

## ASX/Media Release

### Benitec US Re-exam Update

**26 May 2009, Melbourne, Australia:** The Directors of Benitec Limited (ASX: BLT) provide the following update on the US patent re-examination of the '099 Graham patent. CSIRO filed an appeal with the USPTO Board of Patent Appeals and Interferences on 22 May against the two remaining obviousness rejections. CSIRO appealed the decision of the Examiner mailed 26 November 2008, rejecting reexamined claims 4 to 7 and 10 to 28 in connection with the merged ex parte reexamination.

Benitec and CSIRO were previously notified on 21 November 2008 that a Final Office Action had been issued by the USPTO. Representatives of Benitec and CSIRO met with the examiners in mid February 2009 over the remaining re-examination issues. A response was then lodged with the USPTO on 26 February 2009 including substantial arguments and an expert declaration against the remaining rejections which were based on the Fire et al patent to Carnegie Institute and secondary references. Although two other rejections were subsequently withdrawn, the examiners were not fully persuaded by the arguments and have maintained the obviousness rejections.

As per the August 2006 agreements, CSIRO had the right to request assignment of Benitec's share of ownership of the '099 patent. CSIRO exercised this right earlier this year and Benitec therefore assigned its share of ownership to CSIRO. The assignment does not impact upon the commercial rights under the 2006 Agreements with CSIRO, with Benitec retaining its exclusive world wide licence for human applications.

Benitec and its partner CSIRO are fully committed to this patent and will file an Appeal Brief before the deadline at the end of July 2009. If the matter proceeds to an Oral Hearing before the Board of Appeal, this would be expected in 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 of patent applications and Benitec and CSIRO are also entitled to seek addition protection of the same or related subject matter, subject to double-patenting laws, in any of a number of US continuation applications. These applications are not subject to all of the restrictions as 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.

#### CONTACT:

#### BENITEC LTD

Sue MacLeman  
Chief Executive Officer  
+61 437 211 200

#### 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](http://www.benitec.com).