RESOLVED, that shareholders of AbbVie Inc. ("AbbVie") ask the Board of Directors to establish and report on a process by which the impact of extended patent exclusivities on product access would be considered in deciding whether to apply for secondary and tertiary patents. Secondary and tertiary patents are patents applied for after the main active ingredient/molecule patent(s) and which relate to the product. The report on the process should be prepared at reasonable cost, omitting confidential and proprietary information, and published on AbbVie's website.

Supporting Statement: Access to medicines, especially costly specialty drugs, is the subject of consistent and widespread public debate in the U.S. A 2021 Rand Corporation analysis concluded that U.S. prices for branded drugs were nearly 3.5 times higher than prices in 32 OECD member countries.[1] The Kaiser Family Foundation has "consistently found prescription drug costs to be an important health policy area of public interest and public concern."[2]

This high level of concern has driven policy responses. The Inflation Reduction Act empowers the federal government to negotiate some drug prices.[3] State measures, including drug price transparency legislation and copay caps, have been adopted.[4] The House Committee on Oversight and Reform (the "Committee") launched a far-reaching investigation into drug pricing in 2019.[5]

Intellectual property protections on branded drugs play an important role in maintaining high prices and impeding access. When patent protection on a drug ends, generic manufacturers can enter the market, reducing prices. But branded drug manufacturers may try to delay generic competition by extending their exclusivity periods.

Such periods can be extended if secondary patents are granted. The Committee's December 2021 report described construction of a "patent thicket," which consists of many "secondary patents covering the formulations, dosing, or methods of using, administering, or manufacturing a drug" granted after the drug's primary patent, covering its main active ingredient or molecule, has been granted.[6] In June 2022, citing the impact of patent thickets on drug prices, a bipartisan group of Senators urged the U.S. Patent and Trademark Office to "take regulatory steps to . . . eliminate large collections of patents on a single invention."

AbbVie has raised the price of Humira, its top-selling drug, 27 times since its launch. One hundred and thirty patents, most of them secondary patents, have been granted on Humira, extending its

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[1] https://www.rand.org/news/press/2021/01/28.html
[2] https://www.kff.org/health-costs/poll-finding/public-opinion-on-prescription-drugs-and-their-prices/
[3] https://www.kff.org/medicare/issue-brief/explaining-the-prescription-drug-provisions-in-the-inflation-reduction-act/
[4] https://www.americanprogress.org/article/state-policies-to-address-prescription-drug-affordability-across-the-supply-chain/
[5] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf, at i.
[6] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf, at 79.

exclusivity period by 19 years.[7] AbbVie touted to investors in a 2015 presentation that challenging any of Humira's patents in litigation would take four to five years.[8]

In our view, a process that considers the impact of extended exclusivity periods on patient access would ensure that AbbVie considers not only whether it can apply for secondary and tertiary patents but also whether it should do so. AbbVie's current approach subjects the company to reputational risks and to further regulatory blowback resulting from high drug prices and perceptions regarding abusive patenting practices.

[7] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WITH%20APPENDIX%20v3.pdf, at ix, 17.

[8] https://investors.abbvie.com/static-files/af79eef2-5901-4b62-9354-982d2d95404e, slide 16.