

## Thailand: Patent Application for COVID-19 Medication Rejected

Patent application entitled “Tablets and Granulated Powder Containing 6-fluoro-3-hydroxy-2-pyrazinecarboxamide” lodged by FUJIFILM Toyama Chemical Co., Ltd. ( The Applicant) was rejected on 5 May 2021 by the Department of Intellectual Property Thailand (DIP) . The examination report indicated that it lacked inventive step according to Section 5(2) and Section 7 of the Thai Patents Act which sets out the requirements of patentability.

This application is for the medication known as *Favipiravir*, and covers the invention used as for the treatment of COVID-19 . which is very timely and critical during this pandemic. The applicant did not agree with the examination results and filed an appeal with the Patent Board on 1 July 2021 to request for reconsideration of examination, on the basis that the corresponding patent applications for this subject patent application have been granted in other jurisdictions including the EU, USA, Japan, Australia and Korea.

In the meantime the demand for *Favipiravir* has soared as a treatment for COVID-19 due to the increasing number of new cases and deaths each day in Thailand .

While the *Favipiravir* patent application is undergoing appeal, the Government Pharmaceutical Organization (GPO) of Thailand has since developed its own (generic) version of *Favipiravir* after obtaining approval from the Thai Food and Drug Administration (FDA) and is presently able to produce about two to four million pills per month to support the demand of about 30 million pills per month due to the high number of new COVID-19 cases and deaths. It is noted that if the subject patent application is granted in Thailand at a later stage, the actions of the GPO during this time may possibly constitute infringement of the subject patent

In view of this, we expect that there is a high likelihood of either voluntary or compulsory license being issued and this will be part of negotiations to avoid potential suits while maintaining the integrity of the Thai patent system. Sections 45 to 52 of the Thai Patents Act sets out the provisions for the issuance of voluntary and compulsory licenses . In particular Section 51 permits the Thai government to seek compulsory licences in the event of a severe shortage of medicine and allows for negotiations on royalty fees .

We are monitoring to see how this matter unfolds.





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