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Transatlantic Patent Litigation: When Should You File in Europe?

Christoph J. Crützen

Christoph J. Crützen is a European patent litigator at Mayer Brown in Düsseldorf, Germany, who represents global technology and life-science companies in high-stakes transatlantic patent disputes. He advises on coordinating European enforcement before German courts and the Unified Patent Court with parallel U.S. litigation, particularly regarding timing asymmetries and evidentiary strategy. As a registered UPC representative, Christoph serves as European strategic counsel in commercially decisive patent matters.

European patent enforcement offers U.S. companies a faster path to first-instance judgments than they can obtain at home. UPC decisions typically arrive within fifteen months. German infringement courts decide cases in twelve to fourteen months. The court decides, and decides quickly.

That speed creates a competitive advantage when you can meet European evidentiary requirements. The challenge is that European procedure provides limited evidence-gathering mechanisms. The UPC allows applications for preservation and production of specific evidence. German courts can order an inspection. But neither system offers depositions, broad document discovery, or tools to develop your case after filing when you do not know what evidence exists.

U.S. legal tools can bridge that gap, but only through coordination with European timing before filing. Most companies treat U.S. and European enforcement as separate proceedings managed by separate counsel. That wastes opportunities.

Why Separate Enforcement Strategies Fail

U.S. companies enforcing patents in Europe typically run one of two strategies, both flawed.

The first treats European filing as independent of U.S. proceedings. You file in Munich or at the UPC based on the evidence you have at that moment. If the case is incomplete, you accept that European procedure will not develop it further. This works only when your evidentiary position is already strong.

The second waits for U.S. discovery to mature before considering European filing. You spend eighteen months developing the case in Delaware, then evaluate whether to file in Europe. By that point, your U.S.-based evidence may be trapped behind protective orders, your competitive moment may have passed, and defendants have had time to prepare their European defenses.

Neither approach uses the tools available. U.S. law provides mechanisms to obtain discovery specifically for European proceedings. European courts accept evidence gathered through the U.S. legal process when properly presented. What matters is whether you coordinate these systems before timing makes coordination impossible.

U.S. Discovery Tools for European Cases

U.S. law offers two mechanisms to obtain evidence for use in European litigation. Each serves different strategic purposes, and both require advance planning.

[Section 1782 of Title 28 U.S. Code](#) allows parties in foreign proceedings to seek discovery from U.S. entities for use in those foreign cases. If your opponent operates through U.S. subsidiaries or affiliates, federal courts can compel them to produce documents, provide depositions, and submit technical materials. This works whether or not you have parallel U.S. litigation. Courts across multiple circuits have authorized Section 1782 discovery for UPC proceedings. The applications succeed when they target evidence that UPC procedure cannot provide and demonstrate that the evidence will serve legitimate purposes in the European case.

Protective order modification takes a different path. When you have parallel U.S. and European cases, discovery gathered through standard U.S. litigation can potentially be deployed in Europe if you obtain release from the protective order. Courts evaluate these requests based on the relationship between the proceedings, the necessity of the evidence, and whether adequate confidentiality protections exist in the foreign forum. Success requires planning the protective order strategy from the start of U.S. litigation, not attempting modification after the fact.

Courts grant both types of applications when properly structured. The issue is timing: Do you plan for them before you need them, or discover them after European deadlines have passed?

Strategic Coordination: Timing U.S. Discovery for European Use

Coordination begins before European filing. The decision whether and when to file in Europe depends on what evidence you have, what evidence you need, and whether U.S. legal mechanisms can provide that evidence within European timing constraints.

For Section 1782, the analysis starts with three practical questions. Does your opponent have a U.S. presence? Do U.S. entities possess or control the technical information you need? Can you file the application with enough time for briefing, court decision, discovery compliance, and submission to the European court before European deadlines?

Section 1782 applications require coordination between U.S. counsel who files and litigates the application, and European counsel who understands what evidence European procedure can accept and when it must be submitted. In my experience, successful applications are those where both sides understand their roles and timing from the outset.

Protective order modification presents more complex timing challenges. You need parallel U.S. litigation to generate the discovery. You need that discovery to reach the evidence you want. You need time to brief and argue the motion for protective order release. You need the court to grant that motion. And you need all of this to happen before European submission deadlines.

This requires planning at the start of U.S. litigation, not at the end. Protective order language negotiated during early U.S. case management can facilitate later use in foreign proceedings. Discovery schedules that prioritize materials relevant to both cases improve the odds that valuable evidence becomes available when European timing can accommodate it.

How European Courts Evaluate U.S. Discovery Materials

European courts do not automatically accept evidence obtained through U.S. discovery. They evaluate it under European evidentiary rules, which differ significantly from U.S. standards.

