

DYNATEMP INTERNATIONAL, INC., ET AL. vs R421A, LLC, ET AL.
Kenneth M. Ponder on 05/20/2022

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
3 WESTERN DIVISION

4 DYNATEMP INTERNATIONAL, INC.; :
5 FLUROFUSION SPECIALTY CHEMICALS, INC.; :
6 HAROLD B. KIVLAN, IV; WILLIAM GRESHAM; :
7 and DAVID COUCHOT, :
8 :CIVIL ACTION FILE
9 :NUMBER:
10 :5:20-CV-00142-FL
11 :
12 :
13 Plaintiffs, :
14 :
15 versus :
16 :
17 R421A, LLC; RMS OF GEORGIA, LLC d/b/a :
18 Choice® Refrigerants; KENNETH M. :
19 PONDER; and LENZ SALES SALES & :
20 DISTRIBUTING, INC., :
21 :
22 :
23 Defendants. :
24 :
25 :

13 VIDEOTAPED DEPOSITION OF
14 KENNETH M. PONDER

15
16 9:22 a.m.
17 May 20, 2022

18 THOMAS HORSTEMEYER, LLP
19 3200 Windy Hill Road
20 Suite 1600E
21 Atlanta, Georgia

22
23 Susan DiFilippantonio, RPR, CCR No. B-2125
24
25

DYNATEMP INTERNATIONAL, INC., ET AL. vs R421A, LLC, ET AL.
Kenneth M. Ponder on 05/20/2022

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1 (Friday, May 20, 2022 9:22 a.m.) 2 THE VIDEOGRAPHER: This is the beginning 3 of Media 1 in the deposition of Kenneth Ponder in 4 the matter of Dynatemp International, Incorporated, 5 et al., versus R421A, LLC, et al. Today's date is 6 May the 20th, 2022. The time is 9:22 a.m. 7 The attorneys present please introduce 8 themselves for the record, after which the Court 9 Reporter will swear the witness. 10 MR. TREMBATH: Jon Trembath with Michael 11 Best, representing Dynatemp, Flurofusion. 12 MR. MORRIS: Joey Morris from the Smith 13 Anderson law firm in Raleigh, North Carolina, 14 representing Dynatemp and Flurofusion. 15 MR. RACINE: And Russ Racine, present via 16 Zoom, from Cranfill Sumner, representing Dynatemp, 17 Flurofusion, Harold Kivlan, William Gresham and 18 David Couchot. 19 MR. WISE: This is David Wise here via 20 Zoom. I am co-counsel for RMS. 21 MR. VANORE: Drew Vanore via Zoom for 22 Lenz. 23 MR. OSBORN: Lucas Osborn, Michael Best & 24 Friedrich, for Dynatemp, Flurofusion. 25 MR. MORRIS: And we also have present	1 understand your dad has some health issues. 2 A. Yes. 3 Q. I appreciate you taking time out to answer some 4 of our questions. 5 What did you do to prepare for your deposition 6 today? 7 A. Met with my attorneys. 8 Q. About how long? 9 A. A couple of days, six hours, approximately, per 10 day. 11 Q. Okay. Have you testified before? 12 A. Yes. 13 Q. Where have you testified? 14 A. At a deposition in Metairie, Louisiana. 15 Q. What did -- what -- what was that about? 16 A. I was in a case for -- where we were working on 17 a refrigerant, and a gentleman that we had purchased 18 that refrigerant from -- we chose to change the -- to 19 make a new product, and they had issue with that. So we 20 had to go through that process to -- to make sure I was 21 not infringing, and was found that I was not. 22 Q. So it was a patent case? 23 A. It was a patent case. 24 Q. When was it? 25 A. I don't recall the -- the -- the date or the
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1 with us here today Brad Kivlan on behalf of 2 Dynatemp. 3 MR. STALEY: Joe Staley on behalf of RMS 4 of Georgia, R421A, and the witness, Ken Ponder. 5 MR. AMY: Scott Amy with Thomas 6 Horstemeyer, also here on behalf of RMS of Georgia, 7 R421A, and the witness, Ken Ponder. 8 KENNETH M. PONDER, 9 called as a witness at the instance of the Plaintiffs, 10 being first duly sworn, was examined and deposed as 11 follows: 12 MR. TREMBATH: Okay. So, Joe, I think 13 just a -- sort of a housekeeping thing. I was 14 thinking maybe we just use exhibit numbers 15 consecutively throughout. 16 MR. STALEY: That's fine. 17 MR. TREMBATH: Does that work? 18 MR. STALEY: You mean throughout all 19 depositions? 20 MR. TREMBATH: Yeah. 21 MR. STALEY: Correct. That will be fine 22 with me. 23 EXAMINATION 24 BY MR. TREMBATH: 25 Q. Okay. Mr. Ponder, thank you for being here. I	1 year. A number of years ago. 2 Q. Okay. Who was on the other side? 3 A. I don't understand the question. 4 Q. Okay. So there was a lawsuit. Some -- somebody 5 sued you or you sued somebody? 6 A. Correct. 7 Q. Who was on the other side? 8 A. The gentleman's name was Bruce Ruello. 9 Q. Could you spell that? 10 A. R-U-E-L-L-O, I believe. 11 Q. And so that I understand -- by the way, 12 sometimes I don't ask good questions. If I say 13 something that you don't understand, help me. Just tell 14 me, "I don't understand" -- 15 A. Sure. 16 Q. -- and I'll try to think of a better way to ask 17 the question. 18 And I'm sure your counsel has told you sort of 19 the rules here. If you need a break, tell me. We'll 20 take a break. 21 A. Thank you. 22 Q. Okay. So -- so did Mr. Ruello sue Choice or 23 you, or who -- who was sued? 24 MR. STALEY: Objection. Compound. 25 THE WITNESS: If I -- I believe it was me

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1 personally. 2 BY MR. TREMBATH: 3 Q. Okay. And did Mr. Ruello have -- Ruello have a 4 patent? 5 A. He had -- he was in charge of a patent. He 6 wasn't the inventor. He was the assignee. 7 Q. Did he have a company? 8 A. I'm not sure. 9 Q. Okay. As far as you remember, the -- the case 10 was between Mr. Ruello and you? 11 A. Correct. 12 Q. Okay. And what was the patent related to? 13 A. I'm not sure that I understand the question. 14 Since I am not a patent attorney -- 15 Q. Yeah. 16 A. -- it's kind of hard to -- 17 Q. What product was involved? 18 A. His product was a refrigerant called RB-276. 19 Q. What are the components of RB-276? 20 A. R134a, R142b and a lubricant. 21 Q. Why did it have a lubricant in it? 22 A. (Witness moved head from side to side.) 23 Q. Don't know? 24 A. I don't know. 25 MR. STALEY: Objection. Calls for	1 A. I went to Seneca High School in Seneca, South 2 Carolina. 3 Q. Did you graduate? 4 A. 1978. 5 Q. Did you go to college? 6 A. I did. 7 Q. Where did you go? 8 A. Lander College. 9 Q. What did you study? 10 A. Business administration. 11 Q. Did you get a degree? 12 A. I did not. 13 Q. Where is Lander College? 14 A. In Greenwood, South Carolina. 15 Q. Any other formal education? 16 A. I attended Tri-County Technical College. 17 Q. When did you do that? 18 A. I don't recall an exact date, but it was prior 19 to Lander College. 20 Q. What did you study at -- at -- what, Tri -- 21 A. Tri-County -- 22 Q. Tri-County? 23 A. -- Technical College. 24 Q. What did you study at Tri-County Technical 25 College?
Page 11	Page 13
1 speculation. 2 BY MR. TREMBATH: 3 Q. Okay. Do you know what the lubricant was? 4 A. It's been so long ago. Not exactly, no. 5 Q. Was -- was this before you came up with -- with 6 421A? 7 A. Yes. 8 Q. All right. Is there -- do you have any kind of 9 memory impairment? Is your memory pretty good? 10 MR. STALEY: Objection. Vague. 11 THE WITNESS: Fair. 12 BY MR. TREMBATH: 13 Q. Okay. Is there anything that would preclude -- 14 well, that would impair your memory? Anything currently 15 going on in your life that would impair your memory? 16 MR. STALEY: Objection. Vague. 17 BY MR. TREMBATH: 18 Q. So, for example, are you taking -- is there any 19 medication that you're taking that might impact your 20 memory? 21 A. Not to my knowledge. 22 Q. Okay. Okay. Please tell me about your 23 educational background. 24 A. How far back? 25 Q. High school.	1 A. Just college transfer courses. 2 Q. Anything technical? Did you -- did you -- 3 A. No, sir. 4 Q. Okay. Any other formal education? 5 A. No, sir. 6 Q. All right. What did you do -- let's talk about 7 employment. Post college, what employment have you had? 8 A. Post college. M&S Chemical Company. 9 Q. What is M&S Chemical Company? When was that? 10 A. It's janitorial supplies. 11 Q. When did you work there? 12 A. I don't recall the exact dates. 13 Q. But after college? 14 A. Yes, sir. 15 Q. That was kind of the next thing you did? 16 A. (Witness moves head up and down.) 17 Q. And how long did you work at M&S Chemicals? 18 A. Approximately two years. 19 Q. Okay. What happened after that? 20 A. Went back to Consolidated Theatres. 21 Q. What did you do there? 22 A. Managed a theater complex. 23 Q. How long did you do that? 24 A. In college as well as this -- when I went back 25 to them, approximately three years total.

Page 14 1 Q. What did you do after Consolidated Theatres? 2 A. Sold real estate at Keowee Key. 3 Q. Could you say that -- spell that, Keowee Key? 4 A. K-E-O-W-E-E. Keowee Key, K-E-Y. 5 Q. How long did you sell real estate? 6 A. About nine months. 7 Q. And what did you do after that? 8 A. Went to work for Curtis Mathes Corporation. 9 Q. What did you do for Curtis Mathes? 10 A. I was an accounts manager. 11 Q. And what did that -- what did that -- what did 12 you do as an accounts manager? 13 A. At that particular branch, it was a rent-to-own 14 location and sales location, so we rented products into 15 the marketplace, and I managed each account, collecting 16 debts owed. 17 Q. How long did you do that? 18 A. I don't recall. 19 Q. What did you do after Curtis Mathes? 20 A. Started RMS of Georgia. 21 Q. Okay. How did that happen? 22 A. The Clean Air Act came out, and reclamation 23 companies were needed, and I opened up one in the state 24 of Georgia to clean refrigerants. 25 Q. Okay. Did you do it by yourself?	Page 16 1 learn most anything that I needed to learn in order to 2 put this in place. 3 Q. Who -- what was the name of your former 4 brother-in-law? 5 A. Tate Wolf. 6 Q. So was he married to your sister? 7 A. Yes, sir. 8 Q. You said that it was because of your technical 9 experience, they thought you could do any -- well -- you 10 could do most anything. Describe for me what your 11 technical experience was at that time. 12 A. His reference to technical expertise was in view 13 of the fact that I had a limited knowledge of working on 14 electronics, and subsequently it meant to him that I had 15 technical expertise, not -- not -- 16 Q. In a -- go ahead. 17 A. -- not necessarily that it was interchangeable 18 with reclamation. 19 Q. Okay. 20 A. But that I had an ability to learn. 21 Q. Who did you deal with at Golden Systems? 22 A. Primarily Tate Wolf. 23 Q. Did they sell you equipment so that you could do 24 reclamation? 25 A. They did.
Page 15 1 A. I did. 2 Q. How did you -- who did you work with to start? 3 MR. STALEY: Objection. Vague. 4 THE WITNESS: I'm not sure I understand 5 the question. 6 BY MR. TREMBATH: 7 Q. Fair enough. How did you capitalize RMS of 8 Georgia? 9 A. Entered into an agreement with my, at that time, 10 landlord, who became my business partner, Steffan 11 Thomas. 12 Q. How did you get the idea to get into 13 reclamation? 14 A. I had a brother-in-law at the time who was the 15 national sales manager for an equipment company. 16 Q. What was the name of the equipment company? 17 A. Golden Systems. 18 Q. Where was it located? 19 A. Detroit, Michigan. 20 Q. So describe for me how your brother-in-law 21 helped you understand that reclamation might be a good 22 idea. 23 A. They were looking for a facility -- a potential 24 facility in the Atlanta area, and with my technical 25 experience and abilities, they thought that I could	Page 17 1 Q. About how much did that cost? 2 A. I don't recall. 3 Q. Do you know when you started doing reclamation? 4 A. Approximately 1993. 5 Q. And I think I understood that Mr. Thomas helped 6 you financially start RMS. Did -- did he help buy the 7 equipment? 8 A. He did. He was my financial backer. 9 Q. Okay. And that was 1993. What was the business 10 structure of RMS in 1993? 11 A. There was only two of us. I operated all the 12 equipment, secured all the accounts, worked on any -- 13 most all of the internal problems, if one existed. 14 Mr. Thomas, who lived out of town, came by usually one 15 day a week, and then he and I would discuss any issues 16 that we had. That was it. 17 Q. Okay. So tell me -- it -- it was a reclamation 18 business. What does that mean? 19 A. We took in dirty refrigerants, all types of 20 dirty refrigerants, and cleaned them back to a purity 21 standard set forth by the EPA. 22 Q. How did you do that? 23 A. Through a distillation process. 24 Q. What kinds of -- or were there different kinds 25 of refrigerants that you reclaimed?

Page 18	Page 20
1 A. Yes. 2 Q. Could you list the different kinds, as far as 3 you remember? It's not a -- you know, it's not a memory 4 test. 5 A. Yeah. R12, R134a, R22. And at the time that 6 was the primary ones. 7 Q. So how -- how did you get the R12, the 134a or 8 the 22 -- R22? 9 A. I called on customers in the area, industry, 10 municipalities, colleges, heating and air companies of 11 all types and sizes. Most everybody understood the 12 Clean Air Act and its potential ramifications to their 13 particular part of the industry, and subsequently it -- 14 it helped me talk them into helping them save money on 15 buying new refrigerant. I would clean their old 16 refrigerant back to a stan- -- virgin standard and 17 reintroduce it back to them. We still do that to this 18 day. 19 Q. When -- what -- what is the -- what does it 20 mean, virgin standard? What -- how -- yeah, what does 21 it mean to be to virgin standards? 22 A. The EPA and the NARI, which is the -- I can't 23 remember what ARI stands for, it's been so long since I 24 looked it up. But the organization that sets the 25 standards for what a refrigerant must meet. And we have	1 and recover the refrigerant. 2 Q. Okay. Why was it sent in a cylinder? 3 A. Well, that's about the only thing that it can go 4 in. 5 Q. Why? 6 A. Well, you -- you can't send a -- an entire 7 chiller, for instance, tons of a chiller, but I could 8 supply ten cylinders and take the refrigerant out of 9 that ton -- several-ton machine, and then take the 10 refrigerant back to my facility, clean it, test it, 11 rebottle it, and then ship it back to the customer. 12 Q. What do you mean when you say "cylinder"? 13 A. Our industry has cylinders of all sizes, a 14 30-pound, a 50-pound, a 125, a 2400, a half-ton, a ton 15 tank. And then you get into ISO containers or -- which 16 are pulled with a tractor-trailer, all of which would be 17 labeled a tank. 18 Q. When you say "cylinders," do you mean a 19 pressurized cylinder? 20 A. It would be pressurized once the refrigerant was 21 in it. 22 Q. Okay. Are there marking requirements for 23 cylinders? 24 MR. STALEY: Objection. Vague. 25 THE WITNESS: I'm not sure.
Page 19	Page 21
1 to clean it back to that purity level when it's first 2 used, first invented. 3 Q. ARI, did it become HARI? Do you know? Did it 4 change names? 5 A. I don't recall for sure. 6 Q. Do you know what the standard is that you meet 7 today? You say you do reclamation today and you still 8 meet the same standards. Is it still ARI or is there a 9 different standard-setting body that you -- 10 A. I'm not sure. 11 MR. STALEY: Objection. Compound. 12 BY MR. TREMBATH: 13 Q. Okay. R12, R134A, R22 are all one-component 14 refrigerants, right? 15 A. Correct. 16 Q. Did you ever reclaim blended refrigerants? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: I don't recall. 19 BY MR. TREMBATH: 20 Q. Okay. Did you go out to the user of the 21 refrigerant you were reclaiming and take it out of the 22 system yourself or did they take it out? How did that 23 work? 24 A. We did some of both. Sometimes it was just sent 25 to us in a cylinder. Sometimes I was asked to come out	1 BY MR. TREMBATH: 2 Q. Okay. In your industry, when you're dealing 3 with -- let's say you're doing reclamation, and let's 4 say RMS goes out and captures the refrigerant and puts 5 it in a cylinder. Does that cylinder have to be a 6 certain color? 7 A. It does. 8 Q. What is -- what is the color that the cylinder 9 has to be? 10 A. The -- the government has picked a particular 11 color, and I'm unable to tell you what the Pantone [sic] 12 number is. 13 Q. Do you remember what the color looks like? Is 14 it gray? Is it blue? 15 A. It's a -- it's a grayish color. 16 Q. Okay. Are there requirements that you mark the 17 cylinder containing the reclaimed refrigerant? 18 A. In transport? 19 Q. Yes. 20 A. Yes. 21 Q. What is -- what are those requirements? 22 A. I haven't done it in a number of years. I have 23 people that work for me that do that, and so I am unsure 24 of the actual requirement currently. 25 Q. Okay. Did you ever recover low-pressure

Page 22	Page 24
1 refrigerants? 2 A. I did. 3 Q. Do you know what I mean by low-pressure 4 refrigerant? 5 A. (Witness moves head up and down.) 6 Q. What did -- does that mean to you? 7 A. A low-pressure refrigerant such as R11 or R113 8 or R123 is what I consider to be low-pressure 9 refrigerants. 10 Q. Did you ever recover low-pressure refrigerants? 11 A. Yes. 12 Q. Did you put low-pressure refrigerants in 13 cylinders? 14 A. I have. 15 Q. Did you typically put them in cylinders? 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: Depended on where I was 18 recovering the product from. 19 BY MR. TREMBATH: 20 Q. Explain that to me, please. What -- what do you 21 mean it depended on where you recovered the product 22 from? 23 A. So in that process, a decision would be made as 24 to which to locate it in. If I went out to Lockheed 25 Martin, for instance, and recovered from the B-1 steel	1 BY MR. TREMBATH: 2 Q. Let me -- let me -- I appreciate the help. 3 As you're withdrawing the low-pressure 4 refrigerant from the system, you're going to pull it out 5 through something and it's going to pour into the drum, 6 right? 7 A. Correct. 8 Q. What does it look like as it's pouring into the 9 drum? 10 A. If it's real dirty, it could look oily. If it's 11 real wet, it could look milky. If it's -- if there's 12 not a huge problem with them, it could be as clear as 13 ice water. 14 Q. So if it's clean, it would look like ice water? 15 A. Well, if it was clean, it could still be -- not 16 meet a standard, but to the eye it would be clean like 17 ice water. 18 Q. Okay. And it would be a liquid, right? 19 A. In the process, you would be removing liquid and 20 vapor. 21 Q. Okay. Let's go back and be specific about the 22 question. Pipe running into drum is -- it's a liquid at 23 that point, right? 24 A. It is. It is. 25 Q. Okay. On your refrigerant cylinders, there is a
Page 23	Page 25
1 building that had 3400 pounds of -- of 113 in the -- in 2 the bottom of the basement, we might not be able to get 3 a big, large cylinder down there, and so it -- it would 4 dictate that I had to use 55-gallon drums; not 5 necessarily a cylinder as such, but a tank, for lack of 6 a better term. If I went upstairs and had plenty of 7 room to move a half-ton cylinder around in that same 8 exact scenario, I would obviously try to use a half-ton 9 because it would hold more than a 55-gallon drum. 10 Q. Got it. Okay. 11 Describe for me -- I know this is going to be 12 very simplistic to you, but describe for me what a 13 55-gallon drum is. 14 A. I'm not sure I know how to describe it other 15 than you might would call it a trash can. 16 Q. It's just a tin can, right? 17 A. Correct. 18 Q. Probably it's steel, but it's got a lid on it? 19 A. Correct. 20 Q. And you're able then to put the low-pressure 21 refrigerants into the drum? 22 A. Correct. 23 Q. What does a low-pressure refrigerant look like 24 as you're taking it out of the system? 25 MR. STALEY: Objection. Vague.	1 green placard that says "compressed gas" or something 2 like that, "gas under pressure," "refrigerant gas," 3 something like that. Is that right? 4 A. Sometimes. 5 Q. Do you ever have pressurized refrigerant 6 vessels, cylinders, that don't have a placard on them? 7 A. I do. 8 Q. When would that be? 9 A. When -- typically when they're empty. 10 Q. When they are empty, the -- okay. So if you 11 have a cylinder that has refrigerant gas in it, it would 12 have that green placard on it, right? 13 A. Most of the time, yes. 14 Q. When not? 15 A. I don't recall. 16 Q. Okay. When you withdraw the higher-pressure 17 refrigerants -- the R12, the R134a, the R22 -- from a 18 system, is it ever exposed to the atmosphere? Could you 19 ever see what it is as it's coming out of the system? 20 MR. STALEY: Objection. Vague. 21 BY MR. TREMBATH: 22 Q. And, again, I appreciate -- I appreciate 23 Mr. Staley's help. 24 When you take out R12, 134A and 22, do you pour 25 it into a drum?

Page 26 1 A. No. 2 Q. Why not? 3 A. It's high pressure. 4 Q. What does that mean? 5 A. It would turn to vapor if exposed to the air. 6 Q. Okay. All right. So you started out doing 7 reclamation, and did there come a time when you did 8 other things besides reclamation with -- with your 9 business? 10 And -- and I want to be clear, because I know 11 you've got a bunch of different business entities. I'm 12 going to start with RMS and try to understand what it 13 did. If -- if there's something that you set up to do 14 something else, I'd like to know about that. I -- I'll 15 try to catch it and ask, but if I don't -- you know, if 16 I say, RMS, did it do this or that, and it was some 17 other entity that you own, I would like to -- I would 18 like to know that. 19 So what other businesses -- or what other 20 activity did RMS do in the beginning? 21 MR. STALEY: Objection. Compound. 22 BY MR. TREMBATH: 23 Q. Did -- you did reclamation. Was there anything 24 else? 25 MR. STALEY: Objection. Compound.	Page 28 1 doesn't blow up? Is that the idea? 2 A. Put water in it, add pressure, stretch it to 3 make sure it wouldn't blow up. 4 Q. Interesting. So you actually stretch the 5 container a little bit? 6 A. It doesn't come back to its original size. 7 Q. Really? 8 A. (Witness moves head up and down.) 9 Q. Okay. 10 A. They use water, because it's not -- it will tear 11 the metal, as opposed to exploding. 12 Q. Interesting. I'm just curious. So when you do 13 hydrostatic testing, the cylinder will actually expand 14 and it stays in an expanded state? 15 A. Yes, in simplistic terms. 16 Q. Okay. Is that only for pressurized vessels, or 17 do you have to test like drums, non-pressurized vessels? 18 A. Pressurized vessels only -- 19 MR. STALEY: Objection. Compound. 20 THE WITNESS: Excuse me? 21 MR. STALEY: Mr. Ponder, please just 22 remember, give me a second to -- for -- pausing for 23 one second so I can lodge any objections. Okay? 24 THE WITNESS: Okay. 25 MR. STALEY: Thank you.
Page 27 1 THE WITNESS: Recovery. 2 BY MR. TREMBATH: 3 Q. What's -- how is recovery different from 4 reclamation? 5 A. Reclamation is the cleaning of the refrigerants 6 to a standard. Recovery is just the removal of the -- 7 of the refrigerant from a unit. 8 Q. Okay. So removal would be sort of that process 9 we were talking about before, going to the site, taking 10 the refrigerant out? 11 A. Sure. 12 Q. Okay. And the reclamation could happen 13 afterwards? 14 A. Correct. 15 Q. Okay. Did you do anything else? 16 A. As the business grew, we added as -- became a 17 DOT tank requalifier. 18 Q. What does that mean? 19 A. Refrigerant cylinders have an expiration life of 20 five years and they have to be recertified for safety 21 after five years. 22 Q. How do you -- how do you recertify a tank per 23 DOT? 24 A. It's a hydrostatic pressure testing process. 25 Q. Put water in it, pressurize it, make sure it	Page 29 1 BY MR. TREMBATH: 2 Q. So for clarity, were pressurized -- do you do -- 3 did you do pressurized testing on -- let me start over. 4 Did you do hydrostatic testing on 5 non-pressurized containers? 6 A. Not to my knowledge. 7 Q. Okay. And the drums that we talked about 8 before, did you do pressurized hydrostatic testing on 9 drums to certify them for DOT? 10 A. No, sir. 11 Q. Why -- why did a -- did DOT -- let me back up. 12 Why does the industry require testing of 13 cylinders? 14 MR. STALEY: Objection. Calls for 15 speculation. 16 THE WITNESS: I didn't write the rule. 17 BY MR. TREMBATH: 18 Q. Yeah, but you've been doing it a long time. Why 19 do you think they -- they make you check them? 20 MR. STALEY: Objection. Calls for 21 speculation. 22 THE WITNESS: It's a safety issue. 23 BY MR. TREMBATH: 24 Q. You don't want somebody putting gas in a 25 cylinder and having the cylinder blow up, right?

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1 A. Correct. 2 Q. Yeah. 3 Okay. What else did you do with RMS? 4 MR. STALEY: Objection. Vague. 5 THE WITNESS: What else did I do when? 6 BY MR. TREMBATH: 7 Q. Well, we talked about reclamation and recovery. 8 Were there any other activities that RMS performed early 9 on? Start with early on. 10 MR. STALEY: Objection. Vague. 11 THE WITNESS: We would help customers 12 with problems in the industry. 13 BY MR. TREMBATH: 14 Q. Give me some examples. 15 A. Refrigerant was wet, we would dry it back to an 16 acceptable standard. 17 Q. When you say a "refrigerant was wet," what does 18 that mean? 19 A. Literally had water in it. 20 Q. Really? 21 A. (Witness moves head up and down.) 22 Q. A lot or -- I mean, I don't know how -- how 23 much? Is that -- that might be a better question. 24 MR. STALEY: Objection. Vague. 25 THE WITNESS: I've seen gallons to	1 MR. STALEY: Objection. Compound. 2 THE WITNESS: I'm sure we did a lot of 3 things, but the fact that it's 1993-ish -- 4 BY MR. TREMBATH: 5 Q. Okay. 6 A. -- I don't remember daily everything that we 7 did. 8 Q. Certainly. Certainly. 9 Did you ever offer banking services? 10 A. We have. 11 Q. What is banking -- what is -- in your mind, what 12 does banking mean in the context of RMS? 13 A. With respect to refrigerant, Customer A would 14 deposit, send to us, deliver to us pounds, some number, 15 of refrigerant, and our job was to hold that for them 16 for a period of time, is what banking would have meant 17 to me. 18 Q. Do you still offer banking services? 19 A. We do not. 20 Q. Can you bracket kind of the time frame in which 21 banking services were offered? When did it start? When 22 did it end? 23 A. I don't recall. If I got a phone call today and 24 a large customer said, I need you to bank something, I 25 would consider it. But we currently don't have any that
Page 31	Page 33
1 ounces. 2 BY MR. TREMBATH: 3 Q. Really? 4 A. (Witness moves head up and down.) 5 Q. What -- what is the -- in what setting would 6 there be gallons of water in a system? 7 A. In a large centrifugal chiller, whereby the 8 condensing water tubes that circulate inside the shell 9 ruptures and floods the refrigerant tank with gallons of 10 water. 11 Q. That's a bad thing? 12 A. Not good at all. 13 Q. Why is that? 14 A. Refrigerants are designed to -- to run 15 independently. Their -- their -- their -- their need in 16 the system is to cool that water, to absorb the heat 17 that you're trying to get rid of. The water doesn't do 18 that. 19 Q. Water has an R number, right? It's 718, I 20 think. 21 A. I do not know that. 22 Q. Okay. Okay. Okay. What else did RMS do? 23 We've got helping customers. We've got reclaiming. We 24 got recovery. Did you offer any other services for 25 customers?	1 we bank currently. 2 Q. Okay. Did -- did you bank refrigerants at some 3 times in RMS's history? 4 A. Yes, I did. 5 Q. Okay. So the idea is, I think -- and help me if 6 I'm wrong -- I've got a refrigerant, I want some place 7 to store it safely, I come to you, you take care of it. 8 When I'm ready for it, you give it back to me. 9 A. That's correct. 10 Q. Okay. Why would I trust you to take my 11 refrigerant? How would I know you're going to give it 12 back to me? 13 A. You don't. 14 Q. I don't. I have no assurance that you're going 15 to give it back to me? 16 A. I wouldn't go so far as to say you don't have an 17 assurance. My -- you know, we would -- that would -- 18 well, I don't know why I would do it any other way. 19 Q. How did you keep track of the refrigerant given 20 to you in the banking process? 21 A. At what point in time? 22 Q. Let's start at the beginning. 23 A. If we were sent a cylinder and was asked to bank 24 it, we would weigh that cylinder, if we had the 25 capability of weighing that cylinder.

