

# Empirical Analysis Of Permanent Injunction Decisions Following *eBay*

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# Background

➤ Total of 28 factors comprising 3 general categories

- Patentee
- Infringer
- Third parties / public







# Background

- Basis for inclusion in study
  - 49 cases selected from May 15, 2006 to December 31, 2008
  - “Second pair of eyes” review

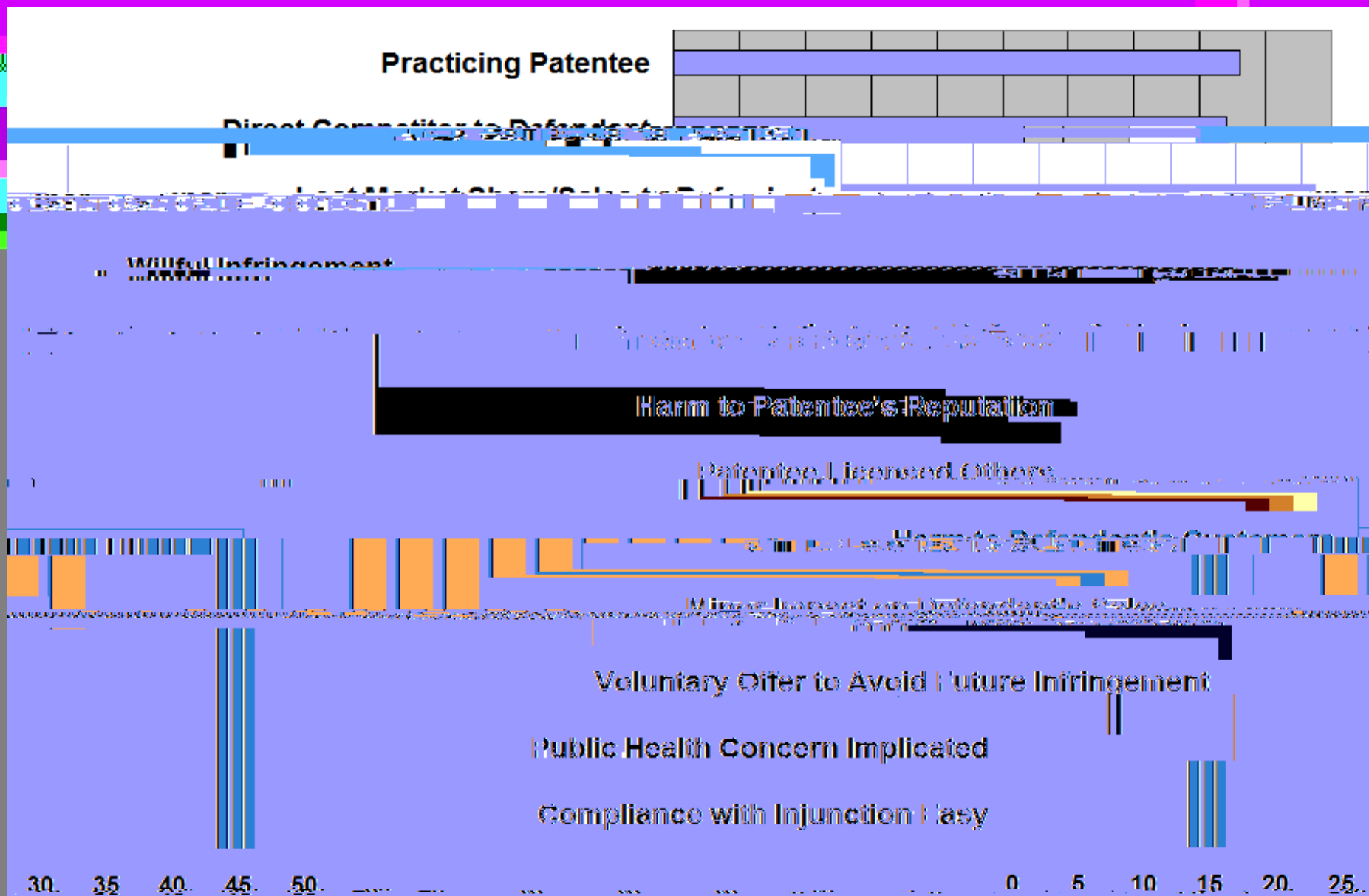
# Background

## ➤ Relevance of data

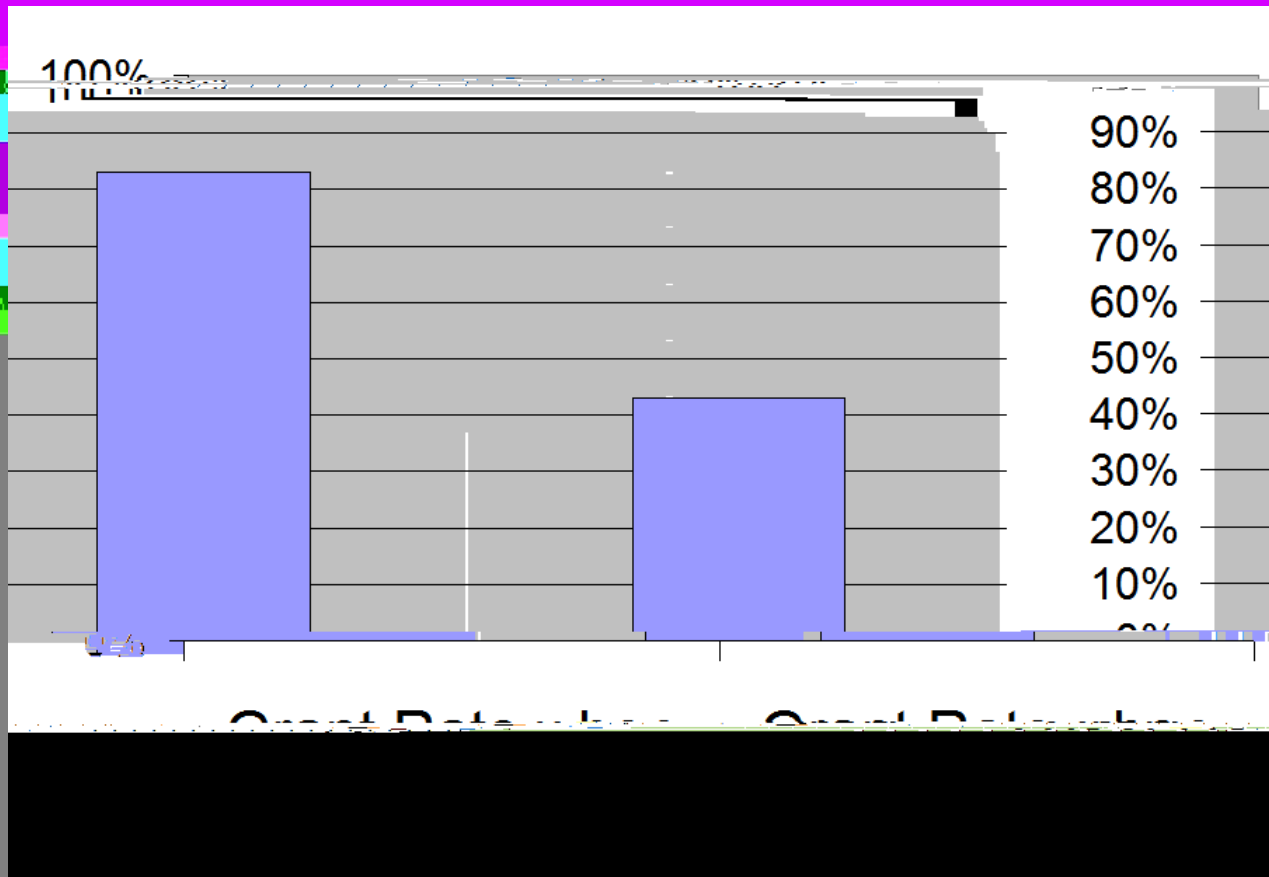
- Frequency of mention in cases
- Percent difference in Yes vs. No



# Frequently Considered Factors



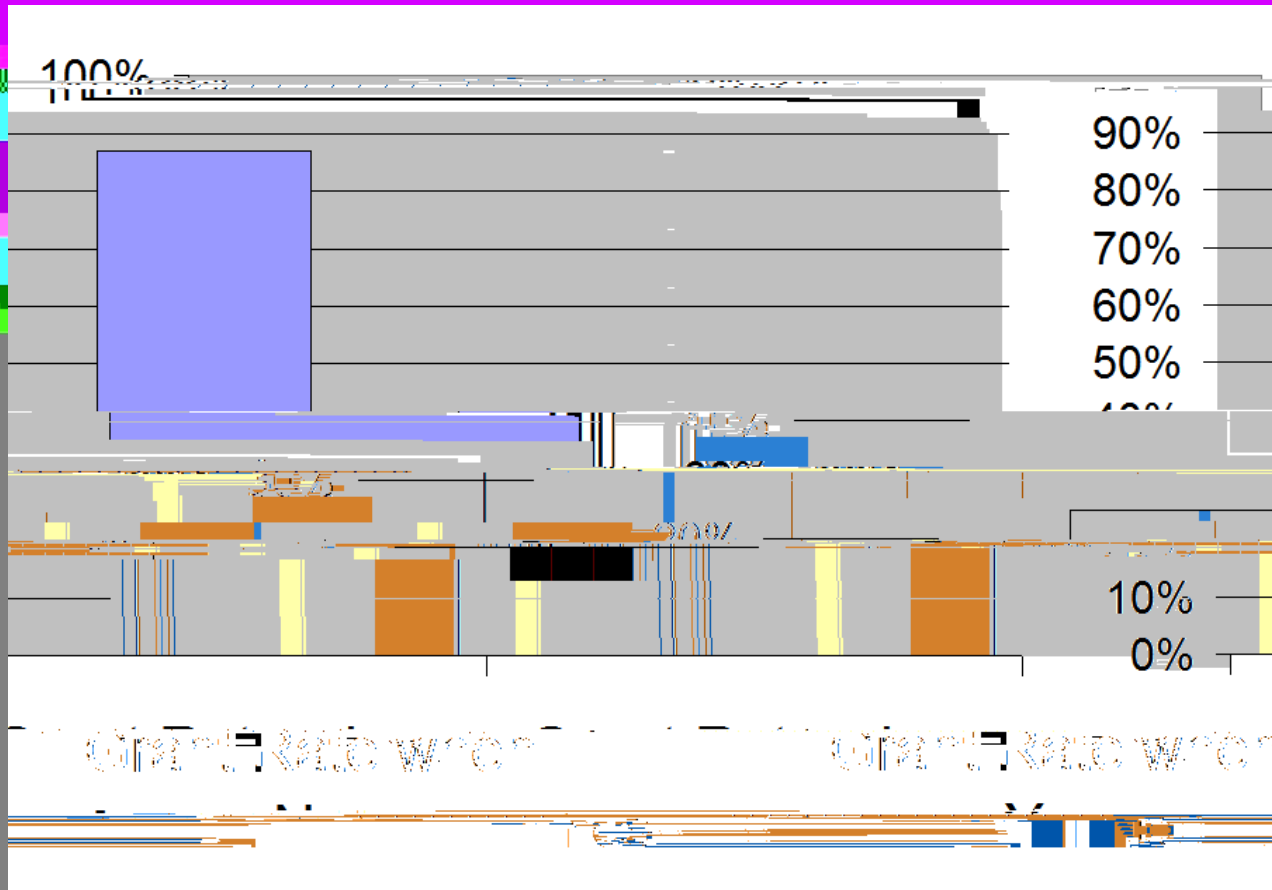
# Practicing Patentee



Mentioned  
in 43 of 49  
cases

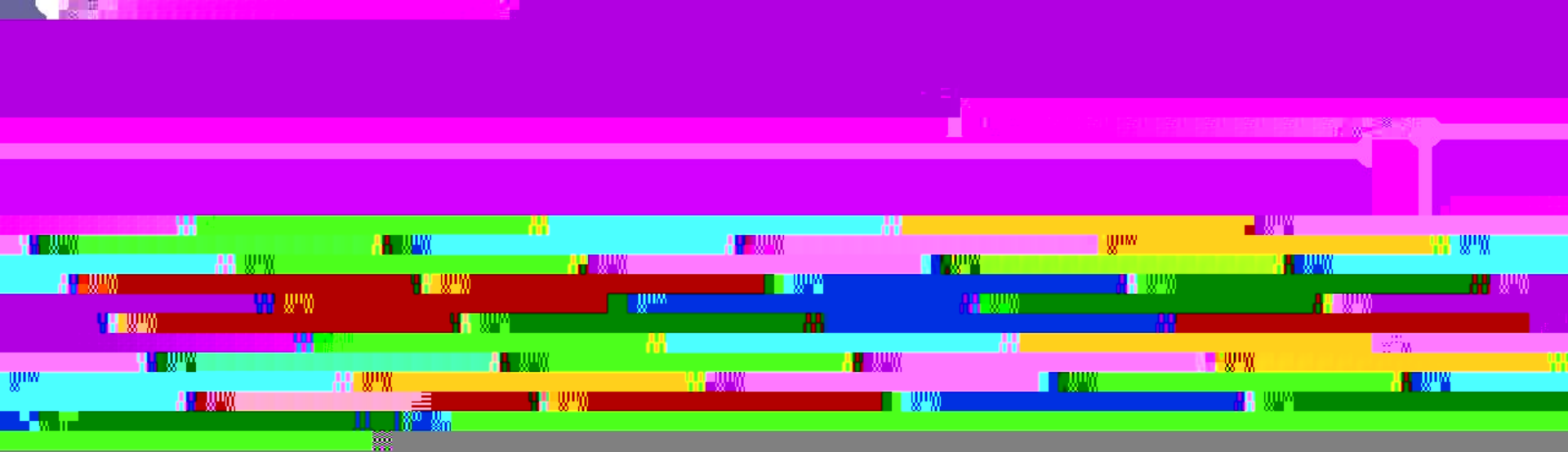
Difference in grant rate: **40%**

# Direct Competitor to Defendant

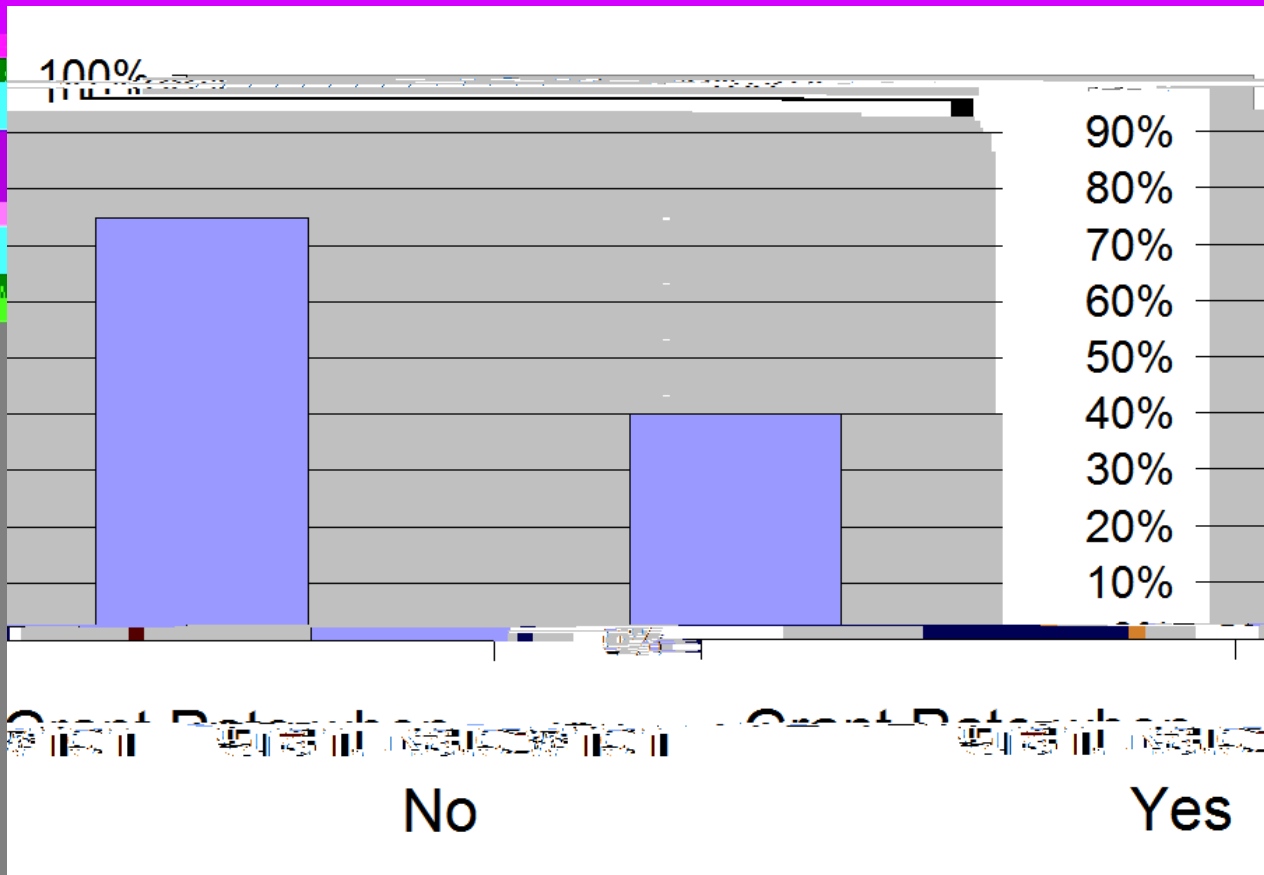


Mentioned  
in 42 of 49  
cases

Difference in grant rate: 62%



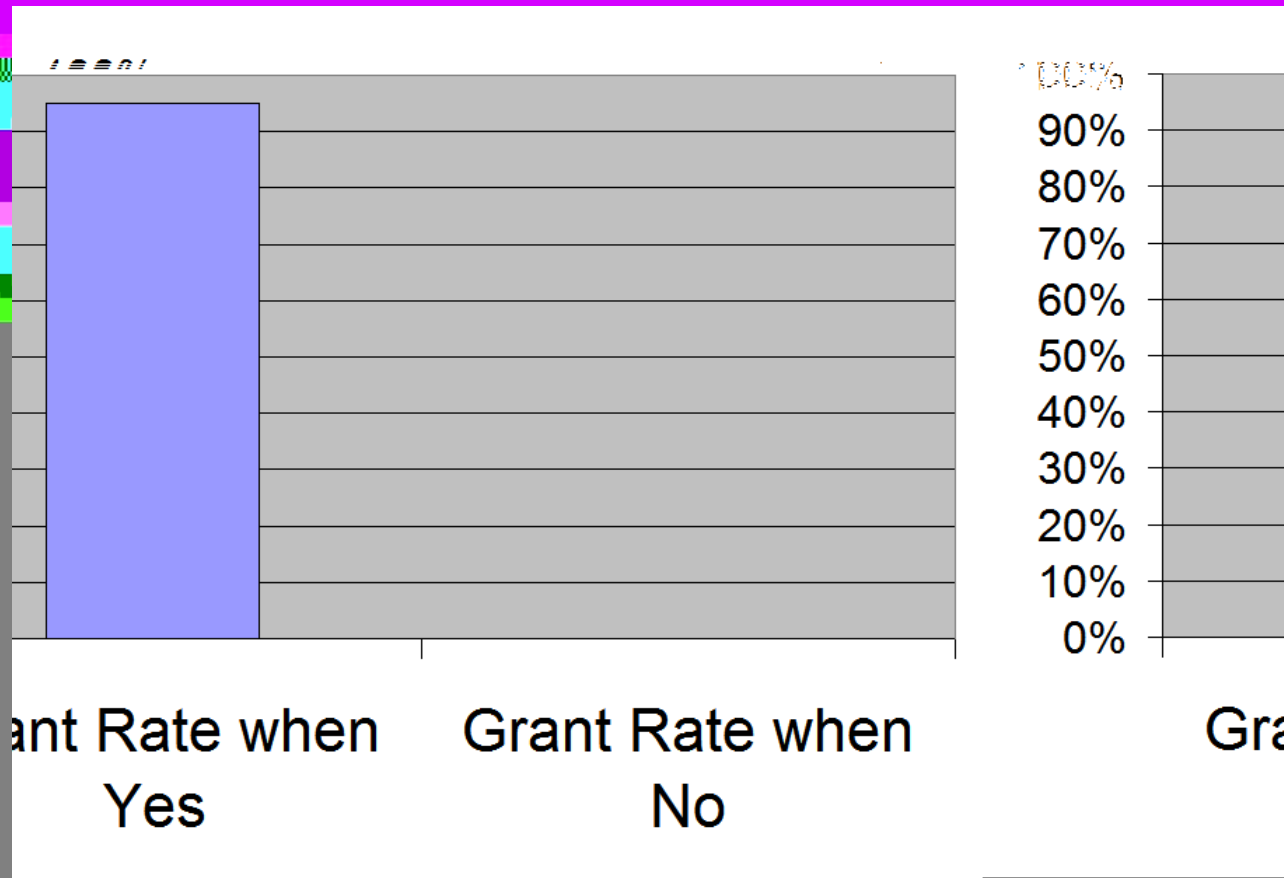
# Willful Infringement



Mentioned  
in 25 of 49  
cases

Difference in grant rate: 35%

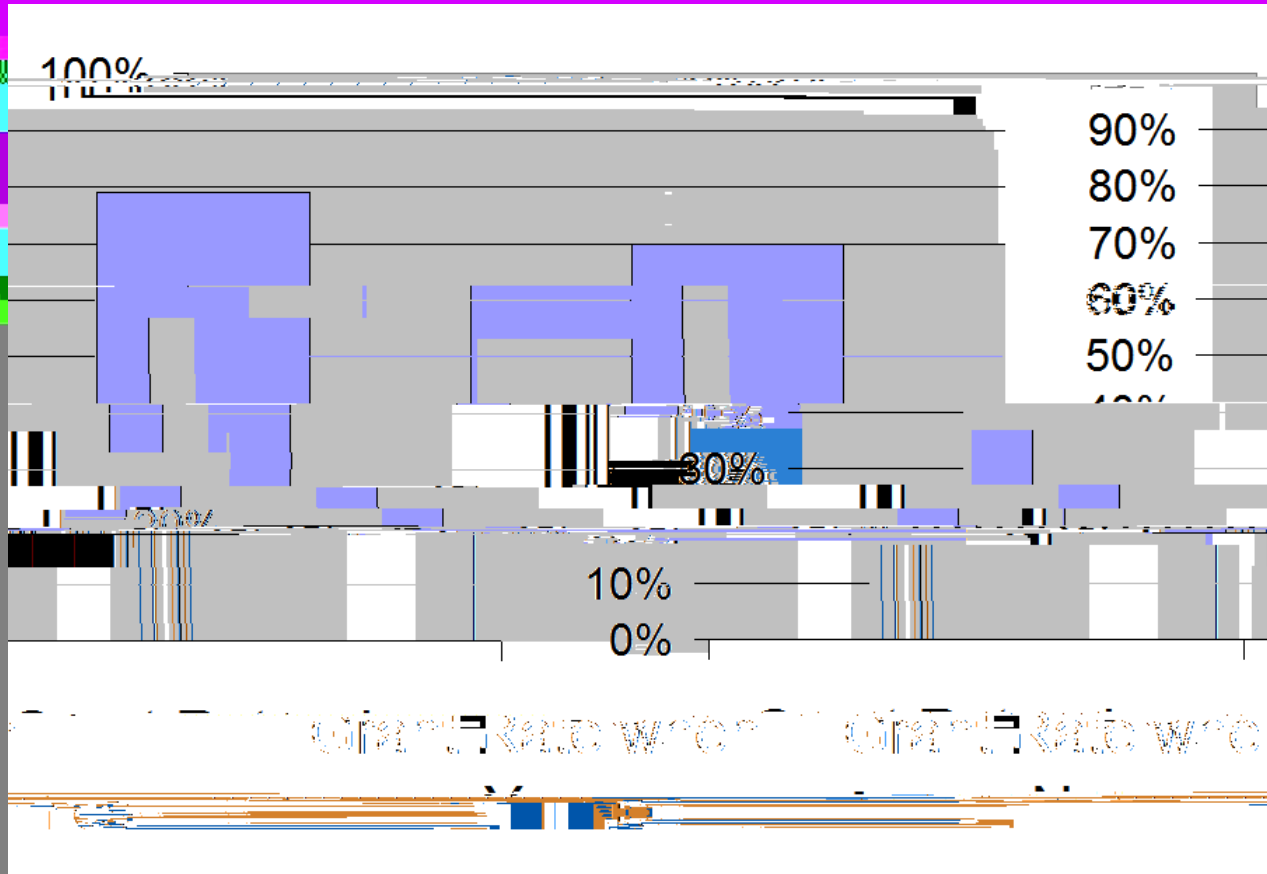
# Harm to Patentee's Reputation



Mentioned  
in 24 of 49  
cases

Difference in grant rate: 95%

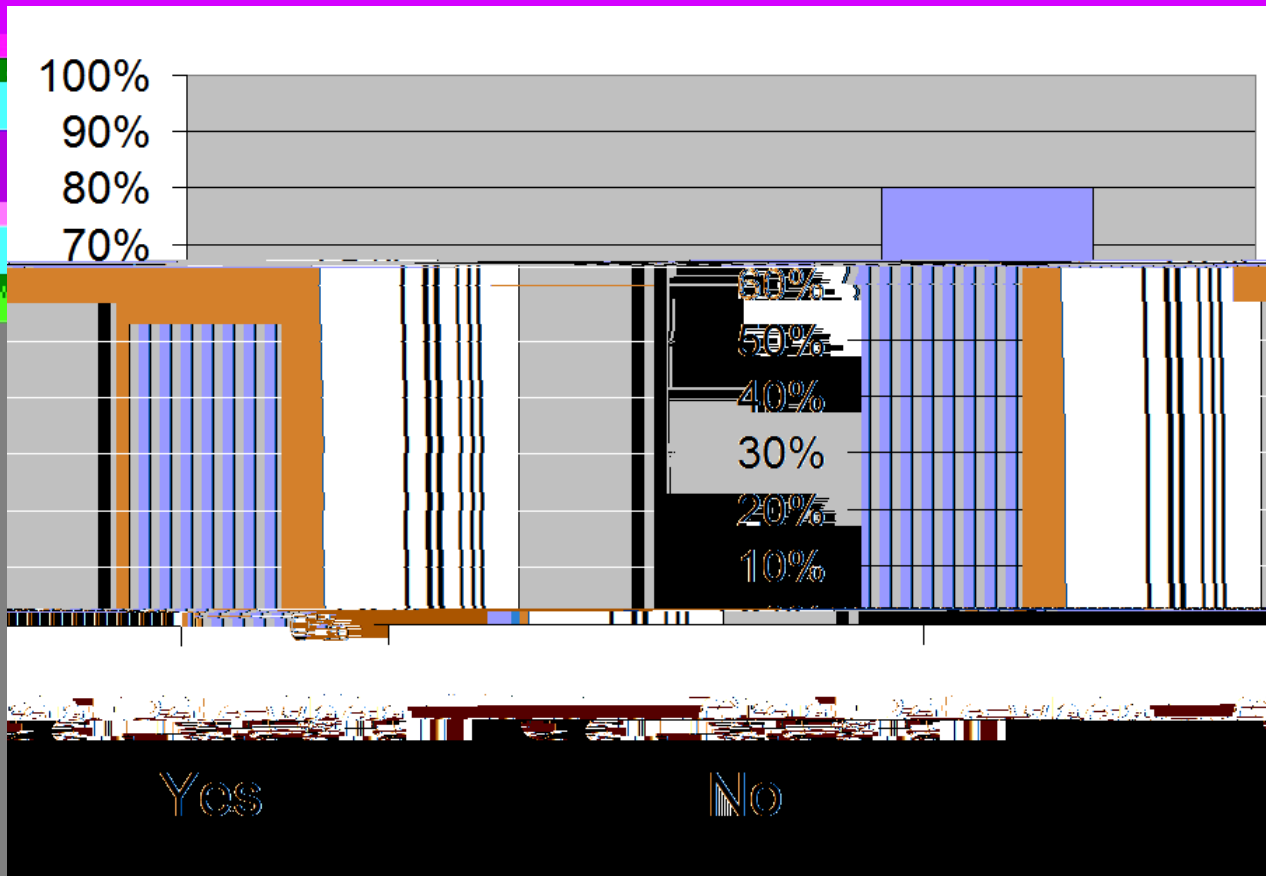
# Impact On Defendant's Business



Mentioned  
in 24 of 49  
cases

Difference in grant rate: 9%

# Patentee Licensed Others

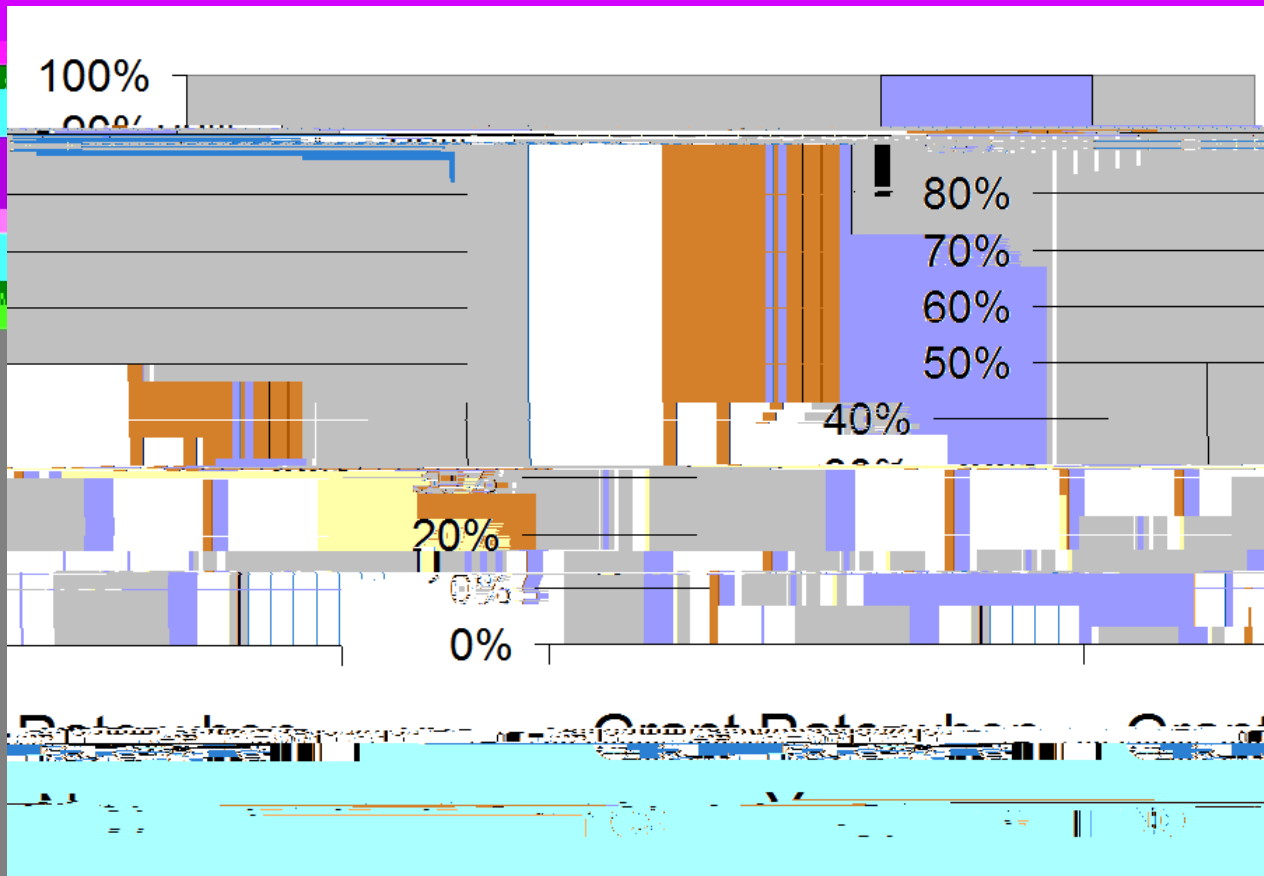


Mentioned  
in 21 of 49  
cases

Difference in grant rate: 17%



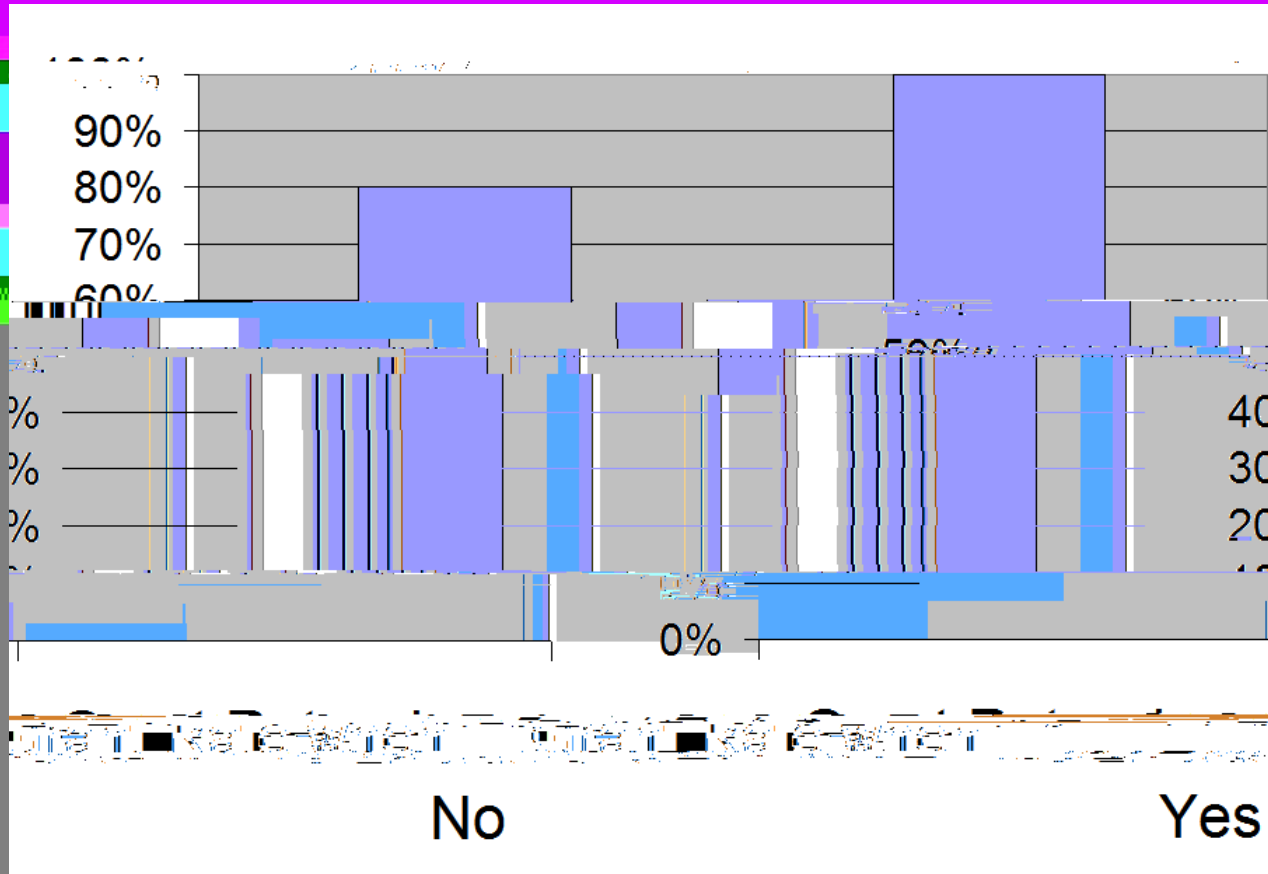
# Harm To Defendant's Customers



Mentioned  
in 19 of 49  
cases

Difference in grant rate: 50%

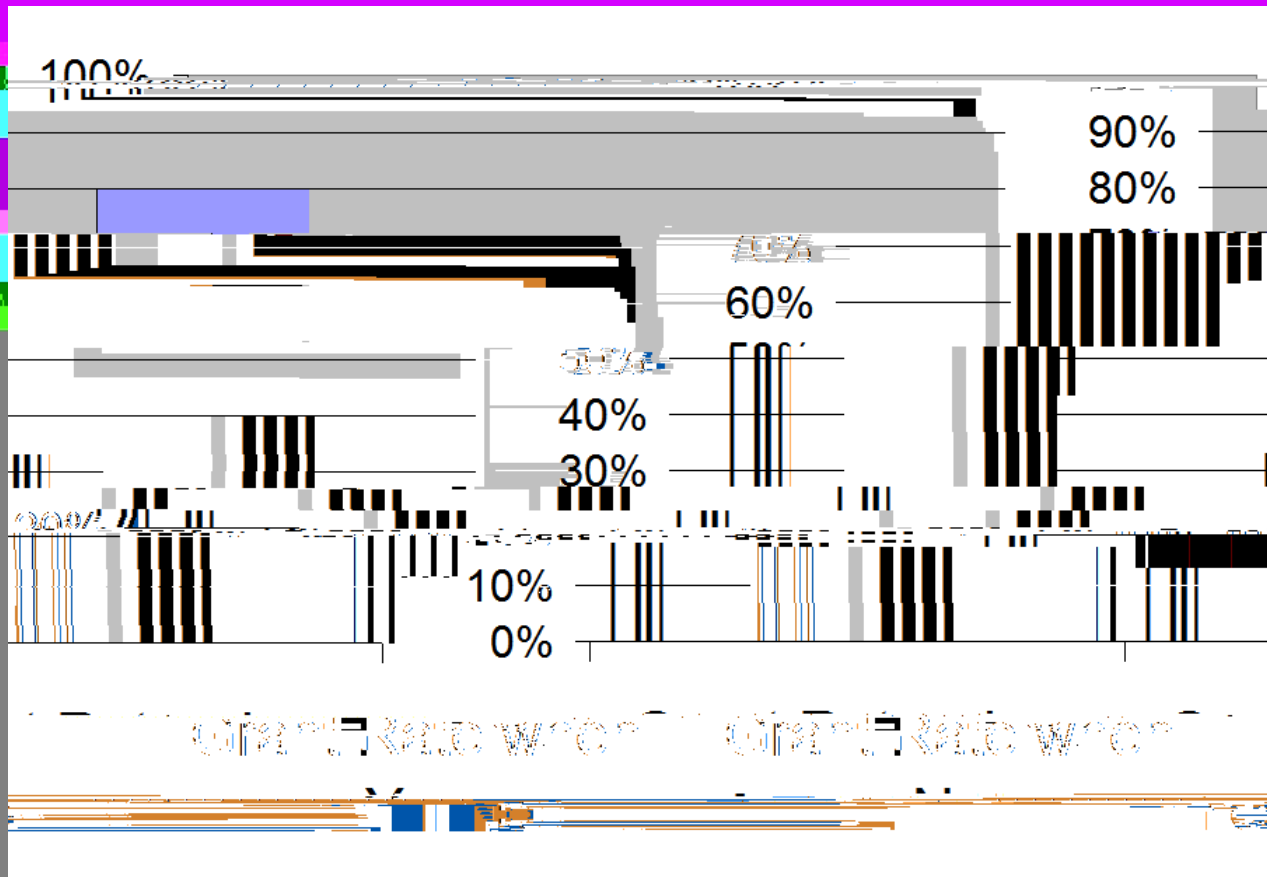
# Minor Impact On D's Sales



Mentioned  
in 17 of 49  
cases

Difference in grant rate: 20%

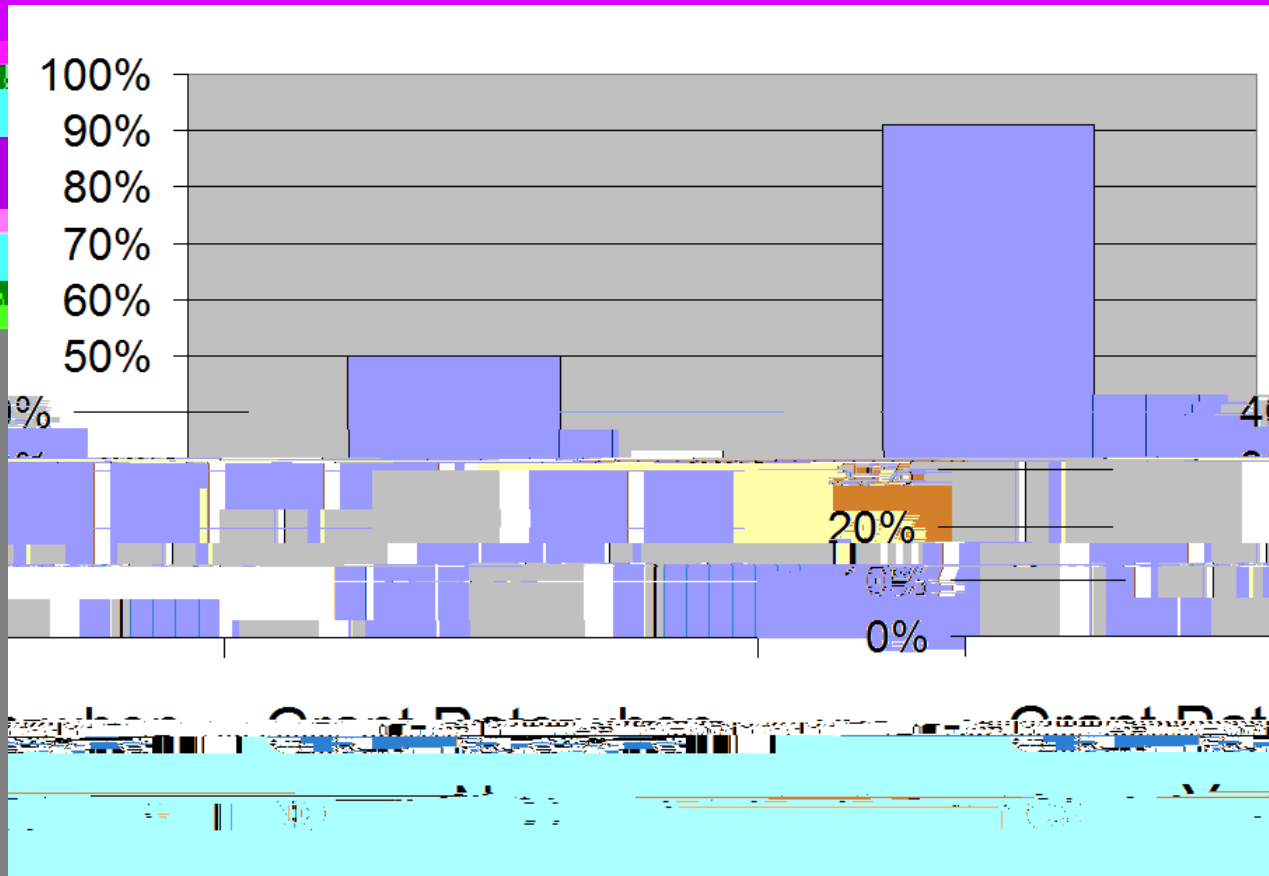
# D's Offer To Avoid Infringement



Mentioned  
in 15 of 49  
cases

Difference in grant rate: 40%

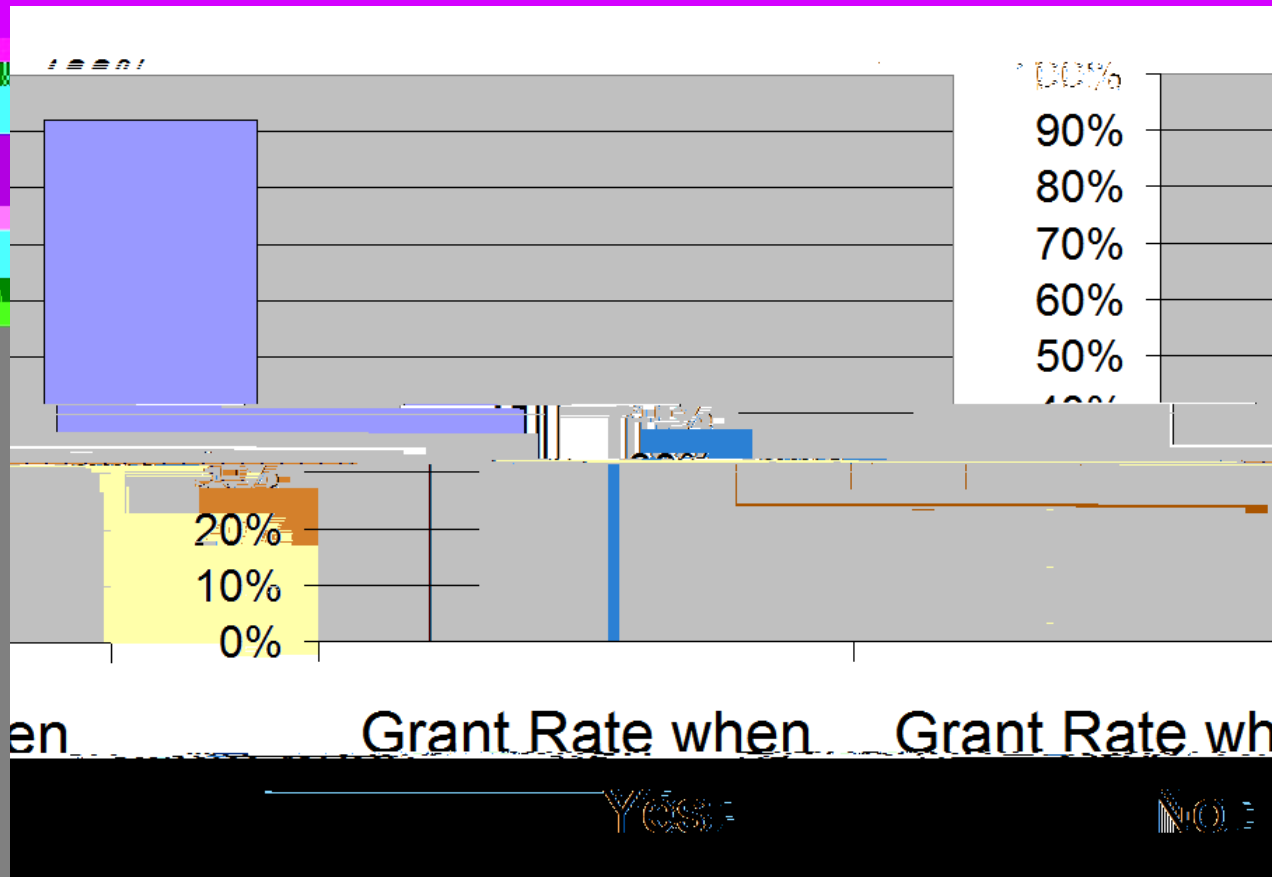
# Public Health Concern



Mentioned  
in 15 of 49  
cases

Difference in grant rate: 41%

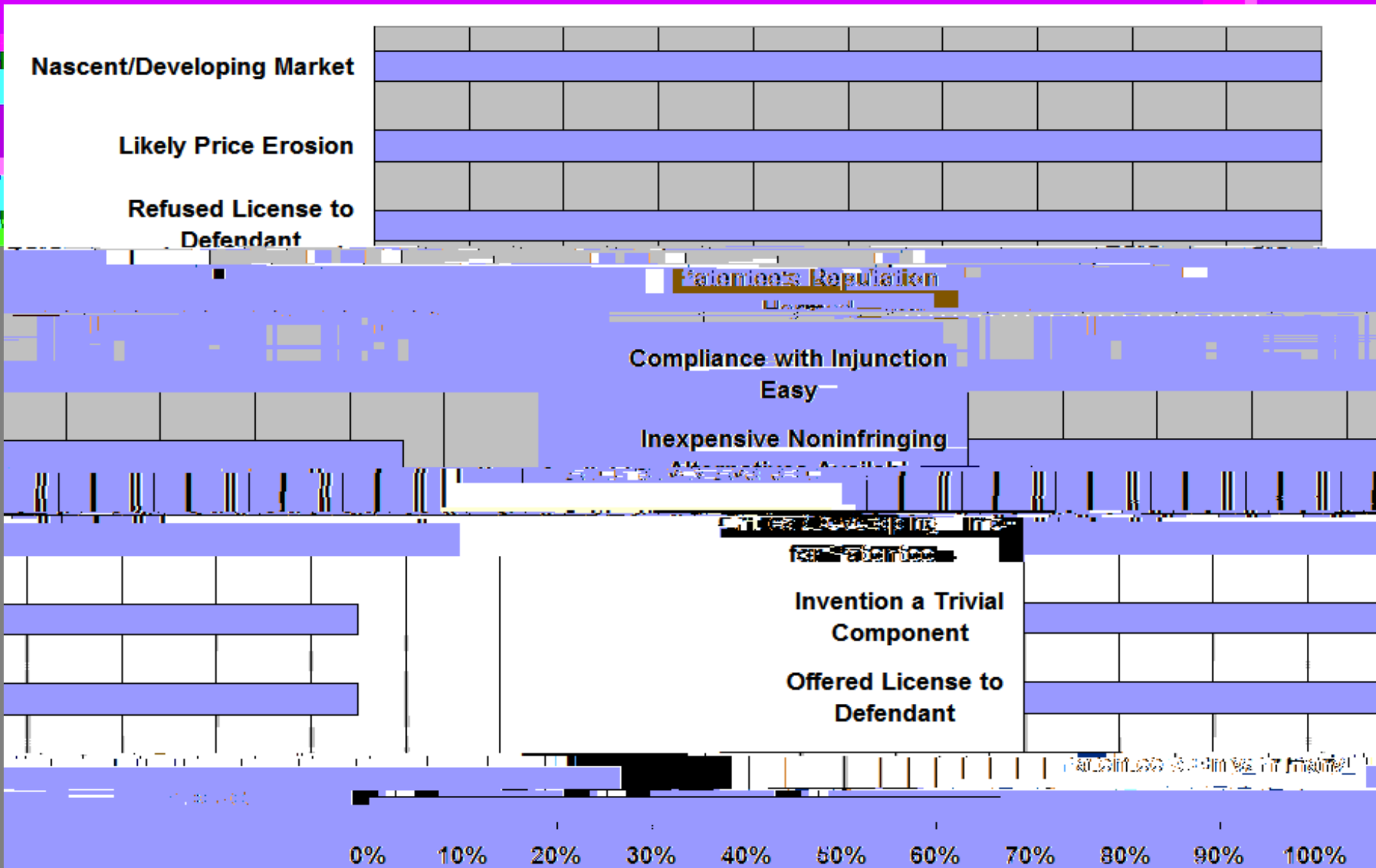
