

Big Tech's patent battering ram isn't lowering drug prices

By James Edwards

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[Big Tech](#) and its newfound allies are adopting a novel line of attack in their war [against the patent system](#). These days, they're latching on to Americans' outrage [over high drug prices](#) to create a new enemy in their anti-patent jihad.

Big Tech's manufactured crusade against so-called [patent trolls](#), which it portrays as preying on everyday businesses, is well documented. It was a storyline Big Tech hammered relentlessly en route to convincing Congress to pass the America Invents Act of 2011, a law that created the Patent Trial and Appeal Board, or PTAB.

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Marketed as a cheap, quick alternative to federal courts for patent invalidity challenges, PTAB soon morphed into Big Tech's battering ram. It has wielded PTAB relentlessly against smaller innovators' patents. Big Tech files challenge after challenge against the same patent, draining resources from the little guys who can't fight back forever.

TRUMP'S BIG TECH PLEDGE IS A GREAT FIRST STEP TO END THE TAXPAYER-FUNDED FREE RIDE

Big Tech's argument goes something like this: PTAB challenges are vital to ending Big Pharma's patents, which prevent generics and biosimilars from entering the market. Therefore, ending unlimited opportunities to challenge drug patents at PTAB will mean higher drug prices. This is the pitch being made in lobbyist meetings on Capitol Hill, in FDA offices, and even in the West Wing.

Of course, it's a naked appeal to President Donald Trump's drive to [tame prescription costs](#) and pin the blame on pharmaceutical innovators, whose approval ratings aren't great. Pure politics and dead wrong on the merits.

The argument was test-driven in response to the PREVAIL Act. That bill, which proposes reforms to rein in abuse of PTAB, remains in committee, likely due to Big Tech's arm-twisting.

The drug price narrative went into overdrive in response to a notice the U.S. [Patent and Trademark Office](#) proposed in October with provisions akin to PREVAIL.

In its public comment, Patients for Affordable Drugs hailed PTAB as a godsend against pharma's "patent abuse." The problem: PTAB has been around for 14 years, yet very few drug patents have been challenged there. If PTAB were the "price slayer" it's presented as, surely a large share of patents reviewed there would be drug patents.

Arnold Ventures's Andrea Noda echoed the argument, asserting that the rule means "higher prices" for patients, employers, and taxpayers. That's hardly surprising given Arnold's penchant for government intervention in U.S. healthcare. In truth, the rule would curb abusive repeat challenges; it doesn't eliminate the mechanism as an alternative to [federal district court](#).

Conveniently downplayed in these arguments is the fact that cheaper generic alternatives to brand drugs exist only on the back of billions of dollars in R&D and clinical trials paid for by drugmakers. Hatch-Waxman created the present-day U.S. generics market in 1984. It provides that after a time of patent exclusivity, generic competitors may enter the market without needing to conduct their own clinical trials. Hatch-Waxman offers six months of exclusivity to the first generic on the market. Today, generics make up 90% of U.S. prescriptions.

Many of the interests promoting the drug price argument have leaned heavily on a [single 2023 paper](#) by Charles Duan. Though the paper offers conveniently helpful soundbites to those advocating for drug patent invalidation, Duan admits that when invalidations succeed, they are overwhelmingly against secondary patents on "distribution safety protocols, formulations to increase absorption in the human body, dosing

regimens, and the like.” He also concedes that both sides of the debate rightly “point out the dearth of evidence on the effects of patent challenges.”

That’s because administrative reviews of drug patents, though of value to generic manufacturers, are relatively infrequent. Generic and biologic challengers filed 2% of PTAB petitions in 2024. If PTAB were the drug-price panacea, we’d see transformation. Instead, selective wins against a few secondary patents haven’t dented drug prices overall.

WE CAN FIGHT THE EU AND BIG TECH AT THE SAME TIME

Contrast that with Big Tech, which comprises 19 of the top 20 PTAB filers since 2012. Repeated challenges, paired with a weak injunction regime, have bred the phenomenon of “efficient infringement”: copy boldly, litigate on multiple fronts, pay peanuts if caught. The uncertainty itself becomes the strategy.

Policymakers shouldn’t fall for the simplistic, false narrative that links boundless patent challenges to cheaper drugs. Trump’s team at the Patent and Trademark Office champions innovation across the board – high tech, biotech, med tech, you name it. Strong patents drive discoveries that secure our global innovation leadership and Americans’ health. It’s time to back reforms from Trump’s PTO and let real creators thrive.

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