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4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2013-E-0968 and FDA-2013-E-0969]

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

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

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

ADDRESSES: Submit electronic comments to <http://www.regulations.gov>. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit petitions electronically to <http://www.regulations.gov> at Docket No. FDA-2013-S-0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., rm. 3180, Silver Spring, MD 20993-0002, 301-796-7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 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 animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal 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 USPTO 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 an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA has approved for marketing the animal drug product OVUGEL (triptorelin acetate). OVUGEL, an animal drug product, is indicated for the synchronization of time of insemination in weaned sows to facilitate a single fixed-time artificial insemination. Subsequent to this approval, the USPTO received patent term restoration applications for OVUGEL (U.S. Patent

Nos. 5,985,320 and RE 42,072) from Penn State Research Foundation and Massachusetts Institute of Technology, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 25, 2014, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of OVUGEL represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for OVUGEL is 3,692 days. Of this time, 3,644 days occurred during the testing phase of the regulatory review period, while 48 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 FD&C Act) (21 U.S.C. 355(i)) became effective: August 12, 2002. The applicant claims February 13, 2002, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the INAD effective date was August 12, 2002, which was the date a major health or environmental effects test is begun or the date on which the Agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug, whichever is earlier.

2. The date the application was initially submitted with respect to the animal drug product under section 512 of the FD&C Act (21 U.S.C. 360b): August 2, 2012. The applicant claims July 20, 2012, as the date the new animal drug Application (NADA) for OVUGEL RE42072 (NADA 141-339) was initially submitted. However, FDA records indicate that NADA 141-339 was submitted on August 2, 2012.

3. The date the application was approved: September 18, 2012. FDA has verified the applicant's claim that NADA 141-339 was approved on September 18, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 331 or 1,826 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) either electronic or written 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.

Interested persons may submit to the Division of Dockets Management (see ADDRESSES) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to <http://www.regulations.gov>, Docket No. FDA-2013-S-0610.

Comments and petitions that have not been made publicly available on <http://www.regulations.gov> may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

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