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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 11CR0329 JM
)	
Plaintiff,)	<u>I N F O R M A T I O N</u>
)	
v.)	Title 15, United States Code,
)	Section 78dd-1 - Foreign
MAXWELL TECHNOLOGIES, INC.,)	Corrupt Practices Act; Title
)	15, United States Code,
)	Sections 78m(b)(2)(A),
Defendant.)	78m(b)(5), and 78ff(a) - Books
)	and Records.

The United States charges that, at all times relevant to this Information:

GENERAL ALLEGATIONS

INTRODUCTION

1. Congress enacted the Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Section 78dd-1, et seq. ("FCPA"), for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of obtaining or retaining business for, or directing business to, any person.

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1 and headquartered in Switzerland. MAXWELL S.A.'s financial results
2 were consolidated with MAXWELL's throughout the relevant period.
3 MAXWELL S.A., although separately incorporated, shared employees,
4 officers, and personnel, and, where specified, undertook the acts
5 set forth herein with the authorization, knowledge and subject to
6 the control of MAXWELL.

7 6. "Executive A," a citizen of the United States, was a
8 senior executive at MAXWELL in its San Diego office during portions
9 of the relevant period and, after resignation, continued to draw
10 a salary from MAXWELL for services as a "corporate planner."

11 7. "Executive B," a citizen of the United States, was a
12 senior executive at MAXWELL in its San Diego office for portions
13 of the relevant period. After Executive B's resignation,
14 "Executive B" continued to work part-time for MAXWELL for the
15 remainder of the relevant period pursuant to a Transition
16 Agreement.

17 8. "Executive C," a citizen of the United States, was a
18 senior executive at MAXWELL in the finance department in San Diego
19 during portions of the relevant period.

20 9. "Executive D," a citizen of the United States, was
21 MAXWELL's "Operations Controller, Europe" during portions of the
22 relevant period and later became MAXWELL's Controller. Although
23 Executive D at times worked in Switzerland, at all times relevant,
24 Executive D was a MAXWELL employee.

25 10. "Executive E," a citizen of Switzerland, was MAXWELL
26 S.A.'s Vice President and General Manager for portions of the
27 relevant period. Executive E later became MAXWELL S.A.'s Senior
28 Vice President and General Manager.

1 11. "Agent 1," a Chinese national, was a third-party agent
2 responsible for MAXWELL S.A.'s high-voltage capacitor sales to
3 Chinese customers from at least 2002 until May 2009.

4 **Maxwell's Customers**

5 12. Pinggao Group Co. Ltd. (formerly Pingdingshan High
6 Voltage Switchgear Works) ("Pinggao Group") was a state-owned
7 manufacturer of electric-utility infrastructure in Henan Province,
8 People's Republic of China ("PRC" or "China").

9 13. New Northeast Electric Shenyang HV Switchgear Co., Ltd.
10 ("Shenyang HV") was a state-owned manufacturer of electric-utility
11 infrastructure in Liaoning Province, PRC.

12 14. Xi-an XD High Voltage Apparatus Co., Ltd. a/k/a Xi'an
13 Shinky High Voltage Electric Co., Ltd. ("Xi-an XD") was a state-
14 owned manufacturer of electric-utility infrastructure in Shaanxi
15 Province, PRC.

16 **THE BRIBERY SCHEME**

17 **Generally**

18 15. From at least July 2002 through in or about May 2009,
19 MAXWELL and its subsidiaries paid approximately \$2,789,131 to Agent
20 1 to be distributed to Chinese foreign officials, in return for
21 securing contracts that profited MAXWELL.

22 16. MAXWELL and its subsidiaries accomplished these payments
23 by using Agent 1 to market and sell MAXWELL's high voltage
24 capacitors to Chinese consumers of MAXWELL'S capacitors,
25 substantially all of which were Chinese state-owned entities.
26 During the relevant period, Agent 1 requested quotes from MAXWELL
27 S.A. on behalf of prospective Chinese state-owned entities. Upon
28 Agent 1's instruction, MAXWELL S.A. added an "extra" 20 percent to

1 the quoted amounts to arrive at a higher price for MAXWELL S.A.'s
2 high-voltage equipment. MAXWELL S.A. then invoiced the Chinese
3 state-owned entities for equipment at the higher-priced rate, which
4 the state-owned entities paid upon receipt of the equipment. Agent
5 1 invoiced MAXWELL S.A. for the "extra" 20 percent added to quoted
6 prices, which Agent 1 classified in Agent 1's invoices as either
7 "extra amount" or "special arrangement" fees. Upon receipt, Agent
8 1 distributed the "extra amounts" to officials at the Chinese
9 state-owned entities, including employees at including Pinggao
10 Group, Shenyang HV, and Xi-an XD.

11 ***Knowledge Within MAXWELL'S U.S. Management***

12 17. MAXWELL's management within the United States discovered,
13 tacitly approved, concealed and caused to be concealed the bribery
14 scheme outlined above. For instance:

15 A. In October 2002, MAXWELL sent Executive D to assist
16 with the integration of the finance function as a result of
17 MAXWELL's acquisition of MAXWELL S.A.

18 B. On November 20, 2002, Executive D sent an email to
19 MAXWELL's most senior officers, then located in the Southern
20 District of California and elsewhere, reporting that Executive
21 D discovered that "there is a payment that is made to a
22 Chinese bank account in relation to selling . . . equipment."
23 Executive D concluded that "[i]t would appear that this
24 payment is a kick-back, pay-off, bribe, whatever you want to
25 call it, given that we cannot obtain an invoice or other
26 document that identifies what the payment is for. This type
27 of payment is in violation of US trade laws." Executive D
28

1 then asked Executive A, Executive B, and Executive C for
2 advice on how "we should handle this situation."

3 C. Executive B, then MAXWELL'S Chief Operating Officer,
4 replied that "this is a well know [sic] issue" and that
5 Executive B would dispatch another MAXWELL employee who had
6 "familiarity with the issues and solutions" to assist
7 Executive D. Executive B also instructed that there be "[n]o
8 more emails please."

9 18. Following the payments' discovery by MAXWELL's senior
10 management in the United States, under Executive E's oversight and
11 direct supervision, payments to Agent 1, which Agent 1 then passed
12 on to officials at Chinese state-owned entities, only increased.
13 In 2002, MAXWELL S.A. paid approximately USD\$165,000 to Agent 1.
14 In 2008, MAXWELL S.A. paid nearly USD\$1.1 million to Agent 1.

15 ***Accounting for "Extra Amounts" and "Special Arrangement" Fees***

16 19. For all relevant periods, MAXWELL periodically filed
17 and caused to be filed with the SEC financial statements and
18 reports disclosing, among other things, MAXWELL's financial data
19 and an analysis of MAXWELL's financial condition and results of
20 operations. MAXWELL's statements and reports accounted for
21 payments of "extra amounts" and "special arrangement" fees paid
22 as bribes to officials at state-owned entities as sales-
23 commission expenses in MAXWELL's books, records, and accounts.
24 In its Form 10-Q filing for the quarter ended March 31, 2009,
25 MAXWELL reclassified the amounts and fees for current and prior
26 periods as a reduction in revenue.

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COUNT 1
Foreign Corrupt Practices Act - Bribery
(15 U.S.C. § 78dd-1)

20. Paragraphs 1 through 19 are realleged and incorporated by reference as though fully set forth herein.

21. From at least in or about July 2002 through in or about May 2009, in the Southern District of California and elsewhere, defendant MAXWELL, an issuer organized under the laws of the United States, willfully and corruptly acted in furtherance of an offer, payment, promise to pay, and authorization of the payment of money to a person, while knowing that all or a portion of such money would be and had been offered, given, and promised, directly or indirectly, to foreign officials, for purposes of: (i) influencing acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of the lawful duties of such officials; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government or instrumentalities, in order to assist defendant MAXWELL and others in obtaining and retaining business for and with, and directing business to, defendant MAXWELL and others; to wit, MAXWELL made and caused to be made a series of payments exceeding \$2.7 million to Agent 1, knowing that all or a portion of those payments would be conveyed to officials of foreign governments employed by state-owned entities, including Pinggao Group, Shenyang HV, and Xi-an XD, in an effort to secure and retain contracts with certain state-owned entities.

All in violation of Title 15, United States Code, Section 78dd-1.

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COUNT 2
Foreign Corrupt Practices Act - Book and Records
(15 U.S.C. § 78m)

22. Paragraphs 1 through 19 are realleged and incorporated by reference as though fully set forth herein.

23. From at least in or about July 2002 through in or about March 2009, in the Southern District of California and elsewhere, defendant MAXWELL, an issuer organized under the laws of the United States, knowingly falsified and caused to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and disposition of MAXWELL and its assets; to wit MAXWELL mischaracterized the "extra amounts" and "special arrangement" fees paid as bribes as sales-commission expenses in its books, records, and accounts.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a), and Title 18, United States Code, Section 2.

Dated: Jan 27, 2011.
LAURA E. DUFFY
UNITED STATES ATTORNEY

DENIS J. MCINERNEY
CHIEF, FRAUD SECTION
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