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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA

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5 IN RE EX PARTE APPLICATION OF  
6 PRO-SYS CONSULTANTS,

7 Defendant.

Case No. [16-mc-80117-DMR](#)

**ORDER DENYING WITHOUT  
PREJUDICE JOHN DOERR'S MOTION  
TO QUASH SUBPOENA AND  
DENYING AS MOOT JOHN DOERR'S  
MOTION TO STRIKE SUR-REPLY**

Re: Dkt. Nos. 10, 23, 25

10 Applicants Pro-Sys Consultants and Neil Godfrey (collectively "Applicants") filed an ex  
11 parte application seeking permission to issue a deposition subpoena pursuant to 28 U.S.C. § 1782  
12 to obtain testimony from John Doerr for use in Pro-Sys Consultants and Neil Godfrey v. Microsoft  
13 Corp. and Microsoft Canada Co./Microsoft Canada CIE, No. LO 43175. [Docket No. 1]. This  
14 court granted Applicants' ex parte application, but ordered that Mr. Doerr be provided at least  
15 thirty days to contest the subpoena. [Docket No. 5].

16 Mr. Doerr subsequently filed a motion to quash the subpoena. [Docket No. 10].

17 On September 19, 2016, Justice E.M. Myers of the Supreme Court of British Columbia  
18 issued the following ruling:

19 [I]f the plaintiffs intend on doing the § 1782 deposition[] of . . . Doerr for the  
20 purpose of [its] introduction as evidence at trial, they ought to apply to me in  
21 advance of conducting the deposition[], otherwise the evidence is not admissible.  
22 To be direct, the U.S. courts should not be under the impression that I would be  
receptive to the evidence being introduced at trial.

23 To the extent the plaintiffs wish to and are entitled by the U.S. courts to conduct the  
24 § 1782 deposition[] as a rough equivalent of interviewing a witness under  
25 compulsion in order to obtain information to assist in cross-examination of other  
26 witnesses or case preparation in general, [the Court has] no comment other than to  
say that [it is] not prepared to require [Plaintiffs] to obtain this Court's  
authorisation.

27 Pro-Sys Consultants Ltd v. Microsoft Corp., 2016 BCSC 1713 at ¶¶ 10-11 [Docket No. 22-1].

28 Given Justice Myers' ruling, the court instructed Applicants to provide certain information

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regarding the Canadian action. [Docket No. 26]. Applicants responded by stating that they intend to file an application to the Canadian Court for leave to take Mr. Doerr’s deposition on or before October 11, 2016, and that they will seek to use Mr. Doerr’s deposition testimony for the “purpose of [its] introduction as evidence at trial,” as well as to “assist in cross-examination of other witnesses or case general preparation in general.” [Docket No. 27].

In deference to Justice Myers’ ruling that Plaintiffs should apply to him first, it would be appropriate as well as efficient for this court to await a determination by the Canadian Court on Applicants’ soon-to-be-filed application. The Canadian Court’s decision may obviate or narrow the disputes in the motion to quash.

Therefore, Mr. Doerr’s Motion to Quash [Docket No. 10] is denied without prejudice to re-filing once the Canadian Court has spoken. Mr. Doerr’s Motion to Strike Pro-Sys’s Improper Sur-Reply [Docket No. 25] is denied as moot. Pro-Sys Consultants and Neil Godfrey’s letter brief [Docket No. 23] is also denied as moot.

**IT IS SO ORDERED.**

Dated: October 5, 2016

