

ASX/Media Release

Benitec US Re-exam Further Update

28 November 2008, Melbourne, Australia: The Directors of Benitec Limited (ASX: BLT) provide the following update on the US patent re-examination of the '099 Graham patent.

The Company was notified on 21 November 2008 that a Final Office Action had been issued by the USPTO. The Company with its collaborators and advisors have now reviewed this Final Office Action in detail and provide the following update.

- Three of the novelty rejections have been successfully withdrawn. This is good.
- One other novelty rejection has been maintained (over the Szyf reference) and the Examiner has been asked to clarify the status of a second novelty rejection (over the Fire et al reference), which may also have been overcome.
- There are also two obviousness rejections, one essentially to claim 4 and its derivatives in the patent, and one essentially to claim 5 and its derivatives.

Benitec and CSIRO have requested a meeting with the Examiner in December 2008 and have the right to appeal this decision to the Board of Appeals of the USPTO.

Benitec and CSIRO expect to file a written response in January 2009 and, if necessary, a Notice of Appeal in February 2009 and an Appeal Brief in April 2009. In the meantime, the Examiner will have the opportunity to amend or remove some or all of the remaining rejections, and this typically happens in such back and forth communications. If the matter proceeds to an Oral Hearing before the Board of Appeal, this would be expected towards the end of 2009/early 2010 due to the backlog of Appeals.

"Benitec and CSIRO remain committed to the '099 Graham patent. Moreover, the '099 patent is only one member of a family. Benitec and CSIRO are also entitled to seek addition protection of the same subject matter claimed in the '099 patent, subject to double-patenting laws, in any of a number of US continuation applications. These applications are not subject to all of the restrictions that apply to the '099 re-examination. Benitec and CSIRO are continuing to obtain specialist advice on how best to continue with the patent portfolio. This "backward and forwarding" between the patent office and the patent owner is usual in high profile IP cases," said Benitec CEO, Sue MacLeman.

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About Benitec

Benitec is an Australian biotechnology company focused on licensing its extensive intellectual property portfolio and developing therapeutics to treat serious diseases using its proprietary ddRNAi technology. For additional information, please visit www.benitec.com.