

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OPTIVER AUSTRALIA PTY LTD & ANOR,	)	Case No.: C 12-80242 EJD (PSG)
	)	
Plaintiff,	)	<b>ORDER GRANTING EX PARTE</b>
v.	)	<b>APPLICATION PURSUANT TO 28</b>
	)	<b>U.S.C. § 1782 PERMITTING</b>
TIBRA TRADING PTY LTD. & ORS.,	)	<b>DISCOVERY FOR USE IN FOREIGN</b>
	)	<b>PROCEEDING</b>
Defendant.	)	<b>(Re: Docket No. 1)</b>
	)	

Applicant Optiver Australia Pty. Ltd. & Anor. (the “Applicant”) applies ex parte to obtain certain discovery from Google, Inc. (“Google”) for use in a foreign proceeding. The Applicant seeks leave to subpoena information related to emails sent to and from its former employees, who are now employed by its direct competitor in the arbitrage business, Tibra Trading Pty Ltd. & Ors. (“Tibra”).<sup>1</sup> The Applicant alleges that between November 2005 and July 2006, several of its former employees copied Optivar’s proprietary source code, left Optivar, and then used its source code to found Tibra. The court GRANTS the Applicants’ request to serve a subpoena. The court’s order is without prejudice, however, to Google moving to quash that subpoena, and any hearing on such a

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<sup>1</sup> To avoid the limitations imposed by the Stored Communications Act, 18 U.S.C. §2701 et seq., Applicant contends that it does not seek the contents of emails but only subscriber and communications information.

1 motion to quash may be heard on an expedited basis. The Applicant shall immediately serve a copy  
2 of this order on Google together with their subpoena.

3 **IT IS SO ORDERED.**

4 Dated: 10/12/2012



PAUL S. GREWAL  
United States Magistrate Judge