IN THE SUPREME COURT OF THE UNITED STATES

---

No. 17-1229

HELSINN HEALTHCARE S.A., PETITIONER

v.

TEVA PHARMACEUTICALS USA, INC., ET AL.

---

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

---

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

---

Pursuant to Rules 28.4 and 28.7 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 oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of argument time to the United States.

This case concerns the meaning of the term "on sale" in 35 U.S.C. 102(a)(1), which provides that "[a] person shall be entitled to a patent unless * * * the claimed invention was

patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention." The court of appeals held that petitioner's invention was "on sale" at a time when the public could not obtain physical embodiments of the invention, but the invention was the subject of licensing and distribution agreements whose existence had been disclosed to the public. Pet. App. 17a-52a. The United States has filed a brief as amicus curiae supporting petitioner, arguing that a sale or offer for sale must make an invention available to the public in order to place the invention "on sale" within the meaning of Section 102(a)(1). U.S. Amicus Br. 15-25. The brief for the United States contends that the agreements in this case did not have that effect. Id. at 26-33.

The United States has a substantial interest in the question presented in this case because it concerns the standards for determining the patentability of an invention. The United States 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 strong regulatory interests in the efficacy of the patent system.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of U.S. patent laws, e.g., WesternGeco 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); Microsoft Corp. v. AT&T Corp., 550 U.S. 437 (2007). Oral presentation of the views of the United States is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

SEPTEMBER 2018