

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
FESTUS ADELABU,

Complainants

v.

DOCKET NOS. 11-BEM-00604
11-BEM-03547

TERADYNE, INC.,
RICK BURNS, and MARTIN SCHWARTZ,

Respondents

Appearances: Marc D. Freiburger, Esq. and Kara Moheban McLoy, Esq. for Complainant
Stephen T. Paterniti, Esq. and Kevin Sibbersen, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 14, 2011, Complainant, Festus Adelabu, filed a complaint of discrimination against his employer, Respondent Teradyne, Inc., his immediate supervisor, Martin Schwartz, an Engineering Manager, and Rick Burns, then Manager of Hardware Engineering. Complainant alleged that Respondents discriminated against him based on his race (African American) and retaliated against him in violation of G.L. c. 151B §§ 4 (1), (4A), 4(4) and 4(5) and Title VII. Complainant alleged that he was the victim of disparate treatment and was demoted from his management position, relieved of his direct reports and denied an award of restricted stock units. On August 9, 2011, Complainant filed a second charge of discrimination alleging further

discrimination and retaliation including constructive discharge from his employment on July 25, 2011, in violation of G.L. c. 151B, §§ 4(1), (4A), (4) and (5).

The Investigating Commissioner found probable cause to credit the allegations of the complaints and attempts at conciliation were unsuccessful. An eleven day public hearing was convened before me on February 1, 2, 3, 4, 5, 10, 24, 25, and 26, 2016 and on March 28 and 29, 2016. A total of ten witnesses were called to testify and 316 exhibits were introduced in evidence.¹ On July 21, 2016, the parties filed extensive post-hearing briefs. Based on the record before me and considering the post-hearing submissions, I make the following Findings of Fact and Conclusions of Law. Certain proposed findings of the parties have been omitted as not relevant or unnecessary to a proper determination of the material issues presented. To the extent that the testimony of a witness is not in accord with the findings herein, such testimony is not credited. To the extent the proposed findings of the parties comport with my determination, they have been adopted here.

II. FINDINGS OF FACT

1. Complainant, Festus Adelabu, is African American. He has a Bachelor's degree and a Master's degree in electrical engineering from Rensselaer Polytechnic Institute and a Master's degree in business administration from Babson College. (Tr. I, 35; Ex. C-16) Complainant worked for a number of companies prior to commencing employment with Respondent. (Id.)

2. Respondent, Teradyne, is a product development company that designs and manufactures equipment that tests semiconductor microchips contained in products including lap-top computers, iPhones, and space satellites. Testing components are controlled by computer and contain software with which the customer/end user interacts using a video monitor and a

¹ Some of the exhibits were duplicates

keyboard. (Tr. 2, 224-225; Tr. 3, 44-47; Tr. 4, 87-88) Teradyne designs the software with which the end user interacts. The software communicates with internal computer circuitry referred to as firmware or FPGA. The firmware interfaces with both the software and the hardware. (Tr. 5, 22-27; Tr. 7, 236-238) The customer interfaces with the software developed by the software group, which has significant interaction with the customer to understand the customer's desires in terms of user interface. The customers do not interface with the FPGA/firmware.² (Tr. Vol. 4, 86-91; Tr. 7, 236-237)

3. From 2007 to 2016 Respondent Rick Burns was the manager of the department referred to as Hardware Engineering at Teradyne and reported to Mike Malone, the VP of Engineering.³ Respondent, Martin Schwartz was the engineering manager of the FPGA/firmware group within the Hardware Engineering Department and he reported to Burns. During Complainant's tenure at Teradyne, he reported directly to Schwartz. (Tr. Vol. 4, 97; Tr. Vol. 7, 220-221, 223; Joint Stipulation No. 3)

4. There are six engineering levels at Teradyne designated as DL1 to DL6. There are a number of manager engineering positions beginning with the designation MG1 through MG6.⁴ Schwartz testified that as an MG2 he was responsible for managing DL5 engineers and MG1 manager engineers. (Tr. Vol. 4, 81) MG1 managing engineers are team leaders who coordinate a team of engineers from their respective functional disciplines and who have direct reports, while DL5's do not have direct reports. (Tr. Vol. 4, 99- 101) MG1's are supervised within their functional discipline by MG2's or higher. Schwartz testified that a DL5 engineer is a technical leader who also leads teams, similar to an MG1, but the individuals who comprise the team do

² The testimony regarding the design and manufacture of testing components, while simplified, is highly technical and detailed from the perspective a lay person and is merely summarized here.

³ In February 2016, Burns was promoted to VP of Engineering. (Tr. 7 220-211)

⁴ Burns held the positions designated as MG3 and MG4 prior to becoming VP of engineering. Tr. 7, 221)

not report directly to the DL5 engineer. DL5's also do not have responsibility for representing their team's work product at the project management level. They drive technical decisions but do not deal with budgets, schedules and other non-technical operational issues. Schwartz testified that a DL5 engineer is a prestigious title with significant autonomy and assignments that have a very large impact on the company. (Tr. Vol. 4 99-100; Tr. Vol. 6, 17). According to Schwartz and Burns, these designations are somewhat fluid and it would not be unusual for an individual to move back and forth within these positions. (Tr. Vol. 6, 13; Vol. 4, 76-78; Vol. 9, 86-87) Schwartz testified that a DL5 engineer might fall somewhere between an MG1 and an MG2 managing engineer in terms of compensation and stock awards, and the ceiling of the DL5 salary range exceeds the ceiling of the MG1 salary range. (Tr. Vol. 4, 100-101; Tr. Vol. 6, 10)

5. The company is structured on a matrix management system that includes both functional management organization as well as project management organization. Engineers within each functional discipline (i.e. software, firmware, hardware) have functional managers, which include MG1's, who also serve as team leaders on projects representing their specific discipline. (Tr. Vol. 3, 48-51; Vol. 4, 94-97) Burns testified that the company's model is to build teams comprised of engineers and managers to work on product development projects. A project manager assembles a team of engineers from various functional disciplines to work on a particular project. (Tr. 7, 229-230) Project core teams are comprised of project management, which includes the project manager, the design lead, and team leaders from each of the major disciplines involved in the project. The core team meets frequently in core team meetings to resolve project issues and disputes. (Tr. Vol. 7, 233) Team leaders are expected to be engaged in the project and to work cooperatively in resolving technical disputes. (Tr. Vol. 3, 55) Burns stated that he and other functional managers are responsible for oversight of these project teams.

Their role is to set realistic goals around schedules and budgets and to assess the validity of the project team's plans and to intervene if the project gets off-track. (Tr. Vol. 7, 222-223)

6. In 2007, Complainant was encouraged by a friend to apply for a position as an engineering manager at Respondent, Teradyne. During the hiring process, Complainant's contact in Human Resources at Teradyne was Peter Volonino. Complainant felt that Volonino was dismissive, rude and condescending to him in response to his efforts to negotiate a higher salary. He claimed that Volonino stated words to the effect of "if you were a security guard or a janitor, we wouldn't pay you what you're asking for." (Tr. Vol. 1, 44) When Complainant did not disclose his compensation history or a complete list of former employers on his application, Volonino claimed in an email to Rick Burns that his application raised "red flags," and another Teradyne recruiter stated Complainant was playing "liar's poker" with the company. (Tr. Vol. 3, 14-16; Vol. 8, 109-110; Ex. C-104) Schwartz testified that it was not uncommon for applicants to negotiate their salaries with Teradyne. (Tr. Vol. VI, 94) Vice President of Human Resources Stephan Fagerquist testified that applicants typically will not provide current compensation on their application and that Teradyne does not typically verify prior salary history. (Tr. Vol. IX, 83)

7. Complainant's resume was referred to Schwartz who interviewed Complainant for an MG1 position in the FPGA/firmware group. Schwartz testified that he was very impressed with Complainant, thought he was "brilliant" and was anxious to bring him on board. (Tr. 4 103-104) Complainant was offered an MG1 position with a salary that was near the top of the MG1 range, the highest salary ever offered an MG1 during Schwartz's tenure as the FPGA manager at Teradyne. The offer exceeded those made to the two most recent MG1 hires by some \$20,000. Schwartz testified that Complainant was also offered more stock than the company

typically offers an MG1 at hiring. Schwartz notified Complainant that this was the best the company could do. (Tr. Vol. IV, 106-109,117, 118; Ex.R-3; R-160; R-163) When Complainant sought the salary range of a MG2 engineering manager, the salary negotiations reached an impasse and it appeared as though Complainant would not accept Teradyne's offer. Burns and Schwartz discussed moving on, much to Schwartz's disappointment. (Tr. Vol. IV, 111-112; Ex. C-102; 104)

8. Ultimately, Complainant accepted Teradyne's offer and he began employment at the company's headquarters in North Reading, MA as a full-time employee as an MG1 Engineering Manager in August of 2007. (Joint stipulation No 1.) Complainant was the only African American manager in the Hardware Engineering Group and one of six African American managers at Teradyne which has approximately 350 white managers in North America. (Ex. C-47, C-79, C-80; Ex. 142, p.9-10) In September of 2007, shortly after being hired, Complainant was identified by Burns as a "high potential" ("HIPO") employee, representing the top three to five percent of the Hardware Engineering group who had the potential for great leadership and technical advancement. Schwartz viewed Complainant as a potential candidate to replace him as an MG2 leading the FPGA firmware group. (Tr. Vol. VII, 244-245; Vol. IV, 121-122)

9. From the time of his hire until February 2011, Complainant held the title of Design Manager. (Joint Stipulation No. 2) In that role, Complainant had approximately six direct reports and typically managed seven to fifteen contractors at any given time while supervising at least two to three, and sometimes more, engineering projects. (Tr. Vol. I, 52-54, 124; Ex. C-69, C-92) Complainant proved very adept at managing his direct reports, and according to Schwartz, was the best functional manager in his department at that time. Complainant received very high

ratings from Schwartz in the area of managing people and teams in his 2009 performance evaluation. (Tr. Vol. IV, 121-122; Ex. R-17)

10. Shortly after he began working at Teradyne, Complainant noted that the number of meetings he had to attend was excessive, demanded an enormous amount of his time, and were often, in his view, unproductive. (Tr. Vol. 1, 55-66; Vol. III, 32-33) Complainant voiced his concerns about this "meeting culture" to Schwartz who concurred that it was excessive and not always efficient. Schwartz received similar complaints from other members of his staff that Teradyne was using meetings as the primary way of doing intra-functional project communication. (Tr. Vol. IV, 133-138) Schwartz was supportive of Complainant's concern that he had limited ability to attend all of the scheduled meetings on his many projects, indicating Complainant did not need to attend certain meetings and, on occasion, attending the meetings on Complainant's behalf. (Tr. Vol. 1, 57-61) In August 2008, Schwartz requested that Complainant provide him with a copy of his meeting schedule to demonstrate his "high meeting work load," and his meeting conflicts. Schwartz addressed this issue with Burns. (Tr. Vol. VI, 114-116; Vol. IV, 141-143; Ex. C-111; C-115; C-61) In September 2008, Schwartz indicated to his direct reports that he intended to raise the issue of the meeting culture being out of control at a round table with the VP of engineering. (Ex. C-65)

11. In late 2008 and 2009, Schwartz began receiving some complaints from Program Managers and Project Managers about Complainant's failure to attend certain meetings. (Tr. Vol. IV, 132-133) One of these complaints was escalated to the VP of Engineering which Schwartz stated was very serious. (Ex. R-11) Schwartz voiced concern to Complainant that he might be perceived as not being committed to certain projects because Complainant had unilaterally decided to not attend some meetings that he did not view as worthwhile. (Tr. Vol.

