

**AON**

# **Intellectual Property Liability Insurance**

Overview

2023

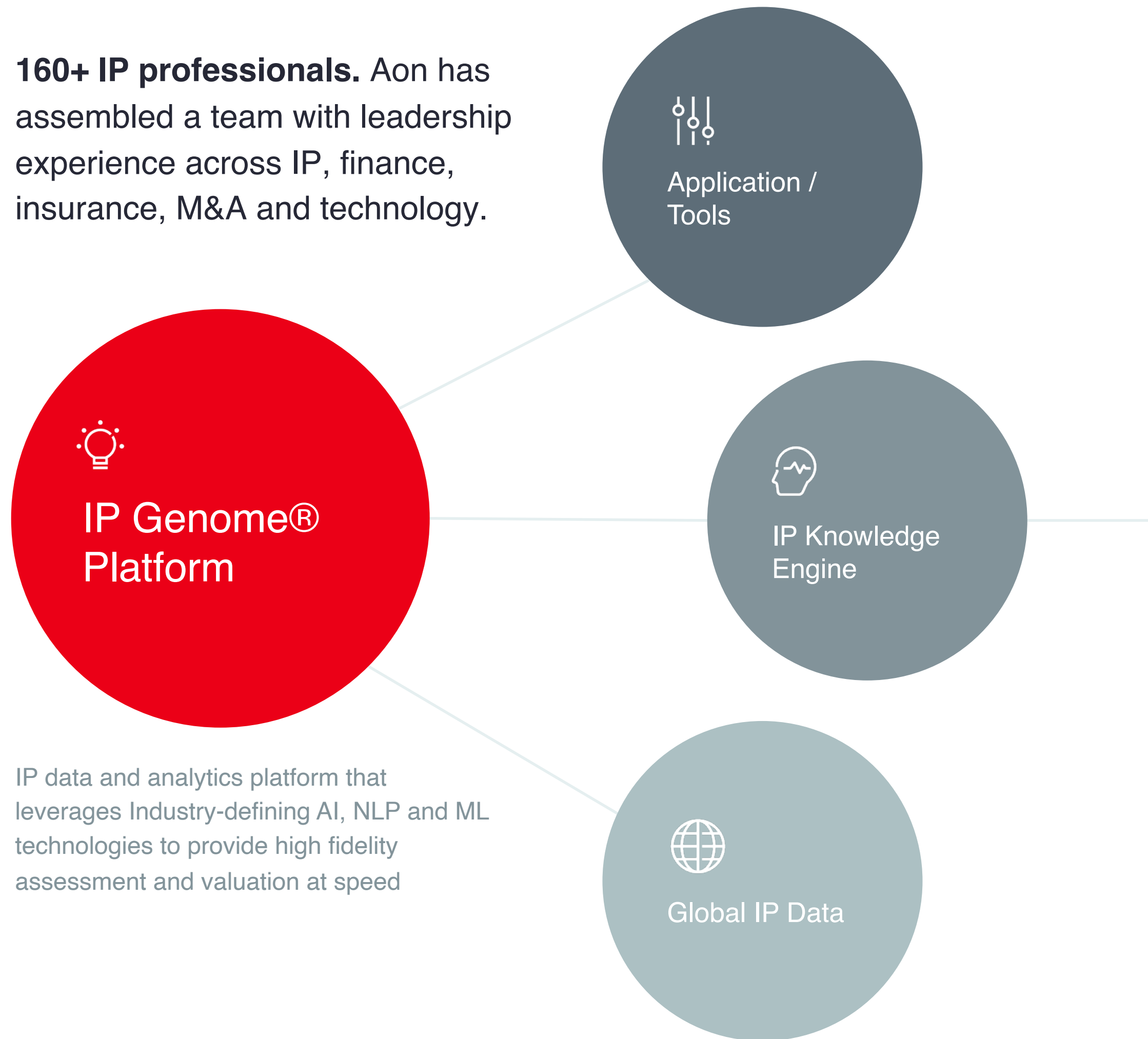




# Aon's Capabilities and Solutions

## Our Global Team

**160+ IP professionals.** Aon has assembled a team with leadership experience across IP, finance, insurance, M&A and technology.



IP data and analytics platform that leverages Industry-defining AI, NLP and ML technologies to provide high fidelity assessment and valuation at speed



### Corporate IP Leadership

Chief Patent Counsel of Microsoft

Chief IP Officer of Philips

General Counsel of Geely

Chief Trademark Counsel of Wrigley

7 of the Top 300 IP Strategists globally



### Technology Development

CEO of SaaS IP specialist Lex Machina

5 Ph.Ds

7 data scientists

9 software architects

41 engineering, computer science, and math degrees



### IP Broking and MGA

Largest IP broking team in the industry

15+ dedicated brokers globally

Innovators of award-winning IP insurance

Largest IP-focused MGA in the market



### M&A and Capital Markets Advisory

1 advisor to Federal Reserve Board of San Francisco

2 investment bankers with >30 years M&A and capital markets experience

2 alternative investment specialists with experience at Blackrock, Barclays, Lehman, Freddie Mac

