

ASX/MEDIA RELEASE

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COCHLEAR LIMITED: APPEAL DECISION IN US PATENT INFRINGEMENT LAWSUIT

Cochlear Limited, Sydney, (AS:COH) today announced that the United States Court of Appeals for the Federal Circuit, in Washington, D.C., has entered a decision in the appeal of the Judgment in the patent infringement lawsuit by the Alfred E. Mann Foundation for Scientific Research (“AMF”) and Advanced Bionics LLC (“AB”) against Cochlear Limited and its US subsidiary Cochlear Americas.

The sequence of events for this case are:

In a trial of the patent infringement lawsuit in January 2014, a jury found that Cochlear infringed four claims across two patents, the infringement was “willful” and awarded USD \$131,216,325 in damages.

On 1 April 2015, a judge in the United States District Court in Los Angeles, California held that three of the four patent claims were invalid and Cochlear’s infringement of the remaining claims was not “willful.” The judge also overturned the damages awarded because three of the four claims were held to be invalid.

On 21 April 2015, the Court entered Judgment on liability only and stayed a new trial on damages pending the outcome of the appeals by all parties from the Judgment.

The Court of Appeals earlier today affirmed the Judgment as to infringement, affirmed the Judgment as to invalidity of one patent, and reversed the Judgment of invalidity as to one claim in the other patent. The Court of Appeals then remanded to the District Court the issue of damages and willfulness of infringement of two claims in the one remaining patent at issue.

The nature of the USA legal process is such that the timeframe and final future outcomes are still uncertain.

A provision was expensed in the half year ended 31 December 2013 in relation to this dispute. The provision is AUD 21.3 million and is disclosed at note 5.5 (page 74) in the 2016 Annual Report. For the purpose of determining this provision, Cochlear considered its independent damages expert assessment prepared for the 2014 trial to estimate the liability that could result from the infringement of four claims, and is considered adequate.

As the patents have expired, the trial Judgment and the Court of Appeals’ decision will not disrupt Cochlear’s business or customers in the United States.

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