UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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.

CASE NO. 1:16-cv-21199-CMA

INDUSTRIAL HEAT, LLC and IPH INTERNATIONAL B.V.,

Counter-Plaintiffs,

v.

ANDREA ROSSI and LEONARDO CORPORATION,

Counter-Defendants,

and

J.M. PRODUCTS, INC.; HENRY JOHNSON; UNITED STATES QUANTUM LEAP, LLC; FULVIO FABIANI; and JAMES A. BASS,

Third-Party Defendants.

JOINT PRETRIAL STIPULATION

Pursuant to Southern District of Florida Local Rule 16.1(e), Plaintiffs Andrea Rossi ("Rossi") and Leonardo Corporation ("Leonardo") (collectively, "Plaintiffs"); Defendants Thomas Darden, John T. Vaughn, Industrial Heat, LLC ("IH"), IPH International B.V. ("IPH"), and Cherokee Investment Partners, LLC ("Cherokee") (collectively, "Defendants"); and Third-Party Defendants Henry Johnson, J.M. Products, Inc. ("J.M. Products"), James A. Bass, Fulvio Fabiani, and United States Quantum Leap, LLC ("USQL") (collectively, "Third-Party Defendants") hereby file the following joint pretrial stipulation.

I. STATEMENTS OF THE CASE

A. Plaintiffs' Statement of the Case

At its essence, this is an action for breach of an intellectual property license agreement ("License Agreement"). Plaintiff, Dr. Andrea Rossi ("Rossi") is the inventor and owner of a patented, disruptive technology that provides for the creation of heat energy in a safe and efficient process using a combination of unique fueling agents and catalysts (the "E-Cat technology" or "E-Cat IP"). The individual and corporate Defendants hold themselves out as investors in Low Energy Nuclear Reaction ("LENR") technology such as the E-Cat technology that Plaintiffs invented and patented.

In October 2012, Plaintiffs and Defendants entered into a License Agreement through which Plaintiffs granted Defendants a territorial license of the E-Cat technology in exchange for Defendants' payment to Plaintiffs of approximately $105,000,000 payable in three tranches. The first tranche consisted of a $1.5 million payment by Defendants to Plaintiffs for the purchase of Plaintiffs' one megawatt E-Cat plant ("1MW Plant"). The second tranche consisted of a $10 million payment by Defendants to Plaintiffs following a 24-hour test (the "Validation Test") of the E-Cat technology. The final tranche consisted of an $89 million payment by Defendants to Plaintiffs following a contractual 400-day test (the "Guaranteed Performance Test" or "GPT") of the E-Cat Technology.

The License Agreement required the parties to agree upon an independent third party arbiter, defined in the License Agreement as an expert responsible for validation ("ERV"). The parties agreed upon the ERV, the ERV performed his agreed-upon duties, and the ERV issues two reports: one showing the technology passed the Validation Test, and one showing the technology passed the GPT. After the ERV issued his first report, Plaintiffs demanded and received payment of the $10 million. After the ERV issued his second report, Plaintiffs demanded payment of the $89 million. Defendants refused.

On April 5, 2016, Plaintiffs were forced to commence the above styled lawsuit as a result of, inter alia, Defendants IH and IPH's breach of the License Agreement requiring IH (and assignee IPH) to pay the $89 million contemplated as the final tranche of payments under the agreement. During the course of the 400-day test, Defendants successfully sold to outside investors approximately four percent of their company for $50 million – equating to a $2 billion valuation. In soliciting this deal, Defendants touted Plaintiffs' E-Cat technology as the centerpiece, and most advanced, of several different Low Energy Nuclear Reaction ("LENR") technologies in their portfolio. Shortly after closing on this $50 million investment, and after working with Plaintiffs for more than three years, Defendants, for the first time, expressed to Plaintiffs their dissatisfaction with Plaintiffs' performance under the License Agreement and with the underlying technology.

Instead of making payment, Defendants have created numerous defenses and counterclaims in an attempt to avoid their contractual obligation. Significantly, despite claiming (1) they had no contractual obligation to pay the $89 million after October 2013, and (2) they suspected that the GPT was being performed in some type of fraudulent manner as of its inception in February 2015, Defendants allowed Plaintiffs to continue to perform under the License Agreement without providing any notification of either until, at the earliest, November 2015. The reason for this conduct is readily apparent: Defendants

were soliciting from investors funding in excess of $50 million, premised on Plaintiffs' technology, during the time period in which the GPT was being performed. Once the funding closed in May of 2015, Defendants no longer needed Plaintiffs, setting the stage for the present lawsuit.

B. Defendants'/Counter-Plaintiffs' Statement of the Case

Plaintiffs claim to have invented a technology called the "E-Cat" capable of violating the law of conservation of energy by producing far more energy than it consumes. In October 2012, Plaintiffs, IH and AmpEnergo, Inc. ("AEG")[1] entered into a License Agreement (the "License Agreement") whereby Plaintiffs agreed (among other things) to transfer and license to IH the E-Cat technology (the "E-Cat IP"). In exchange, IH agreed to one absolute payment and two conditional payments. It would pay $1.5 million upon entering the Agreement, $10 million if Plaintiffs could complete a 24-hour "Validation Test" using a plant containing a collection of E-Cat reactors (the "1 MW Plant"), and $89 million if thereafter Plaintiffs could operate the 1 MW Plant for 350 out of 400 days at the same level (or better) than the initial Validation Test (the "Guaranteed Performance" test).

In October 2012, IH paid Leonardo $1.5 million. On April 29, 2013, a day before the Validation Test, the parties executed the First Amendment to the License Agreement ("First Amendment"). Afterwards, the Validation Test took place in Ferrara, Italy and IH assigned certain of its rights under the License Agreement to IPH. Following the Validation Test, IPH caused Leonardo to be paid an additional $10 million. In exchange, Plaintiffs purportedly transferred all of the E-Cat IP to IH and IPH. Leonardo delivered the 1 MW Plant to IH in August 2013. Nearly a year later, in June 2014, Plaintiffs advised IH that they had found a "real Customer" in Florida that allegedly had a commercial need for the steam produced by the 1 MW Plant. That customer turned out to be a fake – it was Third-Party

[1] AEG had previously licensed the E-Cat technology from Plaintiffs but was relinquishing it to IH. AEG stood to obtain additional payments from IH if Plaintiffs could satisfy the Validation and Guaranteed Performance requirements of the License Agreement.

Defendant J.M. Products, which was operated by Rossi, had no products to sell, no money except what Plaintiffs provided it, and no purpose except to do the bidding of Plaintiffs. Not knowing this, IH entered into an agreement (the "Term Sheet") with J.M. Products and Leonardo that involved sending the 1 MW Plant to J.M. Products' facility in Florida.[2] Also in connection with sending the 1MW Plant to Florida, IH entered into a Technical Consulting Agreement with USQL through its sole member, Fabiani (the "USQL Agreement"). Fabiani also joined the USQL Agreement in his individual capacity to "provide services related to the manufacture and development" of the 1 MW Plant and related E-Cat IP. The USQL Agreement imposes an affirmative obligation upon USQL and Fabiani promptly to disclose information relating to their work on the 1 MW Plant or the E-Cat IP and makes clear that information obtained by USQL or Fabiani during the course of their work under the USQL Agreement is the sole property of Industrial Heat.

From February 2015 to February 2016, Plaintiffs claim to have operated the 1 MW Plant in Florida for J.M. Products and, in doing so, achieved results that would satisfy the criteria for the "Guaranteed Performance" test. In reality, however, the E-Cat technology does not work as Plaintiffs claim, there was no "real Customer" in Florida, and Plaintiffs did not achieve Validation or Guaranteed Performance under the License Agreement. Plaintiffs saw IH as an eager investor able to raise substantial funds to invest in "new energy" technology. With the assistance and involvement of Third-Party Defendants J.M. Products, Johnson, Bass, Fabiani, and USQL, they decided to deceive and manipulate IH and IPH in an effort to con them out of those funds.

Additionally, Fabiani and USQL breached the USQL Agreement by failing to provide accurate and complete information about the 1 MW Plant's performance to IH. Fabiani and USQL have refused

[2] At the time the Term Sheet was entered, J.M. Products did not even have a facility in Florida. Rossi later rented a warehouse in Doral under Leonardo's name and then provided space in that warehouse to J.M. Products.

and continue to refuse to provide records, "tests and results" and other information relating to their engagement under the USQL Agreement to IH, even though they agreed that such information is the property of IH. They have so refused because they are aware that such information demonstrates that the Plant was not performing at levels claims by Leonardo, Rossi and Penon. Fabiani and USQL also breached the USQL Agreement by failing to provide IH with information relating to the scheme to manipulate the operation and testing of the Plant. USQL and Fabiani had an affirmative obligation to inform IH of the scheme to manipulate the Plant's operations and the testing. To this day, Fabiani and USQL have intentionally withheld information from IH relating to the scheme and, therefore, breached the USQL Agreement.

C. Third-Party Defendants' Statement of the Case

In August 2014, J.M. Products, Leonardo and IH entered into a Term Sheet with the understanding that J.M. Products would use the steam generated by the 1 MW Plant for its operations. From the time the 1 MW Plant began operating until the time it ceased operating, J.M. Products performed its obligations under the Term Sheet, using the steam produced by the 1 MW Plant and allowing Plaintiffs and Counter-Plaintiffs to conduct their testing on the 1 MW Plant. Unhappy with the results of the testing of the 1 MW Plant, Counter-Plaintiffs now cry foul and have created a fiction of manipulation and deceit surrounding the operation of the 1 MW Plant in Florida in an effort to avoid making a payment of $89 million. J.M. Products, Johnson, and Bass did not have any interest in the outcome of the testing of the 1 MW Plant and played no role in the measurement of the 1 MW Plant. Furthermore, J.M. Products' operation and use of the steam has no bearing on whether or not the 1 MW Plant works as claimed.

Fulvio Fabiani was initially employed by Dr. Rossi to assist in the development of the E-Cat technology. Following the first validation test and the acquisition of the E-Cat IP by the Defendants,

Fabiani through his Florida limited liability company, USQL, was contracted by IH to continue to serve as a consultant and assistant to Dr. Rossi for the development of the E-Cat technology. The intent of the contract between USQL/Fabiani and IH was for the purpose of assuring that Fabiani would continue to assist and support Dr. Rossi's work. Defendants disregard the limited role played by Fabiani and, instead, allege him to be an integral participant in the scheme alleged to have been orchestrated by Dr. Rossi.

Fabiani did not have any involvement or participation in the agreements involving Dr. Rossi and IH. Fabiani's compensation was not dependent on whether the E-Cat technology was successfully validated or replicated. Moreover, no evidence exists that Fabiani/USQL participated in the majority of the scheme alleged by IH; specifically: (1) Fabiani played no role whatsoever in inducing IH to move the E-Cat Plant to Doral, Florida; (2) Fabiani had no role whatsoever in the discussions and negotiations involving JMP and IH; (3) Fabiani's measurements were not relied upon or pertinent to IH's obligation to pay Dr. Rossi; and (4) there is no evidence that Fabiani manipulated the operation of the E-Cat plant or the data provided by him to Industrial Heat.

The collection and dissemination of data was not a material term in the contract between IH and USQL/Fabiani. The data collected by USQL/Fabiani was only requested by the Defendants after making the decision that no further payments were going to be made to Dr. Rossi. Nevertheless, Fabiani turned over all or substantially all information collected during the 1MW plant's operation in Doral expecting full payment of all monies owed to him by IH. Despite having produced all or substantially all information collected, IH refused to make the final payment due under the contract. Any remaining obligations due by USQL/Fabiani were excused by the continued failure and refusal of IH to make full payment as required under the contract between the parties.

II. BASIS OF FEDERAL JURISDICTION

This Court has subject matter jurisdiction over claims set forth in the Complaint because this Court had subject matter jurisdiction at the time Plaintiffs filed the Complaint under 28 U.S.C. 1331, 1332, and 1338(a). This Court has subject matter jurisdiction over Defendants counterclaims and third-party claims pursuant to 28 U.S.C. § 1367 because the claims pled therein are related to the claims pled in the Complaint and arise out of the same case or controversy.

III. PLEADINGS RAISING THE ISSUES

A. Plaintiffs' Complaint (D.E. 1).

B. Defendants' Fourth Amended Answer, Additional Defenses, Counterclaims, and Third-Party Claims ("4th Amended AACT") (D.E. 132).

C. Plaintiffs' Answer and Affirmative Defenses to Defendants' 4th Amended AACT (D.E. 140).

D. Third-Party Defendants' Answer and Affirmative Defenses to Defendants' 4th Amended AACT (D.E. 141).

E. Fulvio Fabiani And United States Quantum Leap, LLC's Answer And Affirmative Defenses To Counter-Plaintiffs Industrial Heat, LLC And IPH International, B.V.'s Third-Party Claims (DE 149).

IV. UNDISPOSED OF MOTIONS REQUIRING ACTION BY THE COURT

A. Defendants'/Counter-Plaintiffs' Memorandum of Law Regarding Communications with Deep River Ventures that are Protected by the Attorney-Client Privilege and Work Product Doctrine (D.E. 143).[3]

[3] Defendants appealed Magistrate Judge O' Sullivan's ruling denying the relief sought in the memorandum (D.E. 170), and District Judge Altonaga remanded the appeal to Judge O'Sullivan for clarification of the ruling (D.E. 184). The remand was heard by Judge O' Sullivan on April 20, 2017 (D.E. 266).

B. Defendants' Motion for Sanctions Based on Plaintiffs' and Third-Party Defendants Fulvio Fabiani, United States Quantum Leap, LLC, and J.M. Products, Inc.'s Spoliation of Evidence (D.E. 194).[4]

C. Defendants' Motion to Exclude the Opinions and Testimony of Dr. K. Wong (D.E. 197).

D. Defendants'/Counter-Plaintiffs' Motion for Summary Judgment (D.E. 203).

E. Plaintiffs' Motion for Partial Summary Judgment (D.E. 214).

F. Plaintiffs' *Daubert* Motion to Strike and Exclude Defendants' Experts (D.E. 215).

G. Third-Party Defendants' Combined Motion for Partial Summary Judgment (D.E. 242).

H. Plaintiffs' Motion in Limine (D.E. 262).

I. Third-Party Defendants James Bass, J.M. Products, Inc., and Henry Johnson's Motion in Limine (D.E. 263).

J. Defendants' Motion in Limine (D.E. 264).

K. Plaintiffs' intend to appeal Magistrate Judge O'Sullivan's ruling on April 20, 2017 [D.E. 266] that Document IH-0079768 (the "Zalli document") is subject to the attorney-client privilege and not subject to the crime-fraud exception thereto.

V. STATEMENT OF UNCONTESTED FACTS

The parties state the following facts are uncontested in this matter:

1. Rossi is the inventor and owner of a disruptive technology that Rossi claims provides for the creation generation of heat energy in a safe and efficient process using a combination of unique fueling agents and catalysts.
2. Rossi has successfully patented his technology globally, receiving patents from, *inter alia*, the USPTO (Patent No. 9,115,913 B1) and WIPO (Patent No. 2016/018851 A1).

[4] This motion was denied by Magistrate Judge O' Sullivan on April 20, 2017 (D.E. 266). Defendants are appealing the order of denial to District Judge Altonaga.

3. Darden is the CEO of Cherokee, and Vaughn is the Venture Investment Manager of Cherokee.
4. Cherokee Investment Partners, LLC is one of several entities that fall under the "Cherokee" brand, which describes a body of work that Tom Darden and John Mazzarino have accumulated over 30 years.
5. On its website, Cherokee represented to the public that it had raised $2.2 billion in five institutional private equity funds and invested that $2.2 billion in the acquisition, cleanup, development and sale of more than 550 properties in the US, Canada and Europe.
6. Cherokee Investment Services provides administrative services to Industrial Heat, LLC ("IH").
7. Cherokee Investment Partners, LLC has never owned IH.
8. Cherokee Investment Services does not make any profit as a result of providing such services.
9. At a certain point in time, John Vaughn was working for IH, while being paid by Cherokee Investment Services.
10. IH was formed on October 24, 2012, two days before the License Agreement at issue was executed. Industrial Heat and its affiliates, including IPH, are involved in developing and investing in "low energy nuclear reaction" (or LENR) technologies that have the potential to provide clean, reliable, efficient, and safe sources of energy.
11. On or about October 26, 2012, Leonardo Corporation, a New Hampshire corporation ("Leonardo NH"), Rossi, IH, and AEG executed and entered into a License Agreement for the purchase and territorial license of Rossi's Energy Catalyzer intellectual property (the "E-Cat IP").

12. According to the License Agreement, the "E-Cat IP" consists of:

> patents, designs, trade secrets, technology, know-how (including all the knowledge necessary to produce thermal energy by means of apparatuses derived from the technology), products and business plans and all other intellectual property related directly or indirectly to energy production and conversion technologies and to the development, manufacture and sale of products using such technologies, including the Energy Catalyzer ("E-Cat") formula used to fuel the E-Cat, the "Hot-Cat" and the related energy production and conversion technologies.

13. Pursuant to Section 16.1 of the License Agreement, the E-Cat IP also "include[s] all documents, manuals, technical data, formulae, and other items and materials necessary or useful to enable the Company to (i) operate the 1 MW E-Cat Unit, (ii) make E-Cat Products, and (iii) exploit the E-Cat IP as contemplated by this Agreement."

14. Prior to the execution of the License Agreement, AEG held the limited duration exclusive right to commercially market Leonardo and Rossi's E-Cat technologies in the Americas.

15. Section 3 of the License Agreement provides that the total purchase price for the license was $100,500,000, payable in three tranches: (1) $1.5 million upon execution; (b) $10 million upon successful completion of validation test pursuant to the terms of the License Agreement ("Validation"); and (c) $89 million upon successful completion of a 400-day guaranteed performance test ("Guaranteed Performance").

16. Section 3.2(a) of the License Agreement governs the purchase of the 1 MW E-Cat Plant for $1.5 million. That section, as amended by the First Amendment, states, in part:

> Upon execution of this Agreement, the Company will pay to Leonardo One Million Five Hundred Thousand Dollars ($1,500,000) which amount shall be deemed to include full payment for the Plant. In the event the Plant is not delivered or Validation is not achieved within the time period set forth in Section 4, the full $1,500,000 will be refunded to the Company within two business days of its request. A refund of the $1,500,000 will not be provided for any other reason and no other refund will be provided for any reason. In the even the $1,500,000 is refunded, the Plant will remain the property of Leonardo.

17. Section 13.1 of the License Agreement provides that Rossi would provide training and support to IH for a period of not less than 12 months following Validation, as and to the

extent reasonably requested by IH to enable it to utilize the E-Cat IP, operate the Plant and produce E-Cat Products.

18. On or about October 26, 2012, IH made the initial payment of $1.5 million to Leonardo NH as specified under Section 3.2(a) of the License Agreement.

19. Prior to the present lawsuit, IH never requested a refund of the $1.5 million purchase price.

20. J.M. Products, Johnson, Bass, and Fabiani were not parties to the License Agreement.

21. Bass was not involved in any discussion with IH related to the License Agreement.

22. Neither Johnson, Bass nor Fabiani had any involvement in the negotiation or entering of the License Agreement.

23. On or about April 29, 2013, Rossi, Leonardo NH, IH, and AEG executed and entered into the First Amendment to the License Agreement ("First Amendment").

24. The "1 MW E-Cat Unit" is referred to in the License Agreement as the "Plant" and is also sometimes referred to as the "1 MW E-Cat Unit" or the "1 MW Plant").

25. According to Exhibit C to the License Agreement, the 1 MW Plant was anticipated to be able to deliver one megawatt ("1 MW") of thermal output power using an average of roughly 167 kilowatts of electrical input power.

26. Section 3.2(a) of the License Agreement governs the purchase of the 1 MW Plant for $1.5 million.

27. Also on or about April 29, 2013, IH assigned its rights under the License Agreement to IPH pursuant to an Assignment and Assumption of License Agreement ("Assignment and Assumption").

28. Rossi and Leonardo NH executed a consent to the Assignment and Assumption agreement.

29. On or about September 12, 2014, IH and IPH entered into an amended agreement intended to clarify the Assignment and Assumption ("Amended Assignment and Assumption").

30. The Amended Assignment and Assumption, *inter alia*, (a) clarified that the 1 MW Plant was the only interest in the License Agreement that would remain IH's property; and (b) IPH would pay $460,000 in consideration for the assignment of the remaining interests under the License Agreement.

31. Also on or around April 29, 2013, Leonardo NH and Rossi executed a Certificate certifying to IPH that the representations and warranties in the License Agreement, as amended by the First Amendment, remained true and correct.

32. Each party to the License Agreement made representations and warranties in the License Agreement. Such representations, found in Section 11 and of the License Agreement, include that each party:

    a. "is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulation of its jurisdiction of incorporation or organization";

    b. "has, and through the term of the License [would] retain, the full right, power and authority to enter into this Agreement and to perform its obligations";

33. Section 4 of the License Agreement governs Validation.

34. In order to achieve Validation, the Plant was required to consistently produce energy that was at least 6 times greater than the energy it consumed and steam that was consistently 100 degrees Celsius or higher.

35. The License Agreement states that In order to determine the Plant's performance under the Validation Test, "the ERV will measure the flow of the heated fluid and the Delta T between the temperature of the fluid before and after the E-Cat reaction."

36. The Validation Test took place in Ferrara, Italy on April 30 and May 1, 2013.

37. Before the Validation Test began, Rossi provided IH with a draft copy of a report by third parties who tested two different E-Cat reactors in Ferrara, Italy.

38. The final report, later published as "Indication of Anomalous Heat Energy Production in a Reactor Device Containing Hydrogen Loaded Nickel Powder" was prepared by several Italian and Swedish scientists (Giuseppe Levi, Evelyn Foschi, Torbjorn Hartman, Bo Hoistad, Roland Pettersson, Lars Tegner, and Hanno Essen) who hailed from the Royal Institute of Technology, Uppsala University, and Bologna University (the "Ferrara Report").

39. According to the Ferrara Report, one E-Cat reactor produced a COP of 5.6 and a second E-Cat reactor produced a COP of 2.6 or 2.9.

40. During the Validation Test, 18 E-Cat reactors were operated as "Unit A" (as "Unit A" is defined in the First Amendment).

41. For purposes of achieving Validation, only the performance of "Unit A" was to be considered.

42. Section 3.2(b) of the License Agreement provides that upon successful Validation of the 1 MW Plant, "[IH] will deliver Ten Million Dollars ($10,000,00) to [an escrow agent], to be held in escrow pursuant to an escrow agreement acceptable to Leonardo and [IH]. Such escrow agent (the 'Escrow Agent') shall pay the escrowed $10,000,000 to Leonardo immediately after (i) Validation is achieved as provided in Section 4 hereof, and (ii) the E-Cat IP has been validated and is available for immediate delivery to [IH]." Section 3.2(b) of

the License Agreement provides in part: "On the date the Escrow Agent pays the $10,000,000 to Leonardo, the License will commence and Leonardo and Rossi will immediately transfer, and the Validation Agent (as defined in Schedule 3.2(b)) will deliver, to the Company all E-Cat IP."

43. Schedule 3.2(b) of the License Agreement defines the Validation Agent as "any combination of one or more United States patent attorney . . . and a nuclear engineer . . . , in each case that are not an Affiliate of Rossi, to be selected by Leonardo."

44. Leonardo, Rossi, and IPH agreed upon Ruggero Giunti, a nuclear engineer, as the Validation Agent, and the Validation Agent reviewed the transferred IP.

45. The Validation Agent provided his written statement that Leonardo had delivered to IPH all of the E-Cat IP.

46. On June 9, 2013, after Validation, IPH released, through an escrow agent, the $10 million payment in satisfaction of Section 3.2(b) of the License Agreement.

47. Section 5 of the License Agreement originally made the third payment under the License Agreement contingent upon the following factors: (a) the 1 MW E-Cat unit operating at the same level (or better) at which Validation was achieved (a COP of 6.0) for a period of 350 days (even if not consecutive) within a 400 day period (defined as "the Guaranteed Performance"); (b) the test was to commence immediately following the delivery of the 1 MW Plant to Defendants; (c) the ERV (as previously defined in Section 4 of the License Agreement) will confirm in writing the Guaranteed Performance.

48. Section 3.2(c) of the License Agreement provides: "Within five business days following 350 days of operation of the Plant during which the Guaranteed Performance has been achieved

as required by Section 5 . . . the Company will pay to Leonardo Eighty Nine Million Dollars ($89,000,000)[.]"

49. Even if Guaranteed Performance could not be achieved, the License Agreement provided that Leonardo and Rossi were entitled to a reduced third payment (*i.e.*, less than $89 million) if they could demonstrate that the Plant could consistently operate at a COP of at least 4.0 for 350 out of 400 days.

50. In or around August 2013, the 1 MW Plant was delivered to in North Carolina.

51. From approximately September through December 2013, Rossi was on site at IH's facility in North Carolina.

52. In October 2013, Rossi, Leonardo, and IH executed a proposed Second Amendment to the License Agreement ("Proposed Second Amendment").

53. Section 5 of the Second Amendment states:

> Payment of the amount set forth in Section 3(c) above is contingent upon a six cylinder Hot Cat unit reasonably acceptable to the Company (the "Six Cylinder Unit") operating at the same level (or better) at which Validation was achieved for a period of 350 days (even if not consecutive) within a 400 day period commencing on the date agreed to in writing between the parties ("Guaranteed Performance"). Each of Leonardo and Rossi will use their commercially reasonable best efforts to cause Guaranteed Performance to be achieved, including making repairs, adjustments and alterations to the Six Cylinder Unit as needed to achieve Guaranteed Performance. The ERV (or another party acceptable to the Company and Leonardo) will be engaged to confirm in writing the Guaranteed Performance. Guaranteed Performance will not be deemed achieved unless such written confirmation is received or waived by the Company.

54. AEG did not sign the Second Amendment.

55. The Second Amendment states:

> Payment of the amount set forth in Section 3(c) above is contingent upon a six cylinder Hot Cat unit reasonably acceptable to the Company (the "Six Cylinder Unit") operating at the same level (or better) at which Validation was achieved for a period of 350 days (even if not consecutive) within a 400 day period commencing on the date agreed to in writing between the Parties ("Guaranteed Performance"). Each of Leonardo and Rossi will use their

commercially reasonable best efforts to cause Guaranteed Performance to be achieved, including making repairs, adjustments and alterations to the Six Cylinder Unit as needed to achieve Guaranteed Performance.

56. The Six Cylinder Unit is a different device than the 1 MW Plant, but they are both based upon the E-Cat technology.

57. The Six Cylinder Unit was never sent to Florida.

58. Section 16.4 of the License Agreement provides in pertinent part:

> No publicity release or public announcement concerning this Agreement or the transactions contemplated hereby shall be made by Leonardo, Rossi, AEG or the Company without written advance approval thereof by each of Leonardo and the Company. While this Agreement is in effect and after this Agreement terminates, each party hereto and its Affiliates shall keep confidential, and shall not disclose, the terms of this Agreement to any other Person without the prior consent of each other Party hereto . . . During the term of this Agreement, each of Leonardo, Rossi, and AEG agrees to keep the E-Cat IP strictly confidential and not disclose any of the E-Cat IP to any other party.

59. Andrea Rossi has used the following e-mail addresses: ar.123@mail.com, info@leonardocorp1996.com, eon333@liberto.it, eon3333@tiscali.it, info@journal-of-nuclear-physics.com.

60. Andrea Rossi owns the blog www.journal-of-nuclear-physics.com.

61. Section 10 of the License Agreement provides:

> **Recordation of License.** Upon the request of the Company, Leonardo and Rossi shall assign to the Company the Licensed Patents with respect to the Territory or, if so requested by the Company, record this Agreement (or a memorandum hereof, or similar document) as permitted or required by the laws of countries in the Territory, and any recordation fees and related costs and expenses shall be paid by the Company."

62. Section 16.1 of the License Agreement defines the "Licensed Patents" as:

- Italian patent granted for process and apparatus
- USA patent pending for process and apparatus
- Europe patent pending for process and apparatus
- USA patent pending for particulars and theory
- USA patent pending for control systems
- USA patent pending for additives and catalyzers in process and apparatus

- USA patent pending for Hot Cat
- USA patent pending for direct conversion of photons into electric energy
- USA patent pending for particulars of the reactor

63. Section 7.1 of the License Agreement provides:

> For each patent application and patent under the Licensed Patents, Leonardo shall:
> (a) prepare, file and prosecute such patent application;
> (b) maintain such patent;
> (c) pay all fees and expenses associated with its activities pursuant to Section 7.1(a) and
> (b) above;
> (d) keep the Company currently informed of the filing and progress in all material aspects of the prosecution of such patent application, and the issuance of patents from any such patent application;
> (e) consult with the Company concerning any decisions which could affect the scope or
> enforcement of any issued claims or the potential abandonment of such patent application or patent; and
> (f) notify the Company in writing of any additions, deletions or changes in the status of
> such patent or patent application.

64. Section 7.2 of the License Agreement provides: "If Leonardo wishes to abandon any patent application or patent that is a Licensed Patent, it shall give the Company ninety (90) days prior written notice of the desired abandonment. Leonardo shall not abandon any such Licensed Patent except upon the prior written consent of the Company."

65. Leonardo charged Counter-Plaintiffs for fees and expenses associated with certain of Leonardo's patent activities, and Counter-Plaintiffs paid those fees and expenses.

66. Section 13.3 of the License Agreement states in pertinent part:

> For as long as the Company or any of its subsidiaries is engaged in any business related to the E-Cat Products and . . . Leonardo, Rossi or any Affiliate are performing services for the Company or such transferee […]and for an additional period of two (2) years after the last of Leonardo, Rossi or such Affiliate shall have ceased to provide such services, none of Leonardo, Rossi or any of their Affiliates will […] directly or indirectly own, manage, operate, join, or have a financial interest in, control or participate in the ownership, management, operation or control of, or be employed or engaged as an employee, agent or consultant, or in any other individual or representative capacity whatsoever, or use or permit their names to be used in

connection with, or be otherwise connected in any manner with any business or enterprise (a) engaged in the design, development, manufacture, distribution, lease, rental or sale of any E-Cat Products, or the provision of any services related thereto or (b) which is competitive with the E-Cat Products, unless Leonardo or such Affiliate shall have obtained the prior written consent of the Company or such subsidiary of the Company, as the case may be.

67. Section 13.5 of the License Agreement provides in pertinent part: "The Parties shall file all necessary documentation and returns with respect to any applicable sales, use, transfer, real property transfer, recording, gains, stock transfer and other similar taxes and fees pertaining to the respective revenues derived by the Parties in respect of the E-Cat IP."

68. Johnson filed the Articles of Incorporation for J.M. Chemical Products, Inc. with the State of Florida.

69. IH did not contact Johnson Matthey before the Term Sheet was signed.

70. Rossi made representations to IH that Johnson Matthey would be a supplier to J.M. Products'.

71. J.M. Products was owned by the Platinum American Trust, a U.S. trust over which Johnson had control as trustee.

72. Rossi has known Francesco Di Giovanni, the beneficiary of the Platinum American Trust, for over 15 years.

73. On or about August 13, 2014, IH, Leonardo, and J.M. Products entered into the Term Sheet.

74. IH participated in drafting the Term Sheet, including changing some of its terms, and its attorneys reviewed the Term Sheet.

75. IH never sought to collect any payments from J.M. Products in relation to the Term Sheet.

76. Bass was not involved in any discussion with IH or IPH related to the Term Sheet or moving the 1 MW Plant to Florida.

77. Fabiani was not involved in making any representations to IH or IPH concerning moving the 1 MW Plant to Doral, Florida.

78. Fabiani was not a party to the Term Sheet and had no involvement in the negotiation or execution thereof.

79. The License Agreement did not require that a customer be involved with any testing of the E-Cat IP.

80. Paragraph 7 of the Term Sheet required IH to "provide all maintenance on the 1MW Plant during the 2 year rental period."

81. Paragraph 8 of the Term Sheet provides, "Dr. Andrea Rossi of Leonardo Corp will be responsible for the operation of the 1 MW Plant . . . ."

82. Following the execution of the Term Sheet, Leonardo rented the premises at 7861 N.W. 46th Street, Doral, FL 33166 (the "Doral Facility)

83. In or around December 2014, IH shipped the 1 MW E-Cat Plant from North Carolina to Florida.

84. During the period when the 1 MW Plant was tested in the Doral Facility, Rossi apprised IH and IPH in writing of the status of the 1 MW Plant's operations.

85. During this same time period, Penon submitted quarterly reports regarding the operation of the 1 MW Plant to Leonardo, Rossi, IH, and IPH.

86. Darden provided recommendations and proposed modifications to the "E-Cat MW1 Energy Plant in Miami: Test Protocol" drafted by Penon.

87. On at least one occasion during the period when the 1 MW Plant was tested in the Doral Facility, the 1 MW Plant was shut down for mechanical repairs.

88. During the period when the 1 MW Plant was tested in the Doral Facility, IH brought investors and potential investors to the Doral Facility.

89. In May 2015, IH closed on a $50 million investment by non-party Woodford Investment Funds ("Woodford"). Woodford claimed that "Rossi's technology was a core element of this investment."

90. During the period when the 1 MW Plant was tested and operated in the Doral Facility, Rossi:

    a. Distinguished J.M. Products from Leonardo and Rossi in communications with Counter-Plaintiffs and with others, and instructed others to make the same distinctions in communications with Counter-Plaintiffs;

    b. Held out Bass as J.M. Products' "Director of Engineering" to Counter-Plaintiffs;

    c. Represented to Counter-Plaintiffs that J.M. Products had its own operations independent from Leonardo and a use for the 1 MW Plant's steam;

    d. Represented to Counter-Plaintiffs that J.M. Products was satisfied by the steam it was receiving from the 1 MW Plant.

91. During this same time period, Johnson, on behalf of J.M. Product sent letters to IH on the amount of power J.M. Products was receiving from the 1 MW Plant and offering to pay for such power.

92. Bass never reported the 1 MW Plant's COP to Counter-Plaintiffs.

93. During the period when the 1 MW Plant was tested and operated in the Doral Facility, Rossi controlled J.M. Products' technical and product development activities, as well as J.M. Products' day-to-day activities;

94. J.M. Products has never been owned by Johnson Matthey or controlled by a trust formed in the United Kingdom; it has always been owned by the Platinum American Trust.

95. J.M. Products has never been a subsidiary of Johnson Matthey.

96. Johnson Matthey has never had an ownership interest in J.M. Products.

97. During the period when the 1 MW Plant was tested and operated in the Doral Facility, Rossi, on behalf of Leonardo, provided measurement data to Penon in the form of a logbook containing the 1 MW Plant's performance data.

98. Fabiani and USQL, also provided measurement data to Penon during this time period.

99. Certain measurement data collected by Penon during this time period was in turn provided to IH and IPH.

100. Fabiani and USQL also sent his own separate measurement data to IH directly during this time period.

101. Fabiani/USQL and Penon's measurement data regarding the 1 MW Plant's power absorption were nearly identical.

102. Neither Fabiani nor Bass ever limited or interfered with IH and IPH's access to the J.M. Products, Inc. portion of the Doral Facility.

103. Following termination of the 1 MW Plant testing in the Doral Facility, Fabiani deleted all of his email communications regarding the 1 MW Plant's operations except for those specifically connected with the USQL Agreement.

104. J.M. Products has not taken any measures to obtain an alternative source of steam power since the 1 MW Plant was taken out of operation.

105. On March 29, 2016, Penon emailed a copy of the "E-Cat MW1 Energy Plant in Miami Energy Multiple Evaluation Final Report" (the "Final Report") to Rossi and Darden.

106. Rossi and Leonardo demanded payment of $89 million from Defendants, who refused to pay that amount.

107. On or about September 1, 2013, IH entered into a Technical Consulting Agreement with USQL, through its sole member, Fabiani ("USQL Agreement").

108. Rossi worked with Fabiani for the first time in 2013.

109. IH and IPH knew before executing the USQL Agreement that Fabiani and Rossi had a pre-existing working relationship in connection with the E-Cat technology.

110. Fabiani's compensation under the USQL Agreement was not dependent on the success or failure of the E-Cat technology.

111. On or around August 1, 2014, the USQL Agreement was renewed and extended.

112. Also on August 1, 2014, Fabiani executed a joinder to the August 2014 extension of the USQL Agreement, again agreeing to be bound by certain provisions contained therein, including Section 6 relating to "Rights to Materials."

113. The USQL Agreement was renewed and extended again in or about July 2015.

114. The renewal extended the USQL Agreement from September 2015 to March 31, 2016.

115. Fabiani also executed a joinder to the 2015 extension of the USQL Agreement, again agreeing to be bound by certain provisions contained therein, including Section 6 relating to "Rights to Materials."

116. Section 3 of the USQL Agreement required Fabiani and USQL to act in a manner in, and not opposed to, IH's best interests.

117. Section 6 of the USQL Agreement provides:

> All Confidential Information, records, files, memoranda, reports, drawings, plans, designs, specifications, tests and results, recordings, documents and the like (together with all copies thereof), including any of the foregoing that are electronically maintained, relating to the business of Industrial Heat or the engagement of USQL pursuant to this Agreement that USQL shall use or prepare or come in contact with in the course of, or as a result of, the engagement of USQL nder this Agreement shall remain the sole property of Industrial Heat[.]

118. Section 7 of the USQL Agreement provides:

> USQL further agrees that . . . it will promptly disclose to Industrial Heat any and all improvements, inventions, developments, discoveries innovations, systems, techniques, processes, formulas, programs and other things that may be of assistance to Industrial Heat or its affiliates, whether patentable or unpatentable, that (i) relate to the actual or demonstrably anticipated research or development by Industrial Heat or any of its affiliates, or (ii) result from any work performed by USQL for or at the request of Industrial Heat, or (iii) are developed on Industrial Heat's time or using the equipment, supplies or facilities or any Confidential Information or trade secret information of Industrial Heat, or any of its affiliates; and that are made or conceived by USQL, alone or with others, while engaged by Industrial Heat (collectively referred to herein as the "New Developments"). USQL agree that all New Developments shall be and remain the sole and exclusive property of Industrial Heat and that it shall upon the request of Industrial Heat, and without further compensation, but at the cost and expense of Industrial Heat, do all things reasonably necessary to [e]nsure Industrial Heat's or its affiliate's ownership of such New Developments.

119. On March 30, 2016, USQL, through Fabiani, issued its final invoice to IH.

120. IH received USQL's final invoice on April 6, 2016.

121. IH did not pay USQL's final invoice.

The parties shall continue to work together in an attempt to add stipulated facts and narrow issues prior to trial. Should the parties be successful in so doing, they shall seek leave of the Court to amend this pretrial stipulation.

VI. STATEMENT OF ISSUES OF FACT WHICH REMAIN TO BE LITIGATED

Preliminary Statement: None of the parties hereto waive the right to challenge the relevancy of any fact contained on this list, or consent to litigate factual issues that were not properly identified in the operative pleadings.

The parties state that the following factual issues remain to be litigated in this matter:

1. Whether Defendants represented to Plaintiffs that Cherokee would guarantee IH's obligations under the License Agreement.
2. Whether Defendants represented to Plaintiffs that IH was a subsidiary of Cherokee.

3. Whether the First Amendment was fraudulently induced by Leonardo and Rossi.
4. Whether the First Amendment was effective to amend the License Agreement, and if so, the extent of the amendment.
5. Whether the Proposed Second Amendment was effective to amend the License Agreement, and if so, the extent of the amendment.
6. Whether Leonardo, Rossi, and IH agreed upon Penon as the ERV for the Validation Test
7. Whether the Validation Test results reported by Penonwere accurate and reliable.
8. Whether the Validation Test was conducted in accordance with the terms of the License Agreement or the First Amendment.
9. Whether Rossi and Leonardo transferred and delivered all of the E-Cat IP to Counter-Plaintiffs.
10. Whether IH and IPH have been able to replicate the results Rossi and Leonardo claimed for the E-Cat technology, and if not, the reasons why.
11. Whether the License Agreement required that IH and IPH be able to replicate the E-Cat technology.
12. Whether IH and IPH communicated their inability to replicate the E-Cat technology to Rossi and Leonardo, and if so, when.
13. Whether IH and IPH agreed that the time for commencement of the Guaranteed Performance Test had been extended beyond that originally set forth in the License Agreement.
14. Whether Rossi, Leonardo, IH, and IPH agreed upon Penon as the ERV for the Guaranteed Performance Test.

15. Whether IH and IPH accepted Penon as the ERV for the Guaranteed Performance Test and, if so, when.
16. Whether IH and IPH objected to Penon as the ERV for the Guaranteed Performance Test and, if so, when.
17. Whether Rossi, Leonardo, IH, and IPH agreed to substitute the 1 MW Plant for the Six Cylinder Unit for purposes of the Guaranteed Performance Test.
18. Whether Rossi, Leonardo, IH, and IPH intended the shipment of the 1 MW Plant from North Carolina to Florida to be in preparation for the Guaranteed Performance Test.
19. Whether the "E-Cat MW1 Energy Plant in Miami: Tests Plan" submitted by Penon to Rossi, Leonardo, IH, and IPH in February 2015 pertained to the Guaranteed Performance Test.
20. Whether IH and IPH objected, or requested modifications or additions, to the "E-Cat MW1 Energy Plant in Miami: Tests Plan."
21. Whether IH and IPH reported to third parties that they had achieved positive COP numbers in their tests of the E-Cat technology.
22. Whether the testing of the 1 MW Plant from February 2015 to February 2016 in Doral, Florida was the Guaranteed Performance Test under the License Agreement.
23. Whether Penon's Final Report accurately confirmed that Guaranteed Performance had been achieved.
24. Whether Validation was achieved, per the requirements of the License Agreement, in connection with the operation of the 18 E-Cat reactors in Italy.

25. Whether Guaranteed Performance was achieved, per the requirements of the License Agreement in connection with the operation of the 1MW Plant in Florida from February 2015 to February 2016.
26. Whether IH and IPH provided any notice to Rossi or Leonardo that they believed that Rossi and Leonardo had violated the License Agreement.
27. Whether IH and IPH were willing to pay Leonardo any amount of money under the License Agreement beyond the $1.5 million purchase price and the $10 million payment following the Validation Test.
28. Whether Rossi and Leonardo disclosed aspects of the E-Cat IP, including but not limited to samples of the E-Cat fuel catalyzer, to Professor Norman Cook pursuant to a modification of the License Agreement consistent with License Agreement Section 16.4.
29. Whether Rossi and Leonardo disclosed aspects of the E-Cat IP in addition to samples of the E-Cat fuel catalyzer to one or more of the scientists who prepared the Lugano Report pursuant to a modification of the License Agreement consistent with License Agreement Section 16.4.
30. Whether Leonardo abandoned any patent applications or patents related to the "Licensed Patents" as defined in the License Agreement without IPH's prior written consent
31. Whether Rossi and Leonardo have engaged in activities in competition with Counter-Plaintiffs in violation of the License Agreement's covenant not to compete.
32. Whether Rossi and Leonardo have failed to pay taxes on any payments made to them by IH or IPH pursuant to the License Agreement.
33. Whether IPH made the $10 million payment to Leonardo pursuant to Section 3.2(b) of the License Agreement.

34. Whether Leonardo FL executed and was a party to the License Agreement.

35. Whether Section 16.4 of the License Agreement requires IH and IPH to keep confidential the E-Cat IP as that term is defined in the License Agreement.

36. The number of reactors initially required to be tested during the Validation Test contemplated under the License Agreement.

37. Whether Rossi made misrepresentations to IH on or about April 23, 2013 and April 24, 2013 about a meeting Rossi had with the Regional Agency for the Protection of the Environment of Ferrara, Italy (the "Ferrara Environmental Agency") regarding authorizations necessary for the 24-hour Validation Test contemplated under Section 4 of the License Agreement.

38. Whether Rossi represented to IH or IPH immediately before commencing the Validation Test that Italian law would only permit 18 E-Cat reactors to be used for the Validation Test.

39. Whether the Ferrara Environmental Agency represented to Rossi that it would not issue a permit or authorization for the Validation Test regardless of how many E-Cat units were tested.

40. Whether IH accepted the testing of 18 reactors for the Validation Test.

41. Whether IH relied on Rossi's representations regarding Italian law in entering into the First Amendment.

42. Whether the purported Validation Test measured "the flow of the heated fluid and the Delta T between the temperature of the fluid before and after the E-Cat reaction," as specified in the First Amendment.

43. Whether Leonardo NH legally merged with Leonardo FL.

44. Whether Leonardo FL is now a party to the First Amendment.
45. Whether Defendants represented to Plaintiffs that IPH was a wholly owned subsidiary of IH.
46. Whether Defendants represented to Plaintiffs that IPH was a subsidiary of Cherokee.
47. Whether Leonardo NH executed the Proposed Second Amendment.
48. Whether the Six Cylinder Unit can heat water as well as oil.
49. Whether Rossi, Leonardo, IH, and IPH agreed to substitute the 1 MW Plant for the Six Cylinder Unit for purposes of the Guaranteed Performance test.
50. Whether Leonardo abandoned any patent applications relating to the Licensed Patents (as defined in the License Agreement) without giving IPH ninety (90) days prior written notice of the desired abandonment.
51. Whether Leonardo abandoned any patent applications relating to the Licensed Patents (as defined in the License Agreement) without the written consent of IPH.
52. Whether Leonardo abandoned any patent applications relating to the Licensed Patents (as defined in the License Agreement) without obtaining IPH's prior written consent.
53. Whether Leonardo filed any patent applications without keeping IH or IPH currently informed of the filing and progress in all material aspects of the prosecution of such patent applications.
54. Whether Rossi and Leonardo charged IH or IPH for patent-related expenses that, per the License Agreement, they should have paid without charging the expenses to IH or IPH
55. Whether there is a geographical restriction on competition contained in Section 13.3 of the License Agreement and, if so, what is the geographical restriction.

56. Whether Rossi, on behalf of Leonardo, represented to IH that J.M. Products was affiliated with Johnson Matthey.

57. Whether IH had an interest in the identity and operations of the "customer" referenced in the Term Sheet.

58. The extent of the due diligence conducted by IH into the "customer" referenced in the Term Sheet.

59. Whether Rossi represented to IH that he would attempt to arrange a meeting between and IH representative and a Johnson Matthey representative prior to signing the Term Sheet

60. Whether IH knew that the "customer" referenced in the Term Sheet was not yet operating any business at the time the Term Sheet was executed.

61. Whether Rossi and Johnson knew that the representations they made about the "customer" referenced in the Term Sheet were false.

62. Whether Rossi, Leonardo, Johnson, and/or J.M. Products represented that the customer referenced in the Term Sheet was affiliated with Johnson Matthey.

63. Whether IH relied on Rossi, Leonardo, Johnson, and J.M. Products' representations about the "customer" contemplated by the Term Sheet in executing the Term Sheet.

64. Whether IH would have executed the Term Sheet had it known that J.M. Products was not affiliated with Johnson Matthey.

65. Whether IH would have executed the Term Sheet had it known that J.M. Products did not have an existing manufacturing process or need for steam to use in a manufacturing process.

66. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, the 1 MW Plant was producing steam, and if so, how much.

67. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, there was a heat exchanger on the J.M. Products side of the facility that dissipated the heat purportedly produced by the 1 MW Plant.

68. Whether Rossi and Leonardo operated the 1 MW Plant at the Doral Facility for 350 days (even if not consecutive) out of a 400 day period at a COP of at least equal to the claimed results from the Validation Test.

69. Whether Rossi and Leonardo operated the 1 MW Plant at the Doral Facility for 350 days (even if not consecutive) out of a 400 day period at a COP of at least 4.0.

70. Whether the measurements of the 1MW Plant's operations at the Doral Facility were flawed, and, if so, in what respects.

71. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, J.M. Products used the steam purportedly generated by the 1 MW Plant to create products for sale.

72. Whether, during the time the 1 MW Plant being operated at the Doral Facility, J.M. Products sold any products it produced using steam generated by the 1 MW Plant.

73. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, IH or IPH had an interest in J.M. Products' use of the steam purportedly generated by the 1 MW Plant.

74. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, IH or IPH had an interest in whatever product J.M. Products was purportedly producing using the steam purportedly generated by the 1 MW Plant.

75. Whether Bass' title as J.M. Products' "Director of Engineering" accurately reflected Bass' role at and involvement in J.M. Products during the time the 1 MW Plant was being operated at the Doral Facility.

76. Whether Rossi represented to IH or IPH that Rossi would be directing J.M. Products' operations in the Doral Facility.

77. Whether IH or IPH knew that J.M. Products was not affiliated with Johnson Matthey.

78. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Fabiani and USQL made representations to IH or IPH regarding J.M. Products and its operations at the Doral Facility.

79. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Fabiani and USQL worked for or was involved with J.M. Products.

80. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Fabiani and USQL misled IH or IPH about J.M. Products' purported operations.

81. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Rossi or Leonardo, manipulated or fabricated the 1 MW Plant's operations or measurements thereof.

82. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Rossi withheld information from Penon regarding discrepancies between measurements taken of the 1MW Plant's performance during a common time period or interval.

83. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Fabiani and USQL manipulated or fabricated the 1 MW Plant's operations or measurements thereof.

84. The source of the 1 MW Plant measurement data which Fabiani and USQL provided Penon during the time the 1 MW Plant was being operated at the Doral Facility.

85. Whether Penon relied on Fabiani and USQL's measurement data taken during the time the 1 MW Plant was being operated at the Doral Facility in generating his Final Report.

86. Whether, when the 1 MW Plant (which was designed to produce steam) was assembled at the Doral Facility, Rossi and Leonardo removed the steam trap and/or condensate line from the output pipe exiting the 1 MW Plant.

87. Whether Johnson and J.M. Products prohibited or prevented IH personnel from entering any portion of the Doral Facility or learning about J.M. Products' purported operations

88. Whether, pursuant to the Term Sheet, IH was entitled to access to the J.M. Products side of the Doral Facility.

89. Whether, pursuant to the Term Sheet, IH was entitled to access to the Leonardo side of the Doral Facility.

90. The extent of control Rossi and Leonardo exercised over Fabiani and USQL's during the time the 1 MW Plant was being operated at the Doral Facility.

91. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Fabiani and USQL were acting in IH's best interests.

92. Whether, during the time the 1 MW Plant was being operated at the Doral Facility, Fabiani informed IH about how the 1MW Plant was being operated and measured, including all of the data Fabiani and USQL were allegedly collecting on the 1MW Plant's operations.

93. The amount of Plaintiffs' damages, if any, arising from its claim that IH and IPH breached the License Agreement

94. The amount of Plaintiffs' damages, if any, arising from its claim that Defendants fraudulently induced Plaintiffs to enter the License Agreement

95. The amount of Plaintiffs' damages, if any, arising from its claim that Defendants misappropriated Plaintiffs' trade secrets

96. The amount of IH's and IPH's damages, if any, arising from its claim that Plaintiffs breached the License Agreement

97. Whether, as a result of Plaintiffs' breach of contract, IH can recover as damages the $1.5 million paid to Leonardo to purchase the 1MW Plant

98. Whether, as a result of Plaintiffs' breach of contract, IH or IPH can recover as damages the $10 million paid to Leonardo after the purported Validation

99. Whether, as a result of Plaintiffs' breach of contract, IH or IPH can recover as damages the $5.5 million paid to AEG pursuant to the agreement referenced in the License Agreement.

100. Whether, as a result of Plaintiffs' breach of contract, IH can recover as damages the $1,000 paid to ship the 1MW Plant to Florida

101. Whether, as a result of Plaintiffs' breach of contract, IH can recover as damages the $5,000 paid to purchase the shipment container for the 1MW Plant

102. Whether, as a result of Plaintiffs' breach of contract, IH or IPH can recover as damages the $422,311.79 in expenses paid to Rossi and Leonardo

103. Whether, as a result of Plaintiffs' breach of contract, IH or IPH can recover as damages the $25,511.60 paid to Penon or paid to Rossi and Leonardo as reimbursements for payments made to Penon

104. Whether, as a result of Plaintiffs' breach of contract, IH or IPH can recover as damages the $251,094.21 in payments made to Barry West

105. Whether, as a result of Plaintiffs' breach of contract, IH or IPH can recover as damages the $355,659.10 in payments made to USQL and/or Fulvio Fabiani

106. Whether, as a result of Plaintiffs' breach of contract, IH and IPH can recover as damages the other expenses they incurred in connection with the 1MW Plant

107. Whether, as a remedy for Plaintiffs' breach of the confidentiality provisions, IPH can get specific performance of the confidentiality provisions

108. Whether, as a remedy for Plaintiffs' failure to assign the Licensed Patents, IPH can get specific performance of the assignment provision

109. Whether, as a remedy for Plaintiffs' failure to inform and consult on patent applications, IPH can recover as damages its patent-related expenses

110. Whether, as a remedy for Plaintiffs charging IH or IPH for patent-related expenses, IPH can recover the $256,151.59 in patent-related expenses paid to Rossi or Leonardo

111. Whether, as a remedy for Plaintiffs' failure to inform and consult on patent applications, IPH can get specific performance

112. Whether, as a remedy for Plaintiffs' breach of the non-compete provision, IPH can get specific performance of the non-compete provision

113. The amount of IH's damages, if any, arising from its claim that Plaintiffs, Johnson, and J.M. Products fraudulently induced IH to enter into the Term Sheet

114. Whether, as a result of Plaintiffs', Johnson's and J.M. Products' fraudulent inducement, IH can recover as damages the $212,082.56 in payments made to Barry West

115. Whether, as a result of Plaintiffs', Johnson's and J.M. Products' fraudulent inducement, IH can recover as damages the $225,440 in payments made to USQL and/or Fulvio Fabiani

116. Whether, as a result of Plaintiffs', Johnson's and J.M. Products' fraudulent inducement, IH can recover as damages the $1,000 paid to ship the 1MW Plant to Florida

117. Whether, as a result of Plaintiffs', Johnson's and J.M. Products' fraudulent inducement, IH can recover as damages the $5,000 paid to purchase the shipment container for the 1MW Plant

118. Whether, as a result of Plaintiffs', Johnson's and J.M. Products' fraudulent inducement, IH can recover as damages expenses paid to Rossi and Leonardo after the 1MW Plant was shipped to Florida

119. Whether, as a result of , Johnson's and J.M. Products' fraudulent inducement, IH can recover as damages the attorneys' fees it has incurred as a result of this lawsuit

120. The amount of Counter-Plaintiffs' damages, if any, arising from their claim that Plaintiffs and Third-Party Defendants engaged in a scheme to deceive and manipulate them in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA")

121. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages the $1,000 paid to ship the 1MW Plant to Florida

122. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages the $5,000 paid to purchase the shipment container for the 1MW Plant

123. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages expenses in the amount of $302,567.60 paid to Rossi and Leonardo after the 1MW Plant was shipped to Florida, including reimbursements for payments to Fabio Penon

124. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages the $212,082.56 in payments made to Barry West

125. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages the $225,440 in payments made to USQL and/or Fulvio Fabiani.

126. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages the other expenses they incurred in connection with the 1MW Plant in Florida.

127. Whether, as a result of Plaintiffs' and Third-Party Defendants violations of FDUTPA, Counter-Plaintiffs can recover as damages the attorneys' fees they have incurred as a result of this lawsuit.

128. The amount of IH's damages, if any, arising from its claim that Fabiani and USQL breached the USQL Agreement

129. Whether, as a result of Fabiani's and USQL's breach of the USQL Agreement, IH can recover as damages the $225,440 in payments made to Fulvio Fabiani.

130. Whether, as a result of USQL's breach of the USQL Agreement, IH can recover as damages the attorneys' fees it has incurred as a result of this lawsuit.

131. Whether Defendants IH and IPH materially breached the License Agreement and/or amendments thereto by failing to make payment to Plaintiffs.

132. Whether the parties mutually assent to a modification so as to allow the time for the Guaranteed Performance Test to begin in February of 2015, and to test the 1MW E-Cat equipment.

133. If the modification was based on an oral agreement, whether Plaintiffs performed consistent with the oral modification.

134. Whether Defendants received and accepted a benefit that they were otherwise not entitled to under the original contract.

135. Whether the Plaintiffs substantially performed their obligations with respect to the License Agreement.

136. Whether Defendants were unjustly enriched.

137. Whether Plaintiffs bestowed a benefit upon Defendants, and, if so, did the benefit appreciate to Defendants and did Defendants accept and retain the benefit.

138. Whether it be inequitable for Defendants to retain the benefit without compensating the Plaintiffs.

139. The amount of Plaintiffs' damages, if any, arising from its claim that Defendants were unjustly enriched.

140. Whether Defendants misappropriated Plaintiffs' trade secrets.

141. Whether Plaintiffs possess secret information and take reasonable steps to protect it.

142. Whether the Defendants obtained the Plaintiffs' trade secrets either through improper means or through a confidential relationship.

143. Whether the secret information was misappropriated by Defendants who knew or should have known that the secret information was improperly obtained.

144. Whether Defendants fraudulently induced Plaintiffs to enter into the License Agreement with Defendant Industrial Heat, LLC.

145. Whether Defendants made false statements of material facts to Plaintiffs.

146. Whether Defendants knew or should Defendants have known that their statements were false.

147. Whether Defendants made their statements to induce Plaintiffs' reliance on them.

148. Whether Plaintiffs justifiably relied on the false statements to Plaintiffs' detriment.

149. Whether Plaintiffs materially breached the License Agreement by failing to turn over all E-Cat IP.

150. Whether Plaintiffs materially breached the License Agreement by virtue of Defendants' inability to replicate the technology

151. Whether Defendant IH has capacity to sue under this claim

152. Whether IH assigned its rights to bring this claim to IPH

153. Whether Defendants' claim is barred by the voluntary payment doctrine

154. Whether Defendants made payment to Plaintiffs under a claim of right with knowledge of the facts

155. Whether Defendants' claim is barred by the doctrine of ratification

156. Whether Plaintiffs performed an act which breached the contract

157. Whether Defendants knew of the act

158. Whether Defendants knew they could reject the contract because of the act

159. Whether Defendants expressed their intention to accept the act

160. Whether the Defendants performed their obligations under the License Agreement in bad faith

161. Whether Defendants' claim is barred by its antecedent breach of the License Agreement

162. Whether Defendants' claim is barred by the doctrine of acquiescence

163. Whether Defendants' claim is barred by the doctrine of waiver

164. Whether Defendants had a contractual right or benefit that could be waived

165. Whether Defendants had actual or constructive knowledge of the right

166. Whether Defendants intend to relinquish the right

167. Whether Defendants' claim is barred by the doctrine of estoppels

168. Whether Defendants made a representation(s) as to a material fact that is contrary to a later-asserted position

169. Whether Plaintiffs relied on Defendants' representation(s)

170. Whether Plaintiffs changed their position to their detriment as result of the Defendants' representation

171. Whether Defendants' claim is barred by the doctrine of laches

172. Whether conduct on the part of the Plaintiffs gave rise to the present lawsuit

173. Whether Defendants knew of the conduct and did not assert its right by initiating a lawsuit

174. Whether Plaintiffs knew that Defendants would assert their rights to restrict Plaintiffs' activities as Defendants have done in this lawsuit

175. Whether Plaintiffs would be injured or prejudiced if Defendants are afforded the relief sought

176. If the Defendants suffered damages, whether the Defendants' damages should be set off based upon their breach(es) or their unjust enrichment

177. If so, whether the Defendants' damages should be reduced due to their failure to mitigate their damages

178. Whether Plaintiffs materially breached the License Agreement by breaching the confidentiality provisions

179. Whether Plaintiffs materially breached the License Agreement by failing assign patents to IPH

180. Whether Plaintiffs materially breached the License Agreement by failing to keep IPH informed regarding patent applications

181. Whether Plaintiffs materially breached the License Agreement by breaching the non-competition provisions

182. Whether Plaintiffs materially breached the License Agreement by failing to pay taxes

183. Whether Defendant IPH's claims are barred or otherwise subject to Plaintiffs' affirmative defenses

184. Whether Defendant IPH's breach of contract claim is barred by the doctrine of acquiescence

185. Whether Defendant IPH's breach of contract claim is barred by the doctrine of estoppels

186. Whether Defendant IPH made a representation to Plaintiffs contrary to a later asserted position

187. Whether Plaintiffs relied, in good faith, on Defendant IPH's representations

188. Whether Plaintiffs made a detrimental change in position due to their reliance

189. Whether Defendant IPH's breach of contract claim is barred by the doctrine of waiver

190. Whether Defendants had a contractual right or benefit that could be waived

191. Whether Defendants had actual or constructive knowledge of the right

192. Whether Defendants intend to relinquish the right

193. Whether Defendant IPH's breach of contract claim barred by the doctrine of ratification

194. Whether Plaintiffs performed an act which breached the contract

195. Whether Defendant knew of the act

196. Whether Defendant knew they could reject the contract because of the act

197. Whether Defendant expressed their intention to accept the act

198. Whether Defendant performed its obligations of the License Agreement in bad faith

199. Whether Defendant IPH's breach of contract claim is barred by its antecedent breach of the License Agreement

200. If IPH suffered damages, whether Defendant IPH's damages should be set off based upon their breach(es) or their unjust enrichment

201. Whether Defendant's damages should be reduced due to its failure to mitigate its damages

202. Whether Plaintiffs and/or Third-Party Defendants fraudulently induce Defendant IH to enter into the Term Sheet

203. Whether Plaintiffs and/or Third-Party Defendants made false statements of material fact that JMP was a manufacturing company with a real commercial use for the steam power generated by the 1MW E-Cat

204. Whether Plaintiffs and/or Third-Party Defendants knew or should have known that such statements were false

205. Whether Plaintiffs and/or Third-Party Defendants intended that such false statements induce Defendant IH's reliance

206. Whether Defendant IH justifiably relied on the false statement to its detriment

207. Whether Defendant IH's fraudulent inducement claim barred by reason of its unclean hands

208. Whether Defendants fraudulently induced Plaintiffs to enter into the License Agreement with knowledge that IH did not have the means to honor its payment obligations.

209. Whether Defendant IH's fraudulent inducement claim barred by the doctrine of merger and integration.

210. Whether Plaintiffs/Third-Party Defendants made representations prior to the execution of the contract.

211. Whether the subsequent contract (the Term Sheet) covered the subject matter of the alleged misrepresentations.

212. Whether Defendant IH's claim or right, and the alleged misrepresentations was inconsistent with the subsequent, written contract.

213. Whether IH assumed the risk of entering into the Term Sheet with respect to the use of the steam.

214. If IH suffered damages, should IH's damages be reduced as a result of its failure to mitigate its damages.

215. Whether Plaintiffs and/or Third-Party Defendants engaged in deceptive or unfair practices as a result of manipulating the Defendants into shipping the 1MW E-Cat Plant to Florida.

216. Whether Plaintiffs and/or Third-Party Defendants engaged in deceptive or unfair practices as a result of manipulating the operation of the 1MW E-Cat Plant and the measurement of its operations.

217. Whether Plaintiffs and/or Third-Party Defendants engaged in deceptive or unfair practices as a result of claiming that the operations of the 1MW E-Cat Plant satisfied the terms of the License Agreement (and its amendments) thereby allowing for a claim of payment.

218. Whether those deceptive and unfair practices impacted consumers.

219. Whether those deceptive and unfair practices caused damages to Defendants IH and/or IPH.

220. Which party or parties caused the damages.

221. Whether IH and /or IPH suffered actual damages, and in what amount.

222. Whether Defendants' FDUTPA claim is barred by the doctrine of voluntary payment.

223. Whether Defendants made payment to Plaintiffs/Third-Party Defendants under a claim of right with knowledge of the facts.

224. Whether Defendants' FDUTPA claim barred by reason of its unclean hands.

225. Whether Defendants fraudulently induced Plaintiffs to enter into the License Agreement with knowledge that IH did not have the means to honor its payment obligations.

226. Whether Defendant's FDUTPA claim barred by its failure to mitigate its damages, if any.

227. Whether Defendant's damages, if any, subject to any recoupment or set off as a result of Defendant's breach of contract, and, if so, what amount is subject to recoupment or set off.

228. Whether a valid contract existed between Third-Party Plaintiff, Industrial Heat, LLC., and Third Party Defendants Fabiani/USQL.

229. Whether Third-Party Defendants Fabiani/USQL materially breached any such contract by failing to deliver all data relating to the E-Cat Guaranteed Performance Test upon request by Third-Party Plaintiff during the term of such contract.

230. What terms of the contract were breached.

231. Whether Defendant's breach of contract claim against Fabiani/USQL is barred by its failure to mitigate its damages, if any.

232. Whether Defendant's damages, if any, are subject to any recoupment or set off as a result of Defendant's breach of contract, and, if so, what amount is subject to recoupment or set off.

233. Whether Defendant's breach of contract claim against Fabiani/USQL is barred by its antecedent breach of the Technical Consulting Agreement.

234. Was the term of the contract which was allegedly breached sufficiently ambiguous to excuse Third Party Defendants breach of such contract.

235. Whether the Validation Test was required to last for twenty-four (24) consecutive hours.

236. Whether the Validation Test was not performed for a duration of 24 consecutive hours, but rather only for 23.5 hours

237. Whether Fabio Penon certified the results of the Validation Test and the level of performance he certified

238. Whether on or about August 12, 2013, IH paid $3,219,950 to AEG

239. Whether after delivery of the 1 MW Plant to IH's facility in North Carolina, IH hired several independent contractors to assist Rossi in connection with the development, modification, and testing of the 1 MW Plant

240. Whether while Rossi was on site at IH's facility in North Carolina from approximately September through December 2013, he was working IH personnel in efforts to replicate the result of prior E-Cat testing as either claimed by Rossi and Leonardo or reported by Penon in connection with the purported Validation Test

241. Whether after leaving IH's facility in North Carolina, Rossi would visit the facility on occasion to provide feedback on IH's replication testing methodologies and results.

242. Whether IPH and Leonardo executed the Proposed Second Amendment

243. Whether IH believed the Proposed Second Amendment was not effective absent the signatures of all relevant parties

244. Whether Rossi and Leonardo ever entered into any confidentiality agreements with third parties regarding the E-Cat IP

245. Whether Rossi had made public disclosures on his website, the Journal of Nuclear Physics ("JONP"), revealing specific terms of the License Agreement.

246. Whether Rossi publicly disclosed that the License Agreement required a test of the 1 MW Plant, a test to be conducted over 400 days, a test involving 350 days of operation of the 1 MW Plant, and a guaranteed performance or "guarantees of performance."

247. Whether Rossi and Leonardo made these public disclosures without written advance approval from Counter-Plaintiffs

248. Whether Plaintiffs filed the License Agreement in the public docket of this Court without written advance approval from Counter-Plaintiffs

249. Whether by letter dated February 17, 2016, Jones Day on behalf of IPH requested Rossi and Leonardo to assign to IPH the Licensed Patents (as defined under the License Agreement) with respect to the Territory (as also defined in the License Agreement).

250. Whether Jones Day enclosed an assignment with the letter

251. Whether Rossi and Leonardo executed the assignment as requested by the February 7, 2016 letter

252. Whether Rossi and Leonardo are engaged in designing and developing what are classified as "E-Cat Products" under the License Agreement with persons or entities other than Counter-Plaintiffs.

253. Whether Rossi and Leonardo have engaged in design and development activities with ABB Group and Hydro Fusion, Ltd.

254. Whether IH or IPH provided written consent to the purported merger of Leonardo NH with Leonardo FL.

255. Whether Leonardo NH still exists in good standing as a New Hampshire corporation

256. Whether Beginning in June 2014, Rossi, on behalf of Leonardo, stated that Rossi had found a "customer" in Florida, and that this "customer" had a commercial need for, and was going to use in a chemical manufacturing process, steam that Plaintiffs intended to produce from the 1 MW Plant

257. Whether Rossi and Leonardo directed Johnson to file J.M. Chemical Products' Articles of Incorporation with the State of Florida

258. Whether Rossi asserted to IH that having a "real customer" with a need for steam would be an independent check on how the 1 MW Plant would operate, in that the "customer's" purchase of the Plant's steam would confirm that such steam was being produced.

259. Whether the original drafts of a proposed Term Sheet, by which IH would agree to move the 1 MW Plant from its facility in North Carolina to the "customer's" facility in Florida, named the "customer" as Johnson Matthey, plc ("Johnson Matthey"), a British multinational specialty chemical company with over £10 billion in revenue

260. Whether on July 28, 2014, IH, Rossi, and Johnson met in North Carolina to discuss moving the 1 MW Plant from Industrial Heat's facility in North Carolina to J.M. Products' facility in Florida

261. Whether during the meeting, Rossi represented that (1) J.M. Products would obtain and process materials from Johnson Matthey and (2) J.M. Products had its own facility in Florida and was intending to use steam produced by the 1 MW Plant in a chemical manufacturing process

262. Whether the "customer" in the Term Sheet was renamed as J.M. Products at Rossi's direction

263. Whether Johnson, on behalf of J.M. Products, signed a representation that J.M. Products was owned by an entity formed in the United Kingdom

264. Whether from the time Rossi first raised the "customer" with IH to the time the Term Sheet was executed, J.M. Products did not have a chemical manufacturing process in place with a need for the steam to be produced by the 1 MW Plant, or any operations at all.

265. Whether Rossi and Leonardo ever discussed the "Guaranteed Performance" under the License Agreement as a basis for executing the Term Sheet

266. Whether one of IH's goals in executing the Term Sheet was to accommodate Rossi to determine the state of the E-Cat IP (whether or not the technology worked)

267. Whether the License Agreement required Leonardo and Rossi to pay for the 1 MW Plant's operating expenses

268. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility, Rossi, on behalf of Leonardo, continued to represent that J.M. Products was affiliated with Johnson Matthey, including that Johnson Matthey was J.M. Products' supplier

269. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility, Johnson, on behalf of J.M. Products, sent letters to IH representing J.M. Products to be an "Advanced Derivatives of Johnson Matthew Platinum Sponges."

270. Whether during this same time period, Bass:

    a. Held himself out as J.M. Products' "Director of Engineering";

    b. Represented J.M. Products as having its own operations and a use for the 1 MW Plant's steam; and

    c. Represented J.M. Products as being satisfied with the power it was purportedly receiving from the 1 MW Plant.

271. Whether Rossi, Leonardo, Johnson, J.M. Products, and Bass intended by these representations to present J.M. Products to IH and IPH as a check on, and confirmation of, claims by Rossi, Leonardo, and Penon that the 1 MW Plant was operating effectively and producing a high volume of steam.

272. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility J.M. Products did not have a manufacturing process to use the steam purportedly produced by the 1 MW Plant and had no customers other than Leonardo itself

273. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility Rossi and Leonardo entirely controlled and funded J.M. Products and Bass

274. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility Rossi and Leonardo paid J.M. Products' expenses, including payments to J.M. Products' employees and independent contractors, while J.M. Products never made any payments to Rossi or Leonardo

275. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility Rossi had hired Bass as an independent contractor (not an employee) of J.M. Products and had given him the title the "Director of Engineering"

276. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility Johnson and Bass had little to no knowledge of J.M. Products' purported business and operations

277. Whether during the period when the 1 MW Plant was tested and operated in the Doral Facility the monthly letters to IH prepared on J.M. Products letterhead and signed by Johnson, which reported levels of power allegedly received from the 1 MW Plant, were drafted and the information contained therein provided by Rossi.

278. Whether J.M. Products has ever purchased products from or sold products to Johnson Matthey.

279. Whether J.M. Products has ever been an affiliate of Johnson Matthey

280. Whether the only connections between J.M. Products and Johnson Matthey were that Rossi, on behalf of J.M. Products, once asked for a price quote from Johnson Matthey for the purchase of platinum sponge, and then later bought some filters from a Johnson Matthey subsidiary in the United States (to mine them for platinum sponge contained therein

281. Whether J.M. Products has ever developed a product that can be sold on the open market.

282. Whether, when providing measurement data to Penon during this time period, Rossi withheld information regarding instances where the 1 MW Plant had operational problems or had to be shut down

283. Whether the power absorption data that Fabiani and Penon provided IH and IPH reflected that during certain time periods, the 1 MW Plant was using more power than Florida Power and Light was providing to the entire warehouse facility where the 1 MW Plant was located

284. Whether Rossi, on behalf of Leonardo, walled off a portion of the Doral Facility to purportedly create a space within which J.M. Products would operate

285. Whether Rossi controlled the portion of the Doral Location occupied by J.M. Products with respect to access thereto

286. Whether Rossi prohibited IH personnel from entering the J.M. Products side of the Doral Facility or learning about J.M. Products' supposed operations

287. Whether, in mid-2015, IH hired Joseph Murray ("Murray") as its Vice President of Engineering and empowered him to assemble a team of engineers and scientists to evaluate the level of IH's testing and evaluation of LENR technology

288. Whether one of the projects undertaken by Murray's team was testing of the E-Cat

289. Whether Rossi, on behalf of Leonardo, refused to grant Murray access to the Doral Facility in July 2015

290. Whether Rossi, on behalf of Leonardo, again refused to grant IH personnel access to the Doral Facility in December 2015, which refusal Johnson and J.M. Products complied with and enforced

291. Whether, when Murray gained access to the 1 MW Plant in February 2016, he promptly determined that Rossi's claims about the 1 MW Plant were false

292. Whether, following termination of the 1 MW Plant testing in the Doral Facility, Rossi, on behalf of Leonardo, purportedly dismantled a heat exchanger on the J.M. Products side of the facility, as well as the pipes encompassing the exchanger, that supposedly dissipated heat for the 1 MW Plant.

293. Whether, following termination of the 1 MW Plant testing in the Doral Facility, the J.M. Products side of the Doral Facility was re-purposed

294. Whether from January 2011 to the present, Rossi has paid Penon $70,000

295. Whether Rossi and Leonardo paid Penon $50,000 in connection with the work he performed during the time when the 1 MW Plant was tested in the Doral Facility

296. Whether from January 2011 to the present, Rossi and Leonardo have paid Bass approximately $40,000

297. Whether The relocation of the 1 MW Plant to Florida and the testing and operation of the 1 MW Plant in Florida caused IH and IPH to pay for:

a. The 1 MW Plant's transportation to Florida;

b. The procurement and delivery of equipment for the 1 MW Plant's reassembly in Florida;

c. The procurement and transportation of personnel to assemble the 1 MW plant in Florida;

d. Repairs and maintenance of the 1 MW Plant;

e. New equipment for the Doral Facility; and

f. Personnel to work at the Doral Facility, including Barry West (an IH independent contractor), T. Barker Dameron (an IH employee), Murray, and Fabiani.

298. Whether on February 23, 2016, Fabiani acknowledged that he, on behalf of USQL, would provide Industrial Heat with "all electrical and thermal data of the system throughout the period of the test" and an "official report to bring to light all the flaws and functional deficiencies of the system," which would also mention all "plant stop periods (total or partial" and the reasons therefore).

299. Whether beginning in March 2016, IH repeatedly requested from Fabiani, on behalf of USQL, copies of the promised raw thermal and electrical data as well as the final report relating to the testing in Doral, Florida. IH also requested flow meter records that Fabiani had represented he had.

300. Whether in April and May 2016, IH requested these documents and data again.

301. Whether Fabiani refused to provide IH with the all the requested documents and data.

302. Whether the termination date of the USQL Agreement was March 31, 2016.

303. Whether Rossi and Leonardo have provided a sample or samples of the E-Cat fuel to, or allowed a sample or sample of the E-Cat fuel to be taken by, one or more of the scientists who prepared the "Lugano Report" as defined in the 4th Amended AACT.

304. Whether Rossi and Leonardo have had others assist with the design and development of E-Cat Products within the Territory covered by the License Agreement.

305. Whether Rossi introduced Johnson as J.M. Products' president in a meeting with IH.

306. Whether when the 1 MW Plant (which was designed to produce steam) was sent to and then reassembled in Florida, Rossi, on behalf of Leonardo, removed the condensate line placed on the pipe intended to carry the steam.

307. Whether during the period when the 1 MW Plant was tested in the Doral Facility, there was no flow meter or flow rate sensor on the pipe designed to carry steam from the 1 MW Plant to the J.M. Products side of the Doral Facility.

308. Whether during this same time period, there was also no flow meter or flow rate sensor on the piping between the 1 MW Plant's feed water tank and E-Cat heater tank.

309. Whether on September 9, 2013, Fabiani executed a joinder to the USQL Agrement, agreeing to be bound by certain provisions contained therein, including Section 6 relating to "Rights to Materials."

310. Whether IH paid Fabiani/USQL $10,500 per month for services under the USQL Agreement from February 2015 to February 2016.

311. Whether IH paid Fabiani's rent in the amount of $1,370 per month from February 2015 to February 2016.

VII. ISSUES OF LAW ON WHICH THERE IS AGREEMENT

The parties agree on the following issues of law:

1. That venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1), (b)(2), and (c)(3).
2. That Florida law governs Plaintiffs' breach of contract, unjust enrichment, fraudulent inducement, and misappropriation of trade secrets claims
3. That Florida law governs Counter-Plaintiffs' breach of contract claim against Plaintiffs; IPH's second breach of contract claim against Plaintiffs; IH's fraudulent inducement claim against Plaintiffs, Johnson, and J.M. Products; and Counter-Plaintiffs' FDUTPA claim against Plaintiffs and Third-Party Defendants
4. That North Carolina law governs IH's breach of contract claim against Fabiani and USQL

5. The elements of breach of contract under Florida law are: (1) the plaintiff and the defendant entered into a contract; (2) the plaintiff did all, or substantially all, of the essential things which the contract required it to do or that it was excused from doing those things; (3) all conditions required by the contract for the defendant's performance had occurred; (4) the defendant failed to do something essential which the contract required it to do or did something which the contract prohibited it from doing and that prohibition was essential to the contract; and (5) the plaintiff was harmed by that failure.

6. The elements of unjust enrichment under Florida law are: (1) the plaintiff gave a benefit to the defendant; (2) the defendant knew of the benefit; (3) the defendant accepted or retained the benefit; and (4) the circumstances are such that the defendant should, in all fairness, be required to pay for the benefit.

7. The elements of misappropriation of trade secrets under Florida law are: (1) the plaintiff possessed secret information and took reasonable steps to protect its secrecy; (2) the defendant misappropriated the plaintiff's secret; and (3) the misappropriation caused the plaintiff damages.

8. To qualify as a trade secret under Florida law, the information that the plaintiff seeks to protect must derive economic value from not being readily ascertainable by others and must be the subject of reasonable efforts to protect its secrecy. If the information in question is generally known or readily accessible to third parties, it cannot qualify for trade secret protection.

9. Misappropriation under Florida law is satisfied by either: (1) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (2) disclosure or use of the trade secret of another without express or

implied consent by a person who (a) used improper means to acquire knowledge of the trade secret; (b) at the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was (i) derived from or through a person who had utilized improper means to acquire it; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or use; or (iii) derived from or through a person who owed a duty to the person seeking relief to maintain it secrecy or limit its use; or (c) before a material change of her or his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

10. The elements of fraudulent inducement under Florida law are: (1) the defendant made a false statement concerning a material fact; (2) the defendant knew the statement was false when it made it or made the statement knowing that it did not know whether it was true or false; (3) the defendant intended that the plaintiff would rely on the false statement; (4) the plaintiff relied on this false statement; and (5) the false statement was a legal cause of damage to the plaintiff.

11. The elements of a FDUTPA violation are: (1) a deceptive act or unfair practice; (2) causation; and (3) actual damages.

12. The elements of breach of contract under North Carolina law are: (1) the existence of a contract between the plaintiff and the defendant; (2) the defendants' breach of the contract; and (3) the amount the plaintiff is entitled to recover from the defendant's breach.

13. The elements of equitable estoppel under Florida law are: (1) the plaintiff took a material action, spoke about a material fact, or concealed or was silent about a material fact at a time when it knew of that fact; (2) the defendant relied in good faith upon the plaintiff's action,

words, inaction, or silence; and (3) the defendant's reliance on the plaintiff's action, words, inaction, or silence caused the defendant to change its position for the worse.

14. The elements of waiver under Florida law are: (1) the plaintiff had an existing right to have the defendant perform an obligation; (2) the plaintiff knew or should have known it had the right to have the defendant perform that obligation; and (3) the plaintiff freely and intentionally gave up its right to have the defendant perform that obligation.

15. The elements of laches under Florida law are: (1) conduct on the part of the defendant giving rise to the situation of which the complaint is made; (2) the plaintiff, having knowledge or notice of the defendant's conduct, and having been afforded the opportunity to institute suit, is guilty of not asserting its rights by suit; (3) lack of knowledge on the part of the defendant that the plaintiff would assert the right on which it bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the plaintiff, or in the event suit is held not to be barred.

16. The elements of unclean hands under Florida law are: (1) the plaintiff engaged in conduct that was inequitable or done in bad faith; (2) the conduct was connected with the matter in litigation; and (3) the defendant was injured by such conduct.

17. The elements of antecedent breach of contract under Florida law are: (1) the plaintiff breached the contract before the defendant did; and (2) the plaintiff's prior breach was material.

18. The elements of ratification under Florida law are: (1) the defendant performed an act which breached a contract; (2) the plaintiff knew of the act; (3) the plaintiff knew that it could reject the contract because of the act; and (4) the plaintiff accepted the act or expressed its intention to accept the act.

19. To establish a plaintiff's lack of standing under Florida law, the defendant must prove that the plaintiff does not have standing to raise the claim at issue. Standing is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly. The litigant must allege a palpable, distinct injury, economic or otherwise, that can be redressed by the relief sought. Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest that would be affected by the outcome of the litigation. The interest cannot be conjectural or merely hypothetical. Standing also requires that a claim be brought by on or behalf of one who is recognized at law as a real party in interest, that is, the person in whom rests, by substantive law, the claim sought to be enforced.

20. The elements of fraudulent misrepresentation as an affirmative defense under Florida law are: (1) the plaintiff made a false statement concerning a material fact; (2) the plaintiff knew the statement was false when they made it or made the statement knowing that they did not know whether it was true or false; (3) the plaintiff intended that the defendant rely on the false statement; and (4) the defendant relied on the false statement.

VIII. ISSUES OF LAW WHICH REMAIN FOR DETERMINATION BY THE COURT

Preliminary Statement: None of the parties hereto waive the right to challenge the relevancy of any legal issue contained on this list, or consent to litigate legal issues that were not properly identified in the operative pleadings.

The following issues of law remain for determination by the Court:

1. Whether the merger of Leonardo NH into Leonardo FL constituted an assignment of Leonardo NH's rights to Leonardo FL under the License Agreement.

2. Whether the Ferrara Environmental Agency was legally required to authorize the 24-hour Validation Test contemplated under Section 4 of the License Agreement.
3. Whether Italian law allowed 30 reactors to be tested during the Validation Test.
4. Whether Italian law would only permit 18 E-Cat reactors to be used for the Validation Test.
5. Whether Plaintiffs have standing to sue Defendants.
6. Whether Defendants' affirmative defense of "lack of standing" is barred by the doctrine of judicial estoppel, due to Defendants' having counter-sued Leonardo Corporation of Florida in the present case.
7. Whether Defendant IH has standing to sue Plaintiffs in AACT Counts I (breach of contract) and Count IV (FDUTPA).
8. Did the License Agreement impose an obligation on both Leonardo/Rossi and IH/IPH to commence the Guaranteed Performance Test immediately following the delivery of the 1MW Plant?
9. Is the Second Amendment to the License Agreement enforceable against IH and/or IPH?
10. Are Defendants' Counterclaims barred due to their violation of Fla. Stat. § 607.1502(1) as they are foreign corporations that transacted business in this state without a certificate of authority.
11. Whether the Court has jurisdiction over Third Party Defendant Fulvio Fabiani.
12. Whether IPH may sue for breach of contract absent the ability to identify any actual damages.
13. Whether Defendants have identified any consumer impact related to their claims brought for alleged violations of FDUTPA.

14. Whether Defendants' alleged damages – (a) the costs of transporting the 1MW E-Cat to Florida, (b) the costs of engaging and paying two independent contractors, and (c) expenses incurred in connection with the operation and maintenance of the plant – actual (as opposed to special or consequential damages) that are recoverable under FDUTPA.
15. Whether Count III of the Defendants' AACT for Fraud in the Inducement is barred by the doctrine of merger and integration.
16. Whether Count I and II of Defendants' AACT are barred by the doctrine of laches.
17. Whether modification is an affirmative defense that applies to any of IH and/or IPH's claims
18. Whether recoupment and set off is an affirmative defense that applies to any of IH and/or IPH's claims
19. Whether the voluntary payment doctrine is an affirmative defense that applies to any of IH and/or IPH's claims
20. Whether assumption of risk is an affirmative defense that applies to any of IH and/or IPH's claims
21. Whether Third-Party Defendants can raise failure to mitigate as an affirmative defense
22. Whether Third-Party Defendants can raise excuse as an affirmative defense
23. Whether Third-Party Defendants can raise prior breach as an affirmative defense
24. Whether unclean hands is an affirmative defense that applies to any of IH and/or IPH's claims
25. Whether promissory estoppel is an affirmative defense that applies to any of IH and/or IPH's claims

IX. LISTS OF TRIAL WITNESSES

A. Plaintiffs' Trial Witnesses

1. Thomas Darden (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

2. John T. Vaughn (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

3. John Mazzarino (Expect to Present via deposition)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

4. Thomas Barker Dameron (Expect to Present via deposition)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

5. Barry West (Expect to Present via deposition)
1001 Byrd Drive
Clayton, NC 27527

6. James Stokes (May Present)
Bureau of Radiation Control
2044 All Children's Way
Orlando, FL 32818

7. Joseph A. Murray (May Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

8. Dr. Kau-Fui Vincent Wong (Expect to Present)
c/o Annesser & Chaiken, PLLC
2525 Ponce De Leon Blvd., Suite 625
Coral Gables, FL 33134

9. Slocum Hatch Fogleman (Jim Fogleman) and/or Wendy Carter (May Present)
c/o JONES DAY

600 Brickell Avenue, Suite 3300
Miami, FL 33131

10. Craig Cassarino (May present via deposition)
AmpEnergo, Inc.
4110 Sunset Blvd.
Steubenville, Ohio 43952

11. Dr. Fabio Penon (Expect to Present)

12. James Childress (Expect to present via deposition)
Boeing Research and Technology
P.O. Box 3707
Seattle, WA 98124

13. Dr. Andrea Rossi (Expect to Present)

14. Henry Johnson (May Present)

15. James Bass (Expects to Present)

16. Fulvio Fabiani (Expect to present, but May via deposition)

17. David Perry (May Present)

18. John Dewey Weaver, III (May Present via deposition)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

19. Representative of Florida Power and Light ("FPL") (May Present)
Florida Power & Light Company
700 Universe Boulevard
June Beach, FL 33408

20. Dr. Guiseppe Levi (May Present)

21. Dr. Evelyn Foschi (May Present)

22. Dr. Torbjorn Hartman (May Present)

23. Dr. Bo Hoistad (May Present)

24. Dr. Roland Pettersson (May Present)

25. Dr. Lars Tegner (May Present)

26. Dr. Hanno Essen (May Present)

27. Christopher R. Pace, Esquire (May Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

28. Francisco DiGiovanni (May Present)

29. Corporate Representative of Industrial Heat, LLC
(Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

30. Corporate Representative of IPH International, B.V.
(Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

31. Corporate Representative of Leonardo Corporation (Expect to Present)
c/o ANNESSER & CHAIKEN, PLLC
2525 Ponce De Leon Blvd., Suite 625
Coral Gables, FL 33134

B. Defendants'/Counter-Plaintiffs' Trial Witnesses

1. Thomas Darden (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

2. John T. Vaughn (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

3. John Mazzarino (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

4. Thomas Barker Dameron (Expect to Present)
c/o JONES DAY

600 Brickell Avenue, Suite 3300
Miami, FL 33131

5. Barry West (Expect to Present)
1001 Byrd Drive
Clayton, NC 27527

6. James Stokes (May Present)
Bureau of Radiation Control
2044 All Children's Way
Orlando, FL 32818

7. Joseph A. Murray (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

8. Rick A. Smith (Expect to Present)
7400 Brown Road, Suite 200
Ostrander, OH 43061

9. Slocum Hatch Fogleman (Jim Fogleman) and/or Wendy Carter (Expect to Present)
c/o JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131

10. Craig Cassarino (Expect to present via deposition)
AmpEnergo, Inc.
4110 Sunset Blvd.
Steubenville, Ohio 43952

11. James Childress (Expect to present via deposition)
Boeing Research and Technology
P.O. Box 3707
Seattle, WA 98124

12. Andrea Rossi (May call)

13. Henry Johnson (May call)

14. James Bass (May call)

15. Fulvio Fabiani (Expect to present via deposition)

16. David Perry

17. Representative of Florida Power and Light ("FPL") (May Present)
Florida Power & Light Company
700 Universe Boulevard
June Beach, FL 33408

C. Third-Party Defendants' Trial Witnesses

1. Henry Johnson (Expect to present)
c/o ARAN, CORREA & GUARCH, P.A.
255 University Drive
Coral Gables, FL 33134

2. James A. Bass (Expect to present)
c/o ARAN, CORREA & GUARCH, P.A.
255 University Drive
Coral Gables, FL 33134

3. Fulvio Fabiani (Expect to present)
c/o Rodolfo Nuñez, P.A.
2100 Salzedo Street, Suite 303
Coral Gables, Florida 33134
Andrea Rossi (Expect to present)

4. Fabio Penon (Expect to present - via deposition)

5. John T. Vaughn (may call)

6. Thomas Darden (may call)

7. Barry West (may call)

8. Joseph Murray (may call)

9. T. Barker Dameron (may call)

X. ESTIMATED TRIAL TIME

The parties estimate that trial will last fifteen (15) days.

XI. ESTIMATED MAXIMUM ATTORNEY'S FEES ALLOWABLE

Plaintiffs' estimate they shall seek fees of approximately $7,500,000, if successful.

Third-Party Defendants JM Products, Johnson and Bass estimate they shall seek fees of approximately $500,000, if successful.

Defendants estimate they shall seek fees of approximately $7,500,000, if successful.

Dated: May 3, 2017

Respectfully submitted,

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Counsel for Plaintiffs, Andrea Rossi and Leonardo Corporation

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s/ Rodolfo Nunez
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Fla. Bar No.: 16950

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 3, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record.

/s/ Erika S. Handelson
Erika S. Handelson