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WRITTEN TESTIMONY OF JEFFREY LIGHT, EXECUTIVE DIRECTOR

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First of all, I would like to thank this committee for providing me with the opportunity to speak on this important piece of legislation. I would also like to thank Chairman Catania for having the courage to take a bold, new approach to protect the health of the citizens of the District of Columbia.

By way of introduction, I am a registered patent attorney with the United States Patent and Trademark Office and a recent graduate of Georgetown University Law Center. Patients not Patents was organized on the principle that public health should take precedence over corporate profits.

In a NY Times op-ed piece last October, Dr. Peter Rost, Vice President of Marketing at Pfizer wrote: “Americans are dying without the appropriate drugs because my industry and Congress are more concerned about protecting astronomical profits for conglomerates than they are about protecting the health of Americans.” That same month, the New Jersey-based Star-Ledger reported that brand name drug maker Novartis had issued a memorandum to employees, encouraging them to use generic medicines “to control the escalation of costs.”¹

My testimony today has two parts. First, I will discuss the current state of the pharmaceutical industry and address some of the contentions of the drug companies. Second I will explain why compulsory licensing is necessary.

I.

¹ Both articles are submitted to the record.

Pharmaceutical companies, like any business, exist to make profits. They are driven by market demand; their research priorities reflect the potential for revenue, rather than the potential to benefit the public. When drug company officials speak about a profit incentive, we should ask, “An incentive to do what?” An incentive to treat male pattern baldness or an incentive to treat rare, but devastating diseases? An incentive to treat erectile dysfunction or an incentive to treat diseases that primarily affect the developing world?

Drug companies do conduct research on AIDS and cancer, but they are smart businesspeople. They focus on producing so-called “me-too” drugs, copycat versions of the original drug, rather than the riskier venture of researching novel treatment ideas. That is why we have six statin drugs to lower cholesterol, rather than six different approaches to lowering cholesterol.

Drug companies often assert that drugs are too expensive for many people because a large stream of revenue is needed for them to conduct research and development. This is simply not true. According to a Families USA report “Profiting from Pain,” pharmaceutical giant Merck, for example, allocated three times as much of its 2001 revenue to profit as to R&D.² Merck also allocated two and a half times as much revenue to advertising as to R&D. For each dollar of revenue, a mere five cents went to R&D.

The drug industry also spends vast sums of money on lobbying and electing legislators. This will come as no surprise to Mayor Williams or many members of this Council who have accepted large campaign contributions from Merck, Pfizer, and Bristol-Myers Squibb, and their respective PACs.³

II.

Now, I will discuss why compulsory licensing is necessary. Prescription drugs in the United States are so expensive because of patents. Compulsory licensing is necessary to make patented drugs affordable to those who need them. The patent system represents a bargain between society and the inventor. The public endures 20 years of monopoly power, with the expectation that after its time is up, the invention will become part of the public domain. But that is not how the patent system works today. Drug companies are not living up to their end of the bargain. They abuse and manipulate the patent system in an attempt to maintain perpetual monopoly power. Compulsory licensing will allow us to hold the companies to their promise, rather than bribing them to do so.

Patents in the United States generally last for 20 years, but adjustments to the expiration date are made specifically for pharmaceutical patents by Hatch-Waxman and other congressional acts. Companies receive longer patent protection to compensate for the time it takes to win FDA approval on the drug. An additional six months is offered to companies which conduct pediatric studies on the drug. An automatic thirty month

² <http://www.familiesusa.org/site/DocServer/PPreport.pdf?docID=249>

³ Contribution details from public records are attached

extension is added when a brand name company sues a generic manufacturer, even when the generic manufacturer has not even started to produce the medicine. None of this is enough for pharmaceutical companies, for which longer patent life means more profit.

When we speak about patents on pharmaceuticals, it is not just the active chemical that is patented. The dosage used, the type and shape of the pill, the inactive ingredients, and the uses of the drug to treat specific conditions are regularly patented.

A major breach of the bargain with society occurs when drug companies use a technique called “evergreening,” in which they file for a new patent on an old drug by making minor modifications, for example, to the type of inactive ingredients used. I have successfully protested several patent applications, bringing these types of abuses to the attention of the examiners at the patent office. But my work and the work of similar organization barely scratch the surface of the problem.

In response to some of these abuses, President Bush lashed out against such tactics, stating: “The FTC investigation discovered that some brand name drug manufacturers may have manipulated the law to delay the approval of competing generic drugs.”⁴

Our most vulnerable citizens can’t wait 20 or 30 years for lifesaving medicines to become more affordable. They need the cutting edge medicine of today, not the cutting edge medicine of 1985 or even earlier.

A federal district court judge, Judge Schiller stated in the case of McNeil PPC v. L. Perrigo, “The patent laws are not the private sandbox of pharmaceutical companies” (207 F. Supp. 2d 356,375). The city council now has the opportunity to give force to those words.

⁴ Speech on Oct 21, 2002 on new FDA regulations restricting the number of automatic 30-month stays that can be invoked.