118TH CONGRESS
2d Session

S._____

To address patent thickets.

IN THE SENATE OF THE UNITED STATES

Mr. Welch (for himself, Mr. Braun, and Ms. Klobuchar) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To address patent thickets.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. ADDRESSING PATENT THICKETS.

(a) LIMIT ON NUMBER OF PATENTS PER PATENT GROUP THAT MAY BE ASSERTED IN ACTION FOR INFRINGEMENT.—Section 271(e) of title 35, United States Code, is amended by adding at the end the following:

“(7)(A) A person who brings an action for infringement of a patent under this section against a party described in subparagraph (B) may assert in the action not more than one patent per Patent Group.
“(B) A party described in this subparagraph is—

“(i) a person who—

“(I) submits an application for approval of a drug under subsection (b)(2) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), or is a holder of such an approved application; or

“(II) submits an application for licensure of a biological product under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)), or is a holder of such a licensure; or

“(ii) a person making, using, selling, offering for sale, introducing or delivering into interstate commerce, or importing—

“(I) a drug approved pursuant to an application under subsection (b)(2) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355); or

“(II) a biological product licensed under section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)).

“(C) A person who brings an action described in subparagraph (A) asserting a patent against a party may not bring any additional actions described in that subpara-
graph asserting a patent in the same Patent Group
against that party.

“(D)(i) For purposes of this paragraph, the term
‘Patent Group’ means 2 or more commonly owned patents
or applications that—

“(I) are identified on 1 or more disclaimers
under section 253 to obviate obviousness-type double
patenting of another commonly owned patent; or

“(II) are subject to 1 or more disclaimers under
section 253 to obviate obviousness-type double pat-
ten ing of another commonly owned patent.

“(ii) For purposes of clause (i)(I)—

“(I) each patent or application that identifies
the same patent or application on a disclaimer under
section 253 is part of the same Patent Group; and

“(II) each patent or application that is identi-
ified on a disclaimer under section 253 is part of the
same Patent Group as the patent or application sub-
ject to the disclaimer.”.

(b) APPLICABILITY.—The amendment made by sub-
section (a) shall apply with respect to an application sub-
mitted under subsection (b)(2) or (j) of section 505 of the
or section 351(k) of the Public Health Service Act (42
1 U.S.C. 262(k)) on or after the date of enactment of this Act.

2 Act.