

ASX/Media Release

Benitec US Re-exam Update

26 March 2009, Melbourne, Australia: The Directors of Benitec Limited (ASX: BLT) provide the following update on the U.S. Patent and Trademark Office patent re-examination of the '099 Graham patent.

The Company was notified today that the USPTO has issued an Advisory Action indicating that the amendments, arguments and evidence proposed by Benitec and CSIRO will not be entered on procedural grounds. The Advisory Action does not substantively address the extensive arguments presented in support of patentability, does not substantively address evidence in the form of a declaration from a technical expert and provides no explanation for why the proposed amendments would not place the application in condition for allowance. We believe this to be improper. We intend to seek recourse initially within the USPTO and will receive further advice on other available options before ultimately deciding whether to proceed with an Appeal if necessary. Should we receive recourse within the USPTO, the re-examination process will continue taking into account our latest amendments, arguments and evidence.

Benitec was previously notified on 21 November 2008 that a Final Office Action had been issued by the USPTO. Representatives of Benitec and CSIRO have subsequently met with the examiners in mid February over the remaining re-examination issues. A response was then lodged with the USPTO on 26 February 2009.

Benitec and its partner CSIRO are fully committed to this patent and will take this matter to Appeal with the USPTO Board if necessary. 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 and Benitec and CSIRO are also entitled to seek additional protection to the subject matter claimed in the '099 patent, subject to double-patenting laws, in pending 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 further develop 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.

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

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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.