



## Media Release

### **Licensing Executives Society welcomes UWA appeal to clarify “Gray” area of IP commercialization**

**14 May 2008**

The Licensing Executives Society of Australia and New Zealand (LESANZ) today welcomed the potential for greater clarity on the position of Australian universities in commercializing new technology. This follows the move by the University of Western Australia (UWA) to appeal the recent dismissal of its \$150 million legal battle over IP rights with a former employee and founder of the \$200m ASX-listed company Sirtex Medical Limited (ASX:SRX).

LESANZ President-elect, Karen Sinclair noted this case highlights current global trends acknowledging IP protection in the academic sector. The European Commission recently released a recommendation on the management of IP in knowledge transfer activities and a related Code of Practice for universities and other public research organisations.

"The European Union rules follow on from the US Bayh Dole Act which is often cited as the reason for the vibrant technology transfer market in the US academic sector and we are calling for Australia to develop a similar Code," Ms Sinclair said.

Responding to the words of Justice French that *'Universities might well consider the alternative of deriving benefits from inventions produced by their staff by offering highly competent and experienced commercialisation services'* LESANZ Trustee Jeff Bergmann noted: "that LESANZ members provide highly competent and experienced commercialisation services but the efforts of its members would be more effective if the law provided a simple and workable ownership regime for IP rights developed in the academic sector."

Of particular concern was the Court's finding that the invention was not developed "in the course of employment" as Dr Gray was employed "to conduct research", not "to invent". According to Mr Bergmann, there is rarely a clear distinguishing line between researching and inventing in this sector.

"Inventions are commonly the fruits of research and academic researchers rarely deliberately set out to make an invention from research they choose to pursue. The decision has the potential to significantly complicate the process of commercialising IP rights in the academic sector," he said.

"Ultimately, commercialising partners will now need to very carefully assess the inventive contributions of each individual researcher involved in the relevant research, and potentially deal with them all on an individual basis rather than dealing with a single collective employing entity."

Of further concern was Justice French finding that UWA had not validly "promulgated" the Regulations containing its IP policy even though it appears that the relevant players operated under an assumption that the policy was in force.

"This reasoning highlights the importance of not only establishing IP protection policies within the academic research sector, but ensuring that the policies are validly implemented and continually applied," Mr Bergmann concluded.

## **ENDS**

### **About LESANZ**

LESANZ is the Australian and New Zealand chapter of the Licensing Executive Society International (LESI), the premiere association for the education and promotion of commercialisation of innovation with 31 national and regional societies, with around 10,000 individual members in total.

LESANZ is a not-for-profit professional body whose members are actively involved in business activities concerned with commercialising innovation, intellectual asset management, and transfer of technology and intellectual property rights. LESANZ has over 500 members across every state of Australia and from the North and South islands of New Zealand.

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