

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:16-CV-21199-CMA/O'Sullivan

ANDREA ROSSI and LEONARDO
CORPORATION,

Plaintiffs,

v.

THOMAS DARDEN; JOHN T. VAUGHN,
INDUSTRIAL HEAT, LLC; IPH
INTERNATIONAL B.V.; and
CHEROKEE INVESTMENT PARTNERS,
LLC,

Defendants.

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' SECOND REQUEST FOR PRODUCTION TO PLAINTIFFS**

Plaintiffs, Andrea Rossi and Leonardo Corporation ("Plaintiffs"), pursuant to Federal Rules of Civil Procedure 26, and 34, hereby respond to Defendants' Second Request for Production to Plaintiff as follows:

I. PRELIMINARY STATEMENT

Plaintiffs provide these responses and objections ("Responses") without waiving any objections as to the admissibility in evidence of these Responses, the information produced pursuant to, or referenced in, these Responses, or the subject matter of the Request or of the information produced pursuant to, or referenced in, these Responses. Plaintiffs' Responses are also subject to and without waiver of: (i) the right to object to other Discovery directed to the subject matter of the Request or Responses; (ii) the right to make additional

objections or to seek protective orders; and (iii) the right to revise, correct, add to, or clarify the Responses or information referred to below in accordance with all applicable rules.

Plaintiffs respond to this Request based upon information and documents acquired and reviewed to date, which may or may not be inclusive of all documents relevant to the matters in dispute in this case. Accordingly, the present Responses are offered without prejudice to supplementation or modification at a later date.

A statement in Plaintiffs' Responses that documents will be produced is not intended to mean that any such documents actually exist. Rather, such a statement is only intended to mean that, if documents exist, can be located based on a reasonable search, are in the possession, custody or control of Industrial Heat, and are not privileged or otherwise protected from discovery on any other applicable ground, they will be produced within forty-five (45) days of the date of this Response. Likewise, an objection to producing documents does not mean that documents otherwise responsive to a particular Document Request in fact exist.

II. RESPONSES AND OBJECTIONS TO REQUEST FOR PRODUCTION

REQUEST NO 1. All Documents/ESI that reflect, address, discuss, reference or memorialize any Test, or the results of any Test, performed by You or any other Person on the E-Cat or on any device that utilizes or was designed using the E-Cat IP (*e.g.*, the “Big Frankies”, the 1MW E-Cat Unit, the Hot Cat, the Six Cylinder Unit, E-Cat reactors and/or any E-Cat Products) (“E-Cat Device”), including, but not limited to, any Tests conducted at the Doral Location, any Tests conducted at the Triangle Drive Facility, and any Tests conducted in connection with the Ferrara Report or Lugano Report. This request specifically includes, but is not limited to, Documents/ESI reflecting, addressing, discussing or referencing (i) any methodologies or protocols used in conducting a Test, (ii) any data derived from a Test, and (iii) any observations, conclusions or reports resulting from a Test.

ANSWER: Plaintiffs object to this request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the facts, circumstances, documents and results of any test performed by the Plaintiffs using the E-Cat IP, other than the tests performed pursuant to the parties’ agreement, are irrelevant to any matter at issue in this case. Notably, this request is not limited in scope, location and/or country. As Defendants are well aware, they are not the only licensee of the E-Cat IP, and any tests run with or in relation to other licensees would not be relevant to the matters in this case. Notwithstanding the above objections, and without waiving the same, Plaintiffs will produce all responsive documents within their possession and control describing the E-Cat IP tests performed pursuant to the parties’ agreement, and the results of those tests.

REQUEST NO. 2: All communications between You and Fabio Penon.

ANSWER: Plaintiffs object to this request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. The time frame of the Request – January 1, 2011 through the present – is beyond the scope of the matters before the Court. Specifically, Mr. Penon’s involvement with the tests contemplated in the License

Agreement did not arise until early 2013 and the matters at issue in this case were concluded on or before the end of February 2016. To the extent this request seeks information regarding communications after the conclusion of the parties' dealings, such information would not be relevant, nor likely to lead to the discovery of relevant information, and may constitute trade secrets of Leonardo Corporation. Similarly, any communications occurring prior to the License Agreement at issue in this case (November 2012), would likewise not be relevant to the matters at issue in this case. Further, this request is not limited in any way, as to subject matter. Notwithstanding the above objections, and without waiving the same, Plaintiffs will produce all responsive documents within their possession and control relating to communications with Fabio Penon regarding any matter relating to the Validation Test and the Guaranteed Performance Test performed pursuant to the parties' agreement.

REQUEST NO. 3: All Communications between You and J.M. Products.

ANSWER: Plaintiffs object to this request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. The time frame of the Request – January 1, 2011 through the present – is beyond the scope of the issues before the Court. Specifically, the matters at issue were concluded on or before the end of February 2016. To the extent this request seeks information regarding communications after the conclusion of the parties' dealings, such information would not be relevant, nor likely to lead to the discovery of relevant information, and may constitute trade secrets of Leonardo Corporation. Further, this request is not limited in any way, as to subject matter. Notwithstanding the above objections, and without waiving the same, Plaintiffs will produce all responsive documents within their possession and control relating to communications with J. M. Products regarding the E-Cat and/or the E-Cat IP,

including any tests performed pursuant to the parties' agreement.

REQUEST NO. 4: All Communications between You and Giuseppe Levi, Evelyn Foschi, Torbjorn Hartman, Bo Hoistad, Roland Pettersson, Lars Tegner and/or Hanno Essen.

ANSWER: Plaintiffs object to this request on the grounds that it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the persons listed above were not involved in any manner with the License Agreement or any of the tests of the E-Cat or E-Cat IP contemplated therein. It is clear from this request that Defendants seek only to harass and intimidate Plaintiffs through this request as Defendants know that some, or all, of the above individuals participate in the nomination process for the Nobel Prize and their involvement in this matter could jeopardize any consideration Plaintiffs may be receiving for such nomination. Moreover, the time frame of the Request – January 1, 2011 through the present – is beyond the scope of the issues before the Court. Specifically, the matters at issue were concluded on or before the end of February 2016. To the extent this request seeks information regarding communications after the conclusion of the parties' dealings, such information would not be relevant, nor likely to lead to the discovery of relevant information, and may constitute trade secrets of Leonardo Corporation. Further, this request is not limited in any way, as to subject matter.

REQUEST NO. 5: All Communications reflecting, addressing, discussing or referencing the E-Cat, the E-Cat IP, or any E-Cat Device, between You and any of the following Persons:

- (a) John T. Vaughn**
- (b) Thomas Darden**
- (c) T. Barker Dameron**
- (d) Henry Johnson**
- (e) Fulvio Fabiani**
- (f) James Bass**
- (g) Barry West**
- (h) Joseph Murray**
- (i) Norman Cook**
- (j) Craig Cassarino**
- (k) Ron Engleman**
- (l) Richard Noceti**
- (m) Robert Gentile**
- (n) Karl Norwood**
- (o) John Mazzarino**
- (p) USQL**

ANSWER: Plaintiffs will produce all responsive documents within their possession and control.

REQUEST NO. 6: All Documents/ESI that reflect, address, discuss or reference the License Agreement, the First Amendment, the Proposed Second Amendment and/or the Term Sheet, including, but not limited to, all drafts of the License Agreement, First Amendment, Proposed Second Amendment or Term Sheet, and any negotiations over or involving the License Agreement, First Amendment, Proposed Second Amendment or Term Sheet.

ANSWER: Plaintiffs object to this request as it is overly broad and unduly burdensome. Specifically, the use of the term “any documents/ESI that reflect, address, discuss or reference...” is overly broad and would call for Plaintiffs to speculate as to what documents reflect or discuss the license agreement or the obligations contemplated thereby. Moreover, Plaintiffs object to the use of the term “Proposed Second Amendment” and any inference that it suggests. Notwithstanding such objections, and without waiving the same, Plaintiffs will produce all

responsive documents within their possession and control, assuming Defendants' were in fact referencing the Second Amendment executed by Defendants, that use or reference the following terms:

1. "License Agreement"
2. "First Amendment"
3. Second Amendment"
4. "Term Sheet"

In the event Defendants believe additional terms would render a more responsive production, Plaintiffs are willing to discuss the inclusion of additional terms. Plaintiffs further state that many of the documents provided in response to Request No. 5 above, will also be responsive to this Request No. 6. Plaintiffs further direct Defendants to view additional responsive information in the blog hosted on www.journal-of-nuclear-physics.com.

REQUEST NO. 7: All Documents/ESI that reflect, address, discuss or reference the operation, measurement or monitoring of any E-Cat Device at the Doral Location, from December 1, 2014 through the present, including, but not limited to, all Documents/ESI reflecting, addressing, discussing or referencing: (i) maintenance, repairs, replacement of parts, alterations, modifications or any other type of work done on or for any E-Cat Device at the Doral Location, (ii) monitoring of the activity of any E-Cat Device at the Doral Location (including the event log required by the License Agreement), (iii) data collected in connection with the operation, measurement or monitoring of any E-Cat Device at the Doral Location (including power data collected by Fulvio Fabiani and the original power data files generated by the "PCE-830" power and harmonics analyzer) and (iv) costs and expenses associated with the operation any E-Cat Device at the Doral Location.

ANSWER: Plaintiffs object to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendants request for "all documents/ESI that reflect, address, discuss or reference the operation, measurement or monitoring of any E-Cat device" grossly exceeds the scope of the matters at issue in this case. The only operation and/or test at issue in this case is the operation of

the E-Cat Unit as part of the Guaranteed Performance test. To the extent Dr. Rossi tested and/or operated other devices related to the E-Cat or E-Cat IP, it is of no relevance to this issues in this case. Moreover, as drafted, the request would require production of an extraordinary amount of information which has no probative value to the issues. Lastly, to the extent Defendant requests any information after the conclusion of the Guaranteed Performance Test in February 2016, such information would not be relevant, may constitute the confidential trade secrets of Leonardo Corporation and would have no bearing on the matters at issue in this case.

REQUEST NO. 8: All Documents/ESI that reflect, address, discuss or reference (i) visits by any Person to the Doral Location or (ii) the use of any equipment (including computer equipment), materials, machinery or devices in connection with the operation, measurement or monitoring of any E-Cat Device at the Doral Location, from December 1, 2014 through the present.

ANSWER: Plaintiffs object to this request on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendants request for “all documents/ESI that reflect, address, discuss or reference...” is overly broad and could include large numbers of documents which have absolutely no probative value whatsoever and would require Plaintiffs to speculate as to what documents may be responsive. Moreover, to the extent Defendant requests any information after the conclusion of the Guaranteed Performance Test in February 2016, such information would not be relevant, may constitute the confidential trade secrets of Leonardo Corporation and would have no bearing on the matters at issue in this case. Notwithstanding the above objections, and without waiving the same, Plaintiffs will produce documents that identify any visits by any person to the Doral Location and to the extent such documents exist, documents sufficient to identify any “equipment, materials,

machinery or devices used in connection with the operation, measurement or monitoring” of the E-Cat Device during the Guaranteed Performance Test.

Dated: November 29, 2016

Respectfully submitted,

/s/ John W. Annesser

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 29, 2016, the foregoing document was served on all counsel of records identified on the attached Service List via the manner specified.

/s/ John W. Annesser
John W. Annesser, Esq. (98233)

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