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Economic nationalism and the home court advantage

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Abstract

Research Summary: Political and regulatory actors routinely adopt or enforce policies to protect domestic firms at the expense of foreign firms. However, since courts are expected to be neutral and act independently, a question arises whether (and why) they discriminate against foreign firms. We argue that the courts are nationalistic, which emanates from judges differentiating between in-group (domestic) and out-group (foreign) members. In a sample of 58,754 patent disputes adjudicated by US federal district courts between 1983 and 2016, we find domestic patent holders and challengers are more successful than their foreign counterparts. Rulings involving foreign firms are more likely to exhibit nationalistic rhetoric. Judicial ideology moderates the differential odds of success between domestic and foreign firms. Thus, the legal system is another source of economic nationalism.

Managerial Summary: Multinational firms might face a disadvantage relative to domestic firms because politicians and regulators are nationalistic; they

routinely adopt policies that favor domestic firms. If courts are neutral, this disadvantage should not exist in litigation between multinational and domestic firms. On the contrary, if courts are also nationalistic, domestic firms should enjoy an advantage and greater success than multinational firms in judicial verdicts. Using data on patent disputes in the United States observed over a 33-year period, we find domestic patent holders and challengers are more successful than their foreign counterparts suggesting that the legal system is another source of economic nationalism. Rulings involving multinationals are more likely to exhibit nationalistic rhetoric. Judicial ideology moderates the differential odds of success between domestic and multinational firms.

KEYWORDS

intellectual property, multinational corporations, nationalism, nonmarket strategy, patent disputes

1 | INTRODUCTION

Economic nationalism is an important issue impacting firms' competitive advantage in a foreign country. Given its importance and increasing prevalence, scholars and practitioners alike have attempted to shed more light on its causes and consequences (Lubinski & Wadhwani, 2020; Mohr & Schumacher, 2019; Shi et al., 2016; Solis, 2020). Broadly defined, economic nationalism encompasses government policies and actions that protect and bolster domestic interests at the expense of foreign entities (Murtha & Lenway, 1994). Such policies and actions contribute significantly to the competitive disadvantage of foreign firms in unfamiliar host countries.

Prior studies have highlighted two ways political or regulatory actors, incentivized by political objectives and public opinion, typically prioritize domestic interests. First, political actors may directly discriminate against foreign firms by enacting laws or rules that are explicitly pro-domestic. "Buy national" programs that distinguish between domestic and foreign suppliers in public procurement contracts are examples of this form of economic nationalism (Rickard & Kono, 2014; Weiss & Thurbon, 2006). Second, political actors may indirectly discriminate against foreign firms even when there are no differences in de jure laws or policies that govern domestic and foreign firms. Since politicians control the budgets of regulators, they can leverage the bureaucracy to impose burdensome compliance mechanisms or enforce de jure laws differentially for foreign firms. Greater regulatory scrutiny of foreign firms in mergers and acquisitions (Bertrand et al., 2016; Dinc & Erel, 2013), discrimination against foreign firms in awarding patents (De Rassenfosse & Raiteri, 2022), or greater enforcement actions against banks (Wu & Salomon, 2017) are examples of this form of economic nationalism.

Rather than political or regulatory actors, we focus on a relatively understudied source of economic nationalism, the legal system. We examine if courts favor domestic firms over foreign

firms. It is not evident that courts should exhibit a pro-domestic bias. In countries with relatively high judicial independence, courts are expected to operate independently, and federal judges are expected to interpret laws neutrally without systematically favoring one party over another (Hahn & Singer, 2008; Lahr, 1992).[1] Conditional on the law itself being nondiscriminatory, there should be no differences in enforcement of the law between domestic and foreign firms. Nevertheless, the emerging empirical literature finds that outcomes of judicial decisions in the courts systematically differ between foreign and domestic firms (e.g., Bhattacharya et al., 2007; Mai & Stoyanov, 2019). However, these studies do not examine the precise set of reasons underlying the differential outcomes.

We argue that judges, on average, are nationalistic. As members of a nation who share a collective identity, judges will differentiate between in-group (domestic) and out-group (foreign) members. As a result, when adjudicating cases, judges will choose an interpretation of the law that favors domestic firms over foreign ones, even when the de jure laws are nondiscriminatory. Consistent with this idea, judgments that favor domestic firms vis-à-vis foreign firms are more likely to rely on nationalistic rhetoric to legitimize their decision. In addition, the disadvantage of foreign firms in lawsuits is likely to be moderated by their judicial ideology, as conservative ideologies are related to stronger national parochialism (Romano et al., 2021), whereas liberals identify with the world as a whole and openness toward placing limitations on IP rights to pursue other goals (Sag et al., 2009).

We test our arguments using patent disputes adjudicated by federal district courts in the United States. We draw on 58,754 intellectual property lawsuits in the United States between 1963 and 2016. We find that domestic patent holders are 10% more likely to successfully defend their patents in lawsuits against foreign firms when compared to similar disputes against other domestic firms. Similarly, foreign patent holders are 14% less likely to win against domestic challengers compared to similar disputes against other foreign firms. These results are robust to several selection issues, the exclusion of disputes that do not involve a jury, and the inclusion of several controls that account for differences between firms and patents.

Providing more clues to the underlying mechanism, we find that judges use nationalistic rhetoric to justify their decisions; rulings involving foreign (domestic) patent holders and domestic (foreign) challengers are 11% (15%) more likely to contain nationalistic rhetoric relative to disputes involving two foreign (domestic) firms. Finally, we find that the differential success rates in patent litigation between domestic and foreign firms are more pronounced when the presiding judge is more conservative. Our results, therefore, suggest that judge ideology plays an important role in court rulings against foreign firms.

Our study makes three contributions to the literature. Our primary contribution is to identify economic nationalism as an important factor driving judicial decisions in favor of domestic firms (e.g., Mezias, 2002) and provide empirical evidence of the underlying mechanism. Second, we contribute to the international business literature on the liability of foreignness (Zaheer, 1995), by identifying yet another source of economic nationalism—through in-group behavior in courts—which may not only be more systemic and long-lasting but with fewer coping mechanisms for foreign firms. Finally, our study contributes to the empirical literature on home advantage in legal proceedings by providing evidence of the disadvantage faced by foreign firms in US patent disputes using a larger sample spanning several years.

[1]In the United States, for example, federal judges are largely protected from coercive rulings that serve political objectives through lifetime appointments, guaranteed salaries, and high standards for impeachment.

2 | THEORY AND HYPOTHESES

2.1 | Sources of economic nationalism

While the definition of economic nationalism is widely debated among scholars (e.g., Abdelal, 2001; Helleiner, 2002), it is understood as a preference for domestic welfare enhancement at the expense of foreign interests. Typically motivated by goals to preserve a nation's unity, identity, and autonomy, it is pursued through various economic policies and associated with a strong narrative centered on maximizing domestic benefits (Colantone & Stanig, 2019; Lubinski & Wadhwani, 2020). Central to it is the nation, which is an "imagined political community" (Lubinski & Wadhwani, 2020: 403) that reflects a collective identity constructed from historical memory, cultural symbols, ethnicity, language, and religion, created via primary and secondary socialization (Arikan et al., 2020). While individuals may have their own private interests, economic nationalism reflects the shared interests as members of the same nation based on collective identity and national well-being and plays a key role in evaluating cross-border relationships. As part of the in-group, members of a nation may perceive threats from a distinguishable out-group (Baughn & Yaprak, 1996) or find opportunities for extracting benefits from the out-group (D'Costa, 2009). To increase long-term national well-being and national economic independence, opportunities for the out-group are restricted through in-group favoritism.

This conceptualization draws on the social identity theory, which, broadly construed, argues that people tend to classify themselves and others into various social categories or groups. Each group of individuals holds a common social identification and views themselves as members of the same social category (Stets & Burke, 2000). Individuals identifying with a social group will view in-group members more positively than out-group members (Tajfel & Turner, 1979). Indeed, the mere awareness of the presence of an out-group can provoke discriminatory responses. Discrimination may be driven by instrumental rivalry for group and self-interest (Mutz & Kim, 2017; Turner et al., 1979) or by higher expectations and favoritism of in-group members (Ahmed, 2007; Brewer, 1999), rather than hostility or negative attitudes toward out-group members. This in-group versus out-group bias is very well documented across studies in economics, psychology, and sociology (Brewer, 1979; Ruffle & Sosis, 2006; Turner et al., 1979).

In some situations, the distinctive characteristic that defines outsiderness is foreignness. The "in-group-out-group distinction is encapsulated as 'our companies' versus 'their companies'" (Baughn & Yaprak, 1996, p. 766), and there is a preference for assets and resources to be controlled by members of the national group rather than by foreigners (Dinc & Erel, 2013; Shi et al., 2021; Zhang & He, 2014).

Support for "our companies" is generally assumed to take two forms. First, to serve political objectives and contend with public opinion, governments explicitly impose rules and regulations that discriminate against foreign firms, e.g., nationality restrictions on public procurement of goods and services (McLean, 2017; Rickard & Kono, 2014). Second, since governments, who may sometimes even be electorally rewarded for supporting "our companies" (Colantone & Stanig, 2019), also exert budgetary influence over regulatory agencies, they indirectly shape the behavior of the bureaucracy, which will likely increase the scrutiny of foreign firms (Wu & Salomon, 2017). Hahn & Singer (2008: 463) explicitly make this argument using the context of patent disputes adjudicated by the International Trade Commission:

> "<The U.S.> Congress designed the ITC to protect domestic manufacturers. As an independent federal agency, the ITC is exposed to political pressure from legislators

> that control the agency's budget. Because congress people care about political costs and benefits more than economic costs and benefits, one would expect congressional influence over the ITC to favor domestic firms seeking to enforce their patents against foreign rivals, because domestic firms are better able to provide political benefits."

Several studies provide empirical evidence of the second form of economic nationalism such as in corporate mergers (Dinc & Erel, 2013), acquisitions by foreign firms (Clougherty & Zhang, 2021), general regulatory oversight (Shi et al., 2021) and patent grants (de Rassenfosse et al., 2019; de Rassenfosse & Raiteri, 2022; Webster et al., 2014). While acknowledging the role of political and regulatory agencies, we focus on a different governmental body—courts—to examine economic nationalism.

2.2 | Hypotheses

2.2.1 | Economic nationalism in the courts

In principle, courts should function as an independent arm of the government which is neither subject to political influence nor public opinion. In countries with high levels of judicial independence, judges are typically protected from political pressures through lifetime appointments, guaranteed salaries, and high standards for impeachment. The stated mission of the courts in the United States, for instance, is to function as "an independent, national judiciary providing fair and impartial justice within the jurisdiction conferred by the Constitution and Congress" (United States Courts, 2020) in which judges are expected to interpret laws neutrally without systematically favoring one party. Lifetime-appointed federal judges in the United States are "often revered as the pinnacle of objectivity, possessing a deep commitment to fairness, and driven to seek justice as they interpret federal laws and the United States Constitution" (Levinson et al., 2017, p. 65). It is this expectation that leads Hahn and Singer (2008) to use federal district courts as a benchmark against which to examine potential biases in rulings of a regulatory body. Taken together, we should not observe differences in the enforcement of the law when the law itself does not differentiate between foreign and domestic firms.[2]

In contrast, we argue that judges treat foreign and domestic asset holders differently, even when de jure law does not differentiate among them. Our argument is predicated on the fact that judicial enforcement entails some discretion. Laws often provide explicit room for judges to exercise discretion, a situation in which judges arrive at a conclusion based on considerations they deem relevant or appropriate within legally defined bounds (Dewey et al., 2021; Fischman & Law, 2009). Enforcing law is thus partly a choice aimed at achieving specific objectives, such as establishing an order with benefits to some segments of society. We argue that in a legal dispute between domestic and foreign firms, the "foreignness" of the firm will be a salient factor.[3] Domestic judges, who consider their in-group as the nation, are more likely to favor their in-group firms. Doing so allows the potential transfer of foreign assets to domestic

[2]This expectation is supported by Love et al. (2015), who examine patent litigation in China and conclude that the success rates for domestic and foreign firms are similar.

[3]Such nationality-based biases have been demonstrated in other settings. Zitzewitz (2006) and Emerson et al. (2009), for instance, find Olympic judges representing a particular country to display biases in favor of athletes from the same country.

jurisdictions, thereby enhancing domestic profits, consumer surplus, and national welfare (Mai & Stoyanov, 2019). As a result, assets owned by foreign firms will be protected less rigorously than those of domestic firms. Domestic firms, on the flip side, will likely be more successful in defending their assets against foreign firms.[4] This is not to suggest that courts distort the law because of an ex ante goal to discriminate against foreign firms. Rather, when there is ambiguity and the possibility for varying legitimate interpretations of the law, we expect nationalistic actors to choose an interpretation that favors domestic actors.

Our argument is also consistent with empirical studies documenting the courts treating foreign and domestic firms differently (e.g., Mai & Stoyanov, 2019; Moore, 2002), or the differential negative reactions of stock markets to the US federal lawsuit announcement between foreign and domestic firms (Bhattacharya et al., 2007) although these studies are less clear about why this may occur.[5]

Taken together, all else equal, we expect judge rulings in patent disputes to be biased against foreign claimants and defendants. Specifically, we hypothesize that:

> **Hypothesis 1a.** Domestic patent holders are more likely to win legal disputes against foreign challengers compared to similar disputes against domestic challengers.

> **Hypothesis 1b.** Foreign patent holders are less likely to win legal disputes against domestic challengers compared to similar disputes against other foreign challengers.

2.2.2 | Nationalist concerns in judicial decisions

We argued above that domestic firms enjoy an advantage in the courts, on average, because judges are nationalistic. If this is true, judgments should reflect their nationalistic concerns. Beyond simply pronouncing the winner in a particular dispute, judges typically go to considerable lengths to justify their decisions. They would, all else equal, prefer public support and legitimacy rather than opposition to their rulings. To achieve this, they leverage the language of court opinions which offers litigants, lawyers, the press, and ordinary citizens a way to understand why a particular judge came to a particular decision in a particular set of circumstances (Wald, 1995). In other words, the rhetoric of judicial opinions helps in endorsing principles or affirming rules. Scholars have previously demonstrated that judges rely on rhetoric to legitimize their decisions, especially on contentious issues (Busch & Pelc, 2019; Hume, 2006). They alter their language to minimize opposition to their rulings and foster the implementation of their decisions (Wedeking & Zilis, 2018).

Extending this argument, we contend that if courts systematically rule against foreign firms because of nationalist concerns, particularly national well-being and economic independence, then their rulings will reflect such language. Judgments in lawsuits involving foreign firms are more likely to include nationalist rhetoric. Formally, we hypothesize that:

[4]Prior research has similarly highlighted ethnic group biases in judicial decisions (Gazal-Ayal & Sulitzeanu-Kenan, 2010; Shayo & Zussman, 2011).

[5]Moore (2002) proposes xenophobia of juries as a potential mechanism for the foreign firm disadvantage. Importantly, she concludes that judges themselves are not biased. In contrast, our argument focuses specifically on judges and contends that they are nationalistic.

Hypothesis 2. Legal judgments in patent disputes involving foreign and domestic firms (as asset holders or challengers) are more likely to invoke nationalist rhetoric than those involving only domestic or foreign firms.

2.2.3 | The moderating role of judicial ideology

We argued above that in-group/out-group bias will influence judicial decisions. We further contend that the judicial ideology of judges moderates this relationship. Just as organizational researchers suggest that political ideology explains various aspects of firm behavior (e.g., Gupta et al., 2017), legal scholarship emphasizes judicial ideology in explaining different facets of legal decision making (Epstein & Knight, 2013; Harris & Sen, 2019; Segal & Spaeth, 2002). Judicial ideology reflects a judge's preferences or beliefs of an ideological character, including a tendency to favor certain types of public policies (Fischman & Law, 2009; Harris & Sen, 2019). It encompasses a judge's belief about how the world should operate and how those outcomes should be achieved. It reflects policy preferences on a wide range of issues and not simply a preference for a specific political party (Bonica & Sen, 2021; Lee et al., 2014). We contend that because enforcing a law entails discretion over a range of alternatives among which the law does not discriminate (see also Dewey et al., 2021; Segal & Spaeth, 2002), the alternatives a judge chooses is based on her ideology.

Prior research highlights the liberal-conservative axis as an effective and parsimonious way of differentiating among ideologies (Jost et al., 2009). Conservatism is related to uncertainty avoidance, the need for order, intolerance of ambiguity, resistance to changing the status quo, lack of openness to experience, elevated concerns for security, and a less egalitarian outlook (Jost et al., 2007). Conservatives also identify more strongly with their own nation (Romano et al., 2021), display greater national parochialism, are less welcoming of immigrants (van Prooijen, et al., 2015), emphasize anti-egalitarianism and protectionist attitudes in international trade (Jedinger & Burger, 2020) and see private property protection as an end unto itself (Sag et al., 2009). In disputes related to international trade, panels with a conservative majority are more protectionist and support regulatory interventions in favor of domestic US firms (Unah, 1997).

