

Discovery in Aid of Litigation Post-“Intel”: The Continuing Split

Law.com just posted a good article on the follow-on litigation after the Supreme Court’s decision in *Intel Corp. v. Advanced Micro Systems, Inc.*, 542 U.S. 241 (2004). That decision, in short, held that 28 U.S.C. 1782—which empowers federal district courts to compel discovery “for use in a proceeding in a foreign or international tribunal”—could be utilized in aid of the EC Directorate-General for competition. That body was a “foreign or international tribunal” in the eyes of the Court. The next logical question, though, is “what about private arbitral tribunals?” Is that a “foreign or international tribunal” within the meaning of Section 1782?

Despite the broad guidance given by the Court in *Intel*, the lower courts remain split: two district courts in three separate districts have held that private arbitral tribunals are not included in the statute, while three others have held that they are. The authors of this article provide a good summary of the post-*Intel* case law, up to and including the most recent decision denying discovery in aid of private arbitration by the Southern District of Texas.