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FREE GUIDE

The Complete Guide to 28 U.S.C. § 1782 Discovery

How parties in foreign litigation, judgment creditors, and international lawyers obtain U.S. evidence for a case abroad.

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Section 1782 is one of the most powerful — and underused — tools in cross-border litigation. It lets a party in a foreign case ask a U.S. federal court to compel a person or company found in the United States to hand over evidence. This guide explains what the statute requires, where its limits are after the Supreme Court's 2022 decision, and how an application actually works.

> **This is general legal information, not legal advice.** Reading this guide does not create an attorney-client relationship. For an assessment of your matter, request a consultation at 28usc1782.com.

1. What § 1782 is — in one paragraph

28 U.S.C. § 1782 is a federal statute that allows a U.S. district court to order a person who "resides or is found" in that district to produce documents or give testimony "for use in a proceeding in a foreign or international tribunal." The request can be made by the foreign tribunal or, far more commonly, by any "interested person" — usually a party to the foreign case. In short: if the evidence you need for a case abroad sits with someone in the United States, § 1782 is the mechanism for reaching it.

2. Why it is so powerful

U.S. discovery is famously broad compared with most of the world. Many foreign systems give parties little ability to force an opponent — let alone a third party such as a bank or a tech platform — to turn over documents or sit for a deposition. Section 1782 lets a foreign litigant tap the full breadth of U.S. discovery, including:

- **Documents and records** held by U.S. companies and individuals;
- **Banking and financial records** that trace money, transfers, and hidden assets;
- **Electronic data** from U.S. technology, communications, and cloud providers;
- **Sworn deposition testimony** from witnesses located in the United States.

Because so many global companies and banks are "found" in the United States, § 1782 often reaches evidence that would be impossible to obtain through the courts where the dispute is actually being fought.

3. The three statutory requirements

(a) The target "resides or is found" in the district

The person or company you seek evidence from must reside or be found in the federal district where you file. For a company, courts look at where it is incorporated, headquartered, or systematically doing business.

(b) The discovery is "for use" in a foreign proceeding

The evidence must be for use in a proceeding before a foreign or international tribunal. You do not need a U.S. case — the point is that the case is abroad — and the proceeding must be pending or reasonably contemplated.

(c) The applicant is an "interested person"

The request must come from the tribunal or an "interested person." The Supreme Court reads this broadly: it plainly includes the parties to the foreign case, and can reach others with significant participation rights or a reasonable interest in the court's assistance.

> Meeting all three requirements makes you **eligible**. It does not guarantee relief — the court still applies the discretionary *Intel* factors.

4. The arbitration limit after ZF Automotive

This is the most important recent development. In *ZF Automotive US, Inc. v. Luxshare, Ltd.* (2022), the Supreme Court held that a "foreign or international tribunal" means a **governmental or intergovernmental** body — not a private one. In practice:

- **Foreign court litigation qualifies** — a lawsuit in a national court abroad is squarely within § 1782;
- **Foreign government and regulatory proceedings can qualify** — they are governmental tribunals;
- **Private international commercial arbitration generally does not qualify** — a private arbitral panel is not a governmental tribunal.

If your dispute is in private arbitration, a related or parallel foreign **court** proceeding (for example, to enforce or set aside an award) may still qualify. The analysis is fact-specific.

5. "Reasonably contemplated" proceedings

The foreign proceeding need not be filed yet. Courts accept § 1782 where the proceeding is "within reasonable contemplation" — a concrete, good-faith plan to bring the case, not merely a hope of suing someday. This lets parties gather the evidence they need to decide whether and how to proceed.

6. The four Intel discretionary factors

Even when the requirements are met, relief is **discretionary**. In *Intel Corp. v. Advanced Micro Devices, Inc.* (2004), the Court set out four factors courts weigh:

1. **Is the target a participant in the foreign proceeding?** Discovery from a non-party (a bank, vendor, or platform the foreign court cannot reach) weighs in favor of § 1782.
2. **Is the foreign tribunal receptive to U.S. assistance?** Most are; clear hostility weighs against relief.
3. **Is the request an attempt to circumvent foreign limits?** Good-faith requests are fine; end-runs around foreign restrictions are not.
4. **Is the request unduly intrusive or burdensome?** Narrow, targeted requests succeed; fishing expeditions get trimmed or denied.

7. The process, step by step

1. **Identify the target and the right court** — the district where the evidence-holder is found is where you file.
2. **Build the application package** — a petition, a supporting declaration (often from foreign counsel), a proposed order, and a proposed subpoena.
3. **File ex parte** — presented to the judge without the other side initially appearing, so it can be authorized quickly.
4. **Serve the subpoena** — once authorized, it operates much like a Rule 45 subpoena.
5. **Respond to any motion to quash** — where the Intel factors are litigated, so a well-built application pays off.
6. **Obtain and use the evidence** — documents are produced or the deposition proceeds, and the evidence goes into your foreign case.

8. Common ways people use § 1782

- **Foreign litigation support** — documents or testimony from a U.S. party or witness for a case abroad;
- **Asset tracing and judgment enforcement** — U.S. banking records to find assets and enforce a foreign judgment;
- **Fraud and asset recovery** — tracing funds moved through U.S. institutions;
- **Intellectual property disputes** — evidence from a U.S. company for a foreign IP case;
- **Family, inheritance, and matrimonial matters** — U.S. financial records relevant to a proceeding abroad.

9. What evidence you can obtain

Section 1782 reaches the same categories as ordinary U.S. discovery: documents and communications; financial and banking records; electronically stored information from U.S. providers; and sworn deposition testimony. Requests must be reasonably targeted, and privileges and the respondent's own legal obligations still apply.

10. Timeline and what to expect

Timelines vary by district and by whether anyone fights the subpoena. An uncontested ex parte application may be authorized in weeks; a contested motion to quash can add months. Because § 1782 is efficient at the front end, it is often faster and cheaper than letters rogatory or going through the foreign court. What helps most: a precisely identified target, a narrow request, a clear account of the foreign proceeding, and a declaration from foreign counsel.

Think § 1782 might fit your case?
Request a consultation at 28usc1782.com — we assess whether U.S. discovery is available and worth pursuing.

This guide provides general information about 28 U.S.C. § 1782 and does not constitute legal advice or create an attorney-client relationship. Section 1782 practice is fact-specific and varies by federal district and by the law of the foreign proceeding. Prior results do not guarantee a similar outcome. Get My Discovery is a d/b/a of the Law Office of Derek J. Soltis, attorney admitted in New York (Reg. #5175971). Attorney advertising.