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## Florida court halts case in Costa Rica

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A US court has decided a Costa Rican company must pursue its dispute with camera company Canon in the US, in accordance with a forum selection clause of an agreement between companies.

Florida's district court also stopped Costa Rican proceedings started by Canon's distributor in the country, Lantech, in November 2004. An agreement between the two parties had fallen apart, amid allegations that Lantech owed Canon money.

That agreement had a clause stating that any dispute arising from the contract's termination should be litigated in Canon's home jurisdiction of Florida. Despite that, the Costa Rican court accepted jurisdiction and ordered Canon's subsidiary Canonlat to pay a US\$1 million bond to the court, or stop importing goods to Costa Rica.

Canonlat paid the bond, but asked Florida's courts to decide the appropriate law and forum for the case, and impose an injunction to prevent the litigation in Costa Rica continuing. In addition, the company sought damages from Lantech for breach of contract and unjust enrichment.

On 18 July the court decided that the case had to be heard in the US, as the forum selection clause was deemed valid. As far as choice of law goes, however, the court

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was more flexible. As long as Florida law was applied in interpreting the agreement, Costa Rican law could potentially be used in claims arising under it, the court said.

The court rejected Lantech's arguments that the forum selection clause violated Costa Rica's strong public policy, set out in statute, of litigating within its borders. The judge cited the recently-signed CAFTA agreement as proof, in which it is stated that disputes would be subject to arbitration, which "may" - not "must" - take place in Costa Rica.

Imposing a permanent injunction on the proceedings in Costa Rica, the judge said that Lantech's suit was an attempt to evade the forum selection clause, and that the Costa Rica proceedings were vexatious due to the US\$1 million bond Canonlat had to post to avoid losing its importation rights.

Only in relation to the choice of law to be used in proceedings did the court side with Lantech. Canonlat wanted a declaration that all future litigation would be in Florida in accordance with Florida law. But the 2003 contract between the companies stated simply that "this agreement.. shall be governed and construed in accordance with the law of the state of the Florida" - not claims arising under it. During the hearing, Canonlat accepted that, where there were conflicts of law, Costa Rican legislation might prevail in relation to substantive claims.

The judge noted that since Canonlat had not alleged a breach of the forum selection clause of the contract, and applied for a declaratory judgment only, they were not entitled to costs as compensatory damages.

The case will now move to a hearing on the facts.

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