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Non-appealability of Trademark Renewal Certificates and Recordal Notices of Declarations of Use?

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1. INTRODUCTION

The renewal of a trademark registration and the recordal of a declaration of use are generally regarded as ordinary actions within the framework of trademark registry administration, and little attention is usually paid to the impact they may have. As long as they are filed in a timely manner, the Mexican Institute of Industrial Property (Instituto Mexicano de la Propiedad Industrial, or IMPI) will generally grant them favorably. However, when such actions are based on inaccurate information or are issued without compliance with the applicable legal requirements, an important question arises: whether the office actions recognizing such actions constitute definitive administrative acts subject to challenge and, if so, who may challenge them, through what mechanism, and within what timeframe. This article examines the legal nature of both acts, the effects they produce in light of the trademark owner and third parties, and the adequacy of the remedies currently provided under Mexican law to subject potential defects in such actions to judicial review.

2. TRADEMARK RENEWAL

- **Legal Nature of the Renewal Procedure and the Renewal Office Action**

To begin with, it is useful to define the concept of an administrative act. Various legal scholars, including Lucero Espinosa and Delgadillo Gutiérrez, have stated that an administrative act consists of five elements: a unilateral and specific declaration issued by an administrative body and intended to produce legal effects¹.

Based on the foregoing, an administrative act may be understood as *“the unilateral and external manifestation of intent through which an administrative authority, in the exercise of public powers, adopts a decision”*² Furthermore, for such manifestation of authority to produce legal effects, it must necessarily be made in writing. Consequently, a merely verbal manifestation does not produce any legal effect.

¹ Luis Humberto Delgadillo Gutiérrez y Manuel Lucero Espinosa, “Compendio de derecho administrativo: primer curso”, Porrúa, México (con varias ediciones vigentes, desde la 5a hasta la 9a).

² Cfr. Nava Vázquez, César, “El procedimiento administrativo” [clase], Derecho Administrativo II, Universidad Panamericana, campus Mixcoac, séptimo semestre, 5 de agosto de 2025

At this point, it is important to clarify that the controversy addressed in this article arises from determining the legal nature of both the renewal procedure and the Renewal Office Action. In particular, it must be established whether the renewal procedure qualifies as an administrative proceeding, understood as the *“set of administrative acts directed toward the issuance of a decision by the authority that is capable of positively or negatively affecting the legal sphere of the individual concerned.”*³

Within this framework, can the renewal procedure be regarded as an interlocutory or procedural administrative act⁴, insofar as it is aimed at the issuance of a final decision, or should it instead be regarded as a definitive resolution? Certain judicial precedents expressly establish that renewal proceedings do not constitute administrative procedures that culminate in a definitive resolution, since they merely require the owner of a registered trademark to satisfy the requirements and formalities established under the Federal Law for the Protection of Industrial Property. Accordingly, such proceedings constitute procedural acts that serve as instruments of the final decision, that final decision being the Renewal Office Action itself.

However, the Renewal Office Action⁵ constitutes a definitive administrative act because it satisfies the elements and requirements recognized by applicable legislation and doctrine. Indeed, the Renewal Office Action is a declaration issued by the competent authority through a public official; it is unilateral and specific, addressing a particular legal situation; it is expressed in writing and materialized through an official communication; and it is intended to produce legal effects within the legal sphere of the individual concerned. If the statutory requirements are met, the request may be granted; otherwise, the registration lapses by operation of law.

In short, the distinction between the renewal procedure and the Renewal Office Action is not merely conceptual. It carries significant legal consequences. While the renewal procedure is limited to compliance with legal requirements and formalities and does not, in itself, constitute an autonomous administrative proceeding, the Renewal Office Action satisfies all the elements that legal doctrine requires in order to qualify as a genuine administrative act.

³ Cfr. Nava Vázquez, César, “El procedimiento administrativo” [clase], Derecho Administrativo II, Universidad Panamericana, campus Mixcoac, séptimo semestre, 19 de agosto de 2025.

⁴ Rodríguez García, Nelson E., “Los actos administrativos”, Revista de Derecho Público, Caracas, núm. 24, 1985, pp. 47 y 48. http://ulpiano.org.ve/revistas/bases/artic/texto/RDPUB/24/rdpub_1985_24_43-50.pdf (fecha de consulta: 2 de septiembre de 2026).

⁵ Art. 237, Ley Federal de Protección a la Propiedad Industrial. <https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPPI.pdf> (fecha de consulta: 2 de septiembre de 2026)

Consequently, it should be capable of being challenged as such. This distinction is fundamental because it is precisely through the Renewal Office Action that the relevant legal effects materialize, whether favorable to the trademark owner or, alternatively, resulting in the lapse of the registration. These effects directly impact the legal sphere of the trademark owner. Accordingly, it is this act, rather than the procedure that precedes it, that must be analyzed in light of the principles and guarantees applicable to all administrative acts.

- **Legal Status Maintained or Generated as a Consequence of Renewal**

If the Renewal Office Action is regarded as an administrative act, this would imply that it is subject to challenge pursuant to Article 3 of the Organic Law of the Federal Court of Administrative Justice. This conclusion becomes even clearer when one considers that the failure to renew a trademark registration results in the registration ceasing to exist. Conversely, if a trademark is not renewed, the consequence provided under the Federal Law for the Protection of Industrial Property is its lapse:

Article 260. A registration shall lapse in the following cases:

(...)

I. When it is not renewed in accordance with the terms of this Law;

Accordingly, the Renewal Office Action, as an administrative act, is presumed valid under the principle of legality embodied in Article 7 of the Federal Administrative Procedure Law, since an administrative act remains valid until its invalidity is declared by the competent authority:

Article 8. An administrative act shall remain valid until its invalidity has been declared by an administrative or judicial authority, as applicable.

Consequently, the nature of the Renewal Office Action as an administrative act not only renders it challengeable before the Federal Court of Administrative Justice, but also determines the legal framework under which its validity must be assessed. So long as it remains in force and has not been declared invalid by the competent authority, the Renewal Office Action benefits from the presumption of legality granted by the Federal Administrative Procedure Law, thereby producing full legal effects with respect to the trademark registration and potentially serving as the basis for various actions brought against third parties.

Conversely, the absence of such an act, that is, the failure to renew a registration within the legally prescribed terms and deadlines, does not constitute a mere procedural omission. Rather, it results in the automatic lapse of the registration by operation of law, as expressly provided by Article 260, Section I, of the Federal Law for the Protection of Industrial Property.

Thus, the legal position of the trademark owner ultimately depends upon the existence and validity of the Renewal Office Action as an administrative act, rather than upon the renewal procedure that gives rise to it.

3. DECLARATION OF USE

Following the 2018 amendment to the now-repealed Industrial Property Law, new obligations were imposed on trademark owners. One of these obligations was the filing of a declaration of actual and effective use.

The Declaration of Use is an obligation applicable to trademarks filed on or after August 10, 2018. It must be submitted three years after the trademark registration is granted, for which purpose the trademark authority provides a three-month grace period. The declaration consists of a statement made under penalty of perjury that the trademark registration is being used in connection with the goods or services for which protection was sought.

This requirement is established in Article 233 of the Federal Law for the Protection of Industrial Property, which provides:

"If the trademark owner does not file the declaration of use, the registration shall lapse by operation of law, without the need for any declaration by the Institute."

Accordingly, and conversely, if the Declaration of Actual and Effective Use is not filed within the statutory period, the trademark registration will lapse by operation of law, much as occurs in the case of trademark renewal.

Therefore, once the relevant requirement has been satisfied, the authority is obligated to issue a Recordal Office Action, which we believe shares the same legal nature as a Renewal Office Action, since it likewise constitutes an administrative act and a decision that brings a proceeding to an end.

This is because the Recordal Office Action issued by the trademark authority does not create a new legal situation. Rather, as discussed with respect to the Renewal Office Action, it merely has declaratory effects, resembling a certificate issued in favor of the trademark owner stating that the registration remains in force and continues to produce full legal effects against third parties.

The foregoing raises the question of whether the absence of any evidentiary requirement places individuals in a state of legal uncertainty. The principle of good faith in the registry system may be compromised without the authority being aware of it, since nothing prevents a trademark owner from submitting a declaration of actual and effective use that does not correspond to reality and, based solely on that statement, obtaining the issuance of a Recordal Office Action despite the Institute having no certainty regarding the actual use of the trademark.

In such a scenario, the Recordal Office Action, having been issued on the basis of a false declaration, would fall within one of the grounds for nullity contemplated in Article 6 in relation to Article 3 of the Federal Administrative Procedure Law, insofar as that statute renders null and void any administrative act whose object is unlawful or which departs from the governing principles of administrative procedure, including the principle of good faith set forth in Article 13.

Article 3. The elements and requirements of an administrative act are:

(...)

VIII. It must be issued without error concerning its object, cause, grounds, or purpose;

IX. It must be issued free from fraud or coercion;

Article 6. The omission or irregularity of any of the elements or requirements established in Sections I through X of Article 3 of this Law shall result in the nullity of the administrative act, which shall be declared by the hierarchical superior of the authority that issued it, except where the challenged act was issued by the head of a government agency, in which case nullity shall be declared by that same official.

Any administrative act declared legally null shall be invalid; it shall not be presumed lawful or enforceable; it shall be subject to correction, without prejudice to the issuance of a new act. Individuals shall have no obligation to comply with such act, and public servants shall formally record their opposition to executing it, stating the legal and factual grounds for such refusal. The declaration of nullity shall have retroactive effect.

The absence of a verification mechanism capable of examining the legality of a Renewal Office Action or a Recordal Office Action constitutes a factor exposing the registry system to a structural risk of fraud upon the law. A trademark owner may obtain such an office action, thereby preserving the registration, despite lacking actual and effective use of the mark. As a result, the burden of detecting the defect is postponed to a later stage, usually at the initiative of a third party seeking to challenge the registration after it has been used as the basis for an action brought against that third party.

In this regard, good faith in the registry system, rather than being merely a declaratory principle, functions as a substantive limitation on the validity of administrative acts issued on the basis of unilateral statements made by private parties. It also serves as a reminder that the presumption of legality afforded to administrative acts should not be confused with an absolute presumption of truthfulness regarding their underlying content.

4. POSSIBLE MEANS OF CHALLENGING A RENEWAL OFFICE ACTION OR A RECORDAL OFFICE ACTION ACKNOWLEDGING A DECLARATION OF USE

4.1 Federal Administrative Litigation Proceeding

A federal administrative litigation proceeding is the legal mechanism through which private parties challenge before the Federal Court of Administrative Justice the legality of acts issued by the Public Administration. Its admissibility generally requires the existence of a definitive administrative act issued by an administrative authority. The immediate purpose of the proceeding is to compare the challenged act, both in its substance and in the procedure that preceded its issuance, against the legal rules governing administrative action. If the unlawfulness of the act is established, the Court may declare it null and void, either entirely or for specific purposes. Functionally, this proceeding presupposes prior administrative action and seeks to deprive that action of legal effect based on the specific defects alleged by the claimant⁶.

⁶ Sergio Martínez Rosaslanda, "Análisis comparativo: contencioso francés con el mexicano", México, Facultad de Derecho de la Universidad Panamericana, 1995, p. 160.

This procedural dimension is essential because, as legal doctrine has observed, *“the set of formalities and acts that precede and prepare an administrative act constitutes the administrative procedure, just as the processes through which legislative acts and judicial decisions are produced constitute the legislative procedure and the judicial procedure, respectively.”*⁷ Consequently, judicial review should not be limited solely to the contents of the final decision but should also encompass the regularity of the acts and formalities that made its issuance possible, since the legality of the final determination depends upon them.

The purpose of the proceeding is not limited to remedying the individual harm suffered by the claimant but also extends to reviewing the legality of the authority's actions in issuing the challenged act or decision. The injury that gives rise to a challenge must constitute a legally cognizable grievance: substantively, it must involve an infringement of a protected right or legally protected interest; procedurally, it must be articulated through a claim that identifies the challenged act, the legal provision allegedly violated, the manner in which the violation occurred, and the legal consequence sought.

The alleged illegality may arise during the administrative procedure itself, for example through lack of jurisdiction, denial of the right to be heard, improper admission or assessment of evidence, or failure to comply with essential procedural formalities. Likewise, the defect may lie in the decision itself due to inadequate legal and factual reasoning, erroneous assessment of the facts, improper application of the law, excessive consequences, or abuse in the exercise of discretionary powers. Moreover, legal doctrine has concluded that when an interlocutory or procedural act is not independently challengeable, the defect must be raised when challenging the final determination to which it has been carried forward.⁸

The applicable legal framework requires distinguishing between any administrative action and an act that may actually be challenged through litigation. Under the Federal Law of Administrative Litigation Procedure and Article 3 of the Organic Law of the Federal Court of Administrative Justice, the following are challengeable, among others: (i) definitive administrative decisions falling within the subject-matter jurisdiction of the Court; (ii) administrative acts, decrees, and general administrative provisions other than regulations, when they are

⁷ Fraga, Gabino, *Derecho administrativo*, 26a. ed., México, Porrúa, 1987.

⁸ Miguel Ángel García Domínguez, “Naturaleza del juicio contencioso administrativo y su relación con la naturaleza, función y contenido de la demanda”, *Gaceta Mexicana de Administración Pública Estatal y Municipal*, núm. 57, pp. 78-102, disponible en: <https://revistas-colaboracion.juridicas.unam.mx/index.php/gaceta-mexicana/article/viewFile/24989/22412>

self-executing or challenged together with their first act of application; (iii) decisions resolving administrative appeals that continue to affect legal rights; and (iv) administrative proceedings expressly contemplated by law, once they culminate in a definitive resolution or legal consequence.

For these purposes, what matters in determining definitiveness is whether the administrative action represents the final product of the administrative will, defines a specific legal situation, or independently produces binding legal effects and a present injury. As a general rule, preparatory, instrumental, informational, or purely executory acts that do not resolve the merits or independently alter a person's legal position are excluded from autonomous challenge. Defects in such acts must instead be asserted against the definitive decision, unless a legal provision expressly authorizes a direct challenge or the act causes an independent injury incapable of subsequent remedy.

It is also noteworthy that when a definitive administrative act is subject to challenge, Article 83 of the Federal Administrative Procedure Law allows the affected party to choose between filing an administrative review appeal or proceeding directly through the applicable judicial action. In this context, although Renewal Office Actions and Recordal Office Actions may be challenged through either avenue, from a strategic perspective it is preferable to file a nullity action, as this allows the legality of the administrative act to be submitted directly to judicial review by the Federal Court of Administrative Justice without first exhausting an administrative remedy before the very authority that issued the act.

Can a Renewal Office Action or a Recordal Office Action Acknowledging a Declaration of Use be challenged through a nullity action before the Federal Court of Administrative Justice? The answer must derive from the legal function performed by each act rather than from the formal label attached to the document in which it is embodied. Both renewal and declaration of use affect the continued existence of a trademark registration. Renewal extends the registration for an additional term, whereas the declaration of use prevents the extinction of the right due to the failure to make the required declaration. Thus, although neither act is equivalent to the original grant of a trademark registration, both may constitute the basis upon which the registration remains valid and continues producing legal effects.

The appropriate path to challenge such acts is a federal administrative litigation proceeding through a nullity action⁹, since these acts constitute administrative decisions issued by an administrative authority and are therefore susceptible to judicial review. Likewise, under the Federal Law of Administrative Litigation Procedure, administrative litigation proceedings may be brought against definitive administrative decisions pursuant to the Organic Law of the Federal Court of Administrative Justice, which provides that such proceedings are available against decisions *“issued by administrative authorities that bring an administrative proceeding or instance to an end, or resolve an administrative file or matter.”*¹⁰

Since both Office Actions resolve an administrative file initiated through an application and concluded through a determination as to whether the renewal or declaration of use is acceptable, administrative litigation should be available. As various commentators have explained¹¹, this provision encompasses a wide variety of administrative scenarios, thereby permitting affected parties to challenge both Renewal Office Actions and Recordal Office Actions. As noted above, these acts are ultimately nothing more than the culmination of a procedure aimed at resolving an administrative file within the meaning of Article 57, Section I, of the Federal Administrative Procedure Law.

By contrast, if these Office Actions were not considered definitive decisions and therefore not challengeable, an affected third party would be required to challenge the trademark registration itself rather than the Renewal Office Action or the Recordal Office Action. Such a result would be illogical because the trademark registration is the product of a separate and earlier proceeding that already culminated in a final decision granting the registration. Furthermore, even if the third party could resort to those mechanisms, a more fundamental issue would remain: what happens if a trademark that was not in use at the time of renewal or declaration of use later returns to use? In that situation, the registration should not have retained its legal effects. Accordingly, the illegality lies in the decision rendered in the renewal or declaration-of-use proceeding, not in the original registration proceeding itself.

⁹ Martínez Rosaslanda, José Sergio, El contencioso administrativo en México, tesis para obtener el grado de Doctor en Derecho, asesora: Margarita Beatriz Luna Ramos, Universidad Panamericana, Facultad de Derecho, México, D.F., 2010, pp. 12-39. <https://scripta.up.edu.mx/server/api/core/bitstreams/bb8db2e5-41f0-4803-b753-41f292a6b94f/content> (fecha de consulta: 4 de septiembre de 2026).

¹⁰ Soberanes Lasses, Óscar y Soberanes Sánchez, Silvia Valeska, Manual teórico práctico sobre medios de defensa en materia administrativa, México, Universidad Nacional Autónoma de México, 2018, pp. 81 y 82. <https://archivos.juridicas.unam.mx/www/bjv/libros/12/5610/6.pdf> (fecha de consulta: 3 de septiembre de 2026)

¹¹ <https://archivos.juridicas.unam.mx/www/bjv/libros/12/5610/6.pdf>

The renewal process does not create trademark rights, nor does it reopen the registrability examination conducted when the registration was initially granted. Its purpose is to extend the duration of a preexisting right, provided that the renewal application is filed in a timely manner and the legal requirements are met. Nonetheless, that nature does not render the Office Action irrelevant. Through it, the authority verifies compliance with the applicable requirements, including the declaration, made under penalty of perjury, that the mark is in use, and formally expresses its decision to maintain the registration in force for an additional term.

From the standpoint of definitiveness, such an Office Action should be regarded as challengeable because it constitutes the final and autonomous manifestation of the administrative will with respect to renewal. It requires no subsequent act in order to produce legal effects and results in the continued validity of the trademark registration. The act therefore does more than merely report a preexisting circumstance; it formally recognizes and consolidates the continued existence of the exclusive right and makes it enforceable against third parties.

The resulting harm may be direct and immediate for parties facing opposition proceedings, administrative actions for nullity, lapse, cancellation, or infringement, and even for those who, acting in good faith, obtain authorization to use the trademark, such as licensees or franchisees. In other words, every exercise of rights derived from the registration confronted to third parties rests on the presumption that the registration is valid and subsisting. Consequently, a renewal or declaration of use affected by a defect may generate legal consequences for third parties that are premised upon an unlawful and defective right.

4.2 Administrative Declaration Actions before the Mexican Institute of Industrial Property

The Federal Law for the Protection of Industrial Property provides for various causes of action that constitute the contentious proceedings adjudicated by the Mexican Institute of Industrial Property (IMPI). These include administrative declaration proceedings for nullity, cancellation, and infringement. In assessing whether any of these contentious proceedings may serve as a mechanism to challenge a Renewal Office Action or a Recordal Office Action acknowledging a Declaration of Use, it is useful to examine the nature of each proceeding.

The legislature expressly regulated the mechanisms through which the continued existence of trademark rights may be challenged. Chapter VIII of the Federal Law for the Protection of Industrial Property establishes the causes of nullity, lapse, and cancellation, and identifies the specific grounds applicable to each. For example, Article 258 sets forth the grounds for nullity; Article 260 establishes the grounds for lapse, including failure to renew and failure to file a Declaration of Actual and Effective Use; and Article 261 governs cancellation on the basis that a mark has become generic. Likewise, Article 386 contains the catalogue of administrative infringements arising from unauthorized use or use contrary to law.

4.2.1. Cancellation Action

A non-use cancellation action is the proceeding through which a third party seeks a declaration by the Institute that a trademark registration should be cancelled, in whole or in part, based on any of the circumstances set forth in Article 260 of the Federal Law for the Protection of Industrial Property.

Among those circumstances is the failure to use the trademark during the three consecutive years immediately preceding the filing of the non-use cancellation action, without justification acceptable to the Institute. Additionally, a registration may automatically lapse by operation of law if it is not renewed in accordance with the statutory requirements or if the Declaration of Actual and Effective Use is not filed.

Of the three circumstances that may result in the extinction of a trademark registration, two do not require an administrative declaration by the Institute, as they take effect automatically by operation of law once the deadline for filing either a trademark renewal or, where applicable, a declaration of use has expired¹². Or purposes of the issue addressed in this article, it is important to note that the legal consequence of failing to undertake either of these procedures is the extinction of the trademark right itself. It therefore follows logically that if such procedures are carried out in an irregular or unlawful manner, there should exist a mechanism capable of questioning the legality of the administrative action through which they were recognized.

¹² México, Ley Federal de Protección a la Propiedad Industrial, Diario Oficial de la Federación, 1 de julio de 2020, art. 260.

With respect to cancellation based on non-use during the three consecutive years immediately preceding the filing of the action, a third party must initiate the proceeding. The relevant period for purposes of non-use cancellation is directly linked to the timeframe during which use must be demonstrated in order to preserve trademark rights. In other words, the opportunity to seek cancellation is tied to the current statutory period; a party may not seek cancellation based on an alleged lack of use during a different period of the registration's life.

Accordingly, a situation may arise in which a trademark is renewed despite the fact that it was not actually used, based on a false declaration made under penalty of perjury stating otherwise. In such circumstances, there is no ground for non-use cancellation that directly addresses that specific historical period.

Consequently, a non-use cancellation action only allows third parties to challenge the absence of use during the three consecutive years immediately preceding the filing of the action, provided that they possess the necessary legal interest. This mechanism does not permit review of earlier periods of non-use, nor does it allow, in and of itself, a challenge to defects committed during the renewal process or in connection with the filing of the Declaration of Actual and Effective Use.

Thus, if a third party later becomes subject to an action based upon a trademark whose renewal or declaration of use was irregular and, by that time, the disputed period no longer corresponds to the three-year period prescribed by law, a non-use cancellation action will not permit that irregularity to be challenged. In practical terms, the mere passage of time may consolidate the effects of a defective registration in favor of the trademark owner, without the affected third party ever having had an effective mechanism through which to contest those effects.

Moreover, even if cancellation of the registration were ultimately granted, such determination would be based on non-use and would not invalidate the Renewal Office Action or the Recordal Office Action acknowledging the Declaration of Use. As a result, those Office Actions would still have produced specific legal consequences capable of affecting third-party rights despite having been based on a fraudulent declaration. Such a result is difficult to reconcile with fundamental principles of law.

4.2.2 Nullity

A nullity action is a mechanism intended to challenge the legal validity of the grant of a trademark registration on the basis of one of the grounds expressly set forth in Article 258 of the Federal Law for the Protection of Industrial Property. In particular, Section I of that provision establishes that a registration may be declared null and void when it “was granted in violation of” the provisions of the Law or the legislation in force at the time of its registration. Accordingly, a nullity action presupposes the existence of a defect that affects the legality of the registration at the time it was granted, rather than circumstances arising at a later stage that may call into question its legality or validity.

With respect to its effects, a declaration of nullity is intended to retroactively deprive a trademark registration of legal effect when it was obtained in violation of the Law, in accordance with the specific ground that has been established. Even in cases of partial nullity, the Law provides that the Institute shall make the corresponding marginal annotation in the registration certificate, reflecting the modifications ordered and the grounds that gave rise to them.

Under this framework, before resorting to a nullity action it is necessary to determine precisely which act and which defect are being challenged. Not every breach, irregularity, or subsequent event related to a trademark registration constitutes, in and of itself, a ground for nullity. The facts invoked must fall within one of the circumstances contemplated by Article 258 and must be sufficiently serious to affect the validity of the registration under the terms established by the Law and its Regulations.

This distinction becomes particularly important in the context of trademark renewal. Pursuant to Article 237 of the Federal Law for the Protection of Industrial Property, renewal must be requested within the six months preceding the expiration of the registration and may even be filed within the six months following its expiration. That provision also governs the declaration of use that must accompany the renewal application and establishes the consequences of any failure to comply with such requirement. Likewise, Article 238 of the Law provides that if renewal is not requested within the applicable period, the registration shall automatically lapse by operation of law.

It follows that renewal does not constitute a new grant of trademark rights. Rather, it presupposes the existence of a previously granted registration and serves the purpose of maintaining its validity under the conditions established by law. Consequently, the act through which the Institute recognizes a renewal should not be confused with the original act granting the registration, nor should it be regarded, solely for that reason, as a new registration capable of being challenged through a nullity action.

Accordingly, the nullity of a trademark registration and the challenge of a renewal serve different legal purposes. While the former seeks to challenge the validity of the original grant of registration on the basis of one of the grounds set forth in Article 258, the latter, where appropriate, must be directed against the administrative act through which the Institute determined that renewal was proper and must be asserted through the procedural mechanism specifically available for challenging that act.

Attempting to challenge a Renewal Office Action directly through a nullity action would therefore involve using the latter remedy for a purpose different from that contemplated by the legislature.

Indeed, an administrative nullity proceeding brought pursuant to Article 258 of the Federal Law for the Protection of Industrial Property against either a Renewal Office Action or a Recordal Office Action acknowledging a Declaration of Use should be dismissed as manifestly inadmissible, since such Office Actions constitute administrative acts distinct from the trademark registration itself, which is precisely the subject matter regulated by that provision.

4.3. Is There Any Other Means of Challenging a Renewal Office Action or a Recordal Office Action Acknowledging a Declaration of Use?

In light of the foregoing, it is necessary to consider whether the applicable legal framework provides any means of challenge other than those discussed above through which the legality of such administrative acts may be questioned. More specifically, it is necessary to determine whether there exists an autonomous cause of action capable of addressing the alleged non-appealability of Renewal Office Actions and Recordal Office Actions acknowledging Declarations of Use.

In this regard, Article 12 of the Federal Law for the Protection of Industrial Property is particularly relevant. That provision establishes that the Institute shall not grant any patent, registration, or authorization, nor publish in the Gazette, any legal figure or institution governed by the Law if its content or form is contrary to public policy or violates any legal provision. This provision reiterates that the Institute's registry activities are necessarily subject to the principle of legality. Accordingly, neither the renewal of a trademark registration nor the acknowledgment of a Declaration of Use may be divorced from compliance with the requirements and conditions established by law.

Thus, it could be argued that when a renewal or a Recordal Office Action acknowledging a Declaration of Use is obtained on the basis of information that violates the Law, for example, through the filing, under penalty of perjury, of a declaration stating that a trademark is in use when in fact it is not, the administrative act through which the Institute recognizes compliance with the applicable requirements is tainted by an irregularity at its origin. In such circumstances, the Institute's action would have been predicated on a legally nonexistent circumstance or on a representation contrary to reality.

However, the foregoing does not mean that Article 12 itself creates an autonomous ground for the nullity of a Renewal Office Action or a Recordal Office Action acknowledging a Declaration of Use, nor does it mean that any violation of the Law automatically renders a trademark registration void. The provision establishes a standard of legality governing the Institute's actions, but it does not itself establish a procedure or define the effects through which a private party may obtain the revocation, modification, or extinguishment of a previously granted administrative act.

Accordingly, even though Article 12 may serve as a basis for questioning the legality of an act carried out by the Institute in violation of the Law, it remains necessary to determine the legal consequence assigned by the legal framework to that irregularity and, in particular, the procedural mechanism through which such challenge may be asserted. Otherwise, there would be a risk of transforming Article 12 into a general avenue for obtaining the invalidation of registry acts without regard to the specific causes of action and procedures that the Federal Law for the Protection of Industrial Property expressly establishes for challenging the continued existence of trademark rights.

This possibility should not be confused with the existence of an autonomous industrial property action through which a party could seek the modification or extinguishment of a trademark registration solely on the basis of Article 12 of the Federal Law for the Protection of Industrial Property. Article 12 provides that no patent, registration, authorization, or publication shall be granted where the legal figure or institution in question is contrary to public policy or violates the law. Nevertheless, that provision does not establish a cause of action, a procedure, standing requirements, filing deadlines, or specific procedural consequences through which a third party may request that the IMPI invalidate a renewal or a Recordal Office Action already granted. Rather, it is a substantive provision that establishes a condition of legality applicable to acts governed by the Law.

This distinction is particularly relevant because the Federal Law for the Protection of Industrial Property expressly regulates the relationship between renewal and declarations of use. Article 237 establishes that, when filing a renewal application, the trademark owner must declare the actual and effective use of the trademark with respect to the relevant goods or services. It also establishes specific consequences for failing to do so, including the automatic lapse of the registration by operation of law where the applicant fails to comply with a requirement issued by the Institute. Thus, the Law does provide legal consequences for situations in which a renewal or declaration of use fails to satisfy the applicable requirements. However, this does not mean that the legislature created an unnamed or autonomous cause of action through which any person may challenge, at any time and for any reason, the registry record resulting from those procedures.

Accordingly, Article 12 cannot be interpreted as a procedural authorization creating a new cause of action that the legislature did not expressly establish. It is one thing for the provision to state that acts governed by the Federal Law for the Protection of Industrial Property must comply with the legal order and quite another for it to grant private parties an independent cause of action through which to seek the modification or extinguishment of such acts regardless of the causes and procedures expressly provided by law.

For this reason, a distinction must be drawn between challenging the legality of the administrative act through which the IMPI carried out a renewal or issued a Recordal Office Action acknowledging a Declaration of Use, and attempting to obtain, through an autonomous action not provided for in the Federal Law for the Protection of Industrial Property, the modification or extinguishment of that act.

The former may be pursued through the general remedies available against administrative acts, such as a federal administrative litigation proceeding or an administrative review appeal. The latter necessarily requires reliance upon one of the mechanisms expressly established by law for affecting the validity or continued existence of trademark rights.

Consequently, in the absence of a procedure expressly provided by the Federal Law for the Protection of Industrial Property for that purpose, it would not be legally permissible to construct, solely on the basis of Article 12, an autonomous proceeding designed to produce effects equivalent to those resulting from a declaration of nullity, cancellation, or non-use cancellation. Article 12 may serve, where appropriate, as a substantive standard of legality against which administrative action may be measured, either in conjunction with an administrative declaration of nullity action or independently through an administrative review appeal before the Mexican Institute of Industrial Property or a nullity action in federal administrative litigation proceedings. It cannot, however, serve as an autonomous source of action in and of itself.

5. LEGAL STANDING TO CHALLENGE A RENEWAL OFFICE ACTION OR A RECORDAL OFFICE ACTION THROUGH A NULLITY ACTION

Based on the above, it is necessary to consider the type of injury that must exist in order for a third party who did not participate in the underlying proceeding to challenge the legality and veracity of a Renewal Office Action or a Recordal Office Action acknowledging a Declaration of Use. Such party must necessarily possess legal standing (*interés jurídico*¹³), understood as a direct injury to the individual's legal sphere.

In practical terms, such injury commonly materializes through a substantive office action issued by the IMPI in which the allegedly defective trademark registration is cited as a bar to the registration of a later-filed trademark application. Likewise, standing may arise where the allegedly defective registration is used as the basis for an administrative declaration action or asserted through a counterclaim.

¹³ Camarena Juárez, Francisco Javier, "Análisis del interés jurídico y del interés legítimo en el Juicio Contencioso Administrativo. ¿Un obstáculo en el Acceso a la Justicia Administrativa?", Ex Lege, León, Guanajuato, Universidad De La Salle Bajío, 2018, pp. 1-23.
https://www.academia.edu/39096355/El_interés_jurídico_y_el_interés_legítimo_en_el_Juicio_Contencioso_Administrativo_Un_obstáculo_en_el_Acceso_a_la_Justicia_Administrativa (fecha de consulta: 3 de septiembre de 2026)

This situation affects not only the applicant or respondent facing a claim or action based upon the defective trademark registration, but also third parties holding intellectual property rights. So long as the registration remains in force and continues to constitute an obstacle to other market participants, the exclusive right that it confers may prevent others from obtaining registrations for marks that the Institute considers identical or confusingly similar.

Accordingly, it may be argued that, in order for a third party to have legal standing to challenge the legality and veracity of a Renewal Office Action or a Recordal Office Action acknowledging a Declaration of Use, there must be an injury to an intellectual property right. As long as the registration continues to exist and produce legal effects, it will continue to adversely affect the trademark system.

Under this view, legal standing does not arise merely from disagreement with the renewal or acknowledgment of the declaration of use, nor from a generalized interest in ensuring compliance with the law. Rather, it requires a direct and personal injury resulting from the existence and continued effectiveness of the challenged registration. Such injury may become apparent when the registration is invoked as a bar to a later-filed application, serves as the basis for an administrative action, or is otherwise relied upon in a manner that directly affects the legal position of the third party.

Accordingly, the exercise of judicial review in this context should be limited to those persons capable of demonstrating a direct and current legal injury resulting from the continued effectiveness of the registration. Absent such injury, the challenge would amount to an abstract review of the legality of the administrative act, which is inconsistent with the traditional concept of legal standing under Mexican administrative law.

6. TIME LIMIT FOR FILING A CHALLENGE

Article 13 of the Federal Law of Administrative Litigation Procedure establishes a thirty-day period for filing a challenge, calculated from the date on which the challenged decision becomes effective:

ARTICLE 13. *The claimant may file a complaint through a traditional proceeding by submitting it in writing before the competent Regional Chamber, or electronically through the Online Justice System. In the latter case, the claimant must elect that option at the time of filing the complaint. Once such option has been chosen, it may not be changed. Where the authority acts as claimant, the complaint shall in all cases be filed electronically through the Online Justice System.*

(...)

The complaint must be filed within the following time limits:

I. Within thirty days following the occurrence of any of the following circumstances:

When notice of the challenged decision becomes effective, as determined under the law governing such decision, including where a generally applicable administrative rule is challenged simultaneously as its first act of application.

This rule is straightforward when applied to the trademark owner, as it allows the owner to challenge the decision, namely, the Renewal Office Action or the Recordal Office Action acknowledging a Declaration of Use, within the statutory period, which begins to run on the day following notification of the decision.

