

DePuy Hit With \$8.2M Verdict In Implant Patent Fight

By [Dani Kass](#)

Law360 (August 23, 2018, 7:19 PM EDT) -- A Wisconsin federal jury has found that [DePuy Orthopaedics Inc.](#) should pay \$8.2 million for willfully infringing an Acantha LLC orthopedic implant patent, Acantha's attorneys said Thursday.

After five hours of deliberations Tuesday, the Green Bay-based jury unanimously found in favor of Acantha, [Caldwell Cassady & Curry PC](#) said in a statement. The trial over U.S. Patent Number [RE43,008](#) lasted seven days and was held before Chief U.S. District Judge William C. Griesbach.

"The jury worked very hard, and we are grateful for their verdict," Caldwell Cassady principal Austin Curry told Law360.

Representatives for DePuy didn't respond to a request for comment Thursday.

Acantha's patent, which was invented by David Talaber and James Lloyd, describes an orthopedic implant for joining bone segments, such as when treating broken bones, spinal disorders or for fusing two vertebrae when a spinal disc is removed. It was issued in 2008 as U.S. Patent Number [6,261,291](#) and then reissued in 2011.

Talaber testified that he started reaching out to medical device companies, including multiple DePuy subsidiaries, in 2002 to see if they'd be interested in using the technology, according to Caldwell Cassady. Later on, Lloyd tried to sell the technology to DePuy as well. In both cases, DePuy turned them down.

Acantha sued DePuy, its parent company [Johnson & Johnson](#) and some related subsidiaries in 2015, alleging the companies were infringing the reissued patent with some devices used in bone-joining and spinal repairs.

The patent owner has claimed that DePuy was well aware of the patent, given the multiple meetings about possibly licensing the technology. For example, a DePuy executive in 2006 mentioned that a separate company, Synthes, had a device that was probably infringing the technology, Acantha said. DePuy later acquired Synthes, so it should have at least known that the Synthes-branded device was in trouble, Acantha has argued.

The jury was limited in what award it could give, as Judge Griesbach [capped it](#) in April to damages over the last four years.

In 2003, Acantha entered into an exclusive licensing deal for the '291 patent with [Stryker Spine SA](#). But Acantha failed to enforce a provision of its licensing contract

with Stryker, which required that the device maker include the patent number on its labels. That means DePuy wasn't on notice that its own devices were infringing the patent until an Acantha lawyer reached out in March 2014 with a letter outlining patent claims, Judge Griesbach ruled.

The patent-in-suit is U.S. Patent Number 6,261,291, which was later reissued as U.S. Patent Number RE43,008.

Acantha is represented by Bradley W. Caldwell, John Austin Curry, Christopher S. Stewart, John Summers and Seth Reich of Caldwell Cassady & Curry PC and T. Wickham Schmidt of [Davis & Kuelthau SC](#).

DePuy is represented by Kenneth S. Luchesi, Calvin P. Griffith, Patrick J. Norton, Michael S. Weinstein and Tracy A. Stitt of [Jones Day](#) and John P. Fredrickson of [Boyle Fredrickson](#).

The case is Acantha LLC v. DePuy Orthopaedics Inc. et al., case number [1:15-cv-01257](#), in the U.S. District Court for the Eastern District of Wisconsin.

--Additional reporting by Kat Greene. Editing by Alyssa Miller.