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Research

PATENT ISSUES IN ANDA APPROVAL

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Abstract

The study provides information on the laws governing patents, the revisions made under the Hatch Waxman Act, and the application procedure for US patents. The case 01, involving an ANDA violation brought about by an unlawful venue, involves Valeant Pharmaceuticals and Mylan Laboratories. In the Hatch Waxman instances, the location of the ANDA submission is irrelevant; anybody can submit an ANDA from anywhere in the world. The court took notice of this observation, dismissed Valeant Pharmaceuticals' argument, and authorised Mylan Laboratories to submit an ANDA. Thus, the case gave us the impression that the location of an ANDA filing is irrelevant.

The case 02 involving ANDA infringement between Merck Sharp & Dohme Corp. and Amneal Pharmaceuticals. The MFM patent is held by the Merck corporation, and when Amneal wishes to submit an ANDA for MFM, Merck claims that this is an act of infringement. Merck testified in court that three peak analyses were required to determine the amount of MFM present in Amneal's product. One peak analysis is also adequate to diagnose MFM, Amneal testified in court. Then the court instructed both firms to form an expert committee, conduct the study, and submit the report. The court dismissed Merck Sharp & Dohme Corp.'s argument after examining the report and concluding that one peak analysis is adequate and that Amneal's ANDA would not violate any patents.

Keywords: Patent, ANDA, Infringement, Case study, Hatch Waxman act.

INTRODUCTION

Patent: The US Patent and Trademark Office has the rights to grant inventor a property right when it issues a patent for an innovation. When the applicant pays maintenance costs, the life of a new patent

which is 20 years from the date the patent application which was submitted in the United States or, in other circumstances, from the date an earlier related application was filed. Only in the United States, and its territories, and its jurisdiction the U.S. Patent grants are valid. Patent term changes or extensions may be possible in some situations.

Patent consist of three types: -

1) Utility patent is granted to someone who invents or discovers any new and useful process, machine, article of production, or matter composition, or any new and useful improvement.

2) Design patent is granted to someone who creates a new, original, and ornamental design for a manufactured item.

3) Plant patents is granted to someone who invents or discovers a different and novel variety of plant and asexually reproduces it.

Hatch Waxman Act framework [2,3]

A business can apply to the FDA for permission to market a generic drug prior to the expiration of patents connected to the brand-name drug that the generic intends to imitate under the Drug Price Competition and Patent Term Restoration Act of 1984, often known as the Hatch-Waxman Amendments.

When the legal proceeding takes place against the patent the applicant who has submitted paragraph IV certification must inform the brand product sponsor and any other patent owners about the submission of ANDA and patent challenge.

If a branded product sponsor or patent owner brings an infringement action against a generic drug registrant within 45 days of ANDA's notice, FDA approval of the generic drug Market entry is usually delayed for 30 months ,except where a patent expires, is found to be invalid, or is not infringed before that time.

Prior to a generic competitor's application being granted and the drug being put on the market, the brand product sponsor and patent holder are given a set length of time to legally claim their patent rights. This 30-month deferral is also known as the "30-month stay."

As part of ongoing efforts to assist generic drug applicants in preparing their applications, the Food and Drug Administration (FDA or the Agency) frequently publishes data pertaining to the 180-day exclusivity for drug candidates provided under section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

The majority of the medications on this list have been given a "paragraph IV" (PIV) patent certificate and have been the subject of one or more comprehensive abbreviated new drug applications (ANDAs) to the FDA.

USA Patent Filing Procedure

A) Determine which type of intellectual property protection you need: You might require a patent, trademark, copyright, marketing strategy, trade secret, or some combination of these to safeguard your creation. Find out if you actually require a patent or another type of intellectual property protection before you start drafting a patent application.

B) Understand if your invention is patentable: If the invention is already public, you cannot obtain a patent. Therefore, a search of all prior disclosures to the public should be done. It should also be done a search of printed publications and foreign patents.

C) Get ready to Apply: When choosing the kind of patent, you must develop an application plan and may seek the advice of a qualified legal counsel. To file a patent application, you must pay a minimum cost as well as extra charges including a search fee, an inspection fee, and an issue fee. Depending on your application, excess claims fees can also be applicable. While inventors are free to create their own applications, submit them to the USPTO, and manage the processes themselves, they may encounter significant difficulties if they are unfamiliar with these issues or have not thoroughly studied them. Even while people who are not experienced in this field can often obtain patents, there is no guarantee that the patent would appropriately protect the specific idea.

D) Prepare and submit your initial Application: Utility patent applications, provisional applications, and a number of other office communications can all be sent electronically to the USPTO via EFS-Web. EFS-Web is the name of the patent application filing system used by the USPTO. Make sure you have read the published specifications and claims before signing your application. Once the application has been submitted to the USPTO, revisions cannot be made to it.

E)Work with the Advisor: The USPTO will notify you of the inaccuracies in a formal letter known as an Office Action if the application form is incomplete. After that, you'll have time to complete and submit your application (a surcharge may be required). If the omission is not fixed in a specific length of time, the application will be returned or discarded. A handling charge as specified in the fee schedule will be deducted from any filing fees that were paid.

The examiner will provide an explanation if they find that your application does not meet the standards (s). You will have the ability to address the examiner's concerns or make modifications. The application will be denied if the applicant does not answer to the examiner's request within the allotted period. You can appeal the application's rejection to the Patent Trial and Appeal Board if it is turned down twice (PTAB)

F)Receive the approval: The applicant will be informed of the decision when the examiner determines that it is correct and meets the standards. After the issue fee and any necessary publication fee have been received at the office, utility and reissue patents are granted in about four weeks. An application is assigned a patent number and issue date once the USPTO receives and processes the issue fee, and an Issue Notification is sent.

On the day a patent is issued, a letter announcing the award is sent. It contains any allusions to earlier patents, the inventor(s)' names, the specification, and the claims (to name a few). It is exquisitely presented with a gold seal on the front and a red ribbon. Order certified documents with the USPTO ribbon, seal, and certifying officer's signature.

G)Maintain the patent: After 4, 8, and 12 years from the issue date, utility and reissue utility patents need maintenance fees to stay in force. The patent will expire if the maintenance fee and any applicable premium are not paid on time. Except for things sealed under secrecy orders or related to unpublished patent applications, the records and associated paperwork are not secret after the information is recorded and are available for public examination.

MYLAN PHARMACEUTICALS INC, MYLAN LABORATORIES LTD

A) Background: The parties' places of incorporation are significant since the main issue on appeal is one of venue. Significantly less, Valeant Pharmaceuticals Ireland and Valeant Pharmaceuticals North America LLC Kaken Pharmaceuticals Co., Ltd., Dow Pharmaceutical Sciences, Inc. ("Dow"), and Valeant Pharmaceuticals International, Inc.("plaintiffs") are located all throughout the world, including Japan, Delaware and Ireland. Mylan Pharmaceuticals Inc. ("MPI"), a West Virginia corporation with its main office in Morgantown, Pennsylvania-based Mylan Inc., a Pennsylvania corporation with its main office in Canonsburg, and Mylan Laboratories Ltd. are the defendants.

Jublia a brand-name medication, was given FDA approval on June 6, 2014, and Dow now holds the New Drug Application No. 203567 for it. Onychomycosis, a fungal infection of the toenails, is treated with Jublia. Efinaconazole is the substance that makes Jublia effective. There are nine patents for Jublia included in the Orange Book.

In order to obtain authorization to market a less expensive version of Jublia, a generic drug company by the name of MPI submitted an ANDA in June 2018. The MPI forwarded the ANDA to the FDA in White Oak, Maryland, from its corporate headquarters in West Virginia. The Orange-Book mentioned patents for Jublia were deemed invalid, unenforceable, or not to be violated by the ANDA product under Paragraph IV of the ANDA. In August 2018, MPI notified Valeant of the filing of an ANDA. On September 26, 2018, Valeant filed a lawsuit against Mylan in the District of New Jersey, alleging that Mylan violated Dow's Orange Book patents under the Hatch-Waxman Act and requesting an assessment of the validity of the patents.

The defendant does business in New Jersey and he is registered to do that business. According to information, New Jersey and other locations will be the aim of MPI's generic medication, which the company requested FDA

approval for. The ANDA filings made by [MPI] are official actions that invariably show intentions to commercialise the suggested generic medications. Following FDA approval, MPI wants to market and sell its generic products in New Jersey.

In accordance with Federal Rule of Civil Procedure 12(b), Mylan filed a move in January 2019 to dismiss Valeant's lawsuit against MPI and Mylan Inc. in the New Jersey District Court for improper venue (3). The majority of the allegations in Valeant's case regarding venue were not disputed by Mylan. Instead, it argued that the ANDA's lone alleged act of infringement did not occur in New Jersey and that Mylan does not have regular and established places of business there, hence the venue was improper under 1400(b).

In response, Valeant argued that it is excessively restrictive to define "an act of infringement" under 1400(b) as the act of filing the ANDA. Mylan claimed that because MPI was the only business named in the lawsuit as having submitted the ANDA, MPI was the only corporation that qualified to be sued under the Hatch-Waxman Act. According to Valeant, the submission of the ANDA is not solely the responsibility of the company that submits the final ANDA to the FDA.

The court agreed to Mylan's request to dismiss the complaint against all defendants due to improper venue in August 2019. The court determined that because the ANDA was submitted from West Virginia, the location was appropriate.

B)Analysis: In order to determine whether venue is suitable in a district other than the one in which a defendant is incorporated, a court must consider, among other things, "where the defendant has committed acts of infringement." The Hatch-Waxman Act defines submitting [an ANDA] for a drug with a patent claim or a patent for its use as "an act of infringement" if the intent is to obtain permission to engage in the commercial manufacture, use, or sale of the drug with the patent claim or the patent for its use prior to the patent's expiration.

According to 35 U.S.C. 271, the patent holder may file a case for infringement after the act of infringement took place. 6 The discussion then turns to whether any upcoming distribution of the identified generic will violate a valid patent claim. A court must determine that the defendant "has a regular and established place of business" in the district before it may rule that the site is appropriate. 28 U.S.C. § 1400 (b) (b) (b). Additionally, the court has not taken into account whether Mylan operates a regular, well-equipped place of business in New Jersey. As a result, we put off solving the problem.

The FDA's ability to approve the manufacture and sale of the generic product mentioned in the ANDA is postponed for thirty months if the patent holder filesan action within 45 days of the ANDA's submission. This allows the litigation to start before these actions take occur. Determining whether the act of infringement described in 1400(b) happens solely when an ANDA-filer files its ANDA with the FDA or anyplace future distribution of the generic is anticipated is necessary in this appeal.

AIM AND OBJECTIVE

- Evaluating the existing regulatory environment for ANDAs (abbreviated new drug applications) in order to comprehend the subtleties and intricacies of the approval procedure for medications.

- Determining the difficulties in medication producers encounter when putting up and submitting ANDAs to authorities like the FDA (Food and medication Administration).

- Evaluating in medication makers' adherence to legal requirements and industry standards and pinpointing areas in need of improvement.

DISCUSSION

Patents are issued by the United States Patent and Trademark Office (USPTO) and each patent represents a property right in an invention that allows the inventor to enjoy market exclusivity in exchange for public disclosure. Generally, a patent owner can expect a 20-year patent term beginning on the date of filing an application for a pharmaceutical drug. However, the length of the patent term can vary based on the type of application and when the application was filed. For example, utility patents filed on or after June 8, 1995 will enjoy a 20 year term from the earliest U.S. application, whereas those filed before this date may have 20 years from filing or 17 years from

issuance. Further, plant patents and design patents have 14 years from the date of issuance In each case, the patent term gives an exclusive time frame on the market in which no other companies can make, use, or sell the branded drug product. Once the patent term expires, generic competitors are free to enter the market and compete with the brand company, which substantially restricts the amount of profits the brand company realizes. This is especially important in the context of the pharmaceutical industry because studies have estimated the costs of researching, developing, and introducing new drugs to be close to $1 billion—an estimate that may be conservative according to the Pharmaceutical Research and Manufacturers Association. As a consequence, market exclusivity through patent protection is essential for a brand company to recoup its investment and to be incentivized to innovate to bring new drugs to market in the first place.

Patent terms continue to be a growing concern for large pharmaceutical companies due to the high costs and the unique nature and length of the drug development process. The Federal Food, Drug, and Cosmetic Act (FDCA) delegates authority to the Food and Drug Administration (FDA) to assess new drug products for safety and efficacy before the drugs can be introduced on the U.S. market. The FDA determines whether a product should be approved by analyzing a New Drug Application (NDA), which can take up to two years to complete. However, in order to reach the point of submission of an NDA, a drug company must undergo an arduous amount of work. First, the company must engage in discovery, which involves identifying molecules and manipulating their structure to yield a potential drug treatment. Second, the company must conduct preclinical trials to establish a base level of legitimacy so that the FDA can determine whether the drug should move to the clinical stage. Preclinical trials can run anywhere from three to six years depending on the molecules subject to testing. Next, the drug company must submit an Investigational New Drug (IND) application to the FDA with the results of its preclinical trials, details about its new drug, and details about its subsequent plans to conduct clinical trials, and the FDA will either approve or deny its request to proceed to the clinical stage. Clinical trials usually take around seven years and include four stages to test the drug's dose and safety in humans, effectiveness and side effects on large groups, and overall risk-benefit in a larger population. The FDA reviews all NDAs for "a lack of substantial evidence that the drug will have the effect it purports or is represented to have." At the final stages of the process, up to fifteen years may have passed, and a company's patent term—which has been running since the time of filing—is severely eroded.

History

Prior to the introduction of the Hatch Waxman Act in 1984, the pharmaceutical marketplace was largely governed by federal patent laws and the FDCA. The requirements under the FDCA included long and expensive clinical trials and large wait times for approval. This was especially burdensome for generic manufacturers, who had to duplicate the clinical processes that brand companies underwent in order to receive approval from the FDA, without the same ability charge a premium for a drug's novelty. These challenges led to an environment where approximately 150 drugs on the market were "off-patent" with no low-cost generic equivalent to replace them. Drugs in this group included some that the public are highly familiar with today, such as Valium and Motrin.

The Court of Appeals for the Federal Circuit's decision in Roche Products v. Bolar Pharmaceutical Co. only exacerbated the issues plaguing generic market entry. Prior to Roche, generic companies would conduct experiments with brand-name drugs before the brand's patent term expired in order to gather data for application to the FDA. However, the Court in Roche refused to expand the "experimental use" defense and held that a generic company would infringe on a brand's patent where there were "unlicensed experiments conducted with a view to the adaption of the patented invention to the experimenter's business." As Bolar argued, this holding had the effect of extending brand company monopolies under the FDCA "for an indefinite and substantial period of time while the FDA considered whether to grant a pre-marketing clearance" to generic companies. If a generic company failed to gain clearance, it was required to wait until the brand drug's patent expiry to start the test trials required for approval.

HATCH-WAXMAN AND ITS IMPLICATIONS ON THE DRUG PATENT PROBLEM

Congress enacted Hatch-Waxman to address all of the pre-1984 issues that plagued the pharmaceutical market due to lack of generic entry and shrinking exclusivity periods for brand-name drug manufacturers.

Section II will give an overview of the Hatch-Waxman Act and its purpose. Additionally, it will examine some of the unintended consequences of the Hatch-Waxman Act in the pharmaceutical space in order to create a framework for understanding the challenges facing the pharmaceutical market today.

Background and Purpose of the Hatch-Waxman Act

The Court of Appeals for the District of Columbia Circuit described the Hatch-Waxman Act, formally known as the Drug Price Competition and Patent Term Restoration Act, as a "product of compromise," noting that it "emerged from Congress' efforts to balance two conflicting policy objectives: to induce name-brand pharmaceutical firms to make the investments necessary to research and develop new drug products, while simultaneously enabling competitors to bring cheaper, generic copies of those drugs to market." Put simply, the Act sought to:

Expedite the availability of less costly generic drugs by permitting FDA to approve applications to market generic versions of brand-name drugs without repeating the research done to prove them safe and effective. At the same time, the brand-name companies can apply for up to five years additional patent protection for the new medicines they developed to make up for time lost while their products were going through FDA's approval process.

As the costs of branded drugs and new drug development rise, bringing generic drugs to market in a timely fashion has been, and continues to be, an issue that pervades the pharmaceutical industry and the health care system as a public policy matter. The FDA defines a generic drug as "a medication created to be the same as an already marketed brand-name drug in dosage form, safety, strength, route of administration, quality, performance characteristics, and intended use," before noting that the goal for drug similarity is to "demonstrate bioequivalence, which means that a generic medicine works in the same way and provides the same clinical benefit as its brand-name version."40 Because pharmaceutical expenditures increased rapidly, concern grew among consumers, healthcare providers, employers, and the government.

Hatch-Waxman has been largely successful in remedying this situation by eliminating some of the hurdles that generics have to overcome and streamlining their path to market.

Many would say that the Act is responsible for the modern generic drug industry by providing a safe harbor for generic companies and empowering them to file Abbreviated New Drug Applications (ANDA). The safe harbor gives companies immunity from infringement "on account of making, using, offering to sell, or selling within the United States" a product covered by a patent as long as it is done for the purpose of submitting "information under a Federal law which regulates the . . . sale of drugs." Thus, to combat the issue of the de facto patent term that brand companies enjoyed while generics waited to start a premarket approval process with the FDA, the safe harbor empowers generics to start the approval process during the patent term in anticipation of entry immediately upon patent expiration.

The ANDA allowed a generic manufacturer to simply establish sameness and bioequivalence, meaning that the active ingredients, dosage, strength, and route of administration match the brand drug and the rate and extent of the absorption of the active ingredient are not significantly different. Rather than repeating the entire NDA process, which includes long pre-clinical and clinical trials, ample time, and steep costs, the generic drug may simply file the ANDA with the appropriate FDA requirements including Chemistry, Manufacturing and Controls (CMC).

Although the bioequivalence pathway expedites the path to market for the generic drug companies, these contenders still had to consider the patents covering the brand-name drug in order to get FDA approval because the FDA does not approve generic drugs which infringe on a brand drug's patent. To provide information about the number and duration of patents on any given brand-name drug, the Hatch-Waxman Act and the FDA require brand manufacturers to submit the patent number and codes of their patents to be published in the Approved Drug Products with Therapeutic Equivalence Evaluations publication, or the "Orange Book," for reference by generic competitors. Not only does this provide easy access for generic companies, but it also allows innovator companies to "protect and enforce" their patents. Thus, the generic company seeking approval through an ANDA must certify to the FDA "to the best of [its] knowledge" that the brand drug to which its application pertains either: 1) does not have a filed patent; 2) has an expired patent; 3) will be expired when the generic intends to enter the market; or 4) that the patent covering the brand drug is invalid or that infringement will not follow from "manufacture, use, or sale" of the new generic drug.

The most controversy has arisen around the so-called "Paragraph IV certification" due to disagreements between generic and brand manufacturers surrounding validity or no infringement of the patent in question. Once the generic company establishes its "opinion" that a patent on the innovator drug is invalid or will not be infringed, the legislation requires the generic company give the patent owner detailed notice of the opinion and of the intent to move forward with approval and commercialization of the generic. The giving of notice triggers constructive

infringement and gives the brand the ability to file a lawsuit for patent infringement within forty-five days to trigger a thirty-month stay on approval of the generic. However, "the patent or NDA holder does not forfeit its rights to sue for patent infringement under the Patent Act if it does not bring suit within this forty-five-day window. Rather, under the Hatch-Waxman Act, the patent or NDA holder loses only its rights to obtain the stay on FDA approval." The stay gives time for litigation to determine whether a patent is valid or not before a generic enters the market.61 Further, as an incentive for generic companies to bear the costs of litigation and challenge the brand's patent under Paragraph IV, Hatch-Waxman grants a 180-day market exclusivity to the first generic company to file an ANDA with this certification. The addition of the ANDA pathway and the Paragraph IV certification have had the effect of "[d]eputizing generic manufacturers to break through the thicket of secondary patents surrounding the original patented molecule." These pathways sought to serve the important public policy goal of invalidating weak patents on peripheral aspects of a drug that would extend its patent life, without significant merit, in order to bring low cost drugs to market quickly.

Brand companies also reap benefits through competition-free periods and the Patent Term Restoration section of the Hatch-Waxman Act. First, the Act assures the brand manufacturers the ability to enjoy five years of market exclusivity to advertise and sell their new drugs, as well as recoup the massive expenditures from the development process. Congress achieved this goal by mandating that no ANDAs would be subject to FDA review until the end of the five year window afforded to the innovator drug company. Brands gained at least five years of exclusivity regardless of their drug's patent timeline. To be considered a truly "new chemical entity" under this provision of the act, a drug must "contain[ ] no active moiety that has been approved by FDA" in any other NDA submitted under section 505(b) of the Federal Food, Drug and Cos-metic Act. Secondly, the Act provides that drug manufacturers may submit applications "for a drug, which includes an active ingredient . . . that has been approved in another application . . . if such application contain[ed] reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant." If these applications are approved, the FDA is precluded from approving any ANDA on that drug "before the expiration of three years from the date of the approval of the application." In other words, a brand company which makes changes to its marketed product by developing a new dosage, indication, or other form of the drug will be afforded three years of additional market exclusivity for that particular new indication in which no generic entrants may gain approval. Lastly, Hatch-Waxman provides brand companies with longer patent terms to make up for lost time in the FDA process and clinical trials for any "patent which claim[s] a product, a method of using a product, or a method of manufacturing a product," so long as the patent hasn't already been extended, and the term of the patent hasn't expired before the application.74 Brand companies are reimbursed in patent term for each day that the USPTO exceeds deadlines for prosecuting the patent, and for each day beyond three years from the day of filing that their patent sits awaiting approval.

Continuation Application Practice

Some observers believe that the practice of patent evergreening is promoted by the availability of "continuation applications."36 Stated generally, a continuation application is one that has been "refiled" at the USPTO. Among other benefits, continuation patent applications allow inventors to extend the period of examination at the USPTO in order to amend existing claims or submit new ones.37

The use of continuation applications may be illustrated by a straightforward example. Suppose that an inventor files a patent application on July 1, 2002. After the USPTO examiner subsequently issues a "final rejection" of that application, the inventor files a continuation application on August 1, 2004. The continuation application includes the same information as the 2002 application. By filing it, the inventor may continue to assert to the USPTO that a patent should issue on that invention. If the USPTO approves the continuation application, it will issue as a patent that expires on July 1, 2022—twenty years from the date of filing of the original or "parent" application.

It should be appreciated that an applicant may file a continuation application even though the "parent" application has resulted in an issued patent itself. Even in circumstances where the USPTO examiner has allowed all of the claims of a patent application to issue, the inventor may nonetheless file a continuation application. He may do so in order to obtain broader claims, to obtain claims that more closely track his competitor's products, or for any other reason.

Continuation practice has proven controversial, in part because of its potential role in patent evergreening. Christopher Holman, a member of the law faculty of the University of MissouriKansas City, explains that "pharmaceutical companies have traditionally employed continuation practice to evergreen their proprietary

position.... ”38 On the other hand, continuation applications may allow innovative firms to procure patent claims that relate to the products that they will ultimately market. For example, a pharmaceutical firm may file a patent application incorporating claims directed towards a broad category of compounds. At the time of the initial filing, however, that firm may not have conducted the extensive testing and research that is often needed to identify the particular member of that category that will be brought to market. Under current law, once that particular compound has been identified, the firm may file a continuation application specifically claiming that compound.39

To the extent discussion over patent evergreening focuses upon the pharmaceutical industry, legislation commonly known as the Hatch-Waxman Act bears mention.40 The Hatch-Waxman Act governs the procedures through which a potential generic drug manufacturer may obtain FDA marketing approval on a drug that has been patented by another. Some observers believe that the Hatch-Waxman Act provided additional incentives to evergreen.41 Legislative amendments introduced in 2003 may have mitigated this effect, however.42

The Hatch-Waxman Act requires brand-name drug companies to identify certain patents that pertain to their pharmaceutical products.43 The FDA provides this information to the public in a publication commonly known as the “Orange Book.”44 A generic firm that wishes to sell its own version of a brand-name pharmaceutical must account for any patents that are listed in the Orange Book when it files its Abbreviated New Drug Application, or ANDA. If a patent is listed, and the generic firm does not wish to wait until it has expired to market its product, the generic firm must state its position as to why that patent is invalid or not infringed by the generic product.45 Under the statute, such a “paragraph IV certification” is considered an act of patent infringement.46 The brand-name drug company may then commence litigation against the generic firm.

If the brand-name drug company chooses to litigate, then the Hatch-Waxman Act prevents the FDA from granting marketing approval to the generic firm for 30 months.47 This “30-month stay” is intended to provide a period of time for the parties to resolve their intellectual property dispute before the generic drug enters the market.48 The 30-month period may be modified in certain situations. For example, if the generic firm prevails in the litigation before the expiration of 30 months, the statutory stay will be lifted.49

Prior to 2003 amendments to the Hatch-Waxman Act, brand-name firms were at times able to obtain multiple 30-month stays. They could do so by obtaining additional patents prior to FDA approval of the generic firm’s marketing application. Once the patent was published in the Orange Book, the generic firm was then required to provide a new certification—potentially resulting in a new 30-month stay.50 Shashank Upadhye, Vice President of Apotex, Inc., a generic drug company, explained that this system:

resulted in “evergreening” patents that cause new and repetitive 30-month stays. [In one litigation] Apotex was subject to five different 30-month stays. The second stay kicked in some 17 months into the first one and in the end, the total time of the stays was about 65 months. Under the old regime, a well-planned evergreen would allow a newly issued patent to list in the Orange Book right around Month 30 of the first stay so that a new lawsuit would generate a new 30-month stay.51

Out of recognition of this issue, 2003 amendments to the Hatch-Waxman Act stipulate that patent owners may obtain only a single 30-month stay.52 Although patents that issue after litigation has commenced may be listed in the Orange Book, and are then subject to a certification by the generic firm, they no longer effectively prolong the statutory stay period. As explained by Stephanie Greene, a member of the faculty of Boston College:

This change in the law ends the problem of successive thirty-month stays that may occur when innovators list patents after an ANDA is filed. The new law allows a thirty-month stay only for infringement suits filed regarding patents listed in the Orange Book at the time the ANDA was filed.53

Of course, even though follow-on patents no longer serve as the basis for additional 30-month stays, they remain enforceable proprietary rights against generic firms. As a result, the 2003 legislative amendments may not have eliminated incentives to evergreen.

Debate Over Evergreening

Assertions that innovative firms, and particularly brand-name pharmaceutical companies, have engaged in evergreening practices have inspired a lively policy discussion. As explained by Robin Feldman, a member of the faculty of the University of California at Hastings College of the Law, “[s]cholars have expressed concern over patent holders’ attempts to refresh their patents by patenting updated versions, alternative delivery methods, or other

variations of the original product."54 Other experts believe that the patent system appropriately allows for patents to issue on improvement technologies. This report next reviews this debate.

Critics assert that evergreening effectively extends the term of exclusivity that the patent holder obtains.55 Congress has established a term of patent protection that ordinarily extends for a maximum of 20 years from the date of filing.56 However, obtaining multiple patents that effectively cover the same marketed product may effectively extend the aggregate period of patent protection that applies to that product. According to some critics, evergreening is an abusive practice that conflicts with congressional judgment concerning the appropriate duration of patent rights.57

Critics further argue that evergreening impedes the introduction of generic medications and has a negative effect upon public health in the United States.58 Aaron Kesselheim, instructor in medicine at Harvard Medical School, asserts that "[l]oose interpretation of patent laws has permitted patent evergreening, where overly broad or otherwise inappropriate patents have been granted on peripheral aspects of pharmaceutical products, leading to extensions in market exclusivity."59

Other observers further state or imply that evergreening leads to patents that relate to trivial advances or simple variations of known technologies. As explained by patent lawyer Janet Gongola, "generics allege that innovators 'game' the system by filing patent applications for peripheral aspects of inventions such as a drug's color, label, or indication."60 Such patents are said to be of low quality and doubtful validity. Yet they may "increase the infringement minefield that generics must navigate when bringing a product to market."61

Although the practice of evergreening has attracted considerable criticism, many observers believe these critiques are misplaced. Indeed, some consider the term "evergreening" to be inappropriate, and even derogatory in nature.62 They explain that the patent laws promote both original and improvement inventions, that most technological advance occurs incrementally, that improvements may be developed by competitors of the original innovator, that many improvement patents cover advances that are of considerable medical significance, and that patents on improvements may not impede the ability of competitors to market products that were covered by expired patents on original technologies. This report reviews these assertions in turn.

First, these observers note that the patent system allows patents to be obtained on both original and improvement technologies. As a result, the patent law encourages the development of both kinds of inventions. They also explain that under the Patent Act, each invention must fulfill a number of requirements in order to be subject to patent protection. Among these criteria are that the invention must be novel,63 nonobvious,64 and fully disclosed in an application submitted to the USPTO.65 These statutory standards are applied neutrally to each kind of invention, whether it may be characterized as an "original" (such as a medication that has never been previously approved by the FDA) or an "improvement" (such as a new formulation of a known medication).

Patent law experts believe that these legal standards appropriately recognize that most technological progress occurs on an incremental basis. Attorney Ivar Kaardal explains that "most patents ... are granted for incremental, or even insignificant, technological advances."66 Some observers believe that, on an individual or collective basis, patents on more marginal improvements may provide the public with valuable sources of technological information. As Jeanne C. Fromer, a member of the Fordham Law School faculty, states:

while there are a rising number of patents for incremental technical advances, which individually might not be commercially or informationally valuable, the collectivity of incremental advances provides essential information for further innovation in many areas....

Some commentators also believe the critique that many "evergreen" patents represent trivial variations of earlier technologies is misplaced. They assert that many patented improvements provide significant practical benefits. For example, a new formulation may make a known medication easier to use, leading to greater patient compliance, or cause fewer side effects.

Observers also note that the developer of the "original" product is not always the same entity as the developer of "improvement" technologies. Sometimes competitors of the "original" patent proprietor, including generic drug companies, develop and patent the improvements.69 The ability of any innovator to obtain a patent is said to encourage competition among different firms, both in innovation and in the marketplace.

Industry experts further observe that patents on improvement inventions may not block competitors from marketing competing products that were covered by patents that have expired. In this respect, it should be appreciated that the scope of protection provided by a particular patent varies in accordance with the degree of technological advance provided by the patented invention. In particular, a patent that claims a new active ingredient for use in a pharmaceutical typically provides more robust proprietary rights than improvement patents.

For example, suppose that a brand-name pharmaceutical firm develops and patents a new medication. Several years later, the same firm develops and patents an extended-release formulation version of the same drug. At such time as the first patent expires, generic drug companies will be able to sell the original formulation of that pharmaceutical. The marketplace will ultimately decide whether the higher costs associated with the extended-release formulation are worthwhile expenditures.

In addition, some experts believe that recent changes to patent law rules may have limited evergreening strategies. One of these changes concerns the calculation of a patent's term. From 1870 to 1995, the maximum term of a U.S. patent was 17 years from the date it issued. U.S. membership in the World Trade Organization (WTO) led to a change in this durational scheme. For patents based upon applications filed on or after June 8, 1995, the maximum term is instead set as 20 years from the date the patent application is filed.74 Although the life of a patent is now measured from the filing date, an inventor gains no enforceable rights merely by filing a patent application. Those rights accrue only if and when the USPTO allows the patent to issue.

