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**Datasheet for the decision
of 15 March 2022**

Case Number: T 0102/20 - 3.3.04

Application Number: 12748547.2

Publication Number: 2734549

IPC: A61K39/395, A61P17/04

Language of the proceedings: EN

Title of invention:

Monoclonal antibody against dog interleukin-31

Patent Proprietor:

Zoetis Services LLC

Opponents:

Ceva Santé Animale
European Oppositions Limited

Headword:

Anti-Dog IL-31 antibodies/ZOETIS

Relevant legal provisions:

EPC Art. 113(2)

Keyword:

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withdrawn by patent proprietor - patent revoked

Decisions cited:

T 0073/84

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0102/20 - 3.3.04

D E C I S I O N
of Technical Board of Appeal 3.3.04
of 15 March 2022

Appellant: European Oppositions Limited
(Opponent 2) Lacon London
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Representative: Mewburn Ellis LLP
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Respondent: Zoetis Services LLC
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Party as of right: Ceva Santé Animale
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Representative: Michalski Hüttermann & Partner
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 October 2019
rejecting the opposition filed against European
patent No. 2734549 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman L. Bühler
Members: O. Lechner
 B. Rutz

Summary of Facts and Submissions

- I. Two oppositions were filed against European patent No. 2 734 549, entitled "*Monoclonal antibody against dog interleukin-31*", under Article 100(a) (in conjunction with Article 56 EPC), (b) and (c) EPC. The opposition division decided to reject the oppositions.
- II. Opponent 2 (appellant) filed an appeal against this decision. Opponent 1 is party as of right to the appeal proceedings but made no substantive submissions in the appeal proceedings.
- III. With its statement of grounds of appeal, the appellant argued that the claims as granted and all of auxiliary requests 1 to 23 as filed during the opposition proceedings, contained subject-matter which extended beyond the content of the application as filed (Articles 100(c) and 123(2) EPC), did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Articles 100(b) and 83 EPC), and would be obvious to a person skilled in the art (Articles 100(a) and 56 EPC).
- IV. The patent proprietor (respondent) replied and filed new auxiliary requests 2B, 3B, 4B, 6B, 7B, 9B, 11B, 14B, 15B, 16B, 18B, 19B, 21B, 23B, and 24 to 35.
- V. The board issued summons for oral proceedings and a communication under Article 15(1) RPBA in which the board provided its preliminary opinion on some of the issues relevant to the appeal.
- VI. In reply the respondent filed new auxiliary requests 7Ba, 9Ba, 19Ba, 21Ba, 31a and 33a. With a further

letter the respondent filed a corrected auxiliary request 31a.

- VII. Opponent 1 announced that it would not attend oral proceedings.
- VIII. Oral proceedings before the board were held by video conference as requested by the parties present at the oral proceedings.

During these oral proceedings, the respondent disapproved of the text of the patent as granted and of all requests on file. At the end of the oral proceedings, the Chairman 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.

Disapproval of the text of the patent by the patent proprietor

- 2. According to Article 113(2) EPC, the European Patent Office 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 does not exist if the patent proprietor - as in the present case - has expressly stated that it disapproves of the text of the patent as granted and of all pending requests.

4. There is therefore no text on the basis of which the board can maintain the patent. In these circumstances, the proceedings are to be terminated by a decision ordering revocation of the patent, without substantive examination as to patentability (see decision T 73/84, OJ EPO, 1985, 241 and Case Law of the Boards of Appeal 9th edition, 2019, IV.D.2, paragraphs 2 and 3).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



A. Chavinier-Tomsic

L. Bühler

Decision electronically authenticated