

# IP Attorneys / Investigators with Non-U.S. Clients – Gather U.S. Based Evidence Applying 28 USC 1782

*Litigation Support: Gather U.S. Based Evidence for Non-U.S. Client*

NEW YORK, NY, UNITED STATES, June 25, 2021 /EINPresswire.com/ -- Three years ago, I published a post titled, [“What is 28 USC 1782? And Why Should IP Professionals Care.”](#)

In the post, I detailed my experience with a private investigation / legal team that benefited from applying 28 USC 1782 to gather evidence of money laundering from several U.S. banks to support our non-U.S. client’s litigation.

In the recent edition of the Brand Protection Professional (BPP), Leah Evert-Burks has a very informative interview with John Zacharia, titled, [“A Deep Dive Into International Cooperation Tools for Brand Protection.”](#) (Zacharia is a prominent U.S. IP attorney and former United States federal prosecutor.)

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U.S. and Non-U.S. IP lawyers/investigators can apply 28 USC 1782 when evidence held in the U.S. is needed for Non-U.S. clients”

*Ron Alvarez*

Zacharia was a member of the United Nations Interregional Crime and Justice Research Institute (UNICRI) team that produced and authored the recent 126-page EUIPO study titled, [“International Judicial Cooperation in Intellectual Property Cases”](#), in which the benefits of using 28 USC 1782 to gather U.S. based evidence is explained.

INTERVIEW QUESTION AND ANSWER

Burks: What tool do you think is most important for EU brand owners to be aware of?



Zacharia: One that is particularly useful for obtaining U.S.-based evidence to support their cases located outside the U.S is set forth in U.S. federal law (28 U.S.C. § 1782).

Using this statute, interested parties in a non-U.S. proceeding may obtain evidence directly from U.S. courts for use in the foreign proceeding.

EU brand owners can even use this process to obtain U.S.-based evidence prior to the initiation of formal proceedings outside the U.S. Best of all, by using this tool, EU brand owners can avoid going first to a non-U.S. tribunal to obtain U.S.-based evidence, as the Hague Evidence Convention would otherwise require.

As a result, U.S. federal law affords EU and other non-U.S. brand owners a particularly efficient tool to obtain U.S.-based evidence.

#### EUIPO REPORT REFERENCE

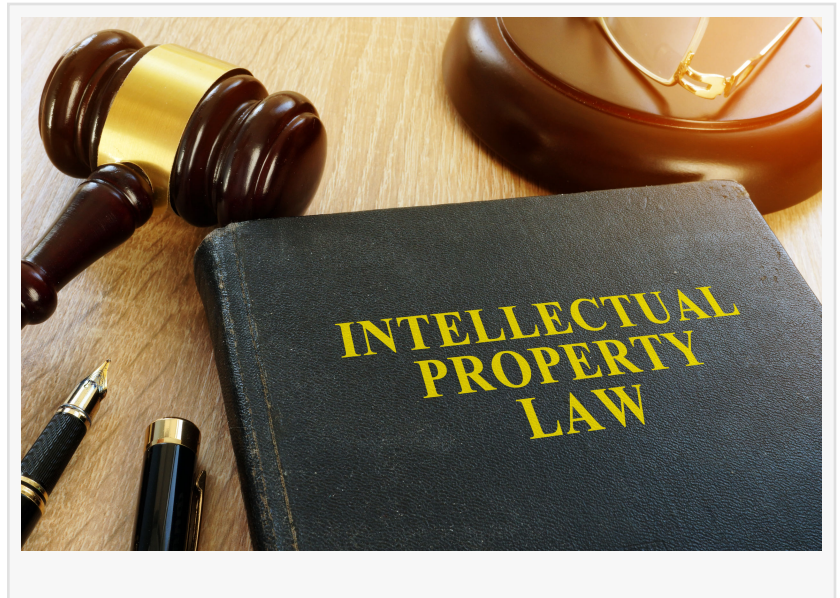
The EUIPO report reference to 28 USC 1782 can be found on page 54 and reads:

“Other tools are used with regard to mutual legal assistance at international level in cases where other specific treaties, such as the Hague Conventions, are not as efficient or not applicable. These are the following. • Direct requests for evidence in foreign courts.

“Some countries have laws authorising private litigants to a legal proceeding outside that country to obtain evidence directly from courts with jurisdiction over the evidence without first submitting such a request to the outside country’s court.

“The United States provides one example of this streamlined process. Specifically, Section 1782 of Title 28 of the United States Code (entitled ‘Assistance to foreign and international tribunals and to litigants before such tribunals’) authorises an ‘interested person’ in a foreign proceeding or tribunal to obtain evidence directly from a US federal court with jurisdiction over the evidence at issue for use in the foreign proceeding ( 157).

“Non-US litigants may even use Section 1782 to obtain evidence prior to the initiation of formal proceedings outside the US. In effect, Section 1782 affords non-US litigants virtually the same ability to obtain evidence located in the US as US-based litigants would have.



“Therefore, Section 1782 provides at least two advantages over the process of obtaining evidence authorised by The Hague Evidence Convention.

“First, under the Section 1782 process, there is no need to have first requested the discovery from a non-US tribunal (as The Hague Evidence Convention requires) because the non-US litigant can make their first request for evidence directly authorises non-US litigants to obtain evidence before a civil lawsuit has commenced outside the US – allowing non-US litigants to obtain evidence in anticipation of such a lawsuit and without the requirement of a lawsuit pending outside the US.

“Most requests for evidence pursuant to Section 1782 have been filed by European companies.”

## JOHN ZACHARIA

For over two decades, John Zacharia (founder of Zacharia Law) has worked at the forefront of the legal issues confronting intellectual property owners, becoming one of the leading subject matter experts in intellectual property criminal law in the country.

As the Assistant Deputy Chief for Litigation of the Computer Crime and Intellectual Property Section (CCIPS) of the United States Department of Justice’s Criminal Division, Zacharia was responsible for supervising all of the intellectual property and cybercrime prosecutions by the Section’s 40 attorneys.

In his 12 years at CCIPS, Zacharia became one of the most experienced federal prosecutors of intellectual property crime in the country.

In addition, Zacharia is the newest member of the BPP Editorial Board.

## LEAH EVERT-BURKS

Leah Evert-Burks is the Editor-in-Chief of The Brand Protection Professional (BPP) and Industry Fellow at the Michigan State University Center for Anti-Counterfeiting and Product Protection, A-CAPP.

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