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**Datasheet for the decision
of 3 February 2022**

Case Number: T 2353/19 - 3.3.04

Application Number: 12155378.8

Publication Number: 2460817

IPC: C07K14/01, A61K39/12, C12N7/04,
C12Q1/68, A61K39/295

Language of the proceedings: EN

Title of invention:

PCV2 immunogenic compositions and methods of producing such compositions

Patent Proprietor:

Boehringer Ingelheim Animal Health USA Inc.

Opponent:

Intervet International BV (opposition withdrawn)

Headword:

Single dose administration/BOEHRINGER INGELHEIM

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

Agreement to text withdrawn by patent proprietor - appeal dismissed

Decisions cited:

T 0073/84, T 0454/15

Catchword:



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Case Number: T 2353/19 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 3 February 2022

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

Representative: Hoffmann Eitle
Patent- und Rechtsanwälte PartmbB
Arabellastraße 30
81925 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 June 2019
revoking European patent No. 2460817 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 of the patent proprietor (appellant) lies from the opposition division's decision revoking European patent No. 2 460 817 ("the patent").
- II. With the statement of grounds of appeal, the appellant maintained the claim requests dealt with in the decision under appeal (main request and auxiliary requests 1 to 8) and submitted sets of claims of auxiliary requests 9 to 12. It requested, *inter alia*, 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 in accordance with one of the sets of claims of auxiliary request 1 to 12, or further alternatively, the remittal of the case to the opposition division with the order to examine the claim request(s) for patentability (Article 100(a) EPC) and/or sufficiency of disclosure (Article 100(b) EPC).
- III. After the notice of appeal had been filed, the opponent withdrew its opposition. Consequently, it ceased being a party to the appeal proceedings.
- IV. The board appointed oral proceedings and, in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of some matters concerning the appeal.
- V. Oral proceedings before the board were held by videoconference, as requested by the appellant. The appellant declared that it no longer approves of the text of the patent as granted, that it is not pursuing any of the auxiliary requests on file and that it will

not propose any amended text.

VI. At the end of the oral proceedings, the Chair announced the decision of the board.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 99 EPC and is admissible.
2. Pursuant to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
3. The appellant declared at the oral proceedings (see above, section V of this decision) that it no longer approves of the text of the patent as granted, that it is not pursuing any of the auxiliary requests on file and that it will not propose any amended text.
4. According to the case law of the boards of appeal in these circumstances the proceedings are to be terminated by a decision ordering revocation of the patent without assessing issues relating to patentability (see decision T 73/84, OJ EPO 1985, 241, and Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, III.B.3.3). In the case at hand, where the patent had already been revoked by the opposition division and, as correctly pointed out in decision T 454/15 (see Reasons, point 6), cannot be revoked again, the effect of the appellant's declaration is that the appeal has to 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