

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 27, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 2:25-MC-00019-JAG

IN RE APPLICATION FOR
DISCOVERY PURSUANT
TO 28 U.S.C. § 1782

ORDER DENYING MOTION
TO QUASH SUBPOENA AND
GRANTING WATER STREET'S
CROSS MOTION TO COMPEL

Pending before the Court is Rec Advanced Silicon Materials LLC, REC Silicon, Inc., and REC Solar Grade Silicon LLC's, ["REC Silicon"] Motion to Quash Subpoena and for Protective Order. ECF No. 16. Water Street Capital, Inc. ["Water Street"] requests expedited review and also seeks permission to exceed the page limit. ECF Nos. 22 and 23. The Court previously granted Water Street's Application for Discovery Pursuant to 28 U.S.C. § 1782, having found that Water Street Capital made the requisite showing to meet the statutory requirements to seek discovery pursuant to 28 U.S.C. § 1782 as well as demonstrated that the *Intel* factors weighed in favor of this Court's exercise of its discretion, *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004). ECF No. 10.

Since REC Silicon did not have an opportunity to respond to Water Street's initial application given the nature of the proceeding, the Court reexamines the *Intel* factors following review of REC Silicon's Motion to Quash, In determining

1 whether to exercise discretion to authorize a § 1782 discovery request, the Court
2 must consider: (1) whether “the person from whom discovery is sought is a
3 participant in the foreign proceeding” because the foreign tribunal “can itself order
4 them to produce evidence” reducing the need for § 1782 aid; (2) “the nature of the
5 foreign tribunal, the character of the proceedings underway abroad, and the
6 receptivity of the foreign government or the court or agency abroad to U.S. federal
7 court judicial assistance;” (3) whether the § 1782(a) request conceals an attempt to
8 circumvent foreign proof-gathering restrictions or other policies of a foreign
9 country or the United States; and (4) whether the request is “unduly intrusive or
10 burdensome.” *Intel*, 542 U.S. at 264-65.

11 The Court finds the *Intel* factors continue to weigh in favor of authorizing
12 limited discovery, but agrees that some of the subpoena requests should be
13 trimmed and tailored given the tight timeline of production Water Street requests.
14 The Court addresses the *Intel* factors in turn. First, Water Street asserts, and REC
15 Silicon provides no evidence to the contrary, that the people from whom the
16 discovery is requested will not be parties to the foreign lawsuit. The first factor
17 weighs in favor of authorizing discovery. Second, Water Street provided evidence
18 that the proceeding under consideration is a lawsuit in the Norwegian courts. In
19 the two Declarations submitted by Morten Kinander, Professor of Law at the BI
20 Norwegian Business School, Professor Kinander opines that Water Street has
21 viable claims to bring in Norwegian courts and the Norwegian courts are receptive
22 to United States federal court judicial assistance. ECF Nos. 5 and 21. Third, REC
23 Silicon provides no factual support for their argument that Water Street’s request is
24 improper.
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26 Regarding the fourth *Intel* factor, REC Silicon’s arguments supporting
27 burdensomeness have some validity given the breadth of Water Street’s original
28 requests, especially in light of the tight timeline imposed. Water Street provided

1 documentation suggesting limits to the breadth, or at least a prioritization of
2 documents and information, that tempers the burdensomeness to REC Silicon and
3 provides a reasonable avenue to comply with the subpoena requests. *See* ECF No.
4 20-1. The Court concurs with Water Street's suggestion that the parties meet and
5 confer regarding Water Street's production requests, with Water Street expected to
6 pare down document requests by seeking documents from a narrower window of
7 time and by providing more tailored subject matter requests, all in order to reduce
8 the volume of documents subject to production.

9 Accordingly, **IT IS ORDERED:**

10 1. Rec Advanced Silicon Materials, LLC, REC Silicon, Inc., and REC
11 Solar Grade Silicon, LLC's Motion to Quash Subpoena and for Protective Order,
12 **ECF No. 16**, is **DENIED in part, GRANTED in part**.

13 2. **REC Silicon shall produce by Tuesday, July 2, 2025:** (1) the
14 Polysilicon Purchase Agreement and any amendments and notices thereto; (2)
15 REC Silicon's standards for testing polysilicon purity and any changes made to the
16 purity standards during the time period of June 1, 2024 – December 31, 2024; and,
17 (3) the identities and roles of Hanwha personnel working at the Moses Lake
18 facilities from June 1, 2024 through the present.

19 3. The parties shall meet and confer by no later than end of business
20 **Wednesday, July 2, 2025**, to address a schedule for production of
21 documents/records in advance of depositions and a schedule for depositions. The
22 relevant timeframe for production of documents shall be discussed and defined.
23 Water Street shall limit the requested documents to a six-month window except for
24 those documents discussed above, including the previous purity standards and the
25 Purchase Agreement.
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1 4. The parties appear to agree that a Protective Order would be
2 appropriate. The parties shall file a stipulated protective order by no later than
3 **Thursday, July 3, 2025.**

4 5. Water Street's Cross Motion to Compel, **ECF No. 19**, is **GRANTED**
5 consistent with this Order.

6 6. Water Street's Motion to Exceed Page Limit, **ECF No. 22**, is
7 **GRANTED.**

8 7. Water Street's Motion to Expedite, **ECF No. 23**, is **GRANTED.**

9 8. Nothing in this Order shall be construed to prevent or otherwise
10 foreclose the parties from seeking modifications of this Order or leave of Court to
11 serve any additional subpoenas on a person or entity.

12 **IT IS SO ORDERED.** The District Court Executive is directed to file this
13 Order and provide copies to counsel.

14 DATED June 27, 2025.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE