

MAR 18 2013

JAMES M. HATTEN, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re Application of:)
)
H.M.G., a natural person and)
citizen of the Republic of Austria,)
)
Applicant.)
_____)

Case No. ~~13-MI-0038~~

CAP

**MEMORANDUM OF LAW IN SUPPORT OF EX PARTE
APPLICATION FOR JUDICIAL ASSISTANCE IN OBTAINING
EVIDENCE FOR USE IN A FOREIGN TRIBUNAL**

As provided by 28 U.S.C. § 1782, Applicant Helga M. Glock ("Ms. Glock") respectfully applies for an order directing Glock, Inc., Glock Professional, Inc., and Consultinvest, Inc. (collectively, the "U.S. Glock Entities"), to produce documents for use in court proceedings pending in Austria, including (i) a proceeding to identify and divide marital assets between Ms. Glock and her former husband, Gaston Glock, Sr.; (ii) a proceeding to determine *Unterhaltung*, i.e., the level of monthly support Glock Sr. must pay Ms. Glock, which is based on worldwide income not only received but to which Glock Sr. has rights; and (iii) proceedings to recover Ms. Glock's shares in Glock GmbH and transfers of marital property by Glock Sr. into illusory trusts over which he retained rights of revision.

The requested documents will assist in identifying and valuing marital assets to be divided and in estimating Glock Sr.'s worldwide income for purposes of the asset division. They are necessary because Glock Sr. has erected a complex and opaque structure of holding companies and trusts for Glock affiliated-entities through the world (the "Glock Group") through which he can move and has moved what Ms. Glock contends are marital assets. The requested documents will also assist in proving how, employing that byzantine structure, Glock Sr. effectively owns and controls the U.S. Glock Entities, which are themselves responsible for a substantial portion of the Glock Group's, and thus Glock Sr.'s, income.

As discussed in detail in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247-248 (2004), Section 1782 provides for broad federal court assistance in gathering evidence – both documents and testimony – for use in foreign tribunals. In *Intel*, after noting the continuing historical trend of expanding statutory support for evidence-gathering to assist in foreign litigation, *id.*, the Supreme Court confirmed and effectuated the broad purposes of Section 1782. *Id.* at 264-265 (rejecting any "categorical limitations" on permitted Section 1782 discovery). Because she satisfies the prerequisites for Section 1782 relief, and because all of the *Intel* factors weigh in favor of this Court's exercise of its discretion, Ms. Glock respectfully requests that her Application be granted.

I. FACTUAL BACKGROUND

A. The Glock Family.

Applicant Helga Glock is former wife of Gaston Glock, Sr. ("Glock Sr."). (Declaration of Helga Glock ("H. Glock Decl.") ¶ 2; a true and correct copy of that Declaration is attached to Ms. Glock's Application as Exhibit 4.) Both Ms. Glock and Glock Sr. are citizens of Austria, residing in Vienna. (*Id.*) They married in 1962 and today have three adult children, Brigitte Glock ("Brigitte"), Gaston Glock Jr. ("Glock Jr."), and Robert Glock ("Robert"). (*Id.*)

B. Founding and Growth of the Family Business.

In 1963, in the village of Deutsch-Wagram, the Glocks founded the firearms manufacturer Glock GmbH (originally known as Glock KG). (*Id.* ¶ 3.) With Ms. Glock's assistance, the company grew from a small machine shop to one of the world's best known and most profitable arms companies. (*Id.* ¶ 3.) And until her dismissal by her ex-husband immediately upon their divorce, Ms. Glock remained active in the company. (*Id.* ¶¶ 3, 16.)

