

**FOURTEENTH ANNUAL
WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Vienna, Austria
30 March to 5 April 2007

Organized by:

**Institute of International Commercial Law
Pace University School of Law**
78 North Broadway
White Plains, NY 10603
USA

and

**FOURTH ANNUAL
WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Hong Kong

19 to 25 March 2007

Organized by:

The Chartered Institute of Arbitrators (East Asia Branch)
Hong Kong International Arbitration Centre
38/F, Two Exchange Square
Central, Hong Kong SAR

THE PROBLEM

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Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana

15 August 2006

Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania
2 Octavian Goga Avenue
Sector 3, Bucharest, Romania

Dear Sirs:

I represent Equatoriana Office Space Ltd, which, pursuant to Article 36 of the Arbitration Rules of the Court of International Commercial Arbitration, hereby submits its arbitral claim against Mediterraneo Electrodynamics S.A. in five copies. I enclose a copy of my power of attorney to represent Equatoriana Office Space Ltd in this arbitration.

A copy of the arbitral claim has been sent to the respondent. A copy of the receipt from the courier service is attached.

The total claimed is US\$200,000. The necessary fees will be transferred to your account upon receipt of your indication of amount and bank account to which they should be transferred.

Equatoriana Office Space Ltd nominates Ms. Arbitrator 1 as arbitrator in this dispute. Her curriculum vitae is attached. You will note that Ms. Arbitrator 1 is not on your list of arbitrators.

The place of arbitration is Vindobona, Danubia, which I understand to be acceptable under Article 74 of your Rules of Arbitration.

Sincerely yours,
(Signed)
Joseph Langweiler

Encl:
Power of Attorney
Arbitral Claim
Arbitrator 1 curriculum vitae
Receipt from courier service

Court of International Commercial Arbitration attached to the Chamber of Commerce and
Industry of Romania

Equatoriana Office Space Ltd
Claimant

v.

Mediterraneo Electrodynamics S.A.
Respondent

NOTICE OF ARBITRATION

The Claimant, Equatoriana Office Space Ltd, hereby requests that the dispute between it and the Respondent, Mediterraneo Electrodynamics S.A., that is set forth below be submitted to arbitration under the Arbitration Rules of the Court of International Arbitration, as provided in the contract between them.

STATEMENT OF CLAIM

I. Parties

1. Equatoriana Office Space Ltd is a corporation organized under the laws of Equatoriana. It has its principal office at 415 Central Business Centre, Oceanside, Equatoriana. The telephone number is (0) 555-7356 and the fax number is (0) 555-7359. Equatoriana Office Space Ltd is a developer of residential and business properties.

2. Mediterraneo Electrodynamics S.A. is a corporation organized under the laws of Mediterraneo. It has its principal office at 23 Sparkling Lane, Capitol City, Mediterraneo. The telephone number is (0) 487-1616 and the fax number is (0) 487-1620. Mediterraneo Electrodynamics S.A. is a fabricator and distributor of electrical equipment to the trade.

II. Facts

3. Equatoriana Office Space Ltd (hereafter Office Space) has constructed a number of large commercial and residential developments in the country of Equatoriana. In 2004 and 2005 Office Space constructed a new development in the city of Mountain View, named Mountain View Office Park (hereafter Mountain View). Mountain View, which has subsequently been constructed, consists of several separate buildings. The space is leased to multiple commercial lessees.

4. Office Space had not previously done any development work in the city of Mountain View or the surrounding area. The electrical supply distribution company in that area is Equalec, a company which did not operate in the parts of Equatoriana where Office Space had previously constructed any developments.

5. The designs for Mountain View called for five primary distribution fuse boards in the basements of separate buildings. Primary distribution fuse boards are connected to the incoming electrical supply. Within each fuse board there are a number of separate fuseways, one for each lessee. In Mountain View each of the five primary distribution fuse board has between 20 and 30 fuseways.

6. Each fuseway has three fuses. There are also fuses of a lower capacity for each lessee outside the primary distribution fuse boards. The entire installation is designed so that the fuses outside the primary distribution fuse board will blow in case of a short circuit or other overload rather than those inside the fuse boards. The fuses inside the primary fuse boards very rarely blow. When they do, the fuses are replaced by the electrical supplier, Equalec in this case. The dispute in this arbitration is in regard to the specifications for the fuses within the primary distribution fuse boards.

7. Although primary distribution fuse boards are purchased by the owner of the buildings, Office Space in this case, they are managed by the electrical supplier, Equalec in this case. The incoming electric current to the primary distribution fuse boards is not metered since the owner of the building does not pay for it. Instead, each lessee pays for its own use of electricity. The meter for each lessee is placed outside the primary distribution fuse boards.

8. Following normal procedures, the primary distribution fuse boards were to be locked by Equalec with a small padlock so that it had exclusive access to them. Locking the primary distribution fuse boards serves several purposes. The most obvious is that it prevents users from having access to unmetered electrical supplies. Of more direct significance to this dispute, it prevents the users from interfering with or changing the fuses. Only the electrical supply company can do so. There is a safety factor involved, since users are prevented from installing fuses of a higher rating than the circuits were designed for. There is also a commercial factor, since the rating of the fuses that are installed is sometimes a basis for capacity-based charges.

9. The Developer, Office Space, made enquiries of its usual supplier of electrical equipment, Equatoriana Switchboards Ltd (hereafter Switchboards). The designers for Office Space subsequently prepared detailed engineering drawings based upon Switchboard's comments. Distribution fuse boards are fabricated to meet the specific requirements of each customer. The drawings showed the distribution fuseways for each tenant including the rating for each fuseway. The fuseways were of different ratings, but all were for less than 400 amperes. Two descriptive notes on the drawings read:

- "Fuses to be "Chat Electronics" JP type in accordance with BS 88." (Chat Electronics is a manufacturer of electrical equipment, including JP and JS fuses. BS 88 is a British Standard for electrical installations used widely outside the United Kingdom and specifically in Equatoriana.)

- "To be lockable to Equalec requirements." (These words indicated that the fuse boards had to meet Equalec's requirements for connecting the distribution fuse boards to the electric current and to lock the fuse boards, thereby establishing its control over them.)

10. Switchboards quoted a price of US\$180,000 for fabricating the five distribution fuse boards in accordance with the drawings. Attempting to secure a better price, Office Space shopped around and eventually received a quotation of US\$168,000 from Mediterraneo

Electrodynamics S.A. (hereafter Electrodynamic). A contract at that price was concluded on 12 May 2005. (Exhibit No. 1) The engineering drawings referred to above were attached to the contract.

11. On 14 July 2005 Mr. Peter Stiles, Sales Manager for Electrodynamic, telephoned and asked to speak to Mr. Herbert Konkler, Purchasing Director for Office Space. Mr. Konkler was absent on a business trip at the time. Mr. Steven Hart, one of the staff in the Purchasing Department, spoke to Mr. Stiles. Mr. Stiles said that they were temporarily unable to supply Chat Electronics JP type fuses and would not be able to make the delivery dates specified in the contract. He said that they could supply either JP fuses from another manufacturer or JS fuses from Chat Electronics. In either case the contract price for the distribution fuse boards would remain the same. He stated that the only functional difference between JP and JS fuses was that fixing centers for the JP fuses were 82 mm and were 92 mm for JS fuses. Since the external dimensions of the fuses were somewhat different, they needed to know promptly which type to install so that the proper supports could be built into the distribution fuse boards. He explained that the choice between JP and JS fuses is in part affected by the actual rating (the nominal current the fuse can carry without 'blowing'), but that up to 400 amperes either type could be used. Over 400 amperes only JS fuses could be used. He said that the JP fuses called for in the contract were functionally identical to JS fuses, except for the fixing centers. Either could be installed and would be completely satisfactory. Mr. Stiles recommended that the primary distribution fuse boards be fabricated using JS fuses.

12. Mr. Hart replied that Office Space preferred using equipment from Chat Electronics whenever possible. He told Mr. Stiles that Office Space was under tight time pressures on the Mountain View development and needed the distribution fuse boards at the contract dates so that they could connect to the electricity supply when scheduled. Once that was done, they would be almost ready to give occupancy to their lessees. Therefore, he acknowledged that Mr. Stiles' recommendation was probably the best way to proceed. Since the contract called for any amendment to be in writing and Electrodynamic was the party suggesting the change in specifications, Mr. Hart anticipated receiving a written confirmation of the telephone conversation.

13. Electrodynamic never submitted a proposal in writing for change to the contract specifications. Article 32 of the contract provided that any amendment to the contract had to be in writing. (Claimant's Exhibit No. 1) If there had been a written proposal for a change in the contract specifications, it would have been submitted to the engineer who had prepared the engineering drawings as to whether he approved the change.

14. The distribution fuse boards with JS fuses were delivered by Electrodynamic directly to the building site on 22 August 2005. The fuse boards were installed on 1 September 2005 by the personnel of General Construction Ltd, the firm constructing Mountain View. Equalec was then notified that the buildings were ready to be connected to the electrical grid. Personnel from Equalec came to make the electrical connection and to lock the distribution fuse boards on 8 September 2005. Because the fuses were JS type, Equalec refused to make the electrical connection.

15. Office Space subsequently learned that Equalec had standardized its requirements for electrical connections that utilized J type fuses. In a letter dated 15 September 2005 from Gregory Smith, Superintendent, Customer Service, Equalec, it was explained that Equalec had decided that as a safety measure it would connect to primary distribution fuse boards

employing J type fuses of 400 amperes or less only if the fuses were of the JP type. That would reduce to some extent the possibility that a fuse would be installed that was beyond the range for which the installation was designed. (Claimant's Exhibit No. 4)

16. Without a connection to the electricity supply, Office Space faced the likelihood that it would not be able to give access to the buildings at Mountain View to its lessees on the dates specified in the lease agreements. Office Space was threatened with significant financial losses from the loss of rental income and from the penalty clauses in several of the lease contracts.