However, the provision does not contemplate situations in which the challenge is brought not by the trademark owner, but rather, as discussed throughout this article, by a third party whose rights have been adversely affected. For that reason, Article 16 of the same Law permits third parties to challenge administrative decisions of which they had no prior knowledge:

ARTICLE 16. *Where it is alleged that an administrative decision was not notified, or was unlawfully notified, provided that the decision is subject to challenge through a federal administrative litigation proceeding, the following rules shall apply:*

(...)

II. Where the claimant states that he or she is unaware of the administrative decision intended to be challenged, such circumstance shall be expressly stated in the complaint, identifying the authority to which the decision is attributed, as well as its notification or enforcement. In such case, when answering the complaint, the authority shall attach the administrative decision and proof of notification, which the claimant shall challenge through an amended complaint.

This provision raises an additional question, namely, the date on which the claimant is deemed to have obtained knowledge of the challenged act. This issue is particularly important because it determines when the limitation period begins to run for purposes of filing a federal administrative litigation proceeding.

The Industrial Property Gazette constitutes the official publication and notification mechanism of the IMPI¹⁴. Pursuant to the Federal Law for the Protection of Industrial Property, acts published therein become effective on the date specified in the Gazette itself. Furthermore, the Industrial Property Gazette serves as a mechanism through which the IMPI provides public notice to interested parties.

Although trademark owners may be expected to monitor such publications, we do not consider that this obligation extends to third parties who may later be adversely affected by a renewal or declaration of use¹⁵. As noted above, legal standing does not arise merely from publication in the Gazette but rather from a direct and concrete injury suffered by a third party. Such a party cannot know whether a trademark registration will operate as an obstacle until either the Institute or the owner of the renewed registration invokes it against that party or initiates an action based upon it.

Accordingly, the thirty-day filing period should necessarily be calculated from the moment at which the challenged act produces a real and direct effect on the legal sphere of the affected individual. In practice, this most commonly occurs when the third party is served with a claim, such as an administrative declaration action for nullity or non-use cancellation, based upon a registration whose renewal or declaration of use is alleged to have been fraudulently obtained.

Under this approach, the relevant date is not the date on which the Renewal Office Action or Recordal Office Action was issued or published, but rather the date on which the third party acquires actual knowledge of the act through a concrete injury to its legal position. To hold otherwise would create the possibility that the statutory limitation period could expire before the third party had any practical opportunity to challenge the allegedly unlawful administrative act.

¹⁴ Art. 18, Ley Federal de Protección a la Propiedad Industrial. <https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPPI.pdf> (fecha de consulta: 4 de septiembre de 2026)

¹⁵ Se confronta: Tesis: XXX.4o.3 A (12a.), MARCAS. CON LA PUBLICACIÓN DE LA SOLICITUD DE SU REGISTRO EN LA GACETA DE LA PROPIEDAD INDUSTRIAL NO SE VIOLA EL DERECHO DE AUDIENCIA DE TERCEROS NI EL DEBIDO PROCESO (LEGISLACIÓN VIGENTE ANTES DEL 1 DE JULIO DE 2020), Tribunales Colegiados de Circuito, Gaceta del Semanario Judicial de la Federación, Duodécima Época, libro 10, junio de 2026, tomo III, volumen 2, p. 1465, registro digital: 2032297. <https://sjf2.scjn.gob.mx/detalle/tesis/2032297> (fecha de consulta: 4 de septiembre de 2026).

Consequently, where the challenge is brought by a third party who did not participate in the renewal or declaration-of-use procedure, the filing period should be deemed to commence only upon actual knowledge of the act and the resulting direct injury, rather than upon its mere publication in the Industrial Property Gazette. This interpretation is the one most consistent with the principles of due process, effective judicial protection, and access to justice.

7. JUDICIAL PRECEDENTS

In Direct Amparo Proceeding No. 455/2025, the claimant filed a nullity action against two Office Actions through which the IMPI informed the defendant of the renewal of a trademark registration. The Specialized Chamber for Intellectual Property Matters of the Federal Court of Administrative Justice dismissed the action, holding that such Office Actions did not affect the claimant's legal standing because they were merely formal administrative steps arising exclusively between the trademark owner and the IMPI.

The Chamber further held that it lacked subject-matter jurisdiction to hear the challenge, reasoning that the disputed Office Actions neither concluded an administrative proceeding nor resolved an administrative file in a manner affecting third-party rights, within the meaning of Article 3, Section XII, of the Organic Law of the Federal Court of Administrative Justice, in conjunction with Article 50(I) of the Court's Internal Regulations and Article 2 of the Federal Law of Administrative Litigation Procedure.

Specifically, the Chamber concluded that acts relating to trademark renewal did not fall within the categories of administrative action reviewable by the Court because they "do not bring an administrative proceeding or instance to an end, nor do they resolve an administrative file affecting the rights of third parties."

In reaching this conclusion, the Chamber explained that it had departed from its previous position regarding the challengeability of Renewal Office Actions. Whereas it had initially regarded such Office Actions as decisions that "culminate the trademark renewal administrative proceeding and affect a private party," it subsequently adopted a different interpretation, concluding that trademark renewal does not constitute a proceeding or instance culminating in a decision that may be challenged by third parties.

According to the Chamber, the purpose of a renewal proceeding is not to revisit the registrability requirements applicable to the trademark, but merely to verify compliance with the statutory requirements necessary to extend the term of a previously granted registration.

In this regard, the Chamber emphasized the non-contentious nature of the renewal proceeding and explained that the legal relationship exists exclusively between the registry authority and the applicant. Unlike an opposition proceeding, *“the renewal process does not contemplate the participation of any third party, not even in the capacity of an intervenor.”*

According to the Chamber, this limitation derives directly from the nature of the proceeding itself, as the authority's function is *“strictly administrative and registral,”* and is confined to verifying compliance with the legal and formal requirements established by the applicable legislation.

On this basis, the Collegiate Circuit Court concluded that the outcome of a renewal proceeding cannot be challenged by a third party because the authority merely verifies that the requirements necessary to extend the term of an existing registration have been satisfied. As the Court explained, *“it must not be overlooked that the proceeding in question is not one that resolves substantive issues,”* since it is not intended to reexamine the registrability requirements of the trademark sign, which had already been examined when the registration was originally granted.

The Court linked this conclusion to the concept of a definitive administrative act. It explained that, where a decision culminates an administrative proceeding, acts that are merely procedural in nature cannot themselves be regarded as definitive; that status is reserved for the decision that brings the proceeding to an end. Conversely, in the case of isolated acts of the Public Administration, such acts will be definitive only where they contain *“a determination or decision whose characteristics”* directly cause legal injury to the affected party.

The claimant attempted to overcome this obstacle by asserting what it described as “counterclaim standing,” arguing that the defendant had brought against it an administrative nullity action based precisely on the trademark registration whose renewal it considered fraudulent. The Court rejected this argument, holding that the mere fact that the renewed trademark registration had been relied upon in a separate contentious proceeding did not, by itself, confer standing to challenge the renewal process.

According to the Court, the fact that the renewed registration “is subsequently used to support a different action” does not create standing to challenge the renewal proceeding because the renewal proceeding itself “does not resolve a dispute between parties.”

Finally, the Court held that where a third party believes that a trademark registration causes a concrete legal injury, it must resort to the specific procedures established by law for addressing such injury, namely administrative actions for nullity, non-use cancellation, or cancellation. Accordingly, the Court concluded that any injury arising from the registration or its continued validity must be asserted through the mechanisms established in Articles 258, 260, and 263 of the Federal Law for the Protection of Industrial Property, proceedings in which third parties are expressly authorized to participate and demonstrate the requisite legal standing.

Direct Amparo Proceeding No. 155/2026 bears significant similarities to the preceding case. Once again, the reviewing court considered the situation of a third party confronted with a trademark registration that had been invoked as the basis for a nullity action brought against it. As in the previous case, the nullity action was dismissed for lack of legal standing and lack of subject-matter jurisdiction. The principal difference was that, in this case, the claimants challenged the constitutionality of Article 83 of the Federal Administrative Procedure Law, Article 2 of the Federal Law of Administrative Litigation Procedure, and Article 3, Section XII, of the Organic Law of the Federal Court of Administrative Justice, arguing that those provisions effectively excluded judicial review for third parties who had not participated in the renewal proceeding. The Collegiate Circuit Court denied constitutional relief.

The claimants argued that these provisions generated legal uncertainty by preventing third parties adversely affected by a renewal from challenging Renewal Office Actions. Specifically, they contended that, under those provisions, a decision renewing a trademark registration was not regarded as a definitive administrative act because it did not bring an administrative proceeding to an end, thereby placing such decisions beyond judicial review. According to the claimants, the challenged provisions “exclude trademark renewal proceedings from judicial review because third parties who did not participate in the renewal process are not in a position to challenge that decision despite suffering a direct injury as a result of the erga omnes effects produced by the act.”

The claimants further argued that the issue did not stem from their lack of participation in the renewal proceeding itself, but rather from the legal effects produced by the renewal. In their view, *“the Renewal Office Action extending the registration produces an exclusive right and, consequently, one that is enforceable against third parties.”* Therefore, preventing judicial review through a federal administrative litigation proceeding would allow a potentially unlawful decision to remain in force and would improperly restrict the constitutional right of access to justice protected by Article 17 of the Mexican Constitution.

The Collegiate Circuit Court rejected these arguments, holding that the constitutional challenge was not truly directed at the normative content of the provisions at issue. The Court noted that *“a reading of the claimants’ arguments reveals that the alleged constitutional defect in the challenged provisions depends upon the interpretation adopted with respect to the trademark renewal system that gave rise to this dispute.”* In other words, the challenge was based on circumstances relating to the trademark renewal framework rather than on the content of the provisions themselves. The Court therefore concluded that the constitutional arguments were ineffective.

In that regard, the Court explained that any constitutional analysis of the challenged provisions could only concern the rules governing the admissibility of administrative litigation proceedings with respect to acts that bring an administrative proceeding, instance, or administrative file to an end. However, the Court emphasized that *“there would be no valid reason to orient such analysis based on provisions contained in another article of the same statute or in an entirely different law,”* as the claimants sought to do by linking the analysis to the specific rules governing trademark renewals.

The Court further observed that, even if the challenged provisions were declared unconstitutional, such declaration would not lead to the result sought by the claimants. It expressly stated that *“even assuming that the challenged provisions were unconstitutional, such conclusion would not have the effect sought by the claimants, namely, permitting the challenge of a decision renewing a trademark registration for an additional ten-year period.”* In doing so, the Court emphasized that the viability of the requested remedy did not depend exclusively on the constitutionality of the challenged provisions.

Moreover, the Court reiterated a principle similar to the one articulated in D.A. 455/2025 regarding the remedies available to third parties. It held that *“the renewal of trademark registrations does not constitute the final expression of the administrative authority’s will,”* because any party seeking to challenge the continued existence of a trademark registration already has access to specific procedures established under industrial property law. In particular, the Court noted that the continued validity of a registration may be challenged through nullity actions and non-use cancellation actions, which were specifically designed to attack the continued existence of trademark rights.

Finally, the Court added that even if the claimants were deemed to possess legal standing to challenge the renewal, that conclusion would not alter the outcome of the case. As the Court stated, “even if the claimants were correct in arguing that they possess legal standing to challenge the decision renewing the trademark registration, that circumstance would not be sufficient to justify the constitutional relief requested,” because the independent ground for dismissal based on the Federal Court of Administrative Justice’s lack of subject-matter jurisdiction would remain. Accordingly, the Court upheld the dismissal and reinforced the conclusion that Renewal Office Actions are not administrative acts that may be challenged by third parties through a federal administrative litigation proceeding.

Consistent with this approach, the courts in both decisions held that Renewal Office Actions and Recordal Office Actions are not challengeable by third parties through a federal administrative litigation proceeding. Their reasoning is grounded in the view that renewal and recordal proceedings are bilateral administrative processes conducted exclusively between the trademark owner and the registry authority, limited to verifying compliance with the requirements and formalities established by law. As a result, they distinguish these proceedings from others in which the participation of third parties is expressly contemplated, such as opposition proceedings.

Consequently, both decisions reject the notion that the renewal or recordal process possesses a contentious nature and conclude that it does not produce an immediate and direct injury to the legal sphere of third parties, as required by Article 8(I) of the Federal Law of Administrative Litigation Procedure. From this perspective, a renewal proceeding does not resolve a dispute between parties, nor does it require the observance of essential procedural safeguards associated with adversarial proceedings. Rather, its sole function is to maintain the validity of the registration for an additional period of time.

Under this reasoning, any injury suffered by a third party is deemed to arise not from the Renewal Office Action or Recordal Office Action itself, but from a subsequent action in which the registration is asserted. Accordingly, legal standing may allegedly be established only within administrative actions for nullity, non-use cancellation, or cancellation, where the participation of third parties is expressly contemplated by statute.

This referral to other proceedings is problematic because the issues litigated in those proceedings are fundamentally different. Administrative actions for nullity, non-use cancellation, and cancellation are directed against the trademark registration itself, not against the administrative act through which the registration was renewed or through which a declaration of use was acknowledged.

For that reason, it remains unclear what procedural avenue would be available to challenge defects that are specific to the renewal or declaration-of-use process, such as the filing of false declarations of use or renewal, conduct that could give rise to nullity under the Federal Administrative Procedure Law. In this regard, it appears illogical to require an affected third party to pursue mechanisms specifically designed to challenge a different act, namely the trademark registration itself, when the true object of the challenge is the subsequent administrative act that allowed the registration to remain in force. These proceedings simply do not address the same factual circumstances that allegedly resulted in the unlawful continuation of the registration.

The inability to challenge Renewal Office Actions and Recordal Office Actions places third parties in a position of legal vulnerability and creates a normative gap regarding the existence of an effective mechanism through which such Office Actions may be challenged when they produce legal effects against persons who did not participate in the underlying proceeding but are nevertheless affected by the continued existence of the trademark registration.

Both judicial decisions answer this question in the negative. They reject the argument that Article 3, Section XII, of the Organic Law of the Federal Court of Administrative Justice, which refers to acts that “bring an administrative proceeding or instance to an end, or resolve an administrative file,” could encompass challenges brought by third parties who did not participate in the proceeding. Instead, the courts reason that the purpose of this provision was precisely to prevent third-party intervention in procedures where such participation is not expressly authorized.

As a result, the disputed issue remains without an express answer, forcing affected parties to engage in a systematic interpretation of the applicable legislation¹⁶. As occurred in the cases that gave rise to the precedents discussed above, this requires identifying the purpose and meaning of the relevant provisions and applying them to a specific factual scenario. Indeed, the silence of the legal framework regarding the challengeability of Renewal Office Actions and Recordal Office Actions arguably justifies recourse to the general provisions governing challenges to administrative acts whose regulation does not expressly address this situation.

It should also be noted that the issue addressed by these precedents was subsequently submitted to the Supreme Court of Justice of the Nation through Appeal for Review in Direct Amparo No. 4676/2026 (A.D.R. 4676/2026). However, that appeal was dismissed after the Supreme Court concluded that the constitutional and statutory requirements for review had not been satisfied. Accordingly, the Supreme Court did not reach the merits of the issue concerning the challengeability of trademark Renewal Office Actions by third parties, nor did it address the potential existence of a judicial mechanism through which defects specific to such administrative acts could be challenged.

Although the precedents discussed above are unfavorable to the admissibility of a federal administrative litigation proceeding, the underlying issue remains unresolved. To date, the Supreme Court has not issued a decision definitively establishing the scope of third parties' right of access to justice when confronted with Renewal Office Actions or Recordal Office Actions that produce legal effects within their legal sphere.

Consequently, the possibility remains that, in a future case satisfying the procedural requirements for Supreme Court review, the Court may ultimately address this issue and establish a binding interpretation concerning the nature of such acts, their effects on third parties, and the availability of an effective legal mechanism through which their legality may be challenged.

¹⁶ Velluzzi, Vito, "«Interpretación sistemática»: ¿un concepto realmente útil? Consideraciones acerca del sistema jurídico como factor de interpretación", trad. de Amalia Amaya, Doxa. Cuadernos de Filosofía del Derecho, Alicante, núm. 21-I, 1998, pp. 71-73.

8. CONCLUSION

The renewal of a trademark registration and the recordal of a Declaration of Actual and Effective Use do not constitute new grants of trademark rights. Nevertheless, neither can they be regarded as acts devoid of impact on third parties. Both are based on a preexisting registration and are intended to allow that registration to remain in force and continue producing legal effects to third parties, provided that the applicable legal requirements are satisfied. The Office Actions through which the IMPI recognizes these procedures embody the final determination of the authority with respect to a specific administrative file, presuppose verification of the applicable requirements, and consolidate the continued existence of the exclusive right. Accordingly, they constitute definitive administrative acts subject to the principle of legality and entitled to a presumption of validity unless and until they are annulled by the competent authority.

Consequently, the principal legal response to the effects of a potentially irregular Office Action should be its autonomous challenge through a federal administrative litigation proceeding, provided that three conditions are satisfied: first, that the Office Action constitutes the final manifestation of the administrative will; second, that the alleged defect arises from the renewal or declaration-of-use procedure rather than from the original grant of the registration; and third, that the claimant demonstrates a direct and current injury to its legal sphere. Such injury may arise when the renewed registration, or the registration maintained through a Recordal Office Action acknowledging a Declaration of Use, is cited as an obstacle to a later-filed application or serves as the basis for an opposition, an administrative declaration action, or any other proceeding capable of directly affecting the rights of the third party. In such circumstances, the controversy does not involve abstract interference with a proceeding to which the claimant was not a party, but rather the judicial review of an administrative act that already produces individualized legal consequences.

In order to properly identify the appropriate remedy, it is essential to distinguish the object of the claim. Challenging the Office Action means questioning the legality of the administrative act through which the IMPI deemed the requirements for renewal or declaration of use to have been satisfied. Challenging the validity of the registration itself means attacking the original grant of the trademark registration on the basis of one of the grounds for nullity established by the Federal Law for the Protection of Industrial Property.

Challenging the effects of the registration towards third parties, in turn, involves contesting the manner in which that right is asserted or enforced in a specific case. Although these claims may be related, they are not equivalent. A nullity action should not be used to remedy defects specific to the renewal process, nor should a non-use cancellation action become a vehicle for generally reviewing the truthfulness of declarations made during earlier periods of the registration's existence.

Where a direct challenge to the Office Action is unavailable, the remedies available will depend upon the nature of the defect and the effect sought to be removed. A nullity action remains appropriate only when the defect affects the original grant of the trademark registration and falls within one of the grounds set forth in Article 258 of the Federal Law for the Protection of Industrial Property. A non-use cancellation action may be used to challenge the absence of use during the three consecutive years immediately preceding the filing of the action, as well as the other circumstances expressly contemplated by law. Cancellation remains available in those situations specifically regulated by statute. Likewise, within a proceeding in which the trademark registration is invoked, it may be possible to challenge the effectiveness or scope of the rights asserted under that registration. None of these mechanisms, however, fully substitutes for judicial review of defects specific to a Renewal Office Action or a Recordal Office Action acknowledging a Declaration of Use. Furthermore, although Article 12 of the Federal Law for the Protection of Industrial Property may serve as a substantive standard of legality, it does not, by itself, create an autonomous cause of action through which such administrative acts may be invalidated.

The issue of timing likewise requires a differentiated approach for trademark owners and third parties. With respect to the trademark owner, the period for challenge begins when notification of the Office Action becomes effective. By contrast, in the case of a person who did not participate in the relevant proceeding, publication in the Industrial Property Gazette neither establishes knowledge of the defect nor, by itself, creates a direct injury. A third party acquires legal standing only when the act has a concrete impact on its legal sphere, for example, when the registration is invoked as an obstacle to its rights or serves as the basis for an action brought against it. In such circumstances, the limitation period should be calculated from the moment of actual knowledge and effective injury, applying the rules governing administrative decisions whose existence or notification was previously unknown. Any other interpretation would allow the limitation period to expire before the claimant had a meaningful legal opportunity to challenge the act, thereby rendering access to justice illusory.



The interpretation that best reconciles the competing interests at stake is therefore one of conditional, rather than unrestricted, challengeability. Legal certainty and the stability of trademark registrations require recognition of their presumption of validity, respect for statutory time limits, and preservation of the distinct legal frameworks governing nullity, non-use cancellation, and cancellation under the Federal Law for the Protection of Industrial Property. At the same time, effective judicial protection requires that such stability not be transformed into immunity from judicial review when a definitive administrative act, affected by its own independent defect, is subsequently used to directly injure a third party. Accordingly, federal administrative litigation should be available whenever definitiveness, legal standing, timeliness, and a causal connection between the alleged defect and the specific injury are present. Only in the absence of those elements should the alternative mechanisms established for challenging trademark registrations or their effects apply. Such an approach preserves confidence in the trademark system while preventing unlawful administrative acts from becoming insulated from review merely through the passage of time.

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