

Mock Arbitration Case

CHINDACORP (CHINDA)

Vs.

PACIFICTECH, INC (WANADA)

Preliminary Remarks

- 1. The present arbitration case is adapted from an arbitration scenario prepared by Benjamin G. Davis**

STATEMENT OF FACTS

CHINDA A CORPORATION (“CHINDACORP”), a Chinese Company, has manufactured and marketed in CHINDA, Zapan and Borea since 2000 sophisticated peripherals to be integrated in office work stations.

In September 2002, Mr. YAN Wang, President of CHINDACORP, met Mr. Charles «Buck» MULLIGAN, President of PACIFICTECH INC.(“PATECH”), a WCanadian Company, at the Hen Mei Trade Fair.

Mr. MULLIGAN expressed interest in distributing certain of the CHINDACORP peripherals throughout WANADA and the ASU. Mr. MULLIGAN was particularly interested in the peripheral known as the NORPTHON (a combination telephone/telefax/telex/voice mail machine) for which he foresaw, after his intense marketing efforts, tremendous growth opportunities in WANADA and the ASU.

Mr. MULLIGAN and Mr. YAN remained in contact after the Trade Fair and, in March 2003, Mr. YAN invited Mr. MULLIGAN to visit CHINDACORP’s NORPTHON plant outside of Shenhao, CHINDA. During this meeting, the parties began to discuss the type of cooperation that could be developed. In April 2003, Mr. YAN visited PATECH as well as several of the independent distributors in the PATECH distribution network in WANADA and the ASU.

Mr. YAN and Mr. MULLIGAN remained in close contact in the spring of 2003. A test shipment of five NORPTHONs was delivered in July 2003. All were immediately sold by Mr. MULLIGAN.

The prospects looking optimistic, Mr. YAN and Mr. MULLIGAN met in early September 2003 to begin to examine possible long-term cooperation.

These visits led to the conclusion of a Distributorship Contract on 30 September 2003.

Under the contract, PATECH was granted the right to be the exclusive distributor for the WCanadian and ASU markets of the NORPTHON peripheral for a period of two years. The term was subject to extensions of one year at the request of either party. Such request had to be made 90 days prior to the expiration of the contract. PATECH was granted the right to use the NORPTHON trademark, CHINDACORP’s technical and marketing documentation, and CHINDACORP’s marketing technical assistance. PATECH was granted the exclusive right to market any improvements to the NORPTHON product during the term of the agreement. NORPTHON peripherals were to be delivered C.I.F. Wancouver by CHINDACORP. The net invoice price of the peripherals in WCanadian Dollars was determined in the contract subject to an annual price adjustment clause based on the changes in the exchange rate between the WCanadian Dollar and the Hen Mei Dollar as published in the Pacific Rim Computer Digest monthly magazine.

PATECH was to provide a confirmed letter of credit 30 days before the anticipated shipping date and payment of the price on 90 day terms from the date of delivery C.I.F. Minimum purchase

requirements of 500 units the first year and 1000 units the second year were foreseen with PATECH undertaking to make its best efforts to market the NORPTHONS in WANADA and the ASU.

PATECH was under a duty to protect the know-how, trademarks, and patents for the NORPTHON in WANADA and the ASU.

Under the contract, CHINDACORP was to ship PATECH NORPTHON peripherals that meet Wanadian and ASU market safety standards in the amounts requested by PATECH within 30 days of the opening of the letter of credit by PATECH.

During the first month of the contract, CHINDACORP was to provide three sales development assistants free of charge to PATECH to train PATECH's personnel and the members of the PATECH distribution network. CHINDACORP retained the exclusive right to repair all NORPTHONS.

Warranty claims were expressly limited to be at the risk of PATECH.

CHINDACORP retained the right to terminate the contract for cause as defined in the agreement by providing 30 days' notice.

On 5 October 2003, three CHINDACORP sales development assistants arrived at PATECH headquarters in Wancouver and began an intensive one-month training phase. They arrived with sales documentation of CHINDACORP for PATECH personnel.

On 20 October 2003, PATECH opened a first letter of credit requesting by telefax the shipment of 100 NORPTHONS per contract terms.

