

### Supreme Court rules that laches is not a defence for patent damages

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On March 21 2017 in *SCA Hygiene Products Aktiebolag v First Quality Baby Products* the Supreme Court held, in a seven-to-one decision, that the doctrine of laches cannot bar a claim for damages in patent infringement cases. The decision reverses the Federal Circuit Court of Appeals decision, which had held *en banc* that laches could be used to bar infringement claims even accruing with the six-year statutory limitations period. This decision substantially increases the ability for patent owners to obtain damages for patent infringement.

The majority relied on the court's 2014 decision in *Petrella v Metro-Goldwyn-Mayer*, where it held that laches could not be used to bar copyright infringement claims brought within the three-year limitations period established in Section 507(b) of the Copyright Act. The court in *Petrella* relied on the rule that laches is a defence to equitable relief, but not to recovery of legal damages where a statutory limitations period is established.

The court had little problem in applying the reasoning of *Petrella* to Section 286 of the Patent Act, which states that a patent owner may recover damages for any patent infringement committed within six years of the filing of the claim. It rejected arguments that Section 286 was not a true statute of limitations, noting that the statutory limitations functioned much as a traditional statute of limitations based on accrual of a cause of action.

The court also rejected the Federal Circuit's rationale that statutory defence of unenforceability under Section 282(b)(1) included laches. The plain language of the statute did not refer to laches, and the court expressed doubt that the legislature would create a specific six-year statute of limitations and then provide a means to shorten it.

The decision removes laches as a defence for damage claims for patent infringement, and serve as a boost for patent owners. However, it does not apply to equitable relief, such as injunctions. Thus, a patent owner may find itself able to recover damages (eg, a reasonable royalty) from competitors, but without being able to obtain an order to stop the infringement.

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