In contrast, liberal ideology is associated with support for progressive change, egalitarianism, a greater predisposition to competition, and support for economic underdogs. Liberals display greater cooperation, trust in others, and greater identification with the world as a whole. Liberal judicial ideology is also associated with more openness to placing limitations on IP rights to pursue other goals (e.g., Sag et al., 2009). Liberal judges are more likely to grant sovereign immunity to foreign governments (Chilton & Whytock, 2015) and asylum to seekers (Keith et al., 2013). Moreover, the "open systems" approach also highlights that liberals differ from conservatives in their perceptions of interdependencies between a firm and its environment (e.g., Chandler et al., 2023; Gupta & Briscoe, 2020). Liberals anticipate greater information exchange and potential spillovers from foreign to domestic firms, through the spread of new technologies and know-how, which can subsequently increase the productivity and competitiveness of the domestic industry (see generally Javorcik & Spatareanu, 2005). Thus, liberals will be more likely to consider engagement with foreign actors to be ultimately beneficial to their in-group.

Given these differences, we expect judge ideology to moderate the bias against foreign firms in property rights disputes. Thus, we hypothesize that.

Hypothesis 3a. The difference in the likelihood of a domestic asset holder winning a patent dispute against a foreign challenger compared to a similar dispute against a domestic challenger is higher when adjudicated by a conservative judge.

Hypothesis 3b. The difference in the likelihood of a foreign asset holder winning a patent dispute against a domestic challenger when compared to a similar dispute against another foreign challenger is lower when adjudicated by a conservative judge.

3 | EMPIRICAL ANALYSIS

3.1 | Context: Patent disputes in US district courts

Our empirical context is patent lawsuits in district courts of the United States, a country with one of the strongest patent regimes globally (Ginarte & Park, 1997), and one which does not differentiate between domestic and foreign firms. Judges in US district courts, enjoy high levels of judicial independence (World Economic Forum, 2016), and are protected by lifetime employment and high standards for impeachment. Patents are disputed in one of the 94 federal district courts when (a) a firm believes the patent is invalid and should not have been granted in the first place, (b) patent holders' rights are believed to be infringed by another firm, and (c) the patent holder is not paid a royalty for the use of its patent. Whereas in (a) and (c) above, the challenger is the plaintiff, in (b), the patent owner is the plaintiff.

3.2 | Empirical strategy

Given the similar de jure protections, we examine if judges adjudicate patent lawsuits differently for foreign and domestic firms. To do so, we compare the probability that a domestic (foreign) patent holder wins a dispute against a foreign (domestic) challenger vis-à-vis another domestic (foreign) challenger.

3.3 | Data and variables

We acquired data from a variety of sources. First, from the United States Patent and Trademarks Office (USPTO), we acquired data on all patent disputes (with a docket number) filed in the federal district and circuit courts from 1983 to 2016.[6] Since this database focuses on patent litigation, our sample only covers disputes where a trial is initiated.[7] Importantly, given the nontrivial amount of manual effort involved in identifying the nationality of the patent holder and challenger—key information for our analysis—for settlements that were concluded prior to trial initiation, we did not include disputes that were settled prior to the initiation of a trial. In

[6]Marco et al. (2017) provide a detailed description of the data. We also validated this sample with several others used by previous research in the online Appendix A9.

[7]This implies that although disputes can be settled at various stages of a dispute, including (a) before a pretrial hearing without judge involvement, (b) during a pretrial hearing but before trial, or (c) after a pretrial conference, during or after a trial, but before the final verdict, our dataset only includes disputes that are settled after trial initiation but before the final verdict.

TABLE 1 Summary of observations.

	Description	Disputes
1	Disputes between 1983 and 2016 (disputes for which a docket number was assigned)	81,350
2	Disputes for which verdict was discernible (long description available)	73,756
3	Disputes which were subsequently settled after trial initiation but before verdict	15,002
4	Lawsuits for which verdict was discernable, that received a final judgment (2–3)	58,754

robustness tests, we consider potential selection issues stemming from the inclusion of only disputes where a trial was initiated.

Next, we obtained financial and accounting information for the lead patent holder and lead challenger firms of each case through the Compustat database.[8] Third, we acquired data on the attributes of judges from the Biographical Directory of Article III Federal Judges, a dataset compiled by the Federal Judicial Center. Fourth, we also acquired data on the ideology of judges from the Database on Ideology, Money in Politics, and Elections (Bonica, 2016; Bonica & Sen, 2021). Finally, we also used the PatentsView database and patent data of Kogan et al. (2017) to construct variables that control for the characteristics of patents in a dispute.

Our preferred unit of analysis is a dispute; however, we also include regressions at the level of a disputed patent for robustness. As Table 1 shows, there were 81,350 patent disputes that reached the trial stage in the federal district courts between 1983 and 2016. After excluding 7594 disputes where a judgment was still pending, a final outcome was not discernable, or when the parties were not firms, we are left with 73,756 disputes, of which we observe the judicial verdicts in 58,754 cases. The remaining 15,002 disputes were settled after the initiation of a trial.

3.4 | Dependent variables

Our main dependent variable, *Patent holder Win*, is a discrete variable equal to one if the patent holder won the focal dispute.[9] Patent holders won roughly 52% of the disputes in the sample.

For H2, we construct a second dependent variable *Nationalistic rhetoric dummy* coded as one for judgments that exhibit nationalistic rhetoric, identified through topic modeling that relies on word and phase patterns (bigrams) to determine clusters in a set of documents (e.g., Hannigan et al., 2019). We rely on this methodology since we do not have a defined set of words or phrases that denote nationalistic rhetoric ex ante. This methodology identified eight distinct topics based on the words and phrases in the judgments in our sample.[10] Whereas seven of the eight topics mostly comprise legal phrases, "topic 3" is associated with terms that potentially signify nationalist rhetoric (e.g., "state directive," "national benefit," "plaintiff nationality," "national policies," "national lawsuit", and "economic boost,").[11] *Nationalistic rhetoric dummy* is coded as one if a judgment was classified under "topic 3" or zero otherwise. About 16.30% of the disputes (9576) exhibited nationalistic rhetoric.

[8]Matched with Compustat using fuzzy name matching and supplemental manual internet searches.

[9]We provide a brief description of how we code the final outcome of a dispute in Appendix A-1.

[10]The top 20 keywords in each topic are presented in the online Appendix (see Table A1-2).

[11]To validate the machine coding, we hired five law students to independently read and code 1500 judgments for nationalistic rhetoric. Human coding was broadly consistent with topic modeling (see Table A1-3 of the online Appendix 1 for details on the validation test).

3.5 | Main independent variables

3.5.1 | Case participant dummies

We code four participant pairs based on the identity of the lead patent owner and challenger[12]: *Domestic-Domestic*, *Domestic-Foreign*, *Foreign-Domestic*, and *Foreign-Foreign*. When both the lead patent owner and the lead challenger are foreign firms, *Foreign-Foreign* equals one (about 5% of the sample), and zero otherwise. We define *Domestic–Domestic* analogously (about 56% of the sample; omitted category). When the lead patent holder in a lawsuit is a foreign firm, and the lead challenger is a domestic firm, *Foreign–Domestic* takes the value of one (about 20% of the sample). We similarly define *Domestic–Foreign* (about 19% of the sample). Following prior literature, a lead patent holder (or challenger) is foreign if the headquarters or country of registration of the firm's ultimate parent was foreign (Dinc & Erel, 2013).[13] Similarly, a patent holder or a challenger is domestic if the ultimate parent is headquartered in the United States.

3.6 | Moderators

3.6.1 | Conservative score

Our measure of judicial ideology comes from DIME (Bonica, 2016). A judge's ideology is scored between +2 (most conservative) and −2 (most liberal) based on his/her federally reported campaign contributions to political candidates and Political Action Committees. Campaign contributions provide a costly and informative signal about a donor's ideology (Bonica & Sen, 2021). *Conservative scores* are computed using a spatial utility model that jointly estimates scores for donors and recipients from a contingency matrix of donation amounts.

3.7 | Controls

3.7.1 | Non-practicing entity

Using a dummy, we control for whether a dispute involves a non-practicing entity—one that is solely set up for litigating patents.[14]

3.7.2 | Case type

Three case-type dummies that reflect the type of dispute. *Patent infringement* dummy equals one if the patent holder files a lawsuit to prevent the unauthorized use of the patent by the challenger (37,233 disputes). Likewise, *Patent invalidation* and *Royalty dispute* dummies are

[12]The lead party is responsible for hiring attorneys and agreeing on a settlement on behalf of the other parties to the dispute.

[13]We relied on case briefs, EDGAR filing, and internet searches to identify the headquarters or country of registration.

[14]NPEs are identified using the Stanford Law School's database (https://npe.law.stanford.edu). We exclude universities, governments, and IP subsidiaries of companies from this categorization.

respectively coded as one if the challenger files a dispute to invalidate the grant of or a granted patent (28,949 disputes) and for disputes filed by patent holders alleging breach of a licensing contract (7574 disputes).

3.7.3 | Court dummies

Ninety-one court dummies, one for each federal district court. The omitted category in regressions comprises three courts that either did not adjudicate any disputes or had no variation in the dependent variable. Delaware, Texas, and California Courts heard about 45% of the disputes in our sample (Figure 1) and our results are robust to excluding disputes in these courts.

