NDA 208715

CONVERSION TO NDA TENTATIVE APPROVAL

Sandoz, Inc.
Attention: Gregory Seitz
Executive Director, Regulatory Affairs
100 College Road West
Princeton, NJ 08540

Dear Gregory Seitz:

We refer to your new drug application (NDA) 208715 for Cabazitaxel Injection received on May 3, 2016, which was submitted pursuant to section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), and approved on January 5, 2023. We are writing to inform you that, consistent with the Final Judgment issued on July 5, 2023, by the U.S. District Court for the District of Delaware, the Agency hereby converts the final approval of NDA 208715 to a tentative approval and considers that this conversion occurred on the date of that decision. This action conforms the NDA's status to the court's Final Judgment, as described in detail below.

The listed drug relied upon for approval of your 505(b)(2) application, Jevtana Kit (NDA 201023), held by Sanofi Aventis US, Inc. (Sanofi), is subject to periods of patent protection. The following patents and expiration dates are listed in the Agency's publication titled Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book):

U.S. Patent Number	Expiration Date
5,847,170 (the '170 patent)	March 26, 2021
7,241,907 (the '907 patent)	December 10, 2025 (June 10, 2026 with pediatric extension)
8,927,592 (the '592 patent)	October 27, 2030 (April 27, 2031 with pediatric extension)
10,583,110 (the '110 patent)	October 27, 2030
10,716,777 (the '777 patent)	October 27, 2030

Your original NDA submission contained paragraph IV certifications to the '170, '907, and '592, patents under section 505(b)(2)(A)(iv) of the FD&C Act stating that these patents listed in the Orange Book for Jevtana Kit (NDA 201023) were invalid, unenforceable, or would not be infringed by your manufacture, use, or sale of Cabazitaxel Injection under NDA 208715. You had notified the Agency that Sandoz complied with the requirements of section 505(b)(3) of the FD&C Act, and that litigation was initiated for infringement of the '170 and '592 patents and was brought against

Sandoz within the statutory 45-day period in the United States District Court for the District of New Jersey [Sanofi-Aventis U.S. LLC, Aventis Pharma S.A., and Sanofi v. Sandoz, Inc., Civil Action No. 3:16-cv-05678-MAS-LHG], triggering a 30-month stay of approval of your NDA that expired in February 2019. On March 5, 2018, the District Court entered a Final Judgment and found that claims 1 and 2 of the ’170 patent were not invalid due to obviousness and that the commercial manufacture, use, sale, or offer for sale within the United States or importation into the United States of the Cabazitaxel Injection product that is the subject of NDA 208715 would infringe the ’170 patent. The District Court found that pursuant to 35 U.S.C. § 271(e)(4), the effective date of any FDA approval of Sandoz’s NDA shall not be earlier than September 26, 2021. The District Court also found that the asserted claims of the ’592 patent were invalid due to obviousness. On appeal, the U.S. Court of Appeals for the Federal Circuit affirmed the District Court’s nonobviousness determinations for the ’170 patent and vacated the District Court’s invalidity determination regarding the asserted claims of the ’592 patent on the ground that there was no case or controversy with respect to those claims. The mandate in this case issued on September 20, 2019.

On March 17, 2020, FDA received patent information for NDA 201023 from Sanofi on the ’110 patent, which has an expiration of October 27, 2030. The patent was listed with the U-2753 method of use (MOU) code [Increasing survival in metastatic castration-resistant prostate cancer patients previously treated with Docetaxel by administering as a 3-week cycle cabazitaxel after 5 mg Dexchlorpheniramine, 8 mg Dexamethasone, and an H2-agonist]. On July 22, 2020, FDA received patent information for NDA 201023 from Sanofi on the ’777 patent, which also expires on October 27, 2030. This patent was listed with the U-2856 MOU code [Increasing survival in metastatic castration-resistant prostate cancer patients previously treated with Docetaxel by administering 20-25 mg/m Cabazitaxel after a premedication regimen that includes an H2-agnoist]. Since the ’110 and ’777 patents were listed after the submission of your 505(b)(2) application, there was no 30-month stay available for these patents.

In June 2020, litigation was initiated for infringement of the ’110 patent and was brought against Sandoz in the United States District Court for the District of Delaware [Sanofi-Aventis U.S. LLC and Sanofi Mature LLP v. Sandoz, Inc., Civil Action No. 1:20-cv-00804-RGA]. The plaintiffs subsequently amended their complaint to allege infringement of the ’777 patent and the ’592 patent. Prior to trial on the alleged infringement of the ’777 patent, the ’592 and ’110 patents were dismissed from the case.

