

Exhibit A

Volume 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES DONATO

IN RE: CAPACITORS ANTITRUST) No. MD 17-2801
LITIGATION,) No. C 14-3264 JD
) San Francisco, California
) Wednesday
) March 4, 2020
) 9:00 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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Official Reporters - US District Court

KRZYWINSKI - DIRECT / SAVERI

1 **MR. SAVERI:** Your Honor, we'd like to call Mr. Eugene
2 Krzywinski to the stand.

3 **THE COURT:** All right.

4 **MR. SAVERI:** Please.

5 **THE COURT:** So, members of the jury, for each witness
6 we're going to give you a head shot, all right, so that will
7 help you keep track.

8 Mr. Saveri, it has the witness's name on it; is that
9 right?

10 **MR. SAVERI:** Yes.

11 **THE COURT:** So each head shot will have the witness
12 and the name. So you can put that in your binder. And might
13 help you keep track. It's just a device for you to decide to
14 use or not. Okay.

15 **EUGENE KRZYWINSKI,**

16 called as a witness for the Plaintiffs, having been duly sworn,
17 testified as follows:

18 **THE CLERK:** Please be seated. Please state your full
19 name, for the record, and spell your last name.

20 **THE WITNESS:** My name is Eugene Krzywinski, but I go
21 by Gene. My last name is spelled K-R-Z-Y-W-I-N-S-K-I.

22 **THE CLERK:** Thank you.

23 **MR. SAVERI:** May I proceed, Your Honor?

24 **THE COURT:** Please.
25

KRZYWINSKI - DIRECT / SAVERI**DIRECT EXAMINATION**

1
2 **BY MR. SAVERI**

3 **Q.** Good morning, Mr. Krzywinski.

4 Is your company a party to this case?

5 **A.** Yes, it is.

6 **Q.** And what kind of party is it?

7 **A.** We are a plaintiff.

8 **Q.** And sir, what is the name of your company?

9 **A.** The name is eIQ Energy, Incorporated.

10 **Q.** And what is your current position at eIQ?

11 **A.** I'm the CEO.

12 **Q.** And where do you live?

13 **A.** I live in San Jose, California.

14 **Q.** And where is eIQ incorporated?

15 **A.** We're incorporated in California.

16 **Q.** And where is eIQ located?

17 **A.** We're located in Santa Clara, California.

18 **Q.** Does eIQ have offices in any other location?

19 **A.** No, we don't.

20 **Q.** I'd like to turn to your background, sir. How old are
21 you?

22 **A.** Turning 65 this month.

23 **Q.** And where were you born?

24 **A.** I was born in New York, but when I was six I moved to
25 Ireland. And then moved back to the U.S. when I was 21.

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1 Q. Did you graduate from college?

2 A. Yes, I did.

3 Q. And what college?

4 A. Rutgers College of Engineering in New Jersey with a
5 Bachelor of Science in electrical engineering.

6 Q. Are you an electrical engineer?

7 A. Yes, I am.

8 Q. Do you belong to any engineering trade associations?

9 A. Yes, I do. I belong to IEEE, which is the Electrical
10 Engineers Institute.

11 Q. When did you begin working at eIQ there?

12 A. I was one of the co-founders of eIQ in 2007. And came on
13 as the CEO.

14 Q. Have you held other positions at eIQ since then?

15 A. Yes. In 2008, when we were fully funded, I transitioned
16 over to become the Chief Technical Officer and we brought in a
17 CEO.

18 Q. When was that?

19 A. 2008.

20 Q. And today, what is your position at eIQ?

21 A. I am the CEO.

22 Q. Now, let me ask you a little bit about the industry that
23 eIQ is in. What industry is eIQ in?

24 A. So, we make power electronics for the solar and the energy
25 industry.

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1 Q. And what type of products does eIQ design or manufacture?

2 A. So we make power electronics, like I said, for the solar
3 industry. It's a DC to DC converter, that converts the energy
4 from a solar panel into a more usable form.

5 Q. And is there a name for that product?

6 A. We call that the vBoost.

7 Q. And what is the primary function with respect to
8 electrical current that the vBoost performs?

9 A. So normally, when you install solar panels, they're put in
10 series. And if one of them goes bad -- it's kind of like the
11 Christmas-light effect, that if one bulb goes, the whole string
12 will go out. What we did was we developed a power electronics
13 that if one panel went bad, the rest of the panels remained
14 operational and fully functional.

15 Q. How about today? What does eIQ do today?

16 A. Today we are mostly a design and engineering services
17 firm. So we design power electronics of -- again, for the
18 renewable and for the solar industry. And we also offer
19 engineering services to companies that use our products or may
20 use our products.

21 Q. Does eIQ license its intellectual property or its
22 products?

23 A. Yes, we do.

24 Q. And would you describe that? What does eIQ do with
25 respect to its licensing business?

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1 **A.** So, so we design the product. We provide all the
2 documentation, the application notes for it. And then we will
3 license it to a particular company that wants to manufacture it
4 under their own manufacturing, rather than buying it from us.

5 **Q.** How many employees does eIQ have now?

6 **A.** We currently have seven.

7 **Q.** And at its high point, how many employees did eIQ have?

8 **A.** We had 35, at one stage. About 35.

9 **Q.** Can you tell us why the numbers have changed so much?

10 **A.** In 2012, we essentially lost our funding with the two
11 venture capitals that had funded the company up until then.
12 One of them essentially ran out of funds. So some of the
13 employees, we acquired the company back from the -- from the
14 investors, which also meant that we downsized.

15 **Q.** Does the -- does the design of the vBoost include
16 capacitors?

17 **A.** Yes, it does.

18 **Q.** What type of capacitors are used in the vBoost?

