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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN JOSE DIVISION**

6  
7 AOKI,

8 Plaintiff,

9 v.

10 ,

11 Defendant.

Case No. 22-mc-80249-BLF

**ORDER GRANTING *EX PARTE***  
**MOTION TO AUTHORIZE FOREIGN**  
**DISCOVERY**

[Re: ECF No. 1]

12  
13 On September 28, 2022, Applicant Yuki Aoki (“Aoki”) filed an *ex parte* application  
14 pursuant to 28 U.S.C. § 1782 (“Section 1782”) for an order granting leave to obtain discovery  
15 from Respondent Google LLC (“Google”) in connection with a potential legal action in Japan.  
16 ECF No. 1 (“App.”). For the reasons set forth below, the Court GRANTS Aoki’s application.

17 **I. BACKGROUND**

18 Aoki is a licensed medical doctor and sole proprietor doing business as Kagurazaka  
19 Gastroenterology and Endoscopy Clinic (“Clinic”), which is located in in Tokyo, Japan. ECF No.  
20 1-1 (“Aoki Decl.”) ¶¶ 1-3. The Clinic has a Google MyBusiness account, through which it can  
21 edit the profile that appears on the Google search engine and Google Maps. *Id.* ¶ 9. Aoki asserts  
22 that many patients find the Clinic using Google. *Id.* ¶ 8.

23 An anonymous individual using a Google account with the name “momo Otanii” published  
24 a review of the Clinic on Google, giving it a one-star rating. Aoki Decl. ¶ 11; *see* ECF 1-3 Exh.  
25 A. Aoki asserts that the review is false, has damaged the reputation of the Clinic, and has had a  
26 significant negative effect on business operations. Aoki Decl. ¶¶ 12-13.

27 Aoki seeks to file a civil lawsuit against the anonymous individual in Japan, under Articles  
28 709 and 710 of the Civil Code of Japan, which are the statutes for reputational torts. Aoki Decl.

1 ¶¶ 16-18; ECF No. 1-2 (“Kanda Decl.”) ¶¶ 6-10. But because Japanese law does not allow  
 2 lawsuits to be filed against anonymous persons, Aoki must first determine the identity of the  
 3 anonymous individual. Kanda Decl. ¶ 11. Aoki is therefore seeking to subpoena Google to learn  
 4 the identity of the anonymous individual. *Id.* ¶ 12; *see* ECF No. 1 at 11-15 (subpoena). The  
 5 subpoena asks for information associated with the identified account and any associated accounts,  
 6 including any names, addresses, email addresses, telephone numbers, credit card names (excluding  
 7 numbers), and identifying access log information, such as IP addresses. ECF No. 1 at 14-15.

8 Aoki filed an *ex parte* application asking this court to authorize the serving of this subpoena  
 9 on Respondent. App.

## 10 II. LEGAL STANDARD

11 Section 1782 provides, in relevant part:

12 The district court of the district in which a person resides or is found may order him  
 13 to give his testimony or statement or to produce a document or other thing for use  
 14 in a proceeding in a foreign or international tribunal, including criminal  
 15 investigations conducted before formal accusation. The order may be made ... upon  
 16 the application of any interested person and may direct that the testimony or  
 17 statement be given, or the document or other thing be produced, before a person  
 18 appointed by the court.... To the extent that the order does not prescribe otherwise,  
 19 the testimony or statement shall be taken, and the document or other thing  
 20 produced, in accordance with the Federal Rules of Civil Procedure.

21 28 U.S.C. § 1782(a). The statute’s purpose is “to provide federal-court assistance in the gathering  
 22 evidence for use in foreign tribunals.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241,  
 23 247 (2004). Section 1782 permits district courts to authorize discovery “where three general  
 24 requirements are satisfied: (1) the person from whom the discovery is sought ‘resides or is found’  
 25 in the district of the district court where the application is made; (2) the discovery is ‘for use in a  
 26 proceeding in a foreign or international tribunal’; and (3) the application is made by a foreign or  
 27 international tribunal or ‘any interested person.’” *Khrapunov v. Prosyankin*, 931 F.3d 922, 925  
 28 (9th Cir. 2019) (quoting § 1782(a)).

But “a district court is not required to grant a § 1782(a) discovery application simply  
 because it has the authority to do so.” *Intel*, 542 U.S. at 264. Instead, a district court has  
 discretion to authorize discovery under Section 1782. *Id.* at 260-61. In exercising this discretion,  
 a district court should consider the following four factors identified by the Supreme Court: (1)

1 whether the “person from whom discovery is sought is a participant in the foreign proceeding”; (2)  
 2 “the nature of the foreign tribunal, the character of the proceedings underway abroad, and the  
 3 receptivity of the foreign government or the court or agency abroad to U.S. federal court judicial  
 4 assistance”; (3) whether the request “conceals an attempt to circumvent foreign proof-gathering  
 5 restrictions or other policies of a foreign country or the United States”; and (4) whether the request  
 6 is “unduly intrusive or burdensome.” *Id.* at 264-65. In exercising its discretion, the district court  
 7 should consider the twin aims of the statute: “providing efficient assistance to participants in  
 8 international litigation and encouraging foreign countries by example to provide similar assistance  
 9 to our courts.” *Id.* at 252.

10 Section 1782 applications are generally considered on an *ex parte* basis because “parties  
 11 will be given adequate notice of any discovery taken pursuant to the request and will then have the  
 12 opportunity to move to quash the discovery or to participate in it.” *IPCom GMBH & Co. KG v.*  
 13 *Apple Inc.*, 61 F. Supp. 3d 919, 922 (N.D. Cal 2014) (quoting *In re Republic of Ecuador*, No. C-  
 14 10-80225 MISC CRB (EMC), 2010 WL 3702427, at \*2 (N.D. Cal. Sept. 15, 2010)).  
 15 “Consequently, orders granting § 1782 applications typically only provide that discovery is  
 16 ‘authorized,’ and thus the opposing party may still raise objections and exercise its due process  
 17 rights by challenging the discovery after it is issued via a motion to quash, which mitigates  
 18 concerns regarding any unfairness of granting the application *ex parte*.” *In re Varian Med. Sys.*  
 19 *Int’l AG*, No. 16-mc-80048-MEJ, 2016 WL 1161568, at \*2 (N.D. Cal. Mar. 24, 2016).

### 20 **III. DISCUSSION**

#### 21 **A. Statutory Requirements**

22 Aoki’s request satisfies the requirements of Section 1782. First, the statute requires that  
 23 Respondent be found in the district. A business entity is “found” in the judicial district where it is  
 24 incorporated or headquartered. *Illumina Cambridge Ltd. v. Complete Genomics, Inc.*, No. 19-mc-  
 25 80215-WHO(TSH), 2020 WL 820327, at \*3 (N.D. Cal. Feb. 19, 2020) (collecting cases). Google  
 26 is headquartered in Mountain View, California. Kanda Decl. ¶ 5. Mountain View, California is  
 27 within this district, so this requirement is met.

28 Second, the discovery must be for use in a proceeding in a foreign tribunal. For a

1 proceeding to meet this requirement, it need not be “pending” or “imminent”; it need only be  
 2 “within reasonable contemplation.” *Intel*, 542 U.S. at 259. Here, a civil lawsuit is within  
 3 reasonable contemplation because Aoki has declared that he intends to bring a lawsuit under  
 4 Japanese tort law once he learns the identity of the anonymous individual. Aoki Decl. ¶¶ 16-17;  
 5 Kanda Decl. ¶¶ 6-9. He has already retained counsel for the purpose of doing so. *See* Aoki Decl.  
 6 ¶ 16; Kanda Decl. ¶ 4.

7 Third, an application under Section 1782 must be brought by an “interested person.” A  
 8 litigant in a foreign proceeding is an “interested person” for purposes of Section 1782. *Intel*, 542  
 9 U.S. at 256-57. As the putative plaintiff, Aoki is an interested person. Aoki Decl. ¶ 17.

10 **B. Discretionary *Intel* Factors**

11 The discretionary factors identified by the Supreme Court in *Intel* also weigh in favor of  
 12 the Court granting the application.

13 **i. Respondent is not a participant in the foreign action.**

14 The first factor, whether the respondent is a participant in the foreign action, supports  
 15 obtaining discovery from entities who are not parties in the foreign tribunal. *Intel*, 542 U.S. at  
 16 264. “[N]onparticipants in the foreign proceeding may be outside the foreign tribunal’s  
 17 jurisdictional reach; hence, their evidence, available in the United States, may be unobtainable  
 18 absent § 1782(a) aid.” *Id.* Here, Google will not be a party or participant in the Japanese lawsuit;  
 19 the only defendant would be the anonymous individual. Kanda Decl. ¶ 13. This factor therefore  
 20 weighs in favor of granting the application.

21 **ii. Japanese courts are receptive to U.S. judicial assistance.**

22 The Supreme Court next requires a district court to consider “the nature of the foreign  
 23 tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign  
 24 government or the court or agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542  
 25 U.S. at 264. “This factor focuses on whether the foreign tribunal is willing to consider the  
 26 information sought.” *In re Varian Med. Sys.*, No. 16-mc-80048-MEJ, 2016 WL 1161568, at \*4  
 27 (N.D. Cal. Mar. 24, 2016).

28 Aoki has submitted a declaration from his attorney, who is admitted to practice in Japan,

1 that asserts that Japanese courts are receptive to assistance in discovery by U.S. federal courts.  
2 Kanda Decl. ¶¶ 14-15. The Court is not aware of any directive from Japan against the use of  
3 Section 1782 evidence. *See In re Jt. Stock Co. Raiffeisenbank*, No. 16-mc-80203-MEJ, 2016 WL  
4 6474224, at \*5 (N.D. Cal. Nov. 2, 2016) (“Absent this type of clear directive, however, a district  
5 court’s ruling should be informed by section 1782’s overarching interest in ‘providing equitable  
6 and efficacious procedures for the benefit of tribunals and litigants involved in litigation and  
7 international aspects.’” (quoting *Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1100 (2d Cir.  
8 1995))). In fact, courts in this district have previously granted Section 1782 discovery for use in  
9 proceedings in Japanese courts. *See In re Med. Corp. H&S*, No. 19-mc-80058-VKD, 2019 WL  
10 1230440 (N.D. Cal. Mar. 15, 2019); *In re Med. Corp. Seishinkai*, No. 21-mc-80160-SVK, 2021  
11 WL 3514072 (N.D. Cal. Aug. 10, 2021). Therefore, this factor weighs in favor of granting  
12 discovery.

13 **iii. There is no circumvention of foreign discovery procedures.**

14 The third factor asks a court to consider whether the applicant is aiming to circumvent the  
15 foreign jurisdiction’s proof-gathering restrictions. *Intel*, 542 U.S. at 265. This factor will weigh  
16 in favor of discovery if there is “nothing to suggest that [the applicant] is attempting to circumvent  
17 foreign proof-gathering restrictions.” *In re Google Inc.*, No. 14-mc-80333-DMR, 2014 WL  
18 7146994, at \*3 (N.D. Cal. Dec. 15, 2014).

19 Here, there is no reason to believe that Aoki is seeking to circumvent Japanese evidence  
20 laws. Aoki’s attorney stated as much in his declaration. Kanda Decl. ¶ 16. Absent any evidence  
21 to the contrary, this factor weighs in favor of granting discovery.

22 **iv. The request is not unduly burdensome or intrusive.**

23 Finally, the last *Intel* factor asks a court to consider whether the proposed discovery is  
24 overly burdensome or intrusive. 542 U.S. at 265. The subpoena seeks information from Google  
25 about the anonymous individual. The subpoena appears to be narrowly tailored to seeking the  
26 information that is necessary to identify the identity of the putative defendant, and courts have  
27 found that requests seeking similar information were not unduly intrusive or burdensome. Kanda  
28 Decl. ¶¶ 17-22; *see Med. Corp. H&S*, 2019 WL 1230440, at \*3-4; *Med. Corp. Seishinkai*, 2021

1 WL 3514072, at \*4-5. To the extent Respondent asserts that any of the information sought by  
2 Aoki is burdensome or confidential or proprietary, it can bring a motion to quash or the parties can  
3 enter a protective order. *See, e.g., In re Illumina Cambridge Ltd.*, No. 19-mc-80215-WHO (TSH),  
4 2019 WL 5811467, at \*5 (N.D. Cal. Nov. 7, 2019) (offering similar options to Respondents).

5 **IV. ORDER**

6 For the foregoing reasons, IT IS HEREBY ORDERED that the Court GRANTS the *ex*  
7 *parte* application authorizing discovery under 28 U.S.C. § 1782(a).

8  
9 Dated: September 29, 2022



10  
11 BETH LABSON FREEMAN  
United States District Judge

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United States District Court  
Northern District of California