Some observers contend that this change in patent term has to some extent discouraged evergreening, at least through the use of continuation practice. The reason is that any patent that issues from a continuation application now expires at the same time as the original application— namely, 20 years from the filing date of the original application. As explained by attorney Natalie M. Derzko, under the previous system of calculating patent term:

later-filed patent applications relating to earlier filed ones could have been used in certain instances to extend protection over related subject matter beyond the initial 17-year term of a first patent.... Yet the term of all patents now runs 20 years from the first U.S. filing date. Consequently, any such improvement patent arising from a patent application related to an earlier-filed U.S. application would expire on the same date as any original patent issuing from the earlier-filed application. This means that the incentives to "evergreen patents" illegitimately have been significantly curtailed by these developments as to the patent term.

It should be appreciated, however, that patents that result from original filings, rather than continuation applications, continue to enjoy a term of 20 years based upon their own filing date. For example, suppose that a brand-name pharmaceutical firm files a patent application claiming an active ingredient in 2003, resulting in a patent that expires in 2023. In 2008, the same firm files a second, original patent application claiming an extended release formulation of that active ingredient. If that second patent issues, it will not expire until 2028. As a result, strategies that some observers characterize as evergreening remain viable despite statutory changes to the patent term.

Another notable development was the 2007 opinion of the U.S. Supreme Court in KSR International Co. v. Teleflex Inc. The KSR opinion addresses one of the fundamental requirements for obtaining a patent, the standard of nonobviousness. Under this standard, "[a] patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious ... to a person having ordinary skill in the art.... " Many observers believe that the KSR opinion raised the standard of nonobviousness, making it harder to obtain a patent. If this view is accurate, evergreening may become a less viable tactic because patents to improvement inventions may be more difficult to procure from the USPTO.

Congressional Issues and Options

If Congress decides that patent evergreening does not present a significant issue, then no action need be taken. Should Congress choose to address the issue of evergreening, however, a number of options exist. First, some observers believe that the broad ability to file continuation applications encourages evergreening practices. The USPTO recently promulgated controversial rules that would have limited the availability of continuation applications. A ruling of the Court of Appeals held that those rules were invalid because they exceeded the USPTO's authority to regulate, however. Although litigation concerning the USPTO continuation rules remains ongoing at the time this report issued, Congress may wish to consider whether current statutory provisions concerning continuation practice are appropriate.

Second, no provision of the U.S. Patent Act is specifically directed towards evergreening issues.84 In this respect, legislative developments in other nations might also be of interest. Recent amendments to the Patent Law of India were introduced arguably in order to address concerns over evergreening. Section 3(d) of that statute provides:

The following are not inventions within the meaning of this Act:

[T]he mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant. Explanation—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be same substance, unless they differ significantly in properties with regard to efficacy.

As explained by Janice M. Mueller, a member of the law faculty of the University of Pittsburgh, "[t]his express and detailed statutory presumption against patentability of derivatives, unique among the world's patent regimes, reflects a strong resentment towards ever-greening of pharmaceutical patents." However, some commentators have expressed concern that the Indian patent statute may violate obligations established by the World Trade Organization (WTO)—in particular, its requirement that "patents shall be available and patent rights enjoyable without discrimination as ... the field of technology.... "

More generalized reform of the patent system presents a third possibility for dealing with concerns over evergreening. Persistent concerns have been voiced that certain patents upon improvement technologies are of poor quality and doubtful validity.88 Effective rules that would allow the USPTO to issue high quality patents, as well as procedural and substantive rules that would efficiently resolve disputes with respect to granted patents, may allay some of these concerns. Current bills before the 111th Congress would potentially introduce a broad range of reforms in an effort to improve the patent system, and would perhaps respond to criticisms of evergreening practices.

The research explores the continuing obligations of generic medicine makers to guarantee the safety and effectiveness of their medications in real-world contexts, which are important to the ANDA process and post-approval promises. Anda contributions are made more complicated by international factors and globalization.

With an emphasis on the need to navigate varied foreign regulatory frameworks and harmonize regulatory methods, the paper provides a critical assessment of the advantages and disadvantages of ANDA globalization. When ANDAs are approved, two important things happen: patient access and affordability. The research delves into the effects of ANDAs on medication prices, how competition drives down prices, and the larger public health consequences. To better understand the social effect of generic medication approvals, it is important to understand how ANDAs affect healthcare costs and patient outcomes. This paper provides an in-depth analysis of ANDA filings, highlighting the scientific, legal, ethical, and global aspects of fulfilling regulatory obligations. This study adds to the continuing conversation about how to regulate generic drugs and their central role in making healthcare more accessible and affordable by analyzing the ANDA process and pharmaceutical companies' tactics.

The ANDA submission procedure is fraught with difficulty because to factors outside the realm of science, such as legal and regulatory concerns. When making generic versions of a medicine, companies must deal with the innovator's patents and other forms of intellectual property. To provide a system for the resolution of conflicts between makers of brand-name and generic pharmaceuticals, the HatchWaxman Act has provisions for patent certification as well as litigation. Pharmaceutical businesses must carefully consider these legal factors in order to develop successful strategies for ANDA applications while protecting intellectual property rights. In addition, the rules and expectations for ANDA filings are constantly changing by regulatory authorities like the FDA. It is critical for pharmaceutical firms to be updated on these changes if they want to get clearance for generic pharmaceuticals. A proactive and flexible strategy is needed to ensure compliance with ever-changing regulatory standards. In order to promote a culture of continual improvement in the ANDA filing process, this critical research investigates how organizations might devise ways to foresee and meet changing regulatory requirements. Broader issues of quality control, production methods, and obligations after approval join those concerning bioequivalence, IP, and regulatory dynamics. Companies producing generic medications must follow Current Good Manufacturing Practices (cGMP) to guarantee the uniformity, accuracy, and safety of their wares. In order to successfully submit ANDAs, it is vital to have a thorough understanding of cGMP regulations and to implement strong quality assurance systems.

Also, pharmaceutical businesses need to be on high alert all the time because of postapproval obligations including postmarketing monitoring and reporting. firms must remain dedicated to pharmacovigilance in order to monitor and report adverse occurrences linked to generic medications. This crucial research will examine how firms might proactively meet post-approval obligations. The complexity of ANDA filings is increased by the fact that the pharmaceutical business is constantly changing and taking global concerns into account. In order to sell generic medications on a global scale, companies need to understand the different regulatory frameworks in each area and adjust their strategy accordingly. Exploring how firms might simplify worldwide ANDA filings while assuring compliance with varied regulatory norms, this crucial research will dig into the problems and possibilities posed by the globalization of generic drug development. This research lays the groundwork for a thorough analysis of ANDA filings and approaches to fulfilling regulatory obligations. A multipronged strategy is needed to tackle the ever-changing scientific, legal, and regulatory hurdles in the pharmaceutical industry. Pharmaceutical firms navigate the difficult route of ANDA filings with the help of this research, which attempts to give significant insights by critically assessing the intricacies of bioequivalence, intellectual property, regulatory dynamics, quality assurance, and international concerns. We will go further into each of these aspects in the sections that follow, providing a more detailed picture of the important elements impacting the approval of generic drugs.

NDAS

The term "NDA" refers to the process by which pharmaceutical companies and other sponsors submit their findings and research on a new drug's efficacy and safety to the Food and Drug Administration (FDA) for evaluation and possible marketing clearance. Beginning with the filing of a novel medicine Application (NDA) to regulatory authorities, the process of bringing a novel medicine to market is a difficult and multifaceted journey. A pharmaceutical product's safety and effectiveness are described in depth in the New Drug Application, which is backed by a mountain of scientific evidence. The complexities of non-disclosure agreements (NDAs) are examined in this critical research, along with the difficulties encountered by pharmaceutical corporations in complying with these regulations and methods used to overcome these obstacles. An important step in developing a medication is submitting an NDA. Years of study, testing in both animal and human settings, and painstaking data collecting have led us to this point. New drug applications (NDAs) undergo extensive regulatory review to guarantee that upcoming pharmaceuticals are safe and effective for human use. Therefore, pharmaceutical businesses must grasp the intricacies of NDA filings if they want to effectively traverse the regulatory terrain.

ANDA 505(J) APPLICATION

Applicants submit data and information to the Agency (FDA) using ANDAs, which stands for Abbreviated-NDA (New Drugs Applications). A pharmaceutically comparable generic drug may be more easily evaluated and authorized in its final form as a result of this. Whether it's the dosage form, potency, quality, mode of administration, active ingredient, or performance attributes, a generic pharmaceutical medication product is almost indistinguishable from the innovator's brand medicine. The applications for generic pharmaceuticals, which are essentially carbon copies of newer drugs (innovator drugs), are called "abbreviated" because, unlike newer drugs, they are not required to include human and animal evidence to prove the efficacy and safety of the drug. Companies seeking to market generic versions of innovator drugs are required to do in-vivo and/or in-vitro studies to prove that their medicines are bioequivalent to the original medication. In 1984, the Drug Price Competition and Patent Term Restoration Act, often known as the Hatch-Waxman Act, created the Abbreviated New Drug Application (ANDA) process. This method has played a crucial role in easing the market introduction of generic pharmaceuticals. Regulatory framework that simplifies the approval procedure for generic medications by relying on the safety and effectiveness data of the reference listed drug (RLD) is the 505(j) application, which is central to ANDA submissions. The difficulties encountered by generic medication makers and methods for effectively navigating the regulatory environment are investigated in this important research that dives into the complexities of ANDA and 505(j) applications. Encouraging pharmaceutical innovation while maintaining inexpensive access to pharmaceuticals was the goal of the ANDA pathway's creation. The ANDA route expedites the approval process by letting generic drug maker’s use the safety and effectiveness data of an existing brandname medicine. This means that generic alternatives may be brought to market more quickly and with fewer resources. At its heart, this method is the 505(j) application, which establishes a regulatory framework for the licensing of generic drugs based on their bioequivalence to the RLD.

The establishment of bioequivalence is a significant obstacle in ANDA applications. For a medicine to be considered a generic, it must be able to rival the RLD in terms of its active components and therapeutic effects, as well as its

bioequivalence. The pharmacokinetics of the RLD and the generic medication will be compared in large-scale in vitro and in vivo experiments. To guarantee the generic medicine satisfies regulatory requirements for effectiveness and safety, it is essential to critically evaluate these bioequivalence studies.

BIOEQUIVALENCE

The term "bioequivalent drug" describes a pharmacological medication that is chemically and therapeutically identical to another medicament. Studies conducted in vivo and/or in vitro establish the equivalency. Generic versions of an innovative medicine or reference standard work in the same manner. That is to say, rather of doing the animal studies, clinical studies, and bioavailability studies that were formerly part of the NDA approval procedure, the single bioequivalence study for an ANDA will be. The Hatch-Waxman Act was the first to establish bioequivalence studies as the basis for obtaining approval of generics (ANDAs). Developing drugs revolves on the idea of bioequivalence, which is especially important when it comes to the licensing of generic drugs via processes like the Abbreviated New Drug Application (ANDA). One of the most important criteria for determining if a generic medicine is equivalent to its reference listed drug (RLD) in terms of safety and effectiveness is bioequivalence. This critical research examines bioequivalence from every angle, dissecting its scientific complexities, regulatory ramifications, and pivotal role in defining the generic drug development environment.

Public Law 98-417 is another name for this legislation. It restores the term of patents and helps with drug price competition. This law makes it easier for generic pharmaceutical companies to submit ANDAs while also protecting innovative drug applicants. In order to ensure that both generic and innovator drug businesses (manufacturers) continue to have access to the advantages they need, this legislation was enacted. To both generic medication and innovator enterprises (manufacturers), this legislation brought about the following improvements or benefits: Sales and profits for innovative drugs will take a nosedive once generics hit the market. As a result, the statute extends patent protection to innovators in certain cases. To be considered for approval, a generic medicine must demonstrate in vitro and/or in vivo pharmacological equivalence to the reference standard, which is an innovator medication. Unless specifically required by BEand/or clinical objectives, generic applicants are exempt from the need to demonstrate therapeutic efficacy and safety in animal and human subjects via research. A six-month exclusivity term is granted to generic applicants by paragraph 4 certificates, either to the first business that submitted an application or to a group of companies. It is common practice to submit a generic version of a medicine when the patent for the original product expires or is about to expire. Applications outlined in paragraph 4 are not subject to this expectation. The commercial marketing of generics will not commence until the patents on the original medicine have expired. Applications outlined in paragraph 4 are not subject to this expectation. There can be no infringement or invalidation of the innovator drug's patents. Nevertheless, after the obligatory judicial stay period of thirty months, the FDA may proceed with the pending applications in the event that patents are found to be invalid. When compared to innovator or nondevelopmental pharmaceuticals (NDAs), generics offer several benefits, the most notable of which are lower production costs and shorter development times. While innovator or brand name drugs take 12–15 years to reach commercialization, generic drugs may be brought to market and made accessible to the public within 10–12 months after submitting an ANDA. The medicine industry in the US was dramatically altered after the Drug Price Competition and Patent Term Restoration Act, also known as the Hatch-Waxman Act, was passed in 1984. The Hatch-Waxman Act simplified the clearance procedure for generic pharmaceuticals and addressed the problems caused by patent exclusivity; it was designed with the twin goals of encouraging innovation and improving access to cheap treatments in mind. From its beginnings to its lasting effects on drug research, intellectual property, and the fine line between innovation and accessibility, this critical study examines the many facets of the Hatch-Waxman Act.

