

# IP infringement insurance in M&A

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# Who are we?



**Kristian Kolsaker**  
Intellectual Property Underwriter



**Angus Marshall**  
Transaction Liability Practice Leader



What is IP &  
infringement?

# What is intellectual property?





IP infringement cover  
in  
Transaction Liability  
insurance

# IP infringement warranties

## Broad (buyer-friendly)

“None of the Company, the Company products (including use and sale thereof) the Company Intellectual Property or the conduct of the Company’s business violates, infringes, or misappropriates any Intellectual Property of any Person (or has previously done so).”

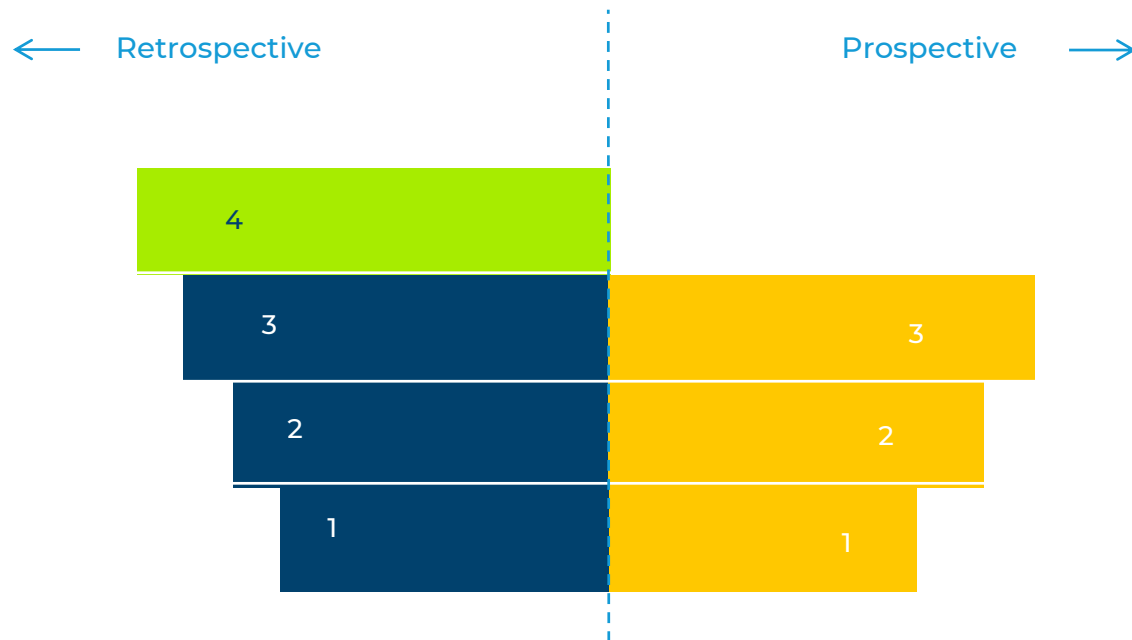
## Restrictive (seller-friendly)

“To the **Seller’s Knowledge**, in the **last three (3) years** the business operations of the Company do not interfere with, infringe upon, misappropriate or otherwise come into conflict with any **U.S.** patent, trademark, service mark or other intellectual property.”

