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ROBERT S. MUELLER, III (CSBN 59775)
United States Attorney

FILED
01 AUG 28 PM 3:00
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

0315
PJH

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERKELEY NUCLEONICS
CORPORATION,
DAVID BROWN,
RICHARD HAMILTON, and
VINCENT DELFINO,

Defendants.

Criminal No:

VIOLATIONS: Title 18, U.S.C. § 371 --
Conspiracy, Title 50, U.S.C. § 1705(b)
Violation of Export Administration
Regulations Regarding Exports to India

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

I. BACKGROUND

1. At all times relevant to this Indictment, except as otherwise specifically stated:

a. The United States Department of Commerce has the authority to regulate the export of goods and technology from the United States to foreign countries. The Department of Commerce, through its Bureau of Export Administration, regulates the export of goods such as nuclear pulse generators from the United States.

b. The Export Administration Act authorizes the Secretary of Commerce to prohibit or curtail the export of any goods, technology or software as necessary to protect the national

1 security, foreign policy, nonproliferation, and short supply interests of the United States. The
2 Secretary of Commerce implements the authority provided by the Export Administration Act
3 through the promulgation of regulations known collectively as the Export Administration
4 Regulations.

5 c. The Export Administration Act lapsed on August 20, 1994. However, the President of
6 the United States, by virtue of the International Emergency Economic Powers Act, has annually
7 invoked his authority to continue the Export Regulations through issuance of annual executive
8 orders. By virtue of these Executive Orders, the Export Administration Regulations have been
9 reiterated and renewed since 1994, and remained in effect throughout the time of the events of
10 this Indictment.

11 d. The Export Administration Regulations prohibit the export of nuclear pulse generators
12 and related parts from the United States unless authorized by the United States Department of
13 Commerce. The regulations further prohibit any transaction that evades or avoids
14 or is taken to evade or avoid the Export Administration Regulations. The Export Administration
15 Regulations include a Commerce Control List, which categorizes the goods and items that are
16 controlled under the Export Administration Regulations. Goods and items included on the
17 Commerce Control List are given an Export Classification Control Number, or an ECCN.

18 e. Defendant Berkeley Nucleonics Corporation was a California Corporation engaged in
19 the business of buying and selling nuclear pulse generators which have military applications.

20 f. Defendant David Brown is the Sales Manager of Berkeley Nucleonics.

21 g. Defendant Richard Hamilton is the Marketing Director of Berkeley Nucleonics.

22 h. Defendant Vincent Delfino was an employee of Berkeley Nucleonics.

23 COUNT ONE: (18 U.S.C. § 371)

24 THE CONSPIRACY

25 2. On or about and between December 31, 1998 and August 22, 2000, both dates being
26 approximate and inclusive, in the Northern District of California, and elsewhere, the
27 defendants

28 BERKELEY NUCLEONICS CORPORATION,
RICHARD HAMILTON,
DAVID BROWN, and
VINCENT DELFINO

and others, did knowingly and intentionally conspire to commit offenses against the United States, that is, the defendants conspired to:

Violate the Export Administration Regulations by exporting U.S. origin goods and technology controlled under ECCN 3A999, ECCN 3A992 and ECCN EAR99 to Bhaba Atomic Research Center and the Nuclear Power Corporation in Mumbai, India, entities to which exports are controlled for national security purposes, without the authorization of the Department of Commerce, as required by 15 Code of Federal Regulations Section 736.2(b)(1), in violation of 50 U.S.C. Sections 1702 and 1705(b), 15 Code of Federal Regulations Sections 734.2(b)(2)(ii), 736.2(b)(5), 764.2(a), 764.2(b), 764.2(c), 764.2(d), 764.2(e), 764.2(g), 764.2(h), and 764.2(i).

MANNER AND MEANS OF THE CONSPIRACY

3. It was part of the conspiracy that the defendant Berkeley Nucleonics Corporation shipped nuclear pulse generators, via air freight, to the Bhaba Atomic Research Center and the Nuclear Power Corporation, which are both divisions of the Indian Department of Atomic Energy in Mumbai, India.

4. It was further part of the conspiracy that defendant Berkeley Nucleonics used and attempted to use certain companies based in Mumbai, India to assist it in arranging for the sales of nuclear pulse generators to the Bhaba Atomic Research Center.

OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

5. In furtherance of the conspiracy and to effect its objects, the defendants Berkeley Nucleonics Corporation, Richard Hamilton, Dave Brown, Vincent Delfino and others committed and caused to be committed the following overt acts, in the Northern District of California and elsewhere:

a. On or about December 31, 1998, defendant Berkeley Nucleonics shipped a model 8020 nuclear pulse generator, without Department of Commerce authorization, to the Bhaba Atomic Research Center in Mumbai, India.

b. On or about May 28, 1999, defendant Berkeley Nucleonics shipped a model 8020 nuclear pulse generator, without Department of Commerce authorization, to the Bhaba Atomic Research Center in Mumbai, India.

c. On or about July 29, 1999, defendant Vincent Delfino sent a fax to Electronic Enterprises in Mumbai, India advising them "regarding shipping restrictions" and in the fax stated that they

had sent two model 8020 Pulse Generators to India in the last eight months and did not foresee a problem shipping another pulse generator.

d. On or about November 19, 1999, defendant Berkeley Nucleonics shipped a model 8020 nuclear pulse generator, without Department of Commerce authorization, to the Bhaba Atomic Research Center in Mumbai, India.

e. On or about December 10, 1999, defendant Berkeley Nucleonics shipped a model BH-1 tail pulse generator and a model AP-1 portanim power supply, without Department of Commerce authorization, to the Nuclear Power Corporation of India in Mumbai, India.

f. On or about January 2, 2000, defendant Dave Brown e-mailed Electronic Enterprises in Mumbai, India asking if "the India bans on certain customers" had affected the success of their business.

g. On or about April 17, 2000, defendant Richard Hamilton had a conversation with an undercover agent.

h. On or about July 28, 2000, defendant Berkeley Nucleonics attempted to ship a model GL-3 pulse generator, without department of Commerce authorization, to the Bhaba Atomic reseach center in Mumbai, India.

i. On or about August 22, 2000, defendant Vincent Delfino had a conversation with an undercover agent.

All in violation of title 18 United States Code 371.

COUNT TWO: (50 U.S.C. § 1705(b); 15 C.F.R. §§ 736.2 and 764.2)

1. Paragraph one of this Indictment is incorporated herein as though fully set forth.

2. On or about December 31, 1998, in the Northern District of California, and elsewhere, the defendants

BERKELEY NUCLEONICS CORPORATION,
RICHARD HAMILTON, and
VINCENT DELFINO

willfully exported goods and items controlled under ECCN 3A992 from the United States to the Bhaba Atomic Research Center in Mumbai, India, specifically, a model 8020 nuclear pulse generator, without having first obtained Department of Commerce authorization as required by law; in violation of Title 50, United States Code, Section 1705(b), and 15 Code of Federal Regulations Sections 736.2(b)(1), 764.2(b), 764.2(e), and 764.2(h).

COUNT THREE: (50 U.S.C. § 1705(b); 15 C.F.R. §§ 736.2 and 764.2)

1. Paragraph one of this Indictment is incorporated herein as though fully set forth.

2. On or about May 28, 1999, in the Northern District of California, and elsewhere, the defendants

BERKELEY NUCLEONICS CORPORATION and
VINCENT DELFINO

willfully exported goods and items controlled under ECCN 3A992 from the United States to the Bhaba Atomic Research Center in Mumbai, India, specifically, a model 8020 nuclear pulse generator, without having first obtained Department of Commerce authorization as required by law; in violation of Title 50, United States Code, Section 1705(b), and 15 Code of Federal Regulations Sections 736.2(b)(1), 764.2(b), 764.2(e), and 764.2(h).

COUNT FOUR: (50 U.S.C. § 1705(b); 15 C.F.R. §§ 736.2 and 764.2)

1. Paragraph one of this Indictment is incorporated herein as though fully set forth.

2. On or about November 19, 1999, in the Northern District of California, and elsewhere, the defendants

BERKELEY NUCLEONICS CORPORATION and
VINCENT DELFINO

willfully exported goods and items controlled under ECCN 3A992 from the United States to the Bhaba Atomic Research Center in Mumbai, India, specifically, a model 8020 nuclear pulse generator, without having first obtained Department of Commerce authorization as required by law; in violation of Title 50, United States Code, Section 1705(b), and 15 Code of Federal Regulations Sections 736.2(b)(1), 764.2(b), 764.2(e), and 764.2(h).

COUNT FIVE: (50 U.S.C. § 1705(b); 15 C.F.R. §§ 736.2 and 764.2)

1. Paragraph one of this Indictment is incorporated herein as though fully set forth.

2. On or about December 10, 1999, in the Northern District of California, and elsewhere, the defendants

BERKELEY NUCLEONICS CORPORATION, and
VINCENT DELFINO

willfully exported goods and items controlled under ECCN EAR99 from the United States to the Nuclear Power Corporation, in Mumbai, India, specifically, a model BH-1 tail pulse generator, without having first obtained Department of Commerce authorization as required by law; in

violation of Title 50, United States Code, Section 1705(b), and 15 Code of Federal Regulations
Sections 736.2(b)(1), 764.2(b), 764.2(e), and 764.2(h).

COUNT SIX: (50 U.S.C. § 1705(b); 15 C.F.R. §§ 736.2 and 764.2)

1. Paragraph one of this Indictment is incorporated herein as though fully set forth.

2. On or about December 10, 1999, in the Northern District of California, and elsewhere, the
defendants

BERKELEY NUCLEONICS CORPORATION, and
VINCENT DELFINO

willfully exported goods and items controlled under ECCN EAR99 from the United States to the
Nuclear Power Corporation, in Mumbai, India, specifically, a model AP-1 portanium power
supply, without having first obtained Department of Commerce authorization as required by law;
in violation of Title 50, United States Code, Section 1705(b), and 15 Code of Federal
Regulations Sections 736.2(b)(1), 764.2(b), 764.2(e), and 764.2(h).

COUNT SEVEN: (50 U.S.C. § 1705(b); 15 C.F.R. §§ 736.2 and 764.2)

1. Paragraph one of this Indictment is incorporated herein as though fully set forth.

2. On or about July 28, 2000, in the Northern District of California, and elsewhere, the
defendants

BERKELEY NUCLEONICS CORPORATION
DAVID BROWN, and
VINCENT DELFINO

willfully attempted to export goods and items controlled under ECCN 3A999 from the United
States to the Bhaba Atomic Research Center, in Mumbai, India, specifically, a model GL-3 pulse

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generator, without having first obtained Department of Commerce authorization as required by
1 law; in violation of Title 50, United States Code, Section 1705(b), and 15 Code of Federal
2 Regulations Sections 736.2(b)(1), 764.2(b), 764 (c), 764.2(e), and 764.2(h).

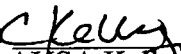
3
4 DATED: 8/28/01

A TRUE BILL.

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6 
7 FOREPERSON

8 ROBERT S. MUELLER, III
9 United States Attorney

10 
11 DAVID W. SHAPIRO
12 Chief, Criminal Division

13 (Approved as to form 
14 AUSA Kelly)