3.7.4 | Patent owner and challenger controls

We control for the following attributes of the patent holder and challenger: (1) the size of the lead patent holder and challenger using their respective total assets (in natural log) in the year the lawsuit was filed, (2) the profitability of the lead patent holder and challenger using the respective EBITDA over sales in the year of filing, (3) the size of the lead patent owners' and challengers' patent portfolios using the cumulative patents they held in the filing year, in natural log, (4) the litigation experience of the patent owner and challenger using the total number of patent disputes that they were involved in until the year of filing the focal dispute.

3.7.5 | Patent controls

We include five attributes of the patents being disputed: (1) the average forward citations of all patents that were involved in a dispute (in natural log), (2) the average number of claims per patent (in natural log), (3) the average patent scope or the average number of words in the shortest independent claim of each patent involved in a dispute (in natural log) (Marco et al., 2019) all constructed using PatentsView, (4) the average of the estimated dollar value of a patent involved in a case (also in natural log) constructed from Kogan et al. (2017), and (5) the average cosine similarity focal disputed patents to all disputed and reassigned patents. Since patent data are only available for disputes after 1999, we control for missing patents using a *no patent* dummy (=1 if patents for a dispute are missing). Similarly, since only 15,936 disputes have the value for at least one patent pertaining to a dispute, we use a *no value* dummy to control for missing values.[15] We also include a *no scope* dummy when patent scope is missing. These three dummies are interacted with the corresponding patent attributes. In addition, we use 382 International Patent Class (IPC) dummies, one for each group of main IPC classes constructed based on the main IPC class of every patent involved in a dispute, to control for the heterogeneity in the patents involved in a dispute.

[15]In the online Appendix A8, we explore the sensitivity of our baseline analysis to missing patents and missing patent values.

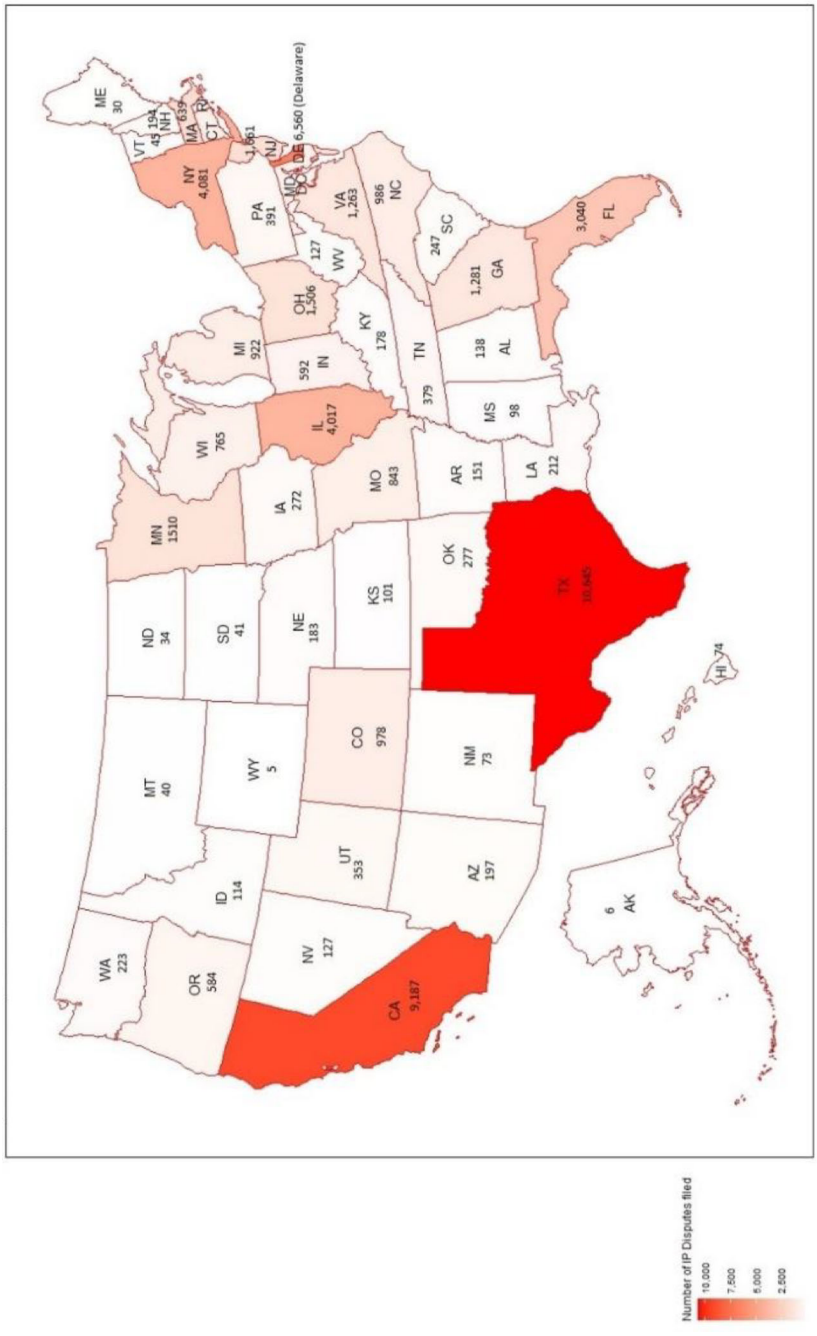

FIGURE 1 Distribution of disputes by court for disputes filed between 1983 and 2016.

3.7.6 | Judge controls

We control for the judge's overall experience using the total number of years since appointment (also in natural log, *log judge experience*). We also control for the judge's prior work experience using two variables: the number of years (in natural log) spent by the judge in a government-appointed position (*log govt. experience*) and private practice (*log private experience*).

3.7.7 | Period dummies

We control for unobserved time effects using 33 dummies, one for each year in which the focal lawsuit. The omitted year is 1983.

3.7.8 | Patent holder and challenger dummies

We control for dispute invariant capabilities of the patent holder and the challenger using 2412 patent holder and 1356 challenger dummies for patent holders and challengers involved in at least three lawsuits and for those where the dependent variable is not perfectly predicted.

3.7.9 | Law firm dummies

Since the quality of the law firm representing the patent holder, or challenger will likely influence a lawsuit's outcome, we also control for any heterogeneity in the law firm capabilities using 263 law firm dummies that were involved in at least three disputes and did not perfectly predict the dependent variable.

Table 2 shows the descriptive statistics for all the variables.

3.8 | Empirical analysis and results

H1a argued that a domestic firm is more likely to win a patent lawsuit against a foreign challenger relative to a domestic challenger. To test H1a, in Table 3, we use logit regressions with *Patent Holder Win* as a dependent variable and compare the coefficient of *domestic-domestic* with *domestic-foreign*. Given that *domestic-domestic* is the left-out category in our regressions, H1a suggests that the coefficient of *domestic-foreign* >0. To test whether foreign patent holders are less likely to win a patent lawsuit against a domestic challenger than against another foreign challenger, as stated in H1b, we compare the coefficients of *foreign-domestic* with *foreign-foreign* and expect the difference *foreign-domestic—foreign-foreign* <0.

In specification 1, we estimate a baseline specification in which only the participant pairs are included. In specification 2, we add controls for characteristics of the disputed patents—average forward citations, average scope, average patent value, average claims per patent, 382 IPC class dummies, and 91 court dummies. In specification 3, we additionally control for the judge's overall, government and private practice experiences. In specification 4, we further control for time-varying attributes of the patent holder and challenger such as the size and profitability of the patent holder and challenger controls as well as the 33-year dummies.

TABLE 2 Descriptive statistics.

Variables	Description	*N*	Mean	SD
Dependent variables				
Patent holder won	=1 when the patent holder won the dispute	58,754	0.52	0.5
Nationalistic rhetoric dummy	=1 if a focal judgment exhibited nationalistic rhetoric, zero otherwise.	58,754	0.16	0.37
Independent variables				
Domestic-domestic	=1 when the patent holder and the challenger are both domestic firms	58,754	0.56	0.50
Domestic-foreign	=1 when the patent holder is a domestic firm and the challenger is a foreign firm	58,754	0.19	0.40
Foreign-domestic	=1 when the patent holder is foreign firm and the challenger is a domestic firm	58,754	0.20	0.40
Foreign-foreign	=1 when the patent holder and the challenger are both foreign firms	58,754	0.05	0.22
Conservative score	The judge's conservativeness based on political contributions and political action committees, which range between −1.67 and 1.30. Higher values imply that the judge is more conservative.	58,754	−0.01	0.71
Patent controls[a]				
Average forward citations	The mean number of forward citations of disputed patents, in natural log	40,764	3.49	1.16
Average number of claims	The mean number of claims of disputed patents, in natural log	40,764	2.99	0.76
Average patent value[b]	The mean value of disputed patents, patent in 1982 millions of dollars in natural log	15,936	2.56	1.52
Average patent similarity	The mean cosine similarity of disputed patents relative to all disputed and reassigned patents	40,764	0.42	0.11
Scope[b]	The number of words in the shortest independent claim averaged over each patent involved in a dispute, in natural log	40,730	4.61	0.72
IPC dummies	382 IPC class dummies, one each for each main IPC class			
Judge controls				
Govt. experience, judge (log)	Number of years spent by the focal judge in a government appointed position in natural log	58,754	1.99	1.30
Private experience, judge (log)	Number of years spent by the focal judge in private practice in natural log	58,754	1.68	1.07
Judge experience (log)	Number of years of experience of judgeship in natural log	58,754	2.03	0.75
Patent owner and challenger controls that vary by dispute				
Total assets, patent holder (log)	Natural Log value of the total assets of the patent holder	58,754	4.46	0.76

TABLE 2 (Continued)

Variables	Description	N	Mean	SD
EBITDA over sales, patent holder	Earnings Before interest, tax, depreciation, and amortization over sales of the patent holder	58,754	0.19	0.24
Total assets, challenger (log)	Natural Log value of the total assets of the challenger	58,754	4.37	0.72
EBITDA over sales, challenger	Earnings Before interest, tax, depreciation, and amortization over sales of the challenger	58,754	0.17	0.16
Patent holder, challenger dummies	2412 patent holder and 1356 challenger dummies one each for each patent holder and challenger who were involved in at least three lawsuits			
Litigation experience, patent owner	The total number of patent disputes in which the patent owner was involved in until the year in which the focal dispute	58,754	4.42	12.40
Litigation experience, challenger	The total number of patent disputes in which the challenger was involved in until the year in which the focal dispute	58,754	1.76	3.87
Patent portfolio patent owner	The cumulative patents they held in the year in which the dispute was filed by the patent owner in natural log	58,754	3.46	0.71
Patent portfolio challenger	The cumulative patents they held in the year in which the dispute was filed by the challenger in natural log	58,754	3.81	0.59
Other controls				
NPE dummy	=1 if the focal dispute involves a non-practicing entity	58,754	0.35	0.48
Case type controls	Three dummy variables, one each for patent infringement, patent invalidation and royalty disputes (left-out category)			
Court dummies	91 dummies one each for each federal district court.			
Period dummies	33-year dummies, one each for the year in which the focal lawsuit was filed. The left-out category denotes 1983.			
Law firm dummies	263 law firm dummies one each per law firm which were involved in at least three lawsuits			

[a]For the 17,990 (58,754—40,764) disputes for which patents were unavailable that were filed before 2000, we use a "no patent" dummy = 1 to control for missing patents.
[b]We similarly control for missing patent values and missing values of scope (the average number of words in the shortest independent claim) using "no value" dummy =1 and "no scope" dummy = 1, respectively. All patent holder and challenger controls were computed using data about the lead patent holder and challenger.

Specification 5 includes 263 law firm dummies, 2412 patent holder, and 1356 challenger dummies. Since this is the fully specified specification, we use it for interpretation.

In specification 6, the coefficient of *domestic-foreign* is 0.38.[16] Given that the left-out category is *domestic-domestic*, this suggests that a domestic firm is 10% more likely to win against a foreign challenger than against another domestic challenger. This result supports H1a. Given that the baseline probability that any patent holder wins a lawsuit is 52%, this constitutes a 19%

[16]A likelihood ratio test between our fully specified and baseline models (specification 6 vs. 1) suggests a significant difference (Chi sq = 5343.10; *p*-value = .00).

TABLE 3 Baseline logit regressions of the probability of a patent holder winning a lawsuit using the full sample.

	Spec. 1	Spec. 2	Spec. 3	Spec. 4	Spec. 5	Spec. 6	Spec. 7	Spec. 8
Domestic-foreign	0.37	0.40	0.42	0.41	0.40	0.38	0.41	0.48
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Foreign—domestic	−0.56	−0.56	−0.55	−0.55	−0.51	−0.49	−0.42	−0.54
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Foreign—foreign	0.11	0.15	0.00	−0.00	0.00	0.06	−0.18	−0.18
	(0.01)	(0.00)	(0.99)	(0.96)	(0.97)	(0.24)	(0.28)	(0.11)
NPE dummy			0.01	−0.01	−0.01	0.00	0.22	0.07
			(0.60)	(0.58)	(0.74)	(0.85)	(0.14)	(0.18)
Patent controls								
(1- no patent) × Forward citations (natural log)		−0.01	−0.01	−0.01	−0.01	−0.02	−0.02	−0.00
		(0.64)	(0.67)	(0.64)	(0.53)	(0.38)	(0.84)	(0.96)
(1- no patent) × no. of claims (natural log)		0.04	0.04	0.03	0.03	0.04	0.11	0.06
		(0.06)	(0.13)	(0.16)	(0.18)	(0.11)	(0.22)	(0.20)
(1- no value) × Patent value (natural log)		−0.00	0.00	0.00	0.01	0.01	−0.02	0.06
		(0.87)	(0.74)	(0.73)	(0.41)	(0.67)	(0.59)	(0.05)
(1- no patent) × Patent similarity		−0.12	−0.13	−0.13	−0.13	−0.13	−0.12	−0.10
		(0.21)	(0.20)	(0.20)	(0.19)	(0.20)	(0.75)	(0.65)
(1- no scope) × Patent scope		−0.01	−0.01	−0.01	−0.01	−0.02	0.04	−0.03
		(0.63)	(0.46)	(0.46)	(0.46)	(0.28)	(0.50)	(0.30)
No patent		0.08	−0.01	−0.01	−0.04	−0.08	−0.63	−0.94
		(0.05)	(0.82)	(0.86)	(0.32)	(0.05)	(0.18)	(0.24)
No scope		0.18	0.02	0.02	−0.04	−0.52	1.97	0.198
		(0.60)	(0.96)	(0.96)	(0.91)	(0.55)	(0.11)	(0.91)

TABLE 3 (Continued)

	Spec. 1	Spec. 2	Spec. 3	Spec. 4	Spec. 5	Spec. 6	Spec. 7	Spec. 8
No value		0.08	−0.01	−0.01	−0.04	−0.08	−0.63	−0.19
		(0.05)	(0.82)	(0.86)	(0.32)	(0.05)	(0.18)	(0.12)
Judge controls								
Judge overall Exp			−0.12	−0.12	−0.09	−0.07	−0.10	0.00
			(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.97)
Judge Govt Exp			0.03	0.03	0.03	0.02	0.01	0.04
			(0.00)	(0.00)	(0.00)	(0.01)	(0.73)	(0.02)
Judge private practice Exp			−0.00	−0.00	−0.02	−0.02	0.01	−0.115
			(0.85)	(0.83)	(0.08)	(0.09)	(0.79)	(0.00)
Dispute level patent owner and challenger controls								
Log total assets, patent holder			0.06	0.06	0.04	0.04	0.01	0.215
			(0.00)	(0.00)	(0.02)	(0.03)	(0.85)	(0.00)
Log total assets, challenger			−0.03	−0.03	−0.02	−0.01	0.04	−0.144
			(0.04)	(0.04)	(0.29)	(0.44)	(0.45)	(0.00)
EBITDA over sales, patent owner			0.34	0.34	0.34	0.31	0.76	0.76
			(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
EBITDA over sales, challenger			−0.26	−0.25	−0.28	−0.31	−0.73	−0.03
			(0.00)	(0.00)	(0.00)	(0.00)	(0.02)	(0.87)
Litigation exp, patent owner				0.00	0.00	0.00	−0.01	0.00
				(0.37)	(0.38)	(0.80)	(0.00)	(0.97)
Litigation exp, challenger				0.00	0.00	0.00	0.00	0.00
				(0.45)	(0.41)	(0.64)	(0.68)	(0.50)
Patent portfolio patent owner				0.03	0.03	0.03	0.03	0.05
				(0.03)	(0.02)	(0.02)	(0.60)	(0.00)

TABLE 3 (Continued)

	Spec. 1	Spec. 2	Spec. 3	Spec. 4	Spec. 5	Spec. 6	Spec. 7	Spec. 8
Patent portfolio challenger				−0.00	−0.00	−0.00	−0.06	−1.48
				(0.85)	(0.96)	(0.88)	(0.34)	(1.727)
Constant	0.82	−0.10	−1.11	−1.88	−1.80	−2.00	0.56	−1.48
	(0.00)	(0.93)	(0.33)	(0.13)	(0.16)	(0.10)	(0.33)	(0.39)
Observations	58,754	58,754	58,754	58,754	58,754	58,754	3714	15,335
Log likelihood	−36885.13	−36601.43	−35220.91	−35198.32	−34809.68	−34213.58	−2289.61	−8651.09
Case type controls	2	2	2	2	2	2	2	2
IPC class dummies	N	382	382	382	382	382	156	182
Court dummies	N	91	91	91	91	91	72	73
Period dummies	N	N	N	33	33	33	30	31
Law firm dummies	N	N	N	N	263	263	125	212
Patent holder dummies	N	N	N	N	N	2412	525	1579
Challenger dummies	N	N	N	N	N	1356	216	786
Dom.—For.—Dom.—Dom	0.09	0.10	0.10	0.10	0.10	0.10	0.10	0.12
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
For.-Dom—For.—For.	−0.16	−0.17	−0.14	−0.14	−0.13	−0.14	−0.06	−0.09
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)

Note: Logit regressions in which the dependent variable is *Patent holder win*. *p*-values within parentheses. Specification 7 uses a subsample of disputes that are similar to those settled after trial initiation but before the verdict. Specification 8 uses a subsample of disputes in which a jury was not involved and was adjudicated by a single judge.

increase in the probability of winning a patent lawsuit. We also find the difference in coefficients *foreign-domestic—foreign-foreign* to be −0.55 (and hence <0). This suggests that a foreign firm is 14% less likely to win a lawsuit against a domestic challenger than against another foreign challenger. Given that the baseline probability that a patent holder wins a lawsuit is 52%, this difference constitutes a 27% reduction in the probability of winning a lawsuit. This result is in support of H1b.

Our main results—that domestic firms are more likely to win in lawsuits against foreign firms compared to other domestic firms—may reflect the fact that disputes that received a verdict systematically differ from disputes that were settled after the initiation of a trial prior to the final verdict. To address this issue, we matched lawsuits that received a final verdict with those settled after trial initiation but before the verdict based on observable attributes of lawsuits.[17] The results using the matched sample (specification 7) are qualitatively similar. To rule out the possibility that our results are driven by preferences of jury members rather than judges, we restrict our sample to lawsuits adjudicated by a single judge (15,335 disputes, see specification 8). We find similar effects in this alternate specification as well.

We now test H2, which argues that judgments involving mixed pairs (*domestic-foreign* and *foreign-domestic*) are more likely to invoke nationalist rhetoric than similar pairs (*domestic-domestic* and *foreign-foreign*). To test this hypothesis, we implement logit regressions where the *nationalistic rhetoric dummy* constructed using topic modeling is the dependent variable and include the case participant dummies. Results are shown in Table 4.

In specification 1, we find that the coefficient of *domestic-foreign* is 1.31 (p-value <.01). Given that *domestic-domestic* is the omitted category, this indicates judgments on a lawsuit involving a domestic patent holder and a foreign challenger are about 15% more likely to exhibit nationalistic rhetoric than a lawsuit involving a domestic firm and a domestic challenger. The difference in marginal effects of *foreign-domestic—foreign-foreign* suggests a lawsuit involving a foreign patent owner and a domestic challenger is 11% more likely to exhibit nationalistic rhetoric than a lawsuit involving two foreign firms (p-value <.01). Specification 2, which uses a matched sample of lawsuits that were settled (after the initiation of a trial but before a final verdict) with those that received a judicial verdict, also provides us with similar results. In sum, these results support H2.[18]

We next test H3a and H3b by interacting the *conservative score* of the adjudicating judge with *domestic-foreign*, *foreign-domestic* and *foreign-foreign* dummies. Given that higher values of *conservative score* implies that a judge is more conservative, H3a suggests that the difference between *domestic-foreign* and *domestic-domestic* should increase and become more positive as the *conservative score* of the presiding judge increases. H3b suggests that the difference between *foreign-domestic* and *foreign-foreign* should be more negative when patent lawsuits are adjudicated by more conservative judges. We start by estimating the overall effect of conservative score in specification 1 of Table 5. In specification 2, we test H3a and H3b using interaction terms of participant pairs with *conservative score*. Figure 2a,b plots the margins at each value of *conservative score* of the presiding judge. As the *conservative score* of the presiding judge

[17]We used the matching frontier method (King, Lucas & Nielsen, 2017) and matched on the log total assets of the patent holder and challenger, EBITDA over sales of the patent owner and challenger, state dummies, patent characteristics, private, and government experience of the judge.

[18]We also considered whether the nationalist rhetoric of judgments reflected language in the plaintiff's case briefs. We implemented topic modeling on the plaintiff's case briefs and found no systematic differences in the use of nationalist rhetoric by domestic or foreign firms. None of the 14 topics we identified from the plaintiff's case briefs were correlated with the nationalist rhetoric dummy (Table A1-4 in Appendix A1-D).

TABLE 4 Regressions of the probability of a judgment exhibiting nationalistic rhetoric.

	Spec. 1	Spec. 2
Domestic-foreign	1.31	1.22
	(0.00)	(0.00)
Foreign—domestic	1.12	1.00
	(0.00)	(0.00)
Foreign—foreign	0.12	0.05
	(0.10)	(0.84)
NPE dummy	0.01	−0.06
	(0.85)	(0.61)
Constant	−1.45	−2.90
	(0.01)	(0.00)
Observations	58,754	3714
Log Likelihood	−23681.41	−1490.57
Patent controls	Y	Y
Judge controls	Y	Y
Dispute level patent owner and challenger controls	Y	Y
Case type controls (2)	Y	Y
IPC class dummies (382)	Y	Y
Court dummies (91)	Y	Y
Period dummies (33)	Y	Y
Law firm dummies (263)	Y	Y
Patent holder dummies (2412)	Y	Y
Challenger dummies (1356)	Y	Y
Dom.—For.—Dom.—Dom	0.15	0.14
	(0.00)	(0.00)
For.-Dom—For.—For.	0.11	0.10
	(0.00)	(0.00)

Note: Logit regressions in which the dependent variable is the *National rhetoric dummy*. *p*-values within parentheses. Specification 2 uses a matched sample of disputes similar to those settled after the initiation of a trial. We include all the controls as reported in specification 6 of Table 3 but only report the coefficients of the main independent variables and that of NPE dummy due to space constraints.

increases, the difference between *domestic-foreign* and *domestic-domestic* becomes more positive (Figure 2a). For instance, when a judge is liberal (or when the *conservative score* is −1.7), the difference in the probability that patent holder wins between *domestic-foreign* and *domestic-domestic* pairs is −0.18 (*p*-value <.01); with a liberal judge, domestic firm has a higher probability of winning a patent lawsuit against another domestic firm relative to a foreign firm. However, when the presiding judge is conservative (or when the conservative score of the presiding judge is 1.3), a domestic firm has a 9% higher probability of winning a patent lawsuit against a foreign firm relative to another domestic firm (*p*-value <.01). Moreover, the difference between *domestic-foreign* and *domestic-domestic* pairs is monotonically increasing as Figure 2a shows

TABLE 5 Logit regressions of the probability of the patent holder winning a lawsuit with interactions with conservative score.

	Spec. 1	Spec. 2
Domestic-foreign	0.24	−0.56
	(0.00)	(0.00)
Foreign-domestic	−0.65	−0.66
	(0.00)	(0.00)
Foreign-foreign	−0.04	0.12
	(0.40)	(0.05)
NPE dummy	0.00	0.01
	(0.92)	(0.66)
Conservative score	0.45	1.23
	(0.00)	(0.00)
Conservative score × domestic- foreign		1.20
		(0.00)
Conservative score × foreign—domestic		−4.28
		(0.00)
Conservative score × foreign—foreign		−2.05
		(0.00)
Constant	−1.84	−3.21
	(0.14)	(0.01)
Log-Likelihood	−33744.50	−27888.70
No. of observations	58,754	58,754
Patent controls	Y	Y
Judge controls	Y	Y
Dispute-level patent owner and challenger controls	Y	Y
Case type controls (2)	Y	Y
IPC class dummies (382)	Y	Y
Court dummies (91)	Y	Y
Period dummies (33)	Y	Y
Law firm dummies (263)	Y	Y
Patent holder dummies (2412)	Y	Y
Challenger dummies (1356)	Y	Y

Note: This table shows the results of logit regressions in which the dependent variable is *Patent holder win*. *p*-values within parentheses. We include all the controls as reported in specification 6 of Table 3 but only report the coefficients of the main independent variables and that of NPE dummy due to space constraints.

lending support to H3a. Similarly, as the *conservative score* of the presiding judge increases, the difference between *foreign-domestic* and *foreign-foreign* turns more negative (Figure 2b). For instance, when a judge is liberal or when the *conservative score* is −1.7, the difference in the probability that patent holder wins between *foreign-domestic* and *foreign-foreign* pairs is 0.37 (*p*-

