No. 20-794

IN THE

Supreme Court of the United States

SERVOTRONICS, INC.,

Petitioner,

v.

ROLLS-ROYCE PLC AND THE BOEING COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

LISA S. BLATT
Counsel of Record
for Respondent
Rolls-Royce PLC
WILLIAMS & CONNOLLY LLP
725 12th Street, NW
Washington, DC 20005
(202) 434-5000
lblatt@wc.com

SCOTT P. MARTIN
Counsel of Record
for Respondent
The Boeing Company
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
(206) 359-8000
smartin@perkinscoie.com

STEPHEN R. STEGICH
Counsel of Record
for Petitioner
KATHERINE B. POSNER
DAVID P. YATES
WENDY A. GROSSMAN
CONDON & FORSYTH
Times Square Tower
Seven Times Square
New York, New York 10036
(212) 490-9100
sstegich@condonlaw.com

PETITION FOR CERTIORARI FILED DECEMBER 7, 2020
CERTIORARI GRANTED MARCH 22, 2021

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APPENDIX A — RELEVANT DOCKET ENTRIES

RELEVANT DOCKET ENTRIES FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, NO. 19-1847

Date Filed	#	Docket Text
04/30/2019	1	Private civil case docketed. Fee paid. Docketing Statement due for Appellant Servotronics, Inc. by 05/06/2019. Transcript information sheet due by 05/14/2019. Appellant's brief due on or before 06/10/2019 for Servotronics, Inc. [1] [7001596] [19-1847] (ER) [Entered: 04/30/2019 03:27 PM]
05/03/2019	2	Docketing Statement filed by Appellant Servotronics, Inc.. Prior or Related proceedings: No. [2] [7002506] [19-1847] (DeGrand, Karen) [Entered: 05/03/2019 03:40 PM]
		***
06/07/2019	11	Submitted appellant brief by Karen Kies DeGrand for Appellant Servotronics, Inc.. [11] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [7009973] [19-

1847] (DeGrand, Karen) [Entered: 06/07/2019 05:39 PM]

06/07/2019 12 Appellant's brief filed by Appellant Servotronics, Inc.. Appellee's brief due on or before 07/08/2019 for Boeing Company and Rolls-Royce PLC. Paper copies due on 06/17/2019 Electronically Transmitted. [12] [7010028] [19-1847] (CAH) [Entered: 06/10/2019 09:59 AM]

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07/08/2019 15 Submitted appellee brief by Scott P. Martin for Appellees Boeing Company and Rolls-Royce PLC. [15] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [7015841] [19-1847] (Martin, Scott) [Entered: 07/08/2019 03:56 PM]

07/08/2019 16 Appellee's brief filed by Appellees Boeing Company and Rolls-Royce PLC. Appellant's reply brief, if any, is due on or before 07/29/2019 for Appellant Servotronics, Inc.. Paper copies due on 07/15/2019 Electronically Transmitted. [16] [7015875] [19-1847] (DRS) [Entered: 07/08/2019 04:45 PM]

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07/29/2019	17	Submitted appellant reply brief by Karen Kies DeGrand for Appellant Servotronics, Inc.. [17] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [7020234] [19-1847] (DeGrand, Karen) [Entered: 07/29/2019 04:23 PM]
07/29/2019	18	Appellant's reply brief filed by Appellant Servotronics, Inc. Paper copies due on 08/06/2019. Electronically Transmitted. [18] [7020310] [19-1847] (DSL) [Entered: 07/30/2019 09:13 AM]

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09/19/2019	25	Case heard and taken under advisement by panel: Diane S. Sykes, Circuit Judge; David F. Hamilton, Circuit Judge and Michael B. Brennan, Circuit Judge. [25] [7031428] [19-1847] (PNR) [Entered: 09/19/2019 02:03 PM]
09/19/2019	26	Case argued by Ms. Karen Kies DeGrand for Appellant Servotronics, Inc. and Mr. Michael S. Paisner for Appellee Boeing Company. [26] [7031435] [19-1847] (PNR) [Entered: 09/19/2019 02:13 PM]

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09/22/2020	37	Filed opinion of the court by Judge Sykes. AFFIRMED. Diane S. Sykes, Chief Circuit Judge; David F. Hamilton, Circuit Judge and Michael B. Brennan, Circuit Judge. [37] [7109641] [19-1847] (FP) [Entered: 09/22/2020 03:35 PM]
09/22/2020	38	ORDER: Final judgment filed per opinion. With costs: yes. [38] [7109646] [19-1847] (FP) [Entered: 09/22/2020 03:41 PM]
10/14/2020	39	Mandate issued. No record to be returned. [39] [7114364] [19-1847] (DRS) [Entered: 10/14/2020 08:30 AM]
10/14/2020		FOR COURT USE ONLY: Certified copy of 09/22/2020 Final Opinion and Final Judgment, with Mandate sent to the District Court Clerk. [7114367-2] [7114367] [19-1847] (DRS) [Entered: 10/14/2020 08:34 AM]
12/14/2020	40	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. 20-794 [40] [7128239] [19-1847] (PS) [Entered: 12/14/2020 02:20 PM]

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03/22/2021	41	Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Justice Alito took no part in the consideration or decision of this petition. 20-794 [41] [7149028] [19-1847] (PS) [Entered: 03/22/2021 03:53 PM]

Appendix A

RELEVANT DOCKET ENTRIES FROM THE U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS (CHICAGO) CIVIL DOCKET FOR CASE #: 1:18-CV-07187

Date Filed	#	Docket Text
10/26/2018	1	CIVIL Cover Sheet (Adler, Michael) (Entered: 10/26/2018)
		***
10/26/2018	3	MISCELLANEOUS CASE by Servotronics, Inc. Application for Order Pursuant to 28 U.S.C. 1782 to take discovery for use in a foreign proceeding Filing fee $ 47, receipt number 0752-15112690. (Adler, Michael) (Entered: 10/26/2018)
10/26/2018	4	MEMORANDUM OF LAW by Servotronics, Inc. in Support of Application of Servotronics Filing fee $ 47, receipt number 0752-15112748. (Adler, Michael) Modified title by Clerk's office on 10/29/2018 (yap,). (Entered: 10/26/2018)
10/26/2018	5	MEMORANDUM by Servotronics, Inc. *In Support of Application for*

		Order Pursuant to 28 U.S.C. Section 1782 (Adler, Michael) Duplicate entry of document #4 (yap,). (Entered: 10/26/2018)
10/26/2018	6	AFFIDAVIT of Akhil Shah regarding miscellaneous case 3 *In Support of Application for Order Pursuant to 28 U.S.C. Section 1782* (Adler, Michael) (Entered: 10/26/2018)
10/26/2018	7	AFFIDAVIT of Richard H. Donohue regarding miscellaneous case 3 *In Support of Application for Order Pursuant to 28 U.S.C. Section 1782* (Adler, Michael) (Entered: 10/26/2018)
10/29/2018		CASE ASSIGNED to the Honorable Elaine E. Bucklo. Designated as Magistrate Judge the Honorable Sidney I. Schenkier. Case assignment: Random assignment. (rc,) (Entered: 10/29/2018)
		***
10/29/2018		***Civil Case Terminated. (yap,) (Entered: 10/29/2018)
		***

11/14/2018	10	*Ex Parte Application of Servotronics for an Order pursuant to 28 U.S.C. Section 1782 to take Discovery for use in a foreign Pleading* NOTICE of Motion by Michael Harris Adler for presentment of before Honorable Elaine E. Bucklo on 11/28/2018 at 09:30 AM. (Adler, Michael) (Entered: 11/14/2018)
11/19/2018	11	MINUTE entry before the Honorable Elaine E. Bucklo: Ex Parte Application of Servotronics for an Order pursuant to 28 U.S.C. Section 1782 to take Discovery for use in a foreign Pleading 3 is granted. No appearance required on 11/28/2018. Mailed notice. (mgh,) (Entered: 11/19/2018)
11/20/2018	12	Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action by Servotronics, Inc. (Attachments: # 1 Exhibit Exhibit A)(Donohue, Richard) (Entered: 11/20/2018)
		***
11/27/2018	14	MOTION by Intervenor Rolls-Royce PLC to vacate *Order 11 , Quash Subpoena and Compel Arbitration* (Walker, Richard) (Entered: 11/27/2018)

11/27/2018	15	MEMORANDUM by Rolls-Royce PLC in support of motion to vacate 14 *Order 11 , Quash Subpoena and Compel Arbitration* (Walker, Richard) (Entered: 11/27/2018)
11/27/2018	16	*Intervenor Rolls-Royce PLC's* NOTICE of Motion by Richard Alan Walker for presentment of motion to vacate 14 before Honorable Elaine E. Bucklo on 11/30/2018 at 09:30 AM. (Walker, Richard) (Entered: 11/27/2018)

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12/14/2018	22	RESPONSE by The Boeing Company in Support of MOTION by Intervenor Rolls-Royce PLC to vacate *Order 11 , Quash Subpoena and Compel Arbitration* 14 (Larson, Bates) (Entered: 12/14/2018)

***

12/14/2018	24	MEMORANDUM by Servotronics, Inc. in Opposition to motion to vacate 14 (Attachments: # 1 Declaration Declaration of Akhil Shah, # 2 Affidavit Affidavit of Stephen Stegich, # 3 Notice of Filing Notice of Filing Proof of Service)(Adler, Michael) (Entered: 12/14/2018)

