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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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INTEL CORP. *v.* ADVANCED MICRO DEVICES, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02–572. Argued April 20, 2004—Decided June 21, 2004

In 1964, pursuant to a recommendation by the Commission on International Rules of Judicial Procedure (Rules Commission), and as part of an endeavor to improve judicial assistance between the United States and foreign countries, Congress completely revised 28 U. S. C. §1782(a). In its current form, §1782(a) provides that a federal district court "may order" a person residing or found in the district to give testimony or produce documents "for use in a proceeding in a foreign or international tribunal . . . upon the application of any interested person." The 1964 overhaul of §1782(a) deleted the prior law's words, "in any judicial proceeding *pending* in any court in a foreign country." (Emphasis added.)

Respondent Advanced Micro Devices, Inc. (AMD), filed an antitrust complaint against petitioner Intel Corporation (Intel) with the Directorate-General for Competition (DG-Competition) of the Commission of the European Communities (Commission), alleging that Intel had violated European competition law. After the DG-Competition declined AMD's recommendation to seek documents Intel had produced in a private antitrust suit in an Alabama federal court, AMD petitioned the District Court for the Northern District of California under §1782(a) for an order directing Intel to produce those documents. The District Court concluded that §1782(a) did not authorize such discovery. The Ninth Circuit reversed and remanded with instructions to rule on the application's merits. The appeals court observed that §1782(a) includes matters before bodies of a quasi-judicial or administrative nature, and, since 1964, has contained no limitation to foreign proceedings that are "pending." A proceeding judicial in character, the Ninth Circuit noted, was a likely sequel to the Commission investigation. The Court of Appeals rejected Intel's argu-

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ment that §1782(a) called for a threshold showing that the documents AMD sought, if located in the European Union, would have been discoverable in the Commission investigation. Nothing in §1782(a)'s language or legislative history, the Ninth Circuit said, required a "foreign-discoverability" rule of that order.

Held: Section 1782(a) authorizes, but does not require, the District Court to provide discovery aid to AMD. Pp. 9–23.

1. To provide context, the Court summarizes how the Commission, acting through the DG-Competition, enforces European competition laws. Upon receiving a complaint, or *sua sponte,* the DG-Competition conducts a preliminary investigation into alleged violations of those laws. The DG-Competition may consider information provided by a complainant, and it may seek information from a complaint's target. The DG-Competition's investigation results in a formal written decision whether to pursue the complaint. If the DG-Competition decides not to proceed, its decision may be reviewed by the Court of First Instance and, ultimately, the Court of Justice for the European Communities (European Court of Justice). When the DG-Competition pursues a complaint, it typically serves the investigation's target with a formal "statement of objections" and advises the target of its intention to recommend a decision finding an antitrust violation. The target is entitled to a hearing before an independent officer, who provides a report to the DG-Competition. Once the DG-Competition makes its recommendation, the Commission may dismiss the complaint or issue a decision holding the target liable and imposing penalties. The Commission's final action is subject to review in the Court of First Instance and the European Court of Justice. Lacking formal "litigant" status in Commission proceedings, a complainant nonetheless has significant procedural rights. Important here, a complainant may submit relevant information to the DG-Competition and seek judicial review of the Commission's disposition. Pp. 9–11.

2. Section 1782(a)'s language, confirmed by its context, warrants the conclusion that the provision authorizes, but does not require, a federal district court to provide assistance to a complainant in a Commission proceeding that leads to a dispositive ruling. The Court therefore rejects the categorical limitations Intel would place on the statute's reach. Pp. 11–20.

(a) A complainant before the Commission, such as AMD, qualifies as an "interested person" within §1782(a)'s compass. The Court rejects Intel's contention that "interested person[s]" does not include complainants, but encompasses only litigants, foreign sovereigns, and a sovereign's designated agents. To support its reading, Intel highlights §1782's caption, "[a]ssistance to foreign and international tribunals and to *litigants* before such tribunals" (emphasis added). A

statute's caption, however, cannot undo or limit its text's plain meaning. *Trainmen* v. *Baltimore & Ohio R. Co.,* 331 U. S. 519, 529. Section 1782(a) plainly reaches beyond the universe of persons designated "litigant." With significant participation rights in Commission proceedings, the complainant qualifies as an "interested person" within any fair construction of that term. Pp. 11–13.

(b) The assistance AMD seeks meets §1782(a)'s specification "for use in a foreign or international tribunal." The Commission qualifies as a "tribunal" when it acts as a first-instance decisionmaker. Both the Court of First Instance and the European Court of Justice are tribunals, but not proof-takers. Their review is limited to the record before the Commission. Hence, AMD could "use" evidence in those reviewing courts only by submitting it to the Commission in the current, investigative stage. In adopting the Rules Commission's recommended replacement of the term "any judicial proceeding" with the words "a proceeding in a foreign or international tribunal," Congress opened the way for judicial assistance in foreign administrative and quasi-judicial proceedings. This Court has no warrant to exclude the Commission, to the extent that it acts as a first-instance decisionmaker, from §1782(a)'s ambit. Pp. 13–14.