17. When Mr. Konkler learned that the distribution fuse boards contained JS fuses rather than JP fuses and that Equalec refused to make the electrical connection, he immediately telephoned Mr. Stiles at Electrodynamics to tell him that the distribution fuse boards sent by Electrodynamics were not in conformity with the contract. He pointed out that Article 32 of the contract specifically stated that any amendment to the contract had to be in writing. When asked how quickly proper distribution fuse boards could be delivered, Mr. Stiles said that they were still having difficulty procuring JP type fuses from Chat Electronics so that it might be an additional two months. Mr. Konkler said that under those circumstances Office Space would have to turn elsewhere for the proper equipment. (Claimant's Exhibit No. 3)

18. In order to save time and to be able to open Mountain View for occupancy by its lessees on the scheduled date, Office Space ripped out the fuse boards and bought replacements with Chat Electronics JP fuses from Equatoriana Switchboards at a total price of US\$180,000. The additional installation costs were US\$20,000.

III. Arbitration clause, applicable law

19. The contract provides in its paragraph 33 that it is subject to the law of Mediterraneo. Mediterraneo is party to the United Nations Convention on Contracts for the International Sale of Goods (CISG), but Equatoriana is not. According to CISG Article 1(1)(b)

“[the] Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(b) when the rules of private international law lead to the application of the law of a Contracting State.”

Since the contract provides that the contract is to be governed by the law of a Contracting State, i.e. Mediterraneo, the contract is governed by the CISG.

20. The arbitration clause is found in paragraph 34 of the contract. It provides as follows:

34. Arbitration. All disputes arising out of or in connection with this Contract, or regarding its conclusion, execution or termination, shall be settled by the International Arbitration Rules used in Bucharest. The arbitral award shall be final and binding.

The Arbitral Tribunal shall be composed of three arbitrators.

The arbitration shall be in the English language. It shall take place in Vindobona, Danubia.

21. Danubia has adopted the 1985 text of the UNCITRAL Model Law on International Commercial Arbitration without amendment. Equatoriana, Mediterraneo and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

IV. Legal Conclusions

22. A tribunal formed in accordance with the arbitration rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania would have jurisdiction over the dispute.

23. The respondent, Mediterraneo Electrodynamics S.A., contracted to sell to the claimant, Equatoriana Office Space Ltd, five primary electrical distribution fuse boards with JP fuses. The electrical distribution fuse boards that were delivered were equipped with JS type fuses rather than JP type. The distribution fuse boards had to be replaced because the electrical supplier, Equalec, would not connect to the distribution boards with JS type fuses.

24. According to Article 35 of the United Nations Convention on Contracts for the International Sale of Goods (CISG):

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract,

25. Electrodynamics was required by the contract to deliver distribution fuse boards with JP type fuses but instead it delivered the fuse boards with JS type fuses in breach of its obligations under Article 35(1). There can be no argument that the contract had been orally amended since the contract specifically provided that any amendment had to be in writing as called for by CISG Article 29(2).

26. Furthermore, Electrodynamics knew that the purpose of the distribution fuse boards was to provide the facility for Equalec to make its connection to the electrical power grid. The distribution fuse boards delivered were not fit for that purpose, as required by CISG Article 35(2)(b).

27. Electrodynamics was notified of its breach of contract within the time required by CISG Articles 38 and 39.

28. According to Article 45(1) of the CISG “If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may ... claim damages as provided in articles 74 to 77.”

29. According to Article 74 of the CISG “Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a

consequence of the breach.”

IV. Relief

30. Equatoriana Office Space Ltd requests the Tribunal to find:

- that the Tribunal has jurisdiction to consider the dispute between Equatoriana Office Space Ltd and Mediterraneo Electrodynamic S.A.;
- that Mediterraneo Electrodynamic S.A. contracted to sell to Equatoriana Office Space Ltd five distribution fuse boards for US\$168,000;
- that the fuse boards were to be equipped with JP type fuses;
- that the distribution fuse boards that were delivered were equipped with JS type fuses;
- that Equalec refused to make a connection between the fuse boards equipped with JS type fuses and the electrical grid;
- that, when informed of its breach of contract and the consequences, Mediterraneo Electrodynamic S.A. indicated that it would not be able to deliver fuse boards with JP type fuses by the contract date (which had already passed) or in time for Equatoriana Office Space Ltd to meet its contractual commitments to its tenants;
- that the proper distribution fuse boards with JP type fuses purchased from Equatoriana Switchboards Ltd cost US\$180,000;
- that the cost of removing the fuse boards delivered by Mediterraneo Electrodynamic S.A. and installing the fuse boards furnished by Equatoriana Switchboards Ltd was US\$20,000.

31. Consequently, Equatoriana Office Space Ltd requests the Tribunal to order Mediterraneo Electrodynamic S.A.:

- to pay Equatoriana Office Space Ltd as damages the sum of US\$200,000, calculated US\$180,000 as the cost of the replacement distribution fuse boards purchased from Equatoriana Switchboards Ltd and US\$20,000 for the cost of removing the non-conforming fuse boards and replacing them with conforming ones.
- to pay interest at the prevailing market rate in Equatoriana on the said sum from the date of breach to the date of payment;
- to pay all costs of arbitration, including costs incurred by the parties.

(Signed)
Counsel

15 August 2006

Claimant's Exhibit No. 1

Contract (Excerpts)

Mediterraneo Electrodynamics S.A. (hereafter Seller) agrees to sell and Equatoriana Office Space Ltd (hereafter Buyer) agrees to purchase five primary distribution fuse boards at a total delivered price of US\$168,000. The price is to be paid upon delivery to the Buyer.

The fuse boards are to be delivered to the building site of the Mountain View Office Park, Mountain View, Equatoriana by 15 August 2005.

The engineering drawings submitted by Buyer are attached and made part of the contract.

32. **Amendments.** Amendments to the contract must be in writing.

33. **Applicable law.** This contract is subject to the law of Mediterraneo.

34. **Arbitration.** All disputes arising out of or in connection with this Contract, or regarding its conclusion, execution or termination, shall be settled by the International Arbitration Rules used in Bucharest. The arbitral award shall be final and binding.

The Arbitral Tribunal shall be composed of three arbitrators.

The arbitration shall be in the English language. It shall take place in Vindobona, Danubia.

(Signed) _____
Peter Stiles, Sales Manager
Mediterraneo Electrodynamics S.A.

(Signed) _____
Herbert Konkler, Purchasing Director
Equatoriana Office Space Ltd

12 May 2005

Claimant's Exhibit No. 2

Witness Statement

Steven Hart
Purchasing Department
Equatoriana Office Space Ltd

My name is Steven Hart. For the past two years I have worked in the Purchasing Department of Equatoriana Office Space Ltd. On 14 July 2005 Mr. Peter Stiles, Sales Manager of Mediterraneo Electrodynamics S.A. telephoned and asked to speak to Herbert Konkler, Purchasing Director of Equatoriana Office Space Ltd. Mr. Konkler was on a business trip at the time, so I took the call. Mediterraneo Electrodynamics S.A. was under contract to fabricate the primary distribution fuse boards for a project of ours in the city of Mountain View, Equatoriana. Mr. Konkler had personally handled the negotiations in regard to that contract, but I was generally aware of what was involved.

Mr. Stiles told me that according to the engineering drawings that had been sent to them – in fact, a copy had been attached to the contract when Mr. Konkler signed it – the fuseways for the individual tenants called for JP type fuses manufactured by Chat Electronics. Mr. Stiles said that they were having some difficulty procuring Chat Electronics JP type fuses. If that was what we really wanted, there would be a delay of two months or so in delivery of the fuse boards. He said that they could easily supply JP type fuses from other manufacturers. They could also fabricate the fuse boards using Chat Electronics JS type fuses.

According to Mr. Stiles, the better solution would be to use the Chat Electronics JS type fuses. He knew that Equatoriana Office Space Ltd had a preference for Chat Electronics equipment. He told me that up to 400 amperes it did not matter whether JP or JS type fuses were used. They had delivered both types to customers in Equatoriana in the past. He said that above 400 amperes it was necessary to use JS fuses. There was a slight difference in the size of JP and JS fuses, JP being 82 mm in length and JS being 92 mm in length. He said that they needed to know promptly which to install since the supports for the two types of fuses would be different.

I did not have much experience with ordering the electrical equipment for our projects. I knew that there was a preference in the firm for Chat Electronics equipment. Since the project was under tight time requirements and it was not possible to reach Mr. Konkler that week, I thought it best to give an immediate answer. I acknowledged that Mr. Stiles' recommendation was probably the best way to proceed. With the assurances that Mr. Stiles had given me about the interchangeability of JP and JS fuses, it did not seem to be a very important decision. In any case, I expected that Mediterraneo Electrodynamics S.A. would send a confirmation of the telephone call and a written request for an amendment to the contract specifications. It turned out that I was mistaken in my expectation; no request for an amendment to the contract was ever received. If it had been, the routine in the firm was that it would have been circulated to all interested persons, which would have included the engineering department where the drawings of the fuse boards had been prepared. They would immediately have drawn our attention to any problems they saw with the change.

(Signed) _____

14 June 2006

Claimant's Exhibit No. 3

Witness Statement

Herbert Konkler
Purchasing Director
Equatoriana Office Space Ltd

My name is Herbert Konkler and I am the Purchasing Director of Equatoriana Office Space Ltd. From 10 to 25 July 2005 I was on a business trip and for some of that time it was not possible to contact me. Before I left I had left instructions that I was to be contacted only in regard to urgent matters so that I remained free to concentrate on the business at hand.

On 8 September 2005 I was informed that Equalec had refused to make the electrical connection to the primary distribution fuse boards in the Mountain View Office Park development we were constructing in the city of Mountain View, Equatoriana. I was told that the reason was that the fuses in the fuse boards were of the JS type rather than JP type. I was greatly surprised by this report. I remembered that the engineering drawings we had sent to Mediterraneo Electrodynamics S.A. had indicated that the fuses should be JP and could not understand why JS fuses had been substituted. Furthermore, in several other developments in Equatoriana JS fuses had been used without complaint from the electrical supply companies.

I telephoned to Equalec and was finally referred to Gregory Smith, Superintendent of Customer Service at Equalec. He informed me that Equalec had adopted a policy of connecting to primary distribution fuse boards using JS type fuses only when the circuits were rated at more than 400 amperes. He said that there were two reasons for the policy. The first was a safety reason. While JP and JS fuses were essentially interchangeable from a functional point of view up to 400 amperes, there were JS fuses of a higher rating. It had happened in the past that fuses with a rating of more than 400 amperes had been installed where the circuits were designed for a lower capacity. By requiring the use of JP fuses, the possibility of such a mistake was lessened. An additional benefit to their customers was that it reduced the amount of inventory that the service trucks were required to carry, thereby assuring that the trucks would have the proper fuses immediately available on those rare occasions when a fuse blew. I asked him to write me a letter explaining the policy and the reasons for it, which he did about a week later.

By this time it was after office hours in Mediterraneo so I was not able to telephone Mr. Stiles at Mediterraneo Electrodynamics S.A. until the following morning. I told him that Equalec had refused to connect to the distribution fuse boards they had supplied to us. I told him that the reason was that JS type fuses had been used for circuits of less than 400 amperes and that they did not connect to JS fuses when the rating was 400 amperes or less. They only connected to JP type fuses. Mr. Stiles said it was the first time he had ever heard of such a policy.

When I asked him why they had supplied JS fuses rather than the JP fuses called for in the contract, he told me that they had been having difficulties procuring JP fuses from Chat Electronics, but they were well supplied with JS fuses. He told me that he had tried to telephone me before the change was made, but that I had been absent from the office. He had

spoken to Steven Hart, one of the personnel in our purchasing office. He said that he had explained the situation to Mr. Hart and Mr. Hart had said they should use Chat Electronics JS fuses.

I told Mr. Stiles that Mr. Hart's recollection of the conversation was somewhat different. In any case, Mr. Hart was not the person responsible for the contract for the distribution fuse boards. Moreover, the contract clearly provided that any amendment to the contract must be in writing. I asked him whether he had any writing showing an amendment to the contract and he said that he did not.

I then told Mr. Stiles that the fuse boards were worthless to Equatoriana Office Space Ltd if Equalec would not connect to them. I asked him how long it would take for Mediterraneo Electrodynamics to furnish fuse boards with the proper JP type fuses. He said that he thought he could have them in another two months or so, but that he was not sure since it depended on whether he could get the necessary Chat Electronics JP type fuses. I told him that under those circumstances, we would have to buy them from someone else. We would hold Mediterraneo Electrodynamics responsible for the extra costs.

Later that day we contacted Equatoriana Switchboards Ltd and they were able to provide us with the fuse boards containing Chat Electronics JP fuses within three weeks at the price they had originally quoted to us – US\$180,000.

Of course, installation of the new boards was not as simple as it would have been had we contracted with them in the first place. First the Electrodynamics boards had to be removed before the Switchboards fuse boards could be installed. Altogether, the extra work cost us another US\$20,000.

Signed _____

14 June 2006

Claimant's Exhibit No. 4

Equalec
Electricity Center
Mountain View

15 September 2005

Mr. Herbert Konkler
Purchasing Director
Equatoriana Office Space Ltd
415 Central Business Centre
Oceanside, Equatoriana

Dear Mr. Konkler:

You have asked me to confirm in writing what I told you on the telephone on 8 September 2005 about our policy in connecting to primary distribution fuse boards with J type fuses.

In the summer of 2003 we discovered when servicing several fuse boards that improper sized fuses had been installed. In each case the fuses in question were JS type fuses. As you know, such fuses can have a rating as high as 800 amperes. The circuits in question called for fuses of either 250 or 355 amperes, but fuses of 500 amperes had been installed. It was never clear to us who had installed them or when it had happened, but we were greatly concerned.

In July 2003 we adopted the policy of connecting to primary distribution fuse boards using J type fuses only if circuits designed for 400 amperes or less used JP type fuses. Naturally, we would connect to circuits of larger rating that used JS fuses. This policy has been communicated widely and can be found on our website.

We regret the inconvenience that has been caused to you by the fact that the primary distribution fuse boards furnished to you for the Mountain View development did not meet our requirements.

Sincerely,

Gregory Smith
Superintendent, Customer Service

**COURT OF INTERNATIONAL COMMERCIAL ARBITRATION
ATTACHED TO
THE CHAMBER OF COMMERCE AND INDUSTRY
OF ROMANIA**

B-dul O. Goga nr. 2, sector 3, Bucharest, Romania, Phone: (40 21) 319 27 47, Fax: (40 21) 319 01 26 E-mail: arbitration@ccir.ro

To:

Equatoriana Office Space Ltd

Office: 415 Central Business Centre, Oceanside, Equatoriana

Re. Case File Romania Moot 0014

Claimant: Equatoriana Office Space Ltd - Equatoriana

Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo

Monetary value of the Statement of Claim: US\$ 200,000

No. 0014 / 18.08.2006

We hereby confirm the receipt of your Request for Arbitration, registered at the Bucharest Arbitration Court under no. 100/18.08.2006, which is the subject matter of the above indicated case file, filed by you against the Respondent Mediterraneo Electrodynamics S.A in which you requested for it to be compelled to pay the amount of USD 200,000.

According to the provisions of Articles 1(1) letter B and 9(1) of the Schedules of Arbitral Fees and Expenses, we invite you to pay, within twenty days of receiving this letter, the arbitration fee due in this above mentioned case file, of **EURO 14,362.25** in the bank account of the Chamber of Commerce and Industry no. RO11 RZBR 0000 0600 XXXX XXXX opened at Raiffeisenbank Romania SA, registered office in Bucharest, Calea Victoriei no.155, 1st District. In your payment order, please, indicate that the amount is arbitration fee due in Case File Romania Moot 0014, beneficiary the Chamber of Commerce and Industry of Romania — the Bucharest Arbitration Court.

Arbitration fees denominated in foreign currency shall be paid only by bank transfer, in accordance to the provisions of the Rules of Foreign Currency Operations approved by the National Bank of Romania. The bank charges and the commissions for the payment of the arbitration fee shall be in your charge.

You shall send a copy of the payment order with the acceptance stamp of your bank.

If the amount is not paid within the specified time limit, the arbitration will not proceed and your Request for Arbitration will be returned.

Assistant,

Attachments: Regulations on the Organisation and Operation (4 pages)

Rules of Arbitration (17 pages)

Schedules of Arbitral Fees and Expenses (4 pages)

**COURT OF INTERNATIONAL COMMERCIAL ARBITRATION
ATTACHED TO
THE CHAMBER OF COMMERCE AND INDUSTRY
OF ROMANIA**

B-dul O. Goga nr. 2, sector 3, Bucharest, Romania, Phone: (40 21) 319 27 47, Fax: (40 21) 319 01 26 E-mail: arbitration@ccir.ro

To:
Mediterraneo Electrodynamics S.A.
Office: 23 Sparkling Lane, Capitol City, Mediterraneo

Re. Case File Romania Moot 0014
Claimant: Equatoriana Office Space Ltd - Equatoriana
Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo
Monetary value of the Statement of Claim: US\$ 200,000

No. 0014 / 28.08.2006

We send you enclosed the copy of the Statement of Claim submitted by the Claimant Equatoriana Office Space Ltd for the amount of USD 200,000.

This Statement of Claim was registered under no. 100/18.08.2006 and is the subject matter of the Case File Romania Moot 0014 of this Arbitration Court.

Please, submit your Statement of Defence and appoint your arbitrator and its substitute arbitrator within 20 days of the receipt thereof.

The claimant party selected Ms. Arbitrator 1 as arbitrator.

We also ask you to comply with the requirement set by Article 114¹(4) of the Romanian Code of Civil Procedure which complements our Rules of Arbitration and inform us within ten days of the receipt thereof of your chosen address in Romania. If you fail to comply thereto, all the correspondence for you will be considered delivered on the basis of the receipt (dispatch note) evidencing its delivery to the Romanian Post.

Assistant,

Attachments: Statement of Claim (7 pages) + Annexes (4 pages)
Regulations on the Organisation and Operation (4 pages)
Rules of Arbitration (17 pages)
Schedules of Arbitral Fees and Expenses (4 pages)
List of Romanian Arbitrators (2 pages)
List of Foreign Arbitrators (2 pages)

**COURT OF INTERNATIONAL COMMERCIAL ARBITRATION
ATTACHED TO
THE CHAMBER OF COMMERCE AND INDUSTRY
OF ROMANIA**

B-dul O. Goga nr. 2, sector 3, Bucharest, Romania, Phone: (40 21) 319 27 47, Fax: (40 21) 319 01 26 E-mail: arbitration@ccir.ro

To:
Ms. Arbitrator 1
Office:

Re. Case File Romania Moot 0014
Claimant: Equatoriana Office Space Ltd - Equatoriana
Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo
Monetary value of the Statement of Claim: US\$ 200,000

No. 0014 / 21.08.2006

Dear Ms. Arbitrator 1,

The Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania was approached with the dispute which forms the object of the above mentioned case file. The Claimant Equatoriana Office Space Ltd, with its principal office at 415 Central Business Centre, Oceanside, Equatoriana, telephone number (0) 555-7356 and fax number (0) 555-7359, nominated you as arbitrator.

We invite you to advise us within 3 days of the receipt thereof about your approval to fulfil the mission of arbitrator for the Claimant in this litigation.

We also send you the Statement of Independence, which we kindly ask you to fill in and return it within the same period of time in case you accept your appointment.

We acknowledge you that, in accordance with the Schedule of Arbitral Fees and Expenses, the fee for one arbitrator is in amount of Euro 3,072.45. The arbitrator's fee shall be paid by the parties in the bank account of the Chamber of Commerce and Industry and shall be transferred to your bank account. Apart from the arbitrator's fee, the party that nominated you shall cover all your arbitral expenses as specified in Art.3(1) of our Schedules of Arbitral Fees and Expenses.

We also enclose a copy of the Statement of Claim, the Regulations on the Organisation and Operation of our Court, the Rules of Arbitration and the Schedules of Arbitral Fees and Expenses.

Assistant,

Attachments: Statement of Independence (1 page)
Statement of Claim (7 pages) + Annexes (4 pages)
Regulations on the Organisation and Operation (4 pages)
Rules of Arbitration (17 pages)
Schedules of Arbitral Fees and Expenses (4 pages)

Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850

4 September 2006

Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania
2 Octavian Goga Avenue
Sector 3
Bucharest, Romania

Re: Romania Moot 0014
Equatoriana Office Space Ltd v. Mediterraneo Electrodynamics S.A.

Dear Mr. Assistant:

I acknowledge receipt of your letter of 28 August 2006 addressed to Mediterraneo Electrodynamics S.A. and the enclosed notice of arbitration and the statement of claim by Equatoriana Office Space Ltd. I represent Mediterraneo Electrodynamics S.A. in this dispute. My power of attorney is attached.

Mediterraneo Electrodynamics S.A. contests the jurisdiction of the Court of International Commercial Arbitration. Therefore, in accord with Article 16(1) of the Arbitration Rules it is requested that the president of the Court of Arbitration refuse to organize the arbitration that was requested by Equatoriana Office Space Ltd. Pursuant to Article 54(1) of the Arbitration Rules Mediterraneo Electrodynamics S.A. the reasons are set out in paragraphs 14 to 17 of the attached Answer to the claim brought by Equatoriana Office Space Ltd.

Mediterraneo Electrodynamics S.A. nominates Professor Arbitrator 2 as its arbitrator. His mailing address is 14 Litigation Avenue, Capitol City, Mediterraneo. A copy of his curriculum vitae is attached.

I look forward to hearing from you further in this matter.

Sincerely yours,

(Signed)
Horace Fasttrack

Encl: Power of attorney
Answer
CV Prof. Arbitrator 2

Court of International Commercial Arbitration attached to the Chamber of Commerce and
Industry of Romania

Romania Moot 0014

Equatoriana Office Space Ltd
Claimant

v.

Mediterraneo Electrodynamics S.A.
Respondent

ANSWER

I. Parties

1. Equatoriana Office Space Ltd is a corporation organized under the laws of Equatoriana. It has its principal office at 415 Central Business Centre, Oceanside, Equatoriana. The telephone number is (0) 555-7356 and the fax number is (0) 555-7359. Equatoriana Office Space Ltd is a developer of residential and business properties.

2. Mediterraneo Electrodynamics S.A. is a corporation organized under the laws of Mediterraneo. It has its principal office at 23 Sparkling Lane, Capitol City, Mediterraneo. The telephone number is (0) 487-1616 and the fax number is (0) 487-1620. Mediterraneo Electrodynamics S.A. is a fabricator and distributor of electrical equipment to the trade.

II. Facts

3. In April 2005 Mediterraneo Electrodynamics S.A. (hereafter Electrodynamics) received a telephonic inquiry from Equatoriana Office Space Ltd (hereafter Office Space) as to whether it could furnish five primary electrical distribution fuse boards with J type fuses for an office park development it was building in Mountain View, Equatoriana. When it was assured that such fuse boards could be delivered, it asked for a price quotation. Several days later Mr. Peter Stiles, Sales Manager of Electrodynamics, telephoned Mr. Herbert Konkler, Purchasing Director at Office Space, and gave a quotation of US\$168,000. Mr. Konkler replied that they would purchase at that price and that he would send a purchase order.

4. The purchase order arrived on 4 May 2005. Because Electrodynamics prefers to contract for any transaction of more than US\$20,000 on the basis of signed contracts rather than the exchange of purchase order and acknowledgement, it sent a completed but unsigned contract to Office Space. The contract, signed by Mr. Konkler, was returned promptly. Mr. Stiles in turn signed the contract on 12 May 2005 and sent a copy to Mr. Konkler that day.

5. The contract as originally prepared by Electrodynamics had contained an arbitration clause calling for arbitration at the Mediterraneo International Arbitral Center. That provision is part of the printed contract form used by Electrodynamics. Mr. Konkler substituted the arbitration clause to be found in Article 34 of the contract. Since Electrodynamics has had very few

disputes with customers that could not be settled amicably, Electrodynamics did not object to its inclusion. (Respondent's Exhibit No. 1)

6. The engineering drawings indicated that the fuses in the distribution fuse boards were to be Chat Electronics JP type fuses. Fuses of that brand and type are normally carried in inventory at Electrodynamics and can normally be obtained on short notice from Chat Electronics. In the spring of 2005 the inventory of Chat Electronics JP type fuses was exhausted. When an additional supply was ordered, Chat Electronics announced that there were production difficulties and that it hoped to resume shipping JP fuses by mid to late August. That meant that the distribution fuse boards could not be delivered to Office Space until early September at the earliest.

7. On 14 July 2005 Mr. Stiles telephoned to Office Space and asked to speak to Mr. Konkler. Mr. Stiles was told that Mr. Konkler was absent on a business trip and he was referred to Mr. Steven Hart, a member of the Purchasing Department at Office Space. Mr. Stiles explained the situation. He said that they could do either of two things. Either they could use a different brand of JP fuses or they could use Chat Electronics JS fuses. The choice was up to Office Space. It would be desirable for a decision to be made promptly, since the outside dimensions of JP and JS fuses were slightly different. The supports for the proper size fuses had to be built into the fuse boards and that needed to be done promptly in order to meet the delivery date called for in the contract.

8. Mr. Hart said that he was not particularly knowledgeable about the electrical equipment. It was not the area in which he worked. He knew that Mr. Konkler and Office Space in general liked Chat Electronics equipment. He asked Mr. Stiles for his recommendation. It was in that context that Mr. Stiles explained that up to 400 amperes either JP or JS fuses could be used. Only JS fuses could be used above 400 amperes. He also said that they had delivered both JP and JS fuses to customers in Equatoriana in the past. Since Mr. Konkler and Office Space preferred Chat Electronics equipment, they might prefer that JS fuses were used. Mr. Hart told Mr. Stiles to go ahead on that basis.

9. A copy of the Chat Electronics catalog for J type fuses is attached as Respondent's Exhibit No. 2 and a picture of a typical JP type fuse is attached as Respondents Exhibit No. 3. All JP fuses use the same cartridge size, which is 82 mm in length. JS fuses are identical in appearance but are 92 mm in length.

10. The distribution fuse boards were delivered to Office Space at the construction site in Mountain View, Equatoriana on 22 August 2005. In conformity with the payment term in the contract Office Space initiated a bank transfer of US\$168,000 to pay for them on 24 August 2005 which was credited to the Electrodynamics bank account two days later on 26 August 2005.

11. On 9 September 2005 Mr. Konkler telephoned Mr. Stiles to complain that the distribution fuse boards were not in conformity with the contract in that they were equipped with JS type fuses rather than with JP type fuses. He said that Equalec, the local electrical distribution company, had refused to connect to the distribution fuse boards because the circuits were designed for loads of 400 amperes or less and were equipped with JS type fuses.

12. Mr. Stiles responded that he did not understand why there was a problem. Both JP and JS fuses met the requirements of the Equatoriana Electrical Regulatory Commission, which had

certified all fuses that met the BS 88 standard. Electrodynamics had delivered many JS fuses for less than 400 amperes to Equalec over the years and there had never been any difficulty. If Equalec refused to connect to fuse boards that employed JS fuses of less than 400 amperes, it was in violation of the law. Equatoriana, like many countries, has a law that requires electrical distribution companies to connect to facilities that had been certified by the Equatoriana Electrical Regulatory Commission. (The text of Articles 14 and 15, Equatoriana Electric Service Regulatory Act, is to be found in Respondents Exhibit No. 4)

13. Mr. Konkler said that they did not have the time to argue with Equalec about whether its policy was against the law or not. He said Office Space was under time pressure to complete the development in Mountain View so that it could give access to its lessees. He asked how long it would take for Electrodynamics to be able to deliver fuse boards with JP fuses to which Equalec would connect. Unfortunately, Electrodynamics was still unable to procure JP fuses from Chat Electronics and Mr. Stiles had to reply that it might be several months yet. With that, Mr. Konkler said that they would have to buy the fuse boards from another source and that they would hold Electrodynamics responsible for the extra costs.

III. Arbitration clause

14. The arbitration clause as drafted by Office Space is found in paragraph 34 of the contract. It provides as follows:

34. Arbitration. All disputes arising out of or in connection with this Contract, or regarding its conclusion, execution or termination, shall be settled by the International Arbitration Rules used in Bucharest. The arbitral award shall be final and binding.

The Arbitral Tribunal shall be composed of three arbitrators.

The arbitration shall be in the English language. It shall take place in Vindobona, Danubia.

15. It is completely unclear to what this clause refers. The request for arbitration was sent to the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania. It is indeed located in Bucharest. However, while the Court is entitled the Court of International Commercial Arbitration, its rules are labeled simply “Rules of Arbitration”. It might be argued that it is self-evident that the rules of arbitration of an entity entitled Court of International Arbitration are international arbitration rules. However, a review of the rules shows that they are designed for domestic arbitrations as well as international arbitrations. The only part of the rules that are specifically for international arbitrations are in Chapter VIII, Articles 72 to 77, which do not give a complete set of rules but only certain modifications of the otherwise applicable rules. Therefore, the reference to “International Arbitration Rules” does not refer to any existing set of rules of any arbitral organization in Bucharest.

16. Even if it were thought to be a possible construction of the clause that they referred to the arbitration rules of the Court of International Commercial Arbitration, it would not be clear what procedures should be followed in establishing the arbitral tribunal or in conducting the arbitration. Article 72(2) provides that the parties are free to decide to use the UNCITRAL Arbitration Rules. Those rules were specifically drafted for international commercial arbitrations and are more likely to be the rules referred to in the arbitration clause. A

comparison of the two sets of rules will demonstrate that they differ in many important respects.

17. Therefore, respondent, Mediterraneo Electrodynamics S.A. contests the jurisdiction of any arbitral tribunal established under the Arbitration Rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania.

IV. Merits

18. Mediterraneo Electrodynamics S.A. delivered the proper goods as called for by the contract between it and Equatoriana Office Space Ltd.

19. There is essentially no question as to the content of the telephone conversation between Mr. Stiles and Mr. Hart on 14 July 2005. Mr. Hart agreed that in place of Chat Electronics JP fuses, Electrodynamics would deliver the five primary distribution fuse boards using Chat Electronics JS fuses. JS fuses were appropriate for the purpose. They were authorized for use in distribution fuse boards by the Equatoriana Electrical Regulatory Commission. Equalec could not by law refuse to connect to distribution fuse boards using them. Under the circumstances it can be questioned whether the use of JS rather than JP fuses in the fuse boards with the agreement of Office Space even amounted to an amendment of the contract.

20. Office Space had a legal right to have the fuse boards with JP fuses connected to the electrical supply. It should have complained to the Equatoriana Electrical Regulatory Commission to have them order Equalec to do so.

21. The fact that Office Space did not complain to the Commission or take other action to cause Equalec to fulfill its legal obligations cannot affect the question as to whether Electrodynamics had fulfilled its contract obligations.

22. Office Space states in paragraph 25 of the statement of claim that “There can be no argument that the contract had been orally amended since the contract specifically provided that any amendment had to be in writing as called for by CISG Article 29(2).” That reflects an incomplete reading of CISG Article 29(2). The second sentence of CISG Article 29(2) provides

However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

23. There can be no question that Electrodynamics relied on Mr. Hart’s decision that Electrodynamics should fabricate the distribution fuse boards using Chat Electronics JS fuses. There would still have been time to substitute JP fuses from a different manufacturer if Electrodynamics had been so notified on Mr. Konkler’s return from his business trip. It is obvious that Office Space found the fuse boards to be completely satisfactory when it had them installed in its development in the city of Mountain View. Furthermore, after receiving the fuse boards, it was so completely satisfied that it paid for the fuse boards two days after receiving them.

IV. Legal Conclusions

24. An arbitral tribunal appointed under the Arbitration Rules of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania has no jurisdiction to decide the dispute between Equatoriana Office Space Ltd and Mediterraneo Electrodynamics S.A...

25. Mediterraneo Electrodynamics S.A. delivered primary distribution fuse boards that were in conformity with the contract between it and Equatoriana Office Space Ltd.

a. The use of JS fuses rather than JP fuses with the approval of Office Space did not constitute an amendment of the contract.

b. If the tribunal were to find that Mr. Hart's decision that JS rather than JP fuses should be used amounted to an amendment of the contract, Electrodynamics relied upon his decision and the subsequent failure of Office Space at any time during the fabrication of the distribution fuse boards to notify Electrodynamics that it should use a brand of JP fuses other than Chat Electronics. The reliance by Electrodynamics on the conduct of Office Space obviated the term in the contract calling for any amendment to be in writing.

c. The words on the drawings "To be lockable to Equalec requirements" should be understood to be a note directed to the personnel of Office Space or the construction firm they engaged to construct the development in Equatoriana. They were not relevant to any undertaking in Mediterraneo by Electrodynamics, which could not possibly have known or foreseen any requirement that Equalec might have contrary to the law.

d. Office Space had the possibility of complaining to the Equatoriana Electrical Regulatory Commission that Equalec was under a legal obligation to connect to the distribution fuse boards containing JS type fuses and to request it to order it to do so. Any failure on the part of Office Space to make such a complaint can have no legal consequences for Electrodynamics.

V. Relief

26. Mediterraneo Electrodynamics S.A. requests the tribunal:

- to dismiss the claim brought by Equatoriana Office Space Ltd on the grounds that it has no jurisdiction under the arbitration clause in the contract;

- if it should find that it has jurisdiction, to dismiss the claim brought by Equatoriana Office Space Ltd as unfounded;

. to order Equatoriana Office Space Ltd to pay all costs of the arbitration, including the costs of legal representation incurred by Mediterraneo Electrodynamics S.A.

(Signed)
Counsel

4 September 2006

Respondent's Exhibit No 1

Witness Statement

Peter Stiles

My name is Peter Stiles and I am the Sales Manager for Mediterraneo Electrodynamics S.A. We are wholesalers of electrical equipment. Most of our business involves selling equipment just as we have purchased it from the manufacturers. However, we also fabricate certain types of electrical equipment using standard parts that we otherwise would sell individually.

On 22 April 2005 I received a telephone inquiry from Herbert Konkler, Purchasing Director for Equatoriana Office Space Ltd, as to whether we could fabricate five primary distribution fuse boards for a project they were building in Mountain View, Equatoriana. I told him that we would certainly be able to do it but that I would like to see their design drawings before I gave a firm answer and before I quoted a price. The drawings arrived within the next several days and I was able to tell Mr. Konkler that our price would be US\$168,000. He accepted that price and sent a purchase order, which arrived on 4 May 2005.

We prefer to use signed contracts for any transaction of US\$20,000 or more, so I sent Mr. Konkler a completed but unsigned contract. He signed and returned it to me. On 12 May 2005 I signed the contract and sent him a copy.

Our contract form contains an arbitration clause calling for arbitration at the Mediterraneo International Arbitral Center. Mr. Konkler had substituted a different arbitration clause. It is the one found in Article 34 of the contract. I am no expert in arbitration, but it looked strange to me. For one thing, no institution was mentioned. However, it was not something I was going to worry about. For the 40 years that Mediterraneo Electrodynamics has been in business, there have been exactly three disputes that could not be settled and went to arbitration. It was not an issue that I was going to let interfere with concluding the sale.

At a later time – before the dispute arose – I talked to Mr. Konkler on the telephone about the contract and during the conversation I asked him why a different arbitration clause had been inserted into our form. He told me that the president of Equatoriana Office Space had told them to always use this clause. I think he drafted it himself. Mr. Konkler seemed to think that he was looking forward to an arbitration in Vindobona so that he would have the occasion to visit. It seems he likes opera very much.

The engineering drawings that had been sent to us for price quotation and that were subsequently attached to the contract indicated that the fuses in the distribution fuse boards were to be Chat Electronics JP type fuses. Fuses of that brand and type are normally carried in inventory at Electrodynamics. Even when they aren't, they can normally be obtained on short notice from Chat Electronics. In the spring of 2005 the inventory of Chat Electronics JP type fuses was exhausted so we ordered the fuses we would need to fulfill the contract with Equatoriana Office Space. We received a reply from Chat Electronics that it was having some production difficulties and would not be able to ship JP type fuses until mid to late August at the earliest. That meant that we would not be able to deliver the distribution fuse boards to Office Space until early September at the earliest.

I immediately called Equatoriana Office Space and asked to speak to Mr. Konkler. That was on 14 July 2005. I was told that Mr. Konkler was on a business trip. I was referred to one of his colleagues in the Purchasing Department, Mr. Steven Hart. I explained the situation to him and told him that there were three possible actions we could take. We could wait for Chat Electronics to resolve its production problems and to ship us the JP fuses we would need. We could use JP fuses from a different manufacturer or we could use Chat Electronics JS type fuses for the distribution fuse boards.

Mr. Hart said that it was not possible to wait for Chat Electronics to resolve its production problems, especially since it was not clear how long that would take. Equatoriana Office Space needed the distribution fuse boards by the contract date so that they could get a supply of electricity into the development. They were under contract with a number of lessees that they had to give occupancy by 1 October 2005 or pay substantial damages. While it might be possible to use JP fuses from a different manufacturer, he was not sure that this would be acceptable to Mr. Konkler or the technical staff at Equatoriana Office Space. He said they seemed to insist on Chat Electronics equipment wherever possible. He said he was not very well versed in the electrical aspect of the development, so that he did not have an independent judgment on it. He asked me what difference it would make to use JS fuses in place of JP fuses.

I explained to him that they looked the same and up to 400 amperes either could be used. Over 400 amperes it is possible to use only JS fuses. I also explained that they are different in size. The fixing centers for JP fuses are 82 mm while those for JS fuses are 92 mm. That means that once one type is installed it cannot be replaced by the other type. Since all the fuses in the distribution fuse boards ordered by Equatoriana Office Space were to be less than 400 amperes, it really did not matter which type was used. However, we needed to know promptly so that we could install the proper supports for the fuses.

Mr. Hart asked for my recommendation. I told him that the only way to receive the distribution fuse boards from us with Chat Electronic fuses was to use JS rather than JP fuses. Mr. Hart told me that he was in agreement and that we should go ahead with JS fuses.

We completed fabricating the fuse boards with Chat Electronics JS fuses and shipped them to the Equatoriana Office Space construction site in Mountain View, Equatoriana. They arrived on 22 August 2005 and, I have been informed, were installed something like ten days later in the buildings under construction.

On 9 September 2005 I received a telephone call from Mr. Konkler. He was very upset. He told me that Equalec, the electricity supplier in Mountain View, had refused to connect to the distribution fuse boards because they contained JS type fuses of less than 400 amperes. He said that Equalec had a policy against it. He already knew about my telephone conversation with Mr. Hart. He said that Mr. Hart was not responsible for the Mountain View project and should never have agreed to a change to the specifications of the fuse boards. He then said that Mr. Hart's oral agreement was not binding because the contract specified that any amendment had to be in writing.

I disagreed with him. I said that a change from JP to JS type fuses is such a minor change that it could hardly be called an amendment of the contract that calls for a writing. This kind of minor adjustment is made all the time in items that need to be specially fabricated. After all, JS and JP fuses are basically the same thing. JS fuses are somewhat larger and can be used

where more current than 400 amperes would be called for, but below 400 amperes either can be used in the vast majority of cases where the rating is the same. I told him that both JP and JS fuses have been certified by the Equatoriana Electrical Regulatory Commission as meeting the BS 88 standard, which is followed in Equatoriana. We have often supplied JS fuses of less than 400 amperes to customers in Equatoriana. I also asked him whether they had insisted, either to Equalec or to the Commission, that Equalec was required by law to connect to the fuse boards that met the certification requirements.

Mr. Konkler said that he had contacted Equalec but not the Commission. Equalec had said that that was their policy and it was well known to the firms that regularly operated in their service area, which Equatoriana Office Space did not. Mr. Konkler said that there was not sufficient time to start a proceeding before the Commission. They were under time pressure to complete the buildings and give occupancy to their lessees. He asked me how long it would take for us to supply fuse boards with Chat Electronic JP fuses. I told him that we were still unable to secure JP fuses from Chat Electronics and that I could not give him a firm date. I thought, however, that it might be several months yet. With that Mr. Konkler said that they would have to buy replacement fuse boards from someone else and would hold us responsible for the extra costs.

Peter Stiles
Sales Manager
Mediterraneo Electrodynamics S.A.

30 August 2006

Chat Electronics

**415V J-Type
Feeder Pillar Fuselinks**

ASTA 20 Certified or tested to BS 88: Part 5 for a breaking capacity of 80kA respectively for wedge tightening contacts.

For use by the Electricity Supply Industry in distribution systems. Available with silver elements, details on request.

| Rating | Fixing Centres (mm) | List No. | Price USD |
|--------|---------------------|----------|-----------|
| 32A | 82 | CJP32 | 34.20 |
| 40A | 82 | CJP40 | 34.20 |
| 50A | 82 | CJP50 | 34.20 |
| 63A | 82 | CJP63 | 34.20 |
| 80A | 82 | CJP80 | 34.20 |
| 100A | 82 | CJP100 | 34.20 |
| 125A | 82 | CJP125 | 34.20 |
| 160A | 82 | CJP160 | 34.20 |
| 200A | 82 | CJP200 | 38.95 |
| 250A | 82 | CJP250 | 38.95 |
| 315A | 82 | CJP315 | 38.95 |
| 355A | 82 | CJP355 | 45.60 |
| 400A | 82 | CJP400 | 47.50 |
| 100A | 92 | CJS100 | 37.05 |
| 125A | 92 | CJS125 | 37.05 |
| 160A | 92 | CJS160 | 37.05 |
| 200A | 92 | CJS200 | 37.05 |
| 250A | 92 | CJS250 | 37.05 |
| 315A | 92 | CJS315 | 41.80 |
| 355A | 92 | CJS355 | 45.60 |
| 400A | 92 | CJS400 | 47.50 |
| 450A | 92 | CJS450 | 60.80 |
| 500A | 92 | CJS500 | 62.70 |
| 560A | 92 | CJS560 | 66.50 |
| 630A | 92 | CJS630 | 68.40 |
| 710A | 92 | CJS710 | 82.50 |
| 800A | 92 | CJS800 | 112.10 |

Respondent's Exhibit No. 3

JP Fuse, 355 amperes



Respondent's Exhibit No. 4

Equatoriana Electric Service Regulatory Act

Art. 14. Every electric corporation shall provide electric service that is safe and adequate to any legal or physical person who shall have made appropriate arrangements for payment of the charges. There shall be no undue or unjust requirements for providing such service.

Art. 15 The Equatoriana Electrical Regulatory Commission shall certify the safety of all equipment to which electrical connections have been requested.

**COURT OF INTERNATIONAL COMMERCIAL ARBITRATION
ATTACHED TO
THE CHAMBER OF COMMERCE AND INDUSTRY
OF ROMANIA**

B-dul O. Goga nr. 2, sector 3, Bucharest, Romania, Phone: (40 21) 319 27 47, Fax: (40 21) 319 01 26 E-mail: arbitration@ccir.ro

To:

Prof. Arbitrator 2

Office: 14 Litigation Avenue, Capitol City, Mediterraneo

Case File Romania Moot 0014

Claimant: Equatoriana Office Space Ltd - Equatoriana

Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo

Monetary value of the Statement of Claim: US\$ 200,000

No. 0014 / 5.09.2006

Dear Prof. Arbitrator 2,

The Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania was approached with the dispute which forms the object of the above mentioned case file. The Respondent Mediterraneo Electrodynamics S.A., with its principal office at 23 Sparkling Lane, Capitol City, Mediterraneo, telephone number is (0) 487-1616, fax number is (0) 487-1620, nominated you as arbitrator.

We invite you to advise us within 3 days of the receipt thereof about your approval to fulfil the mission of arbitrator for the Respondent in this litigation.

We also send you the Statement of Independence, which we kindly ask you to fill in and return it within the same period of time in case you accept your appointment.

We acknowledge you that, in accordance with to the Schedule of Arbitral Fees and Expenses, the fee for one arbitrator is in amount of Euro 3,072.45. The arbitrator's fee shall be paid by the parties in the bank account of the Chamber of Commerce and Industry of Romania and shall be transferred to your bank account. Apart from the arbitrator's fee, the party that nominated you shall cover all your arbitral expenses as specified in Art.3(1) of our Schedules of Arbitral Fees and Expenses.

We also enclose a copy of the Statement of Claim, the Regulations on the Organisation and Operation of our Court, the Rules of Arbitration and the Schedules of Arbitral Fees and Expenses.

Assistant,

*Attachments: Statement of Independence (1 page)
Statement of Claim (7 pages) + Annexes (4 pages)
Regulations on the Organisation and Operation (4 pages)
Rules of Arbitration (17 pages)
Schedules of Arbitral Fees and Expenses (4 pages)*

Arbitrator 1
85 Court Street
Room 325
Fortune City, Equatoriana

***To: the Court of International Commercial Arbitration attached to the
Chamber of Commerce and Industry of Romania***

Re. Case File Romania Moot 0014

Claimant: Equatoriana Office Space Ltd - Equatoriana

Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo

Monetary value of the Statement of Claim: US\$ 200,000

29 August 2006

Dear Mr. Assistant,

Referring to your letter dated 21.08.2006 by which you acknowledged me about my nomination as arbitrator in the above mentioned case file, I send you enclosed my Statement of Independence and also my approval to fulfil the mission of arbitrator for the Claimant.

Yours sincerely,

Ms. Arbitrator 1

Attachment: Statement of Independence (1 page)

STATEMENT OF INDEPENDENCE

The undersigned, Ms. Arbitrator 1, undertake to perform my duties as arbitrator in the Case File No. Romania Moot 0014 of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania with honour, fairness and impartiality, and to strictly comply with the Court's Regulations and Rules of Arbitration. I hereby state that, should anything occur during arbitration that may affect my independence and impartiality, I will disclose such occurrence to the parties and the other arbitrators appointed for that arbitration.

Signature: _____
_____ **29.08.2006** _____

Date:

Professor Arbitrator 2
14 Litigation Avenue
Capitol City
Mediterraneo

***To: the Court of International Commercial Arbitration attached to the
Chamber of Commerce and Industry of Romania***

Re. Case File Romania Moot 0014

Claimant: Equatoriana Office Space Ltd - Equatoriana

Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo

Monetary value of the Statement of Claim: US\$ 200,000

7 September 2006

Dear Mr. Assistant,

Referring to your letter dated 5.09.2006 by which you acknowledged me about my nomination as arbitrator in the above mentioned case file, I send you enclosed my Statement of Independence and also my approval to fulfil the mission of arbitrator for the Respondent.

Yours sincerely,

Prof. Arbitrator 2

Attachment: Statement of Independence (1 page)

STATEMENT OF INDEPENDENCE

The undersigned, Prof. Arbitrator 2, undertake to perform my duties as arbitrator in the Case File No. Romania Moot 0014 of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania with honour, fairness and impartiality, and to strictly comply with the Court's Regulations and Rules of Arbitration. I hereby state that, should anything occur during arbitration that may affect my independence and impartiality, I will disclose such occurrence to the parties and the other arbitrators appointed for that arbitration.

Signature: _____
_____ **7.09.2006** _____

Date:

**COURT OF INTERNATIONAL COMMERCIAL ARBITRATION
ATTACHED TO
THE CHAMBER OF COMMERCE AND INDUSTRY
OF ROMANIA**

B-dul O. Goga nr. 2, sector 3, Bucharest, Romania, Phone: (40 21) 319 27 47, Fax: (40 21) 319 01 26 E-mail: arbitration@ccir.ro

To:
Ms. Arbitrator 1
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Case File Romania Moot 0014
Claimant: Equatoriana Office Space Ltd - Equatoriana
Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo
Monetary value of the Statement of Claim: US\$ 200,000

No. 0014 / 8.09.2006

Dear Ms. Arbitrator 1,

Following your approval to fulfil the mission of arbitrator in the above mentioned case file, we hereby invite you to appoint, together with the arbitrator nominated by the Respondent, the person which shall fulfil the mission of presiding arbitrator within 10 days of the receipt thereof, in accordance with the provisions of Art.23 of the Rules of Arbitration.

The Arbitrator of the Respondent has the following contact details:

Prof. Arbitrator 2

Office: 14 Litigation Avenue, Capitol City, Mediterraneo

Telephone no:

Fax no.:

E-mail:

Assistant,

**COURT OF INTERNATIONAL COMMERCIAL ARBITRATION
ATTACHED TO
THE CHAMBER OF COMMERCE AND INDUSTRY
OF ROMANIA**

B-dul O. Goga nr. 2, sector 3, Bucharest, Romania, Phone: (40 21) 319 27 47, Fax: (40 21) 319 01 26 E-mail: arbitration@ccir.ro

To:

Prof. Arbitrator 2

Office: 14 Litigation Avenue, Capitol City, Mediterraneo

By fax:

Case File Romania Moot 0014

Claimant: Equatoriana Office Space Ltd - Equatoriana

Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo

Monetary value of the Statement of Claim: US\$ 200,000

No. 0014 / 8.09.2006

Dear Prof. Arbitrator 2,

Following your approval to fulfil the mission of arbitrator in the above mentioned case file, we hereby invite you to appoint, together with the arbitrator nominated by the Claimant, the person which shall fulfil the mission of presiding arbitrator within 10 days of the receipt thereof, in accordance with the provisions of Art.23 of the Rules of Arbitration.

The Arbitrator of the Claimant has the following contact details:

Ms. Arbitrator 1

Office:

Telephone no:

Fax no.:

E-mail:

Assistant,

Arbitrator 1
85 Court Street
Room 325
Fortune City, Equatoriana

*To: the Court of International Commercial Arbitration attached to the
Chamber of Commerce and Industry of Romania*

Re. Case File Romania Moot 0014

Claimant: Equatoriana Office Space Ltd - Equatoriana

Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo

Monetary value of the Statement of Claim: US\$ 200,000

15 September 2006

Dear Mr. Assistant,

I wish to inform you of the appointment of Prof. Dr. Presiding Arbitrator as Presiding Arbitrator in the above mentioned case file. The nomination was made by mutual agreement with Prof. Arbitrator 2 in accordance with the provisions of Art.23 of the Rules of Arbitration.

I send you enclosed the letter by which Prof. Arbitrator 2 expressed his agreement.

Yours sincerely,

Ms. Arbitrator 1

Professor Arbitrator 2
14 Litigation Avenue
Capitol City
Mediterraneo

To:
Ms. Arbitrator 1
Office:

Re. Case File Romania Moot 0014
Claimant: Equatoriana Office Space Ltd - Equatoriana
Respondent: Mediterraneo Electrodynamics S.A. - Mediterraneo
Monetary value of the Statement of Claim: US\$ 200,000

14 September 2006

Dear Ms. Arbitrator 1,

Referring to your proposal for the appointment of Prof. Dr. Presiding Arbitrator as Presiding Arbitrator in the above mentioned case file, I acknowledge to you my acceptance.

Yours sincerely,

Prof. Arbitrator 2

Court of International Commercial Arbitration attached to the
Chamber of Commerce and Industry of Romania

Romania Moot 0014

Equatoriana Office Space Ltd
Claimant

v.

Mediterraneo Electrodynamics S.A.
Respondent

Procedural Order No. 1

1. This arbitration is between Equatoriana Office Space Ltd as claimant and Mediterraneo Electrodynamics S.A. as respondent. They shall be referred to in this Procedural Order as Office Space and Electrodynamics, as both of them have done in their Statement of Claim and Answer.
2. On 2 October 2006 the Tribunal conferred by means of a conference call as to the procedure that should be followed in the arbitration. Of immediate relevance is that the Presiding Arbitrator was authorized to make procedural decisions, subject to later approval by the Tribunal.
3. On 5 October 2006 the Presiding Arbitrator held a conference call with Mr. Joseph Langweiler, counsel for claimant Office Space, and Mr. Horace Fasttrack, counsel for respondent Electrodynamics.
4. Mr. Fasttrack insisted that, although Electrodynamics had participated in the creation of the Tribunal by appointing Prof. Arbitrator 2, it continued to insist that the Tribunal had no jurisdiction to consider the dispute. He reiterated that the arbitration clause was so unclear as to what it meant that it was a nullity.
5. The Presiding Arbitrator assured Mr. Fasttrack that pursuant to Article 15(2) of the Arbitration Rules the Tribunal would consider whether it had jurisdiction to consider the merits of the dispute.
6. Mr. Fasttrack said that in the portion of the Answer on the merits of the dispute Electrodynamics had not challenged the statement in paragraph 27 of the Statement of Claim that inspection of the distribution fuse boards and notice of their asserted nonconformity with the contract had been given within the time required by CISG Articles 38 and 39. Mr. Fasttrack said that, if the Tribunal found it had jurisdiction to consider the merits of the dispute, he reserved the right to amend the Answer to assert that notice of the alleged

nonconformity of the distribution fuse boards was not given within the time required by CISG Article 39.

7. Mr. Langweiler said that any such assertion should have been in the Answer. He considered it inappropriate to consider the possibility of such an amendment of the Answer. He contended that the arbitration was a relatively simple matter and that the Tribunal should be able to decide upon both the jurisdictional question and the merits without significant delay. A later amendment to the Answer raising a new defence would not only delay final disposition of the dispute, but would certainly increase the cost. He referred to Article 9 of the Arbitration Rules, and particularly to Article 9(2), which provides that “[a]ny obstruction or undue delay of the dispute shall be considered a breach of the arbitral agreement.”

8. The Presiding Arbitrator indicated that, subject to the approval of the full Tribunal, such an amendment would be accepted. He reminded Mr. Fasttrack that a delayed amendment of the Answer that was not the result of matters that arose during the arbitration might have consequences in regard to the allocation of the costs. Since the parties have not entered into any agreement as to the allocation of the costs of arbitration as envisaged by Article 48(8) of the Arbitration Rules, according to Article 48(9),

the arbitral expenses shall be borne by the party that has lost the case, in full where all the claims of the Request for Arbitration have been accepted in full. If the Request for Arbitration is accepted in part, the cost represented by the arbitration fee shall be awarded in accordance to the accepted claims. The Arbitral Tribunal shall award the other expenses to the extent it will consider them to be justified, under the circumstances of the case.

9. Article 48(10) goes on to provide

(10) Upon request, the Arbitral Tribunal may order the party whose fault caused undue expenses to the other party to indemnify the latter.

10. It was agreed that it would be more efficient and less expensive for the parties for the Tribunal to consider the challenge to the jurisdiction of the Tribunal raised by Electrodynamics at the same time that it considered the substantive issues that were ready for presentation to the Tribunal. The parties will submit memoranda elaborating the positions they have taken in the statement of claim and the answer and oral arguments will be held on those issues. If the Tribunal rejects the challenge to its jurisdiction after receiving the memoranda of the parties and having heard their oral arguments, further proceedings may take place at a subsequent time.

11. The memoranda to be submitted and the oral arguments should be directed to the following issues:

- Whether the Tribunal has jurisdiction to consider this dispute under the arbitration clause found in the contract of 12 May 2005;
- Whether
 - (a) Electrodynamics delivered distribution fuse boards that were in conformity with the contract as originally written, or alternatively
 - (b) the contract was validly amended to provide that JS fuses should be used in the fuse boards;

- Whether the failure of Office Space to complain to the Equatoriana Electrical Regulatory Commission of the refusal of Equalec to connect to the fuse boards excuses any failure of Electrodynamics to deliver goods conforming to the contract.

12. The memoranda should not discuss the following issues:

- Whether Office Space notified Electrodynamics of the alleged nonconformity of the distribution fuse boards in the time required by CISG Article 39;
- the claim for either pre-award or post-award interest;
- the allocation of the costs of arbitration.

13. The schedule for the first phase of the arbitration will be as follows:

- Office Space will submit its memorandum by Thursday, 7 December 2006
- Electrodynamics will submit its memorandum by Thursday, 25 January 2007

14. Oral arguments will be scheduled in the months of March/April 2007 in Vienna and in March in Hong Kong. All participants in the Vienna arguments will be invited to a welcoming event followed by a reception on the evening of Friday, 30 March 2007. Arguments will take place beginning the following morning, Saturday, 31 March 2007. Participants will also be invited to a welcoming party sponsored by the Moot Alumni Association on Thursday evening, 29 March 2007. Participants in the Hong Kong arguments will be invited to a reception on the evening of Monday, 19 March 2007 and the arguments will commence the following morning.

15. The parties have agreed to extend the period of time within which an award should be rendered as authorized by Article 33 of the Arbitration Rules.

(Signed)
Prof. Dr. Presiding Arbitrator

6 October 2006

Court of International Commercial Arbitration attached to the
Chamber of Commerce and Industry of Romania

Romania Moot 0014

Equatoriana Office Space Ltd
Claimant

v.

Mediterraneo Electrodynamics S.A.
Respondent

Procedural Order No. 2

In conformity with the instructions given in Procedural Order No. 1 there have been a number of requests for clarification. There follow in this Procedural Order the clarifications requested.

Scope of the issues to be argued in the memoranda and orally

Only those issues set out in paragraph 11 of Procedural Order No. 1 are to be discussed. Paragraph 12 contains some of the more obvious issues that are not to be discussed. It does not contain all of the possible issues that might be considered relevant but that are not before the arbitral tribunal at this time. In particular, the amount of damages, including questions of mitigation, are not to be considered at this time.

Legal rules and arbitration clause

1. Has Mediterraneo adopted the UNCITRAL Model Law on International Commercial Arbitration?

Yes, with no relevant amendment.

2. Are Equatoriana and Mediterraneo Common Law or Civil Law countries?

Equatoriana is a common law country while Mediterraneo is a civil law country.

3. What languages are spoken in Equatoriana and Mediterraneo?

Equatoriana is English speaking. Mediterraneo speaks a language related to other Latin based languages. English is widely used in business activities.

4. Does the law of Danubia permit the choice of law as done by the parties in clause 33 of the contract?

Yes.

5. Is Danubia a party to the CISG?

Yes, with no declarations.

6. Did Mediterraneo make any declaration when ratifying the CISG?

No.

7. Is Mediterraneo a monist state in regard to the effectiveness of treaties, i.e. is the CISG positive law in Mediterraneo?

Yes.

8. Which, if any, of the states involved are party to the Vienna Convention on the Law of Treaties?

Danubia, Equatoriana and Mediterraneo are all party to the Convention.

9. Would the private international law of Equatoriana and Danubia apply the CISG to contracts in which the chosen law was that of a state party to the convention but one or both of the parties to the contract was from a state that was not a party to the CISG?

Neither Equatoriana nor Danubia has as yet faced the issue and there is nothing in the law of either country that would give a definitive answer to the question other than the fact that Danubia is a party to the CISG.

10. Is there any organization in Bucharest other than the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania that conducts international arbitrations?

No. The Court of International Commercial Arbitration was attached to the Chamber of Commerce and Industry of Romania and Bucharest until several years ago. The Chamber was then divided into a Chamber of Commerce and Industry of Romania and a Chamber of Commerce and Industry of Bucharest. The two chambers remain resident in the same building. There are chambers of commerce and industry in the major cities throughout Romania and the current structure places the Chamber of Commerce and Industry of Bucharest on an equal plane with the chambers in the other cities. At the time of the division the Court of International Arbitration remained with the Chamber of Commerce and Industry of Romania. The reference to the Chamber of Commerce and Industry of Romania and Bucharest in the rules of arbitration has not been amended as yet.

11. What percentage of the cases before the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania are domestic and what percentage are international?

Approximately 80 percent of the cases are domestic and twenty percent are international.

12. How often has the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania been asked to administer arbitrations under the UNCITRAL Arbitration Rules?

Rarely, if ever. However, they are fully prepared to do so.

13. Has Equatoriana communicated its address in Romania within the 10 days, as required by art. 114 (4) of the Romanian Code of Civil Procedure?

As indicated in the letter of 28 August 2006 from the Court of International Arbitration to Electrodynamics, article 114(4) of the Romanian Code of Civil Procedure requires there to be an election of address in Romania. An appropriate address has been communicated to the Court by both Office Space and Electrodynamics.

The file before the arbitral tribunal (i.e. the Problem) does not include all of the correspondence between the Court and either the parties or the arbitrators. The absence of a particular document that might be required should not be taken to indicate that it does not exist. Similarly, the attachments to the letters from the Court to the parties have not been included in the file. All relevant documents have been signed.

14. Has Office Space ever had an arbitration under the clause it inserted into the contract?

No. This the first time the clause has ever been invoked.

15. Under which rules or before which arbitral institution were conducted the three arbitrations that Electrodynamics has had?

Two of the arbitrations were conducted by the Mediterraneo International Arbitral Center. The third arbitration was an ad hoc arbitration in Oceana under the UNCITRAL Arbitration Rules.

16. What is the law of agency in Equatoriana and Mediterraneo as it affects the relationship between the principal and the third party?

For the purposes of the Moot you may assume that the Convention on Agency in the International Sale of Goods (Geneva, 17 February 1983) is in force and that Equatoriana and Mediterraneo are both party to it.

Mr. Hart

17. What was Mr. Hart's role and contracting authority?

Mr. Hart was a procurement professional for Equatoriana Office Space Ltd. His authority to sign contracts was limited to US\$250,000. He had no responsibility for the contract with Mediterraneo Electrodynamics S.A. During Mr. Konkler's absence inquiries that would normally have been referred to Mr. Konkler were directed to Mr. Hart, but he had not been given any additional authority to that which he had when Mr. Konkler was present.

18. Did Mr. Stiles know the extent of Mr. Hart's authority?

When Mr. Stiles asked to speak to Mr. Konkler and was informed by the secretary who answered the telephone that Mr. Konkler was not available, he was told that he could speak to Mr. Hart, a professional in the procurement office. Nothing further was said as to Mr. Hart's authority.

19. Did Mr. Hart ask Mr. Stiles to send a confirmation of the change in specifications?

No.

20. Why did Mr. Hart not inform Mr. Konkler of the telephone call on his return to the office?

There was no formal directive stating that Mr. Konkler should be informed of all telephone calls or other transactions that had occurred during his absence. It was routine that he was informed of those that seemed to warrant his attention or that he should be aware of. One can only speculate as to why Mr. Hart did not inform Mr. Konkler of the telephone conversation with Mr. Stiles. It may be that he forgot to do so, or that he considered it to be of little importance or, as indicated in his witness statement, he thought Mr. Stiles would send a message confirming the content of the conversation. It may also be that all three explanations contributed. Mr. Hart himself would say that it was his firm belief that there would be a confirming message and that he no longer thought about it. He was occupied by other matters that took all of his concentration.

Fuses, fuse boards and Equalec

21. What does the word 'lockable' in the phrase "lockable to Equalec requirements" mean?

There would be testimony that the phrase meant that Equalec would lock the fuse boards with a padlock to which it had the key.

22. Is Equalec a public, i.e. state, enterprise or is it a private corporation?

It is a private corporation.

23. Do any other electrical supply companies in Equatoriana have a policy similar to that of Equalec in regard to refusing to connect to JS fuses with ratings less than 400 amperes?

No.

24. How had Equalec distributed its policy?

The policy could be found on the Equalec website devoted to technical requirements of its electrical service. In addition, it had sent a notice to all who were known to it to be involved in the electrical work in question. That included firms in Equatoriana such as Switchboards engaged in selling electrical equipment to the trade. Electrodynamics was not notified of the policy. Notices were also sent to developers who had been active in the Equalec service area. Since Office Space had not been active in the Equalec service area at the time the policy was adopted, it did not receive a notice.

25. Were the technical personnel at Office Space aware of Equalec's policy?

When Office Space had originally contacted Switchboards to solicit a price quotation for the fuse boards, Switchboards had said that only JP fuses should be used in the fuse boards for the Mountain View project. They had not given any reason, though Switchboards, which operates throughout Equatoriana, was aware of Equalec's policy. The technical personnel at Office Space did not know of Equalec's policy. However, even without the comments of Switchboards, they would normally have called for JP fuses for ratings of less than 400 amperes, though that was not a fixed policy.

26. Is the picture in Respondent's Exhibit No. 3 and accurate representation of what a Chat fuse looks like?

Yes. JP and JS fuses from all manufacturers look the same. Any differences are in the quality of manufacture. Certification that a fuse from a particular manufacturer conforms to the appropriate standard, BS 88 in this case, assures that the fuse meets the necessary minimum quality standard. Chat Electronics has a reputation for being one of the better manufacturers of electrical equipment, including J type fuses.

27. What were the ratings of the Chat Electronics JS type fuses installed in the primary fuse boards delivered by Electrodynamics?

They were of different ratings from 100 to 250 amperes. All of the fuses were of the appropriate rating for the circuit in which they were installed.

28. Has the use of JS type fuses for a rating inferior to 400 amperes been certified by the Equatoriana Electrical Regulatory Commission?

Yes.

29. Has Equalec's policy previously been examined by the Equatoriana Electrical Regulatory Commission?

As far as can be determined, Equalec's policy has never been brought to the attention of the Commission. It is a policy that would fall within the competence of the Commission.

30. How long would it take for the Commission to rule as to whether Equalec was required to connect to fuse boards with JS type fuses of less than 400 amperes?

That is impossible to determine. It is possible that an inquiry from the staff of the Commission would have caused Equalec to change its policy without formal action by the Commission. If that were the case, the entire process could take anywhere from one week to two months or more, depending on how soon the Commission's staff made its inquiry, what they asked and the extent to which they suggested that Equalec's policy was against the law and how quickly Equalec reacted. If a full investigation by the Commission was required, the procedure could take two years or longer before the Commission decided whether Equalec's policy was justified.

31. Does Equalec have a monopoly on the provision of electric power in Mountain View?

Yes.

32. Were the fuse boards inspected by Office Space when they were delivered or soon thereafter?

A visual inspection was done to see whether there had been damage during their transport. No inspection as to whether they conformed to the engineering drawings was carried out. No inspection as to whether they would function properly could be done until they were connected to the electrical supply.

33. How could Switchboards deliver fuse boards with Chat Electronics JP fuses when Electroynamics could not?

Switchboards happened to have a sufficient inventory on hand. Electroynamics had expected to procure the needed fuses directly from Chat Electronics. When they had ordered fuses from Chat Electronics in the past, the fuses had been delivered promptly.

34. What happened to the fuse boards supplied by Electroynamics after they were removed?

Office Space still has them in storage. Their residual value is essentially that of the value of the fuses, which could be used in another application. Office Space is holding them for Electroynamics. Electroynamics is aware of that and is not contesting the issue.

(Signed)

Prof. Dr. Presiding Arbitrator

4 November 2006