12/20/2018	25	MINUTE entry before the Honorable Elaine E. Bucklo: Ruling on Intervenor Rolls-Royce PLC's motion to vacate the Court's Order, Quash Subpoena, and Compel Arbitration 14 before Honorable Elaine E. Bucklo is reset for 1/18/2019 at 9:30 a.m. Mailed notice. (mgh,) (Entered: 12/20/2018)
12/28/2018	26	REPLY by Rolls-Royce PLC to memorandum in support of motion 15 *to Vacate the Court's Order, Quash Subpoena, and Compel Arbitration* (Attachments: # 1 Exhibit Exhibit A)(Obiala, Matthew) (Entered: 12/28/2018)
		***
01/04/2019	29	MEMORANDUM by Servotronics, Inc. in Opposition to motion to vacate 14 *Motion for Leave to File Sur-Reply* (Adler, Michael) (Incorrect title on document). (yap,). (Entered: 01/04/2019)
		***
01/16/2019	31	MINUTE entry before the Honorable Elaine E. Bucklo: Ruling on Intervenor Rolls-Royce PLC's motion to vacate the Court's Order, Quash Subpoena,

		and Compel Arbitration 14 before Honorable Elaine E. Bucklo is reset for 2/1/2019 at 9:30 a.m. No appearance required on 1/18/2019. Mailed notice. (mgh,) (Entered: 01/16/2019)
01/29/2019	32	MINUTE entry before the Honorable Elaine E. Bucklo: Ruling on Intervenor Rolls-Royce PLC's motion to vacate the Court's Order, Quash Subpoena, and Compel Arbitration 14 before Honorable Elaine E. Bucklo is reset for 2/8/2019 at 9:30 a.m. No appearance required on 2/1/2019. Mailed notice. (mgh,) (Entered: 01/29/2019)
02/07/2019	33	MINUTE entry before the Honorable Elaine E. Bucklo: Ruling on Intervenor Rolls-Royce PLC's motion to vacate the Court's Order, Quash Subpoena, and Compel Arbitration 14 before Honorable Elaine E. Bucklo is reset for 2/15/2019 at 9:30 a.m. No appearance required on 2/8/2019. Mailed notice. (mgh,) (Entered: 02/07/2019)
02/07/2019	34	MINUTE entry before the Honorable Elaine E. Bucklo: Ruling on Intervenor Rolls-Royce PLC's motion to vacate the Court's Order, Quash Subpoena, and Compel Arbitration 14 is reset for Oral Argument on 2/21/2019 at

10:15 a.m. Ruling set for 2/15/2019 is stricken. Mailed notice. (mgh,) (Entered: 02/07/2019)

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02/28/2019	40	MINUTE entry before the Honorable Elaine E. Bucklo: In-court hearing held on 2/28/2019. Mailed notice. (mgh,) (Entered: 02/28/2019)

***

03/15/2019	42	TRANSCRIPT OF PROCEEDINGS held on 2-28-19 before the Honorable Elaine E. Bucklo. Order Number: 33882. Court Reporter Contact Information: Sandra M. Mullin, Sandra_Mullin@ilnd.uscourts.gov, 312-554-8244. IMPORTANT: The transcript may be viewed at the court's public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter/ Transcriber or PACER. For further information on the redaction process, see the Court's web site at www.ilnd.uscourts.gov under Quick Links select

Appendix A

		Policy Regarding the Availability of Transcripts of Court Proceedings. Redaction Request due 4/5/2019. Redacted Transcript Deadline set for 4/15/2019. Release of Transcript Restriction set for 6/13/2019. (Mullin, Sandra) (Entered: 03/15/2019)
04/22/2019	43	MINUTE entry before the Honorable Elaine E. Bucklo: Intervenor's Rolls-Royce PLC's motion to vacate the November 19, 2018 courts's order, and to quash the subpoena served on Boeing is granted. Enter Order. Mailed notice. (mgh,) (Entered: 04/22/2019)
04/22/2019	44	ORDER signed by the Honorable Elaine E. Bucklo on 4/22/2019. Mailed notice. (mgh,) (Entered: 04/22/2019)
04/29/2019	45	NOTICE of appeal by Servotronics, Inc. regarding orders 44 Filing fee $ 505, receipt number 0752-15768608. Receipt number: n (DeGrand, Karen) (Entered: 04/29/2019)
		***
04/30/2019	47	TRANSMITTED to the 7th Circuit the short record on notice of appeal 45 . Notified counsel (tt,) (Entered: 04/30/2019)

Appendix A

04/30/2019	48	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 45 ; USCA Case No. 19-1847 (jjr,) (Entered: 04/30/2019)

***

10/14/2020	50	CERTIFIED COPY OF USCA JUDGMENT dated 09/22/2020 regarding notice of appeal 45 ; USCA No. 19-1847; The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date. (jn,) (Entered: 10/15/2020)
10/14/2020	51	CERTIFIED COPY OF OPINION from the USCA for the 7th Circuit; Argued 9/19/2019; Decided 9/22/2020 in USCA case no. 19-1847. (jn,) (Entered: 10/15/2020)

APPENDIX B — *EX PARTE* APPLICATION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED OCTOBER 26, 2018

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Case No. 18-CV-7187

IN RE: APPLICATION OF SERVOTRONICS, INC.,
FOR AN ORDER PURSUANT TO 28 U.S.C. §1782 TO
TAKE DISCOVERY FOR USE IN
A FOREIGN PROCEEDING

EX PARTE APPLICATION OF SERVOTRONICS FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO TAKE DISCOVERY FOR USE IN A FOREIGN PROCEEDING

Based upon the concurrently filed Memorandum of Law, Declaration of Akhil Shah QC ("Shah Decl."), and Affidavit of Richard H. Donohue ("Donohue Aff."), and the supporting documents annexed thereto, Applicant SERVOTRONICS, INC. ("SERVOTRONICS"), by and through DONOHUE BROWN MATHEWSON & SMYTH LLC, applies to this Court pursuant to 28 U.S.C. § 1782 for an Order granting SERVOTRONICS leave to serve in compliance with all relevant provisions of Fed. R. Civ. 45 the Subpoena *Duces Tecum* attached as Exhibit "A" to the Donohue Affidavit upon The Boeing Company ("Boeing"), whose corporate residence is in this district at 100 North Riverside Plaza, Chicago, Illinois 60606,

whereby SERVOTRONICS may gather documents and other materials for use in a foreign proceeding. Applicant SERVOTRONICS requests that the Court grant the leave *ex parte.* As discussed in the Donohue Affidavit, this is the normal procedure for Section 1782 applications, and the respondent can make its objections, if any, pursuant to Fed. R. Civ. P. 45(c)(3) and other discovery rules when responding to the Subpoena.

Applicant SERVOTRONICS is the Respondent in an arbitration proceeding brought by Rolls-Royce, as Claimant, that is currently pending in London, England ("London Proceeding"). Boeing is not a party to the London Proceeding.

As discussed in the accompanying Memorandum of Law, SERVOTRONICS believes the documents and other information sought contain important information relevant to SERVOTRONICS' defenses against the underlying claims. SERVOTRONICS has asked Claimant and Boeing for copies of the documents and other materials described in the Subpoena but neither has provided them.

As set forth in the accompanying Memorandum of Law and Shah Declaration, this Application meets the statutory elements of 28 U.S.C. § 1782 and the discretionary factors identified in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65, 124 S. Ct. 2466, 2483 (2004). In brief, the statutory elements are satisfied because Boeing resides and is found in this District, the London Proceeding is a proceeding before a foreign tribunal (a split in authority as to whether private arbitration constitutes a tribunal is

addressed in the Memorandum), and SERVOTRONICS seeks documents and other materials for use in that proceeding.

As for the discretionary factors, the documents and materials are not accessible by other means—for one thing, Boeing is not a party to the arbitration—production of the evidence will not circumvent any policies of the United States or the United Kingdom or violate any court/arbitration order or directive, evidence collected may be "received" under U.K. law and CIArb rules in the London Proceeding, and the documents and materials are precisely identified and their production accordingly will not be unduly intrusive or burdensome. (Protective measures available under the Federal Rules of Civil Procedure can be applied with respect to privileged and proprietary information.) The London Proceeding is in its early stages and we are informed that no hearing will likely take place prior to July 2019 at the earliest. *See* Shah Decl., ¶16.

For these reasons, SERVOTRONICS respectfully requests that this Court grant its Application for an Order granting SERVOTRONICS leave to serve the Subpoena annexed as Exhibit "A" to the Donohue Affidavit upon The Boeing Company.

Appendix B

Dated: Chicago, Illinois
October 26, 2018

D O N O H U E B R O W N MATHEWSON & SMYTH LLC and CONDON & FORSYTH LLP

By: Michael H. Adler
Michael Adler, one of the attorneys for Applicant SERVOTRONICS, INC.

Richard H. Donohue
(ARDC #3124238)
Michael H. Adler
(ARDC #6320198)
140 South Dearborn, Suite 800
Chicago, IL 60603
Tel: (312) 422-0900
Fax: (312) 422-0909

- and –

CONDON & FORSYTH LLP
Stephen R. Stegich, Esq.
Times Square Tower
7 Times Square
New York, New York 10036
Tel: (212) 490-9100
Fax: (212) 370-4453

Attorneys for Applicant SERVOTRONICS, INC.

APPENDIX C — DECLARATION IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED OCTOBER 26, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

In re: Case No. 18-CV-7181

APPLICATION OF SERVOTRONICS, INC.,
FOR AN ORDER PURSUANT TO 28 U.S.C.
§ 1782 TO TAKE DISCOVERY FOR USE
IN A FOREIGN PROCEEDING

DECLARATION OF AKHIL SHAH QC IN SUPPORT OF APPLICATION FOR AN ORDER TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782

I, Akhil Shah QC, declare and state as follows:

1. I am one of Her Majesty's Counsel. I was admitted as a barrister to practise in England and Wales in 1990 and appointed Queen's Counsel in 2010. I have practised continuously in England since 1990. My practice covers many areas of civil law, including general commercial law, aviation, insurance and reinsurance, and product liability. I am a member of the London Court of International Arbitration and have participated in many arbitrations, as an advocate and an arbitrator. I also regularly act as leading counsel in judicial proceedings before the English Courts.

Appendix C

2. I am submitting this Declaration in support of SERVOTRONICS' Application for an Order Pursuant to 28 U.S.C. § 1782 to Take Discovery for Use in a Foreign Proceeding.

