

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-757

AMGEN INC., ET AL., PETITIONERS

v.

SANOFI, ET AL.

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE  
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,  
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as an amicus curiae supporting respondents; that the time allotted for oral argument be enlarged to 70 minutes; and that the time be allotted as follows: 35 minutes for petitioners, 20 minutes for respondents, and 15 minutes for the United States. Petitioners and respondents both consent to this motion.

This case concerns a provision of the Patent Act that provides that a patent's specification must "enable any person skilled in the art \* \* \* to make and use" the claimed invention. 35 U.S.C. 112(a). The question presented is whether petitioners' patents claiming a genus of antibodies satisfy Section 112(a)'s enablement requirement. The United States has filed a brief as amicus curiae supporting respondents, arguing that the patents' specifications are insufficient to permit a "person skilled in the art \* \* \* to make and use" the claimed antibodies without undue experimentation. 35 U.S.C. 112(a).

The United States has a substantial interest in the resolution of the question presented. The Patent and Trademark Office is responsible for examining all patent applications and for granting and issuing patents when the applicants satisfy the statutory conditions for patentability. 35 U.S.C. 2(a)(1), 131. Several other agencies of the federal government also have significant regulatory interests in the efficacy of the patent system. At the Court's invitation, the United States filed an amicus brief at the petition stage of this case.

The United States regularly presents oral argument as amicus curiae in cases concerning patent law. See, e.g., Minerva Surgical, Inc. v Hologic, Inc., 141 S. Ct. 2298 (2021); Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc., 139 S. Ct. 628 (2019); WesternGeco 3 LLC v. ION Geophysical Corp., 138 S. Ct. 2129 (2018);

Life Techs. Corp. v. Promega Corp., 137 S. Ct. 734 (2017); Samsung Elecs. Co. v. Apple Inc., 137 S. Ct. 429 (2016); Halo Elecs., Inc. v. Pulse Elecs., Inc., 136 S. Ct. 1923 (2016); Kimble v. Marvel Entm't, LLC, 135 S. Ct. 2401 (2015). In light of the substantial federal interest in the question presented, the United States' participation at oral argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

FEBRUARY 2023