

Argentina: New Invalidation and Non-Use Cancellation Procedures

By [Alejandra Camacho Luna](#)

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The main impact of INAP's Resolution is that invalidation and non-use cancellation actions may now be decided by INAP, and need no longer be filed before a court. However, appeals of INAP's decisions must still be brought before the judicial courts. However, if an applicant raises either an invalidity or non-use cancellation motion against a registration that has been asserted in an opposition proceeding, these actions will be decided by the same entity that decides the opposition, namely the Administrative Resolution Proceed of Oppositions (ARPO), rather than the NTD.

The requirements for initiating invalidation and non-use cancellation actions are the same: The plaintiff must (i) provide its name and address, and the name and address of the trademark owner; (ii) identify the plaintiff's and defendant's rights; and (iii) pay the required fees. Failure to comply with these requirements will result in a refusal.

A. Invalidity Actions

Invalidity actions are available to challenge trademark registrations—not applications—either *ex officio*

or at the request of a party. The *ex officio* invalidations shall only proceed against “irremediable serious violations” detected in the trademark proceeding, which requires a high threshold of proof. The National Trademark Department (NTD), an INAP department, should notify the registrant of the *ex officio* invalidation. The registrant then has the right to file a response brief. The NTD will issue a decision explaining the facts and grounds of the invalidation, regardless of whether the owner files a response.

An invalidity action may be refused if a decision has been issued previously regarding the same invalidity grounds. This provision is favorable to trademark owners because owners can assert prior favorable decisions against invalidation actions filed by different third parties, as long as the grounds for invalidity are the same.

B. Non-Use Cancellation Actions

Non-use cancellations may proceed against registrations starting on the fifth anniversary after registration, either *ex officio* or at the request of a party. *Ex officio* non-use cancellations are available if (i) the registrant fails to file a mid-term use declaration; (ii) the mark is not a well-known mark pursuant to the Paris Convention and TRIPS; and (iii) the registrant either has no additional registrations for identical marks in a related class or failed to file a use declaration for the related registrations. Partial non-use cancellation actions will become available only on June 12, 2023.

A non-use cancellation action may be refused if a decision has been issued against the registration on the same grounds within the prior five years.