THE RISE OF TRADE SECRETS

TANGIBLY

TRADE SECRET BENCHMARKS

70%
of trade secret misappropriation cases involve former employees [4]
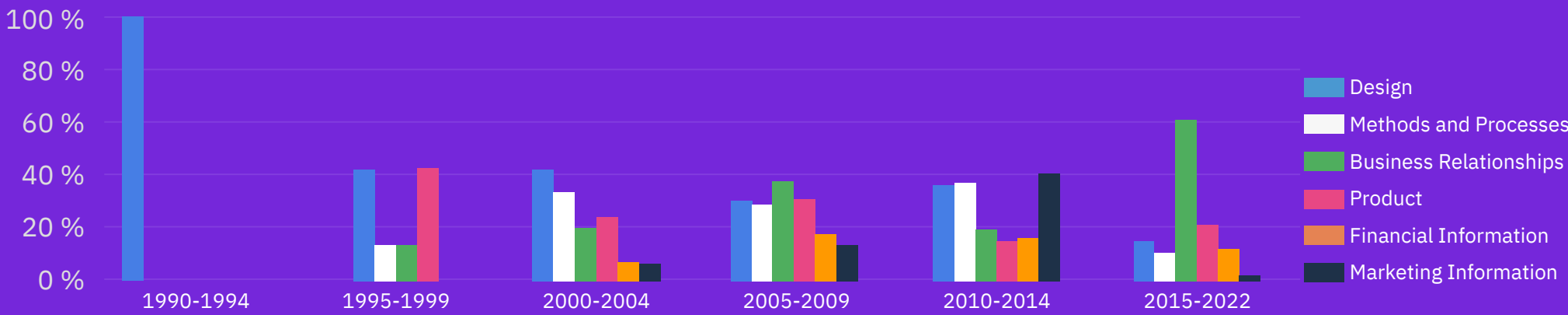
+30%
increase in trade secret filings [1]

$1.7T
of trade secrets are stolen every year

Growth of business method related trade secrets
Out of 328 Cases researched

Legend:
- Design
- Methods and Processes
- Business Relationships
- Product
- Financial Information
- Marketing Information

X-axis: 1990-1994, 1995-1999, 2000-2004, 2005-2009, 2010-2014, 2015-2022

*Years grouped because of low volume of cases to be comparable with subsequent five-year intervals.   **Nine-year period.

Claims accompanying trade secret misappropriation
Out of 328 cases researched

Accompanying cause of action	# of cases	Percentage of total
Contract Claims	237	72.5%
Tortious Interference	163	49.8%
Unfair/Deceptive Practices	119	36.4%
Fraud Claims	104	31.8%
Breach of Responsibility / Fiduciary Duty	104	31.8%
Conversion	70	21.4%
Infringement	77	23.5%
Unjust Enrichment	47	14.4%
Conspiracy	40	12.2%
Defamation/Disparagement	11	3.4%
Trespass	4	1.2%
Emotional/Mental Distress	1	0.3%
Other	93	28.4%

Source: https://www.stout.com/en/news/stout-releases-2024-trends-in-trade-secret-litigation-report

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Since 2016, most major economies have strengthened the laws that protect Confidential Information

2016 DTSA

2018/19 EU DIRECTIVE

2019 AUCL A.9

2018 UCPA

200,000
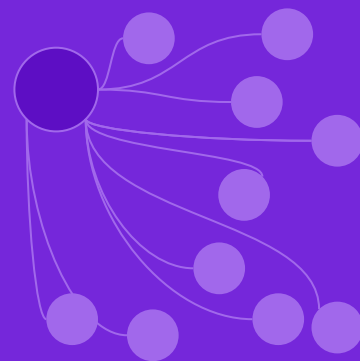the number of trade secrets TSMC has documented

78%
awarded damages of federal cases that went to trial

PATENT BENCHMARKS

↓8%
decline in patent filings (the steepest drop in over a decade) [2]

