



# Pharmaceutical Patent “Evergreening”

Separating Myth from Reality

[unpackingip.org](http://unpackingip.org)

Critics claim that drug companies “evergreen” their patents, using later filings to extend exclusivity on medicines for decades and block generic competition. The evidence does not support the claim.

**MYTH:** Drug companies “evergreen” patents by using later patents to block generics for decades.

**REALITY:** “Evergreening,” as critics describe it, is legally impossible. Patents have a 20-year term measured from filing. No later patent can extend an earlier one or prevent generics from copying the original version of the medicine once its patents expire.

**MYTH:** Studies show that drug company patents lock generics out of the market for decades beyond what the law intends.

**REALITY:** The most cited evergreening studies often assume competition is blocked until the latest expiration date of any potentially relevant patent. But when scholars compared those predictions to actual market outcomes, they found that competition arrived on average seven years earlier than critics predicted. One database built and used by critics treats aspirin, off patent since 1917, as still under patent.

**MYTH:** Later patents on improvements are trivial tweaks that extend exclusivity on the original drug.

**REALITY:** Later patents can protect beneficial improvements without blocking competition for the earlier version once its patents expire. Critics dismiss the development of subcutaneous Keytruda as a trivial exclusivity strategy. But converting a complex biologic from IV infusion to subcutaneous injection required substantial research, with no assured outcome. Now, many patients can avoid lengthy IV infusion appointments. This improvement does not extend the patents on the original IV version.

**MYTH:** The patent system allows drug companies to maintain exclusivity unreasonably.

**REALITY:** Effective market exclusivity for branded drugs has held steady at 13 to 14 years for four decades (far less than the 20-year patent term). Generics now account for over 90% of U.S. prescriptions dispensed, up from 19% in 1984. The system is working as designed.

## The Bottom Line

- Patents expire 20 years from filing. No later patent can extend an earlier one or block generics of the original version of the medicine once its patents expire.
- An independent review of widely cited evergreening predictions found generic entry occurred on average 7 years earlier than predicted by critics.
- The average effective market exclusivity period for new drugs has remained stable at 13 to 14 years for four decades.
- 90% of U.S. prescriptions are filled with generics. Generic competition is robust.

