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**Datasheet for the decision
of 3 July 2020**

Case Number: T 1037/19 - 3.3.04

Application Number: 10174465.4

Publication Number: 2281829

IPC: C07K14/01, A61K39/12

Language of the proceedings: EN

Title of invention:

PCV2 immunogenic compositions for use in a method of preventing PCV2 infection

Patent Proprietor:

Boehringer Ingelheim Animal Health USA Inc.

Opponents:

Intervet International BV (opposition withdrawn)
Eli Lilly and Company

Headword:

PCV2 immunogenic compositions/BOEHRINGER INGELHEIM

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Agreement to text withdrawn by patent proprietor - appeal
dismissed

Decisions cited:

T 0454/15

Catchword:



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Chambres de recours

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Case Number: T 1037/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 3 July 2020

Appellant: Boehringer Ingelheim Animal Health USA Inc.
(Patent Proprietor) 3239 Satellite Blvd
Duluth, GA 30096 (US)

Representative: D Young & Co LLP
120 Holborn
London EC1N 2DY (GB)

Respondent II: Eli Lilly and Company
(Opponent 2) Lilly Corporate Center
Indianapolis, IN 46285 (US)

Representative: Potter Clarkson
The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 4 February 2019
revoking European patent No. 2281829 pursuant to
Article 101(3) (b) EPC.

Composition of the Board:

Chair G. Alt
Members: R. Morawetz
 R. Romandini

Summary of Facts and Submissions

- I. The appeal by the patent proprietor (appellant) lies from the opposition division's decision revoking European patent No. 2 281 829 (henceforth: the patent).
- II. In the statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or alternatively, that the patent be maintained in amended form on the basis of any of auxiliary requests 1 to 11. Oral proceedings were requested in case the main request could not be allowed.
- III. With letter dated 15 April 2019 and filed on 26 August 2019 opponent 1 (respondent I) withdrew their opposition and ceased to be a party to the proceedings.
- IV. Opponent 2 (respondent II) filed a reply to the statement of grounds of appeal and requested that the appeal be dismissed and oral proceedings on an auxiliary basis.
- V. The board issued a summons to oral proceedings accompanied by a communication pursuant to Article 15(1) RPBA.
- VI. In their letter dated 20 May 2020 the appellant declared that:

"The Appellant no longer approves the text of the patent as granted and will not be proposing an amended text. The Appellant understands that the consequence of this action is that the patent will be revoked

immediately, and that the European patent shall be deemed not to have had effect from the outset."

VII. By a communication dated 28 May 2020 the parties were informed that the oral proceedings were cancelled.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is therefore admissible.
2. Pursuant to Article 113(2) EPC the European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
3. The appellant no longer approves the text in which the patent was granted and has, by stating that it "*will not be proposing an amended text*", withdrawn any pending claim request.
4. In the present case, since the patent had already been revoked by the opposition division and, as correctly pointed out in decision T 454/15, cannot be revoked again, the effect of this declaration filed on 20 May 2020 is that the appeal shall be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



I. Aperribay

G. Alt

Decision electronically authenticated