SanDisk is undoubtedly the most significant interpretation of MedImmune and as the leading case is already the subject of controversy, including prediction of “dire consequences” as quoted below.

Litigation “Floodgates”, the Sky is Falling! The Sky is Falling!: Dire consequences have been speculated: “SanDisk is likely to have a very strong adverse impact on small technology companies and universities that may not have the means to defend their patents in declaratory judgment actions... [which] could have a profoundly negative effect on the development of technology in the United States.” David L. Fox, The Elimination of a Patent Licensing “Safe Haven”, IP 360 (April 2, 2007). Predicted is "a dire situation for small patentees, and the United States as a whole.” Id. “[T]he chilling effect that SanDisk will almost certainly have on patent licensing ... is virtually certain to adversely affect the development and implementation of new technology in the United States.” Id.

Per Nokia, the London “Floodgates” Remain Closed: Invalidity actions routinely are filed under far lower standards for a justiciable controversy in Germany, Japan and the United Kingdom, yet there is no similar panic reaction. In a recent expansion of the scope of declaratory judgment jurisdiction in the United Kingdom, Lord Justice Jacob scoffed at the “floodgates” argument. Eccleston et al., p. 34 (attached)(citing Nokia v. InterDigital).

To "dethron[e] Lear", putting America on a Par with Overseas Systems: MedImmune would never have been needed in the first place if the United States had an effective post-grant administrative review process with the same standard of a justiciable controversy as leading foreign systems. More than twenty years ago, Professor Rochelle Cooper Dreyfuss had urged that we should “dethron[e] Lear” in major part because of the expectation at the time that the new reexamination law would provide a solution to the public policy concerns of Lear. Only in hindsight can it be seen that the time to dethrone Lear is still “tomorrow” – due to the abysmal failure of reexamination to provide a timely alternative to litigation.

A condition precedent to dealing with the very real problems generated by Lear, MedImmune and SanDisk is the creation of an effective inter partes post grant review system with a realistically low standard for a justiciable controversy to put the United States on a par with the laws and practices in the United Kingdom, Germany and Japan, as discussed in Eccleston et al., § VI-C, A Comparative View: A Different Approach Abroad, p. 33.