

Special Executive Order of NCPO Regarding Patent Applications in Thailand Involving Marijuana or Its Extract

On 28th January 2019, the National Council for Peace and Order (“NCPO”) issued the Order No. 1/2562 (the “Order”) to amend the Patent Act B.E. 2522 and set out the measures on patent examinations for special cases relevant to an invention that involves marijuana or its extract. The Order was published in the Royal Gazette on 28th January 2019 and has become effective since then.

Under the Order, the following subject matters are unpatentable under Section 9(5) of the Patent Act if they are used for commercial purposes:-

- (1) an invention which contains marijuana or its natural extract;
- (2) a substance which has chemical structure equivalent to an invention under item (1) above;
- (3) any salt, ester and ether of substance under item (2) above.

The Order also stipulates that for the pending patent applications which have already been published but no request for substantive examination is filed with the Patent Office, the Department of Intellectual Property (“DIP”) shall issue a rejection order for such pending patent applications which involve cannabis or its extracts or equivalence or order the applicant to remove such unpatentable subject matter from the claimed invention within 90 days after receipt of the order. If the applicant who receives such order does not agree with the DIP’s order, he is entitled to file an appeal with the Patent Board per the usual appeal procedure under the Patent Act.

The issuance of this Order of NCPO is mainly caused by the controversy and the concern raised after the Nation Legislative Assembly (“NLA”) passed a bill to legalize the controlled production, import and use of marijuana and *kratom* for medical and research purposes. Although this new law on marijuana and *kratom* use for medical and research purposes give positive impact on the research and development field and also may introduce new way of patient treatment including new medicine, as a number of recent patent applications claiming rights to the extracts of some cannabis plants in Thailand have been submitted by foreign firms, Thai civil society groups and researchers feared domination by foreign firms could make it harder for Thai patients to get access to medicines and for Thai researchers to get marijuana extracts if these patents are granted.

Under the Order, once the Bill that allows the use of marijuana for medical and research purposes comes into effect, the addition of these unpatentable subject matters under the Order and the power of the DIP to reject the applications or order removal of these subject matters from the

patent applications will be revoked from the effective date of such Bill.



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