

**ALERTS**

## Intellectual Property Alert - Federal Circuit Confirms Laches Remains A Viable Defense In Patent Cases

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In a closely-watched case that attracted several dozen amicus briefs, the Federal Circuit ruled en banc on Sept. 18 in *SCA Hygiene Products AB v. First Quality Baby Products*, No. 2013-1564, that the doctrine of laches can still be used to bar recovery of certain pre-suit damages where a patent suit was delayed in being brought.

The issue was prompted by the U.S. Supreme Court's "Raging Bull" copyright decision last year that held laches was not applicable in copyright cases because Congress had expressly created a statute of limitations for them.

The Patent Act has a six year rolling time limit for past damages. The Federal Circuit en banc took up the issue of whether the SCOTUS Raging Bull ruling applied to patents or whether laches could still be used to bar any past damages, even if they occurred within the six year window that Congress allowed.

The Federal Circuit distinguished the Raging Bull decision, concluding that laches still applied to patent cases because Congress expressly allowed the doctrine to co-exist with its damages time limit:

"We conclude that Congress codified a laches defense in [The Patent Act] that may bar legal remedies" and "accordingly, we have no judicial authority to question the law's propriety."

The established precedent applying laches under the Patent Act thus remains unchanged. In any action where an accused product, device or method has been used or sold for more than six years prior to suit, the factual elements of laches should be reviewed to determine if some or all of the claimed damages may be barred.

For more information, contact the Barnes & Thornburg attorney with whom you work or a member of the firm's Intellectual Property Law Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Delaware (302-300-3434) Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles (310-284-3880), Minneapolis (612-333-2111), South Bend (574-233-1171), Washington, D.C. (202-289-1313).

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