

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 20-794

SERVOTRONICS, INC., PETITIONER

v.

ROLLS-ROYCE PLC, ET AL.

---

ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

---

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae in support of respondents and that the United States be allowed ten minutes of argument time. Respondents have agreed to cede ten minutes of argument time to the United States and therefore consent to this motion.

1. This case concerns 28 U.S.C. 1782, which authorizes a district court to order testimony or the production of documents or things "for use in a proceeding in a foreign or international tribunal." 28 U.S.C. 1782(a). Current Section 1782 is the culmination of "congressional efforts," dating back more than 165 years, "to provide federal-court assistance in gathering evidence for use in foreign tribunals." Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241, 247 (2004). Section 1782's original precursor, enacted in 1855, authorized a federal circuit court, on receipt of a letter rogatory from a foreign court, to appoint a commissioner to examine a witness whose testimony was sought by the foreign court, and to compel the witness to appear if necessary. Act of Mar. 2, 1855, ch. 140, § 2, 10 Stat. 630. In a series of subsequent statutes from 1863 to 1949, Congress modified, and ultimately broadened, the circumstances in which a federal court could furnish assistance in obtaining evidence and the scope of such assistance. See Intel, 542 U.S. at 247-248. Such assistance, however, was available only in connection with proceedings in a "court" in a "foreign country." In re Letter Rogatory from the Justice Court, Dist. of Montreal, Canada, 523 F.2d 562, 566-568 (6th Cir. 1975) (citations omitted) (reproducing statutes).

In 1958, Congress established the Commission on International Rules of Judicial Procedure (Rules Commission), which it directed

to investigate, and to recommend improvements to, "existing practices of judicial assistance and cooperation between the United States and foreign countries." Pub. L. No. 85-906, § 2, 72 Stat. 1743. Congress charged the Rules Commission with "draft[ing] and recommending any necessary legislation," and proposing any needed international agreements or other action, to further the dual aims of (1) rendering "more readily ascertainable, efficient, economical, and expeditious" those "procedures necessary or incidental to the conduct and settlement of litigation in State and Federal Courts and quasi-judicial agencies which involve the performance of acts in foreign territory, such as the service of judicial documents, the obtaining of evidence, and the proof of foreign law"; and (2) causing "the procedures of our State and Federal tribunals for the rendering of assistance to foreign courts and quasi-judicial agencies" to "be similarly improved." Ibid.

The Rules Commission drafted and recommended the enactment of a revision of Section 1782 into substantially its current form. Fourth Annual Report of the Commission on International Rules of Judicial Procedure, H.R. Doc. No. 88, 88th Cong., 1st Sess. 2, 15-52 (1963). Among other changes, the Rules Commission's proposed revision authorized judicial assistance in obtaining testimony or evidence "for use in a proceeding in a foreign or international tribunal." Id. at 25. The Rules Commission explained that "[t]he word 'tribunal'" in its proposed revision of Section 1782 "[wa]s

used to make it clear that assistance is not confined to proceedings before conventional courts," but instead would also encompass "administrative and quasi-judicial proceedings," such as "proceedings \* \* \* before investigating magistrates in foreign countries" and other "administrative tribunal[s] or quasi-judicial agenc[ies]." Id. at 45. The Rules Commission further explained that, by including "international tribunal[s]," revised Section 1782 would encompass certain international, state-to-state tribunals and claims commissions. Id. at 36-37. In 1964, Congress enacted the Rules Commission's draft legislation unanimously. See generally Pub. L. No. 88-619, 78 Stat. 995; see also Intel, 542 U.S. at 248. The question presented in this case is whether Section 1782, as thus amended, authorizes a district court to order the production of materials for use in a private commercial arbitration.

2. The United States has a substantial interest in the resolution of that question. Section 1782 plays an important role in encouraging international cooperation, facilitating the resolution of foreign disputes, and fostering international comity. The United States utilizes Section 1782 to present to courts letters rogatory and letters of request that are received through the Department of State or the Department of Justice. In addition, the United States is a party to many bilateral investment treaties and free-trade agreements that employ investor-state

arbitration, on which the Court's resolution of the question presented in this case may have a bearing.

The United States previously presented oral argument as amicus curiae in this Court's only previous case addressing the scope of Section 1782. See Intel, supra (No. 02-572). In this case, the United States has filed a brief as amicus curiae in this Court supporting respondents, contending that a private commercial arbitration is not "a proceeding in a foreign or international tribunal" within the meaning of Section 1782, 28 U.S.C. 1782(a), and that Section 1782 therefore does not authorize judicial assistance in obtaining materials for use in such an arbitration. The United States has additionally contended that an investor-state arbitration similarly is not a "proceeding in a foreign or international tribunal." Ibid. In light of the substantial federal interest in the scope of Section 1782, the government's participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Acting Solicitor General  
Counsel of Record

JUNE 2021