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**Datasheet for the decision
of 4 December 2025**

Case Number: T 1387/23 - 3.3.04

Application Number: 16738436.1

Publication Number: 3325502

IPC: C07K14/005, C12N7/00

Language of the proceedings: EN

Title of invention:

New species of tobamovirus

Patent Proprietor:

Nunhems B.V.

Opponents:

Syngenta Crop Protection AG
Enza Zaden Beheer B.V.
Vilmorin & Cie
Rijk Zwaan Zaadteelt en Zaadhandel B.V.

Headword:

Tobamovirus/NUMHEMS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 0186/84, T 0646/08, T 2434/18

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1387/23 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 4 December 2025

Appellant: Nunhems B.V.
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Representative: Maiwald GmbH
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Appellant: Syngenta Crop Protection AG
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Representative: HGF
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Appellant: Enza Zaden Beheer B.V.
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Representative: Höpfner, Sebastian
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Appellant: VILMORIN & CIE
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Representative: Ernest Gutmann - Yves Plasseraud S.A.S.
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Appellant: Rijk Zwaan Zaadteelt en Zaadhandel B.V.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 June 2023 concerning maintenance of the
European Patent No. 3325502 in amended form.**

Composition of the Board:

Chairwoman M. Pregetter
Members: A. Chakravarty
A. Bacchin

Summary of Facts and Submissions

- I. The patent proprietor and all four opponents filed appeals against the opposition division's interlocutory decision of the opposition division that European patent EP 3 325 502, amended according to auxiliary request 1 and the invention to which it relates met the requirements of the EPC.

- II. At the beginning of the oral proceedings before the board (see point IV, below), the appellant-patent proprietor requested that the decision under appeal be set aside and the patent be maintained based on the claims of the main request request, filed with the statement of grounds of appeal. Alternatively, the patent should be maintained on the basis of the set of claims of one of auxiliary requests 1 to 11, also filed with the statement of grounds of appeal, or of AR-1a, AR-5a, AR-5b, AR-6a, AR-6b, and AR8a filed with the letter dated 7 November 2025.

- III. At the beginning of the oral proceedings before the board, the appellants-opponents 1 to 4 all requested that the decision under appeal be set aside and the patent be revoked.

- IV. Oral proceedings were held on 4 December 2025, as requested by the parties. During these oral proceedings, the appellant-patent proprietor stated that they no longer approved the text of the patent as granted, that they withdrew the auxiliary requests, and that they would not propose any other amended text.

Reasons for the Decision

Disapproval of the text of the patent by the patent proprietor

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 appellant-patent proprietor's statement during the oral proceedings (point IV. above), there is no approved text on the basis of which the board could consider the appeals 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, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).
3. According to the case law of the Boards of Appeal, in these circumstances a substantive requirement for maintaining the patent is lacking and the proceedings are to be terminated by a decision ordering revocation of the patent under Article 101 EPC without assessing issues relating to patentability. The patent cannot be maintained against the proprietor's will (see e.g. decision T 73/84 and Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, III.B.3.3 and IV.D.2).
4. There are no remaining issues that need to be dealt with by the Board in the present appeal case.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



A. Wille

M. Pregetter

Decision electronically authenticated