have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a food additive will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the food additive Aqueous Aryl Fluorophosphite Suspension (2,2'-ethylidenebis(4,6-di-tertbutylphenyl)fluorophosphonite). Aqueous Aryl Fluorophosphite Suspension is used as an antioxidant used in adhesives and in the preparation of polymers intended for contact with food. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Aqueous Aryl Fluorophosphite Suspension (U.S. Patent No. 4,912,155) from Albemarle Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 3, 1998, FDA advised the Patent and Trademark Office that this food additive had undergone a regulatory review period and that the approval of Aqueous Aryl Fluorophosphite Suspension represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Aqueous Aryl Fluorophosphite Suspension is 2,930 days. Of this time, 935 days occurred during the testing phase of the regulatory review period, 1,995 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a major health or environmental effects test (''test'') involving this food additive product was begun*: January 9, 1989. The applicant claims July 21, 1986, as the date the test was begun. However, FDA records indicate that the test was begun on January 9, 1989.

2. *The date the petition requesting the issuance of a regulation for use of the additive (''petition'') was initially submitted with respect to the food additive product under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348)*: August 1, 1991. FDA has verified the applicant's claim that the petition was initially submitted on August 1, 1991.

3. *The date the petition became effective*: January 15, 1997. FDA has verified the applicant's claim that the regulation for the additive became effective/commercial marketing was permitted on January 15, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,390 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 6, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 3, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. 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.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–21130 Filed 8–7–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0220]

Determination That Acyclovir 200-Milligram Tablets Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that acyclovir 200-milligram (mg) tablets were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for acyclovir 200-mg tablets.

FOR FURTHER INFORMATION CONTACT: Richard L. Schwartzbard, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' a publication generally known as the ''Orange Book.'' Under the FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated September 17, 1997 (Docket No. 98P–0220/CP1), received by FDA on April 1, 1998, and submitted in accordance with 21 CFR 314.122, TorPharm Inc., requested that the agency determine whether acyclovir 200-mg tablets were withdrawn from sale for reasons of safety or effectiveness. Acyclovir 200-mg tablets are the subject of approved ANDA 74–

556 held by Novopharm Ltd.[1] FDA approved ANDA 74–556 on April 22, 1997, and subsequently declared that Novopharm's acyclovir 200-mg tablets are a reference listed drug. However, after learning that Novopharm decided not to market ANDA 74–556, FDA moved the listing for acyclovir 200-mg tablets to the ''Discontinued Drug Product List'' section of the Orange Book.

FDA has reviewed its records and, under § 314.161, has determined that Novopharm's decision not to market its approved ANDA for acyclovir 200-mg tablets was not for reasons of safety or effectiveness. Accordingly, the agency will maintain acyclovir 200-mg tablets in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to acyclovir 200-mg tablets may be approved by the agency.

Dated: July 31, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–21129 Filed 8–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0464]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mirapex®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Mirapex® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human 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 Commissioner of Patents and Trademarks 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 a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Mirapex® (pramipexole dihydrochloride monohydrate). Mirapex® is indicated for the treatment of the signs and symptoms of idiopathic Parkinson's disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Mirapex® (U.S. Patent No. 4,886,812) from Boehringer Ingelheim International GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Mirapex® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Mirapex® is 2,576 days. Of this time, 2,024 days occurred during the testing phase of the regulatory review period, 552 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 14, 1990. The applicant claims February 20, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 14, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 28, 1995. The applicant claims December 26, 1995, as the date the new drug application (NDA) for Mirapex® (NDA 20–667) was initially submitted. However, FDA records indicate that NDA 20–667 was submitted on December 28, 1995.

3. *The date the application was approved*: July 1, 1997. The applicant claims July 2, 1997, as the date the NDA for Mirapex® (NDA 20–667) was approved. However, FDA records indicate that NDA 20–667 was approved on July 1, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,440 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 6, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 3, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. 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.

[1] The reference listed drug upon which ANDA 74–556 itself was approved was Zovirax (acyclovir) 200-mg capsules.