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**Datasheet for the decision  
of 11 April 2024**

**Case Number:** T 0477/22 - 3.3.04

**Application Number:** 13717118.7

**Publication Number:** 2833909

**IPC:** A61K39/02, A61K39/12,  
A61K39/295

**Language of the proceedings:** EN

**Title of invention:**

PCV/MYCOPLASMA HYOPNEUMONIAE/PRRS COMBINATION VACCINE

**Patent Proprietor:**

Zoetis Services LLC

**Opponent:**

Boehringer Ingelheim Animal Health USA Inc.

**Headword:**

Combination vaccine/Zoetis

**Relevant legal provisions:**

EPC Art. 113(2)

**Keyword:**

Termination of the appeal proceedings - text or agreement to  
text withdrawn by patent proprietor

**Decisions cited:**

T 0186/84, T 0646/08, T 0728/11, T 2434/18

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0477/22 - 3.3.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.04**  
**of 11 April 2024**

**Appellant:** 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)

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

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

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 December  
2021 revoking European patent No. 2833909  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairwoman** M. Pregetter  
**Members:** D. Luis Alves  
L. Bühler

## **Summary of Facts and Submissions**

- I. The patent proprietor (appellant) filed an appeal against the decision of the opposition division to revoke European patent No 2 833 909.
- II. 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.
- III. In a letter dated 11 April 2024, the appellant stated that they no longer approved the text of the patent as granted, that they withdrew all auxiliary requests on file, and that they would not propose any other amended text.

## **Reasons for the Decision**

1. According to the principle of party disposition established by Article 113(2) EPC, the EPO shall examine and decide on the European patent only in the text submitted to it or agreed upon by the proprietor of the patent.
2. In view of the patent proprietor's statement in their letter dated 11 April 2024 (point III. above), there is no approved text on the basis of which the board could consider the appeal and examine whether a ground for opposition prejudices the maintenance of the patent. It is also no longer possible to take a decision as to substance because the absence of an approved text precludes any substantive examination of the alleged impediments to patentability (T 186/84, OJ

1986, 79, point 5 of the Reasons; T 646/08, point 4 of the Reasons and T 2434/18, point 4 of the Reasons).

3. In a situation as the present, where the patent proprietor has appealed a decision of the opposition division revoking its patent and the appeal becomes devoid of subject-matter for substantive examination following the withdrawal of the patent proprietor's agreement to any text for the maintenance of the patent, the appeal proceedings are to be terminated, and the decision under appeal becomes final (see T 728/11, point 3).

## Order

### **For these reasons it is decided that:**

The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated