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July 28, 2021

Senate Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Senator,

On Thursday, July 29, your committee is scheduled to markup [S. 1435](#), the “Affordable Prescriptions for Patients Act of 2021” sponsored by Sens. John Cornyn (R-Texas) and co-sponsored by Sens. Richard Blumenthal (D-Conn.) and Chuck Grassley (R-Iowa.). The bill would amend the Federal Trade Commission (FTC) Act regarding pharmaceutical patents and prevent so-called “product hopping.” On behalf of the more than one million members and supporters of the Council for Citizens Against Government Waste (CCAGW), I urge you to oppose S. 1435.

The legislation would give the FTC unprecedented authority to find anti-competitive liability merely for having patent applications granted by the Patent and Trademark Office. This liability would not be based on science, but on whether a non-patent-trained administrative law judge decides that the patent qualifies as “product hopping” and “patent thickening” regardless of how beneficial the innovation may be. The legislation applies only to pharmaceutical patents, but that would not stop the new law from being extended to other research-intensive industries that constantly improve their inventions, like telecommunications and technology.

“Patent thickets” and “product hopping” as used in S. 1435 seem to predetermine that any new formulation of a drug, including whether administration changes from a needle to a patch, or from two doses to one dose per day, or it treats a different disease, is per se anticompetitive. The intellectual property rights enshrined in these innovations deserve the same protection as any other invention. Even discontinuing an older version of a drug could be considered anticompetitive.

While the purported intent of the legislation is to prevent a manufacturer from using the patent system to stop generic competition by making an “insignificant change” to their drug, the language in S. 1435 is too far-reaching and will harm legitimate pharmaceutical innovation, like discouraging a related but new indication for the same drug for another disease.

This legislation has significant implications for patients, pharmaceutical innovation, and other research-intensive industries. There are already sufficient legal remedies to challenge possible antitrust behavior by any pharmaceutical company. It is both unnecessary and harmful to grant these new powers to the FTC.

Again, I ask you to oppose S. 1435.

Sincerely,

Thomas Schatz