



THINK FORWARD

U.S. Supreme Court to Review the Doctrine of Laches in Patent Cases

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The Supreme Court recently granted a petition for writ of certiorari to review the Federal Circuit's en banc decision in *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC.*, 807 F.3d 1311 (Fed. Cir. 2015), affirming laches as a defense to patent infringement claims. Under 35 U.S.C. § 286, a patent owner is precluded from recovering for patent infringement occurring more than six years prior to the filing of the complaint or counterclaim for infringement. Under the laches defense, a patent owner is precluded from seeking any pre-suit damages for patent infringement if the owner unreasonably delayed filing suit, and the delay resulted in material prejudice to the accused infringer.

The Federal Circuit's en banc decision addressed whether laches remains a defense to patent infringement, in light of the Supreme Court's decision in *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014), rejecting laches as a defense to copyright infringement. The majority held that there was no substantive distinction material to the *Petrella* analysis between § 286 and the damages limitations provision of the copyright statute that the Supreme Court held foreclosed the laches defense in copyright cases. However the majority further held that unlike the copyright statute, the patent statute includes a provision, § 282, which codifies laches as a defense. Thus, according to the majority, laches remains a defense to patent infringement unless and until Congress decides to amend the patent statute.

In its decision granting certiorari, the Supreme Court recounted from *Petrella* that it "ha[s] never applied laches to bar in their entirety claims for discrete wrongs occurring within a federally prescribed limitations period." Those encouraging reversal of the Federal Circuit's SCA decision contend that the six-year patent damage limitations period set forth in § 286 of the patent statute is analogous to the three-year limitations period set forth in § 507(b) of the copyright act, which the Supreme Court held in *Petrella* precludes application of laches. Thus, the question presented to the Court is whether and to what extent the defense of laches may bar a claim for patent infringement brought within the six-year statutory damages period provided in § 286 of the patent statute.

Whether the laches defense survives the Supreme Court's review remains to be seen. In the meantime, laches remains a defense to patent infringement.

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