

Attorney: Supreme Court's Spider-Man Ruling Could Help Biotech, Tech Deals

Boston Business Journal

06.22.2015

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Erik Paul Belt

In a Supreme Court ruling that came out earlier today, Justice Elena Kagan wrote somewhat tongue-in-cheek that "patents endow their holders with certain superpowers, but only for a limited time."

However, a local patent attorney says that time can be extended a little using certain provisions outlined in the ruling, and that royalty agreements for both life science and technology technology companies in particular could benefit as a result.

Erik Paul Belt, a partner at McCarter & English's Boston office, said the ruling has some bearing on any industry in which product royalties potentially outlive their patents. That's certainly true in the pharmaceutical world, where the time it takes to develop drugs means that patents are sometime close to being expired by the time they are approved and able to be sold, but can also apply in the case of technologies where products could take several years to catch on, or in cases life defense technology, where government regulation could take a long time to qualify a new product.

While the Supreme Court failed to overturn the law, Belt said this is specifically outline certain ways that contracts could be written to ensure royalties would be paid after a patent has expired. That could help companies in situations where they don't have a lot of up-front cash to license a patent, but could instead agree to pay royalties over a longer period of time.

Belt also said that the court indicated that while it won't overturn the 1964 ruling, Congress could pass a law that would expressly allow for royalty deals beyond the life of a patent.