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## WLF Urges High Court Not to Overturn Decades-Old Precedents Governing Patent-Infringement Defenses

*(SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC)*

**“When a patent holder surprises a defendant by filing an unreasonably delayed patent-infringement action, courts respond appropriately by reducing the infringement damages available to the plaintiff. The laches rule against unjustified delay protects market participants from unreasonable litigation.”**

**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Supreme Court to resist calls to overturn the unanimous view of the federal appeals courts that patent-infringement defendants may assert “laches” as a defense to unreasonably delayed infringement suits. Federal patent law explicitly bars a patent holder from recovering damages for patent infringement that occurred more than six years before the date on which suit was filed. This case asks whether alleged infringers may also seek to bar damages for infringement that occurred within the six-year window, by invoking a defense known as laches. That defense limits the award of damages based on a plaintiff’s unreasonable delay in filing suit that has unfairly prejudiced the defendant.

In its *amicus curiae* brief in *SCA Hygiene Products v. First Quality Baby Products*, WLF argues that a decision overturning the lower courts’ decades-long interpretation of the Patent Act of 1952 would unnecessarily upset reasonable expectations of those who have come to rely on the current consensus. When Congress adopted the Patent Act, it explicitly ratified the common law’s recognition of laches as a defense to patent-infringement damages. WLF’s brief also contends that Congress has accepted post-1952 appeals court decisions unanimously upholding laches, because it has repeatedly amended the patent law in the past 65 years without ever revising the provision lower courts have cited as the statutory basis for their recognizing laches.

This case involves a manufacturer of protective underwear whose products allegedly infringe a design patent. The patentee waited many years before filing its infringement suit and gave no hint that one was in the offing. During the period of delay, the defendant invested heavily in the allegedly infringing product line and increased its production eight-fold.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “When a patent holder surprises a defendant by filing an unreasonably delayed patent-infringement action, courts respond appropriately by reducing the infringement damages available to the plaintiff. The laches rule against unjustified delay protects market participants from unreasonable litigation. The rule does not prevent enforcement of the patent going forward; it merely reduces the size of the damage award otherwise available to the patentee.”

WLF is a public-interest law firm and policy center that regularly advocates for the rule of law, to ensure unwarranted lawsuits do not harm defendants and drive up costs for all consumers.