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Randomly Albright: The End of Judge Shopping in the Western District of Texas?

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ABSTRACT

Because judges exercise discretion in how they handle and decide cases, heterogeneity across judges can affect case outcomes and, thus, preferences among litigants for particular judges. However, selection obscures the causal mechanisms that drive these preferences. We overcome this challenge by studying the introduction of random case assignment in a venue (the U.S. District Court for the Western District of Texas) that previously experienced a high degree of case concentration before one judge (Alan Albright), whom litigants could select with virtual certainty. To assess Albright's importance to patent enforcers, we examine how case filing patterns changed following the adoption of random case allocation and show that case filings in the Western District of Texas decreased significantly at both the intensive and extensive margins. Moreover, to shed light on why litigants prefer Judge Albright, we compare case management metrics and motions practice across randomly assigned cases and show that cases assigned to Albright received relatively early trial dates and generated fewer motions to stay pending parallel administrative invalidity proceedings and fewer motions to invalidate patents on subject matter eligibility grounds.

JEL Classification: K4, O3

1 | Introduction

When Matthew Kacsmaryk was sworn in as the newest member of the U.S. District Court for the Northern District of Texas in 2019, he became the lone member of the court's Amarillo Division and, therefore, the presumptive selection to preside over all lawsuits filed there. This fact, combined with Kacsmaryk's conservative *bona fides*, attracted the attention of activist litigators, who in the years that followed convinced the judge to issue orders preserving the immigration policies of the first Trump administration, delaying employment protections for transgender workers, and suspending approval of the "abortion pill" mifepristone. Following a similar game plan, politically motivated litigants also directed suits of national significance to sympathetic judges in other sparsely populated divisions with predictable case assignment rules, including Terry Doughty of Monroe, Louisiana, and James Wesley Hendrix of Lubbock, Texas, both of whom are assigned the great majority of their respective divisions' civil caseloads. Doughty blocked a federal COVID-19 vaccine mandate for healthcare workers in November 2021 and barred federal officials from contacting social media platforms to report misinformation in July 2023. Even more recently, Hendrix enjoined a federal law expanding the rights of pregnant employees in a February 2024 opinion that also cast doubt on all federal legislation passed during an 18-month period at the height of the pandemic, when the House of Representatives allowed votes to be cast remotely.

These decisions—and especially the perception that they were made by partisan judges "cherry picked" by like-minded litigants—sparked a full-blown "political firestorm" fueled by a public dialog among high ranking members of Congress,

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executive branch officials, and members of the (normally tight-lipped) federal judiciary.[1] In Congress, multiple legislative proposals that would reform federal case assignment rules were introduced in the Senate and House,[2] and in March 2024 the U.S. Judicial Conference, the federal judiciary's internal policymaking body, issued a set of policy recommendations urging district courts to reconsider any non-random or otherwise predictable case allocation procedures they currently employ (a recommendation that Kacsmaryk and Hendrix's court promptly declined).[3]

While the salience of rulings by Kacsmaryk, Doughty, and Hendrix on issues of intense national interest has brought renewed attention and controversy to the confluence of case assignment practices and judicial bias, savvy litigators working in many areas of the law have long recognized the benefits of "judge shopping"—that is, filing suit in a location that offers heightened odds that one's case will be assigned to a particular, preferred jurist.[4]

Litigants prefer some judges to others because judge characteristics and measures of bias have long been shown to correlate with case outcomes (e.g., Harris and Sen 2019; Ash et al. 2024). Perhaps most well-known in the literature is a link between judges' ideological leanings and the results of litigation assigned to them. For example, because judges in the U.S. are typically appointed and confirmed by elected officials (and in some instances directly elected by voters), judicial selections have an inherent political valence that is readily observable to litigants and may influence where and how they litigate (Taha 2010; Botoman 2018). In addition, because judges have substantial discretion in how they handle and decide legal issues, litigation leaves ample room for judges' idiosyncrasies, tendencies, and biases with respect to race, gender, and much more to impact outcomes in their respective courtrooms (Yang 2015; Lim et al. 2016).

Accordingly, prospective litigants have a strong incentive to exploit heterogeneity across judges by strategically selecting where to file suit, frequently resulting in a concentration of cases in a single court or a small number of forums perceived as advantageous. Among other types of litigation, the literature has presented compelling evidence of case concentration driven by judge shopping in Chapter 11 bankruptcy filings (Eisenberg and LoPucki 1999; Levitin 2023), challenges to FCC regulations (de Figueiredo 2005), immigration removal proceedings (Grantham 2019), and patent assertion (Klerman and Reilly 2010; Anderson and Gugliuzza 2021; Helmers and Love 2025).

While descriptive evidence provides several likely reasons for the often extreme level of case concentration observed in contexts like these, statistical identification of the causal mechanism(s) that drive judge shopping is inherently challenging. This is so for the simple reason that judge shopping introduces selection bias. That is, when some litigants choose to litigate in a particular court specifically because they expect strategic advantages and more favorable outcomes, the set of cases filed in that court is systematically skewed by those choices. As a result, it is generally not possible to completely isolate the causal effect of a specific judge from the distinct effect of litigants' decisions to file suit in that court in hopes of litigating before that judge.

In this paper, we overcome this challenge by taking advantage of a unique development in the U.S. District Court for the Western District of Texas (WDTX): a recent transition from a deterministic civil case assignment procedure, which allowed patent enforcers to select a preferred judge, to a quasi-random procedure, which allocates patent suits across all judges with chambers in the district. For a period of close to 4 years (from late 2018 to mid-2022), most litigants bringing a claim for U.S. patent infringement could elect to have their case assigned to Judge Alan Albright, a former patent litigator widely regarded as favorable to patent enforcers (Anderson and Gugliuzza 2021), simply by filing suit in the WDTX's Waco Division, which at the time automatically assigned all civil cases to Albright. Existing evidence suggests that this opportunity attracted a large influx of patent cases to the WDTX's Waco Division, consistent with judge shopping (Helmers and Love 2025). However, the WDTX modified its case assignment procedures on July 25, 2022, so that patent cases filed in Waco would thereafter be assigned on a quasi-random basis across all 12 district judges assigned to the court.[5]

Our analysis of cases filed before and after the court's July 2022 amendment of its case assignment rules shows that the introduction of random assignment reduced the share of new patent cases assigned to Albright from 100% to less than 11%.[6] We additionally show that patent enforcers filed significantly fewer new cases in Waco following the shift to random case allocation and consequent reduction in the odds of assignment to Albright. Our estimates indicate that new patent case filings dropped by 67%, or nearly 51 cases per month, from a pre-treatment mean of 76 cases to just 25 per month thereafter. These results suggest that patent enforcers' ability to select Albright as their judge with virtual certainty was highly valued and, indeed, their primary motivation for filing suit in Waco.

Following the guidance of a theoretical model of judge shopping in the context of patent enforcement, we additionally consider factors that drove the substantial drop in WDTX patent case filings that we observe. We find that the post-treatment reduction in new patent suits was comprised of significant decreases at both the intensive and extensive margins, particularly the latter and particularly among so-called "non-practicing entities" (NPEs), firms that specialize in patent assertion. Indeed, our results indicate that the majority of pre-treatment WDTX patent enforcers ceased filing new cases in the district following the introduction of random case assignment. Consistent with our model's predictions, we also find evidence that patentees enforcing patents of relatively high value and relatively low quality were disproportionately likely to abandon the WDTX after July 2022.

Finally, we leverage the random nature of patent case allocation in Waco after July 25, 2022, to explore why patent enforcers prefer to litigate before Albright. Consistent with conventional wisdom among patent litigators, we find causal evidence that cases assigned to Albright are scheduled to proceed at a relatively fast pace and, in addition, that defendants in cases assigned to Albright are both less likely to attempt to stay litigation pending the outcome of parallel administrative patent validity challenges

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and less likely to attempt to invalidate asserted patents on subject matter eligibility grounds.

Our results contribute to the broader literature examining the role of individual judges in the administration of justice, as well as to an emerging body of literature that specifically studies forum and judge shopping. A large extant literature assesses how judge characteristics, including personal and professional backgrounds as well as political leanings, affect judicial decision-making, particularly in the context of criminal sentencing (Cohen and Yang 2019; Bonica and Sen 2021). Additional contributions exploit differences across judges to measure the impact of case outcomes on other variables of interest, such as the impact of incarceration length on employment outcomes (Kling 2006; Frandsen et al. 2023) and the effects of compensation in wrongful dismissal cases on firm performance (Cahuc et al. 2023). Viewed in the context of this literature, our results provide additional evidence of the potentially substantial effect of judicial discretion, particularly the freedom to adopt idiosyncratic standing orders and case scheduling practices. While this kind of discretion is intended to allow judges to adjust to the needs of their respective caseloads, our results provide further evidence that judge-specific practices can impose unintended costs, including incentives to engage in strategic litigation behavior. Our analysis also advances this literature by extending its application to civil litigation. While random case assignment has been used widely to study case outcomes in the criminal justice system, it has been used far less often in the study of civil claims, and our study exploits random case allocation in the context of patent infringement litigation, a context where strategic forum and judge selection (especially by NPEs) has long been a topic of intense policy debate (e.g., Moore 2001; Leychkis 2007; Klerman and Reilly 2010; Anderson 2015; Love and Yoon 2017; Anderson and Gugliuzza 2021).

We contribute as well to a small but growing literature that studies strategic forum selection, including in the context of judge shopping (e.g., Atkinson et al. 2009; Ellias 2018) and with a focus on weighing trade-offs between cultivating decisionmaker expertise and inviting biased decision-making (e.g., McDonnell 2004; Baum 2008; Coviello et al. 2019). Our analysis differs from the bulk of the existing literature in that we study a concentration of cases before a single judge, rather than in a single forum. Further, to the extent that judge shopping has been empirically examined to date, we advance our understanding of the phenomenon by analyzing the effect of a rare change in case assignment policy. In particular, while the literature has documented Judge Albright's impact on both patent case filings in Waco and the overall level of patent assertion in the U.S. (Helmers and Love 2025), our examination of the WDTX's subsequent shift to random case assignment allows us to verify that it was plaintiffs' ability to choose Albright with certainty that induced the enormous increase in case filings in that court and, moreover, to explore the underlying causal mechanisms that drove judge shopping in this setting. These results suggest that the combination of factors that led to the dramatic concentration of patent litigation in the Western District of Texas was not unique and, in principle, could re-occur in many other districts with single-judge divisions. In addition, considered in the context of existing studies of the trade-off between expertise and bias in regulatory and judicial system design, our analysis shows that a transition from fast-but-potentially-biased decision-making by a domain expert to slower-but-potentially-less biased decision-making by actors with less specialized knowledge can have differential effects across litigant types and along different margins.

From a broader policy perspective, our results additionally demonstrate that incentives to judge-shop are mitigated when case assignment rules incorporate a degree of random variation. In our setting, reducing the odds of receiving a preferred judge from a near certainty to roughly one in nine (11%) reduced strategic filings by approximately 67%. Accordingly, our findings suggest (consistent with recently proposed legislation and the Judicial Conference's recommendations) that policymakers and judicial officers wary of judge shopping would be wise to consider case assignment rules that maintain some threshold level of randomness that otherwise might not be achieved consistently, especially in sparsely populated venues with few judicial seats.[7] Our data further shows that division-level assignment policies are particularly ripe for abuse, given the prospect that natural variation in judicial retirements and appointments can, at times, lead to very small and indeed even single-judge divisions. As documented by Helmers et al. (2025), single-judge divisions exist in many parts of the country and have, in recent years, been exploited by litigants with ideologically motivated agendas. Our results show that single-judge divisions allow for the selection of judges based on factors other than political ideology and thus provide evidence that single-judge divisions can be problematic even when their occupants are not ideological outliers.

The remainder of this paper is structured as follows. In Section 2, we describe our institutional setting: patent litigation in the WDTX and, more specifically, patent cases filed in Judge Albright's Waco Division. In Section 3, we present a simple model of litigation and judge shopping that produces three predictions, which guide our empirical analysis. In Sections 4 and 5, we describe our empirical approach and detail our data collection and construction, respectively. In Section 6, we present and discuss the results of our empirical analysis. In Section 7, we conclude with a brief summary of our process and the key findings.

2 | Setting

2.1 | Case Allocation in U.S. District Courts

A suit alleging U.S. patent infringement must be heard in the first instance by one of the more than 1000 judges that comprise the U.S. district court system. According to the rules for establishing proper venue in patent suits, a complaint alleging infringement by a U.S. business entity must be filed in a district court located in the entity's state of formation or in a district in which the entity otherwise maintains a "regular and established place of business," such as a headquarters or regional office.[8] Once filed, new cases are allocated to judges at the discretion of each district court's chief judge (28 U.S.C. §137(a)); nonetheless, case assignment rules adopted in the nation's 94 districts almost universally assign cases using

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some form of random draw. When a district is split into multiple "divisions," new cases are most often allocated at random across all eligible judges assigned to the division in which each new case was filed (Botoman 2018). While assignments made in this fashion may be reasonably unpredictable in relatively large divisions, selections naturally become more predictable as the number of judges with chambers in a given division decreases, and, rarely, a single judge may be assigned all or most cases filed in sparsely populated regions that are home to just one judge's chambers (Helmers et al. 2025). In addition, all districts follow some number of secondary local rules that make case assignments more predictable in some circumstances. Most notably, cases identified as closely related are commonly assigned to a single judge for the sake of efficiency (Kahan and McKenzie 2021). Also, case assignment rules and the pool of eligible judges can—and commonly do—vary somewhat depending on the type of case being assigned.[9]

Even within a particular district, the specific judge to which a case is assigned can be of great significance to litigants. In addition to mundane practical considerations (such as the proximity of the judge's courtroom to parties, witnesses, and evidence), judges have wide discretion to control and decide numerous aspects of the cases over which they preside. While it is true that all district courts are bound by the Federal Rules of Civil Procedure, and all judges assigned to a particular district are likewise bound by that district's "local rules" of procedure, individual judges commonly establish additional, detailed procedural norms of their own through the adoption of standardized scheduling orders, discovery orders, and other standing orders that litigants will be expected to follow in all cases assigned to their chambers. These idiosyncratic practices can impact the speed, order, and cost of litigation stages and, therefore, may also influence case outcomes. Judicial assignments plainly can have more direct substantive implications as well. Whether due to judges' professional backgrounds, life experiences, political leanings, or myriad other factors, it is well established in the literature that judges exhibit a great deal of heterogeneity in how they approach and decide the legal issues before them (e.g., Bonica and Sen 2021; Ash et al. 2024), including in the specific context of patent litigation (e.g., Klerman and Reilly 2010; Anderson 2015; Love and Yoon 2017; Anderson and Gugliuzza 2021).

2.2 | Alan Albright and the U.S. District Court for the Western District of Texas

Following nearly two decades in private practice as an intellectual property (IP) litigator, Alan Albright was nominated to a seat on the U.S. District Court for the Western District of Texas in January 2018 and was confirmed by the Senate 8 months later in September. The Western District of Texas spans more than 50 counties in the western and central regions of Texas and is divided by statute into seven divisions: the Austin, Del Rio, El Paso, Midland-Odessa, Pecos, San Antonio, and Waco Divisions (28 U.S.C. §124(d)). Though Albright lived and worked in Austin, Texas, at the time of his nomination, he chose to locate his judicial chambers 100 miles to the north in the district's then-unoccupied Waco courthouse. In doing so, Albright became the Waco Division's sole district judge and, therefore, under case assignment rules in effect at the time, the presumptive choice to preside over all civil cases filed there.[10]

Soon after, patent case filings in Waco increased dramatically.[11] While the WDTX saw just 17 patent case filings per quarter (and the Waco Division just 3 cases per quarter) in the year prior to Albright's arrival, the district received approximately 140 new patent cases per quarter (almost all of which were assigned to Albright) in the 3 years that followed. In 2020, more than 20% of all patent cases filed in the U.S. were brought in Waco, and in 2021, that share grew to 25%. In addition to attracting cases to Waco that would have otherwise been filed in other courts, empirical evidence suggests that Albright's availability induced the filing of hundreds of cases that would not otherwise have been filed at all (Helmers and Love 2025).

As documented by Anderson and Gugliuzza (2021), this influx of cases coincided with—and, indeed, appears to have been the intended result of—efforts by Albright to publicize his arrival in Waco and interest in patent law through press interviews, speeches, and conference attendance. As the local newspaper explained in early 2019, Albright "let it be known in no uncertain terms that he would like his Waco courtroom to become a hub for IP cases."

In addition to inviting patent enforcers to consider filing in Waco, Albright adopted several practices widely regarded as favorable to patent owners. For one, Albright adopted a standing order for patent cases that includes a default case schedule according to which a claim construction hearing (a crucial milestone in patent litigation)[12] is set for 5 months following an initial case management conference and trial is set for 1 year thereafter, meaning that cases are initially scheduled to reach trial within approximately 18 months' time. Conventional wisdom holds that early trial dates are generally advantageous to plaintiffs, and this is particularly true in patent cases due to trial dates' potential effect on defendants' ability to initiate parallel administrative challenges to the patents asserted against them in court. While parties accused of infringement may petition the U.S. Patent and Trademark Office's Patent Trial and Appeal Board (PTAB) to reconsider patent validity, PTAB may decline to review a patent on efficiency grounds and, in recent years, has commonly denied petitions challenging patents involved in court cases that are scheduled to reach trial before the Board can complete its review. Because PTAB reviews require about 18 months to complete, Albright's default case schedule commonly allows patents enforced in Waco to avoid PTAB's scrutiny.

Legal commentary on the benefits of litigating in Waco typically raises three additional considerations. First, to the extent that Albright's trial scheduling practices do not foreclose PTAB challenges, it is said that Albright is unlikely to grant motions to stay litigation pending the outcome of PTAB review. Second, it is said that Albright is reluctant to invalidate patents on subject matter eligibility grounds, even though the cases before him frequently assert patents that appear vulnerable to such challenges.[13] And third, conventional wisdom holds that Albright is loath to grant motions to transfer cases to other courts with a greater geographic connection to the evidence and witnesses involved.[14] In combination, these tendencies (if accurate) increase the odds that firms accused of infringement will incur substantial costs

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litigating in Waco even if they have strong defenses that, absent settlement, ultimately would succeed at PTAB, in trial, or on appeal.[15]

Patent case concentration in Waco—and particularly a perceived concentration of cases filed at Albright's invitation to achieve favorable settlements—soon caught the attention of national policymakers. In November 2021, ranking members of the Senate Judiciary Committee's IP Subcommittee wrote to Supreme Court Chief Justice John Roberts, expressing concern about the "extreme concentration of patent litigation in [the Western District of Texas] and the unseemly and inappropriate conduct that has accompanied this phenomenon," and in January 2022, Chief Justice Roberts directed the U.S. Judicial Conference's Committee on Court Administration and Case Management to review the issue and "work in partnership with Congress in the event change in the law is necessary."

In July 2022, before any legislation was proposed, the WDTX's then-chief judge, Orlando Garcia, unexpectedly revised the district's case assignment rules so that patent cases filed in Waco would no longer be assigned exclusively to Albright. Under the terms of Garcia's July 25, 2022 order, patent cases filed in Waco would thereafter be assigned randomly among the district's 12 active district judges. On December 16, 2022, the district's next chief judge, Alia Moses, issued an order of her own continuing the practice of random patent case assignment, and this practice remains in effect.[16]

3 | Model

To guide our empirical analysis, we first present a simple model of whether and where patentees file lawsuits against alleged infringers. We begin with a theoretical framework of patent assertion litigation, which we adapt to incorporate the multi-venue nature of U.S. patent enforcement and the key characteristics that set Albright apart from other judges. We then derive optimal case allocation for a patentee before and after introducing random case allocation and identify predictions for our empirical analysis.

3.1 | A Simple Framework of Litigation

We model litigation and settlement with symmetric information. Both parties expect the plaintiff to win at trial with probability ω. In case of a win, the plaintiff receives a prize of W. If the plaintiff loses (with probability $1-\omega$), the patent is invalidated with probability $\overline{\mu}$. This invalidation probability is a function of the specific litigation setting (see below). We denote the plaintiff's losses from invalidation (e.g., the loss of future licensing revenues or "licensing value") by N. The patentee incurs litigation costs c_P, while the defendant incurs costs c_D. The patentee's expected payoffs from litigation are $\pi_P = \omega W - (1-\omega)\overline{\mu}N - c_P$; and the defendant's expected payoffs are $\pi_D = -\omega W - c_D$.

Before the case goes to trial, the parties can settle the matter. We model settlement negotiations as random take-it-or-leave-it offers where each party makes a one-time offer with a probability of one-half. The settlement offers must make the receiving party at least as well off as they would be under the expected trial outcome. In equilibrium, each party will extract the full surplus with its respective offer. If the plaintiff brings a negative-expected value suit (with $\pi_P < 0$), the threat to take the case to trial is not credible, and the defendant will reject any $S_P \geq 0$. For positive-expected value suits with $\pi_P \geq 0$, the respective offers are $S_P = \omega W + c_D$ by the plaintiff and $S_D = \omega \mathrm{W} - (1-\omega)\overline{\mu}N - c_P$ by the defendant.

The expected settlement outcome S (i.e., the expected settlement offer) is a settlement payment from the defendant to the plaintiff and is equal to

$$S = \omega \mathrm{W} - \frac{(1-\omega)\overline{\mu}N}{2} + \frac{c_D - c_P}{2} \tag{1}$$

if $\pi_P \geq 0$. If $\pi_P < 0$ and $S = 0$, the plaintiff is indifferent to filing a lawsuit. We assume that, in this case, the plaintiff will not file.

3.2 | Heterogeneity of Venues

Different litigation venues follow different procedures that can facilitate or hinder a defendant's attempt to have the plaintiff's patent invalidated. This observation introduces heterogeneity in the probability of patent invalidation $\overline{\mu}$ (resulting in a loss of N for the plaintiff). In some venues, the probability of invalidation will, therefore, be higher than in others. We assume two different types of venues with probabilities $\mu^L < \mu^H$.

A given venue induces a low invalidation probability with probability ρ and a high invalidation probability with probability $1-\rho$. The plaintiff expects its patent invalidated with probability $\overline{\mu} = \rho\mu^L + (1-\rho)\mu^H$. The expected settlement amount (and the expected value of a lawsuit) is equal to

$$S = \omega W - \frac{(1-\omega)\left[\rho\mu^L + (1-\rho)\mu^H\right]N}{2} + \frac{c_D - c_P}{2} \tag{2}$$

for $\pi_P \geq 0$ (and zero otherwise).

We now introduce two effects on a plaintiff's payoffs of its choice to file a lawsuit with Albright in the WDTX. First, in combination, Albright's scheduling practices, reluctance to grant motions to stay litigation pending the outcome of PTAB review, and resistance to the invalidation of patents on subject eligibility grounds suggest a lower invalidation probability when filing a suit in Waco. We assume that $\rho = 0$ if a case is in a venue other than Waco, so that the probability of invalidation is

$$\overline{\mu}^O = \mu^H \tag{3}$$

If, instead, a case is in front of Albright with certainty, then $\rho = 1$, and the probability of invalidation is μ^L. This is the setting prior to the case assignment order in the WDTX. We denote the probability of invalidation *before* the random case allocation order by

$$\overline{\mu}^{\text{before}} = \mu^L \tag{4}$$

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With ρ representing the probability that Albright is assigned a case (with a lower invalidation probability), the expected probability of invalidation *after* the random case allocation order is

$$\overline{\mu}^{\text{after}} = \rho\mu^L + (1-\rho)\mu^H \tag{5}$$

The second effect stems from potential limitations on the cases that a plaintiff can bring in a specific venue. As introduced above, U.S. law states that a firm generally may be sued for patent infringement in a given district only if the firm maintains an established place of business in the district or the district is located in the firm's state of incorporation. Thus, constraining venue choice to the WDTX may affect the litigation prize a patentee can expect. Suppose the plaintiff has identified several potential infringers but can file only one lawsuit. When filing in the WDTX, the prize is W^L. When filing in another district, the patentee can choose from a set of V venue-infringer combinations, each with a prize W_i. Denote this set by $\mathbb{W} = \{W_i\}_1^V$. A patentee choosing to file outside the WDTX will select the best venue with prize $W^H \equiv \max \mathbb{W}$.[17]

Finally, because our empirical analysis focuses on the litigation behavior of plaintiffs already active in the WDTX, we introduce switching costs $k \geq 0$ in our model. In practice, such costs may include, for example, relocation costs (e.g., the cost of renting office or storage space in the new forum), additional travel expenses (if the new forum is harder for witnesses, experts, and counsel to reach), and costs associated with securing local counsel in the new forum. At the time of settlement negotiations, these costs are sunk and do not enter into the expression of the settlement amount.

Collecting terms, we summarize the expected values of lawsuits filed in the WDTX and other venues as follows:

$$S^{\text{before}} = \omega W^L - \frac{(1-\omega)\mu^L N}{2} + \frac{c_D - c_P}{2} \tag{6}$$

$$S^{\text{after}} = \omega W^L - \frac{(1-\omega)\left[\rho\mu^L + (1-\rho)\mu^H\right]N}{2} + \frac{c_D - c_P}{2} \tag{7}$$

$$S^O = \omega W^H - \frac{(1-\omega)\mu^H N}{2} + \frac{c_D - c_P}{2} - k \tag{8}$$

These payoffs apply to positive-expected value lawsuits with $\pi_P^O \geq 0$, $\pi_P^{\text{before}} \geq 0$, and $\pi_P^{\text{after}} \geq 0$. If any of these inequalities are violated, the plaintiff will not file a lawsuit in the respective venues.

3.3 | Case Allocation

The patentee will file a case in a given venue (WDTX or elsewhere) if it expects non-negative payoffs from the venue and the respective payoffs are higher than in the alternative venue. It does expect positive payoffs if $\pi_P^O \geq 0$, $\pi_P^{\text{before}} \geq 0$, or $\pi_P^{\text{after}} \geq 0$.[18] Suppose these participation constraints are satisfied for all venues (i.e., not filing a case is strictly dominated).

Before random assignment of judges, the plaintiff files a suit in the WDTX if $S^{\text{before}} \geq S^O$ or

$$\frac{(1-\omega)N}{2}\left[\mu^H - \mu^L\right] \geq \omega\left[W^H - W^L\right] - k \tag{9}$$

The plaintiff files in the WDTX when the benefits from lower probabilities of invalidation more than outweigh the costs associated with the potential restrictions on which cases qualify for the venue (i.e., if $W^H > W^L$). If no such restrictions exist (i.e., if $W^H < W^L$), then there is no downside to filing in the WDTX; the patentee will always choose this venue (as long as the participation constraint, $\pi_P^{\text{before}} \geq 0$, is satisfied).

The condition for filing a lawsuit in the WDTX *after* the introduction of random judge assignment is $S^{\text{after}} \geq S^O$ or

$$\rho \cdot \frac{(1-\omega)N}{2}\left[\mu^H - \mu^L\right] \geq \omega\left[W^H - W^L\right] - k \tag{10}$$

With randomization, the benefits from lower invalidation probabilities materialize only when Albright presides over the case, now with probability ρ. The result is a lower incentive to file in the WDTX *after* randomization.

We illustrate the patentee's venue choice in Figure 1.[19] In both panels, we vary the litigation prize W^H that the patentee can achieve outside the WDTX (relative to the prize W^L in the WDTX) on the horizontal axis. In panel (a), we vary on the vertical axis the loss N from patent invalidation relative to the litigation prize in the WDTX (keeping the probabilities of invalidation, μ^L and μ^H, constant). In panel (b), we vary on the vertical axis the probability of invalidation μ^H outside the WDTX (keeping the loss from invalidation and the probability of invalidation in the WDTX constant).

The red, white, and blue-shaded areas are parameter combinations with cases in the WDTX before the random case allocation order. In the red-shaded area, the patentee files cases in the WDTX both before *and* after the order; in the white area, the patentee moved to an outside venue after the order; and in the blue-shaded area, the patentee does not file a case after the order. The gray areas are parameter combinations for which the patentee does not file a case in the WDTX before the order (either because no case is filed or pre-order cases are filed outside the WDTX).

3.4 | Predictions

Finally, we use our model to derive theoretical predictions to test in our empirical analysis. Figure 1 and the underlying participation constraints and allocation conditions in Equations (9) and (10) highlight specific factors that drive judge shopping. We summarize our main predictions in this section with a focus on *venue-specific factors* that are directly or indirectly affected by the introduction of random case assignment.

First, the effect of random case assignment on a plaintiff's decision to file suit in the WDTX is straightforward:

Prediction 1. *Random case allocation (with $\rho < 1$) lowers the plaintiff's incentive to file a case in the WDTX.*

We see this from a comparison of the plaintiff's decision to file in the WDTX *before* random allocation (in Equation 9) and *after* (in

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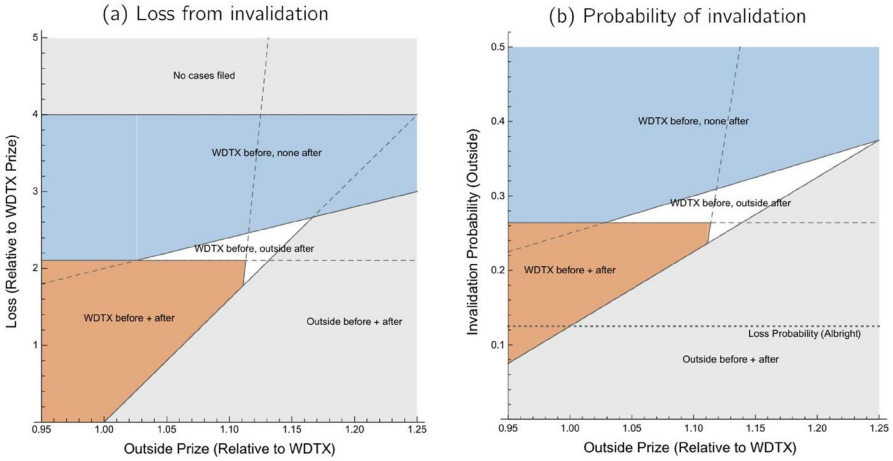

FIGURE 1 | Patentee's case allocation. For the calibration of the model, we use $W^L = 1$ for the litigation prize in the WDTX, $\omega = 1/2$ for the plaintiff's probability of winning at trial, $c_P = c_D = 1/4$ for the parties' respective litigation costs, $k = 1/20$ for the plaintiff's venue switching costs, $\rho = 1/10$ for the probability of assigning Albright after the random case allocation order, $N = 2$ (varying in panel a) for the loss from invalidation, $\mu^L = 1/8$ for the probability of invalidation under Albright, and $\mu^H = 2/8$ (in panel b) for the probability of invalidation in all other venues. In panel (b), the dotted horizontal line depicts the probability of invalidation in the Waco Division of the WDTX (under Albright). [Color figure can be viewed at wileyonlinelibrary.com]

Equation 10). With randomization, the benefits from lower invalidation probabilities (under Albright) materialize with probability $\rho < 1$, lowering the plaintiff's incentive to file in the WDTX (relative to before). Moreover, as ρ decreases (and the probability of an invalidation increases), the plaintiff is less likely to file a case in the WDTX, particularly for higher values of W^H (i.e., the relative advantage of an outside venue).

One of our venue-specific factors is related to the loss from invalidation. Figure 1 depicts, on the vertical axes of panels (a) and (b), the case allocation decision for varying values of invalidation loss N and outside invalidation probability μ^H. After randomization, and as long as $\rho > 0$, higher values of N (and μ^H) make the WDTX increasingly less attractive than an outside venue. But this holds only if the plaintiff's participation constraints are satisfied.

To see this, consider two different ranges of the outside-venue prize W^H (see Figure 1a). For low W^H (e.g., below 1 on the horizontal axis), an outside venue has no prize advantage. As N increases (moving north in the picture), the plaintiff no longer brings the case after randomization (from red to blue) because $\pi_P^{\text{after}} < 0$. For intermediate values of W^H (e.g., a value of 1.1 on the horizontal axis, implying an outside prize that is 10% above the WDTX prize), an increasing value N eventually violates the participation constraint for the WDTX. Because of W^H, the plaintiff files the case outside the WDTX before dropping the case for even higher values of N (from red to white to blue).[20]

Prediction 2. *Higher losses from invalidation (i.e., higher values of N or μ^H) lead to fewer case filings in the WDTX. For a sufficiently large prize advantage of the outside venue, some of these cases move to an outside venue.*

Our second venue-specific factor captures a potential prize advantage of a venue outside the WDTX when $W^H > W^L$. A higher value of W^H makes a move away from the WDTX more attractive to the plaintiff. In both panels of Figure 1, we see that an increase of W^H (moving to the right on the horizontal axes) reduces the number of cases filed in the WDTX. For low values of invalidation loss N or invalidation probability μ^H, cases both before and after randomization move away from the WDTX (from red to gray). For higher values of N or μ^H, initially post-randomization, and for higher values of W^H also pre-randomization, cases move away from the WDTX (from red to white to gray).

Prediction 3. *A higher prize advantage from litigation outside the WDTX (i.e., higher values of W^H relative to W^L) leads to fewer case filings in the WDTX.*

Prediction 1 captures the direct effect of random case assignment on case filings in the WDTX, whereas Predictions 2 and 3 speak to the underlying mechanisms that induce potential plaintiffs to file cases in the WDTX or shift to another venue: the increased loss from invalidation in the WDTX and the relative attractiveness of litigation outside the WDTX.

4 | Empirical Approach

Our empirical approach proceeds in three parts. First, we estimate the overall impact of the random assignment order on patent case filings in the WDTX. Second, we utilize the model presented above to investigate the drivers of the observed change in WDTX patent case filings. And third, we rely on the random assignment of patent cases filed in the WDTX's Waco Division to analyze Albright's causal impact on litigation metrics identified as central to his popularity with patent plaintiffs.

4.1 | Effect of Random Case Assignment Order

Our approach begins with an assessment of the overall impact of random case assignment on patent case filings. This analysis not only informs us about the impact of imposing random case assignment on litigation, but also provides direct evidence of judge

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shopping in the WDTX. We use a difference-in-differences approach at the court-month level, where we ask whether the number of cases filed in the WDTX changed following the random case assignment order relative to the number of cases filed in all other district courts during the same time period. Specifically, we define the following specification:

$$\begin{aligned}\text{case}_{vt} = \alpha + \beta_1 \text{WDTX}_v + \beta_2 \text{WDTX}_v \times I(t \geq Jul2022) + \\ + \gamma I(t \geq Jul2022) + \delta X_{vt} + \theta_t + \theta_v + \epsilon_{vt}\end{aligned} \tag{11}$$

where case_{vt} represents the number of cases filed in district v at time t; WDTX_v is a dummy variable that is equal to one if a case was filed in the WDTX; $I(t \geq Jul2022)$ is a dummy variable that is equal to one starting in July 2022 when Chief Judge Garcia issued the random case assignment order; X_{vt} denotes a set of time-varying district court-level controls (described in Supporting Information);[21] θ_t captures month-by-year fixed effects that account for time-varying shocks to litigation; θ_v are fixed effects for all other district courts that account for unobserved, time-invariant, court-level characteristics; ϵ_{vt} is a random error term; and standard errors are clustered at the court-level. Coefficient β_2 captures the difference in case filings in the WDTX before and after the introduction of random case allocation relative to filings in all other district courts. Since the available empirical evidence shows that Albright disproportionately attracted NPE cases to Waco (Helmers and Love 2025), we additionally consider whether the transition to random case allocation had a differential impact on NPEs. We do this by estimating specification (11) a second time using the subsample of cases brought by NPEs.

As summarized in Prediction 1, our model suggests that changes in the quantity of patent assertion in the WDTX following the court's transition to random case assignment should be driven by resulting changes in ρ, the likelihood that patent cases would be assigned to Albright. Specifically, the model predicts that a lower value of ρ (i.e., a lower probability that patent enforcers will benefit from Albright's favorable handling of their cases) will reduce case filings in the WDTX. Since we observe ρ, which was exogenously determined by randomization, we can study this mechanism directly with a specification that uses the observed share of Waco Division patent cases assigned to Albright as the treatment variable. We do so using the following equation:

$$\text{case}_{vt} = \alpha + \beta_1 \text{Case share assigned to Albright}_{vt} + \delta X_{vt} + \theta_t + \theta_v + \epsilon_{vt} \tag{12}$$

where *Case share assigned to Albright*$_{vt}$ represents one minus the observed share of patent cases filed in the WDTX's Waco Division that were assigned to Albright in month t, and all other variables are defined as they were in specification (11). Once again, we estimate specification (12) once using our full sample and again using the subsample of NPE cases to assess whether changes in ρ had a differential impact on NPEs.

4.2 | Judge-Shopping and Selection

Next, we analyze selection into judge-shopping by examining factors that may have driven changes in WDTX patent case filings since the adoption of random case assignment. First, we assess the extent to which any changes in case filings were driven by changes at the extensive and intensive margins, that is, the extent to which a change in case filings is attributable to a change in the number of patent enforcers willing to file suit there after July 2022 or, instead, to a change in the number of cases filed after July 2022 by patent enforcers.

To do so, we estimate how patent enforcers that were active in the WDTX prior to July 2022 changed their filing behavior following the court's transition to random case assignment using the following specification:

$$\text{case}_{it} = \alpha + \beta \cdot I(t \geq JuI2022) + \theta_t + \theta_i + \epsilon_{it} \tag{13}$$

where $\boldsymbol{case}_{it}$ is a measure of plaintiff i's assertion activity in month t, and θ_i are plaintiff fixed effects. To capture the changes at the extensive margin, we estimate specification (13) when $\boldsymbol{case}_{it}$ is a binary variable that is equal to 1 if plaintiff i filed at least one patent case in the Waco Division in month t and otherwise equal to 0. To capture changes at the intensive margin, we define $\boldsymbol{case}_{it}$ instead as a continuous variable that is equal to the number of patent cases that plaintiff i filed in the Waco Division in month t. These definitions restrict our sample to cases filed in the WDTX's Waco Division and thus focus our analysis on changes over time in case-filing behavior that was specifically directed at Albright. In addition, we assess whether NPEs may have been differentially affected by estimating specification (13) when $I(t \geq Jul2022)$ is interacted with a dummy variable that is equal to one if plaintiff i is an NPE.

Returning to the predictions of our theoretical model, we additionally assess the extent to which the reduction in patent assertion in the WDTX was driven by the factors suggested by Predictions 2 and 3: namely, variation across infringement claims with respect to potential losses from patent invalidation and outside assertion options. To do so, we define the following specification:

$$\text{postorder}_i = \alpha + \beta X_i + \epsilon_i \tag{14}$$

where postorder_i is equal to one if case i was filed after the transition to random case assignment, and X_i denotes empirical measures of the factors identified by Predictions 2 and 3.

To test Prediction 2, we define measures of a plaintiff's expected losses from invalidation of the patents asserted in a given case (N) and the likelihood that the patents asserted in a given case are invalid (μ^H). To capture N and μ^H, respectively, we adopt patent characteristics recognized in the literature as proxies for patent value (i.e., the value of the patented technology) and quality (i.e., the patent's ability to withstand a significant validity challenge). With respect to value (and, thus, loss associated with invalidation), we use patent family size and counts of forward citations and relevant technology classifications. The pursuit of a large family of related patents across multiple national markets suggests that the patentee expected the underlying technology to be used widely (geographically speaking) and with sufficient strategic value to justify a relatively large expenditure on patent prosecution (e.g., Harhoff et al. 2003; van Pottelsberghe de la Potterie and van Zeebroeck 2008). In a similar vein, a relatively large number of forward citations and relevant technology classifications additionally suggests that the patented technology

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is potentially relevant to a relatively wide array of follow-on innovations and a relatively diverse set of applications (e.g., Lerner 1994; Hall et al. 2005).

With respect to quality (and, thus, a patent's likelihood of validity), we use a number of patent characteristics that reflect the thoroughness of the patent's initial examination by the USPTO. They are: overall allowance rate of the examiner assigned to the application from which the patent issued (which serves as a rough proxy for the examiner's leniency); total backward citation count (which serves as a proxy for the number of prior art references that were considered during examination); counts of backward citations to non-patent literature and information disclosure statements (which serve as rough proxies of the thoroughness of both the patentee's and examiner's searches for relevant prior art); and change in the number of independent claims between publication and issuance (as a proxy for the degree to which the patent's overall claim scope was narrowed during examination) (e.g., Mann and Underweiser 2012; Marco et al. 2019; Love et al. 2019). We additionally use the number of requests for continued examination (RCEs) filed during a patent's prosecution (as a proxy for circumvention of proper rejections and attempts to claim new matter) and a binary variable that indicates whether a patent was assigned to a "software" related technology classification (as a proxy for vulnerability to invalidation on subject matter eligibility grounds following the Supreme Court's ruling in *Alice v. CLS Bank*[22]) (Love et al. 2019).

Similarly, to test Prediction 3, we define measures of a plaintiff's ability to pursue substitute litigation elsewhere in the country (W^H). We capture W^H in two ways. First, we use a selection of defendant characteristics, including firm size, firm age, a binary indicator of whether the firm is publicly traded, and a binary indicator of whether the firm operates in the software industry. Firm size and age serve as rough proxies for the likelihood that a firm has one or more physical locations outside the WDTX, which would allow the plaintiff to sue them in other districts. Similarly, the overwhelming majority of publicly traded U.S. firms are incorporated in Delaware and, thus, may properly be sued in the District of Delaware, a very common outside option to WDTX. In contrast, software firms generally lack manufacturing, distribution, and retail facilities, and therefore may be subject to suit in a relatively small number of districts that incorporate major tech hubs. We additionally proxy W^H using NPE plaintiff size. Larger NPEs are generally more litigious and, thus, may have relatively more experience litigating in outside venues.

4.3 | Albright's Effect on Litigation and Outcomes

Finally, we leverage the random allocation of Waco Division patent cases to determine what factors set Albright apart from his peers and, thus, may explain why he is so strongly preferred by plaintiffs. For this purpose, we estimate Albright's causal effect on motions practice, case scheduling, and case outcomes (in the form of settlement).

To assess Albright's impact on motions and scheduling, we restrict our sample to the set of cases assigned on a random basis since July 25, 2022, and estimate the following specification at the case level:

$$\text{mechanism}_i = \alpha + \beta \text{Albright}_i + \epsilon_i \tag{15}$$

where mechanism_i is one of the following: (i) a dummy variable that is equal to one if a motion to transfer was filed in case i; (ii) a dummy variable that is equal to one if a motion to stay pending PTAB review of an asserted patent was filed in case i; (iii) a dummy variable that is equal to one if a motion to invalidate an asserted patent on subject matter eligibility grounds was filed in case i; (iv) a dummy variable that is equal to one if the defendant initiated a parallel PTAB challenge; (v) the number of days between case i's filing date and the earliest date on which case i was set for a claim construction (i.e., *Markman*) hearing; or (vi) the number of days between case i's filing date and the earliest date on which case i was set for trial.

To assess Albright's impact on settlement, we adopt an analogous approach and estimate the following specification:

$$\text{settle}_i = \alpha + \beta \text{Albright}_i + \epsilon_i \tag{16}$$

where we again restrict our sample to cases assigned at random and define settle_i as either (i) a dummy variable that is equal to one if case i settled on or before August 31, 2025, or (ii) the number of days between case i's filing and settlement dates. Patent infringement cases overwhelmingly end in settlement, and both conventional wisdom and empirical evidence suggest that NPEs are particularly likely to settle in the early stages of litigation, potentially because substantive rulings risk the invalidation of weak patents or the foreclosure of broad claim interpretations (Bessen and Meurer 2014; Cohen et al. 2016).

5 | Data

Our empirical approach calls for the collection of data on patent case filings, the characteristics of litigants and patents involved in those cases, and information on how those cases were litigated once filed. Our source for basic case-level data is Maxval's Litigation Databank, which provides a comprehensive list of patent case filings, the date on which each case was filed, the district and division in which it was filed, the patent(s) asserted, the name of the entity enforcing those patents, and the names of all parties accused of infringement.[23] Our sample includes all cases filed from July 2017 through December 2024.[24]

To capture variation among the parties involved in these cases, we add firm characteristics drawn from four sources. First, we determine each patent enforcer's status as a "nonpracticing entity" or operating technology company by cross-referencing three sets of case-level patent enforcer classifications: Stanford Law School's NPE Litigation Database, RPX Insight, and Unified Patents' Litigation Case List. We also use RPX Insight to identify NPEs that are part of a larger group of related entities controlled by a parent and measure the size of each group by counting its known subsidiaries or affiliates. In addition, we extract firm-level characteristics for all defendants, including size and ownership type, from Bureau van Dijk's Orbis database.

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To capture variation among the patents asserted in our sample of litigation, we extract standard patent-level characteristics, including citation metrics and technology classifications, from EPO's Patstat database. We also source a variety of patent-level information, including examination metrics and patent examiner details, from the USPTO's PatentsView and PatEx databases.

Our principal source of data on litigation events is DocketNavigator. Using DocketNavigator's case search functionality, we determine for each case in our sample which judge was initially assigned to the case, as well as whether the case was subsequently reassigned to another judge and, if so, when and to whom. We also determine whether each case remains active or was terminated, and for each terminated case, we identify whether the case was terminated due to settlement and, if so, the date on which the case was settled. Using DocketNavigator's database of court filings, we identify all cases in which an accused infringer filed a contested motion to transfer the case to another district, motion to stay the case pending the outcome of a PTAB challenge, or motion to invalidate an asserted patent on the grounds that the patent claims ineligible subject matter.[25] In addition, we use Docket Navigator's database of docket entries to identify the earliest scheduled *Markman* (i.e., claim construction) hearing date and trial date (if any) reported in each case's docket text. To identify parallel PTAB challenges, we rely on a different source, Unified Patents' Litigation Portal, from which we source basic data on PTAB proceedings, including the parties involved and patents challenged. Our data on all litigation events is current as of August 31, 2025.

Finally, we determine based on a review of case dockets whether cases filed in the Waco Division of the WDTX on or after July 25, 2022 were assigned at random pursuant to Judge Garcia and Judge Moses's respective orders or, instead, were assigned to a particular judge who had previously been assigned a "related case," that is, a case filed by the same patent enforcer to assert at least one of the same patents. During the period of our study, docket entries reporting Western District case assignments commonly indicate on what basis the case was assigned; for example, some entries note that cases were assigned "randomly," while others indicate that the case was assigned "directly ... due to previously filed cases ... having same Plaintiff and patent case number(s)."[26] In an abundance of caution, we additionally treat as "related" (i.e., as non-randomly assigned) all cases without such a note that were both filed prior to May 30, 2024[27] and assigned to a judge already presiding over an active case involving the same patent enforcer and at least one of the same asserted patents.