3. SERVOTRONICS has been named as the Respondent in a Notice of Arbitration dated 18 September 2018 in which Rolls-Royce PLC is the Claimant

4. The relationship between the parties is subject to a Long Term Agreement ("LTA") dated 1 June 2009 between Rolls-Royce Goodrich Engine Control Systems Limited and SERVOTRONICS. The LTA has been amended (and novated in connection with a Rolls-Royce company name change) but the arbitration provision in Clause 27.4 of the original LTA remains in effect and provides in pertinent part that, if the parties cannot resolve any disputes by negotiation or mediation:

> [T]he dispute shall be referred to and finally resolved by arbitration in Birmingham, England, under the rules of the Chartered Institute of Arbitrators, and these Rules are deemed to be incorporated by reference into this clause.

5. SERVOTRONICS does not contest the applicability of Clause 27.4 and served its Response on 16 October 2018.

6. Boeing is not a party to the LTA or the arbitration.

7. While the underlying events are described in SERVOTRONICS's Application and Supporting Memorandum of Law, as a matter of convenience, I include a brief summary of the events herein

8. In May 2015, SERVOTRONICS supplied a Metering Valve Servo Valve ("MVSV") that was incorporated in the hydro-mechanical unit ("HMU") of a Rolls-Royce engine installed on a new Boeing 787 Dreamliner aircraft. During pre-delivery flight and ground tests conducted by Boeing and Rolls-Royce personnel, due to a manufacturing error, an unwanted wafer of metal dislodged in the MVSV affecting the fuel flow in the engine. In response, the Boeing flight and ground crews engaged in troubleshooting of the engine, causing a fire to start in the tailpipe. The fire caused substantial damage to the aircraft and engine before it could be extinguished.

9. Boeing ultimately sought compensation for all alleged resulting damages from Rolls-Royce. In or about March 2017, Rolls-Royce settled Boeing's claim, without SERVOTRONICS's participation. Rolls-Royce then demanded indemnity from SERVOTRONICS, who rejected the demand.

10. Subsequent efforts to mediate and settle the claim were unsuccessful.

11. Accordingly on 18 September 2018 Rolls-Royce served its Notice of Arbitration.

12. In the Notice of Arbitration, Rolls-Royce seeks approximately $12.8 million from SERVOTRONICS on

the alleged grounds that the fire was proximately caused by the product defect in the MVSV.

13. In its Response, SERVOTRONICS denies liability because—without prejudice to further arguments SERVOTRONICS may develop in defence against the claim—the numerous improper, inadequate, and incorrect actions and failures to act of Boeing and Rolls-Royce personnel constitute the legal cause of the damage and intervening and superceding causes of the fire. SERVOTRONICS also contests the reasonableness of the settlement.

14. Arbitration under the Rules of the Chartered Institute of Arbitrators ("CIArb") is a first-instance adjudicatory proceeding. The parties gather evidence and submit it to the arbitrator(s), along with Statements of Claims and Defences. Evidence obtained through discovery, including discovery conducted in foreign countries, may be submitted for use in arbitration under CIArb Rules. Witnesses including expert witnesses may be asked to testify. *See* CIArb Rules (1 December 2015), Exhibit "A" hereto, Arts. 17, 20-21, 27-29; *see also South Carolina Insurance Co. v. Assurantie Maatschappij "de Zeven Provincien" NV* [1987] AC 24 and *Phipson on Evidence,* 19th Ed, at 8-42, attached as Exhibits "B" and "C" hereto (according to House of Lords, English courts allow parties to obtain evidence in any manner they wish so long as it is not illegal).

15. The arbitrator tribunal (in this case three arbitrators) will consider the evidence and arguments made by each of the parties. There will be an oral hearing to adduce the evidence and test the arguments after which the tribunal will determine liability issues and make an award. *See, e.g.,* CIArb Rules, Attachment "A" hereto, Arts. 7, 27, 28 & 33.

16. Article 34(2) of the CIArb Rules provides that any award shall be "final and binding," and, as quoted above, the LTA provides for disputes to be "fully resolved" at arbitration. Article 1(3) of the CIArb Rules, however, confirms that the Rules are subject to "the law applicable to the arbitration from which the parties cannot derogate," and the provision of law "shall prevail" in such instances.

17. Clause 29 of the LTA provides that it shall be governed by the laws of "England and Wales". The laws of England and Wales include the 1996 Arbitration Act, a copy of which is attached as Exhibit "D" hereto. According to Section 1(c) of the Arbitration Act, courts may intervene in arbitrations "as provided by this Part."

18. Schedule 1 to the Act, as referenced in Section 4(1), identifies certain provisions as "mandatory." Among the mandatory provisions are Section 67, which allows parties to challenge any arbitration award on grounds of substantive jurisdiction, and Section 68, which allows judicial challenge based on "serious irregularities."

19. The arbitration was only recently commenced and there have been no activities under the CIArb Rules other

than service of the Notice of Arbitration and Response thereto. The CIArb Rules allow but do not mandate pre-approval of discovery by the arbitral.

20. In this case the better practice is to serve the discovery requests prior to appointment of the arbitral panel so as not to delay the final resolution of the arbitration proceeding.

21. By my estimate, based on my experience in similar arbitrations, no hearings will commence prior to July 2019 at the earliest.

22. I have reviewed the Subpoena attached to the Affidavit of Richard H. Donohue being filed concurrently and confirm that no judicial or arbitral authority in the U.K. has rejected any effort by Applicant to obtain the requested documents and other materials, and that the documents and other materials sought are directly relevant to SERVOTRONICS's defences to the claims made in Rolls-Royce's Notice of Arbitration.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 25th day of October 2018.

/s/_____
AKHIL SHAH, Q.C.

APPENDIX D — AFFIDAVIT OF RICHARD H. DONOHUE IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED OCTOBER 26, 2018

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Case No. 18-cv-7181

IN RE:
APPLICATION OF SERVOTRONICS, INC.,
FOR AN ORDER PURSUANT TO 28 U.S.C.
§ 1782 TO TAKE DISCOVERY FOR USE
IN A FOREIGN PROCEEDING

AFFIDAVIT OF RICHARD H. DONOHUE IN SUPPORT OF *EX PARTE* APPLICATION FOR AN ORDER TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782

State of Illinois)
) ss:
County of Cook)

Richard H. Donohue, being first duly sworn, deposes and says:

1. I am an attorney representing SERVOTRONICS in this matter, and submit this Affidavit in support of SERVOTRONICS, INC.'s Application for an Order to Take Discovery Pursuant to 28 U.S.C. § 1782.

2. Attached as Exhibit "A" hereto is a copy of the Subpoena *Duces Tecum* and its attached Requests for Documents and Other Materials referenced in the Application papers and which SERVOTRONICS is seeking leave to serve upon The Boeing Company.

3. There is good cause for submitting the Application *ex parte. Ex parte* submissions are typical for applications under 28 U.S.C. 1782. *See, e.g., In re IKB Deutsche Industriebank AG,* 2010 WL 1526070 (N.D. Ill.) If the Court grants the Application, and Boeing, the party from whom discovery is sought, objects to the Subpoena served upon it in whole or part, it may move to quash under Fed. R. Civ. P. 45(c) and make any other objections available under discovery rules. *See* 28 U.S.C. § 1782 (unless the court prescribes otherwise, "the document or other thing [shall be] produced in accordance with the Federal Rules of Civil Procedure," and no production will be compelled in violation of a legal privilege).

4. As an alternative, the Court may issue an Order to Show Cause why the Application would not be granted, as in *Gushlak v. Gushlak,* 486 Fed. App'x 215, 2012 WL 2549813 (2d Cir.) ("it is neither uncommon nor improper for district courts to grant applications made pursuant to 28 U.S.C. *§* 1782 *ex parte,"* and the court's decision to issue Order to Show Cause provided respondent with "more relief than is customary in a § 1782 proceeding"); *see also In re Chevron Corp.,* 753 F. Supp. 2d 536 (D. Md. 2010) (also commenced *ex parte* with request for Order to Show Cause as alternative relief). While this "extra step" might enhance efficiency when the Applicant is seeking to serve

subpoenas on multiple respondents, it seems unnecessary when leave is sought to serve a single subpoena on a single respondent who may make the same arguments under Fed. R. Civ. P. 45 and other discovery rules.

5. No application for similar relief has previously been made and, as confirmed in the Declaration of QC Akhil Shah submitted concurrently, no judicial or arbitral authority in the U.K. has rejected any effort by Applicant to obtain the requested documents and other materials. Applicant intends to serve Subpoenas *Testificandum* in the District Court of South Carolina court to compel the testimony of witnesses to the underlying events (an aircraft engine fire that occurred during pre-delivery tests conducted by Boeing and Rolls-Royce in North Charleston, South Carolina on 16 January 2016). The Subpoena attached hereto seeks the production of documents from Boeing in this District where its international headquarters are located.

AFFIANT FURTHER SAYETH NAUGHT

/s/
Richard H. Donohue
(ARDC #3124238)

Sworn to before me on this
26th day of October, 2018

/s/_____
Notary Public

UNITED STATES DISTRICT COURT
for the

Appendix D

Northern District of Illinois

Civil Action No. 18-cv-7181

IN RE: SERVOTRONICS,

Plaintiff,

v.

_____

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: The Boeing Company, 100 North Riverside, Chicago, IL 60606

☒ Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Any and all documents and materials identified in Attachment A.

Place: 140 S. Dearborn, Suite 800, Chicago IL 60603	Date and Time: 11/23/2018 12:45 pm

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☐ Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/26/2018

CLERK OF COURT

_____ OR /s/_____

Signature of Clerk or Deputy Clerk *Attorney's Signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) Servotronics, who issues or requests this subpoena, are: Michael H. Adler, 140 S. Dearborn, Suite 800, Chicago, IL 60603, adler@dbmslaw.com, 312-422-4902

Appendix D

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____ was received by me on *(date)* _____

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____
_____ on *(dated)* _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____,

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Appendix D

Date: _____ _____

Server's Signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Appendix D

Federal Rule of Civil Procedure 45 (c), (d), and (e)
(Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense, Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction— which may include lost earnings and reasonable attorney's fees— on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for

compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person— except that, subject to Rule 45(c)(3)(B)(iii); the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

Appendix D

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources

if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) ***Contempt***. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT "A" TO SUBPOENA

These definitions apply to the terms used in the numbered requests below:

"Aircraft" refers to the Boeing 787-9 Dreamliner aircraft, individually identified as S/N ZB036 and United Kingdom Civil Aviation Authority Registration Number ("R/N") R/N G-VDIA, that was damaged in the Event.

"Event" refers to the engine tailpipe fire that occurred on Boeing facilities on 16 January 2016 at the North Charleston International Airport.

"Engine" refers to the Rolls-Royce Trent 1000 engine individually identified as S/N 10353 that was installed on the right side of the Aircraft at the time of the Event.

"Boeing" refers to The Boeing Company and any and all of its subsidiaries, and their respective directors, officers, employees, contractors, agents, and other representatives, who participated in or were present during the Aircraft and Engine Demonstration tests on the day of the Event, and investigations or other activities related to the Event thereafter.

Appendix D

"Documents and materials" includes electronically stored information, described below, and also includes any paper or other writing and any item of graphic materials, however recorded or reproduced, including but not limited to all drafts, copies or other preliminary material which are different from the executed or final document, regardless of whether designated "confidential," "privileged," or otherwise restricted, wherever located, whether an original or a copy, including but not limited to agreements, contracts, financial statements, account statements, invoices, purchase orders, reports, minutes, confirmations, analyses, plans, manuals, policies, worksheets, work papers, notices and summaries, papers, files and any other written records or recordings of any conferences, meetings, visits, interviews, press releases or telephone conversations, transcriptions of conversations or communications or meetings, financial and statistical data, analyses, surveys, transcripts of testimony, statements, interviews, affidavits, press releases, memoranda, drafts, memo pads, notes, indices, tabulations, graphs, reports, papers, records, inter-office communications, electronic data processing charts, tapes, print-outs, papers or other recordings, tables, compilations, catalogs, faxes, telephone logs, telephone messages, message slips, letters, correspondence, photographs, diaries, calendars, date books, appointment books, drawings, data reports, printed matter, correspondence, communications received and/or sent, books, records, journals, registers, brochures, advertisements, circulars, mailings and publications; and any copy containing thereon or having attached thereto any alterations, notes, or comments.

Appendix D

"Documents and materials" also includes "Electronically Stored Information (ESI)," stored in any type of digital medium, from which it can be retrieved and examined, regardless of whether it is in the original format in which it was created. ESI may include, but is not limited to, digital communications (e.g., e-mail, voice mail, instant messaging, social media); word processing documents (e.g., Word documents and drafts); spreadsheets and tables (e.g., Excel or Lotus 123 worksheets); accounting application data (e.g., QuickBooks, Money, Peachtree data files); image and facsimile files (e.g., .PDF, .TIFF, .JPG, .GIF images); sound recordings (e.g., .WAV and .MP3 files); video and animation (e.g., .AVI and .MOV files); databases (e.g., Access, Oracle, SQL Server data, SAP); contact and relationship management data (e.g., Outlook, ACT!); calendar and diary application data (e.g., Outlook PST, Yahoo, blog tools); online access data (e.g., temporary internet files, history, cookies); presentations (e.g., PowerPoint); network access and server activity logs; project management application data; Computer Aided Design/Drawing files; and, backup and archival files (e.g., Zip, .GHO, .PST).

"Communications" refers to any use of any mode of conveying meaning and information such as, but not limited to, telephone, computer generated or transmitted, written or spoken language for the purpose of transferring information from one person or place to another. Communication shall include, without limitation, notes, memoranda, or any other documents memorializing the information or meaning conveyed.

Appendix D

The words "or" and "and" shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.

Through this Application, Servotronics requests the following documents and other materials from Boeing:

I. Document Production

1. A full and complete copy of the Aircraft Purchase Agreement.

2. A full and complete copy of the Aircraft Delivery Documents.

3. Engine Delivery Documents.

4. A copy of the recorded audio of the Event, including the timeframe leading up to the Event and the time prior to when the Start selection was made (i.e., the CVR recording and any other recordings of communications, including for Aircraft Flights C1 and C2).

5. A copy of the "Surveillance Video" of the Event.

6. A copy of all witness statements to the Event not previously provided in legible form.

7. A copy of all completed witness to the Event questionnaires not previously provided in legible form.

8. A copy of all interview notes for all witnesses to the Event not previously provided.

9. All Maintenance Messages for the Aircraft from the date the Engine was first installed on the Aircraft up to and including the Event, including the Continuous Parameters Logging (CPL)/ Enhanced Airborne Flight Recorder (EAFR) data.

10. A complete copy of the Boeing South Carolina Incident Review Board Report (not the Executive Summary).

11. All Boeing support documents associated with the completion of their "Summary of Investigation", and their "Timeline".

12. Boeing Aircraft Manuals, including the Fault Isolation Manual, that explain the operation, maintenance, servicing and trouble-shooting of the Engine for the B787.

13. All Paperwork, including Aircraft and Engine Logs and Squawk sheets, associated with the "Wetted HMU" that was discovered following a dry engine run prior to Flight C1.

14. All Paperwork, including Aircraft and Engine Logs and Squawk sheets related to Aircraft Flight C1.

15. All Paperwork associated with Engine Runs, or attempted Engine Runs, conducted in the early morning hours of 16 January 2016— prior to the attempted Flight C2.

16. All Paperwork, including Aircraft and Engine Logs and Squawk sheets related to Aircraft Flight C2.

17. A full and complete copy of the Command Narrative (Statement Prepared by the Boeing Fire Fighting Department).

18. A full and complete copy of the Incident Report by Boeing Security prepared after the Event.

19. All documents related to Boeing Investigation Recommendations and actions or procedural changes implemented at Boeing South Carolina, including any supporting documentation, taken by Boeing in regard to investigation findings.

20. All Releases, Subrogation Receipts, and Settlement Agreements between Virgin Atlantic Airways, Boeing and their respective insurers.

21. All documents and communications between Boeing and Virgin Atlantic Airways relating to

the Event, investigations of the Event, repair of the Engine and Aircraft.

22. All documents relating to all money damages Boeing was required to pay to VAA for Boeing's failure to meet any of Boeing's obligations contained in contracts with VAA as a result of the Event; and including any other money damages, costs and expenses incurred by Boeing as a result of the delayed delivery of the Aircraft,

    a. Engineering Labor Costs

    b. Basic Factory Labor Costs

    c. Cost of Replacement Parts for the wing repair

    d. Delivery Delay Payment by Boeing to VAA

    e. Buyout valuation of the Boeing warranty extension to VAA

    f. Buyout valuation of the residual value guarantee that Boeing provided to VAA.

APPENDIX E — NOTICE OF MOTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED NOVEMBER 14, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 18-cv-7187

IN RE:
APPLICATION OF SERVOTRONICS, INC.,
FOR AN ORDER PURSUANT TO 28 U.S.C.
SECTION 1782 TO TAKE DISCOVERY FOR
USE IN A FOREIGN PROCEEDING.

Judge Elaine E. Bucklo

NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 28, 2018, at 9:30 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Judge Elaine E. Bucklo, or any Judge sitting in that Judge's place or stead, in the courtroom usually occupied by her, located at United States District Court, Northern District of Illinois, United States Courthouse, 219 S. Dearborn Street Room 2243, Chicago, IL 60604, and present **Ex Parte Application of Servotronics for An Order Pursuant to 28 U.S.C. Section 1782 to take Discovery for use in a foreign Proceeding**, a copy of which is attached hereto.

Appendix E

DONOHUE BROWN MATHEWSON & SMYTH LLC
Richard H. Donohue ARDC #3124238
Michael H. Adler ARDC #6320198
140 South Dearborn Street, Suite 800
Chicago, IL 60603
(312) 422-0900
service@dbmslaw.com
donohue@dbmslaw.com
adler@dbmslaw.com

PROOF OF SERVICE

I hereby certify that on November 14, 2018, I electronically served this notice and the above-mentioned document either through the court electronic filing manager or an approved electronic filing service provider, if available. For all parties for which such service is not available, I served this notice and the above-mentioned document by email to the email addresses listed below.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

/s/Irene Velez
Irene Velez

APPENDIX F — NOTIFICATION OF DOCKET ENTRY OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED NOVEMBER 19, 2018

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CASE NO.: 1:18−CV−07187

SERVOTRONICS, INC.

Plaintiff,

v.

Defendant.

Honorable Elaine E. Bucklo

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, November 19, 2018:

MINUTE entry before the Honorable Elaine E. Bucklo: Ex Parte Application of Servotronics for an Order pursuant to 28 U.S.C. Section 1782 to take Discovery for use in a foreign Pleading [3]is granted. No appearance required on 11/28/2018. Mailed notice. (mgh,)

Appendix F

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at **www.ilnd.uscourts.gov.**

APPENDIX G — SUBPOENA TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, FILED NOVEMBER 20, 2018

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Civil Action No. 18-cv-7187

IN RE: SERVOTRONICS,

Plaintiff,

v.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: The Boeing Company, 100 North Riverside, Chicago, IL 60606

☒ *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Any and all documents and materials identified in Attachment A.

Appendix G

Place: 140 S. Dearborn, Suite 800, Chicago IL 60603	Date and Time: 12/10/2018 1:00 pm

☐ *Inspection of Premises*: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/20/2018

CLERK OF COURT

_____ OR /s/ Richard H. Donohue
Signature of Clerk or Deputy Clerk *Attorney's Signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) Servotronics, who issues or requests this subpoena, are: Richard H. Donohue, 140 S. Dearborn, Suite 800, Chicago, IL 60603, donohue@dbmslaw.com, 312-422-0904

Appendix G

PROOF OF SERVICE
(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____ was received by me on *(dated)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____ _____ on *(dated)* _____; or

☐ I returned the subpoena unexecuted because: _____ _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.0.

I declare under penalty of perjury that this information is true.

Appendix G

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Appendix G

Federal Rule of Civil Procedure 45 (c), (d), and (e)
(Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for

compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

Appendix G

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

Appendix G

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources

if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Appendix G

ATTACHMENT "A" TO SUUPOENA

These definitions apply to the terms used in the numbered requests below:

"Aircraft" refers to the Boeing 787-9 Dreamliner aircraft, individually identified as S/N ZB036 and United Kingdom Civil Aviation Authority Registration Number ("R/N") R/N G-VDIA, that was damaged in the Event.

