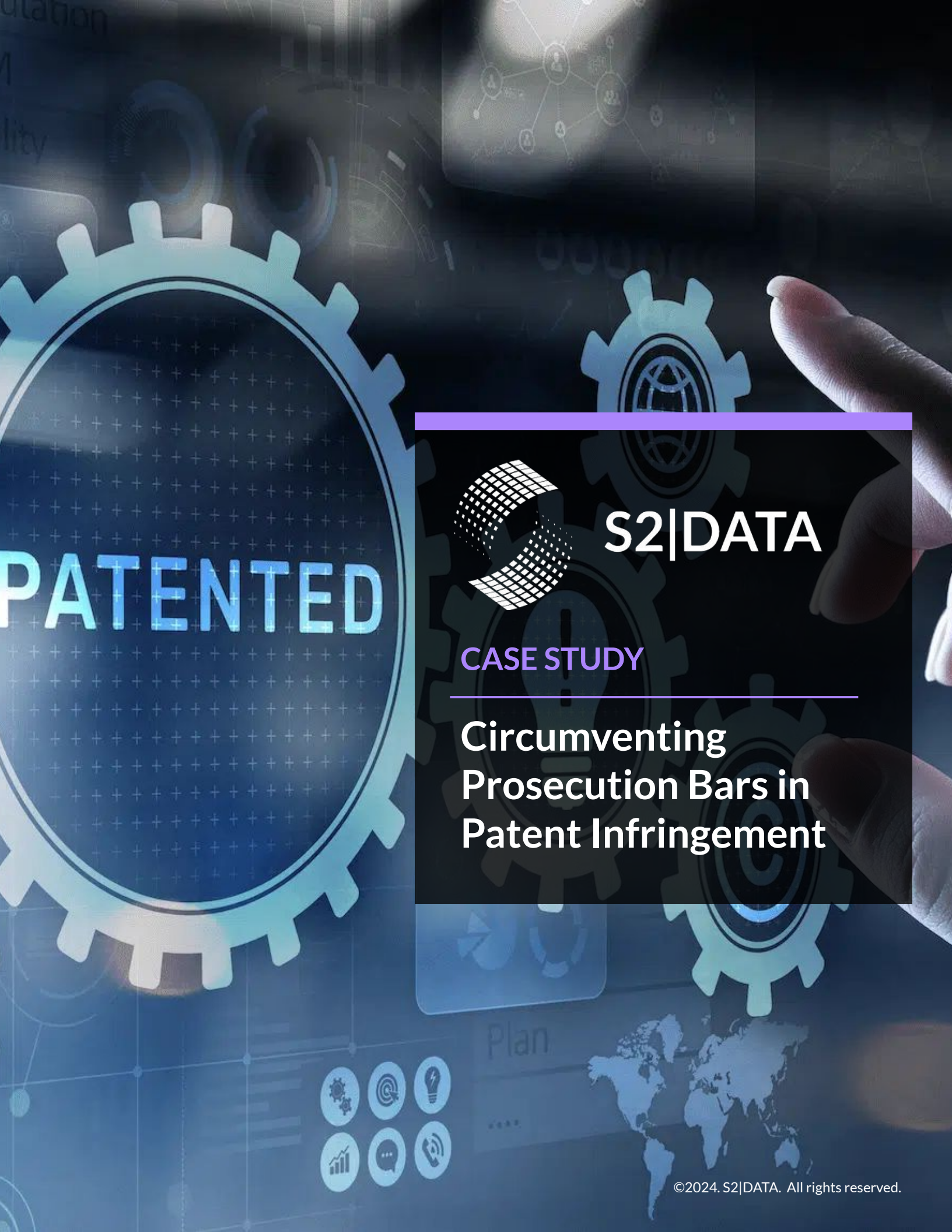

S2|DATA

CASE STUDY

Circumventing Prosecution Bars in Patent Infringement

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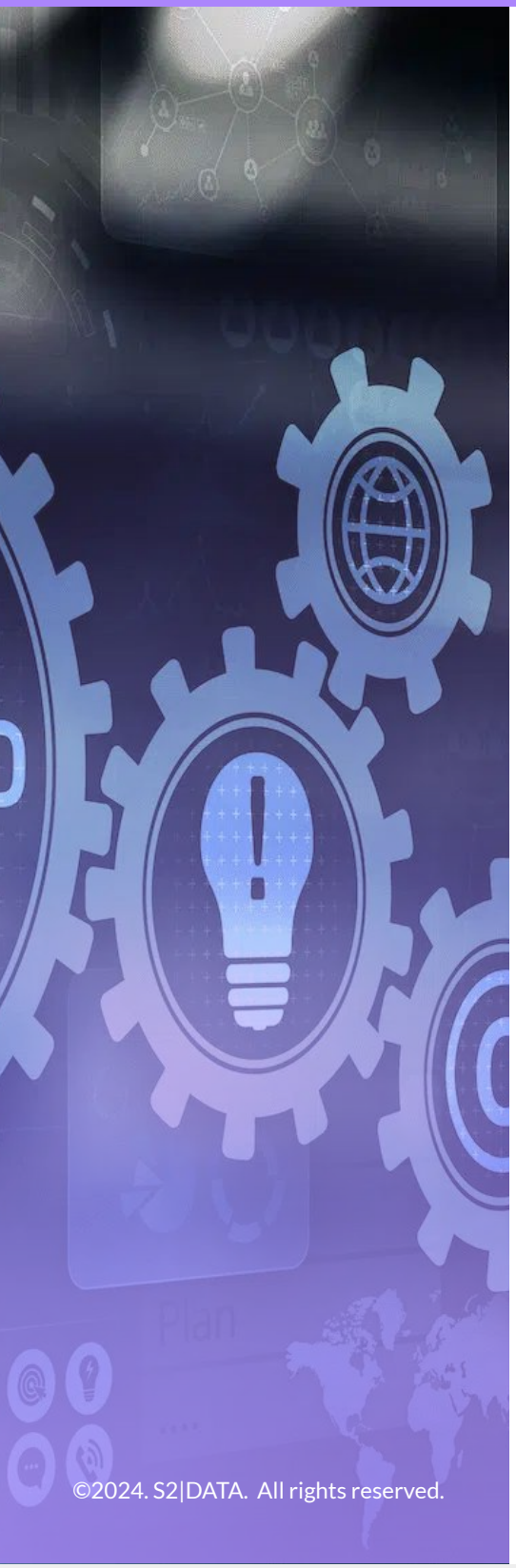

CUSTOMER:	Software company
S2|DATA's ROLE:	Leverage years of expert forensic experience to defensibly recover, present, and produce vital, responsive information from archived living documents
TYPE OF LAWSUIT:	Patent infringement

THE BUSINESS SITUATION

A large software company **(Company A)** acquired another company **(Company B)** in summer of 2006, integrating the acquired Company B's technology and personnel into the parent Company A.

In 2021, a third unrelated company **(Company C)** claimed that Company B previously infringed on a patent now used throughout Company A/B's software.

Company C hired a software expert who is an active developer and occasionally filed new patents of his own. Company C sought a court order in the patent infringement case that would force Company A to make its software source code available for inspection by the expert.

Greg Freemyer, *Director of Forensics and Disputes at S2|DATA*, represented Company A, which agreed that the only way it would abandon the prosecution bar was if the court limited the expert's inspection to the software versions in place on and before the 2006 transaction date.

The next challenge: the most relevant backup didn't happen until 2012, six years after the merger.

THE CHALLENGE

The expert, one of the few in the software field who could assist Company C with its case, refused to accept Company A's proposed prosecution bar. A patent prosecution bar is a protective order that eliminated a person's ability to use information disclosed in the lawsuit for any other purpose or patent.

Because Company C's expert was unwilling to accept the risk of a prosecution bar, discovery hit a roadblock, and six months of negotiations ensued.

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