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### Non-Obviousness Doctrine CP

#### Counterplan: Courts of member nations of the World Trade Organization ought to more strictly apply the non-obviousness standard to new patent applications.

#### It’s unconditional.

#### It competes. Rather than reducing the protection provided by patents, the counterplan increases regulations for who can access those protections—those are distinct.

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Nigel Jones (International Chamber of Commerce; Barrister for Gatehouse Chambers). “The importance of incremental innovation for development.” Submission to the World Health Organization’s Commission on Intellectual Property Rights, Innovation and Public Health. March 2006. JDN. <https://www.lesi.org/publications/les-nouvelles/les-nouvelles-online/2006-2015/2006/march-2006/2011/08/08/the-importance-of-incremental-innovation-for-development>

It is important in this debate to understand **the distinction between existence and exercise of patent rights.** This distinction is well-established in many other areas. Examples of the ways in which the exercise of patent rights are regulated in ways which are (rightly, in ICC’s view) **unrelated to the basic rules for bringing them into existence** include: the application of rules of competition law authorities in considering the inherent tension between intellectual property and competition law; determining the price at which certain patented products can be sold (particularly in the healthcare arena); the way in which products requiring marketing approval (such as pharmaceuticals) are categorised and treated by regulatory authorities; and the approach of courts and other tribunals in interpreting the scope of patent claims and determining the remedies to which a patentee is entitled if he establishes that his rights have been infringed.

#### Prefer additionally, 2 reasons it competes:

#### The AFF can’t implement this nuanced approach because their plan fiats all secondary patents out of existence – CX proves, so “perm, do both” is severance.

#### If there’s any benefit to secondary patents in the squo – even one example or possible future instance – that acts as a disad to the perm since it kills the value of those existing and future innovations.

#### The counterplan solves evergreening using existing legal structures, while avoiding the incremental innovation turns on case

Jones 6

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In the context of pharmaceuticals, it has been suggested that patent protection should not be given to inventions comprising different salts, esters or other derivatives of known drugs, different dosage forms or means of administration of existing products, combinations of known products (including fixed dose combinations), nor “mere” new uses of known compounds, (all of which might qualify for the misnomer “incrementally modified drugs”); nor for modifications to medical devices (such as a single-, rather than multiple-dose, syringe). **These suggestions are**, in ICC’s view, **misconceived.** As stated above, if any such inventions do not satisfy the basic patentability criteria, **patents should not be granted** for them; and if patents are found wrongly to have been granted, courts and patents offices should correct those errors, just as they should for patents in any field and for any category of innovation. This approach should address, and is addressing, concerns about illegitimate extension of patent term, or **“evergreening”.** There is **no need for** separate, or **new, legislation** to deal with this issue. Further, the suggestion that such inventions do not benefit society is wrong. These types of so-called **“incremental” innovation** generally **result in better health outcomes**2, for example by increasing efficacy, reducing side effects and/or making administration easier, resulting in improved compliance and greater effectiveness.

#### Their own solvency advocate concedes that the counterplan solves her aff

Feldman 19

Robin Feldman (professor of law and director of the Institute for Innovation Law at UC Hastings College of the Law in San Francisco). “‘One-and-done’ for new drugs could cut patent thickets and boost generic competition.” Stat News. 11 February 2019. JDN. <https://www.statnews.com/2019/02/11/drug-patent-protection-one-done/>

One-and-done would apply to both patents and exclusivities. A more limited approach, a baby step if you will, would be to invigorate the existing **patent obviousness doctrine** as a way to cut back on patent tinkering. Obviousness, one of the five standards for patent eligibility, says that inventions that are obvious to an expert or the general public can’t be patented.

Either by congressional clarification or **judicial interpretation**, many pile-on patents could be eliminated with a ruling that the core concept of the additional patent is nothing more than the original formulation. Anything else is merely an obvious adaptation of the core invention, modified with existing technology. As such, the patent would fail for being perfectly obvious. **Even without congressional action,** a more vigorous and **robust application of the existing obviousness doctrine could significantly improve the problem** of piled-up patents and patent walls.