# Compliance With Injunction Easy



Mentioned  
in 13 of 49  
cases

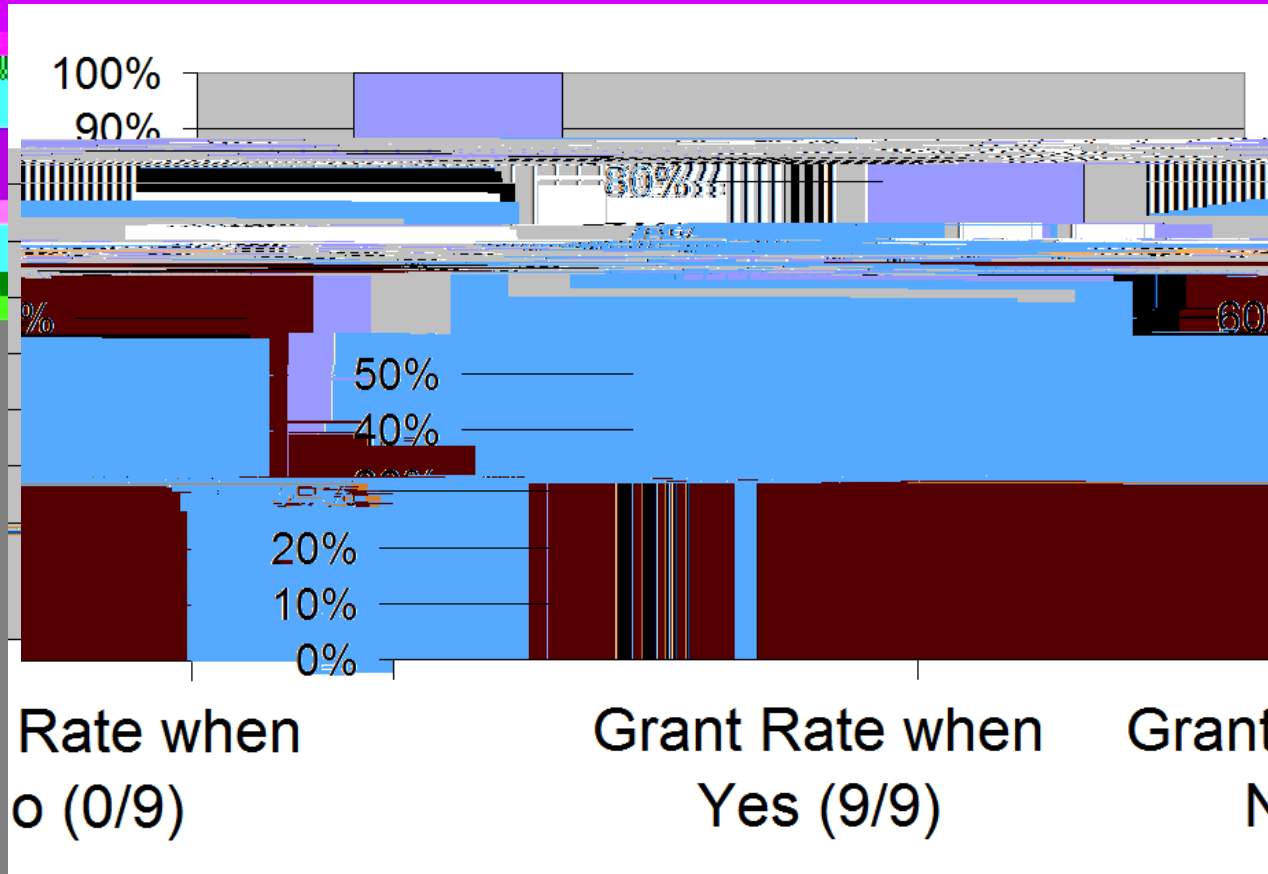
Difference in grant rate: 92%

# Biggest Differences Between Yes and No



PatentLit.com - Patent Litigation Research

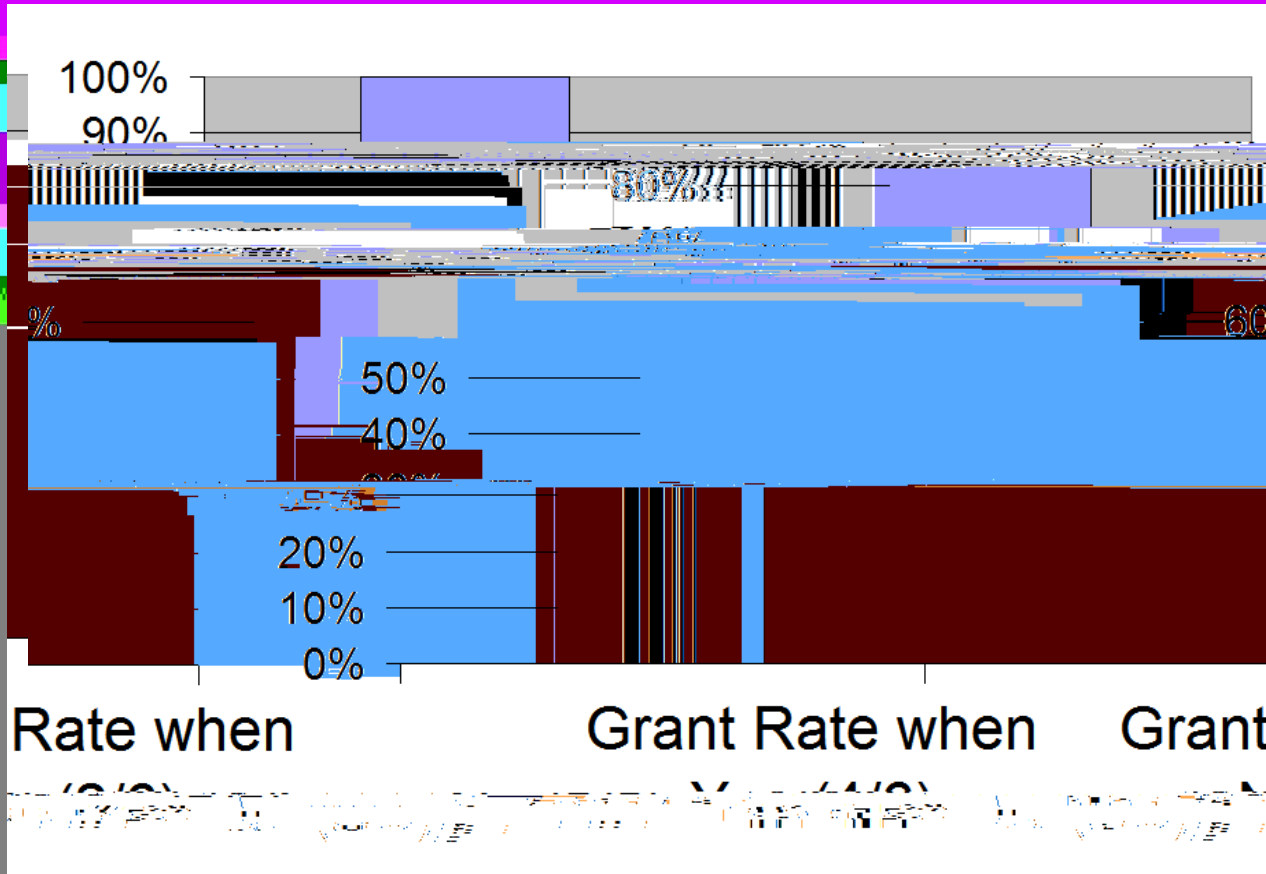
# Nascent / Developing Market



Mentioned  
in 9 of 49  
cases

Difference in grant rate: 100%

# Likely Price Erosion

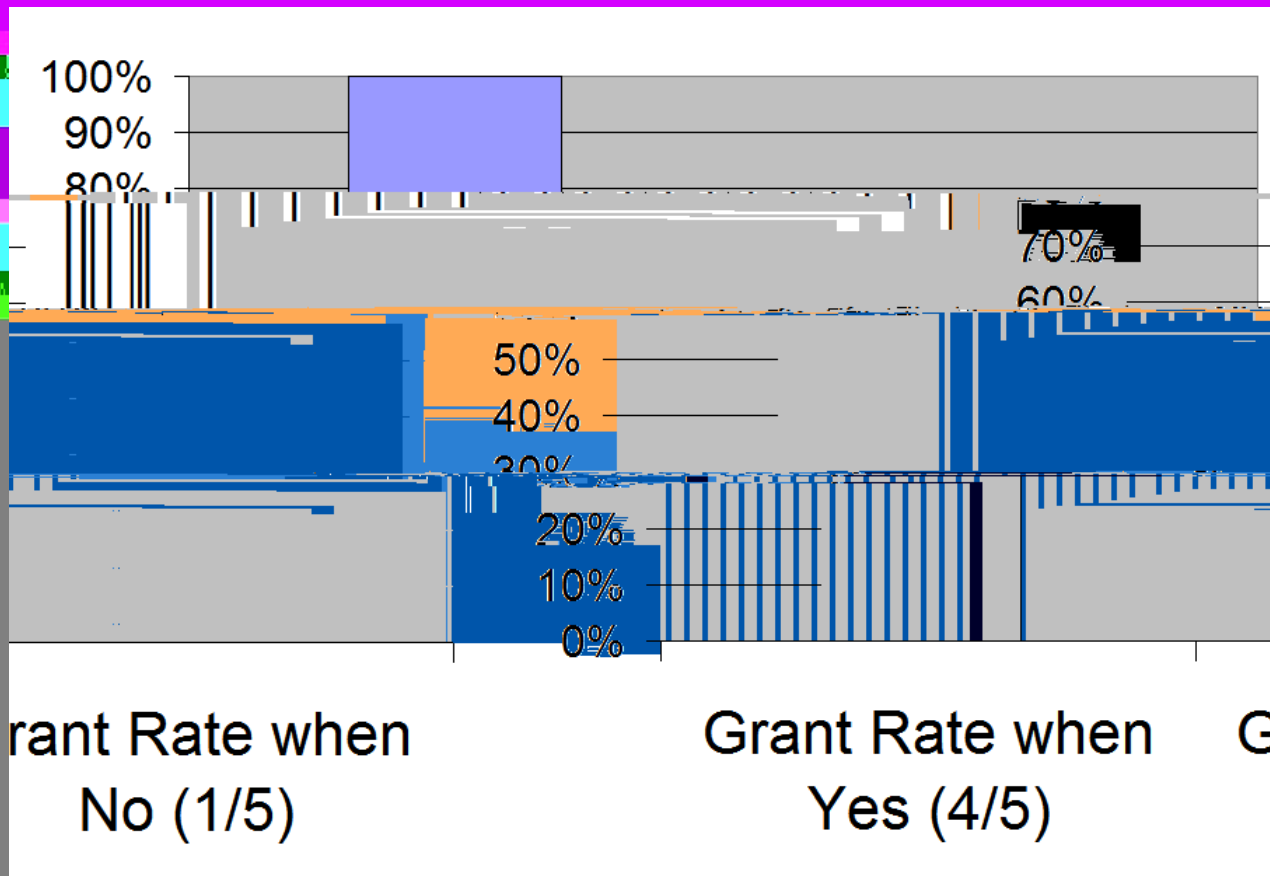


Mentioned  
in 6 of 49  
cases

Difference in grant rate: 100%



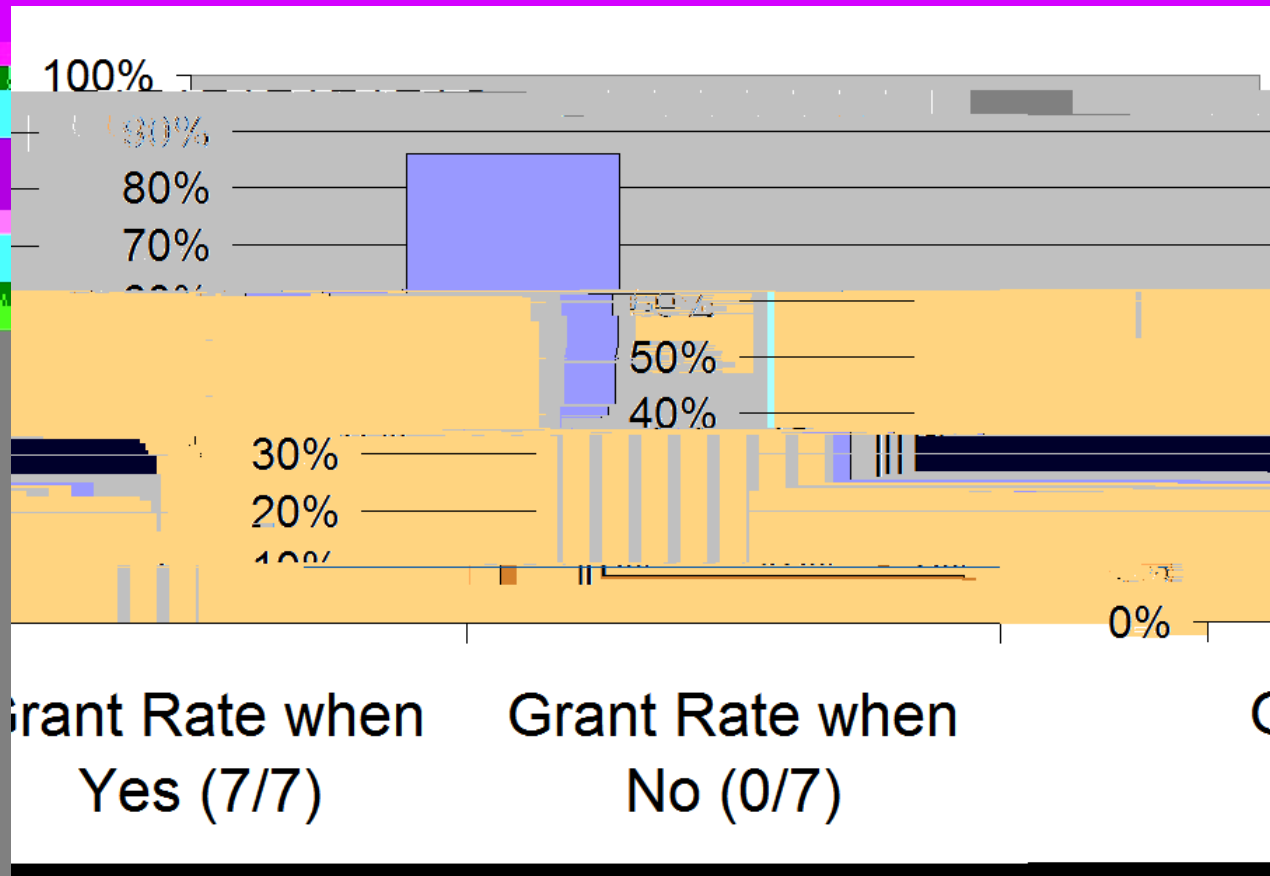