IV, 132-133; 140-141; 147) Complainant responded to managers who complained of his absence at certain meetings that he was often double booked and could not be simultaneously in multiple places. (Tr. Vol. 1, 62; Ex. C-61) Burns suggested to Schwartz that they might have to pull some projects off of Complainant's plate. (Ex. R-11)

12. Complainant was otherwise a strong performer and consistently received positive verbal feed-back from Schwartz in 2007 and 2008. (Tr. Vol. 1, 67-68, 71, 91) Schwartz informed Complainant in 2007 and 2008 that he was his best manager and made Schwartz a better manager. (Tr. Vol. 67-68) Schwartz did not conduct a written Manager Assessment Performance Summary (MAP) for Complainant in 2007 or 2008. (Tr. Vol. 1, 68 -71; Vol. IV, 130-131), but confirmed that if he had done so, it would have been generally positive. (Tr. Vol. VI, 137, 139-141)

13. Schwartz began to be concerned in late 2008 to 2009 that Complainant started to voice a lack of patience with co-workers whom he perceived to be incompetent. (Tr. Vol. IV, 147, 170-171) On one project labeled TCIT/TCIJ, when problems arose with the development team in India, Complainant informed Schwartz that the project was "all screwed up," no one on the project team was listening to him, there was nothing he could do about it, and he was not going to work on it anymore.⁵ Schwartz testified that it was not acceptable for a manager to simply state, "I'm done with this thing," and that no other manager had made ever made such a statement to him. For this reason, Complainant was rated a "Needs Improvement" on this project in 2009. (Tr. Vol. IV, 164-169; Ex. R-17) Despite the problem with this project, Complainant rated himself "Outstanding" for every single goal in his 2009 MAP. (Ex. R-16, 117

⁵ In a similar vein, one of Complainant's peers, Naim Mark Kahwati, who worked with him on a number of projects testified that Complainant generally did not like being challenged by finite resources and timelines, and if a problem fell outside of his job description, it was someone else's problem. (Tr. Vol. X, 22-24)

at TERA-001507) Despite a “needs improvement” rating on the TCIT/TCIJ project, Schwartz rated Complainant as “exceeding expectations” in three of his six goals in his 2009 MAP. (Ex. C-57) Burns testified that in 2009, despite Complainant being removed from the HIPO list for being dissatisfied with his current level and the matrix management system, Complainant was still in the top 4% of performers in the Hardware Engineering Group and was considered an outstanding employee. (Tr. Vol. VIII, 5-7)

14. Complainant received salary and merit raises for each year of his employment from 2007-2010, except for 2009 due to Company-wide pay-cuts when no one received pay raises. (Tr. Vol. I, 96-97; Ex. C-39) He also received grants of restricted stock units (RSU’s) in 2007, 2009 and 2010. (Tr. Vol. I, 72, 93-94, Vol. VI, 168-169; Ex. C-39; C-40)

15. In March of 2010, Schwartz learned that another internal group at Teradyne intended to make Complainant an offer to join them. Schwartz notified Burns that he wanted to “mount a defense” to keep Complainant because he did not want to lose “his best functional manager,” and he asked Burns for his support. (Tr. Vol. VI, 88-89; 181-183) Burns, who had suggested to Schwartz that Complainant be introduced to this other opportunity, also testified that at that time he viewed Complainant as a high performer, a strong manager and a key employee. (Tr. Vol. VIII, 125-128)

16. In late 2009 or early 2010, Teradyne began a new project, referred to as the Battery Project, which involved the development of equipment for manufacturing and testing batteries, targeting customers like Samsung and Hitachi. This was a new direction for the company and high level management was very interested in the project. Burns was selected as the project manager. His supervisor Mike Malone, Teradyne’s VP of Engineering, was considered the sponsor of the project, demonstrating the project’s significance and visibility. (Tr. Vol. III, 101-

104; Vol. VIII, 12-15; Vol. VII, 235; Vol. V, 7) The Battery Project received monthly scrutiny by the CEO. Burns was required to report to the CEO every quarter and to submit budget requests for the next quarter, so the CEO could determine if the project would continue. (Tr. Vol. VIII, 13-15) Since interested customers wanted a demonstration of the product prior to purchasing, there were some unique time pressures and deadlines for developing a prototype. (Tr. Vol. X, 25) Burns testified, "It was a high profile project with a lot of pressure and a lot of things changing all at the same time." (Tr. Vol. VIII, 63)