Today, Glock GmbH is one of the world's most lucrative pistol manufacturers, supplying weaponry to military and law enforcement agencies in at least 48 countries. Glock, Wikipedia, <http://en.wikipedia.org/wiki/Glock> (last modified Mar. 14, 2013). Glock pistols are also popular choices among civilians for home and self-defense and concealed carry. *Id.* With an approximate

65% market share, Glock dominates the United States gun market. *Id.*; see also Dylan Machan, *Top Gun*, Forbes.com, Mar. 31, 2003 (estimating that two thirds of the \$100 million in then-annual revenue for Glock GmbH came from the United States).¹

Glock has, unsurprisingly, generated a great deal of wealth for the family: According to Austrian news reports, Glock Sr. is reportedly among the twenty wealthiest individuals in all of Austria, with an estimated net worth of at least 1.4 billion Euros. Eva Gabriel, *Reich, reicher, am reichsten in Kärntnerland*, Kleinezeitung.at, Jun. 25, 2012.² Until 1999, Glock Sr. owned 85% of the shares of Glock GmbH and Ms. Glock owned 15% of its shares. (H. Glock Decl. ¶ 4-6.)

C. The Glock Family Trusts.

After a failed murder attempt directed at Glock Sr. by a former financial advisor, Glock Sr. and Ms. Glock founded the Glock *Privatstiftung*, or the Glock Trust, on October 1, 1999. (*Id.* ¶ 4.) Its goal was to provide for their children and succeeding generations should something happen to either of the founders, and to perpetuate the Glock family ownership of the business. (*Id.* ¶¶ 4, 7, 8.)

It was important to Ms. Glock that the company she had helped form and

¹ <http://tinyurl.com/b5g5h3e>. A true and correct copy of that article is also attached hereto as Exhibit 1.

² <http://tinyurl.com/asdvpza>. A true and correct copy of that article is also attached hereto as Exhibit 2.

build (and the wealth it generated) be preserved for the benefit of the family and their children. (*Id.* ¶ 8.) All three children were being groomed to take over leadership of the company, and all three grew up working in the company and taking on roles of increasing responsibility. (*See id.* ¶ 8.)

At the time the Glock Trust was created, Ms. Glock thought that these goals were also important to her then-husband. (*Id.*) Thus, relying upon Glock Sr.'s promises, Ms. Glock granted her 14% interest in Glock GmbH to the Glock Trust. (*Id.* ¶ 6.) On June 22, 2007, the couple established another trust, the VALUE *Privatstiftung*, or VALUE Trust, also for the benefit of the couple and their heirs. (*Id.* ¶ 7.)

D. Glock Sr.'s Stroke and Subsequent Estrangement of His Family.

Dramatic changes occurred after October 23, 2008, when the 78-year old Glock Sr. suffered a stroke. (*Id.* ¶ 11.) As he lay incapacitated and recovering, Katrin Tschikof, a girlfriend almost fifty years younger than the ailing Glock, attached herself to him in his clinic. (*Id.*) She kept Helga Glock and other family members away from Glock Sr. with the warning that such contact could result in a further stroke and potentially his death. (*Id.*) Afterwards, Glock Sr. broke off all familial contact with his wife, his three children, and his grandchildren. (*Id.* ¶ 12.)

Also following his stroke, Glock Sr. attempted to transfer to the VALUE Trust, among other assets Ms. Glock contends were marital property, millions of

Euros in cash, various real property, and valuable patent and license rights. (*Id.* ¶¶ 13-14.) Specifically,

- by notarial act dated November 24, 2008, he transferred 172,000,000 Euros to the VALUE Trust,³ which accepted his gift and received the funds on January 13, 2009;
- by notarial act dated March 15, 2009, he transferred to the VALUE Trust all real properties acquired during the marriage; and
- by notarial act of March 19, 2009, he transferred all of his patents and the associated licensing rights (which alone generated an average yearly net income of over 46,000,000 Euros) to the VALUE Trust.

(*Id.*)

Glock Sr. was then, as now, exercising complete control over the Glock Group. He affirmed this control in a patriarchal and stern January 31, 2010 letter to his family – one that he required them to sign and acknowledge. (A true and correct copy of that letter is attached hereto at Exhibit 3.) In the self-serving letter, Glock Sr. refers to his “unconditional” wishes for the Glock Group, his decision to “restructure” the Group, and his refusal to allow “any interference in my life long business endeavors.” (Ex. 3.) He closes by referring to the respect and

³ Paragraph 14 of the Glock Declaration inadvertently notes that it was the Glock Trust, rather than the VALUE Trust.

“compliance” he expects to be his due as the family patriarch. (*Id.*) Notably, the letter also contains promises of the continued involvement of two of his children on a company supervisory board, as well as of “guaranteed” payments to Glock Trust beneficiaries for a lifetime.

Glock Sr. broke those latter promises. He never placed his children on the supervisory board, (H. Glock Decl. ¶ 12), and little over a month before his precipitous divorce from Ms. Glock, Glock Sr. completed his revisions of the governance documents for the family *Stiftungen* to terminate Ms. Glock’s 14% financial interest and cut off support for her and the couple’s adult children. (*Id.* ¶ 15.) As part of his unilateral revisions, he cloaked everything to do with the trusts (new beneficiaries, transfers, affiliates) in complete secrecy. (*Id.*) Finally, in mid-2011, the then 82-year old Glock filed for divorce after almost 50 years of marriage – so that he could marry the then 31-year old Tschikof. He immediately dismissed Ms. Glock from the company that she had helped found and build and in which she had continued over the years to be actively engaged. (*Id.* ¶ 16.)

E. The Course of The Austrian Court Proceedings.

The first phase⁴ of the Glocks’ divorce was final as of June 27, 2011, by

⁴ In Austria, divorce proceedings occur in two distinct phases, the first of which is the divorce itself, followed by actions related to the division of property and spousal support. (*See Amhof Decl. ¶¶ 5, 16.*)

decree of the *Bezirksgericht Döbling*. (Declaration of Dr. Amhof & Dr. Damian GmbH (“Amhof Decl.”) ¶ 2; a true and correct copy of the Amhof Declaration is attached to Ms. Glock’s Application at Exhibit 3.) That proceeding determined that Glock Sr. was solely at fault for the dissolution of the marriage. (*Id.*) Following this determination, there are three sets of pending proceedings in Austria for which the discovery requested from the U.S. Glock Entities is relevant.

First, there is the proceeding to determine Glock Sr.’s *Einkommen*, or spousal maintenance and support commensurate with the couple’s standard of living during the marriage. (*Id.* ¶¶ 6-7.) Because of the determination of Glock Sr.’s sole fault, under *Oberstgerichtshof* (Austria’s highest court, or “OGH”) precedent, Glock should be obligated to pay as spousal support and maintenance between 33% and 40% of family income, accounting for Ms. Glock’s own net income. (*Id.* ¶ 7.)⁵ Under current OGH precedent, there is no limit to the amount of maintenance a spouse can receive, i.e., no “luxury limit,” even where the

⁵ This Court need not resolve any issues of Austrian law or, indeed, any of the numerous issues in dispute in the Austrian proceedings. *See Consorcio Ecuatoriano v. JAS Forwarding (USA)*, 685 F.3d 987, 993 (11th Cir. 2012) (instant appeal under Section 1782 does not concern “whether any other underlying dispute among the parties and related persons has merit”). The claims explain how a party will use the requested documents, but the merits of the parties’ positions in the underlying dispute are not salient to a Section 1782 inquiry.

marital standard of living was high. (*Id.*) Because the lower courts did not apply this standard, and because the Austrian courts have not had a divorce with assets on the scale of the Glock family's, Ms. Glock has called upon the *Oberstgerichtshof* to clarify that the same rule applies to her divorce. (*Id.*)

Second, there is the proceeding to divide the Glocks' marital property, initiated on July 12, 2011, before the *Bezirksgericht Gänserndorf*. (*Id.* ¶ 3-4.) After divorce of living spouses, the Austrian Marriage Law (*Ehegesetz* or "EheG") provides for the identification and division of all marital assets, excluding assets acquired only by one spouse and subject to certain statutory exclusions. (*Id.* ¶ 3.)

In particular, the Marriage Law excludes from the distribution assets:

1. Which each spouse brought into the marriage, inherited by a death or received as a gift from a third party;
2. Used personally by a spouse or are a necessity to exercise ones profession;
3. Belonging to a business;
4. Which are shares of a business, unless it deals with mere value systems.

(*Id.* ¶ 3.)