# Refused License to Defendant



Mentioned  
in 5 of 49  
cases

Difference in grant rate: 100%

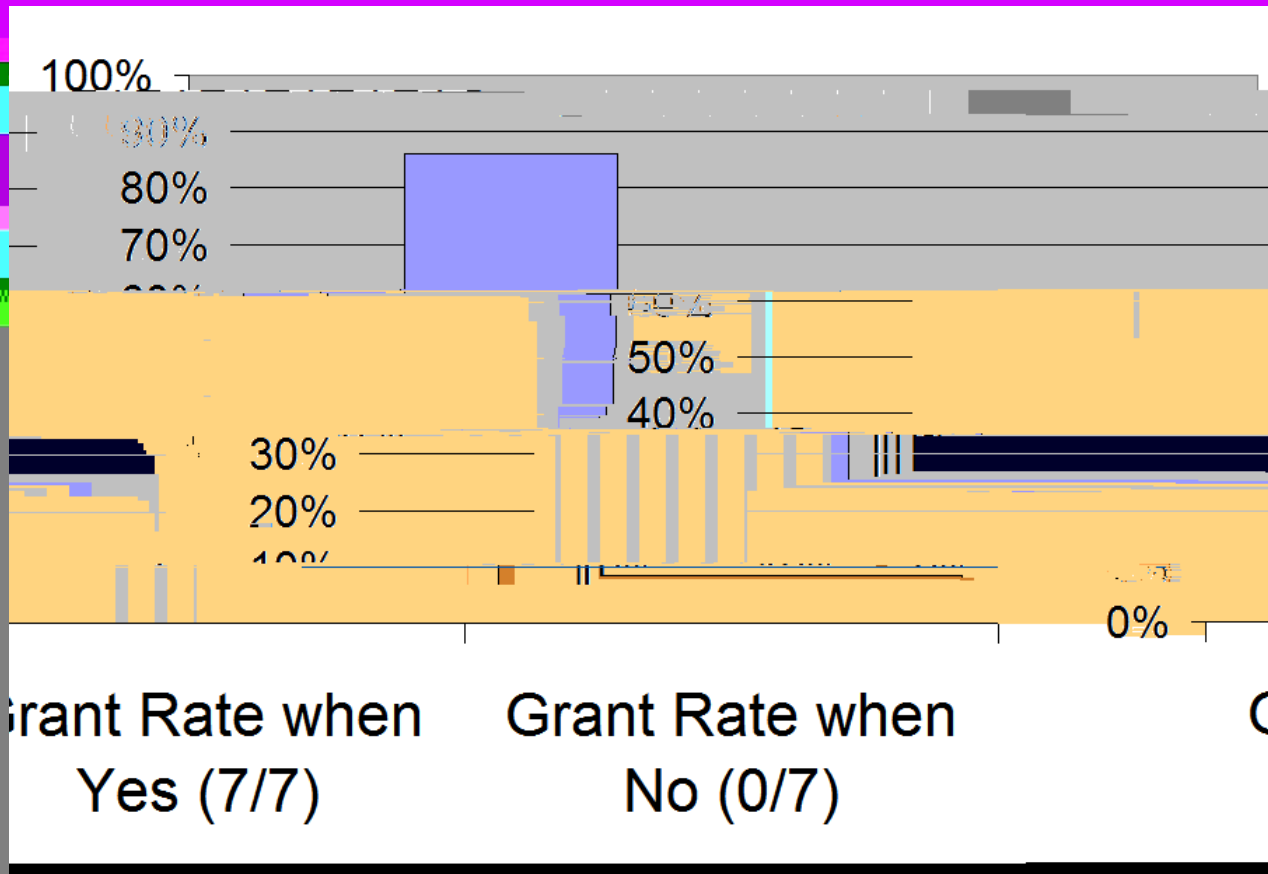
# Critical/Developing Time for Patentee



Mentioned  
in 7 of 49  
cases

Difference in grant rate: 86%

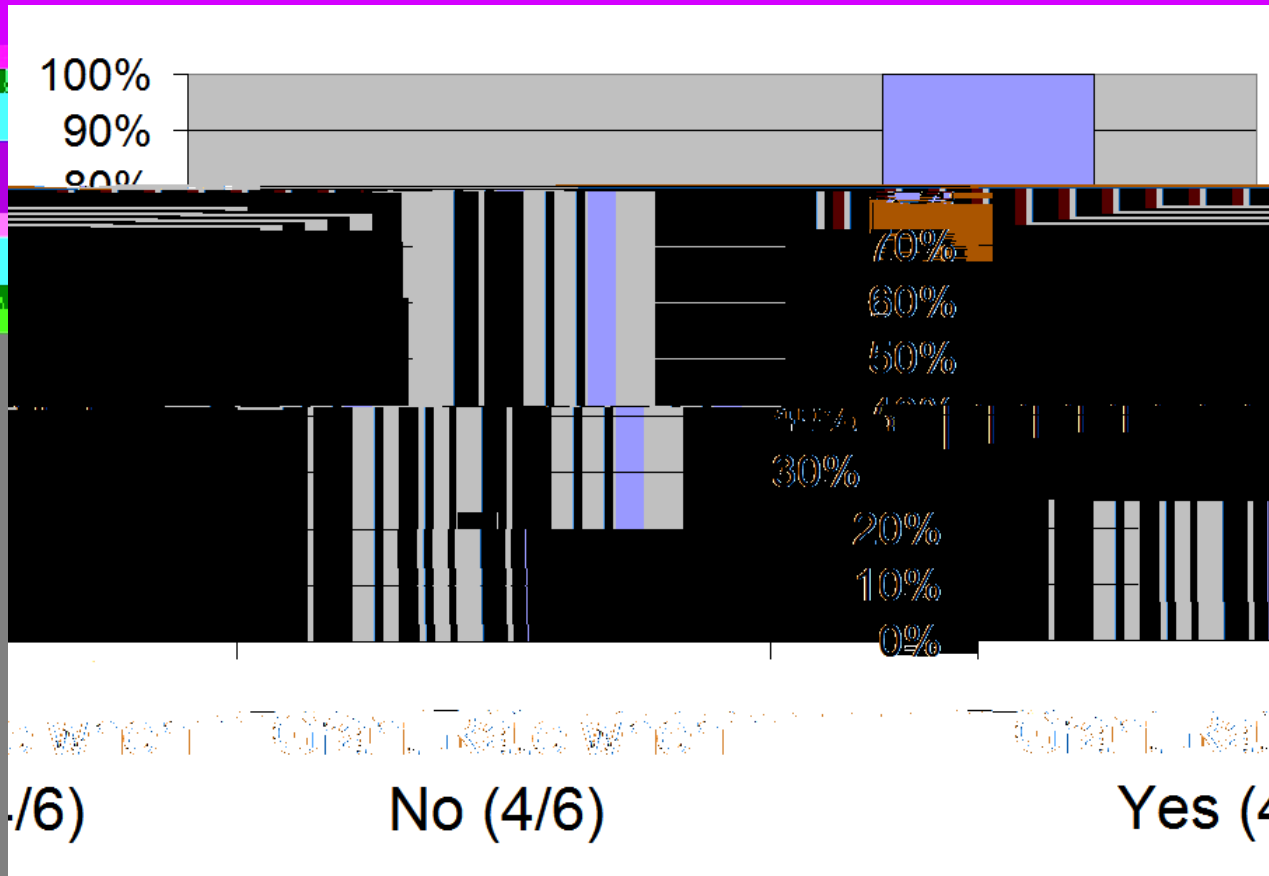
# Noninfringing Alternatives



Mentioned in  
7 of 49 cases

Difference in grant rate: 86%

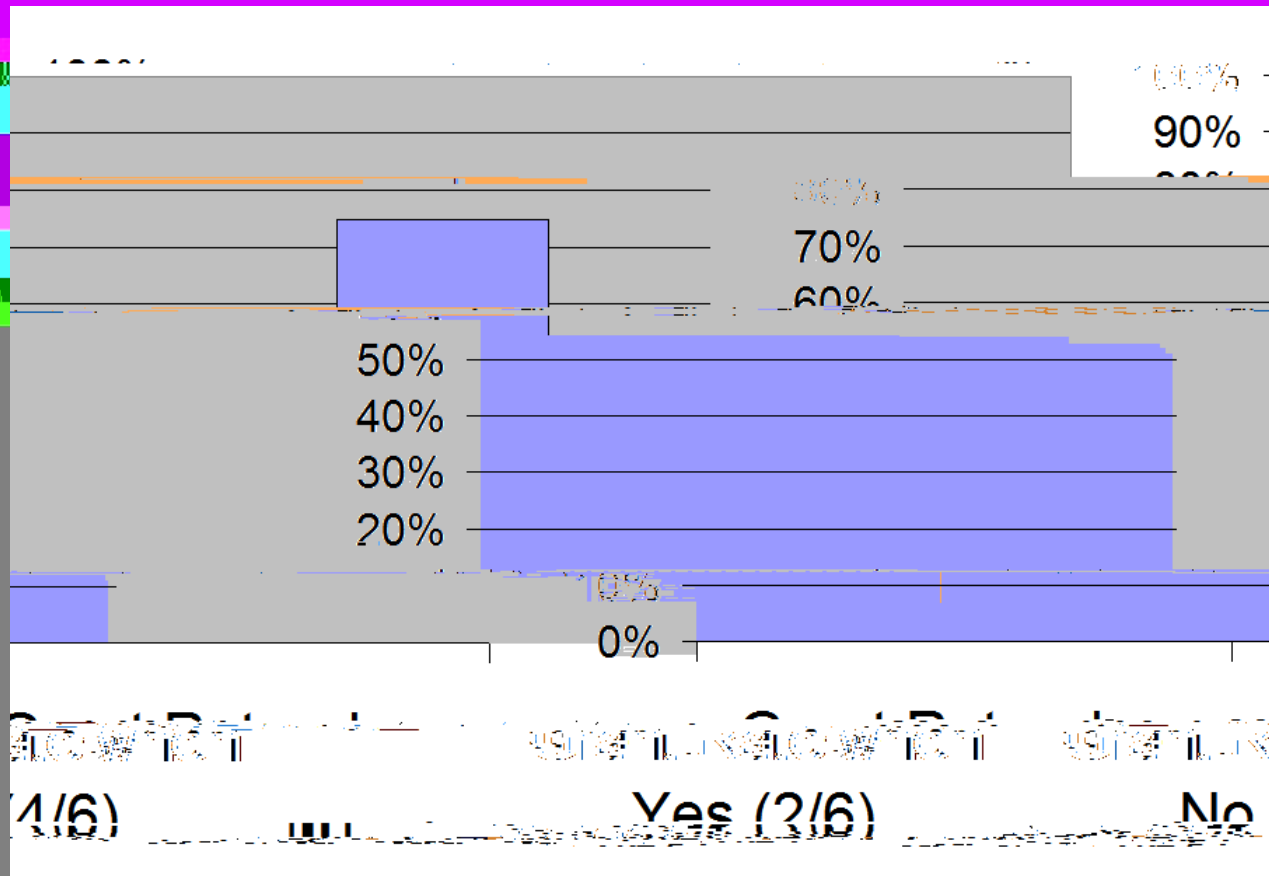
# Offered License To Defendant



Mentioned  
in 6 of 49  
cases

Difference in grant rate: 75%

# Invention a Trivial Component



Mentioned  
in 6 of 49  
cases

Difference in grant rate: 75%

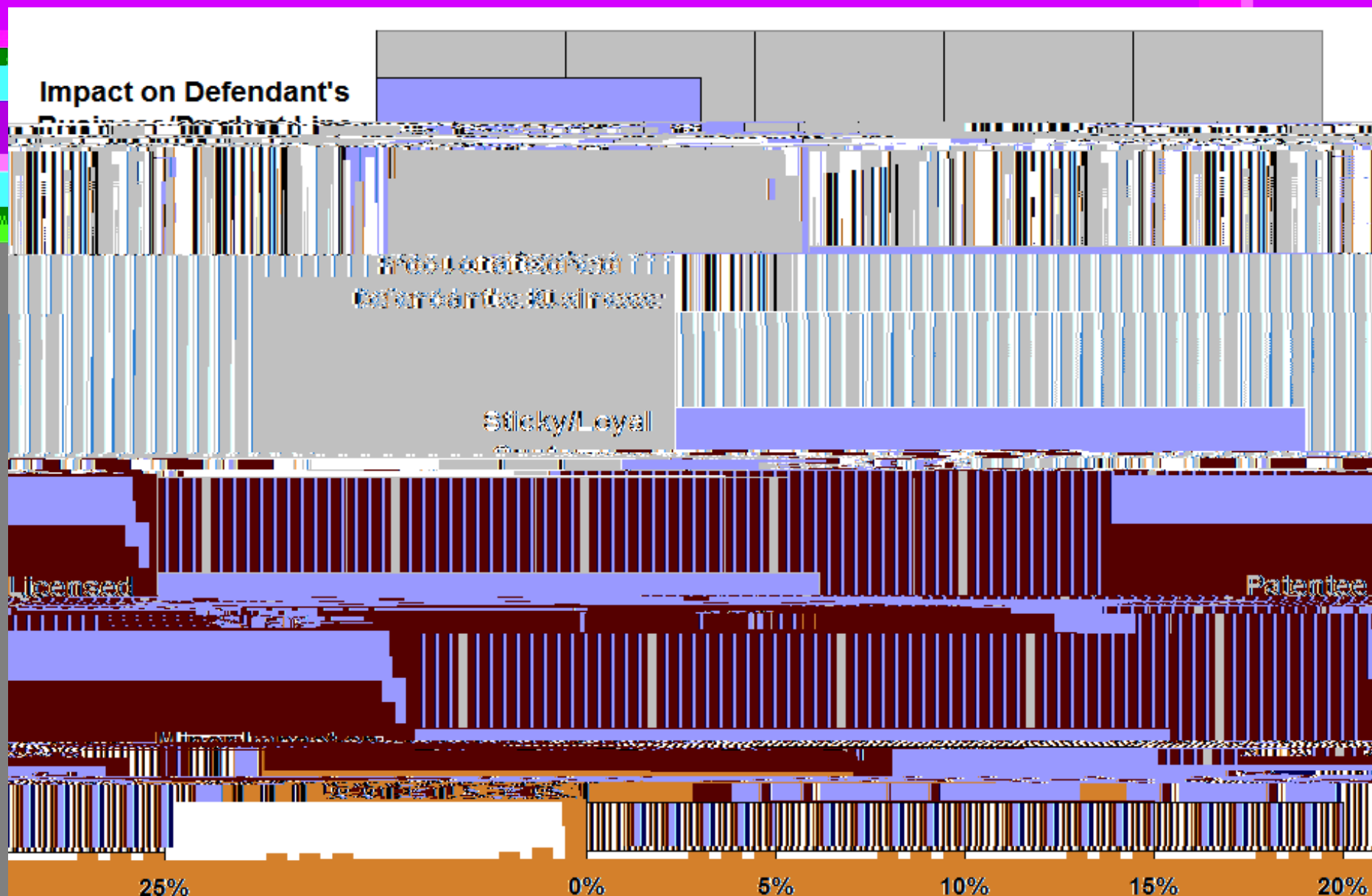
# Patentee's Only/Primary Product



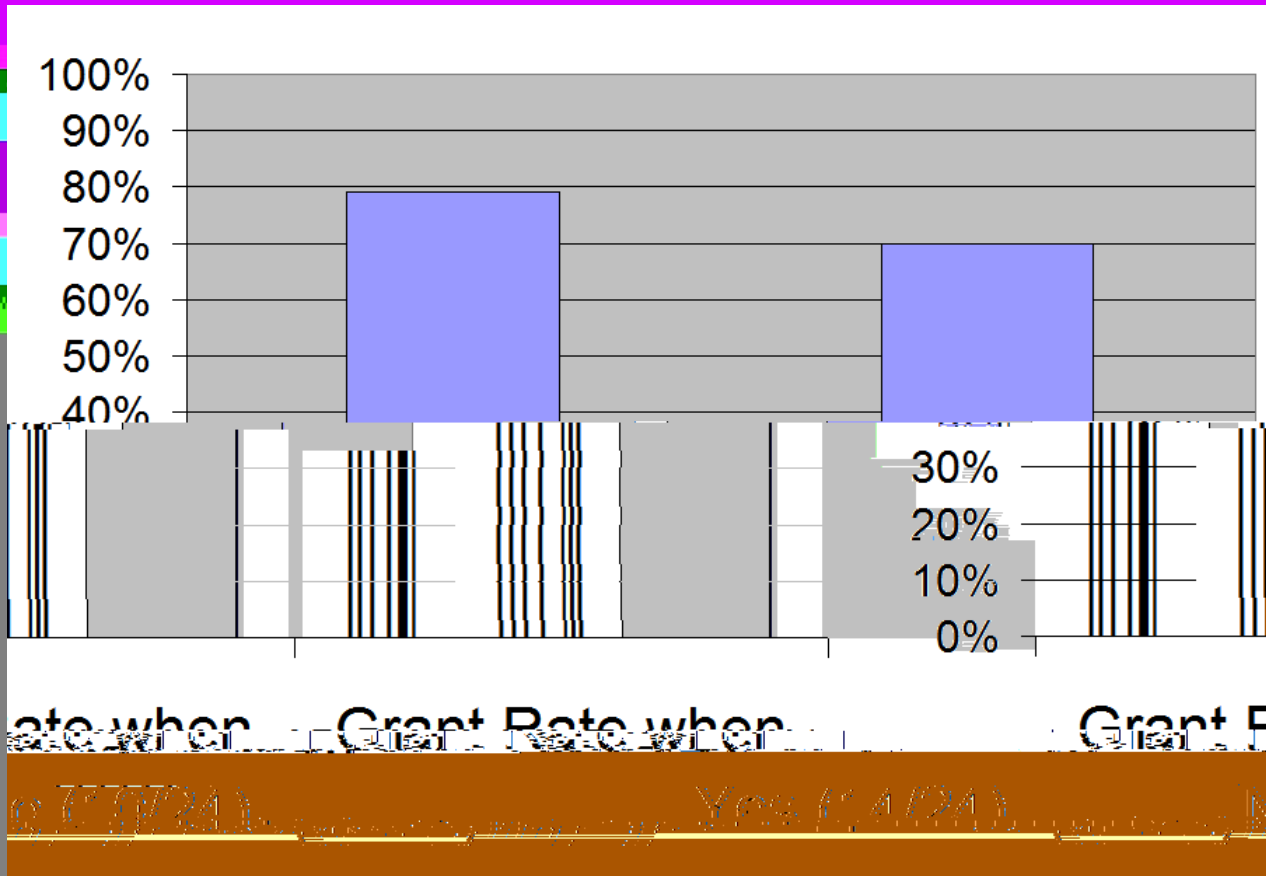
Mentioned  
in 9 of 49  
cases

Difference in grant rate: 67%

# Smallest Differences Between Yes and No



# Impact On Defendant's Business

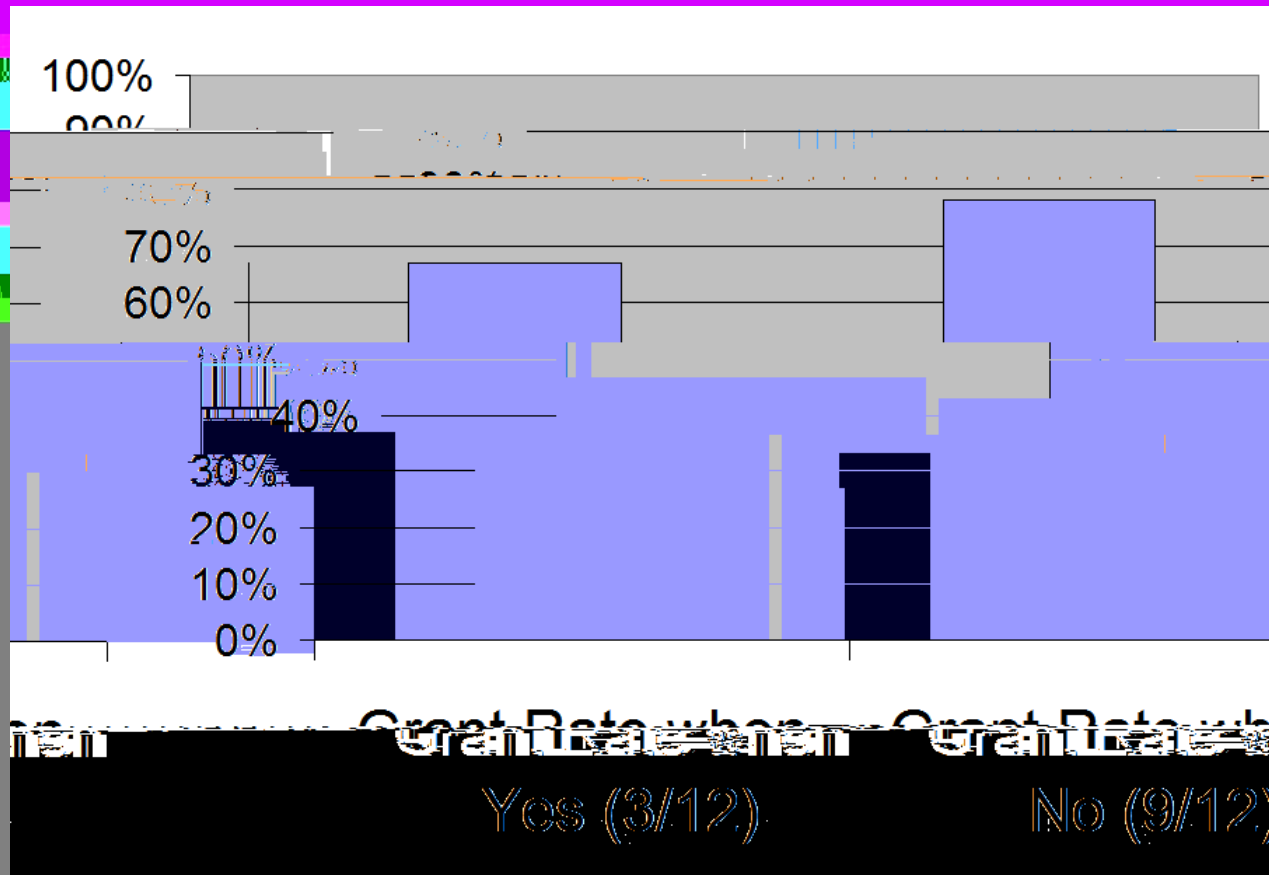


Mentioned  
in 24 of 49  
cases

Difference in grant rate: 9%



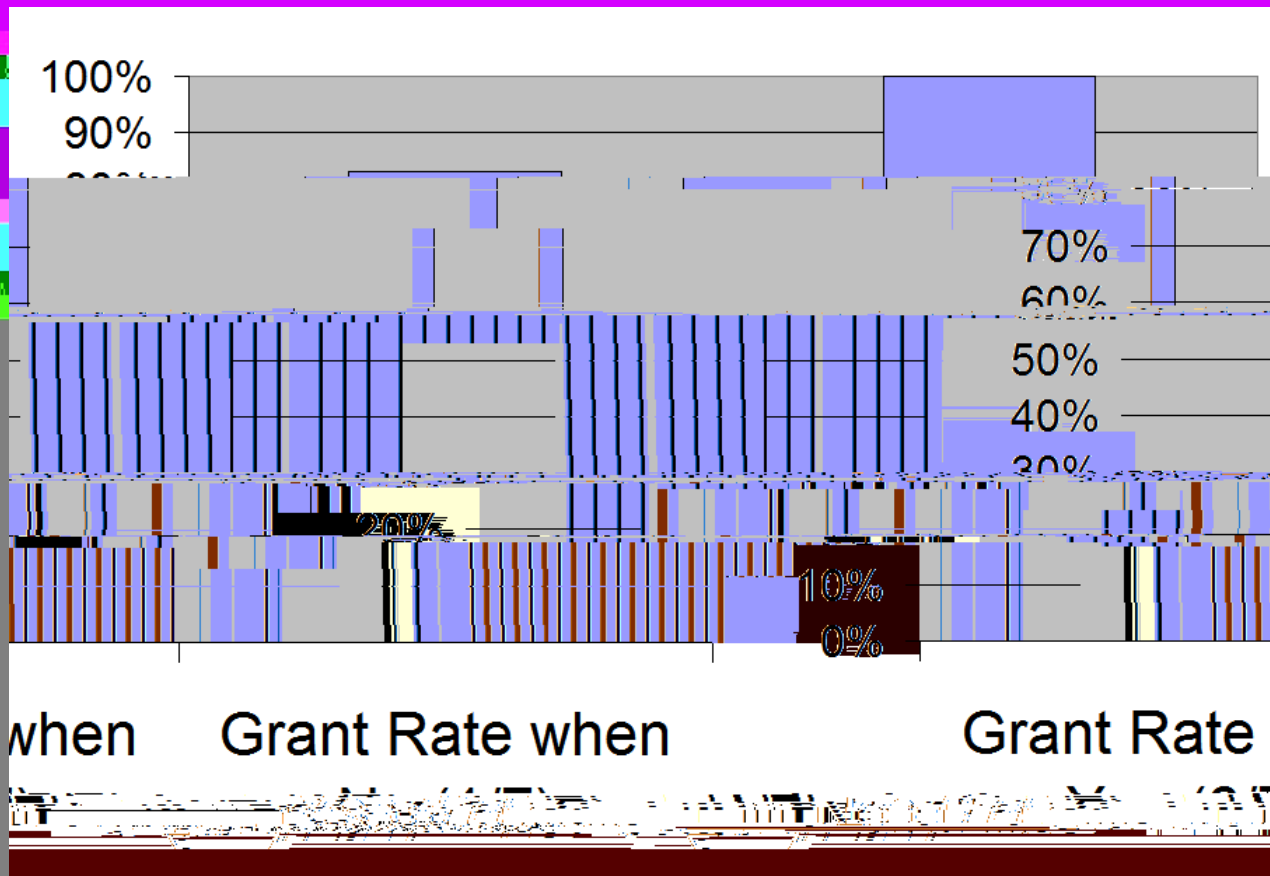
# Product At Core Of D's Business



Mentioned  
in 12 of 49  
cases

Difference in grant rate: 11%

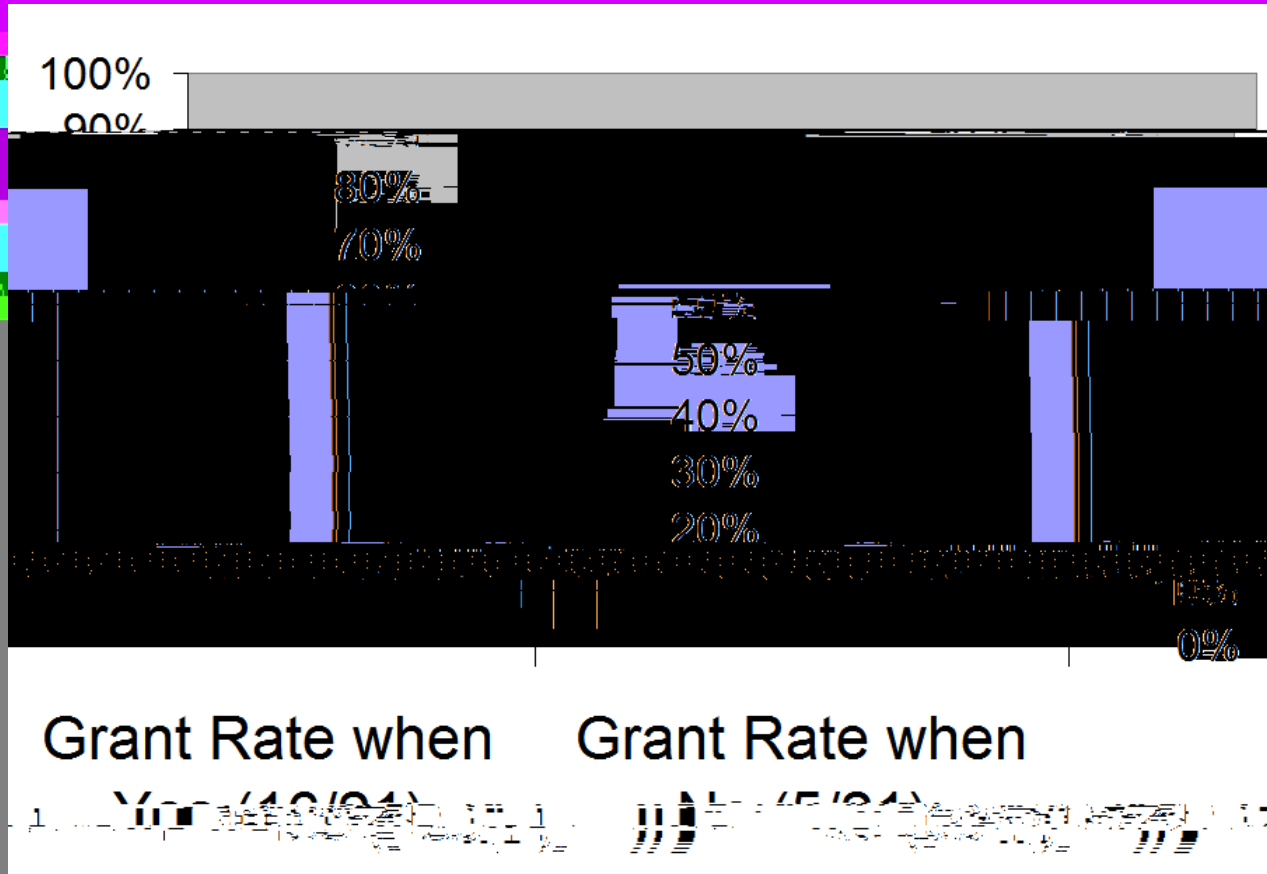
# Sticky/Loyal Customers



Mentioned  
in 7 of 49  
cases

Difference in grant rate: 17%

# Patentee Licensed Others



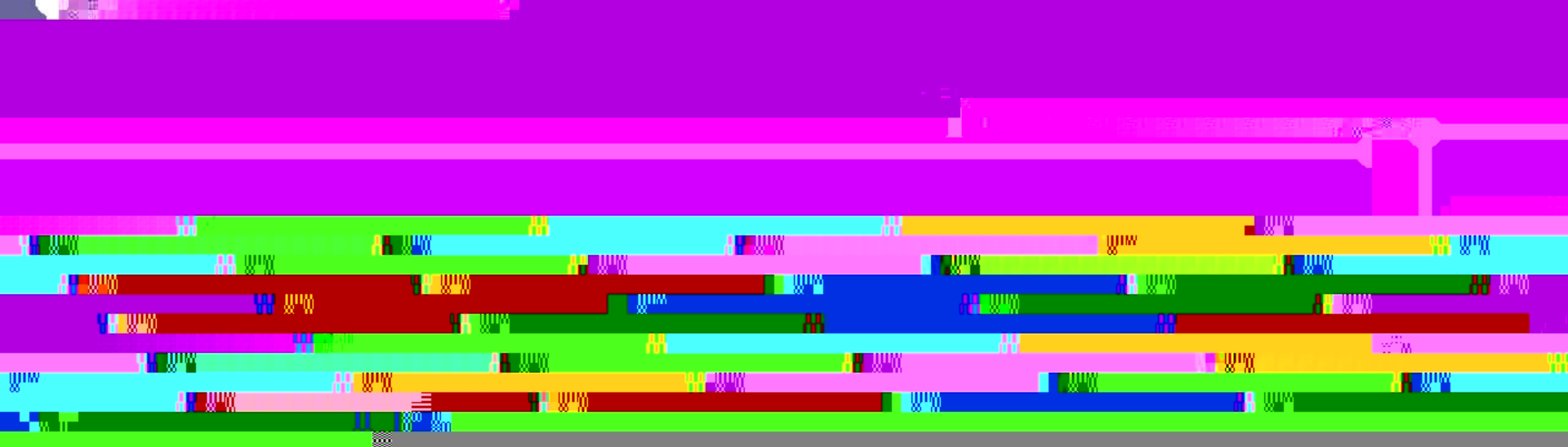
Mentioned  
in 21 of 49  
cases

Difference in grant rate: 17%

# Minor Impact On D's Sales

Mentioned  
in 17 of 49  
cases

Difference in grant rate: 20%



END