could use them as a way of knowing how much</p> <p>9 steam was produced. So to have a third-party</p> <p>10 sophisticated, you know, technical company that needed</p> <p>11 steam and that could measure it was important to us.</p> <p>12 Q. Okay. And did you include provisions in</p> <p>13 the agreement which provided for the method and means</p> <p>14 by which the third-party customer would, in fact,</p> <p>15 measure that?</p> <p>16 A. No. I think we would have been happy with</p> <p>17 almost any way that a credible company would have</p> <p>18 measured it.</p> <p>19 Q. Did you ask for any way? Did you put some</p> <p>20 writing where they said, "They're required to measure</p> <p>21 it using any means possible"?</p> <p>22 A. I don't think so.</p> <p>23 Q. Why not?</p> <p>24 A. Well, they weren't going to pay us money</p> <p>25 unless they were getting the steam.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. Right.</p> <p>2 A. So obviously they were going to measure it.</p> <p>3 Q. Okay. Was there a provision in that deal</p> <p>4 which required them to provide you with -- with those</p> <p>5 measurements?</p> <p>6 A. I don't know if there was a requirement</p> <p>7 that they do so, but if they were going to pay for it</p> <p>8 then we would have known from the fact that they were</p> <p>9 paying for it that they were getting it.</p> <p>10 MR. BELL: You could always show him</p> <p>11 the agreement.</p> <p>12 MR. CHAIKEN: I can't.</p> <p>13 (BY MR. CHAIKEN)</p> <p>14 Q. I asked you a question about whether it</p> <p>15 mattered to you what they did with the steam and you</p> <p>16 gave me an answer. I'm sorry if I'm asking you again.</p> <p>17 But did it matter to you what they did with the steam?</p> <p>18 A. You mean what kind of -- are you asking</p> <p>19 would it matter to me what type of product they were</p> <p>20 producing with it?</p> <p>21 Q. Yeah, exactly.</p> <p>22 A. I think any product that Johnson Matthey</p> <p>23 would have been producing we probably would have been</p> <p>24 happy to have them producing with that steam, I</p> <p>25 suspect.</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. Let's assume that you weren't negotiating</p> <p>2 -- well, let's assume you didn't know the name of the</p> <p>3 customer. Would you have needed to know the name of</p> <p>4 the customer prior to agreeing to allow the test to go</p> <p>5 forward in Florida?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 THE WITNESS: I think that if we had</p> <p>8 perceived it was a credible bona fide third-party</p> <p>9 company we would have felt a lot of comfort from that.</p> <p>10 Knowing who it was, we felt even more comfort from</p> <p>11 that. I think it's a -- our interest was in a whole</p> <p>12 blend of different circumstances surrounding this. So</p> <p>13 any one attribute would we have compromised on? Maybe</p> <p>14 so in terms of letting it go, but everything mattered.</p> <p>15 (Whereupon Exhibit 26 was marked for</p> <p>16 identification as of this date.)</p> <p>17 (BY MR. CHAIKEN)</p> <p>18 Q. I'll show you what's been marked as</p> <p>19 Exhibit 26. Exhibit 26 is an e-mail dated June 22nd,</p> <p>20 2014, and it is bates stamped 117296 through 297. And</p> <p>21 the first e-mail which is on the second page -- it's an</p> <p>22 e-mail chain.</p> <p>23 First, on the second page Dr. Rossi writes</p> <p>24 to you and several other people about a meeting on</p> <p>25 June 17th talking about what happened in August. And,</p>
<p style="text-align: right;">Page 168</p> <p>1 in fact, his paragraph number two on that page states,</p> <p>2 "Since August 2013 it has been impossible to</p> <p>3 communicate to us the where to install and make</p> <p>4 operative the plant." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you disagree with his statement?</p> <p>7 A. Absolutely.</p> <p>8 Q. Do you think you had communicated where you</p> <p>9 were going to make the plant operative at that time at</p> <p>10 or around August 2013?</p> <p>11 A. We said straight away, right where it is.</p> <p>12 Q. Did you tell him in your response that you</p> <p>13 disagreed with him?</p> <p>14 A. I don't know how we responded to this</p> <p>15 but --</p> <p>16 Q. Well, your response is on the next page.</p> <p>17 A. Oh, I see.</p> <p>18 MR. BELL: Technically that's a draft</p> <p>19 of the actual responses.</p> <p>20 MR. CHAIKEN: I think you're right,</p> <p>21 Bernie.</p> <p>22 (BY MR. CHAIKEN)</p> <p>23 Q. Did you, in fact, respond to Dr. Rossi's</p> <p>24 e-mail?</p> <p>25 A. I don't remember, but I see a draft here or</p>	<p style="text-align: right;">Page 169</p> <p>1 if this went then perhaps so.</p> <p>2 Q. Why did you think you needed to forward</p> <p>3 this to your attorneys?</p> <p>4 A. Well, this e-mail --</p> <p>5 MR. BELL: Just -- I'm going to allow</p> <p>6 him -- you can answer the question or allow -- I'll</p> <p>7 instruct him not to answer the question. Otherwise,</p> <p>8 I'll instruct you not to disclose the substance of any</p> <p>9 attorney-client communications coming back to you or</p> <p>10 emanated from you.</p> <p>11 THE WITNESS: So this was an</p> <p>12 outrageous e-mail, the one that he sent. You know, it</p> <p>13 said all kinds of things that were not true. And we</p> <p>14 were trying to figure out among ourselves -- and how do</p> <p>15 we respond to this. I mean, this is so ridiculous, but</p> <p>16 does it matter, on the other hand. Like, why do we</p> <p>17 care about whether it says these things that are</p> <p>18 ridiculous if they're not true then what difference</p> <p>19 does it -- does it make a difference and what is our</p> <p>20 goal.</p> <p>21 Our goal is to see the plant operate,</p> <p>22 to see if it might work. And maybe we could credibly</p> <p>23 instrument the plant. So that was our primary goal.</p> <p>24 Plus, it was beneficial for him.</p> <p>25 (BY MR. CHAIKEN)</p>

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<p style="text-align: right;">Page 170</p> <p>1 Q. You state in your -- in this draft e-mail 2 at least. "Your e-mail refers to contract sections, 3 but I haven't read them since we signed. I will need 4 to get a copy of the document and read it." After you 5 received his e-mail on June 20th did you, in fact, get 6 a copy of the document and read it? 7 A. I don't remember. On June 20th? 8 Q. Yeah. 9 A. I don't remember. You know, I'm sure that 10 -- I'm sure that at some point we began to read these 11 things. I think that -- I don't know when I first 12 began reading these sections. 13 Q. As of June 22nd, 2014 had you previously 14 read the contract sections anytime between June 22nd, 15 2014 and October 26th, 2012? 16 A. I would think that I probably had. 17 Q. Were you in or around June of 2014 pushing 18 Dr. Rossi to start testing the one megawatt plant? 19 A. We were -- around June of '14? 20 Q. Yeah. 21 A. We were always pushing to start testing 22 almost anything. We wanted to operate any machines 23 that he had built. If we had built a machine we wanted 24 to operate it and see it operate and see whether it 25 might work, whether he had transferred the technology</p>	<p style="text-align: right;">Page 171</p> <p>1 to us. 2 Q. Were those -- did you ever put those 3 requests in writing? 4 A. I suspect that we did, but I don't 5 remember. 6 Q. Is there a reason why you wouldn't have put 7 them in writing? 8 A. Well, just because, you know, we're talking 9 by phone or -- excuse me -- in the other office. You 10 know, I saw him most days for a long period of time. 11 Q. Now -- 12 A. I tend not to send e-mails to people who I 13 communicate with verbally so -- 14 Q. Did you have a meeting in Raleigh in July 15 of 2014 with Dr. Rossi and Henry Johnson? 16 A. I know that we had a meeting in Raleigh 17 with -- when he brought Henry Johnson to a restaurant, 18 but I don't remember the date. 19 Q. Who was present at that meeting? 20 A. J.T. was there. I was there. Andrea, 21 Johnson. I don't know who else was there from our 22 side. I can't remember. 23 Q. And what was the purpose of that meeting? 24 A. He was introducing us to the president of 25 the Johnson Matthey subsidiary.</p>
<p style="text-align: right;">Page 172</p> <p>1 Q. And did he say specifically that the 2 purpose of the meeting was to do that? 3 A. The purpose -- yes. 4 Q. Did he say that in writing or orally? 5 A. I don't remember. 6 Q. Did he ever tell you that he was working 7 with a Johnson Matthey subsidiary at any point in time? 8 A. Yes. 9 Q. When was that? 10 A. He told us that that's who the customer 11 was. 12 Q. And when did he tell you that? 13 A. Several times. I mean, I don't remember 14 the specific dates but it was Johnson Matthey. 15 Q. Did he tell you that -- 16 A. He told us he previously worked for Johnson 17 Matthey, that he had done business with them. He 18 repeatedly said that. 19 Q. Did he tell you that orally or did he tell 20 you that in writing? 21 A. I don't know if he said it in writing, but 22 I know he said it orally. 23 Q. Okay. Did he tell you that he was 24 purchasing products from Johnson Matthey? 25 A. He said that he had previously purchased</p>	<p style="text-align: right;">Page 173</p> <p>1 products from Johnson Matthey. He said Johnson Matthey 2 was going to be operating the plant. 3 Q. Okay. And who else was present when he 4 made those statements? 5 A. I don't remember which conversation and who 6 was present at which conversation but -- 7 Q. Let's go to the -- 8 A. He said Johnson Matthey would -- after the 9 plant had operated for a brief period of time and they 10 were sure that it was working and everything was 11 effective, that Johnson Matthey wanted to announce that 12 they were the customer. 13 Q. And let's go back to the meeting with Henry 14 Johnson. You said it was held in a restaurant in 15 Raleigh? 16 A. Yes. 17 Q. And there was J.T. Vaughn, yourself, Dr. 18 Rossi and Henry Johnson, right? 19 A. Yes. I'm not sure if anybody else was 20 there. 21 Q. And what was said at that meeting? 22 A. It was a formalistic kind of a meeting to 23 introduce the customer and to talk about, you know, the 24 circumstances of bringing the plant down to Miami. 25 And, you know, we wanted to build a -- have some</p>

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<p style="text-align: right;">Page 174</p> <p>1 communication with who was going to be using this thing 2 and try to get some feel for it. 3 You know, we just wanted to call Johnson 4 Matthey and talk to them. We wanted to go meet with 5 Johnson Matthey. You know, those were all our initial 6 -- I don't remember the chronology here so I say 7 "initial," but those were recommendations that we were 8 making. And so I suspect that what happened is Andrea 9 said, "Well, I'll just bring the president of Johnson 10 Matthey, you know, to this subsidiary to meet with 11 you." 12 Q. And what happened at that meeting? 13 A. We had lunch. It was -- it was kind of 14 awkward. It -- you know, it was -- he didn't seem like 15 a Johnson Matthey kind of guy. Not that I know what 16 that is necessarily. But, you know, somebody who's an 17 industrial facility operator kind of person. I'm 18 trying to remember when it came up that we put two and 19 two together and figured out that he was Rossi's 20 lawyer. And so that was weird. 21 Again, I'm kind of mixing together 22 different conversations and what we talked about at 23 which time. But I do remember a conversation where we 24 were saying, you know, why would a lawyer be doing 25 this. And either Rossi or Johnson was saying, "Well,</p>	<p style="text-align: right;">Page 175</p> <p>1 you know, they needed to set up a subsidiary for this 2 purpose. This is a special project. They're going to 3 move some of their production from somewhere else in 4 Miami or somewhere nearby over there to produce -- to 5 run this plant, to produce in this plant." 6 They wanted it to be a separate subsidiary. 7 They didn't want their name on it. They wanted it to 8 be, you know, registered by some attorney. And so, you 9 know, here's an attorney. Rossi knew this attorney. I 10 don't know what the connection was to this attorney. 11 So he was going to do it. 12 But I remember saying, "So you're going -- 13 you know, this is what you're going to do or you're 14 going to work with this or you're -- you know, so 15 you're going to run this operation" or something like 16 that. He said, "Yeah, I'm going to run the operation." 17 Q. Did they tell you what products they were 18 going to be producing? 19 A. No, they wouldn't. 20 Q. Did they tell you what they were going to 21 do with the steam? 22 A. Hm? 23 Q. Did they tell you how they were going to 24 measure the steam? 25 A. Well, they said they were going to produce</p>
<p style="text-align: right;">Page 176</p> <p>1 -- 2 MR. BELL: I just want to make sure 3 she gets your -- 4 THE WITNESS: Okay. They didn't tell 5 us what products they were going to produce, and they 6 didn't tell us specifically what they were going to do 7 with the steam except to use it in producing their 8 products. They said they were going to move products 9 from another plant into this plant. 10 (BY MR. CHAIKEN) 11 Q. And did they tell you where that plant was 12 located? 13 A. I recall that they said it was in or 14 somewhere around Miami, but I can't say that for sure. 15 Q. And did you do any due diligence into Henry 16 Johnson at that time? 17 A. Yes. I mean, somewhere in there we figured 18 out this is a lawyer and, you know, we figured out this 19 was Rossi's lawyer. So at some point we figured that 20 out. That's why we were kind of surprised. 21 Q. And -- 22 A. How this guy was going to go do this or 23 this guy is going to run this thing or -- it must be an 24 important operation. He must really be a believer. He 25 must really think this is going to be great.</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. And did they tell you they were forming a 2 new company for the purposes of doing it? 3 A. Yes. 4 Q. And did they tell you who the officers and 5 directors of that company were going to be? 6 A. I don't remember that. Well, Henry 7 Johnson. 8 Q. And they told you that they were going to 9 be opening up a new facility in -- 10 A. Yes. 11 Q. Was there any reason why you were prevented 12 from calling Johnson and Matthey directly to confirm 13 any of this? 14 A. Rossi made us promise we wouldn't do that. 15 He said, "Please don't do that. Then they won't use 16 it. They'll be scared. They'll come out as soon as 17 it's run for 90 days. Everything is going great and 18 they'll come out. You know, they'll be proud to be 19 associated with it at that point. Right now they don't 20 want that to happen." 21 In fact, we knew people in England who knew 22 people at Johnson Matthey, and it would have been very 23 easy to simply -- you know, I was thinking, well, let 24 me call them up. And he said, "No, no. You can't do 25 that. It'll -- you know, they'll get spooked or they</p>