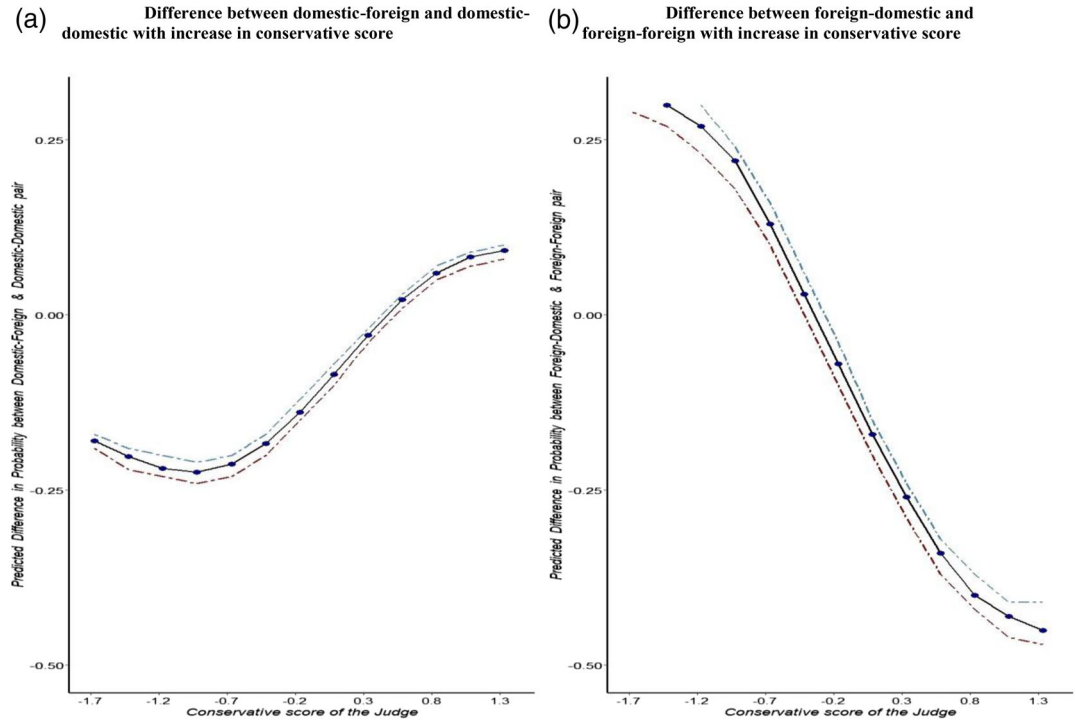

FIGURE 2 (a, b) Plots of interactions between judge conservative score and pair dummies (based on specification 2 of Table 5). (a) Difference between domestic-foreign and domestic-domestic with increase in conservative score. (b) Difference between foreign-domestic and foreign-foreign with increase in conservative score.

value <.01); with a liberal judge, foreign firms have higher a probability of winning a patent lawsuit against a domestic firm relative to a foreign firm. However, when the presiding judge is conservative, a foreign firm has a 55% lower probability of defending its patent lawsuit against a domestic firm relative to another foreign firm (*p*-value <.01). Moreover, the difference between *foreign-domestic* and *foreign-foreign* pairs is monotonically decreasing, as Figure 2b shows, lending support to H3b.

While our results suggest that conservative judges are more likely to rule against foreign firms than liberal judges (H3a), it also appears to suggest that liberal judges may rule in favor of foreign firms. This finding is consistent with prior empirical work on civil lawsuits in federal courts (Clermont & Eisenberg, 1996). While we cannot conclusively provide reasons for this finding we propose two plausible explanations. First, the pattern may be driven by different approaches to protecting intellectual property. Conservative judges see private property protection as an end unto itself (Sag et al., 2009) implying that in disputes involving a domestic patent holder and foreign challenger, conservative judges have higher affinity for the domestic firm due to their in-group as well as the pro-patent holder attitudes. In contrast, liberal judges are more receptive to placing limitations on IP rights to pursue other social goals such as free speech or distributive justice; thus, their decisions primarily reflect in-group bias. Second, liberal attitudes may be correlated with an "open systems" approach which assumes strong interdependencies between a firm and its environment leading to greater information exchange and meaningful dialogue between the firm and its stakeholders (e.g., Chandler et al., 2023; Gupta &

Briscoe, 2020). Such an interdependent relationship could lead to positive spillovers from foreign to domestic firms. In particular, foreign investment can spread new technologies and know-how in the domestic economy, which can increase the productivity and competitiveness of domestic industries (see generally Javorcik & Spatareanu, 2005). Anecdotal evidence supports this view. Public opinion polls in the United States, for instance, find that liberals (or those identifying as Democrats) are more likely to view US involvement in global economic engagement as good since it provides new markets and opportunities for growth (Pew Research, 2016), while conservatives (or those identifying as Republicans) tend to see it as a threat to the economy (Younis, 2021). Overall, liberals, more than conservatives, are likely to consider engagement with foreign economic actors beneficial and worth upholding. If liberal judges similarly consider potential positive externalities of foreign investment and the intellectual property of foreign firms, it may explain the pattern we observe. In other words, liberal judges promoting protection for foreign firms are also nationalistic in that they consider prioritizing foreign firms' intellectual property as ultimately beneficial to the US economy, albeit in an indirect manner.

We explore this line of reasoning empirically in the online Appendix A2. In particular, we test if firm size influences the ruling of liberal judges as they may expect greater indirect benefits to domestic firms from larger foreign firms. We find that liberal judges favor larger foreign firms. To the extent that the positive externalities are more likely to emanate from larger foreign firms, the increase in win likelihood for foreign firms from liberal judges relative to conservative judges appears to be larger for foreign firms than for smaller foreign firms.

3.9 | Additional analyses and robustness checks

We conducted several tests to rule out alternative explanations and explore the robustness of our results. While we describe them briefly here more details are in the online appendix.

3.9.1 | Counterfactual tests

First, using the acquisitions of two similar sized firms in the same industry, one domestic and the other foreign, we develop two vignettes to examine if domestic ownership is associated with a higher likelihood of winning a patent dispute (see online appendix Table A3-1). Second, using machine learning that replicates what a judge "blind" to the nationality of the patent holder and challenger would have ruled given a set of dispute characteristics, we construct counterfactuals by comparing the predicted ruling with the actual ruling (see online Appendix A3-B). Both these tests support our main findings.

3.9.2 | Heterogeneity between foreign and domestic firms and selection bias

Comparison of patent classes and sectors

We explored if the hypothesized differences are on account of systematic differences in sectors and patent classes of disputed patents between domestic and foreign firms (online appendix, Table A4-1, Panel A) and sectors (online appendix, Table A4-1, Panel B) in our sample of disputes. This does not appear to be the case as we find the distribution across participant types to be remarkably similar.

Matching by participant pairs at a dispute level

We construct several matched samples at the dispute level based on observable characteristics of the dispute by separately matching the disputes of each participant pair involving a foreign firm (treatment group) with *domestic-domestic* pair (control group) and then replicate our main specification (specification 6 of Table 3) using the resultant matched sample by turn (see specifications 1 and 2 of Table A4-2 in online Appendix). Our baseline hypotheses are qualitatively supported.

Patent-level analysis

We replicate our main analysis at the patent level (rather than the dispute level) to more precisely control for patent characteristics across domestic and foreign firms. Our main findings (specifications 6 and 7 of Table 3) are once again supported (see Table A4-5, specifications 1 and 2 of the online appendix).

Selection

Note that, as earlier stated, parties to a dispute can settle disputes at any stage, including (a) before approaching courts or the initiation of litigation, or (b) before a pretrial hearing without the judge's involvement, or (c) during a pretrial hearing but before the trial, or (d) after a pretrial conference during or after trial but before the final verdict. Our sample only comprises disputes pertaining to (d) and those that receive a verdict. This could introduce selection biases and it is plausible that our results are simply an artifact of systematic variation between pairs in whether or when they choose to settle a dispute.[19] Using the dispute as the unit of analysis, we have already shown in specification 7 of Table 3 that biases that arise from parties choosing to settle after a trial is initiated (option (d) above) versus proceeding to a verdict does not qualitatively alter our results. However, to address other sources of selection biases, including variation between parties in items (a)–(c) we build a patent-level dataset that leverages reassigned patents. Patent reassignments (excluding reassignments to the same firm) that do not face legal proceedings serve as a reasonable proxy for out of court settlements and successful voluntary technology transfer arrangements (Serrano, 2010). In other words, reassigned patents could likely represent items (a)–(c) above. In specification 3 of Table A4-5 of the online appendix, we use a sample of disputed patents that have been matched with reassigned ones to ensure that the estimating sample is similar in observable characteristics to non-disputed but reassigned patents. In specification 4 of Table A4-5 of the online appendix, we construct a double-matched sample by first matching reassigned patents with disputed patents taken to a trial and then matching the resulting sample with patents that received a verdict. Our results after both the matching procedures are qualitatively similar to the baseline results shown in specification 1 of Table A4-5. In specification 5 and 6 of Table A4-5, we also implement Heckman's selection correction procedure using the proportion of patents that were not renewed in the fourth year by the focal assignee as an exclusion restriction to first predict patents that were taken to a verdict and then subsequently reestimating our principal specification at a patent level in specification 6. Our results continue to hold qualitatively.