3 corporate development heads with experience in M&A, strategy, financing



### IP Legal and Advisory

CEO of leading patent firm Lee & Hayes

COO and co-founder Unified Patents

2 senior members of RPX and Ocean Tomo structured transactions teams

10 intellectual property (registered patent) attorneys

# Poll #1

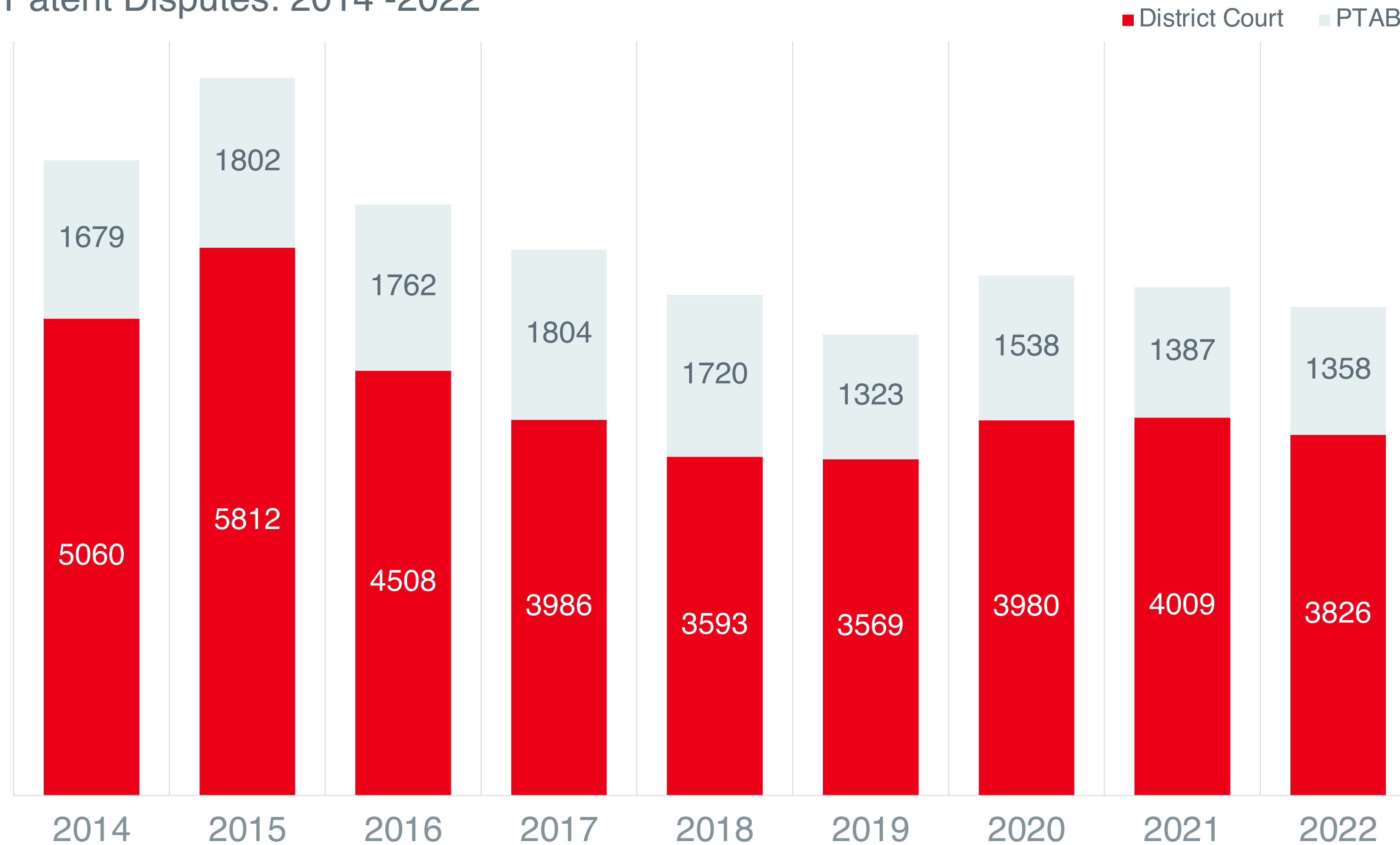
Question:

Has your company experienced IP infringement issues in the past? (Y/N)

# Market Context

## YoY Patent Litigation Trends

Patent Disputes: 2014 -2022



### Highlights

Patent litigation increased on a year-over-year basis from 2019 to 2021

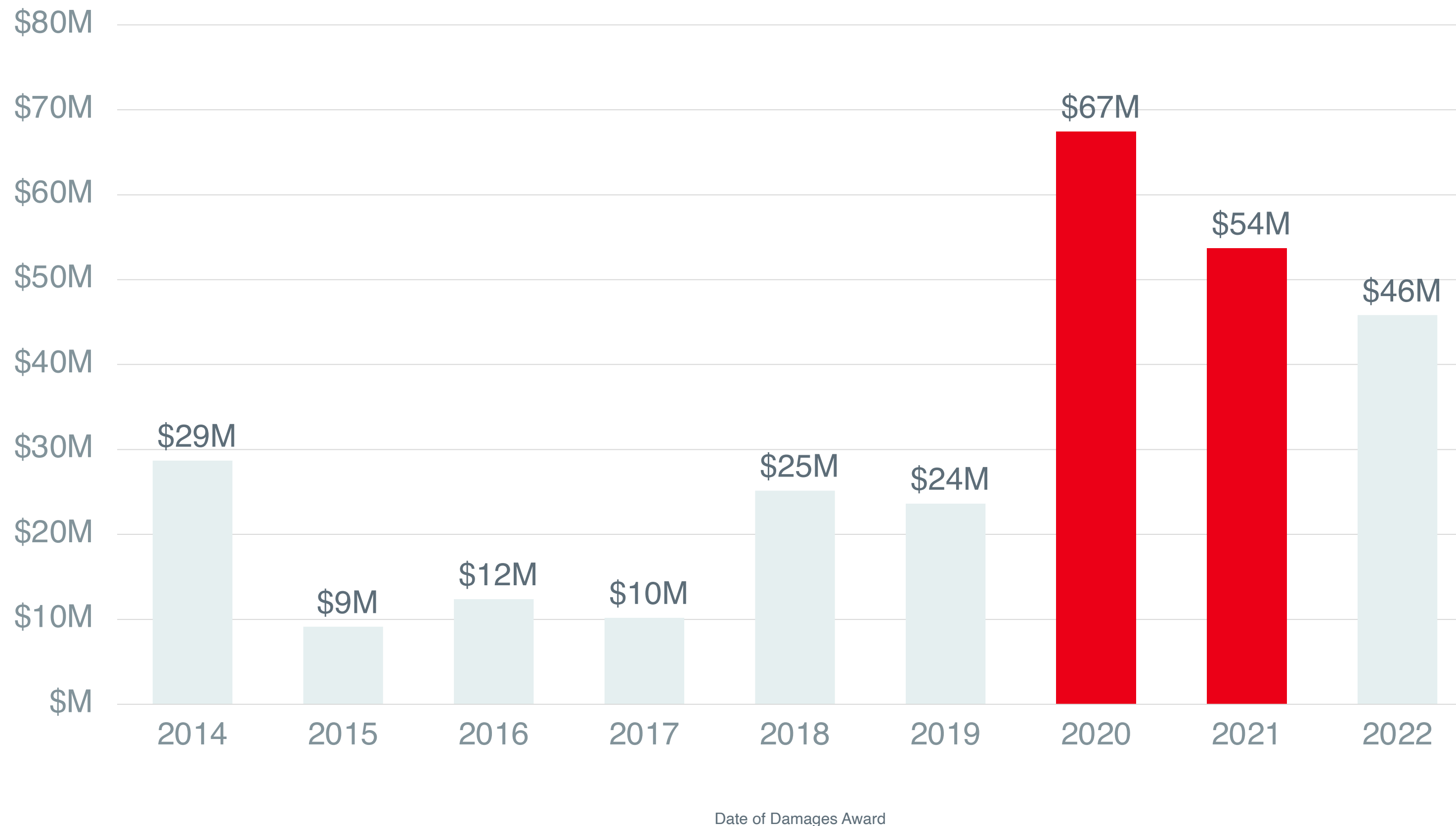
In 2022, NPE-related litigation composed 63% of cases

