Myths vs. Facts: The ETHIC Act

The Eliminating Thickets to Increase Competition (ETHIC) Act seeks to restrict how many patents inventors can assert in infringement lawsuits. If companies cannot reliably prevent competitors from copying their products before R&D costs can be recouped, it will reduce incentives for future R&D into critical lifesaving technologies and treatments.

Supporters of the bill frame it as a way to reduce drug prices by preventing pharmaceutical companies from constructing so-called "patent thickets" that allegedly shield brand-name medicines from cheaper generic competition. But those supporters are misunderstanding, or misconstruing, how the patent system works. If enacted, the ETHIC Act would weaken patent rights, reduce incentives for subsequent innovation, and create harmful consequences for all IP-intensive industries.

Below are some of the most common misconceptions about the ETHIC Act.

Myth: Multiple patents on related inventions are evidence of gamesmanship.

Fact: Invention is iterative: inventors refine, improve, and expand upon their discoveries, which are usually improvements on past discoveries in the same field already. Additional patents are the natural result of ongoing research and development. Later patents cover improvements such as a longer-lasting phone battery, a new therapeutic use for a medicine, or a new way of testing for a disease diagnosis. In other words, there's nothing inherently concerning about companies discovering and patenting new improvements or uses for a previous invention. In fact, this is the sort of ongoing innovation that the patent system is meant to encourage. Otherwise, there would be little reason to invest significantly to improve already-existing products.

Myth: Patents linked by terminal disclaimers create a particularly problematic type of "patent thicket."

Fact: In complex industries like tech and medicine, where products incorporate numerous distinct inventions, protecting a single product often requires multiple patents. Apple, for example, filed roughly 200 patents for the first iPhone. Terminal disclaimers link related patents — such as patents covering closely related versions of a pharmaceutical formulation — and require them to share both a common owner and expiration date. These restrictions ensure that, despite being separate patents, linked patents function in many respects as a single patent.

Myth: "Patent thickets" delay generic competition.

Fact: Generic competition is widespread and robust in the United States. Approximately 90% of all U.S. prescriptions are filled with generic medicines. What's more, multiple studies, including from the USPTO, have found that the average drug experiences roughly 12-14 years of market exclusivity — well below the twenty-year patent term. The USPTO has also found there is no clear relationship between the number of patents on a medicine and when generic competitors enter the market.

Myth: Patents linked by a terminal disclaimer in a patent family are not "real" patents.

Fact: Every patent in a family must satisfy the same legal requirements. Whether it is the first patent or a subsequent one, the U.S. Patent and Trademark Office fully examines each one to ensure it represents a genuinely novel, non-obvious, and useful discovery. Each issued patent is an independently examined property right.

Myth: Patent families are a unique problem in the pharmaceutical industry.

Fact: They are not. Large patent families are common across many industries, and a study from the USPTO shows they are often most prevalent in the electrical technology sector, not the pharmaceutical sector. In fact, according to the Intellectual Property Owners Association's list of the top 300 recipients of U.S. patents in 2024, just seven were pharmaceutical companies, while technology companies, including software and telecommunications, accounted for more than a third of the list. Innovation in such sectors as semiconductors, telecommunications, software, consumer electronics, and advanced manufacturing frequently results in multiple patents that may be linked by terminal disclaimers. This reflects how, for complex technologies, it can take many years and iterations at the USPTO for inventors to fully and adequately achieve a scope of patent protection commensurate with what they invented and disclosed to society.

Myth: The patent system allows inventors to extend protection indefinitely through repeat filings.

Fact: Patent law already contains multiple safeguards to prevent inventors from extending their length of exclusivity for a given invention or obvious variations of that invention. Patent applicants may file for further patents on the same, related, or similar inventions usually with the reasonable goals of describing the invention more accurately or ensuring that the family of patents covers all aspects of the invention. Doctrines such as obviousness-type double patenting and the use of terminal disclaimers ensure that such patents do not restart the exclusivity clock. When a terminal disclaimer is required, the later patent expires with the earlier one.

Myth: The ETHIC Act simply prevents companies from "stacking" patents in litigation.

Fact: The bill would do far more than that. It would sharply restrict the ability to enforce valid patents by allowing inventors to assert only one patent from a family in court. That means that even when multiple distinct patents are infringed, only one could effectively be enforced. The bill would deny innovators the ability to protect the full scope of their inventions. That is a major break from basic principles of intellectual property law.

Myth: Limiting patent enforcement will reduce drug prices without broader consequences.

Fact: There is little basis for that assumption, and the risks are substantial. The ETHIC Act attempts to address drug pricing by weakening patent enforcement, even though the targeted practice of using terminal disclaimers is lawful, longstanding, widespread across industries, and important to protecting ongoing innovation. Undermining this practice could ultimately reduce incentives for research, chill investment in high-risk R&D, and harm sectors ranging from pharmaceuticals and semiconductors to consumer electronics and advanced manufacturing. The bill is also a marked departure from the technology-neutral nature of America's patent system. Patent policies currently affect all sectors equally, allowing the strengths of inventions themselves to determine their patentability and, ultimately, success. The ETHIC Act would distort that agnosticism by applying sector-specific determinations from policymakers, altogether undermining innovation.