

## Seeking Insights in the Tech Industry for Rising Drug Costs

U.S. senators compare systemic issues to tackle prescription drug prices.

[Abigail Blue](#)

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Facing a package of bills that would affect the pharmaceutical industry, the Senate Judiciary Committee discussed the balance, or lack thereof, between innovation and competition in the realm of prescription drugs at Tuesday's full-committee hearing.

Witness Joshua Baker, director of South Carolina's Department of Health and Human Services, was the first to address the imbalance in the market that results in rising costs of prescription drugs.

“Unlike other monopolies where the market power of a single supplier is still balanced against a consumer willingness to pay, these particular producers enjoy both market access exclusivity and a defined and required consumer base,” he said at the hearing.

Steep prices for prescription drugs are in large part due to a lack of generics in the U.S. market.

Concern for patents, particularly the number of patent protections available to a single product, was a shared sentiment among members and witnesses. Examining the tech industry provided greater understanding of the issue.

Senator Thom Tillis drew comparisons from the iPhone to explain why patents should not limit innovative updates to products.

“We want the new iPhone because it is better,” he said. “Apple continued to develop new technology to incorporate into the iPhone. We want to encourage this research and innovation, not penalize it. In the same way, we don’t want to penalize drug companies for improving the first version of a drug, we want to encourage that innovation and research.”

Boston College Professor David Olson, another witness before the committee, noted that not all new drugs are as new as they may seem. He highlighted the practice of abusing patents known as “evergreening” in order to extend a patent on a product. Companies will make slight modifications to a product but present it as entirely different to obtain a new patent.

Olson also commented on the possibility of patent thickets, an additional controversy in patent law, leading to a decrease in innovation. Patent thickets are not as prominent in the pharmaceutical industry as in others like technology and, even then, there is no direct correlation between them and innovation, Olson indicated.

“There is no conclusive evidence that smartphone or other high-tech innovation is being retarded by the large numbers of patents that may cover these devices” he said.

The solution to balancing innovation and competition does not solely rely on the management of patents, however. Brand-name companies have found ways to further manipulate the market.

Withholding drug samples from generic companies and paying them to delay entering the market are major issues, along with the filing of sham citizen petitions to interfere with the approval of competing drugs.

The CREATES Act of 2019, Preserve Access to Affordable Generics and Biosimilars Act and Stop STALLING Act could help to eliminate regulatory loopholes and promote competition.

“The American people are fed up with abuses of this system ... and that is also the reason why we have so many proposals that are bipartisan,” said Sen. Richard Blumenthal.

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