

Cochlear facing a ‘day of reckoning’ in patent case

By **SAMANTHA BAILEY**, BUSINESS REPORTER
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Cochlear can't escape its liability in a long-running patent infringement case, says the US medical research organisation which took the hearing device maker to court.

“There will be an ultimate day of reckoning,” said John Petrovich, chief executive of the Alfred E Mann Foundation.

On Monday, Cochlear ([COH](#)) said the US District Court had awarded \$US268 million (\$371m) in damages to the non-profit Mann Foundation, as it reinstated an earlier finding in the patent infringement case.

Cochlear said that it was surprised by the decision and that it would appeal, which was expected to take about two years.

“I'm surprised that they were surprised,” Mr Petrovich told *The Australian*.

“We were expecting all along that they would reinstate the verdict.”

The decision comes after a US jury found in 2014 that Cochlear had infringed four claims across two patents and that the infringement was wilful.

That finding was reversed in 2015 and the damages were vacated.

The US District Court then entered judgment on liability only and stayed a new trial on damages, pending the outcome of the appeals by all parties. The judgment as to infringement was affirmed in 2016 by the Court of Appeals.

The Mann Foundation asked the District Court judge to enter judgment against Cochlear to add an additional amount for post-verdict infringement, and to increase those damages for

wilful infringement, which was then granted.

Cochlear said that pending the outcome of the appeal, it would need to lodge a \$US335m insurance bond with the court within 14 days to secure the judgment amount, and any interest and costs.

“Because Cochlear’s infringement was confirmed in an earlier appeal, the only question left to be answered is how much Cochlear owes for its infringement,” Mr Petrovich said.

“They can’t really make this go away through the appeal process, there will be an ultimate day of reckoning.

“I just want Cochlear to pay us for the use of the inventions that they have been found by the jury and the court to have infringed.”

Mr Petrovich said should Cochlear choose to appeal, the awarded damages will continue to climb and could far exceed \$US300m.

Cochlear chief executive Dig Howitt told *The Australian* on Monday that the company did not agree with the judge’s decision.

“We respect intellectual property, we’re a company with significant intellectual property and we act always with integrity and that feeds into this case too,” he said.

“We believe we’ve acted with integrity and with honesty in our approach to intellectual property at all times.”

At about 1.15pm (AEDT), Cochlear shares were trading down 0.12 per cent at \$171.54.

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