

H.R.16

IN THE HOUSE OF REPRESENTATIVES

March 29th, 2023

Mr. Posting (for himself) introduced the following bill;

A BILL

To prevent the practice of “evergreening” patents specifically with regards to pharmaceutical companies.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “Deciduous Patent Act of 2023.”

SEC. 2. FINDINGS.

Congress finds that—

- (a) The practice of “evergreening” patents on drugs has resulted in massive increases in drug prices over time.
- (b) Such patents are inherently anti-competition and create what is in effect a healthcare monopoly.
- (c) America spends exponentially more on healthcare than any other nation in the world.

SEC. 3. AMENDING PATENT LAW.

- (a) 35 U.S. Code § 102 is amended, adding subsection (e) and (f) following all prior subsections:

"(e) Special Rules On Patents For Drugs and Medication.—A person shall be entitled to a patent unless—

- (1) The patent is for a drug as defined under [21 U.S.C. 321](#), and
 - (2) A prior patent (henceforth referred to as the prior patent) has already been issued to the same organization, entity, corporation, body, or individual for any drug with the same basic chemical compounds and methods of action for the purposes of treating a different ailment, or a prior patent has already been issued to the same organization, entity, corporation, body, or individual for any drug designed to diagnose, treat, cure, mitigate, or prevent the same ailment for which the current patent is being applied, and
 - (3) The current patent being applied for does not significantly change the method of action, chemical composition, or efficacy of the drug when compared to the prior patent.
- (f) Extensions and patent rules under section (e).— In the event that a person who would not be eligible for a patent under subsection (e) applies for a patent, and the original 20-year term of the prior patent has not expired, the following section shall apply.—
- (1) The individual shall be granted the patent, however;
 - (2) The grant of term for the patent shall be for the remainder of the 20-year term pursuant to 35 U.S. Code § 154(a)(2) of the original patent, and shall not extend such term.”

(b) 35 U.S. Code § 284 is amended to read as follows:

“Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court. In the event that the infringed patent is for a drug, as defined under 21 U.S.C. 321, the damages adequate to compensate for the infringement shall not be found as greater than a royalty of ten percent of all future sales of the patented drug for the remainder of the patent’s term as defined under 35 U.S. Code § 154(a)(2), unless the patent was granted less than five years plus any extensions granted under 35 U.S. Code § 156 prior to the alleged infringement, in which case the damages adequate shall not be found as greater than a royalty of twenty-five per cent of all future drug sales until the date five years plus any granted extensions after the patent was issued, at which point the royalty paid shall decrease to not more than ten per cent. For the purposes of drug patents, damages shall not be found or assessed as a flat fee for lost profits.

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When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed. Increased damages under this paragraph shall not apply to provisional rights under section 154(d), nor shall they apply to any drug patent.

The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.”
