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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re Application of AIS GMBH AACHEN
INNOVATIVE SOLUTIONS & ABIOMED
EUROPE GMBH, Petitioners, For an Order
Pursuant to 28 U.S.C. § 1782 to Take
Discovery for Use in Foreign Proceedings,
Pursuant to the Federal Rules of Civil
Procedure, of Respondent Thoratec, LLC

Case No. [5:16-mc-80094-HRL](#)

**ORDER GRANTING APPLICATION
FOR DISCOVERY IN AID OF
FOREIGN LITIGATION PURSUANT
TO 28 U.S.C. § 1782**

Re: Dkt. No. 1

Pursuant to 28 U.S.C. § 1782, AIS GmbH Aachen Innovative Solutions and Abiomed Europe GmbH (collectively, petitioners), move for leave to conduct discovery of Thoratec, LLC (Thoratec) in aid of patent litigation pending in Germany. Thoratec, the accused infringer in the German actions, protests that the petitioners did not meet-and-confer before submitting the present application. However, petitioners correctly note that § 1782 applications typically are brought on an ex parte basis, and that the discovery target will then be given adequate notice of any discovery and have the opportunity to either participate in the discovery or to move to quash it.

Upon consideration of the application and the supporting papers, the court finds that the requirements of 28 U.S.C. § 1782 are satisfied. Petitioners' application therefore is granted, and they may serve their subpoena for documents and testimony. To the extent there are any confidentiality concerns with respect to the requested discovery, this court finds that such concerns

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would be sufficiently addressed by a protective order, such as the one proposed by petitioners. However, the court will give the parties an opportunity to meet-and-confer and encourages them to attempt to agree on the terms of such an order. Additionally, the instant order is without prejudice to Thoratec to seek to quash the subpoena; but, in the event any discovery disputes arise, the parties shall comply with the undersigned's Standing Order re Civil Discovery Disputes, which (among other things) requires the submission of a joint discovery letter brief, rather than a noticed motion.

SO ORDERED.

Dated: July 1, 2016



HOWARD R. LLOYD
United States Magistrate Judge

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5:16-mc-80094-HRL Notice has been electronically mailed to:

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