It’s an application made for approval of Generic Drugs. The sponsor is not required to reproduce the clinical studies that were done for the original, brand name product. Instead generic drug manufacturers must demonstrate that their product is same as to and bioequivalent to, a previously approved brand name product.

Basic generic drug requirements are:

- Same activity ingredients
- Same route of administration
- Same dosage form

- Same strength
- Same conditions of use
- Inactive ingredients already approved in a similar NDA

Generic drug approval:

- In 1970 FDA established the ANDA as a mechanism for the review and approval of generic versions
- Before 1978, generic product applicants were required to submit complete safety and efficacy through clinical trials
- Post 1978, applicants were required to submit published reports of such trials documenting safety and efficacy
- Neither of these approaches was considered satisfactory and so originated hatch Waxman act on 1984.

Information required for filling anda

¬ Products formulation

¬ Manufacturers procedure

¬ Control procedure

¬ Testing

¬ Facilities

¬ Dissolution profile

¬ Labelling

An abbreviated new drug application (ANDA) contains data which is submitted to FDA for the review and potential approval of a generic drug product. Once approved, an applicant may manufacture and market the generic drug product to provide a safe, effective, lower cost alternative to the brand-name drug it references.

A generic drug product is one that is comparable to an innovator drug product in dosage form, strength, route of administration, quality, performance characteristics, and intended use. All approved products, both innovator and generic, are listed in FDA's Approved drug products with therapeutic equivalence evaluations.

Generic drug applications are termed "abbreviated" because they are generally not required to include preclinical (animal) and clinical (human) data to establish safety and effectiveness. Instead, generic applicants must scientifically demonstrate that their product performs in the same manner as the innovator drug. One way applicants demonstrate that a generic product performs in the same way as the innovator drug is to measure the time the generic drug takes to reach the bloodstream in healthy volunteers. This demonstration of “bioequivalence” gives the rate of absorption, or bioavailability, of the generic drug, which can then be compared to that of the innovator drug. To be approved by FDA, the generic version must deliver the same amount of active ingredients into a patient's bloodstream in the same amount of time as the innovator drug.

The "Drug price competition and patent term restoration Act of 1984" also known as the Hatch-Waxman Amendments, established bioequivalence as the basis for approving generic copies of drug products. These Amendments permit FDA to approve applications to market generic versions of brand-name drugs without repeating costly and duplicative clinical trials to establish safety and efficacy. Under the Hatch-Waxman Amendments, brand-name companies gained patent term extension to account for the time the patented product is under review by FDA and also gained certain periods of marketing exclusivity. In addition to the ANDA approval pathway, generic drug companies gained the ability to challenge patents in court prior to marketing as well as 180-day generic drug exclusivity.

Resources for anda submissions

The following resources provide ANDA applicants with the statutory and regulatory requirements of an ANDA application, assistance from CDER to help you meet those requirements, and internal ANDA review principles, policies, and procedures. Summary tables, application forms, and other ANDA submission resources are available in ANDA forms and submission requirements.

Guidance documents for andas

Guidance documents represent the Agency's current thinking on a particular topic. These documents provide guidelines for the content, evaluation, and ultimate approval of applications and also to the design, production, manufacturing, and testing of regulated products for FDA review staff, applicants, and ANDA holders.

Laws, Regulations, Policies, and Procedures

The Federal food, drug and cosmetic act is the basic food and drug law of the United States. The law is intended to assure consumers that foods are pure and wholesome, safe to eat, and produced under sanitary conditions, that drugs and devices are safe and effective for their intended uses, that cosmetics are safe and made from appropriate ingredients, and that all labeling and packaging is truthful, informative, and not deceptive.

Code of federal regulations

The final regulations published in the Federal Register (a daily published record of proposed rules, final rules, meeting notices, etc.) are collected in the code of federal regulation (CFR). Section 21 of the CFR contains most of the regulations pertaining to food and drugs. The regulations document most actions of all drug applicants that are required under Federal law. The following regulations directly apply to the ANDA process:

- 21CFR Part 314: Applications for FDA Approval to Market a New Drug
- 21CFR Part 320: Bioavailability and Bioequivalence Requirements

CONCLUSION

The information above provides an overview of patents, the Hatch Waxman Act's laws and regulations, and the procedures for filing a US patent. We further explored the issues and case studies under the Hatch-Waxman Act in the review. The first case pitted Mylan labs against Valeant pharmaceuticals and its affiliates. Due to inappropriate venue, the defendant was accused of violating the ANDA by the appellant. The court then stated that in the hatch Waxman instances, the location is irrelevant. The ANDA can be submitted by the filer from any place. As a result, the court denied the appellant's argument and authorised Mylan Laboratories to submit an ANDA.

In the second lawsuit, Amneal Pharmaceuticals is the defendant and Merck Sharp & Dohme Corp. When Amneal attempted to submit an ANDA for a product for which Merck had registered the MFM, Merck deemed it to be an act of infringement. Merck said in court that three Raman peak analyses are necessary to determine whether MFM is present in Amneal's product. Amneal said that MFM may also be identified via single peak analysis. The court denied Merck Sharp & Dohme Corp.'s application after reviewing the report and concluding that one peak analysis is adequate and that Amneal's ANDA would not violate any patents.

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40. 35 U.S.C. § 271(a) (2006).
41. 35 U.S.C. § 283 (2006). See eBay Inc. v. MercExchange L.L.C., 547 U.S. 388 (2006).
42. 35 U.S.C. § 284 (2006).
43. 35 U.S.C. §154(a)(2) (2006). Although the patent term is based upon the filing date, the patentee obtains no enforceable legal rights until the USPTO allows the application to issue as a granted patent. A number of Patent Act provisions may modify the basic 20-year term, including examination delays at the USPTO and delays in obtaining marketing approval for the patented invention from other federal agencies.
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