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0364 '06 FEB 15 P3:03

February 15, 2006

BY HAND DELIVERY

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

CITIZEN PETITION

Pfizer Inc. ("Pfizer") submits this citizen petition under section 505 and 505A of the Federal Food, Drug, and Cosmetic Act ("FDCA") to request the Commissioner of Food and Drugs refrain from lifting the administrative stay currently in effect against the approval of the Dr. Reddy's Laboratories Ltd. ("Reddy") 505(b)(2) application for amlodipine maleate tablets (NDA 21-435) until after expiration of Pfizer's pediatric exclusivity rights for Norvasc® (amlodipine besylate) on September 25, 2007, and after providing Pfizer advance notice.

A. Action Requested

Pfizer requests that the Food and Drug Administration ("FDA" or "agency") confirm (1) that Reddy's application contains a paragraph III certification to United States Patent No. 4,572,909 ("909 patent") and is therefore subject to Pfizer's pediatric exclusivity for that patent; (2) that irrespective of whether Reddy's application contains a paragraph III or paragraph IV certification to the '909 patent, the application is subject to Pfizer's pediatric exclusivity for both the '909 patent and United States Patent No. 4,879,303 ("303 patent") if its approval remains suspended when the patents expire; and (3) that FDA will provide Pfizer prior notice of any decision to lift the stay on Reddy's approval.¹

¹ Pfizer has informally communicated with FDA and Reddy about the issues raised in this petition. These prior discussions, however, have not resolved Pfizer's concerns.

2006P-0077

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B. Statement of Grounds

Pfizer, the owner of the '909 and '303 patents, holds the approved NDA for Norvasc®. Pursuant to section 505A of the Federal Food, Drug, and Cosmetic Act ("FDCA"), FDA has granted Pfizer six months pediatric exclusivity for Norvasc®.

I. Background

As issued, the '909 patent was originally scheduled to expire on February 25, 2003. Under the Hatch-Waxman Act, however, Pfizer was entitled to restoration of a period of the patent term lost to the regulatory review of its Norvasc® application. On December 6, 1993, the Patent and Trademark Office extended the expiration date of the '909 patent until July 31, 2006. Pfizer subsequently earned an additional period of six months of regulatory exclusivity under 21 U.S.C. § 355a for pediatric trials performed on amlodipine. Pfizer's '909 patent is currently listed in the Orange Book with an expiration date of July 31, 2006, and a separate pediatric exclusivity date of January 31, 2007. The '303 patent, which expires on March 25, 2007, is listed with a pediatric exclusivity date of September 25, 2007.

A. Reddy's ad hoc "paragraph IV certification"

Prior to May 1, 2002, Reddy submitted a 505(b)(2) application for amlodipine maleate, under the trade name AmVaz, including a paragraph III certification to the '909 patent. This certification reflected Reddy's desire to market its amlodipine maleate product only after Pfizer's patent rights covering amlodipine maleate expired. Reddy maintained that those rights expired "on the original expiration date of February 25, 2003" and that Pfizer's rights during the restoration term did not extend to the maleate salt. (Letter from David G. Adams, Counsel to Dr. Reddy's Laboratories, Inc. to Douglas Throckmorton, Acting Director, Division of Cardio-Renal Drug Products, CDER, FDA, dated May 1, 2002) (Attachment A). Reddy concluded that the "appropriate patent certification for patent rights expiring on February 25, 2003," and for an application not seeking approval until that date, would be a "paragraph III certification." (*Id.*). However, at FDA's request, Reddy amended its application to include a paragraph IV certification to the '909 patent. (*Id.*). It appears that FDA requested this course so that Reddy could signal its desire for approval prior to the expiration date listed in the Orange Book for the '909 patent and could trigger patent litigation on that issue.

Although Reddy acceded to FDA's request and submitted a paragraph IV certification, Reddy's position vis-à-vis the '909 patent did not change from the position asserted in its original paragraph III certification. Reddy did not contend that the '909 patent was invalid or would not be infringed by Reddy's proposed product. Consistent with its original paragraph III certification, Reddy continued to request a deferred approval, making clear that it still did "not seek approval of its NDA until February 25, 2003," *i.e.*, the date it claimed Pfizer's rights covering amlodipine maleate expired.

(*Id.*) Moreover, Reddy acknowledged that Pfizer was entitled to six months of pediatric exclusivity after that date, publicly stating that it would not market its product until after August 25, 2003 (the date that pediatric exclusivity would have expired but for Pfizer's patent term restoration period). See Reddy Press Release "Court determines Pfizer's patent term extension does not extend to Dr. Reddy's Amlodipine Maleate product," dated Dec. 17, 2002; Reddy Press Release, "Dr. Reddy's receives Approvable letter for Amlodipine Maleate," dated Oct. 22, 2002.

Reddy used the paragraph IV certification merely as an ad hoc device according to FDA's direction. The certification did not assert either of the allegations — invalidity or non-infringement — that define a paragraph IV certification. Moreover, unlike a true paragraph IV certification, Reddy's certification did not seek FDA approval of Reddy's product application before the date of patent expiry. Thus, for all intents and purposes, Reddy's new patent certification remained unchanged from the original paragraph III certification Reddy had submitted.

B. Litigation and Regulatory Proceedings

After Reddy amended its application and provided Pfizer with a paragraph IV notice, Pfizer brought suit.² Subsequently, the district court held that Pfizer's rights during the patent term restoration period did not apply to amlodipine maleate. Pfizer appealed that decision, and on February 27, 2004, the Federal Circuit reversed the district court and held that Pfizer's rights during the restoration term extend to the maleate salt.

While the patent litigation was proceeding, Pfizer petitioned FDA to deny approval of Reddy's section 505(b)(2) NDA on the grounds that section 505(b)(2) does not authorize Reddy or FDA to rely on Pfizer's Norvasc® NDA. After FDA denied Pfizer's petition and approved Reddy's application,³ on November 13, 2003, Pfizer brought suit challenging both the agency's interpretation of section 505(b)(2) as permitting reliance on proprietary NDA data and its approval of Reddy's application in reliance on Norvasc® data. *Pfizer v. FDA*, United States District Court for the District of Columbia, Civ. No. 03-02346 (RCL).

In the course of the 505(b)(2) litigation, FDA, on February 4, 2004, stayed the effective date of Reddy's approval while it examined the administrative record to determine whether the agency had improperly relied on Pfizer's data as a basis for approving Reddy's application. (Administrative Stay of Action Re: NDA 21-435

² Reddy also filed a paragraph IV certification to the '303 patent. Pfizer did not bring suit against Reddy on that patent.

³ Although Dr. Reddy received an effective approval, the company did not bring its amlodipine maleate product to market.

dated Feb. 4, 2004) (Attachment B). Citing this administrative stay, on February 18, 2004, FDA moved for a stay in *Pfizer v. FDA*. (Federal Defendants' Motion For Stay Of Proceedings, *Pfizer v. FDA*) (Attachment C). In support of its request for a stay of the 505(b)(2) litigation, FDA also cited the Federal Circuit decision rejecting Reddy's challenge to the expiration date of Pfizer's rights to the maleate under the '909 patent. Specifically, the agency noted that as a result of the Federal Circuit decision, "Reddy cannot market AmVaz until the patent term extension for the '909 patent expires in 2006, unless the Federal Circuit's decision is modified or reversed in further proceedings, in which case Reddy cannot market AmVaz until such favorable judicial decision becomes effective." (Federal Defendants' Reply In Support Of Its Motion for Stay Of Proceedings, *Pfizer v. FDA*) (Attachment D).

Reddy has done nothing to enable it to market its product — nor has it demonstrated any interest in marketing that product — prior to patent expiry. Reddy has not sought relief from the Federal Circuit's judgment so that it might market its product prior to patent expiry. Rather, after the Federal Circuit decision, Reddy moved for (and was granted) a stay of further patent proceedings. (Letter from Frank D. Rodriguez to the Honorable Katharine (sic) S. Hayden dated May 20, 2004 and May 25, 2004 Order of the Honorable Katherine S. Hayden, *Pfizer v. Dr. Reddy's Labs., Ltd.*, Civ. Action No. 02-CV-2829) (Attachment E). Nor has Reddy made any effort to lift the administrative stay FDA imposed on its approval in February 2004.

II. Analysis

Reddy's actions have clarified that it does not seek final, effective approval prior to patent expiry. As a result, Reddy can no longer maintain its ad hoc paragraph IV certification. FDA should thus deem Reddy a paragraph III filer subject to Pfizer's pediatric exclusivity rights for the '909 patent. 21 U.S.C. § 355a(c)(2)(A)(ii).

Even if Reddy's paragraph IV certification were valid, however, Reddy's application still would be subject to Pfizer's exclusivity rights if the stay of Reddy's approval is in effect when the '909 and '303 patents expire. Reddy's approval has been suspended pending an FDA inquiry into whether the agency improperly relied on Pfizer data in approving Reddy's maleate application. This administrative stay, which should not be lifted without prior notice to Pfizer so that it may renew its litigation challenging FDA's legal basis for approving Reddy's application, renders Reddy's approval an approval with a delayed effectiveness date — a tentative approval. *Barr Labs. v. Thompson*, 238 F. Supp. 2d 236 (D.D.C. 2002). Under section 505A and relevant case law, an application with a tentative approval upon patent expiry is subject to the pioneer's pediatric exclusivity. 21 U.S.C. § 355a(c)(2)(A), (c)(2)(B); *Mylan Labs. v. Thompson*, 332 F. Supp. 2d 106 (D.D.C. 2004), *affirmed by*, 389 F.3d 1272 (D.C. Cir. 2004); *Ranbaxy Labs. Ltd v. FDA*, 307 F. Supp. 2d 15 (D.D.C. 2004), *affirmed by*, No. 04-5079, 2004 U.S. App. LEXIS 8311 (D.C. Cir. April 26, 2004).

- A. Reddy seeks to market its product upon patent expiration and is thus a paragraph III filer subject to Pfizer's pediatric exclusivity.

The Federal Circuit's ruling that Pfizer's rights extend to the maleate salt during the patent restoration term voided Reddy's artificial paragraph IV certification. Reddy, at FDA's request, not at its own insistence, had submitted that certification so that it might obtain approval of its application upon expiration of Pfizer's rights to the maleate salt, a date Reddy claimed differed from the expiration date listed in the Orange Book for the '909 patent. Under the Federal Circuit ruling, however, Pfizer's rights pertaining to the maleate salt, like all other rights pertaining to amlodipine under the '909 patent, expire on July 31, 2006. Because Reddy does not seek approval to market its product before that date — prior to expiration of Pfizer's patent — Reddy cannot maintain its ad hoc paragraph IV certification and should be considered a paragraph III filer.

Indeed, Reddy has always behaved as a passive paragraph III filer awaiting patent expiry and has never acted like a paragraph IV filer seeking to come to market prior to patent expiry. Reddy's initial certification was a paragraph III certification. Even after it converted its certification to a paragraph IV at FDA's request, Reddy never contended that the '909 patent was invalid or not infringed. Reddy challenged only the expiration date of the patent as it applied to the maleate salt. Reddy even acknowledged, in multiple press releases, that, as a result of Pfizer's pediatric exclusivity, its product could not be marketed until six months after it purported Pfizer's patent rights pertaining to maleate lapsed.

In the time since the Federal Circuit decision, Reddy has made no effort to obtain approval to market its product prior to expiration of the '909 patent. Reddy has never asked that the stay on its approval be lifted. Nor has Reddy done anything to expedite the patent litigation. Rather, Reddy moved to stay the patent litigation on the grounds that its approval had been suspended. In so doing, Reddy has precluded itself from obtaining the relief in the patent litigation which FDA (in support of its motion to stay Pfizer's 505(b)(2) challenge) has stated would be required in order for Reddy to come to market prior to patent expiry.

In light of the Federal Circuit's decision and Reddy's actions, Reddy's certification must be deemed to be a certification under paragraph III rather than one under paragraph IV. Reddy does not now — nor did it ever — assert invalidity or non-infringement of the '909 patent — the very hallmark of a paragraph IV certification.⁴

⁴ Reddy has essentially conceded that if Pfizer's rights extend to the maleate salt during the restoration period, its product would infringe. If Reddy were to change this position now, it would need to file a new paragraph IV certification and serve Pfizer with a new paragraph IV notice setting forth the basis of its claim that the '909 patent was invalid or not infringed by its proposed amlodipine maleate product.

21 U.S.C. § 355(b)(2)(A)(iv). Like all other paragraph III filers, Reddy never sought approval prior to patent expiry but rather sought approval only upon expiration of Pfizer's patent rights to the maleate. *Id.* § 355(b)(2)(A)(iii). Like all other paragraph III filers then, Reddy is subject to Pfizer's pediatric exclusivity. 21 U.S.C. § 355a(c)(2)(A)(ii).

- B. Reddy's tentatively approved application is ineligible for effective approval until expiration of Pfizer's pediatric exclusivity rights.

Even if Reddy were able to maintain its paragraph IV certification, Reddy's application still cannot be finally approved until expiration of Pfizer's pediatric exclusivity rights for both the '909 and '303 patents. Currently, Reddy's application is tentatively approved. *See Barr Labs. v. Thompson*, 238 F. Supp. 2d 236 (D.D.C. 2002). According to FDA's Administrative Stay of Action, "the effective date of approval of NDA 21-435" has been stayed and marketing under the application "is prohibited during the pendency of the stay." (Attachment B). The approval is thus an approval "with a delayed effective date." *See Barr Labs.*, 238 F. Supp. 2d at 249-250. Such an approval is necessarily tentative, and further FDA action is required before Reddy may begin to market. *Id.*

Here, the stay of Reddy's approval (and thus Reddy's tentative approval) should remain in effect at least through patent expiration and then through Pfizer's pediatric exclusivity term for both patents.⁵ As an initial matter, FDA has provided no indication that it will lift the stay prior to expiry of either patent, and Reddy has made no effort to have the stay lifted before expiration of the '909 patent. Moreover, there is no basis to lift the stay because FDA has not resolved the issue of its improper reliance on Pfizer data in initially approving Reddy's application.

Because Reddy holds only a tentative approval, upon patent expiration Reddy's application will automatically convert to a paragraph II certification. *Ranbaxy Labs. Ltd.*, 307 F. Supp. 2d at 21. Under section 505A(c)(2)(A)(i) of the FDCA, approval of Reddy's application must then be delayed for six months after expiration of the patents. *Id.*

III. Conclusion

Approval of Reddy's application is subject to Pfizer's pediatric exclusivity rights. Reddy's application is best understood to be a 505(b)(2) application

⁵ Pfizer continues to challenge the legal basis of the agency's acceptance and (now stayed) approval of Reddy's 505(b)(2) application for amlodipine maleate in reliance on its Norvasc® NDA. Advance notice of any decision to lift the administrative stay on Reddy's approval is required so that Pfizer may reinstate its 505(b)(2) litigation against FDA.

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containing a paragraph III certification to the '909 patent and thus subject to Pfizer's pediatric exclusivity for that patent under section 505A(c)(2)(A)(ii) of the FDCA. Regardless of whether FDA considers Reddy to be a paragraph III or paragraph IV filer with respect to the '909 patent, Reddy's application is subject to Pfizer's pediatric exclusivity for both the '909 and '303 patent as an application that does not hold final approval at patent expiry. Upon patent expiry, Reddy's patent certification will automatically convert to a paragraph II certification and its application will be subject to pediatric exclusivity under section 505A(c)(2)(A)(i) of the FDCA.

Moreover, irrespective of Pfizer's pediatric exclusivity rights, FDA has no legal basis to approve Reddy's section 505(b)(2) application for maleate in reliance on Pfizer's Norvasc® NDA. Should FDA decide to lift the stay currently in effect against Reddy's approval, Pfizer requests advance notice so that it may reinstitute its litigation challenging FDA's action.

C. Environmental Impact

The actions requested herein are subject to categorical exclusion under 21 C.F.R. §§ 25.30 & 25.31.

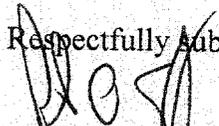
D. Economic Impact

An economic impact statement will be submitted at the request of the Commissioner.

E. Certification

The undersigned certifies that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

Respectfully Submitted,



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