



ANDA 77-332

OCT 16 2006

Spectrum Pharmaceuticals, Inc.
Attention: Ashok Y. Gore
Senior Vice President, Pharmaceutical
Operations and Regulatory Compliance
157 Technology Drive
Irvine, CA 92618

Dear Sir:

This is in reference to your abbreviated new drug application (ANDA) dated October 22, 2004, submitted pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (the Act), for Sumatriptan Succinate Injection, 6 mg (base)/0.5 mL, packaged in 0.5 mL single-dose vials.

Reference is also made to your amendments dated June 16, September 21, October 31, and December 21, 2005; and June 2, and August 9, 2006. We also acknowledge your correspondence dated January 17 and February 23, 2005 pertaining to the patent issues noted below.

We have completed the review of this ANDA, and based upon the information you have presented to date we have concluded that the drug is safe and effective for use as recommended in the submitted labeling. However, we are unable to grant final approval to your ANDA at this time because of the patent issues noted below. Therefore, the ANDA is **tentatively approved**. This determination is based upon information available to the agency at this time (i.e., information in your ANDA and the status of current good manufacturing practices (cGMPs) of the facilities used in the manufacturing and testing of the drug product) and is therefore subject to change on the basis of new information that may come to our attention. This letter does not address issues related to the 180-day exclusivity provisions under section 505(j)(5)(B)(iv) of the Act.

The reference listed drug (RLD) upon which you have based your ANDA, Imitrex Injection of GlaxoSmithKline, is subject to periods of patent protection. As noted in the agency's publication titled Approved Drug Products with Therapeutic

Equivalence Evaluations (the "Orange Book"), U.S. Patent Nos. 4,816,470 (the '470 patent) and 5,037,845 (the '845 patent) are scheduled to expire (with pediatric exclusivity added) on June 28, 2007, and February 6, 2009, respectively.

With respect to the '460 patent, your ANDA contains a paragraph III certification under section 505(j)(2)(A)(vii)(III) of the Act stating that you will not market this drug product prior to the expiration of the patent on June 28, 2007 (with pediatric exclusivity added).

With respect to the '845 patent, your ANDA contains a paragraph IV certification under section 505(j)(2)(A)(vii)(IV) of the Act stating that the '845 patent is invalid, unenforceable, or will not be infringed by your manufacture, use, or sale of Sumatriptan Succinate Injection under this ANDA. Section 505(j)(5)(B)(iii) of the Act provides that approval of an ANDA shall be made effective immediately unless an action is brought against Spectrum Pharmaceuticals, Inc. (Spectrum) for infringement of the '845 patent that was the subject of the paragraph IV certification. This action must have been brought against Spectrum prior to the expiration of 45 days from the date the notice you provided under section 505(j)(2)(B)(i) was received by the NDA/patent holder(s). You notified the agency that Spectrum complied with the requirements of section 505(j)(2)(B) of the Act, and litigation for infringement of the '845 patent was brought against Spectrum within the statutory 45-day period in the United States District Court for the District of Delaware [Glaxo Group Ltd. v. Spectrum Pharmaceuticals, Inc., Civil Action No. 05-88].

Therefore, final approval cannot be granted until expiration of the '470 patent (with pediatric exclusivity added) and:

1. a. the expiration of the 30-month period provided for in section 505(j)(5)(B)(iii),¹
- b. the date the court decides² that the '845 patent is invalid or not infringed (see sections

¹ Because information on the '845 patent was submitted to FDA before August 18, 2003, this reference to section 505(j)(5)(B)(iii) is to that section of the Act as in effect prior to December 8, 2003, when the Medicare Prescription Drug, Improvement and Modernization Act (MMA) (Public Law 108-173) was enacted. See MMA § 1101(c)(3).

² This decision may be either a decision of the district court or the court of appeals, whichever court is the first to decide that the patent is invalid or not infringed.

505(j)(5)(B)(iii)(I), (II), and (III) of the Act), or

c. the '845 patent has expired, and

2. The agency is assured there is no new information that would affect whether final approval should be granted.

To reactivate your ANDA prior to final approval, please submit a "MINOR AMENDMENT - FINAL APPROVAL REQUESTED" 90 days prior to the date you believe that your ANDA will be eligible for final approval. This amendment should provide the legal/regulatory basis for your request for final approval and should include a copy of a court decision, or a settlement or licensing agreement, as appropriate. It should also identify changes, if any, in the conditions under which the ANDA was tentatively approved, i.e., updated information such as final-printed labeling, chemistry, manufacturing, and controls data as appropriate. This amendment should be submitted even if none of these changes were made, and it should be designated clearly in your cover letter as a MINOR AMENDMENT - FINAL APPROVAL REQUESTED.

In addition to the amendment requested above, the agency may request at any time prior to the date of final approval that you submit an additional amendment containing the requested information. Failure to submit either or, if requested, both amendments may result in rescission of the tentative approval status of your ANDA, or may result in a delay in the issuance of the final approval letter.

Any significant changes in the conditions outlined in this ANDA as well as changes in the status of the manufacturing and testing facilities' compliance with current good manufacturing practices (cGMPs) are subject to agency review before final approval of the application will be made. Such changes should be categorized as representing either "major" or "minor" changes, and they will be reviewed according to OGD policy in effect at the time of receipt. The submission of multiple amendments prior to final approval may also result in a delay in the issuance of the final approval letter.

This drug product may not be marketed without final agency approval under section 505 of the Act. The introduction or delivery for introduction into interstate commerce of this drug product before the final approval date is prohibited under section 501 of the Act. Also, until the agency issues the final

approval letter, this drug product will not be deemed to be approved for marketing under section 505 of the Act, and will not be listed in the "Orange Book."

For further information on the status of this application, or prior to submitting additional amendments, please contact Esther Chuh, Project Manager, at 301-827-5773.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary Buehler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gary Buehler
Director
Office of Generic Drugs
Center for Drug Evaluation and Research