17. The Battery Project team leads were a group of Teradyne's high performers. (Tr. Vol. III, 128) In March of 2010, Complainant was assigned to the Battery Project to lead a team responsible for developing the FPGA and embedded firmware for the project. (Tr. Vol. 1, 114, 116, 123) The firmware was designed to communicate with the software being developed by the software team who communicated directly with the customer about product requirements. (Tr. Vol. III, 107-108; Vol. VIII, 15-16, 106-107) The firmware was the "hub" of communication for the project which enabled the hardware and software to interact with the product. (Tr. Vol. X, 28) Burns and Schwartz both felt Complainant was technically a great fit for the Battery Project and considered him a key person on the project. Schwartz testified that he discussed with Complainant the need to be a team player. (Tr. Vol. VIII, 125; Vol. V, 6)

18. The Hardware Lead on the Battery Project was Mark Kahwati, and the Software lead was Jon Rodin. (Tr. Vol. III, 116-118) According to Burns, the core team of the Battery Project was comprised of some the "most opinionated and aggressive people in the organization...who were not afraid to mix it up with each other over issues," and that he valued these attributes in engineers. He also stated there were "some personality clashes" between individuals who all think they know the right thing to do. (Tr. Vol. VIII, 29-30, 63; 127) Complainant had never

worked directly with Burns on a specific project and had never been managed by Burns prior to being assigned to the Battery Project. (Tr. Vol. I, 115; Tr. Vol. VIII, p. 128)

19. During the earliest phase of the Battery Project, Complainant recommended using eInfochips, an out-sourced contractor from India, to work on the development of the firmware. (Tr. Vol. I, 135-136) Schwartz had introduced eInfochips to Teradyne in 2006 and concurred with Complainant's decision to use the company on the Battery Project, based on their success in executing firmware on past projects. (Tr. Vol. I, 136; Vol. V, 8-10; Vol. VI, 184-185) By April 2010, it became apparent to Complainant that eInfochips did not have the capability to perform the work needed on the project, as the firmware and the project itself was becoming more complex than originally anticipated. (Tr. Vol. I, 138-139; Vol. VI, 185-220) Complainant immediately raised his concerns about the capability of eInfochips with Schwartz, who concurred. (Tr. Vol. I, 138-139; Vol. VI, 188-220; Ex. C-120, 121, 122) In May 2010, Complainant admitted that the use of eInfochips was a "bad call," and proposed that Teradyne hire a firmware lead engineer and bring the firmware development for the Battery Project in-house. (Tr. Vol. 147-148, Ex. C-81) Burns rejected Complainant's proposal for financial reasons and accused Complainant of not being upfront with the issues relating to eInfochips. Although Burns admitted that he had been in discussions with Schwartz regarding the problems with eInfochips, he nonetheless wrote to Complainant on May 10, 2010, essentially accusing him of withholding information, and stating, "who have you been telling for the past two months? Until a couple of weeks ago, I had not even heard we were in trouble." (Tr. Vol. VIII, 137-142, Ex. C-81) Burns offered some alternatives that Complainant believed would be ineffective, so Complainant, in an email chain, continued to argue for a full-time firmware engineer. (Ex. C-81) Burns was frustrated with Complainant's response and the fact that Complainant suggested the

budget for the project might be negatively impacted by declining to address the problem. Burns was also concerned about saving face with the CEO. (Tr. Vol. VIII, 21-24) Three months later, in August 2010, Burns approved a proposal similar to Complainant's when presented by Schwartz in a summary presentation of the Battery Project. (Tr. Vol. VI, 215-219; Ex. R-36) However, Complainant was still blamed for mismanaging his part of the project. (Tr. Vol. VI, 219-220)

