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Presentation Title: PUNISHING GOOD AND BAD DEEDS

Abstract: In 2014, in *Petrella v. Metro-Goldwyn-Mayer*, and later, in 2017, in *CA Hygiene Products Aktiebolag v. First Quality Baby Products*, the Supreme Court held that laches, an unreasonable delay in making a legal claim, cannot bar damages for copyright and patent infringements. As a result of those decisions, rights holders can assert claims decades after their work or invention was infringed on. In other words, as long as a work or an invention is still protected—and, when it comes to copyrighted works is typically a very long time—the behavior of the right-holder cannot clear the rights and cannot provide assurances to downstream users regarding the legality (or illegality) of their actions. Such a result is troubling, especially where legal uncertainty is high and where there are very few, if any, bright-line rules regarding infringement, as is the case with both copyright and patent law.

The regime created following *Petrella* and *CA Hygiene Products Aktiebolag* is inconsistent with the treatment of comparable phenomenon in other areas of law. I will show that in other areas the right holder's behavior, and, more specifically, a long-term delay in enforcing legal rights, has significant legal consequences that can undermine or even eradicate the right itself. Indeed, in other areas, those legal consequences go well beyond the statute of limitation. Examples abundant and they include equitable principles such as laches and estoppels, but also legal doctrines such as adverse possession, waivers, course of performance and course of dealing in contract law, and even certain public law doctrines.

The paper explains the important role of those doctrines in other areas of the law and how they work in tandem with the statute of limitation to reduce uncertainty and promote fairness. The article argues that both patent law, and even to a larger degree, copyright law, require parallel mechanisms to promote similar goals.