On October 16, 2020, you updated your patent certification to a paragraph III certification for the ’170 and ’907 patents, and you submitted paragraph III certifications for the ’110 and ’777 patents. Your October 16, 2020, amendment also contained a statement that your prior certification with respect to the ’592 patent remained unchanged. In September 2021, the Orange Book was amended to remove the U-1630 code associated with the ’592 patent and add a new MOU code (U-3200) to the ’592 patent.

On July 8, 2022, you resubmitted NDA 208715 and provided paragraph IV certifications to the ’907, ’110, and ’777 patents. You also stated that your patent certification with respect to the ’592 patent remained unchanged. After receiving an Information Request from FDA, you submitted a paragraph IV certification to the ’592 patent to address the U-3200 MOU code. Because the U-3200 MOU code was listed for the ’592 patent after the submission of your NDA, the statutory 45-day period did not apply and there was no 30-month stay with respect to this paragraph IV certification to the ’592 patent to address the U-3200 MOU code. On January 5, 2023, your application was approved.

The U.S. District Court for the District of Delaware entered a Final Judgment on July 5, 2023, and found that the Cabazitaxel Injection product that is the subject of NDA 208715 will induce infringement of the ’777 patent, and required that FDA “reset the effective date of the approval of Sandoz’s NDA No. 208715 under § 505(b)(2) to a date that is not earlier than the date of expiration of the ’777 patent. Currently the ’777 patent expires on October 27, 2030.” You filed a notice of appeal in the U.S. Court of Appeals for the Federal Circuit. The appeal was subsequently dismissed under Fed. R. App. P. 42(b), and the mandate in this case issued on October 6, 2023.

Section 505(b) of the FD&C Act does not expressly provide for a change in approval status when the patent litigation results in a finding that one or more listed patents is infringed; however, pursuant to 21 CFR 314.107(g), if a court enters an order requiring, in the case of an already approved 505(b)(2) application, that the date of approval be delayed, FDA will convert the approval to a tentative approval, if appropriate. Therefore, after consideration of the district court’s July 5, 2023, Final Judgment, FDA is converting the January 5, 2023, final approval of Sandoz’s NDA 208715 for Cabazitaxel Injection to a tentative approval.

In addition, pursuant to 21 CFR 314.50(i)(6)(i), an applicant who has submitted a paragraph IV certification and is sued for patent infringement must submit an amendment to change its certification if a court enters a final decision from which no appeal has been or can be taken, or signs and enters a settlement order or consent decree in the action that includes a finding that the patent is infringed, unless the final decision, settlement order, or consent decree also finds the patent to be invalid. In its amendment, the applicant must certify under 21 CFR 314.50(i)(1)(i)(A)(3) that the patent will expire on a specific date (i.e., paragraph III certification). Once an amendment for the change has been submitted, the NDA will no longer be considered to contain a paragraph IV certification to the patent.

(b) (4)

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 NDA will be eligible for final approval. A request for final approval that contains no new data, information, or other changes to the NDA generally results in a period of 2 months for Agency review. Accordingly, such a request for final approval should be submitted no later than 2 months prior to the date on which you seek approval. A request for final approval that contains substantive changes to this NDA or changes in the status of the manufacturing and testing facilities’ compliance with cGMPs will be classified and reviewed according to OND policy.

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 NDA was tentatively approved, e.g., 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 “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(c) 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(c) 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 the date of the court order and/or the date of the patent expiration, you should amend your NDA accordingly.

For further information on the status of this NDA, or prior to submitting additional amendments, please contact Rashida Redd, Regulatory Project Manager, at 301-796-5489 or Rashida.Redd@fda.hhs.gov.

Sincerely,

{See appended electronic signature page}

Daniel Suzman, MD
Deputy Director
Division of Oncology 1
Office of Oncologic Diseases
Center for Drug Evaluation and Research

ENCLOSURE(S): (tentatively approved)

- Content of Labeling
  - Prescribing Information
  - Patient Package Insert
  - Carton and Container Labeling

25 Page(s) of Draft Labeling have been Withheld in Full as B4 (CCI/TS) immediately following this page

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This is a representation of an electronic record that was signed electronically. Following this are manifestations of any and all electronic signatures for this electronic record.

/s/

DANIEL L SUZMAN
10/27/2023 09:54:24 AM