20. In April 2010 through the summer of 2010, Complainant was asked by Mark Kahwati, and possibly by Burns, to chair the meetings that integrated the software and hardware teams. (Tr. Vol.1, 116, 117) Complainant testified that there had been some communication problems within the team prior to that time and he learned and that certain people, including Software Lead, Jon Rodin, were not attending team meetings. (Tr. Vol. I, 118-119) Complainant wrote in notes to himself at the time that he believed the software team was refusing to consider a new design and that it was "not ok to hide behind existing process." He also expressed concerns to Rodin and others that the software team was designing "on the fly." (Tr. Vol. 1, 115; 121-122;124-125; Ex. C-15) Complainant had met with Rodin and another engineer, Jeff Benagh, in May of 2010 to address communication issues and Benagh characterized their meeting as "discouraging." (Tr. Vol. 1, 126-128; C-17) Complainant testified that Rodin did not attend the meetings when Complainant was chairing them and that this hampered communication around technical and other conflicts. (Tr. Vol. 132-133)

21. During the summer of 2010, tension continued to mount between the software and firmware teams over a number of disputes regarding technical issues. In July of 2010, a dispute arose between Complainant and Rodin on a technical issue. Complainant testified that Rodin yelled at him and berated him in a conversation about this issue and stormed off. Rodin then

drafted an intemperate email to Burns. (Tr. Vol. I, 163-164) After significant technical debate, some of which occurred in emails, the matter was elevated to Burns to make the decision. Burns sided with Rodin, despite an admission that he did not have all the facts. Burns stated that in the absence of facts, his position was to side with the customer. (Tr. Vol. VIII, 32, 35, 144, 146; Ex. C-99; C-83; R-35) In an email to Burns, Rodin characterized Complainant's position as "ridiculous." Burns admitted that this was insulting to Complainant. (Ex. R-33, Tr. Vol. VIII, 147) Burns ultimately responded to Complainant that "in the interest of teamwork, "I'd recommend you raise the white flag and let [Rodin] decide." (Ex. C-83: R-35) Complainant was clearly frustrated by Burns' response and questioned whether Burns had actually reviewed his technical suggestions. He wrote to Burns, "Clearly you haven't read my response." (Ex. R-35; Tr.165-168) Burns then informed both Complainant and Rodin that they were behaving like children arguing over opinions, rather than producing facts to support their positions. In a private email to Schwartz, Burns indicated how disappointed he was by the exchange and stated he "had a suggestion on where to create a firmware lead." Burns was angry at Complainant's response and admitted his email to Schwartz referenced Complainant being ousted from the position of firmware lead, so they could hire someone new. (Ex. R-35, C-105; Tr. Vol. VIII, 35-36, 153-154; Vol. V, 35) Burns acknowledged that when the team later decided to adopt Complainant's approach, he did not apologize to Complainant. (Tr. Vol. VIII, 148)

22. Burns did not express any similarly negative sentiment regarding Rodin. In fact, Rodin was praised in his performance review as doing, "exceptionally well in dealing with conflict in his straight-ahead style[which] leads to open and frank discussion regarding difficult topics." (Tr. Vol. IX, 22-31; Ex. C-127) Complainant testified that he felt that Burns believed Rodin to be superior and that he was being treated in a condescending manner by Burns who was directing

him to defer to Rodin. (Tr. Vol. I, 168-169) Schwartz expressed dismay at Complainant's response to Burns, characterized it as a "prima donna response," and informed Complainant that Burns was very upset. (Tr. Vol. I, 172; Tr. Vol. V, 33) Schwartz tried to convey to Complainant how "pissed off Rick [Burns] was," stated that Burns was "Mr. Cool," and noted that he had never even observed Burns express exasperation prior to that time. (Tr. Vol. V, 36-38) Complainant testified that prior to this incident, he did not have a great deal of interaction with Burns, however after this exchange, Burns's attitude toward him changed, Burns did not acknowledge him in core team meetings, and spoke derisively toward him. Complainant felt there was hostility between him and Burns and between him and Rodin. (Tr. Vol. I, 169-172)

23. Complainant testified that thereafter in core team meetings on the Battery Project, Burns would address questions to others about firmware work for which Complainant was responsible and would not look at Complainant when he offered an answer to Burns's questions. (Tr. Vol. I, 173-175) Complainant stated that Burns would look to Rodin or Kahwati, who would, in turn, look to Complainant to answer, because they clearly had no idea. (Tr. Vol. 1, 173) There would be occasions when Burns would make comments to Complainant such as "use your brain" or "just do your job" in the presence of five to ten other managers and Complainant perceived this treatment as very hostile. (Id.) I credit this testimony.

