

# Exporting American Discovery

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## APPENDICES

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## **APPENDIX A: Data Collection Methodology**

I relied on the Public Access to Court Electronic Records (PACER) system to compile a dataset of incoming foreign discovery requests for use in civil proceedings abroad.<sup>1</sup> Other scholars have noted the sampling bias stemming from empirical efforts that rely on Westlaw or Lexis searches. Because Westlaw and Lexis contain more published than unpublished orders, have varying completeness across district courts, and lack clarity on the exact contents of their database, searches on these services are likely to yield biased results that do not reflect the overall reality on the ground.<sup>2</sup> These problems are amplified by different publication practices across district courts,<sup>3</sup> and particularly worrisome for studying low-profile routine matters such as § 1782 discovery orders, which tend to be unpublished.

PACER is a mandatory electronic docketing system within federal district courts that provides access to all filed actions nationwide.<sup>4</sup> The process of moving to PACER's electronic docketing system began in 1988, and was mostly completed by the mid-2000s.<sup>5</sup> Since PACER has limited search functions and does not allow text searching,<sup>6</sup> I searched PACER's contents on Bloomberg Law.<sup>7</sup> Bloomberg Law's database includes docket coverage for all federal district courts since 1990.<sup>8</sup> According to Bloomberg Law representatives, the service contains all of PACER's content across that timespan, and continues to collect docket information and filed documents on a rolling basis. Bloomberg's Advanced Dockets Search allows text searches of all

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<sup>1</sup> PACER is a fee-based “electronic public access service that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts, and the PACER Case Locator.” See Public access to Court Electronic Records, [www.pacer.gov](http://www.pacer.gov) (last visited May 1, 2019).

<sup>2</sup> See, e.g., David Freeman Engstrom, *The Twiqbal Puzzle and Empirical Study of Civil Procedure*, 65 STAN. L. REV. 1203, 1214 (2013) (discussing incompleteness in Westlaw and Lexis' database); David Hoffman, Alan Izenman, Jeffrey Lidicker, *Docketology, District Courts, and Doctrine*, 85 WASH. U. L. REV. 681, 686 (2007) (same). When I inquired about the exact methodology by which Westlaw gathers its contents, a Westlaw reference attorney explained: “We . . . obtain reported decisions from the court, we have employees who are out acquiring non-published cases constantly and we receive request to add cases from customer and sales reps.” Email from Stephanie Zoet, Academic Account Manager, Thomson Reuters (July 28, 2017) (on file with author). In phone conversations with Westlaw and Lexis representatives and reference attorneys, I was repeatedly told that the exact methodologies by which they compile their respective databases are proprietary information that could not be shared. Both services refused to put me in touch directly with members of their data team.

<sup>3</sup> Engstrom, *supra* note [], at 1215.

<sup>4</sup> PACER is a fee-based “electronic public access service that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts, and the PACER Case Locator.” See Public Access to Court Electronic Records, [www.pacer.gov](http://www.pacer.gov) (last visited May 1, 2019).

<sup>5</sup> PACER was initially accessible at terminals in libraries and other designated locations, and became available on the Internet in 2001. Bobbie Johnson, *Recap: cracking open US courtrooms*, THE GUARDIAN (Nov. 11, 2009), <https://www.theguardian.com/technology/2009/nov/11/recap-us-courtrooms> (noting that PACER was initially accessible at terminals in libraries and other designated locations, and became available on the Internet in 2001); Engstrom, *supra* note [], at 1208.

<sup>6</sup> The PACER Case Locator allows searches by case number, title, party name, and date range, but does not allow searches to identify cases for which this information is not known. See PACER Case Locator Advanced Case Search, <https://pcl.uscourts.gov/pcl/pages/search/findCaseAdvanced.jsf> (last visited May 1, 2019).

<sup>7</sup> See Bloomberg Law, [https://www.bloomberglaw.com/page/law\\_school](https://www.bloomberglaw.com/page/law_school) (last visited May 1, 2019).

<sup>8</sup> See Bloomberg Law Docket Coverage, <https://www.bloomberglaw.com/dockets/coverage/detail> (last visited May 1, 2019) (noting that Bloomberg contains records of proceedings for all federal district courts from 1990 to the present).

docket reports as well as any underlying filed documents that have been rendered text searchable.<sup>9</sup>

To compile as exhaustive as possible a dataset of incoming foreign civil discovery requests, I took four steps. First, I crafted and tested a variety of text search parameters for identifying foreign civil discovery requests. Since all foreign civil discovery requests and some foreign criminal discovery requests are ultimately executed under the authority of § 1782, the task was to create a dataset of discovery requests brought under § 1782 during that time period, and then to exclude the criminal discovery requests. I tested different text searches on Bloomberg Law by cross checking results for individual calendar years with cases identified by Westlaw as citing § 1782 for that same time period. Where Westlaw only contained an appellate case, I looked for the corresponding district court case in the Bloomberg Law search results. I chose to use Westlaw over Lexis for this step because Westlaw is more inclusive.<sup>10</sup> I adjusted the search terms until the only cases that were missing could not be captured without also pulling in domestic discovery disputes. In other words, I selected the text search that maximized sensitivity without significant sacrifices in specificity. The selected text search was:

"letter rogatory" OR "letters rogatory" OR "judicial assistance" OR "discovery in aid of international" OR "discovery in aid of foreign" OR (28 /s 1782) OR (use /s "foreign proceeding") OR (use /s "foreign proceedings") OR (aid /s "foreign proceeding") OR (aid /s "foreign proceedings")

Second, on May 31, 2018, I ran the above text search on Bloomberg Law on cases filed in all 94 federal district courts between January 1, 2005 and December 31, 2017. As discussed in Part II, these dates were selected to capture how courts have treated foreign civil discovery requests during the years since the Supreme Court's decision in *Intel Corp. v. Advanced Micro Devices, Inc.*<sup>11</sup> This initial search produced over 10,000 results.

Third, since these results included many false positives that were not § 1782 requests, they were manually culled, a process that eliminated approximately two thirds of the results, leaving over 3,000 true positives. All available information was used to determine whether or not the case was a true § 1782 request, including if it was labelled as such in the title or in the "cause" field of the docket report. I did not include as true positives cases that were unambiguously erroneous uses of § 1782.<sup>12</sup> Because the search terms I used included "letter rogatory" and "judicial assistance," many of the initial results were outgoing discovery requests, seeking evidence from abroad for controversies being adjudicated in the U.S. This manual culling was completed with the assistance of a team of research assistants. I spot checked the results for accuracy.

Fourth, to ensure that the dataset is close to exhaustive and unbiased, I cross checked with cases identified by Westlaw as citing § 1782 for different calendar years than had been used to

<sup>9</sup> Not all documents filed on PACER are text searchable (some are scanned as images), and the same goes for Bloomberg. There does not appear to be any pattern in which documents are text searchable.

<sup>10</sup> See Hoffman, Izenman & Lidicker, *supra* note [], at 710 n.138 (noting that all opinions in Lexis were present in the Westlaw database, whereas some opinions were in Westlaw but not in Lexis).

<sup>11</sup> 542 U.S. 241 (2004).

<sup>12</sup> See, e.g., *Whitehead Clan Foreign Trust v. Conway*, No. 2:14-mc-00072 (D. Ariz. Oct. 10, 2014). The court denied the request because it could not discern what the plaintiff was requesting.

construct the text search. The results confirmed my expectations: I missed less than one percent of cases identified by Westlaw, and I could not have captured them without expanding the search terms such that I would have lost a significant degree of specificity in the overall result. There does not appear to be a pattern in the types of § 1782 requests that are missing. They are missing because none of the search terms were mentioned in the docket report or in the text searchable underlying documents. I could not detect any pattern in either the text labels entered into docket reports or whether underlying filed documents were text searchable. I also confirmed that the dataset is close to complete and unbiased by internally checking those cases that were refiled under a different case number or consolidated.<sup>13</sup> Anytime I came across one of these cases, I checked whether the refiled or consolidated case was also in the dataset. Finally, the dataset's estimated number of tribunal requests coming from the Department of Justice's Office of International Judicial Assistance ("OIJA") is in line with the number of requests that OIJA itself estimates they are sending to district courts.<sup>14</sup>

The dataset as a whole likely misses a few cases on the margins, but is close to exhaustive and unlikely to be biased. However, a cautionary note on the 2017 cases is in order: while Bloomberg Law representatives insist that the service regularly updates dockets and pulls in new documents as they are filed, that is not always accurate in my experience and in the experience of research assistants working on this project. Sometimes, it is necessary to manually click an "Update Docket" button to fetch the most recent documents. The result is that the text search was likely run on some docket reports for 2017 that were not fully up to date, and may undercount the number of § 1782 requests in that year. This problem did not seem to affect earlier years, likely because those dockets had, over time, become updated either due to Bloomberg Law clients manually updating those cases or by the system's automatic update mechanism. Additionally, some of the 2017 cases may not yet have reached completion when the text search was run on May 31, 2018, again leading to the search being run on incomplete docket reports and possibly undercounting cases in 2017.

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<sup>13</sup> See Part II.A and III.C.1 (discussing refiled cases).

<sup>14</sup> Interview with Katerina Ossanova, Office of International Judicial Assistance, Department of Justice (Feb. 13, 2019).

## APPENDIX B: Data Coding Methodology

Of the over 3000 true positive § 1782 requests in the dataset, approximately a third (over 1000 requests) were randomly selected for further coding for the following information. This coding was completed with the help of a team of research assistants. We met weekly to discuss difficult coding decisions and I spot checked the results for accuracy. Some cases were sealed overall or had underlying documents that were sealed or otherwise unavailable. We used all the information available to make determinations, or recorded that data as missing.<sup>15</sup>

1. **Civil or criminal:** As noted in Part I, some foreign criminal discovery requests were previously executed under § 1782. Criminal discovery requests were coded as such and not examined further.
2. **District court:** We coded for the district court to which civil discovery requests were made.
3. **Requestor:** We coded for who brought the request, whether it was a tribunal, party, or interested person. If the request was brought by a tribunal, we tracked whether the request came directly to the district court, through the Department of Justice's OIJA, or through a party. In some cases, requests were brought by multiple entities.
4. **Target:** We coded for whether the request targeted a party, a nonparty, or both.
5. **Foreign tribunal type:** We coded for the type of foreign tribunal before which the requested discovery was to be used—whether it was a foreign court, an international court, a regulatory agency, a commercial arbitral tribunal, or an investor-state arbitral tribunal. In some cases, requests indicated that the evidence would be used in multiple tribunals.
6. **Numerosity of foreign proceeding:** We coded for whether the evidence was requested for one foreign proceeding or multiple foreign proceedings.
7. **Timing of foreign proceeding:** We coded for the timing of the foreign proceeding for which the evidence was requested—whether the foreign proceeding was pending, contemplated, or, mixed (if the evidence was requested for multiple proceedings).
8. **Country of foreign proceeding:** We coded for the country or countries of the foreign proceeding(s) for which the evidence was requested. I then also categorized the country in four ways to look for patterns: by region, by Hague Evidence Convention status, by legal system type, and by rule of law score. The categorizations are explained below.

**Regions**—The countries appearing in the dataset were categorized by the following regions:

- Americas—Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, Venezuela

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<sup>15</sup> Neither I nor OIJA is aware of any pattern in which cases become sealed or have missing documents. Ossanova Interview, *supra* note [].

- Caribbean—Antigua, Bahamas, Barbados, Bermuda, Cayman Islands, Curacao, Dominican Republic, Jamaica, British Virgin Islands, St. Vincent and the Grenadines
- Western Europe—Andorra, Austria, Belgium, Czech Republic, Denmark, European Union, France, Germany, Greece, Guernsey, Isle of Man, Italy, Jersey, Luxembourg, Monaco, Netherlands, Northern Ireland, Norway, Portugal, Spain, Slovenia, Sweden, Switzerland, United Kingdom
- Eastern Europe—Croatia, Estonia, Hungary, Moldova, Poland, Romania, Serbia, Slovakia, Russia
- Middle East—Bahrain, Cyprus, Dubai, Egypt, Iran, Israel, Kuwait, Morocco, Oman, Saudi Arabia, Turkey, United Arab Emirates
- Asia—American Samoa, Australia, China, Hong Kong, India, Japan, Kazakhstan, Laos, Pakistan, Singapore, South Korea, Taiwan
- Africa—Ethiopia, Ghana, Liberia, South Africa

**Hague Evidence Convention status**—The countries appearing in the dataset were categorized by whether the Hague Evidence Convention was in force between that country and the U.S. in the calendar year when the case was filed. This may not be the same as whether the country is a member of the Hague Evidence Convention. For example, although Brazil acceded to the Hague Evidence Convention, the U.S. has not accepted its accession, so the Convention is not in force between Brazil and the U.S. Below is a list of countries for which the Hague Evidence Convention was in force with respect to the U.S., including specific calendar years if that statement only holds true for a segment of the study period. If the Convention came into force between a country and the U.S. mid-way through a calendar year, I counted it as being in force starting in the following calendar year.

- Argentina, Australia, Barbados, China, Colombia (since 2013), Croatia (2010), Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hong Kong, Hungary (since 2007), India (since 2007), Israel, Italy, South Korea (since 2010), Kuwait (since 2009), Luxembourg, Mexico, Monaco, Morocco (since 2012), Netherlands, Norway, Poland, Portugal, Romania, Serbia (since 2012), Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, Venezuela

**Legal system type**—The countries appearing in the dataset were categorized by legal system type as follows.

- Common law: Antigua, Australia, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Hong Kong, Ireland, Isle of Man, Jamaica, St. Vincent and the Grenadines, United Kingdom
- Civil law: Argentina, Austria, Bolivia, Brazil, Chile, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, France, Germany, Greece, Guatemala, Hungary, Italy, Luxembourg, Mexico, Moldova, Monaco, Netherlands, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Taiwan, Turkey, Uruguay, Venezuela
- Mixed/other: American Samoa, Bahrain, China, Cyprus, Egypt, Ethiopia, Ghana, Guernsey, India, Iran, Israel, Japan, Jersey, Kuwait, Liberia, Morocco, Oman, Pakistan, Singapore, South Africa, South Korea, United Arab Emirates

**Rule of law score**—The countries appearing in the dataset in 2015-2017 were categorized by rule of law score quartile. To derive the quartiles, I used the World Justice Project’s Rule of Law Index, and only looked at scores from 2015 to 2017 because the scoring instrument varied with each report during earlier years, whereas the scores are more comparable during this three-year period.<sup>16</sup> The index evaluates eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Although each country is given a score as well as sub-scores for each factor, I only relied on the overall composite score. The following is a list of the countries in each quartile, with years if the country was not in that quartile for the full three-year period. In any given year, countries in the fourth quartile have the highest rule of law scores, while those in the first quartile have the lowest scores. Some countries in the dataset were not scored by the World Justice Project, and so appear in the “no score” category.

- 4<sup>th</sup> Quartile: Australia, Austria, Barbados (2016), Belgium, Canada, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong, Japan, Netherlands, New Zealand, Northern Ireland (2016, 2017), Norway, Poland, Portugal, South Korea, Singapore, Slovenia (2016, 2017), Spain, St. Kitts and Nevis (2017), Sweden, United Kingdom, United States, Uruguay
- 3<sup>rd</sup> Quartile: Antigua (2016, 2017), Argentina (2016, 2017), Bahamas (2016, 2017), Barbados (2017), Belarus (2015), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Croatia, Dominica (2016, 2017), Georgia, Ghana, Greece, Grenada (2016, 2017), Hungary, Italy, Jamaica, Jordan, Macedonia (2015, 2016), Malaysia, Mongolia, Nepal (2015), Panama (2015), Philippines (2015), Romania, Senegal, Slovenia (2015), South Africa, , St. Kitts and Nevis (2016), St. Lucia (2016, 2017), St. Vincent and the Grenadines (2016, 2017), Trinidad and Tobago (2016, 2017), Tunisia (2015, 2017), United Arab Emirates
- 2<sup>nd</sup> Quartile: Albania, Argentina (2015), Belarus (2016, 2017), Belize, Burkina Faso (2016, 2017), China, Colombia, Cote D’Ivoire (2015, 2017), Dominican Republic (2015), El Salvador, Guyana (2016, 2017), India, Indonesia, Iran (2017), Kazakhstan, Kyrgyzstan, Lebanon (2015), Macedonia (2017), Malawi, Moldova, Morocco, Nepal (2016, 2017), Panama (2016, 2017), Peru, Russia (2015), Philippines (2016), Serbia, Sri Lanka, Suriname (2016, 2017), Tanzania (2015, 2016), Thailand, Tunisia (2016), Ukraine, Vietnam, Zambia
- 1<sup>st</sup> Quartile: Afghanistan, Bangladesh, Bolivia, Burkina Faso (2015), Cambodia, Cameroon, Cote D’Ivoire (2016), Dominican Republic (2016, 2017), Ecuador, Egypt, Ethiopia, Guatemala, Honduras, Iran (2015, 2016), Kenya, Lebanon (2016, 2017), Liberia, Madagascar, Mexico, Myanmar, Nicaragua, Nigeria, Pakistan, Philippines

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<sup>16</sup> *Current & Historical Data*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/current-historical-data> (“[T]he construction of the indicators and the underlying survey instruments were slightly revised with the publication of each report during those years. For these reasons, we ask all users to use caution in comparing scores over time, though it can be noted that indicator construction and WJP’s survey instruments have remained relatively stable since 2015, so comparisons can be made with more confidence over that time series.”). A spreadsheet of the current and historical data can be downloaded at the site.

