



ANDA 211699

ANDA TENTATIVE APPROVAL

Mylan Pharmaceuticals Inc.
781 Chestnut Ridge Road
P.O. Box 4310
Morgantown, WV 26504-4310
Attention: Robert Barto
Senior Director, Regulatory Affairs Officer

Dear Sir or Madam:

This letter is in reference to your abbreviated new drug application (ANDA) received for review on June 26, 2018, submitted pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) for Breyna (Budesonide and Formoterol Fumarate Dihydrate Inhalation Aerosol), 160/4.5 mcg/actuation and 80/4.5 mcg/actuation.

Reference is also made to the complete response letter issued by this office on November 27, 2020, 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 Breyna (Budesonide and Formoterol Fumarate Dihydrate Inhalation Aerosol), 160/4.5 mcg/actuation and 80/4.5 mcg/actuation, to be bioequivalent and therapeutically equivalent to the reference listed drug (RLD), Symbicort Inhalation Aerosol, 160/4.5 mcg/actuation and 80/4.5 mcg/actuation, of AstraZeneca Pharmaceuticals LP (AstraZeneca).

However, we are unable to grant final approval to your ANDA at this time because of the patent issue noted below. Therefore, the ANDA 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. This letter does not address issues related to the 180-day exclusivity provisions under section 505(j)(5)(B)(iv) of the FD&C Act.

The RLD upon which you have based your ANDA, AstraZeneca's Symbicort Inhalation Aerosol, 160/4.5 mcg/actuation and 80/4.5 mcg/actuation, is subject to periods of patent protection. The following patents and expiration dates (with pediatric exclusivity added) 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>
7,587,988 (the '988 patent)	October 10, 2026
7,759,328 (the '328 patent)	July 29, 2023
7,967,011 (the '011 patent)	February 11, 2022
8,143,239 (the '239 patent)	July 29, 2023
8,387,615 (the '615 patent)	September 26, 2027
8,528,545 (the '545 patent)	April 16, 2029
8,575,137 (the '137 patent)	July 29, 2023
8,616,196 (the '196 patent)	October 7, 2029
8,875,699 (the '699 patent)	May 10, 2025
10,166,247 (the '247 patent)	July 29, 2023

Your ANDA contains paragraph IV certifications to each of the patents¹ 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 Breyna (Budesonide and Formoterol Fumarate Dihydrate Inhalation Aerosol), 160/4.5 mcg/actuation and 80/4.5 mcg/actuation, under this ANDA. You have notified the Agency that Mylan Pharmaceuticals Inc. (Mylan) 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 Mylan for infringement of the '328, '011, '239, and '137 patents in the United States District Court for the District of Delaware [AstraZeneca AB and AstraZeneca Pharmaceuticals LP v. Mylan Pharmaceuticals Inc., Mylan Laboratories Limited, Mylan Inc., and Mylan N.V., Civil Action No. 18-01562] and in the United States District Court for the Northern District of West Virginia [AstraZeneca AB and AstraZeneca Pharmaceuticals LP v. Mylan Pharmaceuticals Inc. and Kindeva Drug Delivery L.P., Civil Action No. 18-00193]. You notified the Agency that the District of Delaware case was transferred to the Northern District of West Virginia as Civil Action No. 19-00203, and that Civil Action No. 19-00203 was consolidated with Civil Action No. 18-00193. You further notified the Agency that an amended complaint, in which claims for infringement of the '011 were no longer asserted, was filed in Civil Action No. 18-00193. You have also notified the Agency that on March 2, 2021, the court rendered a decision in favor of AstraZeneca finding that Mylan failed to demonstrate by clear and convincing evidence that the asserted claims of the patents-in-suit are invalid for obviousness.² Therefore, final approval cannot be granted until the '328, '239, and '137 patents have expired, currently July 29, 2023 (with pediatric exclusivity added).

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, 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(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 July 29, 2023,³ you should amend your ANDA accordingly.

ANNUAL FACILITY FEES

The Generic Drug User Fee Amendments of 2012 (GDUFA) (Public Law 112-144, Title III) established certain provisions⁴ 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 or active pharmaceutical ingredients 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 Xuan-Mai Nguyen, Regulatory Project Manager, at (301) 796 - 9453.

Sincerely yours,

{See appended electronic signature page}

For Edward M. Sherwood
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 '247 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 The March 3, 2021 *Memorandum Opinion and Order Making Findings of Fact and Granting Judgment in Favor of the Plaintiffs, AstraZeneca AB and AstraZeneca Pharmaceuticals LP* also notes that Mylan previously stipulated that their generic product infringed the asserted claims of the patents-in-suit.
 - ³ 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.
 - ⁴ Some of these provisions were amended by the Generic Drug User Fee Amendments of 2017 (GDUFA II) (Public Law 115-52, Title III).



John
Ibrahim

Digitally signed by John Ibrahim
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