# IP infringement coverage in TL



# Loss under R&W Insurance v IP insurance



- Covered by R&W and IP
- Covered by R&W only
- Covered by IP only

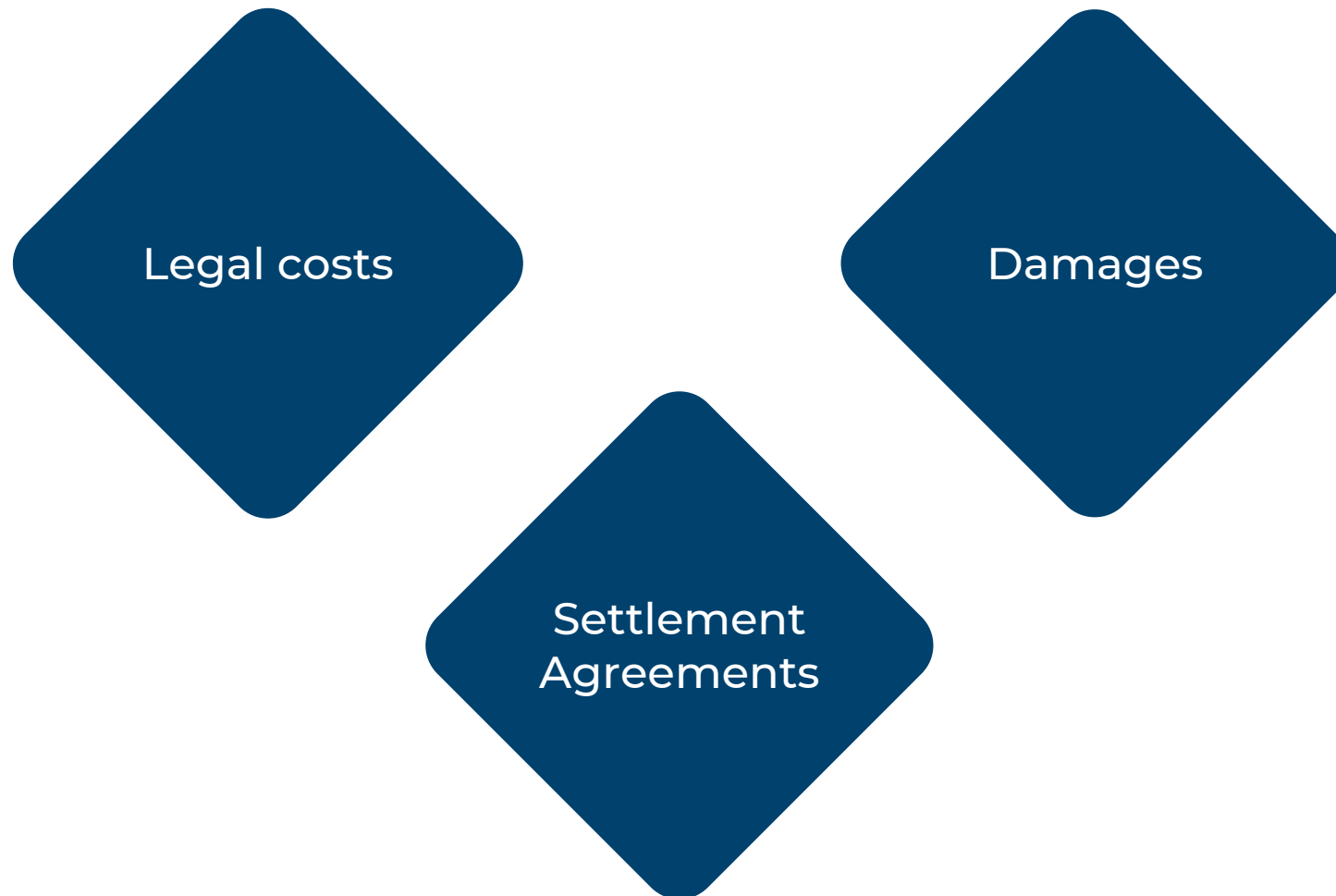
1. Defence Costs incurred in respect of third party claims
2. Loss payable to a third party for IP infringement determined out-of-court
3. Loss payable to a third party for IP infringement determined by a Court
4. Loss (including diminution in value) suffered by the Insured (whether determined by a Court or otherwise, but always subject to a breach of representation or warranty)





