Media Release

Further Update - Successful USPTO Board of Appeals Decision

30 September 2010, Melbourne, Australia: The Directors of Benitec Limited (ASX:BLT) are pleased to provide this further update on the United States Patent and Trademark Office's (USPTO) Board of Patent Appeals and Interferences decision ("the Decision") reversing all previous rejections in the US 6,573,099 (the '099 Graham patent) appeal.

The rejection of all appealed claims (4-7, 10-22 and 24) has been reversed. Claims 23 and 25 to 28 had already been indicated as allowable. A copy of the Decision is available at the Company's website.

The '099 Graham patent will now be returned to the Examiner for further action consistent with the Decision. It is therefore anticipated that the USPTO will soon issue a Notice of Intent to Issue Ex Parte Re-examination Certificate. This Notice would formally terminate the re-examination proceeding. Within several weeks after issuance of the Notice, an Ex Parte Re-examination Certificate will issue, which is analogous to the re-issuance of the patent certificate.

In a January 2010 article in Nature Biotechnology this patent portfolio was described as "one of the most critical patent estates for deploying RNAi in animals and plants".

Benitec's Chief Executive Officer, Dr Peter French, said "This decision confirms our pre-eminent patent position in RNA interference. This includes Benitec's primary focus in the field of DNA-directed RNA interference (ddRNAi) in humans. This provides new impetus for expanding licensing negotiations with all US groups working in this field. Moreover it supports Benitec's clinical and pre-clinical R&D programs including HIV, Hepatitis B and C, and non small-cell lung cancer.

A further benefit of this Decision is that it provides guidance for the Examiners in assessing the several related US applications of the '099 Graham Patent, in which Benitec and CSIRO intend to pursue subject matter disclosed but unclaimed in the '099 Graham Patent. Pleasingly, it should bring to a close a protracted and difficult chapter in Benitec's history".

Ms Jan Bingley, General Manager, IP and Licensing - CSIRO Operations, stated: "CSIRO is extremely pleased with this result. All appealed claims were found allowable by the Board of Appeal for the USPTO, which provides our exclusive licensee Benitec and its sub-licensees with a strong commercial position in the US, in line with the position in other parts of the world. We look forward to clinical progress and commercial success for Benitec now that this decision has come through."

Of the 23 claims of the '099 Graham patent, claims 4 and 5 are considered to be the most important.

Claim 4 describes a double stranded genetic construct (dsRNA) for reducing expression of a target gene in an animal cell, comprising:

- two identical copies of a structural gene sequence, one in the sense orientation and the other in the antisense orientation, each under the control of a separate promoter operable in animal cells
- the sequences being substantially (defined elsewhere as 80-100%) identical to a region in the target gene.

Claim 5 describes a double stranded genetic construct (dsRNA) for reducing expression of a target gene in an animal cell, comprising:

- a promoter sequence operable in animal cells;
- two identical copies of a structural gene sequence, one in inverted orientation to the other
- the sequences being substantially (defined elsewhere as 80-100%) identical to a region in the target gene
- a stuffer fragment (which is a length of double stranded DNA coding for a hairpin loop in the dsRNA.

Further, claim 7 describes methods for using a construct according to claim 5, and claim 10 describes methods for using a construct according to claim 4. Claims 11 and 12 recite where the region of the target gene is 30 nucleotides long.

In addition, other US applications remain pending to pursue other subject matter disclosed but unclaimed in the '099 Graham Patent as described above.

"The Directors and I look forward to building on this positive news and providing further updates to the market once the process for reissuing the '099 Graham patent is completed" said Dr French.

For Further Information

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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.

Benitec is seeking to establish partnerships that combine its ddRNAi gene-silencing technology with novel and proprietary gene delivery mechanisms. For additional information, please visit www.benitec.com.