38% of cases filed over this period were against computer software or hardware manufacturing businesses

# Market Context

## Litigation Severity Trends

Average Patent Damages Per Year



### Highlights

The COVID-19 lockdowns were a sudden shock to the US economic system.

Patent litigation increased 25% in a single quarter, from Q1 2020 to Q2 2020, the biggest single quarter increase since 2016.

2020 and 2021 both saw damages awards exceed \$1B for the first time since 2012

A damages award exceeded \$2B in 2021

## Poll #2

Question:

Has your company looked into IP Insurance in the past? (Y/N)

# IP Infringement Market

## Overview



### Claims & Losses

**Stronger data is being gathered as more IP losses are reported**

- Claims and loss data have expanded coverage offerings and improved actuarial data is used for loss modelling purposes
- Changes in legislation continue to drive litigation (i.e. DTSA, Heartland v Kraft Foods, Alice v CLS, Unwired Planet v Huawei)
- Average frequency and severity of litigation has increased



### Coverage

**Coverage continues to evolve and become more valuable for Insureds**

- Aon continues to negotiate enhanced coverage terms with each insurer
- Coverage breadth continues to expand
- Emphasis on claims support services
- Narrowing of exclusions (International Trade Commission, Special Enrolment Periods, IP Rights, Loss Mitigation, Business Interruption)
- Affirmative Enforcement cover available for sub \$100M revenue clients



### Capacity

**Capacity is continuing to grow across geographies**

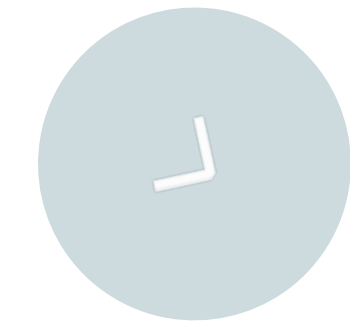
- Over 18 unique Insurers providing IP Infringement capacity
- Capacity is available in Europe, US and Bermuda
- Growing number of Insurers developing appetites for large, complex risks
- There is over \$250M in theoretical capacity available in the IP market place



### Retentions

**Retentions are being reviewed**

- Retentions of all levels are available in the market, but can vary greatly based on industry class, size and unique exposures
- Adjusting retentions can lead to increased coverage and/or pricing flexibility
- Minimum Retentions tend to be \$25,000 or 1% of limit
- Coinsurance continues to reduce across the board, with 0-10% standard, and removed excess \$2.5M
- Higher retentions and coinsurance for ITC cover



