

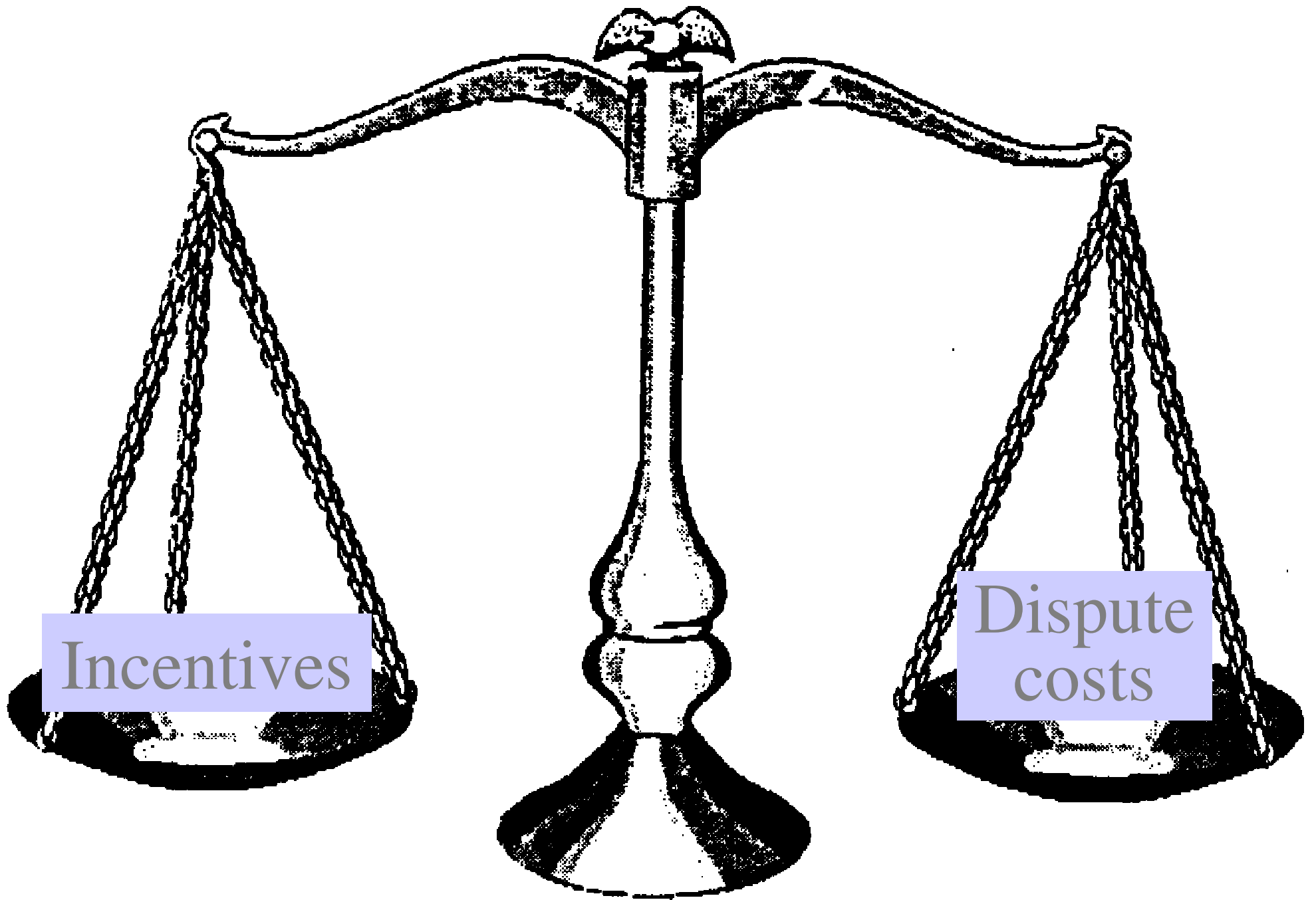
Are too many bad patents  
being granted?

by James Bessen

What are bad patents?

How many are too many?

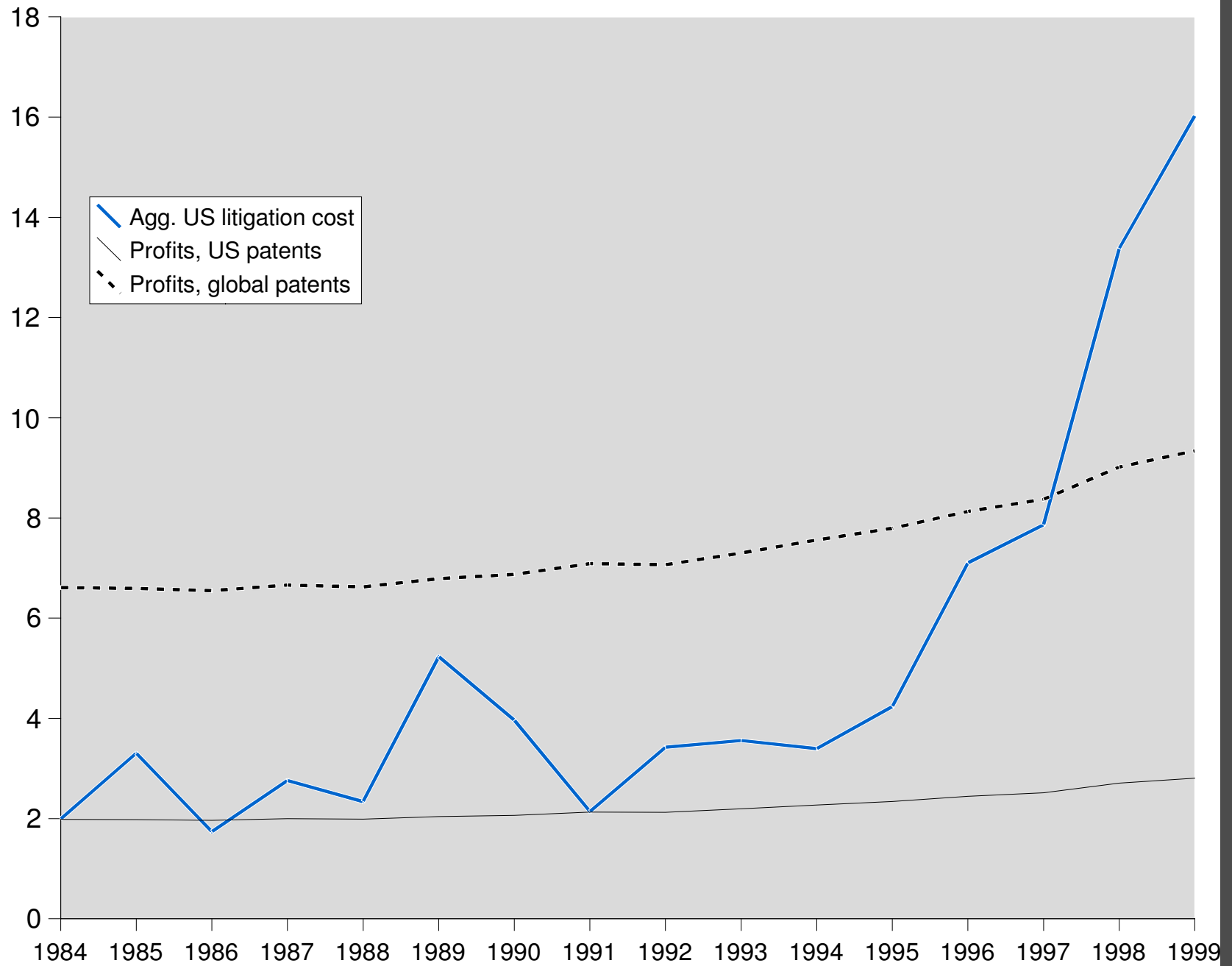
Do patents provide  
positive net incentives  
to innovators?



Incentives

Dispute  
costs

# Aggregate profits/losses from patents, US public firms





“fuzzy” boundaries  
=> inadvertent infringement

“Fuzzy boundaries”

unpredictable claim scope

indefinite claims

hidden claims

claim scope > invention

too many to search

# Technology

	Probability patent in suit	Mean patent value (\$92)	Percent of lawsuits (2002)
ALL	2.0%	\$78,168	
Chemical	1.1%	\$332,790	13%
Complex	2.0%	\$52,024	34%
Other	2.2%	\$79,570	
Software	4.6%	\$55,421	26%
business methods	13.7%		4%
Biotechnology	3.2%		3%

