



# Biotech Daily

Tuesday June 30, 2009

*Daily news on ASX-listed biotechnology companies*

- \* **ASX UP, BIOTECH DOWN: HEARTWARE UP 7%, PRANA DOWN 22%**
- \* **BIOGUIDE BRIEF: STRAPPED FOR CASH – AND THE WEDDING’S OFF**
- \* **FERRIER HODGSON: VENTRACOR SHAREHOLDERS ‘GET NOTHING’**
- \* **USPTO CONTESTS GENETIC TECHNOLOGIES’ PATENT**
- \* **IMPEDIMED RIGHTS ISSUE RAISES \$7m**
- \* **PHARMAXIS SHARE PLAN RAISES \$7.2m**
- \* **TISSUE THERAPIES APPOINTS DR CHERRELL HIRST DIRECTOR**
- \* **UNILIFE REQUESTS ‘SIGNIFICANT AGREEMENT’ TRADING HALT**
- \* **LAWRENCE GOZLAN REPLACES AVEXA DIRECTOR DR JOHN SIME**
- \* **BIO-MELBOURNE WORKSHOPS PRE-NUPTIAL RESEARCH CONTRACTS**

## MARKET REPORT

The Australian stock market closed the financial year up 1.75 percent on Tuesday June 30, 2009 with the S&P ASX 200 up 68.0 points to 3,954.9 points. Fifteen of the Biotech Daily Top 40 stocks were up, 18 fell, four traded unchanged and three were untraded.

Heartware was best for the second day in a row, up six cents or 7.3 percent to 88 cents with 273,465 shares traded, followed by Genera up six percent to 53 cents.

Avexa, Benitec, Polartech, Progen and Starpharma were up more than four percent; Clinuvel and Tissue Therapies were up more than three percent; Bionomics and Optiscan rose more than two percent; Alchemia, Chemgenex and Cytopia were up more than one percent; with Cellestis and Resmed up less than one percent.

Prana led the falls, down 3.5 cents or 21.9 percent to 12.5 cents with 1.2 million shares traded, followed by Labtech down 10.7 percent to 12.5 cents.

Peplin, Phosphagenics and Phylogica lost more than six percent; Viralytics was down more than five percent; Biota fell 4.4 percent; Novogen and Pharmaxis were down more than three percent; Genetic Technologies, Living Cell and Sirtex shed more than two percent; Arana, Circadian, Nanosonics, Psivida and Universal Biosensors fell more than one percent; with Acrux and Cochlear down less than one percent.

## MARC SINATRA'S BIOGUIDE BRIEF NOTE: FERMISCAN, POLARTECHNICS

After the Progen saga earlier this year which highlighted how difficult mergers are to achieve, it is not surprising that proposed Polartech-nics-Fermiscan union is now off.

While I said in an earlier Bioguide (BD: Apr 20, 2009) that the merger made sense, the marriage of two poor companies with their respective problems is not as easy as a rich one taking out a poor one. Like Fermiscan shareholders, I was not aware at that time of the \$1.4 million legal liability for the costs of the case against Prof Veronica James.

But the merger has largely been scuttled by an independent expert finding that Polartech-nics offer for Fermiscan was neither fair nor reasonable to Fermiscan shareholders.

Interestingly, the independent expert found that, in their opinion, Polartech-nics and Fermiscan shares could not be reliably valued.

They did look at the relative share prices of the two companies leading up to the merger announcement but, despite the fact that the comparison indicated the offer was fair, dismissed the comparison on the basis that "...investors in both Fermiscan and Polartech-nics are unlikely to be fully aware of the potential returns and risks associated with each company".

Take that, efficient market hypothesis.

At the end of the day, the independent expert decided the offer was not fair or reasonable based on their view that Polartech-nics was likely to have to raise near term capital, diluting Fermiscan shareholders who took up the offer.

The funny thing is that Fermiscan isn't exactly flush with cash either given they are burning about \$1.7 million a quarter, have \$3.8 million in the bank, no near term sources of significant revenue growth and are engaged in costly legal proceedings against the inventor of the company's technology, Prof Veronica James, that have already created a contingent liability likely to be around \$1.4 million and climbing.

I suspect that it is the contingent liability that has really scotched the merger. The money that Fermiscan will have left if the appeal goes against them will barely be enough to keep themselves afloat without a very near-term capital raising, much less support Polartech-nics' cash-burn.

The merger probably would be going ahead if Fermiscan had just kept Dr James happy.

Polartech-nics, on the other hand, probably only remains interested in the merger because it has few, if any, other options.

Fermiscan fell 0.7 cents or 6.7 percent to 9.8 cents.  
Polartech-nics climbed 0.3 cents or 4.62 percent to 6.8 cents with 2.2 million shares traded.

**Marc Sinatra  
Analyst**

## VENTRACOR

Administrators Ferrier Hodgson have told the ASX that given the improbability of a sale of the company "it is not expected that there will be any return to shareholders".

Ferrier Hodgson finally detailed to shareholders the deed of company arrangement and for the first time named the failed buyer as Siqro Inc, believed to be a creation of the US-based Orqis Medical.

Ferrier Hodgson's administrator Steve Sherman said that Siqro was unable to make a bridging payment on Friday June 19, 2009 to fund operations and "subsequently withdrew their interest, resulting in the termination of the business sale deed".

Mr Sherman said he then contacted the shareholder group and Horizon Health which had earlier made proposals to fund Ventracor, which Mr Sherman said were not viable.

Mr Sherman said he gave the shareholder group and Horizon Health one working day to find the required funds, but they were unable to comply.

"Despite numerous discussions with both parties and assurances that the cash transfer would be made, I was not provided with any funds within the necessary timeframe," Mr Sherman said. "This is notwithstanding that the timeframe for providing these funds was extended to Tuesday June 23, 2009."

He said a meeting of creditors on July 3, 2009 would decide whether the deed of company arrangement should continue or be terminated and the company proceed to termination.

"On the basis that there will be no sale of the Ventracor business, at this time it is not expected that there will be any return to shareholders of the company," Mr Sherman said.

## GENETIC TECHNOLOGIES

The United States Patent and Trademark Office has issued Genetic Technologies an office action relating to one of its non-coding DNA analysis technologies patents.

Genetic Technologies said that the first non-final office action said that seven of the 36 claims of United States Patent number 5,612,179 entitled 'Intron sequence analysis method for detection of adjacent and remote locus alleles as haplotypes' were the subject of the re-examination.

The company said the initial action was preliminary and non-final and it would file a response to the action and as the re-examination was initiated ex parte, there was no third party to the proceedings.

Genetic Technologies chief executive officer Dr Paul MacLeman said that after receiving advice from its US advisors, the company was "confident that these claims will be upheld".

"It is not unusual for some or all claims of high profile patents to undergo a re-examination," Dr MacLeman said.

The company said the German equivalent of the patent was also recently the subject of a challenge by Bioscientia Institute for Medical Diagnostics.

Bioscientia withdrew its challenge during the court hearing after Genetic Technologies successfully argued the validity of that patent.

The company said the patent has previously been the subject of several US infringement actions, all resulting in settlement, including one with Applera Corporation on undisclosed terms following a successful Markman claim construction hearing.

"This is a national action and all patents in the family outside the United States are unaffected," Dr MacLeman said.

"The unchallenged patent claims are presumed to be valid, intact and enforceable during the re-examination process and we will be continuing our licencing activities as usual," Dr MacLeman said.

Genetic Technologies fell 0.1 cents or 2.2 percent to 4.5 cents.

## IMPEDIMED

Impedimed says its one-for-nine rights offer raised \$1.2 million from eligible shareholders with the balance of \$5.8 million underwritten by Wilson HTM.

Impedimed said shareholders applied for 17 percent of the available entitlement offer shares.

The company said 9,022,153 shares were not taken up under the offer and Wilson HTM Corporate Finance would place the shortfall shares.

Impedimed chairman Mel Bridges said the company was “very pleased with the support from Wilson HTM Corporate Finance who have facilitated the fully underwritten placement of \$5.0 million announced on May 28, 2009 and the entitlement offer of \$7.0 million”.

“The \$12 million raised will allow the company to focus for the next 12 months on its business and on the achievement of the milestones it is targeting,” Mr Bridges said.

Impedimed was untraded at 64 cents.

## PHARMAXIS

Pharmaxis has raised \$7.2 million from its share plan at \$2.35 a share.

Pharmaxis said a total of 1,584 shareholders participated in the plan and the company said it would issue 3,069,347 shares.

Pharmaxis chief executive officer Dr Alan Robertson said the company was “very encouraged and appreciative of the level of support from our shareholders”.

“The total proceeds of the placement and share purchase plan of \$54 million puts us in a strong position from which to take our products to the global markets,” Dr Robertson said.

Pharmaxis fell eight cents or 3.2 percent to \$2.41.

## TISSUE THERAPIES

Tissue Therapies has appointed QBF chief executive officer Dr Cherrell Hirst as a director.

Tissue Therapies said that along with a “distinguished clinical career in the detection and treatment of breast cancer” Dr Hirst had extensive and highly respected achievements in both commercial and not-for-profit organizations.

The company said Dr Hirst was deputy chair and part-time chief executive officer of Queensland Biocapital Funds and a director of Peplin, Suncorp Metway, Avant Mutual Group and Avant Insurance, Impedimed and Xenome.

Dr Hirst is also a former chancellor of the Queensland University of Technology and has served as director and chair of multiple commercial, community and government organizations throughout her career.

Tissue Therapies board is Mel Bridges, Cherrell Hirst, Roger Clarke, Greg Baynton and chief executive officer Dr Steven Mercer.

Tissue Therapies was up half a cent or 3.2 percent to 16 cents.

## UNILIFE MEDICAL

Unilife has requested a trading halt pending an announcement to complete the signing of “a significant agreement with its pharmaceutical partner”.

Trading will resume on July 2, 2009 or on an earlier announcement.

Unilife last traded at 31 cents.

## AVEXA

Avexa says Lawrence Gozlan will replace Dr John Sime as a non-executive director, effective immediately.

Avexa said Mr Gozlan had a background in the life science industry “as both a leading analyst and investor”

Mr Gozlan is the chief executive officer and founder of Scientia Capital, an investment fund focused on life science.

Avexa said that prior to Scientia, Mr Gozlan was “responsible for the largest biotechnology investment portfolio in Australia as the institutional biotechnology analyst at Queensland Investment Corporation”.

He was a biotechnology sell-side analyst on the equities team at Foster Stockbroking and had corporate finance experience advising life science companies at Deloitte.

Avexa climbed half a cent or 4.55 percent to 11.5 cents with 1.2 million shares traded.

## BIO-MELBOURNE NETWORK

The Bio-Melbourne Network says its July 17, 2009 workshop will examine how to negotiate and document multi-party collaborative agreements.

The Bio-Melbourne Network said the workshop was entitled ‘Pre-nuptials for research collaborators’ and would be conducted by Piper Alderman intellectual property partner Tim Clarke and corporate and commercial partner George Raitt.

The Bio-Melbourne Network said research institutes, universities and companies were increasingly entering into multiple party collaborations and while most people understood the science, few understood what was required to develop the framework necessary for a productive working relationship.

“Too often what seem like innocuous details turn out to be the sticking points that can end up in litigation,” the Bio-Melbourne Network said.

The Network said Mr Clarke and Mr Raitt would analyze issues surrounding governance, management and intellectual property when in collaborative research.

The organization said the workshop would provide strategic advice on how to negotiate and document multi-party collaborative research ventures and cooperative research centres.

Participants will gain practical experience through a detailed case study that deals with many of the issues faced by those wanting to engage in collaborative research.

Participants will be guided on how to address these issues and develop a range of solutions to solve them.

The Bio-Melbourne Network's July 17 Bio-Workshop will be held at Piper Alderman Lawyers Level 24, 385 Bourke St, Melbourne with registration at 8.45am.

The workshop concludes at 12.30pm followed by a light lunch.

Prices, including GST, are \$350 per person for Network members and \$800 per person for non-members.

For more information visit [www.biomelbourne.org](http://www.biomelbourne.org) or call Anita Petris on +613 9650 8800 or email: [apetris@biomelbourne.org](mailto:apetris@biomelbourne.org).