24. Burns testified that, during that time, he became "really bothered by Complainant's behavior in core team meetings. He testified that if there was a problem with firmware, rather than accepting the problem and working toward a solution, Complainant would deflect and blame some other group for the problem. He testified that this attitude created a lot of frustration in the core team which intensified over the summer. As it became clear that the state of the

firmware was pacing the delivery date of a demonstration prototype to the customer, there was greater focus on Complainant and his team. (Tr. Vol. VIII, 36-38)

25. In August of 2010, it became evident that the problems with eInfochips, and the significant flaws in the firmware it had developed needed to be fixed before a prototype of the battery machine could be demonstrated to the customer. (Tr. Vol. 1, 79; Vol. V, 23-24) Given the problems with eInfochips, Schwartz and Complainant in late August prepared a presentation targeted at securing an increased budget to hire a firmware engineer. Complainant and Schwartz agreed that the quality of the firmware developed by eInfochips was not high enough to actually go into production. The proposal to hire a lead firmware engineer to work in-house was approved and Complainant was tasked with finding someone. Schwartz felt that Complainant was dragging his feet and could not recall Complainant interviewing any outside candidates. The suggestion of an in-house candidate did not come to fruition. (Tr. Vol. V, 23-27) At some point, two eInfochips engineers from India were brought to North Reading to work on the Battery Project. (Tr. Vol. V, 39)

26. By October 2010, the Battery Project was in the lab stage, where the firmware and software were brought together in the lab for testing, to determine if the software, hardware and firmware would all successfully interface. Kahwati testified that during this time there was lack of communication between the firmware and software, and differing opinions about how things should be done. When problems arose with the integration of the firmware and software, it was not always clear whether firmware, software or hardware was the problem. (Tr. Vol. X, 27, Vol. V, 39-41; Vol. VIII, 48) He testified the bugs were discovered in the firmware, which is the hub of communication for the project, and it was difficult to debug due to limited visibility into the firmware, lack of documentation, and because the development of the firmware had been

outsourced to eInfochips. (Tr. Vol. X, 27-29; 46-47) According to Kahwati, interactions between Complainant and Rodin were contentious and there was some finger-pointing. (Tr. Vol. X, 28-29) The testimony reflects that there were some hostile feelings and that tension within the team was running high. As a result of some of these difficulties, the deadlines for developing a prototype of the product were moved from early fall to the end of November to late January. (Tr. Vol. VIII, 36-38)

27. Complainant felt that complaints about bugs in the firmware were exaggerated and that the firmware was in generally good shape in the fall of 2010. (Tr. Vol. III, 118, 124) However, he agreed that tension between the firmware and software groups was negatively impacting the project. (Tr. Vol. III, 142) Schwartz testified that Complainant informed him that Burns was not soliciting his opinions during Battery Project meetings. (Tr. Vol. VII, 80) In prior deposition testimony Schwartz stated that Complainant also complained to him that Burns and Rodin treated him disrespectfully in these meetings. (Tr. Vol. VII, 83, 84) Schwartz remembered clearly Complainant asserting to him that the problems with the firmware were exaggerated and Complainant felt that he was being unfairly picked on. (Tr. Vol. VII, 82-83)

28. By the end of October, Complainant advised Schwartz that the entire project had become “dysfunctional” (Ex. C-87), that the real problem was in the software group, that Rodin did not know what he was talking about and that Rodin was totally incompetent. (Tr. Vol. VII, 18, 19, 24) Schwartz testified that Complainant also questioned Burns’s competency and thought he was “full of hot air.” (Tr. Vol. V, 69) Schwartz was supportive of Complainant. On October 27, 2010, he wrote to Burns that he was going to meet with Rodin to educate him on the process that was being used by the firmware group to make sure that Rodin understood the root cause of the firmware problems, and to make sure all the data were on the table. (Ex. C-109; Tr. Vol. VII,