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

Case Number: T 0104/20 - 3.3.04

Application Number: 12751536.9

Publication Number: 2750704

IPC: A61K39/12, C07K14/01

Language of the proceedings: EN

Title of invention:

SYNTHETIC CAPSID PROTEINS AND USES THEREOF

Patent Proprietor:

Ceva Santé Animale

Opponent:

Boehringer Ingelheim Animal Health USA Inc.

Headword:

PCV2 ORF2 protein/Ceva

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Basis of decision - text or agreement to text withdrawn by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

Catchword:



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Case Number: T 0104/20 - 3.3.04

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

Appellant: Boehringer Ingelheim Animal Health USA Inc.
(Opponent) 3239 Satellite Blvd., Bldg. 500
Duluth, GA 30096 (US)

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

Respondent: Ceva Santé Animale
(Patent Proprietor) 10 Avenue de La Ballastière
33500 Libourne Cedex (FR)

Representative: Cabinet Becker et Associés
25, rue Louis le Grand
75002 Paris (FR)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
4 November 2019 concerning maintenance of the
European Patent No. 2750704 in amended form**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The opponent (appellant) duly filed an appeal against the decision of the opposition division that the patent in amended form according to the main request met the requirements of the EPC. The patent proprietor is respondent to this appeal.
- II. With its statement of grounds of appeal, the opponent requested that the decision under appeal be set aside and that the patent be revoked.
- III. The board issued a summons to oral proceedings, as requested by both parties, and in a subsequent communication pursuant to Article 15(1) RPBA, provided its preliminary appreciation of the appeal case.
- IV. By letter of 13 December 2022, the respondent informed the board that, it no longer approved the text of the patent as granted, nor the text of the patent as amended during the opposition proceedings. Moreover it would not pursue any of the pending requests on file, including the auxiliary claim requests, and would not propose any amended text. It further withdrew the request for oral proceedings.
- V. The board subsequently cancelled the oral proceedings.

Reasons for the Decision

1. The appeal 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. Such an agreement cannot be deemed to exist where - as in the present case - the patent proprietor expressly states that it no longer approves the text of the patent as granted and withdraws all pending claim requests.
4. There is therefore no text of the patent on the basis of which the board can consider the 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, 10th edition 2022, III.B.3.3).
5. Revocation of the patent is also the main request of the opponent (see section II). There are also no remaining issues that need to be dealt with by the board in the present appeal case. The decision in the present appeal case 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 Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated