Third Circuit Shuns Premature § 1782 Appeal

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Summary

- Discovery order ineligible for appeal due to lack of defined scope.
- The ruling stems from patent litigation that Amgen, Inc., initiated against Celltrion Inc. in South Korea.

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In a decision carrying substantial weight for international litigants, the U.S. Court of Appeals for the Third Circuit recently held that discovery orders issued pursuant to 28 U.S.C. § 1782 are not ripe for appeal until the district court has expressly defined the scope of discovery.

The ruling, issued in *In re Amgen Inc. for Assistance Before a Foreign Tribunal Celltrion USA, Inc.*, mirrors Fifth and Ninth Circuit decisions. These decisions establish that an order granting a § 1782 application is not "final" for the purposes of 28 U.S.C. § 1291—and thus, not eligible for appeal—until the issuing court establishes the scope of permissible discovery.

Section 1782 Proceedings

Section 1782 allows a federal district court to compel individuals or entities based in the United States to provide discovery materials to be used in proceedings before a foreign or international tribunal. This statute is a powerful tool for international litigants to obtain evidence that would otherwise be outside the jurisdictional reach of foreign tribunals.

The Dispute

The ruling stems from patent litigation that Amgen, Inc., initiated against Celltrion Inc. in South Korea. To assist in the prosecution of its claims, Amgen filed a § 1782 application in U.S. District Court for the District of New Jersey, seeking to compel Celltrion's subsidiary, Celltrion USA, Inc., to produce documents and testimony in the South Korean litigation.

Celltrion USA opposed the request asserting that it was "overly broad and invasive." However, the magistrate judge approved Amgen's application finding that a § 1782 application cannot be denied on the grounds of overbreadth or invasiveness. The magistrate instructed the parties to meet and confer regarding the confidential treatment of documents to be produced and reserved defining the scope of the § 1782 application until after these discussions had taken place.

The Third Circuit's Decision

After the district court affirmed the magistrate's ruling, Celltrion USA appealed to the Third Circuit. Although Celltrion USA raised substantive objections, the appellate court dismissed the appeal, finding that it lacked jurisdiction under § 1291.

The appellate court explained that § 1291 vests the court with jurisdiction over "final" decisions from the district court or decisions that resolve the litigation on its merits. The appellate court further opined that discovery orders rarely meet § 1291's finality standard, as they do not resolve the merits of the litigation. However, § 1782 proceedings are unique: because discovery is the only matter at issue, such orders may, in some instances, be considered final.

Relying on decisions from the Fifth and Ninth Circuits, the court concluded that a § 1782 order is not "final" and eligible for appeal unless the scope of discovery has been expressly defined by the authorizing court.

Based on this finding, the court concluded that Celltrion USA's appeal was premature, as the district court had not yet established the scope of discovery. The court explained that allowing Celltrion USA's appeal to proceed would undermine the principle of finality and encourage piecemeal appeals.

Finality Is a "Principal Issue"

The court's ruling reinforces the appellate courts' commitment to finality when determining whether a case is ripe for appeal, a point emphasized by Thomas J. Donlon, Stamford, CT, Co-Chair of the ABA Litigation Section's Appellate Practice Committee. "Finality is one of the principal issues when dealing with appellate courts," Donlon says. "[C]ourts want to review cases once. Premature appeals risk multiple reviews, which undermine judicial efficiency and unnecessarily expend resources," he adds.

He added that finality also ensures trial courts can complete their work before appellate review. "In many cases, issues raised in the early stages of litigation may resolve themselves, rendering any appeal moot," Donlon explains.

Donlon further stresses the importance of procedural vigilance. "Appeal deadlines vary by jurisdiction. If there is any concern about timeliness, parties should err on the side of caution and file early, as a late appeal can be barred entirely," he cautions.

Mark A. Romance, Miami, FL, Co-Chair of the Litigation Section's Pretrial Practice & Discovery Committee, echoes Donlon's view. "Appellate courts are courts of limited jurisdiction, and the issue was not fully resolved by the trial court," Romance says. "Courts require finality to avoid piecemeal litigation. From a practical point of view, it's frustrating for litigants who want to know whether they need to spend more time evaluating discoverable documents," he adds. "But the court has to prevent multiple appeals and give trial courts certainty," explains Romance.

Romance also points to the strategic lessons that practitioners can derive from this ruling. "Facing a trial court that determines a subpoena can go forward, you have two paths: Quickly agree on the scope of documents so you can appeal or convince the court not to punt the issue. Leaving the issue unresolved drags out the process," he says.

On broader trends, Romance notes that consistency is emerging across the circuit courts regarding finality and § 1782 orders. "The current trend among the Third, Fifth, and Ninth Circuits should guide practitioners," he explains. "If a trial court leaves the scope of discovery unresolved, act quickly to clarify it. This reduces unnecessary litigation and allows the appellate court to address the matter efficiently," concludes Romance.

Resources

- Mark Doerr, "Need Foreign Discovery? Consider Little-Known Section 1782," *Litig. J.* (Spring 2013).
- Frederick A. Acomb & James L. Woolard, "Can a U.S. Court Order Foreign Discovery for a Foreign Use?," *Litig. J.* (Winter 2020).
- Laura G. Ferguson, "U.S. Discovery for Use in Foreign Proceedings", *Litig. J.* (Oct. 4, 2021).
- *CPC Pats. Tech. Pty Ltd. v. Apple, Inc.*, 119 F.4th 1126 (9th Cir. 2024).
- *Banca Pueyo SA v. Lone Star Fund IX (US), L.P.*, 978 F.3d 968 (5th Cir. 2020).

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