product hop, from patients wishing to minimize their copay, from insurers who have a short-term financial incentive to prefer the new drug, and from pharmacists who ask doctors to change prescriptions to the new drug even when the old form is prescribed. As described in the Prologue, patients are also wooed with copay discounts or rebates directly offered by the drug manufacturer, which lowers patient prices while pushing the rest of the brand-tier costs onto the insurer. As of mid-2016, for example, Genentech provided a CellCept copay card to consumers on the same Web site pushing doctors to prescribe only the branded medication.[17]

To complete the product hop, brand-name companies will often discontinue the previous version of the drug, closing distribution channels and sometimes even buying back all remaining inventory of the drug.[18] In some cases, the original drug is eventually removed or excluded from the insurance formularies or national databases used to determine generic equivalence, such as First Databank MedKnowledge, formerly known as the National Drug Data File.[19]

When the original branded drug is excluded from formularies, use of an equivalent generic generally comes to a full halt. Substitution cannot take place because there is no longer a brand-name drug for the generic on the market. Even if a doctor were to write a prescription specifically for the generic instead of the new branded drug, most insurance companies will consider the generic drug to be a "branded" drug for co-pay and reimbursement purposes, given that it is the only drug on the market. This would shift more costs onto the consumer and discourage use of the drug. In sum, the result is that a generic that was supposed to create competition for the original brand-name drug can no longer gain a foothold in the market.

In perhaps the most famous product hop of all time, AstraZeneca switched the market from its original drug Prilosec to Nexium by moving Prilosec from a prescription medication to an over-the-counter drug, and then shifting the prescription market to a newly patented Nexium.

You may know Prilosec as a proton pump inhibitor used for ulcer and heartburn treatment. It contains omeprazole as its active ingredient – to dive into the biology briefly, a pill of Prilosec can be described in technical terms as a "racemic mixture"

[17] *CellCept CoPay Card*, CellCept, www.cellcept.com/hcp/patient-financial-resources/cellcept-copay-card.

[18] *See* Feldman, Rethinking Patent Law, *supra* note 13, at 175. In at least one instance, a pharmaceutical company "managed to persuade the FDA to withdraw its license" for an original branded drug right as generic competition was about to be permitted. Lars Noah, *Product Hopping 2.0: Getting the FDA to Yank Your Original License Beats Stacking Patents*, 19 Marq. Intell. Prop. L. Rev. 161, 165 (2015).

[19] *See Teva Pharm. USA, Inc. v. Abbott Lab.*, 580 F. Supp. 2d 345, 355 (D. Del. 2008) (featuring the case of TriCor, in which the brand-name manufacturer recoded earlier versions of TriCor as "obsolete" in the NDDF, allegedly blocking some substitution); *see also* Carrier, *A Real-World Analysis of Pharmaceutical Settlements*, *supra* note 13, at 1019–20 (discussing TriCor and the National Drug Data File).