# Patent boundaries

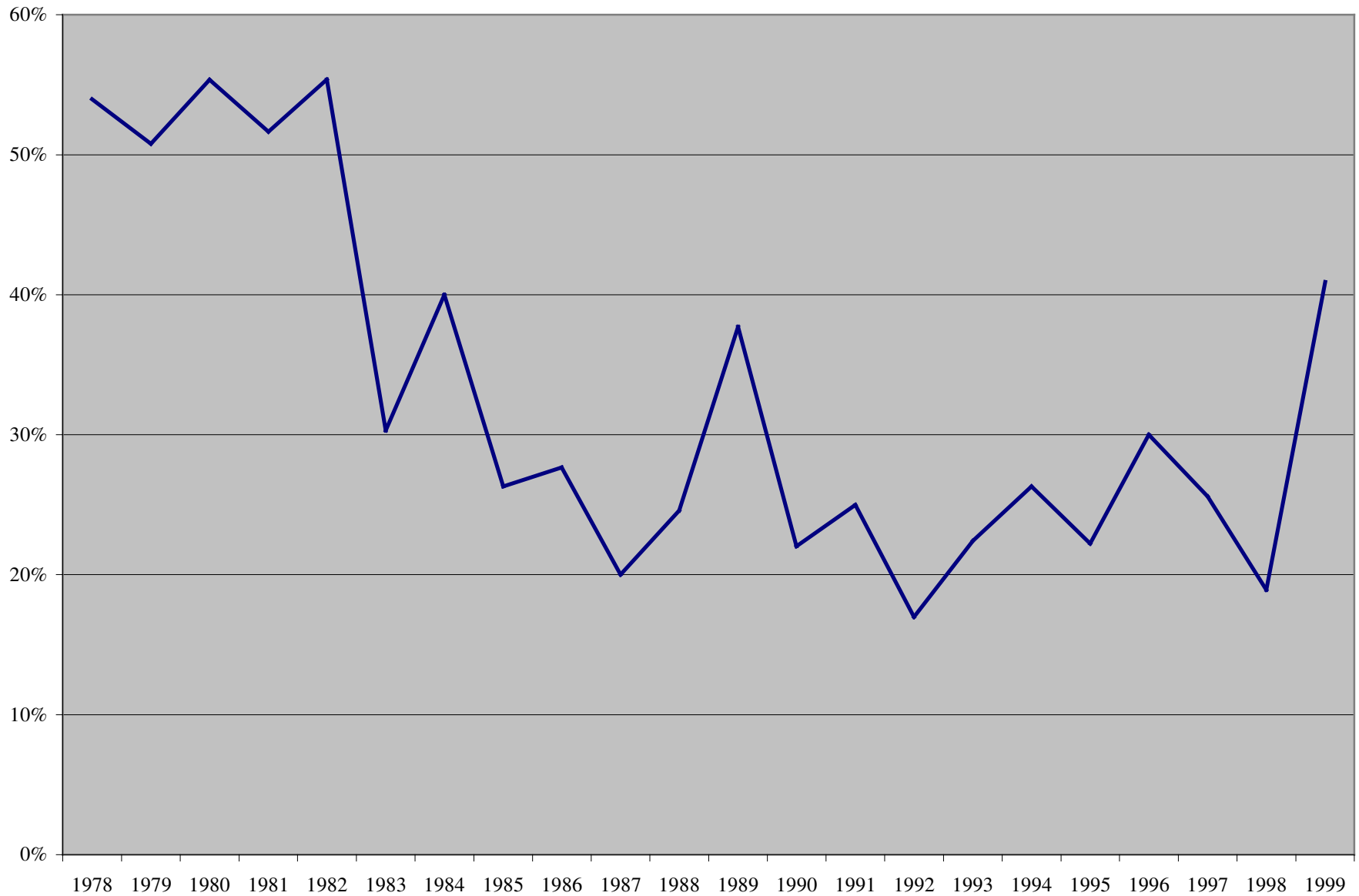
	Relative frequency of claim construction appeal
ALL	1.0
Chemical	0.8
Complex	0.9
Other	1.1
Software	2.2
business methods	6.7
Biotechnology	2.4

# Not just missed prior art

	Percent invalid
ALL	46%
Chemical	46%
Electrical	47%
General	46%
Software & computer	38%
Biotechnology	44%

Source: Allison & Lemley, AIPLA (1998)

# Invalid patents (percent cases)



“Bad” Patents  
missed prior art

# “Bad” Patents

missed prior art

too many to search

obvious

uncertain scope

unpredictable interpretation

Reform

not just fixing  
patent examination