Interactions with the size of foreign patent holders and challengers

As an additional test, we examine if larger foreign firms are at a greater disadvantage than smaller foreign firms. If it is the case that there will likely be greater scope for welfare gains

[19]See Table A4-4 of the online Appendix which suggests our principal results are unlikely to be driven by systematic differences between participant pairs in disputes they decide to take to a verdict versus settling them before a verdict.

when foreign patent holders are large, then nationalistic judges might be more likely to put such firms at a greater disadvantage because the transfer of assets of such firms to domestic firms might increase the potential for domestic profits, consumer surplus, and spillovers (Mai & Stoyanov, 2019). Similarly, larger foreign challengers may also be at a greater disadvantage since they may be viewed as more capable of leveraging the domestic firm's assets and exploiting them in combination with their global operations to the detriment of (other) domestic firms. Our results in the online appendix shown in specifications 1 and 2 of Table A4-5 lend qualitative support to these arguments lending further credibility to H1a and H1b.

3.9.3 | Alternate definitions of foreignness

In our main analysis, we coded a firm as foreign based on the location of its headquarters. We also consider two alternate definitions of foreignness based on inventors' location and a combined measure of inventor and headquarters location (specifications 1 and 2, Table A5-2 of the online Appendix) and get similar results. The results remain largely consistent.

3.9.4 | Forum shopping

We examine if domestic firms' superior success rates is driven by their ability to choose friendlier (to them) courts by undertaking three additional tests. First, we demonstrate that the domestic advantage is not restricted to only popular courts (online appendix, Table A6-1, specification 1). Next, we find that our results hold even when we explicitly code forum shopping and subsequently exclude cases where the plaintiff files a dispute in a state different from the location of the defendant's headquarters (see online appendix, Table A6-1, specification 2). Finally, we find our main results to hold in both pro-patent and pro-challenger courts (see online appendix, Table A6-1, specification 3).

3.9.5 | Effects over time and industries

Finally, we show that differential enforcement persists across decades (see Table A7-1 of the online Appendix) and across industries including those in which patents frequently and infrequently litigated (see Table A7-2 of the online appendix).

4 | DISCUSSION

When courts enjoy high judicial independence, they are expected to operate without being subject to political influence or public opinion (Hahn & Singer, 2008; Lahr, 1992). However, we argue and show, using the federal courts in the United States, that despite judicial independence, courts exhibit a form of economic nationalism based on national identities and the resulting differentiation between in-group and out-group members. Consistent with this idea, judgments that favor domestic firms at the cost of foreign firms are more likely to rely on nationalistic rhetoric to legitimize their decision. Also, the disadvantage of foreign firms

in lawsuits is likely to be moderated by the judicial ideology of judges. We test our arguments using US patent litigations from 1983 to 2016 adjudicated by the US federal courts.

Our study makes three contributions. Primarily, we identify the economic nationalism of judges as an important factor driving judicial decisions in favor of domestic firms. Although courts are expected to be neutral venues unaffected by external governmental pressures, recent evidence suggests that they exhibit differential enforcement to the detriment of foreign firms (e.g., Mai & Stoyanov, 2019; Mezias, 2002). However, the mechanism driving domestic advantage in the courts is unclear. For instance, Moore (2002) suggests that such advantage emanates from juries, but not judges, whereas Bhattacharya et al. (2007, p. 653) suggest judges themselves are prejudiced against foreign firms, although they are unable to conclude why. We offer one potential explanation for this advantage that relies on economic nationalism and judges' national identity and ideology. We argue and provide suggestive evidence, by coding the rhetoric of judgments using topic modeling, that judges differentiate between in-group (domestic) and out-group (foreign) firms to support domestic actors at the expense of foreign firms. Our findings further suggest that judicial ideology moderates this effect, with conservative ideology associated with greater foreign discrimination.

Second, our findings also contribute to the international business literature on the liability of foreignness. Although economic nationalism has long been considered a component of the liability of foreignness (Zaheer, 1995), prior research has primarily highlighted two factors that contribute to it: limited capabilities of foreign firms (Mezias, 2002; Zaheer & Mosakowski, 1997), and greater costs incurred by foreign firms through discriminatory government policies or more stringent regulatory scrutiny (Wu & Salomon, 2017; Zhou & Guillén, 2015). Both these factors can be overcome with either experience (e.g., Wu & Salomon, 2017; Zhou & Guillén, 2015) or other coping mechanisms, such as increasing corporate political spending (Shi et al., 2021). In contrast, we focus on a source of economic nationalism—through in-group behavior in courts—which may be more systemic and long-lasting with fewer coping mechanisms for foreign firms.

Finally, our study contributes to the empirical literature on home advantage in legal proceedings. Prior studies have established domestic advantages in the legal system in US corporate litigation (Bhattacharya et al., 2007), labor lawsuits (Mezias, 2002), and Canadian intellectual property disputes (Mai & Stoyanov, 2019). Our study resonates with these findings and extends the disadvantage to US patent disputes over a larger sample spanning several years.

As with all work, ours is subject to several limitations. Our main limitation is imposed by the nature of the data. Only some disputes initiate legal proceedings, and even a smaller set of disputes are taken all the way to a verdict. Foreign and domestic patent owners and challengers may systematically vary in which disputes they prefer court adjudication versus which ones they settle out of court, either before or after approaching the courts. We have addressed issues of selection in two different ways. We first matched disputes settled during or after a trial but before the verdict with those that received a verdict and reestimated our featured specification. Second, we constructed a patent-level dataset comprising reassigned and disputed patents and reestimate our featured specification after matching (a) reassigned patents with patents that received a verdict and (b) reassigned patents with patents taken to a trial in the first step and used the resulting sample to match with patents that received a verdict in the second step. Across these specifications, our principal results continue to hold qualitatively. Despite these, it is plausible that disputes settled out of court systematically differ from those that proceed to the court and go all the way to a verdict on dimensions we may not be able to capture.

The same limitation also applies to the possibility that the nature of patent disputes can systematically differ between the participant pairs or parties can systematically vary in which courts they may choose to litigate, both of which might show up in the outcomes of these disputes. We have attempted to overcome this possibility in two ways: by controlling for several sources of heterogeneity between domestic and foreign patent holders and challengers at the level of the participant, dispute, and patents involved in a dispute and by constructing matched samples that match the participant pairs based on the observable characteristics of a dispute. Moreover, we also show that our results hold qualitatively across court types (widely vs. rarely used or pro-plaintiff vs. pro-defendant or forum-shopped vs. non-forum-shopped disputes). These, too, are open to the possibility that the cases that involve different participant pairs might differ in unobservable dimensions that may not be captured by matching or that some of the hypothesized differences may not hold in certain types of courts chosen by parties.

Another limitation is that our empirical estimates might be idiosyncratic to our content, the United States, and in particular, apply only to patent disputes. Further work could explore if this phenomenon is generalizable beyond the geographic and industry contexts studied in this article. Finally, while we find that ideology moderates the influence of in-group out-group on judicial decisions, we find that liberal judges are also more likely to favor foreign firms, which is consistent with prior empirical work (e.g., Clermont & Eisenberg, 1996). Although we propose two plausible explanations for the latter, the precise set of mechanisms that drive this seeming pro-foreignness is unclear and is clearly another avenue for future research.

Despite these limitations, we believe the paper contributes in a novel way to understanding how economic nationalism might be prevalent even when the de jure laws are not discriminatory. Our results have significant managerial implications, especially for the managers of foreign multinational entities looking to capitalize on the opportunity that international markets provide. Our results also have implications for policy experts, who might be interested in understanding the pros and cons of implementing an explicit policy change that makes a policy nationalistic versus implementing a subtler form of economic nationalism such as the one studied in this article. Thus, we hope that our paper inspires more such work that explores other forms of economic nationalism other than those explicitly enacted by the state through a policy change.

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DATA AVAILABILITY STATEMENT

The company data that support the findings of this study are available from S&P Global (Compustat). The data on the patents that were involved in a dispute that support this study are available on Lex Machina. Restrictions apply to the availability of these data, which were used under license for this study. Dispute data that support the findings of this study are available from the USPTO at https://www.uspto.gov/ip-policy/economic-research/research-datasets/patent-litigation-docket-reports-data. The 2020 release was used to support the findings of this study.

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SUPPORTING INFORMATION

Additional supporting information can be found online in the Supporting Information section at the end of this article.

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