



**Conservatives
for
Property Rights**

June 24, 2019

The Honorable Lindsey Graham
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

Conservatives for Property Rights (CPR) expresses strong opposition to the No Combination Drug Patents Act. In short, the legislation would weaken property rights by treating one area differently from other useful arts and establishing a harmful presumption against subsequent, otherwise patentable inventions, which constitute the heart of much invention and technological innovation. This legislation effectively deprives inventors of secure property rights and undermines the statutory presumption of patent validity.

CPR emphasizes the central importance of private property in all its forms — physical, personal, and intellectual. The right to private property ranks among the unalienable rights the Founders referenced in the Declaration of Independence. Moreover, exclusive patent rights appear in the U.S. Constitution itself. Thus, property rights should not be considered a conservative or liberal issue, although this coalition approaches property rights from a conservative philosophical perspective.

The No Combination Drug Patents Act treats important new inventions as presumptively “obvious” where pharmaceuticals are concerned. This would leave inventors in all other useful arts free to improve on their original inventions, including new methods of using the initial invention, new applications of that invention, and new, perhaps easier to use or more convenient varieties of the initial invention. To achieve such iterative improvements, many patents may issue on newly developed materials, processes, designs, and elements of machinery.

Many products across technologies have multiple patents, covering various aspects of the product. This aspect of invention epitomizes “progress of science and useful arts.” Most people readily acknowledge that steady improvements of this sort lead to things like more fuel-efficient and safer automobiles, smaller and more highly capable mobile phones, and advanced manufacturing and robotics as industrial labor-saving devices. Also, the proposed discrimination against a specific field of technology violates the TRIPS agreement, involving

*“protecting the exertions of talents and industry . . . securing to them their justly acquired fruits”
— Alexander Hamilton*

international IP standards in the trade context. This alone creates profound adverse consequences and courts serious troubles for U.S. industrial competitiveness and trade talks.

Further, iterative invention leads to fundamental breakthroughs. It is important in every area of invention, including biopharmaceuticals. That is because, for instance, an existing patented drug may be used to treat other diseases (“indications”), new formulations may better suit certain patients, the improvements may reduce side effects, and once-a-day varieties may be more conducive to some patients’ adherence to faithfully taking their medicine than does a four-times-a-day formulation. It is counterproductive in the extreme to forestall this kind of pharmaceutical progress, due to its beneficial gains for patients, the positive effects for our health system, maximizing the benefits derived from early investment and R&D, and expanding the knowledge the entire medical research community garners from its members’ colleagues and new discoveries they may make as a result. Such invention is far from “obvious,” as defined by statute or by the dictionary.

Also, it should be noted that in the committee’s commendable efforts to reform section 101 regarding patentable subject matter, a latter idea floated involves changes to section 100 and section 112 of the patent statute. Those fairly focused proposals have drawn wide-ranging, serious concern, including from CPR, because of the uncertainty, disruption, and counterproductive effect they would have. What is proposed in the No Combination Drug Patents Act amending section 103 would profoundly disrupt and render uncertain patent rights and the legal underpinnings to secure those property rights in at least as dramatic manner as the harmful proposals regarding sections 100 and 112.

Conservatives for Property Rights reiterates our strong opposition to the No Combination Drug Patents Act and urge Senators to oppose this measure. We welcome the opportunity to work with the committee to strengthen intellectual property rights.

Sincerely,

James Edwards
Executive Director
Conservatives for Property Rights

Daniel Schneider
Executive Director
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Ed Martin
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