19 **A.** We use both ceramic and film capacitors.

20 **Q.** And did eIQ purchase film capacitors when it was
21 manufacturing the vBoost?

22 **A.** Yes, we did.

23 **Q.** What type?

24 **A.** We purchased both ceramic and film capacitors.

25 **Q.** And does eIQ purchase capacitors today?

1 **A.** Only for prototyping purposes. We're not purchasing
2 directly for any manufacturing.

3 **Q.** When eIQ was purchasing capacitors for the vBoost, were
4 you the CEO?

5 **A.** No. I would have been the CTO. Although, I would
6 have been involved in the early, in the early design functions
7 as CEO, but then CTO. I would have been, yes.

8 **Q.** And during that period, what responsibilities did you have
9 with respect to the purchase of capacitors?

10 **A.** Well, as CTO I oversaw the whole engineering function,
11 which included making sure that we had the proper documentation
12 as well as the design, and would have met with the engineering
13 team to make sure that the design was solid.

14 **Q.** Were you involved in choosing the capacitors for use in
15 the vBoost?

16 **A.** So the design engineers would have made design choices,
17 which we then would have met and discussed and made sure that,
18 that it was the right choice or that we had the right choices.
19 And I would have been involved in that, yes.

20 **Q.** And how did you go about specifying the capacitors that
21 were included in the design for the vBoost?

22 **A.** So that would have been driven by the function that we
23 were trying to achieve. And then based on that, the design
24 engineers would search for the right capacitor, the right
25 values to -- that we could use.

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1 Q. How many manufacturers were considered, ordinarily?

2 A. For, for the capacitors, we would do a search to find the
3 particular values. Some values were what we call a commodity
4 and other values were -- were ones that were more critical.

5 Q. Why were the capacitors of more than one manufacturer
6 considered?

7 A. So when we generated what we call a bill of materials,
8 which is a complete listing of all the products that we were
9 going to use, we would also specify an approved vendor list;
10 and we would try and find between one and three vendors for
11 that particular function. That was to make sure that we always
12 had at least more than one supplier for that, for that
13 component.

14 Q. And after you specified the capacitors, what did you do
15 next?

16 A. We would have prototyped them and tested them to make sure
17 that they met, met the functions.

18 Q. And did you attempt to obtain certification?

19 A. So, yes.

20 So after, after the design was complete, we would go
21 through certification with Underwriters Lab, which sets the
22 standard for operation of this particular piece.

23 Q. Now, you mentioned Underwriters Lab. Can you describe
24 what that is?

25 A. Yes. Underwriters Lab, they set standards for safe

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1 operation of electrical and electronic equipment. So
2 everything from your light switch, for instance, will have a UL
3 certification number that says they've tested it and that it's
4 safe to operate. And we would also have to go through the same
5 compliance. It's a set of rigorous tests that make sure that
6 the part is safe.

7 **Q.** Was UL certification important to eIQ?

8 **A.** Yes, it was essential for us to be able to sell.

9 **Q.** Could you explain to the jury why UL certification was
10 important?

11 **A.** So, yeah. Our product went on to residences and people's
12 homes, so it was important that it was safe, which meant that
13 the local inspector as well as the people, the installers that
14 were putting it in, made sure that our product was safe to be
15 installed.

16 **Q.** How would your customers know that eIQ had obtained the UL
17 certification for the vBoost?

18 **A.** Each unit that we would sell would have a label on it.
19 And on that label it would specify the -- the UL standard to
20 which it was tested as well as the certificate number that a
21 person could look up and see that our name was actually part of
22 that -- part of that number.

23 **MR. SAVERI:** Your Honor, could I approach the witness
24 with the -- the vBoost (indicating)?

25 **THE COURT:** Yes.

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1 **BY MR. SAVERI**

2 **Q.** So, Mr. Krzywinski, I've placed on the stand an object.
3 Would you tell the jury what that object is?

4 **A.** Yes. So this is the vBoost (indicating). This is the
5 device that goes between the solar panel and the next piece of
6 electronics which is an inverter, which turns it into AC
7 current for use in your home.

8 **Q.** Is the cover removable?

9 **A.** Yes (indicating).

10 **Q.** Could you hold up the interior of the device and just
11 explain that briefly. Well, excuse me, why don't -- on the
12 cover. I was asking you about the UL certification.

13 **A.** Yes.

14 **Q.** Will you show the jury where the UL certification is.

15 **A.** So, down here (indicating) there's, there is a stamp which
16 is, in this case, labeled ETL, which is a nationally-recognized
17 test lab for testing to UL standards. Alongside that, there's
18 a certificate number and there is the standard to which this
19 device has been tested.

20 **MR. SAVERI:** May I approach, Your Honor?

21 **THE COURT:** Yes.

22 **MR. SAVERI:** Would you turn --

23 (Document displayed)

24 **THE CLERK:** What exhibit is this?

25 **MR. SAVERI:** This would be the demonstrative. Do you

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1 want to mark it as --

2 **THE COURT:** No, that's fine. It is just a
3 demonstrative. So you won't see that box in the jury room.
4 Just for illustration.

5 **MR. SAVERI:** That's right.

6 **BY MR. SAVERI**

7 **Q.** And can you see? Is the screen on in front of you?

8 **A.** Yes, it is.

9 (Document displayed)

10 **Q.** I believe you were referring -- let me do it this way.

11 (Off-the-Record discussion between the Court and
12 Clerk)

13 **BY MR. SAVERI**

14 **Q.** The UL certification, is this (indicating) what you were
15 identifying? Right?

16 **A.** Yeah. So that's the standard to which it's been tested.
17 Below the ETL logo there's an Intertek and a number down there.
18 And that number is specific to us and to that product.