(c) The "proceeding" for which discovery is sought under §1782(a) must be within reasonable contemplation, but need not be "pending" or "imminent." The Court rejects Intel's argument that the Commission *investigation* launched by AMD's complaint does not qualify for §1782(a) assistance. Since the 1964 revision, which deleted the prior law's reference to "pending," Congress has not limited judicial assistance under §1782(a) to "pending" adjudicative proceedings. This Court presumes that Congress intends its statutory amendments to have real and substantial effect. *Stone* v. *INS,* 514 U. S. 386, 397. The 1964 revision's legislative history corroborates Congress' recognition that judicial assistance would be available for both foreign proceedings and *investigations.* A 1996 amendment clarifies that §1782(a) covers "criminal investigations conducted before formal accusation." Nothing in that amendment, however, suggests that Congress meant to rein in, rather than to confirm, by way of example, the range of discovery §1782(a) authorizes. Pp. 14–15.

(d) Section 1782(a) does not impose a foreign-discoverability requirement. Although §1782(a) expressly shields from discovery matters protected by legally applicable privileges, nothing in §1782(a)'s text limits a district court's production-order authority to materials discoverable in the foreign jurisdiction if located there. Nor does the legislative history suggest that Congress intended to impose a blanket foreign-discoverability rule on §1782(a) assistance. The Court rejects two policy concerns raised by Intel in support of a foreign-

discoverability limitation on §1782(a) aid—avoiding offense to foreign governments, and maintaining parity between litigants. While comity and parity concerns may be legitimate touchstones for a district court's exercise of discretion in particular cases, they do not warrant construction of §1782(a)'s text to include a generally applicable foreign-discoverability rule. Moreover, the Court questions whether foreign governments would be offended by a domestic prescription permitting, but not requiring, judicial assistance. A foreign nation may limit discovery within its domain for reasons peculiar to its own legal practices, culture, or traditions; such reasons do not necessarily signal objection to aid from United States federal courts. A foreign tribunal's reluctance to order production of materials present in the United States similarly may signal no resistance to the receipt of evidence gathered pursuant to §1782(a). When the foreign tribunal would readily accept relevant information discovered in the United States, application of a categorical foreign-discoverability rule would be senseless. Concerns about parity among adversaries in litigation likewise provide no sound basis for a cross-the-board foreign-discoverability rule. When information is sought by an "interested person," a district court can condition relief upon reciprocal information exchange. Moreover, the foreign tribunal can place conditions on its acceptance of information, thereby maintaining whatever measure of parity it deems appropriate. The Court also rejects Intel's suggestion that a §1782(a) applicant must show that United States law would allow discovery in domestic litigation analogous to the foreign proceeding. Section 1782 is a provision for assistance to tribunals abroad. It does not direct United States courts to engage in comparative analysis to determine whether analogous proceedings exist here. Comparisons of that order can be fraught with danger. For example, the United States has no close analogue to the Commission regime, under which AMD lacks party status and can participate only as a complainant. Pp. 15–20.

3. Whether §1782(a) assistance is appropriate in this case is yet unresolved. To guide the District Court on remand, the Court notes factors relevant to that question. First, when the person from whom discovery is sought is a participant in the foreign proceeding, as Intel is here, the need for §1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a nonparticipant in the matter arising abroad. A foreign tribunal has jurisdiction over those appearing before it, and can itself order them to produce evidence. In contrast, nonparticipants in foreign proceedings may be outside the foreign tribunal's jurisdictional reach; thus, their evidence, available in the United States, may be unobtainable absent §1782(a) aid. Second, a court presented with a §1782(a) request may consider the nature

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of the foreign tribunal, the character of proceedings underway abroad, and the receptivity of the foreign government, court, or agency to federal-court judicial assistance. Further, the grounds Intel urged for categorical limitations on §1782(a)'s scope may be relevant in determining whether a discovery order should be granted in a particular case. Specifically, a district court could consider whether the §1782(a) request conceals an attempt to circumvent foreign proof-gathering limits or other policies of a foreign country or the United States. Also, unduly intrusive or burdensome requests may be rejected or trimmed. The Court declines, at this juncture, Intel's suggestion that it exercise its supervisory authority to adopt rules barring §1782(a) discovery here. Any such endeavor should await further experience with §1782(a) applications in the lower courts. Several facets of this case remain largely unexplored. While Intel and its *amici* are concerned that granting AMD's application in any part may yield disclosure of confidential information, encourage "fishing expeditions," and undermine the Commission's program offering prosecutorial leniency for admissions of wrongdoing, no one has suggested that AMD's complaint to the Commission is pretextual. Nor has it been shown that §1782(a)'s preservation of legally applicable privileges and the controls on discovery available under Federal Rule of Civil Procedure 26(b)(2) and (c) would be ineffective to prevent discovery of Intel's confidential information. The Court leaves it to the courts below, applying closer scrutiny, to assure an airing adequate to determine what, if any, assistance is appropriate. Pp. 20–23.

292 F. 3d 664, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and THOMAS, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment. BREYER, J., filed a dissenting opinion. O'CONNOR, J., took no part in the consideration or decision of the case.