



Myths vs. Facts: Terminal Disclaimers

[Terminal disclaimers](#) are a mechanism used to resolve obviousness-type double patenting, so that patent claims that are differently worded or cover close variations of the same invention may be protected without creating duplicative patent terms. When a patent examiner identifies overlapping claims between a later application and an earlier patent, an applicant may file a terminal disclaimer agreeing that the later patent will expire no later than — and remain commonly owned with — the earlier patent.

This reflects the iterative nature of innovation. As inventors refine their work, they'll often file additional patent applications in an attempt to claim the full scope of their invention more accurately. These further patents can cover specific embodiments of the invention not directly claimed in the original patent or include language that more precisely or accurately captures the invention. Terminal disclaimers accommodate that evolution by allowing those refinements to issue as valid claims without prolonging the original period of patent protection.

A later patent cannot extend the earlier patent's term — terminal disclaimers prevent, rather than enable, double patenting. The new patent likewise has the same expiration date. Terminal disclaimers also do not replace USPTO examination: both patents are reviewed and must pass muster under the same statutory standards. Terminal disclaimers simply allow inventors to pursue additional, distinct patent claims to better protect their invention after an initial patent has been issued — all of which is subject to the same expiration date and a common ownership requirement. The USPTO's [recent study](#) of large patent families confirms that these practices are common across industries and not indicative of abuse.

Below are some common misconceptions about terminal disclaimers:

Myth: A terminally-disclaimed patent is not a “real” patent or was not fully examined.

Fact: Both the earlier and later patents are subject to rigorous USPTO examination under all statutory criteria, including novelty, non-obviousness, written description, and enablement. A patent applicant may agree to a “terminal disclaimer” to overcome an obviousness-type double-patenting rejection in a later patent application, agreeing to limit the term of the patent and agreeing to the common ownership requirement. But agreeing to this stipulation does not negate the fact that the later patent independently satisfied all examination requirements to be issued — it simply imposes some conditions on that patent's usage.

Myth: A terminally-disclaimed patent is a duplicate of the earlier patent.

Fact: Later patents in a family contain claims that are legally and substantively distinct from those in earlier patents. These distinct claims may cover different embodiments disclosed in the original application but not initially claimed, or may reflect more precise or commercially relevant ways of describing the same invention, informed by the real-world experience of bringing a product to market. It is common practice for applicants to file continuation applications to sharpen claim language, capture specific product iterations, or better align patent protection with how an invention is actually practiced. A terminal disclaimer allows these distinct claims to issue while ensuring the applicant cannot extend its period of exclusivity beyond that of the original patent — preserving the public's right to practice the invention once that exclusivity expires.

Myth: Terminal disclaimers are used to prolong a patent owner’s exclusivity.

Fact: Terminal disclaimers prevent term-stacking. By tying the later patent’s expiration — and its ownership — to the earlier patent, they ensure the later patent cannot outlast the earlier one. In short, a terminal disclaimer limits the enforceable life of the later patent rather than extending it.

Myth: Filing a terminal disclaimer permits patentees to create duplicate patents to multiply enforcement or damages.

Fact: Terminal disclaimers require common ownership. This was specifically designed to ensure a single enforceable term and prevent different parties from suing over the same subject matter. Enforcement remains governed by existing legal doctrines — such as ownership rules and patent misuse — making the disclaimer a limiting device rather than a mechanism for multiplicative damages.

Myth: Terminal disclaimers are primarily a pharmaceutical tactic used to delay generic entry.

Fact: The data does not support that claim. A recent USPTO [study](#) found that large patent families are most common in the “[electrical disciplines](#)” — in other words, high tech — and are “[not commonly found](#) in allowed pharma applications.” Another USPTO study [found no clear relationship](#) between the number of patents on a drug and the timing of generic competitors’ entry. In fact, market exclusivity for drugs is often much shorter than the full 20-year patent term; the drugs the USPTO studied had, [on average, less than 12 years](#) of market exclusivity.

Myth: Terminal disclaimers are a sign of abuse or gamesmanship in the patent system.

Fact: Terminal disclaimers are a longstanding and routine feature of the patent system, used to efficiently resolve examiner concerns about overlapping claims. They help streamline the process, avoid unnecessary disputes, and ensure that inventors receive appropriate — but not extended — patent protection. Their use reflects a system functioning as designed to support innovation and the iterative process of accurately capturing that innovation in words.