(2017), Russia (2016, 2017), Sierra Leone, Tanzania (2017), Turkey, Uganda, Uzbekistan, Venezuela, Zimbabwe

- No score: Andorra, American Samoa, British Virgin Islands, Cyprus, European Union, Isle of Man, Israel, Jersey, Kuwait, Monaco, Switzerland, Taiwan

- 9. Substance area of foreign proceeding:** We coded for the substantive area in dispute in the foreign proceeding—whether it was antitrust, bankruptcy, contract (generic contract that does not fit into another category), corporate (disputes regarding corporate structure or breach of an officer’s fiduciary duty), environmental, employment, family (disputes regarding divorce, child custody, or inheritance), fraud (generic fraud that does not fit into another category), maritime, intellectual property or trade secret, products liability, securities, tax, tort (generic tort that does not fit into another category), and other (any cases not covered by the above).
- 10. Number of docket lines:** We coded for the number of docket lines it took to resolve a case. This is a very rough gauge of case complexity. Where a case was still pending, we did not track this data.
- 11. Number of orders:** We coded for the number of orders it took to resolve a case. This is another very rough gauge of case complexity. Where a case was still pending, we did not track this data.
- 12. Outcome:** We coded for the outcome of the case—whether it was granted to some extent (including those that were granted in part or subsequently quashed in part), denied altogether, or reached no resolution. Where an initial result was later altered, we looked at the final outcome. A case reached no resolution if it was withdrawn or otherwise terminated before a decision was made. Where a case was still pending, we did not track the outcome.

**APPENDIX C: Supplementary Tables and Figures***Table 3: Foreign Discovery Requests Executed Under § 1782, Data Summary, 2005-2017<sup>17</sup>*

Year	Total number of cases	Cases sampled <sup>18</sup>
2005	290	102
2006	210	62
2007	275	97
2008	267	91
2009	218	70
2010	197	59
2011	212	72
2012	177	73
2013	233	82
2014	293	94
2015	237	98
2016	312	111
2017	239	81
Total	3160	1092

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<sup>17</sup> The year of a case is determined by the day on which it was filed.

<sup>18</sup> I drew a random sample across the entire study period for detailed coding.

Table 4: Estimated Number of Foreign Discovery Requests Executed Under § 1782<sup>19</sup>

Year	Civil Requests <sup>20</sup>		Criminal Requests		Refiled Requests	
	Number 95% CI	% 95% CI	Number 95% CI	% 95% CI	Number 95% CI	% 95% CI
2005	48.9 34—72	17% 12%—25%	238 218—256	82% 75%—88%	3.3 1—15	1.1% 0.34%—5.2%
2006	63.4 45—89	30% 21%—42%	131 108—155	62% 51%—74%	15.8 8—35	7.5% 3.8%—17%
2007	86.1 66—112	31% 24%—41%	179 156—203	65% 57%—74%	9.9 5—25	3.6% 1.8%—9.1%
2008	108 86—136	41% 32%—51%	144 120—171	54% 45%—64%	14.4 7—32	5.4% 2.6%—12%
2009	127 105—150	58% 48%—69%	87.9 68—113	40% 31%—52%	3.5 1—17	1.6% 0.46—7.8%
2010	135 115—155	69% 58%—79%	51.1 35—74	26% 18%—38%	10.9 5—28	5.6% 2.5%—1.4%
2011	171 154—186	81% 73%—88%	34.8 23—54	16% 11%—25%	6.3 3—19	3% 1.4%—9%
2012	151 139—162	86% 79%—92%	23.1 15—38	13% 8.5%—21%	2.6 1—12	1.4% 0.56%—6.8%
2013	204 190—216	88% 82%—93%	17.5 10—33	7.5% 4.3%—14%	11.6 9—26	5% 2.6%—11%
2014	247 228—264	84% 78%—90%	29.6 18—50	10% 6.1%—17%	16.5 9—34	5.6% 3.1%—12%
2015	219 208—228	92% 88%—96%	7.7 4—19	3.3% 1.7%—8%	10.3 6—22	4.3% 2.5%—9.3%
2016	240 219—260	77% 70%—83%	33 22—52	11% 7.1%—17%	39 27—59	12% 8.7%—19%
2017	208 193—222	87% 81%—93%	3.1 1—14	1.3% 0.42%—5.9%	27.6 17—46	12% 7.1%—19%
Total	2070 1993—2147	65% 63%—68%	919 848—996	29% 27%—32%	172 139—214	5.4% 4.4%—6.8%

<sup>19</sup> Since the random sample was drawn without replacement from a finite population of comparable size, I modeled it as a random draw from a hypergeometric random variable and used this distribution to calculate 95% confidence intervals.

<sup>20</sup> There is a very small number of requests associated with both underlying civil claims and related criminal proceedings or investigations. These mixed requests comprise 2% of the sample and were distributed across years. Because this Article focuses on civil requests, I include these mixed cases in the civil requests group.

*Table 5: Estimated Number of Civil Requests by Most Common Receiving Court*<sup>21</sup>

Court	Number 95% CI	% 95% CI
New York Southern	272 218—342	23% 18%—28%
Florida Southern	124 91—173	10% 7.6%—14%
California Northern	94.1 67—137	7.8% 5.6%—11%
California Central	84 58—124	7% 4.8%—10%
Florida Middle	47.1 30—78	3.9% 2.5%—6.5%

*Table 6: Estimated Number of Civil Requests by Requestor*<sup>21, 22</sup>

Requestor	Number 95% CI	% 95% CI
Tribunal	912 817—1016	44% 39%—49%
Direct	22.4 13—44	1.1% 0.63%—2.1%
Via DOJ	832 741—933	40% 36%—45%
Via Party	57.6 39—88	2.8% 1.9%—4.3%
Party	1142 1038—1255	55% 50%—61%
Interested Person	16 8—35	0.77% 0.39%—1.7%

<sup>21</sup> Since the random sample was drawn without replacement from a finite population of comparable size, I modeled it as a random draw from a hypergeometric random variable and used this distribution to calculate 95% confidence intervals.

<sup>22</sup> Where a request came from both a tribunal and another entity, I counted it as a tribunal request. Where the request came from both a party and an interested person, I counted it as a party request. I applied these rules because in the Supreme Court instructed judges to gauge foreign tribunal receptivity, which judges can do as long as the foreign tribunal is one of the requestors. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004).

Table 7: Estimated Number of Civil Requests by Target<sup>23</sup>

Target	Requests from Foreign Tribunals		Requests from Foreign Parties	
	Number 95% CI	% 95% CI	Number 95% CI	% 95% CI
Party	132 97—183	15% 11%—20%	101 72—134	8.4% 6%—12%
Nonparty	774 684—874	85% 75%—96%	1059 959—1166	88% 80%—97%
Both	3.3 1—17	0.36% 0.11%—1.9%	40.5 25—70	3.4% 2.1%—5.8%

Table 8: Estimated Number of Civil Requests by Type of Foreign Tribunal<sup>23, 24</sup>

Foreign Tribunal Type	Requests from Foreign Tribunals		Requests from Foreign Parties	
	Number 95% CI	% 95% CI	Number 95% CI	% 95% CI
Foreign Court	897 816—982	99% 90%—100%	1078 979—1184	90% 82%—97%
Commercial Arbitration	3.2 1—17	0.35% 0.11%—1.9%	119 87—167	9.9% 7.2%—14%
Regulatory	9.6 4—27	1.1% 0.44%—3%	47.6 30—79	4% 2.5%—6.6%
Investor-state Arbitration	0 0—11	0% 0%—1.2%	30.6 18—57	2.5% 1.5%—4.7%
International Court	0 0—11	0% 0%—1.2%	3.4 1—18	0.28% 0.083%—1.5%

<sup>23</sup> To calculate the 95% confidence intervals, I first used the hypergeometric distribution to estimate a 95% confidence interval for the number of (for example) tribunal requests in the overall population. I then used the hypergeometric distribution a second time to estimate how many requests of this particular sort were made by tribunals. I took a conservative approach and used the lower bound for the number of tribunal requests to calculate the lower bound for the number of requests made by tribunals, etc. This method errs on the side of wider-than-necessary confidence intervals.

<sup>24</sup> Where a request came from more than one tribunal type, it was counted toward both categories, which is why the percentages add up to more than 100%. I double counted because each tribunal type is independently significant.

Table 9: Estimated Number of Civil Requests by Nature of Foreign Proceeding<sup>25</sup>

Nature of Foreign Proceeding	Requests from Foreign Tribunals		Requests from Foreign Parties	
	Number 95% CI	% 95% CI	Number 95% CI	% 95% CI
Timing of Foreign Proceeding				
Pending	907 830—987	100% 91%—100%	1009 909—1117	84% 76%—93%
Contemplated	0 0—11	0% 0%—1.2%	121 89—169	10% 7.4%—14%
Mixed	3.2 1—17	0.35% 0.11%—1.9%	70.6 48—108	5.9% 4%—9%
Number of Foreign Proceedings for Which Discovery Requested				
One	907 830—987	100% 91%—100%	864 766—973	72% 64%—81%
Multiple	3.2 1—17	0.35% 0.11%—1.9%	336 275—413	28% 23%—34%

Table 10: Estimated Number of Civil Requests by Most Common Area of Foreign Dispute<sup>25, 26</sup>

Requests from Foreign Tribunals			Requests from Foreign Parties		
Area	Number 95% CI	% 95% CI	Area	Number 95% CI	% 95% CI
Family	478 397—574	52% 44%—63%	Contract	327 266—404	27% 22%—34%
Contract	140 101—197	15% 11%—22%	Patent/IP	230 181—296	19% 15%—25%
Employment	106 74—156	12% 8.1%—17%	Corporate	148 111—201	12% 9.2%—17%

<sup>25</sup> To calculate the 95% confidence intervals, I first used the hypergeometric distribution to estimate a 95% confidence interval for the number of (for example) tribunal requests in the overall population. I then used the hypergeometric distribution a second time to estimate how many requests of this particular sort were made by tribunals. I took a conservative approach and used the lower bound for the number of tribunal requests to calculate the lower bound for the number of requests made by tribunals, etc. This method errs on the side of wider-than-necessary confidence intervals.

<sup>26</sup> Where the dispute in the foreign proceeding touched on multiple substance areas, I counted them toward all applicable categories.

*Table 11: Estimated Complexity of Civil Requests<sup>27</sup>*

Year	Requests from Foreign Tribunals		Requests from Foreign Parties	
	Median Dkt Lines 95% CI	Median Orders 95% CI	Median Dkt Lines 95% CI	Median Orders 95% CI
2005	5 3—32	1 1—9	6 2—40	1 1—10
2006	3 3—18	2 1—4	11 4—40.5	3 1—8
2007	3 3—3	1 1—1	4 3—33	1 1—7
2008	4 2.5—5.5	1 1—2	20 9.5—39.5	4 2.5—8.5
2009	4 3—5	1 1—1.5	17.5 7—22	4 2—7
2010	3.5 2.5—5	1 1—2	21 9—53	4.5 2.5—12
2011	3 2—3	1 1—1	9 6—19	2 2—4
2012	3 3—4	1 1—1.5	11 8—21	4 2—5
2013	3 3—4.5	1 1—1	11 8—19	3 2—3
2014	3 3—4	1 1—1	11 7—18	4 2—5
2015	4 3—4	1 1—1	9 6—15	2 2—4
2016	3 3—4	1 1—1	13 8—21	4 3—5
2017	4 3—4	1 1—2	11 7—20	3 2—4
Overall	3 3—4	1 1—1	11 9.5—13	3 3—4

<sup>27</sup> I calculated these 2.5% and 97.5% quantiles for the median using bootstrap resampling (10,000 bootstrap samples per interval).

*Table 12: Outcome for Sampled Civil Requests*<sup>28</sup>

Year	Requests from Foreign Tribunals			Requests from Foreign Private Actors		
	Granted No. (%)	Denied No (%)	No Res. No (%)	Granted No (%)	Denied No (%)	No Res. No (%)
2005	9 (100%)	0 (0%)	0 (0%)	5 (100%)	0 (0%)	0 (0%)
2006	4 (80%)	1 (20%)	0 (0%)	8 (80%)	2 (20%)	0 (0%)
2007	18 (95%)	0 (0%)	1 (5%)	6 (86%)	0 (0%)	1 (14%)
2008	11 (92%)	0 (0%)	1 (8%)	10 (56%)	3 (17%)	5 (28%)
2009	19 (86%)	1 (5%)	2 (9%)	13 (93%)	1 (7%)	0 (0%)
2010	11 (92%)	0 (0%)	1 (8%)	16 (64%)	4 (16%)	4 (20%)
2011	14 (82%)	1 (6%)	2 (12%)	26 (72%)	5 (14%)	5 (14%)
2012	20 (91%)	1 (5%)	1 (5%)	25 (74%)	3 (9%)	6 (18%)
2013	25 (96%)	0 (0%)	1 (4%)	30 (73%)	4 (10%)	7 (17%)
2014	33 (97%)	0 (0%)	1 (3%)	28 (72%)	6 (15%)	5 (13%)
2015	35 (90%)	0 (0%)	4 (10%)	37 (80%)	2 (4%)	7 (15%)
2016	38 (93%)	1 (2%)	2 (5%)	26 (67%)	9 (23%)	4 (10%)
2017	25 (100%)	0 (0%)	0 (0%)	34 (83%)	2 (5%)	5 (12%)
Overall	262 (93%)	5 (2%)	16 (6%)	264 (75%)	41 (12%)	49 (14%)

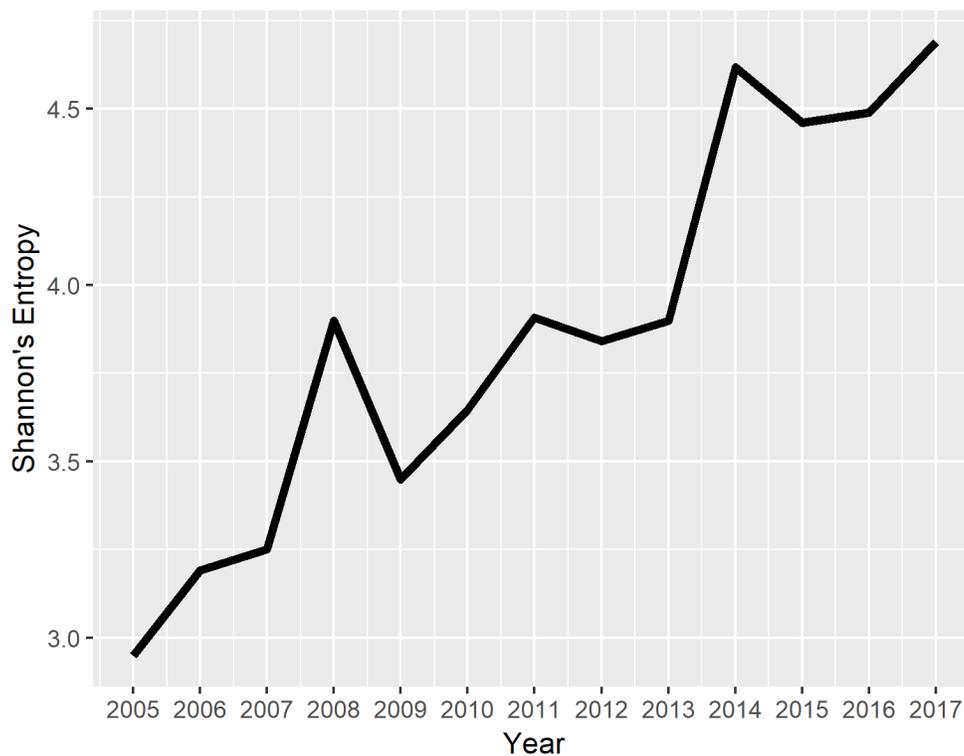
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<sup>28</sup> This table represents the outcome of foreign civil discovery requests in the randomly drawn sample.

*Table 13: Estimated Grant Rates for Civil Requests<sup>29</sup>*

Year	Grant Rate	95% CI
2005	92.9%	69.6%—97.8%
2006	81.3%	57.1%—95.2%
2007	100%	87.5%—100%
2008	87%	68.7%—96.4%
2009	93.9%	81.9%—98.3%
2010	87.5%	73.5%—95.7%
2011	87%	75.7%—93.9%
2012	91.8%	82.9%—96.9%
2013	93.5%	86.2%—97.8%
2014	91.2%	83.2%—96%
2015	97.3%	92.1%—99%
2016	86.5%	78.4%—92.3%
2017	96.8%	90.1%—99%
Tribunal Requests 2005-2017	98.1%	96.1%—99.3%
Party Requests 2005-2017	86.6%	82.9%—89.6%
All Requests 2005-2017	91.9%	89.7%—93.6%

<sup>29</sup> This table shows grant rates in the sampled foreign civil discovery requests, calculated as the number of granted requests divided by the number of granted requests plus the number of denied requests. To calculate the 95% confidence intervals for tribunal and party requests, I first used the hypergeometric distribution to estimate a 95% confidence interval for the number of (for example) tribunal requests in the overall population. I then used the hypergeometric distribution a second time to estimate how many requests of this particular sort were made by tribunals. I took a conservative approach and used the lower bound for the number of tribunal requests to calculate the lower bound for the number of requests made by tribunals, etc. This method errs on the side of wider-than-necessary confidence intervals.

*Figure 4: Shannon's Entropy, Calculated on Mixture of Countries for Civil Requests*<sup>30</sup>

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<sup>30</sup> Shannon's Entropy has been used in varied contexts to measure the diversity of populations. It captures both "richness" (the number of different categories within a population) and "evenness" (the equiprobability of randomly drawing any particular category). The more categories (here, countries) there are in a population, and the more evenly the population is divided across those categories, the higher Shannon's Entropy.