Sweeping FDA Rule Would Overhaul ANDA and 505(b)(2) Applications Process

Drugmakers claiming a product is protected by a patent will need to make much more detailed justifications of their claims under a rule proposed by the FDA on Feb. 5.

The sweeping proposal would impose a number of other changes as well that affect generics makers filing ANDAs and 505(b)(2) applications, all designed to reduce the unnecessary and frivolous litigation that can delay products that are otherwise ready to hit the market.

The rule, which codifies, clarifies and expands on provisions laid out in the 2003 Medicare Prescription Drug, Improvement, and Modernization Act (MMA), seeks to specifically restrict the patent claims NDA holders may put in the Orange Book, especially overbroad method-of-use patent claims on drug indications that aren’t patent protected.

(See Submissions, Page 2)

Social Media, Exclusivity Emerge as Top Controversial Issues in FDA Overhaul

A proposal to lift restrictions on how drugmakers can promote products on social media and another that would grant up to 15 years of generics-free exclusivity to drugs approved to treat an unmet medical need are emerging as controversial issues in a proposal to overhaul the FDA’s drug approval processes.

Reps. Fred Upton (R-Mich.), chair of the House Energy & Commerce Committee that oversees the FDA, and Diana DeGette (D-Colo.), also of Energy & Commerce, said Feb. 9 they are working to introduce a final version of the bill, the 21st Century Cures Act, into the House before Memorial Day.

Over the next several weeks, they will be developing a second early draft of the bill in response to feedback from other legislators and industry, which is aimed largely at speeding drug approvals.

(See Overhaul, Page 4)
The proposed rule would require the scope of any claims submitted to the Orange Book to only cover the drug’s specific indications that are covered by its patent, the FDA said. It would also require much more descriptive claims.

Other provisions in the proposed rule include clarifying the exact window during which ANDA filers must notify a reference drug maker that the FDA has accepted a Paragraph IV challenge to its drug.

Applicants must notify the brandmaker that the FDA considers a Paragraph IV filing to be substantially complete no earlier than the day after that acknowledgement but no later than 20 days after the postmark date on the FDA’s letter.

The rule would also bar generics makers from filing a Paragraph IV ANDA against a patent until the day after it’s been posted in the Orange Book. That should bar serial submissions from generics makers looking to earn first-filer status on an expected Orange Book listing, the Office of Regulatory Policy’s Janice Weiner told Generic Line.

ANDA filers who miss the window could be stripped of their eligibility for 180 days of generics exclusivity, the FDA said.

Other rule provisions include:

- Clarifying that a 30 month stay of approval under a Hatch-Waxman filing would begin on the date of receipt of Paragraph IV filing notification by the patent owner or NDA licensee;
- Giving generic first-filers a 30-day deadline to tell the FDA the date on which they begin commercial marketing of a product or risk having their 180 days of exclusivity shortened; for companies that fail to make the notification, the date of FDA approval would be considered the date of first commercial marketing;
- Giving deference to the use-code patent positions of ANDA and 505(b)(2) applicants pursuing label carve-outs if the NDA holder doesn’t respond in a timely manner, doesn’t provide a sufficiently clear use-code revision or confirms the accuracy of the challenger’s claims;
- New content in the actual paragraph IV certification ANDA filers send to the reference drug holder; and
- Requiring ANDA and 505(b)(2) applicants to submit a new patent certification with any amendment to an application that involves significant changes in a product’s physical form, formulation or the structure of the active ingredient.

While most of the rule is aimed at helping generics makers and 505(b)(2) applicants, its sweeping nature is likely to elicit some angry responses from the industry. Hyman, Phelps & McNamara attorney Kurt Karst says the rule’s requirement that 505(b)(2) applicants always cite a pharmaceutically equivalent product in their filing if one exists may be controversial.

The FDA says the requirement will help ensure the 505(b)(2) pathway isn’t used to circumvent patent certification obligations. However, previously firms using the pathway haven’t always filed against the most recent and closest drug to the one they’re seeking to produce.

Comments on the proposed rule will be due 90 days after its publication in the Federal Register. See the notification on the proposed rule here: www.fdanews.com/02-05-15-ANDANotificationRule.pdf. — Bryan Koenig

**Hamburg Resigns as FDA Commissioner, Departs End of March**

After serving as FDA commissioner for six years, Margaret Hamburg has resigned, ending a tenure during which the agency boosted its focus on drugs for unmet needs, strengthened policing of compounding pharmacies and increased drug approvals.

In 2014 alone, the agency approved more than 40 new drugs, the largest number in nearly two decades.

*(See Hamburg, Page 4)*
Mylan and Watson ANDAs for Generic Celebrex Approved

The FDA last week granted final approval to Mylan and Watson for generic versions of Pfizer’s blockbuster arthritis drug Celebrex, allowing the companies to share 180-day exclusivity with Teva.

Both generics firms first launched their versions of Celebrex (celecoxib) in December as authorized generics using tentative FDA approval. Those launches came even as Mylan and Watson (now Actavis) continued to challenge an April 2014 FDA decision granting rival Teva first-filer exclusivity. Teva’s celecoxib launched Dec. 10 following a patent infringement settlement with Pfizer.

Mylan confirmed receiving final approval to Generic Line after a law firm representing the company in the case announced the FDA decision in a blog post.

The FDA shouldn’t have granted Teva first-filer exclusivity, Hyman, Phelps & McNamara says, because that exclusivity was based off invalidation of an initial patent that was later reissued. Rather, Mylan, Watson and Teva were each entitled to first-filer rights after their Hatch-Waxman challenges invalidated the reissued patent.

After a federal appeals court struck down the FDA decision of sole exclusivity in December, jurisdiction was returned to the agency, which granted final approval to the ANDAs. The two companies can now join in on the exclusivity period that started in December.

An Actavis spokesman tells Generic Line that the company will now be able to transition from the authorized generic provided by Pfizer to one it manufactures itself. The company is looking to switch by the end of the year.

Celebrex, which brought Pfizer $2.5 billion in sales last year, has been at the center of other controversies as well. Several lawsuits against Pfizer allege the company’s patent infringement settlements with ANDA filers amount to anticompetitive deals artificially prolonging market exclusivity (Generic Line, Feb. 4). — Bryan Koenig

FDA Denies Auxilium Bid for Extra Hurdles for Rival’s Testosterone Drug

The FDA has again found Upsher-Smith Laboratories’ testosterone gel Vogelxo therapeutically equivalent to Auxilium’s Testim — knocking down Auxilium’s citizen petition demanding higher hurdles for 505(b)(2) NDAs aimed at its therapy.

Upsher-Smith’s Vogelxo (testosterone) application sufficiently demonstrated safety, efficacy and bioequivalence to Testim (testosterone), the FDA says in its Feb. 9 response. Vogelxo was originally filed as an ANDA referencing Testim, but USL changed that application to a 505(b)(2) at the agency’s request because the therapies have different inactive ingredients, the letter says. Vogelxo was approved last June.

Auxilium’s March 26, 2013, citizen petition urged the FDA to grant Vogelxo equivalence to Testim only if it showed bioequivalence and was proven not to rub off on other people. The drugmaker also demanded that USL’s labels be substantially the same as its own and include a warning that the drug cannot be switched with other testosterone gels.

The FDA says the first three conditions have been met.

However, the agency refused Auxilium’s request for a warning against swapping Vogelxo with other testosterone therapies. While the label is required to note that testosterone therapies may have different doses, strengths or application instructions, adding the additional warning would be misleading because Vogelxo is in fact therapeutically equivalent to Testim, the FDA says.

Auxilium also asked, and was denied, that the FDA undertake additional rulemaking on testosterone therapies before assigning Vogelxo or any other testosterone therapy an equivalence rating.

Auxilium was recently purchased by Endo, which did not respond to a request for comment. — Bryan Koenig
FDA Warns Apotex’s India Facility on cGMP Violations

The FDA slapped Canadian generics maker Apotex with a warning letter for serious lapses in current good manufacturing practices at its Bangalore, India, finished product plant.

According to the Jan. 30 letter, Apotex failed to adequately record test results and microbiological test plates were missing for various finished drug products. The plant’s quality unit also failed to review and approve production and control records didn’t take adequate security measures to ensure only qualified personnel made changes to master production and control records, the letter says.

This continues a string of data integrity violations for international manufacturers. The FDA cited data integrity violations in 13 warning letters out of the 18 issued for good manufacturing practice violations in 2014.

Apotex had expected the warning letter, says spokesman Steve Giuli. The FDA placed an import ban on products made at the Bangalore plant last fall after investigators cited the cGMP issues during a June 23 to July 1, 2014, inspection. Health Canada also banned imports from that plant and a separate raw materials facility nearby (Generic Line, Oct. 18, 2014).

Since the inspection, Apotex has implemented training programs and new procedures to reduce employee error, Giuli tells Generic Line. The improvements are being validated by third-parties.

The warning letter asks Apotex to provide the FDA with a comprehensive evaluation of the plant’s test results, an assessment of potential risks associated with the quality failures and a management strategy with a detailed CAPA plan.


Overhaul, from Page 1

Once the bill makes it through committee, it will still be subject to floor amendments, Upton cautioned in stressing the preliminary nature of the current version.

The two spoke at a conference sponsored by BIO in New York City, outlining the issues in the draft bill for Wall Street investors.

Other provisions in the wide-ranging bill would increase orphan drug development, streamline clinical trials oversight, give industry incentives to find new uses for old drugs and expand U.S. drug manufacturing.

In addition, the proposal would offer greater incentives for developing new drugs and antibiotics that treat drug-resistant infections and other unmet needs, including provisions that would allow drugmakers to transfer market exclusivity bonuses from products developed for unmet needs to other, more profitable drugs, delaying generic competition.

It also would require the FDA to review GMP regulations and guidances to eliminate requirements that may hinder manufacturing innovation, expand market protections for drugmakers that reformulate an existing drug to perform better by adding elements such as abuse-deterrent features and allow drugmakers to provide educational medical texts and journal articles to physicians without having to disclose them under the Physician Payments Sunshine Act (Generic Line, Feb. 4). — Bryan Koenig
Generics Seek Stronger Proscriptions In REMS Compliance Letter Guidance

Generic drugmakers charge a December draft guidance doesn’t go far enough in enabling them to obtain bioequivalence testing batches for drugs protected by REMS product safety protocols.

The guidance would establish a process for ANDA filers to request FDA letters to brandmakers assuring them that the generics firm’s safety protocols will comply with the risk evaluation and mitigation strategies of the reference therapy.

Brandmakers who’ve been given such letters have still refused to hand over sample batches that generics firms need to perform bioequivalence testing in a planned ANDA, Impax says in one of eight comments submitted to the FDA by the Feb. 3 deadline.

Moreover, the letters, which the FDA has issued before but codifies in the draft guidance, aren’t legally binding, Impax warns (Generic Line, Jan. 7). The FDA should establish response timelines to letter requests and penalize brandmakers that don’t comply, as well as refer cases to the FTC, the company says.

Alternative Options

Other generics firms like ChemWerth suggest an end-run around the need for sample batches in the first place. To do that, the FDA would publish the resolution and biological data used to approve an NDA on its website and generics makers could conduct BE testing against that data, ChemWerth says.

Generics makers also warn that the guidance could have unintended consequences and doesn’t cover every potential need for sample batches.

GPhA, for instance, notes that some generics makers don’t need to perform at least some bio-equivalence testing but still require samples for other reasons, including impurity profile comparisons. The FDA should expand the guidance beyond basic bioequivalence testing, the trade group argues.

GPhA also points to a potential flaw in the very logic of guidance on obtaining REMS letters — that brandmakers could refuse to hand over sample batches until a letter is presented. The FDA should clarify that a letter is not explicitly required to obtain REMS-covered drugs, GPhA says.

Generics makers weren’t the only ones to pick up on that discrepancy. PhRMA says the FDA should specify what brandmakers should do in the absence of a letter. The group’s comments outline the various concerns reference drugmakers have cited when refusing to hand over product samples.

The 2007 law that created REMS makes no exception for brandmakers to deviate from those safety protocols to supply ANDA filers with sample batches, PhRMA says. REMS are intended to keep abuse-prone drugs out of the wrong hands through training and various control measures.

Alleged Abuse

Generics makers have complained that brandmakers are increasingly using REMS protocols and even safety protocols on non-REMS protected drugs as an excuse not to turn over sample batches. Nearly 40 percent of all new drugs come with REMS protocols, according to GPhA (Generic Line, July 30, 2014).

Brandmakers comply with those protocols for good reason, says PhRMA, noting firms face stiff penalties if they are found in violation. To guard against that happening, the guidance should set stringent requirements for generics makers seeking a compliance letter from the FDA and detail how the agency will ensure they stay REMS compliant, the trade group adds.

Celgene echoed the call for stronger requirements for generics, and urged the FDA to create a process for withdrawing a letter if an ANDA filer is found not to be REMS compliant. The brandmaker is currently embroiled in a lawsuit accusing it of using the safety protocols as an excuse not to turn over sample batches of its cancer therapies Thalomid (thalidomide) and Revlimid (lenalidomide) (Generic Line, Jan. 21).

Find all of the comments at www.regulations.gov/#!documentDetail;D=FDA-2014-D-1891-0001. — Bryan Koenig
FDA Looking at Biosimilar Application Burden

Long-awaited guidance on designating a biosimilar as interchangeable with the reference product may soon be in the offing, based on an FDA request for comments on a proposed collection of information.

Specifically, the FDA wants drugmakers’ feedback on its estimate that a biosimilar or interchangeable application will take as much time to prepare as the reference biologic’s filing — about 860 hours.

The agency wants to know if the required information is necessary, ways to enhance the quality of the information collected and if there are ways to make the collection easier for companies to handle.

The filings have the same estimated length of preparation time as reference biologics because they are expected to be comparably complex and technically demanding, the FDA says.

Existing Guidance

So far the agency has only issued guidance on demonstrating biosimilarity, rather than the greater regulatory onus of interchangeability.

Interchangeability is one of four biosimilars topics the FDA said it was looking to publish guidance on this year (Generic Line, Jan. 21).

While biosimilar applications need to show “no clinically meaningful differences” from the reference therapy, interchangeables win their status by convincing the FDA they will have the same clinical result as the reference in any given patient.

Sponsors would also have to show that the risk of multiple doses after a switch would be the same as the risk of multiple doses of the reference if swapping didn’t occur.

The 2010 law creating the biosimilar approval pathway allows for interchangeable-designated therapies to be switched from the reference without the prescriber’s approval, although substitution is determined state to state (Generic Line, Feb. 4).

Filers can submit their request for an interchangeable designation in their initial biosimilar application or in a later supplement, the FDA says.

The FDA anticipates receiving about five biosimilar applications per year based on current trends.

Last month, Hospira became the fourth drugmaker to publicly announce a U.S. biosimilar application (Generic Line, Jan. 21). The first was announced last summer.


Reduce Human Error on the Drug and Device Manufacturing Floor

Reduce Errors By 50% or More

An FDA NEWS Conference

March 24-25, 2015 • Philadelphia, PA

Dr. Ginette Collazo — a 15 year veteran of helping drug, biologic and device firms reduce manufacturing errors by 50 percent or more — will conduct a one-of-a-kind workshop that teaches quality managers and manufacturing excellence professionals how to reduce errors and improve quality metrics.

Based on her ground-breaking research, Dr. Collazo explains how small improvements in both manufacturing systems and improved employee training can deliver big results.

Dr. Collazo recently worked with a drug manufacturer that had a baseline rate of 4.7 errors per thousand units manufactured. But with effective human error reduction strategies, the error rate was reduced to 1.9. A 60% reduction achieved in just 10 months.

Don’t miss out! Register TODAY.

Register online at: www.DrugDeviceErrors.com

Or call toll free: (888) 838-5578 (inside the U.S.) or +1 (703) 538-7600
Nothing Blocking Generic Copaxone After Judge Denies Teva Injunction Bid

Mylan and Sandoz need only FDA approval to launch their generic versions of Teva’s blockbuster MS drug Copaxone, after a federal judge refused Teva’s request to block generic entry.

No ruling can be made on blocking generic Copaxone (glatiramer acetate) until the Supreme Court’s Jan. 20 decision sending the case back to a lower court is finalized, the judge in the Southern District of New York ruled Feb. 10. Once that occurs, jurisdiction will immediately revert to the Federal Circuit, where he has no authority.

The Federal Circuit is due to take up Teva’s patent infringement case against the generics makers sometime after Feb. 14, when the Supreme Court’s January decision striking down an earlier finding invalidating the drug’s last patent became final.

Teva’s request to block generic entry until the last of Copaxone’s patents, the ‘808, expires Sept. 1, came during what the judge called a “peculiar procedural lacuna.”

Until Teva can ask the Federal Circuit for a blocking order, there’s nothing stopping Mylan and Sandoz from launching — except a green-light from the FDA, one legal expert says.

All of the remaining blocking patents protecting Copaxone — which enjoyed $1.4 billion in sales in the third quarter of last year — expired in May. The Israeli brand and generics maker has combined its so-far successful legal appeal of a finding of patent invalidity with efforts to switch patients to a newer formulation of Copaxone that is patent-protected until 2030. So far, more than half of Copaxone patients have made the switch.

Teva said that it was disappointed in the ruling and looks forward to the Federal Circuit review. — Bryan Koenig

Pfizer Buying Hospira For $17 Billion

Pfizer will shell out $17 billion to acquire leading injectables and biosimilars maker Hospira, the companies said Feb. 5.

The acquisition will greatly expand New York-based Pfizer’s portfolio of branded sterile injectables by adding Hospira’s generic sterile injectables, including its off-patent sterile injectables, the companies said.

For Hospira, the deal will mean expanding its commercial footprint beyond its usual markets of the United States and the EU.

Both companies say the deal will benefit their respective biosimilar development programs.

Hospira already has several biosimilars on the market outside the U.S. and last month the Illinois-based firm became just the fourth company to publicly announce a U.S. biosimilar application. It also has a partnership with South Korea-based Celltrion to market that firm’s proposed biosimilar in the U.S. — a partnership Pfizer and Hospira promised to work closely on as their merger progresses (Generic Line, Jan. 21).

Pfizer’s John Young noted on a call with reporters that $100 billion of biologics are expected to lose patent protection in the next five to 10 years.

Hospira’s issues with good manufacturing practice violations also came up during the call, although Pfizer executives said they had visited several key Hospira facilities and are confident that any issues have already been closed or are in the process of being resolved (Generic Line, Oct. 8, 2014).

The merger is subject to regulatory approval and is expected to close in the second half of the year, the companies said. Pfizer will end up paying $90 per share, with two-thirds of the money coming from cash on hand and the rest from new debt.

Mylan Denied Final Generic Nexium Approval, Leaving Teva Alone in Market

The FDA gave tentative approval to Mylan’s ANDA for a generic Nexium earlier this month, but denied final approval due to lasting exclusivity protections — almost guaranteeing Teva the only generic version of the blockbuster heartburn drug on the market for months to come.

In a Feb. 4 letter to Mylan, the FDA said it can’t give final approval until after Aug. 3, when Nexium’s (esomeprazole) exclusivity for pediatric indications expires. The agency asked Mylan to resubmit its request for final approval 90 days prior to that date.

The reason Teva can launch while Mylan can’t is most likely the result of an agreement by AstraZeneca to waive pediatric exclusivity during patent challenge litigation with Teva.

Mylan’s denial leaves Teva the only company with an approved ANDA for Nexium, although multiple other generic filers against the drug could potentially be approved, especially after Ranbaxy was stripped of its authorization and first-filer rights to a generic Nexium over GMP violations at its India plants.

Ranbaxy is still challenging that decision. Its manufacturing woes have significantly delayed entry of a generic Nexium, which could have hit shelves as early as May 2014. The delay has proven a boon to NDA holder AstraZeneca’s coffers. The brandmaker raked in $832 million from the drug in the 2014 fourth quarter alone and $3.6 billion for the year (Generic Line, Feb. 4).

Teva said in a call with investors this month that launch of its generic Nexium was imminent. The only reason Teva hasn’t already launched after its Ivax Pharmaceuticals subsidiary received the greenlight last month is because AstraZeneca changed the product label right before generic approval, said Sigurdur Olafsson, president and CEO of global generics. That forced Teva to change its label.

— Bryan Koenig

Hospira Teams With Pfenex to Develop Biosimilar of Genentech’s Lucentis

Hospira is looking to add another biosimilar candidate to its growing pipeline by partnering with Pfenex to develop and market a biosimilar of Genentech’s retinal disease therapy Lucentis.

The deal, announced Feb. 10, calls for Hospira to pay Pfenex $51 million upfront, plus up to $291 million over the next five years and tiered double-digit royalty payments once the biosimilar hits the market. The agreement, which is still subject to regulatory approval, also leaves room for future collaboration on other products.

Hospira will share costs of the Phase III equivalence trial with Pfenex, a clinical-stage biotech company, and will manufacture and market the final product. Branded Lucentis (ranibizumab) had about $4 billion in global sales last year, the companies said.

The biosimilar, called PF582, is currently in a Phase 1b/2a clinical trial being conducted by Pfenex. That trial has 24 patients who have been randomly assigned monthly intraocular injections of the biosimilar or branded Lucentis.

The Lucentis biosimilar, if approved, will expand Hospira’s biosimilar pipeline into a new therapeutic area, says Sumant Ramachandra, senior vice president and chief scientific officer.

Hospira is one of four biosimilars makers to have publicly disclosed a product filing with the FDA, although none has been approved. Hospira’s biosimilars pipeline is a significant draw in Pfizer’s planned $17 billion purchase of the injectables manufacturer, announced earlier this month. — Bryan Koenig
FDA Reopens GDUFA Comments Docket

The FDA is giving industry until March 9 to again weigh in on the controversy surrounding generic first-filer exclusivity determinations and other GDUFA-related issues first raised at a September public hearing.

The agency reopened the public docket on the September hearing after receiving additional requests to be heard (Generic Line, Sept. 24, 2014). During the hearing, generics makers complained of slow ANDA approval times jeopardizing first-filer eligibility, a lack of communication between the FDA and industry, lack of information in an inactive ingredients database and the ANDA backlog itself, among other issues.

In addition to first-filer exclusivity, the FDA now wants feedback on five draft guidances issued under the 2012 Generic Drug User Fee Amendments, which seeks to speed ANDA approval by charging filers for facilities and drug applications. The guidances cover content and format of ANDAs, refuse-to-receive criteria for inadequate impurity limit justification, amendments and easily correctible filing deficiencies, prior approval supplements and controlled correspondence.

Other Issues

The agency also wants to know if there are GDUFA implementation issues related to the guidances that have yet to be addressed, if any other outstanding GDUFA implementation issues are in need of guidance and if there are generic drug issues in need of guidance outside of GDUFA.

For first-filer exclusivity, the FDA is again asking if the considerations should be part of a public process and if there are better legal or regulatory mechanisms to resolve court challenges to exclusivity determinations (Generic Line, Sept. 24, 2014).

Another topic that came up in September, regarding how the FDA will consider so-called “first generics,” is now part of a separate docket for which the agency said it is not seeking additional input (Generic Line, Jan. 7).

The comments will be weighed as the FDA develops its fiscal year 2015 GDUFA priorities.

— Bryan Koenig

FDA to Reopen Comment Period On Generic Labeling Rule

Interested parties will soon get another crack at submitting comments on the FDA’s highly controversial proposed rule that would give generics makers authority to update their labels independently — authority only brandmakers currently have.

The agency signaled in its Fiscal Year 2016 budget request this month that it plans to hold another public meeting in response to a request from a Congressional committee that requested another listening meeting be scheduled with industry and would reopen the comment docket (Generic Line, Feb. 4).

Comments are due April 27 and the hearing will be March 27.

A deluge of comments the last time the docket was open along with an acrimonious reaction from lawmakers spurred the agency to delay finalizing the rule until the fall of 2015.

Generics makers have lashed out at the rule’s proposal to give ANDA holders the power to update their product labels prior to FDA approval under certain circumstances. GPhA and others say such parity would vastly increase their lawsuit liability and drive up costs for the industry and prices for consumers.

The rule has been aimed in large part precisely at increasing generic liability in some drug injury lawsuits after the Supreme Court’s 2011 decision in PLIVA v. Mensing found generics makers largely immune from so-called failure-to-warn lawsuits because they are barred from changing a product label independently (Generic Line, Dec. 3, 2014). — Bryan Koenig
India High Court Puts Brakes On Sovaldi Competition — for Now

The Delhi high court late last month set aside a government order rejecting Gilead’s patent for hepatitis C treatment Sovaldi, saying the Office of Patents Designs and Trademark had made procedural errors in issuing its decision.

