PRE-GRANT REPRESENTATION BY WAY OF OPPOSITION
UNDER SECTION 25(1) OF THE PATENTS ACT
1970(39 OF 1970) AND RULE 55 (1) OF THE RULES
AS AMENDED BY THE PATENTS (AMENDMENT) ACT, 2005

The Patent Controller,
Chennai.

Re: Patent Application No. 1602/MAS/98 filed on 17 July 1998 titled "Crystal Modification of N-Phenyl-2-pyrimidineamine derivative, processes for its manufacture and its use"

REJOINDER TO THE STATEMENT AND REPLY OF THE APPLICANT, NOVARTIS AG

I, Mr. Y.K. Sapru, the Chairman and Founder Member of the Cancer Patients Aid Association (CPAA), do hereby file the rejoinder to the reply of the Applicant, Novartis AG.

1. At the outset, and in response to Novartis's general argument that the subject application is patentable because it represents a two-step improvement over the prior art, I say the following:

(a) Even assuming, without admitting, that there was such a two-step process in creating the claimed product, namely: (i) the addition of methanesulfonic acid to obtain the Imatinib mesylate salt; and (ii) the derivation of the β-crystalline form of Imatinib mesylate, the alleged invention would nevertheless be unpatentable under Indian law. This is because (i) the addition of methanesulfonic acid to obtain imantinib mesylate was anticipated by the 1993 patent, and even if not anticipated, was an obvious improvement over the free base in light of the prior art; and (ii) the Applicant has not shown, and indeed, cannot show, that the β-crystalline polymorph differs significantly in properties with respect to efficacy from other forms of the anticipated and obvious Imatinib mesylate compound. Consequently, the β-crystalline form must be considered to be the "same substance" as the generic Imatinib mesylate compound under section 3(d) of the Patents Act.

(b) Given the disclosures contained in the applicant's 1993 patent, the compound Imatinib mesylate was anticipated by that patent and thus lacks novelty under section 2(l) of the Patents Act. Claim 23 of 1993 patent claims the free base, Imatinib, and "all pharmaceutically acceptable salts thereof." Moreover, the applicant specifically mentions methanesulfonic acid as one of the possible acids with which the free base could react to form a salt, and states, "Owing to the close relationship between the novel compounds in free form and in the form of their salts…hereinbefore and hereinafter any reference to the free

compounds should be understood as including the corresponding salts, where appropriate and expedient." Notwithstanding the Applicant's attempt to distinguish between "embracing" and specific disclosure, these disclosures are sufficient to make out a finding of anticipation.

(c) Although it is true that the compound Imatinib mesylate is never *specifically* disclosed in the 1993 patent, it is not always necessary that a compound be actually disclosed in the prior art in order to make out a showing of anticipation: "For a prior publication to have prejudicial effect, …it is not necessary for the starting compound or process variant to be given special prominence. *The essential point is what a person skilled in the art, carrying out the invention, could be expected to deduce from it*." *Bayer/Diastereomers*, T12/81 (1982) OJEPO 296, attached hereto as "**Exhibit A"** (emphasis added). Thus, even if a prior publication does not expressly disclose in words one or more elements of a patent's claims, it may nevertheless be anticipating if a person of ordinary skill in the art could have combined the publication's description of the invention with his/her own knowledge to make the claimed invention. It is also true that where the claims of a later patent are subsumed (or, in the terminology of the applicant's own admission, "embraced") but not specifically disclosed by a prior art reference, the later claims may nevertheless be found to have been anticipated by the prior disclosure.

(d) It has long been common knowledge in the pharmaceutical industry that the conversion of a lead molecule into a

pharmaceutically acceptable salt can result in numerous advantages, including improved dissolution rate and bioavailability. *See* Morris, et al., "An integrated approach to the selection of optimal salt form for a new drug candidate," International Journal of Pharmacuetics 105 (1994) 209-217, attached hereto as "**Exhibit B**". Also see *Gould* "Salt selection for basic drugs" International Journal of Pharmacuetics 33 (1986) 201-217, attached hereto as **"Exhibit C"**. Thus, one ordinarily skilled in the art would have been well aware of the potential benefits of converting the free base Imatinib into a pharmaceutically acceptable salt.

