to September 30, 2012), the Federal

Trade Commission received 140 final resolutions of patent disputes between a brand and a generic, of which 40 settlements may involve pay-for-delay payments. This preliminary assessment summarizes the types of final settlements received in FY 2012 and describes how the FY 2012 results compare to filings in other recent years.

Overview of Final Settlements

40 final settlements potentially involve pay for delay because they contain both compensation to the generic manufacturer and a restriction on the generic

In nearly half of these potential pay-for-delay agreements (19 out of 40 such agreements), compensation took the form of a promise not to market an

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commitm

o It is not uncommon for a brand company to enter multiple settlements involving payment for the same branded product. In FY 2012, 7 branded products had multiple settlements involving compensation and restrictions on entry. Since 2004, brand companies have paid multiple generics in relation to 26 branded products. For 14 products, a brand company paid 3 or more generics, with as many as 10 generic companies receiving payment on a single branded product.¹

81 final settlements restrict the generic manuf product, but contain no explicit compensation.

19 final settlements have no restrictions on generic entry.

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¹ Subsequent settlements do not necessarily involve compensation. Since 2004, 44 branded products have been involved in a potential pay-for-delay settlement followed by at least one settlement containing no compensation to the generic. As many as nine generic companies have settled for no compensation following a potential pay-for-delay deal on the same branded product.

Final Settlements Involving First Filers

43 settlements involve generics eligible for 180-day first-filer exclusivity.

- 23 settlements contain both compensation to the generic manufacturer and ability to market its product.
- 16 product, but contain no explicit compensation.

lements contain no restrictions on generic entry.

2 to Prior Years

a record number of settlements involved potential pay-for-delay final settlements potentially involving pay for delay in FY 2012 nt increase compared to FY 2011 (in which 28 potential pay-for-ere filed with the Commission), even though the total number of final lar in the two years.²

Commission received a record number of potential pay-for-delay g a no-AG commitment as a form of compensation. The 19 such by the Commission in FY 2012 were significantly greater than FY attlements had compensation in the form of a no-AG commitment) 5 such settlements).

ecord number of potential pay-for delay settlements in FY 2012 the int settlements (great generic manufactur

FY2005 FY2006 FY2007 FY2008 FY2009 FY2010 FY2011 FY2012