

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JAGUAR LAND ROVER LIMITED, *et al.*,**

**Plaintiff (Complainants),**

**v.**

**DR. ING. H.C. F. PORSCHE AG, *et al.*,**

**Defendant (Respondents).**

**Case No. 21-mc-62-ZMF**

**ORDER**

**I. BACKGROUND**

Jaguar Land Rover Limited and Jaguar Land Rover North America, LLC (“Jaguar”), Complainants in a patent infringement investigation pending before the United States International Trade Commission (“ITC”), have petitioned this Court to issue a Request for International Assistance (“Letter of Request”) pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”), Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. 7444. *See* ECF No. 3-1 (Complainants’ Mot.) at 2–3. In the ongoing ITC investigation, Jaguar alleges that Respondents<sup>1</sup> (“Porsche”), violated 19 U.S.C. § 1337 by importing and selling vehicles with control systems that infringe on several claims of U.S. Patent No. RE46,828 (“’828 Patent”). *See* Complainants’ Mot. at 3. Jaguar comes before this Court seeking a Letter of Request to help obtain discovery from a German company, [REDACTED]

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<sup>1</sup> Respondents include DR. ING. H.C. F. Porsche AG; Porsche Cars North America, Inc.; Volkswagen AG; Volkswagen Group of America, Inc.; Automobili Lamborghini S.P.A.; Automobili Lamborghini America, LLC; Audi AG; and Audi of America, LLC. *See* Complainants’ Mot. at 1.

██████, which Jaguar alleges supplied a subsystem used in the accused vehicle control systems. *See id.* at 1, 3. Jaguar’s request is unopposed, and Administrative Law Judge MaryJoan McNamara, who is presiding over the ITC Investigation, issued a recommendation that this Court issue the Letter of Request. *See* ECF Complainants’ Mot., Ex. 1 at 2.

## II. ANALYSIS

Both the United States and Germany are signatories to the Hague Convention, *see* <https://www.hcch.net/en/instruments/conventions/status-table/?cid=82>, which provides that “[i]n civil or commercial matters a judicial authority of a Contracting State may . . . request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.” Hague Convention art. 1.<sup>2</sup> When weighing requests for international discovery—even requests pursuant to the Hague Convention—courts should not overlook factors relevant to international comity. *See Arcelik A.S. v. E.I. DuPont de Nemours & Co.*, No. 20-cv-1869, 2021 WL 2010816, at \*5 (3d Cir. May 20, 2021).

Traditionally, there are five factors in any comity analysis: (1) “the importance to the [investigation] . . . of the documents or other information requested”; (2) “the degree of specificity of the request”; (3) “whether the information originated in the United States”; (4) “the availability of alternative means of securing the information”; and (5) “the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interest of the state where the information is located.” *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 482 U.S. 522, 544 n.28 (1987); *see also* Restatement (Third) of Foreign Relations Law § 442 (Am. L. Inst. 1987)

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<sup>2</sup> The Hague Convention is reproduced at 28 U.S.C. § 1781. Section 1781 codifies the Hague Convention and empowers federal courts to “transmit[] a letter rogatory or request . . . to [a] foreign or international tribunal [or] officer[.]” 28 U.S.C. § 1781(b)(2).

(same) (“Restatement”). However, “some of the international comity concerns noted by the Court [in *Aerospatiale*] are lessened when only use of the Hague Convention is at issue because all the relevant nations have consented to the treaty process.” *Arcelik*, 2021 WL 2010816, at \*7. Courts should focus primarily on first three comity factors. *See* Restatement § 473 reps. n. 5.

Here, the relevant factors weigh in favor of granting Jaguar’s request. First, Jaguar has demonstrated that its requests are both important to the litigation. Jaguar explained that [REDACTED] was identified as a supplier of a subsystem and software used in or with the accused vehicle control system[,]” and that understanding how that system operated will be central to assessing the claims of infringement against Porsche. Complainants’ Mot. at 4. Second, Jaguar has outlined—in significant detail—the specific “technical information” that it seeks “regarding the accused vehicle control system used in . . . eight accused vehicles.” Complainants’ Mot. at 4; *see also id.* Attachment B (giving detail). Third, as the information sought originated in Germany, this factor admittedly weighs against the issuance of the Letters of Request. *See* Complainants’ Mot. at 4. Because the third factor weighs against issuing the Letters, the Court will turn to the fourth, which can “overcome” the third. *See Arcelik*, 2021 WL 2010816, at \*7. Factor four weighs for issuing the Letters if “there [are] no alternative means for [Complainants] to obtain the information.” *Id.* As to this factor, Jaguar stated that it is “unable to obtain the requested [information from] [REDACTED] by any other means, because [REDACTED] is a German company beyond the reach of the [ITC’s] subpoena power.” Complainants’ Mot. at 4. Finally, the Court will not assess the fifth factor because, “[w]hen a court orders resort to the [Hague] Convention[,] . . . it commits the issue whether compliance with the request would undermine important interests of the state where the information is located to the courts or other authorities of that state.” Restatement § 473 reps. n. 5.

As these factors weigh for issuance of the Letters of Request, Jaguar's motion for issuance of the attached letters of request is **GRANTED**.



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2021.06.22

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ZIA M. FARUQUI  
UNITED STATES MAGISTRATE JUDGE