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**Datasheet for the decision  
of 12 March 2020**

**Case Number:** T 0305/17 - 3.3.04

**Application Number:** 07825750.8

**Publication Number:** 2129392

**IPC:** A61K39/02, A61K39/175,  
A61K39/10, A61K39/23,  
A61K39/12, A61K39/295,  
A61K39/155

**Language of the proceedings:** EN

**Title of invention:**  
Methods of vaccine administration

**Patent Proprietor:**  
Zoetis Services LLC

**Opponent:**  
Merial Limited

**Headword:**  
Methods of vaccine administration/ZOETIS SERVICES

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**

Basis of decision - agreement to text withdrawn by patent proprietor - patent revoked

**Decisions cited:**

T 0073/84

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0305/17 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 12 March 2020**

**Appellant I:** 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)

**Appellant II:** Merial Limited  
(Opponent) 3239 Satellite Blvd  
Duluth, GA 30096-4640 (US)

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

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
8 December 2016 concerning maintenance of the  
European Patent No. 2129392 in amended form.**

**Composition of the Board:**

**Chair** B. Claes  
**Members:** R. Morawetz  
R. Romandini

## Summary of Facts and Submissions

- I. Appeals were lodged by the patent proprietor (appellant I) and the opponent (appellant II) against the opposition division's interlocutory decision according to which European patent No. 2 129 392 (henceforth: the patent) as amended in the form of auxiliary request 3, and the invention to which it relates, were found to meet the requirements of the EPC.
- II. With their statement of grounds of appeal, appellant I requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request (patent as granted) or, alternatively, that the patent be maintained on the basis of one of the set of claims of auxiliary requests 1 to 5 submitted on 19 September 2016 or of the set of claims of auxiliary request 6, submitted on 6 September 2017. Oral proceedings were requested on an auxiliary basis.
- III. With their statement of grounds of appeal, appellant II requested that the decision under appeal be set aside and that the patent be revoked. Oral proceedings were requested on an auxiliary basis.
- IV. The board summoned oral proceedings and issued a communication pursuant to Article 15(1) RPBA 2007 setting out its preliminary opinion.
- V. In a letter dated 6 March 2020 appellant I declared *"that we no longer approve of the text of the opposed patent (EP 2 129 392), and that we do not approve of its text in any other version."* They further stated that they understood that this would result in the patent being revoked and that their request for oral

proceedings was withdrawn as well.

- VI. The parties were informed by fax dated 9 March 2020 that the oral proceedings were cancelled.

### **Reasons for the Decision**

1. The appeals comply with Articles 106 to 108 and Rule 99 EPC and are therefore admissible.
2. Pursuant to Article 113(2) EPC the EPO shall decide upon the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. Such an agreement cannot be deemed to exist if the patent proprietor - as in the present case - expressly declares "*that we no longer approve of the text of the opposed patent (EP 2 129 392), and that we do not approve of its text in any other version*" (see section V).
4. There is therefore no text of the patent on the basis of which the board can consider the appeals. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without examination as to patentability (see decision T 73/84, OJ EPO 1985, 241; Case Law of the Boards of Appeal of the European Patent Office, 9th Edition 2019, IV.D.2).
5. There are no remaining issues that need to be dealt with by the board in the present appeal case.
6. Revocation of the patent complies with appellant II's main request (see section III) and the present decision can therefore be taken without holding oral proceedings.

## Order

### For these reasons it is decided that:

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

The Registrar:

The Chair:



I. Aperribay

B. Claes

Decision electronically authenticated