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WLF Urges High Court Not to Overturn 50-Year-Old Precedent Governing Patent Licensing Agreements

(Kimble v. Marvel Enterprises, Inc)

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—Richard Samp, Chief Counsel, Washington Legal Foundation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to resist calls to overturn its 1964 decision in *Brulotte v. Thys Co.*, which established rules governing enforcement of contracts entered into between patent holders and licensees. In a brief filed in *Kimble v. Marvel Enterprises, Inc.*, WLF argues that parties have been relying on the *Brulotte* rule for more than 50 years when drawing up patent license agreements and that a decision overturning *Brulotte* would unnecessarily upset settled expectations. It would also create the real possibility of spawning a cottage industry suing over long-expired licenses.

Brulotte established a bright-line rule regarding patent license agreements: they may not be enforced to require royalty payments for use of the patent after the patent has expired. The Court reasoned that such provisions improperly seek to extend the patent holder’s monopoly beyond the patent’s expiration date. In recent years, some academics have criticized *Brulotte* as out of step with modern approaches to patent and antitrust law. WLF’s brief argues that stare decisis—the principle that counsels courts to stand by their prior decisions—dictates that any change in the *Brulotte* rule should come from Congress, which is free to amend patent laws, not the courts.

Kimble involves a dispute over royalty payments allegedly due the inventor of a web-shooter toy that allows a child to “role play” as Spider-Man. The patent expired in 2010, but the inventor asserts a right to royalties for role-play toys that a Marvel Enterprises licensee still markets.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp:

“In a world where patent trolls and rampant litigation funding thrive, ‘zombie’ litigation—in which long-expired licenses are dredged up for new rounds of litigation—is an all-too-likely result of a decision overturning *Brulotte*. Barring extraordinary circumstances—not present here—the Court should not overturn its own statutory interpretation precedents when companies have been relying on them in entering into business transactions.”

WLF is a national public interest law firm and policy center that regularly litigates in support of civil justice reform, to ensure that unwarranted lawsuits do not drive up costs for consumers.