

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE EX PARTE APPLICATION OF  
YUTAKA YAMASHITA,  
  
Applicant.

Case No. 23-mc-80305-BLF

**ORDER GRANTING *EX PARTE*  
APPLICATION TO AUTHORIZE  
DISCOVERY FOR USE IN A FOREIGN  
PROCEEDING**

[Re: ECF No. 1]

On November 23, 2023, Applicant Yutaka Yamashita filed an *ex parte* application pursuant to 28 U.S.C. § 1782 for an order granting leave to obtain limited discovery from Respondent Apple Inc. in connection with a potential legal action in Japan. *See* ECF No. 1 (“App.”). For the reasons set forth below, the Court GRANTS the application.

**I. BACKGROUND**

Applicant is a resident of Japan that writes a blog on the Ameba blogging platform. ECF No. 1-1 (“Yamashita Decl.”) ¶¶ 1, 4. An Anonymous Individual with a display name of “a” published a comment to Applicant’s blog post falsely accusing Applicant of being a drug addict and for having a history of being arrested by the police. *Id.* ¶¶ 6, 8. Although the comment was removed, at least 100 people had viewed the comment before it was removed. *Id.* ¶¶ 9–10. Applicant alleges that the comment caused Applicant significant emotional and physical harm. *Id.* ¶¶ 10–13.

Applicant seeks to file a civil lawsuit in Japan for violation of Japanese tort law, but the laws of Japan do not permit lawsuits to be filed against anonymous persons. *See id.* ¶¶ 15, 19; ECF No. 1-2 (“Noguchi Decl.”) ¶¶ 10, 16. Applicant has been unable to discern the true identity of the Anonymous Individual, which Applicant needs to proceed with the contemplated civil

1 lawsuit. *See Yamashita Decl.* ¶ 14. However, Applicant was able to identify the IP address of the  
2 Anonymous Individual and that the IP address is owned by Apple. *See id.* ¶ 7; *Noguchi Decl.* ¶ 7.

3 Applicant seeks discovery of personally identifying information (“PII”) for the  
4 Anonymous Individual from Apple to determine who to name in the lawsuit. *See App., Ex. A*  
5 (“Subpoena”). The Subpoena requests documents sufficient to show the names, physical  
6 addresses, e-mail addresses, telephone numbers, credit cards, and payment methods associated  
7 with the Anonymous Individual’s IP address and Apple accounts, as well as access log  
8 information for the three-month period preceding November 23, 2023, through the date that Apple  
9 responds to the Subpoena. *See id.* 1–2.

10 Applicant filed an *ex parte* application asking this Court to authorize the serving of the  
11 Subpoena on Respondent. *See App.*

12 **II. LEGAL STANDARD**

13 Section 1782 provides, in relevant part:

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

20 28 U.S.C. § 1782(a). The statute’s purpose is “to provide federal-court assistance in the gathering  
21 evidence for use in foreign tribunals.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241,  
22 247 (2004). Section 1782 permits district courts to authorize discovery “where three general  
23 requirements are satisfied: (1) the person from whom the discovery is sought ‘resides or is found’  
24 in the district of the district court where the application is made; (2) the discovery is ‘for use in a  
25 proceeding in a foreign or international tribunal’; and (3) the application is made by a foreign or  
26 international tribunal or ‘any interested person.’” *Khrapunov v. Prosyankin*, 931 F.3d 922, 925  
27 (9th Cir. 2019) (quoting § 1782(a)).

28 But “a district court is not required to grant a § 1782(a) discovery application simply

1 because it has the authority to do so.” *Intel*, 542 U.S. at 264. Instead, a district court has  
2 discretion to authorize discovery under Section 1782. *Id.* at 260-61. In exercising this discretion,  
3 a district court should consider the following four factors identified by the Supreme Court: (1)  
4 whether the “person from whom discovery is sought is a participant in the foreign proceeding”; (2)  
5 “the nature of the foreign tribunal, the character of the proceedings underway abroad, and the  
6 receptivity of the foreign government or the court or agency abroad to U.S. federal court judicial  
7 assistance”; (3) whether the request “conceals an attempt to circumvent foreign proof-gathering  
8 restrictions or other policies of a foreign country or the United States”; and (4) whether the request  
9 is “unduly intrusive or burdensome.” *Id.* at 264-65. In exercising its discretion, the district court  
10 should consider the twin aims of the statute: “providing efficient assistance to participants in  
11 international litigation and encouraging foreign countries by example to provide similar assistance  
12 to our courts.” *Id.* at 252.

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

### 23 **III. DISCUSSION**

#### 24 **A. Statutory Requirements**

25 Applicant’s request satisfies the requirements of Section 1782. First, the statute requires  
26 that the respondent be found in the district. A business entity is “found” in the judicial district  
27 where it is incorporated or headquartered. *Illumina Cambridge Ltd. v. Complete Genomics, Inc.*,  
28 No. 19-mc-80215-WHO(TSH), 2020 WL 820327, at \*3 (N.D. Cal. Feb. 19, 2020) (collecting

1 cases). Apple is headquartered in Cupertino, California. Noguchi Decl. ¶ 8, Ex. 1. That is within  
2 this district, so this requirement is met.

3 Second, the discovery must be for use in a proceeding in a foreign tribunal. For a  
4 proceeding to meet this requirement, it need not be “pending” or “imminent”; it need only be  
5 “within reasonable contemplation.” *Intel*, 542 U.S. at 259. Here, Applicant intends to file a civil  
6 lawsuit in Japan, but must identify the Anonymous Individual to do so. *See* Yamashita Decl.  
7 ¶¶ 15, 19; Noguchi Decl. ¶¶ 10, 16. The civil lawsuit in Japan is within reasonable contemplation,  
8 so this requirement is met.

9 Third, an application under Section 1782 must be brought by an “interested person.” A  
10 litigant in a foreign proceeding is an “interested person” for purposes of Section 1782. *Intel*, 542  
11 U.S. at 256–57. As a putative plaintiff in a civil lawsuit, Applicant is an interested person. *See*  
12 Yamashita Decl. ¶¶ 10, 16.

13 **B. Discretionary *Intel* Factors**

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

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

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

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

25 The Supreme Court next requires a district court to consider “the nature of the foreign  
26 tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign  
27 government or the court or agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542  
28 U.S. at 264. “This factor focuses on whether the foreign tribunal is willing to consider the

1 information sought.” *In re Varian Med. Sys.*, No. 16-mc-80048-MEJ, 2016 WL 1161568, at \*4  
2 (N.D. Cal. Mar. 24, 2016).

3 The Court is not aware of any directive from Japan against the use of Section 1782  
4 evidence. *See In re Jt. Stock Co. Raiffeisenbank*, No. 16-mc-80203-MEJ, 2016 WL 6474224, at  
5 \*5 (N.D. Cal. Nov. 2, 2016) (“Absent this type of clear directive, however, a district court’s ruling  
6 should be informed by section 1782’s overarching interest in ‘providing equitable and efficacious  
7 procedures for the benefit of tribunals and litigants involved in litigation and international  
8 aspects.”) (quoting *Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1100 (2d Cir. 1995))). And  
9 Applicant’s attorney, who is licensed to practice law in Japan, stated that “[b]ased upon my  
10 experience as a lawyer qualified to practice law in Japan, courts of Japan are receptive to  
11 assistance in discovery by U.S. federal courts, including for discovery of PII of individuals  
12 publishing anonymous online statements.” Noguchi Decl. ¶ 20. This factor weighs in favor of  
13 granting discovery.

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

15 The third factor asks a court to consider whether the applicant is aiming to circumvent the  
16 foreign jurisdiction’s proof-gathering restrictions. *Intel*, 542 U.S. at 265. This factor will weigh  
17 in favor of discovery if there is “nothing to suggest that [the applicant] is attempting to circumvent  
18 foreign proof-gathering restrictions.” *In re Google Inc.*, No. 14-mc-80333-DMR, 2014 WL  
19 7146994, at \*3 (N.D. Cal. Dec. 15, 2014).

20 Here, there is no reason to believe that Applicant is seeking to circumvent Japanese  
21 evidence laws. Applicant’s attorney confirmed that “Applicant is not attempting to circumvent  
22 any foreign proof-gathering restrictions or other policies of Japan or the United States.” Noguchi  
23 Decl. ¶ 21. Absent any evidence to the contrary, this factor weighs in favor of granting discovery.

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

25 The last *Intel* factor asks a court to consider whether the proposed discovery is overly  
26 burdensome or intrusive. 542 U.S. at 265. The Subpoena seeks information from Apple about the  
27 Anonymous Individual. The Subpoena is narrowly tailored to seeking the information that is  
28 necessary to identify the putative defendant, and courts have found that requests seeking similar

1 information were not unduly intrusive or burdensome. Noguchi Decl. ¶¶ 22–35; *see, e.g., In re*  
2 *Med. Corp. Seishinkai*, No. 21-mc-80160-SVK, 2021 WL 3514072, at \*4-5 (N.D. Cal. Aug. 10,  
3 2021). To the extent Apple asserts that any of the information sought by Applicant is burdensome  
4 or confidential or proprietary, it can bring a motion to quash or the parties can enter a protective  
5 order. *See, e.g., In re Illumina Cambridge Ltd.*, No. 19-mc-80215- WHO (TSH), 2019 WL  
6 5811467, at \*5 (N.D. Cal. Nov. 7, 2019) (offering similar options to Respondents).

7 **IV. ORDER**

8 For the foregoing reasons, IT IS HEREBY ORDERED that Applicant Yutaka Yamashita’s  
9 *ex parte* application for an order authorizing discovery for use in a foreign proceeding under 28  
10 U.S.C. § 1782(a) is GRANTED.

11  
12 Dated: November 27, 2023

13   
14 \_\_\_\_\_  
15 BETH LABSON FREEMAN  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28