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Issue 137

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STATUTE OF LIMITATIONS AND LACHES IN IP INFRINGEMENT

Introduction

A six-year “lookback period” to limit is imposed under 35 USC §286 on a patent infringement action.

35 USC §286 states⁽²⁾: “Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.”

In addition, courts have applied laches to patent infringement suits, even where acts of infringement occurred within the six-year lookback period.

Doctrine of Laches⁽³⁾

Laches is based on the legal maxim "Equity aids the vigilant, not those who slumber on their rights." Laches recognizes that parties to an action can lose evidence, witnesses, and a fair chance to defend themselves after the passage of time from the date the alleged wrong was committed. The basis of equity is contained in the Maxim "Equity will not suffer an injustice." Other maxims present reasons for not granting equitable relief. Laches is one such defense.

Laches is a defense in a proceeding for equitable relief. Cases in Equity are distinguished from cases at law by the type of remedy, or judicial relief, sought by the plaintiff. Generally, law cases involve a problem that can be solved by the payment of monetary damages. Equity cases involve remedies directed by the court against a party.

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Types of equitable relief include Injunction, where the court orders a party to do or not to do something; declaratory relief, where the court declares the rights of the two parties to a controversy; and accounting, where the court orders a detailed written statement of money owed, paid, and held. Courts have complete discretion in equity, and weigh equitable principles against the facts of the case to determine whether relief is warranted.

Statute of Limitations⁽⁴⁾

A statute of limitation is a law which forbids prosecutors from charging someone with a crime that was committed more than a specified number of years ago. The general purpose of statutes of limitation is to make sure convictions occur only upon evidence that has not deteriorated with time.

The law encourages a speedy resolution for every dispute. Cases in law are governed by statutes of limitations, which are laws that determine how long a person has to file a lawsuit before the right to sue expires, whereas laches is the equitable equivalent of statutes of limitations.

The copyright statute has a three-year statute of limitations on filing a suit. In *Petrella*⁽⁵⁾, the Supreme Court observed that the Copyright Act (“Act”) contains a statute of limitations that provides: “No civil action shall be maintained under the Act unless it is commenced within three years after the claim accrued”(citing 17 U.S.C. §507(b)). The Court further observed that “each infringing act starts a new limitations period.” Thus, under the Act an infringer may be liable for damages that accrued during the three years prior to filing suit but is insulated from liability for earlier infringements of the same work. The Court noted that the “principle application” of laches is “to claims of an equitable cast for which the Legislature has provided no fixed time limitation,” and that “in face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief.” The Court left open the possibility that delay by the plaintiff might impact equitable relief, such as an injunction and disgorgement of profits.

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In *SCA Hygiene Products*⁽⁶⁾, the Federal Circuit preserved the defense of laches for patent cases even though the Supreme Court eliminated that defense in copyright cases. This means that an accused infringer may be able to raise a patent laches defense in a suit brought within the 6 year period of 35 USC § 286. The court also held that laches can prevent an injunction, but made clear that in such a case the infringer could be required to pay an ongoing royalty.

In *Auckerman*⁽⁷⁾, the Federal Circuit held that laches may apply to bar a damages claim if the accused infringer proves by a preponderance of the evidence that a patentee unreasonably and inexcusably delayed filing an infringement suit, to the material prejudice of the accused infringer. Even when these two elements are proven, the court retains discretion to determine whether laches should be applied. Under *Auckerman*, when laches is applied, it bars all retrospective relief for damages that accrued prior to filing suit, but does not bar prospective relief or damages that accrue after suit is filed.

Conclusion

All claims must be made in a reasonable time frame from when you knew about the claims, while some claims may have to be brought in a specific period because of a statute-of-limitations. The Doctrine of Laches is avoidable by getting a legal advice from an attorney at the time a legal question is raised.

TROLLS⁽⁸⁾

Patent troll is a person or entity that owns a patent but does not produce the patented product or practice the patented method⁽⁹⁾.

They focus on aggressive litigation, using such tactics as: threatening to sue thousands of companies at once, without specific evidence of infringement against any of them; creating shell companies that make it difficult for defendants to know who is suing them; and asserting that their patents cover inventions not imagined at the time they were granted.

A patent troll uses patents as legal weapons, instead of actually creating any new products or coming up with new ideas. Using QR codes to direct a mobile device user to web content and putting a store locator on a website are examples of Troll Patents. The Patent Office has been issuing patents for such ideas that

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are neither new nor revolutionary, but very broad, covering commonsensical ideas and the subject matter inherent in the prior art and public domain.

Trolls have been increasingly in the news by claiming ownership of many common advertising practices. Patent trolls have been a growing issue for in the advertising industry, costing advertisers and agencies millions of dollars in fees in order to avoid paying even more to defend themselves in court.

Patent trolls cost economy \$29 billion a year. Since it seems patent trolls are a threat to entrepreneurs and business owners, how to face this challenge? Here are 12 tips to help you win the fight against patent trolls⁽¹⁰⁾:

1. Don't Freak Out
2. Do Your Research
3. Don't Settle
4. Ask Specific Questions
5. Use Online Resources
6. Cry Poor
7. Expose the Troll
9. Find Out Who Is Behind These Claims
10. Team Up With Other Companies
11. Cooperate
12. Be Prepared

REFERENCES AND NOTES

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⁽²⁾ Time limitation on damages: <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title35/html/USCODE-2011-title35-partIII-chap29-sec286.htm>

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⁽⁴⁾ Chart: Statutes of Limitations in All 50 States: <http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html>

⁽⁵⁾ *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 1962, at 1967, 1969, 1974, 1978-79 (2014); Bray, A Little Bit of Laches Goes a Long Way, Vanderbilt Law Review En Banc (forthcoming January 2014), <http://www.volokh.com/wp-content/uploads/2014/01/alittlebitoflaches.pdf>

⁽⁶⁾ *SCA Hygiene Products v. First Quality Baby Products*: <http://www.ca9.uscourts.gov/sites/default/files/opinions-orders/13-1564.Opinion.9-16-2015.1.PDF>

⁽⁷⁾ *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, at 1032, 1036, 1041 (Fed. Cir. 1992) (en banc)

⁽⁸⁾ A troll is a supernatural being in Norse mythology and Scandinavian folklore.

“Patent troll” is a person or entity that owns a patent but does not produce the patented product or practice the patented method. A patent troll obtains the patents being sold at auctions by bankrupt companies attempting to liquidate their assets, or by doing just enough research to prove they had the idea first. They can then launch lawsuits against infringing companies, or simply hold the patent without planning to practise the idea in an attempt to keep other companies productivity at a standstill. <http://www.investopedia.com/terms/p/patent-troll.asp#ixzz3nMCsUNB6>;

<http://www.forbes.com/sites/econostats/2015/05/29/who-are-patent-trolls-and-what-will-h-r-9-do-about-them/>

⁽⁹⁾ PATENT ASSERTION AND U.S. INNOVATION, at: https://www.whitehouse.gov/sites/default/files/docs/patent_report.pdf

Patent Trolls Predatory Litigation and the Smothering of Innovation, AT: <http://www.independent.org/store/book.asp?id=110>

Additional Sources: The information published here is available from the primary sources cited above, and also from secondary sources such as: New York Times (NYT), Washington Post (WP), Mercury News, Bayarea.com, Chicago Tribune, USA Today, Intellihealthnews, Deccan Chronicle (DC), the Hindu, Hindustan Times, Times of India, AP, Reuters, AFP, womenfitness.net, about.com, mondaq.com, etc

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Om! Asatoma Sadgamaya, Tamasoma Jyotirgamaya, Mrityorma Amritamgamaya, Om Shantih, Shantih, Shantih! (Aum! Lead the world from wrong path to the right path, from ignorance to knowledge, from mortality to immortality, and peace!)

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