

BENITEC ANNOUNCES LITIGATION STATUS

2 December 2004

Benitec (ASX: BLT). In order to correct any misinformation or misunderstandings relating to Benitec's patent position, the Company is making this statement to correct the record.

Benitec currently has ten issued patents, including U.S.A. (1), U.K.(2) and Australia (2) and such issued patents have been through a process of examination prior to their issue in the countries concerned.

Benitec currently holds Lloyd's of London patent insurance to protect and defend its entire patent estate and has held such insurance for the past three years. Benitec's core patents relating to its proprietary ddRNAi technology are held in co-ownership with CSIRO of Australia.

Benitec's strategy is to protect its proprietary intellectual property by issuing licenses for both commercial research and for therapeutic development. In order to protect the interests of Benitec shareholders to receive a substantial return on their investment in the development of ddRNAi drugs in the future, Benitec has initiated three infringement actions against companies using Benitec's technology without a license. Two of those companies settled with Benitec by taking licenses earlier this year.

Benitec commenced proceedings against Nucleonics, Inc. in March of 2004 as they were obviously infringing on Benitec's issued patent estate, of which Nucleonics was aware. Benitec was advised that Nucleonics was in the process of raising in excess of U.S. \$40 million from U.S. investors using Benitec's ddRNAi technology, which was the subject of an issued patent in the United States dated June 2003. Benitec thought it necessary and important to bring to the attention of the prospective investors in Nucleonics the existence of Benitec's issued patents and to ensure that Benitec could not be criticized at a later date of having known of infringement, but of having taken no action to protect Benitec's intellectual property, or the interests of Nucleonics' own investors.

The current status of the litigation with Nucleonics is as follows: -

1. Benitec has commenced infringement proceedings against Nucleonics based upon evidence of infringement of Benitec's ddRNAi technology in Nucleonics' drug development program.
2. There are currently three motions (applications) before the U.S. District Judge in Delaware brought by Benitec relating to the failure of Nucleonics to provide documents and information in support of their defense as is required under the rules of court procedure. As a result of such failure to provide supporting information, Benitec has sought a ruling prohibiting Nucleonics from producing supporting information at a later date in such proceedings.
3. As Nucleonics' attorneys act for both Nucleonics and Carnegie Institute of Washington, Benitec applied to the court suggesting this conflict of interest and that Nucleonics' attorneys be prevented from disclosing confidential information to Carnegie's attorneys, from the same law firm. This was opposed by Nucleonics' attorneys. Benitec's motion

BENITEC LIMITED ABN 64 068 943 662

CORRESPONDENCE PO BOX 4193 ST LUCIA QLD 4067 AUSTRALIA

TELEPHONE +61 7 3217 8540 FACSIMILE +61 7 3217 7540

REGISTERED OFFICE SUITE 4 242 HAWKEN DRIVE ST LUCIA QLD 4067 AUSTRALIA

has been recently granted by the court and restricts Nucleonics' attorneys from acting for both Nucleonics and Carnegie. Nucleonics has requested the court to reverse its ruling.

4. Benitec has also filed a request under the "discovery" process to Nucleonics' investors in order to determine the state of the investors' reliance upon Nucleonics' infringing research as important to their investment decisions.
5. Nucleonics has recently filed an application with both the Australian and the United States patent offices for re-examination of Benitec's and CSIRO's co-owned patents in each of those jurisdictions. The process is one of application, initial review by the patent office examiner and then upon issuance of the examiner's initial review, Benitec and CSIRO have the opportunity to respond to each and every point made by the examiner. This is the position in Australia where Benitec now has two months within which to respond to the examiner's comments. It is also open to Benitec to make amendments to any of the claims within such patent to rebut arguments made by the examiner and/or clarify the scope of the claims.
6. Benitec has received a request for a research license from Nucleonics through Promega and this is currently being reviewed by Benitec's U.S. attorneys of record, Morrison & Foerster LLP.

It is Benitec's position that it will continue to defend itself against Nucleonics' baseless attacks on its patent position and any attempt to narrow the proper scope of Benitec's claims. Benitec is committed to enforcing its leading position over ddRNAi and to ensuring that its shareholders will receive appropriate benefit for the investment they have made over a number of years in bringing this revolutionary technology to market. Benitec firmly believes that the re-examination proceedings will ultimately serve to strengthen Benitec's patent portfolio and confirm the novelty of Benitec's pioneering ddRNAi technology.


It should also be noted that Benitec's patents and claims differ in each jurisdiction and that any alterations made to the Australian patent through the re-examination process will have no effect on its patents in other jurisdictions. It is precisely because of the importance of ddRNAi that Benitec's issued patent estate has come under attack from Nucleonics, which depends upon Benitec's technology to progress its drug development activities.

Benitec is very aware of the statements being circulated by the Chief Executive Officer of Nucleonics to the press throughout the U.S.A. and elsewhere. These statements are being reviewed in the context of the current litigation and in the event of such statements being found to be incorrect, Benitec will have no hesitation in bringing direct proceedings for corrective action.

Update on Promega Litigation

To ensure that the market is entirely brought up to date with Benitec's current litigation, the position in relation to Promega is as follows: -

1. Benitec commenced proceedings against Promega in the courts of Delaware to obtain a declaration confirming the automatic conversion of the license to non-exclusive on the grounds of failure to make due payment.

- 
-
2. Benitec has filed for judgment in its favor on the pleadings, essentially a summary proceeding, and is awaiting the court's decision.
 3. Promega has in return filed a motion for a preliminary injunction by which Benitec would be prevented from undertaking the licensing which was the subject of the agreement with Promega. Benitec has opposed such application on a number of grounds and this application is now before the Delaware court. In the event of issuance of an injunction (limited to the original license terms), Promega would be required to provide a bond to secure Benitec.

It is not Benitec's intention to respond to the market after every pronouncement from either of Nucleonics and/or Promega as these matters are before the court for adjudication. However, in the event of any material matter relating to such litigation, this will be brought to the immediate attention of both the market and shareholders.

About Benitec

Benitec is an international biotechnology company focused on developing therapeutics to treat serious diseases using its proprietary RNAi technology. It is listed on the Australian Stock Exchange and has its clinical operations centred in Mountain View, California. Its lead therapeutic programs are Hepatitis C, HIV and cancers.

This press release contains forward-looking statements that reflect the Company's current expectation regarding future events. Forward-looking statements involve risks and uncertainties. Actual events could differ materially from those projected herein and depend on a number of factors including the success of the Company's research strategy, the applicability of the discoveries made therein, the successful and timely completion of clinical studies and the uncertainties related to the regulatory process.

CONTACTS:

BENITEC, LTD.

John McKinley
+ 1 408 480 5842
jmckinley@benitec.com

BENITEC, INC.US

Sally Brashears
+ 1 650 564 9850 x 1105
sbrashears@benitec.com