Page 34 1 Q. Okay. So you weigh the cylinder. What do you 2 do next? 3 A. Put it on a shelf, tag it. 4 Q. Okay. So it stays in the cylinder, you hold the 5 cylinder for the customer, and when the customer is 6 ready for it, you give the cylinder back to them? 7 A. Correct. 8 Q. Okay. Did there ever come a time when you 9 withdrew the refrigerant from a cylinder, stored it in 10 your facility, and then returned the refrigerant to the 11 customer as needed? 12 A. Would you state that one more time? 13 Q. Sure. Was there ever a time that you stored 14 refrigerant gas other than in a customer's cylinder? 15 A. I don't think that's the exact question you 16 asked the first time. 17 Q. It isn't. I tried to make it better. 18 A. There is a different answer to each of those 19 questions, so I need to be clear on which one you want. 20 Q. Okay. Answer the first one and then we'll 21 answer the second one. 22 A. So ask me -- restate the first one again, if you 23 don't mind. 24 (The Court Reporter read back the 25 question on page 33 line 8.)	Page 36 1 Q. Oh, okay. 2 A. -- 50s, 125s -- 3 Q. Okay. 4 A. -- half-tons, 240s, ton tanks. 5 Q. Do you have larger tanks at RMS? 6 A. I do. 7 Q. What is the total storage capacity of RMS in the 8 larger tanks today? 9 MR. STALEY: Objection. Vague. 10 THE WITNESS: I don't know exactly what 11 the number is. We have approximately five tanks, 12 five large tanks. 13 BY MR. TREMBATH: 14 Q. So are we talking 500 pounds? 5,000 pounds? 15 50,000 pounds? 16 A. Depending on the refrigerant, it could be 17 upwards of 100,000 pounds in some of those tanks. 18 Q. Per each tank? 19 A. Yes. 20 Q. Wow. 21 Do you recall when you -- when RMS acquired its 22 first big tank? 23 MR. STALEY: Objection. Vague. 24 THE WITNESS: I do not. 25 BY MR. TREMBATH:
Page 35 1 THE WITNESS: Yes. 2 BY MR. TREMBATH: 3 Q. Let's talk about that. When did you do that? 4 A. I don't recall a date. 5 Q. Generally, early on in RMS's history or more 6 recently? 7 MR. STALEY: Objection. Vague. 8 THE WITNESS: It's a pretty generic 9 normal process, given certain application 10 parameters. 11 BY MR. TREMBATH: 12 Q. What are the application parameters that you're 13 talking about? 14 A. If the refrigerant was located in a refrigerant 15 cylinder and sent to me and I was instructed to please 16 hold that for them, remove it so that they could have 17 the cylinder back, that was pretty commonplace. 18 Q. Okay. And then what did you do with the gas 19 after you removed it from the cylinder? 20 A. We would sit it up on a shelf, put it in one of 21 our tanks, tag it with their name, wait. 22 Q. Okay. So if you put it in one of your tanks, 23 how do you tag it with their name? 24 A. The -- well, the tanks that I'm referring to is 25 30s --	Page 37 1 Q. Okay. If I came to you and wanted you to bank 2 my refrigerant and you put it in one of your larger 3 tanks, how do you keep track of what's mine? 4 A. Today it's all done on scales. The large tanks 5 are on scales. Originally they were not. 6 Q. Interesting. So these -- these huge tanks that 7 will hold 100,000 pounds are on scales? 8 A. That's correct. 9 Q. Okay. So, again, how do you keep track of the 10 gas that I've given to you, that I've entrusted to you? 11 How do you keep track of it in that large tank? 12 A. Now that they're on scales, if you sent me 1,000 13 pounds, I can see when we offload your -- your 14 particular tank and -- and put it in my tank, that the 15 scale went up 1,000 pounds, and subsequently that is the 16 amount of offloaded material. 17 Q. When did you start having scales under your big 18 -- your large tanks? 19 A. I don't remember the date. I'm sorry. 20 Q. Generally? Five years ago? Ten years ago? 21 A. It would be a guess, and I don't like to guess. 22 I don't know a date. 23 Q. Okay. More than five years ago? 24 MR. STALEY: Asked and answered. 25 THE WITNESS: It's just a guess. I

Page 38 1 wouldn't -- I do not know. 2 BY MR. TREMBATH: 3 Q. Last year? 4 MR. STALEY: Asked and answered. 5 THE WITNESS: (Witness moved head from 6 side to side.) 7 BY MR. TREMBATH: 8 Q. Did you put scales under your tanks last year? 9 A. I don't recall. 10 Q. Fair enough. 11 So once you weigh the refrigerant brought in by 12 the customer to be banked, do you record somewhere how 13 much the customer brought you? 14 A. Typically, yes. 15 Q. How is it recorded? 16 A. There's a login sheet that -- a clipboard that 17 is filled out, typically. 18 Q. Does the information get from the clipboard to a 19 computer system, to a spreadsheet somewhere? Does it 20 stay on the clipboard? 21 A. Typically it stays on the clipboard. Sometimes 22 we transfer it to a program. 23 Q. Has it always been kept -- the incoming data 24 always -- has it always been kept on a clipboard? 25 A. No.	Page 40 1 -- I don't want to give you the wrong information. 2 BY MR. TREMBATH: 3 Q. That's okay. And I appreciate that. 4 So as you recall, sitting here today, was the 5 incoming weight of refrigerants entrusted to RMS to 6 store ever recorded on something other than a clipboard? 7 MR. STALEY: Objection. Vague. 8 THE WITNESS: Yes. 9 BY MR. TREMBATH: 10 Q. Describe for me what other mechanisms for 11 information storage were used. 12 A. If that customer provided to us shipping weight 13 tickets, we would put that in a file under their name. 14 Q. Any other way to record the incoming weight of 15 refrigerants entrusted to RMS? 16 A. Not to my recollection. 17 Q. Okay. You ever have any inventory disappear on 18 you? 19 MR. STALEY: Objection. Vague. 20 THE WITNESS: Explain -- 21 MR. TREMBATH: Thank you. I will clean 22 it up. 23 BY MR. TREMBATH: 24 Q. Have you ever had refrigerant disappear from 25 your facility?
Page 39 1 Q. How else did you keep track of what was brought, 2 what was entrusted to you to store? 3 A. Depending on the customer and whatever we were 4 being asked to do. For instance, at no point in time 5 can I remember somebody just saying, Here, here is a 6 tank, put it in your big tank and I'll call you later to 7 get it back. 8 If you're referring to an ISO container that 9 showed up with 36,000 pounds, we would have asked them 10 to pre-weigh coming into our facility, and that would 11 have been offloaded into our tank whether the scales 12 were there or scales were not there. 13 Q. Right. Right. 14 A. In the early days, the scales were not there. 15 Q. Yeah. 16 A. So we would have been dependent on that 17 paperwork provided by the customer as to how many pounds 18 there was. 19 Q. But then how do you keep track of the amount of 20 refrigerant entrusted to you? Is it always on this 21 clipboard? Is there some other mechanism? 22 MR. STALEY: Objection. Compound. 23 THE WITNESS: I -- I don't specifically 24 recall because we are talking about 20-plus years 25 of a time frame in examples, and I'm a little con-	Page 41 1 A. Yes. 2 Q. Please explain. 3 A. Which application? Which time? 4 Q. How many times were there? 5 A. I don't know. 6 Q. You know that refrigerant has been taken from 7 your facility without permission, and you don't know 8 when or where? 9 MR. STALEY: Objection. Mischaracterizes 10 the witness's testimony. 11 THE WITNESS: I don't recall the dates, 12 the amounts. 13 BY MR. TREMBATH: 14 Q. Describe for me the instances, then. 15 A. I had a customer that gave to me pallets -- I do 16 not know how many -- of R22 in 30-pound cylinders, and 17 over the week -- over a weekend -- offices were closed 18 on Friday at 5:00. We came to work on Monday morning at 19 8:00 and the 22 was gone. They even used my forklift to 20 help punch a hole in the building. I don't remember the 21 number of pounds. It was a lot, thousands. 22 Q. Do you know who did that? 23 A. I do not. 24 Q. Okay. Any other instances where refrigerant was 25 taken from your facility without your permission?

Page 42 1 A. I had an employee who would come in two or 2 three hours early, before we opened, and fill up 3 cylinders and put them in his car and drive off and come 4 back to work and clock in. 5 Q. What was his name? 6 A. Derrick Caldwell. 7 Q. How did you catch him? 8 A. Video surveillance. 9 Q. Was he prosecuted? 10 A. He was. 11 Q. Did he go to jail? 12 A. He did. 13 Q. Is he still in jail? 14 A. No, sir. 15 Q. Do you know where he is today? 16 A. I do not. 17 Q. Any other instances where refrigerant was taken 18 from your facility without your permission? 19 A. Not that I can recall a specific transaction. 20 Q. Do you recall promoting your banking services to 21 customers or potential customers? 22 MR. STALEY: Objection. Compound. 23 THE WITNESS: It's not a -- it was not a 24 process that we -- a large part of my business, so 25 I don't recall promoting it.	Page 44 1 Let's talk about the process where you -- the 2 first process you described. I think you're taking two 3 individual refrigerants or more and putting them 4 together to create a new refrigerant. Is that fair? 5 A. Fair. 6 MR. STALEY: Objection to the extent it 7 mischaracterizes testimony. 8 BY MR. TREMBATH: 9 Q. He's suggested that the -- my -- my summary 10 wasn't fair. What -- is there anything unfair about 11 that, about what I said? 12 A. Could you restate it. 13 Q. Sure. 14 (The Court Reporter read back the 15 question on page 43 line 1.) 16 THE WITNESS: That's fair. 17 BY MR. TREMBATH: 18 Q. Okay. When did you first blend two separate 19 refrigerants to create a new refrigerant? 20 A. I don't remember the year. 21 Q. Do you remember the gasses -- strike that. 22 The refrigerants. Do you remember the 23 refrigerants used? 24 Let me make a better question. Do you remember 25 the first time that you blended refrigerants together to
Page 43 1 BY MR. TREMBATH: 2 Q. Did you have it on your web page? 3 A. I believe we did. 4 Q. Did you ever talk to customers yourself about 5 banking their refrigerant, that you recall? 6 A. I'm sure I have. 7 Q. Okay. Do you recall what you would tell them to 8 encourage them to bank their refrigerant with you? 9 A. I do not. 10 Q. Does RMS blend refrigerants? 11 A. It does. 12 Q. When did it -- what does it mean to blend 13 refrigerants? 14 A. Several applications. In the production of a 15 blend, you have to have the raw materials to add 16 together in a blending process to -- and the end results 17 would be a new product. And there's the reclamation 18 blend procedure, where as you're cleaning refrigerants 19 that's been sent to you and you have to meet an intended 20 result, and you're off just a little, so you blend a 21 higher-spec product in with it to stretch it up to the 22 standard. That's the two processes. 23 Q. Thank you. I -- I didn't appreciate you 24 could -- I could do that with a -- with an out-of-spec 25 refrigerant.	Page 45 1 create a new refrigerant? 2 A. I do not remember the date, no. 3 Q. Do you recall the refrigerants? 4 A. No, I do not. 5 Q. Okay. So do you recall ever blending 6 refrigerants together to create a new refrigerant? 7 A. I do. 8 Q. Let's -- let's start from the present backwards. 9 What do you recall today? What refrigerants does RMS 10 blend together to create a new refrigerant? 11 MR. STALEY: Objection. Vague. 12 THE WITNESS: Certainly our unique 13 patented products. 14 BY MR. TREMBATH: 15 Q. So 421a, 421b? 16 A. Correct. 17 Q. 420a. Anything else? 18 A. Currently, no. 19 Q. Okay. Let's talk about 420a. When did you 20 first blend 421a -- or 420a? 21 A. I don't remember the day. 22 Q. Do you remember, instead of the date -- I'm 23 horrible with dates too. Can you put it in a timeline 24 of other events? Was it before you came up with 421a? 25 A. Yes.

Page 46 1 Q. Again, I'm not -- I appreciate -- I don't do 2 dates well either. Is there a box of time? Was it like 3 a year before? Two years before? 4 A. It would be a guess, and I'm not -- I'm not 5 comfortable guessing. 6 Q. That's fine. And I appreciate you clarifying 7 that. But -- but you do recall that it was before you 8 came up with 421a? 9 A. Correct. 10 Q. Okay. Were there any other blends that you can 11 recall that you created before 120 -- or 421a? 12 A. I don't remember dates. I just don't -- I don't 13 remember dates. 14 Q. I'm not looking for dates. I'm looking on for 15 chronology, before. Before 421a, were there any other 16 blends that you made? 17 A. I just don't recall. 18 Q. Okay. I want to go back to testimony. I -- I 19 didn't close that loop. Have you testified under oath 20 anywhere other than the lawsuit you mentioned in 21 Metairie, Louisiana? 22 A. Have I testified -- would you say the question 23 one more time? 24 MR. TREMBATH: Could you read that back, 25 please.	Page 48 1 THE WITNESS: I'm not sure. 2 BY MR. TREMBATH: 3 Q. Did it have to do with allocations? 4 A. I don't believe that it did. 5 Q. Okay. Is there any other place where you've 6 testified under oath? 7 A. Not that I recall. 8 Q. In the Metairie, Louisiana case, did it go to 9 trial? 10 A. It did not. 11 Q. It settled, then? 12 A. It did. 13 Q. Do you recall the terms of the settlement? 14 A. I do not. 15 Q. Do you have any documents relating to that case? 16 A. If I do and counsel asked for it, I would -- it 17 was turned over to counsel. 18 Q. Do you know if counsel asked for it? 19 A. I do not recall. They've asked for a lot of 20 stuff. 21 Q. I bet they have. 22 Who was your lawyer in that case, the Metairie, 23 Louisiana case? 24 A. Robert Waddell. 25 Q. And where is he?
Page 47 1 (The Court Reporter read back the 2 question on page 45 line 18.) 3 THE WITNESS: Yes. 4 BY MR. TREMBATH: 5 Q. Where? 6 A. Washington, DC. 7 Q. In what context? 8 A. For the Department of Commerce. 9 Q. For what reason? 10 A. I was being asked questions. 11 Q. About? 12 A. I don't recall them all, but it was -- there was 13 me and a lot of people that were ask -- answering 14 questions. 15 Q. Generally, what were you speaking about? 16 A. Blending. The expense of blending, I think, is 17 on record there. 18 Q. What was the purpose of the hearing at which you 19 testified? Do you recall? 20 A. I don't recall the exact reasons for it. 21 Q. And you said it was the Department of Commerce? 22 A. I believe so. 23 Q. Did it have to do with importation? 24 MR. STALEY: Objection. Compound 25 question.	Page 49 1 MR. STALEY: Objection. Vague. 2 THE WITNESS: I don't know where he is 3 now. At the time, my recollection is that he was 4 in New Orleans. 5 BY MR. TREMBATH: 6 Q. Okay. And he was with a law firm in New 7 Orleans? 8 A. (Witness moves head up and down.) 9 Q. Okay. How -- how have you kept documents or how 10 does RMS keep documents? 11 It's a compound question. I'm going to ask, how 12 do you keep documents relating to RMS? 13 A. I really don't do much of any of that. 14 Q. Okay. Does RMS have documents? 15 A. RMS would have some documents. 16 Q. How are they kept? 17 A. Notebook, a filing cabinet, possibly on the 18 server. 19 Q. Okay. I want to talk a bit about licenses. 20 Has -- have you, RMS or any of the entities with which 21 you are associated had a license? 22 A. Had a license? 23 Q. For a patent, yes. 24 MR. STALEY: Objection. Vague. 25 THE WITNESS: Yes.

Page 50 1 BY MR. TREMBATH: 2 Q. Please describe that for me. 3 MR. STALEY: Vague. Objection. Vague. 4 THE WITNESS: I had a license to produce 5 RB-276. 6 BY MR. TREMBATH: 7 Q. Do you recall the terms of the license? 8 A. I do not. 9 Q. Do you still have the license? 10 A. I do not know. 11 Q. Your memory is -- is your memory that you -- let 12 me back up. 13 So the license -- was the license between you 14 and Bruce Ruello? 15 MR. STALEY: Objection. Vague. 16 THE WITNESS: I just don't recall 17 specifically. I am sorry. 18 BY MR. TREMBATH: 19 Q. What do you recall about the license? 20 A. That I had a license to produce that product. 21 Q. Does -- okay. So does that mean that you 22 blended the product at your facility? 23 A. It did. 24 Q. Okay. Did you pay Mr. Ruello a royalty for the 25 refrigerant that you made?	Page 52 1 A. I can give you an example. 2 Q. Please do. 3 A. Let's say that I made a product and I paid you 4 \$2 a pound, which then made me sell the end product at 5 \$4.50 a pound to my customers, and you came in to me the 6 next day and said, I'm going up on your royalty to \$5 a 7 pound. I now can't sell to my customers at \$4.50 a 8 pound, as an example. That would have been unreasonable 9 to me. 10 Q. Why did Mr. Ruello sue you? 11 A. I don't know. You'd have to ask him. 12 Q. Do you remember what the complaint said? 13 A. I do not. 14 Q. It was a patent infringement case, as I recall. 15 Correct? 16 A. I believe so. 17 Q. So that would mean he had patents he said that 18 you infringed, right? 19 A. I don't remember what the claims were, what 20 the -- what the -- 21 Q. Do you recall why you thought you didn't 22 infringe? 23 A. Once again, it's been so many years, I don't 24 remember exactly. 25 Q. Okay. But for some reason, you thought you
Page 51 1 A. I did. 2 Q. Do you recall what that royalty was? 3 A. I do not. 4 Q. Do you recall how long the license lasted? 5 A. I do not recall. 6 Q. Did you ever sell RB-276 outside of the license? 7 In other words, did you -- did you -- let me -- that's a 8 bad question. 9 Was all of the RB-276 that you sold covered by 10 the license? 11 MR. STALEY: Objection. Vague. 12 THE WITNESS: To the best of my 13 knowledge. 14 BY MR. TREMBATH: 15 Q. Do you recall why the license ended? 16 A. I do. 17 Q. Why did the license end? 18 A. Mr. Ruello issued me a directive stating that 19 the royalty would go up to an unreasonable amount. 20 Q. What was an unreasonable amount? 21 A. I don't recall. At the time it was an 22 unreasonable amount to me, and so we ended it. 23 Q. And then -- I mean, is there any way that you 24 can help quantify what an unreasonable amount means to 25 you?	Page 53 1 didn't infringe, correct? 2 A. I never said I didn't infringe. 3 Q. Okay. Did you think the patent was invalid? 4 A. I never said anything about invalidity. I just 5 simply said -- you asked why the -- the agreement ended. 6 Q. Right. Right. Right. I'm just -- I'm -- I 7 shifted gears in my mind, and I apologize if I didn't 8 articulate it. Speaking to the lawsuit that you had, 9 I'm just wondering why there was a lawsuit, right, what 10 the claims were, what your defenses were. That was the 11 context for the question. 12 A. Yeah, that -- that -- that kind of stuff, I 13 would defer to counsel. They -- I pay them lots and 14 lots of money to handle all that stuff. I wouldn't have 15 written any of that information. 16 Q. Okay. 17 A. I'm sorry. 18 Q. That's all right. I just was wondering if you 19 had an understanding yourself, because you're paying 20 lawyers a lot of money, what the claim is and what your 21 defense is. 22 MR. STALEY: Is there a question pending? 23 MR. TREMBATH: Yeah. 24 BY MR. TREMBATH: 25 Q. Do you recall what the defense was to that

Page 54	Page 56
1 original suit? 2 A. I do not. 3 Q. Okay. Do you recall if the patent involved was 4 called the Weber patent? 5 A. I do. 6 Q. Was it? 7 A. It was. Harry Weber. 8 Q. Harry Weber. Okay. Did you ever meet Harry 9 Weber? 10 A. Yes, I did. 11 Q. Tell me about Harry Weber. 12 MR. STALEY: Objection. Vague. 13 THE WITNESS: Harry was a great guy. 14 BY MR. TREMBATH: 15 Q. You used the past tense. Is he gone? 16 A. I don't know. I haven't talked to him in years. 17 Q. Do you know where he is? 18 A. No idea. 19 Q. Do you know where he was? 20 A. Metairie, Louisiana. 21 Q. He is in Metairie, okay. 22 MR. STALEY: Can you guys not talk over 23 each other? That would be -- just there's a couple 24 times I caught -- you were interrupting him, and 25 let's let each of you finish.	1 Q. Is Leslie still with you? 2 A. She is. 3 Q. What did Stanley Sheets do? 4 A. He helped run the reclamation equipment and 5 helped do recovery jobs. 6 Q. Do you -- do you recall when he left? 7 A. No, I don't remember the year. He had a heart 8 attack, so I don't -- 9 Q. Oh, wow. 10 A. -- remember what that -- when that was. 11 Q. Do you remember your third employee? 12 A. I do not. 13 Q. Can you tell me gen- -- what employees you had 14 around 2000, the year 2000? 15 A. Not with certainty, no. 16 Q. Okay. Tell me the employees you had between 17 1995 and 2005. 18 A. I couldn't do that either with certainty. 19 Q. With this one I'm not looking for certainty. 20 What employees have you had that you can recall? 21 A. Well, I would leave out somebody, and that -- I 22 don't think that's what you want me to do, so I'm not 23 going to do that. 24 Q. I'm okay if you leave out somebody. I want to 25 know what employees you've had that you can remember
Page 55	Page 57
1 Same thing for you, as well, please. 2 MR. TREMBATH: Thank you, Joe. I will -- 3 I will try to be better. Sometimes I get carried 4 away. 5 BY MR. TREMBATH: 6 Q. Going back to RMS in the beginning. Describe 7 for me your employees. Did you have a lot of employees? 8 No employees? 9 MR. STALEY: Objection. Compound. 10 Vague. 11 THE WITNESS: Originally it was just me. 12 BY MR. TREMBATH: 13 Q. When did you fire -- hire your first employee, 14 if you recall? 15 A. Eighteen months after I started. 16 Q. And who was your first employee? 17 A. Stanley Sheets. 18 Q. Is he still with you? 19 A. He is not. 20 Q. Do you know where Stanley is currently? 21 A. I do not. 22 Q. Do you recall who your second employee was? 23 A. I do. 24 Q. Who was that? 25 A. Leslie Nally.	1 over the course of RMS. 2 A. In the time frame -- what was the time frame? 3 Q. I would like the time frame up to 2003, anything 4 before 2003. 5 A. Don Rogers. 6 Q. Is Don still with you? 7 A. No, he's not. He died. 8 Q. Okay. 9 A. Wow. 2003. Michelle Stevens. 10 Q. What does Michelle do? 11 A. She was a front office manager at the time. 12 Q. Anyone else? 13 A. Mark Neal. 14 Q. Mark? 15 A. Neal. 16 Q. Neal. What did he do? 17 A. He was an outside salesman. 18 Q. Is he still with you? 19 A. No, sir, he is not. 20 Q. Do you know where he is today? 21 A. I do not. 22 Q. Anyone else? 23 A. Lee Ponder. 24 Q. Is he still with you? 25 A. Not at RMS, no.

Page 58 1 Q. What does he do? 2 A. He runs another company that we own. 3 Q. What's the name of that company? 4 A. Big Creek Distillery. 5 Q. What does it distill? 6 A. Bourbon. It makes bourbon and gin. 7 Q. Anyone else? 8 A. Not that I can recall. 9 Q. How about customers? Do you recall what 10 customers you had back in the day back in -- before 11 2- -- let me back up. I know Joe will object to a "back 12 in the day" question. 13 Do you recall any customers that you had before 14 2003? 15 A. Yes. 16 Q. Please identify the customers that you can 17 recall that you had before 2003. 18 A. Eddie's Refrigeration. 19 Q. Are they local? 20 A. They are. 21 Q. Are they still in business? 22 A. I do not know. 23 Q. Do you recall the principal at Eddie's 24 Refrigeration? 25 A. Eddie Fowler.	Page 60 1 A. Not that I can recall. 2 Q. Are you doing okay? 3 A. Sure. 4 Q. Okay. I want to talk about -- for a bit about 5 marketing. What do you do currently to market your 6 products, if anything? 7 A. I still maintain a website. 8 Q. You do anything else? 9 A. I haven't done a print ad in quite some time. 10 Q. Do you personally go out and visit customers? 11 A. Occasionally. 12 Q. What do you typically do on a customer visit? 13 MR. STALEY: I will object to that 14 question as being vague. 15 THE WITNESS: Other than go see them? 16 BY MR. TREMBATH: 17 Q. Yeah. What do you do when you go see them? 18 A. I go in to see how they're doing, if there's any 19 questions about the product, how is the industry in 20 general doing, what their aspirations for the future 21 are, is there anything that I can do for them. 22 Q. Do you ever entertain customers? 23 MR. STALEY: Vague. 24 BY MR. TREMBATH: 25 Q. I'll take that.
Page 59 1 Q. Fowler? 2 A. Uh-huh. 3 Q. Do you recall anyone else, any other customers? 4 A. Lockheed Martin. 5 Q. Anyone else? 6 A. Fort Gordon. 7 Q. What is Fort -- oh, Fort Gordon as in a military 8 base? 9 A. Military base. 10 Q. Okay. Anyone else? 11 A. Georgia Power. 12 Q. Anyone else? 13 A. Not right off the top of my head, no. There's 14 -- there are a lot of them. I just don't remember them 15 all. 16 Q. Okay. Do you have any documents that would show 17 who the customers were back in 2003, 2002, 2001? 18 A. I don't know. If counsel asked for them, I've 19 already turned them all in to them -- 20 Q. How about -- 21 A. -- but I don't recall. 22 Q. How about employee lists? Are there any 23 employee lists from -- let me ask a better question. 24 Are there any documents that you're aware of 25 that would tell us who your employees were before 2003?	Page 61 1 Do you ever take customers out for dinner? 2 A. To dinner, sure. 3 Q. Do you ever take them any place else other than 4 dinner? 5 A. No. 6 Q. Just dinner? 7 A. (Witness moved head up and down.) 8 Q. You ever take them to a baseball game? 9 A. No, I've never done that, to my knowledge. 10 Q. When you're marketing -- and I want to talk the 11 whole span from beginning to today -- are you always 12 honest in what you say in your marketing? 13 MR. STALEY: Objection. Vague. 14 THE WITNESS: I certainly try to be. 15 BY MR. TREMBATH: 16 Q. Is there anything that you can think of in your 17 marketing, as you sit here today, that was incorrect or 18 inaccurate? 19 MR. STALEY: Objection. Compound. 20 THE WITNESS: Not that I can recall. 21 BY MR. TREMBATH: 22 Q. Okay. How about -- have you ever done 23 presentations to -- for -- let me back up. 24 Have you ever done presentations for customers 25 to installers?

Page 62 1 A. I have. 2 Q. As -- as you sit here today, is there anything 3 in those presentations that you made that you would 4 think would be inaccurate? 5 MR. STALEY: Objection. Vague. 6 THE WITNESS: Not that I can recall. 7 BY MR. TREMBATH: 8 Q. How about when you've worked with EPA and 9 commerce? I assume that you -- you've had interactions 10 with the Environmental Protection Agency, right? 11 A. I have. 12 Q. Has everything that you've said to the 13 Environmental Protection Agency been accurate, as far as 14 you can recall? 15 A. As far as I can recall, yes. 16 Q. Same question for the Department of Commerce: 17 Has everything that you've done with regard to the 18 Department of Commerce been truthful? 19 A. I believe so. 20 Q. When I say "the Department of Commerce," does 21 that include -- in your mind, would that include stuff 22 with the International Trade Commission? 23 A. It would. 24 Q. Okay. All right. We are here because you're a 25 named inventor. I want to talk to you a minute about	Page 64 1 was the assignee. I then had to start looking for 2 something else to do. I had taken Mr. Ruello and 3 Harry's product all the way to ASHRAE and 4 threatened to sue ASHRAE because they were giving 5 us -- they were going to give us a slightly 6 flammable A2L designation. The RB-276 was not a 7 des- -- an ASHRAE designated product. I wanted to 8 have ASHRAE designation. 9 So in doing testing and promoting the 10 product and doing the applications, it became -- we 11 had made our -- most of our decisions on the fact 12 that Bruce had said it's nonflammable. Testing 13 came out to show otherwise, that it was slightly 14 flammable. So I started working on how to make 15 that product a product like that that was 16 nonflammable. That became known as R420a, an 8812 17 versus a 7919 N2. 18 BY MR. TREMBATH: 19 Q. So did -- does 420a have a lubricant? 20 A. It does. 21 Q. What is that? 22 A. A synthetic alkylbenzene currently. 23 Q. Has it changed over time? 24 A. It has. 25 Q. How has it changed?
Page 63 1 your inventions. What was the first thing that you 2 invented in the refrigerant space? 3 MR. STALEY: Objection to the extent it 4 calls for a legal conclusion. 5 THE WITNESS: The invention? 6 BY MR. TREMBATH: 7 Q. Yeah. 8 A. Well, because the terminology is such, I would 9 defer to counsel based on that, because I'm -- don't 10 know that I know the exact definition of invention. I'm 11 sorry. 12 Q. Fair enough. 13 We talked about 420a. Do you have a patent on 14 420a? 15 A. I have a patent that covers R420a, yes. 16 Q. All right. Tell me about the process that you 17 went through to create 420a. 18 MR. STALEY: Objection. Vague. 19 THE WITNESS: As I had stated earlier, I 20 was selling a product called RB-276, two components 21 and a lubricant, 134a, 142b and a specific 22 lubricant. After the agreement fell through with 23 the patent holder -- the assignee, I should say, 24 because I didn't have an agreement with Harry 25 Weber, I did -- my -- my deal was with Bruce, who	Page 65 1 MR. STALEY: It -- one question here, 2 Jon. I just want to make sure -- and we should 3 talk about this probably now, before we get into 4 anything highly confidential about any business 5 development or product development. I mean, 6 obviously I'll object to Brad being here for a good 7 portion of this, but if we get into that category 8 of information, we'd like him to step outside the 9 room. And I -- I know -- 10 MR. TREMBATH: You just need to flag it 11 and -- 12 MR. STALEY: Yeah. Or if you know you're 13 going there, let us know and we can figure it out. 14 MR. TREMBATH: Sure. 15 MR. STALEY: It's kind of hard, 16 obviously, in the context of -- I'm not sure 17 exactly where you're going with these questions, so 18 I just want to -- let's just -- if you know you're 19 going there, let's -- let's pause and -- 20 MR. TREMBATH: I don't know. I want to 21 talk about -- 22 MR. STALEY: Sure. 23 MR. TREMBATH: -- 420a. I don't know 24 what y'all deem proprietary about 420a, so -- 25 MR. STALEY: I think that's the reason I

Page 66 1 stopped now. It's a little murky, and we're -- the 2 current area is a little murky. If we started 3 getting into specifics about, you know, a 4 particular lubricant may be proprietary or 5 something, I want to make sure we at least talk 6 about it before we go there. So if we're going to 7 get into that and you feel like that's -- you know, 8 you're going to get into some information that's 9 confidential, let us know, okay? 10 THE WITNESS: Okay. 11 MR. STALEY: Obviously I don't know what 12 you're -- how you're going to answer each question, 13 so. 14 BY MR. TREMBATH: 15 Q. Do you want Brad to leave when we talk about the 16 lubricants you've used with 420a? 17 A. No. I'm okay with that right now. 18 Q. Okay. Okay. Too, in fairness, if something 19 feels uncomfortable to you, just say so. 20 A. Sure. 21 Q. We can ask Brad to leave. 22 A. Thank you. 23 Q. Okay. What lubricants were used with 420a? 24 A. There was an -- early, there was a naphthenic 25 lubricant.	Page 68 1 select the lubricant that you were going to use in 420a? 2 A. Do I remember? 3 Q. Yes. 4 A. I do. 5 Q. Could you share that with us, please? 6 A. The RB-276 was a 7919 N2. Obviously the 7 19 percent was what was flammable, so we had to start 8 doing testing on how to reduce the amount of 142b at 9 19 percent to a ratio that would not be tested as 10 flammable. 11 Q. How did you do that? 12 MR. STALEY: Objection. Vague. 13 THE WITNESS: Through internal testing. 14 I mean, when you -- when you've been making a 15 product and it's -- it's like making a cake, a 16 recipe was 7919 N2 and, oh, that blew up in the 17 oven. You take some of the components that was in 18 the pan that you stirred up and you reduce them in 19 terms of percentage until you get down to a number 20 that it doesn't blow up in the pan or, in this 21 case, test out as flammable. 22 BY MR. TREMBATH: 23 Q. Did you do those tests yourself or did you have 24 someone else do the testing? 25 A. We did internal testing to our capabilities, and
Page 67 1 Q. Do -- do you recall what it was? 2 A. That was what it was, a naphthenic lubricant. 3 Did it have a trade name? 4 Q. Yeah. 5 A. I don't remember the trade name. 6 Q. Okay. The patents that -- involved in this 7 suit, they talk about a light naphthenic ROYCO something 8 or another. Was it like that or was it different? 9 A. It could have been similar. That would have 10 been the ROYCO 2302. 11 Q. Yeah. You don't know if the naphthenic you were 12 using was a ROYCO or not? 13 A. I don't recall. 14 Q. But it would -- it would be similar? 15 A. Correct. 16 Q. Okay. Any other lubricants that you used with 17 420a? 18 A. We switched that to Zerol 30. 19 Q. Is that the alkylbenzene? 20 A. It is. 21 Q. Okay. And so those are the two that you've used 22 with 420a. Anything else? 23 A. No. 24 Q. Okay. Do you recall the process you went 25 through to change the refrigerant components and to	Page 69 1 then we would have used Intertek testing and then given 2 that over to our -- that was one phase. The second 3 phase would have been to turn it all over to our patent 4 attorneys and say, Hey, is this -- can I do anything 5 with this. 6 Q. Did you do anything to see if it would still 7 work as a refrigerant? 8 A. Absolutely. 9 Q. What did you do? 10 A. I put it in cars to see if it got cold on a hot 11 day. 12 Q. Did you do anything else to test whether it 13 would work? 14 A. We put it in air conditioners, window units, 15 R12-type units where possible, freezers, walk-in 16 coolers. 17 Q. Did it work in window units and walk-in coolers? 18 A. That, it did. 19 Q. Okay. Did you do any other testing to determine 20 whether -- besides this -- what you've described, to 21 determine that it would work as a refrigerant? 22 A. Not that I can recall today. 23 Q. Did you ask anyone to evaluate whether it would 24 work as a refrigerant? 25 A. I remember -- I remember contacting Eddie's

Page 70 1 refrigeration -- Eddie Fowler. I gave you his name 2 earlier -- and said, Eddie, tell me what you think. 3 Here's a sample, tell me what you think of this. 4 Q. What did Eddie think? 5 A. He came back and said, Can I get more? 6 I will let you know when. 7 Q. So you went to the attorneys and started the 8 patent process? 9 A. Yes, sir. 10 Q. Do you recall how long before you went to the 11 attorneys to start the patent process for 420a -- how 12 long before that did you start developing 420a? 13 A. I do not recall that time frame, how long. 14 Q. Yeah. At all? Six months? A year? Two years? 15 Five years? 16 A. I -- I have no idea. 17 Q. Did you keep any documents about your 18 development? Any records? Notes? 19 A. If I did, I've already turned them over to 20 counsel. If I did. I don't recall. I mean, that has 21 been 20-plus years ago on a proven product that works 22 great, not having to prove it much no more. 23 Q. And you're comfortable that it was 20-plus years 24 ago? 25 A. Well, I use that term loosely. I don't know the	Page 72 1 production -- in producing it, what is your -- the limit 2 of -- of deviation, 1 percent, 2 percent? Because that 3 changes -- that can change everything. 4 And I don't recall the rest of the questions, 5 but there were numerous questions. 6 Q. Did they ever ask you whether it worked or not? 7 A. No. 8 Q. Did you get SNAP approval for 420a? 9 A. I did. 10 Q. What is SNAP approval? 11 A. That's a -- that's a process whereby the EPA 12 gets to -- helps assign it categories to be used in: 13 Commercial refrigeration, automotive, that kind of 14 thing. My understanding is -- was at the time that you 15 have to be SNAP approved in order to go to market and 16 sell a refrigerant in the U.S. 17 Q. Was -- was -- was RB-276 SNAP approved? 18 A. It was. 19 Q. Okay. 20 MR. STALEY: Jon, I'm -- at some point 21 soon, can we take a quick break? I need to use the 22 restroom. We've been going for almost two hours. 23 MR. TREMBATH: Let's do it. 24 MR. STALEY: Now a good time? 25 MR. TREMBATH: Good time.
Page 71 1 date, is what I'm trying to say. It's been long enough 2 for me to be not crystal clear on the transaction. 3 Q. Okay. Did you go through the process of getting 4 an ASHRAE number for 420a? 5 A. I did. That's -- hence they're the ones that 6 gave the number R420a. 7 Q. What does it take to get an ASHRAE number? 8 A. I don't know what you have to do today. I 9 haven't done one in years. That one, it was you had to 10 go before an ASHRAE Standard 34 committee. You had to 11 do an application for approval, of which they stated 12 their criteria, the information you had to give them. 13 Q. Did you physically go before a committee -- 14 A. I did. 15 Q. -- and talk -- interesting. 16 Where was that? 17 A. Several different places, all within the 18 confines of ASHRAE. All of those are either done at the 19 summer convention in June or the winter convention, 20 which is typically the end of January. 21 Q. Did they ask you questions when you were in 22 front of them? 23 A. Sometimes. 24 Q. What kind of questions? 25 A. Ken, what were your production -- what were your	Page 73 1 MR. STALEY: All right. Let's go off the 2 record, then. 3 THE VIDEOGRAPHER: This is the end of 4 Media 1. The time is 11:04 a.m. We're now off the 5 record. 6 (Recess.) 7 THE VIDEOGRAPHER: This is the beginning 8 of Media 2. The time is 11:28 a.m. We're back on 9 the record. 10 BY MR. TREMBATH: 11 Q. I would like to go back -- I think you said that 12 RB-20 -- what was it, 20 -- RB-276 was a 7919 2 blend? 13 A. Yes. 14 Q. What was the "2"? 15 A. Lubricant. 16 Q. What was the lubricant? 17 A. I don't recall. 18 Q. Was it a ROYCO lubricant? 19 A. I -- I do not recall. 20 Q. Okay. Were there any drawbacks to creating 420a 21 as compared to the RB-27 -- I'm sorry. Let me back up. 22 Did R420a perform differently than RB-276 -- 23 MR. STALEY: Objection. Vague. 24 BY MR. TREMBATH: 25 Q. -- in the refrigeration unit?

Page 74 1 A. I think it outperformed RB-276. 2 Q. How so? 3 A. It had -- it had more capacity. 4 Q. What does capacity mean? 5 A. Its ability to absorb heat. 6 Q. Did -- did 420a move away from the R12 pressure 7 temperature curve, as compared to RB-276? 8 MR. STALEY: Objection. Vague. 9 THE WITNESS: I don't remember. 10 BY MR. TREMBATH: 11 Q. You don't know if RB-276, the pressure 12 temperature curve was closer to R12? Because you're 13 trying to replace R12. If it was closer or not to 420, 14 you don't recall? 15 A. I don't recall. 16 MR. STALEY: Objection. Compound. 17 Just -- yeah, just a reminder, give me a 18 chance to object. 19 BY MR. TREMBATH: 20 Q. Do you recall anything else about the testing or 21 the evaluations that you did -- let me back up so it's 22 not compound. 23 Do you recall anything else about the testing 24 that you did to create 420a? 25 A. No.	Page 76 1 partner and we talked several times a day, I'm sure 2 he had multiple opinions and multiple ideas within 3 himself that we talked through. 4 BY MR. TREMBATH: 5 Q. Do you recall any of the ideas that he shared 6 with you about 420a? 7 A. I do not. 8 Q. How often was he coming into the shop when -- as 9 you were developing 420a? 10 A. Typically, one day a week. 11 Q. Was that fairly consistent during the time of 12 his -- your partnership -- your -- let me back up. 13 During the -- his tenure at -- at RMS, was that 14 typical, once a week he would come in? 15 MR. STALEY: Objection. Vague. 16 THE WITNESS: That was the average. 17 BY MR. TREMBATH: 18 Q. Okay. What -- what did Mr. Thomas do at RMS? 19 What was his role? 20 A. Steffan was my financial backer and, 21 subsequently, my sound board. We talked through 22 everything. Everything. Multiple times a day, seven 23 days a week. 24 Q. Do you remember Anderol being a seller of 25 lubricants?
Page 75 1 Q. Okay. You said you gave it to Eddie's. Did 2 Eddie's give you any written feedback? 3 A. Not to my -- not to my memory. 4 Q. Did you have any kind of nondisclosure agreement 5 with Eddie's? 6 A. I did not. 7 Q. Okay. Do you know what Eddie's did with the 8 420? 9 MR. STALEY: Objection. Vague. 10 THE WITNESS: You'd have to ask Eddie 11 exactly, but I don't -- he put it in an R12-type 12 situation, I'm sure. 13 BY MR. TREMBATH: 14 Q. You don't know what he did with it? 15 A. I do not. 16 Q. Did Eddie pay you for the 420a that he used? 17 A. In that instance, I don't recall. 18 Q. Mr. Thomas; what was he doing -- what -- let me 19 back up. 20 Did Mr. Thomas contribute to the creation of 21 420a? 22 MR. STALEY: Objection. Vague. 23 Objection to the extent it calls for a legal 24 conclusion. 25 THE WITNESS: Well, since Steffan was my	Page 77 1 A. Who? 2 Q. Anderol. 3 A. I don't recall that name. 4 Q. Do you remember where you got the lubricants 5 that were used -- you were blending RB-276, right? 6 A. (Witness moves head up and down.) 7 MR. STALEY: Objection. Vague. Lacks 8 foundation. 9 THE WITNESS: We had blended RB-276. We 10 also purchased it already blended and we packaged 11 it. 12 BY MR. TREMBATH: 13 Q. Okay. So if you blended it, you took this -- a 14 source gas -- the two source gasses and put them 15 together with a lubricant, correct? 16 A. Correct. 17 Q. Where did you get the lubricant? 18 MR. STALEY: Objection. Lacks 19 foundation. 20 THE WITNESS: I don't recall. 21 BY MR. TREMBATH: 22 Q. Now, this -- if this is uncomfortable, we can 23 ask Brad to leave. Where do you get the lubricant for 24 420a? 25 MR. STALEY: Objection. Lacks

Page 78 1 foundation. 2 THE WITNESS: Currently? 3 BY MR. TREMBATH: 4 Q. Currently. 5 A. From Shrieve Chemical. 6 Q. Shrieve, okay. 7 And historically, did -- was there another 8 source that you used before Shrieve? 9 A. To purchase the lubricant we use now? 10 Q. Yes. 11 A. No. 12 Q. Or I believe you started out using a naphthenic. 13 A. (Witness moves head up and down.) 14 Q. Did you get that from Shrieve, as well, or was 15 there another source -- 16 A. I did not. 17 Q. Who -- where did you get the naphthenic 18 lubricant? 19 A. I don't recall exactly. I could guess, which I 20 should not do. 21 Q. What -- what did the naphthenic oil do in the 22 RB-276? 23 MR. STALEY: Objection. Vague. 24 BY MR. TREMBATH: 25 Q. If you know.	Page 80 1 BY MR. TREMBATH: 2 Q. When you applied for SNAP approval for 420a, did 3 you tell the -- the EPA that there was a lubricant in 4 it? 5 A. I don't recall. I haven't looked at that 6 application in -- in many years. 7 Q. Do you recall ever telling the EPA that you 8 changed the lubricant used in R420a? 9 A. I do not recall. 10 Q. Let's go back to banking, banking refrigerants. 11 Did you ever have any customers that were unhappy with 12 your banking service, excluding Dynatemp and 13 Fluorofusion? 14 MR. STALEY: Objection. Vague as 15 unhappy. 16 THE WITNESS: Not that I recall. 17 BY MR. TREMBATH: 18 Q. Did you ever get any complaints from anyone 19 about your banking service other than Dynatemp and 20 Fluorofusion? 21 A. Not that I recall. 22 Q. Has RMS been at the same facility since you 23 started it? The same building. 24 A. No. 25 Q. When did you change buildings?
Page 79 1 A. Harry Weber is a much better source of 2 information as to what he -- in his invention than I 3 would be. 4 Q. Do you have an understanding of what the -- the 5 naphthenic oil was doing in the RB-276 system? 6 A. Lubricating the compressor. 7 Q. Did it do anything else besides lubricate the 8 compressor? 9 MR. STALEY: Objection. Vague. 10 THE WITNESS: I do not know. 11 BY MR. TREMBATH: 12 Q. Do you know if it interacted with the existing 13 lubrication in the system? 14 MR. STALEY: Objection. Calls for 15 speculation. 16 THE WITNESS: To what degree, I do not 17 know. 18 BY MR. TREMBATH: 19 Q. Do you have any understanding at all as to what 20 the naphthenic lubricant in RB-276 would do with the 21 normal lubrication in the refrigeration system? 22 A. No. 23 MR. STALEY: Objection. 24 Ken, just one more time, I'm trying to 25 remind you to give me a second to object, please.	Page 81 1 A. I don't remember the exact year. 2 Q. Five years ago? Ten years ago? 3 A. I don't remember the year. 4 Q. Was it before you came up with 421a or after? 5 A. I believe it was after. 6 Q. Okay. Let's go back to the old building, then. 7 Did you have customers come into the building? 8 A. I did. 9 Q. Did they sign any kind of nondisclosure 10 agreements to come into your building? 11 A. No. 12 Q. Did your employees in the first building sign 13 nondisclosure agreements? 14 A. No. 15 Q. Let's talk about lubricating oils. And I want 16 to put you back at around 2000. Did you -- did you know 17 about naphthenic oil being used as a lubricant in 18 refrigeration systems? 19 MR. STALEY: Objection. Vague. 20 THE WITNESS: In 2000? 21 BY MR. TREMBATH: 22 Q. Yeah. 23 A. I don't recall. 24 Q. When did you first learn about alkylbenzene 25 oils?

Page 82 1 A. Approximately 1993. 2 Q. And how did you learn about them in 1993? 3 A. Through the reclamation process. 4 Q. How about polyolester oils? When did you first 5 learn about polyolester oils? 6 A. I don't recall the year. 7 Q. Can you recall how you would have learned about 8 it? 9 A. Most likely through the reclamation process. 10 Q. So describe for me how that would happen -- how 11 -- how would you learn about an oil through the 12 reclamation process? 13 A. When dirty refrigerant that's been in a system 14 is sent in to our facility, a reclaim facility, and 15 you're going to clean it through the reclamation 16 process, the removal is the oil that is contained in it, 17 of which if the system contained a synthetic 18 alkylbenzene or a naphthenic or a POE, you would have 19 access to those oils in the byproduct of the cleaning 20 process. 21 Q. What would you do with the oils? 22 A. Dispose of it. 23 Q. So you wouldn't even necessarily know what it 24 was; you would just get rid of it? 25 A. Only sometimes. Sometimes we would send off a	Page 84 1 A. Yes. 2 Q. What other examples are there of that? 3 A. I am trying to call -- recall the name of the 4 company. It's been years. I can't call [sic] the 5 company name at this moment. 6 Q. Do you remember the name of the refrigerant? 7 A. They were one of the first producers of RB-276, 8 and then I believe they also had a product of 134a that 9 had a lubricant in it. 10 Q. And that was before you started thinking about 11 421a or not? 12 A. Yes, that was before 421a. 13 Q. Okay. What is your understanding of what 14 lubricants do when they're put with a gas in a cylinder 15 and introduced to refrigeration system? 16 A. I'm not sure I understand the question. 17 Q. Yeah, that's -- that's fair enough. 18 So -- so with RB-7 -- or 276, there was a 19 lubricant in it. It was a naphthenic, I believe. What 20 was your understanding of what that naphthenic was in 21 the refrigerant to do? 22 MR. STALEY: Objection. Vague. 23 THE WITNESS: I could tell you what 24 Mr. Ruello told me that it did. 25 BY MR. TREMBATH:
Page 83 1 sample of -- of the product so that we would know a 2 starting point of where we were, and the testing 3 facility would then identify POE, alkylbenzene, mineral. 4 Q. Naphthenic oils; when did you first learn of the 5 use of naphthenic oils in refrigeration systems? 6 A. It would have been in my usage of -- the early 7 days of my experience with RB-276. 8 Q. When did you first experience a lubricating oil 9 being mixed in with a refrigerant in a canister? 10 A. I don't recall the date. 11 Q. Okay. Would it -- so for clarity, I believe a 12 lot of compressors have oil in the compressor. Is that 13 right? 14 A. I believe so. 15 Q. I also understand that a lot of refrigerants 16 don't contain a lubricant when the refrigerant is in 17 its -- in a canister or cylinder. Is that true? 18 A. Correct. 19 Q. 420a and -- and RB-276 are different in that 20 they had a lubricant in the pressure vessel that 21 contained the compressed gas refrigerant, right? 22 A. Right. 23 Q. Are you aware of any other uses of a lubricant 24 in a refrigerant in a -- in a compressed container, 25 compressed gas container?	Page 85 1 Q. Okay. What did Mr. Ruello tell you? 2 A. He said that it thinned the system's oil and 3 allowed the unique blend to travel throughout the 4 system. 5 Q. Let's unpackage that a bit. 6 So in the compressor, there's going to be 7 preexisting oil, correct? 8 A. (Witness moves head up and down.) 9 Q. What kind of oil? 10 A. Depends on the system. 11 Q. Could be a mineral oil? 12 A. Could be a mineral oil. 13 Q. And so you're -- what Mr. Ruello told you was -- 14 well, does that mineral oil -- why would Mr. Ruello 15 think it was an advantage, if you know, to have the 16 right naphthenic thin the existing oil in the 17 compressor? 18 MR. STALEY: Objection. Compound. 19 THE WITNESS: I'm not sure. You would 20 literally have to ask Mr. Ruello. 21 BY MR. TREMBATH: 22 Q. Okay. Do -- do refrigeration systems have 23 problems with oil collecting, so, for example, in the -- 24 the evaporator? 25 MR. STALEY: Objection. Vague.

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1 THE WITNESS: Sometimes. 2 BY MR. TREMBATH: 3 Q. Is -- why is that a problem? 4 A. Complete -- to get the oil not to go back to the 5 compressor, the compressor ceases to work very long. 6 Q. Why would oil collect in the evaporator? 7 MR. STALEY: Objection. Vague. 8 THE WITNESS: There's, I'm sure, many 9 reasons, the most obvious of which is -- to me, is 10 low places within the system, piping problems, 11 pressure problems. 12 BY MR. TREMBATH: 13 Q. Did you interpret what Mr. Ruello said to you to 14 mean that by making the refrigerant -- the existing 15 refrigerant oil less -- by thinning it, it would travel 16 back to the compressor more readily? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: I would imagine so, but 19 once again, that's a -- really a Mr. Ruello 20 question. 21 BY MR. TREMBATH: 22 Q. Yeah. Well, I'm asking you what you thought, so 23 it's a little bit different. Or what you understood 24 from what Mr. Ruello told you, so does that -- 25 A. That would have helped it return back to the	1 417a to come up with -- with 421a? What was the next 2 step? 3 A. To try to get some to play with and secure it so 4 that I could offer it to my customers. 5 Q. 417a? 6 A. Yes. 7 Q. Okay. So you started selling 417a at some 8 point? 9 A. I have sold 417a, yes. 10 Q. It was branded Choice®? 11 A. No. 12 Q. How was it branded? 13 A. Rodia Organic fine. 14 Q. Where did you get the -- the 417a? 15 A. I don't recall exactly where I got the first 16 cylinder of it. 17 Q. Did you develop a relationship with anyone to -- 18 so you could sell 417a? 19 A. The call would have gone to Rodia's 20 distributor -- 21 Q. And who was -- 22 A. -- who at that time would have been Dynatemp 23 International. 24 Q. Who did you speak to at Dynatemp? 25 A. It would most likely have been Mr. Hal Kivlan or
Page 87	Page 89
1 compressor. 2 Q. Okay. Let's move to the creation of 421a. When 3 did you have -- first have an idea about creating 421a? 4 A. In the reclamation business, talking to 5 customers of all sizes, types and locations, having sold 6 a 12 replacement, I was asked are we going to have a 22 7 replacement. I don't remember the first day that call 8 came in. I don't remember what I was doing. But I 9 don't have to be asked more than one time to know that I 10 need to go to work on it because I'm being asked for it. 11 So it was whatever day that was. 12 Q. What did you do after a customers asked about 13 having a 22 replacement? What was the next thing that 14 you did? 15 MR. STALEY: Objection. Vague. 16 THE WITNESS: I started looking at 17 products that were being offered. 18 BY MR. TREMBATH: 19 Q. Which products? 20 A. R417a. 21 Q. Any others? 22 A. I don't recall. That was the primary one. 23 Q. Was your business selling 417a? 24 A. Not at the time. 25 Q. Okay. So what did you do after you looked at	1 Barry Goodman. 2 Q. And Hal Kivlan is Brad Kivlan's dad? 3 A. He is. 4 Q. Okay. How long did you sell 417a acquired 5 through Dynatemp? 6 A. I don't recall how long it was. No longer than 7 I had to. 8 Q. Okay. Why is that? 9 A. I was coming up with a product that I could 10 control. 11 Q. Okay. What -- what are the components of 417a? 12 A. 134a, R125, and butane, I believe. I could be 13 wrong on the hydrocarbon. I hadn't looked at it in a 14 number of years. 15 Q. But a hydrocarbon of some kind? 16 A. Yes. 17 Q. Okay. What was your understanding of what the 18 hydrocarbon did in that blend? 19 MR. STALEY: Objection. Vague. 20 THE WITNESS: Rodia specifically told me 21 that it was in there for -- to facilitate oil 22 return. 23 BY MR. TREMBATH: 24 Q. Same problem we were talking about before: 25 Having oil collect in the evaporator, helping it get

Page 90 1 back to the compressor? Is that the idea? 2 A. That's correct. 3 Q. Okay. So you've got some 417a to play with. 4 What did you do next? 5 A. We started trying to sell it and -- and fielding 6 those questions from customers. And I was wanting to 7 push it further down the road, and so Dynatemp and I 8 went to Tecumseh, compressor manufacturer, and we were 9 successful in getting it approved for use. They had not 10 approved a 22 alternative yet, and they, in fact, 11 approved -- they were kind of -- Kivlans or Dynatemp 12 were very helpful in getting Rodia and Neal Roberts, 13 their technical -- one of their technical guys to come 14 over, and we all went to Tecumseh and held hands and 15 sang kumbaya and, viola, they approved that product. 16 Q. So what did you do next in the development of 17 421a? 18 A. I don't recall when the difference between 19 147a's usage and the Tecumseh process and when I started 20 developing 420a. I don't remember the -- the date 21 range. 22 Q. Chronologically, did you go to Tecumseh before 23 you started -- 24 A. Yes. 25 Q. All right. After you went to -- to Tecumseh,	Page 92 1 similar, if not identical if possible, to R22. I 2 wanted a product that had a greater heat of 3 vaporization, as -- as great as I could get. And 4 so I started looking for those -- those compounds, 5 what could I put together to -- that would exhibit 6 the criteria that I had written. 7 BY MR. TREMBATH: 8 Q. Did you write it down, actually? 9 A. Oh, I'm sure I did. 10 Q. Any idea where that piece of paper would be? 11 A. I have no idea. 12 Q. Did you keep any notes as you were developing 13 421a? 14 A. This has been years ago now. Any of that 15 material that we had available to us was given to 16 counsel, if any -- if any existed. 17 Q. So I'm asking you, as you sit here today, do you 18 remember any memorialization of the process that you 19 went through? 20 A. I do not. 21 Q. Okay. So you've indicated you wanted a closer 22 PT curve and you wanted high heat of vaporization. 23 A. (Witness moves head up and down.) 24 Q. What did you do? How did you -- what did you do 25 next -- let me take next out of it.
Page 91 1 what did you do to develop 421a? 2 A. I don't recall the -- the order. I'm sorry. 3 Q. I'm asking steps. What -- what did you do? 4 A. I -- I do not remember the steps. 5 MR. STALEY: Objection. Vague. 6 BY MR. TREMBATH: 7 Q. You don't recall what you did to create 420a? 8 A. You asked for the steps, and I don't remember 9 the steps -- 10 Q. You don't recall what -- 11 A. -- after 417a. 12 Q. Okay. You don't recall, after you had 417a, 13 what you did to come up with 421a? 14 MR. STALEY: Asked and answered. 15 THE WITNESS: I'm unsure of the answer 16 because I'm unsure of your question, the steps. I 17 don't -- that's a terminology I don't understand. 18 BY MR. TREMBATH: 19 Q. I'm sorry. Thank you for helping me. 20 What did you do to create 421a? 21 MR. STALEY: Objection. Vague. 22 THE WITNESS: I started looking for 23 materials, products, that would meet my unique 24 reasons for coming up with another product. I 25 wanted a closer pressure temperature relationship,	Page 93 1 You understood you wanted a closer PT match and 2 you wanted a higher heat of vaporization. Based upon 3 your unique reasons, what did you do next? 4 MR. STALEY: Object to the extent that it 5 mischaracterizes his testimony. Objection. Vague. 6 THE WITNESS: I would have started -- I 7 would have looked at what was available and -- and 8 started adding products together to, first, see if 9 I could hit a pressure temperature comparison close 10 to R22. 11 BY MR. TREMBATH: 12 Q. How would you do that? 13 A. Take one of those cylinders that you asked me 14 about earlier, add a few pounds of this and a few pounds 15 of that, and shake it up and put a gauge set on it and 16 go, Wow, it's 70 degrees, 22 is at this pressure and 17 this is at 15 percent higher. Eh, no good, that wasn't 18 it. 19 Q. So did you actually do that in your shop? 20 A. I did. 21 Q. Okay. Do you recall the refrigerants that you 22 put together to -- to test? 23 A. I started with looking at HFCs. Because we were 24 in the middle of phasing out HCFCs, so it wouldn't have 25 done me any good to use 141b that I was comfortable

Page 94 1 with. It was being phased out. 2 I looked at anything that was commercially 3 available at the time. We had wide knowledge of 134a. 4 We had some experience with 125, so we -- both of which 5 was on the HFC list and would have met that criteria. 6 So we started putting them together in various ratios. 7 Q. Why do you say that you had wide knowledge of 8 134a and 125? 9 MR. STALEY: Objection. Mischaracterizes 10 testimony. 11 BY MR. TREMBATH: 12 Q. Oh, I'm sorry, that you had wide knowledge of 13 134a. 14 A. Well, having sold 134a, packaged 134a, used 134a 15 in the R420a product, reclaimed 134a, it falls into the 16 category of a wide knowledge of 134a. 17 Q. Okay. And R125; what experience had you had at 18 that point with R125? 19 A. Well, knowing that it was a component of 417, we 20 had already been used to seeing that. We had been told 21 what its -- what its -- reasons why Rodia used it. And 22 Starr Refrigeration used it, which is the patent -- I 23 think -- I don't know what the -- I don't know it came 24 about, but Rodia ended up with it, and so it seemed like 25 a good place to start for me. It was also use -- widely	Page 96 1 from 60/40 and above, down to 58/42, we would have put 2 it in machinery, residential air-conditioning that we 3 had in my -- my facility and -- and -- to see how it was 4 going to operate. 5 Q. You said one of the reasons -- or one of the 6 unique reasons that -- I don't want to mischaracterize. 7 What I heard was heat of vaporization was important. 8 Right? 9 A. It was. 10 Q. Does 125 have as good of heat of vaporization as 11 134a? 12 A. I don't recall the number. 13 Q. Okay. All right. So you're testing it in your 14 facility, in the unit in your facility. How did that 15 go? Did you have to change things? Did it work the 16 first time? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: The hope would've been -- 19 part of the criteria was as little if -- as -- if 20 any, modifications to the equipment. It would have 21 made it easier to sell in the marketplace. 22 BY MR. TREMBATH: 23 Q. Do -- do you recall -- was there a lubricant in 24 your first compositions? 25 MR. STALEY: Objection. Lacks
Page 95 1 used in -- in fire extinguishers as a flame retardant, 2 and so that met part of the criteria of nonflammable. 3 134a wasn't flammable, so that's the road I went down. 4 Q. So you added them to a cylinder in different 5 ratios until when? I mean, what -- how did you -- how 6 did you come up with the ratios that you came up with? 7 A. Well, you don't -- 8 MR. STALEY: Objection. Lacks 9 foundation. 10 THE WITNESS: You don't know if or -- 11 when or if, so you have to start in a blending 12 apparatus -- you have to start at some number. 13 50/50 might would have been the first number. And, 14 once again, we -- we tested that, and that pressure 15 didn't look right. You know, the most logical step 16 would have been 55/45. That number didn't hit the 17 most logical next step. 60/40, that certainly got 18 closer. Then you want to dial down and zero it 19 down to the most preferred number you can come up 20 with, and so we might would have gone 59/41, until 21 it ultimately ended up being 58/42. 22 BY MR. TREMBATH: 23 Q. Did you test it at temperatures other than what 24 was room temperature at your facility? 25 A. Once -- once the numbers started getting close,	Page 97 1 foundation. 2 THE WITNESS: The very first ones? 3 BY MR. TREMBATH: 4 Q. Yes. 5 A. No. 6 Q. When did you first put a lubricant in your 7 blend? 8 MR. STALEY: Objection. Vague. 9 THE WITNESS: It was always going to be 10 in one, but the first step was to try to hit a PT 11 chart. The lubricant would not have altered the PT 12 chart at all, the pressure. 13 BY MR. TREMBATH: 14 Q. Why did you always want to have a lubricant in 15 it? 16 A. Well, my granddaddy used to say, Don't fix 17 what's not broke. I had already been making 420 quite 18 some time, comfortable to component and a lubricant. 19 Q. In your facility, did you have to make any 20 modifications to the refrigeration unit that you were 21 using to test your blend? 22 A. No. 23 Q. Do you recall what percentages you put in the 24 refrigeration unit in your facility? 25 MR. STALEY: Objection. Lacks

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1 foundation. 2 THE WITNESS: If memory serves, I started 3 at 50/50 to see what it would do. 4 BY MR. TREMBATH: 5 Q. Did 50/50 work okay in your building? 6 A. No. 7 Q. Do you know what you did next? 8 A. Pulled it out. 9 Q. And what did you put back in next? 10 A. Logic would -- would -- for me would have been 11 55/45. 12 Q. Did that work? 13 A. No. 14 Q. What did you do next? 15 A. Pulled it out. 16 Q. And what did you replace it with? 17 A. I would have gone to a -- most likely a 60/40. 18 Q. Did you like the way 60/40 worked in your 19 system? 20 MR. STALEY: Objection. Mischaracterizes 21 testimony. 22 THE WITNESS: I personally did not, no. 23 BY MR. TREMBATH: 24 Q. Why? 25 A. It -- the 60/40 did not have the PT chart that I	1 would have wanted to see what it did at 65 degrees. 2 BY MR. TREMBATH: 3 Q. Did you have anybody else helping you understand 4 your refrigerant in this developmental process? Did you 5 talk to anybody else about it? 6 A. Not at my office, not in my office. There 7 wasn't anybody else to -- that would have had a 8 meaningful -- you know, other than my ongoing 9 conversations with Steffan, there would not have been 10 anybody else there. Now -- 11 Q. Did you talk to anybody outside the office? 12 A. I talked to -- I would have draw strength from 13 people think used routinely, companies that I used 14 routinely, to ask generic questions, not relevant to a 15 specific invention, but, Hey, what -- what do you think 16 about this? Can -- can -- if I had this, can you 17 generate a PT chart, a digital PT chart, for me? That 18 kind of a thing. 19 Q. Who did that for you? Who generated the PT 20 chart? 21 A. Two guys. One guy, Andy Gabor with Intertek 22 Testing. 23 Q. And who else? 24 A. And Jim Calm, engineering consultant. 25 Q. Yeah. When did they first -- when did you first
Page 99	Page 101
1 was looking for. 2 Q. Why did that matter? 3 A. In a product that would ultimately be sold, the 4 less you have to do to it to sell it, the -- the ease 5 for the technician. So the closer I could get to the PT 6 chart of 22, the greater the likelihood that I had a 7 home run product. 8 Q. So did you eventually get a 58/42 blend, 58 9 Pinta, 125 and a -- and a 42 percent 34a in your unit in 10 your building? 11 A. I did. 12 Q. Do you remember when that was? 13 A. I do not. 14 Q. How long did you run it before you thought it 15 would work? 16 MR. STALEY: Vague. 17 THE WITNESS: I don't recall. 18 BY MR. TREMBATH: 19 Q. Did it take very long for you to be satisfied 20 that it was working as you had intended? 21 MR. STALEY: Objection. Vague. 22 THE WITNESS: Well, I would have wanted 23 to have complete confidence in it. So you realize 24 that an air conditioner runs 12 months a year, and 25 so that day, if it was -- if it were 85 degrees, I	1 talk to them about 421a? 2 A. I don't recall the day. It was a long process. 3 Q. Yeah, but did you talk to them before you put 4 the refrigerant in your building or after? 5 MR. STALEY: Objection. Vague. 6 THE WITNESS: What do you mean, in my 7 building? 8 BY MR. TREMBATH: 9 Q. In the refrigeration system in your building. 10 Did you talk to Mr. Calm or Mr. Gabor prior to charging 11 your refrigeration system in your building? 12 A. I don't think so, but I really don't recall. 13 Q. Okay. Did you use or -- or have your -- your -- 14 your new blend installed in any other refrigeration 15 units at about the same time? 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: I don't remember the exact 18 time, so I'm having a hard time answering your 19 question. The only other one place that I put it 20 was in a window air conditioner at my 21 mother-in-law's house in Athens, Georgia. It was a 22 pretty safe bet. I knew if it tore up, she would 23 call me. 24 BY MR. TREMBATH: 25 Q. And you don't recall when you did that?

Page 102 1 A. I do not. It was years ago. 2 Q. 1995? 1996? 3 A. I do not know. 4 Q. 2000? Was it before 2000 or after 2000? 5 A. I don't recall. 6 Q. Did you use it anywhere else? Did you send it 7 over to Eddie? 8 A. I did not. 9 Q. Did you use it anywhere else other than your 10 mother-in-law and your -- your -- your shop? 11 A. My personal home. 12 Q. When did you do that? 13 A. I don't recall the day. 14 Q. How did you put your refrigerant blend in your 15 home refrigeration unit? Did you do it yourself? 16 A. I did. 17 Q. Did anyone help you? 18 A. No. 19 Q. Did anyone help you installing your 421a 20 refrigerant in your mother-in-law's window refrigeration 21 -- or air-conditioning unit? 22 A. No, sir. 23 Q. You did it all by yourself? 24 A. I did. 25 Q. And you have no idea when you did it?	Page 104 1 you first created 421a and used it, that that might be 2 more accurate than your memory today? Would you agree 3 with that? 4 MR. STALEY: Objection. Calls for 5 speculation. 6 THE WITNESS: I have no idea. 7 BY MR. TREMBATH: 8 Q. All right. Did Mr. Calm have any other input 9 into your development of R421a other than creating the 10 PT curve that you've talked about? 11 MR. STALEY: Mis- -- objection. 12 Mischaracterizes his testimony. 13 THE WITNESS: Not to my knowledge. 14 BY MR. TREMBATH: 15 Q. What did Mr. Calm do to -- during the process 16 you were developing 421a, if anything? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: He had no part in any of 19 the work in -- inside my building. 20 BY MR. TREMBATH: 21 Q. Did you ask him for advice about what gasses to 22 use to create 421a? 23 A. I don't have any recollection of that. 24 Q. Did you ask him about heat of vaporization of 25 the gasses you were thinking about using?
Page 103 1 A. I don't know a day. I'm sorry, I just don't. I 2 mean, this -- 3 Q. Do you know a year? 4 A. I don't -- 5 MR. STALEY: He hadn't finished. Hang 6 on. Both of you need to make sure. 7 BY MR. TREMBATH: 8 Q. Do you know a year? 9 A. I do not. 10 Q. Do you know a decade? 11 A. No. 12 Q. If you had told someone that it was 1995, would 13 that have been an error? 14 MR. STALEY: Calls for speculation. 15 THE WITNESS: It would be a guess. I'm 16 not going to guess. 17 BY MR. TREMBATH: 18 Q. Well, would you have told someone writing an 19 article about your refrigerant a lie? 20 MR. STALEY: Calls for speculation. 21 THE WITNESS: I don't have any 22 recollection of that. 23 BY MR. TREMBATH: 24 Q. Okay. Would it be fair to say that something 25 you wrote before today might be more -- well, about when	Page 105 1 A. Not prior to using them, no. 2 Q. Okay. How about Mr. Gabor? Same -- same thing? 3 MR. STALEY: Objection. Vague and 4 compound. 5 THE WITNESS: I don't know that I would 6 have asked Andy a heat of vaporization. It would 7 have been outside of his specialty. 8 BY MR. TREMBATH: 9 Q. Did you ask Mr. Gabor anything else about -- or 10 anything at all about your creation of 421a before you 11 finalized on it? 12 A. No. These guys worked for me, so conversations 13 that I can recall -- I can't recall a conversation, a 14 specific date and time. I'm sorry for that. But I've 15 already stated testimony that I would've drawn strength 16 from people around me that I could trust with specific 17 questions; not as to an invention, but what do you think 18 about these two or these three or these four. 19 So could there have been a conversation? Sure. 20 Q. Oil. The oil that you used in 421a, what did 21 you start out using in 421a? 22 MR. STALEY: I want to be clear. Are we 23 talking about the commercial product or are we 24 asking about -- 25 MR. TREMBATH: When -- when he's testing.

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1 THE WITNESS: When I was testing? 2 BY MR. TREMBATH: 3 Q. Uh-huh. 4 A. The first testing point didn't have a lubricant 5 in it, although it was going to have one in it. And I 6 had already started the conversations with Virginia KMP, 7 an oil manufacturer, well recognized in the HVAC and 8 refrigeration industry, and Shrieve -- actually, let me 9 clarify that. Nu-Calgon is who I made this phone call 10 to. This fell outside of their production capabilities, 11 and they introduced me to Shrieve Chemical, who 12 manufactured all of their -- their products and 13 suggested that I deal directly with Shrieve Chemical. 14 Q. Who did you deal with at Shrieve? 15 A. Wow. I can't recall the guy's name. If I had 16 my phone, I could look it up instantly for you, but I'm 17 prevented from using that here. If it comes to me, I 18 will -- I will tell you. 19 Q. I appreciate that. 20 A. I will tell you. 21 Q. So you knew you wanted to use an oil in your new 22 blend. What -- how did you select the oil for your 23 blend? 24 A. Well, you already know what my experience was 25 with my other product. In a cost savings mode, we	1 A. Yes. 2 Q. How so? 3 A. At the very minimum, as it grew in importance 4 and grew in that it was widely recognized, very 5 well-accepted Number 1 product in my mind, I started 6 looking at ways to protect that. So the original 7 versions of, say, ROYCO -- or not ROYCO. Excuse me -- 8 Zerol, which is what we still use to this day, Shrieve 9 put an inner chemical in it, a marker, so that I could 10 sample it anywhere in the world and tell if it was mine, 11 preventing somebody from using my oil. 12 Q. Have you always used Zerol -- Zerol oil in your 13 421a? 14 MR. STALEY: Objection. Vague. 15 THE WITNESS: I cannot tell you with 16 certainty what day I went to purely Zerol 30. I 17 just can't remember that date. It is what we use 18 today. 19 BY MR. TREMBATH: 20 Q. But there was something you used before Zerol 21 30; is that fair? 22 A. It's not fair only in that I cannot tell you 23 what and if it was anything. I just don't remember 24 that. I mean, we're talking lots of time. Don't fix 25 what ain't broke.
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1 owners try to minimize products as much as possible. I 2 would have wanted and started with whatever I used on 3 RB-276 and/or ultimately the 420 product until such time 4 that I decided that this one that I was trying met all 5 the criteria, and then I would have reverse engineered 6 all of the other products to use one -- one lubricant if 7 and when possible. And in this case, it was very 8 possible. I would now use one oil -- 9 Q. What -- 10 A. -- in -- in all three products. 11 Q. What did you start using with 421a? What was 12 the first product? 13 A. I don't recall, only because it would have been 14 what I was using with RB-276. 15 Q. Okay. Did you play with the percentages of the 16 oil in the system as well as the percentages of the 17 gasses? 18 A. No. 19 Q. Why not? 20 A. I'm lazy. 21 Q. Okay. 22 A. I used 2 percent in the original product. It 23 seemed like a good number to me. 24 Q. Okay. Has the oil you used in 421a changed over 25 time in -- in your commercial product?	1 Q. The patent -- the patents talk about the ROYCO 2 oil. Did you ever use the ROYCO oil in your blend? 3 MR. STALEY: Objection. Vague. 4 THE WITNESS: I just don't recall. 5 BY MR. TREMBATH: 6 Q. When did you first sell your refrigerant blend, 7 your 421a refrigerant blend? 8 A. I don't remember the day. 9 Q. Do you remember who you sold it to? 10 A. I do not. 11 Q. Would you have any records that would show when 12 you first sold it? 13 MR. STALEY: Objection. Vague. 14 THE WITNESS: If I did and counsel 15 requested those informations, they've already been 16 turned in to them. 17 BY MR. TREMBATH: 18 Q. So let me ask you the question a little bit 19 differently. If I came to you at your shop and I said, 20 Mr. Ponder, I -- I want to -- I really want to know when 21 did you first sell R421a, how could you help -- it -- 22 are there any documents at your shop that would help me 23 figure out who you first sold it to? 24 MR. STALEY: Objection. Hypothetical. 25 Objection. Vague.

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1 THE WITNESS: I wouldn't know until I 2 went and looked. 3 BY MR. TREMBATH: 4 Q. Where would you look? 5 A. Filing cabinets, sales orders, my computer 6 maybe. Filing cabinets. 7 Q. How far back do your records go as far as sales 8 are concerned? 9 MR. STALEY: Objection. Vague. 10 THE WITNESS: I don't know that answer as 11 I sit here. 12 BY MR. TREMBATH: 13 Q. Were any samples of your refrigerant blend used 14 outside of your facility and outside of your 15 mother-in-law's window unit and your house, in the 16 process of -- of testing your -- your -- your blend? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: Not that I can recall. 19 BY MR. TREMBATH: 20 Q. Let's talk briefly, because we all want to go to 21 lunch here, about your -- your relationship with 22 Dynatemp. How did you come to decide to have Dynatemp 23 sell your 421a product? 24 A. Well, I didn't go to Dynatemp. They came to me. 25 Q. Tell me how that happened.	1 unique things that they did not have. And we were 2 able to agree what each would do, and so, 3 therefore, we went forward. 4 BY MR. TREMBATH: 5 Q. What did they have that you didn't have? 6 A. They had processes where -- and contacts whereby 7 they could order raw materials, contacts that I didn't 8 have. Once this thing was to take off, it would be a 9 massive amount of product coming into my location. We 10 had the blending capability; that wasn't a problem. We 11 had the packaging capability; that wasn't the problem. 12 It was getting the raw materials here, was my first 13 problem. 14 And then they had a sales organization in place 15 already that, once the product was produced and 16 packaged, that -- that they could in fact turn the water 17 faucet on and start selling product. 18 Q. Anything else? 19 A. No. 20 Q. How did you sell your product before you started 21 working with Dynatemp? Your products, plural. How did 22 you sell stuff? 23 MR. STALEY: Objection. Vague. 24 THE WITNESS: I've had some sales reps, 25 manufacturers reps that sold my product. Dynatemp
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1 A. They were using 417a, and Rodia licensed another 2 company to use 417a and call it a different product, and 3 that was going to create confusion in the marketplace. 4 And they were looking for a 22 alternative that they 5 could sell and have a little more control of 6 competition. 7 Q. Do you recall -- go ahead, if you -- 8 A. And that was me. 9 Q. Okay. Do you recall who from Dynatemp came to 10 you? 11 A. Dynatemp and I -- both companies were at trade 12 organization meetings all the time. We ran into each 13 other all the time. So a beer here, a beer there; hey, 14 we need this; what have you got; what can we do; what 15 can y'all do. And that's how the conversation started. 16 Q. And who did you have that conversation with? 17 A. With Hal Kivlan, Brad's dad, and Barry Goodman 18 at the time, the president of Dynatemp. 19 Q. And at some point you decided to enter into a 20 business arrangement with Dynatemp. Why did you do 21 that? 22 MR. STALEY: Objection. Compound. 23 THE WITNESS: At the time, it seemed like 24 a great thing to do. They had unique abilities 25 that I did not have. I, on the other hand, had	1 was more of a nationwide organization, where I was 2 more regional. 3 BY MR. TREMBATH: 4 Q. So describe for me your memory of the initial 5 deal you struck with Dynatemp. 6 A. They came to my office. 7 Q. They? Who? 8 A. Dynatemp came to my office. 9 Q. Barry? Hal? 10 A. Barry was there. Hal was there. I don't 11 remember if there was anybody else from Dynatemp. There 12 could have been, but I don't remember. I'm sorry. And 13 myself and my son. And we were upstairs in the little 14 room I call my boardroom, and we compared customer 15 master lists. We were selling to these guys. Wow, you 16 sell to those guys? We don't sell to those guys. Well, 17 guess what, I don't sell to these guys. 18 So Mr. Kivlan, Hal, said, I tell you what, we'll 19 provide the raw materials. You order them. You tell us 20 what you need and we'll have them show up at your 21 location. And when we sell this product, we will pay 22 back the money for the raw materials, and we'll see what 23 you sold and we'll see what I -- we sold, and we'll 24 split -- we'll minus out the cost and we'll split it 25 50/50.

Page 114 1 And that's what we did for a number of years, 2 successfully. 3 Q. Did that change over time? 4 A. It did. 5 Q. How did it change? 6 A. As the product grew and we made more and more 7 and more, it became my belief that they were marking up 8 the raw materials. And so subsequently I said, Okay, 9 I'll get my own raw materials, which will prevent you 10 from marking it up. 11 And so I ended that agreement, that verbal 12 agreement, that day. 13 Q. Was there any memorialization of the agreement? 14 A. I think -- I don't understand memorialization. 15 I'm sorry. 16 Q. Was it ever written down? 17 A. No, sir. 18 Q. Okay. So you ended that agreement, and then 19 what was the next agreement? Was there a next 20 agreement? 21 A. There was not a next agreement, other than the 22 fact that I agreed to sell them. They had done a 23 wonderful job. I didn't have a problem with their sales 24 capability. And such a bad guy that I was, I kept the 25 price that they were accustomed to paying to be the same	Page 116 1 Q. But you were no longer in sort of a joint 2 venture kind of thing? 3 A. Correct. 4 Q. You -- it was more you're going to make it, 5 you're going to sell it to me, I'm going to sell it and 6 I'll make whatever I make, and you do whatever you do? 7 A. Correct. 8 Q. Okay. And -- and you said you held the price 9 the same. So they could have made just as much as they 10 were making when you were doing the 50/50 thing? 11 MR. STALEY: Objection. Vague. 12 BY MR. TREMBATH: 13 Q. Right or not? I don't mean to be dense. I'm 14 just trying to understand what position were they in 15 after you terminated the 50/50 deal. 16 A. So the original agreement, original verbal 17 agreement, the raw materials, they came to me and said, 18 Ken, our 125 costs this, our 134a costs this, how much 19 are you paying for the lubricant, it costs this. You 20 add those together. That becomes the cost of the 21 product, correct? 22 Q. Uh-huh. 23 A. Okay. At the end of that day, the end of that 24 verbal agreement, with me supplying my own gasses, 25 continuing to supply my lubricant, packaging, cylinders,
Page 115 1 price so that they experienced no bumps in the road. 2 Q. So did they -- did they still get the 50/50 3 split amount? 4 A. No. The cost of the product remained the same. 5 Q. I'm trying to understand. So -- so initially it 6 was 50/50 -- subtract cost of goods, 50/50 split? 7 A. Right. 8 Q. And now you're -- you're not subtracting the 9 cost of the goods anymore, you're -- you're picking up 10 the cost of goods and you're selling them product. At 11 what price, the same -- you said the same price you were 12 selling it to them before? 13 A. Correct. 14 Q. So then they could still make their 50 percent? 15 Is that -- is that the idea? 16 A. We didn't know how much they made. They didn't 17 have to give me anything that they made. I didn't give 18 them anything that I made. 19 Q. Okay. So after the 50/50 agreement, it became 20 more of an arm's-length transaction kind of thing, 21 right? 22 A. Okay. 23 Q. Is that right or not? 24 A. Well, I'm not sure I understand the term "arm's 25 length," but --	Page 117 1 shrink wrap, pallets, whatever that number was, I 2 honored that number, didn't go up or down. I honored 3 that number to them so that in the marketplace they 4 would experience no problems continuing to sell the 5 product from a cost standpoint of view. 6 Q. So from their perspective, the only change, 7 really, is they don't get 50 percent of what you sell? 8 A. That was the majority difference. And the 9 markup we believe that they were making on the raw 10 materials. 11 Q. Okay. Okay. And did that agreement stay in 12 place until the end or was there a subsequent agreement 13 or -- 14 A. That -- 15 Q. Strike that. 16 There was -- you said there wasn't an agreement, 17 it's just you were selling to them. 18 A. Right. We were a manufacturer. They were a 19 distributor. 20 Q. Okay. Did that ever change? 21 A. It didn't until we had our meeting in October 22 of 2019, I think, and they issued me an ultimatum that 23 they would start paying a royalty. And I said, Is there 24 a question in there somewhere? 25 And -- and then it went downhill from there.

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1 Q. Did your pricing go up over time? 2 A. No, it did not. 3 Q. So your pricing -- for clarity, your pricing 4 stayed the same from the time of the 50/50 deal until 5 the very end? 6 A. Let me clarify that. I would have to check to 7 see if that's the case. My memory is -- my recollection 8 is the price had stayed the same. But I would really 9 need to go look that up. 10 Q. Okay. Did -- did you ever throttle back or 11 limit the amount of product that Dynatemp could get from 12 you? 13 A. Not intentionally. If there was a shortage, you 14 could -- you could make the statement that we weren't 15 able to get our product. But if that was a shortage 16 that I didn't have control over -- but personally me 17 going, Hey, Dynatemp, you're going to get 20 percent 18 less this year than you got last year or -- no, that 19 never happened. 20 Q. Did you have other distributors than Dynatemp 21 from the time you ended the 50/50 deal until the deal 22 with Dynatemp ended? 23 A. Yes. 24 Q. Who were they? 25 A. I'd have to go back and look at records to be	1 MR. STALEY: Ken, generally in these kind 2 of questions, I'm going to ask you to -- caution 3 you against revealing any attorney-client 4 communications. Answer the question to the extent 5 you can -- you don't reveal those conversations. 6 THE WITNESS: What was my role -- the 7 question was, what was my role in the patent 8 process. 9 BY MR. TREMBATH: 10 Q. Yeah. What did you do during the -- in the 11 patent process? 12 MR. STALEY: Same obje- -- same -- same 13 caution. 14 THE WITNESS: I would have contacted my 15 patent attorney firm and said -- 16 MR. STALEY: Again, I'm just going to 17 caution you, we don't want you to reveal the 18 substance of any communication either from you to 19 the firm or from the firm to you. 20 BY MR. TREMBATH: 21 Q. For clarify, I'm not looking for what you told 22 your lawyers. I'm looking for the role you played. Did 23 -- did they ask you questions about how the product 24 worked? How -- how did that all happen? 25 MR. STALEY: I think that's an
Page 119	Page 121
1 dependable. 2 Q. Well, tell me the ones you remember. Lenz? Was 3 Lenz a distributor? 4 MR. STALEY: Objection. Vague. 5 THE WITNESS: You know, I just don't 6 know. I'd have to go back and look. 7 BY MR. TREMBATH: 8 Q. You don't -- how would I find that out if I 9 wanted to look in your records? Where would I have to 10 look? 11 A. You'd have to beg me for the information, and 12 then I would give it to counsel, and counsel would 13 funnel it over to you, which I would be glad to do. 14 Q. Okay. 15 A. If it exists. It most likely has already been 16 turned over to counsel. 17 Q. Yeah. I just didn't know where to find that 18 information, so... 19 When you applied for a patent for 421a, describe 20 for me your involvement in that process. 21 MR. VANORE: This is a new topic, and 22 it's 12:44. 23 MR. TREMBATH: Give me five minutes. 24 MR. VANORE: This is -- okay. But I'm 25 just saying. All right.	1 attorney-client communication right there. 2 MR. MORRIS: He can answer yes or no. 3 MR. STALEY: He can answer -- he can 4 answer yes or no. 5 MR. TREMBATH: Yeah, he can answer yes or 6 no. And then -- we're not going to fight about it. 7 MR. STALEY: I know. 8 MR. TREMBATH: I wonder, if you ask him 9 how the product works and it's intended to go into 10 a patent application, how that falls under 11 attorney-client privilege. 12 MR. STALEY: And we can fight about that 13 later. 14 MR. TREMBATH: I know we can. 15 MR. STALEY: Yeah. 16 BY MR. TREMBATH: 17 Q. Generally speaking, what did you do? Did you -- 18 you took -- did you give -- did you have an invention 19 disclosure statement of some kind? 20 A. I did not. 21 Q. Did you call up your attorney and say, I got 22 this idea? 23 MR. STALEY: Like -- I mean, you're 24 asking him if he said a specific thing. 25 BY MR. TREMBATH:

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1 Q. How -- how did you let your lawyers know what to 2 put in your patent application? 3 A. I don't recall. 4 Q. Did you write your patent application? 5 A. I did not. 6 Q. Did you review it? 7 A. Did I review the application? 8 Q. Yes. 9 MR. STALEY: Objection. Vague. 10 BY MR. TREMBATH: 11 Q. Did you review the patent application that 12 resulted in the 421a family of patents? Any of the 13 patent applications. 14 A. That was so long ago. I don't recall. 15 Q. Okay. 16 A. I wouldn't have understood them if I had. 17 MR. TREMBATH: Let's take a break. 18 THE VIDEOGRAPHER: This is the end of 19 Media 2. The time is 12:47 p.m. We're now off the 20 record. 21 (A luncheon recess transpired.) 22 THE VIDEOGRAPHER: This is the beginning 23 of Media 3. The time is 1:55 p.m. We're back on 24 the record. 25 BY MR. TREMBATH:	1 Patent, was marked for identification.) 2 BY MR. TREMBATH: 3 Q. Do you recognize the document? 4 A. Specifically. No. 5 Q. For the record, Exhibit 1 bears production 6 R-142 -- I'm sorry -- R-114 through 142. 7 If you could look at page R-116. 8 A. (Complying.) 9 Q. At the top of the page it says "provisional 10 application for patent cover sheet," and under 11 inventors, it lists Kenneth M. Ponder and Steffan 12 Thomas, Jr. Do you see that? 13 A. I do. 14 Q. Did you file a provisional patent application 15 for your R421a product? 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: I would -- I would defer to 18 counsel that -- my patent attorneys would have 19 handled that. I specifically did not. 20 BY MR. TREMBATH: 21 Q. Did you ever review what they drafted? 22 A. I don't recall. It was over -- years ago. 23 Q. I understand. 24 On page 1 -- well, how did your patent attorney 25 get the information to put into this patent application?
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1 Q. Welcome back. 2 You indicated that you had a building initial -- 3 that you used the R421a in as -- as -- as a fluid in 4 your compressor. Where was that building located? 5 MR. STALEY: Objection. Vague. 6 THE WITNESS: 610 McFarland 400 Drive. 7 BY MR. TREMBATH: 8 Q. Is that a building owned by you? 9 A. It is. 10 Q. Was it owned by you? 11 A. It was at the time as well. 12 Q. Okay. And you said you put R421a in your 13 mother-in-law's window unit? 14 A. Correct. 15 Q. What address? 16 A. Wow. It's on Lavender Road in Athens, Georgia. 17 Q. Did she own the house? 18 A. She did. 19 Q. Did you tell her that you'd put the R421a in the 20 -- in her window unit? 21 A. I didn't originally. 22 Q. All right. I'm going to pass you what has been 23 marked as Exhibit 1. 24 (Exhibit 1, United States Patent and 25 Trademark Office Provisional Application for	1 MR. STALEY: Can you be clear about what 2 page you're talking about? 3 MR. TREMBATH: I'm talking -- I'm on page 4 1. But I just -- I want to know about the 5 provisional application generally. 6 MR. STALEY: Can we use the Bates number 7 today? Maybe -- 8 MR. TREMBATH: The Bates -- 9 MR. STALEY: You can do what you want, 10 but I'm saying if you want to -- 11 MR. TREMBATH: I'm sorry. Sure. 119 is 12 the Bates number. 13 THE WITNESS: I don't recall how they got 14 the information, the process. 15 BY MR. TREMBATH: 16 Q. Would it have come from you? 17 A. I don't recall. 18 Q. Would Mr. Thomas have talked to the patent 19 attorneys about the invention? 20 A. Not to my knowledge. 21 Q. Okay. So then how would Mr. Deveau, who drafted 22 this, apparently -- how would he get the information to 23 know what to put in it if it didn't come from you? 24 MR. STALEY: Objection. Lacks 25 foundation. Vague.

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1 THE WITNESS: I do not know the mechanism 2 by which he got the information. 3 BY MR. TREMBATH: 4 Q. You would agree with me that someone had to tell 5 him what to put in here? 6 A. I would agree with you that he got the 7 information somehow. 8 Q. And you don't recall if it came from you or from 9 someone else? 10 A. No. 11 Q. Okay. On Bates Number 119, R-119, bottom of the 12 first paragraph, it reads, "The lubricant is soluble in 13 both the mixture of the invention and refrigerant R22." 14 MR. STALEY: Objection. Lacks 15 foundation. 16 BY MR. TREMBATH: 17 Q. Do you see that at the bottom of the first 18 paragraph? 19 A. I do. 20 Q. Is that true? 21 MR. STALEY: Objection. Lacks 22 foundation. 23 THE WITNESS: I don't recall. I don't 24 know what lubricant they're talking about in this 25 context in this paragraph.	1 refrigerant." 2 How -- this is your patent application, and for 3 -- in fairness, the lubricant mentioned in here is the 4 ROYCO lubricant. How did you know that it was soluble 5 in both the mixtures of the invention and R22, or did 6 you? 7 MR. STALEY: Hold on. Objection. Lacks 8 foundation. Are you testifying that the lubricant 9 referred to in that sentence is ROYCO. 10 MR. TREMBATH: No. I said ROYCO is in -- 11 is what's described in this application. 12 MR. STALEY: You told him that your -- 13 the lubricant in that sentence is the ROYCO 14 lubricant. 15 BY MR. TREMBATH: 16 Q. For clarity, let's look at R-128, Example 1. 17 A. I've read it. 18 Q. Okay. So let's -- let's talk about that 19 paragraph for the moment. Was there -- were there tests 20 done to give you Table 1? 21 MR. STALEY: Objection. Vague. 22 THE WITNESS: I believe so. 23 BY MR. TREMBATH: 24 Q. Who did those tests? 25 MR. STALEY: Objection. Vague. Lacks
Page 127	Page 129
1 BY MR. TREMBATH: 2 Q. Yeah. It's your application, so -- 3 A. I understand. 4 Q. Yeah. So I want to know what it means -- if you 5 didn't invent it, if somebody else did, that's fine. 6 I'd like to know that too. If Mr. Deveau is the 7 inventor, I'm fine with that. But I want to know what 8 you intended. And you can read the whole paragraph if 9 you'd like. Take your time. I'm not trying to force 10 anything on you. I just want to know what is meant by 11 that last sentence. 12 MR. STALEY: Objection. Lacks 13 foundation. 14 BY MR. TREMBATH: 15 Q. Okay. Let's go back to the beginning, 16 Mr. Ponder. I want you to -- 17 A. Did -- 18 Q. Go ahead. 19 A. Pardon me. Do you want me to read the paragraph 20 or not? 21 Q. I do, yeah. 22 A. Okay. I've read it. 23 Q. All right. The last sentence reads, "The 24 lubricant is soluble in both the mixture of the 25 invention and the refrigerant R22, chlorodifluoromethane	1 foundation. 2 THE WITNESS: I don't recall who exactly 3 did the test. 4 BY MR. TREMBATH: 5 Q. Okay. So let's back up. Were tests done with 6 ROYCO 2302 in relation to your -- your 421a product? 7 MR. STALEY: Objection. Vague. 8 THE WITNESS: It appears so. 9 BY MR. TREMBATH: 10 Q. Who did those tests? 11 MR. STALEY: Objection. Vague. 12 THE WITNESS: I don't remember exactly 13 who did the test. The company would have been, I 14 believe, Inte- -- Integral Sciences, Incorporated. 15 BY MR. TREMBATH: 16 Q. Integral? 17 A. ISI. 18 Q. Where is ISI? 19 A. Columbus, Ohio. 20 Q. The results that are exhibited in Table 1 on 21 R-128, do you know how the test was done? 22 A. I do not -- 23 Q. Were you there -- 24 A. -- recall. 25 Q. -- when the test was done?

Page 130 1 A. I was not there. 2 MR. STALEY: Were you done answering your 3 question? 4 THE WITNESS: (Witness moves head up and 5 down.) 6 BY MR. TREMBATH: 7 Q. Why did you have -- I assume this test was done 8 at your request. 9 MR. STALEY: Objection. Speculation. Is 10 a question pending? 11 MR. TREMBATH: Yes. 12 BY MR. TREMBATH: 13 Q. Was the test done at your request? 14 A. Yes. 15 Q. Why did you have the test done? 16 A. It appears that the reason for the test was to 17 verify solubility of the ROYCO 2302 to a mixture of 18 58/42 percent and/or R22. 19 Q. And the -- yeah, is that -- was that a mixture 20 of 58 percent 134a and 42 percent 125 that you had 21 tested? 22 A. According to Example 1, that's what they're 23 indicating. I was not there, so I do not know. 24 Q. Did you ever have a blend that you know of that 25 was 42 percent 125 and 58 percent 134a?	Page 132 1 BY MR. TREMBATH: 2 Q. And I'm assuming room temperature. 3 MR. STALEY: Objection. Vague. 4 THE WITNESS: I don't know. 5 BY MR. TREMBATH: 6 Q. You don't know if your 421a blend is a gas at 7 room temperature outside of a pressurized container? 8 A. Is that the question? 9 Q. Yeah. 10 A. That -- is 421a a -- 11 Q. A gas outside -- 12 A. -- a vapor? 13 Q. -- of a pressurized container, yeah. 14 A. Outside of a pressurized container? 15 Q. At room temperature. 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: Yes. 18 BY MR. TREMBATH: 19 Q. At the bottom of 128 it says -- you can -- you 20 can read the first sentence. It references the normal 21 operating range of air conditioners. I just want to 22 know what your understanding is of what the normal 23 operating range of air conditioners is. 24 A. I would have to look those numbers up somewhere 25 to see what the normal operating range is, since I
Page 131 1 A. With certainty, I don't recall. 2 Q. Okay. It says -- on R-128 it says, "The mixture 3 was introduced under pressure to maintain the liquid 4 state." 5 That -- see the last line in that paragraph 6 under Example 1? 7 MR. STALEY: Is there a question? I'm 8 sorry. 9 MR. TREMBATH: Yeah. 10 BY MR. TREMBATH: 11 Q. Why would you want to maintain it in the liquid 12 state under -- why would you need pressure to maintain 13 the fluid in a liquid state? 14 MR. STALEY: Objection. Compound 15 question. 16 THE WITNESS: I don't know the answer. 17 BY MR. TREMBATH: 18 Q. Okay. Maybe the note is helpful. The -- it 19 reads, "The color of the fluid remained the same as the 20 barrette was emptied. The expelled gas deposited the 21 oil onto a test panel." 22 If you didn't have your refrigerant in a 23 pressurized container, it would be a gas, would it not? 24 MR. STALEY: Objection. Vague. 25 Objection. Lacks foundation.	Page 133 1 haven't done it since so many years ago. I just don't 2 have that committed to memory any longer. 3 Q. At the top paragraph on page R-128, the last two 4 sentences read, "The most preferred ROYCO 2302 5 lubricants, on the other hand, are soluble in 6 tetrafluoroethane and a 7 tetrafluoroethane/pentafluoroethane mixture. This 8 solubility allows the replacement refrigerant blend to 9 lubricate the air-conditioning system, preventing 10 damages to the compressor and component parts of the 11 system." 12 Is that true? 13 MR. STALEY: Objection to the extent it 14 mischaracterizes the document. 15 THE WITNESS: It appears in this document 16 that that is true. 17 BY MR. TREMBATH: 18 Q. In your knowledge -- this is your document, this 19 is your provisional patent application -- is that a true 20 statement? 21 A. I would have to go back to my patent attorneys 22 to see all the information. 23 Q. Okay. Do you know if -- if in this provisional 24 patent application it says anything about using a 25 naphthenic oil to thin the oil in the compressor?

Page 134 1 A. I'm not aware of that. I'm not -- 2 MR. STALEY: Objection. Vague. 3 Remember, Mr. Ponder, give me a second, 4 please. 5 BY MR. TREMBATH: 6 Q. Do you know why ROYCO 2302 was selected for the 7 test on R-124 -- 8 A. I was -- 9 Q. 128. I'm sorry. 10 MR. STALEY: Objection. Vague. 11 THE WITNESS: That was a lubricant that I 12 was using currently. 13 BY MR. TREMBATH: 14 Q. That was the lubricant you were using at the 15 time you filed your provisional patent application? Is 16 that what you're saying? 17 A. That's not what I'm saying at all. 18 Q. Okay. What are you saying? 19 A. What I'm saying is that the ROYCO 2302 was a 20 lubricant that I was currently using in applications. 21 Q. Currently at the time this was drafted? 22 A. Uh-huh. 23 Q. Right? 24 A. Correct. 25 Q. Okay. On page 121, R-121, in the second full	Page 136 1 40 -- of 46/50/4 mixture of pentafluoroethane, 2 tetrafluoroethane, and butane? 3 A. If my counsel had asked me that question, I 4 would've provided that information to them. 5 Q. How would your counsel have known to put that 6 information in this application if you hadn't told him? 7 A. No idea. You'd have to ask them. 8 Q. Did you tell counsel that -- okay. You 9 represent in the last sentence here, "None of these 10 replacements contain a lubricant when produced." 11 You see that? 12 A. I do. 13 Q. Did you ever tell counsel that there were 14 lubricant -- or refrigerants that had lubricants in them 15 when they were produced? 16 MR. STALEY: Objection. This calls for 17 the disclosure of attorney-client communication. 18 MR. TREMBATH: Instruct him not to 19 answer. Instruct him not to answer and I'll move 20 on. 21 MR. STALEY: Ken, if the information that 22 he asks you calls for the disclosure of 23 attorney-client communications, I'm going to 24 instruct you not to answer the question. 25 BY MR. TREMBATH:
Page 135 1 paragraph, you talk about refrigerants. 2 MR. STALEY: Hold on. Let's make sure. 3 Ken, do you understand what he says when he says -- 4 when he says "R-121," do you know what he means by 5 that? 6 THE WITNESS: The bottom document number. 7 MR. STALEY: Jon, if I may. 8 These are the Bates numbers here, so when 9 he refers to these today, we're looking at -- look 10 for these numbers right there. 11 THE WITNESS: Okay. 12 MR. STALEY: I don't know that he's been 13 educated on -- on that process. 14 BY MR. TREMBATH: 15 Q. How did the person drafting this application 16 know to put that information in the application? 17 MR. STALEY: Objection. Vague. And lack 18 of foundation. 19 THE WITNESS: I don't know what the 20 mechanism was. You'd have to ask counsel that 21 worked for me at the time. 22 BY MR. TREMBATH: 23 Q. Okay. Did you tell your law firm that 410a was 24 a 50 -- 50/50 mixture of difluoromethane and 25 pentafluoroethane, that R17 -- or 417 was a mixture of	Page 137 1 Q. And you'll follow the advice of your counsel? 2 A. (Witness moves head up and down.) 3 Q. Yes? 4 MR. STALEY: Are you asking him? 5 MR. TREMBATH: He -- he didn't say yes. 6 I want to make sure he gives an audible response. 7 MR. STALEY: I agree. 8 THE WITNESS: I will say yes, that I will 9 follow counsel's direction. 10 BY MR. TREMBATH: 11 Q. Thank you. 12 If you could look at R-122. 13 A. (Complying.) 14 Q. In the second paragraph -- if you could read 15 that. When you're through, I'll ask you a question 16 about it. 17 MR. STALEY: To be clear, do you mean the 18 second full paragraph or the second paragraph -- 19 MR. TREMBATH: The second full paragraph, 20 yes. 21 MR. STALEY: -- on the page? 22 THE WITNESS: I've read it. 23 BY MR. TREMBATH: 24 Q. All right. The -- at the tail end, it says 25 you're going to retrofit a system compatible with some

Page 138 1 kind of refrigerant gas. You said before that you were 2 looking for pressure temperature -- no. You didn't say 3 pressure temperature curve. You said high heat of 4 vaporization, and what was the other criteria? And to 5 match the PT curve of 22. Were those your two criteria? 6 MR. STALEY: I don't see any of that in 7 the second full paragraph. 8 MR. TREMBATH: I understand that. I'm 9 asking -- let me get my notes. 10 MR. MORRIS: I think he misspoke. I 11 think he was talking about this -- the first full 12 paragraph. 13 MR. STALEY: That's why I asked the 14 question. 15 MR. MORRIS: Let me make sure the record 16 is clear in these questions, what we're referring 17 to. 18 BY MR. TREMBATH: 19 Q. I'll -- I'll ask you again. The things you were 20 looking for when you were thinking about 421a were 21 thermal capacity, heat of -- of vaporization, and what 22 were the other things? 23 A. A similar -- excuse me. A similar -- 24 MR. STALEY: Hold on. Objection. 25 Mischaracterizes the witness's prior testimony	Page 140 1 THE WITNESS: I don't believe I thought 2 at all about R123. 3 BY MR. TREMBATH: 4 Q. Why wouldn't that have been something you 5 would've thought about? 6 MR. STALEY: Same objections. 7 THE WITNESS: R123 would be a 8 low-pressure refrigerant application not well 9 suited for a 22 replacement. 10 BY MR. TREMBATH: 11 Q. Why is that? 12 A. Its boiling point is so low -- excuse me -- so 13 high. 14 Q. Okay. So it wouldn't work in a -- 15 A. No. 16 Q. -- R22 system? 17 A. (Witness moved head from side to side.) 18 Q. You mentioned before that sometimes water gets 19 in refrigeration systems? 20 A. (Witness moves head up and down.) 21 Q. Does it act as a refrigerant in the 22 refrigeration system? 23 MR. STALEY: Objection. Vague. 24 BY MR. TREMBATH: 25 Q. I'll clean it up. I'll clean it up.
Page 139 1 today. 2 BY MR. TREMBATH: 3 Q. I'm not trying to characterize it. I want to 4 know what -- what -- heat of vaporization. 5 MR. TREMBATH: So can I see your notes 6 again? Sorry. 7 BY MR. TREMBATH: 8 Q. I believe you said previously you wanted a PT 9 curve that would -- was closer to R22 and you wanted 10 greater heat of vaporization than what was existing. Is 11 that fair? 12 A. That's fair. 13 MR. STALEY: Objection to the extent it 14 mischaracterizes his prior testimony. 15 Again, Ken, I know it's hard. Give me -- 16 try and give me one -- just one moment to -- before 17 you answer, please. 18 BY MR. TREMBATH: 19 Q. Okay. The first full paragraph on R-22, it 20 talks about, at the end, retrofitting a system 21 compatible with some kind of refrigerant gas. Now, my 22 question would be, did you think about R123? Because I 23 think it has a really high heat of vaporization. 24 MR. STALEY: Objection. Lacks 25 foundation. Objection. Vague.	Page 141 1 So if we're talking about a high-pressure 2 system, if water gets in the system, does it act as a 3 refrigerant? 4 MR. STALEY: Again, objection. Vague. 5 THE WITNESS: No. 6 BY MR. TREMBATH: 7 Q. Why not? 8 A. That's not -- 9 MR. STALEY: Same objections. 10 THE WITNESS: That's not its job in a 11 typically designed system. 12 BY MR. TREMBATH: 13 Q. Does the lubricant you put in R421a -- does it 14 have a vapor pressure in a refrigerant system? 15 MR. STALEY: Objection. Lacks foundation 16 and vague. 17 THE WITNESS: Not that I recall. 18 BY MR. TREMBATH: 19 Q. Does the -- the lubricant that you use in R20 -- 20 in 421a, does it have a vapor pressure? 21 MR. STALEY: Objection. Mischaracterizes 22 prior testimony and -- and lacks foundation. 23 MR. TREMBATH: I'm not characterizing any 24 testimony. I'm asking the question. 25 BY MR. TREMBATH:

Page 142 1 Q. Does the lubricant that you use in 421a have a 2 vapor pressure? 3 MR. STALEY: Lacks foundation. 4 THE WITNESS: I don't recall. I haven't 5 looked at that in so long. 6 BY MR. TREMBATH: 7 Q. Okay. Please look at R-127, the bottom 8 paragraph. 9 A. (Complying.) 10 Q. The paragraph that begins "Existing refrigerant 11 R22-based air-conditioning systems." 12 A. (Complying.) 13 Okay. I read that. 14 Q. Okay. It says the -- this -- it's talking about 15 a vegetable or hydrocarbon mineral oil used to lubricate 16 the compressor. And the next sentence reads, "This oil 17 has a very low vapor pressure." 18 Do you see that? 19 A. I do see that. 20 Q. So any oil in a refrigeration system is going to 21 have some vapor pressure, right? 22 A. I don't know that. 23 Q. Okay. The oil you referenced here has a vapor 24 pressure, correct? 25 A. According to this --	Page 144 1 A. I've had my sons create it -- my son recreate 2 these PT charts. Andy Gabor has created PT charts for 3 me. 4 Q. Do you recall -- this particular chart that 5 shows up in your provisional application, do you recall 6 who created it? 7 A. I do not. 8 Q. Is this a liquid -- or a pressure or a vapor 9 pressure chart? 10 MR. STALEY: Objection. Vague. Lacks 11 foundation. 12 THE WITNESS: It does not say, so I would 13 not be able to ascertain without looking at the 14 parameters of the test. 15 BY MR. TREMBATH: 16 Q. Okay. I did -- let's pick 150 degrees 17 Fahrenheit on the chart. And if you start at -- with 18 the P-55/45 mixture and then you go to a P-60/40 19 mixture -- I'm sorry -- a 60/40 mixture, the pressure 20 goes up. Is that a fair read of the chart? 21 A. It is. 22 Q. And is it a fair read of the chart that -- then 23 that I would expect if I increase -- now, for clarity, 24 we're talking about your invention. This provisional 25 application, I think, juxtaposes -- reverses the
Page 143 1 MR. STALEY: Objection. Lacks 2 foundation. 3 THE WITNESS: According to this -- these 4 sentences, it appears to have, but I don't recall 5 that. Counsel would be a better informant. 6 BY MR. TREMBATH: 7 Q. If it has a vapor pressure, would it act as a 8 refrigerant in a refrigeration system? 9 MR. STALEY: Objection. Lacks 10 foundation. 11 THE WITNESS: I don't think so. 12 BY MR. TREMBATH: 13 Q. Why not? 14 A. It's -- I would have to do testing to see how 15 much it could -- heat it could absorb. I've done none 16 of that. 17 Q. If you could look at R-132. 18 A. (Complying.) 19 Q. How was that created? How was that chart 20 created on R-132? 21 A. This appears to be from -- I believe it's 22 reflink. Could be REFFPROP. I confuse those two. 23 Q. Did you create this chart? 24 A. I commissioned it to be created. 25 Q. Who did you commission to create this chart?	Page 145 1 numbers. I think it says -- and we can look just to 2 make sure. Okay. On page 5 -- I'm sorry, 123, R-123, 3 it -- there's a heading. It says "summary of the 4 present invention." Okay. And then if you go -- 5 A. I'm sorry -- okay. I see that now. 6 Q. Okay. If you go to the next page, R-124, it 7 says at the top, in the second line, "In an exemplary 8 embodiment, the refrigerant according to the invention 9 comprises a ratio from about 40 to" -- "to about 45 10 weight percent pentafluoroethane." 11 Was that your invention? 12 MR. STALEY: Objection. Calls for legal 13 conclusions. 14 THE WITNESS: Well, thanks for pointing 15 out that we had an application where numbers were 16 reversed. And if that is, in fact, this one, it 17 would be incorrect. 18 BY MR. TREMBATH: 19 Q. This is the provisional application. This is 20 the first application that was filed, so -- 21 A. Well, I mean -- 22 Q. But -- 23 A. -- that doesn't mean anything to me. 24 Q. Okay. I -- 25 MR. STALEY: Wait.

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1 MR. TREMBATH: Did you want to say 2 something, Joe? 3 MR. STALEY: I just -- was just trying to 4 caution you both to make sure you're not talking 5 over, so the record's clear. And I know what's 6 going on here. That's all. 7 BY MR. TREMBATH: 8 Q. So your invention wasn't 40 to 45 weight percent 9 pentafluoroethane? 10 MR. STALEY: Objection. Calls for legal 11 conclusion. 12 THE WITNESS: I would defer to counsel 13 because I didn't write these. 14 BY MR. TREMBATH: 15 Q. Had you written this, would you put in an 16 exemplary embodiment, "The refrigerant according to the 17 invention comprises a ratio from about 40 to 45 percent 18 pentafluoroethane"? 19 MR. STALEY: Objection. Calls for 20 hypothetical. 21 THE WITNESS: I don't know what I 22 would've done. 23 BY MR. TREMBATH: 24 Q. Was your invention 40 to 45 percent 25 pentafluoroethane?	1 expect the pressure to do? 2 MR. STALEY: Objection. Vague. 3 THE WITNESS: I don't know. 4 BY MR. TREMBATH: 5 Q. You've been held out as an expert in the 6 refrigeration business, and you can't tell me whether 7 this chart reflects 125a at 60 percent, 55 percent and 8 50 -- 58 percent, or whether the 60, 58 and 55 is 134a? 9 MR. STALEY: Objection. Are you telling 10 him he is an expert? 11 MR. TREMBATH: He's been held out as an 12 expert. 13 MR. STALEY: I don't know if we have any 14 foundation for that, so I object on that basis. 15 THE WITNESS: If this application is the 16 application that the numbers were reversed, I can't 17 answer any questions as to the validity of what I'm 18 seeing on this paper, if this is what that is, 19 without comparing it to one that I know. And I 20 would need to see one of those. If you have one, 21 I'll be glad to take a look at it. 22 BY MR. TREMBATH: 23 Q. Well, I just want to know, as you sit here today 24 with all of your experience in refrigeration, can you 25 tell if these pressure trends reflect the 60, 58 and
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1 A. I do not recall. I'd have to go back and look. 2 Q. Where would you look? 3 A. I would go back and look at anything I could 4 find. 5 Q. What could you find that would tell you what -- 6 A. I don't know until I go look. 7 Q. Okay. So -- 8 A. Excuse me. I'm sorry. 9 Q. Sorry. I didn't mean to talk over you. Go 10 ahead. 11 A. I didn't mean to talking over you. I was 12 apologizing. 13 I'd look everywhere I could. 14 Q. Yeah. So the PT charts on R-132, would they 15 help you understand whether or not what's being talked 16 about is 55 percent 125 and 45 percent 134a or -- or 17 not? 18 A. I don't recall something from 2003 with 19 certainty, and I apologize for that. 20 Q. All right. That's all right. 21 Let's talk about today. You talked about 22 pressure temperature charts and matching. If I 23 increased a mix -- a blend of 55 percent 134a and 24 45 percent 125 to -- if -- if I change that to 25 60 percent 134a and 40 percent 125, what would you	1 55 percents at the top being 125 or 134a? 2 A. I cannot. 3 Q. You cannot tell? 4 A. As I sit here, no. 5 Q. Okay. So as you sit here today, if the 6 numbers -- well, as you sit here today, this application 7 only discloses about 40 to 45 percent pentafluoroethane. 8 How -- how would I ever understand this application, 9 then, to disclose what you actually invented was -- was 10 a 58 percent 125? 11 MR. STALEY: Objection. Calls for a 12 legal conclusion. And vague. 13 THE WITNESS: Once again, I would defer 14 that line of questioning to my patent attorneys who 15 wrote this. 16 BY MR. TREMBATH: 17 Q. Yeah. 18 A. I did not -- I'm not an attorney, unfortunately. 19 Q. I understand that. But you are a refrigerant 20 guy. You've been doing it for a long time. 21 A. (Witness moves head up and down.) 22 Q. If -- if I handed you this and you saw that it 23 said pentafluoroethane at 45 percent, how would you 24 understand that that wasn't accurate? 25 A. I would have to do what I did at the time in

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1 2003 time frame, which is to verify the pressures and 2 temperatures over a range that I needed. 3 Q. So you couldn't pick this document up and 4 understand -- 5 A. (Witness moved head from side to side.) 6 Q. Okay. Dew point, bubble point and glide -- what 7 is dew point? 8 A. I don't know. I'm no longer a refrigerant 9 expert. Twenty years ago maybe, not today. 10 Q. You don't know what dew point is? 11 A. No, not that I could describe. 12 Q. Do you know what glide is? 13 A. Glide is the -- in my mind, glide is the -- 14 where the refrigerants separate within the system. 15 Q. How do they separate within the system? 16 A. Based on boiling points and temperatures. 17 Q. Where do they separate in the system? 18 A. Condenser, line set. In the entire system, they 19 can, in fact, separate. 20 Q. How do you know that? 21 A. Conversations with technicians; conversations 22 with Jim Calm, for instance; conversations with anybody 23 trained in the fact of knowing the operating 24 characteristics of a fluid. 25 Q. If -- if I want to know when a fluid boils, do I	1 Q. Why do you think that? 2 A. It's just a guess. 3 Q. Were they created as the result of actual tests, 4 physical tests? 5 A. You'd have to ask Mr. Calm. 6 (Exhibit 2, Declaration of Kenneth M. 7 Ponder, was marked for identification.) 8 BY MR. TREMBATH: 9 Q. I've passed you what I believe is a document 10 entitled "Declaration of Kenneth M. Ponder." And there 11 are page numbers at the bottom. I believe on page 13 12 you'll see your signature. 13 MR. STALEY: There's a collection of 14 several documents you passed me. 15 MR. TREMBATH: It is. 16 MR. STALEY: Okay. I'll just make the 17 record clear that you -- what you passed him -- 18 what looks to be a declaration of Ken Ponder. I'm 19 saying it looks to be several documents you passed 20 him. I want to be clear about that. 21 BY MR. TREMBATH: 22 Q. Is that -- is that your declaration? Is that 23 your signature? 24 A. This is my signature. 25 Q. Okay. To Mr. Staley's point, there are
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1 need to know what the pressure is? 2 A. It would be helpful. 3 Q. Don't all fluids boil at different pressures -- 4 boil differently at different pressures? 5 A. They do. 6 Q. Let me make a better question. Don't all fluids 7 boil at different temperatures at different pressures? 8 A. I agree with that. 9 Q. Could you look at R-140. 10 A. (Complying.) Okay. 11 Q. Can you tell me how these graphs were created? 12 A. No, I can't. 13 Q. What is -- what is temperature versus enthalpy? 14 What does that chart tell you? 15 MR. STALEY: Objection. Lacks 16 foundation. 17 THE WITNESS: I can't -- I can't tell you 18 what enthalpy means today. 19 BY MR. TREMBATH: 20 Q. Okay. And you have no idea how these two tables 21 were created? 22 MR. STALEY: Asked and answered. 23 THE WITNESS: These tables look like they 24 were created by Jim Calm. 25 BY MR. TREMBATH:	1 documents attached to the back. I believe they're 2 referenced in your deposition. 3 MR. STALEY: Deposition? 4 MR. TREMBATH: Exhibit B that goes to the 5 brief. Where is Exhibit B? 6 MR. VANORE: Can you tell where the 7 discovery declaration is so that the -- the Zoom 8 callers can find it? 9 MR. TREMBATH: Yeah. It's Document 52 -- 10 or 55 -- 65-2, and it was filed on 10-30-20. 11 MR. MORRIS: Here, this is the 12 declaration submitted in connection with the motion 13 for preliminary injunction. 14 MR. TREMBATH: I don't have the -- do I? 15 MR. VANORE: Thank you. 16 MR. MORRIS: I'd just suggest pull off 17 Exhibit B and everything behind it. 18 MR. TREMBATH: I -- he references this. 19 MR. MORRIS: Okay. 20 MR. TREMBATH: He references this, so I 21 want to -- we'll just go with it. 22 MR. VANORE: Is this going to be 23 Exhibit 2? 24 MR. TREMBATH: Yes, this is Exhibit 2. 25 It comprises Mr. Ponder's declaration, Exhibit 1,

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1 which is a contracting business letter, there's a 2 claim chart -- 3 MR. STALEY: I don't think Exhibit 1. I 4 think it's Exhibit A. 5 MR. TREMBATH: Is it Exhibit A? Attached 6 is Exhibit 65-3, 65-4, 65-5, 65-6, and then this 7 set skips to 65-11. 8 MR. STALEY: So is this the collection of 9 documents that your team put together, representing 10 exhibits filed in the proceeding? 11 MR. TREMBATH: Say that again. 12 MR. STALEY: I want to make sure I 13 understand what this is. So is this -- this is a 14 subset of exhibits that were filed in connection 15 with something in this case that was labeled 16 Exhibit A? 17 MR. TREMBATH: I believe that's correct. 18 And I believe 65 was your preliminary injunction 19 motion or the -- a memorandum supporting the 20 motion. 21 MR. STALEY: Do you want to take a 22 five-minute break and get this straightened out? 23 It's been an hour. I'll just -- 24 MR. TREMBATH: Yes, that's -- that's 25 fine. Let's take a break. Good idea, Joe.	1 A. Well -- 2 Q. -- a list of Dynatemp 421a customers -- Choice 3 421a customers? 4 MR. STALEY: Objection. Compound. 5 BY MR. TREMBATH: 6 Q. Did you share with anyone any compilation of 7 Dynatemp's Choice 421a customers? 8 A. No. 9 Q. You sure about that? 10 A. I don't believe so. 11 Q. Let's go back to your declaration. How was your 12 declaration created? 13 MR. STALEY: Objection. To the extent 14 this question calls for the disclosure of any 15 attorney-client communications, I'm going to 16 instruct you not to answer his question if it 17 reveals the substance of those communications. Do 18 you understand me? 19 THE WITNESS: I do. 20 Can somebody point me to where the 21 declaration in question is at? 22 BY MR. TREMBATH: 23 Q. The declaration is just the document. It's -- 24 it's -- 25 A. Oh, on the first page.
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1 THE VIDEOGRAPHER: The time is 2:48 p.m. 2 We're now off the record. 3 (Recess.) 4 THE VIDEOGRAPHER: The time is 3:11 p.m. 5 We're back on the record. 6 BY MR. TREMBATH: 7 Q. Mr. Ponder, welcome back. 8 Did you ever have Dynatemp's customer list after 9 you quit the 50/50 deal? 10 MR. STALEY: Objection. Vague. 11 THE WITNESS: So I give you the best 12 information, define "customer list." 13 BY MR. TREMBATH: 14 Q. Did you ever have a list of Dynatemp 15 customers -- 16 A. All of their customers? 17 Q. -- created by Dynatemp? 18 A. No, not all of their customers. I don't think 19 so. 20 Q. Did you ever have a list of their 421a 21 customers? 22 A. I had. 23 Q. Did you share that with anyone? 24 A. Not to my knowledge. Not in that format, no. 25 Q. In any format. Did you share with anyone --	1 Q. Yeah. Yes. 2 A. And your question was what, again, please? 3 Q. How was this document created? This document 4 being Exhibit 2, which is the declaration of Kenneth 5 Ponder. We've cleaned it up, and it's dated 6 October 28th of 2020. And it was produced as 7 Document -- or filed at Document 63-3. 8 MR. STALEY: Ken, same instruction. If 9 this -- if your answer will reveal the substance of 10 any communication with counsel, I'm instructing you 11 not to answer the question. 12 THE WITNESS: I do not recall who 13 authored this declaration. 14 BY MR. TREMBATH: 15 Q. Did you? 16 MR. STALEY: Same objection. 17 THE WITNESS: Same answer. I don't 18 recall who wrote it. 19 BY MR. TREMBATH: 20 Q. Did you have input into its creation? 21 A. Possibly. 22 Q. What do you mean by possibly? 23 A. If someone asked me a question and I answered 24 the question, I would've had input into this document. 25 Q. Okay. Let's talk about the substance of the

Page 158 1 document. And -- and I want to remind you, above your 2 signature it says -- above your signature it says, "I 3 hereby declare that all statements made herein of my own 4 knowledge are true and all statements made on 5 information or belief are believed to be true." So -- 6 MR. STALEY: Are you testifying on the 7 record? 8 BY MR. TREMBATH: 9 Q. Could you turn to page 3 at the bottom? 10 A. (Complying.) 11 Q. And -- 12 MR. STALEY: I'm not being a pain in the 13 ass. I want to be clear. When you say "turn to 14 page 3," the page labeled 3 or the actual third 15 page of the document? 16 MR. TREMBATH: Is there a page labeling? 17 MR. STALEY: Yes, there is. 18 MR. TREMBATH: Is there? 19 MR. STALEY: There is. On mine there is. 20 I got page 3 of 13, 2 of 13. 21 MR. TREMBATH: Yeah, but I don't have -- 22 I thought you meant there was a separate label. 23 MR. STALEY: Oh. I'm sorry. 24 MR. TREMBATH: On -- I'm sorry. Let's -- 25 I appreciate your desire for clarity -- clarity	Page 160 1 stamp on it there. 2 (Exhibit 3, RMS of Georgia, LLC's 3 Responses to Dynatemp International, Inc.'s First 4 Set of Interrogatories (Nos 10-27), was marked for 5 identification.) 6 BY MR. TREMBATH: 7 Q. If you could look at page 5 in that document. 8 A. (Complying.) 9 Q. So what this is -- this is a set of questions 10 that Dynatemp sent to RMS or to your attorneys. And the 11 bold is the question, the interrogatory, and then the 12 response is the non-bolded text. 13 A. Okay. 14 Q. Okay. And I would like to turn your attention 15 to the second full paragraph on page 5. 16 A. Okay. I read it. 17 Q. All right. The last sentence, "The person 18 involved in having" -- "in and having knowledge of the 19 negotiations and the license terms is Kenneth Ponder, 20 president of both the licensor and licensee." 21 Could you tell us about the negotiations that 22 went on behind this license? 23 MR. STALEY: Objection. Lacks 24 foundation. 25 BY MR. TREMBATH:
Page 159 1 over everything else, I guess. 2 BY MR. TREMBATH: 3 Q. It says on the bottom -- on the very bottom 4 there's a blue line and it says "page 3 of 13." 5 Okay. Paragraph 4. "Plaintiff 421a has 6 exclusively licensed the rights under the '949 patent, 7 the '706 patent and the '7" -- or "'179 patent to RMS of 8 Georgia, DBA Choice Refrigerants." 9 Tell me about that license. When did that 10 happen? 11 A. I don't recall the exact date, but it -- at the 12 request of my accountant, they suggested that I break 13 the company up based on the patents that were issued at 14 the time and form LLCs so that we could apply money 15 generated back to them and then subsequently take the 16 money and put it in other places. 17 Q. It -- are there any documents that outline what 18 the exclusive licensed rights are? 19 A. If there are, they would've been given to 20 counsel, who would've distributed them. 21 Q. Okay. 22 MR. TREMBATH: I'd like to mark this as 23 Exhibit 3. It is "RMS of Georgia's Responses to 24 Dynatemp International's First Set of 25 Interrogatories, Numbers 8 through 27." Bates	Page 161 1 Q. Was there a negotiation that went on behind this 2 license? 3 MR. STALEY: Objection. Lacks 4 foundation. Vague. 5 THE WITNESS: A negotiation with myself? 6 BY MR. TREMBATH: 7 Q. Yeah. 8 A. I'm sure there was. 9 Q. Tell us about it. 10 A. One minute I did -- I wanted to do something, 11 the next minute I didn't, the third minute I decided to 12 split the difference, and the fourth minute I put 13 something in place. 14 Q. All right. Does this paragraph fairly reflect 15 the license given to 421a, LLC? 16 MR. STALEY: Objection. Lacks 17 foundation. That -- 18 BY MR. TREMBATH: 19 Q. Sorry. License to RMS. Strike that. 20 Does this paragraph accurately reflect the 21 license given to RMS by 421a? 22 MR. STALEY: Objection. Lacks foundation 23 and vague. 24 THE WITNESS: Once again, the people that 25 work for me, both attorneys and accountants, could

Page 162 1 better answer that question. 2 BY MR. TREMBATH: 3 Q. The last sentence says, "The person involved in 4 have" -- "in and having knowledge of the negotiations 5 and the license terms is Kenneth Ponder." 6 A. Correct. 7 Q. So what were the terms of the license, if not 8 what's reflected here? 9 MR. STALEY: Objection. Lacks 10 foundation. 11 THE WITNESS: I don't know. 12 BY MR. TREMBATH: 13 Q. You can't think of any terms of the license to 14 RMS from 421a other than what's reflected here? 15 MR. STALEY: Objection. Lacks 16 foundation. 17 THE WITNESS: I would still need to have 18 a conversation with my attorneys, counsel and -- 19 and my accountant to help me rethink this process. 20 BY MR. TREMBATH: 21 Q. It says here -- this is a document given to us, 22 answering our question about the license. It says here 23 that Kenneth Ponder -- that's you -- 24 A. Absolutely. 25 Q. -- is the person involved in and having	Page 164 1 Q. How would this paragraph end up in a document if 2 you didn't provide the information for it? 3 MR. STALEY: Objection. Ken, to the 4 extent this ques- -- the answer calls you to reveal 5 the substance of any attorney-client 6 communications, I'm going to instruct you not to 7 answer the question. 8 BY MR. TREMBATH: 9 Q. The question is, how could this end up in this 10 document without you providing the information? 11 A. I don't know. 12 Q. Did you provide this information? 13 A. I don't know that either. I don't recall. 14 Q. Do you know if there is a written license 15 between R421a and RMS? 16 MR. STALEY: Objection. Lacks 17 foundation. 18 THE WITNESS: Okay. Let me try this: If 19 one was required by my counsel and/or my accountant 20 such that it exists, there would be one. I do not 21 remember -- I don't know if there is one. 22 BY MR. TREMBATH: 23 Q. So this representation made by your counsel to 24 us is that the license is an oral license. That means 25 it's not written down. Is that inconsistent with your
Page 163 1 knowledge of the negotiation. So who else would have 2 knowledge of your negotiation with yourself about the 3 license? 4 MR. STALEY: Objection. Lacks 5 foundation. 6 THE WITNESS: I'm going to give you the 7 same answer. 8 BY MR. TREMBATH: 9 Q. Which is? 10 A. I would need to discuss with my counsel and my 11 accountant to see what the relevance of this particular 12 sentence is since I didn't write this, and the meanings 13 of therefore. 14 Q. Have you ever seen this before? 15 A. I don't recall. I don't remember it. 16 Q. Did -- during the process of this litigation, 17 did your attorneys ever give you a document to review, 18 answering our questions to your company? 19 A. I don't know. 20 Q. You don't know? 21 A. I do not know. 22 Q. You don't know if you've ever seen this document 23 before? 24 A. I -- I can't with certainty say that I've seen 25 this exact document.	Page 165 1 memory? 2 A. Once again, you'd have to ask them if they wrote 3 it. I didn't write it. 4 Q. Did you tell them that it was an oral license 5 between 420 -- 6 MR. STALEY: Objection. Calls for the 7 disclosure of attorney-client communications. Ken, 8 I'm instructing you not to answer that question. 9 BY MR. TREMBATH: 10 Q. Will you abide by the instruction of your 11 counsel? 12 A. I will. 13 MR. TREMBATH: Okay. I have a problem 14 with that, just for what it's worth. 15 MR. STALEY: I'm fine with you asking if 16 there is a license, if it's oral or written, and he 17 can answer the questions all day long. That's what 18 you want to know, right, if there's an oral 19 license? But you're asking him what he told me. 20 The moment you go there, I'm going to stop you. 21 MR. TREMBATH: If it's intended to go in 22 this document, it's not privileged. 23 MR. STALEY: Well, we can fight about 24 that. But I don't -- I don't know -- I don't know 25 that you even -- what's the point of going there?

Page 166 1 I mean, really, honestly. 2 MR. TREMBATH: I don't want to fight with 3 you, at the moment anyway. 4 MR. STALEY: All right. 5 BY MR. TREMBATH: 6 Q. Was the license between 421a and RMS an oral 7 license? 8 A. According to this document, it is an oral 9 agreement. 10 Q. According to your memory, you signed -- well, 11 you didn't sign this. That's -- that's the problem, I 12 guess. 13 According to your memory, was there an oral 14 agreement between 421a, LLC and RMS to license the 15 patents at issue? 16 A. I do not remember that. 17 Q. And as you sit here today, you do not remember 18 the terms of any license agreement between 421a and -- 19 and RMS; is that right? 20 A. That's right. 21 Q. Okay. Let's go back to -- I think it's 22 Exhibit 2, which is your declaration. 23 A. (Complying.) 24 Q. Let's -- let's -- on page 3 of 13, at the bottom 25 it says you're being paid by your standard -- "I'm being	Page 168 1 to be approved by the U.S. Environmental Protection 2 Agency (EPA) as a certified refrigerant reclaimer." 3 What's the process for getting approval to 4 become a certified refrigerant reclaimer? 5 A. I don't know what the current process was. In 6 1992 I had to put application in to the EPA to put -- to 7 be able to be certified as a refrigerant reclaimer, and 8 I don't remember that exact application. 9 Q. Okay. But you still are a certified refrigerant 10 reclaimer, correct? 11 A. That is correct. 12 Q. And as a certified refrigerant reclaimer, you 13 have to follow the rules set up by the EPA, correct? 14 A. I do. 15 Q. And part of those rules include abiding by ARI's 16 purification standards? 17 MR. STALEY: Objection. Lack of 18 foundation. 19 THE WITNESS: Okay. 20 BY MR. TREMBATH: 21 Q. Is that true? 22 A. I think so. 23 Q. Okay. Do you know who Rick Roland is? 24 A. I do. 25 Q. Who is Rick Roland?
Page 167 1 paid my standard salary as an employee of Choice 2 Refrigerants." 3 Do you see that? 4 A. Yes. 5 Q. What is your standard salary as an employee of 6 Choice Refrigerants? 7 A. I have no idea. 8 Q. Do you get paid on a regular basis by Choice 9 Refrigerants? 10 A. I really don't know. 11 Q. You don't know if you get a paycheck from Choice 12 Refrigerant on a regular basis? 13 A. I don't get a paycheck every Friday, no. 14 Q. You're an owner of the company, right? 15 A. I am the owner. 16 Q. And so any profits that comes to Choice 17 Refrigerant come to you, fair? 18 A. Fair enough. 19 Q. Can we look at paragraph -- let's see -- 9, the 20 top of page 4 of 13. 21 A. Page 9 of 13? 22 Q. Page 4 of 13, paragraph 9. 23 A. (Complying.) 24 Q. It says at the -- well, second sentence, "Choice 25 is one of the 13 companies in the entire United States	Page 169 1 A. Rick Roland is a -- was a certified reclaimer in 2 Punta Gorda, Florida. He was also the owner and the guy 3 that started Golden Systems. 4 Q. Golden Systems is the company that helped you 5 get started, right? 6 A. That's correct. 7 Q. Okay. Did Rick Roland help you get started as a 8 reclaimer? 9 A. He did. 10 Q. Okay. Did he help you at all in testing your 11 421a product? 12 A. He has tested the product, yes. 13 Q. When did he test the product? 14 A. I don't remember the date. 15 MR. STALEY: Objection. Vague. 16 THE WITNESS: I'm sorry. I don't 17 remember the day. 18 BY MR. TREMBATH: 19 Q. What did he do to test the product? 20 MR. STALEY: Objection. Vague. 21 THE WITNESS: Rick would have run it in 22 systems. 23 BY MR. TREMBATH: 24 Q. Did he ever help you install the product in one 25 of your systems?

Page 170 1 MR. STALEY: Objection. Vague. 2 BY MR. TREMBATH: 3 Q. And by "product," I mean 421a. 4 MR. STALEY: Objection. Vague. 5 THE WITNESS: I remember Rick testing one 6 of my systems with 421a in it. I do not recall if 7 he's the guy that charged the unit or not. 8 BY MR. TREMBATH: 9 Q. Which unit was that? 10 A. The system at -- one of the systems at my home. 11 Q. Okay. Is Rick pretty honest, in your 12 estimation? 13 MR. STALEY: Objection. Vague. Calls 14 for speculation. 15 THE WITNESS: I wouldn't be a good judge 16 of that. 17 BY MR. TREMBATH: 18 Q. Did you do business with Mr. Roland over time? 19 MR. STALEY: Objection. Vague. 20 THE WITNESS: I've sold Rick some 21 product. 22 BY MR. TREMBATH: 23 Q. Do you still do business with Mr. Roland? 24 A. I do not. 25 Q. Why not?	Page 172 1 product? 2 Q. Modifications. What kind of modifications do 3 you have to do? 4 A. TXV valves, increasing compressor size. 5 Q. Why do you have to change out or change -- why 6 do you have to change a TXV valve? 7 A. Well, the system in this application is set up 8 -- is specifically for R22. If you put a -- a 9 refrigerant in there of another product to run it in 10 that system, that system not being set up for 22 may 11 need, and most often always does require, some kind of 12 unit modification to allow it to perform fairly well. 13 Q. What is mass flow? 14 A. I don't know how to explain it. 15 Q. Do you know the difference between mass flow and 16 volumetric flow? 17 A. I do not. 18 Q. Paragraph 19, it says, "For example, the 19 refrigerants R407c, R417a and R438a are among the more 20 common R22 substitutes. They, however, can require 21 equipment changes to equipment designed to use R22 when 22 being substituted for R22 in such equipment." 23 Do they always require equipment changes? 24 A. They do not. 25 Q. Does R43a require equipment changes?
Page 171 1 A. I haven't had a need to call him to buy anything 2 that he had. 3 Q. Page 5 of 13, paragraph 5, the first sentence, 4 there's a word in there, "ubiquitous." Do you know what 5 that means? 6 MR. STALEY: Hold on. I do not see a 7 paragraph 5 on here. 8 MR. TREMBATH: Fifteen. Sorry. 9 Paragraph 15. 10 THE WITNESS: I do not know what that 11 means. 12 BY MR. TREMBATH: 13 Q. In paragraph 18 on the same page, it -- 14 paragraph 18, the second sentence reads, "The transition 15 can require retrofitting existing air-conditioning 16 systems because of differences in mass, flow, operating 17 pressures and lubricants. Retrofitting an R22 system to 18 accommodate an HFC refrigerant can be both costly and 19 often technically unsatisfactory." 20 What did you mean by "technically 21 unsatisfactory"? 22 A. Some of the products available required unit 23 modification. 24 Q. Such as? 25 A. Such as the modification or the -- or the	Page 173 1 MR. STALEY: Objection. Lacks 2 foundation. 3 BY MR. TREMBATH: 4 Q. I'm sorry. R438a, does it require an equipment 5 change? 6 MR. STALEY: Objection. Vague. 7 THE WITNESS: Not always. 8 BY MR. TREMBATH: 9 Q. Does your R421a require an equipment change 10 sometimes? 11 A. Sometimes. 12 MR. STALEY: Objection. Vague. 13 BY MR. TREMBATH: 14 Q. Okay. And would you -- is it fair to say that 15 R438a sometimes requires an equipment change as well? 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: Yes. 18 BY MR. TREMBATH: 19 Q. On the next page, page 6, the second-to-the-last 20 sentence in paragraph 20 says -- let's -- let's do 21 something -- let's go the third par- -- third sentence 22 in that paragraph. "Each of the refrigerant components 23 in these blends have unique pressure/temperature (P/T) 24 curves that can vary from one another widely. This is 25 known as temperature glide, and glide can be a big

Page 174 1 problem. Glide can cause inconsistent evaporator 2 temperatures and can result in performance degradation. 3 To my knowledge and understanding, Choice R421a, having 4 only two refrigerant components, has the lowest 5 temperature glide of the leading R22 alternatives." 6 Is that correct? 7 MR. STALEY: Objection. Mischaracterizes 8 the document. 9 BY MR. TREMBATH: 10 Q. Does 421a have the lowest temperature glide of 11 the leading R22 alternatives? 12 A. That's my -- 13 MR. STALEY: Objection. Lacks 14 foundation. 15 THE WITNESS: That's my belief. 16 BY MR. TREMBATH: 17 Q. And upon what do you base that belief? 18 A. Testing performed by Jim Calm at my request. 19 Q. Did he give you a report? 20 A. He did. 21 MR. STALEY: Objection. Vague. 22 Try to give me one second. 23 BY MR. TREMBATH: 24 Q. Let me -- let's -- let's back up so he can make 25 another vague objection. Did he give you a report	Page 176 1 opportunity to perform at its greatest. 2 Q. Does it physically separate? Does the -- the -- 3 the gas or liquid not combine? Is that -- is that what 4 you're saying? 5 A. Absolutely. 6 Q. Like oil and water? 7 A. Absolutely. That's my understanding. 8 Q. Is 410a an R22 alternative? 9 A. Not in my opinion. 10 Q. Why not? 11 A. The pressures are radically higher. You -- 410 12 would not run effectively in a 22 unit. 13 Q. I'd like to visit with you a bit about paragraph 14 23, which spans pages 6 and 7. It talks about ASHRAE 15 approval. 16 A. Yes, sir. 17 Q. Does ASHRAE do anything to figure out whether or 18 not your blend would work as a refrigerant, whether -- 19 did ASHRAE do any testing in that regard? 20 MR. STALEY: Objection. Vague. 21 THE WITNESS: Well, the ASHRAE Standard 22 34 committee is made up of, typically, industry 23 giants: DuPont, Honeywell, Arkema, the big guys. 24 So when an application is given to them, there 25 would be a tremendous working knowledge of
Page 175 1 summarizing the effect of glide on performance? 2 MR. STALEY: Objection. Vague. 3 THE WITNESS: I'd have to go back and 4 check, but I believe he did. 5 BY MR. TREMBATH: 6 Q. All right. So as you sit here today, you wrote 7 -- you signed this. You may not have written it, but 8 you signed it. It says, "Glide can cause inconsistent 9 evaporator temperatures that can result in performance 10 degradation." 11 How? 12 MR. STALEY: Objection. Lacks 13 foundation. 14 THE WITNESS: How does it perform 15 performance degradation, is what your question is? 16 BY MR. TREMBATH: 17 Q. Yeah. How does glide cause performance 18 degradation in refrigeration systems? 19 A. Well, in simplistic terms, if a blend in a 20 system separates and comes more on a constituent basis 21 over the complete parameters of an evaporator, one would 22 condense at a different pressure than the other part of 23 the blend, and its ability to absorb heat is then 24 greatly reduced, so that by the time it comes on through 25 the system and goes back together, it's lost an	Page 177 1 opinions, even if they weren't divulged, as to 2 could this work, could this not work. But I know 3 of no testing that ASHRAE does. 4 BY MR. TREMBATH: 5 Q. Do you know of any ASHRAE application that was 6 denied because the committee thought it wouldn't act as 7 a refrigerant -- the -- the subject of the application 8 wouldn't act as a refrigerant? 9 A. Not that I can recall. 10 Q. Tell me about SNAP. What is the SNAP process? 11 I mean, what is that? 12 A. SNAP is the approved substitutes for various -- 13 in various applications of refrigerants that are 14 permittedly being able to be used in those applications 15 by the EPA. 16 Q. So if you want to have a replacement for R22, 17 you go to the EPA and you say, I'd like to make 18 whatever, and they say it's okay? Is -- I mean, is that 19 the way the process works? 20 A. No, it's -- 21 MR. STALEY: Objection. Lacks 22 foundation. Vague. 23 THE WITNESS: I haven't done one in 24 years. But there's a detailed application where 25 you are submitting your blend and its components,

Page 178 1 constituent components. 2 BY MR. TREMBATH: 3 Q. What does the EPA look at when considering a 4 SNAP application, if you remember? 5 A. I don't remember. You'd have to ask them. 6 Q. Do they look at whether your composition works 7 as a refrigerant or not? 8 A. I do not know the answer to that. 9 Q. Isn't it true that you pick the information that 10 you send in to -- or let me strike that. 11 Isn't it true that to get SNAP approval, you 12 have to go through an application process? 13 A. Correct. 14 Q. And isn't it true in that application process, 15 you designate what applications are suitable for your 16 refrigerant? For example, residential and light 17 commercial air-conditioning, industrial process re- -- 18 you -- you pick where you think it's going to work? 19 MR. STALEY: Objection. Compound. 20 THE WITNESS: I think that's a good way 21 to say it. 22 BY MR. TREMBATH: 23 Q. ASHRAE doesn't say, Oh, I see you got this, 24 we'll let you use it in such and such application, 25 right?	Page 180 1 A. Well, we believe that a unit that's been running 2 for years and had numerous calls, service calls, that 3 the lubricant is one of the components that is very 4 rarely looked at in great detail, so that one could 5 surmise that that unit is a little low of lubricant. 6 And so, subsequently, when the technician converts to 7 our product, it's not uncommon to get that phone call 8 and go, Wow, this thing is running quieter than it's 9 ever run. Wow, this thing is less amp draw than it's 10 ever had. 11 All -- both of those examples would be 12 improvements, enhancements. 13 Q. Could I -- well, could a technician take all of 14 the existing lubricant out of a system and just charge 15 the system with 421a and have a successful system? 16 MR. STALEY: Objection. Calls for 17 speculation. 18 THE WITNESS: No. 19 BY MR. TREMBATH: 20 Q. Why not? 21 A. The lubricant in 421a is designed to be an 22 addition to the system's lubricant, not a replacement 23 thereof. 24 Q. ASHRAE specs R421a to be plus or minus 58 125 25 and 42 134a. Do you ever get product that's out of
Page 179 1 A. The two aren't related. 2 Q. Oh. And the EPA doesn't do -- I'm said -- 3 sorry. I said ASHRAE. 4 The EPA doesn't tell you where you can use your 5 refrigerants; is that true? 6 MR. STALEY: Objection. Vague. 7 THE WITNESS: I haven't looked at that in 8 a long time. I really don't know the best answer 9 for that. I don't. I just don't recall. 10 BY MR. TREMBATH: 11 Q. All right. Let's look at paragraph 27 on the 12 top of page 8. At the end of the second sentence it 13 says, "Choice 421a is the only SNAP-approved R22 14 substitute that is packaged with a performance-enhancing 15 lubricating oil." 16 Please tell me what you meant by 17 performance-enhancing lubricating oil. 18 MR. STALEY: Objection. Lacks 19 foundation. 20 THE WITNESS: I believe that the use of 21 my particular patented blend that contains our 22 lubricant, that it enhances the unit's performance 23 characteristics in a retrofit application. 24 BY MR. TREMBATH: 25 Q. How does it enhance its performance?	Page 181 1 spec? Do you ever sell -- let me back up. 2 Have you ever had product that you've bought 3 from one of your suppliers -- well, let me back up. 4 How do you get 421a to sell? 5 A. One of two ways. 6 Q. What are those one of two ways? 7 A. One, in a large ISO container. The other one is 8 already packaged into 25-pound cylinders. 9 Q. Do the ISOs and cylinders come pre-blended? 10 A. The cylinders do. 11 Q. Okay. 12 A. The ISO does not have lubricant in it typically. 13 Q. Do you ever receive product that is outside of 14 that plus or minus 1 percent tolerance specified by 15 ASHRAE? 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: I can recall only one time. 18 BY MR. TREMBATH: 19 Q. When was that? 20 A. We allowed Dynatemp to order some ISOs of 421a, 21 and when we received them, they were out of spec and we 22 had to adjust the blend. 23 Q. Do any of the smaller containers -- do you ever 24 test those for being in spec, the smaller containers 25 that you receive?

Page 182 1 A. We test them all the time. 2 Q. And are they always in spec? 3 A. To the best of my knowledge. I've not -- I 4 don't recall having one that wasn't. 5 Q. Do you keep records of your testing? 6 MR. STALEY: Objection. Vague. 7 THE WITNESS: In our gas chromatography 8 equipment, it does keep a record digitally of a 9 test made by us internally. 10 BY MR. TREMBATH: 11 Q. So you would have those records internally for 12 all the tests that you have made of incoming product? 13 A. To the extent that -- if counsel had asked us to 14 provide, we've already provided all that we have. 15 Q. Yeah, that wasn't the question. Do you have 16 those records at -- 17 A. I don't know. 18 Q. Page -- page 10 of 13, paragraph 41. You say, 19 "Dynatemp's safety data sheet states that the Dynatemp 20 421a product is a blend of two refrigerant gasses 21 consisting of 58 percent pentafluoroethane (R125) and 22 42 percent 111-2 tetrafluoroethane R134a." 23 And I'm going to pass you the safety data sheet 24 for Dynatemp 421a, and we'll mark it as Exhibit 4, I 25 believe.	Page 184 1 Q. There are two listed. 2 A. And their percentages. 3 Q. And there are percentages. And at the end it 4 says "liquified gas," right? 5 A. It does. 6 Q. What is H-280? 7 A. No idea. 8 Q. Okay. Do you know what a CAS number is? C-A-S. 9 A. It's a form of product identifications. 10 Q. Are you familiar with looking up CAS numbers? 11 A. It's been years since I've done it, but I am 12 aware that it can be done. 13 Q. Okay. 14 MR. STALEY: You doing okay, Ken? 15 THE WITNESS: I'm okay. 16 BY MR. TREMBATH: 17 Q. Let me ask one more question and we'll take a 18 break, okay? 19 A. Okay. Thank you. 20 Q. It's not an endurance test. 21 If you look at page 4 of the Exhibit 4, in the 22 physical and chemical property section it says "physical 23 state, gas. Appearance, clear, colorless gas." 24 Would that be accurate, as far as you know, when 25 it comes to 421a?
Page 183 1 MR. STALEY: Are you representing that 2 what you're passing him is the safety data sheet? 3 MR. TREMBATH: I'm representing that what 4 I'm passing to him is the document filed as 65-12 5 on 10-30 of '20, and it was marked as Exhibit H. 6 (Exhibit 4, Dynatemp R-421A, Safety Data 7 Sheet, was marked for identification.) 8 BY MR. TREMBATH: 9 Q. So the question that I would like to ask -- in 10 paragraph 41 you say, "The Dynatemp 421 product is a 11 blend of two refrigerant gasses." Where is that shown 12 in the Dynatemp 421a data sheet -- safety data sheet? 13 A. Where were you reading from on the -- 14 Q. Your declaration, paragraph 41. 15 A. Okay. And your question again, please. 16 Q. Where in the Dynatemp R421a safety data sheet 17 does it say that its product is a blend of two 18 refrigerant gasses? 19 MR. STALEY: Objection. Lacks 20 foundation. 21 THE WITNESS: I would assume it's in 3.2, 22 labeled mixture. 23 BY MR. TREMBATH: 24 Q. 3.2, labeled mixture. Okay? 25 A. There are two listed.	Page 185 1 A. Where is that at? 2 Q. Section 9. 3 A. Section 9. I have not tested their product, so 4 I do not know its -- the way it would look. 5 Q. Would it -- would it be a gas? 6 MR. STALEY: Objection. Lacks 7 foundation. 8 THE WITNESS: It would be a liquid if the 9 cylinder were inverted, unless it had a dip tube in 10 it. 11 BY MR. TREMBATH: 12 Q. It would be a liquid under pressure, right? 13 A. (Witness moves head up and down.) 14 MR. STALEY: Objection. Lacks 15 foundation. 16 BY MR. TREMBATH: 17 Q. At atmospheric pressure, what would it be? 18 A. It would be a vapor. 19 I need to clarify. Having not tested their 20 product, I'm assuming that it would be a vapor. I do 21 not know specifically if it is or not. 22 Q. So when you said in your sworn declaration that 23 their product was a refrigerant gas, you didn't know if 24 that was true or not? 25 A. No, that's not what I'm saying at all.

Page 186 1 Q. What are you saying? 2 A. That in my declaration, the term "refrigerant 3 gas" is a generic term and it's refrigerant gas. 4 It's -- I'm not trying to talk about where it expands 5 and contracts and -- and the color and vapor and -- 6 based on ambient pressures. 7 Q. Okay. 8 A. Just a loose term. 9 Q. When -- when you are packaging refrigerants -- 10 you're a reclaimer. You're certified. I believe you 11 said that you follow the ARI certification standards. 12 Right? 13 A. (Witness moves head up and down.) 14 Q. And you're very familiar with DOT standards for 15 shipping refrigerant gas, I would assume, correct? 16 A. (Witness moves head up and down.) 17 Q. Isn't it true -- 18 MR. STALEY: Objection. Compound 19 question. 20 BY MR. TREMBATH: 21 Q. Isn't it true that every compressed gas that you 22 ship has a placard on it that says something like 23 "compressed gas"? 24 MR. STALEY: Objection. Vague. Lacks 25 foundation.	Page 188 1 of Media 4. The time is 4:24 p.m. We're back on 2 the record. 3 BY MR. TREMBATH: 4 Q. Mr. Ponder, you've been handed what's been 5 marked Exhibit 5. 6 THE VIDEOGRAPHER: Mic on? 7 MR. TREMBATH: Oh, it's not. Thank you. 8 (Exhibit 5, Pressure Temperature Chart, 9 was marked for identification.) 10 BY MR. TREMBATH: 11 Q. Mr. Ponder, you've been handed what's marked 12 Exhibit 5. Can you tell us what that document is? 13 A. This is a PT chart. 14 Q. Is it something that your company created? 15 A. I'm not sure, but I think so. 16 Q. For the record, it bears production number 17 R-2777 to 2779. 18 MR. STALEY: I'm sorry, I got -- 19 MR. TREMBATH: Did I mess up something? 20 THE WITNESS: 2778. 21 MR. STALEY: I got '77 through '78. 22 MR. MORRIS: It's '77 to '78. 23 MR. TREMBATH: Okay. Then I've got 24 something else. '77 -- okay. We'll go with R77 -- 25 2777 and R-2778.
Page 187 1 THE WITNESS: I don't know the answer to 2 that currently. 3 BY MR. TREMBATH: 4 Q. How, as a certified reclaimer, do you mark the 5 packaging for 123 -- R123 when you reclaim it? 6 A. A low-pressure refrigerant? 7 Q. Yes. 8 A. That's in a drum? 9 Q. That's in a drum. 10 A. I haven't done it in years. I'd have to go back 11 and look. I don't know off the top of my head. 12 Q. Off the top of your head, does it have a placard 13 on it that says "compressed gas"? 14 MR. STALEY: Objection. Lacks foundation 15 and calls for speculation. 16 THE WITNESS: I don't know the answer to 17 that. 18 BY MR. TREMBATH: 19 Q. Let's -- let's take a break. I promised you a 20 break. I'll -- I'll keep my word. 21 THE VIDEOGRAPHER: This is the end of 22 Media 3. The time is 4:04 p.m. We're now off the 23 record. 24 (Recess.) 25 THE VIDEOGRAPHER: This is the beginning	Page 189 1 MR. STALEY: Well, I was handed the pages 2 '8 first, '7 second, and it looks like it's been 3 stapled that way, just for the record. 4 MR. TREMBATH: Say that again. 5 MR. STALEY: I was -- I'd say there -- 6 the exhibit has been stapled as R-2778 as the first 7 page and 2777 as the second page. 8 MR. TREMBATH: All I know is it came from 9 your production and it -- I printed what I had. 10 MR. STALEY: Sure. I'm just not sure 11 it's the same document. I just want to make sure 12 that -- I don't know. 13 BY MR. TREMBATH: 14 Q. Do you know if it's the same document, 15 Mr. Ponder? The -- the -- the pressure temperature 16 chart goes with what's on 2778? 17 A. It could. 18 Q. But you don't know if it did or not? 19 A. I don't. 20 Q. Do you know if this is -- if this something that 21 was produced by RMS? 22 A. I don't recall doing it, but somebody that works 23 for me may have. 24 Q. If we look on the text on 2778, it says, "R421a 25 has been in production since 2000, with millions of

Page 190 1 pounds sold." 2 Is that true? 3 A. You asked me that earlier. I'd have to go back 4 and look up the date of production starting. 5 Q. As you sit here today, does that sound right? 6 A. I -- I wouldn't know it unless I looked it up. 7 Q. Where would you look it up? 8 A. Just like before, files at my office, computers, 9 my website possibly. I'd look everywhere I possibly 10 could. 11 Q. The next bullet point says, "R421a contains a 12 performance-enhancing lubricant which helps facilitate 13 oil return back to the compressor." 14 Is that true? 15 A. That's our belief, yes. 16 Q. How does it help facilitate oil return back to 17 the compressor? When you say "oil return back to the 18 compressor," are you talking about oil like in the 19 evaporator? 20 A. Oil in the system. 21 Q. Okay. How does it help the oil in the system 22 get back to the compressor? 23 A. My design, our lubricant and our cylinder would 24 interact with the lubricant in the system and -- and 25 thin it ever so slightly, enough that it enhanced oil	Page 192 1 MR. STALEY: Are you asking it's fair 2 that you can tell it or are you asking it's fair, 3 the statement? 4 MR. TREMBATH: The statement. 5 THE WITNESS: I actually don't much. 6 BY MR. TREMBATH: 7 Q. Okay. 8 A. I'd have to look at an ad. 9 Q. How does liquid pressure affect a refrigeration 10 system? 11 A. Once again, that's a system design question. I 12 can tell you that customers will call up and go, I need 13 a PSI-A or PSI-G gauge, and we have been able to produce 14 both for them. One is an absolute pressure and one is a 15 gauge pressure, and they are, in fact, different. 16 Q. When you were designing 421a, you were talking 17 about matching pressures with R22. What pressure were 18 you matching, vapor pressure or liquid pressure? 19 A. We were just -- I wasn't looking at either of 20 the two of them. I simply looked at the gauge pressure 21 of 22 in a system, or the gauge pressure of 421 -- what 22 became 421 in a -- in a cylinder in the blending 23 process. 24 Q. Exactly how did you do that? 25 A. How did I measure it?
Page 191 1 return in the system. 2 Q. If you could look at 2777, the chart. For 3 R421a, it says "liquid and vapor" at the top. Is there 4 a -- is that pressure liquid pressure or vapor pressure? 5 Is that what you're conveying? 6 A. It is. 7 Q. What's the difference between liquid pressure 8 and vapor pressure? 9 A. Beyond the obvious of one is a liquid and one is 10 a vapor? 11 Q. In a refrigeration system. I mean, honestly, I 12 -- I don't know -- 13 A. One would be a liquid and one is a vapor. 14 Q. Are there places in the refrigeration system 15 where liquid pressure is more important than vapor 16 pressure? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: You'd have to have a system 19 designer to really answer that question. I -- I'm 20 not a good guy for that question. 21 BY MR. TREMBATH: 22 Q. You -- in -- from -- strike that. 23 From what I can tell, you don't talk about vapor 24 pressure very much in your advertising or marketing. Is 25 that fair?	Page 193 1 Q. Uh-huh. 2 A. The cylinder sitting there, it had some of the 3 blend in a -- whatever percentage I was working with 4 that day, and I put a gauge on the top of it and read 5 the gauge. 6 Q. When you're measuring the pressure in the 7 cylinder, is that liquid pressure or vapor pressure that 8 you're measuring? 9 A. I would've been -- I would've done -- tried to 10 do both. 11 Q. How would you measure liquid pressure in a 12 cylinder? 13 A. I would have a high pressure gauge on the liquid 14 dip tube that would've went down into the liquid of the 15 refrigerant, and then on the one right next to it, a 16 vapor pressure -- a low side -- what we consider to be a 17 low side pressure on the vapor port of the cylinder. 18 Q. Just for my own edification because I don't 19 know, I've never messed with a refrigeration cylinder, 20 you can measure the pressure in the liquid that's in the 21 pressurized vessel and the pressure of the vapor above 22 the liquid? 23 A. In a -- in a -- 24 MR. STALEY: Objection. Compound. 25 THE WITNESS: In certain cylinders, yes.

Page 194 1 BY MR. TREMBATH: 2 Q. Is that pressure different? 3 A. Yes, it is. Slightly, but different. 4 Q. Did you measure the pressures in a refrigeration 5 system running your R421a as you were testing it? 6 A. Sure. 7 Q. Which pressures did you measure? 8 A. I don't recall. Everything that I could think 9 to measure. 10 Q. Did you measure low side pressure? 11 A. I did. 12 Q. High side pressure? 13 A. I did. 14 Q. Measure temperatures? 15 A. As much as I could, yes. 16 Q. Okay. Did -- any other places you measured 17 pressure in the refrigeration systems you were testing? 18 A. I measured the compressor temperature. 19 Q. Were you measuring liquid pressure or vapor 20 pressure? 21 MR. STALEY: Objection. Vague. 22 THE WITNESS: I don't recall. 23 BY MR. TREMBATH: 24 Q. Do you recall that the first -- or the -- do you 25 recall that there was an application that you had for	Page 196 1 MR. STALEY: Objection. Lacks 2 foundation. 3 THE WITNESS: Honestly, I don't -- I 4 didn't understand any of it. Mr. Deveau was with 5 me. He went through that entire process. He would 6 be better served, as my attorney, as to the outcome 7 of that particular visit. 8 BY MR. TREMBATH: 9 Q. At the outcome -- at the end of that particular 10 visit, you didn't get your patent, did you? 11 A. I don't know. 12 Q. I'm going to pass you what we'll mark as 13 Exhibit 6. It bears production numbers 5222 through 14 5234. 15 (Exhibit 6, In the United States Patent 16 and Trademark Office, in re: Patent Application, 17 Second Declaration of Kenneth M. Ponder, was marked 18 for identification.) 19 MR. TREMBATH: Can we go off the record 20 for a second? 21 THE VIDEOGRAPHER: The time is 4:37 p.m. 22 We're now off the record. 23 (Recess.) 24 THE VIDEOGRAPHER: The time is 4:40 p.m. 25 We're back on the record.
Page 195 1 421a -- let me back up. 2 Do you recall that you had a patent application 3 that was at the patent office that went up on appeal 4 that related to your 421a formulation? Appeal to the 5 board of patent examiners. 6 MR. STALEY: Objection. Compound. 7 Vague. Lacks foundation. 8 THE WITNESS: My recollection is I've had 9 many appeals. 10 BY MR. TREMBATH: 11 Q. Do you recall being denied a patent on your 421a 12 composition and -- 13 A. Not specifically, no. 14 Q. Do you recall going to a hearing to talk about 15 getting your 421a composition patented? 16 MR. STALEY: Objection, vague. 17 THE WITNESS: I only went to the patent 18 office one time that I can recall. 19 BY MR. TREMBATH: 20 Q. And when was that? 21 A. I don't recall the date. 22 Q. Don't care about the date. Was it related to 23 421a? 24 A. I think so. 25 Q. What happened?	Page 197 1 BY MR. TREMBATH: 2 Q. I'm going to pass you what has been marked 3 Exhibit 7. I will represent to you that it is the file 4 history of the -- the patent that issued as 9982179. 5 (Exhibit 7, United States Patent and 6 Trademark Office Issue Notification, Determination 7 of Patent Term Adjustment under 35 USC 154(b), was 8 marked for identification.) 9 BY MR. TREMBATH: 10 Q. And if you can go to the red tab, there's a 11 document that's entitled "Declaration for Patent 12 Application." 13 A. (Complying.) Okay. 14 Q. Do you see that? 15 A. (Witness moves head up and down.) 16 Q. And it says on the third paragraph down, "I/we 17 acknowledge the duty to disclose information which is 18 material to patentability as defined by 37 CFR 156, 19 including for continuation of applications materials 20 information of which became available between the filing 21 date of the" -- "of the prior application and the 22 national PCT international filing date of the 23 continuation in part." 24 On the next page it says, "I/we hereby declare 25 all statements made herein are made herein of my" -- "of

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1 my/our own knowledge, are true and that all statements 2 made on information and belief are believed to be true." 3 And then is that your signature? 4 A. That is my signature. 5 Q. Did you review the patent application before you 6 signed this document? 7 A. I would defer to counsel. I don't recall if I 8 did or didn't on something from 2004. I just don't 9 remember the transaction. 10 Q. Okay. But you know that's your signature? 11 A. I do agree that that's my signature. 12 Q. Okay. Do you know if Mr. Thomas signed it? 13 A. I do not know. 14 Q. On the next page there's a signature. Did 15 Mr. Thomas sign this document? 16 MR. STALEY: Asked and answered. 17 THE WITNESS: I do not know. 18 BY MR. TREMBATH: 19 Q. You do not know whether or not he signed this 20 document? 21 A. That's correct. 22 MR. STALEY: Asked and answered. 23 BY MR. TREMBATH: 24 Q. Did you forge Mr. Thomas's signature? 25 A. I do not recall that.	1 Q. Paragraph 4, it says, "An accepted guide for 2 refrigerant designations is ASHRAE Standard 34." 3 MR. STALEY: Is there a question pending? 4 BY MR. TREMBATH: 5 Q. What did you mean by that, ASHRAE Standard 34 is 6 an accepted guide for refrigerant designations? 7 MR. STALEY: Objection. Lacks 8 foundation. 9 THE WITNESS: ASHRAE Standard 34 would be 10 the committee at ASHRAE whereby all refrigerant 11 applications for consideration and designation of a 12 refrigerant would be issued. 13 BY MR. TREMBATH: 14 Q. So I just want to understand what an ASHRAE 15 designation means. Does it -- if I am not ASHRAE 16 designated, am I not a refrigerant? 17 Let me make a better question. If a composition 18 isn't ASHRAE designated, is it not considered a 19 refrigerant? 20 MR. STALEY: Objection. Vague. 21 THE WITNESS: I don't know. The example 22 I'll give you is I produced RB-276. It wasn't 23 ASHRAE designated. It was a refrigerant that I 24 sold. 25 BY MR. TREMBATH:
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1 Q. You do not recall that or you didn't? 2 A. I don't recall doing that, no. 3 Q. Do you recall having authorization to sign for 4 Mr. Thomas? 5 A. I had an authorization to sign for Mr. Thomas on 6 lots of things. Whether it was on this document or not, 7 I do not recall. 8 Q. Is that Mr. Thomas's handwriting? 9 A. He's been dead for years. I couldn't ascertain 10 that, sitting here. 11 Q. Is it your handwriting? 12 A. I don't believe it's my handwriting, no. 13 Q. Let's go back to your -- the -- the declaration, 14 the second declaration. 15 A. (Complying.) 16 Q. Okay. So did you sign that second declaration? 17 A. It appears to be my signature. 18 Q. Did you write this declaration? 19 A. I'm sure I talked to my attorneys, my patent 20 attorneys. 21 Q. Do you recall signing this declaration? 22 A. I do not. 23 Q. Do you recall reading this declaration before it 24 was signed? 25 A. I do not.	1 Q. Okay. Thank you. 2 MR. STALEY: I think he was still 3 answering the question. 4 BY MR. TREMBATH: 5 Q. Did I talk over you? Did you finish? 6 A. I'm done. 7 Q. Okay. Let's look at paragraph 5. Let me 8 know -- I'd like for you to read it. Let me know when 9 you're through. 10 A. (Complying.) Okay. 11 Q. When we look at figure -- the figure below 12 paragraph 5, what did you intend to convey with that 13 figure? 14 MR. STALEY: Objection. Lacks 15 foundation. 16 THE WITNESS: Well, as it describes on 17 the left side of the chart, deviation from R22's 18 pressure, percentage KPA or PSI-A, the differences 19 between a blend of 125/134a at a ratio of 60/40 has 20 a different pressure curve than does the blend at 21 R125/134a in a ratio of 58/42, which we now know as 22 my 421a. 23 BY MR. TREMBATH: 24 Q. Who created this graph? 25 A. I do not remember that.

