

Can One Have Too Many Patents?

“As is common with a blockbuster drug, AbbVie’s Humira faced an antitrust challenge from third-party payers,” writes Richard D. Kelly in *Oblon’s Publications*.

“The third-party payers filed an antitrust action claiming AbbVie’s patent strategy stifled competition by forcing prospective competitors to settle on terms allowing Humira to enjoy a monopoly long after patent protection should have ended. The complaint alleges that AbbVie cornered the market for Humira and its biosimilars by obtaining a thicket of patents which allowed it to gain the market power it needed to prevent competitors from entering the U.S. market (violation of Sherman Act section 2). It used this market power to enter into settlement agreements with potential competitors to keep their products out of the U.S. market in return for early launch dates in Europe, also an important market which they termed a pay-for delay and market division (violation of Sherman Act section 1). ”

Read the article.