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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re *Ex Parte* Application of Hyo-Seob Oh,

Applicant,

For an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings.

Case No.: 22-mc-1649-DDL

REPORT AND RECOMMENDATION FOR ORDER DENYING *EX PARTE* APPLICATION FOR ORDER PERMITTING SUBPOENA PURSUANT TO 28 U.S.C. § 1782

This Report and Recommendation is submitted to Chief United States District Judge Dana M. Sabraw pursuant to 28 U.S.C. § 636(b).¹

On November 8, 2022, Applicant Hyo-Seob Oh (“Applicant”) filed an *ex parte* application (“Application”) pursuant to 28 U.S.C. § 1782(a), seeking an order authorizing the issuance of a subpoena for a deposition of Sandip “Micky” S. Minhas (“Minhas”) for use in pending litigation in South Korea. Minhas opposes the Application. For the reasons

¹ A Report and Recommendation is necessary because applications for discovery under 28 U.S.C. § 1782 are dispositive matters for which a magistrate judge may not render a final decision absent consent of all parties to the magistrate judge’s jurisdiction. *See CPC Patent Technologies Pty Ltd. v. Apple, Inc.*, 34 F.4th 801, 807-08 (9th Cir. 2022).

1 set forth below, the Court **RECOMMENDS** that Applicant’s *ex parte* Application be
2 **DENIED**.

3 **I.**

4 **BACKGROUND**

5 On May 14, 2020, Applicant filed a lawsuit in the Seoul Central District Court
6 against LG Electronics Inc. (“LG”) seeking compensation under Korea’s Invention
7 Promotion Act (“IPA”) for inventions he alleges he developed while employed by LG. *See*
8 Dkt. No. 1-2 at 16-43.² At issue in this Application are two separate but nearly identical
9 statements signed by Minhas and dated June 30, 2021, and November 9, 2021, respectively
10 (“Minhas Statements”). *See id.* at 28-35; Dkt. No. 1 at 5. The Minhas Statements concern
11 the background and formation of two agreements between LG and Microsoft Technology
12 Licensing LLC (“LG/Microsoft Agreements”) governing the purchase and sale of certain
13 patents, including the patents at issue in the Korean litigation. On or about March 23, 2015,
14 Minhas executed the LG/Microsoft Agreements on behalf of Microsoft Corporation in his
15 capacity as Microsoft’s Chief Patent Counsel. The LG/Microsoft Agreements include the
16 alleged value of the patents at issue in the Korean litigation. *See* Dkt. No. 1-2 at 52-64.

17 Applicant questions the veracity and accuracy of the Minhas Statements—which
18 Applicant contends undervalue his patents—and alleges that Minhas made assertions in the
19 Minhas Statements that contradict the LG/Microsoft Agreements. *See generally* Dkt. No.
20 1 at 5-9. Because LG is relying on the Minhas Statements in the Korean litigation to argue
21 that Applicant’s patents had minimal value, Applicant seeks authorization to depose
22 Minhas and to compel Minhas to produce documents pertaining to the Minhas Statements.

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² Page citations are to the CM/ECF page numbers.

1 II.

2 **LEGAL STANDARD**

3 Under Section 1782(a), a district court may order a person who resides or is found
4 in the district to give testimony or produce documents for use in a foreign legal proceeding.
5 The applicant must satisfy three statutory requirements: first, the person from whom
6 discovery is sought must “reside or [be] found” within the district; second, the discovery
7 must be “for use in a proceeding in a foreign or international tribunal”; and third, the
8 request must be made “by a foreign or international tribunal or upon the application of any
9 interested person.” 28 U.S.C. § 1782(a). “The party seeking the discovery bears the burden
10 of establishing that the statutory requirements are met.” *In re Escallón*, 323 F. Supp. 3d
11 552, 555 (S.D.N.Y. 2018).

12 Even when an applicant satisfies each of the statutory requirements, a district court
13 retains discretion to grant or deny discovery under Section 1782(a). A district court may
14 consider the following factors in exercising its discretion: (1) whether “the person from
15 whom discovery is sought is a participant in the foreign proceeding”; (2) the nature of the
16 foreign tribunal, the character of the proceedings underway, and the receptivity of the
17 foreign tribunal to U.S. federal court assistance; (3) whether the Section 1782(a) request
18 “conceals an attempt to circumvent foreign proof-gathering restrictions or other policies”;
19 and (4) whether the request is “unduly intrusive or burdensome.” *Intel Corp. v. Advanced*
20 *Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004).

21 “A district court’s discretion is to be exercised in view of the twin aims of Section
22 1782: providing efficient assistance to participants in international litigation, and
23 encouraging foreign countries by example to provide similar assistance to our courts.”
24 *Palantir Techs., Inc. v. Abramowitz*, 415 F.Supp.3d 907, 912 (N.D. Cal. 2019) (citations
25 omitted). “The party seeking discovery need not establish that the information sought
26 would be discoverable under the foreign court’s law or that the U.S. would permit the
27 discovery in an analogous domestic proceeding.” *Id.*

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1 III.

2 DISCUSSION

3 A. Relevant Procedural History

4 The initial Application filed on November 8, 2022, asserted that Minhas “resides in
5 this District.” Dkt. No. 1 at 13. On December 28, 2022, Minhas filed his Opposition to
6 the Application asserting, in part, that the Application is not properly filed in this judicial
7 district because he “resides in Texas and does not reside in San Diego.” Dkt. No. 9-1 at 9-
8 10. In support of his contention, Minhas cited to his own declaration in support of an earlier
9 motion for an extension of time to file an opposition to the Application in which he stated
10 that the declaration was executed in Dallas, Texas. *Id.* at 9; *see* Dkt. No. 7-2 at 2. Minhas
11 did not provide any documentary support concerning his place of residence, which
12 Applicant pointed out in his Reply to the Opposition (“Reply”). *See* Dkt. No. 10 at 10. In
13 his Reply, Applicant included exhibits reflecting various sources which suggest that
14 Minhas maintains a connection to San Diego, including property records, a registry of
15 various deeds held by Minhas for residential property in San Diego over several years, and
16 screen captures of Minhas’s LinkedIn profile and various online biographical materials
17 reflecting a location in San Diego. *See* Dkt. No. 10-1 at 4-13 and 14-26.

18 On February 17, 2023, the Court held a Status Hearing to discuss its tentative ruling
19 on the Application. Dkt. No. 27. In recognition of the fact that Minhas did not have an
20 opportunity to respond to the documentary evidence proffered by Applicant, the Court
21 ordered Minhas to “file briefing regarding his residence and evidence concerning the issue
22 of whether he ‘resides or is found’ in the Southern District of California, pursuant to 28
23 U.S.C. § 1782” *Id.*

24 On February 24, 2023, Minhas filed a sur-reply in which he maintained that he
25 resides in Dallas, Texas and asserted that, although he owns property in San Diego, he “has
26 not used it as a residence since 2008” Dkt. No. 30 at 3. Still, Minhas failed to provide
27 documentary support for his assertion that he resides in Dallas.

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1 On February 28, 2023, the Court ordered Minhas to file “a supplemental declaration
2 with any documentary evidence he wishes the Court to consider in support of his contention
3 that he has resided in Dallas, Texas ‘since before Mr. Oh initiated his application.’” Dkt.
4 No. 31. On March 3, 2023, Minhas filed a supplemental declaration in support of his sur-
5 reply. Dkt. No. 34-1. Attached to the declaration were documents and records reflecting
6 that Minhas maintains a residential address in Dallas, including cover pages to his current
7 and prior lease agreements at a Dallas address (*Id.* at 10-12); a Texas driver’s license issued
8 to Minhas which is valid from August 22, 2022 through May 14, 2030 (*Id.* at 14); a vehicle
9 registration in Minhas’s name issued by the Texas Department of Motor Vehicles which is
10 effective from December 1, 2022 through November 2023 (*Id.* at 16); a record of Minhas’s
11 voter registration status with the Texas Secretary of State displaying a “valid from” date of
12 January 1, 2022 and an effective date of November 3, 2020 (*Id.* at 18);³ Minhas’s 2020 and
13 2021 federal income tax returns (*Id.* at 20, 22); and an account statement from Texans
14 Credit Union dated June 2021 (*Id.* at 24-27).

15 On March 10, 2023, Applicant filed a response in opposition to Minhas’s sur-reply.
16 Dkt. No. 35. In support of his opposition to the sur-reply, Applicant included additional
17 documentary evidence, including a printout or screen capture of Minhas’s LinkedIn profile,
18 which stated Minhas’s current location as being in San Diego (Dkt. No. 35-1 at 6-8); a
19 transcript of a May 2, 2022, *National Public Radio* interview given by Minhas’s wife,
20 Jennifer Minhas (“Mrs. Minhas”), in which the interviewer stated that Mrs. Minhas lives
21 in San Diego and which she did not contest (*Id.* at 10-17); a 2023 Marquette University
22 award recipient announcement featuring Mrs. Minhas, which indicates that she is located
23 in San Diego (*Id.* at 19-21); a *San Diego Union-Tribune* article dated January 26, 2021,
24 that featured Mrs. Minhas and identified her as “Jennifer Minhas of San Diego” (*Id.* at 23-
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27 ³ Minhas’s voter status is reflected as being in “Suspense.” According to the Texas
28 Secretary of State, this means that “the registrar is not certain of [the voter’s] residential
address.” Dkt. No. 34-1 at 18.

1 31); a Marquette University article dated May 2, 2022, indicating that Jennifer and Micky
2 Minhas donated one million dollars toward a College of Nursing building renovation and
3 expansion campaign (*Id.* at 33-35); an updated version of Minhas’s Marquette University
4 Board of Trustees biography in which Minhas’s place of residence has been removed (*Id.*
5 at 37; *see* Dkt. No. 10-1 at 21); a printout of Mrs. Minhas’s Facebook page indicating a
6 “check-in” at the Mavericks Beach Club in San Diego on January 23, 2022 (*Id.* at 39-42);
7 and a printout of Mrs. Minhas’s Facebook activity, which includes a post dated January 21,
8 2023, in which Mrs. Minhas stated that she was “visiting Phoenix from San Diego”
9 (*Id.* at 44, 51).

10 **B. Analysis**

11 A threshold issue is whether Minhas is “found” or “resides” in the Southern District
12 of California as required by Section 1782. Applicant did not personally serve Minhas with
13 the Application in the Southern District of California, and Applicant does not contend that
14 Minhas is “found” in this District within the meaning of Section 1782. *See In re Escallón*,
15 323 F. Supp. 3d at 556 (“To be ‘found’ in a place . . . under § 1782, requires a person to be
16 physically present in the jurisdiction when served with process.”). Rather, Applicant
17 asserts that Minhas “resides in” the Southern District of California. The crux of
18 Applicant’s argument is that a person may maintain multiple residences, and Minhas’s
19 residence in Dallas does not preclude him from also residing in San Diego. Specifically,
20 Applicant contends that Mrs. Minhas resides in San Diego and that this supports a finding
21 that Minhas also resides in this District regardless of whether Minhas also resides in Dallas.

22 In support of his argument that a spouse’s residence is attributable to a respondent
23 in a Section 1782 application, Applicant cites *In re Matter of Application of Oxus Gold*
24 *PLC*, No. MISC. 06-82, 2006 WL 2927615 (D.N.J. Oct. 11, 2006). In one regard, *Oxus*
25 *Gold* is inapposite because the court held that the respondent was “found in” the District
26 of New Jersey and did not reach the question of respondent’s residency. But even
27 considering *Oxus Gold*’s statement that courts will look to a spouse’s residence as evidence
28 of a Section 1782 respondent’s residence, *Oxus Gold* made clear that this is only one factor

1 in the residency analysis. In addition to a spouse’s residence, *Oxus Gold* recognized that
2 courts have looked to “(2) ownership of property, (3) location of filing for tax purposes,
3 (4) amount of time spent in the United States, and (5) location of full time employment.”
4 *Id.* at *5 (citing *In re Kolomoisky*, No. M19-116, 2006 WL 2404332, at *3 (S.D.N.Y. Aug.
5 18, 2006)).

6 Application of the *Oxus Gold* factors does not support the conclusion that Minhas
7 resides in the Southern District of California. The Court assumes, for purposes of this
8 analysis, that Mrs. Minhas resides in San Diego. Further, Minhas confirmed in his sur-
9 reply that he owns residential property in San Diego. *See* Dkt. No. 34-1 at 4, ¶ 7. But the
10 evidence also shows that Minhas is employed in Dallas and has filed his federal income
11 tax returns using his Dallas address for at least the last two years, and time spent in the
12 United States is not a consideration here. Considered in their totality, these factors do not
13 support the conclusion that Applicant has carried his burden to show that Minhas resides
14 in the Southern District of California. *See, e.g., Kolomoisky*, 2006 WL 2404332, at *3
15 (finding that respondent did not reside in the Southern District of New York
16 notwithstanding that his wife and son resided in Manhattan).

17 Applicant argues that a person may have multiple residences and need not be
18 domiciled where he or she resides. Dkt. No. 10 at 11; *see* Dkt. No. 35 at 5. While the
19 meaning of “residence” in the context of Section 1782 does not appear to be well-defined,
20 Courts have generally recognized “residence” and “domicile” as distinct concepts.
21 “Residence is physical, whereas domicile is generally a compound of physical presence
22 plus an intention to make a certain definite place one’s permanent abode” *Kanter v.*
23 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Weible v. United States*,
24 244 F.2d 158, 163 (9th Cir. 1957) (internal quotation marks omitted)). In support of his
25 assertion that Minhas maintains multiple residences, including in San Diego, Applicant

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1 cites *Escallón*.⁴ However, *Escallón*'s residency analysis weighs against Applicant's
2 position.

3 *Escallón* recognized that "the 'resides in' prong of the § 1782 analysis does not
4 require that the respondent be 'domiciled' in the district." *Escallón*, 323 F. Supp. 3d at
5 557. The court explained:

6 Residency means "an established abode, for personal or business
7 reasons, permanent for a time. A resident is so determined from
8 the physical fact of that person's living in a particular place.
9 Residence is the act or fact of living in a given place for some
10 time, while domicile is a person's true, fixed, principal, and
permanent home, to which that person intends to return and
remain even though currently residing elsewhere.

11 *Id.* (quoting *Rosario v. I.N.S.*, 962 F.2d. 220, 224 (2d Cir. 1992)). The *Escallón* court
12 further stated that "the test for 'residency' requires some 'indicia of permanency,'" which
13 refers to "permanency of presence, not the existence of a permanent connection to a
14 particular piece of real estate." *Id.* at 558. "Mere ownership and control of, and occasional
15 presence in, an apartment does not, by itself, raise an inference that the apartment is the
16 [respondents'] established abode or residence." *Id.*

17 Applying these principles, the court declined to find that the respondents were
18 residents of the Southern District of New York notwithstanding that they owned and staffed
19 a residential property within the district and received mail there. *Id.* at 557-58.
20 Importantly, the court relied on a process server's affidavit, which recounted comments
21 from a doorman at the apartment that respondents had left New York earlier that day for
22 "their home in Colombia" with no return date, and respondents "maintain the apartment in
23 the building but spend most of the year out of town." *Id.* at 557 (internal quotation marks
24 omitted).

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28 ⁴ Applicant refers to the case as *In re Lloreda* in his Reply. See Dkt. No. 10 at 11.

1 Here, Minhas admits to owning property in San Diego (Dkt. No. 34-1 at 4, ¶ 7), but
2 Applicant has not met his burden to show that Minhas is physically present in San Diego.
3 As the *Escallón* court recognized, mere ownership of property does not establish one’s
4 physical residence in a particular location. *Id.* at 558. Other than the property records,
5 Applicant has not provided any official documentation reflecting that Minhas resides in
6 San Diego or otherwise maintains an ongoing physical presence in San Diego. Similarly,
7 the fact that Minhas and his wife have the financial resources to donate a substantial amount
8 of funds to their alma mater may indicate that they have the resources to maintain homes
9 in multiple locations, but it does little to further Applicant’s assertion of residence because
10 it does not demonstrate physical presence in any location for any amount of time.

11 Applicant has provided multiple third-party sources, including news articles and
12 biographical profiles, indicating that Minhas and Mrs. Minhas are located in San Diego.
13 *See* Dkt. No. 10-1 at 21, 23, 26; *see also* Dkt. No. 35-1 at 10-17, 19-21, 23-31. In addition,
14 Applicant points out that Minhas’s LinkedIn page—which he manages—indicates that he
15 is located in San Diego. Dkt. No. 10 at 11; Dkt. No. 35 at 3. In response, Minhas states in
16 a declaration that he has not resided in San Diego since 2012. Dkt. No. 30-1 at 3-4, ¶ 7;
17 Dkt. No. 34-1 at 4, ¶ 7. He points to the list of professional experience on his profile, which
18 he says does not reflect all his current professional engagements, but which does include
19 full-time positions outside of San Diego since 2012. Dkt. No. 30-1 at 5, ¶ 16; Dkt. No. 34-
20 1 at 5, ¶ 16. Minhas explains that his LinkedIn profile is outdated because he has not
21 updated the profile in many years, and “any inference that [he] currently reside[s] in San
22 Diego, California is inaccurate.” Dkt. No. 30-1 at 5, ¶ 16; Dkt. No. 34-1 at 5, ¶ 16.

23 To counter Applicant’s residency contentions, Minhas has provided multiple
24 documents and official records, including a current lease agreement, a current vehicle
25 registration with the Texas Department of Motor Vehicles, and a valid Texas driver’s
26 license, all of which indicate some “permanency of presence” in Dallas, even if only for a
27 certain time. Minhas also provided a Dallas address on his federal income tax returns for
28 the past two years. The latter three documents are particularly compelling because they

1 are recent records issued or prepared for processing by government authorities, and the
2 timing of their issuance or preparation corresponds with the time Minhas asserts he has
3 resided in Dallas.

4 “[T]he test for ‘residency’ requires some ‘indicia of permanency,’” which refers to
5 “permanency of presence” *Escallón*, 323 F. Supp. 3d at 558. Applicant’s evidence
6 shows that Minhas has ties to San Diego and that his spouse may reside here. However,
7 even if Minhas maintains some consistent personal or business connection to San Diego,
8 the record reflects that he has established a permanent physical presence in Dallas. While
9 the Court does not disagree that one may have multiple residences, Applicant has not met
10 his burden to establish that Minhas resides in San Diego within the meaning of Section
11 1782.

12 The Court acknowledges Applicant’s understandable concern that Minhas did not
13 initially provide evidence in support of his contention that he resides in Dallas. Rather, it
14 was only after the Court directed Minhas to submit documentary evidence in support of
15 this contention that Minhas provided the evidence upon which the Court has relied in
16 recommending denial of the Application. Had Minhas provided this evidence earlier in the
17 proceedings, the parties and the Court would have been spared a substantial amount of time
18 and effort in this matter. However, based on the complete record currently before the
19 Court, Applicant has not met his burden to establish that Minhas resides in the Southern
20 District of California. Any Application seeking relief under Section 1782 should be filed
21 in the Northern District of Texas, where Minhas admits he resides.

22 **IV.**

23 **RECOMMENDATION**

24 For the foregoing reasons, the Court concludes that Applicant has not satisfied the
25 statutory requirements for a Court of this District to authorize discovery under Section
26 1782(a). **IT IS HEREBY RECOMMENDED** that the Chief District Judge issue an
27 Order:

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- 1 1. Denying the issuance of a subpoena for the deposition of, and production of
- 2 documents by, Sandip S. Minhas; and
- 3 2. Directing Applicant to serve the Order on LG; and
- 4 3. Directing the Clerk of Court to close the case.

5 **IT IS ORDERED** that no later than **April 25, 2023**, the parties may file written
6 objections to this Report and Recommendation with the Court and shall serve a copy on all
7 parties. The document should be captioned “Objections to Report and Recommendation.”
8 The parties are advised that failure to file objections within the specified time may waive
9 the right to raise those objections on appeal of the Court’s Order.

10 **IT IS SO ORDERED.**

11 Dated: April 11, 2023

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Honorable David D. Leshner
16 United States Magistrate Judge
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