On 30 October 2003, CHINDACORP advised that the first shipment had been sent on the vessel 'MAGICWAND'.

The MAGICWAND arrived on 9 November 2003 at Wancouver – three days behind schedule. PATECH took delivery on 10 November 2003 of the 100 NORPTHONS.

PATECH alerted CHINDACORP on 12 November 2003 that 20 of the NORPTHONS had suffered water damage in the shipment and were not fit to be commercialized.

CHINDACORP immediately sent Mr. LUO, Chief Shipping Manager, who arrived on 13 November 2003. Mr. LUO inspected the 20 packages and asserted that the water damage was the result of the temporary storage at PATECH. He wrote a handwritten report that was faxed the same day to CHINDACORP confirming his opinion. Mr. MULLIGAN of PATECH contested this point in a covering telefax but said he would try to sell the 20 water damaged NORPTHONS at a reduced price.

CHINDACORP acknowledged receipt of both documents by telefax of 16 November 2003.

During the months of November and December 2003, PATECH marketed the 100 NORPTHON peripherals. Of the 80 sales of undamaged NORPTHONs made, 60 were made in Wancouver and 20 in Weattle, ASU. In early January 2004, PATECH found purchasers for the 20 water damaged NORPTHONs at a 20% discount and requested Mr. YAN confirm that this would be acceptable with the cost subsequently being passed through to CHINDACORP.

On 15 January 2004, PATECH opened a second letter of credit for a further purchase of 150 NORPTHONs and so advised CHINDACORP, asking that the shipment be made slightly earlier as it was likely that a sale of 100 NORPTHONs could be made to the VERY BIG CORPORATION if PATECH delivered by 15 February 2004.

On 20 January 2004, CHINDACORP advised that production scheduling had been rearranged to permit the shipment of the 150 NORPTHONs on 5 February 2004 with expected time of arrival in Wancouver on 13 February 2004.

The second lot of 150 NORPTHONs arrived on 14 February 2004 in Wancouver and PATECH shipping personnel took delivery and returned in the early morning on 15 February 2004 to the PATECH Headquarters.

The VERY BIG CORPORATION ordered 80 of the NORPTHONs on 20 February 2004.

On 20 February 2004, Mr. MULLIGAN of PATECH received a call from his independent distributor in Wancouver advising him that two of the purchasers of NORPTHONs were experiencing difficulties with the peripherals. The telexes were being sent through the electronic memory to the fax machine and that the phone lines were sporadically connecting with the voice mail. The distributor said, "there appear to be some switched wires inside that heated up."

Mr. MULLIGAN telephoned Mr. YAN about the problem and asked for assistance. Mr. YAN urged Mr. MULLIGAN to have the problem NORPTHONs shipped back to Shenhao and said that his technicians would verify the problem.

Advised of this, the customers insisted on local repair as they could not be without the NORPTHONs. Otherwise, they would sue PATECH. Mr. MULLIGAN of PATECH passed this information to Mr. YAN of CHINDACORP in a phone conversation. Mr. YAN said that PATECH would "at its own risk" have repairs made locally.

Mr. MULLIGAN selected a local computer repair company that determined the source of the bug and repaired it. The manager of the repair company advised that the problem was in the design of the peripheral memory system.

Mr. MULLIGAN was shocked at this information and immediately on 29 February 2004 sent a telefax to Mr. YAN advising of the problem.

Mr. YAN responded on 7 March 2004 that, after checking with the production department at the Shenhao plant, there was no apparent problem in the lot that was sent and that the difficulty must have arisen in the handling of the NORPTHONs upon arriving in Wancouver.

Mr. MULLIGAN responded on 9 March 2004 that this was not credible as the computer repair company had been reliable in the past.

Mr. YAN responded on 12 March 2004, that he was fully confident in his production team and that Mr. MULLIGAN should “trust me on this one.”

CHINDACORP’s Finance Department sent a telefax to PATECH on 14 March 2004, reminding that the payment for the first 100 NORPTHONS was four weeks past due and requesting immediate advice from PATECH failing which it would call on the letter of credit.

PATECH wire transferred 85 per cent of the amount due for the first 100 NORPTHONS on 16 March 2004 to CHINDACORP. By telefax of 17 March 2004, Mr. MULLIGAN of PATECH advised Mr. YAN that only 85 per cent was paid in light of the 20 damaged NORPTHONS, the cost of the customer repairs incurred, and to ensure that contingency sums would be available for potential repairs due to the design problems.

Mr. YAN of CHINDACORP RESPONDED ON 19 March 2004 that such withholding was not permissible and threatened to suspend all further shipments unless full payment was made in cash.

Negotiations ensued between the parties in late March and April and the parties agreed to disagree on that lot but to continue working together to exploit the Wanadian and ASU markets. It was now “water under the bridge”, provided payments were regularly made for the rest of the shipments.

By the end of April 2004, PATECH had sold 240 of the NORPTHONS with 200 of them sold in Wancouver, 20 in Seattle and 20 in Montreal. In a 5 May 2004 telefax, Mr. MULLIGAN wrote to Mr. YAN advising on the success of the relationship so far and stating that he looked forward to continuing to work together.

At the same time, PATECH placed an order for 200 further NORPTHONS to be delivered in mid-June.

Sales continued steadily in late June through August. On 8 August 2004, PATECH advised CHINDACORP that it had opened a fourth letter of credit for a further 100 units to be delivered by 10 September 2004 for the fall purchasing cycle of many customers.

On 9 August 2004, a Wancouver distributor advised of problems similar to the prior problem with 10 of the NORPTHONS sold there. Mr. MULLIGAN had a local computer repair company make the repair, advised CHINDACORP of said action, and deducted the costs of the repair from the next payment made to CHINDACORP.

In early September 2004, CHINDACORP’s finance Department wrote to PATECH advising of the discrepancy in the last payments and advising of the new prices to be applied for sales after

15 October 2004. These prices represented a 10% increase of the prior prices based on the application of the contract price adjustment clause.

Mr. MULLIGAN responded on 20 September 2004 that the price adjustment would “kill” the market and was not the result his finance department had come to from the price-adjustment clause. Mr. MULLIGAN warned that PATECH would have difficulty meeting its minimum purchase requirements with such a price level. Mr. MULLIGAN maintained that the Pacific Rim Computer digest index did not warrant an adjustment of the prices.

CHINDACORP’s Finance Department advised on 5 October 2004 that the adjustment was fully in conformity with the contract price adjustment clause and was fully in force. Further, CHINDACORP cited the increasing prices to consumers in the market and advised that PATECH should recognize this reality.

PATECH opened a further letter of credit on 6 October 2004 requesting shipment of 200 NORPTHONS for delivery on 20 November 2004.

During the early November 2004 Hen Mei Trade Fair, Mr. MULLIGAN and Mr. YAN reviewed their work together and the development of the business. Mr. YAN advised that technological improvements were moving rapidly in the industry but that efforts were continually being made to improve the NORPTHON’s quality. Mr. MULLIGAN noted that the latest purchases of NORPTHONS had led to fewer problems with customers and that a “bridgehead” had been made in WANADA and the ASU.

Sales continued slowly but steadily in the winter of 2004-5 with 400 NORPTHONS sold by 28 February 2005.

In early March, a Wancouver distributor interested in the NORPTHON advised PATECH that some of his customers had been referring to something called a FRISTRON peripheral during sales calls.

On 15 March 2005, Mr. Mulligan passed this information to CHINDACORP, asking if there was any information on this product. At the same time, PATECH placed an order for 300 more NORPTHONS.

CHINDACORP advised on 16 April 2005 that the FRISTRON was a completely new type of information access peripheral that it had just developed. Voice, telex, telefax, and video technologies were combined to provide a broad spectrum peripheral for entertainment industry applications.

Mr. MULLIGAN advised on 17 April 2005, that this appeared to be an improvement on the NORPTHON that he should have been made aware of and that he wished to sell. He sought to cancel the NORPTHON order and replace them by FRISTRONS requesting that 300 be sent immediately and opening a letter of credit.

CHINDACORP advised on 20 April 2005 that the FRISTRON was fundamentally different from the NORPTHON and was not covered by the exclusive distributorship contract and that, in any event, the September NORPTHON order had been shipped on 16 April 2005.

Mr. MULLIGAN flew to Shenhao on 10 May 2005 to discuss the problem with Mr. YAN. Intense discussions occurred without a change of position. Mr. MULLIGAN returned to Wancouver on 13 May 2005. On 20 May 2005, Mr. MULLIGAN sent a telefax to Mr. YAN stating that, unless he was provided the FRISTRONS he would consider CHINDACORP in breach of its obligations.

On 29 May 2005, CHINDACORP sent a telefax to PATECH advising that it thereby terminated the contract pursuant to the provisions of Article 10.

On June 2005, PATECH advised CHINDACORP that it refused the termination and demanded that CHINDACORP immediately proceed to perform its obligations under the contract. PATECH also said it gave notice that it extended the agreement for one year and placed an order for 200 NORPTHONS “without prejudice”.

Mr. YAN called Mr. MULLIGAN on 5 June 2005 and they agreed to discuss the differences at a meeting on 20 June 2005 to be held in Wancouver.

On 20 June 2005, heated discussions took place between Mr. YAN and Mr. MULLIGAN. Mr. MULLIGAN had come with his lawyer who advised of the legal consequences of CHINDACORP’s breach. Mr. YAN confirmed that he had bent over backwards working with Mr. MULLIGAN and that it was clear that there was no basis for confidence between the parties. Mr. YAN said that Mr. MULLIGAN had consistently breached the contract terms, not him. Mr. YAN said the last shipment of NORPTHONS had been made to PATECH.

Sales of the NORPTHONS were slow in late June and early July. On 15 July 2005, CHINDACORP requested that PATECH return all sales documentation to CHINDACORP within 15 days pursuant to the terms of the contract.

At the 1 August 2005 Hen Mei Trade Fair, Mr. MULLIGAN and Mr. YAN met briefly.

On 2 October 2005, PATECH filed an order for 50 NORPTHONS and 10 FRISTRONS with CHINDACORP.

On 3 October 2005, CHINDACORP advised that the contract had been terminated.

On 5 October 2005, PATECH objected to CHINDACORP’s position, referring to its 1 June 2005 notice of extension.

On 4 January 2006, CHINDACORP, relying upon Article 12 of the Agreement, initiated international commercial arbitration.

DISTRIBUTORSHIP CONTRACT

BETWEEN

(Abstract)

The company CHINDA A CORPORATION (“CHINDACORP”), a Chinese Company, having its principal place of business in Shenhao, CHINDA, represented by Mr. YAN Wang, President.

AND

The Company PACIFICTECH INC. (“PATECH”), a Canadian Corporation, having its principal place of business in Vancouver, Western Department, CANADA, represented by Mr. Charles MULLIGAN, President.

Whereas CHINDACORP has experience in the manufacture and marketing in north Asia of sophisticated computer peripherals to be integrated in Office Work Stations including the NORPTHON peripheral.

Whereas CHINDACORP is desirous of expanding the sales of the sophisticated computer peripherals in CANADA and the ASU.

Whereas PATECH has experience in the distribution in CANADA and the ASU of computer peripherals.

Whereas PATECH is desirous of distributing a certain computer peripheral manufactured by CHINDACORP in CANADA and the ASU.

CHINDACORP and PATECH hereby agree on the following:

Article 1.

CHINDACORP declares it owns all rights to the NORPTHON peripheral defined in Annex 1 to this contract.

CHINDACORP hereby warrants that the NORPTHON peripherals to be sold as defined in Annex 1 (and any further improvements) meet (and, for any further improvements, will meet) safety standards of CANADA and the ASU.

CHINDACORP hereby grants to PATECH for the duration of the contract, as extended as the case may be, the right to distribute exclusively in CANADA and the ASU (hereinafter “the Territory”) the NORPTHON peripheral as defined in Annex 1 to this contract and its improvements.

Article 2.

CHINDACORP hereby grants PATECH the right to use the NORPTHON Trademark, CHINDACORP's technical and marketing documentation, and CHINDACORP's marketing technical assistance.

