Every Patent Stands Alone: Debunking the "Evergreening" Myth

America's patent system grants patent protection to inventions that pass the U.S. Patent and Trademark Office's (USPTO) review for patentability that includes finding the invention be useful, novel and non-obvious. Due to their complexity, medicines often incorporate multiple inventions, each eligible for its own patent whether they were discovered before or after U.S. Food and Drug Administration (FDA) approval of the medicine.

Critics of the U.S. intellectual property system claim drug companies stack up late-lifecycle patents on "trivial" changes to extend "monopolies" and delay generic entry, a practice they call "evergreening." But those claims are false and rest on flawed methodologies, failing to recognize the immense contributions of post-approval R&D and misstate basic patent law: **New patents do not extend the terms of older ones.**

The facts

- **Prescribed 2x more** | Medicines are prescribed **twice** as often for new uses as their initial approved use as post-approval R&D investments typically expand therapeutic value.
- **7 years sooner** | Generic competition **arrives seven years** earlier than assumed by IP critics using flawed approaches for predicting generic entry.
- **12-14 years** | Brand medicines face generic competition after 12-14 years on the market on average, a trend that has **held consistent for decades**.

Five things to know

Drug development doesn't stop at initial FDA approval. Companies keep investing in R&D after a medicine reaches patients. They improve formulations, delivery and manufacturing and test medicines in new diseases and patient populations. U.S. law limits each patent to a single invention, so each discovery may earn its own patent.

New patents do not extend old ones. Every patent has its **own 20-year term**, and patents that come after a medicine's initial approval cannot stretch the original patent's term. Additionally, patents tied to an earlier application actually share the start date of the original's term, so they often provide less than 20 years of protection, not more.

Trivial tweaks cannot be patented. The USPTO only grants patents for useful, new and non-obvious inventions, a standard that screens out "frivolous" patents.

Post-approval research and development delivers real results for patients. For example, about half of all approved uses for cancer treatments **came after** a medicine's initial FDA approval. Cutting market exclusivity by five years over the past decade would have meant **32 fewer** of post approval treatments and one million lives lost.

"Evergreening" claims rely on flawed math. Critics count raw patent numbers to predict delayed generic entry, an approach academics and the USPTO itself have rejected as inaccurate. In fact, in 2024 a USPTO study **found no correlation** between patent counts and actual market exclusivity.

The Bottom Line

America's intellectual property system rewards research before and after FDA approval. New patents don't extend old ones, and generic competition keeps arriving right on schedule.