(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid, unenforceable, or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid, unenforceable, or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, a full and detailed explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) Amendment to an application. If an application is amended to include the certification described in §314.50(i), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the application is submitted to FDA.

(e) Documentation of receipt of notice. The applicant shall amend its application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) Approval. If the requirements of this section are met, the agency will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder as the first day of the 45-day period provided for in section 505(c)(3)(C) of the act. FDA may, if the applicant amends its application with a written statement that a later date should be used, count from such later date.
pending application, the applicant shall certify in the declaration forms that the applicant has test data, as set forth in paragraph (b)(2) of this section, demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the new drug application. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product, as is defined in §314.3, that is described in the pending or approved application. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use that are described in the pending or approved application. The applicant shall separately identify each pending or approved method of use and related patent claim. For approved applications, the applicant submitting the method-of-use patent shall identify with specificity the section of the approved labeling that corresponds to the method of use claimed by the patent submitted. Process patents, patents claiming packaging, patents claiming metabolites, and patents claiming intermediates are not covered by this section, and information on these patents must not be submitted to FDA.

(2) Test Data for Submission of Patent Information for Patents That Claim a Polymorph. The test data, referenced in paragraph (b)(1) of this section, must include the following:

(i) A full description of the polymorphic form of the drug substance, including its physical and chemical characteristics and stability; the method of synthesis (or isolation) and purification of the drug substance; the process controls used during manufacture and packaging; and such specifications and analytical methods as are necessary to assure the identity, strength, quality, and purity of the polymorphic form of the drug substance;

(ii) The executed batch record for a drug product containing the polymorphic form of the drug substance and documentation that the batch was manufactured under current good manufacturing practice requirements;

(iii) Demonstration of bioequivalence between the executed batch of the drug product that contains the polymorphic form of the drug substance and the drug product as described in the NDA;

(iv) A list of all components used in the manufacture of the drug product containing the polymorphic form and a statement of the composition of the drug product; a statement of the specifications and analytical methods for each component; a description of the manufacturing and packaging procedures and in-process controls for the drug product; such specifications and analytical methods as are necessary to assure the identity, strength, quality, purity, and bioavailability of the drug product, including release and stability data complying with the approved product specifications to demonstrate pharmaceutical equivalence and comparable product stability; and

(v) Comparative in vitro dissolution testing on 12 dosage units each of the executed test batch and the new drug application product.

(c) Reporting requirements—(1) General requirements. An applicant described in paragraph (a) of this section shall submit the required patent information described in paragraph (c)(2) of this section for each patent that meets the requirements described in paragraph (b) of this section. We will not accept the patent information unless it is complete and submitted on the appropriate forms, FDA Forms 3542 or 3542a. These forms may be obtained on the Internet at http://www.fda.gov by searching for “forms”.

(2) Drug substance (active ingredient), drug product (formulation or composition), and method-of-use patents—(i) Original Declaration. For each patent that claims a drug substance (active ingredient), drug product (formulation and composition), or method of use, the applicant shall submit FDA Form 3542a. The following information and verification is required:

(A) New drug application number;

(B) Name of new drug application sponsor;

(C) Trade name (or proposed trade name) of new drug;

(D) Active ingredient(s) of new drug;

(E) Strength(s) of new drug;

(F) Dosage form of new drug;
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(G) United States patent number, issue date, and expiration date of patent submitted;

(H) The patent owner's name, full address, phone number and, if available, fax number and e-mail address;

(I) The name, full address, phone number and, if available, fax number and e-mail address of an agent or representative who resides or maintains a place of business within the United States authorized to receive notice of patent certification under sections 505(b)(3) and 505(j)(2)(B) of the act and §§ 314.52 and 314.95 (if patent owner or new drug application applicant or holder does not reside or have a place of business within the United States);

(J) Information on whether the patent has been submitted previously for the new drug application;

(K) Information on whether the expiration date is a new expiration date if the patent had been submitted previously for listing;

(L) Information on whether the patent is a product-by-process patent in which the product claimed is novel;

