

Case 433: CISG 1(1)(a), 6, 10

United States: U.S. [Federal] District Court for the Northern District of California; No. C 01-20230 JW
30 July 2001

Asante Technologies, Inc. v. PMC-Sierra, Inc.

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<http://cisgw3.law.pace.edu/cases/010727u1.html>

Abstract prepared by Peter Winship, National Correspondent

The plaintiff (buyer), a producer of network switchers located in the United States (California), concluded “Prototype Product Limited Warranty Agreements” with the defendant (seller), a U.S. corporation with places of business in Canada (British Columbia) and the United States (Oregon). The agreements set out technical specifications for component parts the buyer wished to acquire from the seller. When ordering the components, the buyer, at the seller’s direction, submitted most but not all purchase orders to an independent distributor located in California.

The delivered components allegedly did not conform with the agreed specifications. The buyer brought suit in a California state court on claims based in tort and contract. The complaint did not refer to the CISG. The seller removed the case to a federal district court and the buyer asked the federal court to remand the case to the state court. The issue before the federal district court was whether it had jurisdiction. The court held that it had jurisdiction because the contract dispute was governed by the CISG and therefore the complaint raised a federal question.

The court held that the contract claims in the plaintiff’s complaint were governed by the CISG. It found that the parties had their places of business in two different States and these States were Contracting States. In particular, the court concluded that the seller’s relevant place of business was in Canada. The seller had its corporate headquarters, inside sales and marketing office, public relations department, and principal warehouse in British Columbia, and the seller carried out most of its design and engineering functions there. In its dealing with the buyer, the seller sent documents with technical specifications from Canada and the parties executed the “Prototype Product Limited Warranty Agreements” in Canada. The court found that this Canadian place of business was closest to the contract and its performance. It did so notwithstanding the buyer’s extensive contacts with the engineers at the U.S. place of business when developing and engineering the components purchased.

Although the buyer sent its purchase orders to the independent distributor in California, the court stated that the “warranty agreements” were entered into directly with the seller. The court held that the independent distributor was not an agent of the seller. The court did not consider whether the “warranty agreements” were contracts of sale.

The court further held that the choice of law clauses in the parties’ forms did not have clear language excluding application of the CISG. The buyer’s clause stated that the contract was governed by the law of California, while the seller’s clause stated that British Columbia was the “proper” law governing the agreement. The court noted that under the Supremacy Clause of the federal constitution the CISG would bind California and that British Columbia legislation made the CISG applicable in that province.

Finally, in response to the buyer’s argument that its complaint did not establish that the case arose under federal law, the court held that the CISG, as a treaty to which the United States was a party, preempted state law by virtue of the Supremacy Clause of the federal constitution and that the facts pleaded in the complaint showed that the CISG governed.