

Learning From A Typical Section 1782 Discovery Case

By **Louis Fogel and Alexander Mazza** (February 9, 2026)

Proceedings under Title 28 of the U.S. Code, Section 1782, give foreign litigants access to evidence they may have never obtained through foreign discovery mechanisms.

This article provides an introduction to Section 1782 in practice, including the factors a petitioner will need to establish, considerations prior to filing and an illustration of Section 1782 proceedings in action from the recent U.S. District Court for the Northern District of California case, *In re: Xiaomi Corp.*



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What is Section 1782?

Section 1782 provides a method for obtaining evidence for use in litigation outside the U.S., provided the target is within the jurisdiction of a U.S. district court.

Section 1782 is a powerful discovery tool because it may grant a petitioner access to broad discovery within the U.S. This evidence could include testimony, statements, production of documents or other things.[1]



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Where is a petition filed?

A Section 1782 application must be filed in a U.S. district court that has jurisdiction over the discovery target. Significant due diligence may be required to understand which jurisdiction is appropriate.

As a Section 1782 application must be filed with a U.S. district court, there are several factors a petitioner should consider before choosing a jurisdiction.

The most important factor is whether the target is located within the jurisdiction in question. Due diligence is required early in the process, as it will likely be a costly endeavor to file a petition only to find out later that the court does not have jurisdiction over the target.

A petitioner may find there could be several U.S. district courts that have jurisdiction over the target. In that case, further due diligence is required to determine which is most appropriate for the case at hand. Certain jurisdictions appear to be more favorable toward Section 1782 applications; however, district court judges and magistrate judges even within the same jurisdiction may have different views on Section 1782 and could use their discretion to allow or deny these applications.

There are many strategies that could be employed, such as a party not consenting to magistrate judge jurisdiction, if due diligence has shown that the magistrate assigned to the case does not normally grant such petitions. As such, due diligence on the front end is critical to ensuring that an application has the highest likelihood of success prior to filing.

Should Section 1782 applications be filed ex parte?

Applicants generally file Section 1782 petitions ex parte.

Filing Section 1782 applications ex parte causes little risk of prejudice to the target because the court will order the petitioner to serve the application shortly after filing.

Also, when a court grants a Section 1782 application, it is typically only authorizing that discovery be taken from the target. The recipient of the discovery request will be given notice of the request and will have the opportunity to take action, such as through a motion to quash.

What factors should an applicant address?

A petitioner will need to address several statutory and discretionary factors.

In its application, a petitioner must establish three statutory factors from Section 1782 and address four discretionary factors, known as the Intel factors, derived from the landmark 2004 case in the U.S. Supreme Court, *Intel Corp. v. Advanced Micro Devices Inc.*[2]

Statutory Factor 1

Any foreign litigant filing a Section 1782 application must first demonstrate whether the person from whom discovery is sought "resides or is found" in the district where the court sits.

This means that a petitioner must identify, and find evidence to support, that the entity from whom discovery is sought is located in the jurisdiction. Without this evidence, the petitioner would likely need to withdraw its application and refile in the correct jurisdiction or else have its petition denied for this reason.

Statutory Factor 2

The applicant must demonstrate that the discovery sought is "for use in a proceeding in a foreign or international tribunal." The court in *Intel* added color to this statutory factor by clarifying that it is also acceptable that the foreign litigation must be "within reasonable contemplation."

Factor 2 represents one of the greatest strengths of Section 1782. Under this factor, litigation need not be imminent or ongoing. This opens Section 1782 for use as a tool for preparing a case against an entity in non-U.S. litigation.

Statutory Factor 3

Third, the party filing the application must demonstrate that they are an "interested person" in the foreign proceeding. There is no requirement that the petitioner must be a party to the proceeding; however, in practice, the petitioner is a party in many cases. Examples of other interested persons could be foreign or international officials and any other individuals with a reasonable interest in obtaining the evidence.[3]

If an applicant meets the statutory requirements, the district court will then weigh at least the following four discretionary factors below.

Intel Factor 1

To meet the Intel decision's requirements, "[t]he person from whom discovery is sought is a participant in the foreign proceeding."

The court will determine whether the discovery target is a participant in the proceeding. If the target is a participant, this factor will weigh against the petitioner because the foreign tribunal has jurisdiction over those appearing before it. If this evidence was necessary for the foreign litigation, the tribunal could theoretically compel the party in question to produce the desired evidence.

Intel Factor 2

The second factor concerns "[t]he 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."

To satisfy this factor, petitioners usually develop evidence to show that the foreign court is receptive to U.S. federal court judicial assistance. This is an area ripe for the use of supporting evidence. Petitioners may use affidavits from foreign lawyers attesting that a given jurisdiction is receptive to U.S. judicial assistance, prior Section 1782 petitions in the U.S. and even evidence from the foreign tribunal itself.

Intel Factor 3

The third factor examines "[w]hether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering limits or other policies of a foreign country or the United States."

In practice, courts will look for evidence on the record that the petitioner is actually circumventing foreign discovery restrictions. In many cases, without evidence to the contrary, the court will weigh this factor in favor of the petitioner.

Intel Factor 4

Requests for evidence that are "unduly intrusive or burdensome ... may be rejected or trimmed." This is a fact-specific analysis. A petitioner should be careful to narrowly tailor their Section 1782 discovery request such that the limits are defensible and that it does not appear to overreach.[4]

Whether the district court finds in favor of petitioner under these factors is based on the unique facts of the case. It is important to note that these factors do not create an exhaustive list and district courts have the freedom to consider other factors as well.[5]

The Analysis in Action: Xiaomi's Section 1782 Application

In re: Xiaomi Corp. is representative of a typical Section 1782 analysis in that the court accepted the application ex parte, ordered the petitioner to serve the application on the other party, set a timeline for the parties to choose whether to consent to magistrate judge jurisdiction, and, ultimately, where the court analysed each statutory and Intel factor.

In June 2025, Xiaomi Corp. and related Xiamoi companies[6] filed an ex parte Section 1782 action against ASUS Computer International, also known as ASUS North America, in the

Northern District of California.[7]

In December 2024, ASUS Technology Licensing Inc. had sued Xiaomi in District Court Munich I in Munich, Germany, for patent infringement.[8] ASUS Licensing alleged Xiaomi infringed its telecommunications patents.[9] In response, Xiaomi raised several defenses and filed a nullity action in German Federal Patent Court in April 2025.[10]

In the Section 1782 proceeding in California, Xiaomi then sought to obtain "documents relevant to its defenses as well as nullity and damages actions and requiring ASUS North America to make itself available for deposition." [11] In June 2025, Xiaomi was ordered to serve ASUS North America with notice of the Section 1782 action.[12]

In the same order, the court also set a July 7, 2025, deadline for the parties to decide whether to consent to magistrate judge jurisdiction.[13] ASUS North America declined magistrate judge jurisdiction and, as a result, Chief U.S. District Judge Richard Seeborg became the presiding judge.[14]

On Sept. 29, 2025, the court ultimately granted Xiaomi's application. A summary of the court's analysis can be found in the next section.

Analysis of Statutory and Intel Factors

The court analyzed all statutory and Intel factors and found in favor of Xiaomi. The court determined the following.

Statutory Factor 1

ASUS North America was found within the Northern District of California for Section 1782 purposes, since its U.S. headquarters are located in Fremont, California.[15]

Statutory Factor 2

Xiaomi sought to use the requested discovery in a foreign proceeding.[16]

Statutory Factor 3

Xiaomi was an interested party because it was the defendant in the German infringement action and the plaintiff in the German nullity action.[17]

Next, the court dedicated most of its analysis to the four Intel factors.

Intel Factor 1

The court found the first factor did not weigh for or against Xiaomi, even though it might have been possible for it to obtain this discovery from ASUS Licensing rather than ASUS North America.[18] The court noted that "German discovery procedures do not allow for even remotely comparable discovery as in the United States." [19]

Intel Factor 2

The court found in favor of Xiaomi because there was no "evidence to show that the Munich Court would be unreceptive" and that the German judge could "disregard evidence that would waste the court's time" if necessary.[20]

The court also considered the "character of the proceedings underway abroad" and stated "the evidence sought is relevant to Xiaomi's defenses and nullity and damages actions." [21]

Intel Factor 3

The court determined that this factor did not weigh against granting the application because neither party had "identified a German policy which would bar the discovery sought." [22]

Intel Factor 4

The court found the request was not overly burdensome. The court reasoned that Xiaomi's requests were broad but determined that "Xiaomi has demonstrated that the requested discovery is relevant to Xiaomi's defenses." [23] The court noted that "authorization under § 1782 does not strip [ASUS North America] of the opportunity to lodge objections and seek or stipulate to a protective order." [24]

Conclusion

This case demonstrates a typical analysis of a Section 1782 application and also provides jurisdiction-specific guidance from the perspective of the chief judge of the Northern District of California as to what the court considers in its analysis of the statutory and Intel factors.

Final Remarks

Section 1782 proceedings give foreign litigants access to evidence that they may have never obtained through foreign discovery mechanisms. But preparation and planning are central to a successful petition.

An applicant should perform extensive due diligence before deciding to pursue this discovery mechanism and thoroughly address each factor in its petition.

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[1] 28 U.S. Code § 1782.

[2] See *Intel Corp. v. Advanced Micro Devices Inc.*, 542 U.S. 241 (2004).

[3] 28 U.S.C. § 1782; *Intel Corp.* at 246.

[4] *Intel Corp.*, 542 U.S. at 264-65.

[5] *Id.*; see also *In re: Gliner*, 133 F.4th 927, 933 (9th Cir. 2025) ("[D]istrict courts are guided by the four non-exhaustive factors that the Supreme Court articulated in *Intel*." (citation omitted)).

[6] Xiaomi Corporation, Xiaomi Inc., Beijing Xiaomi Mobile Software Co. Ltd., Xiaomi Communications Co. Ltd., Xiaomi Technology Netherlands B.V., and Xiaomi Technology Germany GmbH.

[7] In re: Xiaomi Corp., No. 25-mc-80143-RS, 2025 LX 483005, *1-2 (N.D. Cal. Sep. 29, 2025).

[8] Id. at 2.

[9] Id.

[10] Id. at 2-3.

[11] Id. at *3.

[12] In re: Xiaomi Corp., 2025 U.S. Dist. LEXIS 111307, *1-2 (N.D. Cal. June 9, 2025).

[13] Id.

[14] Consent or Declination to Magistrate Judge Jurisdiction, In re: Xiaomi Corp., 3:25-mc-80143 (2025) (No. 13).

[15] Xiaomi Corp., 2025 LX 483005, at *5.

[16] Id.

[17] Id.

[18] Id. at *6.

[19] Id. (quoting Heraeus Kulzer GmbH v. Biomet, Inc., 633 F.3d 591, 597 (7th Cir. 2011) (internal citations omitted)).

[20] Id. at *7; see also Heraeus Kulzer, 633 F.3d at 597.

[21] Id. at *3, *7.

[22] Id. at *7-8.

[23] Id. at *9.

[24] Xiaomi Corp., 2025 LX 483005, at *10.