CHINDACORP hereby agrees to furnish to PATECH during the term of the contract, as extended as the case may be, the sales documentation on the NORPTHON peripheral.

Article 3.

PATECH declares that it is experienced in the distribution of computer peripherals in WANADA and the ASU.

PATECH hereby undertakes to use its best efforts to market the NORPTHON peripheral and its improvements in the Territory.

PATECH will market the NORPTHON peripheral assuring that all features and trademarks of CHINDACORP are clearly marked on the NORPTHON's and their packaging.

In the year 30 September 2003 to 29 September 2004, PATECH hereby undertakes to purchase a minimum of 500 NORPTHON peripherals.

In the year 30 September 2004 to 29 September 2005, PATECH hereby undertakes to purchase a minimum of 1000 NORPTHON peripherals.

For any extension period, the minimum purchase will be re-negotiated in good faith between the parties to this contract during the 90 day period between notice of extension and the beginning of said extension. Failing agreement, the minimum purchase of the previous year will be in force for the one year. If there is still failure to agree, the contract will terminate at the end of that last extension.

Article 4.

CHINDACORP agrees to provide free of charge for one month starting 1 October 2003 three sales development assistants to train PATECH personnel selected by PATECH in the sale of NORPTHON peripherals.

Article 5.

The net invoice price for each NORPTHON peripheral is agreed for the first year to be Wanadian \$18,000.

The price in the second year is subject to adjustment on the basis of the change in Hen Mei \$/Wanadian \$ exchange rate as published in the Pacific Rim Computer Digest monthly magazine in the September 2004 issue according to the following formula:

PO = Wanadian \$ 18,000

P1 = Price in second year

YO = Hen Mei \$/Wanadian \$ exchange rate in September 2003

Y1 = Hen Mei \$/Wanadian \$ exchange rate in September 2004

$P1 = (PO \times (1.00 + ((Y1 - YO)YO))) - \text{Wanadian } \270

Where $((P1 - PO)/PO)$ results in an excess of 10 per cent positive or negative change in the price, parties will re-negotiate prices in good faith.

The price in any further year as extended is subject to the same formula based on the publication in the September issue of the Pacific Rim Computer Digest Hen Mei \$/Wanadian \$ Exchange Rate.

(COMPETITORS: Please note that the formula does not work.)

Article 6.

30 days before an anticipated shipping date, PATECH will open a letter of credit in favor of CHINDACORP and so advise CHINDACORP and its bank for the amount of the NORPTHONS so ordered.

CHINDACORP will ship C.I.F. Wancouver by appropriate vessel all orders at the latest 30 days from the date of the opening of the letter of credit or advice of the opening of the letter of credit from PATECH, whichever is the latest. CHINDACORP will advise PATECH immediately upon determination of the name of the nominated vessel and its expected time of arrival at Wancouver.

PATECH will pay for all NORPTHONS received within 90 days from the date of delivery of the NORPTHONS C.I.F. Wancouver.

Article 7.

All repairs of NORPTHON peripherals will be made by CHINDACORP or under its instructions, which shall not be unreasonably withheld.

Article 8.

The term of the agreement is for two years from 30 September 2003 until 29 September 2005. Either party can extend the agreement by providing notice of extension 90 days prior to the end of a term. Such extension will be for a term of one year.

Article 9.

PATECH bears all risks for warranty claims of its customers.

PATECH is in no manner the agent of CHINDACORP.

Article 10.

CHINDACORP reserves the right to terminate the agreement for cause on 30 days notice to PATECH. Cause means:

1. A delay in any payment under the terms of the agreement.
2. Bankruptcy of PATECH.
3. Non-respect of the minimum purchase requirements.

Upon expiry of the termination period of 30 days, PATECH will return all documentation to CHINDACORP, except as is needed to complete sales initiated prior to the date of expiry of the termination period.

Article 11.

PATECH undertakes to protect CHINDACORP know-how, patents, and trademarks for the NORPTHON and its improvements in the Territory during the term of the agreement.

Article 12.

All disputes arising in connection with the present contract shall be settled by one or more arbitrators.

Wancouver, Western Department, WANADA, 30 September 2003