(e) Further, the use of methanesulfonic acid to obtain a pharmaceutically acceptable salt from a free base was known in the industry. Indeed, a study by Engel, et al revealed that of the new chemical entities approved by the United States Food and Drug Administration ("U.S. FDA") from the period 1995-1999 that had associated anionic salts, nearly 20% were reported to be mesylate salts. "Salt form selection and characterization of LY333531 mesylate monohydrate," Intl. J. of Pharm. 198 (2000) 239-247, attached hereto as "**Exhibit D"**. Thus, even if it is true, as applicant claims, that "there is neither an Example for preparation of Imatinib mesylate in the 1993 patent nor any claim specific disclosure," a person with ordinary skill in the art would have had ample knowledge of how to prepare Imatinib mesylate from the disclosures contained in the 1993 patent alone, *especially where, as here, methanesulfonic acid is specifically disclosed in the patent*

as a candidate acid. Thus, Imatinib mesylate is anticipated by the 1993 patent.

(f) Without prejudice to the points made above, assuming without admitting that the 1993 patent does not anticipate Imatinib mesylate, the process of converting the free base into the methanesulfonic acid addition salt is an obvious step and thus lacks the quality of inventiveness required under Section 2(j) of the Patents Act. As mentioned above, the conversion of a lead molecule into a salt has many advantages and has been common knowledge in the industry for quite some time. Indeed, prior art teaches a systematic, expeditious approach to finding the optimal salt for any given new drug candidate. Morris, et al disclosed in 1994 (prior to the present application's 1997 priority date) an integrated, three-tiered approach to selecting the optimal salt for any given new drug candidate. Starting from a pool of seven possible salts, the authors proposed an approach by which the least time-consuming experiments were conducted in the first tier, and the more time-consuming experiments were conducted as more and more candidates were eliminated in the earlier tiers. Using this approach, the authors concluded that the entire salt-selection process could be completed within 4-6 weeks or less and easily be adopted into the drug development program.

(g) Utilising a similar approach, Engel, et al were able to determine in an "expeditious manner" that the mesylate salt was the optimum salt for their new drug candidate due to its greater solubility and bioavailability. Although Engel, et al admittedly does not

constitute prior art given that it post-dates the present application, it is nevertheless illustrative of how readily the teachings of Morris, et al and the like can be adopted into a drug development program. As the 1993 patent discloses, a "pharmaceutically acceptable salt" was specifically contemplated for the free base Imatinib. Further, the 1993 patent discloses methanesulfonic acid as one possible candidate to create such a salt. Given the obvious benefits of converting the free base into a pharmaceutically acceptable salt, the limited universe of acids with which to create such a salt, and the prior art teachings that lay out a systematic and expeditious manner in which to select the optimal salt, the improvement from the free base to Imatinib mesylate did not involve the requisite inventive step as required under the Patents Act.

(h) As demonstrated above, there is nothing novel or inventive in the formation of the methanesulfonic acid addition salt. It is not novel because regardless of whether Imatinib mesylate is specifically disclosed in the 1993 patent, the generic disclosure of the free base and "any pharmaceutically acceptable salt thereof" in conjunction with the disclosure of methanesulfonic acid as a possible candidate is sufficiently describes Imatinib mesylate such that one skilled in the art "could have combined the [publication's] description of the invention with his own knowledge to make the claimed invention." [cited above] It does not involve an inventive step because the prior art teaches the desirability of converting a lead molecule into a pharmaceutically acceptable salt, and teaches also the systematic

and expeditious means of selecting the optimal salt through a process of elimination. Contrary to the Applicant's assertion, the fact that "human intervention" is present in the conversion from free base to salt is alone not sufficient to make out a showing of inventiveness.

(i) The Applicant claims repeatedly that the alleged invention is a two-step improvement over the prior art: (i) the conversion of the free base to the methanesulfonic acid addition salt; and (ii) the conversion of the resulting product to the β-crystalline polymorph of the methanesulfonlic acid addition salt. However, as we have seen, the conversion from the free base to the methanesulfonic acid addition salt is both anticipated and obvious and is thus not patentable. Further, *even assuming without admitting that the β-crystalline form is not the inevitable end-product of the conversion from the free base to the salt, applicant has made no showing that the β-crystalline polymorph "differs significantly in properties with respect to efficacy" from the other forms of the Imatinib mesylate compound*, and thus under Section 3(d) of the Patents Act, the β-crystalline form of Imatinib mesylate must be considered to be the "same substance" as the unpatentable generic compound.

(j) The Applicant may argue that Section 3(d) only applies to salts and polymorphs of a "known" substance, and thus the relevant comparison of efficacy should be between the free base Imatinib and the β-crystalline form of Imantinib mesylate. This, however,

does not end the enquiry. Because Imatinib mesylate was anticipated and made obvious by the 1993 patent, Imatinib mesylate as well as the free base Imatinib was "known" as of the date of the 1993 patent, and thus the applicant must also make out a showing that the claimed invention of the β-crystalline polymorph differs significantly in properties with respect to efficacy from its other forms, including the α form.

(k) Even assuming, without admitting, that better efficacy can be equated with increased bioavailability, the Applicant fails to even attempt to discharge, let alone discharge, its burden of showing that the claimed invention differs significantly in properties with respect to efficacy from other known substances. Other than submitting in the affidavit an alleged 30% increase in bioavailability from the *free base* to the β-crystalline polymorph, the applicant makes no attempt to show that the β-crystalline polymorph differs significantly with respect to efficacy from the other forms of Imatinib mesylate. In fact, the applicant admits that other companies such as Cipla and Natco "have applied for and obtained drug licenses for the *alpha* form," (emphasis added). This admission is fatal to the applicant's claim that the β-crystalline form is patentable under Indian law.

(l) Under Schedule Y of the Drugs and Cosmetics Act, an applicant for a generic drug must show that the generic version is *bioequivalent* to the already-marketed drug. This means that companies such as Cipla and Natco were required to submit data

establishing that their versions of the drug utilising the α-crystalline polymorph *does not differ significantly in properties with respect to efficacy from the applicant's β-crystalline form.* The fact that these companies were granted regulatory approval to market and sell the drug is conclusive evidence that there is no difference in efficacy between the α and β-crystalline forms of Imatinib mesylate.

(m) The Indian Drug Controller is not the only drug approval authority to consider different polymorphs of a drug substance the "same" for the purposes of determining efficacy and bio-equivalency. The U.S. FDA, widely regarded to have the most stringent drug approval standards in the world, has stated that it "*has approved a number of [generic drug applications] in which the drug substance in the generic drug product had a different polymorphic form from the drug substance in the [original drug product]*," *See* U.S. FDA, Draft Guidance, "ANDAs: Pharmaceutical Solid Polymorphism Chemistry, Manufacturing, and Controls Information," December 2004, attached hereto as "**Exhibit E"** (emphasis added). Thus, for the purposes of determining efficacy, and therefore for determining "sameness" as defined under Section 3(d), the ultimate touchstone is not the specific polymorphic form, but rather pharmaceutical equivalence measured in terms of bioequivalence of the final drug product. *See* Raw, et al, "Regulatory considerations of pharmaceutical solid polymorphism in Abbreviated New Drug

Applications," Advanced Drug Delivery Reviews, 56 (2004) 397-414, attached hereto as "**Exhibit F**".

(n) In terms of showing that a different polymorphic form is the pharmaceutically equivalent to a known form, *the only relevant criterion that affects bioavailability is the substance's solubility*. In both the U.S. FDA's Draft Guidance on Polymorphs and in Raw, et al., three "decision trees" are given that provide guidance as to whether a different polymorphic form will ultimately affect drug performance. As shown in the very first "decision tree," if all known polymorphs exhibit the same solubility or are all highly soluble, "no further test or polymorphic acceptance criterion" is necessary. This is because other factors that may vary in different polymorphic forms, such as stability, particle shape, flowability, compactability, hygroscopicity, etc. can be controlled and accounted for during the manufacturing process to produce a product that has equal efficacy to a known drug product utilising a different polymorph. Thus, Raw, et al concluded, "*there is no scientific basis for one to conclude that using a different drug substance polymorph from the [original drug product] would preclude a [generic drug] from demonstrating drug product manufacturability, bioequivalence, and stability,*" (emphasis added).

(o) In the current application, applicant makes no mention of varying solubilities between the α and the β-crystalline forms of Imatinib mesylate. The only differences applicant notes between the two forms are factors that do not affect ultimate drug performance such

as crystal form, flow properties, stability and hygroscopicity. Given that none of these factors preclude other forms of Imatinib mesylate having the same efficacy as the claimed β-crystalline form, the claimed invention is not patentable as a matter of law under Section 3(d) of the Patents Act.

2. I now do a para-wise reply to the reply of Novartis. At the outset, I repeat and reiterate each and every statement, contention, averment made in the statement of facts/ evidence filed by me by way of pre-grant opposition and specifically deny anything contrary thereto or inconsistent therewith. I say that nothing in the affidavit in reply filed by Novartis AG may be deemed to be admitted unless the same is specifically admitted herein. I say that the rejoinder filed hereby is limited to the new contentions filed by the Applicant Novartis AG.