IP infringement  
insurance

# Standalone IP infringement coverage



# 'Go-forward' IP infringement exposures



New Business Activities



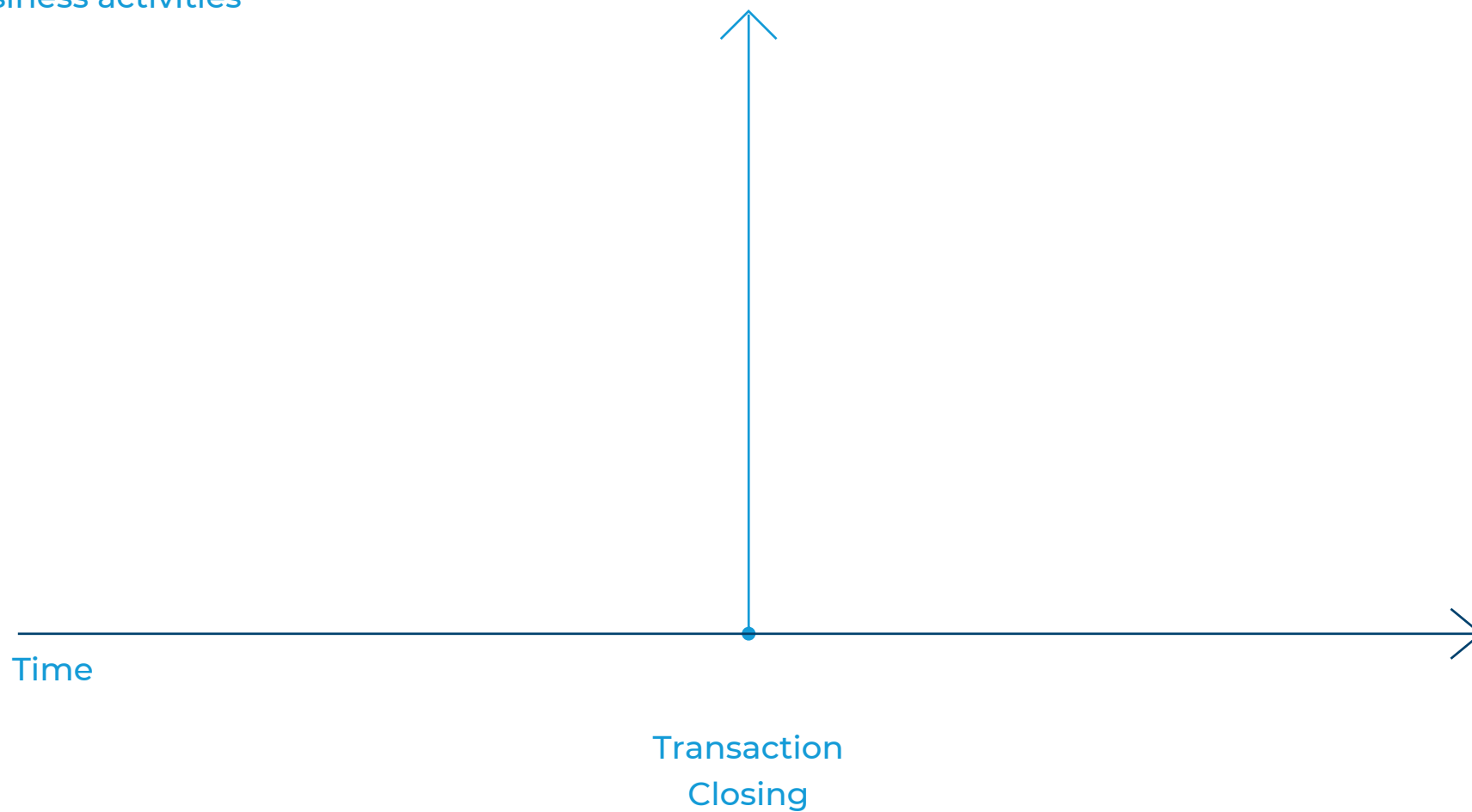
Entering new countries



New Third Party IP

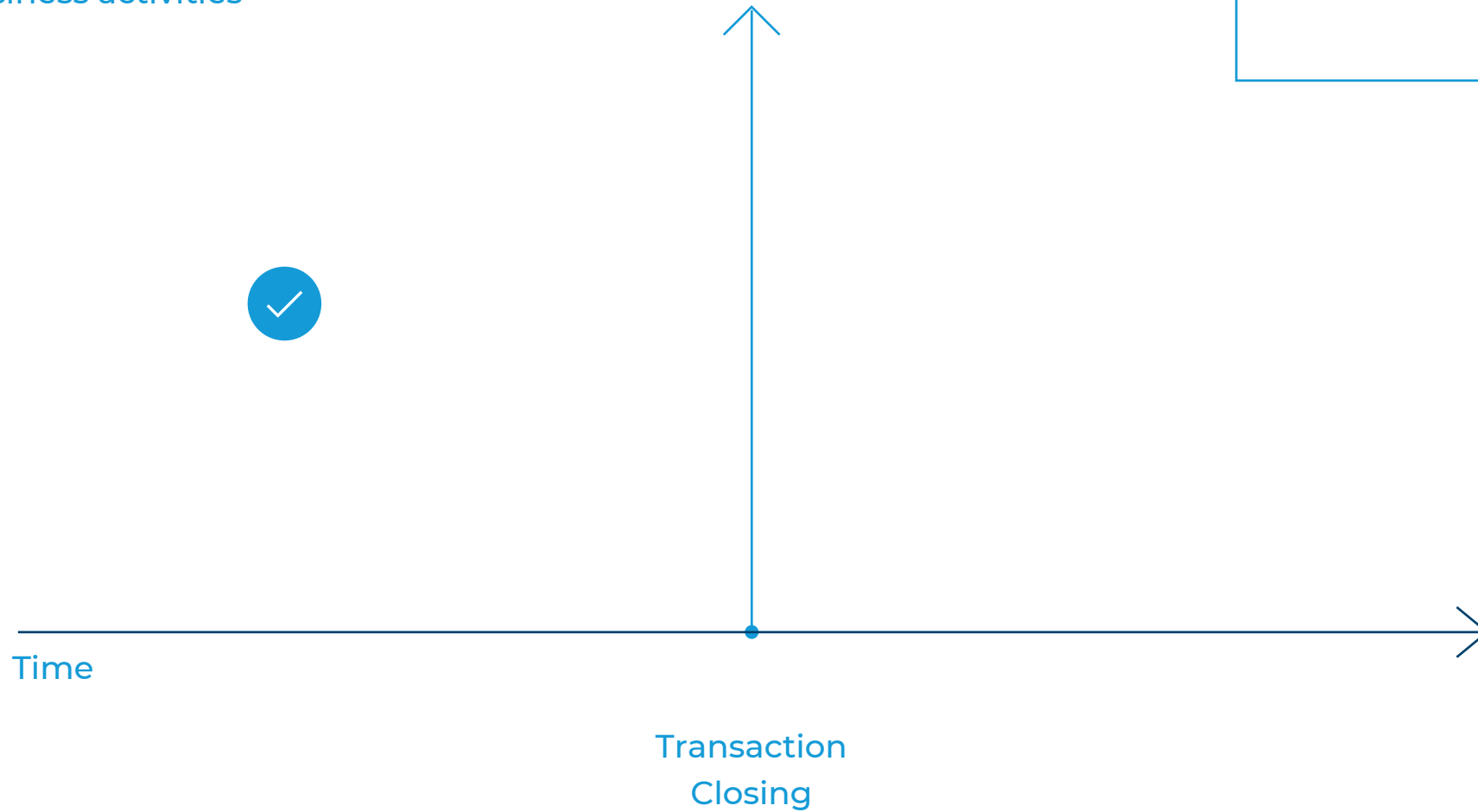
# 'Go-forward' IP infringement exposures

