

ASX/Media Release

Benitec US Patent Re-exam Update

21 April 2008, Melbourne, Australia: The Directors of Benitec Limited (ASX: BLT) provide the following update on the USPTO patent re-examination and the recent examiner non-final response.

The Company was notified by the USPTO on 14 April 2008 that a Non-Final Office Action had been posted on 12 April 2008. At the time the details of this Office Action were unknown. Benitec requested a trading halt. The Company received a copy of the Non-Final Office Action on 16 April 2008. As the Company needed to review the response from the Examiner and provide an appropriate update to the market, it was decided after discussions with ASX to put the Company into voluntary suspension. It is expected that, with the release of this update, this suspension will be lifted.

"Benitec is confident that its gene silencing intellectual property claims will be further secured through the re-examination of the '099 patent and these related patents or patent applications. This "backward and forwarding" between the patent office and the patent owner is usual in high profile IP cases," said Benitec CEO, Sue MacLeman.

"While this Graham patent is important, it should be remembered that Benitec has 98 patent applications and granted patents in the RNAi space and additional IP that it has licensed. While this patent is under review in the US, we have six other related applications to pursue these claims in the US. These include patent application nos. 10/346,853, 10/759,841, 10/821,726, 09/646,807, 10/646,070, and 10/821,710," she added.

Non final office action

The response from the Examiner is available on USPTO PAIRS. The Non-Final Office Action is a response to Benitec's submission of 24 April 2007 and subsequent filings. The response from the examiner is a Non-Final Office Action rather than a Final Office Action.

Benitec and its advisors believe the Examiner has misinterpreted the science and the state of the art at the time Benitec's patent was filed. As this is non-final, it provides the Benitec team with the chance to clarify the art for the Examiner and provide additional arguments.

In his response, the Examiner has not accepted the Company's arguments in respect of the Zamecnik and Szyf references. We believe the Examiner has

missed the point here as these references relate to ribozymes and oligonucleotides that differ from and don't have the elements of DNA directed RNAi.

The Examiner has also supplied new references *e.g.*, Bissler (27 March 1998) and Chou (21 March 2003). These are being reviewed however we note that the Chou reference is in fact not prior art as it is dated March 2003 where our Priority date is March 1998.

Pleasingly the Fire prior art has largely been overcome for anticipation or lack of novelty. This is favourable for Benitec as this is one of the key patents in the RNAi space and Benitec has successfully addressed the Fire anticipation rejection based on argument alone. The Examiner has not accepted our initial proffer of evidence showing conception of certain aspects of the invention before the December 1997 filing date of Fire. Benitec intends to supplement the present evidence to clarify its conception of these aspects prior to the 23 December 1997 filing date of Fire.

Next steps

Benitec has 2 months to respond and, with our partners CSIRO and legal advisors, intends to rigorously respond to the Examiner as we believe he has misinterpreted the science and the state of the art at the time our patent was filed. If we do not get resolution with this Examiner on Final Action, the Company does have the ability to file an appeal to the USPTO Appeals Board.

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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. Its current therapeutic program is focused on Human Immunodeficiency Virus (HIV). For additional information, please visit www.benitec.com.