

need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) The opposition may be withdrawn without prejudice before the answer is filed. After the answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of the applicant or the applicant's attorney or other authorized representative.

[30 FR 13193, Oct. 16, 1965, as amended at 46 FR 6940, Jan. 22, 1981; 48 FR 23136, May 23, 1983; 54 FR 34897, Aug. 22, 1989]

§ 2.107 Amendment of pleadings in an opposition proceeding.

Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.

[48 FR 23136, May 23, 1983]

CANCELLATION

AUTHORITY: Secs. 2.111 to 2.114 also issued under secs. 14, 17, 24, 60 Stat. 433, 434, 436; 15 U.S.C. 1064, 1067, 1092.

§ 2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by the timely filing of a petition for cancellation, together with the required fee, in the Patent and Trademark Office.

(b) Any entity which believes that it is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registra-

tion in whole or in part. The petition need not be verified, and may be signed by the petitioner or the petitioner's attorney or other authorized representative. The petition may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14(3) or (5) of the Act. In all other cases the petition and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.6). If the fee submitted is insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner a set time in which to submit the required fees(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

(2) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are insufficient for each named party petitioner, the Office will issue a written notice allowing the named party petitioners until a set time in which to submit the required fee(s) (provided that the five-year period, if applicable, has not expired) or to specify the petitioner(s) to which the submitted fees apply. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the first named party will be presumed to