# Pharmaceutical "Patent Thickets"

Separating Myth from Reality

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**Critics argue that drug companies create "patent thickets," dense webs of overlapping patents on a single medicine, to block generic competition and keep drug prices high. The evidence does not support the argument. Proposals such as the ETHIC Act would cap the number of patents an innovator can assert.**

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| **MYTH:** | Patent thickets prevent generics from coming to market. |
| **REALITY:** | About 90% of U.S. prescriptions are now filled with generics, up from just 13% in 1984. If patent thickets truly blocked competition, we would not see that level of generic usage. In fact, 28% of generics launch while the innovator still has unexpired patents listed, demonstrating that not every patent affects generic entry. |
| **MYTH:** | The number of patents on a drug determines when generics can enter the market. |
| **REALITY:** | A 2024 USPTO study found no significant correlation between the number of patents on a drug and the timing of generic entry. Generic companies are not easily deterred: under the Hatch-Waxman Act, the first successful patent challenger wins 180 days of exclusive generic market status, worth hundreds of millions of dollars. The average time from brand launch to first patent challenge has dropped from nearly 19 years in the mid-1990s to about 6 years today, and over 80% of brand-name drugs now face patent challenges. |
| **MYTH:** | Pharmaceutical companies obtain excessive numbers of patents. |
| **REALITY:** | The USPTO ranks biopharma 9th among patent-intensive industries, behind financial services, semiconductors, and software. Pharma companies obtain roughly one-tenth the number of patents per R&D dollar compared to top patentees in other high-tech industries. Of the top 300 U.S. patent recipients in 2024, only 7 were biopharma firms, and their combined total was about one-third of the patents granted to the top patentee that year. |
| **MYTH:** | Capping the number of patents would speed up generic competition. |
| **REALITY:** | Generic entry already arrives on a stable, predictable timeline; caps would not accelerate it. What caps would do is deter investment in post-approval improvements that benefit patients: improved formulations, new indications, and easier delivery systems. |

## The Bottom Line

- 90% of U.S. prescriptions are filled with generics. Generic competition is robust.
- A 2024 USPTO study found no significant correlation between patent counts and when generics enter the market. 28% of generics launch while innovator patents remain listed.
- Biopharma ranks 9th among patent-intensive industries and obtains roughly 90% fewer patents per R&D dollar than top patentees in other sectors.

*Authored by Mark Schultz, The IP Policy Institute, The University of Akron (IPPI), and Jennifer Brant, Sidley and IPPI, with Douglas Park, IPPI. May 2026.*