To avoid a spouse's financial disadvantage based on the above, a further provision of the Austrian civil code deals with personal use of company assets or conversion of personal assets into company assets. (*Id.* ¶ 5.) In such an instance, Section 91 of the Marriage Act provides for equitable compensation to the benefit of the other spouse:

(1) Has a spouse otherwise not expressed or implied mutual consent to the other prior to two years before filing for divorce, annulment of marriage or the marriage been declared invalid or if the marital relationship was removed prior to the two years, any asset or savings reduction due to contradictory life style spending by a spouse during their marital relationship will need to be taken into account and the assets separated accordingly.

(2) If marital assets or marital savings were placed in a business, of which one spouse or both spouses are entitled to a share or if the assets were used for another purpose within the business, then the value of the assets allocated to the business need to be included in the asset separation. However one has to take into consideration to which extent each spouse benefited from the asset contribution or appropriation of benefits and to which extent the contributed and spent marital savings originate from company profits. The company stock must not be jeopardized by the asset allocation.

(3) Is there a physical item that has served both spouses during their matrimonial relationship belonging to a business, to which one or both spouses are entitled to a share and which after the divorce, annulment or marital dissolution remains with one spouse, the court shall take this into account and appropriately assess the value to benefit the other spouse during the asset separation.

(*Id.* ¶ 5.) Ms. Glock intends to prove that Section 91 is implicated, in that Glock Sr. did, indeed, use the complicated structure of the Glock Group, including his trusts, to hide and reduce marital assets.

Importantly, the two-year time limitation of Section 91(2) with respect to a trustee will start *only when and if the trustee has relinquished all rights in the trust.*

(*Id.* ¶ 5.) If the trustee retains any rights to change the trust, as Glock Sr. did with respect to the Glock Trust and the VALUE Trust, the time period will not run.

(*Id.*) Because Glock Sr. retained the right to change both, all contributions of marital assets to them should be included in the divorce distribution proceedings, where they will be valued for purposes of spousal payment. (*Id.*)

Third, in the wake of Glock Sr.'s breakup of the Glock family, there are proceedings related to his manipulation of the family trust structure, and in particular, to Glock Sr.'s changes to the *Stiftungen* documents and resulting wrongful alienation of Ms. Glock's shares and rights of beneficiaries to support. (*Id.* ¶ 8.)

F. Glock Sr.'s Transfer of Marital Assets.

From the outflow of assets into the VALUE Trust in 2010, it appears that Glock Sr., anticipating divorce, began shifting and secreting personal and corporate assets, realigning corporate relationships, and divining ways to reduce or eliminate Ms. Glock's share in the family's wealth.

Ms. Glock also believes Glock Sr. has channeled assets worth billions of dollars beyond Austria's borders. (H. Glock Decl. ¶ 13.) Because of his efforts at concealment, clues have to date surfaced or been uncovered only sporadically. (*Id.* ¶ 17.) For example, Glock, Sr. had his financial advisor establish a trust in Bermuda in order to receive \$ 51 million. (*Id.*) Ms. Glock is also aware of transfers to accounts in Switzerland, Liechtenstein, and/or Luxemburg. (*Id.*)

Meanwhile, with Glock Sr. having orchestrated the removal of almost all of Ms. Glock's ownership, and having shut her out of the company that she helped found and grow and remained active in for decades, he has installed his new wife to the Glock supervisory board (*Aufsichtsrat*). (H. Glock Decl. ¶ 18.) This position is one that, despite the promises in his letter, even his adult children, after twenty-seven years of working in the business, did not have. (*Id.* ¶¶ 8, 12, 18.) It is not apparent what, if any, business experience Tschikof-Glock had prior to this elevation. Glock Sr. has also installed Tschikof-Glock as director of the opulent Glock Horse Performance Center in Treffen, Carinthia. *See* Glock Horse Performance Center Austria, http://www.ghpc.at/en/at/about-us/#jfmulticontent_c3-1.

G. The U.S. Glock Entities and the Opaque Glock Group.

The corporate structure of Glock GmbH, its affiliates and subsidiaries, is a highly complex tangle of paper ownership and relations, with the majority of its estimated revenue coming from Glock, Inc., one of the U.S. Glock Entities. (*See* H. Glock Decl. Ex. A.) On information and belief, of the Georgia entities, Glock Professional, Inc. is a corporation formed to conduct firearms training, and Consultinvest, Inc. is a corporation formed to own real estate and equipment related to Glock, Inc. But the picture becomes murkier from there. We know that, including the 14% of Glock GmbH shares Glock Sr. induced Ms. Glock to transfer

away, the Glock Trusts the 99% owner of Glock GmbH.⁷ That company, in turn, owns 50% of Glock, Inc. (*Id.* ¶ 5.) But another entity, “Rochus GmbH,” which has no obvious operating role or business-related purpose, is believed to own the other 50% of Glock, Inc. (*See id.* Ex. A.)

And Rochus is only one example. The Glock Group is replete with trusts and shell or holding companies, which collectively permit Glock Sr. to manipulate various inter-company transactions and to obscure ownership and accountability. In 2000, he was reportedly using two different shell companies, Reofin International in Panama and Unipatent Holding in Luxemborg, to control 50% of Glock, Inc. *See* Brian Grow, Jack Ewing, and Paul M. Barrett, *Glock’s Secret Path to Profits*, *Businessweek*, Sept. 10, 2009.⁸ “Half the wealth from American gun sales ended up flowing to Glock’s putative co-owner, Unipatent, which, in fact, Glock [Sr.] controlled via the paper company in Panama.” PAUL M. BARRETT, *GLOCK: THE RISE OF AMERICA’S GUN* 170 (Crown Publishers 2012). “In other words, [Glock’s then-advisor] helped Gaston Glock create an essentially fictional co-owner, making it more difficult to trace company earnings generated in the

⁷ Ms. Glock maintains 1% of the Austrian corporate entity, (H. Glock Decl. ¶ 6), and, as discussed herein, has asserted claims in a pending Austrian court proceeding for return of the shares.

⁸ <http://tinyurl.com/p32rr3>. A true and correct copy of that article is also attached hereto as Exhibit 4.

United States.” *Id.* 218-219. Observing similar manipulation, PricewaterhouseCoopers auditors determined in 2002 that shell companies were being used to bill Glock companies for “services” that “had no economic substance and were motivated by tax reasons.” *Grow et al., supra.* “One effect of the various arms of Glock owning and billing one another was to decrease the profits that had to be reported in Austria and the United States, which are relatively high-tax jurisdictions.” Barrett, *supra*, 170-171. The import of this structure is that Glock Sr., perched atop and engineering the complexity, has an enormous ability to manipulate profits and losses and to direct the movement of money through disparate entities and jurisdictions.

In the past, too, Glock Sr. has feigned ignorance about ownership of Glock, Inc. – and by some accounts, misrepresented it. In lawsuits in the 1990s, Glock Sr. was “repeatedly” asked about the Glock Group’s “convoluted ownership structure” and on various occasions testified “that he did not own-or did not know who owned-Unipatent, the shell that theoretically controlled fully half of Glock, Inc.” Barrett, *supra*, 171. In Luxembourg proceedings involving one of Glock’s former financial advisors, the chief prosecutor observed of Glock Sr.’s testimony concerning Unipatent, “He’s not telling the truth [in the U.S.], and he’s

presenting a false reality.” Brian Grow and Paul Barrett, *Two Tales of Glock Ownership*, BloombergBusinessweek Magazine (September 09, 2009).⁹

To prove her claims in the Austrian proceedings, Ms. Glock “depends on comprehensive information about Glock Sr.’s income and assets as well as his trusts...and his other assets.” (*Amhof Decl.* ¶ 10). Under Austrian procedure, it is incumbent upon Ms. Glock herself to assemble this evidence. (*See Amhof Decl.* ¶¶ 9-10.) Glock Sr., of course, has stymied any disclosure of his income and potential marital assets, impeding the ability of Ms. Glock and the Austrian courts to adjudicate claims. (*H. Glock Decl.* ¶ 19; *Amhof Decl.* ¶ 10 (“...Glock Sr. until this day refuses to give any information, in order to obstruct the evidence required of Mrs. Glock and to undermine her claims.”))

The result is that Ms. Glock lacks information necessary to ascertain and derive the relevant income of Glock Sr. from the United States and to identify the assets subject to division that may exist or have been transferred here (*H. Glock Decl.* ¶ 19). Thus, Ms. Glock must turn to this Court, which, in any event, alone has jurisdiction over the U.S. Glock Entities and the ability to authorize the production of documents necessary to further Ms. Glock’s claims.

⁹ <http://tinyurl.com/bhw3hcb>. A true and correct copy of that article is also attached hereto as Exhibit 5.

II. MEMORANDUM OF LAW

A. Ms. Glock's Application Satisfies the Requirements of 28 U.S.C. § 1782.

Discovery for use in a foreign tribunal is authorized pursuant to 28 U.S.C.

§ 1782(a), which provides, in part:

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. 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. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. 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.

28 U.S.C. § 1782(a). Distilled and as relevant here, Section 1782 requires that: (1) the request must be made by an interested person; (2) the request must seek testimonial, documentary, or other tangible evidence; (3) the evidence must be

for use in a proceeding in a foreign tribunal; and (4) the person or corporation from whom discovery is sought must reside or be found in the district of the court in which the application is filed. *In re Clerici*, 481 F.3d 1324, 1331-32 (11th Cir. 2007); *see also Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246-47 (2004). If those elements are met (as they are here), the district court has the power and jurisdiction to order the discovery requested or to tailor the requested discovery to avoid future disputes. *Clerici*, 481 F.3d at 1331-32.

1. *Ms. Glock is an "Interested Person" Under the Statute.*

Ms. Glock is an interested person within the meaning of 28 U.S.C. § 1782(a). An interested person under Section 1782 has been held to include any party to the foreign litigation. *Intel*, 542 U.S. at 256 (holding that "litigants are included among, and may be the most common of, the 'interested person[s]' who may invoke § 1782" but that the scope of interested persons is even broader than just litigants in foreign proceedings).

Ms. Glock is a party to multiple separate legal proceedings in Austria, which, directly and indirectly, address Ms. Glock and Glock Sr.'s respective interests in the Glock empire, which must be determined as a result of their divorce. *See generally London v. Does*, 279 Fed. Appx. 513, 514-15 (9th Cir. 2008) (approving district court's grant of application for § 1782 discovery to wife for use in foreign divorce proceeding to establish adultery). The divorce-related

proceedings to divide marital property and calculate Glock Sr.'s *Einkommen* must consider the financial assets of Glock Sr., his sources of income, and the current disposition of assets wrongfully diverted from the marital estate.

As an interested person as contemplated by Section 1782(a), Ms. Glock has satisfied the first element in establishing this Court's jurisdiction to grant her Application and order the discovery requested.

2. *Ms. Glock's Application Requests Documentary Evidence.*

Ms. Glock requests an Order compelling the production of documents in the possession, custody and control of the U.S. Glock Entities. Section 1782(a) expressly permits a party to seek evidence, whether through testimony or the production of a documents or things. Thus, Ms. Glock has also satisfied the second prerequisite of obtaining Section 1782 assistance.

3. *The U.S. Glock Entities Reside or are Found in the Northern District of Georgia.*

The U.S. Glock Entities are each registered as Georgia domestic for-profit corporations, and are found in this District, conducting business from their principal office at 6000 Highlands Parkway Southeast, Smyrna Georgia, 30082. Accordingly, the U.S. Glock Entities reside or are found within the District in which Ms. Glock seeks evidence, as required by 28 U.S.C. § 1782(a).

4. *The Evidence Is For Use in a Foreign Tribunal.*

Ms. Glock seeks evidence for use by her Austrian counsel in proceedings pending before the Austrian courts against her ex-husband, Glock Sr. The family and civil law courts of Austria qualify, undoubtedly, as foreign tribunals under Section 1782. Accordingly, this final prerequisite to assistance under 28 U.S.C. § 1782 has also been satisfied.