(M) Information on the drug substance (active ingredient) patent including the following:

(1) Whether the patent claims the drug substance that is the active ingredient in the drug product described in the new drug application or supplement;

(2) Whether the patent claims a polymorph that is the same active ingredient that is described in the pending application or supplement;

(3) Whether the applicant has test data, described in paragraph (b)(2) of this section, demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the new drug application or supplement, and a description of the polymorphic form(s) claimed by the patent for which such test data exist;

(4) Whether the patent claims only a metabolite of the active ingredient; and

(5) Whether the patent claims only an intermediate;

(N) Information on the drug product (composition/formulation) patent including the following:

(1) Whether the patent claims the drug product for which approval is being sought, as defined in §314.3; and

(2) Whether the patent claims only an intermediate;

(O) Information on each method-of-use patent including the following:

(1) Whether the patent claims one or more methods of using the drug product for which use approval is being sought and a description of each pending method of use or related indication and related patent claim of the patent being submitted; and

(2) Identification of the specific section of the proposed labeling for the drug product that corresponds to the method of use claimed by the patent submitted;

(P) Whether there are no relevant patents that claim the drug substance (active ingredient), drug product (formulation or composition) or approved method of use, for which the applicant is seeking approval and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product;

(Q) A signed verification which states:

“The undersigned declares that this is an accurate and complete submission of patent information for the NDA, amendment or supplement pending under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct.”; and

(R) Information on whether the applicant, patent owner or attorney, agent, representative or other authorized official signed the form; the name of the person; and the full address, phone number and, if available, the fax number and e-mail address.

(ii) Submission of patent information upon and after approval. Within 30 days after the date of approval of its application or supplement, the applicant shall submit FDA Form 3542 for each patent that claims the drug substance (active ingredient), drug product (formulation and composition), or approved method of use. FDA will rely
only on the information submitted on this form and will not list or publish patent information if the patent declaration is incomplete or indicates the patent is not eligible for listing. Patent information must also be submitted for patents issued after the date of approval of the new drug application as required in paragraph (c)(2)(ii) of this section. As described in paragraph (d)(4) of this section, patent information must be submitted to FDA within 30 days of the date of issuance of the patent. If the applicant submits the required patent information within the 30 days, but we notify an applicant that a declaration form is incomplete or shows that the patent is not eligible for listing, the applicant must submit an acceptable declaration form within 15 days of FDA notification to be considered timely filed. The following information and verification statement is required:

(A) New drug application number;
(B) Name of new drug application sponsor;
(C) Trade name of new drug;
(D) Active ingredient(s) of new drug;
(E) Strength(s) of new drug;
(F) Dosage form of new drug;
(G) Approval date of new drug application or supplement;
(H) United States patent number, issue date, and expiration date of patent submitted;
(I) The patent owner's name, full address, phone number and, if available, fax number and e-mail address;
(J) The name, full address, phone number and, if available, fax number and e-mail address of an agent or representative who resides or maintains a place of business within the United States authorized to receive notice of patent certification under sections 505(b)(3) and 505(j)(2)(B) of the act and §§314.52 and 314.95 (if patent owner or new drug application applicant or holder does not reside or have a place of business within the United States);
(K) Information on whether the patent has been submitted previously for the new drug application;
(L) Information on whether the expiration date is a new expiration date if the patent had been submitted previously for listing;
(M) Information on whether the patent is a product-by-process patent in which the product claimed is novel;
(N) Information on the drug substance (active ingredient) patent including the following:
   (1) Whether the patent claims the drug substance that is the active ingredient in the drug product described in the approved application;
   (2) Whether the patent claims a polymorph that is the same as the active ingredient that is described in the approved application;
   (3) Whether the applicant has test data, described at paragraph (b)(2) of this section, demonstrating that a drug product containing the polymorph will perform the same as the drug product described in the approved application and a description of the polymorphic form(s) claimed by the patent for which such test data exist;
   (4) Whether the patent claims only a metabolite of the active ingredient;
   (5) Whether the patent claims only an intermediate;
   (O) Information on the drug product (composition/formulation) patent including the following:
      (1) Whether the patent claims the approved drug product as defined in §314.3; and
      (2) Whether the patent claims only an intermediate;
   (P) Information on each method-of-use patent including the following:
      (1) Whether the patent claims one or more approved methods of using the approved drug product and a description of each approved method of use or indication and related patent claim of the patent being submitted;
      (2) Identification of the specific section of the approved labeling for the drug product that corresponds to the method of use claimed by the patent submitted; and
      (3) The description of the patented method of use as required for publication;
   (Q) Whether there are no relevant patents that claim the approved drug substance (active ingredient), the approved drug product (formulation or composition) or approved method(s) of use and with respect to which a claim
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of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product;