The ruling is a setback for generics makers hoping to cash in on Sovaldi (sofosbuvir), which retails for $1,000 per pill and $84,000 for a full, three-month treatment (Generic Line, Jan. 21).

The patent office initially rejected Gilead’s patent, siding with a challenge by Indian generics manufacturer Natco Pharma and the U.S.-based nonprofit Initiative for Medicines, Access & Knowledge.

Tahir Amin, co-founder of I-MAK, says the ruling does not refute the government’s ruling that Gilead’s product is not patent worthy; it simply means procedural problems need to be corrected in the way it reached its decision.

Simon Elliott, an attorney with Foley & Lardner, however, welcomed the ruling, saying the government’s decision to end Sovaldi’s exclusivity was poorly thought out and not based on patent law.

The court ruling gives drugmakers some assurance that India’s intellectual property policy is relatively predictable and that the law is not being rewritten on the fly to favor political constituencies, Elliott says.

Gilead declined to comment on the high court’s decision. — Jonathon Shacat

Gilead’s Sovaldi Facing Another Patent Challenge, This Time in Europe

Gilead’s pricey hepatitis C blockbuster Sovaldi is facing another international patent challenge, this time by a French nonprofit.

Médecins du Monde, or Doctors of the World, said Feb. 10 that it had filed a challenge to Sovaldi (sofosbuvir) with the European Patent Office.

While Sovaldi is an important development in hepatitis C treatment, it is not sufficiently innovative to deserve patent protection, the group claims.

The challenge mirrors one brought in India by the Initiative for Medicines, Access & Knowledge, with which MDM collaborated for the European challenge.

MDM maintains that branded Sovaldi, priced at $84,000 for a full 12-week treatment in the U.S., is far too costly and is forcing drug rationing. The group wants generic competition to drive down Sovaldi’s cost.

Gilead declined a request for comment. The company is actively fighting the decision by India’s patent office to deny one of the patents it sought for Sovaldi, and won a temporary victory when that decision was thrown out by the Delhi high court late last month on procedural grounds. — Bryan Koenig

Indian Government to Sell Low-Cost Generics

The Indian government is planning to relaunch a program that would sell hundreds of quality generic drugs at low cost under its own label, Jan Aushadhi.

The Bureau of Pharma Public Sector Undertakings of India last month began seeking bid applications from drugmakers that are interested in supplying drugs for the program. BPPI, which is part of the Department of Pharmaceuticals, will oversee quality control for drugs in the program, says K.K. Aggarwal, secretary general of the Indian Medical Association.

Up to 504 drugs, many of them on the essential medicines list, are slated to be sold through the program, which will start in July.

Last year, India’s National Pharmaceutical Pricing Authority enacted price controls on 95 essential medicines — 43 drugs, including antibacterials and diabetes treatments, in September and another 52, including treatments for cancer, pain and skin disorders, in December. — Jonathon Shacat
**Remicade Biosimilar Goes Before FDA Advisory Committee**

An FDA advisory committee will meet next month to consider Celltrion’s biosimilar version of Janssen’s Remicade.

This will be only the second advisory committee meeting on a biosimilar. Last month, the FDA’s Oncologic Drugs Advisory Committee unanimously recommended the agency approve Sandoz’s bid to produce its own version of Amgen’s Neupogen (filgrastim).

Celltrion’s proposed biosimilar for Remicade (infliximab), which was filed in August, is scheduled for discussion before the Arthritis Advisory Committee on March 17, and experts say the process may not be as easy as it was for filgrastim.

Filgrastim, which helps chemotherapy patients fight infection, had been used by hundreds of thousands of patients in Europe, which helped override any concerns raised in the review of its application (Generic Line, Jan. 21).

Though Celltrion already markets its infliximab biosimilar in dozens of countries under the name Remsima, it has far fewer patients currently using it since it is only indicated for patients with certain types of Crohn’s disease, ulcerative colitis, rheumatoid arthritis, ankylosing spondylitis, psoriatic arthritis and plaque psoriasis, according to the FDA (Generic Line, Jan. 21). — Jonathon Shacat

**Appeals Court Allows Lupin Generic Of ViiV HIV Drug, But Bars Teva**

A federal appeals court has upheld a lower court ruling that allowed Lupin to manufacture a generic of one of ViiV Healthcare’s HIV therapies, while blocking Teva’s ANDA of a related drug.

The U.S. Court of Appeals for the Federal Circuit offered no explanation for its decision Feb. 12.

Lupin may continue to market its generic version of ViiV’s Trizivir (lamivudine, abacavir and zidovudine) while Teva remains barred from marketing its generic of Epzicom (lamivudine and abacavir).

ViiV filed patent infringement lawsuits against the two ANDAs, asserting the same patent, the ‘191, for both. The cases were consolidated and, in December 2013, a U.S. District Court judge for the Delaware district ruled that Teva’s ANDA infringed on the patent while Lupin’s did not.

Under the Feb. 12 ruling, Teva is blocked from marketing a generic Epzicom until the ‘191 patent expires in March 2016.

ViiV is an independent company formed from the HIV pipelines of GlaxoSmithKline and Pfizer. The two therapies in question are both manufactured by GSK. Trizivir brought in about $55 million in sales last year, according to an SEC filing by GSK. Epzicom pulled in over $1.1 billion. — Bryan Koenig

**Teva Discloses Findings Of Likely FCPA Violations**

Israeli drugmaker Teva says it has uncovered questionable business practices at its operations in Russia, Eastern Europe, Latin America and elsewhere, in violation of the Foreign Corrupt Practices Act, the U.S. antibribery law.

Teva’s ongoing, internal investigation was spurred by an SEC probe into the firm’s practices in Latin America, according to an annual SEC filing Fed. 9.

Teva launched its investigation in 2012 with help from outside counsel, turning over the findings to U.S. authorities. The investigation also revealed that Teva affiliates under investigation by local authorities in some countries turned over inaccurate or altered information regarding marketing and promotional practices, the company said.

There’s no way of knowing what impact the violations may have, Teva warned investors, noting that U.S. authorities can hit the company with fines, as well as criminal penalties. Operations in the affected countries could also be impacted, Teva said.

The internal investigation is expected to last at least through the end of 2015, Teva said. — Bryan Koenig
Expedited Patent Reviews
Changing Drugmakers’ IP Practices

A recent system for expedited review that makes it easier for challengers to overturn patents is prompting intellectual property counsel at drug and biotech companies to rethink their game plan on how and when to challenge a patent or launch a defense.

According to a recent report by the Consero Group, 78 percent of chief IP lawyers at 41 biotech and pharma companies said the 2011 America Invents Act has changed their in-house approach to the patent process. That compares with 59 percent of chief in-house counsel who reported in 2013 that they’d changed their patent process due to AIA.

The AIA affects considerations on both sides of the pharmaceutical world, for brandmakers seeking to protect their products and generics makers trying to challenge them, says Staci Julie, head of global IP at brand and generics maker Teva.

The ramifications include the fight with patent examiners over what types of claims to pursue, with brandmakers trying to determine those claims most likely to survive an AIA challenge, Julie tells Generic Line. The law may also force brandmakers to start preparing defenses of patents even earlier because the AIA is not bound by periods of exclusivity granted to new drugs, she adds.

The attorneys Consero surveyed also overwhelmingly (68 percent) said that two of the three means of patent review covered by AIA — post-grant and inter partes — have become more complex in the wake of the law.

Inter partes review is the mode of challenge experts anticipate most drug patents will face under AIA. While pharma and biotech patents remain a relatively small subset of AIA challenges compared with electronics and computer patents, they are picking up steam and spurring brandmakers to pursue even more claims and patents with the patent office to increase the odds of surviving a review challenge.

So far this fiscal year, 8.6 percent of AIA petitions have involved biotech and pharma patents, Consero says, citing U.S. Patent and Trademark Office data. That represents a jump from 5.7 percent in early September.

It’s worth noting that pharma and biotech patents reviewed under AIA aren’t limited to drugs.

Most of the lawyers surveyed work for pharmaceutical companies, according Paul Mandell, Consero’s CEO. Of those, the majority were brandmakers, although there was some representation of generics firms, he says.

AIA reviews have earned a reputation as favoring patent challengers. Generic drugmakers increasingly are turning to them because they have no assumption of validity, unlike federal district courts, and tend to be faster and cheaper than the traditional Hatch-Waxman process (Generic Line, Aug. 13, 2014).

The Consero report is based on a November survey cosponsored by CDS Legal and CPA Global.