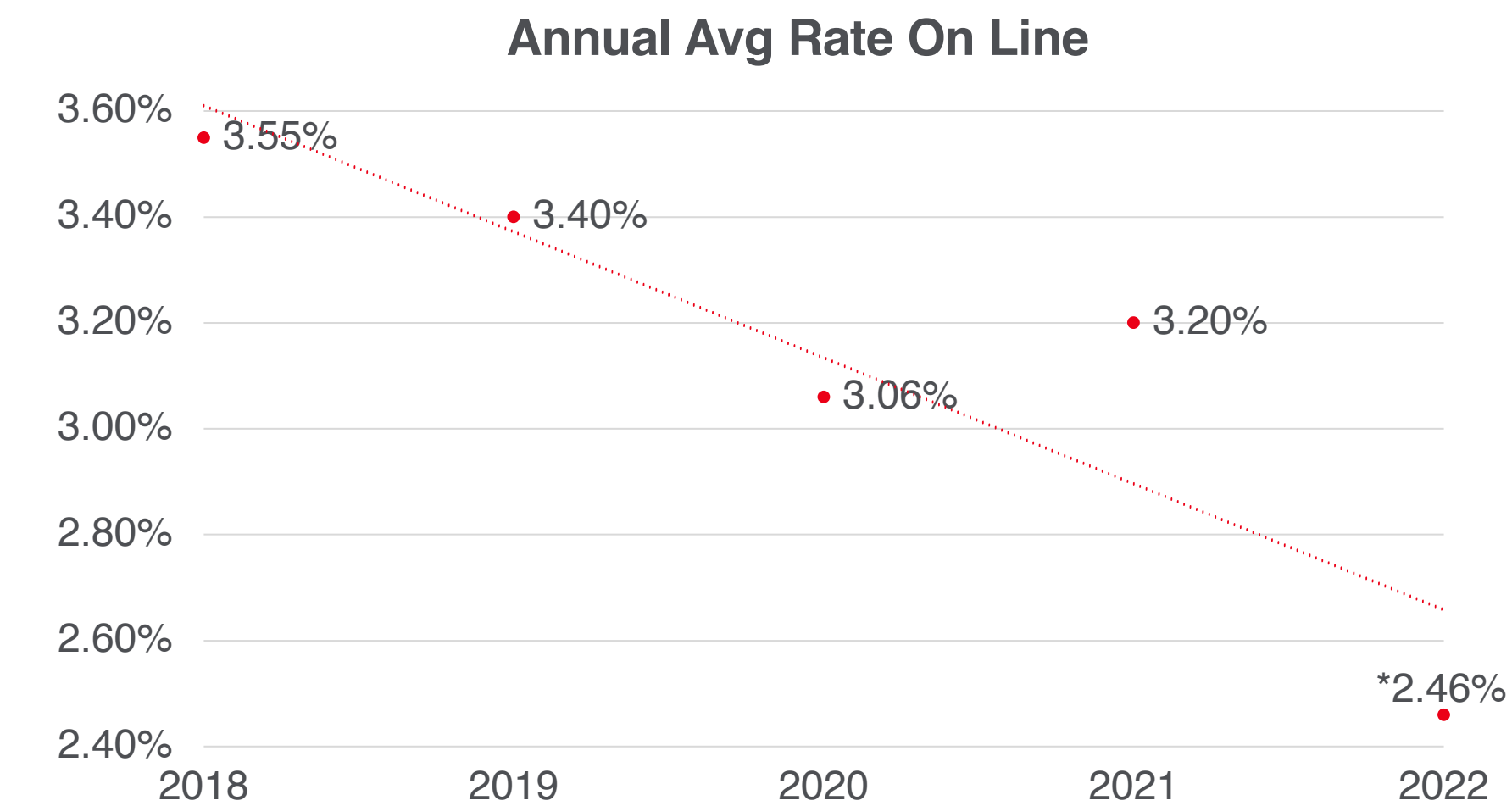
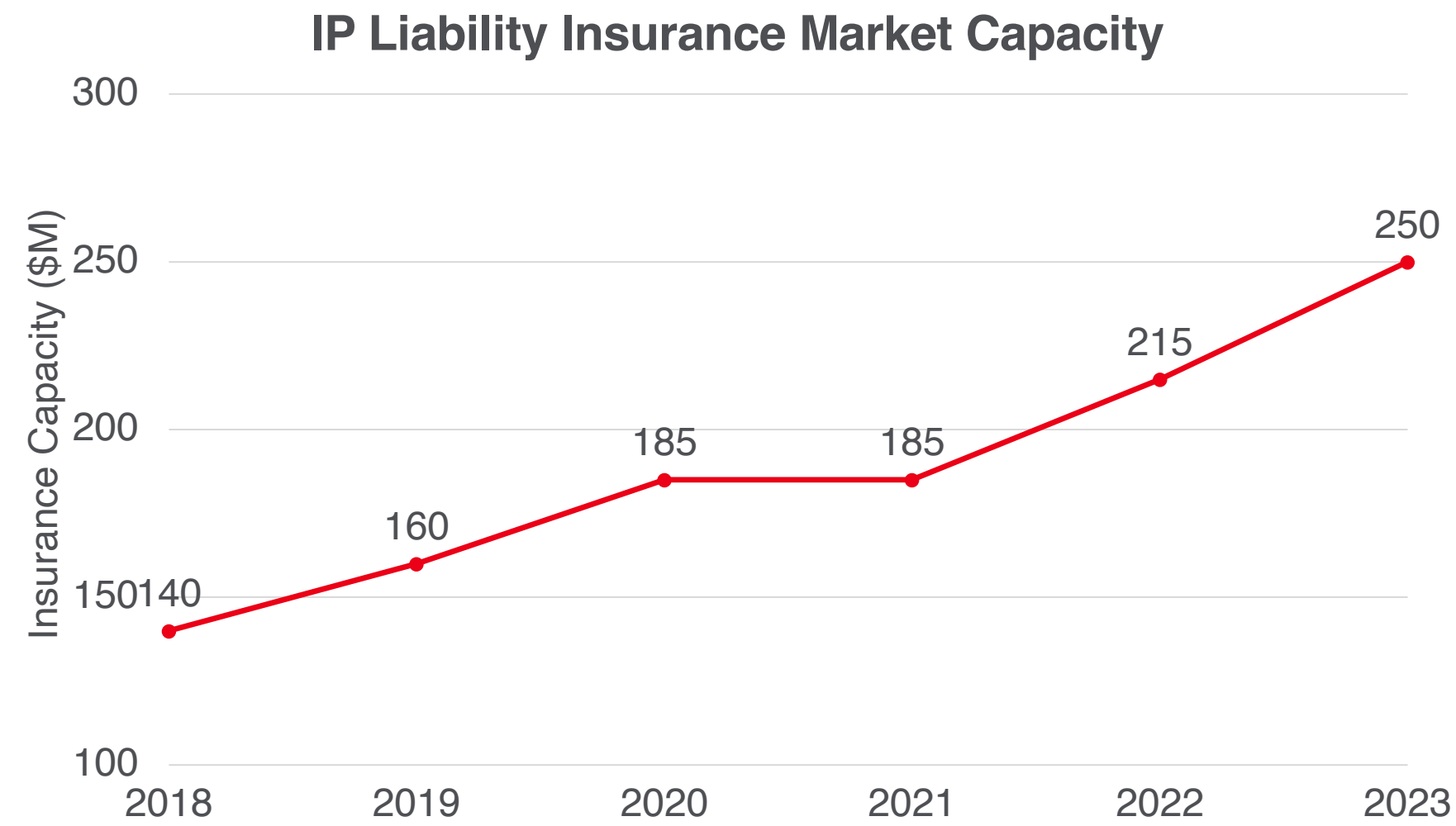
### Pricing

**Pricing trends are on a slight decline**

- Average premium rates reflect a decline largely due to an increase in the amount of data available to underwriters
- Excess rate environment holds steady
- Some Insureds have secured significant coverage improvements as a result of paying higher premiums
- SME/middle market companies have seen biggest premium savings

# IP Liability Market

Increased Capacity Leads to Decreased Rates and Increased Participation



## IP Highlights

**\$150K**  
Average premium

**300+**  
Submissions a month<sup>1</sup>

**10+**  
Insurers

**10**  
Fortune 500 Aon clients

**~\$750M**  
Total Aon Limits Placed

## Industries Represented

32%  
Technology

30%  
Manufacturing

12%  
Software

21%  
Healthcare/Retail/ Oil & Gas/Other



1 - Based on market feedback from participants

2 - Data provided through Aon IP Benchmarking against current book

3 - Market Capacity based on historic interest and limits provided



## Poll #3

Question:

Does your company have an annual budget for IP infringement litigations / issues? (Y/N)

# Capabilities and Solutions

IPL

IP Liability Insurance can protect companies by covering against:

**A** **Infringement Defense**

### Balance Sheet / Volatility Protection

- Coverage for potentially catastrophic IP infringement pre litigation or litigation claims
- Coverage includes reimbursement for: legal fees & expenses, settlements and damages
- Appeals and counterclaims
- Challenges to IP rights & ownership
- Coverage against NPEs/Competitors

**B** **Contractual Indemnity**

### Business Enablement

- IP related contractual indemnities provided to a third party
- Coverage can potentially include entire business' operations or for specific product(s), processes, services, and contracts

**C** **IP Rights Protection**

### First Party Loss

- Challenges to the Insured's rights in or ownership of IP
- Validity, rectification, cancellation or revocation proceedings or applications to amend any register
- Applications for entitlement for a post grant, grant of a compulsory license & declaration of non infringement



Global Coverage



All business activities or contract specific



Choice of Counsel



Threats/Charges of Infringement



Litigation Expense, Settlements, and Damages



# IP Risk Assessment

## Overview

- Aon relies on a proven data driven analytical framework to quantify IP Infringement risk.
- The **Intellectual Property Infringement Risk Assessment** has been employed by companies ranging from SME/Middle Market companies to Fortune 500 companies to develop a data-driven understanding of their Infringement risk and quantify the potential impact of IP insurance to hedge earnings volatility & balance sheet risk.



### Scenario Analysis

#### Identify + Analyze Scenarios

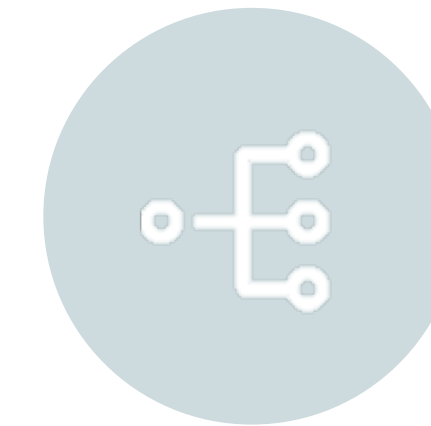
- Identify threat scenarios and exposures with ABC
- Define commercial parameters of each identified scenario with ABC business representatives
- Qualitative review of IP Infringement risk
- Industry litigation analysis
- Key infringement risk factors & mitigating factors
- Review of major legal precedents & rule changes impacting infringement risk



### Financial Modeling

#### Data Analysis + Loss Quantification

- Data collation of relevant ABC information with Aon databases
- Benchmark frequency and severity against peers and industry verticals
- Actuarial analysis of infringement risk & loss scenarios
- Calculation of TCOR & CAT TCOR



### Insurance Testing

#### Risk Management Testing

- Pricing and impact of various insurance structures
- Summarize IP infringement risk posture
- Insurance program analysis for each scenario
- Evaluate efficacy of existing risk mitigation measures, including the Risk Transfer (Insurance) strategy
- Gap analysis of current program against insurable IP exposures (limits and coverage)

# IP Liability Insurance

## Application Process

1

### Application

Initial call to assess client's demands and needs to determine type and amount of cover required

Signing NDA

Completion and submission of proposal form to insurers

**Timing: Weeks 1-2**

2

### Indication & Quoting

Insurers review the information provided and will deliver a non-binding indication and potentially request additional information to formalize a quote

Conference call with client and insurers to discuss specific questions and improve insurer understanding

Final bindable quote provided

**Timing: Weeks 3-4**

3

### Binding of Cover

Aon will provide a formal proposal of the various quotes received, including the key differences

A conference call will be arranged to discuss the proposal and provide additional clarity

Client selects preferred insurer and issues binding instructions, including desired inception date

**Timing: Week 5**

### Critical Information

Client Name

Industry

Revenue

Litigation history, including defense costs and settlement data

Desired coverage structure:

Enterprise cover

Product specific

Segment specific

Contractual requirement

#### NOTE

*Estimated timeline is contingent upon several factors, including client timeliness in providing the data and transaction complexity.*



# Contact Us

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Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance

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# Intellectual Property Liability Coverage

**IP exposure is an emerging litigation concern for nearly all companies**

IP Liability results from alleged infringements upon other companies' patents, trade secrets, copyrights, trademarks, and more.

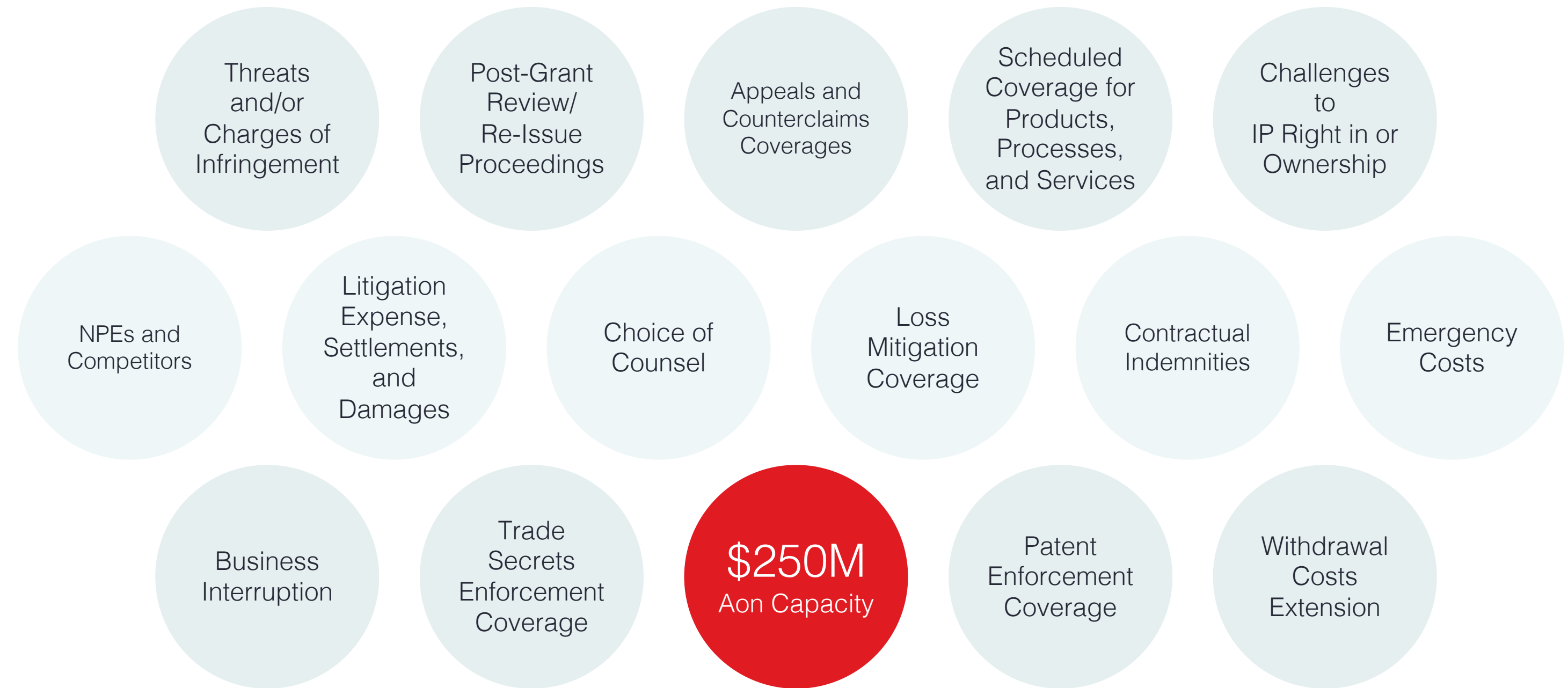
**Any entity that offers products or services can be sued**

- It does not matter if you own patents; it matters that others own them
- Counterintuitively, a relative scarcity of patents can increase your IP exposure

**IP infringement can be a “bet the company” scenario**

- Nearly \$3 million — Average cost of patent litigation
- Over \$1 billion — Multiple awards in excess of
- Business disabling — Orders to cease utilization of certain patents, trade secrets, etc., could be an existential crisis for many businesses

IP Liability Insurance can protect companies by covering against:





# IP Liability Insurance

## Coverage Gap Analysis

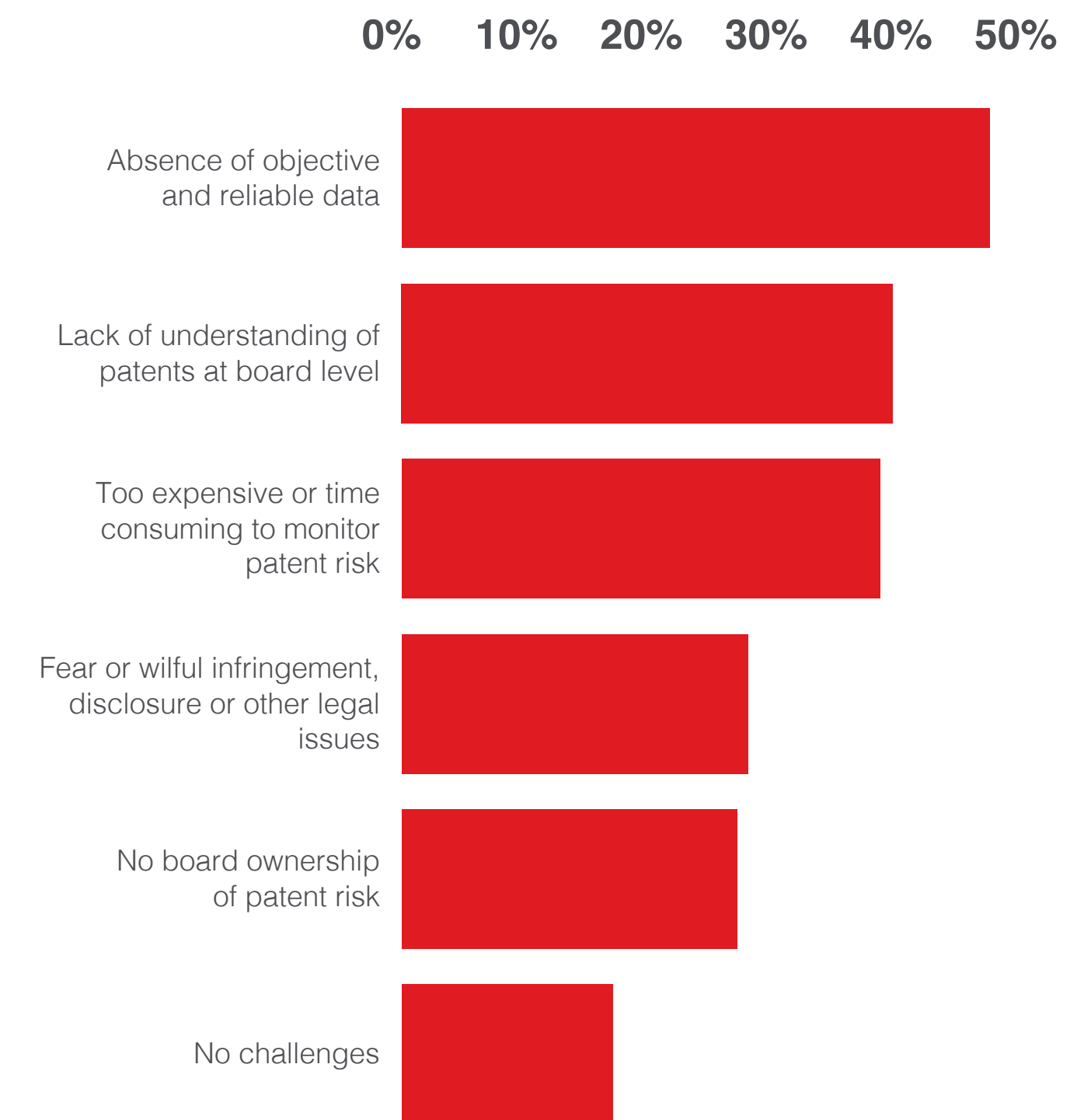
Exposures	Intellectual Property Liability	General Liability	E&O/ Professional Liability	Cyber Liability	Media Liability	Kidnap and Ransom	Reps and Warranties (Transaction Based)
<b>IP Liability Risks</b>							
Patent Infringement	Cover available	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward
Trade Secret Misappropriation	Cover available, outside the scope of some core policies	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward
Trademark/Trade Dress/Trade Name Infringement	Cover available	Limited to Advertising Injury, Products and Services Excluded	Limited to Advertising Injury tied to the Performance of Professional Services	Content disseminated through the website or internet	Limited to Content	Excluded	Cover for the Rep on past issues, no go-forward
Copyright Infringement	Cover available	Limited to Advertising Injury, Products and Services Excluded	Limited to Advertising Injury tied to Professional Services	Content disseminated through the website or internet	Limited to Content	Excluded	Cover for the Rep on past issues, no go-forward
Third Party IP disclosure/release (breach of NDA/confidentiality agreement)	Cover can be endorsed for unintentional acts	Excluded	Limited to Professional Services for unintentional acts	Cover for unintentional breach of NDA, under Security & Privacy Liability	Unintentional disclosure of private facts	Excluded	Cover for the Rep on past issues, no go-forward
Contractual Indemnities of IP Risk	Cover available for IP Infringement of Insured's Product	Excluded	Limited to Advertising Injury tied to Professional Services	Limited to Content disseminated through website or internet	Limited to Content	Excluded	Cover for the Rep on past issues, no go-forward
Breach of IP license agreement	Can be endorsed, limited availability	Excluded	Excluded	Excluded	Unintentional breach of a license	Excluded	Cover for the Rep on past issues, no go-forward
<b>IP Ownership Risks</b>							
IP ownership representations	Cover available	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward
Loss of IP value due to theft/misappropriation/other loss	Solutions being built	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward
IP Enforcement costs	Limited availability, only outside of the US	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward
Loss of IP due to legal challenge/Loss of Revenue	Limited availability	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward

# Cipher Survey

## Key Findings

- Patent risk is unavoidable for most patent owners, inevitable for many and generally not reported,
  - Over **82%** of patent owners think it is likely that they will have to deal with patent risk in the next two years, with **40%** reporting that patent risk is inevitable
- Building a strong patent portfolio is the primary approach to patent risk mitigation (**92%** of respondents), but is only part of an overall risk mitigation strategy
- The main challenges when communicating patent risk include the absence of objective and reliable data (**50%** of respondents) and the lack of understanding of patents at board level (**41%**).
- Most patent owners have a risk matrix or framework but only use it when there is a significant issue.
  - 49%** of patent owners report that they have a risk matrix or framework for communicating patent risk
  - 53%** overall increase NPE litigation cases from 2020 to 2021 across all sectors.

**Figure 5 |** What are the challenges you face in communicating patent risk?






Source: Cipher Patent Risk Survey, 2021

**Figure 4A |** If you secured additional budget, how best would it be deployed to reduce patent risk? (split by sector)

	Patent portfolio size	Filing for more patents	Licences or cross licences	Patent acquisition	Broader geographical coverage for the existing portfolio	Membership of organisations	Patent insurance
Automotive		67%	67%	67%	50%	33%	17%
Healthcare		90%	60%	60%	60%	0%	10%
Industrials		64%	64%	64%	36%	0%	9%
Software		67%	33%	83%	33%	50%	17%
Technology		58%	58%	58%	33%	0%	18%

# Quality of Intellectual Property

Solution Suite: IP intelligence tailored for the deal market

	 Buy	 Build	 Sell
Transactions	<b>M&amp;A Investments</b>	<b>IP Strategy Transaction Preparedness</b>	<b>M&amp;A Capital Raising</b>
Impact	<p><b>Inform Investment Decisions</b></p> <ul style="list-style-type: none"> <li>▪ Examine IP assets and coverage</li> <li>▪ Benchmark IP vs. competitors</li> <li>▪ Identify key risks</li> <li>▪ Recommend portfolio enhancements and risk management strategy</li> </ul>	<p><b>Optimize IP Coverage and Quality</b></p> <ul style="list-style-type: none"> <li>▪ Identify IP investment opportunities</li> <li>▪ Enhance IP landscape visibility</li> <li>▪ Drive value creation opportunities</li> <li>▪ Build portfolio value during holding period</li> </ul>	<p><b>Enhance Value Realization</b></p> <ul style="list-style-type: none"> <li>▪ Catalogue IP with precision</li> <li>▪ Position IP with impact</li> <li>▪ Benchmark IP vs competitors</li> <li>▪ Tie IP to enterprise advantages</li> <li>▪ Elevate IP positioning &amp; data room content</li> </ul>
Project Scope	<p>Focused scope Targeted IP analytics</p>	<p>Focused scope Optimized for client needs</p>	<p>Broad scope Multiple classes of IP Deep IP and enterprise analytics</p>
Deliverables	<p>20-30 page report + consultation</p>	<p>Varies by assignment + consultation</p>	<p>40-80 page report + execution support</p>
Indicative Timeline	<p>2-4 weeks depends on deal cadence, project scope</p>	<p>Varies by assignment</p>	<p>4-8 weeks depends on deal cadence, project scope</p>



# Quality of Intellectual Property

Sellside Value Proposition: Enterprise positioning enhancements, deal process improvements

- 1 Enhances Company Positioning**
  - Ties IP portfolio to investment highlights and management “talk track”
  - Benchmarks patent portfolio against competitors
- 2 Elevates IP Discussion**
  - Front loads IP discussion during price discovery vs. confirmatory due diligence
  - Enables seller to market IP as value driver *before indications of interest*
- 3 Focuses Buyer Engagement**
  - Provides intelligence about relative IP position of potential strategic buyers
  - Identifies competitors with similar patent portfolios, often discovering new potential buyers
- 4 Streamlines IP Diligence**
  - Improves process efficiency with better IP information quality and earlier IP dialogue
  - Avoids surprises late in process (including during exclusivity)

## Better Value Realization

*“... Victory Innovations thanks Aon for their impactful role in our sale process ...  
In four weeks, they helped us package years of innovation and IP development into a concise report  
that augmented our sale process and drove value for shareholders ...”*

*- Victory Innovations CEO*

# IP-Backed Lending

**Borrower Profiles:** IP-rich companies at an inflection point in their growth cycle

## Typical Borrower Profile



Inflection point for revenue growth and profitability



In need of runway capital to fund milestones



Seeking alternative to dilutive equity raise



Significant IP investment to serve as loan collateral



Opportunity to enhance IP value during loan period



Aon network can provide meaningful value-add partnership

**IP assets include: patents, trade secrets, know-how, copyrights, trademarks / brand, data rights, source code, regulatory rights, long term agreements, licensing agreements**

## Typical Credit Characteristics



Meaningful breadth of IP Assets (10+)



Current revenues linked to IP



Strong equity backing



Positive EBITDA or clear path to positive EBITDA



IP is, or can be, unencumbered



Expected loan to IP value <50%



Positive ESG profile



Multiple exit options

# IP-Backed Lending

## Illustrative Terms: Debt financing and insurance policy

Indicative Terms and Structure <sup>1</sup>	
<b>Size of Loan</b>	\$10M to \$200M+
<b>Insurance Policy Limit</b>	Can be 90% - 100% of loan amount
<b>Speed</b>	Target intro to close in <12 weeks
<b>Cost</b>	Target 10-20% all-in cost of capital <ul style="list-style-type: none"> <li>▪ Coupon ranges from 4-12% (see following page)</li> <li>▪ Insurance premium ranges from 4-10% annually</li> </ul>
<b>Flexibility</b>	Aon structures loan to meet client needs and align with risk profile <ul style="list-style-type: none"> <li>▪ Term: 2-5 years (typically 3-4)</li> <li>▪ Amortization: None, typically interest only</li> <li>▪ Premium: Paid upfront or in annual/quarterly installments; typical for a portion to be returned pro rata if taken off risk</li> <li>▪ Coupon: Cash and/or partial PIK</li> <li>▪ Covenants: Light on financial covenants, more strict around collateral</li> </ul>
<b>Warrants</b>	Minimal
<b>Workout Period</b>	180 to 270 days; IP held in a special purpose vehicle
<b>Insurer Ratings</b>	<ul style="list-style-type: none"> <li>▪ Can do layered or quota share deals, with high rated fronting insurers to optimize the insurance as a security</li> <li>▪ Aon has the ability to place coverage with 15+ insurers, enabling deals in excess of \$200m</li> </ul>
<b>Aon Capital</b>	\$600m of capital currently committed to the strategy <sup>2</sup>

<sup>1</sup>There is no guarantee that the above or similar terms will be the final terms provided for any Aon IP-backed credit offering. Despite interest received from its partners, there is no guarantee Aon together with its partners would have availability to make meaningful investments above \$100M for one offering. All terms are illustrative and subject to change. THE INFORMATION SET FORTH ABOVE DOES NOT CONSTITUTE AN OFFER OR SOLICITATION OF AN INTEREST IN ANY FINANCIAL PRODUCT OR SERVICE.

<sup>2</sup>Consists of direct capital and co-investment vehicle.