Empirical Analysis Of Permanent Injunction Decisions Following *eBay*

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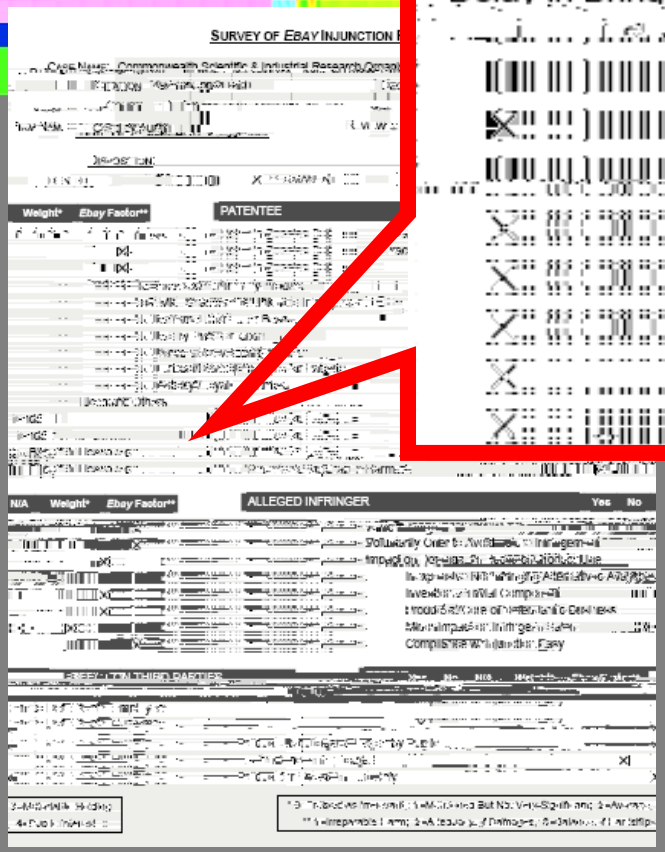
Background

After initial review of cases, questionnaire created based on list of injunctive factors

Background

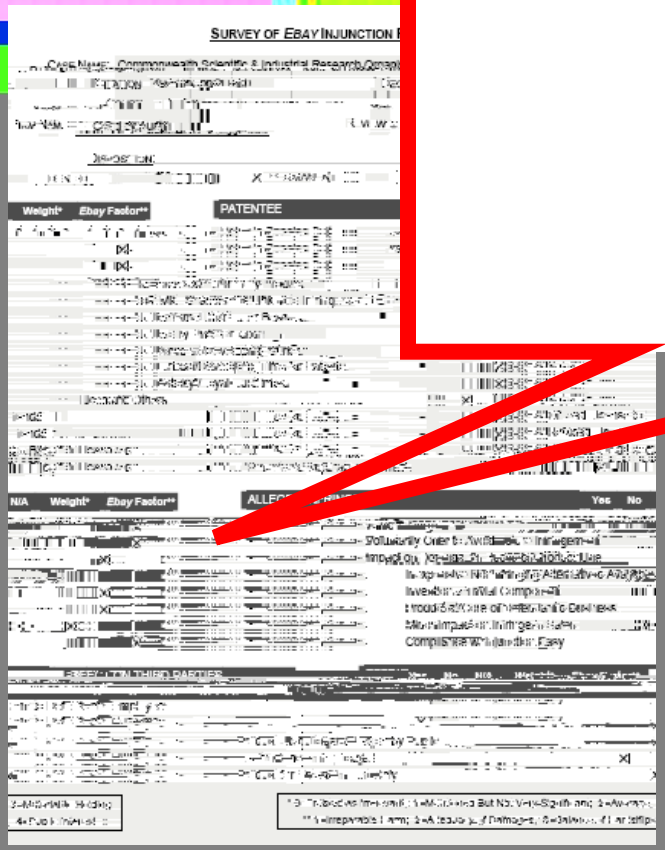
- Total of 28 factors comprising 3 general categories
  - Patentee
  - Infringer
  - Third parties / public

Background

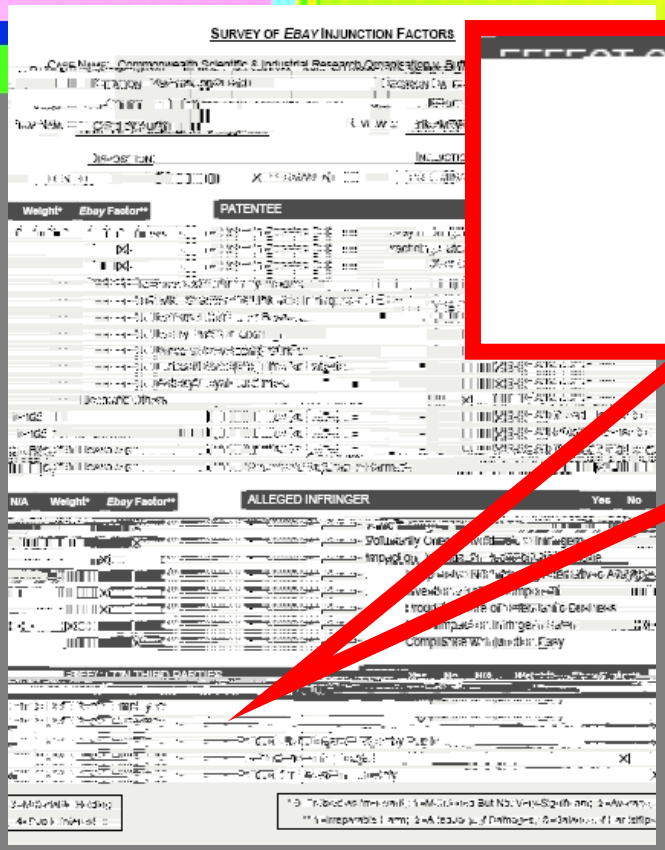


PATENTEE	Yes	No	N/A
Delay in Bringing Suit	☐	☐	☒

Background


SURVEY OF EBAY INJUNCTION
Weight*
Ebay Factor**
PATENTEE
N/A
Weight*
Ebay Factor**
Yes
No

