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**Effective: February 10, 1996**

United States Code Annotated [Currentness](#)

Title 28. Judiciary and Judicial Procedure ([Refs & Annos](#))

▾ [Part V](#). Procedure

▾ [Chapter 117](#). Evidence; Depositions ([Refs & Annos](#))

→→ **§ 1782. Assistance to foreign and international tribunals and to litigants before such tribunals**

(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. 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.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 949; May 24, 1949, c. 139, § 93, 63 Stat. 103; Oct. 3, 1964, Pub.L. 88-619, § 9(a), 78 Stat. 997; Feb. 10, 1996, [Pub.L. 104-106](#), Div. A, Title XIII, § 1342(b), 110 Stat. 486.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 28, U.S.C., 1940 ed., §§ 649-653, 701, 703, 704 (R.S. §§ 871-875, 4071, 4073, 4074; Feb. 27, 1877, c. 69, § 1, 19 Stat. 241; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; June 25, 1936, c. 804, 49 Stat. 1921).

Sections 649-652 of Title 28, U.S.C., 1940 ed., applied only to the District of Columbia and contained detailed provisions for issuing subpoenas, payment of witness fees and procedure for ordering and taking depositions. These matters are all covered by [Federal Rules of Civil Procedure, Rules 26-32](#).

Provisions in sections 649-652 of Title 28, U.S.C., 1940 ed., relating to the taking of testimony in the District of Columbia for use in State and Territorial courts were omitted as covered by section 14-204 of the District of Columbia Code, 1940 ed., and [Rules 26 et seq.](#), and [46 of the Federal Rules of Civil Procedure](#).

Only the last sentence of [section 653 of Title 28, U.S.C.](#), 1940 ed., is included in this revised section. The remaining provisions relating to depositions of witnesses in foreign countries form the basis of section 1781 of this title.

Sections 701, 703, and 704 of Title 28, U.S.C., 1940 ed., were limited to “suits for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest.”

The revised section omits this limitation in view of the general application of the last sentence of [section 653 of Title 28, U.S.C.](#), 1940 ed., consolidated herein. The improvement of communications and the expected growth of foreign commerce will inevitably increase litigation involving witnesses separated by wide distances.

Therefore the revised section is made simple and clear to provide a flexible procedure for the taking of depositions. The ample safeguards of the [Federal Rules of Civil Procedure, Rules 26-32](#), will prevent misuse of this section.

The provisions of section 703 of Title 28, U.S.C., 1940 ed., for punishment of disobedience to subpoena or refusal to answer is covered by Rule 37(b)(1) of [the] Federal Rules of Civil Procedure.

The provisions of section 704 of Title 28, U.S.C., 1940 ed., with respect to fees and mileage of witnesses are covered by Rule 45(c) of [the] Federal Rules of Civil Procedure.

Changes were made in phraseology. 80th Congress House Report No. 308.

1949 Acts. This amendment corrects restrictive language in section 1782 of Title 28, U.S.C., in conformity with original law and permits depositions in any judicial proceeding without regard to whether the deponent is “residing” in the district or only sojourning there.

1964 Acts. Senate Report No. 1580, see 1964 U.S. Code Cong. and Adm. News, p. 3782.

1996 Acts. [House Conference Report No. 104-450](#), see 1996 U.S. Code Cong. and Adm. News, p. 238.

#### References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in this title.

#### Amendments

1996 Amendments. Subsec. (a). Pub.L. 104-106, § 1342(b), inserted “, including criminal investigations conducted before formal accusations” after “proceeding in a foreign or international tribunal”.

1964 Amendments. Pub.L. 88-619 substituted provisions which empowered district courts to order residents to give testimony or to produce documents for use in a foreign or international tribunal, pursuant to a letter rogatory, or request, of a foreign or international tribunal or upon application of any interested person, and to direct that the evidence be presented before a person appointed by the court, provided that such person may administer oaths and take testimony, that the evidence be taken in accordance with the Federal Rules of Civil Procedure unless the order prescribes using the procedure of the foreign or international tribunal, that a person may not be compelled to give legally privileged evidence, and that this chapter doesn't preclude a person from voluntarily giving evidence for use in a foreign or international tribunal, for provisions permitting depositions of witnesses within the United States for use in any court in a foreign country with which the United States was at peace to be taken before a person authorized to administer oaths designated by the district court of the district where the witness resides or is found, and directing that the procedure used be that generally used in courts of the United States, in the text, and “Assistance to foreign and international tribunals and to litigants before such tribunals” for “Testimony for use in foreign countries”, in the catchline.

1949 Amendments. Act May 24, 1949, struck out the word “residing” following “witness”, and substituted “judicial proceeding” for “civil action” following “to be used in any”.

#### CROSS REFERENCES

Fees of witnesses in the United States courts, see [28 USCA § 1821](#).

Letters rogatory from United States courts, see [28 USCA § 1781](#).

#### LAW REVIEW COMMENTARIES

28 U.S.C. § 1782 and the evolution of international judicial assistance in United States courts. Michael Campion Miller, Alejandro G. Rosenberg, and Michael Stoll, [59 Fed. Law. 44 \(May 2012\)](#).

[Euromepa v. Esmerian: Scope of the inquiry into foreign law when evaluating discovery requests. 21 N.C.J.Int'l L. & Com.Reg. 491 \(1996\)](#).

Extra-statutory discovery requirements: Violating the twin purposes of 28 U.S.C. section 1782. 29 Vand.J.Transnat'l L.117 (1996).

“Extraterritorial” discovery and U.S. judicial assistance: Promoting reciprocity or exacerbating judiciary overload? Cynthia Day Wallace, 37 Int'l Law. 1055 (Winter, 2003).

How to construe section 1782: A textual prescription to restore the judge's discretion. 61 U.Chi.L.Rev. 1127 (1994).

International judicial assistance: Does 28 U.S.C. § 1782 contain an implicit discoverability requirement? 18 Fordham Int'l L.J. 332 (1994).

Much ado about 1782: A look at the recent problems with discovery in the United States for use in foreign litigation under 28 U.S.C. 1782. Brian Eric Bomstein and Julie M. Levitt, 20 U.Miami Inter-Am.L.Rev. 429 (1989).

Recent interpretation of 28 u.s.c. § 1782(a) by the Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*: The effects on federal district courts, domestic litigants, and foreign tribunals and litigants. Note, 17 Pace Int'l L. Rev. 413 (2005).

Second Circuit's § 1782 trilogy: Foreign litigants' use of U.S. discovery rules. Barry H. Garfinkel and Marco E. Schnabl, 213 N.Y.L.J. 1 (April 20, 1995).

Supreme court expands the role of U.S. courts in foreign discovery proceedings. Note, 1 N.Y.U. J. L. & Bus. 551 (2005).

U.S. discovery for foreign litigants. Lawrence W. Newman and Michael Burrows, 212 N.Y.L.J. 3 (July 29, 1994).

U.S. evidence for foreign tribunals. Lawrence W. Newman and Michael Burrows, 213 N.Y.L.J. 3 (June 30, 1995).

## LIBRARY REFERENCES

American Digest System

[Federal Civil Procedure](#) 🔑 1312.

Key Number System Topic No. [170A](#).

Corpus Juris Secundum

[CJS Federal Civil Procedure § 597](#), Discretion of Court.

[CJS Federal Civil Procedure § 600](#), Grounds and Objections--Inconvenience or Oppression; Protective Orders.

[CJS Federal Civil Procedure § 613](#), Taking for Use in Another Proceeding.

[CJS Federal Civil Procedure § 614](#), Depositions in Foreign Countries.

[CJS Federal Civil Procedure § 713](#), Objections and Grounds for Refusal.

[CJS Federal Courts § 439](#), Evidence, Discovery, and Similar Matters.

[CJS Federal Courts § 592](#), De Novo Review.

[CJS International Law § 34](#), International Comity; Statutory Provisions.

## RESEARCH REFERENCES

ALR Library

[43 ALR, Fed. 2nd Series 659](#), Construction and Application of International Organizations Immunities Act, [22 U.S.C.A. §§ 288 et seq.](#) (Ioia).

[45 ALR, Fed. 2nd Series 51](#), Discovery in Federal Arbitration Proceedings Under Discovery Provision of Federal Arbitration Act (FAA), [9 U.S.C.A. § 7](#), and Federal Rules of Civil Procedure, as Permitted by Fed. R. Civ. P....

[56 ALR, Fed. 2nd Series 307](#), Construction and Application of 28 U.S.C.A. § 1782, Permitting Federal District Court to Order Discovery for Use in Proceeding in Foreign or International Tribunal.

[13 ALR, Fed. 208](#), Valid Judgment of Court of Foreign Country as Entitled to Extraterritorial Effect in Federal District Court.

[36 ALR, Fed. 763](#), Appealability of Discovery Order as “Final Decision” Under [28 U.S.C.A. § 1291](#).

[112 ALR, Fed. 295](#), Construction and Application of Right to Financial Privacy Act of 1978 ([12 U.S.C.A. §§ 3401 et seq.](#)).

[200 ALR, Fed. 541](#), Construction and Application of United Nations Convention on Contracts for the International Sale of Goods (Cisg).

[1 ALR International 289](#), Construction and Application of Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters, March 18, 1970, 847 U.N.T.S. 231--Global Cases.

[60 ALR 5th 75](#), Reportorial Privilege as to Nonconfidential News Information.

[76 ALR 4th 22](#), Forum Non Conveniens in Products Liability Cases.

[99 ALR 3rd 37](#), Privilege of Newsgatherer Against Disclosure of Confidential Sources or Information.

[19 ALR 2nd 301](#), Stay of Civil Proceedings Pending Determination of Action in Another State or Country.

[58 ALR 1263](#), Scope or Extent, as Regards Books, Records, or Documents to be Produced or Examined, Per-

missible in Order for Inspection.

[73 ALR 1460](#), Extraterritorial Enforcement of Arbitral Award.

[108 ALR 384](#), Power of Court to Issue or to Honor Letters Rogatory.

[125 ALR 508](#), Attorney-Client Privilege as Affected by Wrongful or Criminal Character of Contemplated Acts or Course of Conduct.

[148 ALR 991](#), Conclusiveness as to Merits of Judgment of Court of Foreign Country.

[128 ALR 405](#), Choice of Laws as Regards Presumption, Burden of Proof, and Sufficiency of Evidence, in Actions in Federal Courts Since Repudiation of Rule of Swift v. Tyson.

[109 ALR 1450](#), Testimonial or Evidentiary Privilege in Respect of Business Transactions Between Banker or Broker and Customer.

[27 ALR 139](#), Privilege Against Self-Incrimination Before Grand Jury.

[4 ALR 1377](#), Relation of Treaty to State and Federal Law.

Encyclopedias

[21 Am. Jur. Proof of Facts 2d 1](#), Law of Foreign Jurisdiction.

[31 Am. Jur. Proof of Facts 3d 495](#), Invalidity of Foreign Arbitration Agreement or Arbitral Award.

[39 Am. Jur. Proof of Facts 3d 1](#), Proof of Basis For, and Grounds for Lifting, Work Product Protection Against Discovery.

[92 Am. Jur. Proof of Facts 3d 1](#), Arbitrability Disputes: Proving What Facts to Whom.

[44 Am. Jur. Trials 507](#), Alternative Dispute Resolution: Commercial Arbitration.

[71 Am. Jur. Trials 1](#), How to Conduct International Discovery.

[76 Am. Jur. Trials 1](#), Arbitration Evidence: Putting Your Best Case Forward.

[81 Am. Jur. Trials 1](#), Arbitrating International Claims--At Home and Abroad.

[82 Am. Jur. Trials 243](#), Handling Aviation Disaster Cases.

[86 Am. Jur. Trials 111](#), Arbitration Highways to the Courthouse--A Litigator's Roadmap.

[Am. Jur. 2d Depositions and Discovery § 5](#), Discretion of Court.

#### Forms

[Federal Procedural Forms § 23:273](#), Transmittal of Letter of Request; Court Order for Discovery.

[Federal Procedural Forms § 23:274](#), What Foreign or International Tribunals May Obtain Discovery.

[Federal Procedural Forms § 23:275](#), Privileges; Voluntary Disclosure.

[Federal Procedural Forms § 23:276](#), Granting of Request as Exercise of Discretion.

[Federal Procedural Forms § 23:282](#), Order--Appointing Officer to Take Deposition for Use in Foreign Action--On Request by Foreign Court [28 U.S.C.A. § 1782; [Fed. R. Civ. P. 28\(a\)](#)].

[Federal Procedural Forms § 23:283](#), Order--For Execution of Letter Rogatory--Appointing Examiner and Directing Issuance of Subpoena [28 U.S.C.A. § 1782(a)].

[Federal Procedural Forms § 23:284](#), Motion--By Subpoenaed Witness--To Vacate Order for Execution of Letter Rogatory from Foreign Agency; Issuing Agency Not "Tribunal" [28 U.S.C.A. § 1782(a)].

[Federal Procedural Forms § 23:285](#), Order--Vacating Ex Parte Order for Execution of Letter Rogatory and Quashing Subpoena--Foreign Agency Not "Tribunal" [28 U.S.C.A. § 1782(a)].

[Federal Procedural Forms § 23:286](#), Order--Denying Motion to Vacate Order for Execution of Letters Rogatory Issued by Foreign Tribunal and to Quash Subpoena [28 U.S.C.A. § 1782(a)].

5 West's Federal Forms § 7807, Application for Order Appointing Commissioners to Obtain Evidence for Foreign Prosecution.

5 West's Federal Forms § 7808, Application for Order Appointing Commissioners to Obtain Evidence for Foreign Prosecution--Supporting Memorandum.

5 West's Federal Forms § 7809, Application for Order Appointing Commissioners to Obtain Evidence for Foreign Prosecution--Commissioner's Subpoena.

3B West's Federal Forms § 3985, Service of Subpoena.

5A West's Federal Forms § 87:63, Assistance to Foreign Tribunals--Application for Order Appointing Commissioners to Obtain Evidence for Foreign Prosecution.

5A West's Federal Forms § 87:64, Assistance to Foreign Tribunals--Application for Order Appointing Commissioners to Obtain Evidence for Foreign Prosecution--Supporting Memorandum.

5A West's Federal Forms § 87:65, Assistance to Foreign Tribunals--Application for Order Appointing Commissioners to Obtain Evidence for Foreign Prosecution--Commissioner's Subpoena.

7A West's Federal Forms § 11761, Special Notice of Taking Deposition (Witness Departing from District).

7A West's Federal Forms § 11795, Motion to Quash Subpoena and Vacate Order Appointing Commissioner.

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 884, Introductory Comments.

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 885, Application--By Interested Person--To Take Deposition for Use in Foreign Action.

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 887, Motion and Notice--By Subpoenaed Witness--To Vacate Order for Execution of Letter Rogatory from Foreign Agency--Issuing Agency Not "Tribunal".

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 889, Order--Appointing Officer to Take Deposition for Use in Foreign Country--Specifying Procedures--On Application by Interested Person.

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 890, Order--Appointing Officer to Take Deposition for Use in Foreign Action--On Request by Foreign Court.

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 891, Order--For Execution of Letters Rogatory from Foreign Tribunal--Appointing Special Examiner to Take Deposition--Directing Issuance of Subpoena to Witness.

Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 892, Order--Vacating Ex Parte Order for Execution of Letter Rogatory and Quashing Subpoena--Foreign Agency Not "Tribunal".



[Am. Jur. Pl. & Pr. Forms Fed. Prac. & Proc. § 893](#), Order--Denying Motion to Vacate Order for Execution of Letters Rogatory Issued by Foreign Tribunal and to Quash Subpoena.

Treatises and Practice Aids

[Bankruptcy Procedure Manual § 7028:4](#), Service of a Subpoena in a Foreign Country.

[Callmann on Unfair Compet., TMs, & Monopolies § 14:30](#), The Requirements for Protection--Secrecy and Publication--Disclosure in Litigation.

[Federal Procedure, Lawyers Edition § 26:925](#), Court Order for Discovery.

[Federal Procedure, Lawyers Edition § 26:926](#), Court Order for Discovery--Procedure for Obtaining Discovery Pursuant to Court Order.

[Federal Procedure, Lawyers Edition § 26:927](#), What Foreign or International Tribunals May Obtain Discovery.

[Federal Procedure, Lawyers Edition § 26:928](#), What Foreign or International Tribunals May Obtain Discovery--Adjudicative Nature of Foreign Proceeding.

[Federal Procedure, Lawyers Edition § 26:929](#), Application of Interested Person.

[Federal Procedure, Lawyers Edition § 26:930](#), Necessity of Pending Proceeding.

[Federal Procedure, Lawyers Edition § 26:931](#), Privileges; Voluntary Disclosure.

[Federal Procedure, Lawyers Edition § 26:932](#), Honoring of Request Not Dependent on Reciprocity.

[Federal Procedure, Lawyers Edition § 26:933](#), Granting of Request as Exercise of Discretion.

[Federal Procedure, Lawyers Edition § 26:934](#), Granting of Request as Exercise of Discretion--Discoverability.

[Federal Procedure, Lawyers Edition § 26:935](#), Appeal and Review.

[Federal Procedure, Lawyers Edition § 26:950](#), Orders Concerning Letters of Request from Foreign Tribunals.

[Federal Procedure, Lawyers Edition § 36:204](#), Introduction.

Federal Procedure, Lawyers Edition § 36:205, Determining Proper Procedure.

Federal Procedure, Lawyers Edition § 36:206, Assertion of Privilege.

Federal Procedure, Lawyers Edition § 65:271, Are the Subpoenaed Materials Specified With Reasonable Particularity?

Patent Law Fundamentals § 4:6, Trade Secret Misappropriation--Elements of a Cause of Action for Trade Secret Misappropriation.

Patent Law Fundamentals § 20:79, Discovery--Matters Discoverable.

Patent Law Fundamentals § 20:87, Discovery--Limitations on Discovery--Conflict With Foreign Law.

Restatement (Third) of Foreign Relations § 473, Obtaining Evidence in Foreign State.