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1 Q. Did you create it? 2 A. I do not remember that. 3 Q. As in you don't think you did? 4 A. As in I do not remember that -- 5 MR. STALEY: Hold on. Mischaracterizes 6 the witness's testimony. 7 THE WITNESS: I just don't remember. 8 BY MR. TREMBATH: 9 Q. All right. Do you know what -- if a computer 10 program was used to generate this graph? 11 A. I do not know that. 12 Q. Okay. Let me ask you a different question, I 13 guess. Where would you expect -- let's see, this -- 14 this blend is 58/42 and 60/40. Where would you expect a 15 blend of 59/41 to fall on this graph? 16 MR. STALEY: Objection. Calls for 17 speculation. Lacks foundation. 18 THE WITNESS: That would be a guess, and 19 I don't like to guess. 20 BY MR. TREMBATH: 21 Q. Okay. Can you tell me if it would be between 22 the band for 60/40 and the band for 58/42? 23 MR. STALEY: Same objection. 24 THE WITNESS: And your blend stated was 25 what again?	1 Q. The date you signed it, which was September 28, 2 2017. 3 A. Okay. A few days -- a few months -- a few years 4 later? I still don't remember it. Lot of water under 5 that bridge. 6 Q. Would a lubricant in the system affect this -- 7 these curves? In other words, if you added a lubricant 8 to the 60/40 blend or the 58/42 blend, would it affect 9 this curve? 10 MR. STALEY: Objection. Calls for 11 speculation and lacks foundation. 12 THE WITNESS: I would have to verify it, 13 but I don't think that it would. 14 BY MR. TREMBATH: 15 Q. All right. Do you know as you sit here today 16 whether or not this curve reflects vapor pressure or 17 liquid pressure? 18 MR. STALEY: Objection. Lacks foundation 19 calls for speculation. 20 THE WITNESS: I do not. I do not know. 21 BY MR. TREMBATH: 22 Q. Would the curve look different if different 23 pressures were used -- different -- let me back up. 24 If this curve were generated using liquid 25 pressure, would a curve using vapor pressure look
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1 BY MR. TREMBATH: 2 Q. 59/41. 3 MR. STALEY: Same objections. 4 THE WITNESS: I don't know where the 5 chart would fall without trying to do the math, 6 trying to verify. 7 BY MR. TREMBATH: 8 Q. Okay. As you're sitting here today with all 9 your years of experience with refrigeration, you can't 10 tell whether or not a blend of 59 percent 125 and 41 11 percent 134a would fall between, on this graph, 60/40 12 and 58/42? 13 MR. STALEY: Objection. Lacks 14 foundation. Calls for speculation. 15 THE WITNESS: That's correct. 16 BY MR. TREMBATH: 17 Q. This is part of your declaration, right? You 18 signed this, you swore to it, and now you're telling me 19 you don't know how this was created. Is that true? 20 A. Ten years ago. You're right. 21 Q. Ten years ago. Is that ten years ago? 22 A. That's exactly what I'm saying. 23 Q. I don't think this was ten years ago, was it? 24 A. This says "filed June 11, 2012." That's the 25 date I'm going on. What date would you like to look at?	1 different? 2 MR. STALEY: Objection. Calls for 3 speculation and lacks foundation. 4 THE WITNESS: I would not know that 5 without some kind of attempt to verify. 6 BY MR. TREMBATH: 7 Q. Let's move on to the next page. No, let's not 8 move on yet. I want to focus on this -- do you know if 9 you created this figure -- you said you didn't create 10 it. You don't know who created it -- 11 MR. STALEY: He did not say that. 12 BY MR. TREMBATH: 13 Q. That you couldn't remember creating it. 14 Did your attorney create it? 15 A. I do not know who created it. 16 Q. Do you know that it's accurate? 17 A. Sitting here? 18 Q. Yes. 19 MR. STALEY: Objection. Calls for 20 speculation. And lacks foundation once again. 21 THE WITNESS: And just for clarification 22 purposes, to make sure I'm understanding, one that 23 was in reference that I know we -- I don't remember 24 creating was on page 2. We have not discussed did 25 I create the one on page 4.

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1 BY MR. TREMBATH: 2 Q. Right. On page 2, that's the one that I'm 3 talking about. I'm sorry. 4 A. Oh, do you want me to go back to page 2? 5 Q. Yeah, page 2. 6 A. Okay. 7 Q. So you -- you -- in your -- in the document you 8 signed, you said, "I hereby declare all statements made 9 herein of my own knowledge are true and all statements" 10 -- "statements made on information and belief are 11 believed to be true." 12 You're representing, I guess, with that, the 13 accuracy of this chart, right? 14 MR. STALEY: Are you testifying on the 15 record again? 16 MR. TREMBATH: No. I'm -- I want to know 17 what he -- he meant when he signed this document. 18 BY MR. TREMBATH: 19 Q. Is this -- is this chart accurate or not, as you 20 sit here today? 21 MR. STALEY: Objection. Compound 22 question. Lacks foundation and calls for 23 speculation. 24 THE WITNESS: Counselor, without 25 verification, as I sit here today, I cannot	1 Q. Yeah. Do you -- 2 MR. AMY: Only one person asking 3 questions here, right? 4 MR. MORRIS: I'm talking to him. 5 MR. AMY: I know, but you're also on the 6 record. 7 MR. MORRIS: I'm -- I'm here, I can do 8 that. 9 MR. AMY: Well, then we're all going to 10 talk on the record and this is going to get ugly. 11 MR. MORRIS: That's fine, and that's what 12 you're doing. 13 MR. AMY: Yep. Let's have one person ask 14 questions on the record. 15 MR. MORRIS: We are. 16 MR. STALEY: What's the -- what's the 17 pending question? 18 BY MR. TREMBATH: 19 Q. Did you think that everything in the declaration 20 was true when you signed it? 21 MR. STALEY: Asked and answered. 22 THE WITNESS: That would have been my 23 belief. 24 BY MR. TREMBATH: 25 Q. Paragraph 6. There's a bolded section in there.
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1 ascertain if this chart is correct or not, since I 2 can't remember creating it, although I did sign 3 this declaration. 4 BY MR. TREMBATH: 5 Q. Did you have in 2017 any means for creating a 6 chart like this? 7 A. Yeah. 8 Q. How -- how would you create a chart like this? 9 And by "this," I mean the chart on page 2. 10 A. I'd walk down the hallway in my office and I'd 11 ask the first three people that I came across. And if I 12 didn't like their answers, I'd call my son, who has got 13 a physics degree, and I'd say, Lee, I need a graph of a 14 chart. Can you help me do that? 15 And that would be the end of it. 16 Q. And that would be 2017? 17 A. Absolutely. I'm not going to sit down and do 18 it. 19 Q. Did you think everything in your declaration was 20 true when you signed it? 21 A. I have no reason to believe that it was not 22 true, since my attorneys provided it to me. 23 MR. MORRIS: That's not what he says in 24 the declaration. 25 BY MR. TREMBATH:	1 Did -- did you bold that? Somebody else bold that for 2 you? Do you know why it was bolded? 3 A. I don't know. 4 MR. STALEY: Objection. Compound 5 question. 6 Mr. Ponder, please remember to give me a 7 second to object. 8 BY MR. TREMBATH: 9 Q. So you don't know how that section got bolded, 10 right? 11 A. No, I don't. 12 Q. Do you know why it was bolded? 13 A. I do not. 14 Q. Do you know if the pressures involved that are 15 illustrated in -- on page 2 in that chart, are those 16 vapor pressures or liquid pressures? 17 MR. STALEY: Asked and answered. 18 THE WITNESS: I don't know. 19 BY MR. TREMBATH: 20 Q. Do you know if -- if -- do you know if -- if 21 421a has a closer approximation of the ther- -- 22 thermodynamic R22 pressure temperature PT 23 characteristics than 60 percent R125/40 percent R134a if 24 you consider vapor pressure as opposed to liquid 25 pressure?

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1 MR. STALEY: Objection. Lacks 2 foundation. 3 THE WITNESS: I don't know the answer to 4 that. 5 BY MR. TREMBATH: 6 Q. Paragraph 6 goes on to say, "An important 7 consideration for replacement of the HCFC refrigerant 8 Freon 22" -- well, let me start over again. 9 Six reads, "As shown in the above figure, R421a 10 offers a much closer approximation of the thermodynamic 11 R22 pressure temperature characteristics than 60 percent 12 R125/40 percent R134, an important consideration for 13 replacement of the HFC refrigerant Freon 22." 14 Are there other important considerations for 15 replacements of Freon 22? 16 A. That would be better answered by the person and 17 what they were trying to work on at the time. To me, 18 this is all I was interested in at that time. 19 Q. Okay. The last sentence reads, "In short, 20 unexpectedly, R421a better approximates the pressure 21 temperature PT characteristics of Freon R22 than 22 60 percent R125 and 40 percent R134a." 23 What is unexpected about the way 421a matches 24 the temperature curve -- the pressure temperature 25 characteristics of Freon 22, as opposed to a 60/40	1 THE VIDEOGRAPHER: The time is 5:02 p.m. 2 We're now off the record. 3 (Recess.) 4 THE VIDEOGRAPHER: The time is 5:14 p.m. 5 We're back on the record. 6 MR. TREMBATH: Was there a question 7 pending? 8 (The Court Reporter read back the 9 question on page 210 line 9.) 10 MR. TREMBATH: And I think we were 11 talking about paragraph 6 on page 3. 12 BY MR. TREMBATH: 13 Q. I can ask a question and maybe make it easier. 14 The last sentence that says, "In short, 15 unexpectedly, 421a better approximates the pressure 16 temperature characteristics of R22," what was the basis 17 for that? 18 A. For that statement? 19 Q. For that representation, yeah. 20 A. So back in the day, our word unexpectedly was we 21 didn't know what was going to be expected. We -- we had 22 a criteria we were trying to achieve, to meet the 23 pressure temperature curve of 22. So 60/40 was a 24 different number than 50/50 or 60/40 or 65/45. And so 25 finally, when we dialed down and came across the 58/42,
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1 blend? 2 MR. STALEY: Objection. Lacks 3 foundation. Vague. And compound. 4 THE WITNESS: I could guess, but I don't 5 want to guess. 6 BY MR. TREMBATH: 7 Q. I don't want you to guess. 8 A. That's just not a -- that's not fair to you. 9 Q. I want you to tell me what you meant when you 10 wrote that sentence. 11 A. I don't recall. 12 Q. What was unexpected? Do you recall that? 13 MR. STALEY: Objection. Vague. Lacks 14 foundation. 15 THE WITNESS: Joe? 16 MR. STALEY: Yeah. 17 THE WITNESS: I have a question with 18 work. 19 MR. STALEY: With attorney-client 20 communications? 21 THE WITNESS: Yes, I do. 22 MR. TREMBATH: Do you want to take a 23 break? 24 MR. STALEY: Let's take a quick break. 25 THE WITNESS: Just for a moment, please.	1 voila, that was -- we didn't know that earlier in the 2 morning -- the day, the month, the week. So that was -- 3 that -- that number was unexpected. That was what we 4 uncovered. That's -- that became the basis of our 5 product. 6 Q. The sentence says, though, it's comparing the 7 pressure temperature characteristics of R22 with 8 60 percent R125, 40 percent 134a and your blend. So 9 what was unexpected about the pressure characteristics 10 of 58 percent penta -- 125 better approximating the 11 pressure temperature curve than 60 percent 125? 12 A. That's exactly what we're saying. It's -- 60/40 13 didn't have the pressure temperature that we wanted, and 14 the next one was 58/42. 15 Q. So you were, I believe -- and correct me if I'm 16 wrong. I don't want to misconstrue anything. I believe 17 you were messing with the temperature -- or the 18 pressures in your canisters where -- I remember you 19 describing you put different percentages in the canister 20 when you started out at 55, and then I think you said 21 you went to maybe 60 and then maybe started out 50/50. 22 When you put more 125 in the system, did the pressure go 23 up or go down? 24 MR. STALEY: Objection to the extent it 25 mischaracterizes earlier testimony.

Page 214 1 THE WITNESS: If we started at 50/50, 2 using your example, and the pressure was X, to have 3 added some measure more of 125, it would have made 4 the pressure go up in the cylinder. 5 BY MR. TREMBATH: 6 Q. And so if you take the mixture up to 60 percent 7 125 and measure the pressure, you would expect, would 8 you not, that if you took some of the 125 out of the 9 mixture, the pressure would go down? 10 MR. STALEY: Objection. Calls for 11 speculation. 12 THE WITNESS: In theory, correct. 13 BY MR. TREMBATH: 14 Q. Okay. Let's move on to paragraph 7. What's the 15 factual basis for your representation of paragraph 7? 16 A. I don't recall how that was ascertained. 17 Q. Who would know? 18 A. Probably my counsel, Todd Deveau. 19 Q. All right. Let's move on to paragraph 8. 20 What's the factual basis for the representations in 21 paragraph 8? 22 A. Okay. I've read it. 23 Q. What's the factual basis for paragraph 8? 24 MR. STALEY: Objection. Vague. 25 THE WITNESS: I believe this -- these	Page 216 1 A. That's my belief, because he did a test on co-op 2 of performance comparatively on 421a and... 3 Q. Okay. So this compares 58 percent 125 with 4 60 percent 125 in a blend, and it shows the 60 percent 5 blend being less efficient, I believe. Is that correct? 6 MR. STALEY: Are you representing that 7 information to Mr. Ponder? 8 MR. TREMBATH: I'm asking him if it's 9 correct, if that's a correct characterization of 10 the figure. 11 THE WITNESS: The graph shows the average 12 condensing temperatures in the coefficient of 13 performance change by percentage relative to R22 14 over that temperature range. 15 BY MR. TREMBATH: 16 Q. And it shows 60 percent 125 and 58 percent 125 17 as two separate lines, right? 18 A. Correct. 19 Q. And the 60 percent R125 is below the 58 percent 20 R125, correct? 21 A. That's correct. 22 MR. STALEY: Objection. Mischaracterizes 23 the document. 24 BY MR. TREMBATH: 25 Q. Is -- knowing what you know about refrigeration,
Page 215 1 statements in Number 8 are based on work done by 2 Jim Calm in theo- -- theoretical computer modeling 3 comparing R22 to the invention of 421a. 4 BY MR. TREMBATH: 5 Q. Did Mr. Calm write paragraph 8? 6 A. I don't know that. 7 Q. Why do you think the factual basis came from 8 him? 9 A. Knowing Jim as well as I do, this seems to be 10 conversation, the way it's stated, the way he -- knowing 11 how he projects things, this looks like Jim Calm's work, 12 Number 8. 13 Q. How would I know where Paragraph Number 8 came 14 from? 15 A. Once again, the declaration was handled by my 16 attorney. He would be able to furnish that information. 17 Q. Do you know what doubly normalized means? 18 A. I do not know. Is that an attorney statement? 19 Q. I don't know. It's in paragraph 8. It says 20 "the following double normalized figure," and I didn't 21 know what it meant. 22 Let's talk about the figure on page 4. Who 23 created that figure? 24 A. Jim Calm. 25 Q. Are you sure?	Page 217 1 if I used a blend that was 56 percent 125, where would 2 that line fall on this graph? 3 MR. STALEY: Objection. Calls for 4 speculation. 5 THE WITNESS: I would not know that. 6 BY MR. TREMBATH: 7 Q. Would it be above the line for the 8 58/42 percent? 9 MR. STALEY: Objection. Calls for 10 speculation. 11 THE WITNESS: I would not know the answer 12 to that. 13 BY MR. TREMBATH: 14 Q. What is -- what -- you said COP, C-O-P. What is 15 COP? 16 A. Coefficient of performance. 17 Q. What does coefficient of performance mean? 18 MR. STALEY: Objection. Lacks 19 foundation. Calls for speculation. 20 THE WITNESS: I don't know how to explain 21 it at this day and time. 22 BY MR. TREMBATH: 23 Q. It's in your declaration. 24 A. It is. That I signed. 25 Q. That you signed?

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1 A. (Witness moves head up and down.) 2 Q. Who -- who would know? 3 A. I would defer to my attorneys, and I would call 4 Jim Calm, who -- both, I'm sure, could go into great 5 lengths to help me understand that. 6 Q. In paragraph 9 -- why don't you review paragraph 7 9, and when you're through... 8 A. Okay. 9 Q. Okay. What is the higher temperature range of 10 421a? Where -- where does it stop being a good 11 refrigerant, if you know? 12 MR. STALEY: Objection. Vague. 13 THE WITNESS: I don't know what the upper 14 directions of these are. What this Number 9 is 15 referring to is energy consumption in peak energy 16 consumption times. 17 BY MR. TREMBATH: 18 Q. Okay. If we go back to the chart on page 4, it 19 goes from 35 to 65 degrees C. You see that? 20 A. I do. 21 Q. Are those the limits of 421a? 22 A. I would have to ask Jim Calm. 95 degrees, which 23 is the 35 degrees C, I think that's a -- a genuine -- a 24 general temperature range for residential 25 air-conditioning, if I'm -- remember correctly.	1 Q. Who could answer that question? 2 A. My counsel, Todd Deveau, or Jim Calm. 3 Q. Could we look at paragraph 10. Read that and 4 let me know when you're through. 5 A. (Complying.) Okay. 6 Q. What are the factual bases for paragraph 10? 7 MR. STALEY: Objection. Vague. 8 THE WITNESS: Could you help me 9 understand what you mean by factual bases? 10 BY MR. TREMBATH: 11 Q. You signed this -- 12 A. Correct. 13 Q. -- declaration. Paragraph 10 makes some factual 14 representations. Do you know these factual 15 representations of your own knowledge, or are you 16 relying upon somebody else for the factual 17 representations in paragraph 10? 18 MR. STALEY: Objection. Vague. 19 THE WITNESS: I don't know the factual 20 basis without looking it up. I'd be glad to do 21 that. 22 BY MR. TREMBATH: 23 Q. Is that something you would do or is that 24 something Mr. Deveau would do? 25 A. I could do it. I could ask Mr. Deveau. I could
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1 Q. And where would that temperature be measured? 2 Is it -- is it ambient temperature or is it 3 temperature -- 4 A. I don't know. 5 Q. Okay. What are your -- what's the basis for the 6 representations that you make in paragraph 9? 7 A. What's the -- 8 MR. STALEY: Objection. Vague. 9 BY MR. TREMBATH: 10 Q. What are the factual bases for the 11 representations made in paragraph 9? 12 MR. STALEY: Same objection. 13 THE WITNESS: I believe it's showing that 14 the 58/42 blend is a superior blend over the 15 typical operating temperatures of peak times for 16 residential air-conditioning. That's -- that's a 17 perceived benefit. 18 BY MR. TREMBATH: 19 Q. What's the factual basis for your representation 20 that, unexpectedly, 58 percent, slash -- unexpectedly, 21 the 58/42 percent are -- 421a composition benefits are 22 greatest when most needed? What's the factual basis for 23 that representation? 24 A. I'm not sure how to answer the question. I'm 25 sorry.	1 ask Jim Calm. 2 Q. Okay. As you sit here today, do you know if 3 this information came from you or is that something that 4 came from Mr. Deveau or Mr. Calm? 5 A. I do not know which. 6 Q. Do you think it came from you? 7 A. I do not recall that. 8 Q. Okay. What is GWP? 9 A. Global warming potential. 10 Q. What does that mean? 11 A. When the industry collectives decided to get 12 together since guys like me were beating on it every 13 time we got up in the morning because we didn't have 14 ozone depletion, the Clean Air Act was the only document 15 at the time that this was created -- and up until last 16 year was still the only document -- that -- that you had 17 to beat, was -- you couldn't have an ozone depletion. 18 So they came up with a new term, "global warming 19 potential." They put -- they moved the mark. We had to 20 meet -- beat the mark again. 21 Q. Let me ask you a different question. It -- it 22 looks -- as I read this, it looks like reducing R125 in 23 a blend improves your -- your GWP. Is that right? 24 A. That is correct. 25 Q. Is that unexpected or is that math?

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1 A. That's math. 2 Q. Let's look at 14, paragraph 14. Tell me when 3 you've read it. 4 A. (Complying.) Okay. 5 Q. Again, the factual basis for what's represented 6 in 14, is it better to talk to somebody else or is this 7 something that you can talk about? 8 MR. STALEY: Objection. Vague. 9 THE WITNESS: I would defer to counsel. 10 BY MR. TREMBATH: 11 Q. Okay. Paragraph 15. 12 A. Okay. 13 Q. If the board -- the hearing you went to in 14 Washington, DC said stuff inconsistent with paragraph 15 15, would that be fair to say you thought the board was 16 wrong? 17 MR. STALEY: Objection. Lacks foundation 18 and vague. 19 THE WITNESS: If you've got something 20 from the board you would like for me to compare 21 this to, I'll be glad to read it. 22 BY MR. TREMBATH: 23 Q. Okay. If it's inconsistent, if what the board 24 did was inconsistent -- 25 A. I don't remember exactly what the --	1 (The Court Reporter read back the 2 question on page 222 line 6.) 3 MR. TREMBATH: Boy, that's a terrible 4 question. How did you let me ask that? 5 MR. STALEY: I'm not disagreeing. 6 THE REPORTER: You're out of hitting 7 range. 8 BY MR. TREMBATH: 9 Q. And why did you let me ask that question. You 10 should have said, I don't understand what you're asking. 11 Here's -- here is what I'm asking: If paragraph 12 15 in your declaration is inconsistent with what the 13 board ultimately concluded, would it be fair to say that 14 you disagreed with the board's conclusion? 15 MR. STALEY: Same objections. Lacks 16 foundation. Vague. Calls for speculation. 17 THE WITNESS: Once again, I do not as I 18 sit here today remember what the board said. And 19 without rereading it, I am -- it is impossible for 20 me to answer your question based on Number 15. 21 BY MR. TREMBATH: 22 Q. Fair enough. 23 A. I'm sorry. 24 MR. TREMBATH: Let's take a break. 25 THE VIDEOGRAPHER: The time is 5:39 p.m.
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1 MR. STALEY: Objection. Hold up. 2 THE WITNESS: Sorry. 3 MR. STALEY: Objection. Lacks foundation 4 and it's vague. 5 BY MR. TREMBATH: 6 Q. If the board -- if the board said something 7 inconsistent with this -- this -- your -- your 8 declaration is after the board -- when you went to 9 Washington, DC after the board made its decision. If 10 paragraph 15 is inconsistent with what the board said, 11 would you agree with me that you would disagree with 12 what the board did? 13 MR. STALEY: First of all, are you 14 representing to him that what the board said is 15 inconsistent with his statement? 16 MR. TREMBATH: No. I'm just asking -- 17 MR. STALEY: Okay. 18 MR. TREMBATH: -- if it was, would he 19 disagree. 20 MR. STALEY: That was the first part of 21 your statement there. So I'm not -- the question 22 lacks foundation. It's vague. And it calls for 23 speculation. 24 MR. TREMBATH: Could you read the 25 question back?	1 We're now off the record. 2 (Recess.) 3 THE VIDEOGRAPHER: The time is 6:00 p.m. 4 We're back on the record. 5 (Exhibit 8, Application Data Sheet 37 CFR 6 1.76, was marked for identification.) 7 BY MR. TREMBATH: 8 Q. Mr. Ponder, I'm going to pass you what's been 9 marked as Exhibit 8. (Tendered.) 10 And it bears production numbers 5 -- R-5331 11 through R-5647. And I've got some little red tabs 12 there. One of them should take you to R-5603. Do you 13 want me to help you find it? 14 A. This one is R-05587 with a red tab on it. 15 Q. Go to the next red tab, then. 16 A. R-05588. 17 Q. R-05603, is that in that stack? 18 A. 5603? 19 Q. Yes. 20 A. It is. 21 Q. Okay. So this is a document that your patent 22 attorney, I believe, submitted to the patent office, and 23 this was after Dynatemp had filed its IPR petition. And 24 in this document, if you look at -- at -- I don't need 25 to -- I don't need to get to that. These are the

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1 remarks that Mr. Deveau made to the examiner. Really 2 what I want to focus on is page 5604. 3 A. Okay. 4 Q. Have you heard of a patent named Powell? 5 A. It doesn't ring a bell. 6 Q. All right. So the document says -- if you could 7 see References 3 and 4. There's a paragraph that begins 8 "References 3 and 4." 9 A. I do see that. 10 Q. "References 3 and 4 do not appear to be any more 11 relevant than Powell in that they are directed to 12 compositions having at least three refrigerant gasses." 13 Do you recall telling Mr. Deveau that References 14 3 and 4, which would be Global and Pearson -- do you 15 recall suggesting that they had more than two 16 refrigerant gasses, or at least three? 17 MR. STALEY: Objection. Objection. 18 Calls for the disclosure of attorney-client 19 communications. I'm going to instruct you not to 20 answer that question. 21 BY MR. TREMBATH: 22 Q. Okay. I -- the -- the next -- the last 23 paragraph there on 8 says, "The Reference 1 under U.S. 24 Patent Application US 2003/0062508 is equivalent to 25 EP195928-Honeywell, was also cited and considered in	1 MR. TREMBATH: Yes. 2 BY MR. TREMBATH: 3 Q. This document, Exhibit 9, bears production 4 number R-4884 through R-4897. And, again, if you look 5 at the last page, it's a document prepared by 6 Mr. Deveau. On page 10 of the document that bears Bates 7 Number 4893, the first full paragraph and the first two 8 sentences in the following paragraph, could you read 9 that, please? 10 A. (Complying.) Okay. 11 Q. Do you know the bases for the representations 12 made in that block of text? 13 A. I do not. 14 Q. If I wanted to understand the bases for the 15 representations made, would Mr. Deveau be a better 16 person to talk to than you? 17 MR. STALEY: Objection. Vague. 18 THE WITNESS: At least Todd Deveau. 19 BY MR. TREMBATH: 20 Q. Who else would I talk to if I wanted to know the 21 bases for the representations made here? 22 MR. STALEY: I'll just be clear. I think 23 I got lost. Where -- where exactly are we talking 24 about? 25 MR. TREMBATH: Are you on page 4893, the
Page 227	Page 229
1 connection with Serial Number 10/937,736 and is directed 2 to a refrigerant composition having at least three 3 refrigerant gasses, like Powell." 4 Do you know the basis for those representations? 5 A. I do not. 6 MR. STALEY: Hold on. Objection. 7 Mischaracterizes the document. Lacks foundation. 8 BY MR. TREMBATH: 9 Q. Do you know the basis for the representations 10 made in the last paragraph on page 8 of the document, 11 which is R-5604, and the representation made in the 12 paragraph that begins "References 3-4"? 13 MR. STALEY: Objection. Calls for 14 speculation. Lacks foundation and is vague. 15 THE WITNESS: I do not. 16 BY MR. TREMBATH: 17 Q. Would Mr. Deveau be a better person to talk to? 18 A. I believe so. 19 Q. Okay. This is from a different patent 20 application, and we'll mark it as Exhibit 9. 21 (Exhibit 9, In The United States Patent 22 and Trademark Office, in re: Application of Ponder 23 et al., Response to Non-Final Office Action, was 24 marked for identification.) 25 MR. STALEY: Are we done with --	1 first -- 2 MR. STALEY: I am. 3 MR. TREMBATH: The first paragraph and 4 the first two sentences of the next paragraph. 5 MR. STALEY: Thank you. 6 THE WITNESS: I would've been talking 7 about John Hardy, the examiner, would be another 8 person to ask. 9 BY MR. TREMBATH: 10 Q. Oh, okay. I can't talk to Mr. Hardy, so 11 Mr. Deveau would be the best person to talk to, right? 12 A. That sounds good to me. 13 Q. Is that right, though? 14 A. It is. 15 Q. Okay. All right. Did you ever tell your 16 salespeople to not talk about vapor pressure with 17 customers? 18 MR. STALEY: Objection. Vague. 19 BY MR. TREMBATH: 20 Q. When selling R421a. 21 A. I don't recall that at all. 22 MR. STALEY: Objection. Vague. 23 I'm sorry, I didn't mean to interrupt 24 you. 25 BY MR. TREMBATH:

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1 Q. No, you don't recall that? 2 A. I don't recall that, no. 3 Q. Do you -- have you ever taken inventory of R421a 4 cylinders at RMS? 5 A. I have. 6 Q. Do you currently do that? 7 A. I do not. 8 Q. Who does? 9 A. Whoever I call and say, How many have I got? 10 Q. How -- how often do you check to see how many 11 cylinders of R421a you have? 12 A. Weekly, at a minimum. 13 Q. Are records kept of the inventory that you have? 14 A. No. 15 Q. How do you know when you want to know what your 16 inventory is? Is it just -- 17 A. I just walk through there, and if the pile looks 18 a little low, I go, Hey, how many have we got, how many 19 did we sell last year? 20 Q. Are any records kept of inventory at all? 21 A. As to how much is in stock, no. 22 Q. How many years have you been doing reclamation? 23 It was '92, '93, so that's 30 years? 24 A. '93, yeah. 25 Q. About 30 years?	1 DOT or -- 2 A. I would lean -- I would lean towards DOT. 3 Q. Okay. Does -- does the D- -- does the DOT 4 define what a gas is, do you know? 5 A. I don't know. 6 Q. If it did, would it be a fair representation of 7 what a gas is? 8 MR. STALEY: Objection. Lacks 9 foundation. Calls for speculation. 10 THE WITNESS: If -- if -- if such a 11 definition existed, I would have to read it to 12 ascertain if it made sense or not, so I don't know. 13 BY MR. TREMBATH: 14 Q. So you don't know whether -- as you're sitting 15 here today, you don't know if you would agree with the 16 DOT or not? 17 A. Correct. 18 Q. How about EPA? 19 A. I may not definitely agree with them. 20 Q. If -- every refrigerant gas that is sold in 21 commerce in the United States should have that green 22 placard on it, right? That green diamond. 23 A. I don't -- 24 MR. STALEY: Objection. Hold on. 25 Objection. Vague.
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1 A. (Witness moves head up and down.) 2 Q. In 30 years, did you ever reclaim cyclopentane 3 from a refrigeration system? 4 MR. STALEY: Objection. Vague. 5 THE WITNESS: Not to my knowledge. 6 MR. TREMBATH: Let's mark this as 7 Exhibit 10. 8 (Exhibit 10, Choice R-421A Sales 9 Information Sheet, was marked for identification.) 10 BY MR. TREMBATH: 11 Q. Do you recognize Exhibit 10? It bears 12 production number R-2751 to 2752. 13 A. I do. 14 Q. What is it? 15 A. It's a brochure on R421a. 16 Q. It has a green diamond on the side of the box in 17 the -- in the photograph. What is that green diamond 18 about? What does it tell you? 19 A. That it's a compressed gas. 20 Q. Why do you put the green diamond saying it's a 21 compressed gas on the box? 22 A. I haven't read the regs in a number of years, so 23 I'll go out on a limb and say that it's a requirement 24 that we meet. 25 Q. Is it -- do you know if it's a requirement by	1 THE WITNESS: I don't know that. 2 BY MR. TREMBATH: 3 Q. Who would know that at your -- at RMS? 4 MR. STALEY: Objection. Lacks 5 foundation. 6 THE WITNESS: I would have to instruct 7 someone to look it up. 8 BY MR. TREMBATH: 9 Q. Your internal billing records -- I don't want to 10 get into the specifics, I want to try to keep it general 11 so we don't have to kick Brad out -- have a UM number on 12 them. They say -- typically they say "refrigerant gas" 13 and then there's a UM number. I think it's 7818, 14 something like that. 15 A. And that's located on what? 16 Q. On a lot of your billing documents. I can show 17 you if you'd like. 18 A. I would love to see one. 19 Q. Okay. This one is marked confidential. 20 MR. STALEY: Okay. 21 MR. TREMBATH: I don't -- we shouldn't 22 have to exclude Brad since it was to Dynatemp. 23 MR. STALEY: Yeah, that's fine. 24 MR. TREMBATH: Okay. 25 MR. STALEY: Brad, you were there in

Page 234 1 2019, correct? 2 BRAD KIVLAN: Yeah. 3 (Exhibit 11, RMS Choice Refrigeration 4 Purchase Order Number 187731, dated May 3, 2019, 5 Bates stamped DFF-03106, was marked for 6 identification.) 7 MR. STALEY: Is this 11? 8 MR. TREMBATH: Yeah. Exhibit 11, 9 production number DFF-3106. 10 BY MR. TREMBATH: 11 Q. You see in the description it says, "R125 12 pentafluoroethane UN 32320." 13 Do you know what that references? 14 A. It's the UN number, a further description of the 15 product. 16 Q. If the UN defines gasses, would you agree with 17 their definition? 18 MR. STALEY: That calls for speculation 19 and lacks foundation. Objection on that basis. 20 THE WITNESS: I don't know. 21 BY MR. TREMBATH: 22 Q. Why do you put UN 3220 behind pentafluoroethane 23 in your -- this is billing statement from you, is it 24 not? 25 A. This --	Page 236 1 MR. STALEY: Objection. Calls for 2 speculation. 3 THE WITNESS: I couldn't speak to how 4 somebody else runs it. 5 BY MR. TREMBATH: 6 Q. Do you know if generally in the industry you 7 have to put a UN number on your packaging? 8 A. I do not know generally. 9 Q. If this purchase order had been for 123, would 10 it say "nonflammable gas"? 11 A. I don't know. I'd have to look that up. 12 Q. What is a material safety data sheet? 13 MR. STALEY: Objection. Vague. 14 THE WITNESS: That was the old way of 15 describing the product listed in a cylinder for 16 shipping purposes. 17 BY MR. TREMBATH: 18 Q. How about if the product is in a drum? Would 19 you use a safety data sheet for that as well? 20 A. Sure, you could. 21 Q. Okay. 22 MR. TREMBATH: Joe, I -- I want to ask 23 him questions about this. I don't want to mark it 24 since it's -- it says "outside counsel eyes only." 25 Can I do that?
Page 235 1 Q. A purchase order? 2 A. This is a purchase order. 3 Q. Okay. Why on the purchase order do you put in 4 UN 3220? 5 A. I would imagine that it's to further describe 6 shipping paperwork. In other words, this document goes 7 through some changes in its history. It starts off as a 8 purchase order, then it goes to an invoice, then it goes 9 to a shipping document. And in the shipping document, 10 in the packing slip, it might would be useful to the 11 trucking company to see what they were hauling. 12 Q. So it's an identifier of some kind? 13 A. That's a good of a way as any. 14 Q. Okay. A CAS number. Why do you put a CAS 15 number on your purchase order? 16 A. No idea. 17 Q. And it says "nonflammable gas"? 18 A. (Witness moves head up and down.) 19 Q. Why do you put that on there? 20 A. Once again, because this document goes through 21 several different uses. In a packing slip, it would 22 help the shipping company understand what we just loaded 23 onto their truck. 24 Q. Is that sort of uniform across all folks in the 25 refrigerant business?	Page 237 1 MR. STALEY: I mean, sure, if we -- why 2 don't we just -- Brad is leaving in five minutes 3 anyway. Do you just want to -- let's just -- 4 MR. TREMBATH: I -- I -- do you -- I 5 don't need to have it be an exhibit, I don't think. 6 I just -- 7 MR. STALEY: I mean, I don't -- I mean, I 8 just -- I haven't looked at it. I mean -- 9 MR. TREMBATH: Okay. Okay. Fair enough. 10 Let's mark this as Exhibit -- 11 THE COURT: Twelve. 12 MR. TREMBATH: -- 12. 13 (Exhibit 12, National Refrigerants, Inc., 14 Refrigerant Recovery Containers, Guidelines, was 15 marked for identification.) 16 BY MR. TREMBATH: 17 Q. On the left of the photograph, it appears to me 18 to be some drums, and on the right appears to be 19 cylinders. Is that fair? 20 A. Fair. 21 MR. STALEY: Is this a document that was 22 produced in this case? 23 MR. TREMBATH: No, it's not. This is a 24 document that I got off the internet. It has no 25 production number.

Page 238 1 BY MR. TREMBATH: 2 Q. The drums on the left are representative of the 3 drums you were talking about before for R-123? 4 MR. STALEY: Objection. Lacks 5 foundation. 6 BY MR. TREMBATH: 7 Q. Correct or not? 8 A. That is correct. 9 Q. Okay. 10 A. Can I clarify? 11 Q. Sure. 12 A. See that big cylinder in the middle? 13 Q. Yeah. 14 A. I also put 123 in it. 15 Q. I don't -- understand -- I understood your 16 testimony when you said that before. 17 A. Okay. So let's mark this as Exhibit 13. 18 (Exhibit 13, R123, Product Summary, 19 Product Applications, was marked for 20 identification.) 21 BY MR. TREMBATH: 22 Q. Another document that I got off of the internet. 23 How many pages do you have there? 24 A. Four. 25 Q. Are they all the same?	Page 240 1 from -- another container of R123, but I don't know 2 that -- who would be a better person to ask. 3 BY MR. TREMBATH: 4 Q. Of course. 5 The point is -- or the question is, is that drum 6 typical of what you would put 123 in as a reclaimer? 7 MR. STALEY: Objection. Lacks 8 foundation. Vague. 9 THE WITNESS: That looks pretty typical. 10 MR. TREMBATH: Let's take a break. 11 MR. STALEY: Okay. 12 MR. TREMBATH: I can kind of regroup and 13 I think it will be more efficient. 14 THE VIDEOGRAPHER: The time is 6:25 p.m. 15 We're now off the record. 16 (Recess.) 17 THE VIDEOGRAPHER: The time is 6:38 p.m. 18 We're back on the record. 19 MR. TREMBATH: Joe, what I've got is 20 Wayback stuff -- Wayback Machine stuff from the RMS 21 website. 22 MR. STALEY: Okay. 23 MR. TREMBATH: I'm going to give you a 24 copy of this, which has more detail on it. 25 (Tendered.) And a copy of this, which I had my
Page 239 1 A. I believe so. 2 Q. Let me have it back and we're going to -- we're 3 going to cut it down. 4 A. (Tendered.) 5 Q. Do you have -- 6 MR. STALEY: I have five. 7 MR. TREMBATH: You have five? 8 MR. STALEY: Uh-huh. 9 MR. TREMBATH: Okay. Let's do it this 10 way. 11 BY MR. TREMBATH: 12 Q. Exhibit Number 14, what does it depict? 13 MR. STALEY: Hold on. I don't -- I don't 14 have the original. 15 MR. TREMBATH: Oh, 14, that's what I -- 16 THE WITNESS: I have 13. 17 BY MR. TREMBATH: 18 Q. It's 123. Exhibit 13, okay. 123, there you go. 19 What does Exhibit 13 depict? 20 MR. STALEY: Objection. Lacks 21 foundation. 22 MR. TREMBATH: And, again, this is a 23 document I pulled off the internet. 24 MR. STALEY: Still lacks foundation. 25 THE WITNESS: It appears to be a drum	Page 241 1 assistant print off. It's -- it should be the same 2 content. It's just more legible. The top is cut 3 off, so you can't really tell -- you know, it's not 4 complete. So you can put the two together and it 5 should be complete. 6 MR. STALEY: It looks like the URL is 7 different. I don't know how this works. I mean, I 8 know what the Wayback Machine is, but I'm saying 9 that the URL listed at the top of the second 10 document you gave me that's blown up is different 11 than the URL -- the -- the -- looks like that you 12 represented it comes from. 13 MR. TREMBATH: I see what you're saying. 14 There's an 80 at the end of it. 15 MR. STALEY: Yeah, there's a slash in 16 there. 17 MR. TREMBATH: Okay. Look -- look at the 18 back, towards the back. This should be the same. 19 June -- I think -- let's see. 2003 -- no, that's 20 not. Well, let's go with the one that it is less 21 legible, then. 22 Can we mark that? 23 MR. STALEY: We're using this document, 24 though, correct? 25 MR. TREMBATH: Pardon -- yes.

Page 242 1 BY MR. TREMBATH: 2 Q. Mr. Ponder, I'm going to pass you what's been 3 marked as Exhibit 14. 4 (Exhibit 14, Refrigerant Management 5 Services of Georgia Website Captures 1999-2017, was 6 marked for identification.) 7 BY MR. TREMBATH: 8 Q. It came from the internet archives, and I 9 believe it represents a capture of the rmsgas.com 10 website on February 21st, 2001; and on December 12, 11 2001; and on June 10, 2002; and on June 21st, 2003; and 12 on December 2nd, 2003. 13 I'd like to focus on the first page. Does that 14 look like content from your web page? 15 A. It does. 16 Q. Did you produce any of your web page content in 17 the course of this litigation? 18 A. What do you mean, produce? 19 Q. Did -- did you go back and check your old web 20 page information to produce it as part of the discovery 21 request? 22 A. I personally did not, no. 23 Q. Tell me about the document production process. 24 How did -- how -- in this lawsuit, how did your 25 documents, RMS's documents, get to us eventually?	Page 244 1 predominantly an HFC and contains a naphthenic oil 2 designed to thin the existing system mineral oil, we 3 suggest following the manufacturer's recommendations for 4 converting to R134a." 5 So what was Freezone? What is this -- 6 MR. STALEY: Objection. Lacks 7 foundation. 8 MR. TREMBATH: Yeah. 9 BY MR. TREMBATH: 10 Q. Is -- was Freezone just RB-276 or was there 11 something else you called Freezone? 12 A. Freezone was only RB-276. 13 Q. Okay. What -- what did -- what did you mean 14 when -- in this first sentence in paragraph 5, "Because 15 Freezone is predominantly an HFC and contains a 16 naphthenic oil designed to thin the existing system 17 mineral oil, we suggest following the manufacturer 18 recommendations for converting to R134a"? 19 MR. STALEY: Objection. Lacks 20 foundation. 21 THE WITNESS: The blend known as 22 Freezone, RB-276, was 79 percent 134a. 23 BY MR. TREMBATH: 24 Q. So did 134a mix with existing mineral oils and 25 refrigerant systems well?
Page 243 1 MR. STALEY: Objection. Vague. 2 THE WITNESS: My attorneys came over to 3 the office, said we need this. And my team went to 4 produce it and gave it to them. 5 BY MR. TREMBATH: 6 Q. Did your attorneys have access to the filing 7 cabinets and the computers and that kind of stuff, or 8 did your employees just get the stuff they asked for? 9 A. I think they just got the stuff they were -- 10 they asked for. 11 Q. Okay. Do you have at RMS your -- your website 12 documentation, your records and stuff that was on the 13 website? 14 MR. STALEY: Objection. Vague. 15 THE WITNESS: I would have no idea. 16 BY MR. TREMBATH: 17 Q. Do you know who manages your website? 18 A. My son would've done the majority of work on it. 19 Q. Did anyone ask him for historical documents 20 relating to RMS from the website? 21 A. I do not recall. 22 Q. All right. Let's -- let's look at the first 23 page of the document marked Exhibit 14. 24 A. (Complying.) 25 Q. Paragraph 5, it reads, "Because Freezone is	Page 245 1 A. Typically with the lubricant in the Freezone. 2 Q. Without the lubricant, would it mix with the 3 mineral oil in the systems? 4 A. I don't recall any testing that we did. Bruce 5 Ruello would be a better -- Harry Weber would be a great 6 guy to ask. 7 Q. All right. The date on this document is 8 February 21st, 2001, which suggests that you were 9 selling Freezone, RB-276, at least as early as 10 February 21st of 2001. Does that sound about right or 11 not? 12 A. I don't know what the dates would be without 13 going and trying to look them up. 14 Q. Do you have any reason to disagree with the date 15 of -- on this document? 16 Let me make a better question. 17 Do you have any reason to disagree or to -- do 18 you have any reason to dispute that this document is an 19 accurate representation of your web page on 20 February 21st, 2001? 21 MR. STALEY: Objection. Lacks -- lacks 22 foundation. 23 THE WITNESS: Could you please -- I'm -- 24 and I'm sorry to ask this. I'm -- I'm -- restate 25 your question one more time.

Page 246 1 BY MR. TREMBATH: 2 Q. Do you have any reason to think that what's 3 marked as Exhibit 14 is not an accurate representation 4 of was -- of what was on your website on the dates 5 designated on the bar at the top of each page or -- or 6 the certain pages? For example, the first page, do you 7 have any reason to dispute that it was on your website 8 on February 21st, 2001? 9 A. I don't remember it, that it -- 10 MR. STALEY: Objection. Lacks 11 foundation. 12 I'm sorry. Go ahead. 13 THE WITNESS: I don't remember it being 14 there, specifically because of the age of it, but 15 it could have been. 16 BY MR. TREMBATH: 17 Q. You have no reason to say it wasn't? 18 A. I have no reason to say it wasn't. 19 Q. Okay. If you can flip towards the back, there's 20 a page that is dated June 21st, 2003. It looks a lot 21 like the -- the first page of the document. 22 A. (Complying.) Where? Where? 23 Q. Up here in the corner, it says June 21st, 2003. 24 It's towards the back. 25 A. June?	Page 248 1 foundation and is vague. 2 THE WITNESS: I have -- I would want to 3 go and look at my own records. 4 BY MR. TREMBATH: 5 Q. We've asked for your records, and we didn't find 6 anything relating to this. I haven't seen anything in 7 the production relating to this. So I'm asking, as you 8 sit here today, do you have any reason to believe that 9 what's depicted on the page you're looking at that has 10 June 21st, 2003, in the upper right-hand corner -- do 11 you have any reason to believe that's not accurate? 12 MR. STALEY: Same objection. Lacks 13 foundation and is vague. 14 THE WITNESS: There are inconsistencies 15 in this document that makes me want to question its 16 validity. 17 BY MR. TREMBATH: 18 Q. What are the inconsistencies? 19 A. For instance, under e-mail, 20 "info@norust@rmgsas.com." 21 Q. Uh-huh. 22 A. I don't know what that means as compared to 23 Freezone RB-276. 24 Q. Did you have a product line "No Rust" or did you 25 deal with rust preventatives?
Page 247 1 Q. 21st, 2003. 2 A. Okay. Okay. 3 Q. All right. Now -- now we're talking about 4 Freezone R420a. Do you see that in the first line, 5 chiller conversions? 6 A. I do see that it says that. 7 Q. Does that suggest or refresh your memory perhaps 8 that you had Freezone R420a at least as early as 9 June 21st, 2003? 10 MR. STALEY: Objection. Lacks 11 foundation. 12 THE WITNESS: I do not know that. 13 BY MR. TREMBATH: 14 Q. Do you have any reason to think that this page 15 that has June 21st, 2003, on it is not an accurate 16 representation of what was on your web page on 17 June 21st, 2003? 18 MR. STALEY: Objection. Vague and lacks 19 foundation. 20 THE WITNESS: Well, I would have to go 21 back and look to verify, to make sure. 22 BY MR. TREMBATH: 23 Q. As you sit here today, is there any reason to 24 think this isn't accurate? 25 MR. STALEY: Same objection. Lacks	Page 249 1 A. I did. 2 Q. Did you have a web page entitled "No Rust at 3 rmgsas.com"? 4 A. I don't know for sure. 5 Q. Okay. 6 A. Could very well have been. 7 Q. Okay. Let's look at what we'll mark as 8 Exhibit 15. 9 (Exhibit 15, Refrigerant Management 10 Services of Georgia, Website Captures 1999-2017, 11 was marked for identification.) 12 BY MR. TREMBATH: 13 Q. On the first page of Exhibit 15 -- well, first 14 of all, does this look like content from your web page 15 at RMS? 16 MR. STALEY: Objection. Vague. 17 THE WITNESS: It could be. 18 BY MR. TREMBATH: 19 Q. If you'll look in Section 3, it says "melting 20 point gas." Do you see that? 21 A. I do see the term. 22 Q. Did you put that in any of your safety data 23 sheets for RB-276? 24 A. I do not recall. 25 Q. Do you have any reason to believe that this

Page 250 1 entry "melting point gas" was not put in by someone at 2 RMS? 3 MR. STALEY: Objection. Lacks 4 foundation. 5 THE WITNESS: I have no idea. 6 BY MR. TREMBATH: 7 Q. Okay. Do you have any reason to believe that 8 the first -- Exhibit 15 is not an accurate 9 representation of what was on your web page at 10 rmsgas.com on February 21st, 2001 -- 11 MR. STALEY: Objection. Vague. 12 BY MR. TREMBATH: 13 Q. -- and December 12, 2001; and August 11, 2003? 14 MR. STALEY: Objection. Vague and lacks 15 foundation. 16 THE WITNESS: I have no idea without 17 going back and reconstructing this to see. By 18 memory, I have no idea. 19 BY MR. TREMBATH: 20 Q. Do you have any way to go back and check what 21 was going on in February 21st, 2001? 22 MR. STALEY: Objection. Vague. 23 THE WITNESS: I won't know until I go 24 back and try. 25 BY MR. TREMBATH:	Page 252 1 became the distributor for RB-276 Freezone, a true 2 drop-in replacement for R12." 3 Does that help your memory as to when you first 4 started selling RB-276? 5 MR. STALEY: Objection. Lacks 6 foundation. 7 THE WITNESS: No, it doesn't. 8 BY MR. TREMBATH: 9 Q. Did you put anything inaccurate or untruthful on 10 your web pages? 11 A. Not to my knowledge. 12 Q. So I had another Wayback document here. I'm not 13 going to mark it. It suggests that -- that RMS had 14 invested in high-volume certified recovery equipment for 15 both high- and low-pressure refrigerants. 16 Is the equipment different for high-pressure 17 refrigerant recovery and low-pressure refrigerant 18 recovery? 19 A. It can be. 20 Q. How would -- how would it be different? 21 MR. STALEY: Objection. Vague. Lacks 22 foundation. Are you using the base of that 23 document to -- 24 MR. TREMBATH: I'm asking him, from his 25 memory, what did they do, did they have
Page 251 1 Q. Is it possible that Lee could go back in your 2 web page -- your web service and figure out whether this 3 stuff existed back in 2001? 4 MR. STALEY: Objection. Calls for 5 speculation. 6 THE WITNESS: It's possible. 7 Can I ask a question? 8 BY MR. TREMBATH: 9 Q. Sure. 10 A. What is Wayback Machine? 11 Q. There's a service you can go to, archives.org, 12 and there's a thing called a web crawler. It goes all 13 over the internet and it captures pictures of your 14 website and then it stores it. So I believe that the 15 Wayback folks would say they went on your website on 16 February 21st, 2001, and took a picture of it, and 17 that's what that picture was. 18 A. Okay. 19 Q. Let's mark Exhibit 16. 20 (Exhibit 16, Refrigerant Management 21 Services of Georgia, Website Captures 1999-2017, 22 was marked for identification.) 23 BY MR. TREMBATH: 24 Q. Exhibit 16, on the first page says, "Effective 25 2-4-98, Refrigerant Management Services of Georgia	Page 253 1 high-pressure recovery systems and low-pressure 2 recovery systems, as the website suggested that 3 they did. I asked what the difference was. 4 MR. STALEY: Same objection. 5 THE WITNESS: On some of our equipment, 6 for high pressure it used a compressor. On some of 7 our equipment, on low pressure it used a vacuum 8 pump, not the same thing as a compressor. And that 9 was the difference between the two. 10 BY MR. TREMBATH: 11 Q. Help me understand where in the process you had 12 a vacuum pump. 13 MR. STALEY: Objection. Vague. Lacks 14 foundation. 15 THE WITNESS: Are you familiar with the 16 term "push-pull"? 17 BY MR. TREMBATH: 18 Q. I've had kids with wagons and sometimes I pushed 19 them and sometimes I pulled them, so, yeah. 20 A. Well, it's -- it's irrelevant. With a 21 compressor, you can do push-pull. With a -- a vacuum 22 pump, you can do push-pull in a recovery application. 23 The volume -- typically on a vacuum pump, a large vacuum 24 pump is greater than the typical recovery machine for 25 high-pressure refrigerants.

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1 Q. So you would use, as I understand it, then, a 2 vacuum pump to pull low-pressure refrigerants out of the 3 system? 4 A. Yes. 5 Q. Okay. 6 MR. TREMBATH: Joey, how much time do we 7 have left? 8 MR. MORRIS: We have a few more minutes. 9 MR. TREMBATH: As in ten? Five? 10 MR. MORRIS: Ten, fifteen, something like 11 that. 12 MR. TREMBATH: Okay. Joe, let's take a 13 little break and let me tighten it up. 14 THE VIDEOGRAPHER: The time is 7:04 p.m. 15 We're now off the record. 16 (Recess.) 17 THE VIDEOGRAPHER: The time is 7:14 p.m. 18 We're back on the record. 19 (Exhibit 17, Choice R-420A Safety Data 20 Sheet, was marked for identification.) 21 BY MR. TREMBATH: 22 Q. Mr. Ponder, you've been handed what's been 23 marked Exhibit 18. Can you tell us what it is? 24 MR. STALEY: Seventeen, Jon. 25 MR. TREMBATH: Seventeen? Did I say 18?	1 BY MR. TREMBATH: 2 Q. At RMS, does every compressed refrigerant stored 3 in a cylinder that goes out of the shop -- does it have 4 one of those placards on it? 5 MR. STALEY: Objection. Vague. 6 THE WITNESS: Every cylinder shipped by 7 RMS of a compressed gas has a placard on it. 8 BY MR. TREMBATH: 9 Q. And the placard says what? 10 A. Various things. 11 Q. Such as? 12 A. "Nonflammable gas." 13 Q. Anything else? 14 A. The UN number for that particular product. 15 Q. Anything else? 16 A. Not to my knowledge. 17 Q. Okay. In 22 it says "hazard statement GHS-US" 18 within parens, so -- or -- what is GHS? Do you know? 19 MR. STALEY: Objection. Mischaracterizes 20 the document. 21 THE WITNESS: Where -- where are you -- 22 where are you looking at this time? 23 BY MR. TREMBATH: 24 Q. In 22 down -- 25 A. Yeah, 22.
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1 I'm sorry. Joe, thank you for keeping me honest, 2 and Joey. You guys are phenomenal. I'm sorry I'm 3 so discombobulated. 4 BY MR. TREMBATH: 5 Q. Exhibit 17, can you tell us what that is? 6 A. This appears to be a -- an MSDS sheet centered 7 around R420a. 8 Q. Is this something that would've been created by 9 RMS? 10 A. If memory serves, it was commissioned by RMS. 11 Q. Who did you commission to do this? 12 A. I don't recall the -- the name of the company, 13 but I believe there is a company that exists that 14 performed that service. 15 Q. Okay. In 2-2 there's a placard or a diamond 16 shape -- I think of it as a placard, that has a 17 compressed gas cylinder in it. Do you see that? 18 A. I do. 19 Q. Does that go on all compressed gasses, all 20 compressed refrigerants that you -- 21 A. I -- 22 MR. STALEY: Objection. It calls for 23 speculation. 24 THE WITNESS: I do not know the answer to 25 that.	1 Q. Yeah, behind each one of the text in -- on the 2 left, there's a little parenthetical that says "GHS-US." 3 What does GHS mean? 4 A. I -- I do not know the -- I don't know what that 5 stands for. 6 Q. Could it mean Global Harmonized System 7 classified -- classification labeling chemicals? 8 MR. STALEY: Objection. Calls for 9 speculation. 10 THE WITNESS: It could, but I don't know 11 it is as -- I don't know that. 12 BY MR. TREMBATH: 13 Q. You don't know that? 14 A. (Witness moved head from side to side.) 15 Q. This -- as you go down in 22, it says "hazard 16 statements." It says "contains gas under pressure." 17 Do you always put -- and let me back up. 18 You -- you've shipped 123 before, right? 19 A. Sure. 20 Q. Did you put this diamond-shaped thing on the 21 barrels of 123? 22 MR. STALEY: Objection. Vague. 23 THE WITNESS: I don't recall. 24 BY MR. TREMBATH: 25 Q. Who would know whether you did or not?

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1 A. Anybody in my company that prepared the shipping 2 document to be used for a shipment of 123 that day. 3 Q. Did you ever personally ship 123 and prepare the 4 documentation to go with it? 5 MR. STALEY: Objection. Vague. Lacks 6 foundation. 7 THE WITNESS: I don't recall the 8 transaction, but I'd be shocked if I didn't. 9 BY MR. TREMBATH: 10 Q. Okay. And do you recall whether or not you put 11 the placard with the pressurized gas cylinder on the 12 drum? 13 MR. STALEY: Same objections. 14 THE WITNESS: I do not recall that. 15 BY MR. TREMBATH: 16 Q. Okay. Do you disagree that 420a was a gas under 17 pressure when it was in a cylinder? 18 A. No, I don't disagree with that. 19 Q. If you go down to 3-2, it lists the chemicals. 20 It gives a CAS number. Do -- do you know why a CAS 21 number is put on a SDS? 22 A. I do not. 23 Q. It says "liquified gas" in the last column. Do 24 you agree that chloro -- 1-Chloro-1,1-difluoroethane is 25 a liquified gas when it's in a cylinder?	1 A. Okay. Sure. Yeah. 2 Q. Are you still in contact with Barry? 3 A. It depends on what ball team is playing. 4 Q. How often do you talk to him? 5 A. I've talked to him twice in -- in five months. 6 Q. Barry was president of Dynatemp for a while, 7 right? 8 A. He was. 9 Q. There came a time when he left Dynatemp, and I 10 believe he went to RMS. Is that correct? 11 A. No, that is not correct. 12 Q. Okay. Where -- do you -- was Barry ever an 13 employee of yours? 14 A. No, sir. 15 Q. Okay. 16 A. I tried to get him to be, but he didn't take the 17 job. 18 Q. Did he say why? 19 A. No. He was retiring. 20 Q. Okay. When Barry was at Dynatemp, how would you 21 describe your relationship with him? 22 MR. STALEY: Objection. Vague. 23 THE WITNESS: By my definition, we were 24 compadres, thick as thieves. He asked me for 25 things; I did them. I asked him for things and he
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1 A. I would have to pull the CFRs and look that 2 information up to be exact. 3 Q. Okay. If you'll look on page 3 of 7, it's 4 Section 9. 5 A. (Complying.) 6 Q. Again, this safety data sheet is for Choice 7 R420a. Physical state, it says it's a gas. Do you 8 disagree with that? 9 MR. STALEY: Objection. Lacks 10 foundation. 11 THE WITNESS: Not necessarily, no. 12 BY MR. TREMBATH: 13 Q. Okay. It says "appearance, clear, colorless 14 gas." Do you agree with that as a definition or as a -- 15 strike that. 16 Do you disagree or agree that R420a had -- had 17 the appearance of a clear, colorless gas? 18 MR. STALEY: Objection. Compound. 19 THE WITNESS: I would believe that to be 20 true. 21 BY MR. TREMBATH: 22 Q. Okay. Let's talk about Barry for a minute. 23 A. Who? 24 Q. Barry. Barry Goodwin, I believe his last name 25 is.	1 did them. We had a great relationship. I liked 2 him immensely. 3 BY MR. TREMBATH: 4 Q. How about Hal Kivlan? How would you 5 characterize your relationship with Hal? 6 A. Strained, just because of personalities. It's 7 not that he's a bad guy, just strained because he's -- 8 he's a businessman with an ulterior motive to do most 9 everything that he does. 10 MR. TREMBATH: Let's go off just so we 11 can ask him if he has any other questions. 12 Otherwise I think I'm -- 13 THE VIDEOGRAPHER: The time -- 14 MR. TREMBATH: We're done. 15 MR. STALEY: Okay. We'll step out for -- 16 you can stay here. 17 THE VIDEOGRAPHER: The time is 7:24 p.m. 18 We're now off the record. 19 (Recess.) 20 THE VIDEOGRAPHER: The time is 7:26 p.m. 21 We're back on the record. 22 MR. STALEY: We have no further 23 questions. The witness reserves the right to 24 review, sign and designate testimony. 25 That's it.

Page 262 1 MR. TREMBATH: Thank you. Thank you so 2 much for your hospitality. Thank you for sitting 3 through a long day. 4 THE WITNESS: No problem. 5 THE VIDEOGRAPHER: This concludes the 6 deposition. The time is 7:27 p.m. We're now off 7 the record. 8 (Deposition adjourned at 7:27 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 264 1 been made to cover this deposition. Huseby Global 2 Litigation, will charge its usual and customary 3 rates to all parties in the case, and a financial 4 discount will not be given to any party to this 5 litigation 6 <i>Susan DiFilippantonio</i> Susan DiFilippantonio, Notary Public 7 and Registered Professional Reporter Commission Expires 10-22-2028 8 Georgia Certificate Number 2125 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 263 1 DISCLOSURE 2 Pursuant to Article 10.B of the Rules and 3 Regulations of the Board of Court Reporting of the 4 Judicial Council of Georgia which states: Each 5 court reporter shall tender a disclosure form at 6 the time of the taking of the deposition stating 7 the arrangements made for the reporting services of 8 the certified court reporter, by the certified 9 court reporter, the court reporter's employer or 10 the referral source for the deposition, with any 11 party to the litigation, counsel to the parties, or 12 other entity. Such form shall be attached to the 13 deposition transcript, I make the following 14 disclosure: I am a Georgia Certified Court 15 Reporter. I am here as a representative of Huseby 16 Global Litigation. 17 Huseby Global Litigation, was 18 contacted to provide court reporting services for 19 the deposition. Huseby Global Litigation, will not 20 be taking this deposition under any contract that 21 is prohibited by O.C.G.A. 9-11-28(c). Huseby 22 Global Litigation, has no contract/agreement to 23 provide reporting services with any party to the 24 case, any counsel in the case, or any reporter or 25 reporting agency from whom a referral might have	Page 265 1 STATE OF GEORGIA: 2 COUNTY OF FULTON: 3 I hereby certify that the foregoing transcript was 4 reported, as stated in the caption, and the questions 5 and answers thereto were reduced to typewriting under my 6 direction; that the foregoing pages represent a true, 7 complete, and correct transcript of the evidence given 8 upon said hearing, and I further certify that I am not 9 of kin or counsel to the parties in the case; am not in 10 the employ of counsel for any of said parties; nor am I 11 in any way interested in the result of said case. 12 <i>Susan DiFilippantonio</i> Susan DiFilippantonio, Notary Public 13 and Registered Professional Reporter Commission Expires 10-22-2028 14 Georgia Certificate Number 2125 15 16 17 18 19 20 21 22 23 24 25

Page 266 CAPTION The Deposition of KENNETH M. PONDER, taken in the matter, on the date, and at the time and place set out on the title page hereof. It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form. It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.	Page 268 DEPOSITION ERRATA SHEET Assignment No. 397891 Case Caption: Dynatemp International, Inc., et al. -vs- R421A, LLC, et al. Witness: KENNETH M. PONDER DECLARATION UNDER PENALTY OF PERJURY I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath. _____ There are no changes noted. _____ The following changes are noted: Page No. ____ Line No. ____ Should read: _____ Reason for Change: _____ Page No. ____ Line No. ____ Should read: _____ Reason for Change: _____ Page No. ____ Line No. ____ Should read: _____ Reason for Change: _____ Page No. ____ Line No. ____ Should read: _____ Reason for Change: _____
Page 267 CERTIFICATE OF REPORTER STATE OF GEORGIA COUNTY OF FULTON Before me, this day, personally appeared, KENNETH M. PONDER, who, being duly sworn, states that the foregoing transcript of his deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition. If no changes need to be made on the following two pages, place a check here _____, and return only this signed page.	Page 269 Page No. ____ Line No. ____ Should read: _____ Reason for Change: _____ Page No. ____ Line No. ____ Should read: _____ Reason for Change: _____ SIGNATURE OF DEPONENT _____ KENNETH M. PONDER Sworn to and subscribed before me this ____ day of _____, ____.

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