

**Case 698: CISG 1 (1) [10]**

United States: Superior Court of Massachusetts

No. 034305BLS

28 February 2005

Vision Systems, Inc. v. EMC Corporation

Published in English: 2005 WL 705107

See also : <http://cisgw3.law.pace.edu/cisg/wais/db/cases2/050228u1.html>

Abstract prepared by Peter Winship, National Correspondent

A representative from a US subsidiary of a multinational enterprise negotiated with a potential buyer with its place of business in Massachusetts (USA) for the sale of smoke detection units that could be integrated in the latter's data storage systems. The potential buyer consulted about technical details with an engineer at the US subsidiary. Although the parties did not sign a framework agreement proposed by the seller, the potential buyer did submit individual orders to the US subsidiary for the purchase of the seller's units at a price quoted by the seller as "FOB [buyer's place of business]". An Australian subsidiary of the multinational carried out all the research, development and manufacture of the units sold. After delivery and payment for the units ordered, the buyer notified the seller that it would purchase no more units. The US and Australian subsidiaries sued the buyer on several grounds, including breach of contract under the CISG.

The CISG issue before the court was whether the seller and buyer had their places of business in different countries for the purposes of art. 1 CISG.

Citing art. 1 the court concluded that the Convention did not govern the contractual relationship. The court stated that the test for the scope of the CISG was similar to the "center of gravity of circumstances" test found in state unfair trade legislation. In the case before it, the court found that the center of gravity was Massachusetts. It stressed that the US subsidiary made the price quotations, that these quotations referred to delivery FOB Massachusetts, and that all the buyer's orders were submitted to the US subsidiary. The international component of the transaction, considered by the court a "jurisdictional pre-requisite" was lacking in this case. The international component of the transaction, considered a jurisdictional prerequisite, was thus lacking in this case.