keted drugs. This situation could change only by the development of drugs with novel mechanism of action targeting the cause of the disease.[260]

E. Conclusion and Suggestions

A common theme in both case studies is that subsequent patent applications by the respective originator companies failed to adequately protect further advances (too early publication of own results and patent drafting). More care needs to be taken in regards of existing prior art. As already mentioned the invention must be more clearly delimited and the claims should me more specific to have a better chance to overcome obviousness requirements and to sustain an invalidity attack. Very important is also an effective document clearance inside the company to avoid novelty problems caused by prepublication as in the case of Xalatan.

In addition in the case of research on combination patents that aim to protect these results would be more useful and valuable if the combination could be administered in a single formulation. In this way the problem of off label use could be avoided.

Finally, because these secondary patents are often a weak strategy to cover investment in research a possible additional incentive could be a longer time of marketing exclusivity for a demonstrated clinical benefit as the additional year for a new use available in Europe.

260 Anonymous, *Patent expiries to hit glaucoma drug market growth until 2018*, The Pharma Letter, Sept. 18, 2011.