

# The Supreme Court Update - November 4, 2022

by Ian Blodger

Today, the Supreme Court of the United States granted certiorari in three cases:

**Amgen Inc. v. Sanofi**, No. 21-757: This case concerns the Patent Act's requirement that a patent's "specification shall contain a written description of the invention, and of the manner and process of making and using it," sufficient "to enable any person skilled in the art . . . to make and use the" invention. 35 U.S.C. § 112(a). The question presented is: Whether enablement is governed by the statutory requirement that the specification teach those skilled in the art to "make and use" the claimed invention, 35 U.S.C. § 112, or whether it must instead enable those skilled in the art "to reach the full scope of claimed embodiments" without undue experimentation—i.e., to cumulatively identify and make all or nearly all embodiments of the invention without substantial "time and effort," as the Federal Circuit held.

**Abitron Austria GmbH v. Hetronic International, Inc.**, No. 21-1043: This case concerns the foreign reach of the Lanham Act. The petitioners in this case, all foreign nationals, were subjected to a \$90 million damages award under the Lanham Act for allegedly infringing U.S. trademarks. The question presented is: Whether the court of appeals erred in applying the Lanham Act extraterritorially to petitioners' foreign sales, including purely foreign sales that never reached the United States or confused U.S. consumers.

**Arizona v. Navajo Nation; Department of the Interior v. Navajo Nation**, Nos. 21-1484, 22-51: These consolidated cases concern a dispute over the Navajo Nation's water rights. The questions presented are: (1) Whether the opinion of the U.S. Court of Appeals for the 9th Circuit, allowing the Navajo Nation to proceed with a claim to enjoin the secretary of the U.S. Department of the Interior to develop a plan to meet the Navajo Nation's water needs and manage the mainstream of the Colorado River in the Lower Basin so as not to interfere with that plan, infringes upon the Supreme Court's retained and exclusive jurisdiction over the allocation of water from the LBCR mainstream in *Arizona v. California*; (2) whether the Navajo Nation can state a cognizable claim for

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breach of trust consistent with the Supreme Court's holding in *United States v. Jicarilla Apache Nation* based solely on unquantified implied rights to water under the doctrine of *Winters v. United States*; and (3) whether the federal government owes the Navajo Nation an affirmative, judicially enforceable fiduciary duty to assess and address the Navajo Nation's need for water from particular sources, in the absence of any substantive source of law that expressly establishes such a duty.