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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To address patent thickets.

IN THE HOUSE OF REPRESENTATIVES

Mr. ARRINGTON introduced the following bill; which was referred to the
Committee on _____

A BILL

To address patent thickets.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Eliminating Thickets
5 to Increase Competition Act” or the “ETHIC Act”.

6 **SEC. 2. ADDRESSING PATENT THICKETS.**

7 (a) LIMIT ON NUMBER OF PATENTS PER PATENT
8 GROUP THAT MAY BE ASSERTED IN ACTION FOR IN-
9 FRINGEMENT.—Section 271(e) of title 35, United States
10 Code, is amended by adding at the end the following:

1 “(7)(A) A person who brings an action for infringe-
2 ment of a patent under this section against a party de-
3 scribed in subparagraph (B) may assert in the action not
4 more than one patent per Patent Group.

5 “(B) A party described in this subparagraph is—

6 “(i) a person who—

7 “(I) submits an application for approval of
8 a drug under subsection (b)(2) or (j) of section
9 505 of the Federal Food, Drug, and Cosmetic
10 Act (21 U.S.C. 355), or is a holder of such an
11 approved application; or

12 “(II) submits an application for licensure
13 of a biological product under section 351(k) of
14 the Public Health Service Act (42 U.S.C.
15 262(k)), or is a holder of such a licensure; or

16 “(ii) a person making, using, selling, offering
17 for sale, introducing or delivering into interstate
18 commerce, or importing—

19 “(I) a drug approved pursuant to an appli-
20 cation under subsection (b)(2) or (j) of section
21 505 of the Federal Food, Drug, and Cosmetic
22 Act (21 U.S.C. 355); or

23 “(II) a biological product licensed under
24 section 351(k) of the Public Health Service Act
25 (42 U.S.C. 262(k)).

1 “(C) A person who brings an action described in sub-
2 paragraph (A) asserting a patent against a party may not
3 bring any additional actions described in that subpara-
4 graph asserting a patent in the same Patent Group
5 against that party.

6 “(D)(i) For purposes of this paragraph, the term
7 ‘Patent Group’ means 2 or more commonly owned patents
8 or applications that—

9 “(I) are identified on 1 or more disclaimers
10 under section 253 to another commonly owned pat-
11 ent; or

12 “(II) are subject to 1 or more disclaimers under
13 section 253 to another commonly owned patent.

14 “(ii) For purposes of clause (i)(I)—

15 “(I) each patent or application that identifies
16 the same patent or application on a disclaimer under
17 section 253 is part of the same Patent Group; and

18 “(II) each patent or application that is identi-
19 fied on a disclaimer under section 253 is part of the
20 same Patent Group as the patent or application sub-
21 ject to the disclaimer.”.

22 (b) APPLICABILITY.—The amendment made by sub-
23 section (a) shall apply with respect to an application sub-
24 mitted under subsection (b)(2) or (j) of section 505 of the
25 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355)

1 or section 351(k) of the Public Health Service Act (42
2 U.S.C. 262(k)) on or after the date of enactment of this
3 Act.