ANDA 75-452 January 3, 2000

TEVA Pharmaceuticals USA
Attention: Deborah A. Jaskot
1510 Delp Drive
Kulpsville, PA 19443

Dear Madam:

This is in reference to your abbreviated new drug application dated August 31, 1998, submitted pursuant to Section 505(j) of the Federal Food, Drug, and Cosmetic Act (Act), for Fluoxetine Capsules USP, 10 mg (base) and 20 mg (base).

Reference is also made to your amendments dated October 16, October 29, November 30, and December 7, 1998; and May 12, October 22, December 6, December 17, and December 29, 1999.

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

The listed drug product (RLD) referenced in your application, Prozac Capsules of Eli Lilly & Co., is subject to periods of patent protection which expire on February 2, 2001 (U.S. Patent No. 4,314,081 [the ‘081 patent]), and December 2, 2003, (U.S. Patent No. 4,626,549 [the ‘549 patent]). Your application contains a Paragraph III Certification under Section 505(j)(2)(A)(vii)(III) of the Act to the ‘081 patent stating that this drug product will not be marketed prior to the expiration of this patent. The application also contains

a Paragraph IV Certification to the ‘549 patent under Section 505(j)(2)(A)(vii)(IV) of the Act. This certification states that your manufacture, use, or sale of this drug product will not infringe upon the ‘549 patent. Section 505(j)(5)(B)(iii) of the Act provides that the approval of an abbreviated new drug application shall be made effective immediately, unless an action is brought against Teva for infringement of the patent that is the subject of the certification (the ‘549 patent). This action must be taken before the expiration of forty-five days from the date the notice provided under paragraph (2)(B)(I) is received by both the holder of the new drug application (NDA) and the patent holder (Eli Lilly & Co.). You have notified the Agency that TEVA Pharmaceuticals USA (TEVA) has complied with the requirements of Section 505(j)(2)(B) of the Act, and that as a result, Eli Lilly & Co. initiated a patent infringement suit against TEVA in the United States District Court for the Southern District of Indiana (Eli Lilly & Company v. TEVA Pharmaceuticals USA, Civil Action No. IP 98-1435 C B/S) over the ‘549 patent. Therefore, with respect to the ‘549 patent only, final approval cannot be granted until:

1. a. the expiration of the 30-month period provided for in section 505(j)(5)(B)(iii) since the date of receipt of the 45-day notice required under section 505(j)(2)(B)(i), unless the court has extended or reduced the period because of the failure of either party to reasonably cooperate in expediting the action, or,

   b. the date of court decision 505(j)(5)(B)(iii) (I), (II), or (III)], which has been interpreted by the Agency to mean the date of the final order or judgement of that court from which no appeal can be or has been taken, or,

   c. the ‘549 patent has expired, and

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

Because the Agency is granting a tentative approval for this application, please submit an amendment at least 60-days (but not more than 90-days) prior to the date you believe your application will be eligible for final approval. This amendment should identify changes, if any, in the conditions under which the drug product was tentatively approved, and

should include updated information such as final-printed labeling, chemistry, manufacturing and controls data, as appropriate. This amendment also serves to reactivate the application and should be submitted even if none of these changes were made to the application since the date of this tentative approval. This amendment should be designated clearly in your cover letter as a MINOR AMENDMENT. In addition to this amendment, the Agency may request at any time prior to the date of final approval that you submit an additional amendment containing the information described above. Failure to submit either or, if requested, both amendments may result in rescission of the tentative approval status of your application, or may result in a delay in the issuance of the final approval letter.

Any significant changes in the conditions outlined in this abbreviated application as well as the status of the manufacturing and testing facilities' compliance with current good manufacturing procedures (CGMPs) are subject to Agency review before final approval of the application will be made.

The drug product that is the subject of this abbreviated application 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 effective 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 listed in the Agency's "Approved Drug Products with Therapeutic Equivalence Evaluations" list, the “Orange Book”, published by the Agency.

Prior to submitting the amendment(s), please contact Timothy Ames, Project Manager, at (301) 827–5849, for further instructions.

Sincerely yours,

Douglas L. Sporn
Director
Office of Generic Drugs
Center for Drug Evaluation and Research