New Business activities



# 'Go-forward' IP infringement exposures

New Business activities



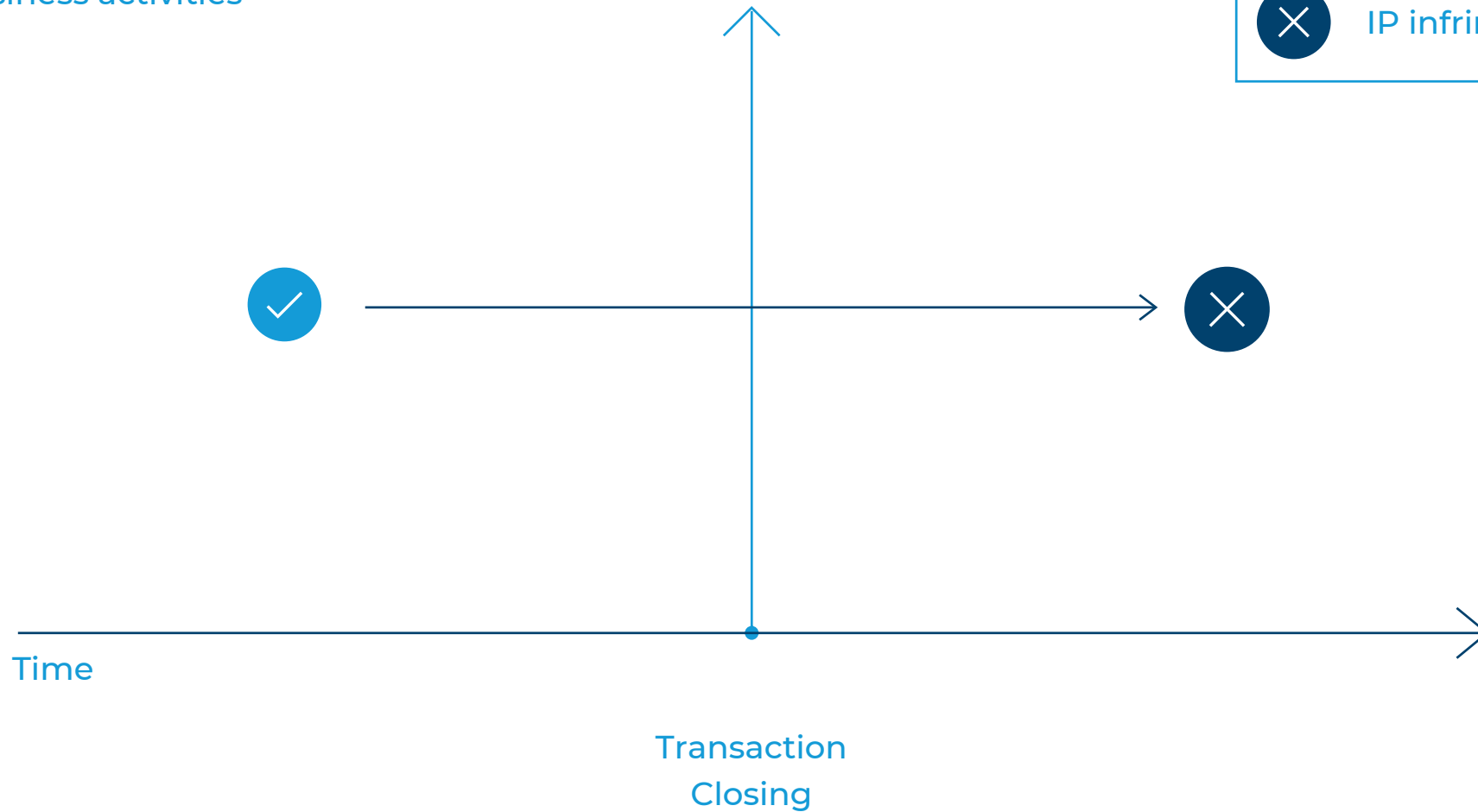
Key:



Product / service launched

# 'Go-forward' IP infringement exposures

New Business activities



Key:



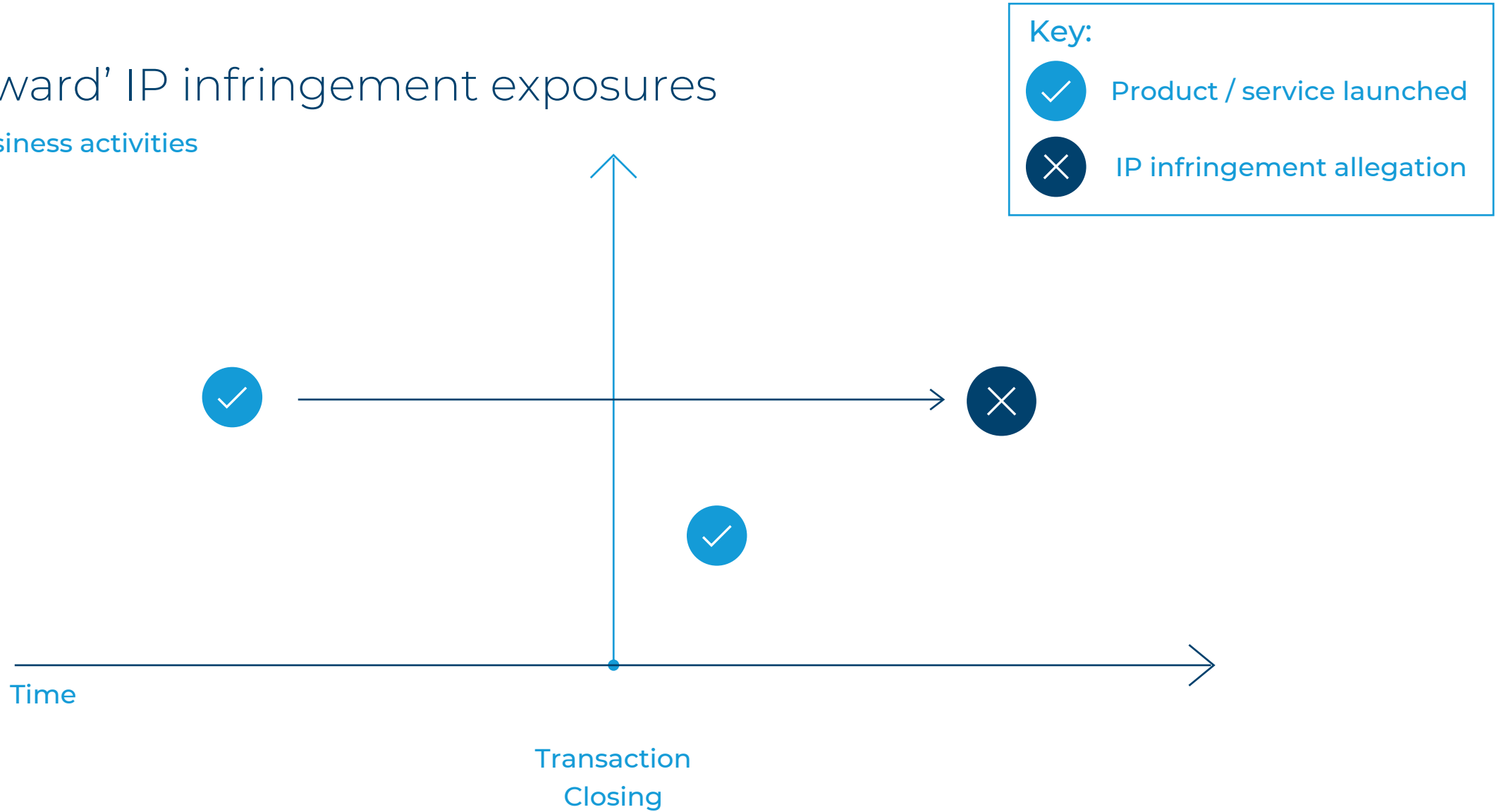
Product / service launched



IP infringement allegation

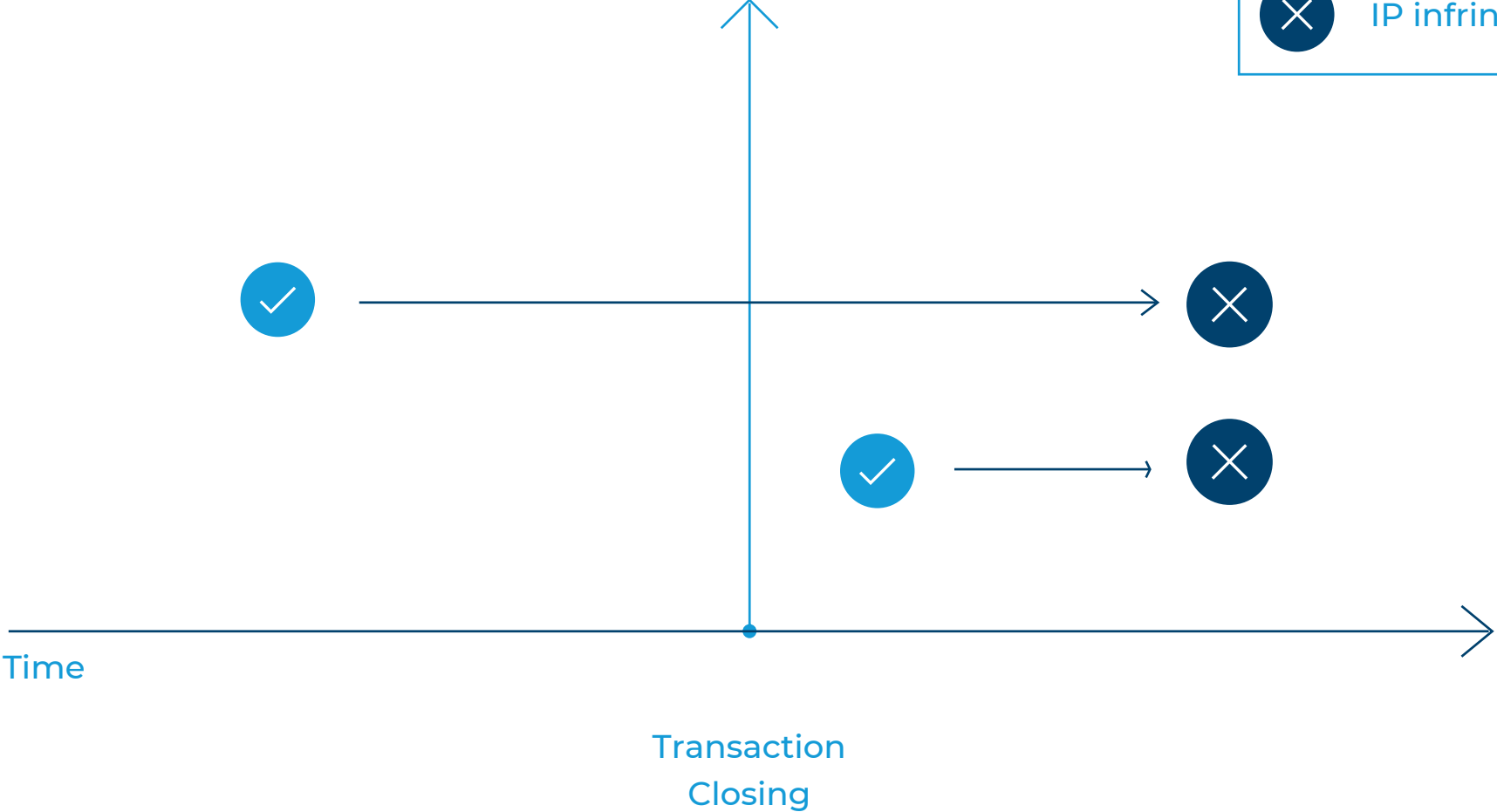
# 'Go-forward' IP infringement exposures

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New Business activities



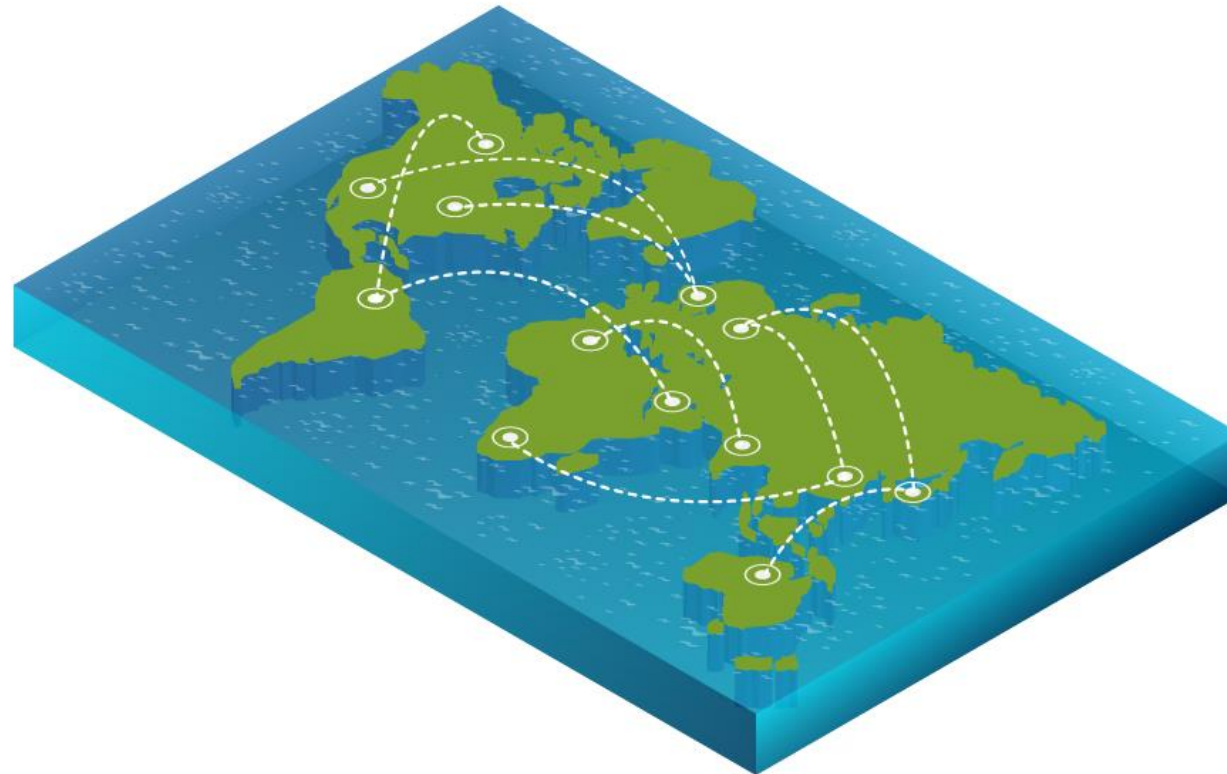
Key:

- ✓ Product / service launched
- ✗ IP infringement allegation



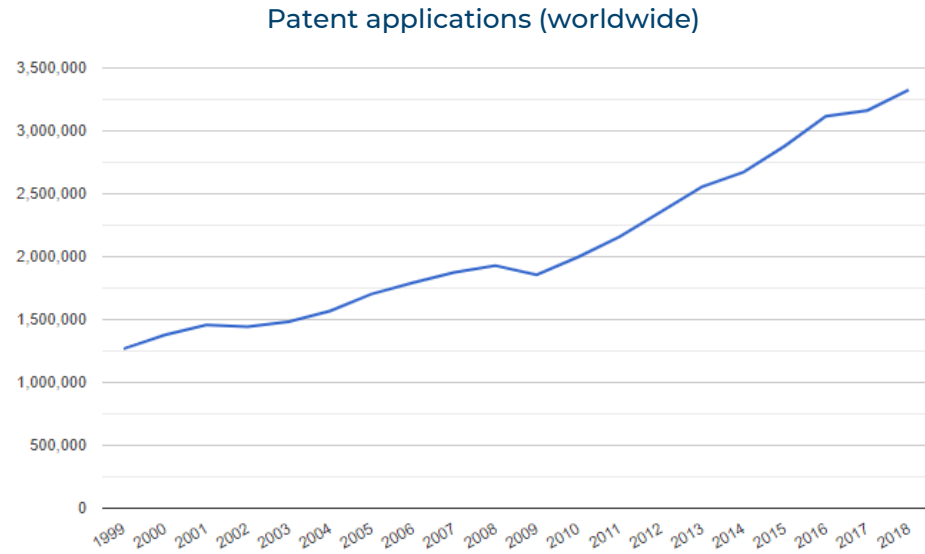
# 'Go-forward' IP infringement exposures

New territories



# 'Go-forward' IP infringement exposures

## New third party IP



Source: WIPO IP Statistics Data Center

## Additional cover option: IP invalidity challenges








Insurance due  
diligence

# Checking target's underlying insurances for IP cover

## Cover in other insurance policy wordings

- Professional Indemnity Insurance (UK)
- Errors & Omissions Insurance (USA)
- Directors & Officers Insurance

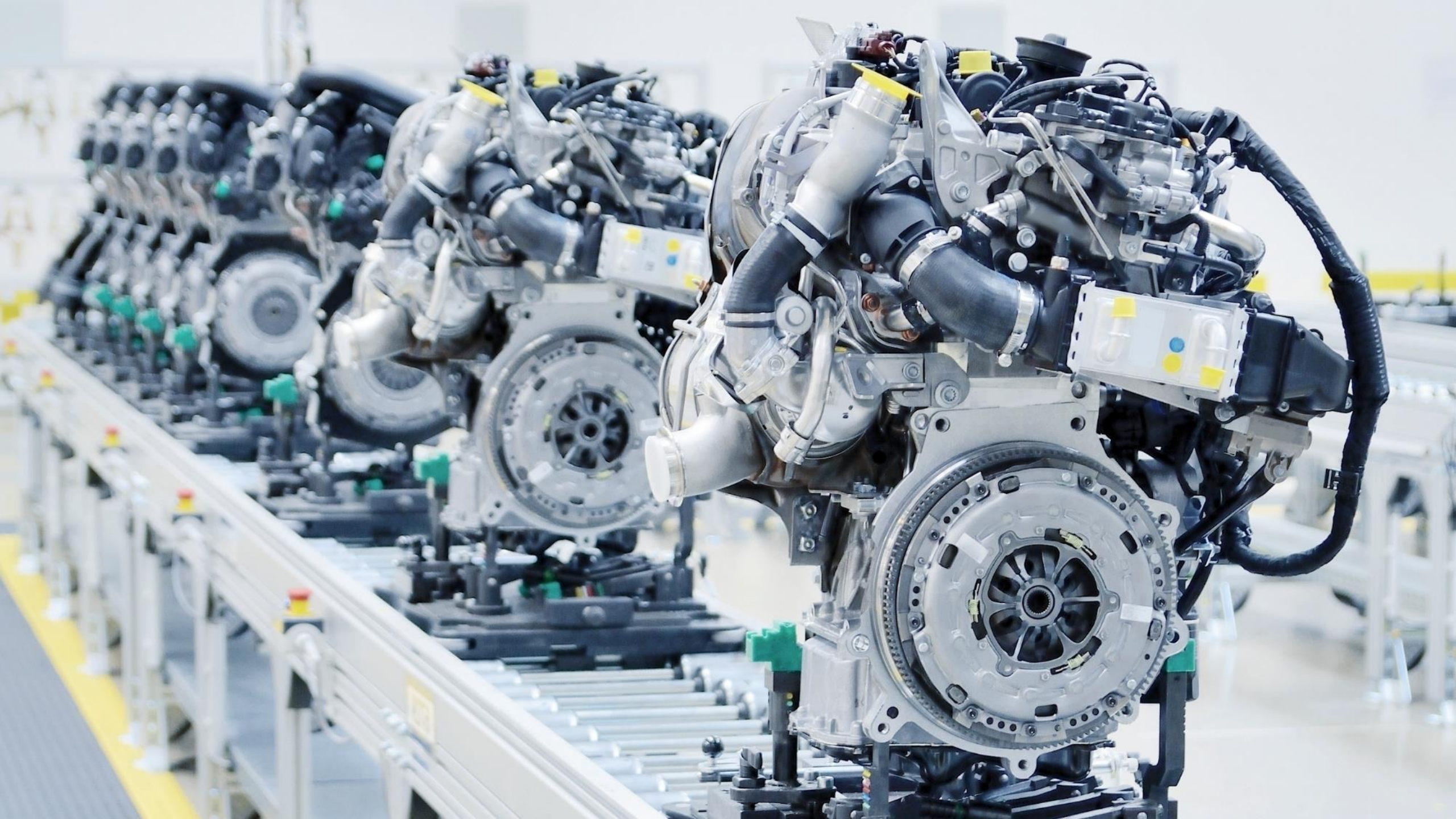
## Check list

-  Perils
-  Insured activities
-  Trigger



Case studies





The image features three overlapping circles of varying shades of blue. The largest circle is a light blue, positioned on the right. A medium-sized circle in a darker blue is positioned in the center, overlapping the light blue circle. The smallest circle is a very dark blue, positioned on the left, overlapping the medium blue circle. The text "How to get a quote?" is centered within the medium blue circle.

How to get a  
quote?



# Key features

Standalone IP insurance is:

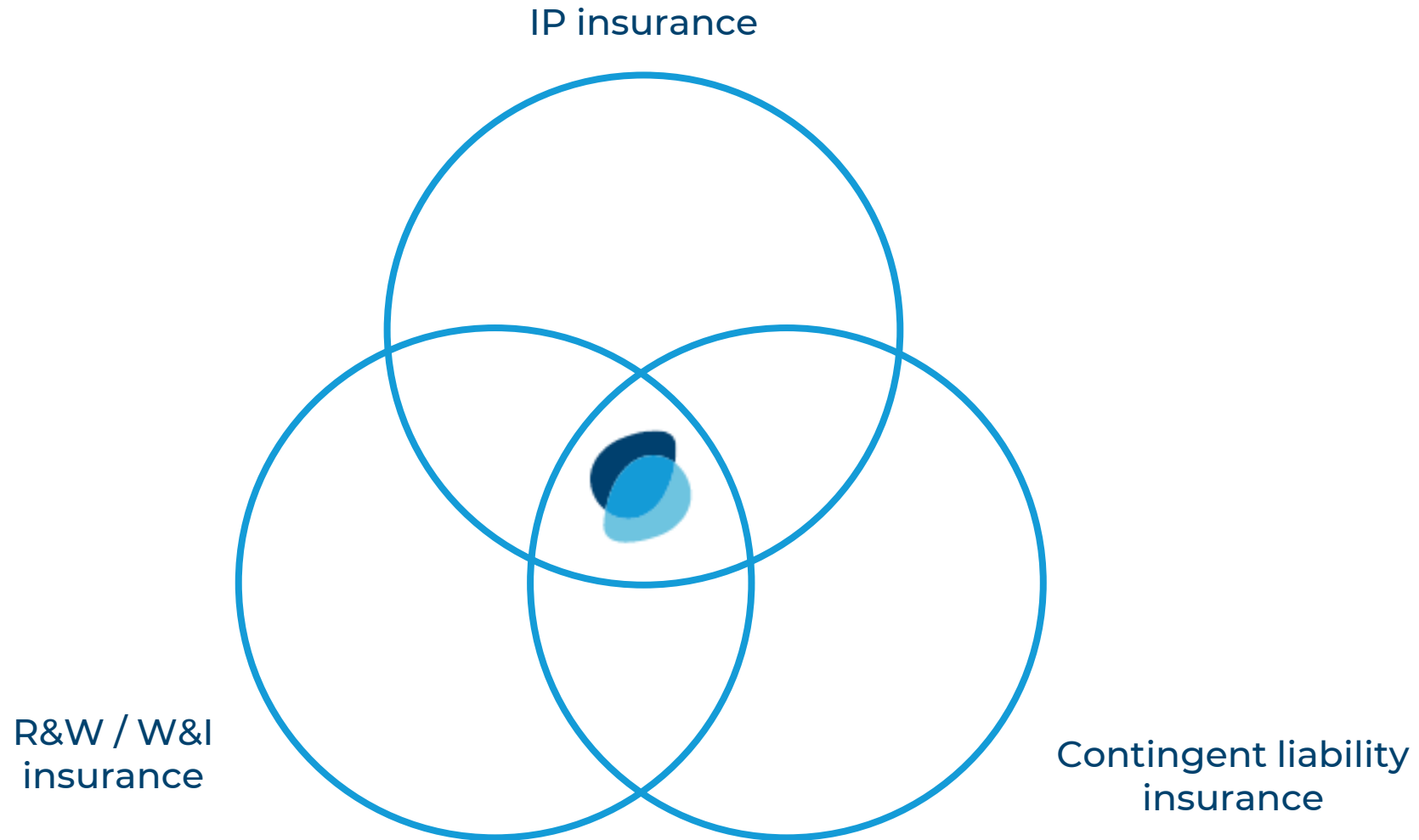
Annually  
renewable

Flexible

No upfront  
info /  
costs

Before-the-  
Event cover

# Summary





Any questions?