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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E-0043]

Determination of Regulatory Review Period for Purposes of Patent Extension; TYGACIL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TYGACIL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT:

Beverly Friedman,

Office of Regulatory Policy (HFD-007),

Food and Drug Administration,

5600 Fishers Lane,

Rockville, MD 20857,

301-594-2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term

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Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TYGACIL (tigecycline). TYGACIL is indicated for the treatment of infections caused by susceptible strains of the designated microorganisms in the conditions listed in this paragraph for patients 18 years of age and older: (1) Complicated skin and skin structure infections caused by Escherichia coli (E. coli), Enterococcus (Entero.) faecalis (vancomycin-susceptible isolates only), Staphlococcus (Staph.) aureus (methicillin-susceptible and -resistant isolates), Streptococcus (Strept.) agalactiae, Strept. anginosus group (includes S. anginosus, S. intermedius, and S. constellatus), Strept. Pyogenes,

and Bacteroides (B.) fragilis, and (2) Complicated intra-abdominal infections caused by Citrobacter freundii, Enterobacter cloacae, E. coli, Klebsiella (K.) oxytoca, K. pneumoniae, Entero. faecalis (vancomycin-suspectible isolates only), Staph. aureus (methicillin-susceptible isolates only), Strept. anginosus group (includes S. anginosus, S. intermedius, and S. constellatus), B. fragilis, B. thetaiotaomicron, B. uniformis, B. vulgatus, Clostridium perfringens, and Peptostreptococcus micros. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TYGACIL (U.S. Patent No. 5,529,990) from Wyeth Holdings Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TYGACIL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TYGACIL is 2,487 days. Of this time, 2,304 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective: August 26, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 26, 1998.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: December 15, 2004. FDA has verified the applicant's

claim that the new drug application (NDA) for Tygacil (NDA 21-821) was initially submitted on December 15, 2004.

3. The date the application was approved: June 15, 2005. FDA has verified the applicant's claim that NDA 21-821 was approved on June 15, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,335 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see ADDRESSES) written or electronic comments and ask for a redetermination by [insert date 60 days after date of publication in the FEDERAL REGISTER]. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by [insert date 180 days after date of publication in the FEDERAL REGISTER]. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.
May 17, 2006.

Jane A. Axelrad

Jane A. Axelrad,
Associate Director for Policy,
Center for Drug Evaluation and Research.

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Dawn P. Hawkins