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July 8, 2005

Division of Dockets Management
Food and Drug Administration
5630 Fishers Lane
Room 1061 (HFA-305)
Rockville, Maryland 20852

Re: Response to Comments Submitted by Teva Pharmaceuticals USA on June 8, 2005 to Citizen Petitions by IVAX Pharmaceuticals, Inc. and Ranbaxy Laboratories Ltd., Docket Nos. 2005P-008; ~~2005P-0046~~

Dear Sir or Madam:

In a letter dated June 8, 2005, Teva Pharmaceuticals USA (Teva) submitted a response to the pending citizen petitions filed by IVAX Pharmaceuticals, Inc. (IPI) and Ranbaxy Laboratories Ltd. (Ranbaxy) in the above dockets. The IPI and Ranbaxy petitions request that the Food and Drug Administration (FDA) give effect to their respective eligibilities under the Federal Food, Drug, and Cosmetic Act (FDCA) and FDA's regulations, 21 C.F.R. § 314.107(c), for 180-day exclusivity for the strengths of simvastatin tablets for which the two companies were first to submit paragraph IV certifications to two patents listed by Merck & Co., Inc. (Merck), the NDA holder for Zocor®, the reference listed drug. FDA improperly granted Merck's request to delist these two patents, U.S. Patent RE 36,481 ('481 patent) and U.S. Patent RE 46,520 ('520 patent), from the Orange Book. In addition to its original citizen petition filed on January 5, 2005, IPI submitted a supplement to the citizen petition on April 11, 2005, and then on May 6, 2005 IPI submitted a reply to comments from the Federal Trade Commission (FTC) on the IPI petition. IPI will not repeat the arguments made in its previous submissions except where necessary to respond to Teva's latest comments.

2005P-0046

RC 2

Teva attaches to its comments a letter of November 3, 2003 to FDA from Mr. Steven J. Lee, a lawyer who presumably represents Teva. The letter was sent to FDA pursuant to 21 C.F.R. § 314.53(f) and questioned whether the '481 and '520 patents were correctly listed in the Orange Book. Mr. Lee asked that FDA forward this letter to Merck. FDA's regulations specifically permit this procedure.

Teva contends that as a result of Merck's receipt of this November 3, 2003 letter Merck "evidently realized its mistake in submitting these patents to FDA for listing in the Orange Book and thus requested that FDA delist the patents." FDA subsequently removed the two patents from the Orange Book ten months later in September 2004. Teva's conclusion is based upon a misunderstanding of FDA's regulations, as well as rank speculation about Merck's motives for delisting the two patents.

As Teva is no doubt aware, FDA amended its patent listing regulations on June 18, 2003 and those regulations became effective on August 18, 2003. The amended regulations changed the types of patents that could be submitted to FDA by NDA holders. Among the patents that no longer were permitted to be listed in the Orange Book were metabolite patents. However, contrary to the suggestions in Mr. Lee's letter, those changes were prospective. The revised regulations did not require NDA holders to amend previous patent filings to delist metabolite patents or other patents that no longer could be properly submitted. Therefore, it is inaccurate to suggest that Merck mistakenly listed the patents because the new regulations prohibited the submission of metabolite patents.

IPI is also aware that Ranbaxy has responded to Teva in a July 1, 2005 submission to the above two dockets. Ranbaxy's testing has confirmed that the compounds covered by the '481 and '520 patents are present in Zocor® which undermines Teva's argument that these patents should not have been listed because they are merely metabolite patents.

Regardless of Merck's motivations for asking FDA to delist the patents, FDA does not have the ability to delist the two patents if the effect is to deprive ANDA applicants of their eligibility to 180-day exclusivity. We have dealt with this issue exhaustively in our prior submissions.

The result Teva seeks is also inconsistent with one of the reforms enacted by Congress in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Prior to the MMA, generic firms had unsuccessfully sued FDA and innovator companies to delist improperly listed patents. The MMA gave generic companies the right to file a counterclaim in a paragraph IV patent infringement case for an order requiring the correction or deletion of previously submitted patent information. See § 505(j)(5)(C)(ii) as

revised by the MMA. It makes no sense for Congress to have provided this remedy if the effect of a successful counterclaim is loss of 180-day exclusivity.

Teva suggests that awarding exclusivity to IPI and Ranbaxy will, according to the letter from Mr. Lee, have the effect of "improperly delaying generic competition for Zocor." Nothing could be farther from the truth. IPI is fully committed to going to market with its generic simvastatin tablets as soon as possible. In other words, IPI commits to launching its products upon the expiration of the patent on which it filed a paragraph III certification and the accompanying pediatric exclusivity that is attached to that patent. Teva seems to be under the mistaken view that until it is permitted to market its product, which will occur 180 days after IPI launches its generic simvastatin, generic competition will not exist. This is plainly not the case.

Teva also contends that delisting the two Merck patents is not inconsistent with FDA's actions in prior delisting situations. Teva cites the nefazadone precedent as support. IPI responded at length to the nefazadone example in its supplement of April 11, 2005 and relies on that analysis here.

Mr. Lee's letter mentions buspirone. That situation was unique. First, Mylan, one of the NDA applicants, sued FDA and Bristol-Myers Squibb (BMS) to delist the patent at issue. While Mylan was successful in district court, the Federal Circuit overturned the district court decision and said that there was no cause of action to delist a patent. Subsequently, in the patent infringement lawsuit brought by BMS against Mylan and other ANDA applicants, another district court ruled that the patent at issue did not claim buspirone, in part because of statements that BMS had made to the PTO in prosecuting the patent. Delisting the patent did not affect the exclusivity of any ANDA applicants.

Finally, as Ranbaxy notes in its July 1 comments, Teva's position here is inconsistent with Teva's acceptance of 180-day exclusivity for mirtazapine in a situation where a court decided that the patent at issue did not claim an approved use of the drug. Under 21 C.F.R. § 314.53 method-of-use patents that do not claim an approved use may not be listed in the Orange Book.

In conclusion, Teva's comments are off base to the extent that they suggest that FDA's June 18, 2003 regulations were somehow retroactive and required Merck to delist the two patents at issue. Moreover, Teva speculates about the basis for Merck's decision to delist the patent. Since IPI has not seen Merck's letter to FDA asking that FDA delist the patents -- and presumably Teva has not or it would have attached a copy to its comments -- there is no basis to conclude that FDA's delisting of the patents in September 2004 was

Division of Dockets Management

July 8, 2005

Page 4

related to a determination by Merck that the patents were improperly listed, particularly in light of the fact that FDA's new regulations were not retroactive and that Zocor® contains the two compounds covered by the patents. As explained in IPI's petition and the supplement thereto, FDA's decision to delist the '481 and '520 patents was unlawful and should be revoked. Even if FDA refuses to put the patents back in the Orange Book, FDA cannot approve any other ANDAs for simvastatin tablets until 180 days after IPI begins commercial marketing of its product.

Respectfully submitted,



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IVAX Pharmaceuticals, Inc.