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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 *In re Ex Parte Application of Cover*
8 *Corporation,*
9 Applicant.

Case No. 25-mc-80128

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

[Re: ECF No. 1]

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12 On May 22, 2025, Applicant Cover Corporation (“Applicant”) filed an *ex parte* application
13 pursuant to 28 U.S.C. § 1782 (“Section 1782”) for an order granting leave to obtain limited
14 discovery from Google LLC (“Google”) in connection with a legal action in Japan. *See* ECF 1
15 (“App.”). For the reasons set forth below, the Court GRANTS Applicant’s application.
16

17 **I. BACKGROUND**

18 The following facts are taken from Applicant’s *ex parte* application. *See* App. Applicant is
19 a Japanese corporation that manages and represents “Virtual YouTubers” (VTubers”). App. at 2.
20 VTubers use avatars of fictional characters and post videos on YouTube. *Id.* Applicant owns
21 intellectual property rights “with regards to the name and design of the 3D character displayed as a
22 VTuber.” App. at 2.

23 One of the VTubers managed by Applicant performs under the name “Shirakami Fubuki”
24 (the “Talent”) and is a member of the VTuber idol group “Hololive Production.” *Id.* On January 16,
25 2024, Talent and other VTubers under Applicant’s management posted a video addressing a
26 controversy involving “Yozora Mel,” a first-generation member of Hololive Production. *Id.* at 3.
27 On or about January 16, 2024, an individual on the social media platform X under the account name
28 “@arareGZlq” (the “Anonymous Individual”) posted a comment in Japanese which reads, “What a

1 wonderful stream to casually mourn a contract violator. Cry appropriately and appeal for sympathy,
2 and make money while you're at it." *Id.* According to Applicant's Japanese Counsel, the post
3 infringes Applicant's business rights and tarnishes the value of the Talent. *Id.*; Tanaka Decl. ¶¶ 17-
4 18. Applicant intends to file civil lawsuits in Japan against the Anonymous Individual under Article
5 709 of the Civil Code of Japan upon discovering the true identity of the Anonymous Individual.
6 App. at 3-4. Consequently, Applicant seeks to subpoena Google to obtain the identity of the
7 anonymous individual. *See id.* at 3; *see also* ECF 1-1 (subpoena). The subpoena requests information
8 associated with the email account "ryuryu44334@gmail.com," including all access log information,
9 IP addresses, corresponding port numbers, corresponding dates and times, access type, and
10 corresponding destination IP addresses. *See* ECF 1-1. Applicant filed an *ex parte* application asking
11 this Court to authorize the service of the subpoena on Google. App. at 1.

12 **II. LEGAL STANDARD**

13 Section 1782 provides, in relevant part:

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

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

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

1 it has the authority to do so.” *Intel*, 542 U.S. at 264. Instead, a district court has discretion to
2 authorize discovery under Section 1782. *See id.* at 260–61. In exercising this discretion, a district
3 court should consider the following four factors identified by the Supreme Court: (1) whether “the
4 person from whom discovery is sought is a participant in the foreign proceeding”; (2) “the nature of
5 the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the
6 foreign government or the court or agency abroad to U.S. federal-court judicial assistance”; (3)
7 whether the request “conceals an attempt to circumvent foreign proof-gathering restrictions or other
8 policies of a foreign country or the United States”; and (4) whether the request is “unduly intrusive
9 or burdensome.” *Id.* at 264–65. In exercising its discretion, the district court should consider the
10 twin aims of the statute: “providing efficient assistance to participants in international litigation and
11 encouraging foreign countries by example to provide similar assistance to our courts.” *Id.* at 252.
12 Section 1782 applications are generally considered on an *ex parte* basis because “parties will be
13 given adequate notice of any discovery taken pursuant to the request and will then have the
14 opportunity to move to quash the discovery or to participate in it.” *IPCom GMBH & Co. KG v.*
15 *Apple Inc.*, 61 F. Supp. 3d 919, 922 (N.D. Cal 2014) (quoting *In re Republic of Ecuador*, No. C-10-
16 80225 MISC CRB (EMC), 2010 WL 3702427, at *2 (N.D. Cal. Sept. 15, 2010)). “Consequently,
17 orders granting § 1782 applications typically only provide that discovery is ‘authorized,’ and thus
18 the opposing party may still raise objections and exercise its due process rights by challenging the
19 discovery after it is issued via a motion to quash, which mitigates concerns regarding any unfairness
20 of granting the application *ex parte*.” *In re Varian Med. Sys. Int’l AG*, No. 16-mc-80048-MEJ, 2016
21 WL 1161568, at *2 (N.D. Cal. Mar. 24, 2016).

