

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In Re Ex Parte Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings.

Case No.

**EX PARTE APPLICATION OF ENI S.P.A. FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782 GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN PROCEEDINGS**

Based on the memorandum of law, declarations, and other supporting documents accompanying this application, Eni S.p.A. (“Eni”) respectfully applies to this Court for an Order pursuant to 28 U.S.C. § 1782 (“Section 1782”) and Federal Rules of Civil Procedure 26, 30, and 45 granting Eni leave to serve the following entities incorporated in Delaware with subpoenas for the production of documents and deposition testimony for use in Italian court proceedings and an international investor-state arbitration: Poplar Falls, LLC; Drumcliffe Partners I LLC; Drumcliffe Partners II LLC; Drumcliffe Partners III LLC; Drumcliffe Partners III SMA I, LLC; Drumcliffe Partners IV LLC; and Drumcliffe Partners IV SMA1, LLC (together, “Respondents”).

Eni’s application meets the requirements of Section 1782. Respondents are “found” within this district; the narrow discovery Eni requests is for use in proceedings before a foreign tribunal; Eni, as a party to the foreign proceedings, is an “interested person”; and the application does not require disclosure of privileged materials. The factors set out by the Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), also weigh heavily in favor of Eni’s limited discovery requests: (1) the evidence sought likely is unobtainable without this Court’s assistance; (2) there is no indication that either the Italian court or the international arbitration tribunal will be unreceptive to the requested discovery; (3) Eni is not using this application to circumvent any

proof-gathering restrictions or policies; and (4) the targeted discovery Eni seeks is narrowly tailored and not unduly burdensome or intrusive.

Finally, as courts in this Circuit have recognized, Section 1782 applications made on an *ex parte* basis are properly filed and routinely granted. *See, e.g., In re Mota*, 2020 WL 95493, at *1 (D. Del. Jan. 8, 2020) (“Discovery applications under § 1782 are often granted *ex parte* because, *inter alia*, witnesses and other recipients can ‘raise[] objections and [otherwise] exercise[] their due process rights by motions to quash.’”); *In re Ex parte Petition of Republic of Turkey for an Order Directing Discovery From Hamit Çiçek Pursuant to 28 U.S.C. § 1782*, 2020 WL 2539232, at *3 (D.N.J. May 18, 2020) (“‘[An] *ex parte* application is an acceptable method for seeking discovery pursuant to Section 1782,’ in part because the person subpoenaed may exercise their due process rights with a motion to quash.”); *In re Ex Parte Application of Societe d’Etude de Realisation et d’Exploitation Pour le Traitement du Mais*, 2013 WL 6164435, at *2 (E.D. Pa. Nov. 22, 2013) (“Any fair interpretation of § 1782(a)’s plain language . . . should read it to encompass *ex parte* proceedings[.]”); *In re Platebright Ltd.*, 2014 WL 341568, at *6 (D.V.I. Jan. 30, 2014) (“[I]t is common for parties to request and obtain [§ 1782] orders authorizing discovery *ex parte*[.]”).

Eni therefore respectfully requests that this Court enter an Order granting this application.

Dated: October 6, 2020

LANDIS, RATH & COBB LLP

/s/ Rebecca L. Butcher

Daniel B. Rath (No. 3022)
Rebecca L. Butcher (No. 3816)
Jennifer L. Cree (No. 5919)
919 Market Street, Suite 1800
Wilmington, DE 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450
Email: rath@lrclaw.com
butcher@lrclaw.com
cree@lrclaw.com

Nicolas Bourtin (*pro hac vice* pending)
Beth D. Newton (*pro hac vice* pending)
Michele C. Materni (*pro hac vice* pending)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000
bourtinn@sullcrom.com
newtonb@sullcrom.com
maternim@sullcrom.com

Counsel for Applicants Eni S.p.A.