"Event" refers to the engine tailpipe fire that occurred on Boeing facilities on 16 January 2016 at the North Charleston International Airport.

"Engine" refers to the Rolls-Royce Trent 1000 engine individually identified as S/N 10353 that was installed on the right side ofthe Aircraft at the time of the Event.

"Boeing" refers to The Boeing Company and any and all of its subsidiaries, and their respective directors, officers, employees, contractors, agents, and other representatives, who participated in or were present during the Aircraft and Engine Demonstration tests on the day of the Event, and investigations or other activities related to the Event thereafter.

"Documents and materials" includes electronically stored information, described below, and also includes any paper or other writing and any item of graphic materials, however recorded or reproduced, including but not limited to all drafts, copies or other preliminary material which are different from the executed or final document,

regardless of whether designated "confidential," "privileged," or otherwise restricted, wherever located, whether an original or a copy, including but not limited to agreements, contracts, financial statements, account statements, invoices, purchase orders, reports, minutes, confirmations, analyses, plans, manuals, policies, worksheets, work papers, notices and summaries, papers, files and any other written records or recordings of any conferences, meetings, visits, interviews, press releases or telephone conversations, transcriptions of conversations or communications or meetings, financial and statistical data, analyses, surveys, transcripts of testimony, statements, interviews, affidavits, press releases, memoranda, drafts, memo pads, notes, indices, tabulations, graphs, reports, papers, records, inter-office communications, electronic data processing charts, tapes, print-outs, papers or other recordings, tables, compilations, catalogs, faxes, telephone logs, telephone messages, message slips, letters, correspondence, photographs, diaries, calendars, date books, appointment books, drawings, data reports, printed matter, correspondence, communications received and/or sent, books, records, journals, registers, brochures, advertisements, circulars, mailings and publications; and any copy containing thereon or having attached thereto any alterations, notes, or comments.

"Documents and materials" also includes "Electronically Stored Information (ESI)," stored in any type of digital medium, from which it can be retrieved and examined, regardless of whether it is in the original format in which it was created. ESI may include, but is not limited to, digital communications (e.g., e-mail, voice mail, instant

messaging, social media); word processing documents (e.g., Word documents and drafts); spreadsheets and tables (e.g., Excel or Lotus 123 worksheets); accounting application data (e.g., QuickBooks, Money, Peachtree data files); image and facsimile files (e.g., .PDF, .TIFF, .JPG, .GIF images); sound recordings (e.g., .WAV and .MP3 files); video and animation (e.g., .AVI and .MOV files); databases (e.g., Access, Oracle, SQL Server data, SAP); contact and relationship management data (e.g., Outlook, ACT!); calendar and diary application data (e.g., Outlook PST, Yahoo, blog tools); online access data (e.g., temporary internet files, history, cookies); presentations (e.g., PowerPoint); network access and server activity logs; project management application data; Computer Aided Design/Drawing files; and, backup and archival files (e.g., Zip, .GHO, .PST).

"Communications" refers to any use of any mode of conveying meaning and information such as, but not limited to, telephone, computer generated or transmitted, written or spoken language for the purpose of transferring information from one person or place to another. Communication shall include, without limitation, notes, memoranda, or any other documents memorializing the information or meaning conveyed.

The words "or" and "and" shall be read in the conjunctive and not in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of a request. The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include

the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.

Through this Application, Servotronics requests the following documents and other materials from Boeing:

I. Document Production

1. A full and complete copy of the Aircraft Purchase Agreement.

2. A full and complete copy of the Aircraft Delivery Documents.

3. Engine Delivery Documents.

4. A copy of the recorded audio of the Event, including the timeframe leading up to the Event and the time prior to when the Start selection was made (i.e., the CVR recording and any other recordings of communications, including for Aircraft Flights C1 and C2).

5. A copy of the "Surveillance Video" of the Event.

6. A copy of all witness statements to the Event not previously provided in legible form.

7. A copy of all completed witness to the Event questionnaires not previously provided in legible form.

8. A copy of all interview notes for all witnesses to the Event not previously provided.

9. All Maintenance Messages for the Aircraft from the date the Engine was first installed on the Aircraft up to and including the Event, including the Continuous Parameters Logging (CPL)/Enhanced Airborne Flight Recorder (EAFR) data.

10. A complete copy of the Boeing South Carolina Incident Review Board Report (not the Executive Summary).

11. All Boeing support documents associated with the completion of their "Summary of Investigation", and their "Timeline".

12. Boeing Aircraft Manuals, including the Fault Isolation Manual, that explain the operation, maintenance, servicing and trouble-shooting of the Engine for the B787.

13. All Paperwork, including Aircraft and Engine Logs and Squawk sheets, associated with the "Wetted HMU" that was discovered following a dry engine run prior to Flight C1.

14. All Paperwork, including Aircraft and Engine Logs and Squawk sheets related to Aircraft Flight C1.

15. All Paperwork associated with Engine Runs, or attempted Engine Runs, conducted in the early morning hours of 16 January 2016 – prior to the attempted Flight C2.

16. All Paperwork, including Aircraft and Engine Logs and Squawk sheets related to Aircraft Flight C2.

17. A full and complete copy of the Command Narrative (Statement Prepared by the Boeing Fire Fighting Department).

18. A full and complete copy of the Incident Report by Boeing Security prepared after the Event.

19. All documents related to Boeing Investigation Recommendations and actions or procedural changes implemented at Boeing South Carolina, including any supporting documentation, taken by Boeing in regard to investigation findings.

20. All Releases, Subrogation Receipts, and Settlement Agreements between Virgin Atlantic Airways, Boeing and their respective insurers.

21. All documents and communications between Boeing and Virgin Atlantic Airways relating to the Event, investigations of the Event, repair of the Engine and Aircraft.

22. All documents relating to all money damages Boeing was required to pay to VAA for Boeing's failure to meet any of Boeing's obligations contained in contracts with VAA as a result of the Event; and including any other money damages, costs and expenses incurred by Boeing as a result of the delayed delivery of the Aircraft.

Appendix G

a. Engineering Labor Costs
b. Basic Factory Labor Costs
c. Cost of Replacement Parts for the wing repair
d. Delivery Delay Payment by Boeing to VAA
e. Buyout valuation of the Boeing warranty extension to VAA
f. Buyout valuation of the residual value guarantee that Boeing provided to VAA.

APPENDIX H — MOTION TO VACATE THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED NOVEMBER 27, 2018

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 18-cv-07187

IN RE:
APPLICATION OF SERVOTRONICS, INC., FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO TAKE DISCOVERY FOR USE IN A FOREIGN PROCEEDING

Honorable Elaine E. Bucklo

INTERVENOR ROLLS-ROYCE PLC'S MOTION TO VACATE THE COURT'S ORDER, QUASH SUBPOENA, AND COMPEL ARBITRATION

Subject to, and without waiver of any rights, privileges and defenses, Rolls-Royce PLC intervenes in this matter and respectfully requests that the Court vacate its Order of November 19, 2018 [ECF 11] granting Petitioner Servotronics Inc.'s *Ex Parte* Application pursuant to 28 U.S.C.A. § 1782 ("§ 1782"), and that the Court quash the subpoena Servotronics Inc. has caused to be issued and served on The Boeing Company [ECF 12], or, alternatively, that the Court compel the matter of non-party discovery to arbitration before the arbitral panel to be constituted under the Rules of the Chartered Institute of Arbitrators.

Appendix H

In support of its Motion to Vacate the Court's Order, Quash the Subpoena, and Compel Arbitration, Rolls-Royce PLC relies upon the points and authorities set forth in its Memorandum of Law in Support of its Motion to Vacate the Courts Order, Quash Subpoena, and Compel Arbitration filed simultaneously with this Motion, and all other pleadings on file with the Court.

WHEREFORE, for the foregoing reasons, Rolls-Royce PLC respectfully requests that this Court vacate its Order of November 19, 2018, quash the subpoena issued to the Boeing Company, or, alternatively, that the Court compel the matter of non-party discovery to arbitration before the arbitral panel to be constituted under the Rules Chartered Institute of Arbitrators.

Dated: November 27, 2018 Respectfully submitted,

/s/ Richard A. Walker
Larry S. Kaplan – ARDC No. 1398717
Richard A. Walker – ARDC No. 6196947
Matthew J. Obiala – ARDC No. 6316991
KAPLAN, MASSAMILLO & ANDREWS, LLC
200 W. Madison Street, 16th Floor
Chicago, Illinois 60606
Tel: (312) 345-3000
Fax: (312) 345-3119
lkaplan@kmalawfirm.com
rwalker@kmalawfirm.com
mobiala@kmalawfirm.com

Attorneys for ROLLS-ROYCE PLC

APPENDIX I — NOTIFICATION OF DOCKET ENTRY OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED APRIL 22, 2019

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CASE NO.: 1:18–CV–07187

SERVOTRONICS, INC.

Plaintiff,

v.

Defendant.

Honorable Elaine E. Bucklo

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, April 22, 2019:

MINUTE entry before the Honorable Elaine E. Bucklo: Intervenor's Rolls–Royce PLC's motion to vacate the November 19, 2018 courts's order, and to quash the subpoena served on Boeing is granted. Enter Order. Mailed notice. (mgh,)

Appendix I

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at *www.ilnd.uscourts.gov.*

APPENDIX J — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED APRIL 22, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 18-cv-7187

IN RE APPLICATION OF SERVOTRONICS, INC., FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO TAKE DISCOVERY FOR USE IN A FOREIGN PROCEEDING

April 22, 2019, Decided
April 22, 2019, Filed

ORDER

Servotronics, Inc. ("Servotronics") initiated this action by filing an *ex parte* application for discovery assistance pursuant to 28 U.S.C. § 1782(a). In its application, Servotronics sought an order allowing it to serve a subpoena *duces tecum* upon the Boeing Company ("Boeing"), a resident of this district, to obtain documents for use in a private arbitration proceeding between Servotronics and Rolls-Royce, PLC ("Rolls-Royce") pending in London, England ("London Arbitration"). I granted the application, and Servotronics served its subpoena on Boeing. Shortly thereafter Rolls-Royce filed a motion to vacate the order granting Servotronics's application and to quash the subpoena, and Boeing filed a response in support of Rolls-Royce's motion. For the

reasons that follow, I grant the motion, vacate my previous order, and quash Servotronics's subpoena on Boeing.

The parties' underlying dispute arises from a fire that occurred at Boeing's facilities in Charleston, South Carolina. During a ground engine test of a Boeing 787-9 aircraft, a stray piece of metal apparently got lodged in the aircraft's engine valve, affecting the flow of fuel to the engine. Boeing's employees began troubleshooting the engine, and, at some point, the engine caught fire, causing damage to the aircraft.

After the accident, Boeing sought compensation from the engine manufacturer Rolls-Royce, and the two companies reached a settlement. Rolls-Royce then demanded indemnity from Servotronics, the manufacturer of the engine valve that Rolls-Royce claims caused the engine malfunction. Servotronics refused, and so Rolls-Royce notified Servotronics that it intended to arbitrate the dispute pursuant to an agreement existing between them. According to their agreement, Rolls-Royce and Servotronics must submit all disputes that are not resolved by negotiation or mediation to private arbitration[1] under the rules of the Chartered Institute of Arbitrators ("CIArb"), which provide for "final and binding" arbitration reviewable only for substantive jurisdictional issues and "serious irregularities."[2] Shah Decl. [6] ¶¶ 16-

1. Although the agreement does not use the term "private arbitration," there is no dispute that private arbitration is what it requires.

2. By adopting the CIArb Rules, parties "waive their right to any form of appeal or recourse to a court or other judicial authority

18. After Rolls-Royce sent Servotronics its arbitration notice, the parties agreed to hold an arbitration hearing in London, England. That hearing has not yet occurred.

In preparation for the London Arbitration, Servotronics decided to seek discovery from non-party Boeing and its employees in the United States. It filed an *ex parte* 28 U.S.C. § 1782 application here in the Northern District of Illinois seeking documents from Boeing's headquarters, and it filed a separate *ex parte* application in the District of South Carolina seeking to take depositions from three of Boeing's Charleston facility employees. The South Carolina court denied Servotronics's application on the ground that 28 U.S.C. § 1782 does not reach private arbitral forums, and Servotronics is appealing that decision. I granted the application that was before me.

Rolls-Royce, with Boeing's support, seeks to vacate my order granting Servotronics's application because it asserts that I lacked authority under 28 U.S.C. § 1782 to order discovery for use in a foreign private arbitration. Servotronics disagrees of course, but it also argues that I should not even reach the question of my § 1782 authority now because (1) Rolls-Royce has not formally moved to intervene in this case, and (2) Rolls-Royce lacks standing

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insofar as such waiver is valid under the applicable law." Shah Decl. [6] Exh. A, Art. 34(2). Under the laws of England and Wales, which govern the agreement between Rolls-Royce and Servotronics, *id.* ¶ 17, parties to an arbitration cannot waive the right to challenge an award in court for lack of substantive jurisdiction or for serious irregularities. Arbitration Act, 1996, c. 23, §§ 4, 67-68 & sch. 1. However, parties can waive the right to appeal questions of law arising out of an arbitration award. *Id.* § 69.

to vacate the order and quash the subpoena since both are directed at Boeing. Neither of these arguments is persuasive.

First, although Servotronics is correct that Rolls-Royce never filed a formal motion to intervene in this matter (and neither did Boeing), this does not prevent me from considering the motion to vacate and quash. District courts vary on whether they require non-parties affected by a § 1782 order to formally move to intervene to challenge the order. *Compare In re Kleimar N.V v. Benxi Iron & Steel Am., Ltd.*, No. 17-CV-01287, 2017 WL 3386115, at *4 (N.D. Ill. Aug. 7, 2017) (permitting a party served with a subpoena under § 1782 to challenge the order without separately moving to intervene), *and In re Application of TJAC Waterloo, LLC*, No. 3:16-MC-9-CAN, 2016 WL 1700001, at *2 (N.D. Ind. Apr. 27, 2016) (granting a motion to vacate a § 1782 order by opponent in the underlying foreign proceeding without a formal motion to intervene), *with In re Ambercroft Trading Ltd.*, No. 18-MC-80074-KAW, 2018 WL 4773187, at *4 (N.D. Cal. Oct. 3, 2018) (permitting challenge because party filed a timely motion to intervene under Federal Rule 24(b)), *and In re Hornbeam Corp.*, No. 14-MC-424, 2015 WL 13647606, at *3 (S.D.N.Y. Sept. 17, 2015) (same). And in any case, motions that implicitly seek intervention in a matter may be treated as motions brought under Rule 24. *See United States v. Griffin*, 782 F.2d 1393, 1399 (7th Cir. 1986) (even when a motion is "not styled [as] one for intervention ... a court is entitled to disregard labels and treat pleadings for what they are"); *Am. Nat. Bank & Tr. Co. of Chicago v. Bailey*, 750 F.2d 577, 582 (7th Cir.

1984) (party's failure to file a formal motion for leave to intervene before it filed a counterclaim "not necessarily [] fatal to its status as an intervenor").

Second, as the opposing party in the pending London Arbitration, Rolls-Royce has standing to request that my § 1782 order be vacated. It is well-settled that a party "against whom information obtained under section 1782 may be used, has standing to assert that, to his detriment, the authority for which the section provides is being abused." *In re Letter of Request from Crown Prosecution Serv. of United Kingdom*, 870 F.2d 686, 689 (D.C. Cir. 1989) (Ginsburg, J.); *see also Application of Sarrio, S.A.*, 119 F.3d 143, 148 (2d Cir. 1997) ("We have recognized, though implicitly, that parties against whom the requested information will be used may have standing to challenge the lawfulness of discovery orders directed to third parties."). Because Servotronics intends to use whatever discovery it obtains from Boeing against Rolls-Royce in the London Arbitration, Rolls-Royce is entitled to challenge the validity of the order to produce it.

The merits of Rolls-Royce's motion require me to consider the reach of 28 U.S.C. § 1782. Section 1782 "authorizes federal district courts to order the production of evidentiary materials for use in foreign legal proceedings, provided the materials are not privileged." *McKevitt v. Pallasch*, 339 F.3d 530, 531 (7th Cir. 2003). The provision states:

> The district court of the district in which a person resides or is found may order him to

> give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal .... The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court....

28 U.S.C. § 1782(a). A federal court thus has authority to order discovery pursuant to § 1782 when (1) a request for discovery from a person residing in or found in the court's district (2) is made by a foreign tribunal or an "interested person" (3) for use in "a proceeding in a foreign or international tribunal." *Id.* If these statutory prerequisites are met, a district court may exercise its discretion to grant a § 1782 application.

Rolls-Royce does not dispute that Servotronics's application met the first and second § 1782 requirements. It contends, however, that Servotronics's application cannot satisfy the third requirement because the London Arbitration for which Servotronics seeks discovery is a private arbitral proceeding that does not qualify as a "foreign or international tribunal" under the statute. I agree.

As Rolls-Royce points out in its motion, I previously addressed this question in *In re Arbitration between Norfolk S. Corp., Norfolk S. Ry. Co., & Gen. Sec. Ins.*

Co. & Ace Bermuda Ltd. ("*Norfolk*"), 626 F. Supp. 2d 882 (N.D. Ill. 2009). In *Norfolk*, I declined to order the former counsel of a party involved in a private arbitration in London to appear for a deposition in Chicago pursuant to § 1782 because I concluded, based on § 1782's text, its legislative history, and relevant case law, that purely private arbitrations were outside the scope of the statute. *Id.* at 885-86. In reaching this conclusion, I considered the Supreme Court's decision in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), where the Court determined that an intergovernmental European commission that enforced European competition laws was within § 1782's ambit. Although *Intel* did not involve arbitration, the Court in that case favorably quoted a definition of "tribunal" that included "arbitral tribunals." The Court did not explain whether this definition was intended to include all arbitral bodies or just government-sponsored ones. Nonetheless, because the *Intel* Court "stopped short of declaring that *any* foreign body exercising adjudicatory power falls within the purview of the statute" and instead focused its analysis on the public and quasi-judicial functions of the commission in question and the ultimate reviewability[3] of its decisions, I interpreted the "reference to 'arbitral bodies' as including state-sponsored arbitral bodies but excluding purely private arbitrations." *Norfolk*, 626 F. Supp. 2d at 885. That

3. In *Norfolk*, I observed that the parties' arbitration agreement, like the CIArb Rules here, waived the right to judicial review of the merits of their dispute. 626 F. Supp. 2d at 886. This limitation on reviewability stood in contrast to the reviewable decisions of the intergovernmental commission at issue in *Intel*. *See* 524 U.S. at 255, 259.

the Court made no mention of Second and Fifth Circuit precedent expressly holding that § 1782 did not reach private arbitrations added further support to this interpretation. *See National Broadcasting Co. v. Bear Stearns & Co. ("NBC")*, 165 F.3d 184, 189 (2d Cir. 1999) (holding that the term "foreign or international tribunal" encompasses governmental and intergovernmental adjudicatory bodies, but not "arbitral bod[ies] established by private parties"); *Republic of Kazakhstan v. Biedermann International*, 168 F.3d 880, 883 (5th Cir. 1999) (concluding that § 1782 "was not intended to authorize resort to United States federal courts to assist discovery in private international arbitrations").

Since my decision in *Norfolk*, there have not been any legal developments that would lead me to a different conclusion about § 1782's scope. In *GEA Group AG v. Flex-N-Gate Corp.*, 740 F.3d 411 (7th Cir. 2014), the Seventh Circuit briefly pondered the question of § 1782's reach in dicta, noting that a private arbitration in Germany might—or might not—qualify as a foreign tribunal under § 1782. *Id.* at 419. But the Court did not resolve the question, as the matter before it was not a § 1782 proceeding. The *GEA* panel did cite one circuit court case, *In re Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.* ("*Consorcio I*"), 685 F.3d 987 (11th Cir. 2012), which post-dated my decision in *Norfolk*, for the proposition that a private arbitral forum might be covered by § 1782. In *Consorcio I*, the Eleventh Circuit broke with the Second and Fifth Circuits to conclude that a private arbitral panel in Ecuador satisfied § 1782's requirements. 685 F.3d at 996-98, 997 n.7. But the Eleventh Circuit subsequently vacated and replaced that

decision with an opinion resolving the dispute on different grounds. *See Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.* ("*Consorcio II*"), 747 F.3d 1262, 1270 n.4 (11th Cir. 2014) (vacating prior decision that concluded that private arbitral forums were covered because that "substantial question" was not clearly presented on the "sparse record" before it). Thus, after *Consorcio II*, what remains, other than the authorities that existed at the time of my decision in *Norfolk*, is *GEA*'s acknowledgement that the question of § 1782's scope is open in the Seventh Circuit. While district courts have continued to answer the question differently, including within this district, *see, e.g.*, *Kleimar*, 2017 WL 3386115, at *5-6, the only two circuits that have directly addressed § 1782's applicability to private arbitration proceedings hold that the statute does not so extend. *NBC*, 165 F.3d at 189; *Biedermann*, 168 F.3d at 883. Without any intervening guidance from the Seventh Circuit or the Supreme Court, my view therefore remains unchanged from my opinion in *Norfolk*. Accordingly, I grant Rolls-Royce's motion [14] to vacate my November 19, 2018, order [11] and to quash the resulting subpoena [12].[4]

ENTER ORDER:

/s/ Elaine E. Bucklo
Elaine E. Bucklo
United States District Judge

Dated: April 22, 2019

4. Because I agree with Rolls-Royce that § 1782 does not reach purely private arbitrations, there is no need to address its other arguments in support of its motion.

APPENDIX K — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED SEPTEMBER 22, 2020

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 19-1847

SERVOTRONICS, INC.,

Petitioner-Appellant,

v.

ROLLS-ROYCE PLC
AND THE BOEING COMPANY,

Intervenors-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 18-cv-7187 — **Elaine E. Bucklo**, *Judge.*

September 19, 2019, Argued
September 22, 2020, Decided

Before SYKES, *Chief Judge*, and HAMILTON and BRENNAN, *Circuit Judges.*

SYKES, *Chief Judge*. Section 1782(a) of Title 28 authorizes the district court to order a person within the district to give testimony or produce documents "for use

in a proceeding in a foreign or international tribunal." This case asks whether a private foreign arbitration is "a proceeding in a foreign or international tribunal" within the meaning of the statute. Two decades ago, the Second and Fifth Circuits answered this question "no," holding that § 1782(a) authorizes the district court to provide discovery assistance only to state-sponsored foreign tribunals, not private foreign arbitrations. *Nat'l Broad. Co. v. Bear Stearns & Co.*, 165 F.3d 184, 191 (2d Cir. 1999); *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 883 (5th Cir. 1999).

More recently, the Sixth Circuit reached the opposite conclusion, *Abdul Latif Jameel Transp. Co. v. FedEx Corp.* (*In re Application to Obtain Discovery for Use in Foreign Proceedings*), 939 F.3d 710, 714 (6th Cir. 2019), and the Fourth Circuit agreed, *Servotronics, Inc. v. Boeing Co.*, 954 F.3d 209, 214 (4th Cir. 2020). We join the Second and Fifth Circuits and hold that § 1782(a) does not authorize the district court to compel discovery for use in a private foreign arbitration.

I. Background

The backdrop for this case is an indemnification dispute over losses incurred when an aircraft engine caught fire during testing in South Carolina. Rolls-Royce PLC manufactured and sold a Trent 1000 engine to the Boeing Company for incorporation into a 787 Dreamliner aircraft. In January 2016 Boeing tested the new aircraft at its facility near the Charleston International Airport. A piece of metal became lodged in an engine valve, restricting

the flow of fuel to the engine. As Boeing employees attempted to fix the problem, the engine caught fire, damaging the aircraft. Boeing demanded compensation from Rolls-Royce, and in 2017 the companies settled for $12 million. Rolls-Royce then sought indemnification from Servotronics, Inc., the manufacturer of the valve.

Under a long-term agreement between Rolls-Royce and Servotronics, any dispute not resolved through negotiation or mediation must be submitted to binding arbitration in Birmingham, England, under the rules of the Chartered Institute of Arbiters ("CIArb"). Negotiations did not bear fruit, so Rolls-Royce initiated arbitration with the CIArb. For convenience, the parties agreed to conduct the arbitration in London.

Servotronics thereafter filed an ex parte application in the U.S. District Court for the Northern District of Illinois asking the court to issue a subpoena compelling Boeing to produce documents for use in the London arbitration. The application invoked 28 U.S.C. § 1782(a), and the judge initially granted it and issued the requested subpoena. Rolls-Royce intervened and moved to quash the subpoena, arguing that § 1782(a) does not permit a district court to order discovery for use in a private foreign commercial arbitration. Boeing intervened and joined the motion to quash. The judge reversed course and quashed the subpoena. She agreed with Rolls-Royce and Boeing that § 1782(a) does not authorize the court to provide discovery assistance in private foreign arbitrations. Servotronics appealed. Rolls-Royce and Boeing jointly defend the judge's ruling.

Appendix K

II. Discussion

A. Statutory Framework

Sections 1781 and 1782 of Title 28 govern the district court's authority to provide discovery assistance in litigation in foreign and international tribunals. Section 1781 describes a formal judicial instrument known as a "letter rogatory"—a letter of request "issued by one court to a foreign court, requesting that the foreign court (1) take evidence from a specific person within the foreign jurisdiction ... and (2) return [it] ... for use in a pending case." *Letter of Request*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Letters rogatory are transmitted through diplomatic agencies; the statute provides that the State Department may, either "directly, or through suitable channels, ... receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed," and "receive and return it after execution." 28 U.S.C. § 1781(a)(1). The assistance is reciprocal; tribunals in the United States may issue letters rogatory through the State Department to a "foreign or international tribunal, officer, or agency."[1] *Id.* § 1781(a)(2).

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1. A State Department regulation elaborates:

> In its broader sense in international practice, the term letters rogatory denotes a formal request from a court in which an action is pending, to a foreign court to perform some judicial act. Examples are requests

Appendix K

Section 1782 works in tandem with and supplements § 1781, empowering the district court to order a person within the district to give testimony or provide evidence for use in foreign litigation, either in response to a letter rogatory or on application of a person with an interest in the litigation. The key portion of the statute reads as follows:

> The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing *for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.*

Id. § 1782(a) (emphasis added). The link to § 1781 comes in the next sentence:

> The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the

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for the taking of evidence, the serving of a summons, subpoena, or other legal notice, or the execution of a civil judgment. In United States usage, letters rogatory have been commonly utilized only for the purpose of obtaining evidence. Requests rest entirely upon the comity of courts toward each other, and customarily embody a promise of reciprocity.

22 C.F.R. § 92.54.

> document or other thing be produced, before a person appointed by the court.

Id.

The statute also gives the judge the discretion to prescribe procedures for the collection of evidence, including the option to require adherence to the practice and procedure of the foreign country or international tribunal in question:

> The order may prescribe the practice and procedure, *which may be in whole or part the practice and procedure of the foreign country or the international tribunal*, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

Id. (emphasis added).

This case involves a § 1782(a) application filed by a party to a private commercial arbitration in the United Kingdom; there is no letter rogatory or request from a foreign or international tribunal. Rather, Servotronics invoked the statute by virtue of its status as an "interested person" in the London arbitration. The judge issued the subpoena ex parte but later quashed it after concluding

that § 1782(a) does not authorize federal courts to provide discovery assistance to private foreign arbitrations. Servotronics takes issue with that interpretation of the statute, so we're asked to resolve a purely legal question and our review is de novo. *United States v. Titan Int'l, Inc.*, 811 F.3d 950, 952 (7th Cir. 2016).

B. Applicability to Private Foreign Arbitrations

This is a question of first impression for our circuit, but several other circuits have addressed it and a split has recently emerged. The disagreement centers on the meaning of the statutory phrase "foreign or international tribunal"—or more particularly, the word "tribunal."

The Second Circuit was the first to confront the question more than 20 years ago. The court began by observing that although the phrase "foreign or international tribunal" does not unambiguously *exclude* private arbitral panels, neither does it unambiguously *include* them. *Nat'l Broad. Co.*, 165 F.3d at 188. After reviewing the statutory and legislative history, the court concluded that the phrase, considered in context, is limited to state-sponsored foreign and international tribunals. *Id.* at 188-91. The court added that a contrary interpretation would create an inexplicable conflict with the Federal Arbitration Act. More specifically, a broad grant of federal-court authority to compel discovery in private foreign arbitrations "would stand in stark contrast to" the extremely limited judicial role in domestic arbitrations. *Id.* at 191. Accordingly, the court held that the statute does not authorize district courts to order discovery for use in private foreign arbitrations. *Id.*

The Fifth Circuit quickly agreed with that interpretation, *Biedermann Int'l*, 168 F.3d at 883, and that's where things stood for many years. No other appellate court weighed in until last year when the Sixth Circuit read the word "tribunal" broadly and held that the district court's authority to compel discovery for use in foreign litigation extends to private foreign arbitrations. *In re Application to Obtain Discovery*, 939 F.3d at 714.

A few months later, the Fourth Circuit aligned itself with the Sixth Circuit in a case involving a § 1782(a) application by Servotronics in a district court in South Carolina seeking discovery for use in this same London arbitration. *Servotronics*, 954 F.3d at 212-13. The Fourth Circuit's decision differs in one respect from the Sixth Circuit's; it rests in part on the court's view that contractual arbitration is the "product of government-conferred authority" both in the United Kingdom and the United States.[2] *Id.* at 214.

