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**Datasheet for the decision
of 11 April 2024**

Case Number: T 0519/22 - 3.3.04

Application Number: 13718432.1

Publication Number: 2833910

IPC: A61K39/02, A61K39/12,
A61K39/295

Language of the proceedings: EN

Title of invention:

PCV/MYCOPLASMA HYOPNEUMONIAE COMBINATION VACCINE

Patent Proprietor:

Zoetis Services LLC

Opponent:

Boehringer Ingelheim Animal Health USA Inc.

Headword:

Combination vaccine/Zoetis

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Termination of the appeal proceedings - text or agreement to
text withdrawn by patent proprietor

Decisions cited:

T 0186/84, T 0646/08, T 0728/11, T 2434/18

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0519/22 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 11 April 2024

Appellant: Zoetis Services LLC
(Patent Proprietor) 10 Sylvan Way
Parsippany, NJ 07054 (US)

Representative: Mannion, Sally Kim
Zoetis UK Limited
First Floor, Birchwood Building
Springfield Drive
Leatherhead, Surrey KT22 7LP (GB)

Respondent: Boehringer Ingelheim Animal Health USA Inc.
(Opponent) 3239 Satellite Blvd., Bldg. 500
Duluth, GA 30096 (US)

Representative: D Young & Co LLP
3 Noble Street
London EC2V 7BQ (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 December
2021 revoking European patent No. 2833910
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairwoman M. Pregetter
Members: D. Luis Alves
L. Bühler

Summary of Facts and Submissions

- I. The patent proprietor (appellant) filed an appeal against the decision of the opposition division to revoke European patent No 2 833 910.
- II. The board appointed oral proceedings and, in a subsequent communication pursuant to Article 15(1) RPBA 2020, provided its preliminary appreciation of some matters concerning the appeal.
- III. In a letter dated 11 April 2024, the appellant stated that they no longer approved the text of the patent as granted, that they withdrew all auxiliary requests on file, and that they would not propose any other amended text.

Reasons for the Decision

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide on the European patent only in the text submitted to it or agreed upon by the proprietor of the patent.
2. In view of the patent proprietor's statement in their letter dated 11 April 2024 (point III. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 186/84, OJ 1986, 79,

point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).

3. In a situation as the present, where the patent proprietor has appealed a decision of the opposition division revoking its patent and the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the patent proprietor's agreement to any text for the maintenance of the patent, the appeal proceedings are to be terminated, and the decision under appeal becomes final (see T 728/11, point 3).

Order

For these reasons it is decided that:

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated