



# Biotech Daily

Tuesday September 8, 2009

*Daily news on ASX-listed biotechnology companies*

- \* **ASX, BIOTECH UP: CATHRX UP 11%; COMPUMEDICS DOWN 9.5%**
- \* **SIRTEX'S DR BRUCE GRAY WINS 'NO DUTY TO INVENT' CASE**
- \* **SPRUSON & FERGUSON: IP GENIE UNBOTTLED**
- \* **BIONOMICS RAISES \$12.8m; SHARE PLAN TO RAISE \$2.2m**
- \* **MEDICAL THERAPIES' MIDKINE BOOSTS BREAST CANCER TESTS**
- \* **UNDERWRITER PNK HOLDINGS TAKES 31% OF PATRYS**
- \* **CATHRX APPOINTS MERCE V SPANISH DISTRIBUTOR**

## MARKET REPORT

The Australian stock market climbed 1.56 percent on Tuesday September 8, 2009 with the S&P ASX 200 up 69.4 points to 4523.8 points.

Sixteen of the Biotech Daily Top 40 stocks were up, 13 fell, seven traded unchanged and four were untraded.

Cathrx was best, climbing four cents or 11.43 percent to 39 cents with 185,310 shares traded, followed by Antisense up 0.4 cents or 8.9 percent to 4.9 cents.

Bionomics climbed 6.25 percent; Cellestis, Novogen and Sirtex were up more than four percent; Acrux and Viralytics were up more than three percent; Benitec, Cochlear and Optiscan rose more than two percent; with Biota, Chemgenex, Mesobalst, Nanosonics and Psivida up more than one percent.

Compumedics led the falls, down two cents or 9.5 percent to 19 cents with 60,000 shares traded, followed by Cytopia down one cent or 7.7 percent to 12 cents.

Tissue Therapies and Universal Biosensors lost more than six percent; Prana fell 4.35 percent; Clinuvel fell 3.2 percent; Circadian, Pharmaxis, Progen and Sunshine Heart shed two percent or more; with Genera and Starpharma down more than one percent.

## SIRTEX

The full court of the Federal Court has dismissed an appeal by the University of Western Australia against earlier findings in favor of Sirtex founder Dr Bruce Nathaniel Gray. There has been ongoing litigation between the University, Dr Gray and Sirtex over the ownership of the selective internal radiation therapy or SIR-Spheres technology, as well as other issues.

A finding in May was deemed to be the end of the Sirtex involvement in the case (BD: May 15, 2009), but according to the company's 2008 annual report former chairman Dr Gray owned 17,332,283 shares or 31.1 percent of the company and it is believed that the Full Court hearing lifts a September 9, 2008 injunction preventing Dr Gray trading his shares. On September 3, 2009, Justices Kevin Lindgren, Paul Finn and Annabelle Bennett dismissed the appeal and ordered that the University pay Dr Gray's costs.

The judges upheld the original Justice Robert French decision that the contract between the University and Dr Gray "there was no 'duty to invent' and the conditions required for the implication of a term at law were not satisfied".

The full court upheld Justice French's decision on 'Fiduciary duties' that "in absence of implication of terms in law, there was no independent fiduciary obligation of a kind and scope that made [the] employee accountable to [the] university for the inventions, applications for patents, or patents".

The Court upheld that "on the evidence, university had abandoned the patent committee mechanism and the term incorporating the patent regulations did not avail university".

The full judgment is at: <http://www.austlii.edu.au/au/cases/cth/FCAFC/2009/116.html>.

A further five days are set for hearing of costs and other matters by Justice Michael Barker at the Federal Court in Perth beginning on November 9, 2009.

Sirtex was up 18 cents or 4.1 percent to \$4.59.

## SPRUSON & FERGUSON COMMENT

In a newsletter, intellectual property law firm Spruson & Ferguson said: "This decision has the potential to impact directly on ownership of intellectual property generated in public sector research organizations."

The newsletter authors Philip Heuzenroeder and Silke Semitecolos said the Federal Court upheld the decision that Dr Gray's employment to undertake and organize research, did not include a duty to invent and in the absence of an express agreement to the contrary, the Court said there was no implied term in employment contracts of academic university staff that inventions created in the course employment were owned by the university.

The newsletter said some of the impacts of the decision included a need for research organizations to review procedures and contractual terms on the ownership of inventions created by employees; there would be more proactive negotiation by academic staff who become aware of the decision; and commercialization officers would need to understand the issues clearly.

They said the ownership of intellectual property in a range of existing projects and past transactions may be open to question and private sector organizations which rely on public sector research institutions need to ensure the ownership of intellectual property. Spruson & Ferguson principal and head of its commercialization team Rob McInnes said that one outcome was that "the fruits of many years of research within the University, funded to a large extent by the taxpayer, will now be enjoyed by one person, with no return to the University or to the public who fund the University - public investment will have been turned into private gain and those who applaud this decision should think about that ... ultimately this case sets a precedent for the diversion of massive public investment into private hands".

## BIONOMICS

Bionomics has placed \$5.8 million at 24 cents a share and will offer a fully underwritten \$2.2 million share plan at the same price.

Last week, Bionomics received \$7 million from the Australian Government's Innovation Investment Follow-on Fund, through Start-up Australia (BD: Sep 3, 2009), conditional on raising a further \$5 million and shareholder approval.

Today, Bionomics said the record date for the share plan would be September 14, 2009 and further details would be announced at a later date.

Bionomics chief executive officer Dr Deborah Rathjen told Biotech Daily the shareholders meeting would be in Adelaide before the November annual general meeting in Sydney.

In a media release to the ASX, Bionomics said that after allowing for projected revenue and spending \$20.4 million for the BNC105 phase II cancer trials and the BNC210 anti-anxiety phase Ib trial, the company should have \$6.4 million in cash at June 30, 2011.

Bionomics said that "in the absence of new opportunities or major developments, the directors have committed not to raise further equity capital for at least two years".

The company said that chairman Dr Peter Jonson would retire from the board at the end of the annual general meeting and director Chris Fullerton would be appointed chairman. Bionomics was up 1.5 cents or 6.25 percent to 25.5 cents.

## MEDICAL THERAPIES

Medical Therapies says researchers at Japan's Kumamoto University found that measuring blood midkine levels improved conventional breast cancer marker tests.

The company said that measuring midkine levels with cancer markers CA15-3, CEA and NCCST-439 gave a statistically significant improvement in the diagnosis of breast cancer.

The company said that midkine levels became elevated in the early stages of many cancers and it owned a portfolio of patents relating to measuring midkine levels in blood, urine or in vivo for the early detection of a number of different malignancies.

Medical Therapies said midkine was widely researched and the Kumamoto University's Department of Diagnostic Medicine measured levels of cancer markers and midkine in the blood samples of 147 breast cancer patients, in addition to 104 healthy volunteers.

Using a combination of conventional markers, CEA, CA15-3 and NCCST-439, the rate of breast cancer detection was 29.9 percent.

Medical Therapies said the detection rate increased to 44.9 percent when midkine was used in combination with two of the three conventional markers (CEA/CA15-3/midkine and CEA/NCCST-439/midkine).

The company said that using a panel of markers was common in cancer detection and combined the advantages of individual markers for improved patient outcomes.

Medical Therapies said mammography was the gold standard for breast cancer screening for women over 50 years of age and for those with re-occurring tumors.

But the company said mammography was costly and had radiation exposure and its accuracy varied widely depending on the skill of the operator.

Medical Therapies said that an accurate blood test could add significant value to the proper diagnosis of breast cancer, especially for those under the age of 50 years or in the early stages of the disease.

Medical Therapies said it was "in the process of commercializing its early cancer detection technology" and the finding provided independent validation of using midkine, in combination with other markers, for the early diagnosis of breast cancer.

Medical Therapies rose 0.5 cents or 19.2 percent to 3.1 cents with 2.6 million shares traded.

### PATRY5

PNK Holdings has increased his substantial shareholding in Patrys from 37,625,000 shares (22.29%) to 57,625,000 shares (31.27%).

PNK said 20,000,000 shares were bought for \$5 million as the underwriter for the recent rights issue (BD: Aug 17, 2009).

Patrys was up one cent or 10 percent to 11 cents.

### CATHRX

Cathrx says Merce V Electromedicina will distribute its cardiac catheters to hospitals across Spain.

Cathrx said Merce V was founded in 1972 and was a longstanding and active participant in the cardiac product market in Spain.

The company said the contract with Merce V would expand its distribution network in Europe.

Cathrx was up four cents or 11.4 percent to 39 cents.