22 **III. DISCUSSION**

23 **A. Statutory Requirements**

24 Applicant’s request satisfies the requirements of Section 1782. First, the statute requires that
25 Respondent be found in the district. A business entity is “found” in the judicial district where it is
26 incorporated or headquartered. *Illumina Cambridge Ltd. v. Complete Genomics, Inc.*, No. 19-
27 mc80215-WHO(TSH), 2020 WL 820327, at *3 (N.D. Cal. Feb. 19, 2020) (collecting cases). Google
28 is headquartered in Mountain View, California. *See Tanaka Decl.* ¶¶ 4 & 7 & Ex. 1. Mountain View,

1 California is within this district, so this requirement is met.

2 Second, the discovery must be for use in a proceeding in a foreign tribunal. For a proceeding
3 to meet this requirement, it need not be “pending” or “imminent”; it need only be “within reasonable
4 contemplation.” *Intel*, 542 U.S. at 259. Here, a civil lawsuit is within reasonable contemplation
5 because Attorney Tanaka has declared that Applicant intends to initiate civil lawsuits under Japanese
6 law once the identity of the Anonymous Individual is learned through discovery. Tanaka Decl. ¶ 8.

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 in the civil lawsuit, Applicant is an interested person. *See*
10 ECF 1 at 6; Tanaka Decl. ¶ 25.

11 **B. Discretionary *Intel* Factors**

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

14 **1. Respondent is not a participant in the foreign action.**

15 The first factor, whether the respondent is a participant in the foreign action, supports
16 obtaining discovery from entities who are not parties in the foreign tribunal. *Intel*, 542 U.S. at 264.
17 “[N]onparticipants in the foreign proceeding may be outside the foreign tribunal's jurisdictional
18 reach; hence, their evidence, available in the United States, may be unobtainable absent § 1782(a)
19 aid.” *Id.* Here, Google will not be a party or participant in the Japanese lawsuit; the only defendant
20 would be the anonymous individual. Tanaka Decl. ¶ 29. This factor therefore weighs in favor of
21 granting the application.

22 **2. Japanese courts are receptive to U.S. judicial assistance.**

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

28 Applicant has submitted a declaration from its attorney, who is admitted to practice law in

1 Japan, that asserts that he is not aware of any restrictions or policies under Japanese law that would
2 limit the gathering of the evidence Applicant seeks, and that Japanese courts are receptive to
3 assistance in discovery by U.S. federal courts. ECF 1 at 8; Tanaka Decl., ¶¶ 30-31. The Court is not
4 aware of any directive from Japan against the use of Section 1782 evidence. *See In re Jt. Stock Co.*
5 *Raiffeinsbank*, No. 16-mc-80203-MEJ, 2016 WL 6474224, at *5 (N.D. Cal. Nov. 2, 2016)
6 (“Absent this type of clear directive, however, a district court's ruling should be informed by section
7 1782's overarching interest in providing equitable and efficacious procedures for the benefit of
8 tribunals and litigants involved in litigation and international aspects.”) (citations omitted) (internal
9 quotations omitted). In fact, courts in this district have previously granted Section 1782 discovery
10 for use in proceedings in Japan. *See In re Med. Corp. H&S*, No. 19-mc-80058 VKD, 2019 (WL
11 1230440 (N.D. Cal. Mar. 15, 2019); *In re Med. Inc. Ass'n Keizankai*, No. 22-mc-80253-BLF, 2022
12 WL 5122958, at *4 (N.D. Cal. Oct. 4, 2022). Therefore, this factor weighs in favor of granting
13 discovery.

14 **3. 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 in
17 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, as Applicant’s Attorney stated in his declaration, there is no reason to believe that
21 Applicant is seeking to circumvent Japanese evidence laws. *See Tanaka Decl.*, ¶ 32. Absent any
22 evidence to the contrary, this factor weighs in favor of granting discovery.

23 **4. The Request is not unduly burdensome or intrusive.**

24 Finally, the last Intel factor asks a court to consider whether the proposed discovery is overly
25 burdensome or intrusive. 542 U.S. at 265. The Subpoena seeks information from Google about the
26 Google Account, including information registered with the Google Account and access logs of the
27 Google Account. ECF 1-1; Tanaka Decl., ¶¶ 33-35. The Subpoena appears to be narrowly tailored
28 to seeking the information that is necessary to identify the identity of the Anonymous Individual,

1 and courts have found that requests seeking similar information were not unduly intrusive or
2 burdensome. *See* ECF 1-1; Tanaka Decl., ¶¶ 33-35; *see also In re Starship Ent. Co., Ltd.*, No. 23-
3 mc-80147-BLF, 2023 WL 5520772, at *1, 3 (N.D. Cal. Aug. 25, 2023); *Med. Corp. Seishinkai v.*
4 *Google LLC*, Case No. 22-mc-80282-EJD, 2023 WL 3726499, at *4 (N.D. Cal. May 30, 2023). To
5 the extent Respondent asserts that any of the information sought by Applicant is burdensome or
6 confidential or proprietary, it can bring a motion to quash or the parties can enter a protective order.
7 *See, e.g., In re Illumina Cambridge Ltd.*, No. 19-mc-80215-WHO (TSH), 2019 WL 5811467, at *5
8 (N.D. Cal. Nov. 7, 2019) (offering similar options to Respondents).

9 **IV. ORDER**

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

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Dated: May 23, 2025



BETH LABSON FREEMAN
United States District Judge