Background


SURVEY OF *EBAY* INJUNCTION FACTORS

Weight* Ebay Factor** PATENTEE

N/A Weight* Ebay Factor** ALLEGED INFRINGER Yes No

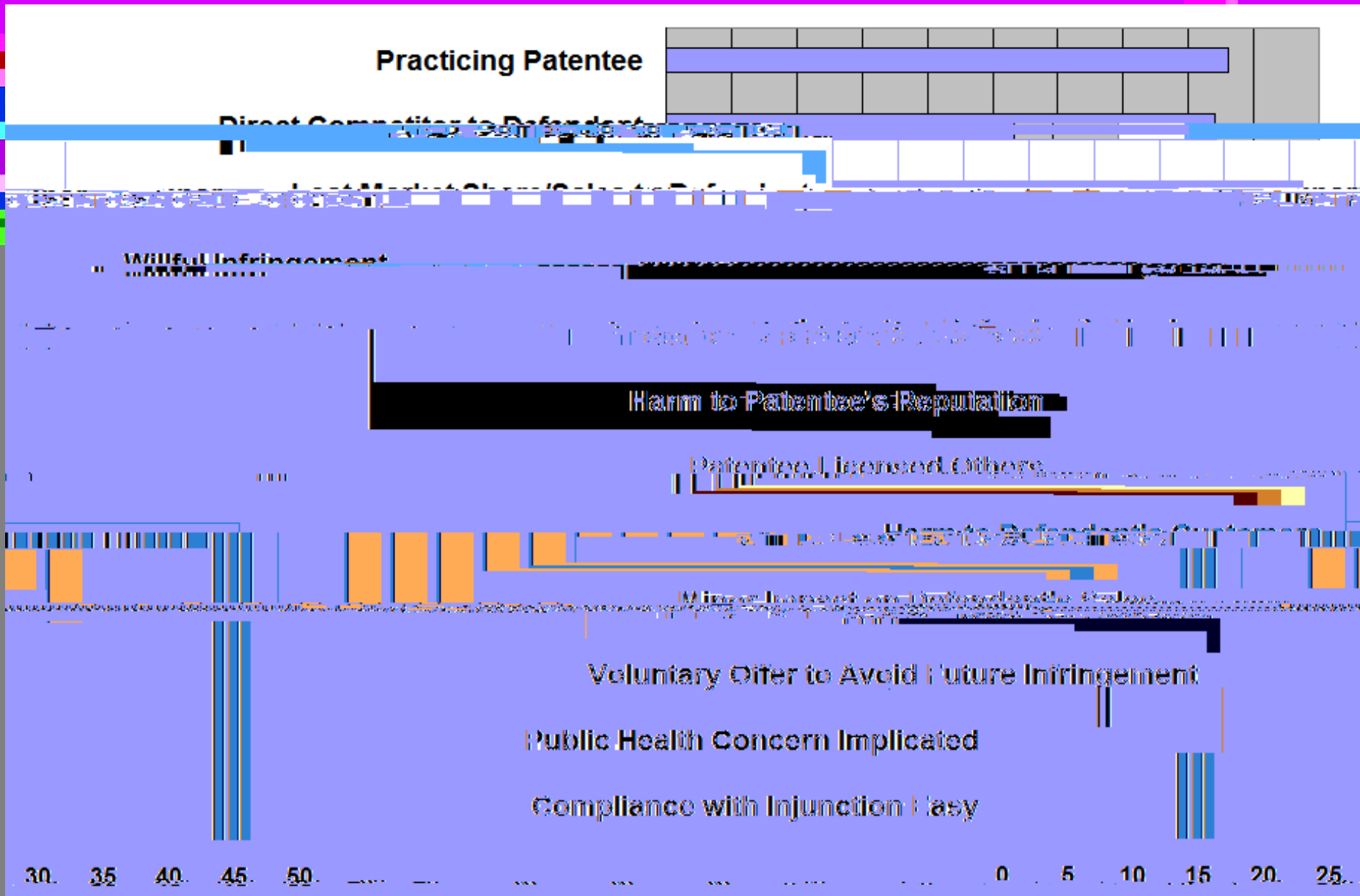
Background

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

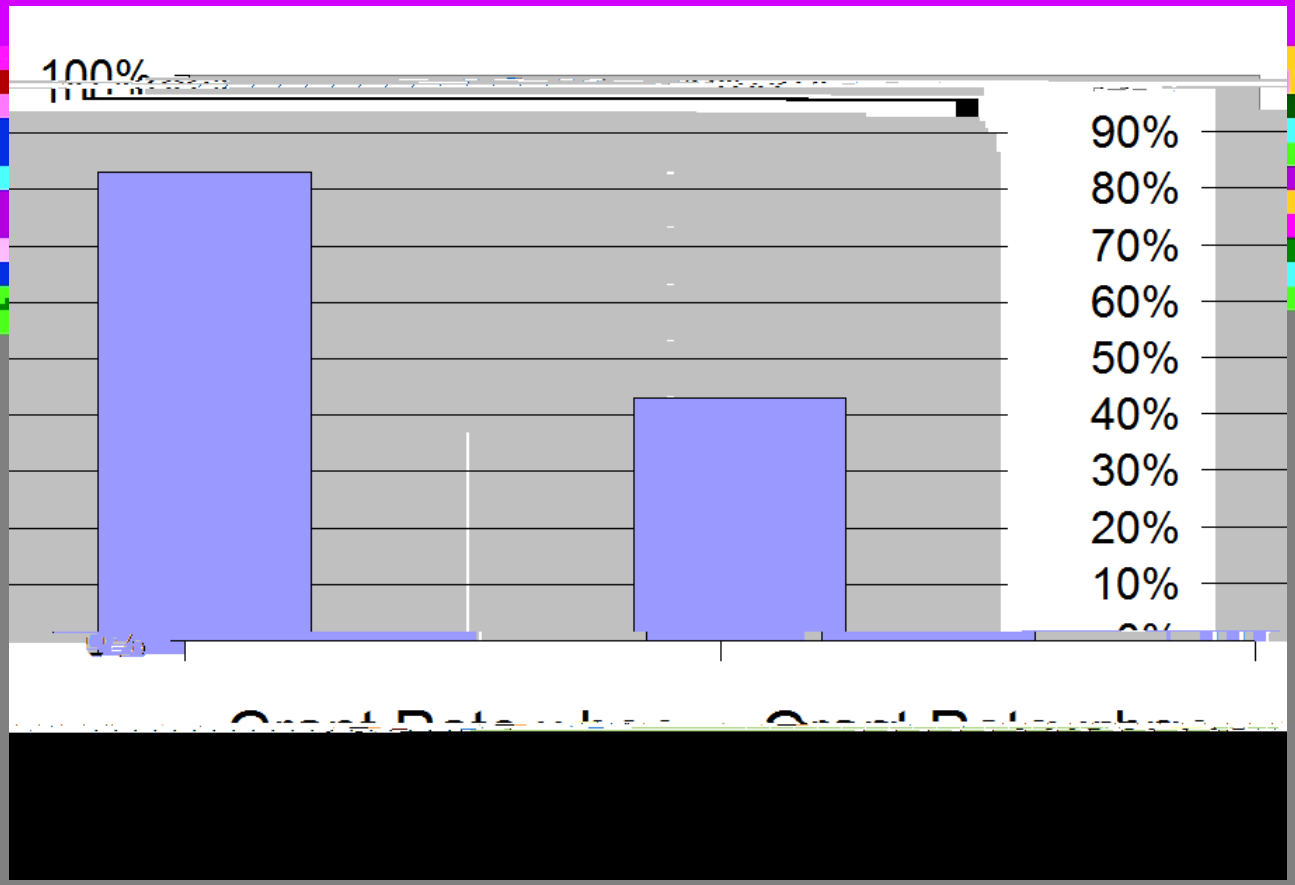
Background

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

Frequently Considered Factors



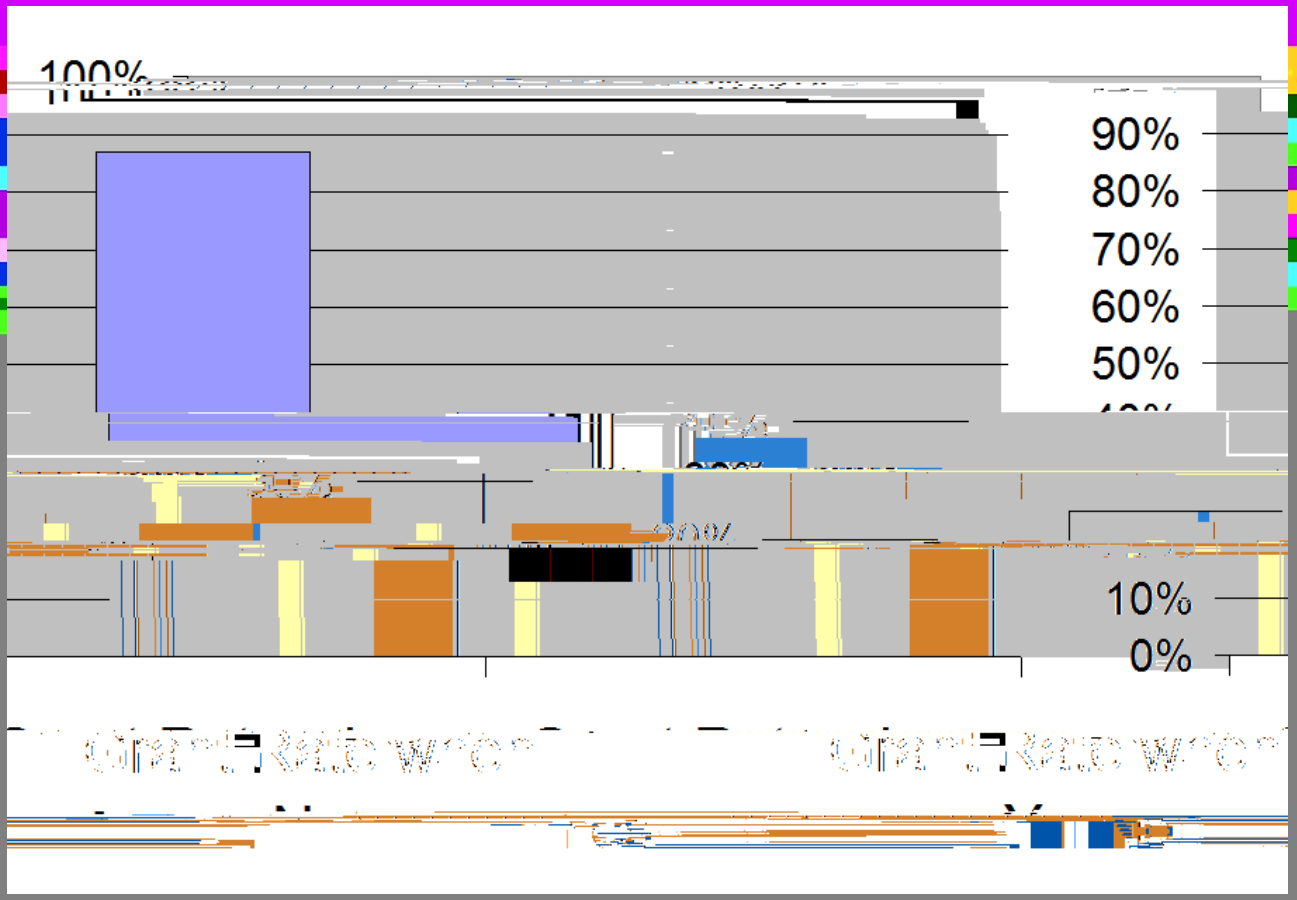
Practicing Patentee



Mentioned in 43 of 49 cases

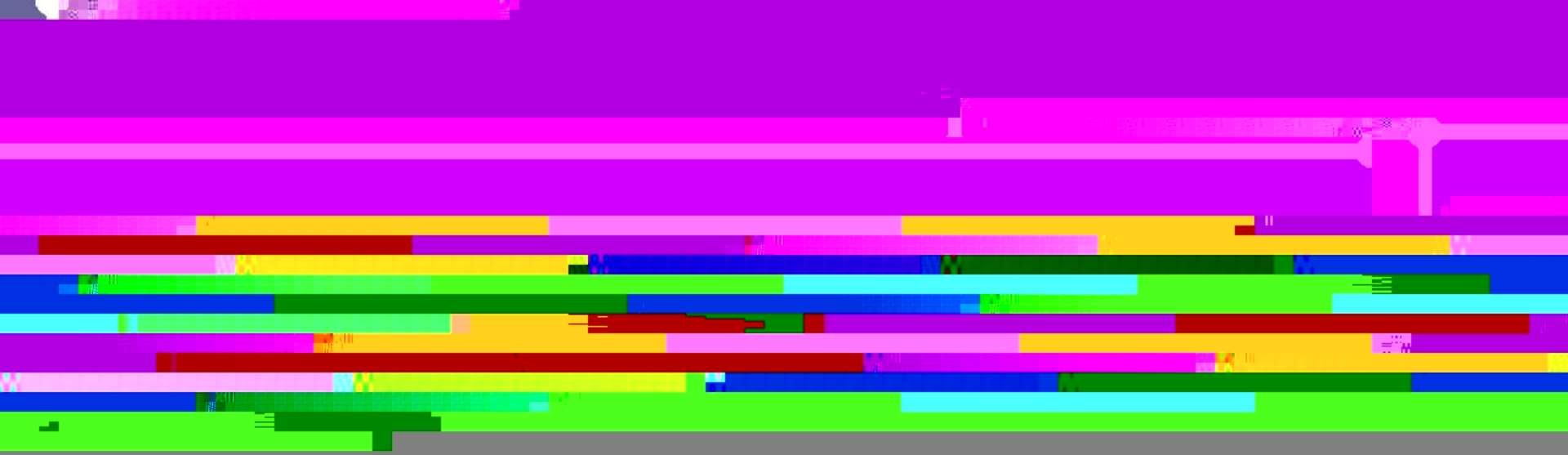
