

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C act) (21 U.S.C. 360j(g)) involving this device became effective:* April 12, 2006. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C act for human tests to begin became effective on March 10, 2006. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on April 12, 2006, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* March 3, 2011. The applicant claims March 4, 2011, as the date the premarket approval application (PMA) for COFLEX INTERLAMINAR TECHNOLOGY (PMA P110008) was initially submitted. However, FDA records indicate that PMA P110008 was submitted on March 3, 2011.

3. *The date the application was approved:* October 17, 2012. FDA has verified the applicant's claim that PMA P110008 was approved on October 17, 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 application for patent extension, this applicant seeks 1,503 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 July 6, 2015. 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 November 3, 2015. 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.*

[FR Doc. 2015–10998 Filed 5–6–15; 8:45 am]

**BILLING CODE 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 July 6, 2015. 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 November 3, 2015. 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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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-E-1652]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; HVAD ROTARY BLOOD PUMP

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for HVAD ROTARY BLOOD PUMP 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 Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

**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 Campus, Rm. 3180, Silver Spring, MD 20993, 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 medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (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 medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device HVAD ROTARY BLOOD PUMP. HVAD ROTARY BLOOD PUMP is indicated for use as a bridge to cardiac transplantation in patients who are at risk of death from refractory end-stage left ventricular heart failure. Subsequent to this approval, the USPTO received a patent term restoration application for HVAD ROTARY BLOOD PUMP (U.S. Patent No. 6,234,772) from HeartWare, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 18, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of HVAD ROTARY BLOOD PUMP represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for HVAD ROTARY BLOOD PUMP is 1,667 days. Of this time, 973 days occurred during the testing phase of the regulatory review period, while 694 days occurred during the approval phase. These periods of time were derived from the following dates: