IP Alert: SCA Hygiene: Mountain or Mole Hill? That is the Question



SCA Hygiene: Mountain or Mole Hill? That is the Question

By Ernest V. Linek

The U.S. Supreme Court heard oral arguments in SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC (Case No. 15-927) on Nov. 1, 2016. The question presented to the court was whether and to what extent the defense of laches may bar a claim for patent infringement brought within the Patent Act's six-year statute of limitations period.

Laches is an equitable defense based on an unreasonable delay in taking action by the plaintiff, to the detriment of the defendant. If laches applies in a given patent infringement action, the patent is held to be unenforceable against the defendant.

This case is a topical follow-on to the 2014 "Raging Bull" (Petrella v. Metro-Goldwyn-Mayer, Inc.) copyright decision by the Supreme Court, where it was held that there could not be both a statute of limitations and a laches defense to bar recovery of all infringement damages.

SCA's patent claims an absorbent pants-type diaper. The Federal Circuit's en banc majority held that the recent Supreme Court opinion in Petrella, which eliminated laches as a defense to a damages claim in a copyright suit filed within the Copyright Act's statute of limitations period, did not similarly affect laches in patent suits.

Many of the Justices appeared to side with the petitioner in favor of extending Petrella to patent cases and reversing the Federal Circuit. Justice Ginsburg suggested that it would seem to be an easy concept to simply extend Petrella to patent cases.

Many of the Justices seemed to be unpersuaded by the respondent counsel's argument that when Congress passed the 1952 Patent Act providing for damages, they intended to include laches as a defense, because there were few pre-1952 cases that had barred recovery for damages based on laches. Chief Justice Roberts called the case law evidence a "mole hill" as opposed to a "mountain."

Based on the Supreme Court's discussion during oral argument, there is a chance that the Petrella case may be extended to patent actions. However, litigants should be prepared for a decision either way.

Click here to download the transcript in SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC.

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