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<p style="text-align: right;">Page 178</p> <p>1 don't want any publicity until they know that 2 everything is working great."</p> <p>3 Q. Based on your prior due diligences into Dr. 4 Rossi and based on what you had learned about Henry 5 Johnson, didn't this all start to put red flags up and 6 say, hey, maybe this isn't legit? We need to start 7 doing more due diligence?</p> <p>8 A. Well, our loss of confidence in the 9 technology and in Rossi was kind of a continuous slide. 10 So, you know, we tend to be hopeful and optimistic 11 people. Being in the businesses that we're in you need 12 to be maybe a little bit slower to be suspicious than 13 we should be. Certainly this was not -- it didn't feel 14 as good as it should have.</p> <p>15 Q. But here you are in June-July 2014. You're 16 unable to replicate. You had doubts at the start this 17 might be a fraud. Dr. Rossi shows up with his attorney 18 as a so-called customer for Johnson Matthey. And who 19 is Johnson Matthey, by the way?</p> <p>20 A. It's a large British, I think, 21 headquartered company that makes -- oh, products -- 22 industrial supply products mostly for the medical or 23 high-tech industry. Very sophisticated company.</p> <p>24 Q. Is it publicly traded?</p> <p>25 A. I'm 90 percent sure it is. I'm not sure.</p>	<p style="text-align: right;">Page 179</p> <p>1 I believe so.</p> <p>2 Q. So you've got all that going on, and you're 3 about to ship a piece of equipment they had paid \$1.5 4 million for and you're not going to check to see if, in 5 fact, Johnson Matthey has anything to do with it?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 (BY MR. CHAIKEN)</p> <p>8 Q. I mean, I understand the thinking in that.</p> <p>9 MR. BELL: Objection to form.</p> <p>10 THE WITNESS: Are you saying that we 11 should have been worried about the value of the plant 12 and losing access to the value of this plant? I mean, 13 we weren't getting value from the plant as it was so we 14 didn't care about that at that point.</p> <p>15 (BY MR. CHAIKEN)</p> <p>16 Q. So it really wasn't -- this was, "Hey, we 17 just want to see it work. We don't really care about 18 the logistics of it"?</p> <p>19 A. Well, we absolutely --</p> <p>20 MR. BELL: objection to form.</p> <p>21 THE WITNESS: So we absolutely 22 believed that someone associated with Johnson Matthey 23 was producing products on the other side of that wall.</p> <p>24 (BY MR. CHAIKEN)</p> <p>25 Q. I'm sorry. Say that one more time.</p>
<p style="text-align: right;">Page 180</p> <p>1 A. So we absolutely believed that somebody 2 associated with Johnson Matthey was producing something 3 on the other side of that wall.</p> <p>4 Q. But you didn't do any due diligence to 5 confirm that?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 THE WITNESS: We talked to -- we 8 talked to a lawyer -- a licensed lawyer -- in Florida. 9 I mean, somebody who's presumably not a scam artist who 10 said, "I'm the president of this company. We're going 11 to use this steam. We're going to make products from 12 it." I mean, sure, it wasn't comforting. I wish that 13 it had been somebody who was coming that had a British 14 accent and worked for 20 years at Johnson Matthey. I 15 would have felt much better. But it also was credible 16 that a company like Johnson Matthey would have been 17 worried about being associated with this technology.</p> <p>18 (BY MR. CHAIKEN)</p> <p>19 Q. But was it credible to think that Johnson 20 Matthey was going to be associated with Dr. Rossi's 21 personal attorney, and his personal attorney was going 22 to be the CEO of that subsidiary?</p> <p>23 A. Well, you could imagine --</p> <p>24 MR. BELL: Objection to form.</p> <p>25 THE WITNESS: I mean, if the goal of</p>	<p style="text-align: right;">Page 181</p> <p>1 Johnson Matthey was to stay completely behind the 2 scenes or incognito relative to this, that would be a 3 good way to do it.</p> <p>4 (BY MR. CHAIKEN)</p> <p>5 Q. Did you ask Henry Johnson what his 6 experience was in manufacturing?</p> <p>7 A. Yeah, we did. We said, "Have you ever run 8 a plant or have you ever done anything like this." He 9 said, "No. It's a new thing for me." We assumed that 10 the operational requirements of managing this operation 11 -- this facility, you know, for him would not call for 12 a lot of technical expertise. And that was obvious. 13 We figured that there would be technical people running 14 this thing.</p> <p>15 Q. Isn't it true that Dr. Rossi told you that 16 he was going to be running this plant?</p> <p>17 A. No.</p> <p>18 Q. He never did?</p> <p>19 A. I don't remember that.</p> <p>20 (Whereupon Exhibit 27 was marked for 21 identification as of this date.)</p> <p>22 Q. I'll show you what's been marked as 23 Exhibit 27. Exhibit 27 has been bates stamped 24 1H-12026. It's an e-mail from Andrea Rossi to you and 25 J.T. Vaughn and other persons dated June 10th, 2014.</p>

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<p style="text-align: right;">Page 182</p> <p>1 It states, "I have completed the 2 organization of my plan to put the one megawatt in 3 operation. I confirm all I already said: We have a 4 customer who pays \$1,000 a day to rent the one megawatt 5 plant, put it in his factory in Miami, produce 6 catalyzers that he sells; I will direct the operation 7 of the plant for the first year, the contract will be 8 for three years, renewable." Did you ever have any 9 conversation with Dr. Rossi about that? 10 A. I believe we generally did, but this is 11 consistent with what I just said. I think they're 12 questioning that he was not going to operate the 13 customer's facility. 14 Q. You didn't take this sentence to mean that 15 he was going to direct the operation of the customer's 16 facility? 17 A. Well, he's going to rent the one megawatt 18 plant, put it in the factory in Miami -- the factory in 19 Miami -- "produce catalyzers that he sells; I will 20 direct the operation of the plant" -- the one megawatt 21 plant in my mind -- "for the year." And then every day 22 or whenever, Rossi would report either to us or via the 23 blogs that he was working hard in the container -- I 24 mean, running the steam plant. 25 Q. But couldn't have you read it a different</p>	<p style="text-align: right;">Page 183</p> <p>1 way meaning he was going to be operating at the 2 customer's plants given the fact that he uses the -- 3 the contract will be for three years renewable? 4 Doesn't that suggest to you that he's talking about the 5 customer's plant and not the one megawatt plant? 6 A. No. 7 MR. BELL: Objection to form. 8 (BY MR. CHAIKEN) 9 Q. Because why would you need a three-year 10 renewable contract for the one megawatt plant? 11 A. Well -- 12 MR. BELL: Objection to form. 13 THE WITNESS: Because we were -- 14 MR. BELL: This is referencing the 15 contract. Why don't you show him the contract instead 16 of this. This is not the contract. 17 MR. CHAIKEN: Because I don't think he 18 was referring to a term sheet. 19 (BY MR. CHAIKEN) 20 Q. So you can answer my question. 21 A. Well, I remember that Rossi told us that 22 they would rent the plant for more than one year. And 23 so we actually thought we would be getting paid 24 whatever that is -- \$265,000 a year for -- I thought it 25 was two years. Maybe it was three years. But that it</p>
<p style="text-align: right;">Page 184</p> <p>1 was a longer term contract than that. 2 So I think this says that it was a -- it's 3 a renewable plant. The contract will be for three 4 years to run the steam plant. I mean, to buy steam 5 from us. 6 Q. Did you ever have a conversation with him 7 after sending this e-mail regarding this e-mail? 8 A. I don't remember. 9 Q. So who negotiated the -- and you're 10 familiar with a document called the Term Sheet? 11 A. Yes. 12 Q. Who negotiated that term sheet with J.M. 13 Products? 14 A. Rossi. 15 Q. Who on the Industrial Heat side? 16 A. I don't remember. 17 Q. Who represented Leonardo in those 18 negotiations? 19 A. I don't remember. 20 Q. Do you know who represented J.M. Products 21 in those negotiations? 22 A. No, I don't remember. 23 Q. Do you know if it was Dr. Rossi who did? 24 A. I don't know. I don't remember that. 25 Q. Did your -- I say "your," did Industrial</p>	<p style="text-align: right;">Page 185</p> <p>1 Heat's attorneys review the term sheet before it was 2 executed? 3 A. I don't remember much about that term 4 sheet. Maybe if I looked at it I could get a feel for 5 it. 6 Q. Your wish is granted. Here's the term 7 sheet. 8 (Whereupon Exhibit 28 was marked for 9 identification as of this date.) 10 Q. Exhibit 28 has been marked, and that is the 11 term sheet. It's stamped IH-11496 through 11497. Does 12 this refresh your recollection as to whether or not 13 your attorneys -- IH's attorneys reviewed this prior to 14 it being executed? 15 A. I don't remember whether they did or not. 16 I would assume that they did, but I don't know that 17 they did. 18 Q. Does the word or name Johnson Matthey 19 appear anywhere in this contract? 20 A. J.M.C. J.M. Chemical Products, Inc. And 21 then later, J.M.C. 22 Q. But that doesn't say "Johnson Matthey," 23 does it? 24 A. Right. This was a separate subsidiary of 25 Johnson Matthey.</p>

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<p style="text-align: right;">Page 186</p> <p>1 Q. And --</p> <p>2 A. We were told.</p> <p>3 Q. Was that --</p> <p>4 A. And I believe, in fact -- I think we looked</p> <p>5 at this. I believe that there's a Johnson Matthey</p> <p>6 Chemical Products, Inc. I think that there actually is</p> <p>7 a company called that. So it was a logical name.</p> <p>8 That's a recollection.</p> <p>9 Q. Did you -- do you have anything in writing</p> <p>10 that you asked, whether it be J.M. Chemical Products,</p> <p>11 Inc., or Dr. Rossi or Henry Johnson, where they stated</p> <p>12 specifically, "We represent that J.M. Chemical</p> <p>13 Products, Inc., is, in fact, the subsidiary of Johnson</p> <p>14 Matthey"?</p> <p>15 A. I don't remember that specifically. And</p> <p>16 whether it was subsidiary or affiliate or part of the</p> <p>17 group or some of the language, clearly they represented</p> <p>18 that.</p> <p>19 Q. In writing?</p> <p>20 A. I don't know. We would have to search.</p> <p>21 Q. If it wasn't produced in discovery in this</p> <p>22 case would you agree that it doesn't exist?</p> <p>23 MR. BELL: In writing.</p> <p>24 THE WITNESS: So is there nothing --</p> <p>25 is there nothing -- I don't know that there is nothing</p>	<p style="text-align: right;">Page 187</p> <p>1 that has the name Johnson Matthey in it that -- that</p> <p>2 was produced in discovery.</p> <p>3 (BY MR. CHAIKEN)</p> <p>4 Q. Did you ever receive anything in writing</p> <p>5 from Dr. Rossi where he said specifically that he was</p> <p>6 purchasing products from Johnson Matthey?</p> <p>7 A. I don't remember that.</p> <p>8 Q. In the course of this case defendants have</p> <p>9 produced over 65,000 pages of documents. I haven't</p> <p>10 seen one which says specifically anything to the effect</p> <p>11 of J.M. Chemical Products, Inc., is a subsidiary or</p> <p>12 affiliate of Johnson Matthey. Is it your contention</p> <p>13 that such a written document exists?</p> <p>14 A. I know -- I don't know whether such a</p> <p>15 written document exists.</p> <p>16 Q. Okay. If it did exist it would have been</p> <p>17 produced, correct?</p> <p>18 A. I would assume that it would have.</p> <p>19 Q. Okay. Now, you mentioned that pursuant to</p> <p>20 this agreement, Industrial Heat would have been</p> <p>21 entitled to \$365,000 per year, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Did Industrial Heat ever seek to collect</p> <p>24 that money?</p> <p>25 A. After the plant got it -- no, we did not.</p>
<p style="text-align: right;">Page 188</p> <p>1 After the plant got installed in Florida and we saw</p> <p>2 that Rossi had removed all of the instrumentation and</p> <p>3 the monitoring access that we had, and as we realized</p> <p>4 that he was restricting access to it so it was not</p> <p>5 going to be a fully transparent bona fide test, at that</p> <p>6 point we became very suspicious.</p> <p>7 We realized that it was -- something bad</p> <p>8 was going on down there. And we don't want to get</p> <p>9 thrown in jail for participating in some kind of fraud</p> <p>10 so we said we don't want to receive payment from them.</p> <p>11 Q. What measurement equipment did you --</p> <p>12 A. I don't know the details of it, but we had</p> <p>13 put on access ports on places where instruments could</p> <p>14 be put so that we could put our own instruments on it</p> <p>15 and cut it all off.</p> <p>16 Q. Who -- who knows more about that than you?</p> <p>17 A. T. Barker knows about it.</p> <p>18 Q. Anybody else?</p> <p>19 A. Barry probably knows something about it.</p> <p>20 Q. Did you ever inform Dr. Rossi and said,</p> <p>21 "Hey, why are you removing all this measuring</p> <p>22 equipment"?</p> <p>23 A. We did talk about that.</p> <p>24 Q. You talked about it. Did you ever send him</p> <p>25 an e-mail and say, "Hey, why are you moving all this</p>	<p style="text-align: right;">Page 189</p> <p>1 stuff"?</p> <p>2 A. I don't remember sending an e-mail. I</p> <p>3 remember talking directly about it.</p> <p>4 Q. Was there -- did you ever give an</p> <p>5 instruction to -- whether it be T. Barker Dameron or</p> <p>6 Berry West where you told him, "Hey, you know, dance</p> <p>7 carefully around Dr. Rossi. Don't say anything that</p> <p>8 might upset him. Don't tell him if you think something</p> <p>9 is wrong with the plant"? Anything of that -- anything</p> <p>10 of that nature?</p> <p>11 A. Well, we definitely -- I definitely don't</p> <p>12 remember saying don't tell if there's something wrong</p> <p>13 with the plant. I mean, I don't know the definition of</p> <p>14 "wrong with the plant." But they knew that they needed</p> <p>15 to be careful in their communication with Rossi</p> <p>16 generally because he was so volatile and he would get</p> <p>17 very angry at them. So if they -- if they asked</p> <p>18 questions or if they tried to get information, you</p> <p>19 know, they knew that Rossi was likely to get very</p> <p>20 angry.</p> <p>21 Q. Let me ask it a different way. Did you</p> <p>22 ever give any instruction to T. Barker Dameron as to</p> <p>23 what topics of conversation he should not have with Dr.</p> <p>24 Rossi?</p> <p>25 A. I don't remember but could have.</p>

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<p style="text-align: right;">Page 190</p> <p>1 Q. What about Barry West?</p> <p>2 A. I don't remember but maybe.</p> <p>3 Q. Now, you would agree with me that this term</p> <p>4 sheet provides for a test of the one megawatt plant,</p> <p>5 right?</p> <p>6 MR. BELL: Objection to form.</p> <p>7 THE WITNESS: For selling steam from</p> <p>8 the one megawatt plant.</p> <p>9 (BY MR. CHAIKEN)</p> <p>10 Q. Got it. For selling steam.</p> <p>11 THE VIDEOGRAPHER: You have seven</p> <p>12 minutes left.</p> <p>13 MR. CHAIKEN: Okay.</p> <p>14 (BY MR. CHAIKEN)</p> <p>15 Q. I'll show you what's been marked as</p> <p>16 Exhibit 29.</p> <p>17 (Whereupon Exhibit 29 was marked for</p> <p>18 identification as of this date.)</p> <p>19 Q. Exhibit 29 has been bates stamped 80561</p> <p>20 through 80567. The very first e-mail at the top of the</p> <p>21 page is an e-mail from you to Joe Pike and Daniel Pike.</p> <p>22 A. Um-hm.</p> <p>23 Q. Do you recall sending that e-mail?</p> <p>24 A. I don't -- I mean, it looks like I did. I</p> <p>25 don't recall specifically sending it.</p>	<p style="text-align: right;">Page 191</p> <p>1 Q. This exhibit is an e-mail chain</p> <p>2 approximately March 23rd, 2015.</p> <p>3 A. Um-hm.</p> <p>4 Q. And you're responding to -- you're having</p> <p>5 some conversations about what's going on in the plant.</p> <p>6 In fact, this very first page you state on March 23rd</p> <p>7 at 9:54 a.m., "I'm torn about calling it a commercial</p> <p>8 customer or about representing the output at this time.</p> <p>9 We only have Rossi's words so far."</p> <p>10 And then at the top in response to an</p> <p>11 e-mail from Joe Pike you state, "My lack of clarity is</p> <p>12 just around 1) precisely how much. We cannot</p> <p>13 definitively represent this yet." Referring to the</p> <p>14 steam. "And 2) what is the nature of the customer."</p> <p>15 And then you state, "But these are picky nuances, not</p> <p>16 related to the core issue."</p> <p>17 A. Yes.</p> <p>18 Q. The nature of the customer in March of 2015</p> <p>19 was not a core issue, was it?</p> <p>20 MR. BELL: Objection to form.</p> <p>21 THE WITNESS: Well, the nature of the</p> <p>22 customer and the measurement of the steam were core</p> <p>23 issues for us in deciding how the technology worked.</p> <p>24 They were not core issues around the question of</p> <p>25 whether it was producing any steam for some kind of</p>
<p style="text-align: right;">Page 192</p> <p>1 customer. That's the distinction.</p> <p>2 (BY MR. CHAIKEN)</p> <p>3 Q. Got it.</p> <p>4 A. They were important issues to us.</p> <p>5 Q. Maybe I didn't -- I'm sorry if I</p> <p>6 misunderstood. It seems to me that this e-mail states</p> <p>7 the nature of the customer is not a core issue to you.</p> <p>8 Am I wrong? Maybe I just missed it.</p> <p>9 A. So I would have to read more of it.</p> <p>10 Q. Yeah.</p> <p>11 A. But I believe that he must have written</p> <p>12 something to somebody in China saying Industrial Heat</p> <p>13 is producing, you know, a megawatt of steam or lots of</p> <p>14 steam for, you know, a great customer or something like</p> <p>15 -- I don't know.</p> <p>16 Let's say if he had said that, I would have</p> <p>17 said, well, I don't know. I don't know how much we're</p> <p>18 producing. We can't definitively represent this yet.</p> <p>19 And I don't know the nature of the customer. Now,</p> <p>20 maybe they said something about the nature of the</p> <p>21 customer that it's a big industrial company or it's a</p> <p>22 -- you know, they're making wonderful products or -- I</p> <p>23 don't know what it said.</p> <p>24 But, you know, I was saying I don't want to</p> <p>25 do anything dishonest. I don't want to overrepresent</p>	<p style="text-align: right;">Page 193</p> <p>1 anything, you know. But, again, I would have to look</p> <p>2 at the e-mail and see what it was exactly he said.</p> <p>3 Q. Do you want to take a look and do that?</p> <p>4 A. Yeah. Let me take a look at it. Where</p> <p>5 does he refer to the customer?</p> <p>6 Q. Well, right in this e-mail right below</p> <p>7 yours.</p> <p>8 A. I know but where -- I want to see what it</p> <p>9 was that he said that I think I must have objected to.</p> <p>10 MR. ANNESSER: Pardon me. What's the</p> <p>11 number? The bates number for Exhibit 29?</p> <p>12 MR. CHAIKEN: I'm sorry. 80561</p> <p>13 through 80567.</p> <p>14 MR. ANNESSER: 05612?</p> <p>15 MR. CHAIKEN: Through 80567.</p> <p>16 MR. ANNESSER: Thank you.</p> <p>17 MR. CHAIKEN: You're welcome.</p> <p>18 THE WITNESS: Maybe -- I don't know.</p> <p>19 There's a sentence in here that says, "Since then we</p> <p>20 have installed our first beta customer device." A beta</p> <p>21 device -- a beta customer is -- you know, that's a</p> <p>22 customer that's really using a -- I'm trying to think</p> <p>23 of an example.</p> <p>24 A beta product is something that --</p> <p>25 it's really kind of ready to go. You know, it's -- and</p>

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<p style="text-align: right;">Page 194</p> <p>1 it's going to be operated for awhile so that somebody 2 can fine tune it and turn it into the ultimate product. 3 But a beta product is a pretty good thing. 4 So, you know, it's -- I was probably 5 unwilling to say "beta commercial device." I can 6 imagine that I would have been unwilling to say that. 7 And, anyway, I would have to keep looking to see that. 8 There was some representation that he must have made 9 that I thought was a little bit too definitive for us 10 to honestly make. 11 (BY MR. CHAIKEN) 12 Q. And I understand -- and I appreciate the 13 context. But I'm just trying to understand why it's 14 not a -- why your e-mail up at the top -- you know, 15 "What is the nature of the customer. These are picky 16 nuances not related to the core issue." 17 A. They're not related to the core issue of we 18 have a technology and it produces steam. We don't know 19 how well it's working, but if it produces steam this is 20 a really magnificent thing. That's what they need to 21 know. You know, assuming this actually works and Rossi 22 is honest, this is a magnificent thing. You should 23 come see it. 24 The nature of the customer -- you know, 25 these are investor types or Chinese people who are</p>	<p style="text-align: right;">Page 195</p> <p>1 looking at it as a technology. You know, they would 2 say -- they would assume that it was being honestly 3 metered, honestly monitored. So if it was covered up 4 with instruments, you had lots of -- Bureau Veritas 5 measuring it, then the customer would have been less 6 relevant. In our case because there was, you know, a 7 history of obfuscation or hiding results, it was 8 important to us who the customer was. 9 Q. Okay. 10 MR. CHAIKEN: Off the record. 11 THE VIDEOGRAPHER: We're off the 12 record at 2:34 p.m. 13 (Whereupon a break was taken.) 14 THE VIDEOGRAPHER: We are back on the 15 record at 2:49 p.m. 16 (BY MR. CHAIKEN) 17 Q. Mr. Darden, before we just got on that 18 break you had given some testimony about what you 19 thought was -- I'll use your words -- "a history of 20 obfuscation and hiding results." What history is that 21 you're speaking of? 22 A. Well, I mean, I could give you an example. 23 This was early 2014. We ran a test. And this was a 24 device that Rossi had us build. And it -- we had made 25 a lot of different -- fueled a lot of different</p>
<p style="text-align: right;">Page 196</p> <p>1 reactors, and the same kind of reactor was being used 2 inside different designs or sort of holding devices. 3 So we had a reactor and then the stuff around it to 4 manage the reactor. 5 And it was arguably -- or, you know, saying 6 he was trying different types of reactor devices 7 preparing for this test to be run in Switzerland. And 8 one of these reactors -- we made different kinds of 9 reactors plus blank reactors. So a dummy reactor, 10 something that has no fuel in it at all. And that way 11 you could test that against something that had fuel and 12 see if there was a difference. 13 That's the best way of running a test is 14 you put two things side by side, observe them with the 15 same instruments and then you know. And so he would 16 never run a dummy test. He didn't like running dummy 17 tests -- I mean, not side by side because -- and he 18 would say, "No. The dummy might interfere with it" or 19 there was always some reason -- sort of a technical 20 reason. And, you know, so he's the expert so we were 21 thinking, you know, maybe he's right. Maybe we'll mess 22 it up. So we tended not to do that. 23 But we had a dummy. And these things were 24 all numbered. And there was a six -- you have one 25 through ten or whatever. And so a six and a nine are</p>	<p style="text-align: right;">Page 197</p> <p>1 the same number just inverted, right. It's hard to 2 tell. Like, was that a six or a nine. It depends on 3 which way you hold it. 4 The device got built with a dummy charge. 5 And later in going through the list of the different 6 devices or which ones we had, I realized that. And I 7 reached out to him and said, you know -- and, 8 meanwhile, this thing was running perfect and the 9 results were good, very consistent with the other 10 results. And I reached out to him and said, "We need 11 to have a -- you know, this is really important." This 12 was around Christmastime or early January of '14. And 13 I remember that date. 14 And so he said, "Oh, well, you know." I 15 said, "We have a serious problem. We need to talk 16 about this because there's a big measurement error that 17 we detected." And we were always kind of debating 18 about camera settings and measurement and how to 19 measure. And he didn't like having two ways of 20 measuring. He said, "No, don't touch it with a 21 thermocouple" -- the temperature measuring device as 22 opposed to the thermal cameras. He said, "It will 23 interfere with it or it won't read accurately. The 24 cameras are more trustworthy." 25 So I -- he said he wouldn't come. I said,</p>

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<p style="text-align: right;">Page 198</p> <p>1 "We've got to have an in-person meeting and talk about 2 this. It's really important." So I said I'm coming 3 down there. And so I flew down there and met him in a 4 restaurant. And actually he brought Madelana and her 5 mother. And I said, "Andrea, that unit was fueled 6 with a dummy as producing great energy. So unless 7 something else is going on here we've got a serious 8 problem with measurement." No, no, it's impossible. 9 It can't be. You know, the charge got stolen. You 10 know, somebody came in and took it out. 11 And the way this was built, it was molded 12 into it. I mean, it was totally sealed up. So it was 13 not -- I don't know if you could pull it out and stick 14 something else in there. I said, "Look, I haven't 15 taken it apart, but I know which ones I have and that's 16 the only one that I don't have in my physical 17 possession so, therefore, it's in that unit and so 18 we've got a serious problem." 19 And so he agreed to come up to North 20 Carolina. And he and I together drilled it out. You 21 know, like, drilled into it to see if there was 22 anything in it. There was nothing in it. And he 23 stormed out and, you know, the Russians came and stole 24 the charge. I mean, you know, who knows. You know, "I 25 know it was charged. It had to have been charged. How</p>	<p style="text-align: right;">Page 199</p> <p>1 could it not be charged." 2 And so that was just an example of instead 3 of saying, "Wait, a second. Oh, wow. We have an 4 instrumentation error here. We've got a problem. We 5 need to really bore into this and try to figure out, 6 you know, what's going on. What's wrong with the way 7 we're measuring." You know, it was just like, you 8 know, we're going to ignore that or kind of carry on 9 notwithstanding that or not use multiple ways of 10 measuring. 11 So that's an example. I think the tests 12 that were done with the professors were not thoroughly 13 really instrumented. As an example, the one in 14 Switzerland. There was a thermocouple in that device 15 so -- but they didn't give the information from the 16 thermocouple to the professors. So the professors were 17 only allowed to put a thermal camera on the device, not 18 to in addition put a -- run a thermocouple on it the 19 whole time. 20 If it had run a thermocouple the whole 21 time, you could have been comparing two things against 22 one another and saying, you know, gee, you know -- 23 which is, do they match up. Does this kind of make 24 good logical sense. You know, why is that. You know, 25 why not put 25 thermocouples on it two different -- you</p>
<p style="text-align: right;">Page 200</p> <p>1 know, multiple ways of measuring it. 2 Is it a search for truth or is it a goal to 3 sort of trick something or to find some way to -- it 4 looks like -- looked like it worked but maybe it didn't 5 really work. And so, you know, you look backwards and 6 you just see a pattern of this consistently. How about 7 running the -- you know, running the fraction of the 8 units and -- you know, running the fraction of the 9 units in the Ferrara test. You know, what's that 10 about. I mean, we thought it was all legitimate like, 11 okay, well, I guess there's some law that says you 12 can't -- you know, you can't run an energy device 13 larger than whatever the size was. But, you know, what 14 was that about. I mean, why -- why -- why do that. 15 It's just weird. 16 Q. Did you -- did you put any of these issues 17 in writing to Dr. Rossi saying, "Hey, you're hiding the 18 ball. You're not letting us measure with two different 19 devices"? Did you say anything like that in writing? 20 A. I don't remember our communication in 21 writing. We talked to him, you know, daily about 22 measurement, how to measure. He was extremely volatile 23 and extremely dismissive of anyone challenging anything 24 about measurement. Just like, no, you're wrong. 25 You're an idiot. And early on we believed him. We</p>	<p style="text-align: right;">Page 201</p> <p>1 thought, okay, we're idiots. I mean, I guess we don't 2 really know about this stuff. It was really over time 3 as the accumulation of all these things we're thinking 4 -- you know, looking backwards in particular like this 5 was so outrageous. But we weren't catching it then. 6 Q. If there was such a plethora of data like 7 this or instances like this, why wasn't there a paper 8 trail made to say, "Hey, look, starting way back when, 9 you know, we asked for duplicate ways to measure these 10 tests and you've denied here; you denied it here; you 11 denied it here"? Why don't I see that in the documents 12 you've provided? 13 A. How would it help us? 14 Q. It would validate your claim. 15 A. Our claim for our ten million back? 16 Q. That, your claim against -- your claim 17 against or defending against his claim for the 18 \$89 million. 19 A. So at that point we don't know. It depends 20 on which point it is. But at that point we don't know 21 that the technology never works. And some of these 22 tests were compelling. You get these professors who 23 are really smart guys coming in saying, "Wow, look at 24 this. This works." And we're thinking, "Well, damn, 25 maybe it does work."</p>

1 A. We asked him some questions. His answers
2 were very unsatisfying and so -- unsatisfactory and so
3 at that point we stopped.

4 Q. That wasn't my question. My question was
5 did you reject the plan in writing?

6 A. I don't believe that we did.

7 Q. Why not?

8 A. We didn't accept it.

9 Q. Well, why wouldn't you reject it in writing
10 if you didn't agree with it?

11 A. We didn't care if he went ahead with his
12 measurements. And we were willing to pay even if they
13 were bad measurements.

14 Q. That doesn't sound like a good business
15 plan to me to pay for bad measurements.

16 A. We would have preferred --

17 MR. BELL: There's no question.

18 (BY MR. CHAIKEN)

19 Q. Why would you agree to pay for something
20 you didn't agree with?

21 A. Any data was better than no data, and we
22 figured our alternative was to get no data. We wanted
23 someone to be measuring something from the plant. We
24 didn't trust the data that we were getting from Fabio
25 and Rossi.

1 people are saying about the technology.

2 I perceived that this memo is from Brian
3 saying that what Rossi is saying is inappropriate.
4 He's gloating about the success of the technology when,
5 in fact, it's not being successful. We wouldn't want
6 to do that. That's the sort of thing that we find
7 aversive. So we would be inclined to say, and Brian
8 would be inclined to say, we would support Brian in
9 saying don't gloat about a technology that's still
10 extremely speculative.

11 Q. Did Industrial Heat start bringing visitors
12 to the plant in Doral?

13 A. Excuse me?

14 Q. Did Industrial Heat bring visitors to the
15 plant in Doral?

16 A. Yes, we did.

17 Q. For what purpose?

18 A. We had a lot of interest in -- in the -- in
19 the technology. And so there were people who wanted to
20 see it so we took -- there were some Chinese visitors
21 that wanted to come see it about the prospect of
22 becoming manufacturing partners in China, and Woodford
23 wanted to see it. The Woodford team wanted to see it.

24 Q. The Chinese people who visited, were they
25 interested in making an investment or a JD partnership?

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<p style="text-align: right;">Page 226</p> <p>1 Anything like that?</p> <p>2 A. The real motivation was to take the</p> <p>3 technology to China. They might have been interested</p> <p>4 in or willing to invest in a U.S. company as well. But</p> <p>5 their primary motivation was to be the partners for</p> <p>6 developing the technology in China. And we said to</p> <p>7 them, "We don't know if we have a technology that works</p> <p>8 that we could use in China, but you're welcome to come</p> <p>9 see it."</p> <p>10 Q. I'm going to show you what's been marked as</p> <p>11 Exhibit 38. Exhibit 38 is a copy of Industrial Heat's</p> <p>12 -- it's a long-titled document so bear with me.</p> <p>13 Supplemental -- Supplement to Defendant Industrial Heat</p> <p>14 LLC's Amended Responses and Objections to Plaintiff</p> <p>15 Andrea Rossi's Second Requests for Production -- that's</p> <p>16 the wrong document. I'm sorry. They gave me the wrong</p> <p>17 document.</p> <p>18 A. Do you want it back?</p> <p>19 Q. Yeah. Let me have it back. It's not what</p> <p>20 I meant to hand you. Sorry about that.</p> <p>21 MR. BELL: No worries.</p> <p>22 (BY MR. CHAIKEN)</p> <p>23 Q. They're all the same.</p> <p>24 A. Hm?</p> <p>25 Q. I said they're all the same. They're all</p>	<p style="text-align: right;">Page 227</p> <p>1 wrong.</p> <p>2 MR. BELL: Are you looking for the one</p> <p>3 that lists the visitors?</p> <p>4 MR. CHAIKEN: Yeah, exactly. That's</p> <p>5 okay.</p> <p>6 (BY MR. CHAIKEN)</p> <p>7 Q. So you brought Woodford to the facility,</p> <p>8 and you brought Chinese investors to the facility. Do</p> <p>9 you remember the timeframe?</p> <p>10 A. No, I don't remember the dates. Sorry.</p> <p>11 Q. Did you --</p> <p>12 MR. BELL: Object to the form of the</p> <p>13 question.</p> <p>14 (BY MR. CHAIKEN)</p> <p>15 Q. Did you ask Dr. Rossi to speak to --</p> <p>16 whether it be Woodford or the Chinese investors?</p> <p>17 A. I'm sure that we would have assuming he was</p> <p>18 there. I mean, I'm sure he was there. I assume he was</p> <p>19 for any visits that we made, and I'm sure he would have</p> <p>20 said, "Hey, tell them what's going on here."</p> <p>21 Q. And did you ask -- do you know who James</p> <p>22 Bass is?</p> <p>23 A. Yes.</p> <p>24 Q. Who is James Bass?</p> <p>25 A. James Bass was the plant manager for the</p>
<p style="text-align: right;">Page 228</p> <p>1 Johnson Matthey plant. J.M. plant.</p> <p>2 Q. Did you ever speak with him?</p> <p>3 A. Yes.</p> <p>4 Q. And what did you speak with him about?</p> <p>5 A. We met him in his capacity as the operator</p> <p>6 of the -- of the J.M. plant.</p> <p>7 Q. Okay. I understand you met him in that</p> <p>8 capacity, but what did you speak to him about?</p> <p>9 A. Oh, oh; I'm sorry. We asked him how it was</p> <p>10 going. You know, how is production. How is the energy</p> <p>11 supply. How do you feel about this. Is it working</p> <p>12 well. It was a general conversation that, you know,</p> <p>13 somebody might have with a plant manager, somebody</p> <p>14 operating a plant, to try to get information about, you</p> <p>15 know, was it a good customer supply relationship, how</p> <p>16 were they feeling about it, was it operating</p> <p>17 effectively. He said it was producing lots of steam.</p> <p>18 He said their utility bills have been</p> <p>19 reduced compared to what they were before because they</p> <p>20 weren't having to use so much electric energy and now</p> <p>21 they were using this energy. He said the form of the</p> <p>22 steam was great. You know, the temperature or</p> <p>23 whatever, the nature of it, and production was going</p> <p>24 well.</p> <p>25 Q. When did you have that conversation with</p>	<p style="text-align: right;">Page 229</p> <p>1 him?</p> <p>2 A. I don't remember the dates. And I believe</p> <p>3 I met him on two separate occasions so I could be</p> <p>4 blending two conversations together. Although, I think</p> <p>5 they were the same. But it was in the conference room</p> <p>6 at J.M. Products.</p> <p>7 Q. Do you know if it was February 2015? After</p> <p>8 that time?</p> <p>9 A. I don't remember.</p> <p>10 Q. Do you know if he was by himself or was he</p> <p>11 with other people?</p> <p>12 A. Well, we had -- we had visitors so, I mean,</p> <p>13 it was in a conference room with visitors. So I don't</p> <p>14 know -- I don't remember meeting him alone, for</p> <p>15 example.</p> <p>16 Q. Do you know if Dr. Rossi was present when</p> <p>17 that conversation took place?</p> <p>18 A. Yes, yes; he was there.</p> <p>19 Q. Did James Bass speak to any of the people</p> <p>20 -- visitors that Industrial Heat brought?</p> <p>21 A. Well, they were there in the room.</p> <p>22 MR. BELL: I'm sorry. I lost focus.</p> <p>23 What was the question, please?</p> <p>24 (Requested portion was read.)</p> <p>25 THE WITNESS: When I saw James Bass I</p>

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<p style="text-align: right;">Page 238</p> <p>1 Q. What was the third one?</p> <p>2 A. Well, others would be public demonstrations</p> <p>3 of machines. So showing a machine to someone in</p> <p>4 public. It's one thing to tell somebody how it works.</p> <p>5 So to say, you know, let me take this apart for you,</p> <p>6 this device. I'll take this device apart, show you the</p> <p>7 inside of it so you can see how it's made.</p> <p>8 But there's another really severe problem</p> <p>9 in the patent law world which is if you demonstrate a</p> <p>10 machine in public then -- and any part of that is</p> <p>11 patented, even if what's patented is invisible inside</p> <p>12 it -- so you haven't demonstrated the invisible part</p> <p>13 inside -- you can lose your patent rights, your right</p> <p>14 to patent the whole machine even if it appeared to be a</p> <p>15 black box. Even if nobody could see inside it, if you</p> <p>16 show a machine in public and you don't have patents on</p> <p>17 it at that point you can have given up your patent</p> <p>18 rights even though you didn't give away the specific</p> <p>19 information. So that happened certainly more than</p> <p>20 three times.</p> <p>21 Q. And do you know when?</p> <p>22 A. Well, putting pictures -- pictures of the</p> <p>23 device in the reports that the professors put out, for</p> <p>24 example. Those would be a couple of instances.</p> <p>25 Q. So putting it in a written report wouldn't</p>	<p style="text-align: right;">Page 239</p> <p>1 be the same thing as publicly displaying it, right?</p> <p>2 A. No, that would be a --</p> <p>3 Q. It's a public display?</p> <p>4 A. I'm 90 percent sure that would be a public</p> <p>5 display. I'm not a patent lawyer, but I'm 90 percent</p> <p>6 sure.</p> <p>7 Q. Okay. Were there two more big instances or</p> <p>8 blatant instances?</p> <p>9 A. Well, other -- you know, I mean, the others</p> <p>10 probably would be a function of posting things on the</p> <p>11 internet.</p> <p>12 Q. Okay. We're almost out of tape so we're</p> <p>13 going to go off the record.</p> <p>14 THE VIDEOGRAPHER: Off the record at</p> <p>15 3:50 p.m.</p> <p>16 (Whereupon a break was taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record at 4:07 p.m.</p> <p>19 (BY MR. CHAIKEN)</p> <p>20 Q. All right, Mr. Darden. We had been talking</p> <p>21 about the fourth affirmative defense on page 23 of</p> <p>22 Exhibit 38, I believe. And you had mentioned several</p> <p>23 instances in which you felt that plaintiffs had</p> <p>24 breached the nondisclosure provisions of the license</p> <p>25 agreement. Do you recall that testimony?</p>
<p style="text-align: right;">Page 240</p> <p>1 A. Yes.</p> <p>2 Q. Have you done any type of calculation as to</p> <p>3 how you've been damaged or how Industrial Heat has been</p> <p>4 damaged as a result of these breaches?</p> <p>5 A. Well, we don't know yet what damages we</p> <p>6 might have depending on whether someone is successful</p> <p>7 with the technology.</p> <p>8 Q. So would it be fair to say you haven't made</p> <p>9 a computation of damages?</p> <p>10 A. We have not made a computation. Sorry. I</p> <p>11 didn't answer the question.</p> <p>12 Q. And you had mentioned some specific</p> <p>13 instances where you felt that the nondisclosure had</p> <p>14 been breached. Were there any others that come to mind</p> <p>15 now that you've had a break?</p> <p>16 A. I didn't think about it any further. It's</p> <p>17 not coming to mind right now, sir.</p> <p>18 Q. Okay. The second item mentioned in this</p> <p>19 paragraph four on page 23 states, "Failing to assign</p> <p>20 certain patents and/or patent applications to IPH." Do</p> <p>21 you know specifically any patents or patent</p> <p>22 applications that plaintiffs had failed to assign?</p> <p>23 A. I think there were several. I mean, our</p> <p>24 counsel got involved in this, and I think we had</p> <p>25 conversations with Rossi and/or his counsel's office.</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Do you know sitting here today what those</p> <p>2 are?</p> <p>3 A. I don't remember, sitting here today.</p> <p>4 Q. Do you know -- well, let me ask you this.</p> <p>5 Do you contend that IPH still wants those patents or</p> <p>6 patent applications?</p> <p>7 A. I don't have a firm opinion about that</p> <p>8 right now.</p> <p>9 Q. Okay. Have you made any assessment of</p> <p>10 damages as it relates to this breach?</p> <p>11 A. I think the damages are contingent upon the</p> <p>12 technology working or the patents or IP being effective</p> <p>13 for someone else who makes the technology work. So if</p> <p>14 someone else is effective then the breach will have</p> <p>15 harmed us.</p> <p>16 Q. But sitting here today has IPH or IH made</p> <p>17 any attempt to calculate damages as it relates to that?</p> <p>18 A. I don't believe that anyone in the company</p> <p>19 has done that.</p> <p>20 Q. When -- well, let me ask it this way. Did</p> <p>21 IH or IPH ever notify plaintiffs that they felt that</p> <p>22 this was a breach of the license agreement?</p> <p>23 A. I believe that we did.</p> <p>24 Q. Do you know when?</p> <p>25 A. No, I don't remember the date.</p>

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<p style="text-align: right;">Page 246</p> <p>1 A. I haven't seen the tax return, and I don't 2 have anything clearly documented that says he didn't 3 pay taxes except my recollection that he said that. 4 Q. "He" being someone from Ampenergo? 5 A. Well, Andrea. 6 Q. Andrea told you directly that he didn't pay 7 his taxes? 8 A. He said either he didn't pay the taxes or 9 he wasn't going to owe the taxes. And I couldn't 10 figure out how that could be the case because it was a 11 U.S. company. 12 Q. And how, in fact, has IH or IPH been harmed 13 as a result? 14 A. Well, our credibility is, unfortunately, 15 tied to Rossi's credibility. And so if Rossi has legal 16 problems or credibility problems associated with 17 compliance then it affects us. 18 Q. But sitting here today you don't know if 19 that's true or not? 20 A. I don't know if -- if it has been 21 manifested at this point. I don't know. 22 Q. And have you done anything to count -- to 23 compute what your actual damages are as a result of any 24 failure to pay taxes? 25 A. I don't believe that any of us -- I have</p>	<p style="text-align: right;">Page 247</p> <p>1 not, and I don't believe that others of us have made 2 such a computation. 3 MR. CHAIKEN: Anybody just join the 4 call? 5 MR. ARAN: Fernando here. I'm still 6 here. I'm not sure -- 7 MR. CHAIKEN: We're going to keep 8 going. Somebody just join now? 9 MR. ANNESSER: This is John. I got 10 disconnected. 11 MR. CHAIKEN: Okay. Thanks for 12 announcing yourself. 13 (BY MR. CHAIKEN) 14 Q. Back -- back to my questions. I forgot to 15 ask Mr. Darden with respect to the third category, 16 "Failing to inform or consult with Industrial Heat and 17 IPH on the existence of certain patent applications." 18 How has -- or let me ask it this way. Has IP -- IH or 19 IPH computed how it's -- what its actual damages are as 20 a result of that allegation? 21 A. I don't believe that we've computed that. 22 We know how much money we've spent pursuing this 23 technology. If it jeopardized that then certainly it 24 would be the value of the money that we spent. 25 Q. Okay. There's one last paragraph there.</p>
<p style="text-align: right;">Page 248</p> <p>1 One last allegation. It states, "Failing to keep the 2 original Leonardo entity active." Have you made any 3 attempts to compute what your damages are as a result 4 of that failure? 5 A. I don't believe so. I'm not aware of that. 6 Q. And in response to all of these allegations 7 contained in this fourth defense -- when I say "you" I 8 know I'm talking to Tom Darden, but you as an officer 9 or director of the company, do you know if IH or IPH 10 has computed damages for any of these items? 11 A. I'm not aware that the companies have 12 computed damages for those other than knowing how much 13 money we spent on it and the possible jeopardy of that. 14 Q. Okay. Did you during the course of the 15 tests in 2015 that was taking place in Florida, did you 16 receive copies of reports from Fabio Penon? 17 A. Yes, I did. 18 Q. And did you review them? 19 A. I did. 20 Q. And did you send them to Joe Murray? 21 A. I believe that I sent them around to people 22 inside Industrial Heat. I assume I sent them to Joe. 23 Q. And did anybody ever respond to either 24 Penon or Dr. Rossi and say that they thought the 25 results were not valid?</p>	<p style="text-align: right;">Page 249</p> <p>1 A. I don't remember the specific conversations 2 that we had about that. 3 Q. Well, I wasn't asking about a conversation. 4 I was asking about -- 5 A. I'm sorry. I don't know. 6 Q. Okay. 7 A. I don't remember. 8 Q. Is there a reason you wouldn't have said -- 9 sent an e-mail or report and said, "Hey, look, these 10 are the problems with the report"? 11 A. If it was so bad that we felt that it was 12 just completely unprofessional and not remediable, we 13 might have just said never mind. 14 Q. Okay. Did you end up paying Penon for his 15 time? 16 A. We did end up paying Penon for his time. 17 Q. And why did you? 18 A. Well, we didn't know if we might have 19 agreed to pay Penon for his time, and so we didn't want 20 to not pay Penon if we had told him that we would. 21 Q. Do you think he honored the contract -- the 22 agreement? 23 A. No. 24 Q. And how did he not honor it? 25 A. I don't think he complied with the testing</p>

1 Mr. Fukuda about what IH technologies could do?

2 A. We certainly had conversations about the
3 different technologies that we were looking at so, yes,
4 generally. I'm sure that I never said to him that we
5 had good evidence of a system that generated a COP of
6 ten.

7 Q. Do you know if you ever had a conversation
8 with Dewey Weaver about that?

9 A. I don't know.

10 MR. BELL: I'm sorry. Are you asking
11 if Tom did or if Fukuda did?

12 MR. CHAIKEN: If Tom did.

13 MR. BELL: I see.

14 THE WITNESS: I'm sorry. So the
15 question is did I ever talk to Dewey Weaver about the
16 performance of the systems that we had or did I ever
17 say to Dewey Weaver that we had a system that generated
18 a COP of ten?

19 (BY MR. CHAIKEN)

20 Q. That's a great distinction. And my
21 question -- the answer to your question is yes. Did
22 you either --

23 A. I'm sure that I talked to Dewey Weaver
24 about the performance of the different technologies
25 that we had. I'm sure that I never said to Dewey

1 A. We knew that the test was going to happen
2 in Lugano. Yes. We were very familiar with the fact
3 that he wanted to have a test with those scientists.

4 Q. Did you ever say, "Hey, listen, we don't
5 think it's a good idea. You're going to be disclosing
6 our IP"?

7 A. Yes, we did.

8 Q. And how did you do that?

9 A. We had many conversations about it.

10 Q. Did you put anything in writing about it?

11 A. I don't remember writing about that. I
12 remember we specifically said, "You can't disclose to
13 them what's in the fuel." And he said, "Don't worry.
14 I can protect it. I'll take a sample that doesn't come
15 from the part of the reactor that has the fuel in it --
16 the real fuel sample in it."

17 (Whereupon Exhibit 43 was marked for
18 identification as of this date.)

19 Q. I'm showing you what's been marked as
20 Exhibit 43. Exhibit 43 is a document bates stamped
21 IH-7623. I believe it's dated February 3rd, 2014 and
22 -- actually, I take it back. March 2nd, 2014. I was
23 reading it backwards.

24 A. Um-hm.

25 Q. It's -- the first e-mail is Dr. Rossi

1 do what he was going to do. Meanwhile, we were very
2 happy to see the technology being tested if it was
3 being tested in a professional manner.

4 Q. Do you know for a fact whether or not he
5 disclosed the fuel to the Swedish professors?

6 A. Yes, he did. Well, let me rephrase that.
7 I don't know whether he disclosed the fuel because I
8 don't know what fuel was used. I don't know where the
9 sample came from. I know that he said he disclosed the
10 fuel to the Swedish professors.

11 Q. He said that to you?

12 A. He said it because he said that he had
13 given them the fuel to test. I don't know if it was
14 true. I know that he said that.

15 Q. And you were present during at least some
16 or part of that conversation, correct?

17 A. Yeah. While they were running the
18 machines.

19 Q. While they were running the machines. Did
20 you prepare some of the fuel for that test?

21 A. I don't know. I prepared fuel before that
22 test.

23 Q. Got it.

24 A. We fueled one reactor. That reactor was
25 not the one that was run. There were three empty

1 reactors that went over there. One of those reactors
2 ran. We don't know what ran in that reactor. It may
3 have been the fuel that we prepared; maybe not.

4 (Whereupon Exhibit 44 was marked for
5 identification as of this date.)

6 Q. I'll show you what's been marked as
7 Exhibit 44. Exhibit 44 has been bates stamped
8 IH-107140. The top of the page is an e-mail from you
9 to Brian McLaughlin dated October 2nd, 2014.

10 A. Um-hm.

11 Q. I believe you're talking about this -- the
12 Lugano test as well. You can correct me if I'm wrong.

13 A. Um-hm.

14 Q. And you write in this e-mail, "Also, he
15 would say that they've now done one and four." And
16 you're referring to the e-mail down below. "They
17 tested the isotopes before and after (as I understand
18 -- and FYI, the professors did take the "after" fuel
19 sample from the Lugano device, i.e. AR didn't control
20 it)." What did you mean by that?

21 A. I thought that was in -- I did not remember
22 that that was the case. My recollection, as I sit here
23 now, was that he did control it. So the question is
24 who actually took the sample from the device and was it
25 the device that ran. And was it the same device -- was

1 sample. Those types of issues.

2 Q. Is it your contention still that Dr. Rossi
3 was in control of the test in general?

4 A. Yes. And by that, to elaborate, I know
5 that the professors would have made many different
6 kinds of measurements had they been able to do so. And
7 I know that they were unhappy that they were not able
8 to take those different kinds of measurements. They
9 also told me clearly that the heat output from the
10 device was overstated based on the way the thermal
11 measurement happened.

12 Q. Going back to Exhibit 38 which was the
13 Fourth Amended Counterclaim. We talked a little bit
14 about the Lugano report. I want to talk a little bit
15 about the next one which is disclosure of specific
16 information about E-CAT fuel to Norman Cook. Who is
17 Norman Cook?

18 A. He's a professor at Kansai University in
19 Osaka.

20 Q. Got it. And did you have discussions with
21 Dr. Rossi prior to Norman Cook issuing a report?

22 A. I don't remember when we talked to Rossi
23 about it. I believe that Rossi told us before Rossi
24 wrote -- before Cook wrote a paper about it that he was
25 going to do so.

1 wrongfully disclosing our IP"?

2 A. I don't remember the chronology of those
3 conversations, but it was a fairly regular
4 communication that we had. "Please don't disclose so
5 much information about our IP."

6 Q. Do you recall reading the final report?

7 A. The paper -- the Cook paper?

8 Q. Yeah.

9 A. I don't remember. I don't remember reading
10 it.

11 Q. Was there --

12 A. I'm sure that I would have looked at it,
13 but I don't remember.

14 Q. Was there some specific IP that was
15 disclosed that you thought was violative of the license
16 agreement?

17 A. I don't remember reading it so I don't
18 remember specifically what it was.

19 (Whereupon Exhibit 46 was marked for
20 identification as of this date.)

21 Q. I'll show you what's been marked as
22 Exhibit 46. 46 has been bates stamped IH-89665 through
23 666. It's a series of e-mails dated February 8th and
24 9th, 2015. At the top of it is an e-mail from you to
25 Daniel Pike; February 9th, 2015.

1 You write, "I've just read the presentation
2 and the abstract and they appear to be safe. Our IP
3 attorneys and we will be reading the paper tomorrow.
4 Thanks." Do you recall sending that e-mail?

5 **A. I don't recall, but I see it here. I must**
6 **have.**

7 Q. Do you recall talking to your IP attorneys
8 after this date?

9 **A. No, I don't remember that conversation.**

10 Q. Do you recall anybody telling you -- and,
11 again, do you recall anyone other than your counsel
12 telling you that they felt that some improper IP had
13 been disclosed as a result of the issuance of this
14 paper?

15 **A. I don't remember the feedback. As I sit**
16 **here now, I don't remember the feedback that we got**
17 **from the IP attorneys about it. My comment about the**
18 **presentation and the abstract appearing to be safe**
19 **meant that it appeared to be okay to send the abstract**
20 **and the presentation to the people in China who he**
21 **wanted to send that to.**

22 But there's nothing that -- they were going
23 to get the paper one way or another. I doubt that the
24 abstract or the presentation had more information than
25 the paper itself.

1 (Whereupon Exhibit 47 was marked for
2 identification as of this date.)

3 Q. I'm going to show you what's been marked as
4 Exhibit 47. 47 has been bates stamped IH-7010 through
5 7011. At the top of it is an e-mail from you to Dr.
6 Rossi.

7 A. Um-hm.

8 Q. And it's dated April 10th, 2015. And he's
9 telling you -- first, actually, I think Daniel Pike is
10 telling you at the bottom that the Rossi/Cook paper was
11 translated in Chinese. And you wrote at the top, "This
12 is very exciting to think about. Now 1.5 billion
13 people can read your paper. What a great world it is."
14 Do you see that?

15 A. Um-hm.

16 Q. If you had issues with the paper and
17 thought that it had improperly disclosed IP would you
18 have been happy about it?

19 A. It had already happened.

20 Q. Got it.

21 A. I had no choice at that point. If there
22 was good news in it then I would have been happy that
23 1.5 billion people would have seen it.

24 MR. CHAIKEN: Let's go off the record.
25 Do you want to take about five minutes and I'm done.

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<p style="text-align: right;">Page 290</p> <p>1 Q. Not before that one.</p> <p>2 A. I believe that I met him before that with</p> <p>3 some Chinese visitors.</p> <p>4 Q. Okay. And if we -- if we look at the</p> <p>5 listing, I believe, only by reading the names, that</p> <p>6 perhaps the first time that any one of the Chinese</p> <p>7 defendants visited would have been March 27th, 2015?</p> <p>8 A. I see that. Wait a second. March 27th. I</p> <p>9 see that.</p> <p>10 Q. Would that refresh your recollection?</p> <p>11 A. Well, it would mean that I could not have</p> <p>12 met him with the Chinese before the visit when we met</p> <p>13 him with Paul Lamacraft. So, yes, that would refresh</p> <p>14 my recollection. Are we saying the --</p> <p>15 Q. February 9th, 2015, would I be correct in</p> <p>16 stating that the plant had not commenced operations</p> <p>17 yet? The testing phase yet?</p> <p>18 A. I don't remember the dates but let's say</p> <p>19 that's the case.</p> <p>20 Q. So if that's the case, Mr. Bass at that</p> <p>21 point in time could not have been making any</p> <p>22 representations to you concerning the performance or</p> <p>23 the power, if you will, being produced by the plant,</p> <p>24 correct?</p> <p>25 A. I understand what you're saying. If the</p>	<p style="text-align: right;">Page 291</p> <p>1 plant was not running then he could not have been</p> <p>2 representing that.</p> <p>3 Q. So now if you could take a second, I read</p> <p>4 through the rest of the visit and in none of those</p> <p>5 visits was it indicated that you, Mr. Vaughn or anyone</p> <p>6 else met with Mr. Bass.</p> <p>7 A. I see that.</p> <p>8 Q. So that's -- based on your recollection</p> <p>9 you're telling me that this is probably inaccurate then</p> <p>10 that you met with him on more than that occasion?</p> <p>11 A. I remember him talking about the</p> <p>12 performance of the plant.</p> <p>13 Q. Okay. And if I could ask you when you met</p> <p>14 and he talked about the performance of the plant, who</p> <p>15 else was with him?</p> <p>16 A. Well, I'm not remembering the different</p> <p>17 trips. So I thought I met with him with some of the</p> <p>18 Chinese visitors. So I'm -- but I'm not remembering</p> <p>19 the details of who was in the room at the time.</p> <p>20 Q. And could it be fair for me to state that</p> <p>21 by the time those Chinese visitors went to the plant in</p> <p>22 Doralee -- by then the plant was operational?</p> <p>23 A. I believe that that's the case. I believe</p> <p>24 that's the case.</p> <p>25 Q. The plant was producing?</p>
<p style="text-align: right;">Page 292</p> <p>1 A. Yeah, I believe that's the case. But let</p> <p>2 me -- let me note something that in August there was</p> <p>3 another visit when Paul Lamacraft came and so perhaps</p> <p>4 we met with him at that point. I don't know. I don't</p> <p>5 know whether it was the second trip with Paul Lamacraft</p> <p>6 that we met with him again or whether it was one of the</p> <p>7 Chinese trips.</p> <p>8 Q. But you do recall meeting with him when the</p> <p>9 Chinese folks were at Doralee?</p> <p>10 A. I don't want to make such a definitive</p> <p>11 statement as that. So I thought that I remembered</p> <p>12 meeting with him with the Chinese visitors, but perhaps</p> <p>13 I met him twice with Lamacraft.</p> <p>14 Q. Okay. And if that were the case then we</p> <p>15 would follow the dates here that would have been then</p> <p>16 in August of 2015?</p> <p>17 A. That's when we apparently came with Paul</p> <p>18 Lamacraft, yes.</p> <p>19 Q. And by then the test that was being</p> <p>20 performed on the one megawatt plant was well underway,</p> <p>21 correct?</p> <p>22 A. That would be correct.</p> <p>23 Q. Now, did Mr. Bass have an obligation to you</p> <p>24 -- and by that I mean you or IH or IPH -- to present</p> <p>25 you with reports of data concerning measurements of the</p>	<p style="text-align: right;">Page 293</p> <p>1 COP of the one megawatt plant?</p> <p>2 A. I seem to recall that they did.</p> <p>3 Q. When you say "they," was it Mr. Bass that</p> <p>4 was sending you a report?</p> <p>5 A. Well, Bass or J.M. I have it in my mind.</p> <p>6 I'm trying to remember something that -- where they had</p> <p>7 committed to do that. I can't remember, but I seem to</p> <p>8 recall that.</p> <p>9 Q. Does the term sheet permit J.M. Products or</p> <p>10 any of its employees to provide IH with any data at</p> <p>11 all?</p> <p>12 A. Can we get it out and let me take a look at</p> <p>13 it because this is -- I'm making these comments</p> <p>14 from memory.</p> <p>15 Q. Could you please.</p> <p>16 A. Sure. We're looking.</p> <p>17 MR. BELL: I'm putting in front of</p> <p>18 Mr. Darden what was previously marked as Exhibit 28.</p> <p>19 (Witness peruses document.)</p> <p>20 THE WITNESS: Well, I see here on the</p> <p>21 second page 19, "J.M.C. will keep records of the</p> <p>22 operation of the one megawatt plant as reasonably</p> <p>23 requested by Leonardo or IH and will provide copies of</p> <p>24 such records to Leonardo and IH upon request."</p> <p>25 (BY MR. ARAN)</p>

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<p style="text-align: right;">Page 294</p> <p>1 Q. Okay. Do you have any recollection of ever 2 having made such a request of J.M. Products? 3 A. I don't remember doing that, but we would 4 like to see them. 5 Q. Well, was a request made? 6 A. I don't remember. I'm sure that we said to 7 them, "How is it going. How much are you getting. How 8 is the output." 9 Q. Okay. But you did not make -- am I correct 10 in stating you did not make any formal request of J.M. 11 to keep track of any particular type of measurement, 12 correct? 13 MR. BELL: Objection to form. 14 THE WITNESS: Well, except via the 15 term sheet where we assumed that they were and the fact 16 that they were sending us bills. Other than that, I'm 17 not aware of one. 18 (BY MR. ARAN) 19 Q. So you're aware of them sending you an 20 invoice. Let me backtrack. What you're aware is that 21 they sent you a letter saying, "Please invoice me 22 because the one megawatt plant this month produced X 23 amount of COP"? 24 A. I don't remember exactly what they 25 communicated but something like that.</p>	<p style="text-align: right;">Page 295</p> <p>1 Q. Okay. And then did you ever send them the 2 invoice to collect on the supposed debt or payment? 3 A. I believe that we never sent one. I 4 believe that we made a decision early on that we were 5 worried about whether the -- the -- there was some type 6 of a fraud going on and we didn't want to be 7 participating in it, that it would be used to 8 communicate to the outside world. But I don't remember 9 the timing of when we came to that conclusion. 10 Q. And that would be specific -- do you recall 11 that it was Mr. Bass that did that or was that under 12 somebody else's signature? 13 A. I don't remember. I thought it may have 14 been from Henry Johnson. 15 Q. Okay. If I would tell you that it was 16 Henry Johnson do you have any reason to believe it was? 17 A. No. In fact, that was my -- that's what 18 kind of popped into my brain. 19 Q. So my question is really precise. Did 20 Mr. Bass communicate to you in writing -- and to "you" 21 I mean you or IH in writing -- any type of data 22 concerning performance of the one megawatt plant? 23 A. I don't remember getting any writing from 24 him about that. 25 Q. Now, what you do recall is being in Doral</p>
<p style="text-align: right;">Page 296</p> <p>1 with other persons. It could have been Mr. Lamacraft 2 or it could have been both him and another occasion, 3 both from China, and having a conversation generally 4 saying, "Hey, how is it going." And he's saying, 5 "Yeah. We're comfortable with the performance. We're 6 comfortable with the power. We're getting -- we're 7 comfortable with the steam" or receiving words to that 8 effect; am I correct? 9 MR. BELL: Objection to form. 10 THE WITNESS: It is correct that we -- 11 that I remember a meeting where he said those things. 12 Things similar to that. 13 (BY MR. ARAN) 14 Q. And I'm trying to characterize what I heard 15 before. If you think that I didn't characterize your 16 testimony before please let me know how. 17 A. I think you're -- 18 MR. BELL: Objection to form. 19 (BY MR. ARAN) 20 Q. Okay. So did I characterize it more or 21 less correctly? 22 A. I believe so. 23 Q. Okay. And this is well after the plant has 24 been transferred to Doral and became operational? 25 A. I believe so.</p>	<p style="text-align: right;">Page 297</p> <p>1 Q. Okay. I'll try to be brief because I know 2 the other counsel needs to ask his questions. If I 3 could direct you to the Fourth Amended Answer to the 4 Pleadings. And that would be Exhibit 38. 5 A. Yep, yep. 6 Q. And then if you could find page 62. 7 A. I have turned to 62. 8 Q. Thank you. I'm going to ask you to focus 9 on Count IV and initially paragraph 140. 10 A. Yeah. 11 Q. It indicates that, "As described in greater 12 detail above" -- meaning the other preceding paragraph 13 -- "Rossi, Leonardo, Johnson JMP, Fabiani, USQL, and 14 Bass were engaged in a common scheme," correct? 15 A. Yes. 16 Q. So under this Count IV, Industrial Heat and 17 IPH are suing Mr. Bass, correct? 18 A. Correct. 19 Q. Now, I'm going to ask you to direct your 20 attention now to paragraph 141. 21 A. Yes. 22 Q. And it indicates, "The first part of the 23 scheme was to manipulate Counter-Plaintiffs into 24 allowing the plant to be sent from the Industrial Heat 25 facilities in North Carolina to Florida," correct?</p>

1 **A. Yes.**

2 Q. What, if anything, did Mr. Bass do to
3 manipulate the plant being brought to Florida from
4 North Carolina?

5 **A. Well, if he was part of setting up a
6 fraudulent company, that was part of the scheme or the
7 deception to try to trick us into sending the machine
8 down there thinking that it was a credible entity, then
9 that would have been his role.**

10 Q. Well, what proof do you have that Mr. Bass
11 was involved in setting up this company or doing any of
12 the acts that you've just testified to?

13 **A. I believe that he helped in building the
14 heat radiator or heat transfer system on the other side
15 of the wall. And I believe that he represented to us
16 that there was a manufacturing plant there and that it
17 was operating nicely.**

18 Q. But did that happen prior to you making the
19 decision to bring the plant to North Carolina?

20 **A. I don't know the chronology of when he came
21 to be involved.**

22 Q. But we do know that he -- you and him had
23 not met until after the decision had been made to bring
24 the plant to Florida?

25 **A. That is correct.**

1 Q. So how then could he have been involved in
2 manipulating you to do so if he was not in the picture
3 at all?

4 A. I don't know when he came to be part -- in
5 the picture.

6 Q. So if he came to be part of the picture
7 after the decision had been made to transfer the plant
8 and the transfer had already been entered into, then
9 would I be correct in stating that he had no part in
10 that first part of the scheme?

11 A. If he came to work there or got involved
12 after we had already made the decision to send the
13 plant to Florida what you said sounds reasonable.

14 Q. Okay. So that's a "yes"? He would have
15 had no part in the scheme? Now, let me read to you
16 what the second part of the scheme was.

17 "The second part of the scheme was to
18 manipulate the operation of the plant and the
19 measurement of the plant's operations to create the
20 false and deceptive appearance and impression that the
21 plant was performing at astronomical levels, with COP
22 measurements not only well in excess of anything
23 achieved by any third party testing of the E-CAT
24 technology, but in fact many multiples higher than
25 anything achieved by any third-party testing." Let me

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<p style="text-align: right;">Page 302</p> <p>1 steam and they were buying one megawatt of steam.</p> <p>2 Q. Again, a casual conversation?</p> <p>3 MR. BELL: Objection to form.</p> <p>4 THE WITNESS: He was sitting at the</p> <p>5 head of the table as a representative of J.M. Products</p> <p>6 there to report to us on how things were going.</p> <p>7 (BY MR. ARAN)</p> <p>8 Q. Okay. But did he measure and report to you</p> <p>9 the measurement of COP of the one megawatt plant?</p> <p>10 A. No.</p> <p>11 MR. BELL: Objection to form.</p> <p>12 THE WITNESS: He did not report the</p> <p>13 COP. He reported to us that he was getting the steam.</p> <p>14 (BY MR. ARAN)</p> <p>15 Q. Correct. So the second part of the scheme</p> <p>16 -- okay -- is reporting false and deceptive impressions</p> <p>17 of the plant by the plant performing at astronomical</p> <p>18 levels. Mr. Bass never represented to you that the one</p> <p>19 megawatt plant was performing at astronomical levels,</p> <p>20 did he?</p> <p>21 A. Yes. He did represent that it was</p> <p>22 performing at astronomical levels because one megawatt</p> <p>23 of steam coming from that small plant would have been</p> <p>24 astronomical. In fact, it would have heated up the</p> <p>25 whole building to such a point that people couldn't</p>	<p style="text-align: right;">Page 303</p> <p>1 have existed inside the building.</p> <p>2 Q. Did he ever say he was receiving one</p> <p>3 megawatt of steam?</p> <p>4 A. He said that he was receiving all the steam</p> <p>5 -- he said the plant was performing consistent with</p> <p>6 their expectations and it was a one megawatt plant.</p> <p>7 Q. Well, that doesn't mean that he was</p> <p>8 receiving anything in particular, does it? Does it</p> <p>9 mean that he was receiving one megawatt plant? Do you</p> <p>10 know how much power he needed to run the other side of</p> <p>11 the plant?</p> <p>12 A. That was the other side of the equation.</p> <p>13 In other words, I'm saying that he gave -- he gave us</p> <p>14 half of the information that would lead us to believe</p> <p>15 that it had that COP because he was buying a megawatt</p> <p>16 worth of steam from us and he said he was getting all</p> <p>17 the steam he was supposed to be buying.</p> <p>18 He didn't say, "Gee, unfortunately, the</p> <p>19 plant is only putting out 50 kilowatts of steam" or</p> <p>20 some amount less than one megawatt. He said, "Yeah.</p> <p>21 Everything is going great. We're getting the steam and</p> <p>22 our utility bills are reduced."</p> <p>23 Q. So that's the statement he made? "We're</p> <p>24 receiving the steam and our electricity bills are</p> <p>25 reduced"?</p>
<p style="text-align: right;">Page 304</p> <p>1 A. I'm speaking in sort of a -- I'm speaking</p> <p>2 colloquially or I'm speaking -- I'm paraphrasing a</p> <p>3 conversation. So this is the kind of conversation that</p> <p>4 manufacturing people would have with one another. If</p> <p>5 you said to somebody, "How is your business operating?</p> <p>6 You know, how is your production"? If somebody said,</p> <p>7 "Things are great. We're operating at capacity. We're</p> <p>8 getting what we need. We're -- you know, the plant is</p> <p>9 running well" -- if someone were asking you that and</p> <p>10 they were your suppliers selling you one megawatt worth</p> <p>11 of energy and you were only getting 100 kilowatts of</p> <p>12 energy, then you would be saying, "We're only getting</p> <p>13 100 -- you know, everything is great except we're only</p> <p>14 getting 100 kilowatts worth of energy so it's not</p> <p>15 looking so good."</p> <p>16 Q. But you never asked and he never did tell</p> <p>17 you how much he was receiving. So he never represented</p> <p>18 to you or IH any particular measurement of COP.</p> <p>19 MR. BELL: Objection to form. I mean,</p> <p>20 at some point you can't ask the same -- you can't ask</p> <p>21 the same question -- you can't ask the same question</p> <p>22 for an hour.</p> <p>23 MR. ARAN: Okay. Well, maybe I could</p> <p>24 but I won't.</p> <p>25 MR. BELL: True.</p>	<p style="text-align: right;">Page 305</p> <p>1 (BY MR. ARAN)</p> <p>2 Q. Now, based on this claim under the Florida</p> <p>3 Deceptive and Unfair Trade Practices Act, do you know</p> <p>4 what damages monetarily -- what amount, the quantum of</p> <p>5 damages suffered by IH or IPH as a result of the</p> <p>6 actions under this count?</p> <p>7 A. I'm not aware of that number.</p> <p>8 Q. And do you know if it has been calculated?</p> <p>9 A. I don't know if someone else has calculated</p> <p>10 it or not.</p> <p>11 Q. Okay. At last I'll ask you to refer to</p> <p>12 paragraph 144, page 63.</p> <p>13 A. Um-hm, yes.</p> <p>14 Q. It indicates that based on the scheme</p> <p>15 various payments were made. And that among these</p> <p>16 payments were -- and it lists payments to Fabiani,</p> <p>17 Penon, USQL. Do you see that?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. Travel, equipment, etc.</p> <p>20 A. Yes, yes, yes.</p> <p>21 Q. Are these the types of damages that were</p> <p>22 suffered as a result of the conduct indicated in this</p> <p>23 particular count?</p> <p>24 A. I don't know. I would have to think about</p> <p>25 it but, you know, we spent a lot of money working on</p>

