

/ () ()

:

*

.

. // :

. // / :

:

:

*

The Legal Protection of Pharmaceutical Regulatory Data Pursuant to the Jordanian Law: A Comparative Study

Dr. Saad Abdelkarim Abughanm

Abstract

This study investigates the conditions which Regulatory Pharmaceutical Data (RD) must meet to be protected against unfair commercial use and disclosure. Such data is provided to the Jordanian Food and Drug Bureau (JFDA) by sponsors of new drug applications to prove the intoxicity, potency, and quality of their new drugs. This study establishes that the mere submission of RD to the JFDA does not justify legal protection. To qualify for protection RD must satisfy the following conditions: it must derive from lab tests and clinical studies; it must relate to a product containing a new chemical entity that has never been used or disclosed before in any form; it must be confidential and kept secret, unknown to, or easily accessible by people dealing with such data it must be required and necessarily lead to approval of the associated drug; and must require a considerable effort to generate.

Keywords: Pharmaceutical data, conditions of protection, unfair competition.

:

() " "

()

()

./ /
" "

:

:

:

.

.

" " " " ()

Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), Marrakesh Agreement
Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, Annex 1C.

()

./ //

()

./ //

:

.



.

"

"

"

...

"

.

"

"

()

.

.

.

.

.

.

" "



(1C)

()

.

/ () ()

()

:

:

()

:

(Pre-clinical Studies) "

"

.(Clinical Studies)

(Toxicology)

.(Pharmacokinetic)

)

.(Pharmacodynamic)

(

:

()

()

()

()

:

:

()

U.S. Food and Drug Department (FDA), Investigational New Drug Application, <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/InvestigationalNewDrugINDApplication/default.htm> (last accessed: January 15, 2016).

() :

()

()

()

:

:

()

//

:

U.S., FDA, Conducting Clinical Trials,

<http://www.fda.gov/Drugs/DevelopmentApprovalProcess/ConductingClinicalTrials/default.htm> (last accessed: January 15, 2016).

()

()

:

()

U.S., FDA, Conducting Clinical Trials, FDA

<http://www.fda.gov/Drugs/DevelopmentApprovalProcess/ConductingClinicalTrials/default.htm> (last accessed: January 15, 2016).

:

()

/

()

() "

"

: ()

Food and Drug Administration Amendments Act of 2007, Public Law 110-85, 121 Stat. 823 (قُنن في الكتاب) 21 U.S.C.).21 C.F.R. § 312.21.

:

Geoffrey M. Levitt, James N. Czaban & Andrea S. Patterson, "Human Drug Regulation", in 2, David G. Adams, Richard M. Cooper & Jonathan S. Kahan eds., FUNDAMENTALS OF LAW AND REGULATION: AN IN-DEPTH LOOK AT THERAPEUTIC PRODUCTS (1999), 165at 166.

: ()

WL Trepicchio, et al., "Designing prospective clinical pharmacogenomic (PG) trials: meeting report on drug development strategies to enhance therapeutic decision making", (2006) 6 The Pharmacogenomics Journal 89 at 91-89.

/ () ()

Apothecaries) "

"

(Wares, Drugs and Stuffs Act

:

() .

(Anatomy)

(Chemistry)

.(Pharmacology)

(sulfanilamide elixir) "

"

(Diethylene glycol)

() .

(thalidomide) "

"

" "

(Chemie Grunenthal)

.(Contergan)

/ /

: ()

Lembit Rāgo, Budiono Santoso, "Drug Regulation: History, Present and Future", في Drug Benefits and Risks: International Textbook of Clinical Pharmacology, Edited by C.J. van Boxtel, B. Santoso and I.R. Edwards, revised 2nd edition (2008) at65.

.65-66 at ()

)

() . () .

() .

: ()
Richard A. Merrill, "The Architecture of Government Regulation of Medical Products"
(1996) 82 VA. L. REV. 1753 at 1970.

: ()
FDA regulations 21 CFR § 314.14 (f), الفصل 1984 قُنن عام, 21 U.S.C. § 355 (l); Public
Law No. 87-781, 76 Stat. 780 (قُنن في) 21 U.S.C. §§ 321, 331-32, 348, 351-53, 355, 357-
60, 372, 374, 376, 381; see the official website of the FDA at: <http://www.fda.gov> (last
accessed: January 15, 2016).

انظر في سرد مراحل تطور التنظيم:
Trevor M. Cook, *Special Report: The Protection of Regulatory Data in the
Pharmaceutical and Other Sectors*, (London: Sweet & Maxwell, (2000) at ٧٣.

.65 at (Lembit Rāgo) ()

:

()

()

)

()

/

: ()

Gilston, The Generic Patent Compromise, MED, Advertising News, Apr. 30, 1984, at 16-17, cited in Gerald Mossinghoff, "Overview of the Hatch-Waxman Act and Its Impact on the Drug Development Process" (1999) 54 Food and Drug Law Journal 187.

" "

()

()

:

..... ()

()

:

()

-

()

)

(

WIPO-)

()

(LAS/IP/JOURN/CAI/05/2

:

()

:

(Molar Dose)

/

()

//

/ () ()

()

()

() ()

: ()

EC, Council Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code Relating to Medicinal Products for Human Use, [2001] O.J.L. **311 at 0067 – 0128**, online: EUR-Lex Homepage <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0083:EN:HTML>>; EC, Council Directive 87/21/ECC of 22 December 1986, Amending Council Directive 65/65/EEC on the Approximation of Provisions Laid Down by Law, Regulations or Administrative Action Relating to Proprietary Medicinal Products, [1986] O.J.L. 015 at 0036 – 0037, online: IKEV.org<<http://www.ikev.org/docs/eu/387L0021.htm>>; EC, Council Directive 87/22/EEC of 22 December 1986 on the Approximation of National Measures Relating to the Placing on the Market of High-technology Medicinal Products, Particularly those Derived from Biotechnology, [1987] O.J.L. 015 at 0038 – 0041, online: EC.europa<http://ec.europa.eu/enterprise/sectors/pharmaceuticals/files/pharmacos/docs/doc2001/may/directive_87-22_en.pdf>; EC, Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 Amending Directive 2001/83/EC on the Community Code Relating to Medicinal Products for Human Use, [2004] O.J.L. 136 at 34, online: EUR-Lex Homepage <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:136:0034:0057:EN:PDF>>; EC, Council Directive 65/65/EEC of 26 January 1965 on the Approximation of Provisions Laid Down by Law, Regulation or Administrative Action Relating to Medicinal Products, [1965] O.J.L. 22 at 369, online: EUR-Lex <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31965L0065:EN:HTML>>.

Judit Sanjuna et al., *Protection of Pharmaceutical Test Data: A Policy Proposal*, (Consumer Project on Technology, 2006) at 10, on line: CPTech Homepage <<http://www.cptech.org/ip/health/data/CPTech-Test-Data.pdf> (last accessed: January 15, 2016).

(generic) ()

(Pharmaceutically equivalent or alternatives)

(Original product) ()

(Reference product)

(Reference product) :

(market leader)

:

.



.

.

.

.

() .

-

-

(Hatch-Waxman Act)

() .



. - at Gilston ()

: ()

Drug Price Competition and Patent Term Restoration Act of 1984, Public Law No. 98-417, 89 Stat. 1585.

/ () ()

()

()

()

)

() :

()

() .

/

(505(e)(ii) and (iii))

()

:

(

()

:

:

-

-

()

/ /

(87/21/ECC)

:

()

:

()

505(j)

:

()

EC, Council Directive 87/21/ECC of 22 December 1986, Amending Council Directive 65/65/EEC on the Approximation of Provisions Laid Down by Law, Regulations or Administrative Action Relating to Proprietary Medicinal Products, [1986] O.J.L. 015 at 0036 – 0037, online: IKEV.org<<http://www.ikev.org/docs/eu/387L0021.htm> (last accessed: January 15, 2016).

()

:

if the period elapsed since the marketing date of the authorized product is:
(iii) less than six years and [the authorized drug] is marketed in the Member State for which the application is made; this period shall be extended to 10 years in the case of high-technology medicinal products [...]” Furthermore, a Member State may also extend this period to 10 years by a single decision covering all the products marketed on its territory where it considers this necessary in the interest of public health. Member States are at liberty not to apply the abovementioned six-year period beyond the date of expiry of a patent protecting the original product.”

() .

"

(high-technology medicinal products) "

A

() .

() .

-

(١) انظر:

Paul Garland, "Data Exclusivity, Bolar Exemption and Generic Drugs in the EU" (2007) 29(4) European Intellectual Property Review 128-133.

:

()

A. Medicinal products developed by means of the following biotechnological processes: recombinant DNA technology, controlled expression of genes coding for biologically active proteins in prokaryotes and eukaryotes, including transformed mammalian cells, hybridoma and monoclonal antibody methods.

:

EC, Council Directive 87/21/ECC of 22 December 1986

"

()

()

()

//

()

:

"

"

"

//

:

:

()

. rDNA " "

-
-
-
-

:

()

()

:

:

/ /

(NAFTA)

)

()

(:

(

)

(

at Cook

()

EC, Council Directive 87/21/ECC of 22 December

()

1986

: ()

North American Free Trade Agreement, Canada - U.S. - Mexico, December 17, 1992, 32 I.L.M. 605, 675 (1993).

:

()

If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

() ()

" "

)

(

"

() "

" "

()

()

()

Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

:

()

" "

() " "

" "

()

:

: ()

Bayer Inc. v. Canada (Attorney General), [1999] F.C.J. No. 826.

: ()

“[t]rade secrets submitted to governments shall not be disclosed or used for the benefit of third parties”

:

General Agreement on Tariffs and Trade (GATT), *Suggestion by the United States for Achieving the Negotiating Objective*, GATT document MTN.GNG/NG11/W/14?Rev.1 of October 17, 1988, http://www.wto.org/gatt_docs/English/SULPDF/92030039.pdf(last accessed: January 15, 2016).

:

G. Acts contrary to honest commercial practices including protection of undisclosed information
Article 28

In the course of ensuring effective protection against unfair competition as provided for in Article 10 *bis* of the Paris Convention –

[...]

(b) Contracting parties, when requiring the publication or submission of test or other data, the origination of which involves a considerable effort, shall protect such efforts *against unfair exploitation by competitors*. The protection shall last for a reasonable time commensurate with such efforts, the nature of the data required, the expenditure involved in their preparation and shall take account of the availability of other forms of protection.

:

GATT, *Draft Agreement on Trade-Related Aspects of Intellectual Property Rights*, GATT document MTN.GNG/NG11/W/68 of March 29, 1990 at 13, http://www.wto.org/gatt_docs/English/SULPDF/92100042.pdf (last accessed: January 15, 2016).

: ()

Nuno Pires de Carvalho, *The TRIPS Regime of Antitrust and Undisclosed Information*, (The Hague: Kluwer Law International, 2008) at 243-258; Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (The Hague: Kluwer Law International, 2001) at 204.

()

" "

" "

()

()

Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

C1

The Marrakech Agreement Establishing the World Trade Organization ("WTO Agreement"), Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), 33 ILM 81 (1994).

()

Trudo Lemmens & Candice Telfer, "Access to Information and the Right to Health: The Human Rights Case for Clinical Trials Transparency", 38 AM. J.L. & MED. 63, (2012) at 66; Jerome H.Reichman, "Rethinking the Role of Clinical Trial Data in International Intellectual Property Law: The Case for a Public Goods Approach", 13 MARQ. INTELL. PROP. L. REV. 1, at9 (2009); Daniel R. Cahoy, "Medical Product Information Incentives and the Transparency Paradox", 82 IND. L.J. 623, at 27-626; (2007); Kevin Outterson, "Pharmaceutical Arbitrage: Balancing Access and Innovation in International Prescription Drug Markets", 5 YALE J. HEALTH POL'Y L. & ETHICS 193 (2005); Rebecca S. Eisenberg, "Patents, Product Exclusivity, and Information Dissemination: How Law Directs Biopharmaceutical Research and Development", 72 FORDHAM L. REV. 477 (2003).

:



:

.

.

.

.

:

.

(

(:

.

.

.

:

.

.

"

"

-

- "

/ () ()

() "

() "

"

"

()

"

"

() "

()

/ /

() () () () () ()

//

()

/ /

at

Carvalho

()

!

()

:

.



-

- :

- ()

()

-

- rDNA " "

.

:

.

.

:

.

.

.

"

"

"

"



..

()

()

()

)
:
(
Pursuant to Article 39.3 of *TRIPS*, each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data, or *evidence of approval in another country*, the origination of which involves a considerable effort, shall protect such information against unfair commercial use. In addition, each Party shall protect such information against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the information is protected against unfair commercial use.

" () "
) "

:
(
"10. It is understood that protection for "new chemical entities" shall also include protection for new uses for old chemical entities for a period of three years".

:
Agreement between the United State of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Oct. 24, 2000, DOS No. 02-11, Consolidated Treaties and INT'L Agreements, 2002-I, at 197, 203 (دخلت ٢٠٠١/١٢/١٧ الاتفاقية مرحلة النفاذ بتاريخ <http://www.ustr.gov/trade-agreements/free-trade-agreements/jordan-fta/final-text> (last accessed: January 15, 2016).

:



/

()

()_

-

()

:

Correa, M. Carlos. Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement, ed. (New York: Oxford University Press Inc., 2007) at 275.

(//) ()

/ /

- at Correa ()

()

()

()

"

"

"

()

19,039

()

: 153 / 2005

19,996 / 2005

“Mechanisms Established for the Protection of Undisclosed Data by the Institute of Public Health”.

Pharmaceutical Research and Manufacturers of America (PhRMA), *2006 Special 301 Submission*, (Washington, DC: PhRMA, 2006) at 175,

Consumer Project Home page <<http://www.cptech.org/ip/health/trade/2005phrma301.pdf>> (last accessed: January 15, 2016).

1983

()

47D

()

Pharmaceutical Research and Manufacturers of America (PhRMA), *Special 301 submission*, (2010), 90, :

http://www.phrma.org/sites/phrma.org/files/attachments/2010_Special_301_Review_Submission_PhRMA_.pdf (last accessed: January 15, 2016).

Mark S. Cohen and Tal Frieman, “Data Exclusivity in Israel” (2003) Business Briefing: Pharmagenetics 1-2 :

<http://www.touchbriefings.com/download.cfm?fileID=491&action=downloadFile> (last accessed: January 15, 2016).

//

()

. //

()

//

///

(last accessed: January 15, 2016). <http://www.jfda.jo/Publications.aspx?lang=ar>.

:

()

()

:

:

(:

(

(

(

()

FDA

()

:

Small Business Assistance: Frequently Asked Questions for New Drug Product Exclusivity:

<http://www.fda.gov/Drugs/DevelopmentApprovalProcess/SmallBusinessAssistance/ucm069962.htm> (last accessed: January 15, 2016).

.

.

:

"

"

.

.

:

"

"

.

()

()

()

:

:

"

"

()

()

()

()

:" "

UNCTAD-ICTSD Project on IPRs and Sustainable Development, *Resource Book on TRIPS and Development*, (Cambridge: Cambridge University Press, 2005) at 530; Carlos Maria Correa, "Unfair Competition Under the TRIPS Agreement: Protection of Data Submitted for the Registration of Pharmaceuticals" (2002) 3 CHI. J. INT'L L. 69 at ٧٤; Carlos Maria Correa, South Centre, Protection Of Data Submitted For The Registration Of Pharmaceuticals: Implementing The Standards Of The Trips Agreement (2002) at 17.

.20 at Judit Sanjuna et al. انظر ()

.18 at (Protection Of Data Submitted) Correa ()

. :

() .

:

:

() .

.

.

.

() .

at السابق

، Carvalho " "

. at

(Unfair Competition) Correa 294

()

()

:

"

()

"

()

. -

// -

:



()

()

"

()"

:



()

()

:

at

(Protection Of Data Submitted) Correa

()

()

:

(WIPO)

()

:

" "

Considerable "

"

" "

"

."Efforts

19,996

()

(A,B)

:

"PhRMA"

()

()

()

()

()

()

Adams and Brantner ()

Christopher P. Adams & Van V. Brantner, "Estimating The Cost Of New Drug Development: Is It Really \$ 802 Million?" (2006) 25 (2) *Health Affairs* 420 at 425.

() انظر:

Joseph A DiMasi, Ronald W. Hansen & Henry Grabowski, "The Price of Innovation: New Estimates of Drug Development Costs" (2003) 22 **Journal of Health Economics** 151 at 166.

(٣) انظر:

Joseph A DiMasi & Henry Grabowski, "The Cost of Biopharmaceutical R&D: Is Biotech Different?" (2007) 28 *Managerial and Decision Economics* 469.

(٤) انظر:

Jason Millman (The Washington Post) "Does it really cost \$2.6 billion to develop a new drug?", online at: https://www.washingtonpost.com/news/wonk/wp/2014/11/18/does-it-really-cost-2-6-billion-to-develop-a-new-drug/?postshare=8821453316164577&tid=ss_mail (last accessed: January 20, 2016).

(٥) انظر:

Tufts Center for the Study of Drug Development (CSDD), "Cost to Develop and Win Marketing Approval for a New Drug Is \$2.6 Billion" (2015), online at http://csdd.tufts.edu/news/complete_story/pr_tufts_csdd_2014_cost_study (last accessed: January 20, 2016).

()

:

-

-

-

-

-

-

:

.

:

.

-

.

.

-

.

-

.

-

.

-

:

.

.

.

.