

No. 21-757

In the
Supreme Court of the United States

AMGEN INC., AMGEN MANUFACTURING, LIMITED, AND AMGEN USA, INC.,

Petitioners,

v.

SANOFI, AVENTISUB LLC, FKA AVENTIS PHARMACEUTICALS INC.,
REGENERON PHARMACEUTICALS, INC., AND SANOFI-AVENTIS U.S., LLC,

Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit**

**MOTION OF CHEMISTRY AND THE LAW DIVISION OF THE AMERICAN
CHEMICAL SOCIETY TO PARTICIPATE IN ORAL ARGUMENT AS
AMICUS CURIAE, FOR ENLARGEMENT OF THE TIME FOR ORAL
ARGUMENT, AND FOR DIVIDED ORAL ARGUMENT**

Pursuant to Rules 21 and 28 of this Court, amicus curiae Chemistry and the Law Division of the American Chemical Society (“CHAL”) respectfully moves for leave to participate in oral argument in support of petitioners, for enlargement of the time for oral argument, and for divided oral argument. CHAL seeks to present 5 minutes of argument, with 25 minutes allocated to petitioners. In the alternative, CHAL respectfully requests that the Court extend the total time for oral argument from 60 to 70 minutes and grant CHAL leave to use 5 minutes of that expanded time to argue as amicus curiae in support of petitioners.¹

¹ CHAL alerted petitioners and respondents to this motion, but neither party has stated a position.

CHAL recognizes that motions for leave to participate in oral argument as amicus curiae will only be granted in extraordinary circumstances. CHAL believes that those extraordinary circumstances are present here.

1. The central issue in this case—the enablement standard for the patentability of genus claims—is a matter of significant importance. Patent law is rooted in the quid pro quo bargain that an inventor may obtain temporary exclusivity in exchange for the public disclosure of his or her invention and the further enrichment of the art and society. Recognizing the importance of our intellectual property system and the delicate balancing of incentives necessary to promote innovation, the United States Constitution vests in Congress the exclusive right to define the boundaries of patentability. U.S. Const. art. I, § 8, cl. 8. The Federal Circuit’s heightened “full scope” test articulated in *Amgen Inc. v. Sanofi*, 987 F.3d 1080, 1087-88 (Fed. Cir. 2021) is a marked departure from Congress’s intent and the established judicial precedent applied for decades by the Federal Circuit, the Court of Customs and Patent Appeals, and the United State Patent and Trademark Office.

2. CHAL has a paramount and unique institutional interest and perspective in this case that merits granting oral argument time. The American Chemical Society was founded in 1876 and incorporated under federal charter in 1937 when Franklin D. Roosevelt signed Public Act No. 358. Today, the American Chemical Society is one of the largest scientific organizations in the world, with more than 150,000 members in all fields of chemistry, chemical engineering, pharmaceuticals, biotechnology, and related fields. As the only division of the

American Chemical Society focused on the intersection of chemistry and the law, CHAL has many members who are attorneys, and many of those attorneys specialize in patent law.

3. The central issue in this case is of exceptional importance to CHAL and its members. Perhaps no other fields depend on patent protection as much as those supported by CHAL. The costs of research and development in these fields are enormous, and the potential benefits to innovators and consumers in need of that innovation are equally large, if not larger. Those working in these fields are also the most likely to take advantage of the genus claims impacted by the Federal Circuit's new enablement standard. CHAL is uniquely positioned to provide the perspective of the many individuals and companies working in the chemical, pharmaceutical, and biotechnology fields and seeking patent protection for their innovations.

4. Oral argument time is warranted here so that CHAL may address the effects that the Federal Circuit's heightened enablement standard for genus claims and this Court's decision will have on the patent prosecution process and the industries that CHAL counts among its membership. CHAL would argue, as it did in its amicus curiae brief, that the Federal Circuit's enablement standard will potentially jeopardize the benefits of many modern innovations in the chemical, pharmaceutical, and biotechnology fields. The plain meaning of 35 U.S.C. § 112 has served the country well and, if reaffirmed by this Court, will continue to do so.

CONCLUSION

For these reasons, CHAL's motion for leave to participate in oral argument and for divided argument should be granted. In the alternative, CHAL respectfully requests that the Court extend the total time for oral argument from 60 to 70 minutes and grant CHAL leave to use 5 minutes of that expanded time to argue as amicus curiae in support of petitioners

Dated: January 3, 2023

Respectfully submitted,

/s/ JUSTIN J.HASFORD

JUSTIN J. HASFORD
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