

THIS ORDER IS A
PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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JMM

September 18, 2026

Cancellation No. 92063134

Philip Morris USA Inc.

v.

*IP Services International Inc. and Sycuan
Tribal Development Corporation*

**Before Heasley, Elgin, and O'Connor,
Administrative Trademark Judges.**

By the Board:

This case comes before the Board for consideration of Respondent Sycuan Tribal Development Corporation's construed motion to dismiss this cancellation proceeding under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction on the basis of tribal sovereign immunity, a question of first impression before the Board.¹ The motion is fully briefed.²

¹ Respondent's motion was originally styled as one for summary judgment on the issue of tribal sovereign immunity. 54 TTABVUE. As the Board explained in its January 30, 2021 order, because the issue of tribal sovereign immunity is jurisdictional, the Board construes the motion as one to dismiss for lack of subject matter jurisdiction. 66 TTABVUE 3. Although the time for filing a motion under Fed. R. Civ. P. 12(b) passed before Sycuan was joined as a Respondent in this proceeding, the motion will be considered on its merits, as the Board must dismiss a proceeding if it lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

² We have considered the parties' submissions but do not recount all of the facts or arguments. *Guess? IP Holder LP v. Knowluxe LLC*, No. 92060707, 2015 WL 9702438, at *2 (TTAB 2015).

For the reasons set forth herein, we hold that tribal sovereign immunity cannot be asserted in inter partes proceedings before the Board.

I. Relevant Factual Background³

On February 8, 2016, Petitioner Philip Morris USA Inc. filed a petition to cancel the following registrations then owned by Respondent IP Services International Inc. (hereinafter “IP Services”):

No. & Date of Registration	Mark	Goods
3140971 Sept. 12, 2006	 “classic” disclaimed	cigarettes and smoking tobacco (Int’l Cl. 34)
3172861 Nov. 21, 2006		cigarettes and smoking tobacco (Int’l Cl. 34)
4218677 Oct. 2, 2012		cigarettes; smoking tobacco; chewing tobacco; loose leaf tobacco; cigars (Int’l Cl. 34)

³ The parties designated nearly all of the jurisdictional evidence as “Confidential” or “Confidential – Attorneys’ Eyes Only” under the Board’s Standard Protective Order. Board proceedings are designed to be public, and as the parties were previously warned, the improper designation of materials as confidential thwarts that intention. *Edwards Lifesciences Corp. v. VigiLanz Corp.*, No. 91154210, 2010 WL 1514315, at *2 (TTAB 2010). “The Board needs to be able to discuss the evidence of record, unless there is an overriding need for confidentiality, so that the parties and a reviewing court know the basis of the Board’s decisions.” *Id.* Where parties over-designate material as confidential, the Board will not be bound by their designations. Trademark Rule 2.116(g), 37 C.F.R. § 2.116(g); *Adamson Sys. Eng’g, Inc. v. Peavey Elecs. Corp.*, No. 92076586, 2023 WL 7274674, at *7 (TTAB 2023). In this order, we will discuss the evidence designated as confidential in general terms, if necessary and appropriate, but in rendering our decision, we will treat as confidential only testimony and documentary evidence that is truly confidential.

4261884 Dec. 18, 2012		cigarettes; smoking tobacco; chewing tobacco; loose leaf tobacco; cigars (Int'l Cl. 34)
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Petitioner seeks cancellation of the involved registrations on the ground that the marks have been abandoned through nonuse, or alternatively, through naked licensing.⁴ IP Services denies the salient allegations in the amended petition for cancellation.⁵

On September 18, 2017, IP Services moved for a protective order to prevent Petitioner from taking discovery depositions, including that of its Fed. R. Civ. P. 30(b)(6) designee. IP Services argued, in part, that it should not be required to comply with its discovery obligations in this proceeding because it intended to sell the involved registrations to Respondent Sycuan Tribal Development Corporation (hereinafter “Sycuan”) and Sycuan would be able to assert tribal sovereign immunity.⁶ On January 22, 2018, the Board denied the motion for a protective order

⁴ Amended Petition for Cancellation, 18 TTABVUE 18.

⁵ Answer to Petition for Cancellation, 4 TTABVUE; Answer to Amended Petition for Cancellation, 34 TTABVUE. IP Services’ “Affirmative Defenses” were stricken on September 25, 2018. 47 TTABVUE 4 n.7–9.

⁶ 24 TTABVUE 7, 10. IP Services submitted a sworn declaration from Oliver Duggal, an employee of UCS, Inc., the authorized representative of IP Services, declaring that IP Services was in negotiations with Sycuan for the sale of the involved marks at least as early as September 18, 2017. Although the sworn declaration refers only generally to a Native American Indian Tribe, Mr. Duggal later confirmed, as IP Services’ Fed. R. Civ. P. 30(b)(6) witness, that the tribe referred to therein is Sycuan. (39 TTABVUE 213–16 (Confidential)). Although the transcript of Mr. Duggal’s deposition is designated as “Confidential – Attorneys Eyes Only” under the Board’s Standard Protective Order, the assignment of the involved registrations to Sycuan is now a matter of public record. *See Adamson Sys. Eng’g, Inc.*, 2023 WL 7274674, at *7 (The Board may “discuss evidence that cannot be reasonably termed confidential and is necessary to support our decision.”).

and reiterated IP Services' obligation not only to sit for a properly-noticed deposition, but also to serve written discovery responses and produce requested documents. Moreover, the Board warned the parties that, if an assignment took place at some future date, "the new owner may be joined with Respondent as defendant."⁷

On February 26, 2018, Sycuan's Board of Directors passed a resolution approving acquisition of the four involved registrations.⁸ On March 23, 2018, IP Services assigned them to Sycuan.⁹ As a result, on September 25, 2018, the Board joined Sycuan as a party respondent in this proceeding.¹⁰ *See W. Worldwide Enters. Grp. Inc. v. Qinqdao Brewery*, No. 92017965, 1990 WL 354566, at *2, n.4 (TTAB 1990) (where the respondent assigned its involved registrations after commencement of the proceeding, Board sua sponte joined assignee as a party defendant "in accordance with the Board's usual practice"). IP Services has remained a respondent.

On November 16, 2018, Sycuan filed its motion to dismiss for lack of subject matter jurisdiction on the basis of tribal sovereign immunity.¹¹ After the motion was briefed, proceedings were suspended pending the final outcome of a decision by the U.S. Court of Appeals for the Federal Circuit in *St. Regis Mohawk Tribe v. Mylan Pharm. Inc.*, 896 F.3d 1322 (Fed. Cir. 2018), *cert. denied*, 587 U.S. 938 (2019), which

⁷ 28 TTABVUE 15 n.5.

⁸ 103 TTABVUE 177, 201 (Confidential).

⁹ On March 30, 2018, the assignments were recorded with the USPTO's Assignment Recordation Branch at Reel/Frame 6304/0284.

¹⁰ 47 TTABVUE 8–9.

¹¹ 53 TTABVUE (Confidential), 54 TTABVUE.

held that tribal sovereign immunity does not apply to inter partes review proceedings before the Patent Trial and Appeal Board (“PTAB”).

On January 30, 2021, the Board again deferred consideration of the motion to dismiss and allowed Petitioner time to conduct jurisdictional discovery into Sycuan’s claim of tribal sovereign immunity in this proceeding.¹² In addition, upon the conclusion of that discovery, the Board allowed the parties to submit supplemental briefing specifically directed to these issues.¹³

II. Applicable Legal Principles

Although the Board has never decided the applicability of tribal sovereign immunity to inter partes proceedings, as noted above, the Federal Circuit considered such a claim of immunity made before the PTAB in *St. Regis*. In that case, Mylan Pharmaceuticals petitioned for inter partes review (“IPR”) of various patents owned by Allergan. While the IPR was pending, Allergan transferred title of the patents to the Saint Regis Mohawk Tribe (“Tribe”), which asserted tribal sovereign immunity. The PTAB denied the Tribe’s motion to terminate the proceeding on the basis of sovereign immunity and Allergan’s motion to withdraw from the proceeding. Allergan and the Tribe appealed, and the Federal Circuit affirmed the PTAB’s ruling. *St. Regis*, 896 F.3d at 1325.

¹² 66 TTABVUE 4–5 (limiting discovery “solely to the issues of whether Sycuan is an entity that may claim tribal sovereign immunity in a Board proceeding and, if so, whether there had been a waiver of any such immunity in this case”).

¹³ 98–99 TTABVUE.

The Federal Circuit in *St. Regis* reviewed general principles governing assertions of tribal sovereign immunity. “As ‘domestic dependent nations,’ Indian tribes possess ‘inherent sovereign immunity,’ and suits against them are generally barred ‘absent a clear waiver by the tribe or congressional abrogation.’” *Id.* at 1325–26 (citing *Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)). Tribal sovereign immunity shields not only the tribe itself, but, in some circumstances, commercial entities operating as “arms of the tribe.” *See, e.g., Spurr v. Pope*, 936 F.3d 478, 482 (6th Cir. 2019); *Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 176 (4th Cir. 2019); *Miller v. Wright*, 705 F.3d 919, 923–24 (9th Cir. 2013).

Tribal sovereign immunity “derives from the common law,” and “does not extend to actions brought by the federal government.” *St. Regis*, 896 F.3d at 1325–26 (internal citations omitted). Immunity generally “does not apply where the federal government acting through an agency engages in an investigative action or pursues an adjudicatory agency action.” *Id.* at 1325 (internal citation omitted). However, there is no “blanket rule that immunity does not apply in federal agency proceedings.” *Id.* at 1326 (internal citations omitted).

After reviewing these general principles governing assertions of tribal sovereign immunity, the Federal Circuit held that tribal sovereign immunity cannot be asserted in IPR proceedings before the PTAB, finding that “IPR is neither clearly a judicial proceeding instituted by a private party nor clearly an enforcement action brought by the federal government.” *Id.* The Court found that an IPR proceeding “is a ‘hybrid proceeding’ with ‘adjudicatory characteristics’ similar to court proceedings, but in

other respects it ‘is less like a judicial proceeding and more like a specialized agency proceeding.’” *Id.* (citing *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 263 (2016)).

In *Regents of the Univ. of Minn. v. LSI Corp.*, the Federal Circuit followed a similar rationale in holding that state sovereign immunity, like tribal sovereign immunity, does not apply to IPR proceedings before the PTAB. 926 F.3d 1327, 1342 (Fed. Cir. 2019) (“*U. Minn. v. LSI*”). Several years later, the Board correspondingly held that state sovereign immunity does not apply in inter partes proceedings before the Board. *Mountain Gateway Ord., Inc. v. Va. Cmty. Coll. Sys.*, No. 91283412, 2024 WL 2863444, at *16 (TTAB 2024) (holding that state sovereign immunity does not apply to opposition proceedings).

III. The Parties’ Arguments

Faced with the adverse decision in *St. Regis* holding that tribal sovereign immunity does not apply in PTAB IPR proceedings, Sycuan attempts to distinguish cancellation proceedings before the Board from IPR proceedings before the PTAB. To that end, Sycuan focuses its arguments on the procedural aspects of cancellations and the ways they “operate akin to civil litigation.”¹⁴ Petitioner, however, maintains that *St. Regis* dictates that tribal sovereign immunity should not apply because cancellation proceedings before the Board, like IPR proceedings, are more similar to agency adjudicative proceedings. Petitioner focuses on the differences between cancellations and civil litigation—for example, the Board’s limited jurisdiction, its inability “to determine the right to use” or “broader questions of infringement or

¹⁴ 54 TTABVUE 8.

unfair competition,”¹⁵ and its inability to “award monetary damages or injunctive relief, such as to stop trademark use.”¹⁶

IV. Analysis and Decision

The U.S. Patent and Trademark Office (“USPTO” or “PTO”) is an agency in the Department of Commerce “responsible for the granting and issuing of patents and the registration of trademarks.” 35 U.S.C. §§ 1, 2(a)(1). “To obtain the benefits of registration, a mark owner files an application with the PTO.” *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 143 (2015). As we recently observed in finding that state sovereign immunity does not apply in Board proceedings, “[r]egistration proceedings are governed by federal law with certificates of registration issued ‘in the name of the United States of America, under the seal of the [USPTO], and . . . signed by the Director.’” *Mountain Gateway*, 2024 WL 2863444, at *4 (citing Trademark Act Section 7(a), 15 U.S.C. § 1057(a)). Applications to the USPTO are subject first to examination by a USPTO examiner, 15 U.S.C. § 1062, and second to potential challenge by way of an opposition proceeding. Trademark Act Section 13, 15 U.S.C. § 1063. If an application clears these hurdles and matures into a registration, “[a] petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed.” Trademark Act Section 14, 15 U.S.C. § 1064. Registrations also are subject to continuing maintenance in the form of declarations of use and renewals, which require registrants to prove periodically that they are

¹⁵ 57 TTABVUE 16.

¹⁶ *Id.* at 17.

using the registered mark in commerce or risk cancellation of the registration. Trademark Act Sections 8 and 9, 15 U.S.C. §§ 1058, 1059.¹⁷

The Trademark Act expressly contemplates that a “natural person” and a “juristic person” may apply to register marks and therefore avail themselves of the Trademark Act’s registration provisions. *See Mountain Gateway*, 2024 WL 2863444, at *4 n.7 (citing 15 U.S.C. §§ 1051(a)(3)(A), 1051(b)); Trademark Act Section 45, 15 U.S.C. § 1127 (“The term ‘person’ and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person.”). The Trademark Act expressly requires submission to opposition and cancellation proceedings by such persons. *See Mountain Gateway*, 2024 WL 2863444, at *4 (citing 15 U.S.C. § 1063(b) (oppositions)); *see also* 15 U.S.C. § 1064; Trademark Rule 2.116(b), 37 C.F.R. § 2.116(b) (“the applicant in an opposition proceeding or the respondent in a cancellation proceeding shall be in the position of defendant”).

Federally-recognized Indian tribes qualify as juristic persons under the Trademark Act. *See* 15 U.S.C. § 1127 (“The term ‘juristic person’ includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.”); *In re White*, No. 78175476, 2004 WL 2202268, at *5 (TTAB

¹⁷ Similar to the requirements for registration, maintenance filings must include an affidavit or declaration and one specimen for each class of goods or services showing current use of the mark in commerce, absent excusable nonuse. Trademark Rule 2.161(a), 37 C.F.R. § 2.161(a). These materials are examined by the USPTO, which “may require the owner to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the affidavit or declaration under section 8 of the Act or for the Office to assess and promote the accuracy and integrity of the register.” Trademark Rule 2.161(b), 37 C.F.R. § 2.161(b).

2004) (“[T]here is sufficient information to indicate that federally-recognized tribes are entities or juristic persons that can enter into contracts, sue and be sued.”); *see also In re Pedersen*, No. 85328868, 2013 WL 6926518, at *6 n.22 (TTAB 2013) (citing TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 803.03(j) (May 2026) (“A federally recognized Indian tribe, organized under the laws of the United States, is an acceptable designation of an applicant’s entity.”)). Thus, it is clear that federally-recognized tribes may apply for registration under the Trademark Act, and that such tribes are subject to the same provisions of the Act as any other applicant—including those subjecting applications to opposition and registrations to cancellation proceedings.¹⁸ *Cf. Mountain Gateway*, 2024 WL 2863444, at *4 (discussing state sovereign immunity in opposition proceedings before the Board).

Sycuan voluntarily chose to acquire “federal trademark registrations that would evidence its presumed nationwide exclusive rights to use marks in commerce, 15 U.S.C. § 1057(b), a choice with consequences for the public.” *Mountain Gateway*, 2024 WL 2863444, at *6.¹⁹ We see no reason to depart from our reasoning in *Mountain Gateway* on grounds that this case involves an assertion of tribal immunity rather than state sovereign immunity. *Cf. U. Minn. v. LSI*, 926 F.3d at 1341 (“We conclude

¹⁸ Tribes have appeared before the Board on several occasions in the position of plaintiff and defendant. *See, e.g., CBC Mortg. Agency v. TMRR, LLC*, No. 92076723, 2022 WL 3444028 (TTAB 2022) (cancellation proceeding brought by an entity formed by a federally-recognized tribe); *Grand Canyon W. Ranch, LLC v. Hualapai Tribe*, No. 91162008, 2008 WL 2600669 (TTAB 2008) (opposition against a federally-recognized tribe).

¹⁹ Moreover, in this case (as was the case in *St. Regis*), Sycuan made that decision knowing that this proceeding was ongoing.

that state and tribal sovereign immunity do not differ in a way that is material to the question of whether IPR proceedings are subject to state sovereign immunity.”).

As we recognized in *Mountain Gateway*, under the federal trademark regulatory scheme, Board proceedings are limited to an applicant’s right to obtain, or a respondent’s right to maintain, a federal registration. *Mountain Gateway*, 2024 WL 2863444, at *5; see 15 U.S.C. § 1067(a) (“In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.”); see also *Person’s Co. v. Christman*, 900 F.2d 1565, 1571 (Fed. Cir. 1990) (“The Board’s function is to determine whether there is a right to secure or to maintain a registration.”).

As a result, plaintiffs in Board proceedings are restricted to asserting grounds that negate the defendant’s entitlement to registration. Board proceedings do not involve the exercise of personal jurisdiction over the registrant, the assessment of liability for monetary damages, and the imposition of injunctive relief. See *FirstHealth of the Carolinas, Inc. v. CareFirst of Md., Inc.*, 479 F.3d 825, 828 (Fed. Cir. 2007) (“The Board is empowered to determine only the right to register. The Board is not authorized to determine the right to use, nor may it decide broader questions of infringement or unfair competition.”). Consequently, “[t]raditional civil action-type remedies are unavailable in opposition [or cancellation] proceedings.” *Mountain Gateway*, 2024 WL 2863444, at *5. As in PTAB proceedings, “[n]o monetary or other

relief against the... owner is authorized or provided.” *U. Minn. v. LSI*, 926 F.3d at 1345 (Dyk, Wallach, and Hughes, JJ., concurring).

We acknowledge that inter partes proceedings before the Board share more procedural characteristics with district court litigation than do IPR proceedings, including the availability of a broader range of discovery devices. But that does not dictate that tribal sovereign immunity applies to Board proceedings. *Cf. St. Regis*, 896 F.3d at 1329 (“The mere existence of more inquisitorial proceedings in which immunity does not apply does not mean that immunity applies in a different type of proceeding before the same agency.”). Inter partes proceedings before the Board are “hybrid proceedings” with “adjudicatory characteristics,” but they also operate “like a specialized agency proceeding.” *Id.* at 1326. For example, the politically appointed Director of the USPTO is a standing member of the Board and has “broad authority to refuse to register a mark or cancel a registration” in inter partes proceedings. *Piano Factory Grp. v. Schiedmayer Celesta GmbH*, 11 F.4th 1363, 1373 (Fed. Cir. 2021) (citing 15 U.S.C. §§ 1067-68). The authority of the Director “includes the authority to reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board....” Trademark Act Section 18, 15 U.S.C. § 1068. Moreover, “the Director has discretion regarding the size and composition of TTAB panels, which the Director can exercise pursuant to his [or her] authority to establish rules and regulations governing procedures before the TTAB.” *Piano Factory Grp.*, 11 F.4th at 1372 (citing 15 U.S.C. § 1123).

Because the Board, unlike a court, cannot exercise personal jurisdiction or impose monetary or injunctive remedies, the tribe's sovereignty over its tribal members and territories remains undiminished by the Board's administrative inter partes proceedings. Such proceedings do not implicate the tribe's "ability to regulate within its own domain." *U. Minn. v. LSI*, 926 F.3d at 1343 (referring to state sovereignty). "The USPTO's second look at an earlier administrative grant of a public franchise does not constitute an affront to a state's sovereignty, ... particularly where the only possible adverse outcome is the cancellation of erroneously granted [patent] claims." *Id.* at 1346 (Dyk, Wallach, and Hughes, JJ., concurring). All inter partes proceedings do, in fact, is enforce Congress' superior sovereignty over the statutory framework it has created governing federal trademark registration. *Cf. id.* at 1338 (quoting *St. Regis*: "the USPTO is acting as the United States in its role as a superior sovereign to reconsider a prior administrative grant...." 896 F.3d at 1329). In sum, given the nature of inter partes proceedings, tribal sovereign immunity, like state sovereign immunity, "does not apply in the first instance." *U. Minn. v. LSI*, 926 F.3d at 1340-41.

The USPTO's examination of registrability, coupled with the Board's limited jurisdiction and the Director's broad authority, highlight how inter partes proceedings allow the USPTO to reconsider previously-issued administrative grants, and "enable the Office to more fully accomplish the means of enforcing the trademark regulatory scheme." *Mountain Gateway*, 2024 WL 2863444, at *5. Like IPR proceedings before the PTAB, inter partes proceedings before the Board "protect the

public interest in the integrity of the federal trademark register by providing a means to consider and decide the right to registration.” *Id.* “Registration is significant,” and “[t]he Lanham Act confers important legal rights and benefits on trademark owners who register their marks.” *B&B Hardware*, 575 U.S. at 142 (internal citation omitted). Inter partes proceedings before the Board fulfill the trademark regulatory scheme (of which Sycuan availed itself when it acquired the involved registrations) by ensuring that only eligible marks are registered and maintained on the federal trademark register. *Cf. St. Regis*, 896 F.3d at 1327 (citing *Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 584 U.S. 325, 336-37 (2018)).

Indeed, a ruling to the contrary would allow Indian tribes, and their potential assignors, to gain the benefits of registration while obstructing the USPTO’s ability to ensure that such registrations comply with the Trademark Act and rules governing registrability. Nothing would prevent a tribe “from lending its sovereign immunity to private parties, as the tribe attempted to do in *St. Regis*. Such manipulation would undo Congress’ central quality control mechanism in creating post-grant administrative proceedings.” *U. Minn. v. LSI*, 926 F.3d at 1342. If Respondents’ position were adopted, not only could Indian tribes shield their federal applications and registrations from challenge, but non-tribal entities could also use the doctrine to insulate invalid registrations from removal from the register by assigning them to a tribe or an arm of the tribe. The danger of such gamesmanship is plainly evidenced by Respondents’ conduct here, stretching so far as to attempt to blanket itself in immunity even prior to the assignment from IP Services to Sycuan.

We find that tribal immunity does not apply to Board inter partes proceedings “in the first instance,” *see U. Minn. v. LSI*, 926 F.3d at 1340-41, and that Respondents’ attempt to invoke tribal immunity would contravene the very letter and purpose of the federal Trademark Act. In view of the foregoing, Sycuan’s motion to dismiss for lack of jurisdiction on the basis of tribal sovereign immunity is **denied**.²⁰

V. Proceeding Schedule

Proceedings remain **suspended**. The parties are allowed until **October 16, 2026**, to notify the Board of the status of the outstanding discovery responses and deposition discussed in the Board’s November 13, 2018 order.²¹ Proceedings will be resumed, and dates reset, following the parties’ response to this order.

²⁰ In light of our determination that tribal sovereign immunity does not apply, we need not decide whether Sycuan is an “arm of the tribe” for purposes of tribal sovereign immunity; whether dismissal of Sycuan for lack of jurisdiction would automatically require dismissal of IP Services; or whether Sycuan waived its right to assert immunity when it acquired the involved registrations after learning that they were subject to this cancellation proceeding.

²¹ 51 TTABVUE 10-11.