Finally, and more recently still, the Second Circuit reaffirmed its interpretation of § 1782 notwithstanding the contrary views of the Sixth and Fourth Circuits. *In re Guo*, 965 F.3d 96, 104 (2d Cir. 2020). The court also

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2. That view strikes us as mistaken. Contractual arbitration is private dispute resolution. The source of a private arbitral panel's adjudicative authority is found in the parties' contract, not a governmental grant of power. A private arbitral body does not exercise governmental or quasi-governmental authority. But we need not explore this point further. No one here argues that arbitration in the United Kingdom (or the United States) is the product of government-conferred authority.

held that nothing in the Supreme Court's decision in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 124 S. Ct. 2466, 159 L. Ed. 2d 355 (2004), required a course correction. *In re Guo*, 965 F.3d at 105-06. We'll return to *Intel* in a moment; for now, it's enough to say that the Court's decision does not tip the scales in favor of either side of the circuit split.

For several reasons, we side with the Second and Fifth Circuits in this interpretive debate. First, the word "tribunal" is not defined in the statute, and dictionary definitions do not unambiguously resolve whether private arbitral panels are included in the specific sense in which the term is used here. All definitions agree that the word "tribunal" means "a court," but some are more expansive, leaving room for both competing interpretations.

For example, in 1964 when the present-day version of the statute was adopted, *Black's Law Dictionary* defined "tribunal" as: "The seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise." *Tribunal*, Black's Law Dictionary (4th ed. 1951). That definition appears to exclude private arbitral panels. Today the legal definition of "tribunal" is broader: "A court of justice or other adjudicatory body." *Tribunal*, Black's Law Dictionary (11th ed. 2019).

Nonlegal definitions are similar. *See, e.g.*, *Tribunal*, The Concise Oxford Dictionary of Current English (5th ed. 1964) (defining "tribunal" as "[j]udgement-seat ...; court of justice"); *Tribunal*, Webster's New Twentieth

CENTURY DICTIONARY (2d ed. 1964) (defining "tribunal" as "the seat of a judge; ... a court of justice"); *Tribunal*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed 2018) (defining "tribunal" as "[a] law court[;] ... [a] committee or board appointed to adjudicate in a particular matter"); *Tribunal*, MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS (2020) (defining "tribunal" as "the seat of a judge[;] a court of justice[;] something that decides or determines, [as in] the ~ of public opinion ...").

In short, canvassing dictionary definitions is inconclusive. In both common and legal parlance, the phrase "foreign or international tribunal" can be understood to mean only state-sponsored tribunals, but it also can be understood to include private arbitration panels. Both interpretations are plausible.

C. Statutory Context

As always, context is key to unlocking meaning. After all, statutory words and phrases "cannot be construed in a vacuum. ... It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748, 204 L. Ed. 2d 34 (2019) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989)). Once we situate the word "tribunal" in its proper statutory context, the more expansive reading of the term—the one that includes private arbitrations—becomes far less plausible.

Appendix K

As we've noted, the language of present-day § 1782 dates to 1964. *See Intel*, 542 U.S. at 247-49 (describing the statutory history of § 1782). The text was proposed by the Commission on International Rules of Judicial Procedure, a study group created by Congress in 1958 with the following statutory charge:

> The Commission shall investigate and study existing practices of judicial assistance and cooperation between the United States and foreign countries with a view to achieving improvements. To the end that procedures necessary or incidental to the conduct and settlement of litigation in State and Federal courts and quasi-judicial agencies which involve the performance of acts in foreign territory, such as the service of judicial documents, the obtaining of evidence, and the proof of foreign law, may be more readily ascertainable, efficient, economical, and expeditious, and that the procedures of our State and Federal tribunals for the rendering of assistance to foreign courts and quasi-judicial agencies be similarly improved, the Commission shall—
>
> > (a) draft for the assistance of the Secretary of State international agreements to be negotiated by him;
> >
> > (b) draft and recommend to the President any necessary legislation;

> (c) recommend to the President such other action as may appear advisable to improve and codify international practice in civil, criminal, and administrative proceedings; and
>
> (d) perform such other related duties as the President may assign.

Act of Sept. 2, 1958, Pub. L. No. 85-906, § 2, 72 Stat. 1743, 1743. Noticeably absent from this statutory charge is any instruction to study and recommend improvements in judicial assistance to private foreign arbitration.

"Six years later, in 1964, Congress unanimously adopted legislation recommended by the Rules Commission," which "included a complete revision of § 1782." *Intel*, 542 U.S. at 248; Act of Oct. 3, 1964, Pub. L. No. 88-619, § 9, 78 Stat. 995, 997. The legislation also revised 28 U.S.C. § 1696, pertaining to service of process in foreign litigation, and § 1781, regarding letters rogatory. Act of Oct. 3, § 4, 78 Stat. 995; *id.* § 8, 78 Stat. 996. All three statutes use the identical phrase "foreign or international tribunal" to describe the object of the district court's litigation assistance.

Identical words or phrases used in different parts of the same statute (or related statutes) are presumed to have the same meaning. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86, 126 S. Ct. 1503, 164 L. Ed. 2d 179 (2006). Service-of-process assistance and letters rogatory—governed by §§ 1696 and 1781—are

matters of comity between governments, which suggests that the phrase "foreign or international tribunal" as used in this statutory scheme means state-sponsored tribunals and does not include private arbitration panels.

Within § 1782(a) itself, the word "tribunal" appears three times—first in the operative sentence authorizing the district court to order discovery "for use in a proceeding in a foreign or international tribunal," and again in the next sentence, which authorizes the court to act on a letter rogatory issued by "a foreign or international tribunal." Two sentences later the word "tribunal" appears again where the statute provides that the court's discovery order "may prescribe the practice and procedure, which may be in whole or part the *practice and procedure of the foreign country or the international tribunal*." (Emphasis added.)

The highlighted phrase parallels the earlier phrase "foreign or international tribunal." Harmonizing this statutory language and reading it as a coherent whole suggests that a more limited reading of § 1782(a) is probably the correct one: a "foreign tribunal" in this context means a governmental, administrative, or quasi-governmental tribunal operating pursuant to the foreign country's "practice and procedure." Private foreign arbitrations, in other words, are not included.

D. Conflict with the Federal Arbitration Act

This narrower understanding of the word "tribunal" avoids a serious conflict with the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-15 (amended 1988). We "interpret

Congress's statutes as a harmonious whole rather than at war with one another." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619, 200 L. Ed. 2d 889 (2018). When a statute is susceptible of two interpretations, one that creates a conflict with another statute and another that avoids it, we have an obligation to avoid the conflict "if such a construction is possible and reasonable." *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 544 (7th Cir. 2003). Applying this principle to the relationship between the FAA and § 1782 confirms that the latter does not apply to private foreign arbitrations.

The discovery assistance authorized by § 1782(a) is notably broader than that authorized by the FAA. Most significantly, the FAA permits the arbitration panel—but not the parties—to summon witnesses before the panel to testify and produce documents and to petition the district court to enforce the summons. 9 U.S.C. § 7. Section 1782(a), in contrast, permits both foreign tribunals *and litigants* (as well as other "interested persons") to obtain discovery orders from district courts. If § 1782(a) were construed to permit federal courts to provide discovery assistance in private foreign arbitrations, then litigants in foreign arbitrations would have access to much more expansive discovery than litigants in domestic arbitrations. It's hard to conjure a rationale for giving parties to private foreign arbitrations such broad access to federal-court discovery assistance in the United States while precluding such discovery assistance for litigants in domestic arbitrations.

Moreover, the FAA applies to some foreign arbitrations under implementing legislation for the Convention on the

Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention on International Commercial Arbitration. *See* 9 U.S.C. §§ 201-208, 301-307; *Nat'l Broad. Co.*, 165 F.3d at 187. Reading § 1782(a) broadly to apply to all private foreign arbitrations creates a direct conflict with the Act for this subset of foreign arbitrations.

In sum, what the text and context of § 1782(a) strongly suggest is confirmed by the principle of avoiding a collision with another statute: a "foreign or international tribunal" within the meaning of § 1782(a) is a state-sponsored, public, or quasi-governmental tribunal.

E. *Intel* and Legislative History

Intel was the Supreme Court's first—and to date only—occasion to address § 1782(a). The Court held that the statute may be invoked by a nonlitigant "interested person," *Intel*, 542 U.S. at 256-57, and also that a foreign proceeding need not be pending or imminent but only "within reasonable contemplation," *id.* at 259. And the Court clarified that § 1782(a) does not contain an implicit foreign-discoverability requirement. *Id.* at 260-63. Finally, and most pertinent here, the Court considered whether the proceeding at issue in the case—before the Directorate General for Competition of the Commission of the European Communities—was a "proceeding in a foreign or international tribunal." The Court had no difficulty concluding that the Directorate, as a public agency with quasi-judicial authority, qualified as a "foreign tribunal" within the meaning of § 1782(a).

Along the way to this last holding, the Court sketched the legislative history of § 1782 and as a part of its discussion quoted from a footnote in a law-review article written by the law professor who served as the reporter for the commission that proposed what eventually became § 1782. This passage in *Intel* has taken on outsized significance here, so we quote it in full: "The term 'tribunal' [in § 1782(a)] ... includes investigating magistrates, administrative and *arbitral tribunals*, and quasi-judicial agencies, as well as conventional civil, commercial, criminal, and administrative courts." *Id.* at 258 (emphasis added) (quoting Hans Smit, *International Litigation Under the United States Code*, 65 COLUM. L. REV. 1015, 1026 n.71 (1965)).

Servotronics relies heavily on the professor's inclusion of "arbitral tribunals" in this footnoted list, but this reliance is misplaced. The quotation from the professor's article appears in the Court's opinion as part of an explanatory parenthetical. There is no indication that the phrase "arbitral tribunals" includes *private* arbitral tribunals. Even if there were such an indication, we see no reason to believe that the Court, by quoting a law-review article in a passing parenthetical, was signaling its view that § 1782(a) authorizes district courts to provide discovery assistance in private foreign arbitrations.

In short, this passage cannot bear the weight Servotronics places on it. For the foregoing reasons, we join the Second and Fifth Circuits in concluding that § 1782(a) does not authorize the district courts to compel discovery for use in private foreign arbitrations.

AFFIRMED