

84-125

ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 84

Date of filing: 7. DEC - 1983

** AWARD - Type of Award FINAL AWARD
- Date of Award 7. DEC. 1983
5 pages in English pages in Farsi

** DECISION - Date of Decision
 pages in English pages in Farsi

** CONCURRING OPINION of
- Date
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** SEPARATE OPINION of
- Date
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** DISSENTING OPINION of
- Date
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** OTHER; Nature of document:

- Date
 pages in English pages in Farsi

ULTRASYSTEMS INCORPORATED,
Claimant,
and

CASE NO. 84
CHAMBER THREE
FINAL AWARD NO.89 -84-3

THE ISLAMIC REPUBLIC OF IRAN;
INFORMATION SYSTEMS IRAN,
Respondents.

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|---------------------------------------|--|
| IRAN UNITED STATES CLAIMS TRIBUNAL | دادگاه داری دعوی ایران - ایالات متحدہ |
| ثبت شد - FILED | |
| Date | ۱۳۶۲ / ۹ / ۱۶ |
| 7 DEC 1983 | |
| No. 84 | ۸۴ |

FINAL AWARD

APPEARANCES:

For the Claimant:

Mr. Richard Chernick,
Attorney

Mr. J.L.W. Silleviss Smitt,
Attorney

Mr. Phillip Stevens,
President, Ultrasystems Inc.

Mr. Phillip Simons,
Vice-President,
Ultrasystems Inc.

For the Respondents:



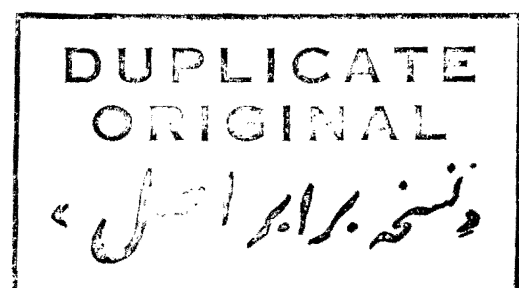
Mr. Mohammed K. Eshragh,
Deputy Agent of the Islamic
Republic of Iran

Dr. A.A. Riazi,
Legal Adviser to the Agent

Dr. Varasteh,
Attorney for Isiran

Mr. N. Khoshayni,
Isiran

Mr. A. Zandi,
Isiran



I. THE ISSUES REMAINING TO BE RESOLVED

In its Partial Award No. 27-84-3, which is annexed hereto and hereby incorporated by reference, the Tribunal left three issues to be resolved after further comments and explanations by the parties : (a) whether Isiran paid invoice No. 5 by cheque (see III.B.1 of the Partial Award); (b) whether Isiran paid back part of the performance guarantee by cheque (see III.B.2 of the Partial Award), (c) whether Ultrasystems is entitled to more than the amounts of US \$10,000 and US \$5,000 awarded in the Partial Award for the months of Khordad and Tir 1357 (see II.B.2).

Pursuant to orders issued by the Tribunal subsequent to the Hearing, both parties made further written submissions on those three issues.

II. REASONS FOR FINAL AWARD

1. Alleged payments by two cheques

Among the evidence submitted by Isiran prior to the Hearing were photocopies of the two cheques referred to above, one of them having on its backside a handwritten text in Farsi which appears to indicate that it had been cashed.

Isiran submitted on 25 April 1983, inter alia, a Statement by Bank Tejarat dated 11 April 1983 concerning the movements on Ultrasystems' account with that bank from 1 August 1978 to 31 March 1979 and a bank statement with regard to Isiran's bank account. Isiran further submitted photocopies of a great number of cheques drawn on Ultrasystems' account between the middle of October and the end of November 1978 and bearing the signature of Mr. Fred C. Faupel, Ultrasystems' principal representative in Iran. Although it

must be noted that, pursuant to the Tribunal's pre-hearing order, all evidence that the parties wished to rely on should have been submitted prior to the Hearing, the Tribunal decides in this case to admit this material as supporting evidence.

According to the above-mentioned statements concerning Ultrasonics' account, the amount of 2,268,976 rials under cheque No. 854454 and the amount of 3,529,784 rials under cheque No. 184101 were credited to that account on 28 November 1978 and 12 October 1978 respectively.

Ultrasonics has not offered evidence sufficient to disprove in any satisfactory way that such payments were made. That funds were in fact available to Ultrasonics in its account with Bank Tejarat during the relevant period is indicated by the withdrawals made by Mr. Faupel. Ultrasonics has not contested the authenticity of his signature on the cheques.

On the basis of the above, the Tribunal finds that, with regard to invoice No. 5, payment has been made in full by cheque No. 854454. Consequently, the claim in that respect cannot be granted.

With regard to the claim for the performance guarantee sum withheld by Isiran, the Tribunal similarly finds that, in the absence of any convincing counter-evidence, the newly submitted material shows that 3,529,784 rials of such guarantee sum were paid to Ultrasonics by cheque No. 184101. This payment corresponds to the performance guarantee sum claimed by Ultrasonics for the period from the month of Day 1356 to the month of Ordibehesht 1357. Consequently, no amount is owing for that period.

2. Withholding of performance guarantee for Khordad and Tir

In the Partial Award, the Tribunal found that, due to some ambiguities in the evidence before it, Ultrasystems should be awarded a total of US \$15,000 for the months of Khordad and Tir, which meant a reduction of the amounts claimed for these months. The Claimant was given the opportunity to give further explanation on this point. No such explanations were given, and thus there is no ground for awarding further amounts with regard to this part of the claim.

3. Costs of arbitration

In its Partial Award the Tribunal awarded Ultrasystems its costs of arbitration in the amount of US \$ 70,000. This amount pertained to those portions of the case which were adjudicated in the Partial Award. By retaining jurisdiction over the issues dealt with in this Final Award, the Tribunal also reserved its decision with regard to all arbitration costs incurred by either party, throughout the proceedings, in relation to those issues. In view of the conclusion reached in this Final Award and applying Articles 38 and 40 of the Tribunal Rules, the Tribunal finds that Isiran should now be awarded such costs in the amount of US \$ 15,000.

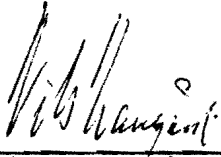
III. FINAL AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The portions of the claim dealt with in this Final Award are hereby dismissed.

Claimant ULTRASYSTEMS INCORPORATED shall pay to
Respondent INFORMATION SYSTEMS IRAN the sum of Fifteen
Thousand United States Dollars (US \$15,000).

Dated, The Hague,
7 December 1983.

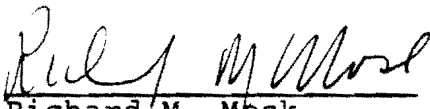


Nils Mangård
Chairman
Chamber Three

In the name of God



Parviz Ansari Moin
(Concurring Opinion)



Richard M. Mosk
(Dissenting Opinion)