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<p style="text-align: right;">Page 306</p> <p>1 that plant, paying costs of rebuilding that plant, 2 getting the control systems built, shipping it down 3 there. You know, so I suspect it would be 4 substantially more than that, but I haven't thought 5 about it in detail.</p> <p>6 Q. Do you know if anybody has quantified that 7 amount?</p> <p>8 A. I don't know if anybody inside Industrial 9 Heat has or not. So I'm not sure. I don't know.</p> <p>10 Q. So we established that at least Mr. Bass 11 has nothing to do with the decision to bring the plant 12 down to Doral, correct?</p> <p>13 MR. BELL: Objection to form.</p> <p>14 THE WITNESS: If he was not working 15 with J.M. prior to when we brought the plant down there 16 then I would think that what you just said makes sense. 17 (BY MR. ARAN)</p> <p>18 Q. And more precise, prior to the term sheet 19 being signed, correct?</p> <p>20 MR. BELL: What exactly is the 21 question?</p> <p>22 (BY MR. ARAN)</p> <p>23 Q. Well, that the lapse between the time the 24 term sheet is signed and the agreement is done and the 25 physical arrival of the plant; am I correct?</p>	<p style="text-align: right;">Page 307</p> <p>1 A. Yes, I see what you're saying. You're 2 saying that -- that the term sheet was signed and then 3 later the plant was shipped down there. I believe 4 that's correct.</p> <p>5 Q. Correct. And by the time the term sheet is 6 signed, the decision to send the plant to Doral had 7 already been made, correct?</p> <p>8 A. Well, I think at any given time we were -- 9 we were assessing whether what we were doing was making 10 sense kind of throughout the process. So if we had -- 11 I don't know when we would have turned it around or 12 stopped. So I'm being a little bit narrow or narrow in 13 my response to your question meaning I don't know that 14 he was -- I'm getting ready to state a double negative. 15 Sorry. It is possible that his actions did influence 16 our decision to allow the plant to go down there.</p> <p>17 Q. So what would those actions have to have 18 been?</p> <p>19 A. Making us think that it's a real company, 20 for example. Maybe helping in building a system that 21 would deceive us into thinking that something was 22 operating over there or in building a system that would 23 -- that would, you know, fake or affect the test -- the 24 measurements from the other side.</p> <p>25 Q. But, to your knowledge, at the time that</p>
<p style="text-align: right;">Page 308</p> <p>1 the decision was made and by the time the plant got 2 here you did not know Mr. Bass's input, did you?</p> <p>3 A. I don't know the chronology of when he got 4 involved versus when we entered into the term sheet.</p> <p>5 THE VIDEOGRAPHER: Counsel, you have 6 30 minutes left until the seven-hour mark.</p> <p>7 MR. ARAN: I will then yield the floor 8 to Mr. Nunez so that he can have some time.</p> <p>9 RECROSS-EXAMINATION BY 10 MR. NUNEZ:</p> <p>11 Q. All right. Hello, there. Do you want to 12 take a quick break or just go on through this next half 13 hour?</p> <p>14 A. No, keep going. Keep going.</p> <p>15 Q. All right. Good afternoon, Mr. Darden. My 16 name is Rudy Nunez. I represent Fulvio Fabiani and 17 United States Quantum Leap in this case. Are you able 18 to hear me clearly through the phone?</p> <p>19 A. Yes, the audio is -- the audio is fine.</p> <p>20 Q. Okay. Thanks. You testified a few times 21 today about Mr. Fabiani. Can you tell me about how you 22 came to know Mr. Fabiani.</p> <p>23 A. He was working for Rossi, I believe, the 24 first time that I met Rossi over in Italy.</p> <p>25 Q. And what did you initially know about him</p>	<p style="text-align: right;">Page 309</p> <p>1 or find out about him?</p> <p>2 A. I knew that he was an expert about, you 3 know, communications, computer communication systems 4 and that he had electrical training.</p> <p>5 Q. And who told you that?</p> <p>6 A. Well, he did. I think Andrea probably did 7 also.</p> <p>8 Q. Did you do any independent investigation to 9 find out about him?</p> <p>10 A. We did not at that time, no.</p> <p>11 Q. Have you since?</p> <p>12 A. Well, we've done more, you know, looking 13 into his background, researching his background.</p> <p>14 Q. And what have you done?</p> <p>15 A. Well, we also -- excuse me. We also talked 16 to him a lot more. You know, he's an amiable, 17 enjoyable guy to talk to. And he would describe his 18 background. And he said that he early on was a hacker 19 and that he had gotten in trouble.</p> <p>20 He got arrested, I believe, in Italy for 21 hacking and that his -- his settlement or his solution 22 was to go into the military and be a hacker working for 23 the military or a computer, you know, security or 24 whatever kind of expert.</p> <p>25 That he worked with different, you know,</p>

1 Q. Okay. Did you do any background search
2 before -- strike that. Did there ever come a time
3 where Industrial Heat entered into a contract with
4 Mr. Fabiani for him to work for the company?

5 A. I know that we paid him so I assume that we
6 did.

7 Q. Are you aware of whether or not there is a
8 contract or was a contract?

9 A. I don't remember that specifically, but I
10 believe that there was a contract.

11 Q. Do you recall at all who executed the
12 contract on behalf of the other parties?

13 A. No, I'm sorry. I don't.

14 Q. Now, from your understanding what were
15 Mr. Fabiani's duties with regard to his work
16 for Industrial Heat?

17 A. Well, to support -- to support Andrea in
18 producing equipment or control systems for equipment.
19 Just generally to help out in trying to build a device
20 that worked.

21 Q. And that was -- that was the intent at the
22 beginning to bring Mr. Fabiani on to work for
23 Industrial Heat?

24 A. Well, no. Andrea wanted Fabiani to come
25 on. You know, he needed his help or he said he needed

1 his help and so, you know, we agreed to pay him to help
2 Andrea.

3 Q. So would I be correct in saying the purpose
4 of entering into a contract, at least to your
5 understanding, was for Mr. Fabiani to help Mr. Rossi in
6 the development of his technology?

7 A. Yes. Help -- help Rossi and help us
8 because we were the beneficiaries of that technology,
9 yes.

10 Q. Did you understand at that time that he
11 also had duties to report or -- strike that. Did he
12 also at that time have duties to collect data and take
13 measurements of the operation of any of the plants that
14 you were working on at the time?

15 A. Yes. We asked him to help us keep track of
16 data that was being produced by the different systems.

17 Q. And was he doing that?

18 A. I believe that he was.

19 Q. And where was he working?

20 A. He was working in Raleigh.

21 Q. Do you know how long he worked in Raleigh?

22 A. Sitting here I don't remember the dates,
23 but a pretty long time. You know, I would say more
24 than a year.

25 Q. And could you tell me generally from your

1 **A. This is a memory. I'm not sure.**

2 Q. Do you know whether he ever went into that
3 container on the other side which is the J.M. side?

4 **A. Well, that's what I'm referring to as the**
5 **other side.**

6 Q. Oh, actually into the container?

7 **A. I don't know. You know, I don't know what**
8 **part of what he might have seen on the other side. But**
9 **if it had been merely a container then it obviously was**
10 **not a manufacturing facility.**

11 Q. But you don't know for sure that he was
12 ever over there?

13 **A. I don't know for sure that he was there. I**
14 **believe that he was. And I don't know when he was over**
15 **there what he was seeing.**

16 THE VIDEOGRAPHER: Three minutes.

17 MR. CHAIKEN: Did you hear that, Rudy?
18 (BY MR. NUNEZ)

19 Q. Was Fulvio Fabiani present when you met
20 with Jim Bass? You testified that Jim Bass was at the
21 head of the table making serious representations. Was
22 Fabiani there at that meeting?

23 **A. I do not recall. Sorry.**

24 Q. And do you recall Mr. Fabiani in any way
25 participating in any way to restrict your or your

1 company's assets to the J.M. side of the facility?

2 **A. I don't remember him needing to do that. I**
3 **mean, we weren't trying to break down the door. The**
4 **door was closed.**

5 Q. Well, that was just an allegation in your
6 complaint that he restricted Industrial Heat's access.
7 Do you have any facts to support that allegation?

8 **A. That he restricted our access to the other**
9 **side?**

10 Q. Yes, sir.

11 **A. I did not see him restrict our access or**
12 **try to keep us from going over there. Maybe someone**
13 **else.**

14 Q. Now, in the newest amended complaint
15 there's been some new allegations that he provided
16 energy consumption numbers that didn't coincide with
17 numbers from the electric company. Did you have any
18 participation in analyzing that at all?

19 **A. I did not do that analysis, no.**

20 Q. Now, you're also -- your claim is that he
21 did not provide and disclose information and didn't
22 give his final report; am I correct?

23 **A. I believe that that's correct.**

24 Q. Would you agree with me that by the time
25 that he -- that that issue came up, you and Industrial

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<p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF NORTH CAROLINA)</p> <p>3 COUNTY OF WAKE)</p> <p>4</p> <p>5 I, Leslie Christian, the officer before whom</p> <p>6 the foregoing videotaped deposition was taken, do</p> <p>7 hereby certify that the witness whose testimony appears</p> <p>8 in the foregoing videotaped deposition was duly sworn</p> <p>9 by me; that the testimony of said witness was taken by</p> <p>10 me to the best of my ability and thereafter reduced to</p> <p>11 typewriting under my direction; that I am neither</p> <p>12 counsel for, related to, nor employed by any of the</p> <p>13 parties to the action in which this videotaped</p> <p>14 deposition was taken, and further that I am not a</p> <p>15 relative or employee of any attorney or counsel</p> <p>16 employed by the parties thereto, nor financially or</p> <p>17 otherwise interested in the outcome of the action.</p> <p>18 This the 28th day of February, 2017.</p> <p>19 <i>Leslie Christian</i></p> <p>20</p> <p>21 LESLIE CHRISTIAN</p> <p>22 Notary Public in and for</p> <p>23 County of Wake</p> <p>24 State of North Carolina</p> <p>25 Notary Public No. 201221300088</p>	<p>1 WITNESS'S CERTIFICATE</p> <p>2</p> <p>3 I, Thomas Darden, MD, do hereby certify</p> <p>4 that I have read and understand the foregoing</p> <p>5 transcript and believe it to be a true, accurate, and</p> <p>6 complete transcript of my testimony, subject to</p> <p>7 the attached list of changes, if any.</p> <p>8</p> <p>9</p> <p>10 Thomas Darden, MD</p> <p>11</p> <p>12 This deposition was signed in my presence by</p> <p>13 _____, on the ____ day of</p> <p>14 _____, 2017.</p> <p>15</p> <p>16</p> <p>17 Notary Public</p> <p>18 My commission expires:</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 332</p> <p>1 CaseWorks, Inc.</p> <p>2 811 Ninth Street, Suite 260 (Page 1 of 2)</p> <p>3 Durham, North Carolina 27705</p> <p>4 E R R A T A S H E E T</p> <p>5 Re: Andrea Rossi, et al. vs. Thomas Darden, et al.</p> <p>6 Deposition of: Thomas Darden, MD</p> <p>7 Please read this transcript with care, and if</p> <p>8 you find any corrections or changes you wish made, list</p> <p>9 them by page and line number below. DO NOT WRITE IN</p> <p>10 THE TRANSCRIPT ITSELF. Return the</p> <p>11 Certificate and Errata Sheet to this office after</p> <p>12 it is signed. We would appreciate your prompt</p> <p>13 attention to this matter.</p> <p>14 To assist you in making any such corrections,</p> <p>15 please use the form below. If supplemental or</p> <p>16 additional pages are necessary, please furnish same and</p> <p>17 attach them to the errata sheet.</p> <p>18 Page ____ Line ____ should</p> <p>19 read: _____</p> <p>20 Page ____ Line ____ should</p> <p>21 read: _____</p> <p>22 Page ____ Line ____ should</p> <p>23 read: _____</p> <p>24 Page ____ Line ____ should</p> <p>25 read: _____</p>	<p style="text-align: right;">Page 333</p> <p>1 Page ____ Line ____ should (Page 2 of 2)</p> <p>2 read: _____</p> <p>3 Page ____ Line ____ should</p> <p>4 read: _____</p> <p>5 Page ____ Line ____ should</p> <p>6 read: _____</p> <p>7 Page ____ Line ____ should</p> <p>8 read: _____</p> <p>9 Page ____ Line ____ should</p> <p>10 read: _____</p> <p>11 Page ____ Line ____ should</p> <p>12 read: _____</p> <p>13 Page ____ Line ____ should</p> <p>14 read: _____</p> <p>15 Page ____ Line ____ should</p> <p>16 read: _____</p> <p>17 Page ____ Line ____ should</p> <p>18 read: _____</p> <p>19 Page ____ Line ____ should</p> <p>20 read: _____</p> <p>21 Page ____ Line ____ should</p> <p>22 read: _____</p> <p>23 Page ____ Line ____ should</p> <p>24 read: _____</p> <p>25</p>