Restatement (Third) of Foreign Relations § 474, Obtaining Evidence in or for Use in Foreign State: Law of the United States.

Restatement (Third) U.S. Law of Int'l Comm. Arb. § 1-1, Definitions.

Securities Crimes § 4:32, Early Case Law.

Securities Crimes § 4:33, Current Use in Criminal Cases.

Trade Secrets Law § 5:42.50, U.S. Discovery for Use in Foreign Suits.

Wright & Miller: Federal Prac. & Proc. § 1063, Subject Matter Jurisdiction, Venue, Personal Jurisdiction, and Service of Process Distinguished.

Wright & Miller: Federal Prac. & Proc. § 2006, Appellate Review of Discovery Orders.

Wright & Miller: Federal Prac. & Proc. § 2072, Depositions Before Action--Petition.

Wright & Miller: Federal Prac. & Proc. § 2203, Actions in Which Production Available.

Wright & Miller: Federal Prac. & Proc. § 3569, Arbitration.

[Wright & Miller: Federal Prac. & Proc. § 3655](#), Actions Against Federal Agencies and Officers.

[Wright & Miller: Federal Prac. & Proc. § 3691](#), Miscellaneous Bases of Federal Jurisdiction--Federal Statutes; Indians and Indian Tribes.

[Wright & Miller: Federal Prac. & Proc. § 5437](#), Exceptions--Act of Congress.

[Wright & Miller: Federal Prac. & Proc. § 2005.1](#), Exclusiveness of Procedures--Foreign Discovery.

[Wright & Miller: Federal Prac. & Proc. § 2463.1](#), Quashing or Modifying a Subpoena.

[Wright & Miller: Federal Prac. & Proc. § 3068.2](#), Magistrate Judge Handling of Matters Other Than Trial -  
-Dispositive and Nondispositive Matters.

[Wright & Miller: Federal Prac. & Proc. § 3071.2](#), Consensual Civil Proceedings Before Magistrate Judges -  
-Consent to the Magistrate Judge's Jurisdiction.

[Wright & Miller: Federal Prac. & Proc. § 3901.1](#), Magistrate Judge Appeals.

[Wright & Miller: Federal Prac. & Proc. § 3914.24](#), Finality--Orders Prior to Trial--Discovery Orders--Ancillary  
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#### 1. Generally


Letters rogatory in aid of foreign criminal proceedings are authorized. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. Federal Civil Procedure](#)  1312


Letters rogatory may be executed by district court when testimony sought is for use in proceeding in foreign or international tribunal. [In re Letters Rogatory Issued by Director of Inspection of Government of India, C.A.2 \(N.Y.\) 1967, 385 F.2d 1017. Federal Civil Procedure](#)  1312


## 2. Construction

Amendment to this section must be interpreted in terms of mischief it was intended to rectify. [In re Letters Rogatory Issued by Director of Inspection of Government of India, C.A.2 \(N.Y.\) 1967, 385 F.2d 1017. Statutes](#)  212.5


## 3. Construction with other laws


The manner in which discovery proceeds under statute allowing federal courts to provide assistance in gathering evidence for use in foreign tribunals is determined by normal discovery rules. [Government of Ghana v. ProEnergy Services, LLC, C.A.8 \(Mo.\) 2012, 677 F.3d 340. Federal Civil Procedure](#)  1312

Internationally known individual was not entitled to order directing United States National Security Agency (NSA) to produce classified documents relating to the death of individual's son and his companion in a highly publicized automobile crash, even for purposes of use in foreign tribunal's inquiry into such deaths, where another party's request for same documents was previously denied under Freedom of Information Act (FOIA). [In re Al Fayed, D.Md.1999, 36 F.Supp.2d 694, affirmed 210 F.3d 421. Federal Civil Procedure](#)  1312


Right to Financial Privacy Act did not apply to proceeding seeking to enforce subpoena duces tecum under letters rogatory issued by Brazilian court. [In re Request for Intern. Judicial Assistance \(Letter Rogatory\) from the Federative Republic of Brazil, S.D.N.Y.1990, 130 F.R.D. 283. Federal Civil Procedure](#)  1312


### 3a. Construction with federal rules of civil procedure


Amended version of Federal Rule of Civil Procedure governing discovery disclosure applied to request of Republic of Ecuador and its Attorney General seeking production of documents from witness and his former employer for use in foreign proceeding, a Bilateral Investment Treaty Arbitration; Republic's application for documents was filed nearly two years after Arbitration was initiated, and after enactment of amended version of Rule. [In re Application of Republic of Ecuador, N.D.Cal.2012, 280 F.R.D. 506. Federal Civil Procedure](#)  44


Federal Rules of Civil Procedure did not govern district court's decision denying discovery request under statute permitting domestic discovery for use in foreign proceedings. [In re Application for an Order Pursuant to 28 U.S.C. §1782, C.A.D.C.2012, 473 Fed.Appx. 2, 2012 WL 1138816, Unreported. Federal Civil Procedure](#)  1312


#### 4. Purpose

Twin aims of statute which permits a district court to provide assistance to foreign and international tribunals, and litigants before such tribunals, are to provide efficient means of assistance to participants in international litigation in federal courts, and to encourage foreign countries by example to provide similar means of assistance to United States courts. [In re Ishihara Chemical Co., C.A.2 \(N.Y.\) 2001, 251 F.3d 120, 58 U.S.P.Q.2d 1907. Federal Civil Procedure](#)  1312


Goals of statute permitting federal district court to allow interested persons to obtain discovery for use before foreign tribunals are to provide equitable and efficacious discovery procedures in United States courts for the benefit of tribunals and litigants involved in litigation with international aspects, and to encourage foreign countries by example to provide similar means of assistance to American courts. [Lancaster Factoring Co. Ltd. v. Mangone, C.A.2 \(N.Y.\) 1996, 90 F.3d 38, on remand 1996 WL 706925. Federal Civil Procedure](#)  1312

Purpose of 1964 amendment to this section providing for assistance to foreign or international tribunals was to broaden prior law and permit extension of international assistance to bodies of a quasi-judicial or administrative nature, including foreign investigating magistrates. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. International Law](#)  10.45(1)



The statute under which a district court may order a person to produce a document for use in a proceeding in a foreign or international tribunal is the product of congressional efforts to provide federal-court assistance in gathering evidence for use in foreign tribunals. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632. Federal Civil Procedure](#)  1312

By enacting 1964 amendments to this section pertaining to assistance to foreign and international tribunals, Congress intended to enable the United States to take the initiative in rendering such assistance, with the hope that this would stimulate reciprocal aid. [In re Request For Judicial Assistance From Seoul Dist. Criminal Court, Seoul, Korea, N.D.Cal.1977, 428 F.Supp. 109, affirmed 555 F.2d 720. Federal Civil Procedure](#)  1312


#### 5. Law governing


Subpoena for bank records located in United States, whose enforcement was sought by government of Haiti for use in criminal investigation was issued pursuant to federal statute, and governed by federal law, and Florida law was preempted, for purposes of claim that subpoena violated Florida's constitutional guarantee of privacy. [In re Letter of Request for Judicial Assistance from Tribunal Civil de Port-au-Prince, Republic of Haiti, S.D.Fla.1987, 669 F.Supp. 403. States](#)  18.15


#### 6. Treaties


Treaty with foreign government for mutual assistance in criminal matters was self-executing and superseded any inconsistent preexisting statutory domestic law, which relieved domestic court of need to determine whether foreign judicial proceeding was pending or whether evidence requested under treaty could be used in the foreign proceeding. [In re Erato, C.A.2 \(N.Y.\) 1993, 2 F.3d 11. Treaties](#)  11; [Treaties](#)  12


## 7. Discretion of court


Whether, and to what extent, to honor a request for assistance, pursuant to statute giving district courts power to provide assistance to foreign courts, has been committed by Congress to the sound discretion of the district court. [United Kingdom v. U.S., C.A.11 \(Fla.\) 2001, 238 F.3d 1312](#), rehearing and rehearing en banc denied [253 F.3d 713](#), certiorari denied [122 S.Ct. 206, 534 U.S. 891, 151 L.Ed.2d 146](#). [Criminal Law](#)  [627.2](#)


Federal statute dealing with discovery for use in foreign or international tribunal gives district court discretion to decide whether to honor requests for assistance. [Lo Ka Chun v. Lo To, C.A.11 \(Fla.\) 1988, 858 F.2d 1564](#). [Federal Civil Procedure](#)  [1261](#)


A request by a foreign tribunal for assistance in securing testimony or document is addressed to the district court's discretion. [In re Request For Judicial Assistance from Seoul Dist. Criminal Court, Seoul, Korea, C.A.9 \(Cal.\) 1977, 555 F.2d 720](#). [Federal Civil Procedure](#)  [1312](#)


District court has discretion in determining whether letters rogatory from foreign or international tribunals should be honored. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216](#). [Federal Civil Procedure](#)  [1312](#)

If the four requirements are met for an application for judicial assistance to litigant in foreign tribunal, the court has discretion to grant the application. [Pott v. Icicle Seafoods, Inc., W.D.Wash.2013, 2013 WL 1855771](#). [Federal Civil Procedure](#)  [1312](#)

If the requirements of the statute under which a district court may order a person to produce a document for use in a proceeding in a foreign or international tribunal are met, the district court is authorized, but not required, to provide assistance. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632](#). [Federal Civil Procedure](#)  [1312](#)


District courts have broad discretion to grant judicial assistance to foreign tribunals to obtain evidence for use in foreign proceedings. [In re Application of Mesa Power Group, LLC, S.D.Fla.2012, 2012 WL 2886827](#). [Federal Civil Procedure](#)  [1312](#)


Whether to permit requested discovery for use in foreign proceeding is within discretion of court, even if all statutory requirements are met. [Republic of Ecuador v. Bjorkman, D.Colo.2011, 801 F.Supp.2d 1121](#), stay denied, affirmed [2011 WL 5439681](#). [Federal Civil Procedure](#)  [1312](#)

Even where threshold requirements of statute permitting domestic discovery for use in foreign proceedings are met, a district court is not required to grant a discovery application simply because it has the authority to do so. [In re Application of Thai-Lao Lignite \(Thailand\) Co., Ltd., D.D.C.2011, 821 F.Supp.2d 289](#). [Federal Civil Procedure](#)  [1312](#)


District Court is not required to grant a discovery application made by a foreign tribunal simply because it has






authority to do so; rather, it has discretion to decide whether to exercise its authority to grant the request for judicial assistance. [In re Request for Judicial Assistance from the Dist. Court in Svitavy, Czech Republic, E.D.Va.2010, 748 F.Supp.2d 522. Federal Civil Procedure](#)  1312


Even where threshold requirements of statute authorizing discovery for use in a proceeding in a foreign or international tribunal are met, a district court is not required to grant discovery application simply because it has the authority to do so. [In re Application of Caratube Int'l Oil Co., LLP, D.D.C.2010, 730 F.Supp.2d 101. Federal Civil Procedure](#)  1312

It is within the court's discretion to grant or deny an application under federal statute permitting domestic discovery for use in foreign proceedings. [In re Roz Trading Ltd., N.D.Ga.2006, 469 F.Supp.2d 1221, motion for stay pending appeal denied 2007 WL 120844. Federal Civil Procedure](#)  1312


District court is not required to grant discovery application for assisting foreign or international tribunal simply because it has authority to do so; rather, once statutory requirements are met, district court is free to grant discovery in its discretion. [In re Microsoft Corp., S.D.N.Y.2006, 428 F.Supp.2d 188. Federal Civil Procedure](#)  1312

District courts have wide discretion when considering applications to compel production of documents or deposition testimony under statute governing assistance to foreign tribunals and litigants before those tribunals. [Application of Euromepa, S.A., S.D.N.Y.1994, 155 F.R.D. 80, reversed 51 F.3d 1095. Federal Civil Procedure](#)  1312

United States magistrate judge, acting as commissioner pursuant to Convention on Taking of Evidence Abroad, has discretion to grant or deny foreign court's letter rogatory for assistance in obtaining evidence. [In re Letter Rogatory from Local Court of Ludwigsburg, Federal Republic of Germany in Matter of Smith, N.D.Ill.1994, 154 F.R.D. 196. Treaties](#)  8; [United States Magistrates](#)  17

Compliance with statute governing requests by foreign courts for discovery assistance and with Hague Convention does not necessarily end inquiry as to whether to provide assistance as district court must determine whether it is appropriate to exercise wide discretion conferred by statute. [In re Letter of Request From Boras Dist. Court, E.D.N.Y.1994, 153 F.R.D. 31. Federal Civil Procedure](#)  1312

#### 7a. Mandamus

Statute governing assistance to foreign and international tribunals and to litigants before such tribunals provided no clear duty to government to produce documents for foreign prisoner's use in foreign tribunal, and thus prisoner was not entitled to writ of mandamus ordering production of documents; issuance of discovery orders pursuant to statute was matter of discretion for district court. [McKevitt v. Mueller, S.D.N.Y.2010, 689 F.Supp.2d 661. Mandamus](#)  32

#### 8. Persons within section

United States is not “person” within meaning of statute giving district court power to order person to give his testimony or statement or to produce document or other thing for use in proceeding in foreign or international tribunal. *Al Fayed v. C.I.A.*, C.A.D.C.2000, 229 F.3d 272, 343 U.S.App.D.C. 308. [Federal Civil Procedure](#) 1312

Government is not “person” under statute governing assistance to foreign and international tribunals and to litigants before such tribunals and therefore cannot be compelled to provide documents for use in foreign litigation. *McKevitt v. Mueller*, S.D.N.Y.2010, 689 F.Supp.2d 661. [Federal Civil Procedure](#) 1312

Central Intelligence Agency (CIA) was not a “person” within meaning of statute giving district court power to order person to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. *In re Al Fayed*, D.D.C.2000, 91 F.Supp.2d 137, affirmed 229 F.3d 272, 343 U.S.App.D.C. 308. [Federal Civil Procedure](#) 1312

#### 9. Interested persons

Complainant before Commission of the European Communities qualifies as “interested person” within compass of federal statute permitting domestic discovery for use in foreign proceedings; statute makes discovery available to complainants who do not have status of private litigants and are not sovereign agents. *Intel Corp. v. Advanced Micro Devices, Inc.*, U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. [Federal Civil Procedure](#) 1312

Brother of person who died intestate in foreign country was “interested person” authorized by statute to seek discovery order from district court for use in proceedings before foreign tribunal, in light of fact that brother was party to two separate proceedings in Hong Kong to determine whether he or his sister would become administrator for their brother's estate. *Application of Esses*, C.A.2 (N.Y.) 1996, 101 F.3d 873. [Federal Civil Procedure](#) 1312

Agent for court-appointed trustee of foreign debtor, which was involved in pending Italian bankruptcy litigation, was “interested person” within meaning of statute permitting federal district court to allow interested persons to obtain discovery for use before foreign tribunals. *Lancaster Factoring Co. Ltd. v. Mangone*, C.A.2 (N.Y.) 1996, 90 F.3d 38, on remand 1996 WL 706925. [Federal Civil Procedure](#) 1312

Tokyo district prosecutor's office was “interested person” for purpose of statute authorizing district courts to give assistance to foreign and international tribunals upon application of foreign or international tribunal or “any interested person.” *In re Letters Rogatory from Tokyo Dist. Prosecutor's Office, Tokyo, Japan*, C.A.9 (Cal.) 1994, 16 F.3d 1016. [Federal Civil Procedure](#) 1312

Crown Prosecution Service of the United Kingdom was an “interested person” within meaning of federal statute governing foreign applications for judicial assistance. *In re Letter of Request from Crown Prosecution Service*

of United Kingdom, C.A.D.C.1989, 870 F.2d 686, 276 U.S.App.D.C. 272. Federal Civil Procedure  1312

District court was statutorily authorized to provide judicial assistance to foreign tribunals to obtain evidence for use in foreign proceedings on power company's application for such assistance in relation to its arbitration proceeding under North American Free Trade Agreement (NAFTA) with Canadian government; power company was "interested party" in arbitration, application sought evidence in form of document production and deposition testimony, evidence sought would be used in proceeding before foreign or international tribunal, and competitor from which evidence was sought resided within court's district. [In re Application of Mesa Power Group, LLC, S.D.Fla.2012, 2012 WL 2886827. Alternative Dispute Resolution !\[\]\(4729e517bc6a7cd81c8025b9646574fb\_img.jpg\) 514](#)

In determining whether to grant application for discovery pursuant to statute permitting domestic discovery for use in foreign proceedings, court must determine whether: (1) person from whom discovery is sought resides or is found in district where action has been filed, (2) discovery sought is for use in proceeding before foreign tribunal, and (3) application is made by foreign or international tribunal or any interested person. [In re Lazaridis, D.N.J.2011, 2011 WL 3859919. Federal Civil Procedure !\[\]\(cbe80b694ebd74fcfe136a095b608235\_img.jpg\) 1312](#)

Applications filed by American oil company and two employees of its Ecuadorian subsidiary, seeking discovery from an attorney under statute permitting domestic discovery for use in foreign proceedings, satisfied threshold statutory requirements with regard to an environmental lawsuit pending in Ecuador, to extent that lawsuit concerned the company, and Ecuadorian criminal proceedings against the two employees; attorney resided in the United States, the requested discovery was for use in proceedings before foreign tribunals, and, as civil and criminal defendants in the Ecuadorian proceedings, the applicants were "interested persons" within the meaning of the statute. [In re Application of Chevron Corp., D.Mass.2010, 762 F.Supp.2d 242. Federal Civil Procedure !\[\]\(a03a7eb2f4046e1d3c76772003e549ea\_img.jpg\) 1312](#)

District Court had authority to grant applicant's discovery request under statute permitting domestic discovery for use in foreign proceedings, even though applicant was not "interested party" in Greek prosecution, where applicant had for the most part satisfied the statutory requirements. [Lazaridis v. International Centre for Missing and Exploited Children, Inc., D.D.C.2011, 760 F.Supp.2d 109, affirmed 473 Fed.Appx. 2, 2012 WL 1138816. Federal Civil Procedure !\[\]\(cbe2492b119e39e02a1dab2af4a4b296\_img.jpg\) 1312](#)

An "interested person" within meaning of statute authorizing an interested person to apply for an order for discovery in aid of foreign proceeding includes a party to the foreign litigation, whether directly or indirectly involved. [In re Merck & Co., Inc., M.D.N.C.2000, 197 F.R.D. 267. Federal Civil Procedure !\[\]\(e474458956c9a37fbf9586ddb60a7fa1\_img.jpg\) 1312](#)

#### 10. Found within district

If a person is served with a subpoena while physically present in the district of the court that issued the discovery order, he is "found" in that district for purposes of statute authorizing discovery in United States for use in foreign tribunal; thus, a person who lives and works in a foreign country is not necessarily beyond the statute's reach simply because the district judge signed the discovery order at a time when that prospective deponent was not physically present in the district. [In re Edelman, C.A.2 \(N.Y.\) 2002, 295 F.3d 171. Federal Civil Procedure](#)

 1312

Allegation that, upon information and belief, entity had “systematic and continuous contacts” with the District of Columbia that would be sufficient to justify the exercise by the district court of in personam jurisdiction over the entity, was not sufficient to establish that entity was found in the District of Columbia, under statute permitting domestic discovery for use in foreign proceedings, absent any explanation as to what such “systematic and continuous contacts” might have been. [In re Application of Thai-Lao Lignite \(Thailand\) Co., Ltd., D.D.C.2011, 821 F.Supp.2d 289. Federal Civil Procedure !\[\]\(dfbd6b3763a6d1d9afaa974f64e2e4b5\_img.jpg\) 1312](#)

Foreign corporations and their executives did not reside and were not found in the Southern District of New York, as required to conduct discovery for use in a foreign proceeding, although they were served with subpoenas there, where corporations were neither incorporated nor headquartered there, and neither corporations nor their executives engaged in systematic and continuous activities there. [In re Godfrey, S.D.N.Y.2007, 526 F.Supp.2d 417. Federal Civil Procedure !\[\]\(e78f798d4ea5c530c9db49e7d26e6b95\_img.jpg\) 1312](#)

Software corporation lacked statutory authority to serve subpoenas duces tecum upon partner in European office of American law firm, with respect to ongoing antitrust proceeding before European Commission; although partner was member of New York bar, he was Dutch national who resided and worked in Belgium, and had not been present in district since subpoenas were issued. [In re Microsoft Corp., S.D.N.Y.2006, 428 F.Supp.2d 188. Witnesses !\[\]\(23d9fc146e83b5c3013cfa32c784f8d5\_img.jpg\) 16](#)

Law firm which possessed documents sought by litigants in German securities action was located in the district where the discovery petition was filed, satisfying the assistance to foreign tribunals statute requirement that the person from whom discovery was sought be found in the district court where application was made, although law firm allegedly only had temporary possession of the documents solely for the purposes of the litigation in the United States. [In re Application of Schmitz, S.D.N.Y.2003, 259 F.Supp.2d 294, affirmed 376 F.3d 79. Federal Civil Procedure !\[\]\(c694a3ff3b077d76910920a6a1593ab4\_img.jpg\) 1312](#)

#### 11. Discovery generally

Statute allowing federal courts to provide assistance in gathering evidence for use in foreign tribunals does not establish a standard for discovery; instead, it provides for a threshold determination of whether to allow foreign litigants to enjoy discovery in United States courts in accordance with federal rules. [Government of Ghana v. ProEnergy Services, LLC, C.A.8 \(Mo.\) 2012, 677 F.3d 340. Federal Civil Procedure !\[\]\(05be7c7a8995decd503647c99211f7c2\_img.jpg\) 1312](#)

Secondary estate distribution proceeding in Brazil probate court, for which decedent's heirs from a previous marriage sought an order compelling discovery from decedent's Florida banks in which assets were purportedly concealed and from his accountant to contest decedent's will, was a proceeding in a foreign tribunal within reasonable contemplation, a required statutory element to authorize the district court to order the discovery; settlement agreement between will contestants and decedent's widow specifically contemplated a second proceeding for concealed inheritance property, and will contestants reactivated the case file with the Brazilian probate court. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632. Federal Civil Procedure !\[\]\(aa53ad6fea213b8b2226d3077e30533a\_img.jpg\) 1312](#)

Statute providing for judicial assistance to foreign tribunals to obtain evidence for use in foreign proceedings directs judges to provide discovery assistance pursuant to the Federal Rules of Civil Procedure, so long as the order does not prescribe the practice and procedure of the foreign country or the international tribunal. [In re Application of Mesa Power Group, LLC, S.D.Fla.2012, 2012 WL 2886827. Federal Civil Procedure](#) 🔑 1312

The assistance to foreign tribunals statute affords access to discovery of evidence in the United States for use in foreign proceedings. [In re Application of Schmitz, S.D.N.Y.2003, 259 F.Supp.2d 294, affirmed 376 F.3d 79. Federal Civil Procedure](#) 🔑 1312

District court did not abuse its considerable discretion by denying discovery request under statute permitting domestic discovery for use in foreign proceedings on basis that it was overbroad and vague, and court did not have obligation to trim discovery request. [In re Application for an Order Pursuant to 28 U.S.C. |1782, C.A.D.C.2012, 473 Fed.Appx. 2, 2012 WL 1138816, Unreported. Federal Civil Procedure](#) 🔑 1312

## 12. Requests within section

Agreement on Procedures for Mutual Legal Assistance outlining procedures for Department of Justice and Philippine Presidential Commission on Good Government to assist each other in legal investigation of former president of Philippines and his wife upon request of either government did not make applicable to former president and his wife statute providing that person before foreign and international tribunals may not be compelled to give testimony or statements or produce document or other thing in violation of any legally applicable privilege; existence of agreement was not a “request” which triggered application of statute. [In re Doe, C.A.2 \(N.Y.\) 1988, 860 F.2d 40. Grand Jury](#) 🔑 36.3(2)

Party requesting relief under statute providing for judicial assistance to foreign tribunals to obtain evidence for use in foreign proceedings does not have to prove receptivity to show that they are not attempting to circumvent foreign proof-gathering mechanisms. [In re Application of Mesa Power Group, LLC, S.D.Fla.2012, 2012 WL 2886827. Federal Civil Procedure](#) 🔑 1312

District court had jurisdiction over a request for deposition and document production ordered pursuant to a letter rogatory issued by an Argentine court in light of evidence in record demonstrating that evidence was sought for use in a pending judicial proceeding and demonstrating the adjudicative function of the Argentine court with sufficient clarity. [Application of Sumar, S.D.N.Y.1988, 123 F.R.D. 467. Federal Civil Procedure](#) 🔑 1312; [Federal Civil Procedure](#) 🔑 1551

## 13. Proceedings generally

A “proceeding” within meaning of statute authorizing discovery in aid of a foreign proceeding includes any proceeding in which an adjudicated function is being exercised or is imminent. [In re Merck & Co., Inc., M.D.N.C.2000, 197 F.R.D. 267. Federal Civil Procedure](#) 🔑 1312

## 14. Criminal proceedings

District court had jurisdiction to issue a subpoena duces tecum in response to letters rogatory issued by Canadian prosecutor in attempt to obtain records from Detroit bank relative to defendant in Canadian prosecution. [In re Letter Rogatory from Justice Court, Dist. of Montreal, Canada, C.A.6 \(Mich.\) 1975, 523 F.2d 562. Federal Civil Procedure](#) 🔑 1354

A Greek criminal investigation conducted by a magistrate fell squarely within the type of pre-accusatory proceeding contemplated under statute permitting domestic discovery for use in foreign proceedings. [Lazaridis v. International Centre for Missing and Exploited Children, Inc., D.D.C.2011, 760 F.Supp.2d 109, affirmed 473 Fed.Appx. 2, 2012 WL 1138816. Federal Civil Procedure](#) 🔑 1312

This section providing that district court of district in which person resides or is found may order him to produce a document for use in proceeding in foreign or international tribunal permits use of letters rogatory in criminal proceedings, as well as in civil cases. [In re Letter Rogatory from Justice Court, Dist. of Montreal, Canada, E.D.Mich.1974, 383 F.Supp. 857, affirmed 523 F.2d 562. Criminal Law](#) 🔑 627.2

#### 15. Investigations

Subpoena duces tecum directed at New York bank as result of letters rogatory issued by Brazilian judge could not be enforced consistent with United States letter rogatory statute where there was nothing in record to show that adjudicative proceedings were likely or very soon to be brought against perpetrators of “probable illicit acts” under Brazilian law; letter from Brazilian prosecutor identified four individuals as targets of tax evasion investigation but referred only “possible” violations by those persons and “possible prosecution” of them and gave no assessment of likelihood or timing of formal proceedings, and thus it could not be said that proceedings were imminent, so as to statutorily authorize rendering of judicial assistance. [In re International Judicial Assistance \(Letter Rogatory\) for the Federative Republic of Brazil, C.A.2 \(N.Y.\) 1991, 936 F.2d 702. Federal Civil Procedure](#) 🔑 1312

Bank documents requested by foreign official were for use in a “proceeding in a foreign tribunal” within meaning of statute authorizing district court to provide assistance to such tribunals, though no proceeding was currently pending, where the documents were sought in admissible form, in an ongoing criminal investigation, for use at trial. [In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, S.D.Fla.1986, 648 F.Supp. 464, affirmed 848 F.2d 1151, certiorari denied 109 S.Ct. 784, 488 U.S. 1005, 102 L.Ed.2d 776. Federal Civil Procedure](#) 🔑 1312

This section providing that district court of district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal was not intended to and does not authorize United States courts to compel testimony on behalf of foreign governmental bodies whose purpose is to conduct investigations unrelated to judicial or quasi-judicial controversies. [In re Letters of Request to Examine Witnesses from Court of Queen's Bench for Manitoba, Canada, N.D.Cal.1973, 59 F.R.D. 625, affirmed 488 F.2d 511. Federal Civil Procedure](#) 🔑 1312

#### 16. Pending proceedings

British criminal proceedings were not required to be pending in order for Crown Prosecution Service of United Kingdom to be entitled to request assistance in criminal investigation, but rather it was sufficient that judicial proceedings be within reasonable contemplation. [In re Letter of Request from Crown Prosecution Service of United Kingdom, C.A.D.C.1989, 870 F.2d 686, 276 U.S.App.D.C. 272. Federal Civil Procedure](#) 🔑 1312

Statute authorizing federal court to order person residing within district to give testimony or produce document for use in proceeding in foreign or international tribunal did not require that proceeding be pending before judicial assistance could be granted. [In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, C.A.11 \(Fla.\) 1988, 848 F.2d 1151, certiorari denied 109 S.Ct. 784, 488 U.S. 1005, 102 L.Ed.2d 776. Federal Civil Procedure](#) 🔑 1312

The statute under which a district court may order a person to produce a document for use in a proceeding in a foreign or international tribunal is not limited to proceedings that are pending or imminent; rather, the proceeding for which discovery is sought need only be within reasonable contemplation. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632. Federal Civil Procedure](#) 🔑 1312

Statute providing for judicial assistance to foreign tribunals to obtain evidence for use in foreign proceedings is not limited to proceedings that are pending; to warrant such assistance, the proceedings need only be within reasonable contemplation. [In re Application of Mesa Power Group, LLC, S.D.Fla.2012, 2012 WL 2886827. Federal Civil Procedure](#) 🔑 1312

An adjudicative proceeding need be neither pending nor imminent for an applicant to invoke statute permitting domestic discovery for use in foreign proceedings successfully. [Lazaridis v. International Centre for Missing and Exploited Children, Inc., D.D.C.2011, 760 F.Supp.2d 109, affirmed 473 Fed.Appx. 2, 2012 WL 1138816. Federal Civil Procedure](#) 🔑 1312


Submissions of Dutch authorities, in support of request by the government of the Netherlands for U.S. assistance in aid of ongoing criminal investigation, sufficiently established that an adjudicative proceeding lay within reasonable contemplation, as required by statute allowing formal assistance to foreign criminal investigations. [In re Wilhelm, S.D.N.Y.2007, 470 F.Supp.2d 409. International Law](#) 🔑 10.19


Lack of pending judicial proceeding did not prohibit district court under § 1782 from ordering United States citizen to give deposition testimony and to provide documents to assist United Kingdom authorities during criminal perversion of justice investigation upon application via letter rogatory. [In re Letter of Request From Crown Prosecution Service of United Kingdom, D.D.C.1988, 683 F.Supp. 841, affirmed and remanded 870 F.2d 686, 276 U.S.App.D.C. 272. Criminal Law](#) 🔑 627.2

#### 17. Foreign or international tribunals


Discovery rules in foreign tribunals bear no impact on the provision of assistance under statute governing discovery of matters for use in proceeding in foreign or international tribunal, and foreign tribunal can place conditions on its acceptance of information to maintain whatever measure of parity it concludes is appropriate. [Re-](#)


[public of Ecuador v. Bjorkman, D.Colo.2011, 801 F.Supp.2d 1121, stay denied , affirmed 2011 WL 5439681. Federal Civil Procedure](#)  1312


Discretionary factors weighed in favor of granting petition of Republic of Ecuador and its Attorney General for issuance of subpoena to environmental expert, who authored reports for oil company for use in bilateral investment treaty arbitration before United Nations Commission on International Trade Law (UNCITRAL) arbitral body, for taking of deposition and production of documents for use in foreign proceeding; expert was not participant in foreign proceeding, nor was there any indication he would be subject to jurisdiction of UNCITRAL arbitration, request was not attempt to circumvent foreign discovery restrictions, permitting discovery had no bearing on whether evidence would be accepted by UNCITRAL panel, and limitation of discovery, pursuant to Federal Rule of Civil Procedure governing discovery of individuals considered testifying experts, was not appropriate absent existence of any privilege. [Republic of Ecuador v. Bjorkman, D.Colo.2011, 801 F.Supp.2d 1121, stay denied , affirmed 2011 WL 5439681. Alternative Dispute Resolution](#)  514

Fact that letters rogatory were signed by a Brazilian judge was not dispositive of whether subpoenaed documents were sought for use in a proceeding in a foreign or international tribunal, as required for execution of the letters. [In re Request for Intern. Judicial Assistance \(Letter Rogatory\) from the Federative Republic of Brazil, S.D.N.Y.1988, 687 F.Supp. 880, stay lifted 700 F.Supp. 723, on reargument 130 F.R.D. 283, reversed on other grounds 936 F.2d 702. Federal Civil Procedure](#)  1312

#### 18. Tribunals within section--Generally

Within this section providing that district courts may order persons residing or found in district to give testimony or to produce document or thing for use in proceeding in foreign or international tribunal and order may be made pursuant to letter rogatory issued, or request made, by foreign or international tribunal, “tribunal” has an adjudicatory connotation. [Fonseca v. Blumenthal, C.A.2 \(N.Y.\) 1980, 620 F.2d 322. Federal Civil Procedure](#)  1312

This section providing that district court of district in which person resides or is found may order person to give testimony or statement or to produce document or other thing for use in proceeding in foreign or international tribunal did not authorize United States court to compel testimony on behalf of foreign governmental body whose purpose was to conduct investigation unrelated to judicial or quasi-judicial controversy. [In re Letters of Request to Examine Witnesses from Court of Queen's Bench for Manitoba, Canada, C.A.9 \(Cal.\) 1973, 488 F.2d 511. Federal Civil Procedure](#)  1312

This section permitting district court to execute foreign letters rogatory is not so broad as to include all the plethora of administrators whose decisions affect private parties and who are not entitled to act arbitrarily. [In re Letters Rogatory Issued by Director of Inspection of Government of India, C.A.2 \(N.Y.\) 1967, 385 F.2d 1017. Federal Civil Procedure](#)  1312

In order for United States district court to grant foreign court's request for judicial assistance in obtaining information, it is sufficient that information sought is intended for use in a judicial or quasi-judicial controversy



and that procedures followed comport with our notions of due process of law. [In re Request For Judicial Assistance From Seoul Dist. Criminal Court, Seoul, Korea, N.D.Cal.1977, 428 F.Supp. 109, affirmed 555 F.2d 720. Federal Civil Procedure](#) 🔑 1312

Word “tribunal,” in this section providing that district court of district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, was not intended to include institutions whose purpose is to investigate and report to executive or legislative branches of government; rather, the crucial requirement is that the foreign body exercise adjudicative powers, and have an adjudicative purpose. [In re Letters of Request to Examine Witnesses from Court of Queen's Bench for Manitoba, Canada, N.D.Cal.1973, 59 F.R.D. 625, affirmed 488 F.2d 511. Federal Civil Procedure](#) 🔑 1312

#### 19. ---- Arbitration, tribunals within section

Term “foreign and international tribunals,” as used in statute authorizing district courts to assist discovery efforts of litigants before foreign and international tribunals, did not include private international arbitration. [Republic of Kazakhstan v. Biedermann Intern., C.A.5 \(Tex.\) 1999, 168 F.3d 880. Federal Civil Procedure](#) 🔑 1312


Statute authorizing district courts to assist discovery efforts of litigants before “foreign or international tribunals” does not apply to proceedings before private arbitral panels. [National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc., C.A.2 \(N.Y.\) 1999, 165 F.3d 184. Alternative Dispute Resolution](#) 🔑 252


Arbitral tribunal established by an international treaty, which operated under United Nations Commission on International Trade Law (UNCITRAL) rules was “foreign tribunal” for purposes of statute authorizing discovery of material for use in proceeding before foreign tribunal. [In re Veiga, D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Alternative Dispute Resolution](#) 🔑 514


Arbitral tribunal established by an international treaty, which operated under United Nations Commission on International Trade Law (UNCITRAL) rules was a “foreign tribunal” for purposes of statute authorizing discovery of material for use in a proceeding before a foreign tribunal. [In re Application of Chevron Corp., S.D.N.Y.2010, 709 F.Supp.2d 283, corrected , for additional opinion, see 2010 WL 5621332, stay denied , affirmed 629 F.3d 297. Alternative Dispute Resolution](#) 🔑 512; [Treaties](#) 🔑 8


Statute that permitted federal district court to compel person in its district to provide testimony for proceeding in foreign or international tribunal did not apply to compel witness to testify at deposition in Chicago in connection with private arbitration in London, England; statute applied to state-sponsored arbitral bodies that were subject to reviewability, and private arbitration was alternative to formal litigation that was final and binding on parties. [In re Arbitration between Norfolk Southern Corp., Norfolk Southern Ry. Co., and General Sec. Ins. Co. and Ace Bermuda Ltd., N.D.Ill.2009, 626 F.Supp.2d 882. Alternative Dispute Resolution](#) 🔑 514

Statute authorizing district courts to assist discovery efforts of litigants before foreign and international tribunals


did not extend to arbitral tribunals. [La Comision Ejecutiva Hidroelectric Del Rio Lempa v. El Paso Corp., S.D.Tex.2008, 617 F.Supp.2d 481, affirmed 341 Fed.Appx. 31, 2009 WL 2407189. Alternative Dispute Resolution](#)  514


International commercial arbitral body located in Austria was a “tribunal” within the meaning of federal statute permitting domestic discovery for use in foreign proceedings. [In re Roz Trading Ltd., N.D.Ga.2006, 469 F.Supp.2d 1221, motion for stay pending appeal denied 2007 WL 120844. Federal Civil Procedure](#)  1312

Unofficial, private arbitration is not “tribunal” within meaning of statute permitting district court to order person in district to give testimony or statement or to produce document or other thing for use in proceeding in foreign or international tribunal; rather, term “tribunal” refers to public, official adjudicatory proceedings. [Application of Medway Power Ltd., S.D.N.Y.1997, 985 F.Supp. 402. Alternative Dispute Resolution](#)  252


Arbitrator or arbitration panel is “tribunal” within meaning of statute authorizing district court to order discovery for use in foreign tribunal. [Application of Technostroyexport, S.D.N.Y.1994, 853 F.Supp. 695. Alternative Dispute Resolution](#)  252

20. ---- Commission of the European Communities, tribunals within section


Commission of the European Communities is “tribunal” under federal statute permitting domestic discovery for use in foreign proceedings when it acts as first-instance decisionmaker. [Intel Corp. v. Advanced Micro Devices, Inc., U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. Federal Civil Procedure](#)  1312

Under statute permitting domestic discovery for use in foreign proceedings, district court had authority to entertain discovery request by antitrust complainant before Commission of the European Communities. [Intel Corp. v. Advanced Micro Devices, Inc., U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. Federal Civil Procedure](#)  1312


21. ---- Indian income tax officer, tribunals within section

Indian income-tax officer was not such a “tribunal” as was entitled to execution of its letters rogatory. [In re Letters Rogatory Issued by Director of Inspection of Government of India, C.A.2 \(N.Y.\) 1967, 385 F.2d 1017. Federal Civil Procedure](#)  1312


22. ---- Manitoba Commission of Inquiry, tribunals within section


Manitoba Commission of Inquiry is not a “tribunal” within this section providing that district court of district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. [In re Letters of Request to Examine Witnesses from Court of Queen's Bench for Manitoba, Canada, N.D.Cal.1973, 59 F.R.D. 625, affirmed 488 F.2d 511. Federal Civil Procedure](#)  1312


### 23. ---- Tokyo district court, tribunals within section


District court properly exercised its discretion in honoring letters rogatory from Tokyo district court, which were issued pursuant to request by Tokyo district public prosecutor's office which was investigating improper payments of money to Japanese citizens by an American corporation and its officers and agents, where letters were issued in aid of ongoing investigation of alleged violations of Japanese law, information sought from witnesses, who were not subjects of the investigation, was for use in completion of investigation and in future trials, and letters were issued pursuant to a mutual assistance agreement between Japan and the United States, despite contention that the Tokyo district court, while not acting as an adjudicatory body, was not a "tribunal" as used in this section. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. Federal Civil Procedure](#)  1312

### 24. ---- Miscellaneous tribunals, tribunals within section

Although preliminary, proceeding before the Directorate General-Competition of the European Commission, in which microprocessor company alleged that competitor's actions violated treaty establishing Commission, qualified as "foreign or international tribunal" under statute permitting domestic discovery for use in foreign proceeding, in that proceeding was, at a minimum, one leading to quasi-judicial proceedings. [Advanced Micro Devices, Inc. v. Intel Corp., C.A.9 \(Cal.\) 2002, 292 F.3d 664, 63 U.S.P.Q.2d 1156, certiorari granted 124 S.Ct. 531, 540 U.S. 1003, 157 L.Ed.2d 408, affirmed 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001, on remand 2004 WL 2282320. Federal Civil Procedure](#)  1312

Arbitral body falls within the scope of a foreign or international tribunal under statute providing for judicial assistance to foreign tribunals to obtain evidence for use in foreign proceedings, if (1) it is a first-instance adjudicative decisionmaker, (2) it permits the gathering and submission of evidence, (3) it has authority to determine liability and impose penalties, and (4) its decision is subject to judicial review. [In re Application of Mesa Power Group, LLC, S.D.Fla.2012, 2012 WL 2886827. Alternative Dispute Resolution](#)  514

Japanese Patent Office (JPO) invalidity proceeding was neutral and adversarial and thus JPO was "tribunal" within meaning of statute governing assistance to foreign tribunals, permitting Japanese corporation with pending JPO invalidity proceeding against United States competitor to seek discovery from competitor under statute. [In re Ishihara Chemical Co., Ltd., E.D.N.Y.2000, 121 F.Supp.2d 209, vacated 251 F.3d 120, 58 U.S.P.Q.2d 1907. Federal Civil Procedure](#)  1312

Commissioner appointed by district court was authorized to assist Haitian tribunal and juge d'instruction in conducting discovery of bank records located in United States, since tribunal was a quasi-judicial entity and there was no applicable extranational limitation on its authority to request assistance. [In re Letter of Request for Judicial Assistance from Tribunal Civil de Port-au-Prince, Republic of Haiti, S.D.Fla.1987, 669 F.Supp. 403. Federal Civil Procedure](#)  1611

### 25. Considerations governing--Generally

Among factors that district courts may consider in deciding whether to grant request for formal assistance to for-

foreign criminal investigation are: nature and attitudes of government of country from which request emanates and character of proceedings in that country. [U.S. v. Sealed 1, Letter of Request for Legal Assistance from the Deputy Prosecutor General of the Russian Federation, C.A.9 \(Wash.\) 2000, 235 F.3d 1200. Federal Civil Procedure](#) 🔑 1312; [International Law](#) 🔑 10.19


Federal courts, in responding for requests for assistance from foreign tribunals to secure testimony or documents, should not feel obligated to involve themselves in technical questions of foreign law relating to subject matter jurisdiction of foreign or international tribunals or admissibility before such tribunals of the testimony or material sought; however, this is not to say that jurisdiction of the requesting court is never an appropriate inquiry for if departures from our concepts of fundamental due process and fairness are involved, a different question is presented. [In re Request For Judicial Assistance from Seoul Dist. Criminal Court, Seoul, Korea, C.A.9 \(Cal.\) 1977, 555 F.2d 720. Federal Civil Procedure](#) 🔑 1312


Discretionary factors court may consider in deciding whether to grant application for discovery pursuant to statute permitting domestic discovery for use in foreign proceedings include: (1) whether person from whom discovery is sought is participant in foreign proceeding, such that discovery is accessible without statute's aid; (2) nature of foreign tribunal, character of foreign proceedings, and receptivity of foreign government or court to accept court's assistance; (3) whether request conceals attempt to circumvent foreign proof gathering restrictions; and (4) whether subpoena is unduly burdensome. [In re Lazaridis, D.N.J.2011, 2011 WL 3859919. Federal Civil Procedure](#) 🔑 1312


Courts consider four discretionary factors in determining whether to grant an application for discovery in a foreign proceeding: (1) whether the material sought is within the foreign tribunal's jurisdictional reach; (2) 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 jurisdictional assistance; (3) whether the application conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States; and (4) whether the subpoena contains unduly intrusive or burdensome requests. [In re Chevron Corp., S.D.N.Y.2010, 749 F.Supp.2d 141, affirmed 409 Fed.Appx. 393, 2010 WL 5151325. Federal Civil Procedure](#) 🔑 1312


In determining whether to grant discovery for use in a foreign proceeding, a court can weigh whether the person from whom discovery is sought is a participant in the foreign proceeding, take into account the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign court to United States federal-court judicial assistance, and consider whether the discovery request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States; in examining these factors, district courts should consider the twin aims of statute permitting domestic discovery for use in foreign proceedings: providing efficient means of assistance to participants in international litigation in United States federal courts and encouraging foreign countries by example to provide similar means of assistance to United States courts. [In re Application of Thai-Lao Lignite \(Thailand\) Co., Ltd., D.D.C.2011, 821 F.Supp.2d 289. Federal Civil Procedure](#) 🔑 1312


In determining its authority to grant a discovery request under statute permitting domestic discovery for use in


foreign proceedings, the district court considers: (1) whether the person from whom discovery is sought resides or is found in the district where the action has been filed, (2) whether the discovery sought is for use in a proceeding before a foreign or international tribunal, and (3) whether the application is made by a foreign or international tribunal or “any interested person.” [Lazaridis v. International Centre for Missing and Exploited Children, Inc., D.D.C.2011, 760 F.Supp.2d 109, affirmed 473 Fed.Appx. 2, 2012 WL 1138816. Federal Civil Procedure](#)  1312

A district court considers the following discretionary factors in determining whether to permit discovery for use in foreign litigation: (1) whether the person from whom discovery is sought is a participant in the foreign proceeding, (2) the receptivity of the foreign tribunal to United States court assistance, (3) whether the discovery application is an attempt to circumvent foreign proof-gathering restrictions, and (4) whether the documents and testimony sought are unduly intrusive or burdensome. [Chevron Corp. v. Shefftz, D.Mass.2010, 754 F.Supp.2d 254. Federal Civil Procedure](#)  1312


Factors considered in determining whether to grant discovery for use in a proceeding in a foreign or international tribunal include: (1) whether the person from whom discovery is sought is a participant in the foreign proceeding, (2) nature of the foreign tribunal, character of the proceedings, and receptivity of tribunal to U.S. judicial assistance, and (3) attempts to circumvent foreign proof-gathering restrictions. [In re Application of Caratube Int'l Oil Co., LLP, D.D.C.2010, 730 F.Supp.2d 101. Federal Civil Procedure](#)  1312

In determining whether to grant application for discovery for use in a foreign proceeding, courts should consider: (1) whether the documents or testimony sought are within the foreign tribunal's jurisdictional reach; (2) 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 federal court judicial assistance; (3) whether the request for discovery conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States; and (4) whether the subpoena contains unduly intrusive or burdensome requests. [In re Godfrey, S.D.N.Y.2007, 526 F.Supp.2d 417. Federal Civil Procedure](#)  1312


Court presented with request for domestic discovery for use in foreign proceeding may take into account nature of foreign tribunal, character of proceedings underway abroad, and receptivity of foreign government or court or agency abroad to U.S. federal-court judicial assistance; furthermore, court will, in addition to those factors, consider the scope of the information requested and its relation to the proceedings abroad. [In re Roz Trading Ltd., N.D.Ga.2006, 469 F.Supp.2d 1221, motion for stay pending appeal denied 2007 WL 120844. Federal Civil Procedure](#)  1312


District court is authorized to assist foreign or international tribunal or litigant before such tribunal by ordering discovery where: (1) person from whom discovery is sought resides or is found in district; (2) discovery is for use in proceeding before foreign tribunal; and (3) application is made by foreign or international tribunal or any interested person. [In re Microsoft Corp., S.D.N.Y.2006, 428 F.Supp.2d 188. Federal Civil Procedure](#)  1312

There are three requirements in the assistance to foreign tribunals statute: (1) that the person from whom discovery is sought reside or be found in the district of the district court to which the application is made, (2) that the


discovery be for use in a proceeding before a foreign tribunal, and (3) that the application be made by a foreign or international tribunal or any interested person. [In re Application of Schmitz, S.D.N.Y.2003, 259 F.Supp.2d 294, affirmed 376 F.3d 79. Federal Civil Procedure](#)  1312


26. ---- Constitutional rights and privileges, considerations governing


It was premature, on motion to terminate stay of taking of testimony under subpoenas issued pursuant to letters rogatory received from a foreign court, to examine whether the witnesses might have been granted immunity from prosecution in the foreign country and the effects of any such grants, and to consider the possibility that they might claim [U.S.C.A. Const. Amend. 5](#) privilege against testifying, as no witness had yet made any claim of privilege. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. Federal Civil Procedure](#)  1312

Court would not exercise its discretion to quash subpoena issued in attempt by Canadian prosecutor to obtain records from Detroit bank relative to defendant in Canadian prosecution, even though defendant alleged that there was potential denial of rights under [U.S.C.A. Const. Amend. 6](#), where government assured court that defendant would have opportunity to cross-examine deponent at hearing to be held by the rogatory commission and it could not be assumed that defendant's constitutional rights would receive no protection under Canadian procedures. [In re Letter Rogatory from Justice Court, Dist. of Montreal, Canada, E.D.Mich.1974, 383 F.Supp. 857, affirmed 523 F.2d 562. Criminal Law](#)  662.30


27. ---- Admissibility in foreign jurisdiction, considerations governing


District court could not consider admissibility of evidence in foreign proceeding when ruling on application under statute permitting domestic discovery for use in foreign proceedings. [Brandi-Dohrn v. IKB Deutsche Industriebank AG, C.A.2 \(N.Y.\) 2012, 673 F.3d 76. Federal Civil Procedure](#)  1312


In determining whether litigant requesting assistance from district court in obtaining discovery in United States for use in foreign proceeding has made adequate showing that information sought would be discoverable in the foreign jurisdiction, district court need not explore whether information applicant seeks would be admissible in foreign jurisdiction, or any other issue of foreign law. [Application of Asta Medica, S.A., C.A.1 \(Me.\) 1992, 981 F.2d 1, 25 U.S.P.Q.2d 1861. Federal Civil Procedure](#)  1271


Witnesses could not object to district court's action in issuing subpoenas in response to letters rogatory from a foreign court on the grounds that the testimony to be taken might not be admissible in trial in the foreign country. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. Federal Civil Procedure](#)  1312


28. ---- Burdensomeness or oppressiveness of order, considerations governing


A district court may deny an application under the statute permitting domestic discovery for use in foreign proceedings where it suspects that the discovery is being sought for the purposes of harassment. [Brandi-Dohrn v. IKB Deutsche Industriebank AG, C.A.2 \(N.Y.\) 2012, 673 F.3d 76. Federal Civil Procedure](#)  1312


To determine whether it should exercise its discretion to grant an application for judicial assistance to litigant in foreign tribunal, the court considers the following four non-exclusive factors: (1) whether the application seeks discovery from a party that is a participant in the foreign proceeding, (2) the nature of the proceeding and that tribunal's receptivity to the requested discovery, (3) whether the request attempts to circumvent foreign discovery restrictions or policies, and (4) whether the request is unduly burdensome or intrusive. [Pott v. Icicle Seafoods, Inc., W.D.Wash.2013, 2013 WL 1855771. Federal Civil Procedure](#)  1312

Unduly intrusive or burdensome requests for judicial assistance in gathering evidence for use in foreign tribunals may be rejected or trimmed by the district court. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632. Federal Civil Procedure](#)  1312

Subpoena requiring non-profit organization that provided assistance to victims of international child abduction to provide information regarding organization's website for use in Greek criminal prosecution was unreasonable and burdensome, and thus would be quashed, where applicant was private complainant in prosecution, applicant offered essentially no factual information regarding nature and importance of Greek prosecution or how information sought was relevant to prosecution, court and prosecutor had not requested information sought, breadth of request was great and intrusive, requiring organization to make such production would place great burden on it, applicant failed to establish that he could not obtain information from other sources, and release of information would violate organization's privacy policy. [In re Lazaridis, D.N.J.2011, 2011 WL 3859919. Federal Civil Procedure](#)  1312

When ruling on request for domestic discovery to be used in foreign proceeding, district court can consider whether statutory request conceals attempt to circumvent foreign proof-gathering restrictions or other policies of foreign country or United States; also, unduly intrusive or burdensome requests may be rejected or trimmed. [In re Veiga, D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Federal Civil Procedure](#)  1312

Unduly intrusive or burdensome requests for discovery under statute permitting domestic discovery for use in foreign proceedings may be rejected or trimmed. [In re Application of Thai-Lao Lignite \(Thailand\) Co., Ltd., D.D.C.2011, 821 F.Supp.2d 289. Federal Civil Procedure](#)  1312

When determining whether to grant a petitioner's request for aid under federal statute permitting domestic discovery for use in foreign proceedings, the court should consider whether the petitioner's request is unduly intrusive or burdensome. [Ahmad Hamad Algozaibi & Bros. Co. v. Standard Chartered Intern. \(USA\) Ltd., S.D.N.Y.2011, 785 F.Supp.2d 434. Federal Civil Procedure](#)  1312

Discovery sought by litigant in Israeli arbitration proceeding from non-party was not unduly broad or burdensome, even though non-party did not assume his current position within corporation until after events in question, and discovery was more limited under Israeli law than under United States law, where requested discovery consisted of nine document requests and nine interrogatories, Israeli arbitrator expressly indicated his willingness to consider any evidence that resulted from requested discovery, and documents requested were predominantly e-mails that non-party received in Minnesota by virtue of his prior employment. [In re Hallmark Capital](#)

Corp., D.Minn.2007, 534 F.Supp.2d 951, reconsideration denied. [Federal Civil Procedure](#) 🔑 1312

In view of California's policy to permit discovery whenever information is reasonably calculated to reveal admissible evidence and because charges brought by Korean government against Korean citizen were such that any bank deposits which the Korean citizen made abroad might be relevant, subpoena requiring California bank to produce financial records relating to the Korean citizen was not burdensome or oppressive because it concerned a bank account which Korean citizen maintained as president of a corporation. [In re Request For Judicial Assistance From Seoul Dist. Criminal Court, Seoul, Korea, N.D.Cal.1977, 428 F.Supp. 109, affirmed 555 F.2d 720. Federal Civil Procedure](#) 🔑 1312

Putative father could be ordered to give blood sample pursuant to letter rogatory issued by foreign court in paternity proceeding; order was not oppressive or unduly burdensome and did not violate any substantive or due process right, and putative father had in fact previously expressed willingness to give sample. [In re Letter of Request From Local Court of Pforzheim, Div. AV, Federal Republic of Germany \(No. 5 C 34183\), W.D.Mich.1989, 130 F.R.D. 363. Federal Civil Procedure](#) 🔑 1312

Subpoena request for documents created after April 20, 1980, which stated with reasonable particularity subjects to which the documents related, was not unreasonable or oppressive, absent any contention that documents requested were either voluminous and expensive to produce or that request required the creation of new documents. [Application of Sumar, S.D.N.Y.1988, 123 F.R.D. 467. Federal Civil Procedure](#) 🔑 1558.1

#### 28a. ---- Control of documents, considerations governing


Oil company would be permitted to subpoena producer to turn over the “outtakes” of a documentary film which depicted events relating to a multi-billion dollar Ecuadorian litigation against company, the threatened criminal prosecution in Ecuador of two of its attorneys, and an international arbitration; neither the Ecuadorian court nor the arbitral tribunal could compel producer, who was in sole possession of the raw footage and was located in the district, to produce the outtakes because he was not a party to the foreign proceedings or subject to their writs, and discovery of the outtakes would not compromise the ability of producer or any other film maker to obtain material from individuals interested in confidential treatment. [In re Application of Chevron Corp., S.D.N.Y.2010, 709 F.Supp.2d 283, corrected , for additional opinion, see 2010 WL 5621332, stay denied , affirmed 629 F.3d 297. Federal Civil Procedure](#) 🔑 1312

Documents sought by claimant in Israeli arbitration were within control of holding company's chairman, for purposes of claimant's motion to compel production in action alleging that claimant was owed finder's fees concerning investments by subsidiary partnership; with respect to arbitration, subsidiary had voluntarily provided company with copies of its internal correspondence and access to all of its files from relevant period. [In re Hallmark Capital Corp., D.Minn.2008, 534 F.Supp.2d 981. Federal Civil Procedure](#) 🔑 1574


#### 28b. ---- Location of documents, considerations governing



Location of most, if not all, of the relevant documents sought from French company, pursuant to petition for dis-





covery in aid of a proceeding before a foreign tribunal, outside the United States, militated against granting the petition; French company was headquartered in France, and petitioners sought information about French assets in order to satisfy what was essentially a French judgment confirming an arbitral award. [In re Application of Thai-Lao Lignite \(Thailand\) Co., Ltd., D.D.C.2011, 821 F.Supp.2d 289. Federal Civil Procedure](#)  1312


29. ---- Discoverability in domestic jurisdiction, considerations governing


Applicant under federal statute permitting domestic discovery for use in foreign proceedings need not show that United States law would allow discovery in domestic litigation analogous to the foreign proceeding. [Intel Corp. v. Advanced Micro Devices, Inc., U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. Federal Civil Procedure](#)  1312

District Court for the District of Massachusetts was authorized by statute to issue order permitting discovery and deposition of expert witness for use in environmental litigation and arbitration proceedings in Ecuador; the expert resided in Massachusetts, the application for the order was made by domestic corporation which was defendant in the foreign proceedings, and the discovery was for use in a foreign or international tribunal. [Chevron Corp. v. Shefftz, D.Mass.2010, 754 F.Supp.2d 254. Alternative Dispute Resolution](#)  514; [Federal Civil Procedure](#)  1312

Pursuant to statute, District Court had authority to grant request for assistance, made by a court in the Czech Republic, in obtaining discovery in a paternity action initiated in the Czech court; putative father was subject to District Court's jurisdiction, the discovery being sought was to be used in a proceeding before a foreign tribunal, and the application was made by the foreign tribunal. [In re Request for Judicial Assistance from the Dist. Court in Svitavy, Czech Republic, E.D.Va.2010, 748 F.Supp.2d 522. Children Out-of-wedlock](#)  39; [Federal Civil Procedure](#)  1312

30. ---- Discoverability in foreign jurisdiction, considerations governing

Federal statute permitting domestic discovery for use in foreign proceedings does not impose blanket “foreign discoverability” requirement that evidence sought from district court be discoverable under law governing foreign proceeding; abrogating [In re Application of Asta Medica, S.A., 981 F.2d 1, In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, 848 F.2d 1151. Intel Corp. v. Advanced Micro Devices, Inc., U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. Federal Civil Procedure](#)  1312

District court abused its discretion in ordering American parent of Australian seller to retrieve documents in Australia and United Kingdom, ship them to United States, and provide them to Australia buyer for use in buyer's breach of contract suit against seller in Australia, where Australian procedure did not require disclosure of documents, requirements for piercing corporate veil had not been met, and documents were not necessary for buyer to establish its claim. [Kestrel Coal Pty. Ltd. v. Joy Global, Inc., C.A.7 \(Wis.\) 2004, 362 F.3d 401. Federal Civil Procedure](#)  1312

Statute permitting domestic discovery for use in foreign proceedings does not impose threshold requirement that material sought be discoverable in foreign proceeding, regardless of whether request comes from private party or foreign tribunal; overruling *Application for Assistance in a Foreign Proceeding*, 147 F.R.D. 223. *Advanced Micro Devices, Inc. v. Intel Corp.*, C.A.9 (Cal.) 2002, 292 F.3d 664, 63 U.S.P.Q.2d 1156, certiorari granted 124 S.Ct. 531, 540 U.S. 1003, 157 L.Ed.2d 408, affirmed 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001, on remand 2004 WL 2282320. [Federal Civil Procedure](#) 🔑 1312

District court abused its discretion in denying discovery under statute governing discovery for use in foreign and international tribunals by denying German company discovery for use in German employment dispute on ground information sought was not discoverable under German law. *In re Application for an Order Permitting Metallgesellschaft AG to take Discovery*, C.A.2 (N.Y.) 1997, 121 F.3d 77. [Federal Civil Procedure](#) 🔑 1312

District court did not have to consider foreign court's discovery rules before modifying protective order to permit party to introduce confidential deposition excerpts in related action in the foreign court, as the excerpts at issue were already discovered; district court was simply enabling foreign court to have the excerpts before it so that it could apply its own rules. *In re Jenoptik AG*, C.A.Fed. (Cal.) 1997, 109 F.3d 721, 41 U.S.P.Q.2d 1950. [Federal Civil Procedure](#) 🔑 1312

District court was not required to determine that blood test was discoverable as matter of German law before ordering resident to comply with foreign court's letter rogatory requesting blood test from resident putative father for use in foreign paternity action, pursuant to Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; United States courts were not in business of second-guessing evidentiary requests of foreign courts based on foreign jurisdiction's own rules of discovery. *In re Letter of Request from Amtsgericht Ingolstadt, Federal Republic of Germany*, C.A.4 (W.Va.) 1996, 82 F.3d 590. [Federal Civil Procedure](#) 🔑 1312; [Treaties](#) 🔑 13

In deciding whether to order discovery in aid of foreign litigation, extensive examination of foreign law regarding existence and extent of discovery in the forum country is not desirable to ascertain the attitudes of foreign nations to outside discovery assistance, and though grant of discovery that trenches on clearly established procedures of foreign tribunal would not be within the discovery statute, inquiry into discoverability of the requested materials should consider only authoritative proof that foreign tribunal would reject evidence obtained with the aid of discovery under the United States statute, as embodied in the forum country's judicial, executive or legislative declaration specifically addressing the use of evidence gathered under foreign procedures. *Euromepa S.A. v. R. Esmerian, Inc.*, C.A.2 (N.Y.) 1995, 51 F.3d 1095. [Federal Civil Procedure](#) 🔑 1312

District court did not abuse its discretion in granting provisional general guardians of Chilean incompetent discovery from American residents concerning incompetent's assets in the United States, under statute governing assistance to foreign and international tribunals and to litigants before tribunal; although court did not make finding as to party's ability to obtain pretrial discovery under Chilean law, it inquired into whether its grant of discovery would circumvent Chilean restrictions on discovery or would be an affront to Chilean court or Chilean sovereignty, and found that discovery would be permissible. *Application of Gianoli Aldunate*, C.A.2 (Conn.) 1993, 3 F.3d 54, certiorari denied 114 S.Ct. 443, 510 U.S. 965, 126 L.Ed.2d 376. [Federal Civil Procedure](#) 🔑

1312

Litigant requesting assistance from district court in obtaining discovery in United States for use in foreign proceedings must show that information sought would be discoverable in foreign jurisdiction; in rare case where such determination would be unduly difficult, district court has various options, among them, to ask foreign court to help it decide whether information is available in foreign jurisdiction, or to request assistance of foreign law expert. [Application of Asta Medica, S.A., C.A.1 \(Me.\) 1992, 981 F.2d 1, 25 U.S.P.Q.2d 1861. Federal Civil Procedure](#) 🔑 1271

Request for judicial assistance in obtaining discovery in paternity dispute involving a United States citizen, made by a court in the Czech Republic, was not an attempt to circumvent foreign proof-gathering restrictions or any other foreign or U.S. policy, weighing in favor of granting the request; putative father would be able to challenge the personal jurisdiction of any order issued by the Czech court, once presented to a U.S. court of his employer. [In re Request for Judicial Assistance from the Dist. Court in Svitavy, Czech Republic, E.D.Va.2010, 748 F.Supp.2d 522. Children Out-of-wedlock](#) 🔑 39; [Federal Civil Procedure](#) 🔑 1312

A foreign tribunal's willingness to accept evidence obtained through the discovery in federal court generally weighs in favor of granting such petitions; in evaluating a tribunal's willingness, courts do not believe that an extensive examination of foreign law regarding the existence and extent of discovery in the forum country is desirable in order to ascertain the attitudes of foreign nations to outside discovery assistance. [In re Application of Caratube Int'l Oil Co., LLP, D.D.C.2010, 730 F.Supp.2d 101. Federal Civil Procedure](#) 🔑 1312

Non-party was required to respond to litigant's requests for discovery for use in Israeli arbitration proceeding, where non-party resided in district, non-party appeared to have information relevant to proceeding, and litigant was claimant in proceeding. [In re Hallmark Capital Corp., D.Minn.2007, 534 F.Supp.2d 951, reconsideration denied. Federal Civil Procedure](#) 🔑 1312

For purposes of statute governing discovery applications for assisting foreign or international tribunals, a witness cannot be compelled to produce documents located outside of the United States. [In re Godfrey, S.D.N.Y.2007, 526 F.Supp.2d 417. Federal Civil Procedure](#) 🔑 1312

In light of petitioner's allegations that respondent was involved to some degree in the underlying dispute giving rise to arbitration of petitioner's contract claim against government of Uzbekistan in a foreign tribunal, and in view of the likelihood that respondent had unique access to relevant documents, court would exercise its discretion under federal statute permitting domestic discovery for use in foreign proceedings to compel respondent to produce documents seized or made unavailable to petitioner by the Uzbek government; foreign tribunal could not itself order respondent to produce evidence, and was receptive to aid from courts. [In re Roz Trading Ltd., N.D.Ga.2006, 469 F.Supp.2d 1221, motion for stay pending appeal denied 2007 WL 120844. Federal Civil Procedure](#) 🔑 1312

Bank asserting claim in Venezuela against Venezuelan security firm to recover funds stolen by firm employee

would be required to produce documents concerning any insurance claim made, and any insurance payment received, by bank for loss at issue in Venezuelan proceeding, despite bank's contention that firm should be required to wait until evidentiary stage of Venezuelan proceeding, and to seek discovery from Venezuelan court in first instance, where, under Venezuelan law, partial or complete reimbursement by insurer would deprive bank of standing to bring suit, and documents were unobtainable under Venezuelan discovery rules for purely technical reasons. [In re Servicio Pan Americano de Proteccion, S.D.N.Y.2004, 354 F.Supp.2d 269. Federal Civil Procedure](#) 🔑 1312

One of the factors a district court may consider in determining how to exercise its discretion pursuant to assistance to foreign tribunals statute is whether the documents would be discoverable under the relevant foreign law; however, that inquiry should serve at most as a “useful tool” and one among many factors utilized to inform discretion, but can serve no greater purpose given that assistance to foreign tribunal statute makes no reference whatsoever to a requirement of discoverability under the laws of the foreign jurisdiction. [In re Application of Schmitz, S.D.N.Y.2003, 259 F.Supp.2d 294, affirmed 376 F.3d 79. Federal Civil Procedure](#) 🔑 1312


Private litigant in proceeding pending in foreign jurisdiction may not obtain district court order requiring non-party resident of district to give pretrial discovery for use in the foreign proceeding unless the foreign jurisdiction allows pretrial discovery. [In re Trygg-Hansa Ins. Co., Ltd., E.D.La.1995, 896 F.Supp. 624. Federal Civil Procedure](#) 🔑 1312

In deciding whether to order discovery of evidence in United States for use in foreign paternity proceedings, District Court would not undertake inquiry into whether Norwegian laws would permit ordering of blood samples. [In re Letter Rogatory from Nedenes Dist. Court, Norway, S.D.N.Y.2003, 216 F.R.D. 277. Federal Civil Procedure](#) 🔑 1312


Documents need not be “discoverable” under foreign procedure to be obtained under rule allowing district court to compel discovery for use by foreign tribunals and litigants before those tribunals. [Application of Euromepa, S.A., S.D.N.Y.1994, 155 F.R.D. 80, reversed 51 F.3d 1095. Federal Civil Procedure](#) 🔑 1312



English litigants who requested assistance of federal courts in obtaining discovery in United States were not entitled to discovery beyond that available in English court in which action was proceeding. [Application for an Order for Judicial Assistance in a Foreign Proceeding in High Court of Justice, Chancery Div., England, C.D.Cal.1993, 147 F.R.D. 223. Federal Civil Procedure](#) 🔑 1271


It was not necessary for district court to decide whether domestic laws of Trinidad and Tobago would permit production of bank records in order to rule on request by government of Trinidad and Tobago for production of bank records pursuant to statute providing that district court may order person to give testimony or his statement or provide document for use in proceeding in foreign or international tribunal. [In re Request for Assistance From Ministry of Legal Affairs of Trinidad and Tobago, S.D.Fla.1987, 117 F.R.D. 177. Federal Civil Procedure](#) 🔑 1551


Absent indication that documents and testimony for which opponents requested discovery order were discoverable under South African law and in view of information which would lead court to suspect that materials were not available through South African procedures, opponent in pending litigation regarding issuance of South African patent was not entitled, under statute governing assistance to foreign and international tribunals to litigants before such tribunals, to order directing applicant to give testimony and produce documents relating to patent case pending in South Africa. [In re Court of Com'r of Patents for Republic of South Africa, E.D.Pa.1980, 88 F.R.D. 75. Federal Civil Procedure](#)  1312


### 31. ---- Imminence, considerations governing

Federal statute permitting domestic discovery for use in foreign proceedings does not come into play only when adjudicative proceedings are “pending” or “imminent” and instead requires only that dispositive ruling by European Commission, reviewable by the European courts, be within reasonable contemplation; abrogating [In re Ishihara Chemical Co., 251 F.3d 120. Intel Corp. v. Advanced Micro Devices, Inc., U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. Federal Civil Procedure](#)  1312

Statute governing formal assistance to foreign criminal investigations does not contain “imminence” requirement; had Congress meant to authorize assistance to foreign investigations only where foreign proceedings are imminent, it could have said so. [U.S. v. Sealed 1, Letter of Request for Legal Assistance from the Deputy Prosecutor General of the Russian Federation, C.A.9 \(Wash.\) 2000, 235 F.3d 1200. Federal Civil Procedure](#)  1312; [International Law](#)  10.19

Imminent-proceeding requirement of statute permitting federal district court to allow interested persons to obtain discovery for use before foreign tribunals was met where party seeking discovery was agent for court-appointed trustee of foreign debtor and Italian bankruptcy proceeding was pending; bankruptcy proceeding was, by its nature, one in which value of debtor's estate was adjudicated, and thus such proceeding was within statute's scope. [Lancaster Factoring Co. Ltd. v. Mangone, C.A.2 \(N.Y.\) 1996, 90 F.3d 38, on remand 1996 WL 706925. Federal Civil Procedure](#)  1312

District court may order production of evidence pursuant to foreign government's letter rogatory in absence of pending adjudicative proceeding, but only if such proceeding is imminent, that is, very likely to occur within brief interval from request; it is not sufficient that adjudicative proceedings are merely “probable.” [In re International Judicial Assistance \(Letter Rogatory\) for the Federative Republic of Brazil, C.A.2 \(N.Y.\) 1991, 936 F.2d 702. Federal Civil Procedure](#)  1312

Proceeding before and on behalf of French juge d'instruction was adjudicatory in nature, and not police matter, and thus, district court properly appointed Assistant United States Attorney as commissioner to act on behalf of government of France in accordance with formal request of France for discovery including issuance of subpoenas, even though imminence of filing of charge could not be assessed in advance. [In re Letter of Request From Government of France, S.D.N.Y.1991, 139 F.R.D. 588. Federal Civil Procedure](#)  1312

### 32. ---- Limitations, considerations governing

Neither fact that prosecution in United States would be barred by expiration of statute of limitations, nor allegation that defense had become impossible due to passage of time precluded enforcement of Swiss request for assistance in obtaining testimony for criminal investigation in Switzerland; Swiss statute of limitations had not expired and witnesses, if charges were brought against them, would have opportunity to argue prejudicial prosecutorial delay in Swiss court. [In re Kasper-Ansermet, D.N.J.1990, 132 F.R.D. 622. Treaties ↪ 8](#)

33. ---- Need for information, considerations governing



Individuals charged with fraud conspiracy in United Kingdom were not entitled to discovery of secret grand jury materials related to American prosecution of alleged coconspirators, under statute permitting district courts to provide assistance to foreign courts, as individuals made blanket request for such materials, without showing particularized need for any individual items; mere fact these items were being sought for use in defending against criminal charges was insufficient. [United Kingdom v. U.S., C.A.11 \(Fla.\) 2001, 238 F.3d 1312, rehearing and rehearing en banc denied 253 F.3d 713, certiorari denied 122 S.Ct. 206, 534 U.S. 891, 151 L.Ed.2d 146. Grand Jury ↪ 41.50\(5\)](#)


Statute authorizing discovery for use in foreign tribunal did not entitle applicant to order directing United States National Security Agency (NSA) to produce documents relating to the death of applicant's son and son's companion in highly publicized automobile crash, where applicant did not demonstrate how the information he sought would assist his participation in French investigative proceedings, he only summarily explained purpose and function the requested documents would serve in the foreign proceeding, and disclosure of the documents sought had already been identified by NSA as potentially causing exceptionally grave damage to national security. [Al Fayed v. U.S., C.A.4 \(Md.\) 2000, 210 F.3d 421. Federal Civil Procedure ↪ 1312](#)

Factor of the nature of the underlying proceedings and the need for discovery assistance weighed in favor of allowing applicants, an American oil company and two employees of its Ecuadorian subsidiary, to obtain domestic discovery from an attorney for use in Ecuadorean civil and criminal proceedings, pursuant to statute permitting domestic discovery for use in foreign proceedings, even though it was not entirely clear that the Ecuadorian criminal court was receptive to such discovery assistance; the two employees faced serious criminal charges, and it appeared that the attorney possessed at least some information with regard thereto. [In re Application of Chevron Corp., D.Mass.2010, 762 F.Supp.2d 242. Federal Civil Procedure ↪ 1312](#)


Applicant was not entitled to discovery from respondents under statute permitting domestic discovery for use in foreign proceedings; respondents were necessarily participants in Greek prosecution for which applicant sought such discovery, neither the Greek prosecutor nor the Greek court needed applicant's assistance in gathering evidence, and applicant's wide-ranging discovery request suggested that he was seeking information more for his general use than for use by the Greek tribunals in their investigation or prosecution of specific criminal acts. [Lazaridis v. International Centre for Missing and Exploited Children, Inc., D.D.C.2011, 760 F.Supp.2d 109, affirmed 473 Fed.Appx. 2, 2012 WL 1138816. Federal Civil Procedure ↪ 1312](#)


Statute governing court discovery assistance in aid of foreign proceedings did not authorize order compelling United States nonparty subsidiary to produce documents held by European parent corporation, for use in Canadian litigation; there was no showing that Canadian courts needed or wanted American court assistance, and

there was no basis for piercing of corporate veil to secure possession of documents held by parent. [Norex Petroleum Ltd. v. Chubb Ins. Co. of Canada, D.D.C.2005, 384 F.Supp.2d 45. Corporations And Business Organizations](#)  1078(1); [Federal Civil Procedure](#)  1312


In view of fact that Korean prosecutor might contemplate bringing additional charges against Korean citizen, who had been convicted for violations of Korean law, and that prosecutor had reiterated need for records of California bank relating to the Korean citizen, fact that Korean citizen had been convicted in Korea subsequent to prosecutor's initial request for judicial assistance in obtaining bank records did not warrant conclusion that information sought was no longer needed by Korean authorities. [In re Request For Judicial Assistance From Seoul Dist. Criminal Court, Seoul, Korea, N.D.Cal.1977, 428 F.Supp. 109, affirmed 555 F.2d 720. Federal Civil Procedure](#)  1312


#### 34. ---- Reception of assistance, considerations governing

District court did not abuse its discretion by denying application for discovery assistance in a foreign proceeding by shareholders in German corporation who had brought suit in Germany against corporation, through which shareholders sought discovery from law firms which represented opposing sides in action brought against corporation in American court by purchasers of corporation's American depository shares, where German government had made clear that it was unreceptive to judicial assistance of an American court in instant case. [Schmitz v. Bernstein Liebhard & Lifshitz, LLP., C.A.2 \(N.Y.\) 2004, 376 F.3d 79. Federal Civil Procedure](#)  1312


District court presented with discovery request for assisting foreign or international tribunal should consider receptivity of foreign government or court or agency abroad to federal-court judicial assistance. [In re Microsoft Corp., S.D.N.Y.2006, 428 F.Supp.2d 188. Federal Civil Procedure](#)  1312


#### 35. ---- Reciprocity or reciprocal treaties, considerations governing


Statute authorizing district court to provide assistance to foreign tribunals and litigants before those tribunals did not require that reciprocal arrangements exist in order for private foreign litigant's discovery request to be granted. [Application of Malev Hungarian Airlines, C.A.2 \(Conn.\) 1992, 964 F.2d 97, certiorari denied 113 S.Ct. 179, 506 U.S. 861, 121 L.Ed.2d 125. Federal Civil Procedure](#)  1312

To extent district court rested its decision to deny discovery to litigant before foreign tribunal upon lack of reciprocity in issuance of letters rogatory and upon prediction that discovered evidence would not be admissible in foreign tribunal, district court abused its discretion, since statute governing judicial assistance rendered to foreign and international tribunals and to litigants before such tribunals does not depend upon reciprocal agreements, and testimony sought would generally be subject to discovery were all parties in foreign tribunal's jurisdiction. [John Deere Ltd. v. Sperry Corp., C.A.3 \(Pa.\) 1985, 754 F.2d 132. Federal Civil Procedure](#)  1269.1


Existence of tax treaty between United States and Korea was not prerequisite to district court's honoring request of Korean district court for assistance in procuring from California bank certain financial records relating to a Korean citizen under investigation in Korea for violating Korean currency laws. [In re Request For Judicial As-](#)


assistance from Seoul Dist. Criminal Court, Seoul, Korea, C.A.9 (Cal.) 1977, 555 F.2d 720. Federal Civil Procedure  1312


Statute governing assistance to foreign tribunals does not require that foreign court have similar judicial assistance procedures or that party seeking discovery under statute establish that discovered material would be admissible as evidence in foreign proceeding. *In re Ishihara Chemical Co., Ltd.*, E.D.N.Y.2000, 121 F.Supp.2d 209, vacated 251 F.3d 120, 58 U.S.P.Q.2d 1907. Federal Civil Procedure  1312


In absence of evidence that Korea had refused to provide similar assistance to United States courts when requested, district court would disregard the lack of a reciprocal treaty in determining whether to grant request of Korean District Criminal Court for judicial assistance in procuring certain financial records from a California bank. *In re Request For Judicial Assistance From Seoul Dist. Criminal Court, Seoul, Korea*, N.D.Cal.1977, 428 F.Supp. 109, affirmed 555 F.2d 720. Federal Civil Procedure  1312

36. ---- Use of evidence, considerations governing

Statute permitting domestic discovery for use in foreign proceeding did not preclude possibility that evidence sought could be utilized to cast doubts on impartiality of foreign court. *In re Chevron Corp.*, C.A.3 (N.J.) 2011, 633 F.3d 153. Federal Civil Procedure  1312


Use to which depositions to be obtained pursuant to subpoenas issued in response to letters rogatory from a foreign court were to be put in the foreign country did not merit concern of court of appeals where witnesses were neither defendants nor subjects of investigation in the foreign country. *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, C.A.9 (Cal.) 1976, 539 F.2d 1216. Federal Civil Procedure  1312

Communications concerning activities of laboratory known as “Selva Viva,” which referred to technical team and their allegedly makeshift testing facilities in hotel room in Ecuador, was “for use” in civil litigation in Republic of Ecuador relating to results from that laboratory, and thus district court was authorized to grant request for domestic discovery under federal statute permitting domestic discovery for use in foreign proceedings, since it raised some concern as to whether experts at Selva Viva conducted their work pursuant to sound scientific practices. *In re Veiga*, D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Federal Civil Procedure  1312


Documents and information concerning preparation of expert reports generally in litigation in Republic of Ecuador was “for use” in that proceeding, and thus district court was authorized to grant request for domestic discovery under federal statute permitting domestic discovery for use in foreign proceedings, since veracity of expert reports actually submitted to court in that litigation for its consideration was relevant issue in that litigation. *In re Veiga*, D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Federal Civil Procedure  1312


Discovery of financial records related to allegedly fraudulent monetary transfers that Saudi Arabian corporation sought from New York banks was for use in proceedings in Cayman Islands and Saudi Arabia involving corpor-





ation such that corporation met requirements under federal statute permitting domestic discovery for use in foreign proceedings; foreign courts could not order banks as nonparties to produce requested discovery, discovery was relevant to corporation's allegations that fraud was accomplished through channeling billions of dollars in loans and repayments through various bank accounts including accounts in New York, some documents requested in discovery likely were necessary to prove fraud claims, and fact that information corporation obtained in discovery also could be used in future litigation against banks was immaterial. [Ahmad Hamad Algosaibi & Bros. Co. v. Standard Chartered Intern. \(USA\) Ltd., S.D.N.Y.2011, 785 F.Supp.2d 434. Federal Civil Procedure](#)  1312

37. ---- Infringement on foreign procedure, considerations governing

District court did not abuse its discretion by denying German corporation's request for certain unredacted documents from American corporation, for use in foreign litigation against Spanish corporations, on ground that unredacted versions of documents desired would be cumulative, since district court did not thereby improperly intrude into the substantive role of the foreign forum court, and decision was not a prediction of the actions of the foreign tribunal. [Bayer AG v. Betachem, Inc., C.A.3 \(N.J.\) 1999, 173 F.3d 188, 50 U.S.P.Q.2d 1380. Federal Civil Procedure](#)  1312

It was improper to deny discovery in aid of litigation in France on ground that French policy requires that pre-trial discovery and use of evidence be controlled by courts and not by parties and that granting petition would infringe on power that French legislature has bestowed on the courts, where no authoritative declarations by French judicial, executive or legislative bodies objecting to foreign discovery assistance appeared in the record, and since French court could enjoin party from pursuing discovery in manner that violates judicial policies of France or refuse to consider evidence gathered by such practice. [Euromepa S.A. v. R. Esmerian, Inc., C.A.2 \(N.Y.\) 1995, 51 F.3d 1095. Federal Civil Procedure](#)  1312

Oil company would be permitted to subpoena attorney who provided assistance to plaintiffs in multi-billion dollar environmental litigation against company in Ecuador; Ecuadorian courts were not empowered to compel attorney to testify or produce documents, attorney was primary source of responsive documents, subpoenas were unlikely to undermine Ecuadorian proof gathering, substantial evidence showed that attorney improperly pressured and intimidated Ecuadorian courts in public media campaign, attorney's role in litigation went far beyond rendition of professional legal services, and there was little risk of encountering attorney-client privilege issues. [In re Chevron Corp., S.D.N.Y.2010, 749 F.Supp.2d 141, affirmed 409 Fed.Appx. 393, 2010 WL 5151325. Federal Civil Procedure](#)  1312

Judicial efficiency considerations for determining whether to stay discovery pending resolution of foreign proceedings weighed in favor of granting a limited stay in Brazilian bankruptcy trustee's proceeding for judicial assistance to allow discovery for use in a large-scale Brazilian bankruptcy, where foreign interests in the matter outweighed any United States' interests, and a ruling in the Brazilian appeal would resolve the question of whether trustee had the right to the discovery requested. [In re Application of Alves Braga, S.D.Fla.2011, 789 F.Supp.2d 1294. Action](#)  69(5)

District court would, as a matter of discretion, deny without prejudice American oil company's request, pursuant

to statute permitting domestic discovery for use in foreign proceedings, for discovery from an attorney for use in an arbitration proceeding under a United States-Ecuador treaty, even though company's application satisfied statutory criteria; it was unclear whether the requested discovery was appropriate, rather than an attempt to circumvent proof-gathering mechanisms that might be available in the arbitration, and the discovery sought was not relevant to the tribunal's jurisdiction, which was the only matter before it. [In re Application of Chevron Corp.](#), D.Mass.2010, 762 F.Supp.2d 242. [Alternative Dispute Resolution](#) 🔑 252

Oil company was not entitled to discovery for use in an international arbitration of a contract dispute against the Republic of Kazakhstan; none of the respondents were parties to the underlying arbitration, arbitration was already "late in the procedure," and company appeared to be circumventing the tribunal's control over its own discovery process. [In re Application of Caratube Int'l Oil Co., LLP](#), D.D.C.2010, 730 F.Supp.2d 101. [Alternative Dispute Resolution](#) 🔑 514

District court would not compel production of documents or witnesses to be used in civil litigation pending in France, under statute governing assistance to foreign tribunals and litigants before those tribunals, in light of French system in which court controlled all discovery and fact that party seeking discovery did not use French procedural methods to obtain requested items; allowing discovery would infringe upon rules of French court. [Application of Euromepa, S.A.](#), S.D.N.Y.1994, 155 F.R.D. 80, reversed 51 F.3d 1095. [Federal Civil Procedure](#) 🔑 1312

#### 38. ---- Relevance, considerations governing


Finding of English court that materials sought by individuals charged with fraud conspiracy in United Kingdom, which related to American prosecution of alleged coconspirators, were relevant or possibly relevant and thus discoverable under English law did not require district court judge to grant individuals' request for discovery of such materials, under statute permitting district courts to provide assistance to foreign courts, as English court made no particularized finding of relevance, but stated that its ruling was subject to any possible claims of privilege or immunity. [United Kingdom v. U.S.](#), C.A.11 (Fla.) 2001, 238 F.3d 1312, rehearing and rehearing en banc denied 253 F.3d 713, certiorari denied 122 S.Ct. 206, 534 U.S. 891, 151 L.Ed.2d 146. [Criminal Law](#) 🔑 627.2

Under the federal statute permitting domestic discovery for use in foreign proceedings, relevancy is broadly construed and encompasses any material that bears on, or that reasonably leads to other matters that could bear on, any issue that is or may be in the case; when relevance is in doubt, the district court should be permissive. [In re Veiga](#), D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. [Federal Civil Procedure](#) 🔑 1272.1


#### 39. ---- Rulings, considerations governing


Statute permitting domestic discovery for use in foreign proceedings authorizes, but does not require, federal district court to provide assistance to complainant in European Commission proceeding that leads to dispositive ruling, i.e., final administrative action both responsive to complaint and reviewable in court. [Intel Corp. v. Advanced Micro Devices, Inc.](#), U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001. [Federal Civil Procedure](#) 🔑 1312


40. ---- Reopening of proceedings, considerations governing


Potential motion to reopen French Court of Appeal action, after French Supreme Court had affirmed judgment, based on newly discovered evidence did not suffice as predicate proceeding for insurer's petition for discovery to aid foreign litigation; statute governing discovery in aid of foreign litigation was not designed to provide discovery to justify reopening of already-completed litigation. [Euromepa, S.A. v. R. Esmerian, Inc., C.A.2 \(N.Y.\) 1998, 154 F.3d 24. Federal Civil Procedure](#)  1312

41. ---- Miscellaneous cases, considerations governing


District court did not abuse its discretion by denying discovery, rather than merely limiting discovery, in connection with application for discovery assistance in a foreign proceeding by shareholders in German corporation who had brought suit in Germany against corporation, through which shareholders sought discovery from law firms which represented opposing sides in action brought against corporation in American court by purchasers of corporation's American depository shares, where German authorities objected to any disclosure of documents to German shareholders, who were not in same position as purchasers of depository shares. [Schmitz v. Bernstein Liebhard & Lifshitz, LLP., C.A.2 \(N.Y.\) 2004, 376 F.3d 79. Federal Civil Procedure](#)  1312


Journalists had no conceivable interest in maintaining confidentiality of source which would have precluded production of tape recordings of their interviews with key prosecution witness to defendant facing prosecution in foreign country for membership in banned organization and directing terrorism; not only was identity of source, the witness, known, but he indicated that he had no objection to disclosure of recordings. [McKevitt v. Pallasch, C.A.7 \(Ill.\) 2003, 339 F.3d 530, rehearing and rehearing en banc denied. Privileged Communications And Confidentiality](#)  404


Applicants for domestic discovery did not attempt to circumvent foreign proof-gathering restrictions and policies by attempting to obtain domestic discovery for use in civil and criminal proceedings in Republic of Ecuador under federal statute permitting domestic discovery for use in foreign proceedings, by not first seeking discovery from foreign tribunal, since statute did not incorporate exhaustion requirement. [In re Veiga, D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Federal Civil Procedure](#)  1312


Fairness considerations for determining whether to stay discovery pending resolution of foreign proceedings weighed in favor of granting a stay in Brazilian bankruptcy trustee's proceeding for judicial assistance to allow discovery for use in a large-scale Brazilian bankruptcy, where foreign interests in the matter outweighed any United States' interests, the foreign forum was therefore also more convenient, and, given that trustee initiated the litigation in Brazil, it was likely that he would receive fair and impartial appellate consideration there on the threshold issue of a company's inclusion in the bankruptcy estate, on which the relevance of the requested discovery turned. [In re Application of Alves Braga, S.D.Fla.2011, 789 F.Supp.2d 1294. Action](#)  69(5)


Discretionary factors weighed against granting of discovery request made by software corporation that served competitor and counsel in European antitrust matters with subpoenas duces tecum in connection with ongoing antitrust proceeding before European Commission; commission was or would be in possession of documents


sought, commission opposed federal-court judicial assistance, corporation sought to circumvent commission's access to file rules, and subpoenas were unduly intrusive and burdensome. [In re Microsoft Corp., S.D.N.Y.2006, 428 F.Supp.2d 188. Federal Civil Procedure](#)  1312

Defendant in multiple foreign patent infringement suits would be allowed to obtain discovery from plaintiff; alternative discovery channels were inefficient and possibly ineffective, request did not undermine any specific policies of foreign countries or United States, request was not unduly burdensome, and confidentiality of requested material could be maintained. [In re Application of Procter & Gamble Co., E.D.Wis.2004, 334 F.Supp.2d 1112. Patents](#)  292.4

It was legitimate to take Germany's explicitly stated sovereignty concerns into account in determining whether German litigants could have access to discovery materials in a securities regulation lawsuit in the United States; failure to acknowledge those concerns would undermine the assistance to foreign tribunal statute's purposes by discouraging foreign countries from heeding similar sovereignty concerns posited by our governmental authorities to foreign courts. [In re Application of Schmitz, S.D.N.Y.2003, 259 F.Supp.2d 294, affirmed 376 F.3d 79. Federal Civil Procedure](#)  1312

District court would grant timepiece producer's request for discovery under statute governing assistance to foreign and international tribunals and to litigants before such tribunals from prospective licensee of trademark holder which licensed its trademark to producer, as to information for which request was clearly set forth and which was relevant for foreign proceeding between producer and trademark holder, absent evidence that foreign tribunal prohibited any discovery or that foreign law prohibited use of discovery sought; purpose of statute would be served since discovery would provide assistance to foreign litigants and discovery would not significantly upset balance between litigants. [Eco Swiss China Time Ltd. v. Timex Corp., D.Conn.1996, 944 F.Supp. 134. Federal Civil Procedure](#)  1312

District Court would exercise its discretion to compel putative father to provide blood sample in connection with paternity proceeding in Norway, where Norwegian court had specifically requested assistance of District Court, such that no Norwegian sovereignty concerns could hinder District Court's efforts, and where compelling blood sample would efficiently assist request made by Norwegian court and encourage Norway to provide similar assistance to United States courts. [In re Letter Rogatory from Nedenes Dist. Court, Norway, S.D.N.Y.2003, 216 F.R.D. 277. Federal Civil Procedure](#)  1312

Ordering putative father to provide blood sample in connection with paternity proceeding in Norway was permissible under rule allowing district court to order party to submit to physical examination, where putative father denied he was father, neither party claimed that designated medical provider was not certified to take blood sample, and blood sample was relevant to determination of paternity. [In re Letter Rogatory from Nedenes Dist. Court, Norway, S.D.N.Y.2003, 216 F.R.D. 277. Federal Civil Procedure](#)  1653

In determining whether to provide discovery assistance to Swedish court in connection with paternity action by ordering alleged father to provide blood sample, district court was not required to determine whether prima facie case of paternity under state law had been established in Swedish court, in absence of express statutory require-

ment; that Swedish court found sufficient grounds to order blood test ended district court's inquiry in that regard. [In re Letter of Request From Boras Dist. Court, E.D.N.Y.1994, 153 F.R.D. 31. Federal Civil Procedure](#) 🔑 1312

Extensive factual recitations concerning parties' prior litigation were irrelevant to request for documents and deposition order pursuant to letter rogatory issued by Argentine court. [Application of Sumar, S.D.N.Y.1988, 123 F.R.D. 467. Federal Civil Procedure](#) 🔑 1312; [Federal Civil Procedure](#) 🔑 1551

#### 42. Privileges--Generally

District courts may order production of evidentiary materials for use in foreign legal proceedings, provided materials are not privileged. [McKevitt v. Pallasch, C.A.7 \(Ill.\) 2003, 339 F.3d 530, rehearing and rehearing en banc denied. Federal Civil Procedure](#) 🔑 1312

Treaty with foreign government for mutual assistance in criminal matters prevented assertion of foreign parent-child privilege in proceeding to compel testimony for use in foreign criminal prosecution, despite treaty's general incorporation of domestic law including statute for recognition of privileges to which witness might be entitled; treaty intended any foreign privilege to be asserted before introduction of evidence into foreign prosecution, which allowed domestic courts to avoid burdensome inquiries into foreign law. [In re Erato, C.A.2 \(N.Y.\) 1993, 2 F.3d 11. Treaties](#) 🔑 8

Federal grand jury could take testimony of former President of the Philippines and his wife in violation of the Philippine privilege against self-incrimination; the federal grand jury issued subpoenas to the former President and his wife on its own initiative, rather than as result of any type of request from Philippine tribunal, as part of the grand jury's ongoing investigation into corruption in the dealings of American corporations with the former President's regime. [In re Grand Jury Proceedings, Doe No. 700, C.A.4 \(Va.\) 1987, 817 F.2d 1108, certiorari denied 108 S.Ct. 212, 484 U.S. 890, 98 L.Ed.2d 176. Witnesses](#) 🔑 297(6)

The existence of privilege cannot be determined from a blanket assertion of privilege over a large amount of material, as is the assertion of privilege to any bit of information that relates to a bank account. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632. Privileged Communications and Confidentiality](#) 🔑 21

Attorney-client privilege and attorney work product doctrine did not protect documents listed on privilege log, in action seeking discovery under federal statute permitting domestic discovery for use in foreign proceedings in connection with lawsuit pending in Republic of Ecuador against United States corporation, criminal proceedings commenced against lawyers for corporation in Ecuador, and arbitration commenced by corporation against Republic; privilege log contained numerous defects including document descriptions that were too general and brief to give the court a basis for determining whether the privilege was properly invoked, failure to correlate assertions of privilege with specific communications, and failure to identify role of attorney at any particular moment in time, who was representing different parties in related litigations, and which of attorney's communications related to which litigation. [In re Veiga, D.D.C.2010, 746 F.Supp.2d 27, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Federal Civil Procedure](#) 🔑 1558.1; [Privileged Communica-](#)

## tions And Confidentiality 22

Statute governing discovery applications for assisting foreign or international tribunals expressly shields privileged material. [In re Microsoft Corp., S.D.N.Y.2006, 428 F.Supp.2d 188. Federal Civil Procedure !\[\]\(eafc244b53721dd1ec133f0772f70fc7\_img.jpg\) 1312; Privileged Communications And Confidentiality !\[\]\(cb741e910ae1fce3b15fcd4605753ff5\_img.jpg\) 9](#)

### 43. ---- Persons entitled to assert, privileges

Creator of documentary film was not independent as to what he published in film regarding litigation being conducted in Ecuador over allegations of environmental damage in Ecuador from petroleum operations conducted by affiliate of oil corporation, and thus, for purposes of oil corporation's motion seeking disclosure of footage shot in making of documentary for use in proceedings in foreign tribunals, creator was not entitled to withhold footage under qualified evidentiary privilege for information gathered in journalistic investigation, notwithstanding creator's contention that some of footage was either irrelevant to proceedings or could have been obtained from other sources, where attorney for plaintiffs in litigation in Ecuador solicited creator to make documentary of litigation from perspective of plaintiffs, and creator removed at least one scene from final version of documentary at direction of plaintiffs in Ecuadoran litigation. [Chevron Corp. v. Berlinger, C.A.2 \(N.Y.\) 2011, 629 F.3d 297. Privileged Communications And Confidentiality !\[\]\(950a62bbddad88d64435fd35607dfc42\_img.jpg\) 404](#)

Statute providing that person before foreign and international tribunals may not be compelled to give testimony or statement or produce document or other thing in violation of any legally applicable privilege has no application to witness in United States who is subpoenaed for investigation being conducted in the United States. [In re Doe, C.A.2 \(N.Y.\) 1988, 860 F.2d 40. Grand Jury !\[\]\(5a132f13505a6571904d622757b7a8f0\_img.jpg\) 36.3\(2\)](#)

Professional basketball league was required to produce records regarding expulsion of player for violation of drug usage policy, in response to subpoena issued in connection with player's suit in German court against international basketball association, which had declared him ineligible based upon league's drug violation finding, despite league's claim that collective bargaining agreement with players' association required that information be kept confidential; real privacy interest was that of player, who waived confidentiality by challenging league's determination in German court. [In re Federation Internationale de Basketball, for a Subpoena Pursuant to 28 U.S.C. § 1782, S.D.N.Y.2000, 117 F.Supp.2d 403. Privileged Communications And Confidentiality !\[\]\(10f8862fc183b400327470ea85afe9ae\_img.jpg\) 423](#)

### 44. ---- Waiver, privileges

Bank's failure to assert, on appeal, attorney-client privilege as basis for protection from disclosure of documents which were sought by foreign company under statute authorizing district court to order production of documents for use in proceeding in foreign tribunal constituted waiver of privilege, which bank had asserted before district court, and warranted remand to determine whether company was entitled to require production of documents. [Application of Sarrio, S.A., C.A.2 \(N.Y.\) 1997, 119 F.3d 143. Federal Courts !\[\]\(73002692dd5e7a64e60946be3158e719\_img.jpg\) 947](#)

### 45. Property rights

Disclosure to defendant facing prosecution in foreign country for membership in banned organization and for

directing terrorism of tape recordings of journalists' interviews with key prosecution witness, made in course of research for biography of witness, pursuant to statute authorizing district court to order production of evidentiary materials for use in foreign legal proceedings, did not constitute appropriation of intellectual property; no showing was made, nor was it plausible, that journalists would have abandoned biography if information contained in recordings was made public. [McKevitt v. Pallasch, C.A.7 \(Ill.\) 2003, 339 F.3d 530](#), rehearing and rehearing en banc denied. [Copyrights And Intellectual Property](#) 🔑 108

#### 46. Scope of assistance--Generally

Supreme Court would not exercise its supervisory authority to adopt rules barring domestic discovery by foreign antitrust complainant for use in proceedings before European Commission; instead, Court would allow lower courts to determine on remand, using relevant factors it had outlined, what, if any, discovery assistance was appropriate. [Intel Corp. v. Advanced Micro Devices, Inc., U.S.2004, 124 S.Ct. 2466, 542 U.S. 241, 159 L.Ed.2d 355, 71 U.S.P.Q.2d 1001](#). [Federal Courts](#) 🔑 444; [Federal Courts](#) 🔑 462

Scope of congressional authorization necessarily limits and defines judicial power to render and seek assistance in response to letters rogatory issued by foreign and international tribunals. [In re Letter Rogatory from Justice Court, Dist. of Montreal, Canada, C.A.6 \(Mich.\) 1975, 523 F.2d 562](#). [Courts](#) 🔑 513

Court's involvement on letter rogatory is narrow, so that, where subpoenas were issued pursuant to letters rogatory, proceeding is limited by act of Congress to question of enforceability of subpoenas by compulsion. [In re Letters Rogatory from Supreme Court of Ontario, Canada, E.D.Mich.1987, 661 F.Supp. 1168](#). [Federal Civil Procedure](#) 🔑 1353.1

#### 47. ---- Enforcement of judgments


Enforcement of Mexican judgment against Mexican national allegedly residing in Texas was beyond scope of assistance which district court could give pursuant to request for judicial assistance by letters rogatory. [In re Civil Rogatory Letters Filed by Consulate of the U.S. of Mexico, S.D.Tex.1986, 640 F.Supp. 243](#). See, also, [Tacul, S.A. v. Hartford Nat. Bank & Trust Co., D.Conn.1988, 693 F.Supp. 1399](#). [Judgment](#) 🔑 830.1

#### 48. Exhaustion of other means or procedures


Discovery in aid of foreign litigation could not properly be denied for having failed to exhaust discovery options in the foreign country before seeking assistance in the United States, even on the basis of considering it factor in addition to the nature and attitudes of the foreign country tort discovery and whether information sought was ultimately discoverable under foreign law. [Euromepa S.A. v. R. Esmerian, Inc., C.A.2 \(N.Y.\) 1995, 51 F.3d 1095](#). [Federal Civil Procedure](#) 🔑 1312

Private foreign litigant's request for discovery from American aircraft manufacturer was improperly denied as "premature and unnecessary" on the theory that the foreign litigant had never made a formal discovery request on the American company through the foreign tribunal. [Application of Malev Hungarian Airlines, C.A.2 \(Conn.\) 1992, 964 F.2d 97, certiorari denied 113 S.Ct. 179, 506 U.S. 861, 121 L.Ed.2d 125](#). [Federal Civil Procedure](#)



 1312

Party to litigation in foreign country need not exhaust all discovery requests in foreign tribunal prior to seeking compulsion of documents or witnesses in district court under statute governing assistance to foreign tribunals and litigants before those tribunals. [Application of Euromepa, S.A., S.D.N.Y.1994, 155 F.R.D. 80, reversed 51 F.3d 1095. Federal Civil Procedure](#)  1312


## 49. Intervention

Rule governing permissive intervention, rather than statute providing for assistance to foreign and international tribunals and to litigants before such tribunals, was proper vehicle for Canadian linerboard purchaser, who was a plaintiff in similar action in Canadian court, to seek modification of confidentiality order in antitrust class action involving allegations that manufacturers of linerboard fixed prices in violation of the Sherman Act, although Canadian rules of civil procedure would not permit a plaintiff to seek discovery from a defendant until after class certification, where defendants would suffer no prejudice from granting movant access to materials that had already been produced to plaintiffs in District Court. [In re Linerboard Antitrust Litigation, E.D.Pa.2004, 333 F.Supp.2d 333. Federal Civil Procedure](#)  1312


## 50. Jurisdiction

District court had subject matter jurisdiction over request by foreign tribunal to order blood test of putative father residing within district in which court sat; matter required interpretation of treaty of United States, Congress had expressly authorized federal district courts to consider foreign letter rogatory requests and court had personal jurisdiction over the subject of the requests under Convention on Taking of Evidence Abroad in Civil or Commercial Matters. [In re Letter Rogatory from Local Court of Ludwigsburg, Federal Republic of Germany in Matter of Smith, N.D.Ill.1994, 154 F.R.D. 196. Federal Courts](#)  162; [Treaties](#)  8

## 51. Abstention


The assumption of jurisdiction over a res factor for *Colorado River* abstention favored abstention on application by attorney who was appointed to inventory assets of estate to compel two New York attorneys to produce certain documents in connection with foreign probate proceeding, where there was chance a New York surrogate's court could appoint a temporary administrator to assume temporary control over assets of the estate, and there were restraining orders in effect with respect to certain entities allegedly controlled by the deceased. [Application of Horler, S.D.N.Y.1992, 799 F.Supp. 1457. Federal Courts](#)  47.1


## 52. Procedure for taking evidence--Generally

Evidence taken from American citizen and supplied to Crown Prosecution Service of United Kingdom for use in British criminal investigation pursuant to federal statute allowing foreign states to request such evidence was to be supplied in a form appropriate for use in British court. [In re Letter of Request from Crown Prosecution Service of United Kingdom, C.A.D.C.1989, 870 F.2d 686, 276 U.S.App.D.C. 272. Federal Civil Procedure](#)  1312





53. ---- Ex parte proceedings, procedure for taking evidence

Letters rogatory may properly be received and appropriate action taken with respect thereto ex parte, as witnesses can raise objections in exercise of their due process rights by motion to quash subpoenas. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. Federal Civil Procedure](#)  1312


Ex parte application to depose and conduct discovery on expert witness in Massachusetts for use in environmental litigation in Ecuador would be granted; the expert witness resided outside of the jurisdiction of the foreign tribunal, the Ecuadorian tribunal was still accepting documents, there was no showing that the discovery was sought in bad faith or in an attempt to circumvent foreign proof-gathering restrictions, and the discovery request was not unduly intrusive or burdensome. [Chevron Corp. v. Shefftz, D.Mass.2010, 754 F.Supp.2d 254. Federal Civil Procedure](#)  1312

54. ---- Notice, procedure for taking evidence

Statements taken, pursuant to court order issued under statute regarding assistance to foreign and international tribunals and to litigants before such tribunals, in Tokyo district prosecutor's office's investigation of murder of Japanese citizen while she was in Los Angeles, were far more analogous to depositions than Jencks Act statements, and thus notice of taking deposition should have been provided in accordance with Federal Rules of Civil Procedure. [In re Letters Rogatory from Tokyo Dist. Prosecutor's Office, Tokyo, Japan, C.A.9 \(Cal.\) 1994, 16 F.3d 1016. Federal Civil Procedure](#)  1312

Defendant in criminal proceedings begun in Hong Kong, alleging fraud and corruption in conducting bank's affairs, was entitled to notice of proceedings against him, and, thus, where defendant was denied opportunity to participate in depositions of bank representatives, United States Attorney and Attorney General of Hong Kong had to return deposition transcripts; Hong Kong Attorney General subjected himself to district court's jurisdiction by applying for orders to carry out discovery pursuant to letters of request. [In re Letter of Request from Supreme Court of Hong Kong, S.D.N.Y.1991, 138 F.R.D. 27. Federal Civil Procedure](#)  1312

55. ---- Presence of parties at proceedings, procedure for taking evidence

Target of French criminal investigation had no right to disclosure of documents submitted by juge d'instruction in seeking appointment of commissioner to aid in discovery, nor to be present at examinations of subpoenaed witnesses or to cross examine those witnesses. [In re Letter of Request From Government of France, S.D.N.Y.1991, 139 F.R.D. 588. Federal Civil Procedure](#)  1312

56. Protective orders

Documents that were sent by Dutch client to law firm, even if sent to secure firm's legal advice, were not entitled to protection from disclosure by subpoena in action by third party against company which client had audited, to extent that client voluntarily authorized firm to send documents to Securities and Exchange Commission (SEC) during investigation into such audits. [Ratliff v. Davis Polk & Wardwell, C.A.2 \(N.Y.\) 2003, 354](#)

### F.3d 165. Privileged Communications And Confidentiality 168

United States citizen from whom evidence was to be taken for possible use in British criminal proceedings pursuant to request of Crown Prosecution Service of United Kingdom was not entitled to protective order to guard against improper use of evidence in auxiliary or unrelated proceedings in the United States or abroad, but rather citizen was entitled to assert precise objection in the event that improper use of evidence threatened injury to him. [In re Letter of Request from Crown Prosecution Service of United Kingdom, C.A.D.C.1989, 870 F.2d 686, 276 U.S.App.D.C. 272. Federal Civil Procedure !\[\]\(99f58673407353e96a019fbca558fd72\_img.jpg\) 1312](#)

Subpoena compelling nonparty corporation to produce documents requested by Argentine court pursuant to letters rogatory would not be quashed on ground that compliance would force corporation to breach contract with Argentine Air Force and was threat to Argentine national security; Argentine court was capable of making such decisions and had done so, and appropriate response to corporation's concerns was protective order requiring that party seeking documents neither disclose nor publish them. [In re Letters Rogatory Issued by Nat. Court of First Instance in Commercial Matters N. 23 of Federal Capital of Argentinean Republic, E.D.Pa.1992, 144 F.R.D. 272. Federal Civil Procedure !\[\]\(0f848bbd71cef6b345273b16f905912a\_img.jpg\) 1353.1](#)

#### 57. Disclosure orders

Japanese murder suspects' remedy for fact that evidence against them was taken in violation of notice provisions of Federal Rules of Civil Procedure was district court order directing commissioners appointed pursuant to statute providing district court with authority to provide assistance to foreign and international tribunals and to litigants before such tribunals to provide copies of all witness statements, including affidavits, interviews, and depositions, and all documentary and physical evidence collected and still in commissioners' possession, to suspects. [In re Letters Rogatory from Tokyo Dist. Prosecutor's Office, Tokyo, Japan, C.A.9 \(Cal.\) 1994, 16 F.3d 1016. Federal Civil Procedure !\[\]\(a870788d6ed9b8fd294b7654a8c8526b\_img.jpg\) 1312](#)

#### 58. Reciprocal discovery

District court acted well within its statutory discretion in ordering reciprocal discovery between brother and sister for use in foreign proceedings to determine administrator of their brother's estate, absent any indication that district court's decision was at variance with purposes of statute, that it lacked reasonable basis, that order was overly burdensome or duplicative, or that foreign court had issued any pronouncement suggesting discovery order would trench upon foreign law or otherwise interfere with foreign proceedings. [Application of Esses, C.A.2 \(N.Y.\) 1996, 101 F.3d 873. Federal Civil Procedure !\[\]\(3211b5d1d968fc1665909b34f9f16010\_img.jpg\) 1312](#)

To extent that district court presented with petition to order discovery in aid of litigation in France was concerned that permitting requested discovery would allow requesting party to examine documents that it might not wish to use in court, which might be barred by French discovery rule, court was free to insist that requesting party submit any evidence it obtained in the United States to the French court regardless of whether the evidence helped or hindered it, and if district court wished to ensure procedural parity between requesting party and party from whom discovery was sought in the United States, which would be unable to gain access to analogous documents of the requesting party in Europe, district court could have conditioned relief on parties' reciprocal ex-

change of information. [Euromepa S.A. v. R. Esmerian, Inc., C.A.2 \(N.Y.\) 1995, 51 F.3d 1095. Federal Civil Procedure](#) 🔑 1312

#### 59. Persons entitled to challenge order

Plaintiffs in Ecuadorian class action against oil company had standing to bring appeal challenging district court's ruling that plaintiffs waived attorney-client privilege with respect to their attorney's communications regarding Ecuadorian class action, in oil company's action seeking discovery of communications for use in Ecuadorian class action, because plaintiffs were the clients to whom attorney-client privilege belonged. [In re Chevron Corp., C.A.3 \(Pa.\) 2011, 650 F.3d 276. Federal Courts](#) 🔑 544

United States citizen, potential target in British criminal investigation, had standing to challenge district court order for the taking of evidence in aid of that criminal investigation pursuant to a letter rogatory from the Crown Prosecution Service of the United Kingdom, even though no evidence was sought from citizen. [In re Letter of Request from Crown Prosecution Service of United Kingdom, C.A.D.C.1989, 870 F.2d 686, 276 U.S.App.D.C. 272. Federal Civil Procedure](#) 🔑 1312



While Korean citizen, who was under investigation in Korea for violation of Korean currency laws, may not have had standing to challenge disclosure of records of his account with California bank on the basis of [U.S.C.A. Const. Amends. 4 or 5](#), he had standing to challenge order granting request of Korean court for assistance in procuring the records; question was whether judicial assistance should have been granted under this section and request warrant stating that the records were sought in connection with pending criminal charges. [In re Request For Judicial Assistance from Seoul Dist. Criminal Court, Seoul, Korea, C.A.9 \(Cal.\) 1977, 555 F.2d 720. Federal Civil Procedure](#) 🔑 1312


Defendant, who was subject of letters rogatory issued by Canadian prosecutor in attempt to obtain records from Detroit bank relative to defendant in Canadian prosecution, had standing to challenge district court's power to issue a subpoena duces tecum in response thereto on theory that court had acted in excess of terms of this section. [In re Letter Rogatory from Justice Court, Dist. of Montreal, Canada, C.A.6 \(Mich.\) 1975, 523 F.2d 562. Federal Civil Procedure](#) 🔑 1332


A foreign citizen aggrieved by an order under a provision allowing a district court to exercise authority to compel discovery pursuant to a letter rogatory issued by a foreign court had standing to oppose judicial assistance to foreign authorities under that provision. [Application of Sumar, S.D.N.Y.1988, 123 F.R.D. 467. Federal Civil Procedure](#) 🔑 1312


#### 59a. Participant in foreign proceeding


There was no fundamental unfairness caused by district court declining to compel production, pursuant to Government of Ghana's application for discovery pursuant to statute allowing federal courts to provide assistance in gathering evidence for use in foreign tribunals, of settlement documents between Missouri companies and a contractor that Government of Ghana was suing in a foreign proceeding, and therefore any error in the district

court's decision declining to compel production did not constitute reversible error; Missouri companies had already produced most of the documents, depositions, and interrogatory answers from its lawsuit with the Government of Ghana's contractor, and Missouri companies were not party to the foreign litigation. [Government of Ghana v. ProEnergy Services, LLC, C.A.8 \(Mo.\) 2012, 677 F.3d 340. Federal Civil Procedure](#)  1312; [Federal Courts](#)  895


District court did not abuse its discretion in requiring plaintiffs in environmental damages action in Ecuador to turn over to oil company documents created by non-testifying environmental consultant and submitted to court-appointed damages expert, where consultant was not subject to Ecuadorian court's jurisdiction, expert apparently denied that he was in receipt of documents from consultant, arbitration panel hearing dispute did not have authority to order production, and Ecuadorian court had not definitively ruled on company's request. [In re Chevron Corp., C.A.3 \(N.J.\) 2011, 633 F.3d 153. Federal Civil Procedure](#)  1312



District court would not quash subpoena issued in response to former business owner's application for judicial assistance to litigant in foreign tribunal, seeking subpoena against interested party in sale of business assets; although interested party was not party to foreign action, business owner's ongoing criminal proceeding against buyer of assets qualified as foreign proceeding, business owner sought information regarding value of business that might contradict evidence produced by buyer in Argentina, and business owner argued that he and interested party worked collectively to limit breadth of discovery and that there was no expense to buyer associated with document production. [Pott v. Icicle Seafoods, Inc., W.D.Wash.2013, 2013 WL 1855771. Federal Civil Procedure](#)  1312

Statutory requirements were satisfied in connection with petition of Republic of Ecuador and its Attorney General for issuance of subpoena to environmental expert, who authored reports for oil company for use in bilateral investment treaty arbitration before United Nations Commission on International Trade Law (UNCITRAL) arbitral body, for taking of deposition and production of documents for use in foreign proceeding; expert was resident of district, discovery sought would be used before treaty arbitration pending at UNCITRAL tribunal, and petition was made by interested person as party to UNCITRAL proceeding. [Republic of Ecuador v. Bjorkman, D.Colo.2011, 801 F.Supp.2d 1121, stay denied, affirmed 2011 WL 5439681. Alternative Dispute Resolution](#)  514


Person who had not had active role in subject proceeding in Republic of Ecuador for years, and even then only as counsel, was not participant in foreign proceeding, favoring allowing applicants to obtain domestic discovery for use in civil and criminal proceedings in Republic of Ecuador under federal statute permitting domestic discovery for use in foreign proceedings; although such person had represented that he would subject himself to jurisdiction of Ecuadorian courts upon properly lodged application for discovery in those courts, he had not done so. [In re Veiga, D.D.C.2010, 746 F.Supp.2d 8, appeal dismissed 2010 WL 5140467, appeal dismissed 2011 WL 1765213. Federal Civil Procedure](#)  1312


Attorney from whom discovery was sought was not a party to, nor an attorney presently connected with, the underlying Ecuadorian civil and criminal proceedings, weighing in favor of allowing applicants, an American oil company and two employees of its Ecuadorian subsidiary, to obtain domestic discovery from the attorney for


use in the Ecuadorian proceedings, pursuant to statute permitting domestic discovery for use in foreign proceedings. [In re Application of Chevron Corp., D.Mass.2010, 762 F.Supp.2d 242. Federal Civil Procedure](#)  1312


Putative father was a “participant,” within meaning of statute governing requests for judicial assistance to foreign tribunals, in paternity action filed in a court in the Czech Republic, weighing in favor of granting that court's request for such assistance; since putative father had no connection to the Czech Republic other than the underlying paternity dispute, the foreign court would be unable to compel him to respond to its discovery requests without the District Court's assistance. [In re Request for Judicial Assistance from the Dist. Court in Svitavy, Czech Republic, E.D.Va.2010, 748 F.Supp.2d 522. Children Out-of-wedlock](#)  39; [Federal Civil Procedure](#)  1312

#### 60. Final and appealable orders

District court's discovery order, directing creator of documentary film to produce all footage shot in making of documentary for use by oil corporation in civil litigation in Ecuador, and for use by oil corporation's attorneys in criminal prosecutions brought against them in Ecuador, was final adjudication of corporation's petition to take discovery in aid of foreign proceeding, and, thus, Court of Appeals had jurisdiction to review order, notwithstanding that suits in Ecuador remained unadjudicated. [Chevron Corp. v. Berlinger, C.A.2 \(N.Y.\) 2011, 629 F.3d 297. Federal Courts](#)  594

District court's orders made pursuant to statute governing formal assistance to foreign criminal investigations are final and appealable. [U.S. v. Sealed 1, Letter of Request for Legal Assistance from the Deputy Prosecutor General of the Russian Federation, C.A.9 \(Wash.\) 2000, 235 F.3d 1200. Federal Courts](#)  574

District court order granting request of Korean court for assistance in procuring from a California bank certain financial records relating to a Korean citizen under investigation in Korea for violating Korean currency laws was appealable; subpoena was directed against the bank, and not the subject of the investigation and bank was unlikely to suffer finding of contempt to protect the subject's rights. [In re Request For Judicial Assistance from Seoul Dist. Criminal Court, Seoul, Korea, C.A.9 \(Cal.\) 1977, 555 F.2d 720. Federal Courts](#)  556

Although issue is more difficult than in case of order granting motion to vacate and quash subpoena issued pursuant to letters rogatory would be, order in aid of foreign letters rogatory is also appealable. [In re Letters Rogatory Issued by Director of Inspection of Government of India, C.A.2 \(N.Y.\) 1967, 385 F.2d 1017. Federal Courts](#)  556

#### 61. Stay pending appeal

Witnesses were not entitled to a stay pending appeal from denial of motion to quash subpoenas which were issued in response to letters rogatory from a Japanese court, where it appeared that the substantial likelihood of success on the merits was in favor of commissioner appointed by the district court, rather than the witnesses, imposition on witnesses in attending depositions was outweighed by Japanese government's request for expeditious treatment, and public policy, as reflected by a mutual assistance agreement entered into by the United States

government, strongly favored denial of stay. [In re Letters Rogatory from Tokyo Dist., Tokyo, Japan, C.A.9 \(Cal.\) 1976, 539 F.2d 1216. Federal Civil Procedure](#) 🔑 1312

There was no good cause to justify stay of order granting Ecuador's application for subpoena to environmental expert, who authored reports for oil company for use in bilateral investment treaty arbitration before United Nations Commission on International Trade Law (UNCITRAL) arbitral body, for taking of deposition and production of documents for use in foreign proceeding; any "risk of conflict" with Treaty Arbitration Tribunal's supposed discovery order or proceedings was speculative since Tribunal had not yet ordered discovery, and movants failed to show how they would be harmed absent stay. [Republic of Ecuador v. Bjorkman, D.Colo.2011, 801 F.Supp.2d 1121, stay denied, affirmed 2011 WL 5439681. Alternative Dispute Resolution](#) 🔑 514

Documentary filmmaker was not entitled to a stay pending appeal of order issuing a subpoena requiring him to turn over the "outtakes" of his documentary film, which depicted events relating to a multi-billion dollar Ecuadorian litigation against oil company, the threatened criminal prosecution in Ecuador of two of its attorneys, and an international arbitration; there was reason to doubt the finality of the order appealed from and hence its appealability, even if there was appellate jurisdiction, filmmaker would not be likely to prevail on the merits, and the equitable factors on balance strongly favored the oil company. [In re Application of Chevron Corp., S.D.N.Y.2010, 709 F.Supp.2d 283, corrected, for additional opinion, see 2010 WL 5621332, stay denied, affirmed 629 F.3d 297. Federal Courts](#) 🔑 686

Order granting foreign suit defendant's request for discovery would not be stayed pending appeal; need for discovery was immediate, and it was unlikely that subject of discovery order would succeed on appeal. [In re Application of Procter & Gamble Co., E.D.Wis.2004, 334 F.Supp.2d 1112. Federal Courts](#) 🔑 686

#### 61a. Stay pending foreign proceedings

International comity factor for determining whether to stay discovery pending resolution of foreign proceedings weighed in favor of granting a stay in Brazilian bankruptcy trustee's proceeding for judicial assistance to allow discovery for use in a large-scale Brazilian bankruptcy, where Cayman Islands' interests in the action were subsumed within the Brazilian interests, and those Brazilian interests far outweighed the nebulous risk of harm to future United States requests for judicial assistance from Brazil. [In re Application of Alves Braga, S.D.Fla.2011, 789 F.Supp.2d 1294. Action](#) 🔑 69(5)

#### 62. Standard of review

Appellate courts review a district court's decision on an application for discovery pursuant to statute allowing federal courts to provide assistance in gathering evidence for use in foreign tribunals for abuse of discretion. [Government of Ghana v. ProEnergy Services, LLC, C.A.8 \(Mo.\) 2012, 677 F.3d 340. Federal Courts](#) 🔑 820

Court of Appeals reviews for abuse of discretion a district court's decision on a request for discovery for use in a foreign proceeding, however, if the district court misinterpreted or misapplied the law, or if the district court relied on inappropriate factors in the exercise of its discretion, the Court of Appeals' review is plenary. [In re Chev-](#)

ron Corp., C.A.3 (Pa.) 2011, 650 F.3d 276. [Federal Courts](#) ↪ 763.1; [Federal Courts](#) ↪ 820

Review by Court of Appeals of district court's decision in case involving request for assistance made pursuant to statute giving district courts power to provide assistance to foreign courts is extremely limited and highly deferential; because Congress has given district courts broad discretion in granting judicial assistance to foreign countries, Court of Appeals may overturn district court's decision only for abuse of discretion, although review is de novo to the extent the district court's decision is based on an interpretation of law. [United Kingdom v. U.S., C.A.11 \(Fla.\) 2001, 238 F.3d 1312](#), rehearing and rehearing en banc denied [253 F.3d 713](#), certiorari denied [122 S.Ct. 206, 534 U.S. 891, 151 L.Ed.2d 146](#). [Criminal Law](#) ↪ 1139; [Criminal Law](#) ↪ 1148

Order directing resident to comply with foreign or international tribunal's request for evidence made pursuant to Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is reviewed for abuse of discretion. [In re Letter of Request from Amtsgericht Ingolstadt, Federal Republic of Germany, C.A.4 \(W.Va.\) 1996, 82 F.3d 590](#). [Federal Courts](#) ↪ 820

Decision as to whether to order discovery in aid of foreign litigation is reviewed for abuse of discretion, but fact that district court may or may not, in its discretion, order discovery does not mean that it is free to do so on inappropriate grounds. [Euromepa S.A. v. R. Esmerian, Inc., C.A.2 \(N.Y.\) 1995, 51 F.3d 1095](#). [Federal Courts](#) ↪ 820

Abuse of discretion is standard of review for determining whether district court can exercise its authority under statute allowing district court to order one before foreign and international tribunals to give testimony or statement or produce document for use in proceeding in foreign or international tribunal. [In re Doe, C.A.2 \(N.Y.\) 1988, 860 F.2d 40](#). [Federal Courts](#) ↪ 820


District courts have broad discretion in granting judicial assistance in gathering evidence for use in foreign tribunals, and any review of the court's determination is extremely limited and highly deferential. [In re Pimenta, S.D.Fla.2013, 2013 WL 1846632](#). [Federal Civil Procedure](#) ↪ 1312; [Federal Courts](#) ↪ 820

### 63. Moot issues

Petition in which Japanese patent holder sought discovery from its American competitor for use in invalidity proceeding before Japanese Patent Office (JPO) did not relate to discovery for use in a proceeding before a foreign tribunal, and thus, appeals from order granting petition in part were moot, where JPO had conducted evidentiary hearing on merits during pendency of appeals; requested discovery could not be introduced in JPO proceeding, and possibility that a new invalidity proceeding would be brought would not be considered, since petition had not been based on need for discovery in any such proceeding. [In re Ishihara Chemical Co., C.A.2 \(N.Y.\) 2001, 251 F.3d 120, 58 U.S.P.Q.2d 1907](#). [Federal Courts](#) ↪ 724

### 64. Costs

Saudi Arabian corporation was required to pay 100% of costs related to discovery of financial records related to

allegedly fraudulent monetary transfers from New York banks under federal statute permitting domestic discovery for use in foreign proceedings based on substantial burden discovery request placed on banks; corporation's discovery requests were defined very broadly, corporation requested records over an 11-year time period, and one respondent bank had ceased banking activity and had date responsive to requests only on legacy computer systems that were no longer maintained. [Ahmad Hamad Algosabi & Bros. Co. v. Standard Chartered Intern. \(USA\) Ltd., S.D.N.Y.2011, 785 F.Supp.2d 434. Federal Civil Procedure](#)  1312

28 U.S.C.A. § 1782, 28 USCA § 1782

Current through P.L. 113-36 approved 9-18-13

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