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9
 10 UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 12

13 *In re* Ex Parte Application of

14 APPLE INC.; APPLE RETAIL GERMANY
 15 GMBH; and APPLE SALES
 16 INTERNATIONAL,

17 Applicants,

18 For an Order Pursuant to 28 U.S.C. § 1782
 19 Granting Leave to Obtain Discovery from
 20 Qualcomm Incorporated for Use in Foreign
 21 Proceedings.

Case No.: '12CV0147 LAB POR

**EX PARTE APPLICATION FOR AN
 ORDER PURSUANT TO 28
 U.S.C. § 1782 GRANTING LEAVE TO
 OBTAIN DISCOVERY FOR USE IN
 FOREIGN PROCEEDINGS AND
 SUPPORTING MEMORANDUM**

22 Apple¹ applies to the Court *ex parte*² for an order pursuant to 28 U.S.C. § 1782
 23 granting Apple leave to obtain targeted discovery from Qualcomm Incorporated for use in
 24 foreign litigations. This application is supported by the memorandum of points and authorities
 25

26 _____
 27 ¹ Except as otherwise indicated, as used herein, “Apple” means Apple Inc.; Apple Retail
 28 Germany GmbH; and Apple Sales International.

² Courts within this Circuit have authorized the *ex parte* filing of applications for discovery
 under 28 U.S.C. § 1782. *E.g.*, *In re Ecuador*, No. C-10-80225 MISC CRB (EMC), 2010 U.S.
 Dist. LEXIS 102158, at *7 (N.D. Cal. Sept. 15, 2010) (“[I]t is common for the process of
 presenting the request to a court and to obtain the order authorizing discovery to be conducted
ex parte. Such *ex parte* applications are typically justified by the fact that the parties will be
 given adequate notice of any discovery taken pursuant to the request and will then have the
 opportunity to move to quash the discovery or to participate in it.”) (Internal quotations and
 citations omitted).

1 below and the Declaration of Christine Haskett, filed concurrently herewith. The proposed order
2 and subpoena are attached to this application as Exhibits A and B, respectively.

3 **I. INTRODUCTION**

4 Motorola Mobility Inc. and Motorola, Inc. (collectively “Motorola”) have filed
5 lawsuits against Apple in the United States and Germany. These lawsuits allege Apple’s
6 products infringe patents that Motorola has declared essential to practice various
7 telecommunications standards. Under 28 U.S.C. § 1782, interested parties, such as Apple, may
8 obtain discovery for use in foreign litigations from companies located within the United States.

9 In support of its defenses to the actions filed by Motorola against Apple in
10 Germany, Apple seeks narrowly-tailored discovery from its supplier of certain wireless
11 communication chips, Qualcomm Incorporated (“Qualcomm”). Specifically, Apple seeks
12 documents relating to whether Qualcomm had or has a license or is or was otherwise authorized
13 to practice some or all of the patents that have been asserted by Motorola against Apple.

14 Apple’s application satisfies Section 1782’s three statutory requirements. First, it
15 is in “the district in which [the] person resides,” 28 U.S.C. § 1782(a), because Qualcomm’s
16 headquarters are in San Diego, California. Second, Apple seeks the discovery “for use in a
17 proceeding in a foreign ... tribunal,” *id.*, including the Higher District Court of Karlsruhe,
18 Germany and the District Courts of Mannheim and Dusseldorf, Germany. Third, Apple and its
19 foreign subsidiaries qualify as “interested persons” in those foreign proceedings. *See id.; Intel*
20 *Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 256 (2004) (litigants are common
21 example of “interested persons”).

22 Moreover, the factors identified by the Supreme Court to guide courts’ discretion
23 in analyzing applications under Section 1782 all favor granting Apple’s request. Qualcomm is
24 not a participant in the foreign proceedings, and Section 1782 provides an effective mechanism
25 for obtaining this targeted discovery across various cases. In addition, the foreign jurisdictions at
26 issue are receptive to the type of discovery sought by Apple, the discovery provides key

1 information for the foreign proceedings, and the request is not made to circumvent any
2 limitation on discovery imposed by the foreign courts. Finally, the discovery request is narrowly
3 tailored and is not unduly intrusive or burdensome.

4 Accordingly, Apple respectfully requests that the Court enter the order attached
5 as Exhibit A, allowing Apple to serve the subpoena attached as Exhibit B.

6 **II. FACTUAL BACKGROUND**

7 Motorola has filed lawsuits against Apple in the United States, before the
8 International Trade Commission, and in Germany. The functionalities accused by Motorola in
9 many of these actions relate to the wireless communications chips within the iPhone and iPad,
10 some of which are supplied by Qualcomm. (Decl. Haskett ¶ 12.) Motorola’s German lawsuits
11 are pending in Germany’s Higher District Court of Karlsruhe, Mannheim District Court, and
12 Dusseldorf District Court. (*Id.* ¶¶ 4-7).

13 **III. ARGUMENT**

14 **A. Legal Standard**

15 Section 1782 is “the product of congressional efforts, over the span of nearly 150
16 years, to provide federal-court assistance in gathering evidence for use in foreign tribunals.”
17 *Intel Corp.*, 542 U.S. at 247. Over time, Congress has “substantially broadened the scope of
18 assistance federal courts could provide for foreign proceedings.” *Id.* at 247-249. Section 1782
19 provides in part:

20 The district court of the district in which a person resides or is
21 found may order him to give his testimony or statement or to
22 produce a document or other thing for use in a proceeding in a
23 foreign or international tribunal The order may be made ...
upon the application of any interested person and may direct that
the testimony or statement may be given, or the document or other
thing be produced, before a person appointed by the court.

24 28 U.S.C. § 1782(a). The statute thus sets forth three requirements, authorizing the district court
25 “to grant a Section 1782 application where ‘(1) the person from whom discovery is sought
26 resides or is found in the district of the district court to which the application is made, (2) the

1 discovery is for use in a proceeding before a foreign tribunal, and (3) the application is made by
2 a foreign or international tribunal or ‘any interested person.’ *In re Ecuador*, No. C-10-80225
3 MISC CRB (EMC), 2010 U.S. Dist. LEXIS 102158, at *4 (N.D. Cal. Sept. 15, 2010) (quoting
4 *In re Chevron*, 709 F. Supp. 2d 283, 290 (S.D.N.Y. 2010)).

5 In *Intel*, the Supreme Court set forth several non-exclusive factors to aid district
6 courts in determining how to exercise their discretion in granting section 1782 applications.
7 These factors include: (1) whether “the person from whom discovery is sought is a participant in
8 the foreign proceeding”; (2) “the nature of the foreign tribunal, the character of the proceedings
9 underway abroad, and the receptivity of the foreign government or the court or agency abroad to
10 U.S. federal-court judicial assistance”; (3) whether the request is “an attempt to circumvent
11 foreign proof-gathering restrictions or other policies of a foreign country or the United States”;
12 and whether the discovery is “unduly intrusive or burdensome.” *Intel*, 542 U.S. at 264-65.

13 **B. Apple’s Application Meets the Section 1782 Requirements.**

14 Apple’s request for discovery meets each of the three statutory requirements.
15 First, the person from whom discovery is sought, Qualcomm, “resides or is found” in this
16 District. 28 U.S.C. § 1782(a). Qualcomm has its principal place of business at 5775 Morehouse
17 Drive, San Diego, California, which is located within this District. (Haskett Decl. Ex. 1 (excerpt
18 of Qualcomm 2010 10K) at 1.)

19 Second, the discovery is sought for use in a “proceeding before a foreign
20 tribunal.” 28 U.S.C. § 1782(a). Specifically, Apple seeks the information for use in establishing
21 at least the defense of license, unfair competition, and/or antitrust defenses in patent
22 infringement actions brought by Motorola in three foreign tribunals: the Mannheim District
23 Court, the Dusseldorf District Court, and the Higher District Court of Karlsruhe.

24 As previous cases have recognized, these and related foreign adjudicative bodies
25 qualify as “tribunals” for purposes of Section 1782. *See, e.g., Cryolife, Inc. v. Tenaxis Medical,*
26 *Inc.*, No. C08-05124 HRL, 2009 U.S. Dist. LEXIS 3416, at *1, 5 (N.D. Cal. Jan. 13, 2009)

1 (permitting discovery for use in patent infringement suit pending in “Dusseldorf Regional Court
2 in Germany”).

3 Third, as named parties in the foreign actions, Apple and its subsidiaries qualify
4 as “interested part[ies].” 28 U.S.C. § 1782(a); *Intel*, 542 U.S. at 256 (“No doubt litigants are
5 included among ... the ‘interested person[s]’ who may invoke § 1782”); see *Heraeus Kulzer,
6 GmbH v. Biomet, Inc.*, 633 F.3d 591, 594 (7th Cir. 2011).

7 Accordingly, Apple has satisfied the statutory requirements for an application
8 under 28 U.S.C. § 1782.

9 **C. The Supreme Court’s *Intel* Factors Strongly Favor Granting Apple’s
10 Application.**

11 In addition, the factors identified by the Supreme Court in *Intel* and later cases
12 weigh heavily in favor of the Court exercising its discretion to grant Apple’s request for
13 discovery.

14 **1. Qualcomm Is Not a Party to the Foreign Proceedings.**

15 The *Intel* Court first asked whether “the person from whom discovery is sought is
16 a participant in the foreign proceeding.” *Intel*, 542 U.S. at 264 (noting that “nonparticipants in
17 the foreign proceeding may be outside the foreign tribunal’s jurisdictional reach; hence, their
18 evidence, available in the United States, may be unobtainable absent § 1782 aid”). Here,
19 Qualcomm is not a party to the foreign litigations, and the material sought—licenses and
20 communications in Qualcomm’s possession—may not be within the foreign tribunal’s
21 jurisdictional reach. See *Heraeus Kulzer*, 633 F.3d at 597 (authorizing section 1782 discovery
22 because German litigant could not “obtain even remotely comparable discovery by utilizing
23 German procedures”); *Cryolife*, 2009 U.S. Dist. LEXIS 3416 at * 13 (holding that “petitioner
24 need only show that the information” sought under section 1782 “will be useful”).³

25 _____
26 ³ Courts frequently grant Section 1782 discovery even from parties to foreign cases. *E.g.*,
Heraeus Kulzer, 633 F.3d at 596 (permitting Section 1782 discovery from opposing party in

27 (continued...)

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2. Apple Seeks Highly Relevant Information That Will Assist the Foreign Courts.

The *Intel* Court next counseled courts to “take into account the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542 U.S. at 264. Because the nature and character of the foreign proceedings involve Motorola’s allegations of patent infringement, discovery regarding potentially relevant license agreements would be critical. *See London v. Does*, 279 F. App’x 513, 515 (9th Cir. 2008) (affirming order granting 1782 discovery when proof sought was “critical” in light of the “nature and character of the foreign case”); *In re Bayer AG*, 146 F.3d 188, 195-96 (3d Cir. 1998) (documents relevant to the foreign proceedings are “presumptively discoverable” under section 1782).

Moreover, prior cases have recognized the receptiveness of German courts to the use of discovery obtained through Section 1782. *E.g., Heraeus Kulzer*, 633 F.3d at 597; *Cryolife*, 2009 U.S. Dist. LEXIS 3416, at *8-9.

3. No Foreign Discovery Restrictions Bar Apple’s Requested Discovery.

28 U.S.C. § 1782 does not require that the documents sought be discoverable in the foreign courts. *Intel*, 542 U.S. at 260-63. However, a district court may consider whether an applicant was seeking in bad faith “to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States.” *Id.* at 265.⁴ Here, Apple is unaware of any

foreign suit and noting “[t]he importance of American-style discovery to [plaintiff/applicant’s] ability to prove” its case); *Cryolife*, 2009 U.S. Dist. LEXIS 3416, at *1-2, 15 (same); *In re Procter & Gamble Co.*, 334 F. Supp. 2d 1112, 1113, 1118 (E.D. Wise. 2004) (granting Section 1782 request for discovery from entity involved in multiple foreign suits against applicant).

⁴ *See also In re Esses*, 101 F.3d 873, 876 (2d Cir. 1996) (“[O]nly upon authoritative proof that a foreign tribunal would *reject* evidence obtained with the aid of Section 1782 should a district court refrain from granting the assistance offered by the act.”) (emphasis in original); *Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1097, 1101 (2d Cir. 1995) (permitting discovery under Section 1782 and observing that court “can simply refuse to consider any evidence that [1782 applicant] gathers by what might be—under French procedures—an unacceptable practice”);

(continued...)

1 restrictions on proof-gathering procedures that would prohibit obtaining the discovery it seeks
2 through Section 1782. To the contrary, as noted above, courts have routinely granted
3 applications under Section 1782 for evidence to be used in the foreign courts at issue here. *E.g.*,
4 *Heraeus Kulzer*, 633 F.3d at 597.

5 **4. Apple’s Discovery Is Narrowly Tailored to Avoid Undue Burden.**

6 The *Intel* Court finally noted that “unduly intrusive or burdensome requests may
7 be rejected or trimmed.” *Intel*, 542 U.S. at 265. Here, Apple’s proposed discovery requests are
8 narrowly tailored and minimally burdensome. Apple is requesting document discovery on only
9 two topics, targeted to a small, discrete set of documents: intellectual property licenses between
10 Qualcomm and Motorola and communications regarding the licenses. The universe of
11 responsive documents is thus likely to be small and easily searchable, avoiding any undue
12 burden on Qualcomm.

13 **5. Granting Apple’s Section 1782 Request Would Promote Efficient
14 Discovery.**

15 Courts have also considered other evidence bearing on whether the discovery
16 sought accomplishes the goals of the statute, which include “providing efficient means of
17 assistance to participants in international litigation in our federal courts.” *Marubeni Am. Corp. v.*
18 *LBA Y.K.*, 335 Fed. App’x. 95, 96 (2d Cir. 2009) (internal quotation omitted). Here, given the
19 multiple German cases between Apple and Motorola, Section 1782 provides an effective means
20 for obtaining the discovery sought by Apple. Rather than seeking the same discovery in each of
21 the foreign litigations, Apple can obtain the discovery with one application under Section 1782.
22 *Procter & Gamble*, 334 F. Supp. 2d at 1115 (observing that it would be inefficient to require

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24 _____
25 *Procter & Gamble*, 334 F. Supp. 2d at 1116 (holding that “to decline a § 1782(a) request based
26 on foreign nondiscoverability, a district court must conclude that the request would undermine a
27 specific policy of a foreign country or the United States”).

1 party to patent infringement actions in Germany, Japan, the Netherlands, France and the United
2 Kingdom “to seek the same discovery” in each of them).

3 * * *

4 Accordingly, the Intel factors strongly favor the Court exercising its discretion to
5 grant Apple’s application. Indeed, courts in this Circuit have routinely permitted discovery
6 under Section 1782, when, as here, the applicant has satisfied the statutory requirements and the
7 above factors weighed in favor of granting relief. *E.g.*, *In re Am. Petroleum Institute*, 11-80008-
8 JF (PSG), slip op. (N.D. Cal. Apr. 7, 2011) (Haskett Decl. Ex. 3); *In re Ecuador*, 2010 WL
9 3702427, at *2; *London*, 279 F. App’x at 513; *Chevron Corp. v. E-Tech Int’l*, 2010 WL
10 3584520 (S.D. Cal. Sept. 10, 2010); *Govan Brown & Assocs. v. Doe*, No. 10-2704-PVT, 2010
11 U.S. Dist. LEXIS 88673, at *7-8 (N.D. Cal. Aug. 6, 2010); *Mirana v. Battery Tai-Shing Corp.*,
12 No. 08-80142, slip op. (N.D. Cal. Sept. 19, 2008) (Haskett Decl. Ex. 4).

13 **IV. CONCLUSION**

14 Apple seeks narrowly tailored discovery for use in several currently pending
15 foreign proceedings. Because Apple’s request satisfies the three statutory requirements of 28
16 U.S.C. § 1782 and because the *Intel* factors all weigh in favor of granting the application, Apple
17 respectfully requests that this Court issue the proposed order attached as Exhibit A, authorizing
18 the issuance of a subpoena in substantially the same form as Exhibit B.

19
20
21 Dated: January 17, 2012

/s/ Mark D. Selwyn
MARK D. SELWYN (SBN 244180)
WILMER CUTLER PICKERING
HALE AND DORR LLP

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

In re Ex Parte Application of APPLE INC.; APPLE RETAIL GERMANY GMBH; AND APPLE SALES INTERNATIONAL

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Mark D. Selwyn (SBN 244180), Wilmer Cutler Pickering Hale and Dorr LLP, 950 Page Mill Road, Palo Alto, CA 94304, Telephone: (650) 858-6000, Fax: (650) 858-6100

Attorneys (If Known)

'12CV0147 LAB POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent -- yeb <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
IMMIGRATION					
<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions					

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28:1331 yeb

VI. CAUSE OF ACTION

Brief description of cause: APPLICATION FOR LEAVE TO OBTAIN DISCOVERY

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/18/2012 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.