Difference in grant rate: **40%**

Direct Competitor to Defendant

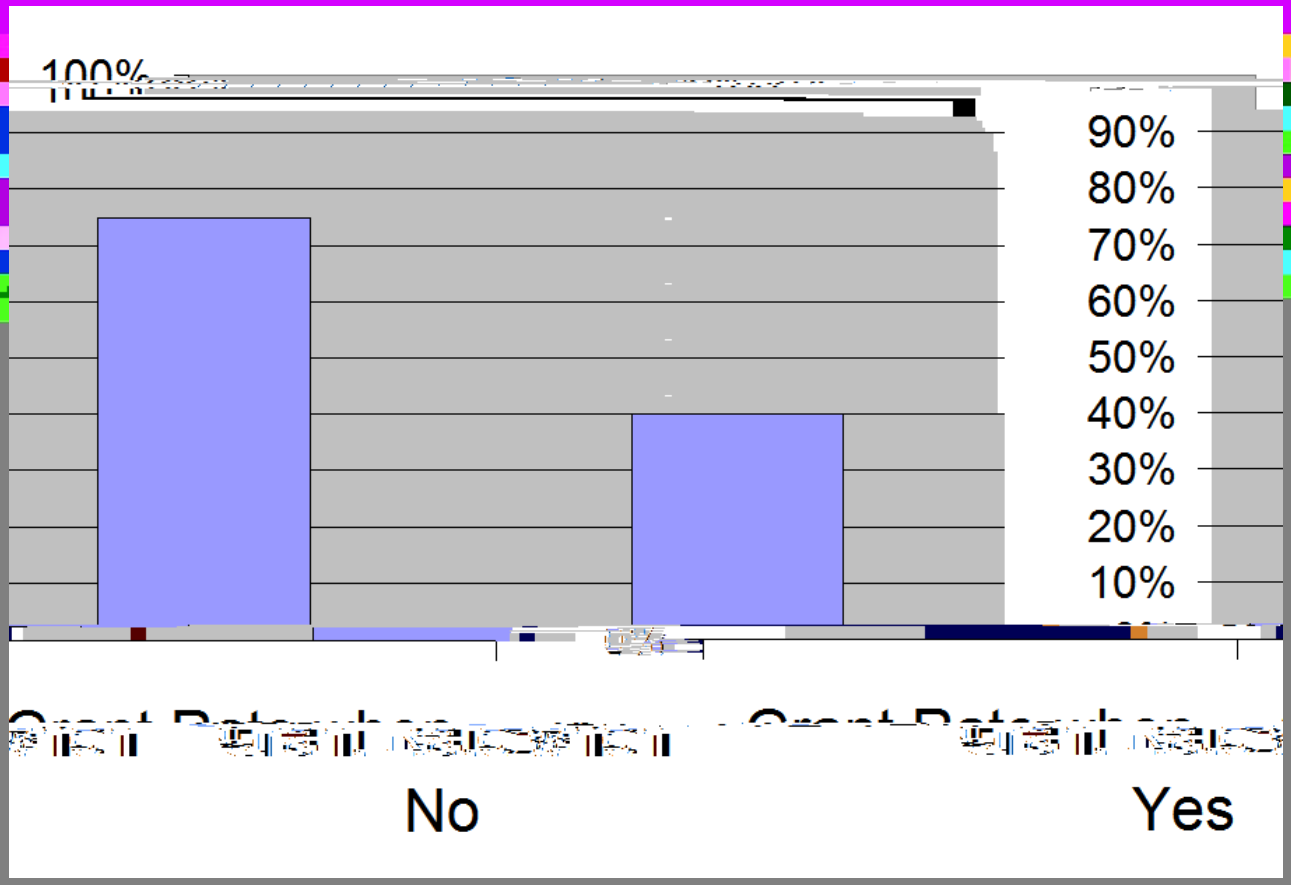


Mentioned in 42 of 49 cases

Difference in grant rate: 62%



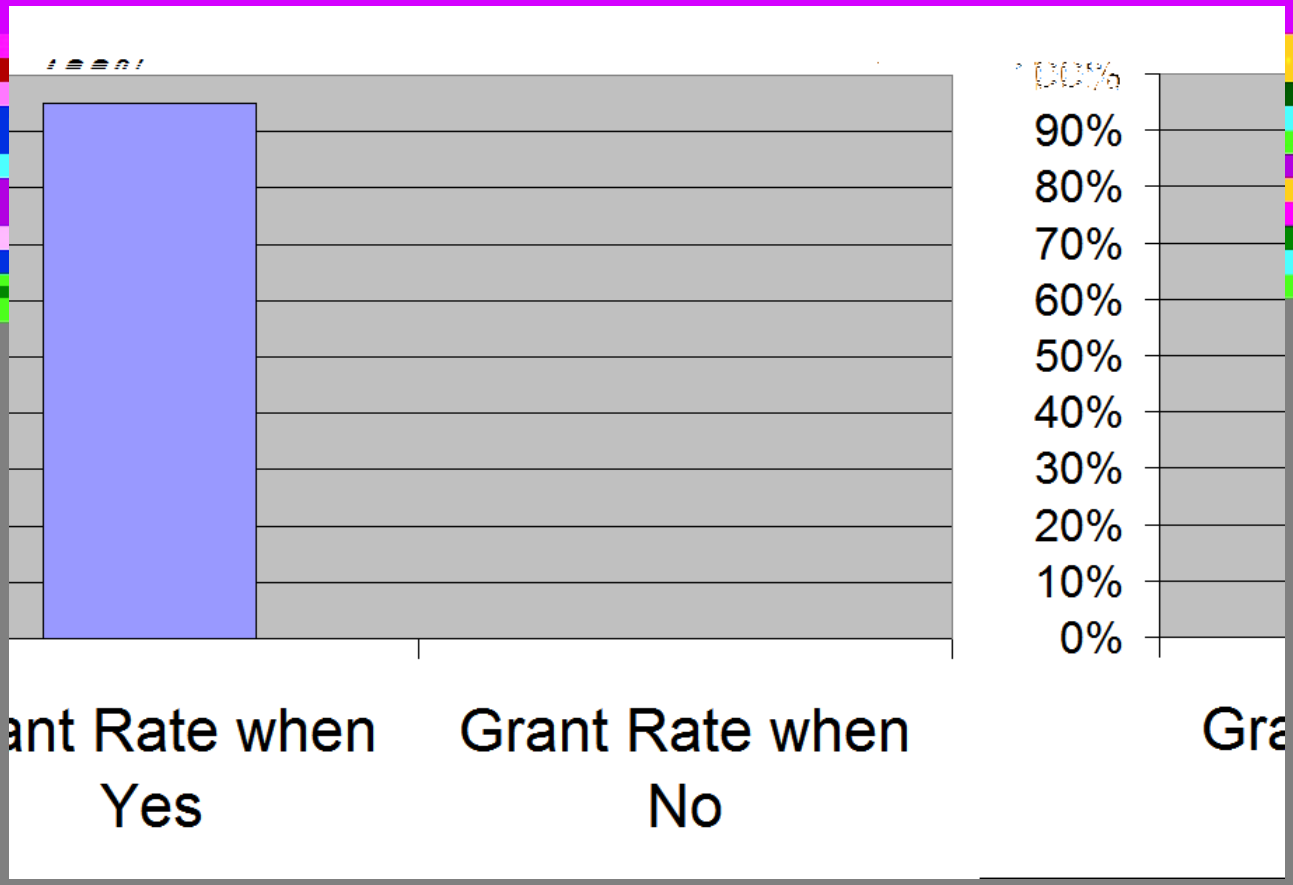
Willful Infringement



Mentioned in 25 of 49 cases

Difference in grant rate: **35%**

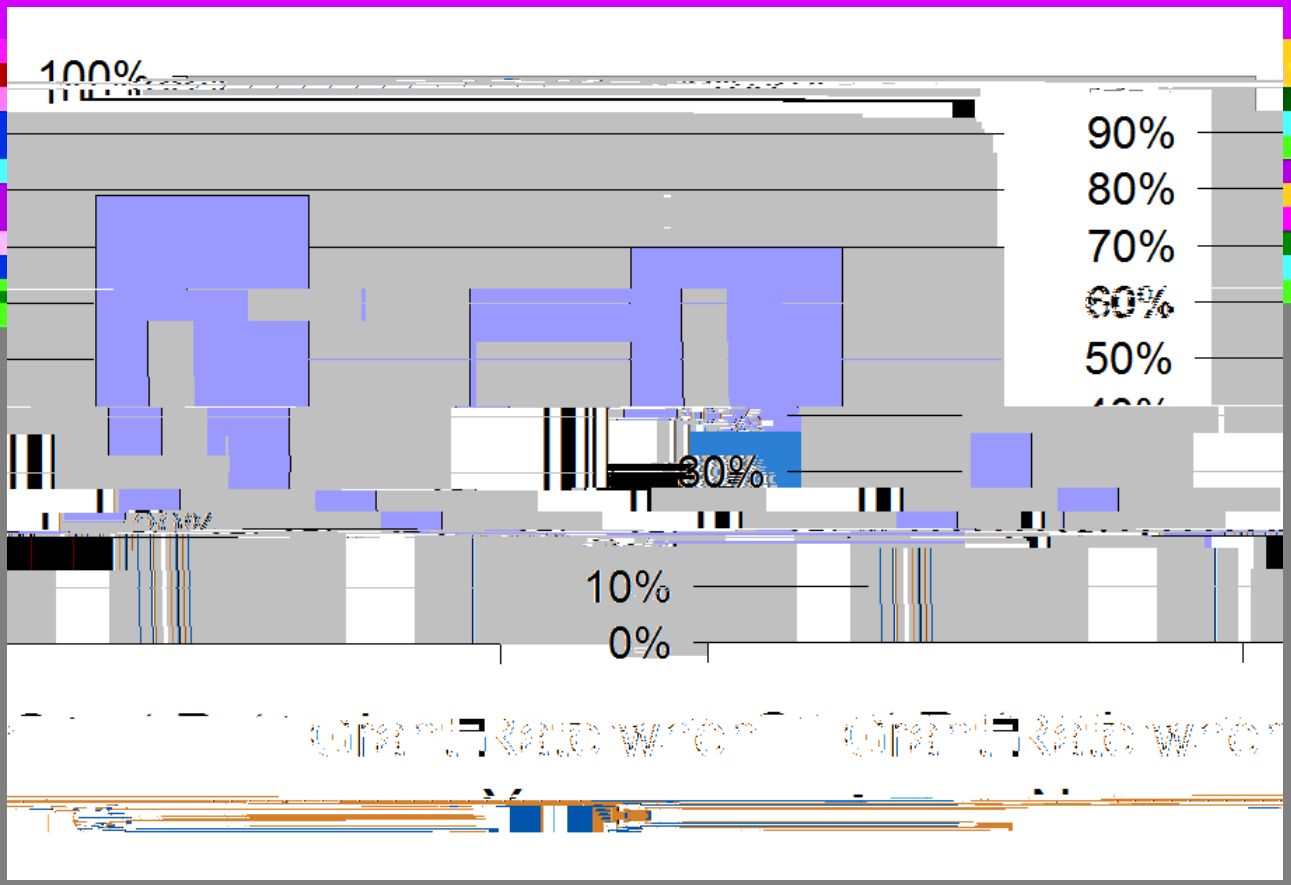
Harm to Patentee's Reputation



Mentioned in 24 of 49 cases

Difference in grant rate: **95%**

Impact On Defendant's Business

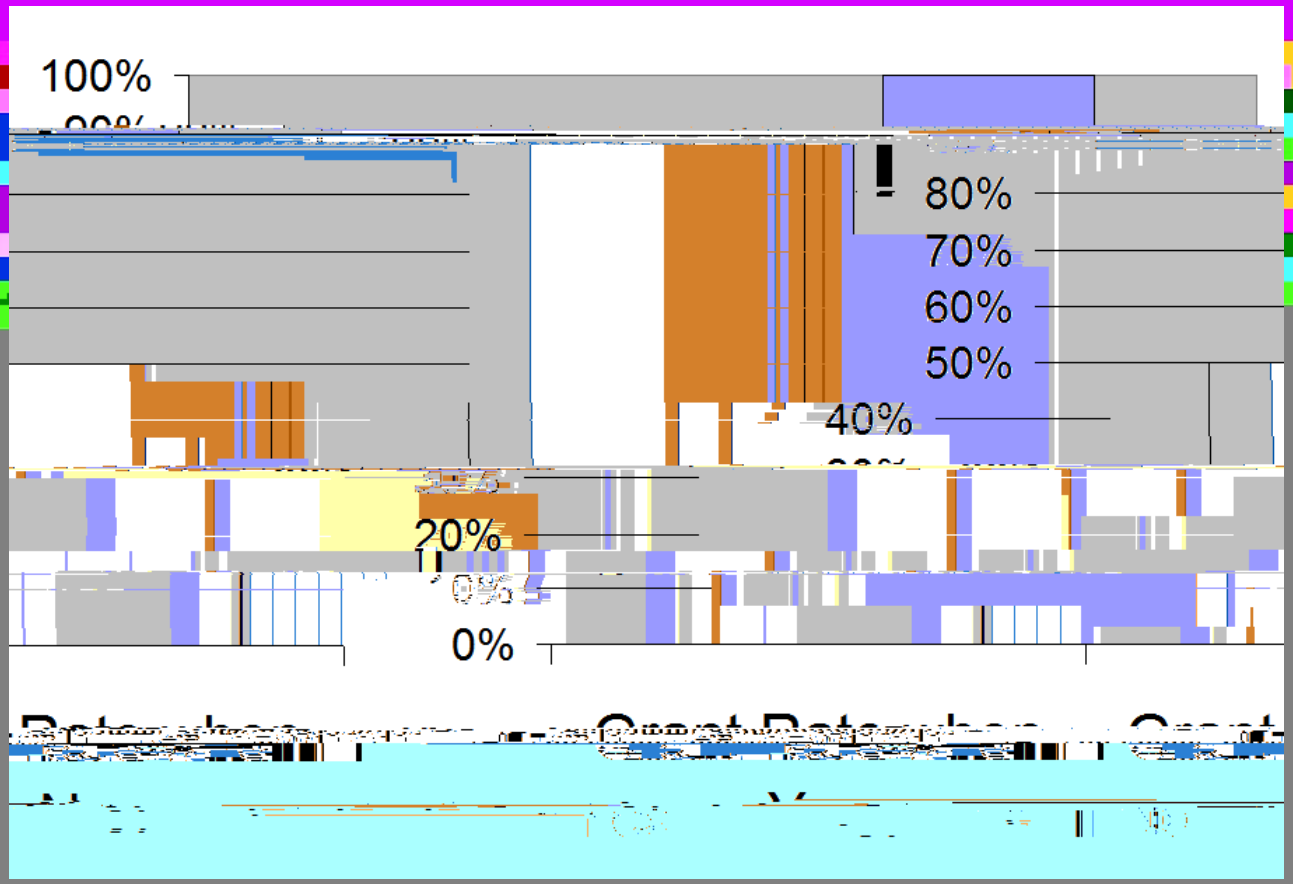


Mentioned in 24 of 49 cases

Difference in grant rate: **9%**

Patentee Licensed Others

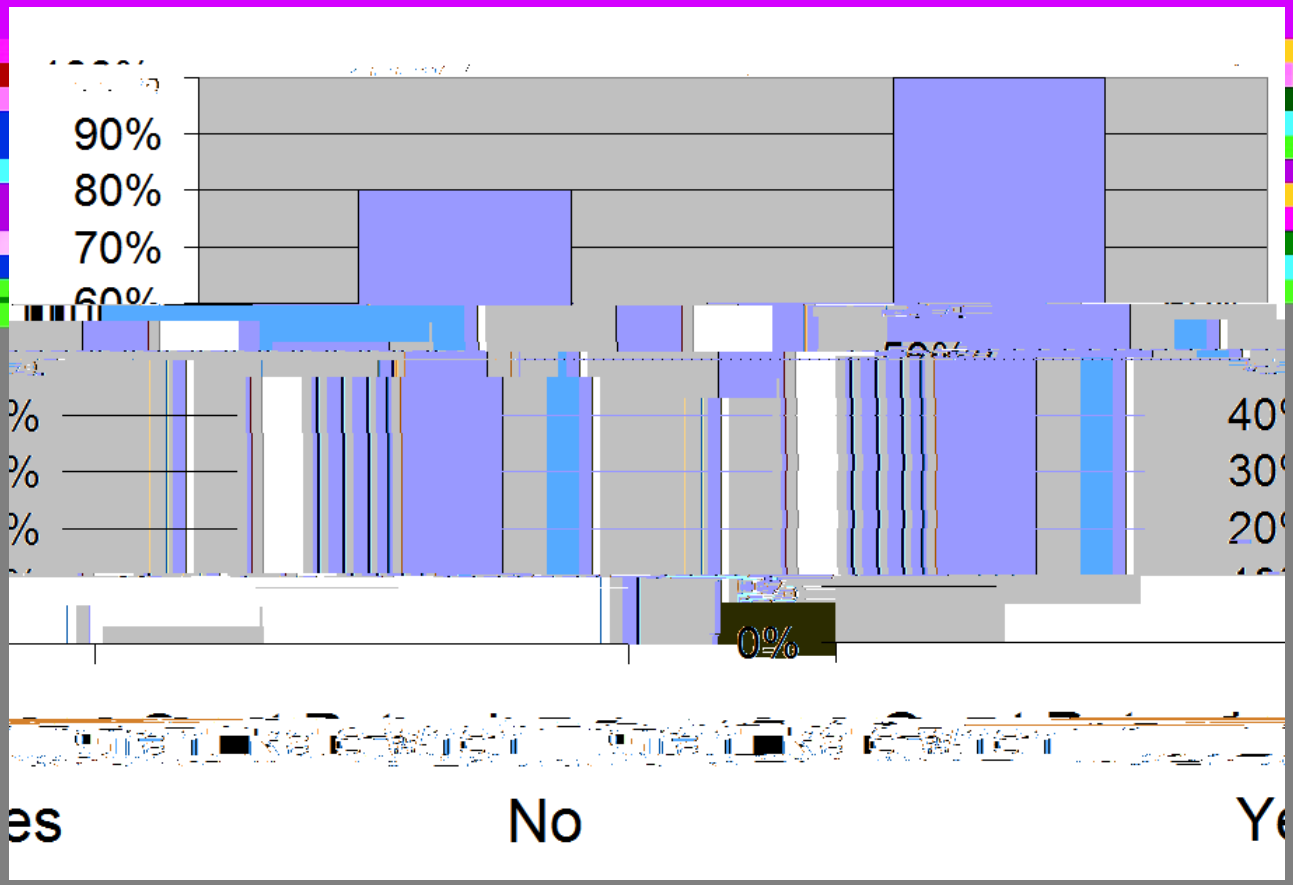
Harm To Defendant's Customers



Mentioned in 19 of 49 cases

Difference in grant rate: **50%**

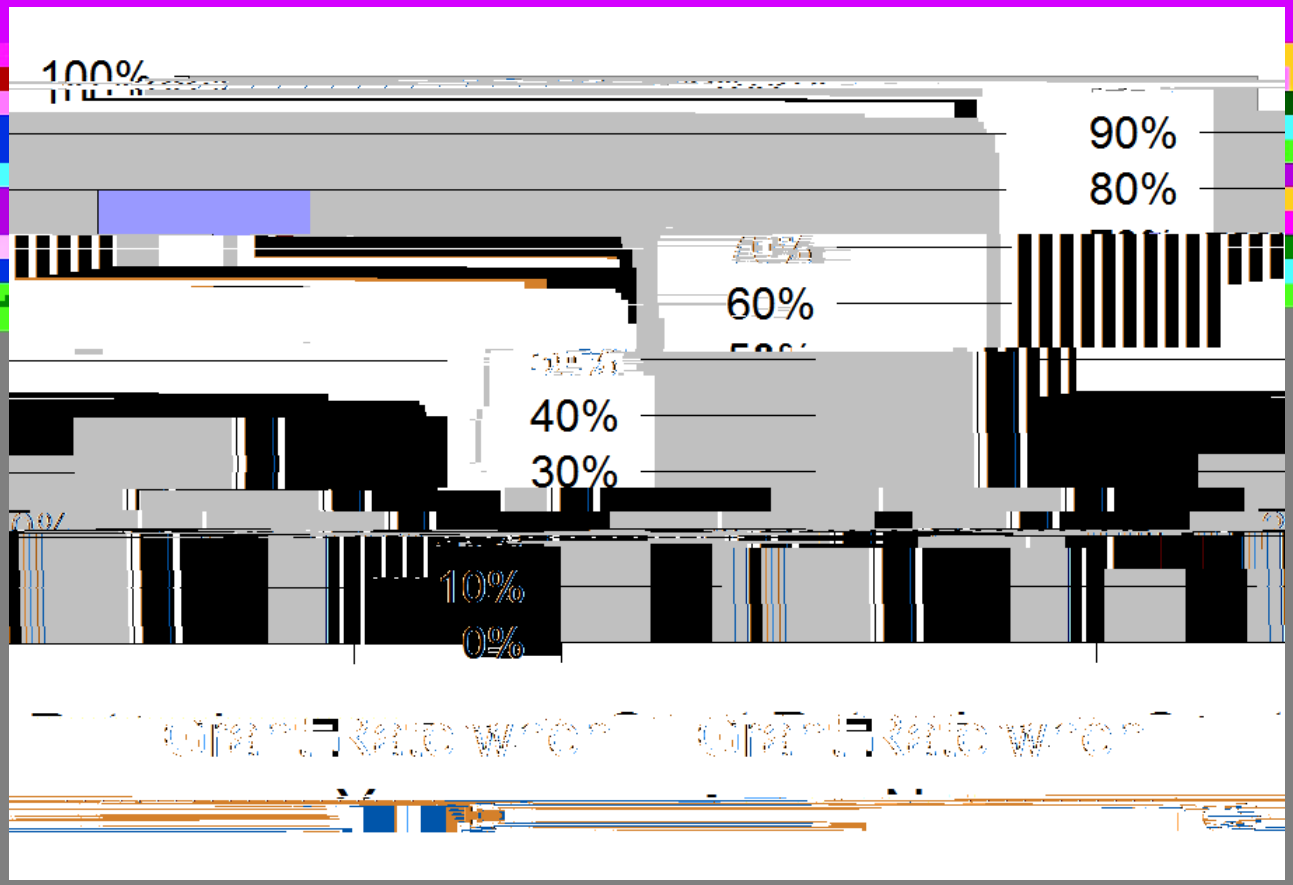
Minor Impact On D's Sales



Mentioned in 17 of 49 cases

Difference in grant rate: **20%**

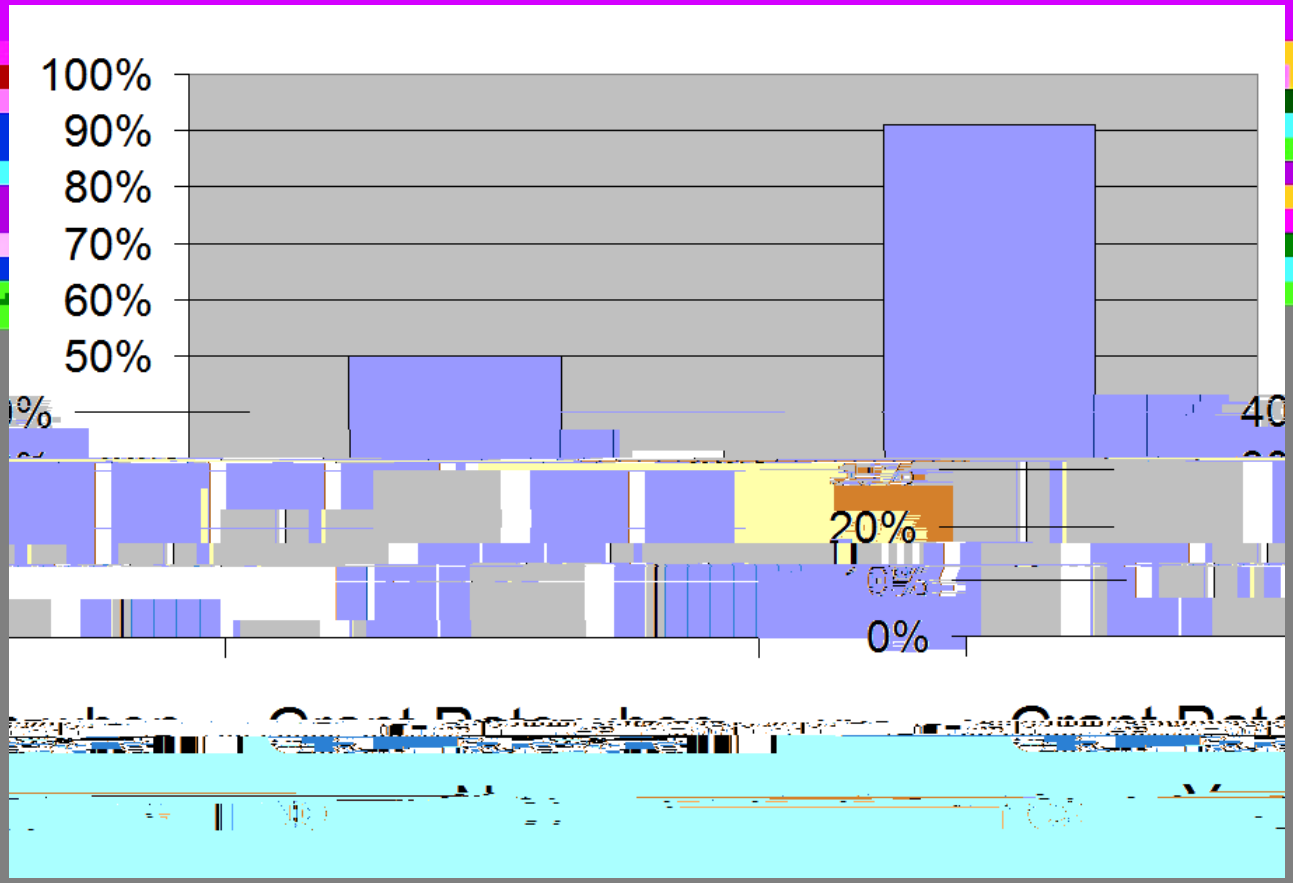
D's Offer To Avoid Infringement



Mentioned in 15 of 49 cases

Difference in grant rate: **40%**

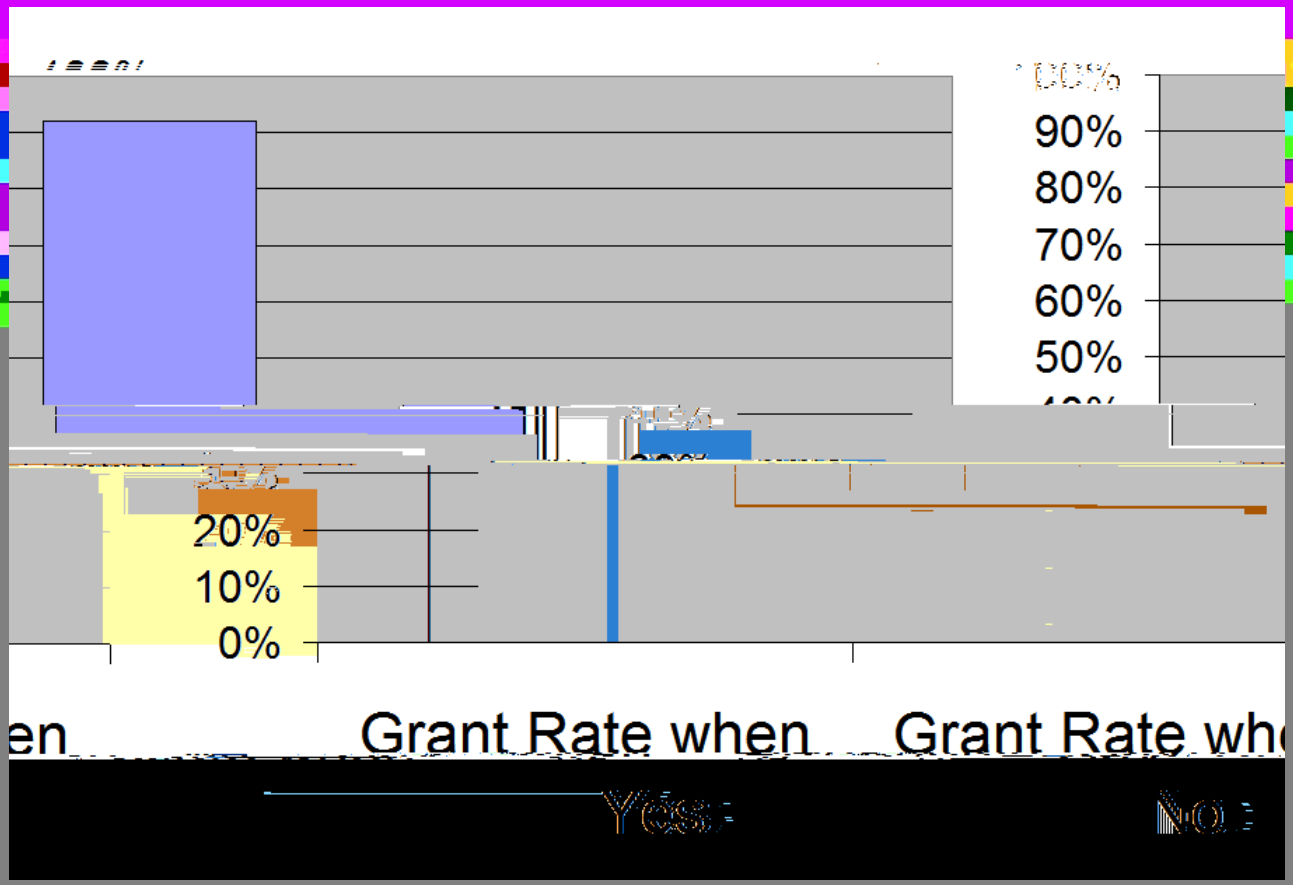
Public Health Concern



Mentioned in 15 of 49 cases

Difference in grant rate: **41%**

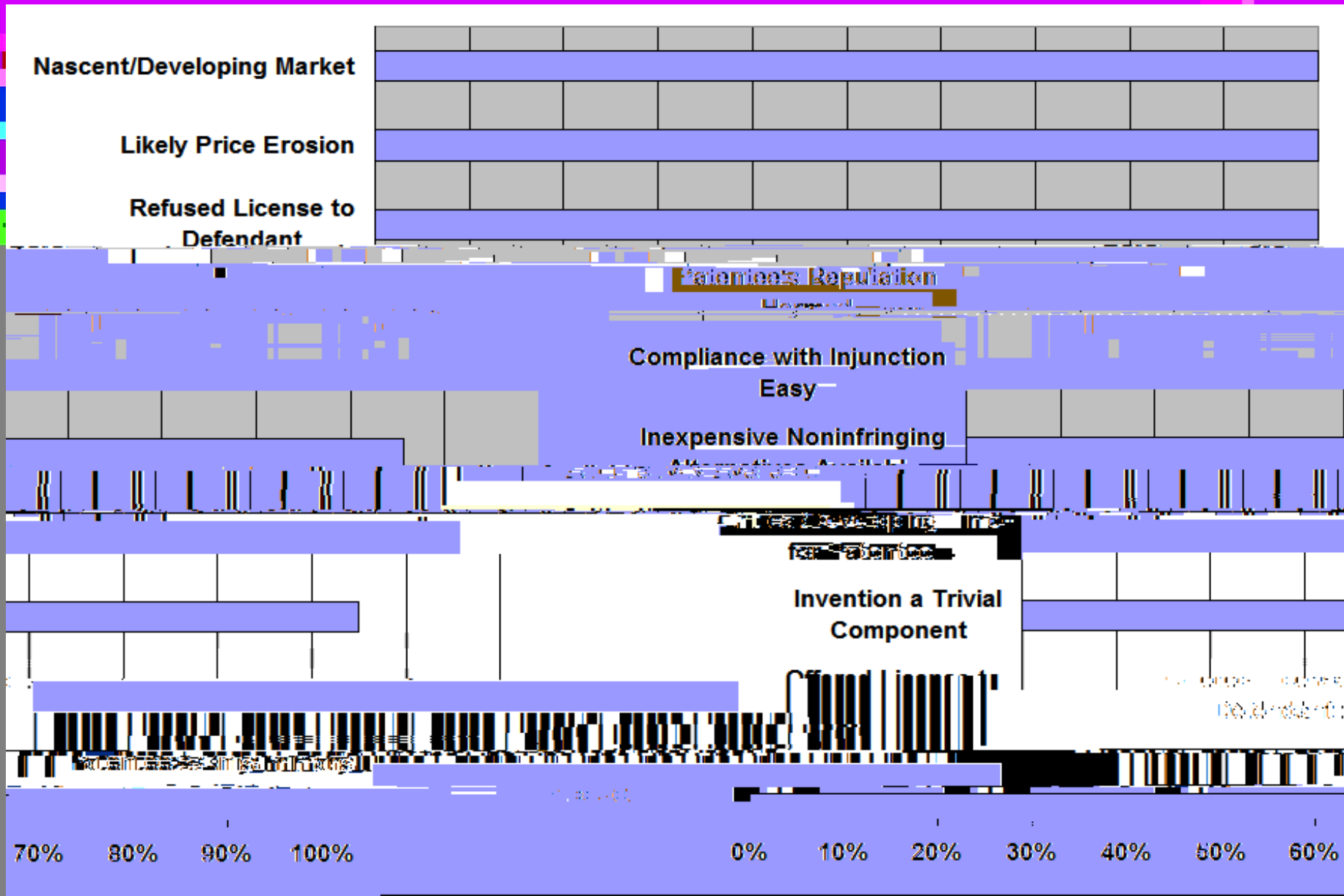
Compliance With Injunction Easy



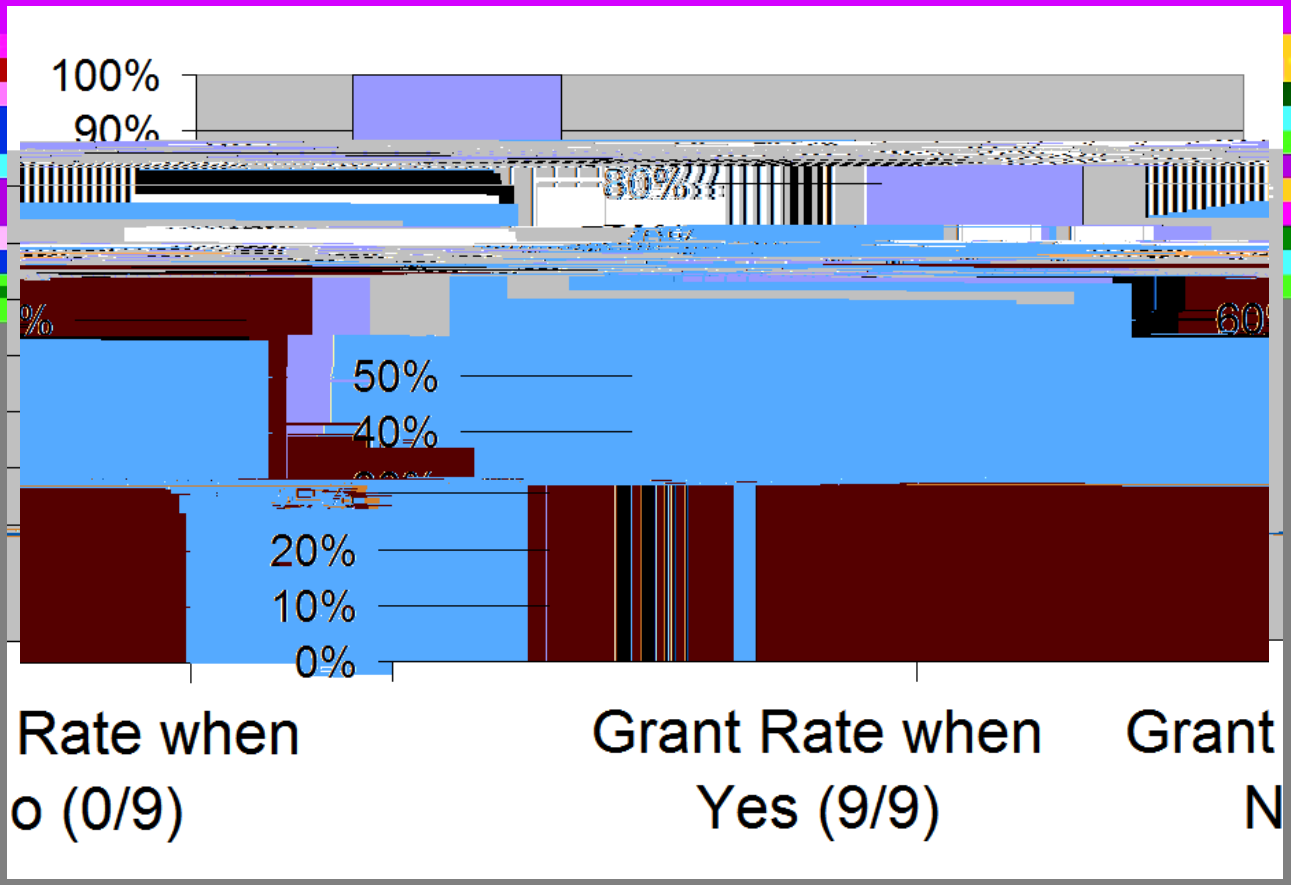
Mentioned in 13 of 49 cases

Difference in grant rate: **92%**

Biggest Differences Between Yes and No



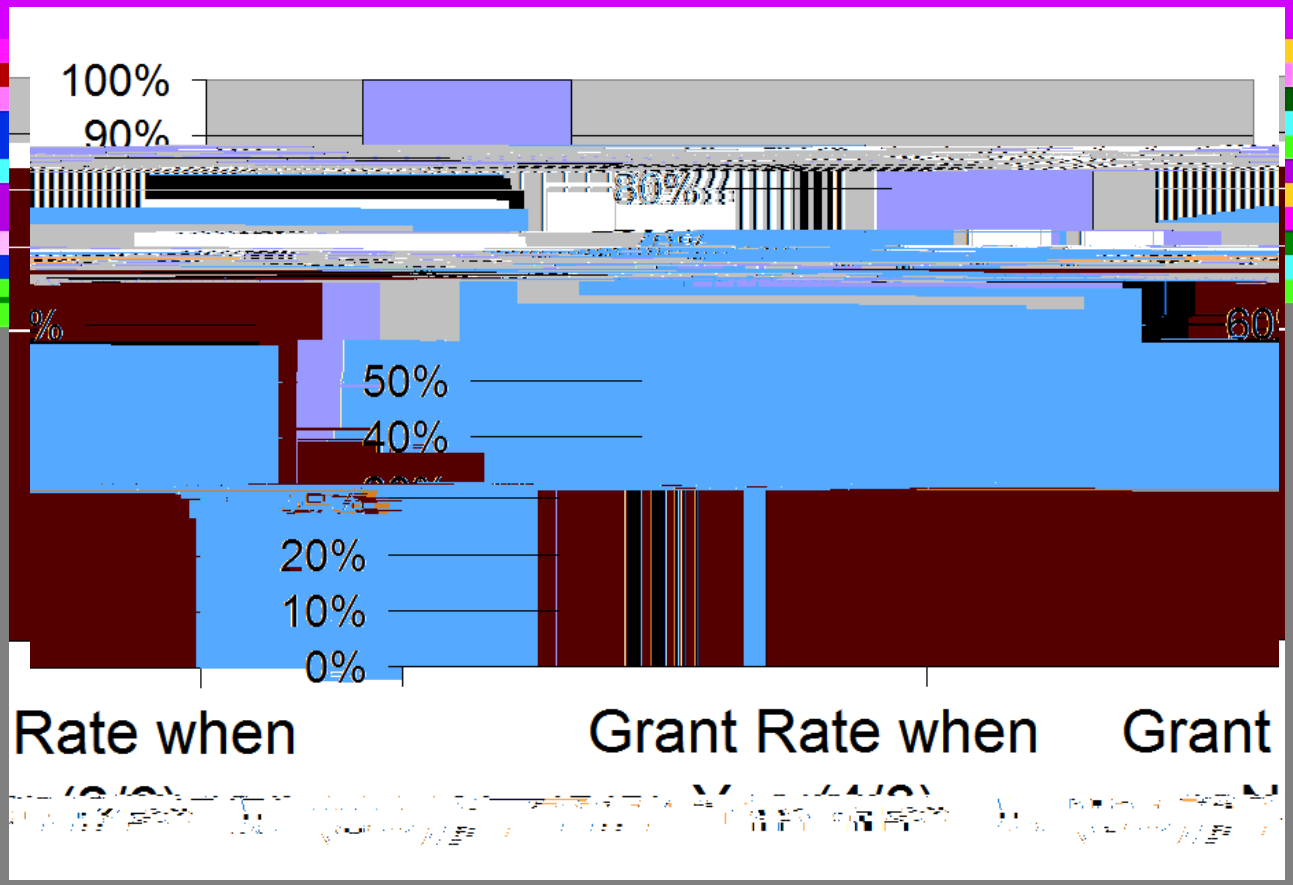
Nascent / Developing Market



Mentioned in 9 of 49 cases

Difference in grant rate: <u>100%</u>

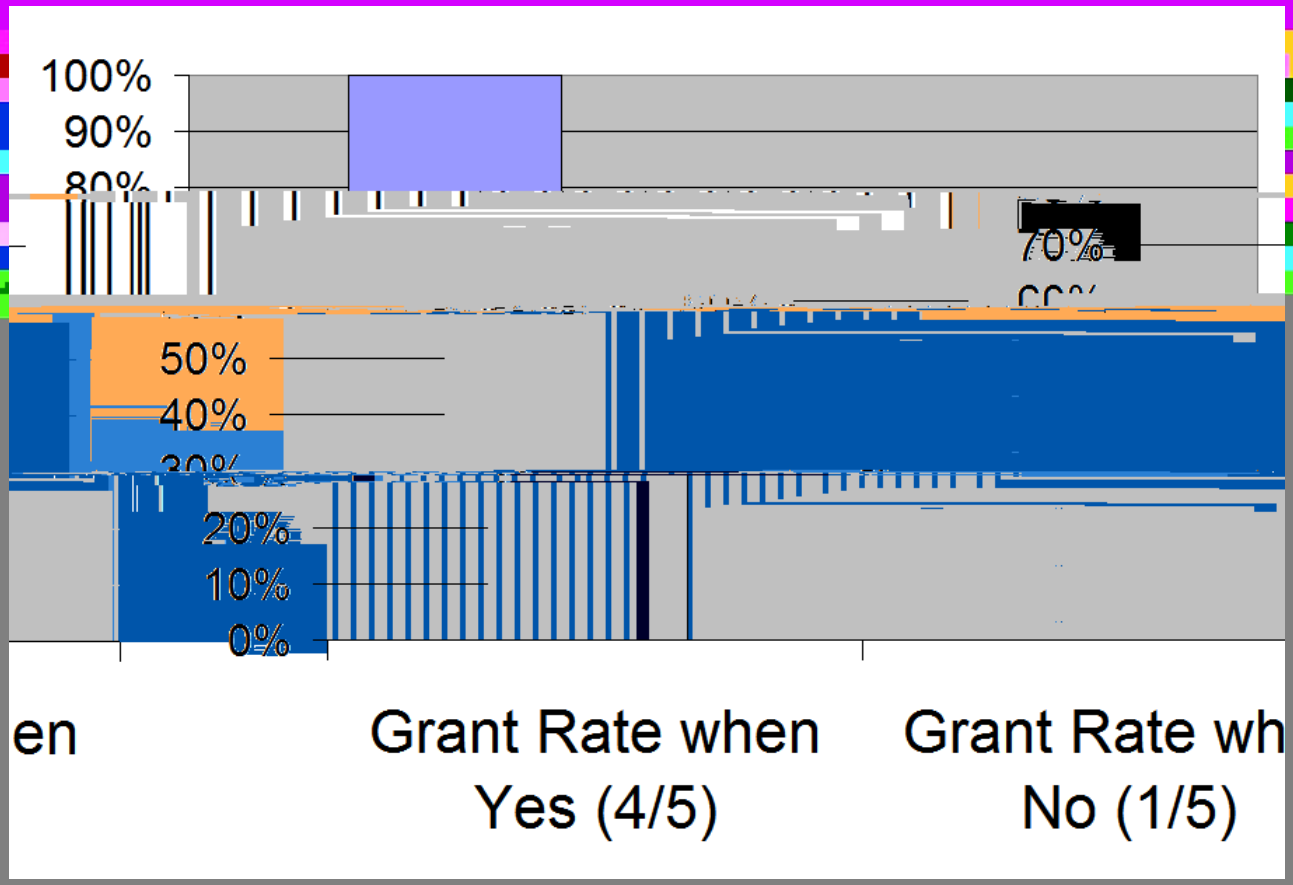
Likely Price Erosion



Mentioned in 6 of 49 cases

Difference in grant rate: 100%

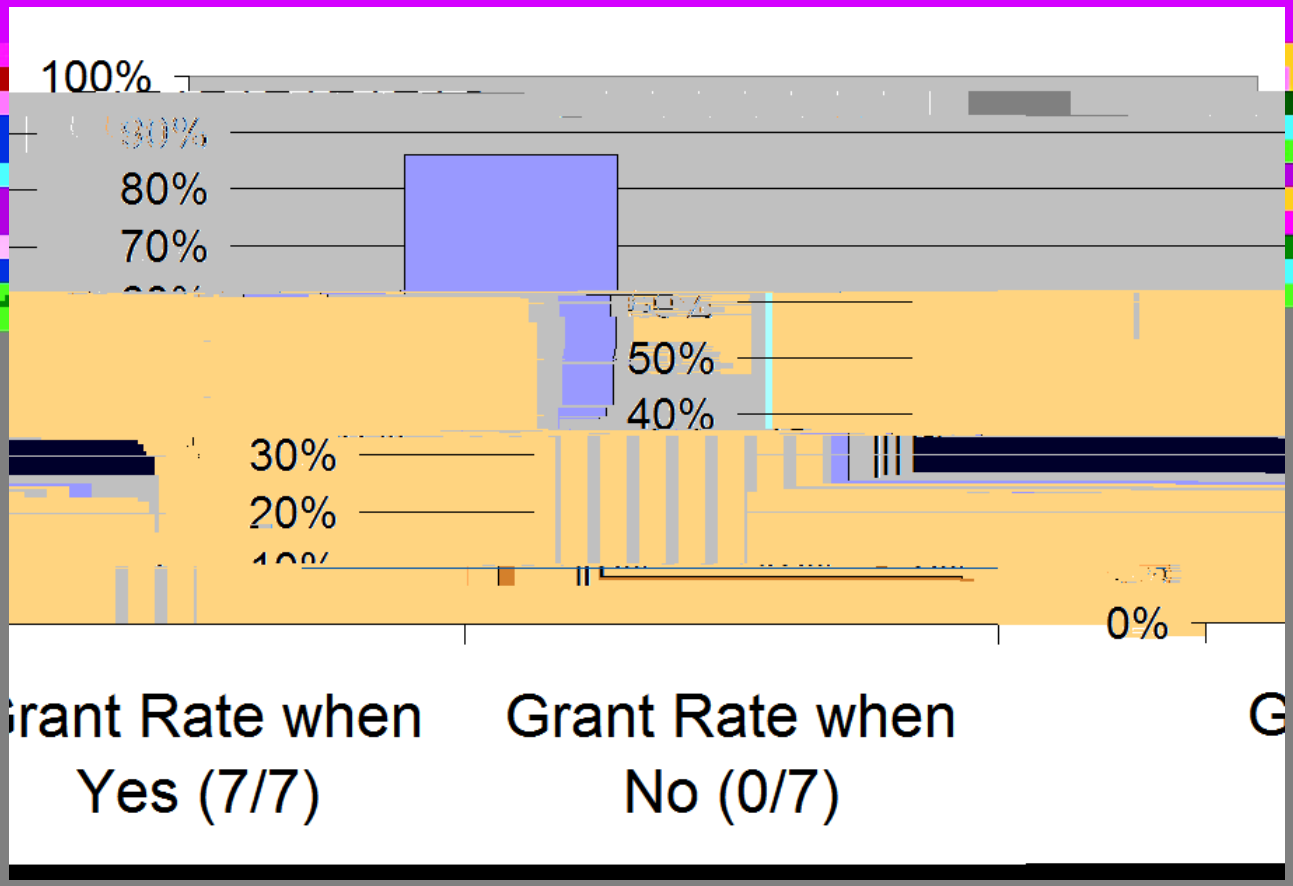
Refused License to Defendant



Mentioned in 5 of 49 cases

Difference in grant rate: <u>100%</u>

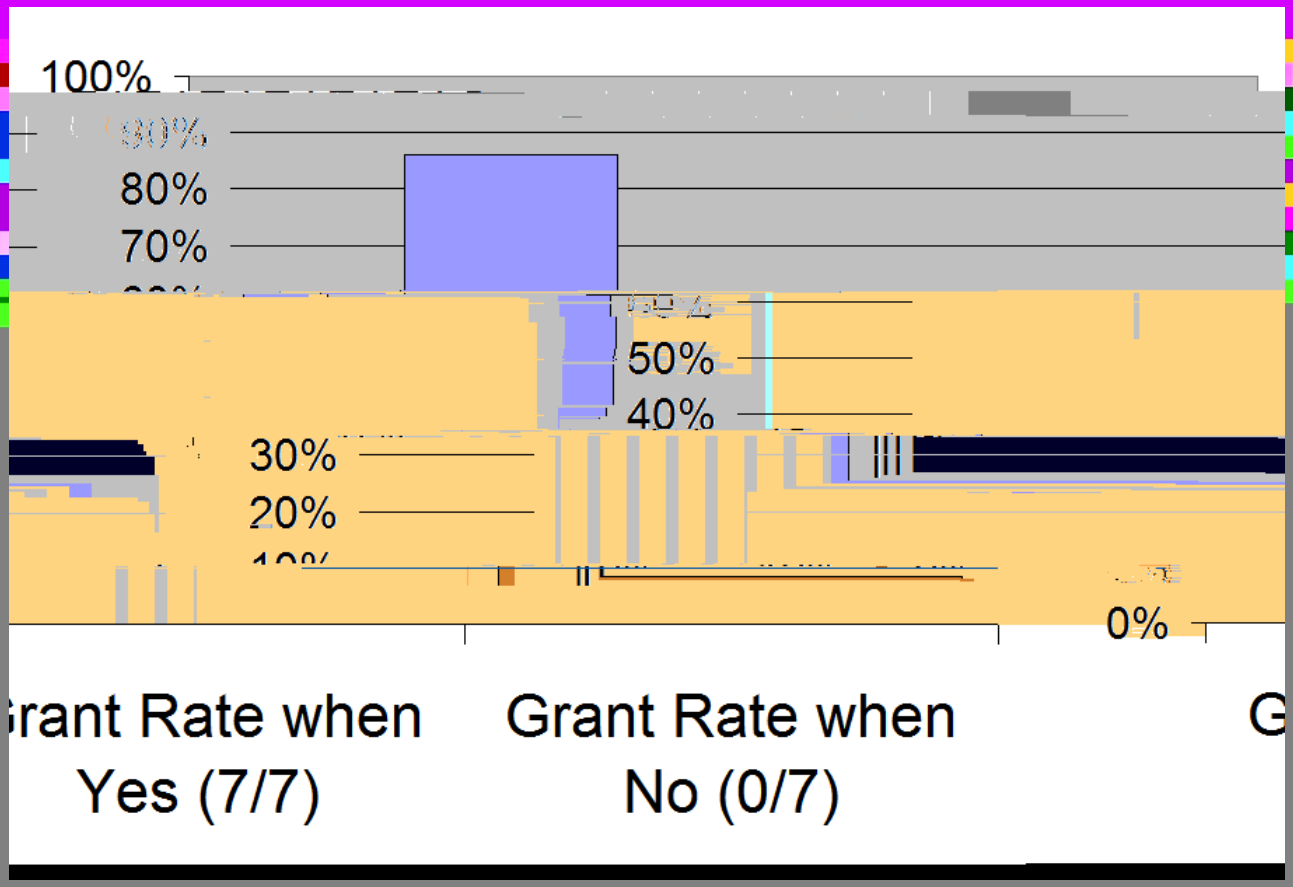
Critical/Developing Time for Patentee



Mentioned in 7 of 49 cases

Difference in grant rate: 86%

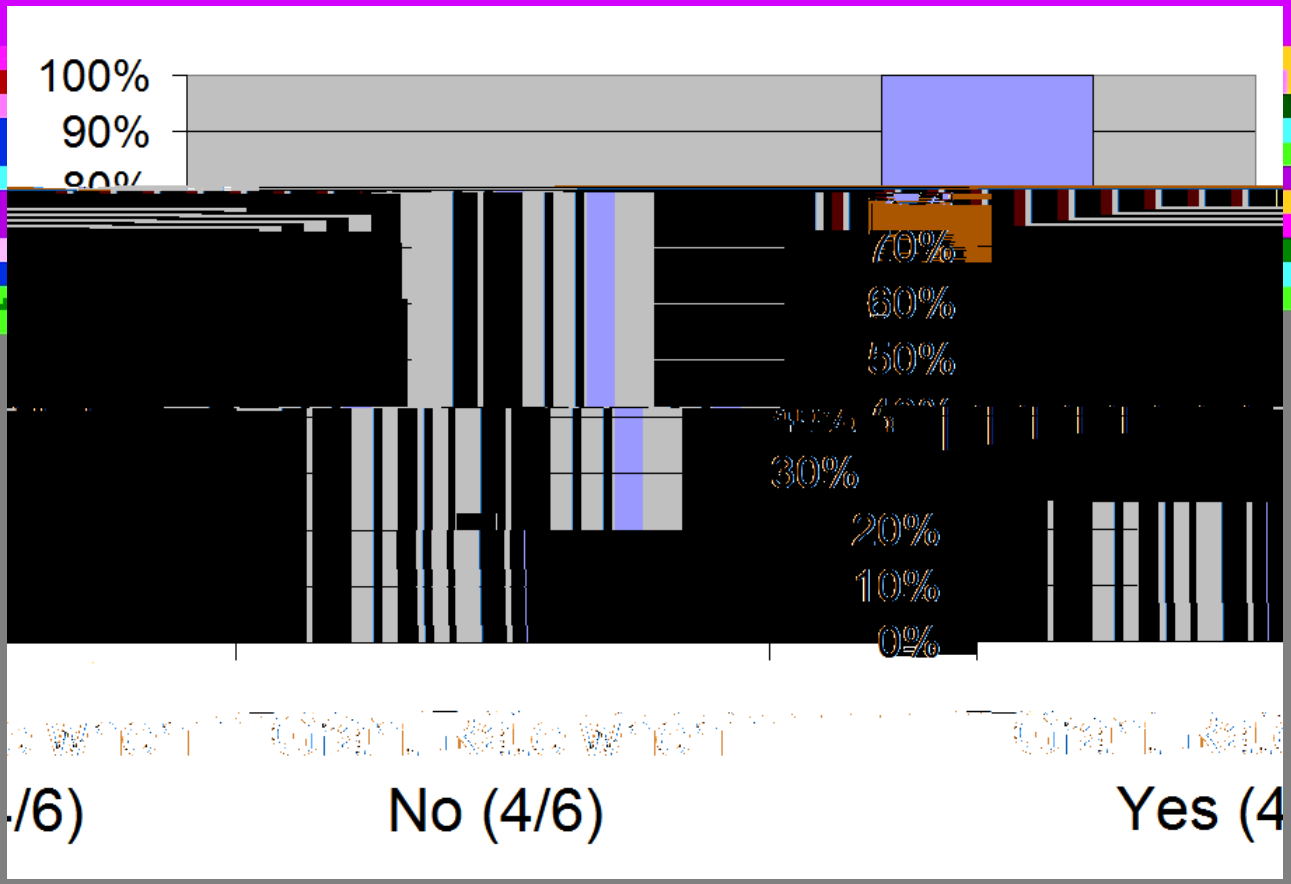
Noninfringing Alternatives



Mentioned in
7 of 49 cases

Difference in grant rate: 86%

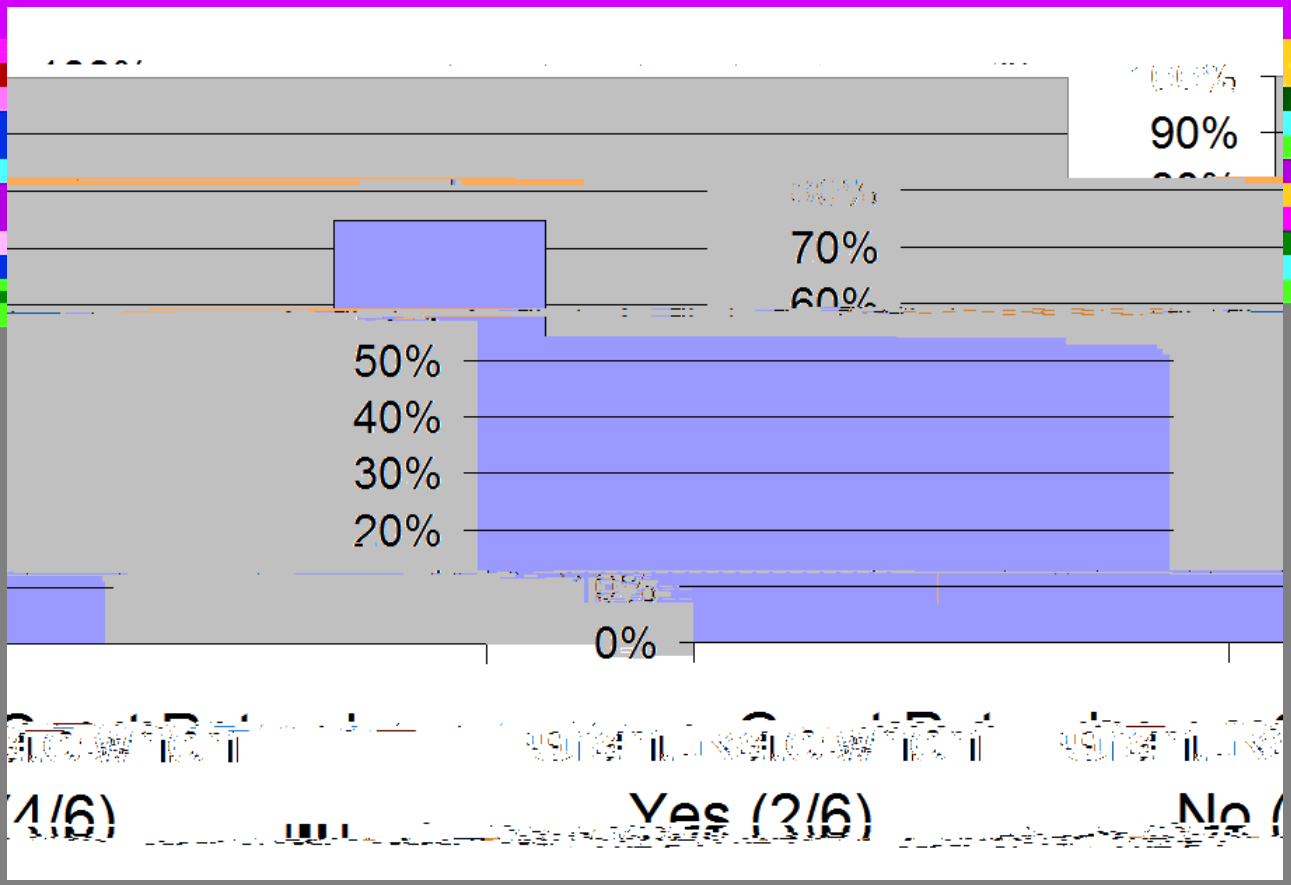
Offered License To Defendant



Mentioned in 6 of 49 cases

Difference in grant rate: 75%

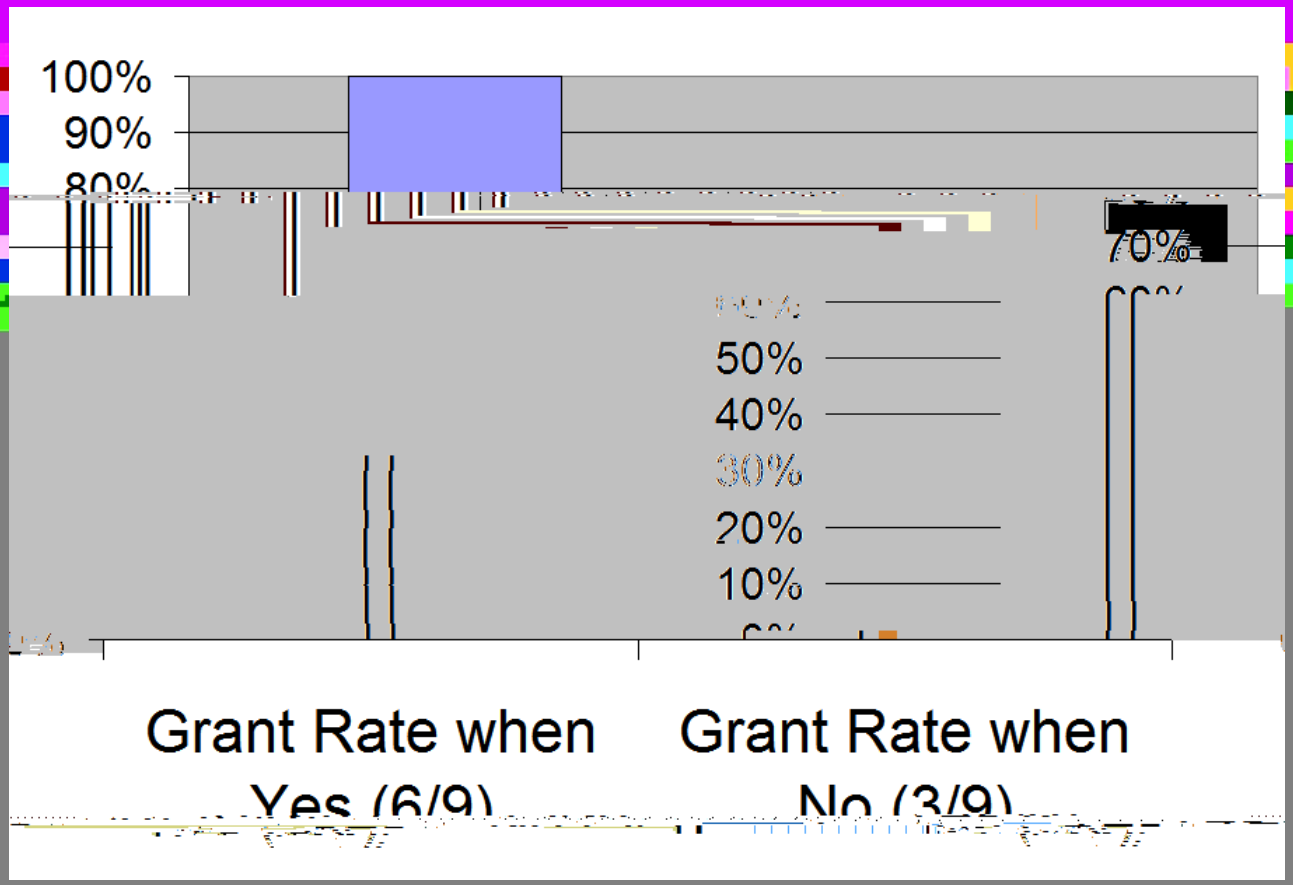
Invention a Trivial Component



Mentioned in 6 of 49 cases

Difference in grant rate: 75%

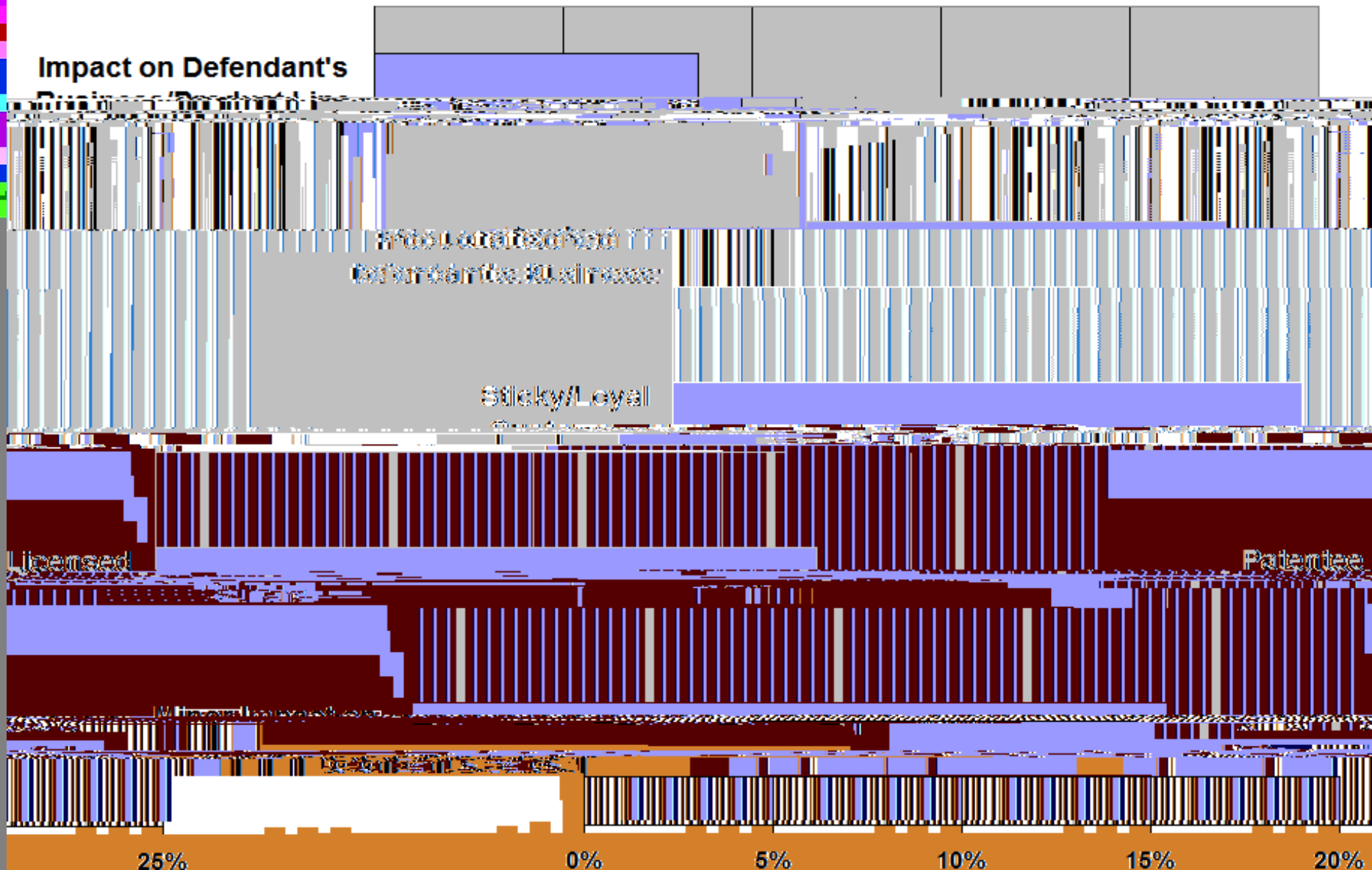
Patentee's Only/Primary Product



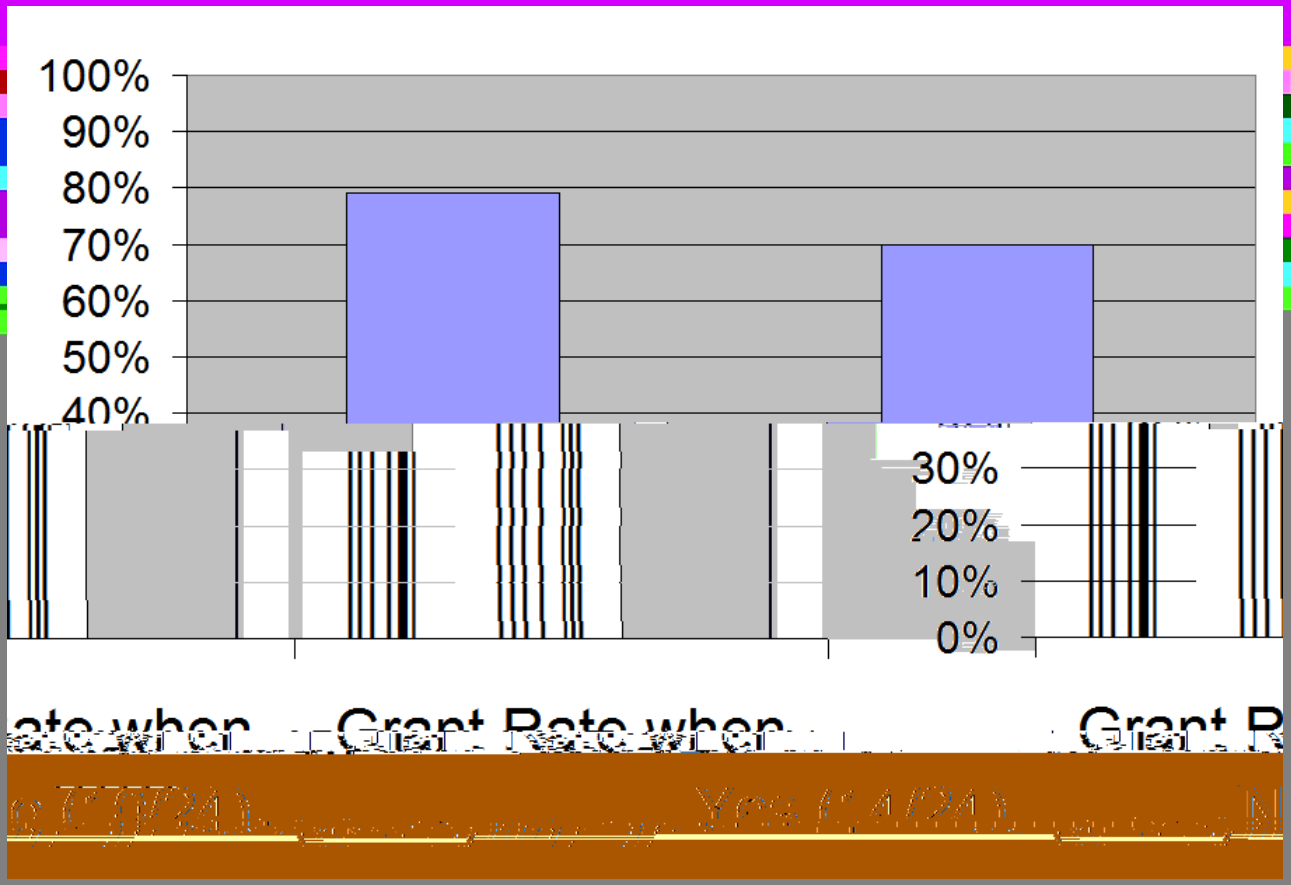
Mentioned in 9 of 49 cases

Difference in grant rate: 67%

Smallest Differences Between Yes and No



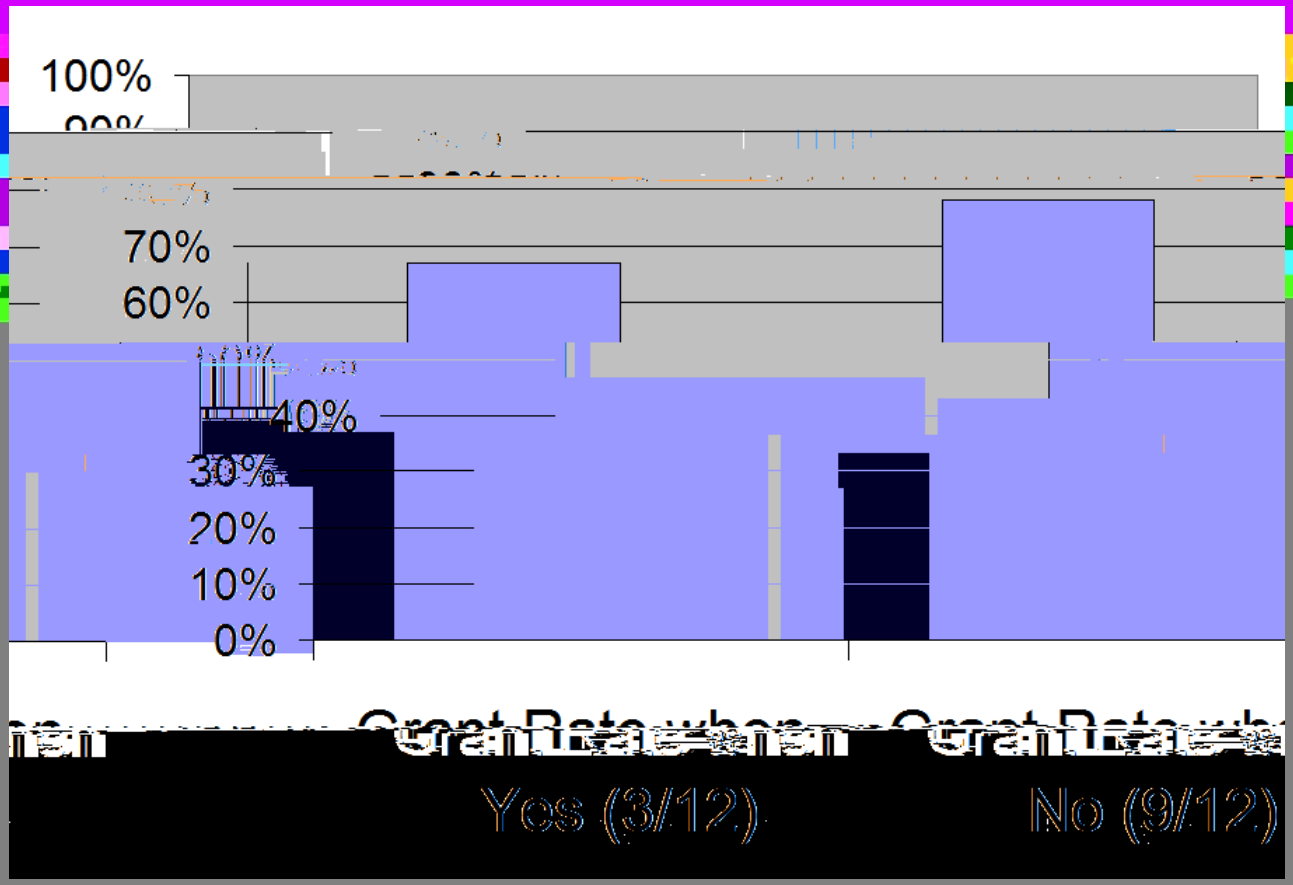
Impact On Defendant's Business



Mentioned in 24 of 49 cases

