

ENDING PATENT THICKETS: HOW THE ETHIC ACT WOULD LOWER DRUG PRICES

1 in 3

Americans are struggling to afford their prescription drugs

Nearly Half

of all families are worried about affording health care costs in 2026

BIG PHARMA ABUSES THE PATENT SYSTEM TO KEEP PRICES HIGH

The pharmaceutical industry's gaming of the U.S. patent system is estimated to cost patients and taxpayers billions of dollars every year.

Drug companies in the U.S. have unlimited, unilateral pricing power during monopoly periods awarded by the U.S. Patent and Trademark Office (USPTO) and the Food and Drug Administration (FDA). After the monopoly period ends, generics and biosimilars can enter the market to compete, helping to drive down prices. **When there are six or more generic competitors in the market, prices can fall by up to 95%.**

PHARMA FILES HUNDREDS OF SHAM PATENTS TO BLOCK COMPETITION

In order to artificially prolong monopoly periods and block lower-cost competitors, drug companies game the patent system by securing as many patents as possible on a drug. Companies file what are called "continuation patents," obvious modifications of an existing patent that the U.S. government will still grant under the condition that they expire at the same time as the original patent. The result is a dense cluster of non-innovative patents, known as a "patent thicket," surrounding a single feature of a medication.

To enter the market, generic competitors must overturn every individual patent in a patent thicket, which forces them to waste years and hundreds of thousands of dollars on expensive and lengthy litigation, reducing their ability to introduce their own product to the market and helping to effectively lower prices for patients. Studies show:

- The top ten best-selling brand-name drugs have an average of 140 patents filed per-drug.
- On average, there are 74 patents granted on each of America's top-selling drugs.
- When challenged through lawsuits, more than two-thirds of secondary patents are invalidated.

SOLUTION: THE ETHIC ACT

The bipartisan *Eliminating Thickets to Increase Competition (ETHIC) Act* would curb patent thickets by limiting the number of patents a pharmaceutical manufacturer can assert during litigation to one per patent family. Brand-name manufacturers would still be able to sue over patent infringement, but they could not pursue litigation for multiple patents that pertain to the same feature of a drug. This would lower the barrier to entry for generics and biosimilars and allow market forces to bring down prices for consumers.