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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To amend title 35, United States Code, to prevent double patenting, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend title 35, United States Code, to prevent double
patenting, and for other purposes.

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 “Terminating the Ex-
5 tension of Rights Misappropriated Act of 2019” or the
6 “Term Act of 2019”.

1 **SEC. 2. PREVENTION OF DOUBLE PATENTING.**

2 (a) IN GENERAL.—Section 253 of title 35, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(c) DISCLAIMERS OF DRUG PATENT TERM.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), in a proceeding challenging the validity of
8 patents under section 505(c) of the Federal Food,
9 Drug, and Cosmetic Act (21 U.S.C. 355(c)) with re-
10 spect to a drug, under section 351(l) of the Public
11 Health Service Act (42 U.S.C. 262(l)) with respect
12 to a biological product, or a federal district court
13 proceeding involving patents that are the subject of
14 an action under section 271(e)(2), the patentee shall
15 be presumed to have disclaimed the patent term for
16 each of the listed patents after the date on which the
17 term of the first patent expires, subject to the excep-
18 tions provided for in subsection (2).

19 “(2) DEMONSTRATION OF DISTINCT INVEN-
20 TIONS.—If a patentee demonstrates by a preponder-
21 ance of the evidence that certain patents described
22 in paragraph (1) cover patentably distinct inventions
23 from the invention claimed in the first such patent
24 to expire, no part of the term of any such patent
25 shall be presumed to have been disclaimed, and all
26 patent term extensions granted by the United States

1 Patent and Trademark Office shall be respected, un-
2 less and to the extent the patentee expressly dis-
3 claims, in writing, the patent term for each such
4 patent.”.

5 (b) USPTO REVIEW.—

6 (1) DEFINITIONS.—In this subsection—

7 (A) the term “Office” means the United
8 States Patent and Trademark Office; and

9 (B) the term “Director” means the Under
10 Secretary of Commerce for Intellectual Property
11 and Director of the Office.

12 (2) REVIEW.—The Director shall conduct a
13 comprehensive review of the patent examination pro-
14 cedures of the Office to determine whether the Of-
15 fice—

16 (A) is using best examination practices,
17 guidance, and procedures to avoid the issuance
18 of patents relating to the same drug, or biologi-
19 cal product, that are not patentably distinct
20 from one another, and not subject to an appro-
21 priate disclaimer of patent term; and

22 (B) should develop and implement new
23 practices, guidance, or procedures to—

1 (i) improve examination of patent ap-
2 plications relating to the same drug or bio-
3 logical product; and

4 (ii) reduce the improper issuance of
5 patents that improperly extend the term of
6 exclusivity afforded a new drug or biologi-
7 cal product.

8 (3) REPORT.—Not later than 1 year after the
9 date of enactment of this Act, the Director shall
10 submit to the Committee on the Judiciary of the
11 House of Representatives a report that contains—

12 (A) the findings from the review conducted
13 under paragraph (2); and

14 (B) any recommendations of the Director
15 with respect to the review conducted under
16 paragraph (2).