

119TH CONGRESS
1ST SESSION

S. _____

To address patent thickets.

IN THE SENATE OF THE UNITED STATES

Mr. WELCH (for himself, Mr. HAWLEY, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To address patent thickets.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Eliminating Thickets
5 to Increase Competition Act” or the “ETHIC Act”.

6 **SEC. 2. ADDRESSING PATENT THICKETS.**

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

1 “(7)(A) A person who brings an action for infringe-
2 ment of a patent under this section against a party de-
3 scribed in subparagraph (B) may assert in the action not
4 more than one patent per Patent Group.

5 “(B) A party described in this subparagraph is—

6 “(i) a person who—

7 “(I) submits an application for approval of
8 a drug under subsection (b)(2) or (j) of section
9 505 of the Federal Food, Drug, and Cosmetic
10 Act (21 U.S.C. 355), or is a holder of such an
11 approved application; or

12 “(II) submits an application for licensure
13 of a biological product under section 351(k) of
14 the Public Health Service Act (42 U.S.C.
15 262(k)), or is a holder of such a licensure; or

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

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

23 “(II) a biological product licensed under
24 section 351(k) of the Public Health Service Act
25 (42 U.S.C. 262(k)).

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

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

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

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

15 “(ii) For purposes of clause (i)(I)—

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

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

23 (b) APPLICABILITY.—The amendment made by sub-
24 section (a) shall apply with respect to an application sub-
25 mitted under subsection (b)(2) or (j) of section 505 of the

1 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355)
2 or section 351(k) of the Public Health Service Act (42
3 U.S.C. 262(k)) on or after the date of enactment of this
4 Act.