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**Datasheet for the decision
of 6 May 2026**

Case Number: T 0292/26 - 3.3.04

Application Number: 17734653.3

Publication Number: 3471766

IPC: A61K39/12, A61K39/245,
C12N15/86

Language of the proceedings: EN

Title of invention:

Recombinant non-pathogenic Marek's disease virus constructs encoding infectious laryngotracheitis virus and infectious bursal disease virus antigens

Patent Proprietor:

Intervet International B.V.

Opponent:

Boehringer Ingelheim Vetmedica GmbH

Relevant legal provisions:

EPC Art. 107

Keyword:

Admissibility of appeal - party adversely affected by decision (no) - statement of grounds - filed within time limit (no)



Beschwerdekammern

Boards of Appeal

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Case Number: T 0292/26 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 6 May 2026

Appellant: Intervet International B.V.
(Patent Proprietor) Wim de Körverstraat 35
5831 AN Boxmeer (NL)

Representative: Intervet International B.V.
Hertford Road
Hoddesdon, Hertfordshire EN11 9BU (GB)

Respondent: Boehringer Ingelheim Vetmedica GmbH
(Opponent) Binger Straße 173
55216 Ingelheim am Rhein (DE)

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

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted/
electronically transmitted on 11 December 2025
concerning maintenance of the European Patent
No. 3 471 766 in amended form**

Composition of the Board:

Chairwoman M. Pregetter
Members: B. Rutz
L. Bühler

Summary of Facts and Submissions

- I. The appeal is of the decision of the opposition division that European patent No. 3 471 766, entitled "*Recombinant non-pathogenic Marek's disease virus constructs encoding infectious laryngotracheitis virus and infectious bursal disease virus antigens*", in amended form according to the main request (former auxiliary request 13) met the requirements of the EPC.
- II. On 10 February 2026 the patent proprietor filed a notice of appeal.
- III. In its letter of 25 February 2026 the opponent observed that the patent proprietor was not adversely affected by the decision of the opposition division which had allowed the patent proprietor's main request. The patent proprietor was therefore "*ineligible to appeal the Decision*" and the appeal was inadmissible.
- IV. On 5 March 2026 the board issued a communication pursuant to Rule 100(2) EPC in which it provided its preliminary opinion that the patent proprietor was not adversely affected by the appealed decision and that therefore the appeal was likely to be rejected as inadmissible.
- V. The patent proprietor did not file a written statement setting out the grounds of appeal within the time limit prescribed by Article 108 EPC, nor does the notice of appeal contain anything that could be regarded as a statement of grounds of appeal according to Article 108, third sentence, EPC and Rule 99(2) EPC. The patent proprietor also did not reply to the communication by

the board within the two months time limit given therein.

- VI. The patent proprietor requested to set aside the interlocutory decision of the opposition division and to maintain European patent 3 471 766 as granted, or subsidiarily on the basis of an auxiliary request, e.g. as submitted during the opposition proceedings.

The opponent requested to hold the appeal inadmissible.

Reasons for the Decision

1. According to Article 107 EPC, an appeal can only be filed by a person adversely affected by a decision. A party is adversely affected within the meaning of Article 107 EPC if the decision fails to meet that party's requests (see Case Law of the Boards of Appeal of the EPO, 11th edition 2025, V.A.2.4.2). Since the opposition division allowed the main request of the patent proprietor (see decision under appeal, point 9) the patent proprietor is not adversely affected by the decision.
2. The fact that the main request corresponds to former auxiliary request 13 (see minutes of the oral proceedings during opposition, point 8.5) is irrelevant in this regard because the patent proprietor had made this request its main request. This request was found allowable by the opposition division and consequently formed the sole basis for the contested decision. This is also in accordance with the patent proprietor's final requests as stated at the end of the oral proceedings before the opposition division. Moreover, the patent proprietor had renumbered the patent as granted as auxiliary request 17, thus indicating that

it considered this request and all other auxiliary requests as subsidiary to the new main request (see minutes, point 11.8). A correction of the minutes has not been requested.

3. The patent proprietor thus deliberately avoided a decision on the lower-ranking requests including the patent as granted. A return to the granted version conflicts with the basis of the contested decision.
4. There is nothing on file to suggest that the patent proprietor has been adversely affected by the decision of the opposition division regarding European patent No. 3 471 766.
5. The board therefore comes to the conclusion that the proprietor is not adversely affected by the decision under appeal and is not entitled under Article 107, first sentence, EPC to appeal the decision. An appeal filed by a person who has no standing to do so is a (manifestly) inadmissible appeal. According to Rule 101(1) EPC, the appeal is to be rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated