Infanrix expiry shows complexity of SPCs

Late June brings the loss of supplementary protection certificate (SPC) exclusivity in Italy for GlaxoSmithKline's multivalent vaccine Infanrix (DTPa-IPV/Hib vaccine). However, similar SPCs remained just applications in Austria, Belgium, Denmark, Germany, the Netherlands and the UK, so they never entered into force (see Figure 1).

Even though Infanrix represents a significant commercial opportunity – global brand sales declined by 2% to £690 million (US$1.09 billion) last year due to a 7% reverse to £403 million in Europe amid price cuts – developing such a complex vaccine is beyond the scope of many generics players. But Infanrix' equally complex intellectual-property landscape has ensured it has been the focus of industry attention for other reasons.

In April 2009, GlaxoSmithKline's partner, Medeva, filed five SPC applications for several vaccines, referencing the basic patent EP1,666,057. It supported these filings by referencing marketing authorisations for different DTPa-IPV/Hib vaccines, but the UK's intellectual property office (IPO) rejected the applications. Medeva appealed against the IPO's decision to a UK Court of Appeal, which in turn referred the case to the European Court of Justice (ECJ).

Having interpreted Article 3(a) of the European Union's (EU's) SPC Regulation 469/2009 – which requires that, to qualify for a monopoly extension, a product be protected by a basic patent – the ECJ ruled SPCs could only be granted to products solely containing active ingredients specified in the claims of the basic patent (**Generics *bulletin***, 9 December 2011, page 15).

According to patent intelligence expert GenericsWeb – which compiles a database of SPC, data exclusivity and patent expiries – the ECJ's 'Medeva' ruling could render invalid up to a third of SPCs for combination products (**Generics *bulletin***, 6 April 2012, page 24).

In terms of data exclusivity (see Figure 2), June brings the expiry of 10-year protection in most EU member states for Pegasys (peginterferon alfa-2a), Roche's blockbuster hepatitis treatment, which achieved global sales of SFr1.44 billion (US$1.52 billion) last year, including SFr297 million in western Europe. However, GenericsWeb points out, "patent protection extending beyond exclusivity in all major territories remains a constraining factor for the launch of generic peginterferon alfa-2a".

Sales of Pegasys are expected to increase due to the recent launches of two novel hepatitis C therapies that are indicated as triple therapies in combination with peginterferon and ribavirin – Merck & Co's Victrelis (boceprevir) and Vertex's Incivek (telaprevir), which is also marketed by Janssen-Cilag as Incivo.

Among potential generic-development targets (see Figure 3), the US Food and Drug Administration's (FDA's) approval in March 2012 of Omontys (peginesatide) from Affymax and Takeda – including a preservative-free version of the anaemia treatment – has led to the listing of several patents in the FDA's Orange Book.

Data exclusivity expiries in June

INN	Country/Region
Abatacept	Canada
Ambrisentan	US
Cefovecin	Turkey
Drotrecogin alfa (activated)	Switzerland
Entecavir	Turkey
Eprosartan/hydrochlorothiazide	Switzerland
Exenatide	Australia
Fondaparinux sodium	Switzerland
Glimepiride/rosiglitazone	Turkey
Lapatinib	Australia
Natalizumab	Turkey
Oseltamivir	European Union
Peginterferon alfa-2a	European Union
Rimonabant	Turkey

Figure 2: Molecules for which data exclusivity expires in certain markets during June 2012 (Source – GenericsWeb)

Molecules in the spotlight

INN	Event
Florbetapir	First US Orange Book patents listed following FDA approval of Amyvid on 6 April 2012
Peginesatide	First US Orange Book patents listed following FDA approval of Omontys & Omontys Preservative Free on 27 March 2012
Remestemcel-L	First Canadian patent listed in Patent Register following Health Canada approval of Prochymal on 22 May 2012

Figure 3: Molecules in the spotlight, based on recent regulatory or litigation events (Source – GenericsWeb)

SPC expiries in June

INN	Country
Carbidopa/melevodopa	Italy
Cefdinir	Austria
Desirudin	Spain
Dibotermin alfa	Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, UK
DTPa-IPV/Hib Vaccine	Austria*, Belgium*, Denmark*, Germany*, Italy, Netherlands*, UK*
Lepirudin	Switzerland
Levofloxacin	Spain
Olanzapine	Switzerland
Penciclovir	Cyprus
Pramipexole	Spain
Topotecan	Cyprus

* indicates that the SPC remained an application at expiry, so never entered into force

Figure 1: Molecules for which supplementary protection certificates (SPCs) expire in certain markets during June 2012 (Source – GenericsWeb)