



ANDA 207934

ANDA APPROVAL/TENTATIVE APPROVAL

Par Pharmaceutical
Six Ram Ridge Road
Chestnut Ridge, NY 10977
Attention: Krista Richardson
Associate Director, Regulatory Affairs

Dear Madam:

This letter is in reference to your abbreviated new drug application (ANDA) received for review on August 21, 2014, submitted pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) for Everolimus Tablets, 2.5 mg, 5 mg, 7.5 mg, and 10 mg.

Reference is also made to the tentative approval letter issued by this office on August 2, 2019, and to any amendments thereafter.

We have completed the review of this ANDA and have concluded that adequate information has been presented to demonstrate that the drug meets the requirements for approval under the FD&C Act. We have determined your Everolimus Tablets, 2.5 mg, 5 mg, 7.5 mg, and 10 mg, to be bioequivalent and therapeutically equivalent to the reference listed drug (RLD), Afinitor Tablets, 2.5 mg, 5 mg, 7.5 mg, and 10 mg, of Novartis Pharmaceuticals Corporation (Novartis).

However, we are unable to grant final approval to your Everolimus Tablets, 10 mg, at this time because of the exclusivity issue noted below. Therefore, your ANDA is **approved** insofar as it pertains to Everolimus Tablets, 2.5 mg, 5 mg, and 7.5 mg. Your Everolimus Tablets, 10 mg, is **tentatively approved**. This determination is based upon information available to the Agency at this time (e.g., 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). This determination is subject to change on the basis of new information that may come to our attention.

The RLD upon which you have based your ANDA, Afinitor Tablets, 2.5 mg, 5 mg, 7.5 mg, and 10 mg, of Novartis, is subject to periods of patent protection. The following patents and expiration dates are currently listed in the Agency's publication titled *Approved Drug Products with Therapeutic Equivalence Evaluations* (the "Orange Book"):

<u>U.S. Patent Number</u>	<u>Expiration Date</u>
5,665,772 (the '772 patent)	March 9, 2020*
7,297,703 (the '703 patent)	June 6, 2020*
8,410,131 (the '131 patent)	May 1, 2026*
8,436,010 (the '010 patent)	August 22, 2022*
8,778,962 (the '962 patent)	August 18, 2022*
9,006,224 (the '224 patent)	July 1, 2028

* with pediatric exclusivity added

With respect to the '772, '703, '131, '010, '962, and '224 patents¹, your ANDA contains paragraph IV certifications under section 505(j)(2)(A)(vii)(IV) of the FD&C Act stating that the patents are invalid, unenforceable, or will not be infringed by your manufacture, use, or sale of Everolimus Tablets, 2.5 mg, 5 mg, 7.5 mg, and 10 mg, under this ANDA. You have notified the Agency that Par Pharmaceutical, Inc. (Par) complied with the requirements of section 505(j)(2)(B) of the FD&C Act. Litigation was initiated within the statutory 45-day period against Par for infringement of the '010 patent in the United States District Court for the District of Delaware [Novartis Pharmaceuticals Corporation v. Par Pharmaceutical, Inc., Civil Action No. 15-01050]. You have notified the Agency that this case was dismissed.

You have also notified the Agency that litigation was initiated within the statutory 45-day period against Par for infringement of the '772 and '703 patents in the United States District Court for the District of Delaware [Novartis Pharmaceuticals Corporation and Novartis AG v. Par Pharmaceutical, Inc., Civil Action Nos. 14-01494 and 15-00078]. You have notified the Agency that the claims and counterclaims concerning the '703 patent were dismissed on February 11, 2016. On May 1, 2019, the court ordered that pursuant to 35 U.S.C. 271(e)(4)(A), “the effective date under § 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)) of any final approval by the United States Food and Drug Administration of Par’s ANDA Nos. ... and 207934 shall be a date not earlier than the expiration of the pediatric exclusivity for the '772 patent, which is March 9, 2020, except to the extent (a) agreed between Novartis and Par, or (b) ordered or otherwise permitted by this Court or other tribunal.”²

The RLD upon which you have based your ANDA, Novartis’s Afinitor Tablets, 2.5 mg, 5 mg, 7.5 mg, and 10 mg, is also subject to periods of exclusivity. As noted above, the pediatric exclusivity periods associated with the '772 and '703 patents are scheduled to expire on March 9, 2020 and June 6, 2020, respectfully. You have provided a copy of a letter from Novartis dated August 21, 2019, that waives any unexpired periods of

pediatric exclusivity for Afinitor Tablets, 2.5 mg, 5 mg, and 7.5 mg, effective December 5, 2019. This waiver did not include the 10 mg strength; therefore, final approval with respect to the 10 mg strength product cannot be granted until expiration of the pediatric exclusivity period associated with the '703 patent.³ See section 505A(b)(1)(B)(i) of the FD&C Act.

Upon the foregoing, your ANDA is **approved** insofar as it pertains to the 2.5 mg, 5 mg, and 7.5 mg strengths. Your 10 mg strength product is **tentatively approved**.

I. Approval of Everolimus Tablets, 2.5 mg, 5 mg, and 7.5 mg

Under section 506A of FD&C Act, certain changes in the conditions described in this ANDA require an approved supplemental application before the change may be made.

Please note that if FDA requires a Risk Evaluation and Mitigation Strategy (REMS) for a listed drug, an ANDA citing that listed drug also will be required to have a REMS. See section 505-1(i) of the FD&C Act.

REPORTING REQUIREMENTS

Postmarketing reporting requirements for this ANDA are set forth in 21 CFR 314.80-81 and 314.98 and at section 506I of the FD&C Act. The Agency should be advised of any change in the marketing status of this drug or if this drug will not be available for sale after approval. In particular, under section 506I(b) of the FD&C Act, you are required to notify the Agency in writing within 180 days from the date of this letter if this drug will not be available for sale within 180 days from the date of approval. As part of such written notification, you must include (1) the identity of the drug by established name and proprietary name (if any); (2) the ANDA number; (3) the strength of the drug; (4) the date on which the drug will be available for sale, if known; and (5) the reason for not marketing the drug after approval.

PROMOTIONAL MATERIALS

You may request advisory comments on proposed introductory advertising and promotional labeling materials prior to publication or dissemination. Please note that these submissions are voluntary. To do so, submit, in triplicate, a cover letter requesting advisory comments, the proposed materials in draft or mock-up form with annotated references, and the package insert (PI), Medication Guide, and patient PI (as applicable) to:

OPDP Regulatory Project Manager
Food and Drug Administration
Center for Drug Evaluation and Research
Office of Prescription Drug Promotion
5901-B Ammendale Road
Beltsville, MD 20705

Alternatively, you may submit a request for advisory comments electronically in eCTD format. For more information about submitting promotional materials in eCTD format, see the draft Guidance for Industry (available at: <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM443702.pdf>)

You must also submit final promotional materials and package insert(s), accompanied by a Form FDA 2253, at the time of initial dissemination or publication [21 CFR 314.81(b)(3)(i)]. Form FDA 2253 is available at <http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM083570.pdf>. Information and Instructions for completing the form can be found at <http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM375154.pdf>. For more information about submission of promotional materials to the Office of Prescription Drug Promotion (OPDP), see <http://www.fda.gov/AboutFDA/CentersOffices/CDER/ucm090142.htm>.

ANNUAL FACILITY FEES

The Generic Drug User Fee Amendments of 2012 (GDUFA) (Public Law 112-144, Title III) established certain provisions⁵ with respect to self-identification of facilities and payment of annual facility fees. Your ANDA identifies at least one facility that is subject to the self-identification requirement and payment of an annual facility fee. Self-identification must occur by June 1st of each year for the next fiscal year. Facility fees must be paid each year by the date specified in the *Federal Register* notice announcing facility fee amounts.

All finished dosage forms (FDFs) or active pharmaceutical ingredients (APIs) manufactured in a facility that has not met its obligations to self-identify or to pay fees when they are due will be deemed misbranded. This means that it will be a violation of federal law to ship these products in interstate commerce or to import them into the United States. Such violations can result in prosecution of those responsible, injunctions, or seizures of misbranded products. Products misbranded because of failure to self-identify or pay facility fees are subject to being denied entry into the United States.

CONTENT OF LABELING

As soon as possible, but no later than 14 days from the date of this letter, submit, using the FDA automated drug registration and listing system (eLIST), the content of labeling [21 CFR 314.50(l)] in structured product labeling (SPL) format, as described at <http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm>, that is identical in content to the approved labeling (including the package insert, and any patient package insert and/or Medication Guide that may be required). Information on submitting SPL files using eLIST may be found in the guidance for industry titled "SPL Standard for Content of Labeling Technical Qs and As" at

<https://www.fda.gov/media/71211/download>. The SPL will be accessible via publicly available labeling repositories.

II. Tentative Approval of Everolimus Tablets, 10 mg

Our decision to tentatively approve your Everolimus Tablets, 10 mg, is based upon information currently available to the agency (i.e., data in your ANDA and the status of current good manufacturing practice (cGMP) of the facilities used in the manufacture and testing of the drug product). This decision is subject to change on the basis of new information that may come to our attention.

Please note that if FDA requires a Risk Evaluation and Mitigation Strategy (REMS) for a listed drug, an ANDA citing that listed drug also will be required to have a REMS. See section 505-1(i) of the FD&C Act.

RESUBMISSION

To request final approval, please submit an amendment titled “FINAL APPROVAL REQUESTED” with enough time to permit FDA review prior to the date you believe that your ANDA will be eligible for final approval. A request for final approval that contains no new data, information, or other changes to the ANDA generally requires a period of 3 months for Agency review. Accordingly, such a request for final approval should be submitted no later than 3 months prior to the date on which you seek approval. A request for final approval that contains substantive changes to this ANDA or changes in the status of the manufacturing and testing facilities’ compliance with cGMPs will be classified and reviewed according to OGD policy in effect at the time of receipt. Applicants should review available agency guidance for industry related to amendments under the generic drug user fee program to determine the duration of Agency review needed to review the changes submitted. As part of this consideration, applicants should monitor any changes to the RLD that occur after tentative approval, including changes in labeling, patent or exclusivity information, or marketing status. The submission of multiple amendments prior to final approval may also result in a delay in the issuance of the final approval letter.

The amendment requesting final approval should provide the legal/regulatory basis for your request for final approval and should include a copy of a court decision, settlement or licensing agreement, or other information described in 21 CFR 314.107, 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/MAJOR AMENDMENT TO ORIGINAL #2 – 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

information as specified by the Agency. Failure to submit either or, if requested, both types of amendments described above may 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(j) of the FD&C Act. The introduction or delivery for introduction into interstate commerce of this drug product before the final approval date is prohibited under section 301 of the FD&C Act. Also, until the Agency issues the final approval letter, this drug product will not be deemed approved for marketing under section 505(j) of the FD&C Act, and will not be listed in the Orange Book. Should you believe that there are grounds for issuing the final approval letter prior to June 6, 2020, you should amend your ANDA accordingly^{3,4}.

ANNUAL FACILITY FEES

The Generic Drug User Fee Amendments of 2012 (GDUFA) (Public Law 112-144, Title III) established certain provisions⁵ with respect to self-identification of facilities and payment of annual facility fees. Your ANDA identifies at least one facility that is subject to the self-identification requirement and payment of an annual facility fee. Self-identification must occur by June 1st of each year for the next fiscal year. Facility fees must be paid each year by the date specified in the *Federal Register* notice announcing facility fee amounts.

All finished dosage forms (FDFs) or active pharmaceutical ingredients (APIs) manufactured in a facility that has not met its obligations to self-identify or to pay fees when they are due will be deemed misbranded. This means that it will be a violation of federal law to ship these products in interstate commerce or to import them into the United States. Such violations can result in prosecution of those responsible, injunctions, or seizures of misbranded products. Products misbranded because of failure to self-identify or pay facility fees are subject to being denied entry into the United States.

In addition, we note that GDUFA requires that certain non-manufacturing sites and organizations listed in generic drug submissions comply with the self-identification requirement. The failure of any facility, site, or organization to comply with its obligation to self-identify and/or to pay fees when due may raise significant concerns about that site or organization and is a factor that may increase the likelihood of a site inspection prior to approval. FDA does not expect to give priority to completion of inspections that are required simply because facilities, sites, or organizations fail to comply with the law requiring self-identification or fee payment.

For further information on the status of this ANDA or upon submitting an amendment to the ANDA, please contact Emmanuel Kerry, Regulatory Project Manager, at (301) 796 - 7737.

Sincerely yours,

{See appended electronic signature page}

For Vincent Sansone, PharmD
CAPT, USPHS
Deputy Director
Office of Regulatory Operations
Office of Generic Drugs
Center for Drug Evaluation and Research

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- ¹ The Agency notes that the '224 patent was submitted to the Agency after submission of your ANDA. Litigation, if any, with respect to this patent would not create a statutory stay of approval.
- ² Final Judgment, *Novartis Pharmaceuticals Corporation and Novartis AG v. Par Pharmaceutical, Inc.*, Civil Action Nos. 14-01494 and 15-00078 (May 1, 2019), at 4.
- ³ We note that the pediatric exclusivity period associated with the '772 patent currently expires on March 9, 2020; however, as of that date, the pediatric exclusivity period associated with the '703 patent will not yet have expired. Therefore, your 10 mg strength will not be eligible for approval until after the pediatric exclusivity period associated with the '703 patent expires, currently June 6, 2020.
- ⁴ We note that this ANDA currently is eligible for approval the day after expiration of the pediatric exclusivity period. See Section 505A(b)(1)(B) of the FD&C Act. If this day falls on a Saturday, Sunday, or Federal holiday, it will be eligible for approval the next business day.
- ⁵ Some of these provisions were amended by the Generic Drug User Fee Amendments of 2017 (GDUFA II) (Public Law 115-52, Title III).



Sarah
Kurtz

Digitally signed by Sarah Kurtz

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