DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

Re: Prialt
Docket Nos. 05E-0246 and 05E-0239

JUL - 8 2005

The Honorable Jon Dudas
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Box Pat. Ext.
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Director Dudas:

This is in regard to the applications for patent term extension for U.S. Patent Nos. 5,795,864 and 5,364,842 filed by Elan Pharmaceuticals, Inc. under 35 U.S.C. § 156. The human drug product claimed by the patents is Prialt (ziconotide), which was assigned NDA No. 21-060.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in *Glaxo Operations UK Ltd. v. Quigg*, 706 F. Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F. 2d 392 (Fed. Cir. 1990).

The NDA was approved on December 28, 2004, which makes the submission of the patent term extension applications on February 22, 2005, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patents are eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad

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

cc: Charles E. Van Horn
Finnegan, Henderson, Farabow, Garrett & Dunner
901 New York Ave., NW
Washington, DC 20001-4400