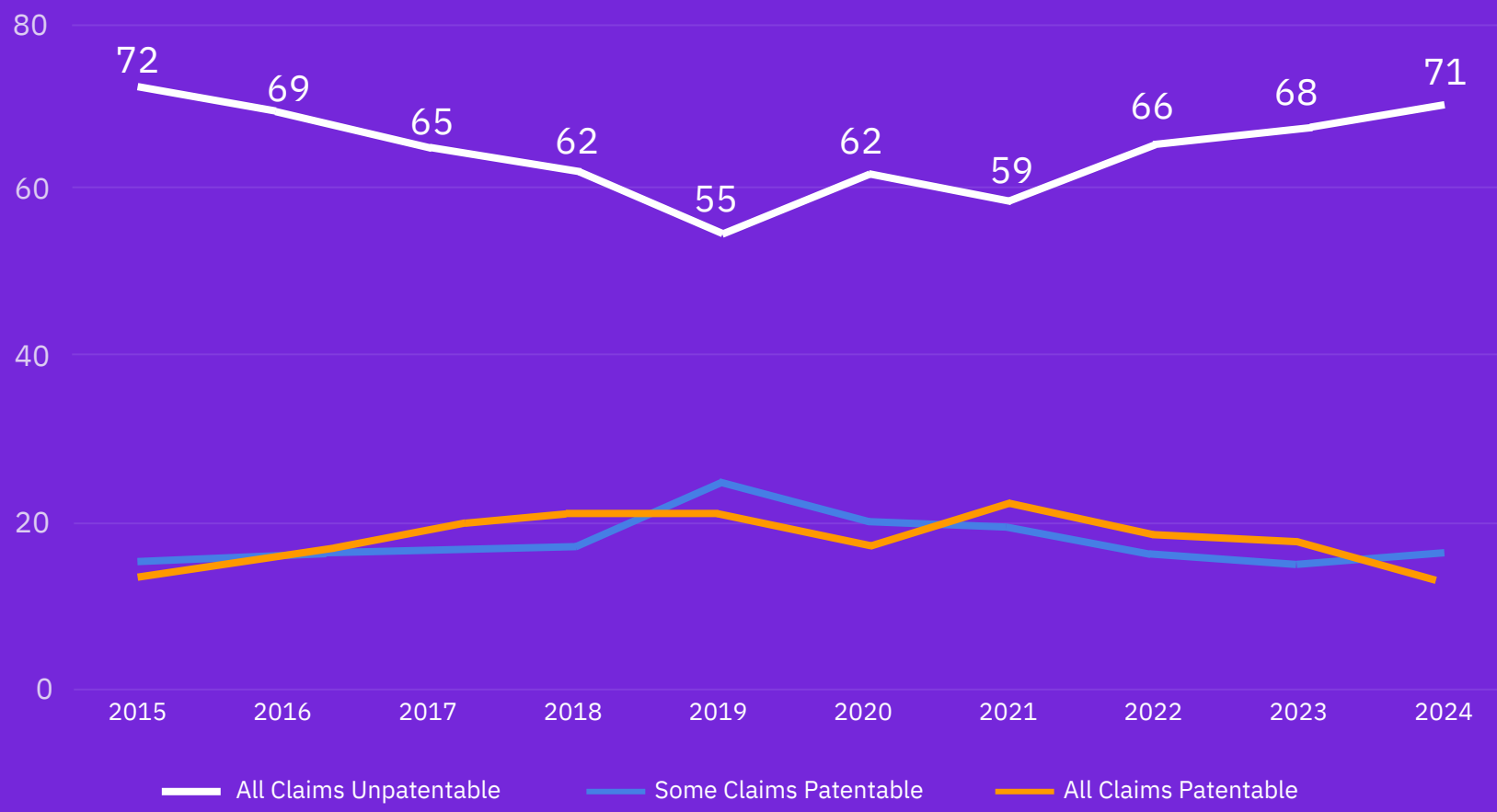**1 patent has on average, 10 associated trade secrets** [3]

$100,000+
the lifetime costs of one global patent [2]

AI training data is better as a trade secret versus a patent given difficulty of reverse engineering

PTAB invalidation rates continue to climb

Data points (All Claims Unpatentable): 72, 69, 65, 62, 55, 62, 59, 66, 68, 71

X-axis: 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024

Legend:
- All Claims Unpatentable
- Some Claims Patentable
- All Claims Patentable

Currently at 71% for the first two quarters of 2024

IMPORTANT CASE LAW

Cases lost due to poor trade secret documentation / particularity

	Case	Review
Zunum v. Boeing	Case	Review
Mallet v. Lacayo	Case	Review
Alifax v. Alcor Scientific	Case	Review
Group14 Technologies v. Nexeon Ltd	Case	Review
Irth Solutions v. Apex	Case	Review
Olaplex v. L'Oreal	Case	Review

Damages are climbing

$77M	$120M	$210M	$275M	$407M	$452M	$650M	$1.8B	$2B [5]
Bladeroom v. Emerson	DOJ v. Xiaorong You	Computer Sci v. Tata	Trizetto v. Syntel Sterling damages vacated but attorneys' fees awarded	Motorola v. Hytera	Insulet v. EOFlow	Propel Fuels v. Phillips 66	LG v. SK – Settlement at ITC	Appian v. Pegasystems
Case	Case	Case	Case	Case	Case	Case	Case	Case
Review	Review	Review	Review	Review	Review	Review	Review	Review

1. LexisNexis, Lex Machina 2024 Trade Secret Litigation Report; Claims Journal (2023)   2. United States Patent and Trademark Office (USPTO); Anaqua Analysis (2023)   3. IP CloseUp (2021)   4. Gonzaga Law Review (2020); American Bar Association (2024)   5. Overturned on appeal, currently back in trial court