

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (CKK)

MEMORANDUM OPINION AND ORDER

Before the Court is a motion to reconsider filed by Lonnie G. Schmidt.¹ Mr. Schmidt seeks intervention as of right pursuant to Federal Rule of Civil Procedure 24(a)(1). Mr. Schmidt complains that the Court erred in denying his previous motion on the grounds that “[t]he proposed intervenor is not Lonnie G. Schmidt (“Relator”), but the United States (federal government).” Mot. to Reconsider at 2 (emphasis omitted). In this regard, Mr. Schmidt asserts that “[t]he United States of America are not proper parties in the instant cases, because they have never made proper appearances of any kind whatsoever.” *Id.* The Court cannot agree. Accordingly, upon review of Mr. Schmidt’s motion to reconsider, the Court shall deny the motion.

Intervention as of right is governed by Federal Rule of Civil Procedure 24(a) which provides:

¹Although Mr. Schmidt’s case is captioned as a motion in Civil Action Nos. 98-1232 and 98-1233, based upon the substance of Mr. Schmidt’s motion, the Court construes the request for intervention to apply only in *United States v. Microsoft Corp.*, No. 98-1232 (D.D.C.).

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a). Mr. Schmidt insists that subsection (a)(1) of Rule 24 applies to his motion and points to 28 U.S.C. § 2403. Section 2403 provides in pertinent part:

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

28 U.S.C. § 2403 (emphasis added). Contrary to Mr. Schmidt's assertion, the United States is already a party to this case. As a result, there is no basis upon which Mr. Schmidt, even acting as a purported "Relator," can assert an unconditional right to intervene pursuant to 28 U.S.C. § 2403 and Rule 24(a)(1).

Based on the foregoing, it is this 7th day of March, 2002, hereby

ORDERED that Lonnie G. Schmidt's motion to reconsider is **DENIED**.

SO ORDERED.

COLLEEN KOLLAR-KOTELLY
United States District Judge