3. With reference to paragraph 3 of the reply of Novartis, I deny that the Opponent has no legal basis for opposing the grant of patent. I say that under section 25 (1) of the Patents Act, "any person" may, in writing represent by way of opposition to the Controller against the grant of patent. The word "person" under section 3 (42) of the General Clauses Act, has been defined to include any company or association or body of

individuals, whether incorporated or not. Therefore, this Opponent has legal basis for opposing the grant of the patent.

(a) <u>Prior publication and prior knowledge:</u>

4. With reference to paragraphs 4 (a)(1) and 4(a)(2) of the reply of Novartis, the contents therein are denied for the reasons already stated above. I further state the following:

(a) Preparing mesylate salts is by no means an invention. Isolation of the β- or any polymorph of a crystalline substance from solvent/s is not an invention. For one versed in the art, different salts of a compound or drug can be prepared and crystallized from varieties of solvents and the physical forms one obtains depends on the packing in the crystal lattice and no novelty can be claimed for the physical forms.

(b) Whether one obtains a trihydrochloride or a mono mesylate depends on the structure of the parent compound or free base. Further, forming a mono hydrochloride, dihydrochloride or trihydrochloride, fumarate, etc cannot and should not be considered novel, as one ordinarily skilled in the art would have knowledge of how to combine a base and any number of acids to create a salt.

(a) <u>Does not involve an inventive step</u>.

5. With reference to paragraphs 4(a)(2) and 4(b)(1) of the reply of Novartis, I deny all the contents therein, for the reasons already stated above.

(a) I deny that the alleged invention is a two-step improvement of the prior art in which the free base is changed to a salt

form and then to a particular crystal form of this salt through ingenuity and human intervention.

(b) In any event, crystalline salt forms or properties of compounds reside in the properties of the parent organic chemical entity, in this case in the free base. For example, the base can be converted to a crystalline mesylate salt by the addition of the corresponding acid. Crystallization of such salts from solvents yield crystals in specific forms sometimes including such solvents in the lattice as solvates and sometimes without them. β-crystalline form was not deliberately planned and/ or invented but a property dictated by the structure of the salt obtained from certain solvents.

6. I deny that the compound/subject matter of the application is completely different from the subject matter claimed in the 1993 patent. I say that the 1993 patent has the same claims are in the present patent application. Pages 11, 12 and 13 of the US patent clearly state that "compounds of formula I… inhibit not only protein kinase C…..but also certain tyrosine kinases, such as PDGF (platelet derived growth factor) receptor kinase or abl kinase..." are also stated in the Indian patent application on page 9 and 10. I humbly submit that between 1984 to 1987 a BCR-ABL protein was identified as the possible cause of chronic myeloid leukemia and was found to be effective as a Signal Transduction Inhibitor (STI). STI inhibits the action of enzyme tyrosine kinase. I say that this was known in 1993 and was in the public domain and therefore cannot be patented in India.

7. The Applicant's assertion that Section 3(d) of the Patents Act goes beyond the general requirements of patentability otherwise mentioned in the Act and is not in compliance with the TRIPS Agreement is irrelevant to these pre-grant opposition proceedings, as it is not within the Hon'ble Tribunal's powers to decide upon this issue. This is exclusively a matter for Parliament. The power of interpreting the provisions of the Patent Act is only vested with the High Court and Supreme Court and not with the Tribunal.

8. Nevertheless, for the sake of clarification and in response to the Applicant's claim, the TRIPS Agreement only sets minimum standards and does not set any specific higher standards for its Members when determining the protection to be granted to intellectual property, including the scope of patentability. Indeed, Article 4*bis* of the Paris Convention, of which India is a signatory, specifically contemplates the existence of varying patentability standards, and mandates that the grant or revocation of a patent application in one country shall have no effect on the status of a patent in another: *"Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained in other countries, whether members of the Union or not"*.

9. Thus, the fact that the present application has been granted patent protection in 35 countries is irrelevant as a matter of law.