19 **Q.** Thank you very much. You can turn that off.

20 (Document taken off display)

21 **MR. SAVERI:** May I approach?

22 **THE COURT:** Yes.

23 **MR. SAVERI:** Will you put it back together.

24 (Request complied with by the Witness)

25

KRZYWINSKI - DIRECT / SAVERI

1 **BY MR. SAVERI**

2 **Q.** Now, you said a minute ago that you specified three
3 manufacturers sometimes for the capacitor for the vBoost. Do
4 you recall that?

5 **A.** Yes. We had provision for up to three, yes.

6 **Q.** What if, for an example, a fourth manufacturer made a
7 capacitor that was interchangeable with the other three for use
8 in the vBoost, could you use that?

9 **A.** Once we had passed compliance, we would not have -- we
10 would not have considered that, another capacitor manufacturer.

11 **Q.** And why is that? Would you explain that, please?

12 **A.** Yeah. Because it was -- it's a very costly process to go
13 through UL certification. They have to test it to failure, it
14 takes time and it takes a lot of money.

15 **Q.** What is the problem in terms of the sales or the business
16 of eIQ if you were to seek recertification from UL?

17 **A.** It could have a time delay in us getting into market or
18 delivering product in a timely manner to our customers.

19 **Q.** Now, you testified that the vBoost includes film
20 capacitors?

21 **A.** Yes, it does.

22 **Q.** And how many film capacitors are included in the vBoost?

23 **A.** In the vBoost there's one film capacitor but there's
24 provision for two.

25 **Q.** Was the capacitor in the vBoost a critical component?

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1 **A.** Yes. It's an essential part of its operation.

2 **Q.** Would you describe the film capacitor that's included in
3 the vBoost design and manufacture as comparatively expensive to
4 the other parts of the device?

5 **A.** Yes. In terms of the other capacitors, it was by far the
6 more expensive component or capacitor. In terms of the rest of
7 the components, yes, it was expensive.

8 **MR. SAVERI:** Your Honor, could Mr. Krzywinski come
9 down from the stand and explain the product to the jury with
10 his hands?

11 **THE COURT:** Yes.

12 **MR. SAVERI:** Or he could do it from the --

13 **THE COURT:** That will be fine. You want to -- just,
14 careful on the way down, it's a little bit steep.

15 **THE WITNESS:** Pardon?

16 **THE COURT:** It's a little bit steep so be careful
17 walking down.

18 **BY MR. SAVERI**

19 **Q.** So, Mr. Krzywinski, could you come down and just explain
20 to the jury the vBoost product and what it does?

21 **A.** Sure.

22 **THE COURT:** If you don't mind, just stand on the far
23 end and then face towards us, towards me and the court
24 reporter. Yeah. That way we can hear you.

25 **THE WITNESS:** Is that okay?

1 **THE COURT:** Yeah. Okay.

2 **THE WITNESS:** Okay.

3 So this is the vBoost. And we take the input -- this
4 comes from the solar panel, that goes -- that's on your roof.
5 And it comes in here, we process it, we take data from it. And
6 then we go through what's called a switching network; that
7 takes that voltage, that lower voltage, which is about
8 40 volts, and boosts it up to 380 volts. So it goes, it goes
9 from very low voltage to a very high voltage. And in doing so,
10 it allows us to put the solar panels in parallel rather than in
11 series. And what that means is that if one goes bad, we just
12 lose that one, we don't lose the whole string.

13 Typically -- I said they are in a string, like Christmas
14 tree lights, so if one does go bad, the whole string would go
15 bad. But this, this gets around that. And it also means that
16 they can put whatever panels that they want, the panels that
17 they want to put up on the roof.

18 **BY MR. SAVERI**

19 **Q.** Mr. Krzywinski, could you show the jury where the
20 capacitor is in the design?

21 **A.** Sure. So, the film capacitor, which is at the output
22 (indicating), and that is a high-voltage device, is this green
23 cylindrical device that you see here (indicating). So this is
24 the film capacitor. There are other capacitors on here,
25 there's some very small ceramic ones that are just used for

1 filtering out noise, but this one here is what we call the
2 storage capacitor. So this stores the energy so that it can be
3 released, it can release later.

4 **Q.** Thank you. Thank you very much.

5 Careful.

6 Why don't we just --

7 **A.** Okay.

8 **Q.** Now, you mentioned a minute ago that there are some
9 ceramic capacitors in the vBoost.

10 **A.** Yes.

11 **Q.** Could you have used ceramic capacitors instead of the film
12 capacitor that's included in the vBoost?

13 **A.** No. Like I said, the ceramic capacitors are used for
14 filtering out noise. They're -- so they're lower-voltage ones.
15 The film capacitors store energy. And the way that they store
16 that energy and capture it and release it, the operation of
17 that capacitor has to have what we call a very low resistance
18 to energy coming in and out of it, as well as capability of
19 going to a high voltage.

20 **Q.** Sir, did eIQ buy film capacitors when it was manufacturing
21 the vBoost?

22 **A.** Yes, we did.

23 **Q.** And from which companies did eIQ purchase film capacitors?

24 **A.** We purchased them from Chemi-Con.

25 **Q.** Are NCC and UCC both part of Chemi-Con?

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1 **A.** Yes, we understood that they were -- that it was the same
2 company. We -- they were synonymous to us.

3 **Q.** Did you buy film capacitors from NCC or from UCC, the U.S.
4 subsidiary of NCC?

5 **A.** So our purchase order was to UCC, but we got direct
6 shipments from NCC on those orders. Those orders were
7 fulfilled and shipped directly from Japan to us.

8 **Q.** And did you have salespeople from the Chemi-Con company
9 that you worked with?

10 **A.** Yes, we did.

11 **Q.** And did they work for NCC or UCC?

12 **A.** Um, again, we wouldn't have looked too closely. But
13 yesterday I -- based on, based on some of the discussions at
14 the opening statements, I looked up a business card. And it
15 says both on it. So the business card does say both.

16 **Q.** Do -- do you have the business card?

17 **A.** Yes, I do.

18 **MR. SAVERI:** May I approach?

19 **THE COURT:** Yes.

20 (Witness hands counsel a business card.)

21 **MR. SAVERI:**

22 (Off-the-Record discussion between counsel)

23 **MR. SAVERI:** I would like to mark this (indicating) as
24 an exhibit. I've shown it.

25 **MR. FINZI:** By stipulation, Your Honor. No objection.

KRZYWINSKI - DIRECT / SAVERI

1 **THE COURT:** Okay. That will be Exhibit 1.

2 (Trial Exhibit 1 received in evidence.)

3 **MR. SAVERI:** May I approach?

4 **THE COURT:** Please.

5 **BY MR. SAVERI**

6 **Q.** Would you identify Exhibit 1 for the record, sir.

7 **A.** Yes. This is a business card from Mr. Kanji Ohta.

8 **Q.** And on the side you're holding, what company does it
9 indicate he works for?

10 **A.** So at the very top it says Nippon Chemi-Con Group. On the
11 address it says United Chemi-Con, Inc.

12 **Q.** And if you flip the card over, what does it say?

13 **A.** Nippon Chemi-Con Group.

14 **Q.** Thank you. You can put that down.

15 Now, sir, were you here yesterday for the opening
16 statements?

17 **A.** Yes, I was.

18 **Q.** And did you hear UCC's counsel talk about two employees of
19 UCC, I think it was a Mr. Fitzpatrick and a Mr. Watlock?

20 **A.** Yes, I did.

21 **Q.** Do you know who they are?

22 **A.** No. I have not heard of them before this.

23 **Q.** Have you ever spoken with them?

24 **A.** No, I have not.

25 **Q.** Have you ever exchanged emails with them?

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1 **A.** Not personally, no.

2 **Q.** Have you ever seen them on any email chain?

3 **A.** No, I have not.

4 **Q.** Did you correspond with Mr. Ohta about the purchases of
5 NCC/UCC capacitors?

6 **A.** My staff would have. I did not, personally.

7 **Q.** To the best of your knowledge, did your staff ever
8 communicate about these purchases from Mr. Fitzpatrick or
9 Mr. Watlock?

10 **A.** Not to my knowledge, no.

11 **Q.** So in your dealings, your personal dealings with NCC or
12 UCC, who were the people you dealt with?

13 **A.** Mr. Kanji Ohta and Mr. Koji Nagata.

14 **Q.** And where were those gentlemen located?

15 **A.** They're located in California.

16 **Q.** Turning back to the UL certification. Were there any
17 other capacitors which you could have substituted for the NCC
18 or specified film capacitor in your design without -- while
19 maintaining the UL certification?

20 **A.** So, we had also qualified a capacitor from EPCOS and --
21 which is why the footprint on the particular board here has
22 provision for taking either EPCOS or the Chemi-Con capacitor.

23 **Q.** Were the film capacitors that were specified standard film
24 capacitors?

25 **A.** Yes, they were.

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1 Q. And would you explain what a standard film capacitor is.

2 A. So a standard product is one that's available either
3 through a catalog or through online. It's for the open market.
4 So that anyone can buy it. Or, either through distributors or
5 through -- or through the manufacturer.

6 Q. And why was it important for eIQ to specify a standard
7 film capacitor in its design?

8 A. Two reasons, really. One is it would have been very
9 costly to have made a custom capacitor for us. We would not
10 have had the money to do that. But number two, there's history
11 with a standard product, there's a lot of data, especially
12 reliability data that's available in a standard product that
13 would have been costly to get through a customized product.

14 Q. Now, you mentioned EPCOS.

15 A. Yes.

16 Q. You tried to buy film capacitors from EPCOS?

17 A. Yes, we did, but they were unresponsive during the time
18 that we were trying to buy them.

19 Q. Now, after you didn't get a response from EPCOS, could you
20 have tried to buy a capacitor from a third company?

21 A. Not after compliance, we would not have.

22 Q. And could you explain that?

23 A. Again, we would have gone through -- it would have been
24 costly to have gone back through compliance. Because we would
25 have had to go back through compliance, this capacitor would

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1 have been considered a critical part, which means that we
2 couldn't have substituted it without taking it back in from
3 that compliance.

4 **Q.** Now, with respect to the capacitors that you did buy, did
5 you negotiate a price with Chemi-Con?

6 **A.** I wouldn't say that we negotiated a price. We were given
7 a price and it was either buy it or don't buy it.

8 **Q.** And in terms of dollars, approximately how much did eIQ
9 spend or pay for or pay to Chemi-Con for the film capacitors
10 they purchased?

11 **A.** On, approximately \$30,000.

12 **Q.** Mr. Krzywinski, I'd like to ask you about one final area.
13 Who made the decision at the company to file the lawsuit in
14 2014?

15 **A.** So after we acquired the company back from the investors,
16 the CEO was -- and partner of mine was Michael Lamb and he
17 would have made the decision.

18 He would have been the first contact, but both of us would
19 have made the decision as to, as to go forward.

20 **Q.** Did you participate in the decision to file this lawsuit?

21 **A.** Yes, I did.

22 **Q.** In the course of this lawsuit, have the lawyers engaged
23 experts to calculate or to help you determine the damage caused
24 by you -- caused to you and other members of the class?

25 **A.** Yes, they have.

KRZYWINSKI - CROSS / LAU

1 **Q.** And do you have an understanding of what your damages
2 might be?

3 **A.** We understand it to be in the -- be between six and seven
4 percent.

5 **Q.** And do you consider eIQ paying an extra six or seven
6 percent for a capacitor in the vBoost to be significant?

7 **A.** Any -- any cost increase, especially for a startup, is
8 significant. So we were always trying to reduce costs.

9 **Q.** Can you tell the jury why you decided to file this
10 lawsuit?

11 **A.** We're a startup and we try to operate in the free market.
12 We try to operate by the rules. And we're subject to those
13 rules. And our pricing is subject to those rules. So any kind
14 of price fixing hurts us and hurts the industry in general.
15 That's why we decided that we wanted to go forward with this.
16 It was important to us.

17 **MR. SAVERI:** Thank you very much. I have no further
18 questions.

19 **THE COURT:** All right. Pass the witness.

20 **CROSS-EXAMINATION**

21 **BY MS. LAU**

22 **Q.** Good morning, Mr. Krzywinski. Thanks for being with us
23 today.

24 **A.** Good morning.

25 **Q.** My name is Bonnie Lau. And I represent Matsuo.

KRZYWINSKI - CROSS / LAU

1 EIQ is a private corporation, is that correct?

2 **A.** That's correct.

3 **Q.** And you're one of its two major shareholders?

4 **A.** Yes, I am.

5 **Q.** And you testified that you've been eIQ's CEO since 2016.

6 **A.** Approximately -- yes, 2016.

7 **Q.** And prior to that, you served as the CTO?

8 **A.** Correct.

9 **Q.** And in each of those capacities, you've been involved in
10 the day-to-day purchase of products for eIQ, is that correct?

11 **A.** Pretty much.

12 **Q.** And capacitors are a component of eIQ's products, as you
13 mentioned, to class counsel?

14 **A.** Yes.

15 **Q.** And one of the products you are responsible for was
16 purchasing capacitors, correct?

17 **A.** I'm sorry. Could you repeat that again?

18 **Q.** You were responsible for purchasing capacitors?

19 **A.** When you say was I responsible for purchasing -- I had
20 staff that would have been, you know, buyers and such that
21 would have done the direct purchasing. But yes, it would have
22 been under my supervision that that was done.

23 **Q.** Great.

24 And you're aware that there are different types of
25 capacitors, correct?

KRZYWINSKI - CROSS / LAU

1 A. Yes, I am.

2 Q. And that includes aluminum, tantalum, film, and ceramic,
3 correct?

4 A. That's correct.

5 Q. You testified on direct that eIQ only uses film and
6 ceramic.

7 A. That's correct.

8 Q. Ceramic capacitors cost pennies, sometimes a tenth of a
9 penny, is that right?

10 A. Yes.

11 Q. And film capacitors, they can cost up to \$3, is that
12 right?

13 A. In our case, yes.

14 Q. And you warrant your products for 20 to 25 years, is that
15 right?

16 MR. SAVERI: Your Honor, I object. That is beyond the
17 scope of the direct.

18 THE COURT: We discussed that yesterday. That's
19 overruled. Go ahead.

20 BY MS. LAU

21 Q. You may answer.

22 A. I'm sorry, would you repeat the question?

23 Q. Absolutely.

24 You warrant your products for 20 to 25 years, is that
25 correct?

KRZYWINSKI - CROSS / LAU

1 A. That's correct.

2 Q. And eIQ uses film capacitors because they have a long life
3 span, is that right?

4 A. Yes.

5 Q. And you do not use electrolytic, aluminum or tantalum
6 capacitors in your products because of their limited life span,
7 is that right?

8 A. That's correct.

9 Q. So in your products, you cannot use aluminum electrolytic
10 capacitors?

11 A. We decided not to use aluminum. Yes.

12 Q. And in your products, you cannot use tantalum electrolytic
13 capacitors?

14 A. Again, we decided not to use them, yes.

15 Q. And in your products, aluminum, tantalum and film
16 capacitors are not interchangeable?

17 A. In our product, no.

18 Q. Between 2002 to 2013, you testified on direct that eIQ
19 purchased film capacitors only from one defendant, United
20 Chemi-Con, correct?

21 A. Yes.

22 Q. And you purchased capacitors from United Chemi-Con for
23 roughly two years?

24 A. I -- I believe -- I believe so, yes. I don't have the
25 exact numbers in my head, yes, but yes.

KRZYWINSKI - CROSS / LAU

1 Q. Sure.

2 And you continued to purchase from United Chemi-Con until
3 eIQ stopped manufacturing products in June, 2012, is that
4 right?

5 A. Approximately, yes.

6 Q. There are 22 defendants being sued by the plaintiff class,
7 right?

8 A. Yes.

9 Q. And plaintiffs allege an overarching scheme to fix the
10 prices of aluminum, tantalum, and film capacitors involving 22
11 defendants, correct?

12 A. That's what I saw yesterday, yes.

13 Q. And except for United Chemi-Con, eIQ has never purchased
14 film capacitors from any other defendant?

15 A. To the best of my knowledge, that's correct.

16 Q. And between 2002 and 2013, eIQ has never purchased any
17 electrolytic capacitors from any defendant?

18 A. I believe that to be correct.

19 Q. EIQ purchased zero aluminum capacitors from any defendant?

20 A. I believe that to be correct, yes.

21 Q. EIQ purchased zero tantalum capacitors from any defendant?

22 A. I believe that to be correct.

23 Q. And between 2002 and 2013, you are not aware of eIQ
24 purchasing any capacitors from any of the defendant
25 manufacturers located in Japan?

KRZYWINSKI - CROSS / LAU

1 A. I believe that to be correct.

2 Q. And eIQ did not purchase any customized capacitors, right?

3 A. That's correct.

4 Q. On direct you testified that you considered purchasing
5 from EPCOS?

6 A. That's correct.

7 Q. And EPCOS is a film capacitor manufacturer that is not one
8 of the defendants sued in this case, correct?

9 A. I believe so, yes.

10 Q. And that's because EPCOS made the type of film capacitor
11 that was interchangeable with the one that you purchased from
12 United Chemi-Con, is that correct?

13 A. Its functions were interchangeable, but its footprint was
14 not.

15 Q. Okay. And another source of capacitors was to buy them
16 from distributors, is that correct?

17 A. That's generally correct, yes.

18 Q. And distributors buy capacitors from the capacitor
19 manufacturers to sell them to you, correct?

20 A. Correct.

21 Q. And eIQ purchased from distributors, right?

22 A. Yes, we did.

23 Q. And in fact, you actually prefer buying capacitors from
24 distributors, is that correct?

25 A. Generally, yes.

KRZYWINSKI - CROSS / LAU

1 Q. Because you can negotiate lower prices with distributors
2 because you're usually buying a variety of electrical
3 components at the same time from them, is that correct?

4 A. In our case, we would -- we try to buy from distributors
5 because we tried to buy the whole package --

6 Q. Uh-huh.

7 A. -- of all the components that we have. So it was
8 essentially more of a one-stop shop rather than our people
9 trying to go in and buy separate, separate components from
10 separate distributors.

11 Q. Thank you, Mr. Krzywinski.

12 And because you were able to buy that variety of
13 electrical components from a one-stop shop, you could negotiate
14 lower prices, correct?

15 A. In -- yeah -- I think so, yes. In some cases, yes.

16 Q. And you shopped around for different prices when you
17 purchased capacitors, isn't that right?

18 A. We would have tried to shop around, yes.

19 Q. And you testified on direct that you typically used one
20 film capacitor in each DC to DC converter in your vBoost
21 product, correct?

22 A. That's correct, but the footprint is set up -- there's
23 values of capacitance. And we bought a certain value. And if
24 that wasn't available, we made provision that we could buy two
25 of the smaller values.

KRZYWINSKI - CROSS / LAU

1 Q. And on direct you also testified that the film capacitor
2 is one of the most expensive components used to manufacture the
3 vBoost, is that right?

4 A. That's correct.

5 Q. And film capacitors cost at most \$3, right?

6 A. That's correct.

7 Q. And sometimes film capacitors cost less than \$3?

8 A. If you say so. We didn't buy them -- well, we didn't buy
9 them at much less than that.

10 Q. What was the price that you purchased film capacitors at?

11 A. \$2.90.

12 Q. \$2.90. And in fact, eIQ sold it, DC to DC convertors at a
13 price of approximately \$299, correct?

14 A. That was the MSRP. That was the manufacturer price.

15 Q. So the cost of the film capacitor was roughly one percent
16 of your MSRP price, correct?

17 A. Of the MSRP.

18 Q. And you testified on direct that you are part of a trade
19 association called IEEE, is that right?

20 A. That's correct.

21 Q. And you know that a trade association is an organization
22 of people, entities in the same industry, is that correct?

23 A. That's correct.

24 Q. And eIQ is also a member of a solar industry trade
25 association called SEPA, S-E-P-A, is that right?

KRZYWINSKI - CROSS / LAU

1 A. That was correct. We were, past-tense.

2 Q. And the SEPA trade association put on trade shows,
3 correct?

4 A. Correct.

5 Q. And the SEPA trade association provided networking
6 opportunities for the solar industry, correct?

7 A. Yes.

8 Q. And you personally attended SEPA trade association
9 meetings on behalf of eIQ?

10 A. Not meetings. I attended -- we attended conferences, but
11 there were, there were no particular meetings that we went to.

12 Q. You attended meetings with your competitors at trade
13 association SEPA events, correct?

14 A. Could you rephrase that, please?

15 Because when you say "meetings," do you mean that we met
16 in the hallway? Or that we met on a conference floor? Or that
17 we met in a separate room?

18 Q. Sure. Let me take a step back.

19 A. Okay.

20 Q. So some of the attendees at SEPA trade association events
21 were your competitors, correct?

22 A. Yes.

23 Q. Okay. And you had meetings with your competitors at those
24 SEPA trade association events, correct?

25 A. Again, would you please define, what do you mean by

KRZYWINSKI - CROSS / LAU

1 "meetings"? Was it casual meeting? Or was it a meeting
2 specifically set up as a separate meeting in a separate room?
3 I'm confused about what you're asking.

4 **Q.** Any meeting with a competitor.

5 **A.** We met, casually met our competitors. We saw them on the
6 conference floor. We did not have separate meetings with them.

7 **Q.** Direct class counsel asked you about your decision to file
8 this lawsuit. Do you remember that?

9 **A.** Yes.

10 **Q.** You have no personal knowledge that the conspiracy you're
11 alleging in this case existed, correct?

12 **A.** Correct.

13 **Q.** You're relying on your lawyers for the allegation that 22
14 defendants engaged in an overarching scheme to fix the prices
15 of aluminum, tantalum, and film capacitors for 12 years, isn't
16 that right?

17 **A.** I don't know what you mean by "overarching scheme."

18 **Q.** Uh-huh.

19 **A.** Please explain.

20 **Q.** Do you have any facts to support the allegation of a
21 scheme across 12 years, three capacitor types, and 22
22 defendants?

23 **THE COURT:** Next question, please. That one's not
24 going to be answered. Go ahead. Next question, counsel.

25

1 **BY MS. LAU**

2 **Q.** EIQ took no steps to uncover the alleged conspiracy before
3 filing your complaint, is that right?

4 **A.** That's correct.

5 **Q.** EIQ was incorporated in September, 2007, right?

6 **A.** Yes.

7 **Q.** So eIQ did not purchase capacitors from any defendants
8 before September, 2007, right?

9 **A.** Yes.

10 **Q.** And eIQ stopped manufacturing products in June, 2012,
11 right?

12 **A.** Yes.

13 **Q.** So that means that after June, 2012, eIQ did not purchase
14 any capacitors from any defendants, correct?

15 **A.** Yes.

16 **Q.** So the only time that eIQ was purchasing capacitors was
17 from September, 2007, to June, 2012, with the exception of the
18 prototype that you mentioned?

19 **A.** Within that timeframe, yes.

20 **Q.** That's around five years of the alleged 12-year conspiracy
21 period, correct?

22 **A.** Yes.

23 **Q.** So of the 22 defendants in this case, eIQ only purchased
24 from one, United Chemi-Con, right?

25 **A.** Yes.

KRZYWINSKI - CROSS / BIAL

1 **Q.** And of the three types of capacitors in this case, eIQ
2 only purchased film capacitors from United Chemi-Con, correct?

3 **A.** Yes.

4 **MS. LAU:** Thank you, Mr. Krzywinski.

5 I believe we may have one or two questions from United
6 Chemi-Con, Your Honor.

7 **THE COURT:** All right. Go ahead.

8 **MR. BIAL:** Thank you, Your Honor. This shouldn't take
9 long.

10 **CROSS-EXAMINATION**

11 **BY MR. BIAL**

12 **Q.** Good morning, Mr. Krzywinski. And thank you for your
13 time.

14 It sounds like you had quite an interesting business.

15 You were here in court yesterday, did I get that correct?

16 **A.** That's correct.

17 **Q.** And do you recall I held up a fairly large-sized capacitor
18 and I compared it to -- I think to the vBoost that you have
19 sitting in front of you?

20 **A.** Yes, I saw that, yes.

21 **Q.** Okay. Have you ever purchased one of those large-can
22 capacitors from United Chemi-Con?

23 **A.** No.

24 **Q.** Has eIQ ever purchased any other capacitors from United
25 Chemi-Con other than the film capacitors that we were

KRZYWINSKI - CROSS / BIAL

1 discussing?

2 **A.** Yes. We purchased ceramic.

3 **Q.** Ceramic capacitors?

4 **A.** Yes.

5 **Q.** What about aluminum capacitors?

6 **A.** No.

7 **Q.** Okay. Thank you.

8 Do you know whether you've purchased any capacitors that
9 were manufactured in the Lansing facility that I was discussing
10 yesterday?

11 **A.** I wouldn't know.

12 **Q.** You don't know?

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

14 **Q.** Okay. Thank you.

15 And then you mentioned a Mr. Ohta and a Mr. Nagata. Did I
16 get that correct?

17 **A.** I think -- yeah, I think that was his last name.

18 **Q.** Do you know whether those two gentlemen are still with
19 United Chemi-Con?

20 **A.** No, I don't.

21 **Q.** While they were here in United States, do you know whether
22 Mr. Ohta report reported to United Chemi-Con?

23 **A.** His business card says both Nippon Chemi-Con and United
24 Chemi-Con --

25 **Q.** Right.

1 **A.** -- so I don't know which one he directly reported to.

2 **Q.** No, that's fair, that's fair.

3 And I take it, that's the same for Mr. Nagata?

4 **A.** I would believe so.

5 **Q.** Okay. Since 2012, do you know who from United Chemi-Con
6 is selling United Chemi-Con capacitors or NCC capacitors in
7 California?

8 **A.** No, I don't.

9 **Q.** Okay. And then you mentioned something -- I think I heard
10 six to seven percent damages. Did I hear that correctly?

11 **A.** Yes.

12 **Q.** And where was that number calculated?

13 **A.** By my counsel.

14 **Q.** By the counsel, okay.

15 Do you know whether that was an economist calculation?

16 And I don't want to hear anything about your conversations with
17 counsel, but do you know whether that was calculated by an
18 economist?

19 **A.** I relied on counsel to, to tell me that number.

20 **Q.** Okay. So if that was incorrectly calculated, would that
21 change your view of the damages and harm to eIQ?

22 **A.** I -- I don't have a view of the damages.

23 **Q.** Okay. That's fair.

24 And just the last couple of questions.

25 Did you testify that you considered purchasing the film

KRZYWINSKI - CROSS / BIAL

1 capacitors from EPCOS?

2 **A.** Yes, we did.

3 **Q.** Okay. Would the capacitors that you considered purchasing
4 from EPCOS have been an alternative to the film capacitors that
5 you actually purchased from my client, United Chemi-Con?

6 **MR. SAVERI:** I object. This is asked and answered.

7 **THE COURT:** Well, you're just going to ask this one
8 thing? Yeah, go ahead. That's fine.

9 **MR. BIAL:** I have two questions left, Your Honor.

10 **THE COURT:** That's fine, go ahead. Yes.

11 **THE WITNESS:** Would you repeat the question, please?

12 **BY MR. BIAL**

13 **Q.** Sure.

14 Were the capacitors that you considered purchasing from
15 EPCOS an alternative to the ones that you ultimately purchased
16 from United Chemi-Con, my client?

17 **A.** Yes.

18 **Q.** Is EPCOS a defendant in this lawsuit?

19 **A.** No.

20 **MR. BIAL:** Thank you, Mr. Krzywinski. Appreciate your
21 time.

22 **THE COURT:** Okay. Any brief followup?

23 **MR. KIDWELL:** Your Honor, I just have 120 seconds of
24 followup for AVX.

25 **THE COURT:** All right.

1 **MR. KIDWELL:** Thank you.

2 **CROSS-EXAMINATION**

3 **BY MR. KIDWELL**

4 **Q.** Mr. Krzywinski, I'm Robert Kidwell. Thanks for taking
5 just one more moment with me.

6 I'm going to jump around because I just have a couple
7 followup questions. I'm not going to ask you to retestify to
8 anything. I'm just going to tell you what portion of your
9 testimony I'm referring back to. Okay?

10 **A.** Okay.

11 **Q.** So you testified earlier, and if I misstate it please tell
12 me, that your design engineers would specify capacitors based
13 on their function, is that correct?

14 **A.** Correct.

15 **Q.** And that some capacitors were commodity and others were
16 more critical?

17 Did you say that earlier?

18 **A.** Yes, I did.

19 **Q.** Okay. And you also said that you would get UL
20 certification for your product based on its specifications, is
21 that correct?

22 **A.** I'm sorry --

23 **Q.** Certainly.

24 Did you get UL certification for your product?

25 **A.** Yes, we did.

1 Q. And are aspects of UL certification flammability? Is that
2 one of the aspects of UL certification?

3 A. I'm not clear -- I'm not sure in terms of our particular
4 product.

5 Q. Okay. So you're unaware whether the UL specification for
6 your product includes a flammability standard?

7 A. I'm unsure of that, yes.

8 Q. Does it include a fail mode standard?

9 A. Yes.

10 Q. What is the fail mode standard?

11 A. Fail safe.

12 Q. Fail safe.

13 You said the vBoost has one film capacitor. Is it a thin
14 film or a thick film capacitor?

15 A. It's a polypropylene, which is the extent of my knowledge
16 of the internal workings.

17 Q. Would UL have certified your product if you used a
18 tantalum capacitor on the output circuit?

19 **MR. SAVERI:** Objection; calls for speculation.

20 **THE COURT:** Sustained. Next question.

21 **BY MR. KIDWELL**

22 Q. Does your design engineers consider specifying a tantalum
23 capacitor for the output circuit?

24 A. No.

25 Q. Are you aware of what the fail mode is for a tantalum

1 capacitor?

2 **A.** No.

3 **Q.** Are film capacitors self-healing?

4 **MR. SAVERI:** Objection.

5 **THE COURT:** Sustained. Next question.

6 **MR. KIDWELL:** Certainly.

7 **BY MR. KIDWELL**

8 **Q.** You said the output power of the vBoost is 250 watts at
9 1.25 amps, is that correct?

10 **MR. SAVERI:** Objection. I don't -- that's not what he
11 testified.

12 **THE COURT:** I'll do one or two more on this and then
13 we'll move on. Go ahead.

14 Do you know the answer?

15 **THE WITNESS:** Yes.

16 The specification calls, calls for up to 250 amps -- 250
17 watts at up to 1.25 amps.

18 **BY MR. KIDWELL**

19 **Q.** Thank you. And 300 volts. And are you aware -- is that
20 correct?

21 **MR. SAVERI:** Objection. Objection.

22 **THE COURT:** I can't understand a word you're saying.
23 And if you're trying to get him to add to his testimony, you
24 can't just slip it in. So do you have a question?

25 **MR. KIDWELL:** Sure. Sure.

KRZYWINSKI - REDIRECT / SAVERI

1 **THE COURT:** Something involving the number 300?

2 **BY MR. KIDWELL**

3 **Q.** Is that at 300 --

4 **THE COURT:** Counsel, let me go first. And then we're
5 going to wrap it up so you have one or two left. All right?

6 **MR. KIDWELL:** Yes.

7 **THE COURT:** Okay. Go ahead.

8 **BY MR. KIDWELL**

9 **Q.** And is it 300 volts? Is that correct?

10 **A.** Actually, it could operate up to 350 volts on some of the
11 products and 380 volts on some other ones.

12 **Q.** Thank you.

13 **MR. KIDWELL:** Let me cross out my questions here,
14 Your Honor.

15 **BY MR. KIDWELL**

16 **Q.** Did you consider buying your film capacitor from AVX?

17 **A.** I --

18 **MR. WILLIAMS:** Objection. That is MIL 5.

19 **THE COURT:** It's already been discussed. Do you have
20 anything else?

21 **MR. KIDWELL:** No, Your Honor. Thank you.

22 **THE COURT:** Okay. Any brief followup?

23 **MR. SAVERI:** Just brief.

24 **THE COURT:** Yes.
25

REDIRECT EXAMINATION

1
2 **BY MR. SAVERI**

3 **Q.** On cross-examination, you were asked briefly about trade
4 associations. Do you recall that?

5 **A.** Yes.

6 **Q.** When you went to a trade association, did you ever talk
7 with your competitors that you may have met there about
8 pricing?

9 **A.** No.

10 **Q.** Did you ever talk to them about your future plans for
11 prices?

12 **A.** No.

13 **Q.** Did you ever exchange with them information regarding your
14 production capacity?

15 **A.** No.

16 **Q.** Did you ever exchange any confidential business
17 information to anyone at a trade association meeting?

18 **A.** No. This was a highly-competitive market. No.

19 **MR. SAVERI:** Thank you.

20 **THE COURT:** Okay. Members of the jury, we're going to
21 take just a six-minute break; I'm going to have a word with the
22 lawyers. And the witness will still be here on the stand. So
23 if you have any written questions, you can present them to me
24 at that point. But let's just -- give me just six minutes or
25 so.

CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

Wednesday, March 4, 2020