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COCHLEAR LIMITED: RULING IN USA PATENT INFRINGEMENT CASE

Sydney, 5 November 2018 (ASX:COH): Cochlear Limited today announced that the court ordered entry of a judgment against it in the patent infringement lawsuit by the Alfred E. Mann Foundation for Scientific Research (“AMF”) and Advanced Bionics LLC (“AB”).

Key points:

- Damages in the amount of USD 268,057,078 has been awarded against Cochlear in the patent infringement lawsuit by AMF and AB;
- Cochlear will appeal the Judgment with the timing of an appeal outcome expected in approximately two years;
- Cochlear established a provision in FY14 based on the view of Cochlear’s independent damages expert’s assessment of the liability that could result from the dispute;
- Cochlear will undertake a review of the current provision of AUD 21.3 million and will update the market once this review is complete;
- It is important to note that the infringement relates to a long expired patent and has no ongoing impact to Cochlear’s business.

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 claim was not “willful.” The judge also vacated 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.

On 18 November 2016, the Court of Appeals 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.

Details:

AMF and AB asked the District Court judge to enter judgment against Cochlear for USD \$131,216,325 based upon the verdict from the jury trial in January 2014, to add an additional amount for post-verdict infringement, and to increase those damages for willful infringement.

Cochlear asked the judge to find non-infringement of the second valid claim, to hold a second jury trial on damages, and to decline to increase damages for willful infringement.

Today the U.S. District Court granted AMF's and AB's request for entry of the prior jury verdict, upheld infringement of the second claim, added USD 2,812,214 for post-verdict infringement, increased damages based upon the jury's verdict of willful infringement, and ordered AMF and AB prepare a judgment to be entered against Cochlear for USD268,057,078.

Cochlear's CEO and President Dig Howitt said "We are surprised by the decision and do not agree with the reasons given by the judge. We will continue to defend this case and the next step in the litigation process is our appeal to the U.S. Court of Appeals. The case is likely to take years to finally resolve."

A decision on the appeal is expected in approximately two years. To stay the execution of the judgment pending the outcome of the appeal, Cochlear will need to lodge a USD 335 million insurance bond with the Court within 14 days of the entry of judgment to secure the judgment amount, and any interest and costs. Cochlear has debt and other facilities available to cover the amount of the insurance bond.

A provision was expensed in the half year ended 31 December 2013 in relation to this dispute. The current provision is AUD 21.3 million and is disclosed in note 5.6 to the financial statements on pages 86 and 87 of the 2018 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 infringement. Cochlear will undertake a review of the current provision and will update the market once this review is complete.

As the patent at issue in the litigation has expired, the judgment will not disrupt Cochlear's business or customers in the United States.

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