6 | Results

6.1 | Effect of Random Case Assignment Order

We begin the presentation of our results with a descriptive assessment of case filing and assignment trends across the period covered by our study. Figure 2 plots patent case filings in the WDTX on a monthly basis from July 2017 through December 2024. On average, patent enforcers filed fewer than six cases per month in the Western District of Texas prior to Albright's arrival in September 2018. Thereafter, patent case filings rose sharply to an average of more than 76 per month (more than a quarter of all patent cases filed each month in the U.S.) in the year prior to Judge Garcia's order. In the period following the court's adoption of random case assignment, the solid black line plots monthly patent case filing counts that exclude related cases which may have been assigned on a non-random basis. The dashed gray line plots total case counts, including related cases. To ensure that the analyses that follow are restricted to cases assigned at random, we ignore these related cases.[28]

Figure 3 plots the share of patent cases filed in the Waco Division of the WDTX that were assigned to Judge Albright from July 2021 onward in 90-day bins.[29] As expected, patent cases filed in Waco were assigned to Albright with certainty prior to Judge Garcia's July 2022 order. In contrast, Albright received

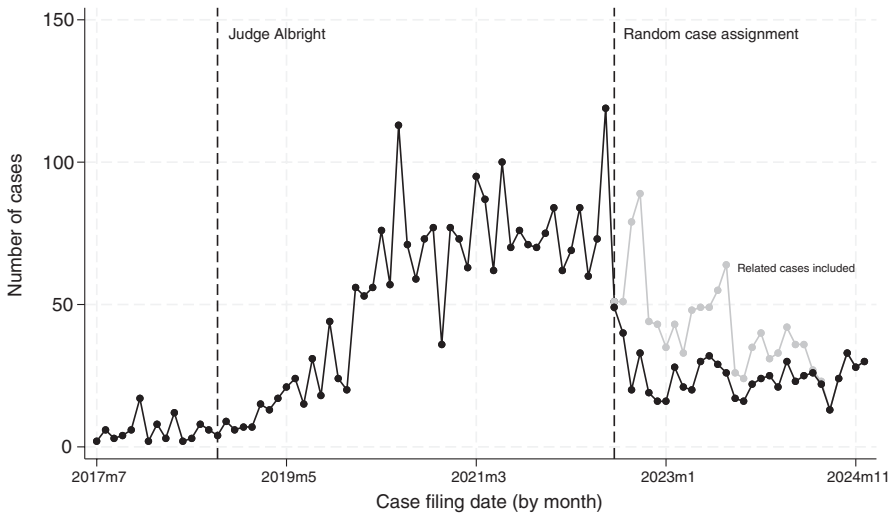

FIGURE 2 | Patent case filings in WDTX (by month). The figure shows the number of patent infringement cases filed in the Western District of Texas (WDTX) by month. Judge Albright was sworn in as judge of the WDTX on September 18, 2018. The random case assignment order was issued on July 25, 2022. Related cases are cases that were assigned (on a non-random basis) to a judge who was already presiding over an active case involving the same patent enforcer and at least one of the same asserted patents.

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approximately 11% of (random) case assignments in the period that followed.

Figure 4 compares Albright's case assignments with those of his fellow WDTX judges. Figure 4a plots the absolute number of patent cases filed in Waco that were randomly assigned to Albright or to another West Texas judge instead. Figure A1 in Supporting Information presents corresponding plots of monthly patent case counts across WDTX divisions and judges. In addition to documenting the dramatic impact of random case assignment on the number of (unrelated) patent cases that were filed in Waco and assigned to Albright, these graphs confirm that WDTX patent case filings were almost entirely allocated to Albright prior to July 2022 and also that patent enforcers did not react to Judge Garcia's order by shifting case filings from Waco to Austin or another WDTX division. In contrast, as shown in Figure 4b, unrelated patent case filings in Waco have since been assigned across judges in reasonably comparable shares.[30]

To more formally illustrate the effect of random case assignment on Waco patent case filings, we additionally compare monthly patent case filings in the WDTX and a synthetic control "court" constructed using monthly patent case filing patterns in the next 10 most popular districts with patent enforcers. Corresponding plots are provided in Figure A2a in Supporting Information. These plots show that filings in our synthetic control court track those in the Western District of Texas reasonably well prior to the random case assignment order and thereafter remain largely flat, while those in WDTX fall sharply.[31]

We also assess the dynamics of the drop in WDTX patent case filings by estimating the leads and lags associated with the following specification: $$\text{case}_{vt} = \alpha + \sum_t \beta_t \left(\text{WDTX}_v \times D_t\right) + \theta_t + \theta_v + \epsilon_{vt}$$ where D_t are month-by-year dummies with $t = 2021m7$, $2021m8$, ..., $2024m12$ with $2022m7$ as the omitted category. The results of this analysis, which are plotted in Figure A2b in Supporting Information, suggest that the drop in case filings occurred immediately after the order was implemented. They suggest some anticipation effect as well; however, we note that the increase in Waco case filings observed in June 2022 was likely unrelated to the coming shift in case assignment practices, as there is no evidence that plaintiffs were aware prior to the release of Judge Garcia's order on July 25, 2022[32] and contemporaneous reports link this spike instead to idiosyncratic filing behavior by just one NPE group at the end of the fiscal quarter.[33]

Turning now to the results of our formal empirical analysis, Table 1 presents the results obtained when we estimate specifications (11) and (12) using OLS. As shown in column (1), the

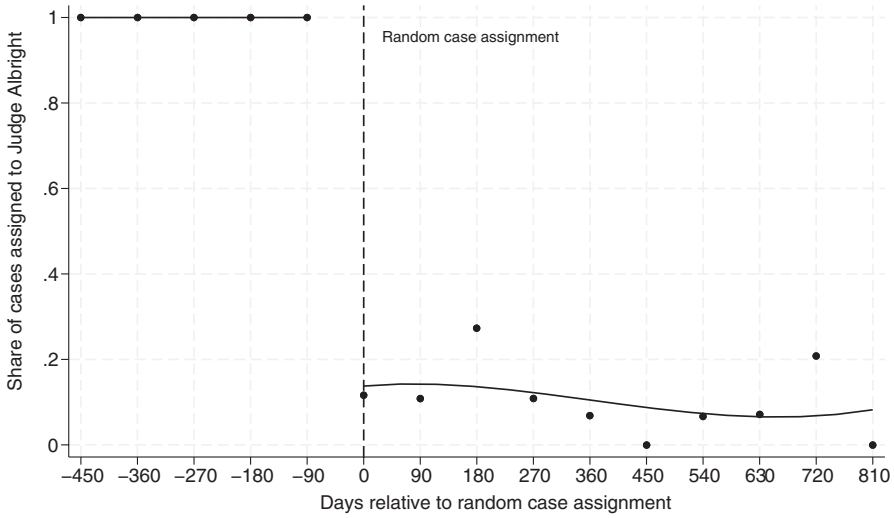

FIGURE 3 | Share of cases filed in Waco Division assigned to Albright. The figure shows the share of patent cases filed in the Waco Division of the Western District of Texas (WDTX) assigned to Albright before and after the random case assignment order issued on July 25, 2022.

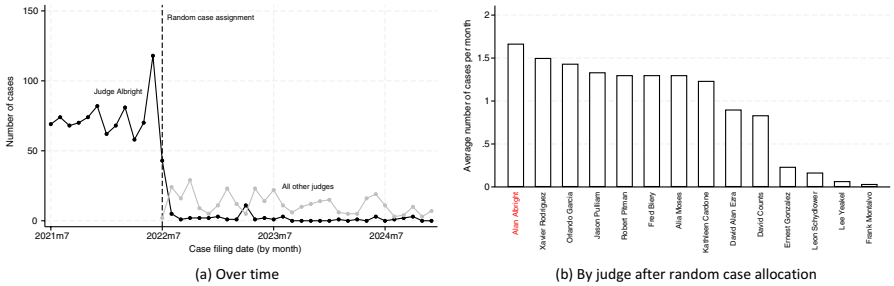

FIGURE 4 | Patent case filings in Waco Division (by judge). Panel (a) shows the number of cases filed in the Waco Division of the Western District of Texas (WDTX) allocated to Albright and all other eligible judges. Panel (b) shows the average number of cases per month assigned to a given judge following the random case assignment order issued in July 2022. In panel (a), "All other judges" includes the judges shown in panel (b). [Color figure can be viewed at wileyonlinelibrary.com]

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TABLE 1 | Effect of random case allocation on patent case filings.

	All		NPE	
	(1)	(2)	(3)	(4)
WDTX × $I(t \geq Jul2022)$	−51.043***		−37.348***	
	(0.697)		(1.099)	
Case share Albright × $I(t \geq Jul2022)$		−51.501***		−34.256***
		(0.738)		(0.982)
Controls	Yes	Yes	Yes	Yes
Court FE	Yes	Yes	Yes	Yes
Case filing month FE	Yes	Yes	Yes	Yes
R^2	0.848	0.842	0.783	0.771
Observations	3528	3528	2268	2268

Note: Dependent variable: number of patent cases filed in a given month. Controls listed in Supporting Information. The sample consists of 84 district courts. Unit of observation at the case-month-level; OLS coefficients shown; robust standard errors clustered at the case-level; *significant at 10%, ** at 5%, *** at 1%.
Abbreviations: FE, fixed effects; NPE, non-practicing entity.

coefficient on the binary $\mathsf{WDTX}_v \times I(t \geq Jul2022)$ interaction term used in specification (11) is highly statistically significant and implies that the introduction of random case assignment reduced patent case filings in the Western District of Texas by an average of approximately 51 cases per month. Given that the district received an average of 76 new patent cases per month prior to the random case assignment order, this represents a sizeable drop of approximately 67%.[34] Column (2) presents the results obtained when we use instead a continuous variable based on the observed probability that new (unrelated) cases were assigned to Albright (as plotted in Figure 3). The coefficient reported here implies that the 89-percentage-point reduction in plaintiffs' odds of drawing Albright (i.e., the drop from a probability of 1 prior to July 2022 to 0.11 after) led to an estimated decrease of 51.5 cases per month, an effect size very similar to the one produced by specification (11). Columns (3) and (4) report the results obtained when we repeat these regressions for the subsample of NPE cases. These coefficients suggest that the court's adoption of random case assignment reduced NPE filings by an average of 37 cases per month when we use a binary interaction term and 34 cases per month when we use a continuous variable instead. In relative terms, these results correspond to a drop of approximately two-thirds, an effect that is virtually identical to the percentage drop observed in the overall sample.

The large drop in patent case filings that we observe in the post-order period strongly suggests that plaintiffs' ability to direct their cases to Albright with certainty drove the concentration of cases filed in Waco prior to July 2022.[35] Considered in the context of our model, Table 1 is also consistent with Prediction 1, which states that WDTX case filings will fall when cases are randomly assigned because doing so reduces the likelihood that plaintiffs receive the validity-related benefits of litigating before Albright. In Section 6.3, we explore the underlying mechanisms by which Albright's handling of cases lowers invalidation probabilities and increases his appeal to patent enforcers.

6.2 | Judge-Shopping and Selection

Our next set of results assesses the factors that drove the substantial reduction in patent case filings documented by the analysis above. We begin with descriptive results that disaggregate the overall effect of random case allocation across three plaintiff types: (i) patent enforcers that filed suit in Waco both before and after the introduction of random case allocation, (ii) patent enforcers that filed suit in Waco prior to random case allocation, but not after, and (iii) patent enforcers that filed suit in Waco after the introduction of random case allocation, but not before.[36] As depicted in Figure 1 above, our model shows that a patent enforcer may fall into any one of these three categories depending on the strength and value of its patent rights and its ability to litigate in multiple districts.

Figure 5a,b plots pre- and post-July 2022 litigation activity of patent enforcers in each group. These plots suggest that the post-July 2022 reduction in Waco case filings is predominantly explained by the large number of patent enforcers in group (ii), that is, by a reduction in the number of patent enforcers that are active in West Texas. While some prior patent enforcers continue to file suit in Waco in late 2022 and beyond (group i), they are relatively small in number.

We assess in greater detail in Supporting Information whether the patent enforcement activity "missing" from Waco after July 2022 represents a reduction in patent assertion or instead a shift to other courts. In Figure A5 in Supporting Information, we plot case filings by each group of patent enforcers in all other U.S. district courts. In addition, we plot in Figure A6 in Supporting Information monthly counts of cases filed outside the WDTX that assert one or more patents that were also enforced in Waco and, further, distinguish qualifying cases brought in the EDTX, an obvious potential substitute forum that has been very popular with patent enforcers (and especially NPEs) for well over a decade (Love and Yoon 2017).[37] These plots reveal no clear evidence of an uptick in patent assertion outside the WDTX

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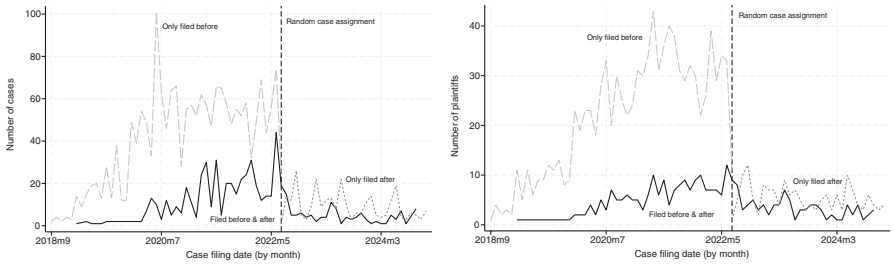
caused by an exodus of cases from Waco and, thus, suggest that the predominant effect of random case allocation was a cessation, rather than reallocation, of patent enforcement efforts. Considered in the context of our model, these results suggest that patent cases filed in Waco prior to July 2022 tend to assert patents of relatively high value and relatively low quality, that is, infringement claims that fall within the blue-shaded areas of Figure 1a,b.

Turning now to our formal empirical analysis of case filing changes at the extensive and intensive margins, Table 2 presents the results obtained when we estimate specification (13) at the plaintiff level with month and plaintiff fixed effects included. Columns (1) and (2) address the extensive margin—the likelihood that a given patent enforcer files at least one suit in Waco after the introduction of random case assignment—while columns (3) and (4) address the intensive margin—the frequency with which a given patent enforcer files suit in Waco once random case assignment begins. Our results indicate that the overall reduction in case filings shown in Figure 2 is a combination of significant reductions along both margins. As shown in column (1), the average monthly likelihood that a patent enforcer filed at least one (unrelated) case in Waco fell by 69% in the post-order period. In addition, as shown in column (3), monthly counts of (unrelated) cases filed per patent enforcer dropped even further, by an average of 78% in the months following the introduction of random case allocation. As shown in columns (2) and (4), our results also suggest that both effects were marginally stronger among NPEs.[38]

Next, we consider how our empirical results square with our predictions concerning the drivers of judge-shopping as stated in Predictions 2 and 3. Table 3 presents the results obtained when we estimate specification (14) using OLS. Table A1 in Supporting Information presents a corresponding descriptive comparison of each measure's average value in cases filed before and after July 25, 2022.

On the whole, these results are broadly consistent with both Predictions 2 and 3. Recall from Section 3.4 above that Prediction 2 indicates that patents covering technology of relatively high value (i.e., patents with relatively higher losses associated with invalidation) and patents that received relatively less scrutiny from the USPTO (i.e., patents with a relatively high risk of invalidation) will be asserted less often following the introduction of random allocation. Consistent with this prediction, our results indicate that patents asserted after July 2022 are members of significantly smaller families, have fewer forward citations,



(a) Number of cases (b) Number of plaintiffs

FIGURE 5 | Case filings by plaintiff type. Panel (a) shows the number of cases filed by plaintiff type. Panel (b) shows the number of distinct plaintiffs by plaintiff type. Plaintiff types are defined as follows: (i) plaintiffs that file cases before as well as after the random case assignment order, (ii) plaintiffs that file cases before the random case assignment order but stop doing so afterward, and (iii) plaintiffs that only file cases after the order came into effect. The sample consists only of cases filed in the Waco Division of the Western District of Texas (WDTX).

TABLE 2 | Effect of random case allocation on patent case filings at plaintiff-level.

	Case 0/1		In # of case	
	(1)	(2)	(3)	(4)
$I(t \geq Jul2022)$	−0.687***	−0.671***	−0.780***	−0.748***
	(0.007)	(0.010)	(0.007)	(0.010)
NPE × $I(t \geq Jul2022)$		−0.021*		−0.041***
		(0.010)		(0.014)
Plaintiff FE	Yes	Yes	Yes	Yes
Case filing month FE	Yes	Yes	Yes	Yes
R^2	0.068	0.066	0.052	0.047
Observations	25,201	25,201	25,201	25,201

Note: Dependent variables: in columns (1) and (2), a dummy variable that is equal to one if a plaintiff filed a case in a given month; in columns (3) and (4), the log number of patent cases filed by a given plaintiff in a given month. Unit of observation at the plaintiff-month level; OLS coefficients shown; robust standard errors clustered at the plaintiff level; *significant at 10%, ** at 5%, *** at 1%.
Abbreviations: FE, fixed effects; NPE, non-practicing entity.

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TABLE 3 | Selection into assertion post-random assignment order.

	(1)	(2)
Plaintiff characteristics		
NPE	−0.013	−0.010
	(0.198)	(0.196)
NPE size	0.001	0.002
	(0.001)	(0.001)
Defendant characteristics		
Size	0.167	0.163
	(0.118)	(0.117)
Publicly traded	−0.427**	−0.415**
	(0.187)	(0.186)
Age	0.0004	0.00006
	(0.002)	(0.002)
Software	0.394**	0.413**
	(0.190)	(0.190)
Patent characteristics		
Software patent	−0.057	−0.030
	(0.152)	(0.152)
Patent family size	−0.046***	−0.045***
	(0.013)	(0.013)
Forward citations	−0.004**	−0.004**
	(0.002)	(0.002)
Backward citations	0.001***	0.001**
	(0.0004)	(0.0005)
Non-patent lit. citations	0.0006	0.0001
	(0.001)	(0.001)
IPC class count	−0.183***	−0.185***
	(0.062)	(0.064)
Diff. indep. claim count	0.033*	0.033*
	(0.017)	(0.018)
Examiner allowance rate	−1.136***	−1.310***
	(0.397)	(0.378)
No. information disclosure statements	−0.012	−0.009
	(0.012)	(0.012)
No. requests for continued examination	−0.313**	−0.305**
	(0.150)	(0.143)
Technology FE	No	Yes
Observations	7659	7659

Note: Dependent variable is equal to one if a case was filed post-random assignment order; Technology FE: fixed effects represent broad IPC-based technology areas including electrical engineering, instruments, chemistry, pharmaceuticals, mechanical engineering, machinery, and other; observations are at the case-defendant-patent-level; Logit estimates shown; robust standard errors clustered at the case-level; *significant at 10%, ** at 5%, *** at 1%.

and are attributed to fewer technology classes (all proxies for lower value) and, further, have significantly higher counts of backward citations to patent prior art, significantly higher independent claim counts at publication relative to issuance, significantly lower examiner allowance rates, and significantly fewer requests for continued examinations (RCEs) (all of which are proxies for a lower risk of invalidity). The coefficients on our remaining metrics of validity are not statistically significant, however.

Prediction 3 states that patentees with greater ability to pursue litigation outside the WDTX will do so more frequently following a shift to random case allocation. Consistent with this prediction, we find that software firms (which lack manufacturing, distribution, and retail locations) make up a significantly greater share of WDTX defendants in the period following July 2022, while publicly traded companies (which likely can be sued in at least the District of Delaware) make up a significantly smaller share. That said, coefficients associated with our remaining two proxies for an accused infringer's relative ability to be sued outside the WDTX (defendant size and age) are not statistically significant. We also find no evidence that the size of NPEs litigating in Waco increased significantly in the post-July 2022 period, despite the fact that larger NPEs may have greater expertise and experience litigating in outside venues. It is possible that this result reflects the fact that an increased risk of invalidation will naturally be less consequential to NPEs that hold relatively large portfolios of substitute patents.

6.3 | Albright's Effect on Litigation and Outcomes

Finally, we estimate specifications (15) and (16) to assess Albright's impact on patent suits relative to that of his WDTX judicial peers. Following conventional wisdom regarding Albright's appeal to patent enforcers, we focus on potential differences in motion and petition filing rates (Table 4), case scheduling practices (columns 1–4 in Table 5), and settlement behavior (columns 5 and 6 in Tables 5 and 6).

6.3.1 | Empirical Evidence

Before turning to our results, we note once more (and more formally) that our setting shields our analysis from bias caused by case selection.[39] As shown in Figure 4, unrelated cases filed in the WDTX's Waco Division since July 25, 2022, have been allocated on a roughly even basis across all judges in the district. To confirm the quasi-random nature of these assignments, we run a balance test that regresses our Albright dummy (i.e., a variable that is equal to one for cases assigned to Albright and otherwise zero) on a large set of plaintiff, defendant, and patent characteristics. The results of this test are presented in Table A6 in Supporting Information. Across the 21 total observables included in the test, we find just three significant correlations.[40] In addition, Table A7 in Supporting Information shows that there is no indication that Albright changed his behavior with respect to motions practice or case scheduling following his division's transition to random case assignment.

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TABLE 4 | Effect of Judge Albright on motions practice and parallel PTAB challenges.

	Motion to transfer		Motion to stay		PSM motion[a]		Parallel PTAB[b]	
0/1	**(1)**	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**
Albright	0.031	−0.055	−0.034***	−0.115***	−0.072***	−0.102***	0.055	0.042
	(0.054)	(0.113)	(0.009)	(0.036)	(0.014)	(0.034)	(0.049)	(0.145)
NPE		−0.080*		−0.104***		−0.038		−0.156***
		(0.045)		(0.036)		(0.037)		(0.044)
Albright × NPE		0.111		0.104***		0.038		0.020
		(0.129)		(0.036)		(0.037)		(0.153)
R^2	0.001	0.011	0.004	0.041	0.008	0.012	0.005	0.074
Observations	388	388	388	388	388	388	388	388

Note: Dependent variables: in columns (1) and (2), a dummy variable that is equal to one if the defendant filed a motion to transfer; in columns (3) and (4), a dummy variable that is equal to one if the defendant filed a motion to stay the case pending a parallel validity challenge at the USPTO; in columns (5) and (6), a dummy variable that is equal to one if the defendant filed a motion to invalidate a patent on patentable subject matter (PSM) grounds; in columns (7) and (8), a dummy variable that is equal to one if the defendant filed a parallel validity challenge at the Patent Trial and Appeal Board (PTAB). Unit of observation at the case level; OLS estimates shown; robust standard errors; *significant at 10%, ** at 5%, *** at 1%.
Abbreviation: NPE, non-practicing entity.
[a]Motion to invalidate a patent on PSM grounds.
[b]Parallel patent validity challenge at the PTAB.

TABLE 5 | Effect of Judge Albright on case schedules and settlement speed.

	Time to *Markman* date		Time to trial date		Time to settle	
Delay in days	**(1)**	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
Albright	−117.771**	−106.331*	−162.573**	−154.052*	95.683*	6.099
	(50.439)	(55.337)	(58.931)	(84.042)	(46.852)	(98.558)
NPE		−21.570		−68.131		−151.456***
		(20.581)		(46.903)		(30.225)
Albright × NPE		−15.055		−13.697		105.791
		(77.414)		(95.710)		(120.475)
Case filing month FE	Yes	Yes	Yes	Yes	Yes	Yes
R^2	0.425	0.432	0.540	0.572	0.173	0.251
Observations	63	63	46	46	310	310

Note: Dependent variables: in columns (1) and (2), the delay measured in number of days lapsed between the filing of the complaint and the scheduled *Markman* hearing; in columns (3) and (4), the delay measured in number of days lapsed between the filing of the complaint and the scheduled trial; in columns (5) and (6), the delay measured in number of days lapsed between the filing of the complaint and when a given case terminated through settlement. Unit of observation at the case-level; OLS estimates shown; robust standard errors clustered at the month-level; *significant at 10%, ** at 5%, *** at 1%.
Abbreviations: FE, fixed effects; NPE, non-practicing entity.

While limiting our analysis to unrelated cases avoids selection bias, it simultaneously limits the data available for this final set of analyses. Because patent litigation is a notoriously slow process that rarely extends beyond the initial discovery phase in less than approximately 1–2 years' time, we have relatively few observations across our metrics of interest. Observation counts are available in Table A2 in Supporting Information.

Table 4 presents the results obtained when we estimate specification (15) using OLS to determine Albright's causal effect on motions practice in patent cases. As shown in columns (3)–(6), we find that litigants accused of infringement in cases randomly assigned to Albright are significantly less likely to request that the court stay litigation pending the outcome of administrative patent challenges and also significantly less likely to attempt to invalidate asserted patents on subject matter eligibility grounds. That said, as shown in column (4), Albright's relative reluctance to issue stays is much more modest (−0.115 + 0.104 = −0.011) when the challenged patent is enforced by an NPE. In columns (1), (2), (7), and (8), we find no significant difference in the frequency with which motions to transfer or parallel PTAB validity challenges were filed in cases assigned to Albright and his peers. With respect to transfer requests, our findings may reflect the fact that Albright's transfer decisions have been reversed on appeal at high rates in recent years (Anderson et al. 2022). As a result, accused infringers may file transfer motions (regardless of Albright's tendency to deny them) in anticipation of receiving a favorable ruling on appeal. Similarly, our findings with respect

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TABLE 6 | Effect of Judge Albright on settlement.

	(1)	(2)	(3)	(4)
Albright	−0.012	−0.087	0.154**	0.156**
	(0.017)	(0.173)	(0.060)	(0.063)
NPE		0.058		−0.118
		(0.062)		(0.122)
Albright × NPE		0.090		0.024
		(0.186)		(0.112)
Time to *Markman* Date (days)	No	No	Yes	Yes
Case filing month FE	Yes	Yes	Yes	Yes
R^2	0.173	0.194	0.568	0.596
Observations	319	319	30	30

Note: Dependent variable is equal to one if a given case terminated through settlement. In columns (3) and (4), the sample is restricted to cases that were litigated to the issuance of a *Markman* scheduling order. Unit of observation at the case-level; OLS estimates shown; robust standard errors; *significant at 10%, ** at 5%, *** at 1%.
Abbreviations: FE, fixed effects; NPE, non-practicing entity.

to parallel PTAB challenges may reflect the fact that these challenges can substantially influence related litigation—for example, by inducing the disclosure of litigation positions (Helmers and Love 2023)—even when a stay is likely to be denied.

The results obtained when we estimate specification (15) using case scheduling metrics as the dependent variable are presented in Table 5's first four columns. Our findings here indicate that Albright does indeed schedule his cases for claim construction and trial on an aggressive timeline. Relative to the scheduling practices of other WDTX judges, we find that Albright's initial scheduling orders anticipate that claim construction hearings will take place 118 days sooner and that trials will begin 162 days sooner on average. Given an average time-to-scheduled-*Markman*-hearing of 391 days in the sample and an average time-to-scheduled-trial-date of 788 days, Albright's patent case scheduling orders assume that litigation will proceed approximately 20%–30% faster than the average schedule adopted by all other WDTX judges.[41]

Last, we consider Albright's effect on the settlement of patent infringement claims. Results obtained when we estimate specification (16) using a binary settlement dummy are presented in Table 6, while estimates calculated when we use a count of days from case filing to settlement are shown in columns (5) and (6) of Table 5. Our findings here suggest that cases assigned to Albright settled at rates comparable to those assigned to his peers, but, conditional on settlement, terminated approximately 3 months later. These results tend to contradict conventional wisdom that patent enforcers prefer Albright because his case management practices induce quick settlements. However, we caution that our settlement analysis may be biased. Anecdotal evidence suggests that patent enforcers sometimes strategically dropped cases that were not assigned to Albright and, as shown in Figure A7 in Supporting Information, cases assigned to judges other than Albright were indeed far more likely to be voluntarily dismissed within 30 days of filing.[42] To account for this potential bias, we report in columns (3) and (4) of Table 6 settlement results estimated when we restrict our sample to cases that were litigated to one early case milestone: the issuance of a *Markman* scheduling order. In this smaller sample, we do find (consistent with conventional wisdom) that cases assigned to Albright were significantly more likely to settle.

6.3.2 | Discussion of Theoretical Mechanisms

Viewed through the lens of our model of judge shopping (presented above in Section 3), the results presented in Tables 4–6 help rationalize our earlier findings in Tables 1 and 2 that WDTX patent filings fell sharply in the wake of Judge Garcia's random case assignment order.

First, consistent with the perception that Albright is reluctant to defer to administrative validity review or invalidate patents on subject matter eligibility grounds, our results indicate that accused infringers are less likely to invest in pursuing those outcomes in cases assigned to Albright. Given that our model links a plaintiff's expected payoffs from litigation and the expected settlement payment from the defendant with the probability $\overline{\mu}$ that asserted patents will not be invalidated, these results explain in a straightforward manner why incentives to litigate in the WDTX fall when cases are no longer assigned to Albright with certainty.

Our findings regarding case scheduling practices also help explain why the WDTX became a less attractive venue following the introduction of random case allocation. As explained above, a practice of scheduling early trial dates tends to decrease the likelihood that PTAB will grant petitions to review patent validity and, thus, naturally reduces $\overline{\mu}$.

In addition, we note that faster procedures can benefit plaintiffs in settlement negotiations for reasons unrelated to validity, particularly when settlement negotiations follow a back-and-forth bargaining protocol in which litigants take turns making offers. Rubinstein (1982) shows that in the unique subgame perfect equilibrium of an alternative-offer bargaining model, the party making the first offer receives a share $\frac{1}{1+\delta}$ of the bargaining surplus, and the responder a share $\frac{\delta}{1+\delta}$, where the parameter δ is the continuation probability of settlement negotiations. Accordingly, when plaintiffs are likely to make the first offer (a reasonable assumption in the context of patent litigation, particularly NPE suits),[43] they prefer a lower continuation probability, which aggressive case schedules provide in the form of accelerated (stochastic) deadlines.

7 | Conclusion

While the literature has long documented that litigants commonly prefer particular judges, empirical evidence of the causal mechanisms behind these preferences is generally obscured by the selection inherent in litigants' efforts to obtain the judge of their choosing. We overcome this challenge by studying the recent introduction of a random case assignment

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order in the U.S. District Court for the Western District of Texas, a district previously noted for an extreme concentration of patent infringement cases before a single judge, Alan Albright, whom patent enforcers could (until recently) select with virtual certainty by filing suit in the district's Waco Division.

Our analysis of cases filed before and after the court's July 25, 2022 case assignment rule modification shows that the transition from certain to random assignment led to a significant decrease in patent case filings in Waco. In addition, we show that the overall drop in case filings reflects decreases at both the intensive and extensive margins: the majority of parties enforcing patents in Waco prior to random allocation stopped litigating in the Western District thereafter, and those that continued to file suits in Waco (especially NPEs) were significantly less active post-July 2022. Moreover, among patent cases assigned by random draw since July 2022, we find that cases assigned to Albright were scheduled to reach claim construction and trial at relatively earlier dates, and also that accused infringers were less likely to file both motions to stay litigation pending administrative patent review and motions to invalidate asserted patents on subject matter eligibility grounds. Accordingly, our results suggest that patent enforcers highly value the ability to select Albright as their judge and also that Albright's value to patent enforcers derives from his reluctance to stay cases and invalidate patents on subject matter eligibility grounds, as well as his aggressive case scheduling practices.

From a broader policy perspective, our results tend to support calls to increase the randomness of judicial assignments as a means to frustrate judge shopping. Setting aside non-random related case assignments, we show that random allocation of patent suits has been a seemingly effective deterrent to judge shopping in the Western District of Texas. To the extent that this effect translates to other types of litigation, our analysis lends support to ongoing efforts to induce Congress and individual chief judges to limit the practice of division-level case assignment in U.S. district courts.

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Ethics Statement

The authors have nothing to report.

Data Availability Statement

Data necessary to replicate the results of this article are available upon request from the corresponding author.

Endnotes

[1] For a selection of relevant press coverage, see, for example, Senate Democratic Leader Schumer Urges "Judge Shopping" Reform in Texas (Reuters, March 22, 2024); Judges, GOP Lawmakers Slam New Policy that Limits "Judge Shopping" (Washington Post, March 14, 2024); Biden Administration Accuses Texas of "Judge Shopping" Spending Law Case (Reuters, February 28, 2023).

[2] Among these were competing bills sponsored by then-Senate Majority Leader Chuck Schumer, End Judge Shopping Act, S. 4096, 118th Cong. (2024), and then-Senate Minority Leader Mitch McConnell, SHOP Act, S. 4095, 118th Cong. (2024). Additional bills include the Fair Courts Act of 2023, S. 1758, H.R. 3652, 118th Cong. (2023), the End Judge Shopping Act of 2023, H.R. 3163, 118th Cong. (2023), and the Stop Judge Shopping Act of 2023, S. 1265, 118th Cong. (2023).

[3] We refer here to the U.S. Judicial Conference's March 2024 Guidance on Civil Case Assignment in the District Courts, which states in part that U.S. district courts should "avoid case assignment practices that result in the likelihood that a case will be assigned to a particular judge" and, further, should assign at least "civil actions seeking to bar or mandate nationwide [or statewide] enforcement of a federal [or state] law" on a "district-wide" (rather than division-level) basis. Despite the mandatory nature of some language included in the document, the Guidance is non-binding. As explained in greater detail below, U.S. law gives each district court the discretion to set its own case assignment rules. In a letter sent later the same month, the Chief Judge of the Northern District of Texas informed Congress that the judges of the district met to discuss the matter and the "consensus was not to make any change to our case assignment process at this time."

[4] "Judge shopping" can, thus, be viewed as a form of "forum shopping" that focuses on the benefits of a particular judge rather than broader venue-level advantages, like jury pool composition or local procedural rules.

[5] As we explain in greater detail below, the total number of judges receiving patent case assignments during the period of our study varied from 10 to 12 as judges retired and were replaced. In addition, some semi-retired "senior" judges did not receive an equal share during some periods covered by our study.

[6] As explained in greater detail below, patent case filings that are "related" to previously assigned cases were not subject to random allocation prior to May 30, 2024. We identify and exclude these related cases from our analysis.

[7] Among recent bills, our results are particularly relevant to the Fair Courts Act of 2023, S. 1758, H.R. 3652, 118th Cong. (2023), which would require that district court case assignment procedures "ensure that the probability that an action, suit, or proceeding is assigned to any particular judge does not exceed 25 percent," and the End Judge Shopping Act, S. 4096, H.R. 3163, 118th Cong. (2024), which in its most recent form would codify the U.S. Judicial Conference's March 2024 policy guidance and, thus, require that cases with potential nationwide or statewide effect be randomly assigned across all judges in the district court in which the case was filed.

[8] *See* 28 U.S.C. §1400(b); *TC Heartland v. Kraft Foods*, 137 S. Ct. 1514 (2017); In re *Cray*, 871 F.3d 1355, 1362–64 (2017). While foreign entities may be sued in any district, suits against foreign entities most often target those entities' U.S. subsidiaries due to limits on the extraterritorial reach of U.S. courts' jurisdiction.

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[9] At a minimum, district judges who assume "senior status," a form of semi-retirement (28 U.S.C. §371), may opt not to hear certain kinds of cases. In addition, districts commonly adopt ad hoc case assignment rules for certain types of cases, most notably pro se suits, habeas corpus petitions, bankruptcy and social security appeals, and patent cases.

[10] As Helmers et al. (2025) show, the practice of assigning all or substantially all cases filed in large, sparsely populated divisions to a single judge is a long-standing practice in many districts, including all four districts in Texas.

[11] The Waco, Texas economy lacks a significant tech sector; however, whether or not venue is proper in a patent suit is determined at the district level. Accordingly, patent infringement cases can properly be filed in Waco provided the firm accused of infringement is incorporated in Texas or maintains a place of business *anywhere within the WDTX*, a large geographic area that includes both Austin (one of the nation's most significant tech hubs) and San Antonio, Texas. *TC Heartland v. Kraft Foods*, 137 S. Ct. 1514 (2017). A wide variety of major technology firms and retailers are, therefore, eligible to be sued for patent infringement in any division of the WDTX (Helmers and Love 2025).

[12] Claim construction is a phase of patent litigation during which the parties identify contested claim terms/phrases and present arguments in briefing and orally at a hearing supporting their preferred definitions of those terms. Thereafter, the court issues a set of definitions of these terms. On the basis of these definitions, the parties then typically move the court for summary judgment of invalidity/validity and/or infringement/noninfringement. If the case is not resolved by these motions and does not settle in the meantime, the jury will be instructed to follow the court's claim term/phrase definitions at trial.

[13] Patent cases filed in Waco since Albright's arrival disproportionately assert patents related to software, e-commerce, finance, and other subject matter of questionable patentability following the U.S. Supreme Court's ruling in *Alice v. CLS Bank*, 573 U.S. 208 (2014). For a summary of *Alice*'s impact on patent litigation in recent years, see, for example, Alice: Benevolent Despot or Tyrant? Analyzing Five Years of Case Law Since Alice v. CLS Bank (IP Watchdog, August 29, 2019).

[14] Notably, several of Albright's transfer denials have been forcefully reversed on appeal. *See*, for example, Fed. Circ. Keeps Up Criticism of Albright's Transfer Denials (Law360, September 27, 2021).

[15] For a summary of legal commentary on Albright, see Anderson and Gugliuzza (2021).

[16] Prior to Moses taking over the role of chief judge, it was unclear for a time whether Garcia's special assignment rule for Waco patent cases would be renewed when it expired on December 15, 2022. However, Moses readopted the rule the very next day. On December 1, 2022, Judge Frank Montalvo assumed "senior status" and thereafter elected to no longer hear patent cases. In addition, Judge Lee Yeakel retired on May 1, 2023. In spring 2024, two new judges were added at almost the same time: Judge Leon Schydlower on March 26 and Judge Ernest Gonzalez on April 9. Accordingly, the WDTX had 12 active district judges through November 2022, 11 active members between December 2022 and April 2023, 10 active members from May 2023 to March/April 2024, and 12 active judges again as of April 2024. On May 30, 2024, Judge Moses reissued an amended version of the court's prior July 2022 order concerning the allocation of patent cases filed in Waco. In amended form, the order added Schydlower and Gonzalez to the list of judges eligible for a Waco patent case assignment and added a brief new section signaling an end to the court's prior practice of assigning related cases on a non-random basis.

[17] A larger prize may be available in another venue because, among other possible reasons, that venue is home to a more plaintiff-friendly jury pool and/or an alternative infringer against whom a larger damages award may be achieved, for example, due to a larger volume of infringing sales.

[18] The patentee's expected payoffs are positive if $S \geq 0$; a necessary and sufficient condition for this inequality to hold for the WDTX is $\pi_P \geq 0$. For a lawsuit filed outside after case randomization, $\pi_P^O \geq 0$ is the binding constraint for sufficiently low k such that $\frac{(1-\omega)\mu^H N + c_P + c_D}{2} \geq k$.

[19] For the calibration values, see the figure notes.

[20] For even higher values of W^H (e.g., above values of 1.2 on the horizontal axis), the plaintiff will not file in the WDTX before randomization (gray area).

[21] While these controls are unlikely to be directly affected by the introduction of random case assignment for reasons provided in Supporting Information, we note that our results are robust to their omission from specifications (11) and (12).

[22] Alice Corp. v. CLS Bank Int'l, 573 U.S. 208 (2014).

[23] Throughout the paper, we use the term "patent" to refer to utility patents. Our sample does not include cases filed to enforce design or plant patents. We also drop cases generated due to the transfer or severance of an earlier-filed case, as well as the small minority of cases that concern patent rights but do not bring a claim for patent infringement. For use in a robustness check, we additionally source data on all other civil cases filed in the Western District of Texas from the Federal Judicial Center's Integrated Database (FJC-IDB) and the Free Law Project's RECAP database.

[24] In our main analysis, we limit the sample to the period July 2021 to December 2024. This helps mitigate concerns over COVID restrictions affecting observed litigation behavior. As described by Germano et al. (2022), federal district courts began reacting to the COVID pandemic in March 2020. Specifically, the WDTX issued its first COVID-related guidance on March 12, 2020. In particular, Albright issued a number of standing orders for the Waco Division. From the available guidance and orders issued by the WDTX, it is clear that the court made great efforts to minimize the impact of COVID on proceedings. That said, we cannot rule out the possibility that Albright would have attracted even more cases in mid-2020 and 2021, and hence, if anything, we might be *under*estimating the impact of the random case assignment on case filings. Nonetheless, by July 2021 (the beginning of the sample period used in our analysis), most COVID-related restrictions had been lifted in the WDTX and, indeed, by that time, Judge Albright had already completed multiple in-person trials in patent cases.

[25] That is, we exclude motions that were unopposed or stipulated at the time they were filed, but retain motions that were later granted by agreement of the parties, as well as motions that were later withdrawn or mooted or that remained pending as of August 31, 2025.

[26] *Compare* Docket Entry dated October 25, 2022, Aperture Net LLC v. Gen. Dynamics Mission Sys. Inc., No. 6:22-cv-01109 (W.D. Tex.) ("Case randomly assigned to Judge Jason K. Pulliam pursuant to the Order Assigning Business of the Court as it Relates to Patent Cases, filed 7/25/2022"); Docket Entry dated October 7, 2022, WirelessWerx IP LLC v. Raytheon Tech Corp., No. 6:22-cv-01059 (W.D. Tex.) ("Case randomly assigned due to no known related cases") *with* Docket Entry dated Dec. 28, 2022, Cedar Lane Tech. Inc. v. Zenitel Group, No. 6:22-cv-01307 (W.D. Tex.) ("Case directly assigned to Judge Alan D Albright due to previously filed cases as having same Plaintiff and patent case number(s)"); Docket Entry dated October 27, 2022, Stormborn Tech. LLC v. Itron Inc., No. 6:22-cv-01128 (W.D. Tex.) ("Case assigned to Judge Robert Pitman due to related case").

[27] On May 30, 2024, Chief Judge Alia Moses added language to the court's prior patent case assignment order indicating that, moving forward, *all* new patent cases filed in the Waco Division would be randomly assigned initially and thereafter reassigned due to relatedness only upon the grant of a motion providing "sufficient legal and factual justification." Accordingly, we assume that cases filed on or after May 30, 2024, were (initially) assigned on a random basis.

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[28] Another reason for ignoring related cases is that they are largely a short-run phenomenon. As the concentration of cases filed prior to random case assignment was disposed of, related case filing counts naturally declined.

[29] Case shares for the period July 2022 through May 2024 were calculated using samples that exclude related cases, which may have been assigned on a non-random basis.

[30] The relatively lower average number of cases assigned to David Ezra, Frank Montalvo, Lee Yeakel, Leon Schydlower, and Ernest Gonzalez is explained as follows: Ezra was a senior judge throughout the duration of our sample period, Montalvo assumed senior status on December 1, 2022, Yeakel retired on May 1, 2023, and Schydlower and Gonzalez recently joined the court in March and April 2024, respectively. In Table A3 in Supporting Information, we also show that the number of cases allocated to a given judge is uncorrelated with a large number of observable judge characteristics.

[31] Figure A4 in Supporting Information provides corresponding individual plots of case filings in the two next most popular districts, the Eastern District of Texas and the District of Delaware. This comparison is useful because the Eastern District of Texas is (like the WDTX) a multi-division district that assigns substantially all patent cases filed in one division (the Marshall Division) to a single judge (Rodney Gilstrap) (Love and Yoon 2017), while Delaware is a single-division district that assigns cases randomly across all judges assigned to the district. These plots show that litigation in the Marshall Division has slowly increased over time, potentially because some plaintiffs who engage in judge shopping shifted from Waco to Marshall. During the same period, the District of Delaware experienced a significant drop in case filings, which may also explain the rise in cases in Marshall. This drop likely reflects Delaware Chief Judge Colm Connelly's adoption in April 2022 of a new standing order requiring the disclosure of third-party litigation funding and Connelly's subsequent investigation of the ownership and funding structure behind NPEs affiliated with IP Edge LLC (Anderson 2026), rather than the WDTX's shift to random case allocation.

[32] For example, the Financial Times published an article titled "How Waco Became a Patent Litigation Hotspot" in mid-June 2022 that makes no mention of any plans to change the way patent cases are assigned to judges in the Western District. Similarly, the popular intellectual property blog Patently-O published an article on Albright and the WDTX on June 17, 2022, without mentioning any potential change to the way cases are assigned in the Western District.

[33] See, for example, a blog post discussing case filing patterns in June 2022. Table A4 in Supporting Information shows that our results are robust to the exclusion of all cases filed by the NPE responsible for this spike in filings.

[34] For the sake of robustness, we present in Table A5 in Supporting Information the results of a triple difference-in-differences analysis that additionally incorporates data on all civil case filings in the WDTX. Albright was assigned 100% of all non-patent cases filed in the Waco Division throughout our sample period, that is, the assignment of non-patent civil cases was unaffected by the random case assignment order in July 2022. We exploit this institutional feature to estimate a triple difference-in-differences specification that compares differences before/after the random assignment order across divisions within WDTX between patent and other civil cases. This alternative approach allows us to difference out any division-specific time shocks that could otherwise confound the estimates reported in Table 1. As shown in Figure A3 in Supporting Information, non-patent civil case filings in the WDTX remained flat throughout our sample period. The results of our triple-difference approach align closely with those of our core approach and indicate a highly significant drop of approximately 50 patent cases per month following the introduction of random patent case assignment.

[35] In fact, our results might *underestimate* the impact of random case assignment in the WDTX given that Judge Garcia's order may have caused patent enforcers to shift future filings from the WDTX to other courts included in our control groups. That said, the results of our synthetic control analysis (Figure A2a in Supporting Information) and additional results presented in Section 6.2 below (Figure 5 and Table 2) suggest that venue substitution was both uncommon and unlikely to meaningfully affect our estimates.

[36] We categorize patent enforcers at the business group level. This is particularly important for NPEs, which commonly distribute their patent enforcement activities across multiple subsidiaries.

[37] Like the June 2022 spike in our core sample, the July 2024 spike shown in Figure A6 in Supporting Information represents idiosyncratic filing behavior by a single NPE.

[38] While our results do not reveal what became of these missing suits, results obtained by Helmers and Love (2025) suggest that approximately one-third of patent cases filed in the WDTX following Albright's appointment would not have been filed at all but for the ability to select Albright as a judge, while the remaining two-thirds would have been filed instead in another district. If incentives are similar when the ability to select Albright is removed, it seems reasonable to assume that similar shares of cases "missing" post-random assignment were either not filed at all or were filed instead in other courts.

[39] To provide one concrete example of selection-driven bias, consider a plaintiff asserting a software patent that is likely invalid. Such a plaintiff may strategically choose to file suit in Waco in the hope of reducing the odds that the asserted claims are found ineligible for patent protection. If so, the firm accused of infringement in that suit may be *more* likely to file a motion to transfer—not because Albright is more likely to grant such motions all else equal—but rather because selection has increased the value of transfer.

[40] Two of which are only marginally significant at the 10% level. We note as well that our results in Table 4 are qualitatively unchanged when we include these 21 variables as controls.

[41] When interpreting these metrics, it is important to keep in mind that they refer to *scheduled* dates, rather than the dates on which hearings or trials (if any) actually took place.

[42] The confidential nature of patent case settlements prevents us from determining whether these cases were settled pursuant to a negotiated agreement between the parties or were instead unilaterally dismissed.

[43] When venue selection is advantageous, patent enforcers have incentives to strategically avoid pre-suit licensing negotiations so as to preempt accused infringers' ability to bring declaratory judgment actions (Risch 2019).

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Supporting Information

Additional supporting information can be found online in the Supporting Information section. **Figure A1** Patent case filings in the Western District of Texas (by division and judge). **Figure A2** Effect of random case allocation on patent case filings. **Figure A3** Patent and other civil case filings in the Western District of Texas (by division). **Figure A4** Patent case filings in the Eastern District of Texas (EDTX) and the District of Delaware (DED). **Figure A5** Patent case filings in Waco and all other district courts by plaintiff type (by month). **Figure A6** Patent case filings in the Eastern District of Texas (EDTX) and all other district courts asserting patents asserted in the Waco Division of the WDTX (by month). **Figure A7** Time to settlement in the Waco Division of the WDTX (by judge). **Table A1** Plaintiff, defendant, and patent characteristics of cases before and after the random case assignment order. **Table A2** Motions practice and case management. **Table A3** Case assignment and judge characteristics. **Table A4** Effect of random case allocation on patent case filings—excl. cases filed by IP edge. **Table A5** Effect of random case allocation on case filings—difference-in-difference-in-differences. **Table A6** Balance test. **Table A7** Comparison of motions practice and settlement rate before/after random case assignment for Judge Albright.

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