10. Further, the Applicant's claim that the fact that an EMR was granted in India for the product in question is proof of inventiveness is misleading. Firstly, it is clear that when India enacted the EMR system in 1999, it was on the basis that EMRs would not have the same standing or be presumed to be a precursor to the granting of a patent for the product in question. Furthermore, the fact that the Bombay High Court refused to issue an injunction to the Applicant for its EMR in India is indicative of the concern over the claim of the inventiveness and rights that the Applicant claims over the product in question. Indeed, the matter now rests with the Supreme Court.

11. I vehemently deny that the burden lies heavily on the Opponent to prove that the patents in other jurisdictions have been wrongly granted. I say that the Opponent is concerned with the Application in India and not with that in other jurisdictions that have a very different criterion for patentability than that of India. Therefore, the Applicant's enclosure of **"Annexures F and G**" do not have any standing and relevance in these proceedings. As the Applicant states in paragraph 1, page 16 of its reply, section 3(d) is unique to India. Therefore, the standards of patentability in other countries in which the Applicant has been granted patents are inadmissible in these proceedings. In any event, "**Annexures F and G**" submitted by the Applicant are incomplete or un-translated, with respect to the Russian Patent No. 2208012 and U.S Patent No. 6894051, and/or are not official or authenticated copies of the original patents that are claimed, as is required under Rules 61(1) and 61(2).

12. With reference to the affidavit filed by the Applicant in their reply at **"Annexure H"** of one Dr. Giorgio Pietro Massimini, cannot be relied upon as admittedly the said doctor is a technical expert of the Applicant Novartis AG itself. Only an independent expert, who is not swayed by bias or by a one-sided opinion of whatever the Applicant's desire, should judge the issue of enhanced efficacy. Placing reliance on the said affidavit would be against the principles of natural justice.

13. I deny that a 30% improvement in bioavailability corresponds to a significant improvement with regard to efficacy. In any event, a 30% improvement in bioavailability may or may not be statistically significant. The interaction of the claimed molecule with the targeted cell receptor is governed by the chemical structure of the parent compound, whether it is in its free base or the salt in whatever crystalline form it exists. Also, if the free base had been converted to a salt by reaction with methanesulfonic acid, the "mixture of crystal forms" (without "isolation" from a specific solvent) may still have provided the same pharmacokinetic result.

14. I vehemently deny that efficacy should be interpreted to mean only 'bioavailability'. Improved bioavailability may not translate to enhanced efficacy. For example, for scientists dealing with viruses such as HCV or HIV, an increase in Cmax or UC in certain treatments need not translate into sustained viral response. Another argument which is overlooked by the Applicants is that the compound binding to receptor is actually the parent compound (in terms of molecular structure) and not a specific polymorphic form.

15. With reference to paragraph 4(b)(3) of the reply of Novartis, I deny the contents therein. A certain compound can crystallize from a given solvent in a specific form depending on the packing in the crystal lattice. The molecular nature of the compound will not change in this process just because it exists in different physical shape or form. For example, the binding of this form to the receptor is dictated by the chemical structure of the parent compound i.e., free base and this in turn will decide the cascade of biological events and hence efficacy. I therefore would like this Hon'ble Tribunal to look at the true substance and not be glossed over by the physical forms and solubilities. It is known to one versed in organic synthesis that numerous salts can be prepared with a given base having higher solubilities. β-form may have solubilities closer to α-form or other possible physical forms or even uncrystallized "amorphous" conglomerate. To claim superiority in efficacy of a specific physical form is not comprehensible based on molecular mechanisms.

16. I deny that because the Opponent has not shown that it has practiced Example 21 or claim 29 of the 1993 Patent and has produced the β-crystalline form of imatinib mesylate or shown an instance of the same having been done so prior to the filing date/ priority date, the Hon'ble Tribunal cannot take into account allegedly untenable and theoretical conjectures in law. I say that under the Indian Patent law it is not necessary for a party opposing the grant of a patent to show that they have manufactured the drug prior to the date of priority. I say that any party can oppose the drug and prior manufacturing is not the only criteria for

opposing a patent and that the Indian law allows for a opposing a patent on many grounds which have been stated in the statement of facts / evidence filed by this Opponent.

17. With reference to paragraph 4(b)(6) of the reply of Novartis, I deny that the requirements of section 2(1)(ja) are met and that the conditions of economic significance and non-obviousness are met. I deny that the patent application ought to proceed to grant.

C. Not an invention

18. With reference to paragraph 4(c)(1) of the reply of Novartis, I deny the contents therein. I deny that the subject application reveals a new product and novel process involving inventive step to produce the product, for the reasons already stated above.

19. With reference to paragraph 4(c)(2) of the reply of Novartis, I deny the contentions therein, for the reasons already stated above.

20. With reference to paragraph 4(c)(5) of the reply of Novartis, I deny the contentions therein. I deny that the α-form itself is novel and has inventive step for the reasons stated above. The rest of the paragraph is a mere repetition of what has been stated earlier and is denied.

D. Insufficient description

21. With reference to paragraph 4(d)(1) and (2) of the reply of Novartis, I deny the contentions therein. The contents of the paragraph are mere

repetitions of the earlier paragraphs and are denied for reasons stated hereinabove.

22. With reference to paragraph 4(d)(3-4) of the reply of Novartis, I deny the contentions therein. I say that the judgements cited at **"Annexures I, J,K and L"** are not relevant to the instant case and cannot be considered. The US cases – 339 US 605 and 520 US 17 – refer to the doctrine of equivalents which has not been established in Indian law, and is in any case used for comparing an alleged patent-infringing invention with the patented invention. AIR 1954 Patna 492 is not relevant in determining the inquiry at hand, and is in any case distinguishable

23. With reference to paragraph 4(d)(5) of the reply of Novartis, I deny the contentions therein. I say that it is relevant to question the starting matter. If α-form is depleted, what may be left behind will be enriched in β-form.
24. With reference to paragraph 4(d)(6) of the reply of Novartis, I deny the contentions therein. I say that for a pharmaceutical formulator, addition of excipients to make capsules/ tablets is a well known art.

25. With reference to paragraph 4(d)(7) of the reply of Novartis, I deny the contentions therein. I say that once again the Applicants have only repeated what has been stated in the earlier paragraph and the same is denied for reasons stated hereinabove. Crystallizations to produce suitable physical forms of materials is an age old science. Application of suitable pressure, cooling, filtration, etc. even though may indicate sophistications in terms of practice, does not change the fact that compounds from

different solvents will crystallize in different shapes. Molecular structure and the way they interact in vivo with carrier proteins, receptors, etc. are influenced by fundamental molecular entity and not by how one crystallized them.

26. With reference to paragraph 4(d)(8) of the reply of Novartis, I deny the contentions therein for the reasons already stated above.

E. Patent application not made within one year from the date of filing in a convention country.

27. With reference to paragraph 4(e) of the reply of Novartis, I deny the contentions therein and state that the Applicants have made fallacious arguments therein as the law is clear and has been stated in detail in the statement of facts/ evidence filed by me. In any event, the "**Annexure M"** of the reply of Novartis is in relation to Australia being notified as a convention country and not Switzerland as claimed by them.

F. No difference in efficacy

28. With reference to paragraph 4(f) of the reply of Novartis, I deny the contentions therein. I say that the affidavit of Dr. Massimini at **"Annexure H"** has been dealt with earlier and the same is not repeated again here. Other than submitting via affidavit an alleged 30% increase in bioavailability from the *free base* to the β-crystalline polymorph, the applicant makes no attempt to show that the β-crystalline polymorph differs significantly with respect to efficacy from the other forms of Imatinib mesylate.

29. Further, any compound in different physical forms will behave the same way biologically. One cannot distinguish an α- or β- or another form on the basis of in vivo activity. They will all be carried by the same transport system, will bind to the same receptor etc. The Applicant's claim that the efficacy requirement is satisfied by the claimed invention's effectiveness against restinosis is denied. Restenosis is a disease where thickening of the artery arises after surgery due to the proliferation of the cells in the area. Because the parent compound is antiproliferative, it will also be effective for such indications.

G. Commercial exploitation

30. With reference to paragraph 4(g) of the reply of Novartis, I deny the contents therein. I further say that it is an established principle under law that patented subject matter held by a foreigner must allow use on reasonable and equitable terms. [See *Franz Xaver Huemer v. New Yash Engineers*, AIR 1997 Delhi 79, paragraph 17 and 21.]

H. Mere admixture is not an invention

31. With reference to paragraph 4(h) of the reply of Novartis, I deny that the composition is novel and inventive. I deny that the patent claim is allowable. It is pertinent to note that the Applicant does not deny that the said substance, namely, the β-crystalline form of the compound is a mere admixture. Therefore it is not patentable.

32. For all the reasons stated above and for those as stated in the statement of facts/ evidence of the Opponent, the patent application ought to be rejected.

Date: 8.12.2005

Mr. Y.K. Sapru
For Cancer Patients Aid Association