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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
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Washington, D.C. 20231

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Kenilworth, NJ 07033-0530

In Re: Patent Term Extension
Application for
U.S. Patent No. 4,839,342

NOTICE OF FINAL DETERMINATION

A determination has been made that U.S. Patent No. 4,839,342, which claims the animal drug OPTIMMUNE®, is eligible for patent term extension under 35 U.S.C. § 156. The period of extension has been determined to be 700 days.

The period of extension has been calculated using the FDA determination of the length of the regulatory review period published in the Federal Register of April 5, 1996 (61 Fed. Reg. 15264). Under 35 U.S.C. § 156(c):

$$\begin{aligned} \text{Period of Extension} &= \frac{1}{2} (\text{Testing Phase}) + \text{Approval Phase} \\ &= \frac{1}{2} (1,668) + 230 \\ &= 1,064 \text{ days (2.9 years)} \end{aligned}$$

Since the regulatory review period began May 24, 1990, after the patent issue date (June 13, 1989), the entire period has been considered in the above determination. No determination of a lack of due diligence under 35 U.S.C. § 156(c)(1) was made.

The 14 year exception of 35 U.S.C. § 156(c)(3) operates to limit the term of the extension in the present situation because it provides that the period remaining in the term of the patent measured from the date of approval of the approved product (August 2, 1995) when added to the period of extension calculated above (1,064 days) cannot exceed fourteen years. The period of extension is thus limited to August 2, 2008, by operation of 35 U.S.C. § 156(c)(3). Since the patent term of twenty-years from the applicable filing date (35 U.S.C. § 154) would expire on September 2, 2007,¹ the period of extension is the number of days to extend the term of the patent from its expiration date to and including August 2, 200~~8~~, or 700 days.

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The limitations of 35 U.S.C. § 156(g)(6) do not operate to further reduce the period of extension

¹ Although the patent indicates that the portion of the term subsequent to June 13, 2006 was disclaimed, the notation was in error. Note the attached certificate of correction.

determined above.

A single request for reconsideration of this final determination as to the length of extension of the term of the patent may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period. In the absence of such request for reconsideration, the Commissioner will issue a certificate of extension, under seal, for a period of 700 days.

Upon issuance of the certificate of extension, the following information will be published in the Official Gazette:

U.S. Patent No.	:	4,839,342
Granted	:	June 13, 1989
Original Expiration Date	:	September 2, 2007
Applicant	:	Renee Kaswan
Owner of Record	:	University of Georgia Research Foundation, Inc.
Title	:	Method of Increasing Tear Production by Topical Administration of Cyclosporin
Classification	:	514/256
Product Trade Name	:	OPTIMMUNE®
Term Extended	:	700 days
Expiration Date of Extension	:	August 2, 2009

Any correspondence from applicant with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box Patent Ext.
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: One Crystal Park, Suite 520
2011 Crystal Drive
Arlington, VA

Telephone inquiries related to this determination should be directed to Karin Tyson at (703) 306-3159.



Hiram H. Bernstein
Senior Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

Enclosure: Certificate of Correction

cc: Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs (HFY-20)
Food and Drug Administration
5600 Fishers Lane, Room 15-22
Rockville, MD 20857

RE: OPTIMMUNE®
FDA Docket No.: 95E-0033