Difference in grant rate: 9%

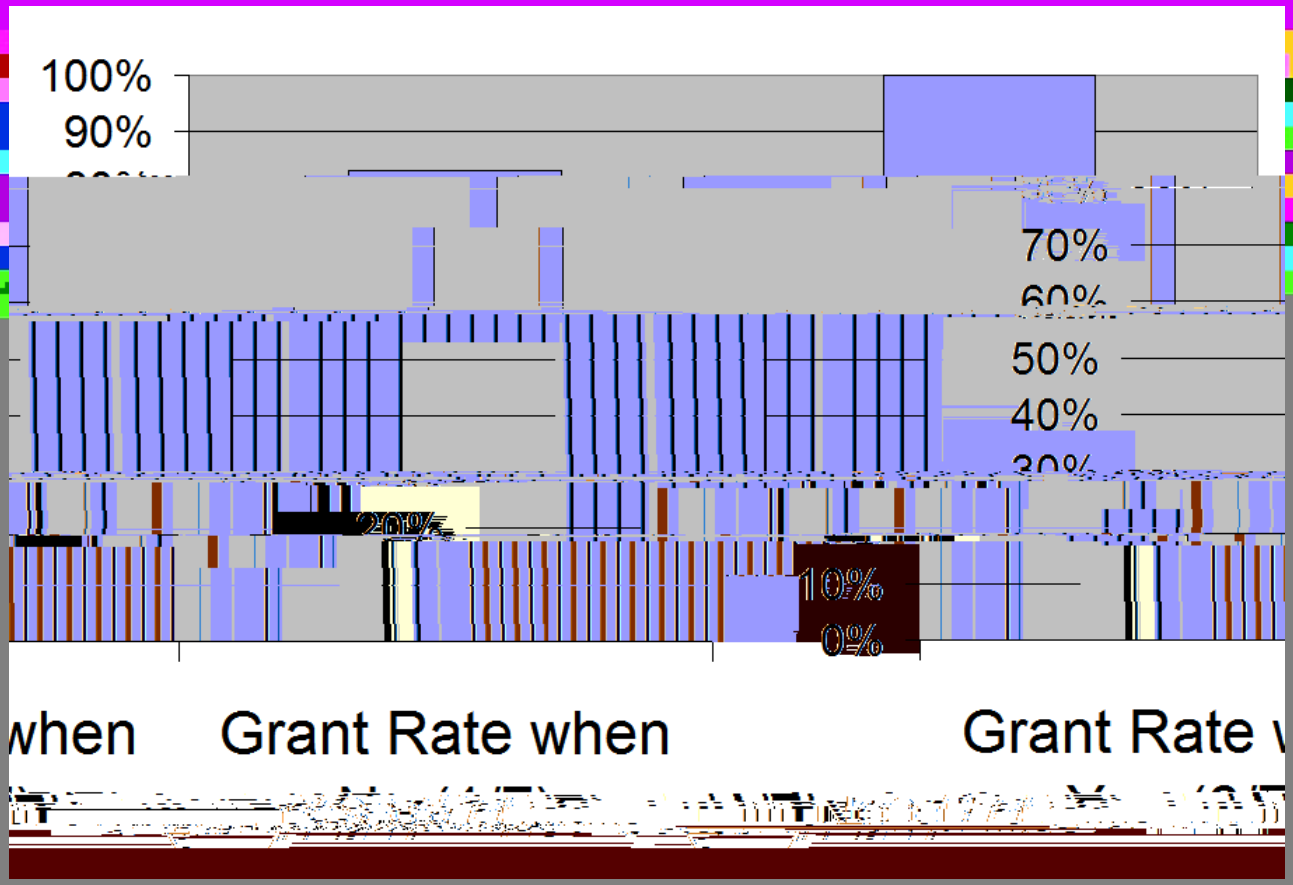
Product At Core Of D's Business



Mentioned in 12 of 49 cases

Difference in grant rate: 11%

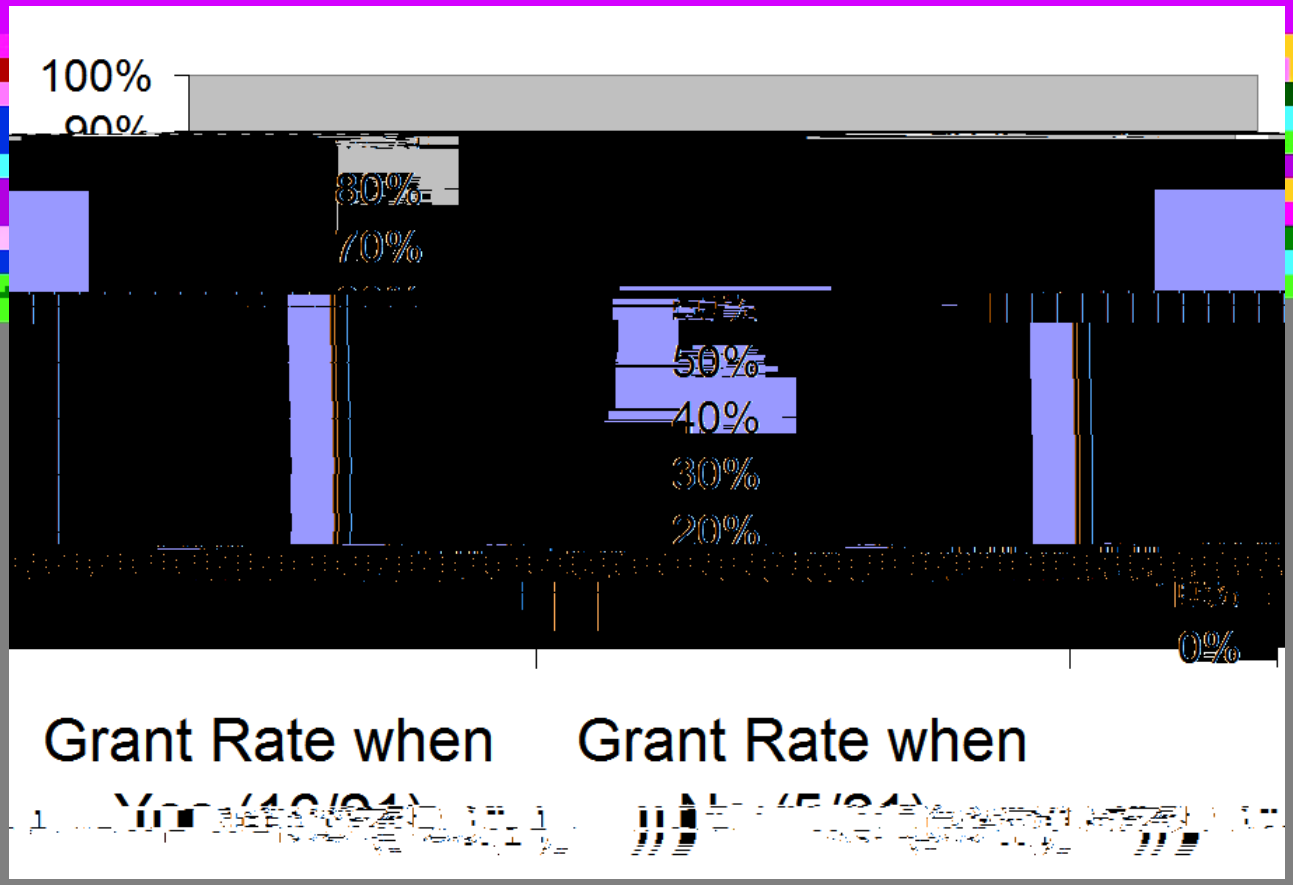
Sticky/Loyal Customers



Mentioned in 7 of 49 cases

Difference in grant rate: 17%

Patentee Licensed Others



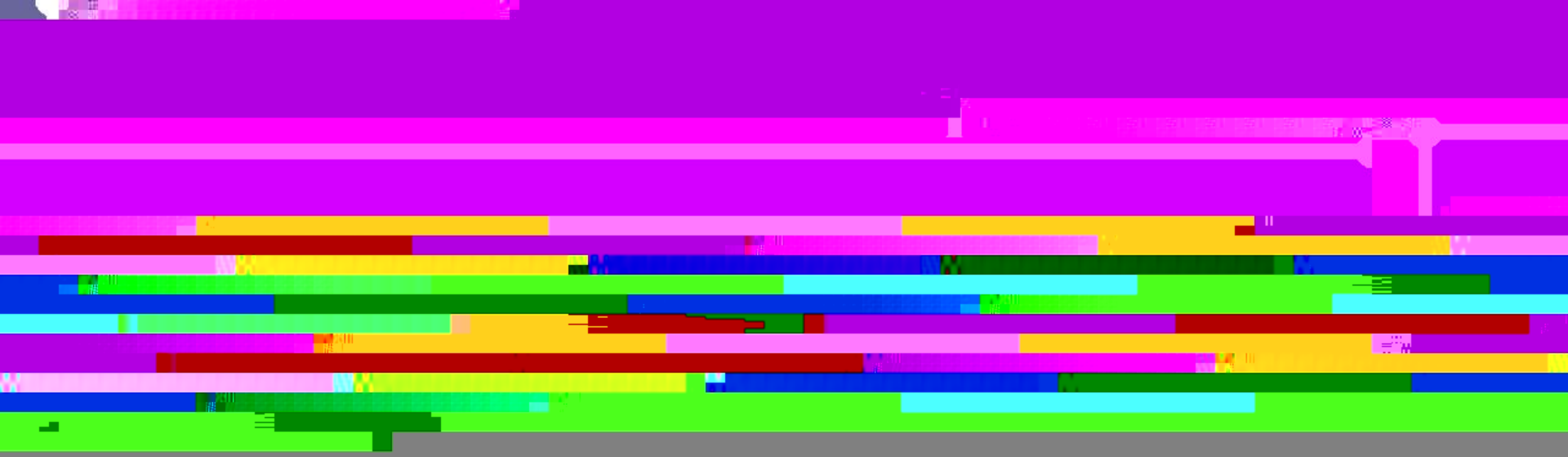
Mentioned in 21 of 49 cases

Difference in grant rate: 17%

Minor Impact On D's Sales

Mentioned in 17 of 49 cases

Difference in grant rate: 20%



END