German courts and the UPC assess whether evidence is relevant, whether it was lawfully obtained, and whether it meets procedural requirements for submission. U.S. deposition transcripts are treated as written witness statements. Documents produced in U.S. discovery are evaluated like any other documentary evidence.

Courts consider the circumstances under which evidence was obtained but do not exclude it simply because it originated in U.S. proceedings.

Confidentiality protections matter. European courts want assurance that confidential information disclosed in U.S. proceedings receives equivalent protection in Europe. This includes demonstrating that protective measures

comparable to those in U.S. litigation will govern the European case. Courts may require expert testimony on comparative procedural protections to satisfy these requirements.

Translation and procedural compliance create practical barriers. Evidence must be submitted in the language of the European proceedings unless the court permits otherwise. It must comply with European rules for document submission, authentication, and timing. U.S. counsel rarely understands these requirements. European counsel must ensure U.S. discovery materials meet European standards before submission.

This coordination between U.S. and European counsel determines whether U.S. discovery helps or hinders your European case. Evidence obtained through proper U.S. process but submitted incorrectly in Europe provides no value.

Filing Decisions: Readiness vs. Coordination

Deciding when to file in Europe turns on whether your case is ready now or whether coordination with U.S. discovery tools can make it ready within European timing constraints.

File immediately if your evidence is complete. Public information, reverse engineering, and materials you already possess may be sufficient. European speed favors plaintiffs who can win on current evidence. Waiting to coordinate U.S. discovery when you do not need it wastes competitive advantage.

Delay European filing if you need additional evidence and U.S. mechanisms can provide it in time. Section 1782 can reach materials from U.S. affiliates within months if properly executed. Protective order modification can release U.S. discovery materials if planned early in parallel litigation. What matters is whether timing permits coordination or whether European filing should wait for U.S. proceedings to develop further.

Coordinate from the start if you plan to use both systems. Engage European counsel before filing U.S. Section 1782 applications to ensure requests target evidence European courts will accept. Engage U.S. counsel who understands that discovery in parallel U.S. litigation may need to be deployed in Europe and can structure protective orders accordingly.

Companies that succeed at transatlantic enforcement treat U.S. and European proceedings as a coordinated strategy, not separate cases. They identify early which evidence U.S. tools can provide, what European courts will accept, and whether timing allows coordination. They engage counsel in both jurisdictions who understand not just their own system but how the two systems interact.

Executing Transatlantic Coordination

Effective coordination requires specific planning at each stage.

Before U.S. discovery begins, identify whether materials obtained in U.S. proceedings might be useful in European cases. Structure protective orders to contemplate use in related foreign proceedings rather than categorically prohibiting any disclosure. Prioritize discovery of materials that serve both U.S. trial preparation and European evidentiary needs.

Before European filing, assess whether your case is complete or whether U.S. discovery tools can strengthen it within European timing constraints. If Section 1782 is viable, engage U.S. counsel to evaluate the likelihood of success and timeline for obtaining discovery. If protective order modification is possible, determine what motion practice will be required and how long courts in that jurisdiction typically take to decide such motions.

During European proceedings, monitor deadlines for submitting additional evidence. European courts allow supplementation with newly obtained materials when you demonstrate the evidence could not have been obtained earlier. U.S. discovery conducted after European filing can qualify, but only if you execute fast enough that evidence arrives before European deadlines.

Throughout both proceedings, maintain coordination between U.S. and European counsel. U.S. counsel should understand what European courts need and when they need it. European counsel should understand what U.S.

discovery tools can provide and what obstacles might prevent their use. Neither side can execute effectively without understanding the other system.

Conclusion

European patent enforcement delivers judgments in twelve to fifteen months. That speed creates an advantage for companies that can meet European evidentiary requirements without the discovery tools U.S. procedure provides.

U.S. legal mechanisms can bridge that evidentiary gap through coordinated planning. Section 1782 reaches U.S. entities. Protective order modification releases U.S. discovery materials. European courts accept this evidence when properly presented. The tools exist and courts grant these applications.

Most companies fail to coordinate because they treat U.S. and European enforcement as separate proceedings managed by separate counsel operating under separate timelines. That approach wastes opportunities while timing constraints make coordination impossible.

Companies that succeed at transatlantic patent enforcement integrate U.S. discovery capabilities with European timing requirements from the start. They do not wait until European filing to discover that U.S. evidence is trapped behind protective orders. They do not wait until U.S. discovery is complete to realize European timing has passed.

The critical issue: Do you build these coordination tools into your enforcement planning before you file, or discover them after timing has made them irrelevant?