B. The Court Should Exercise its Jurisdiction and Grant the Instant Application Upon Weighing the *Intel* Factors.

Once jurisdiction has been satisfied under the statutory requirements of Section 1782(a), the Court should weigh the following factors, outlined in the Supreme Court's *Intel* decision, in considering whether to grant the Application: "(1) whether the 'person from whom discovery is sought is a participant' in the foreign case; (2) the nature and character of the foreign proceeding, and whether the foreign court is receptive to judicial assistance from the United States; (3) whether the discovery request is an attempt to avoid foreign evidence-gathering restrictions; and (4) whether the discovery request is 'unduly intrusive or burdensome.'" *London*, 279 Fed. Appx. at 515 (quoting *Intel*, 542 U.S. at 264-66). As discussed below, these factors weigh in favor of granting the Application and allowing the discovery to issue.

1. *The U.S. Glock Entities Are Not Participants in the Foreign Proceedings.*

Intel requires the Court to consider whether the person from whom discovery is sought is a participant in the foreign action. 542 U.S. at 264. When the person from whom discovery is sought is a party to the foreign proceedings, “the need for § 1782(a) aid is generally not as apparent as it ordinarily is when evidence is sought from a non-participant in the matter arising abroad” because the foreign tribunal would, presumably, have the power to command the production of evidence from parties appearing before it. *Id.*; *but see Clerici*, 481 F.3d at 1334-35 (even where *Clerici* was a party to the foreign proceedings, because the foreign court could not enforce its order against *Clerici* directly, this factor did not weigh against Section 1782 assistance).

Neither of the U.S. Glock Entities are parties to the proceedings pending in Austria. While Ms. Glock believes that Glock Sr. may have secreted personal, marital, and/or other corporate assets to the U.S. Glock Entities, those corporations are separate legal entities from Glock Sr., and the Austrian courts would presumably have no power over them.

A similar situation arose in *Lopes v. Lopes*, 180 Fed. Appx. 874, 877 (11th Cir. 2006). In *Lopes*, a wife in a pending Brazilian divorce proceeding sought Section 1782(a) assistance to discover information pertaining to her husband’s foreign assets from banks in south Florida. *Id.* The husband contended that the

first *Intel* factor weighed against granting the relief requested because he was a participant in the divorce proceeding and the Brazilian court could therefore compel him to produce his own bank records. *Id.* The Eleventh Circuit soundly rejected this contention, concluding, as did the district court, that “the entities from whom the discovery is sought are the banks, not the husband.” *Id.*

The U.S. Glock Entities have information relevant to the proceedings pending in Austria, but they are not parties to those proceedings. Ms. Glock seeks information directly from the U.S. Glock Entities, and the Austrian courts have no power over them. *In re Roz Trading, Ltd.*, 469 F. Supp. 2d 1221, 1228-29 (N.D. Ga. 2006). Thus, the first *Intel* factor weighs in favor of granting her Application.

2. *The Austrian Courts, Laws, and Rules Are Not Hostile to the Relief Ms. Glock Seeks.*

Second, *Intel* instructs that “a court presented with a § 1782(a) request may take into account the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542 U.S. at 264 (citing 1964 S. Rep. No. 1580, at 7.); *see also In re Application of Chevron Corp.*, No. 11-24599, 2012 U.S. Dist. LEXIS 123315, at *35 (S.D. Fla. June 12, 2012) (*citing Intel* for proposition that discovery should issue even though the

European Commission did not “need or want” federal court assistance from the United States).

The ongoing proceedings in Austria are adversarial and the courts where the proceedings were initiated are “first-instance decision maker[s].” *See In re Winning (HK) Shipping Co.*, No. 09-22659, 2010 U.S. Dist. LEXIS 54290, at *30 (S.D. Fla. Apr. 30, 2010) (finding second factor weighed in favor of granting application where the tribunal was a first-level decision maker, rendering decisions reviewable by an appellate court, and where there was no evidence that the foreign government would be unreceptive to the court’s judicial assistance).

Here, the sought-after information is necessary, *inter alia*, to establish the basis for calculation of Ms. Glock’s statutory share of Glock Sr.’s *Einkommen*, as well as to identify, catalogue, and divide marital assets. *See, e.g., London*, 279 Fed. Appx. at 515 (holding that second *Intel* factor was met where the evidence sought was critical to establish adultery, secure a divorce, and defend against allegations of fabrication).

Moreover, the Austrian courts and laws would not be unreceptive to the taking or consideration of evidence obtained here in the United States. Indeed, this Court has previously granted a Section 1782(a) application for use in an

Austrian arbitral forum. See *In re Roz Trading, Ltd., supra*. This factor therefore also weighs in favor of granting the instant Application.

3. *The Application is Not Filed to Circumvent Any Austrian Law, Rule, or Ruling.*

Ms. Glock has not filed this Application for an improper purpose or to circumvent any law, rule, or ruling by any Austrian court pertaining to the evidence at issue. Rather, Ms. Glock seeks information that is directly relevant to the protection of her financial and family law interests, which are the subject of multiple legal proceedings in Austria. Without Section 1782 relief, Ms. Glock will be have no avenue to obtain information pertaining to United States' aspects of Glock Sr.'s income and assets, and will be unable to trace the diversion of any income and assets from Glock GmbH, the *Stiftungen*, or Glock Sr. himself to the U.S. Glock Entities. Given that there is no legal impediment in Austria that would obstruct Ms. Glock's ability to maintain the instant Application (and certainly, no rule denying her access to such information), Ms. Glock's Application is due to be granted.

4. *The Application and Discovery Requests Are Narrowly Tailored and Are Subject to the Court's Review.*

Section 1782 provides that the district court should grant discovery under the Federal Rules of Civil Procedure, which in turn permit parties to "obtain discovery regarding any nonprivileged matter that is relevant to any party's

claim or defense – including the existence, description, nature, custody, condition and location of any documents.” *Consortio Ecuatoriano v. JAS Forwarding (USA)*, 685 F.3d 987, 999 (11th Cir. 2012). Although this broad mandate would authorize discovery beyond what Ms. Glock is presently seeking, Ms. Glock has tailored the proposed document requests to the subject matter of the corporate relationships among the various Glock entities,¹⁰ financial transfers between those entities and/or Glock Sr., and Ms. Glock’s potential financial interest in Glock Sr.’s United States-based marital assets. (See Application, Appendix A to Proposed Order.)

Further, to establish what rights to income Glock Sr. has, and whether or not he has exercised those rights, it is necessary to understand how revenue can flow and has flowed through the Glock Group and its various corporate affiliates and trusts back to him. Ms. Glock will need to complete the *Einkommen* figure herself, which would be a herculean task even if Glock Sr. had not been obstructing her progress. Also in dispute are the classification and extent of marital assets, which disputes cannot be resolved without complete information about Glock Sr.’s post-2008 transactions within the Glock Group. If marital assets

¹⁰ The entities listed as “Glock Affiliates” in Definition 3 of the proposed requests are those listed on the Glock Group organizational chart, (H. Glock Decl. Ex. A), or entities affiliated with them.

were transferred into the Glock Group, including its trusts and holding companies, they must be counted back into the marital estate. Identifying which transfers occurred, and when, will depend on a detailed analysis of the particulars of many transactions. Further, because Ms. Glock has claimed that assets in the illusory trusts are marital property, it will be necessary to value them. Finally, the governance of the U.S. Glock Entities, necessary to establish the manner and means by which Glock Sr. exercises complete control over them and the overall complicated structure of the Glock Group, is highly relevant. The requests, then, not only relevant to her claims, but tailored to core aspects of what Ms. Glock must prove in each of three referenced sets of Austrian judicial proceedings.

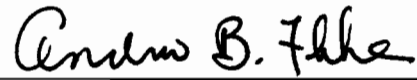
III. RELIEF REQUESTED

Because this Court has jurisdiction to grant Ms. Glock's Application and because the *Intel* factors weigh in favor of affording her the relief she seeks, Ms. Glock respectfully requests that the instant Application be granted, and that the Court enter an Order (1) directing the U.S. Glock Entities to produce the documents requested in Appendix A of the Proposed Order within 30 days of service of the Order upon them, and (2) for such other and further relief as the Court deems just and proper.

DATED: March 18, 2013.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies, pursuant to L.R. 5.1 that the foregoing Memorandum of Law was prepared in accordance with L.R. 5.1 using Book Antiqua, 13 point.


Andrew B. Flake
Andrew B. Flake