(R) A signed verification which states: "The undersigned declares that this is an accurate and complete submission of patent information for the NDA, amendment or supplement approved under section 505 of the Federal Food, Drug, and Cosmetic Act. This time-sensitive patent information is submitted pursuant to 21 CFR 314.53. I attest that I am familiar with 21 CFR 314.53 and this submission complies with the requirements of the regulation. I verify under penalty of perjury that the foregoing is true and correct."; and

(S) Information on whether the applicant, patent owner or attorney, agent, representative or other authorized official signed the form; the name of the person; and the full address, phone number and, if available, the fax number and e-mail address.

(3) No relevant patents. If the applicant believes that there are no relevant patents that claim the drug substance (active ingredient), drug product (formulation or composition), or the method(s) of use for which the applicant has received approval, and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product, the applicant will verify this information in the appropriate forms, FDA Forms 3542 or 3542a.

(4) Authorized signature. The declarations required by this section shall be signed by the applicant or patent owner, or the applicant’s or patent owner’s attorney, agent (representative), or other authorized official.

(d) When and where to submit patent information—(1) Original application. An applicant shall submit with its original application submitted under this part, including an application described in section 505(b)(2) of the act, the information described in paragraph (c) of this section on each drug (ingredient), drug product (formulation and composition), and method of use patent issued before the application is filed with FDA and for which patent information is required to be submitted under this section. If a patent is issued after the application is filed with FDA but before the application is approved, the applicant shall, within 30 days of the date of issuance of the patent, submit the required patent information in an amendment to the application under §314.60.

(2) Supplements. (1) An applicant shall submit patent information required under paragraph (c) of this section for a patent that claims the drug, drug product, or method of use for which approval is sought in any of the following supplements:

(A) To change the formulation;
(B) To add a new indication or other condition of use, including a change in route of administration;
(C) To change the strength;
(D) To make any other patented change regarding the drug, drug product, or any method of use.

(ii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(i) of this section and existing patents for which information has already been submitted to FDA claim the changed product, the applicant shall submit a certification with the supplement identifying the patents that claim the changed product.

(iii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(i) of this section and no patents, including previously submitted patents, claim the changed product, it shall so certify.

(iv) The applicant shall comply with the requirements for amendment of formulation or composition and method of use patent information under paragraphs (c)(2)(i) and (d)(3) of this section.

(3) Patent information deadline. If a patent is issued for a drug, drug product, or method of use after an application is approved, the applicant shall submit to FDA the required patent information within 30 days of the date of issuance of the patent.

(4) Copies. The applicant shall submit two copies of each submission of patent information, an archival copy and a copy for the chemistry, manufacturing, and controls section of the review
§ 314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.

(a) The act does not permit approval of an abbreviated new drug application for a new indication, nor does it permit approval of other changes in a listed drug if investigations, other than bioavailability or bioequivalence studies, are essential to the approval of the change. Any person seeking approval of a drug product that represents a modification of a listed drug (e.g., a new indication or new dosage form) and for which investigations, other than bioavailability or bioequivalence studies, are essential to the approval of the changes may, except as provided in paragraph (b) of this section, submit a 505(b)(2) application. This application need contain only that information needed to support the modification(s) of the listed drug.

(1) The applicant shall submit a complete archival copy of the application that contains the following: