

13-720 KIMBLE V. MARVEL ENTERPRISES, INC.

DECISION BELOW: 727 F.3d 856

LOWER COURT CASE NUMBER: 11-15605

QUESTION PRESENTED:

Petitioners are individuals who assigned a patent and conveyed other intellectual property rights to Respondent. The court of appeals "reluctantly" held that Respondent, a large business concern, was absolved of its remaining financial obligations to Petitioners because of "a technical detail that both parties regarded as insignificant at the time of the agreement." App. 2-3; 23. Specifically, because royalty payments under the parties' contract extended undiminished beyond the expiration date of the assigned patent, Respondent's obligation to pay was excused under *Brulotte v. Thys Co.*, 379 U.S. 29, 32 (1964), which had held that "a patentee's use of a royalty agreement that projects beyond the expiration date of the patent is unlawful *per se*."

A product of a bygone era, *Brulotte* is the most widely criticized of this Court's intellectual property and competition law decisions. Three panels of the courts of appeals (including the panel below), the Justice Department, the Federal Trade Commission, and virtually every treatise and article in the field have called on this Court to reconsider *Brulotte*, and to replace its rigid *per se* prohibition on post--expiration patent royalties with a contextualized rule of reason analysis.

The question presented is:

Whether this Court should overrule *Brulotte v. Thys Co.*, 379 U.S. 29 (1964).

CERT. GRANTED 12/12/2014