

Insights: Publications

Does Section 1782 Apply to Discovery in Private International Commercial Arbitration Proceedings?

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Life sciences companies should pay attention to an ongoing action in Delaware that could have implications for whether they can obtain (or be subjected to) U.S. discovery in international arbitration under 28 U.S.C. § 1782. Section 1782 is a powerful tool that permits litigants to obtain broad discovery in the United States for use in international arbitrations, which traditionally do not provide for or allow significant discovery. But U.S. courts have found that not all international arbitrations qualify under this statute. While courts have permitted Section 1782 to be used in connection with investor-State arbitration, they have wrestled with whether to apply the statute in the context of international arbitration between two private, commercial parties. The statute states in pertinent part: “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, . . . 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.”