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March 16, 2004

**By Facsimile and FedEx**

Andrew M. Berdon, Esq.  
Quinn Emanuel Urquhart Oliver & Hedges, LLP  
335 Madison Avenue, 17th Floor  
New York, NY 10017

**Re: Reliant Pharmaceuticals Paragraph IV Certification to Abbott Laboratories and Laboratories Fournier, S.A.**

Dear Mr. Berdon:

I write on behalf of Abbott and Fournier in response to your letter dated March 9, 2004.

In my letter of March 1, 2004, I informed you that Abbott and Fournier want to evaluate whether Reliant has infringed their rights under various fenofibrate patents, including but not limited to the '726 patent, and I asked Reliant to produce certain materials to facilitate that evaluation. Your March 9 letter seeks to impose unacceptable conditions on the use of the materials we requested. In particular, your March 9 letter says that Reliant only would be willing to produce materials if Abbott and Fournier agree as a precondition only to use them for a limited purpose, *i.e.*, to evaluate their rights under the '726 patent, until *after* the expiration of the 45-day period from Reliant's Paragraph IV certification dated February 18, 2004.

Reliant's effort to prevent Abbott and Fournier from evaluating infringement under patents other than the '726 patent until *after* the 45-day period expires raises serious concerns on our part. It is impeding Abbott's and Fournier's evaluation of infringement of the '726 patent by Reliant. What is more, it heightens our concern about the propriety of Reliant's decision to provide a Paragraph IV certification only with respect to the '726 patent (which is the patent listed in the *Orange Book* for Abbott's NDA 19-304), without providing a Paragraph IV certification with respect to '670 patent; the '405 patent; the '552 patent; and the '881 patent, which are listed in the *Orange Book* for Abbott's NDA 21-203 along with the '726 patent. See *Marion Merrell Dow, Inc. v. Hoechst-Roussel Pharm.*, 32 U.S.P.Q.2d 1156 (D.N.J. 1994). Frankly, Reliant's course of conduct leaves us with the distinct impression that it is engaging in

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gamesmanship aimed at depriving Abbott and Fournier of the protections afforded by the Hatch-Waxman Act.

In order for Abbott and Fournier to evaluate infringement for infringement of the patents that are listed in the *Orange Book* for NDA 21-203, we demand that Reliant produce the materials requested in my March 1, 2004 letter no later than Friday, March 19, 2004, under terms allowing Abbott's and Fournier's outside counsel, in-house counsel (who are not involved in any competitive decision making role concerning fenofibrate), and outside independent experts access to the materials for the purpose of evaluating infringement of any of Abbott's and Fournier's patent rights. If Reliant does not comply with this request, we reserve the right to seek appropriate recourse.

Very truly yours,



Eugene M. Gelernter

cc: Charles D. Ossola, Esq.